

**NAMLEX
INDEX TO THE LAWS OF NAMIBIA**

**LEGAL ASSISTANCE CENTRE
2010 update**

INFORMATION CURRENT TO 30 June 2010

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UPDATES

The current issue of NAMLEX includes the following:

- laws and regulations through **Government Gazette 4513 (30 June 2010)**
- cases in the Namibian Law Reports through **2009**
- multilateral treaties signed or ratified as of **31 May 2010**.

The Legal Assistance Centre will endeavour to update NAMLEX from time to time. While every effort has been made to ensure the accuracy of the information in NAMLEX, there are undoubtedly some errors. We appeal to those who use NAMLEX to alert us to mistakes which should be corrected or to additional information which should be included in future updates.

TERMINOLOGY

There are laws which are termed "Acts", "Ordinances", "Proclamations" and "AG Proclamations" because legislative authority over South West Africa vested in various different offices and bodies at different points in the country's history. The differences in terminology do not give the laws in question any greater or lesser legal force.

This index refers to "South West Africa" to mirror the use of that term in the laws which are being discussed, and to differentiate between the period before and after independence.

FORMAT

INDEX

The categories used in NAMLEX are listed in the index in boldface type. All other headings have cross-references to NAMLEX categories.

LIST OF STATUTES

This is an alphabetical list of all the statutes in force in Namibia. The category in which each statute has been placed is indicated in brackets. South African statutes inherited by Namibia at independence are indicated in italics. Laws which have not yet come into force are shaded. Appropriations, transfer proclamations and repeals of discriminatory legislation which do have any independent force are excluded from this list.

INDIVIDUAL ENTRIES

The individual statutes in each index category are listed chronologically, starting with the oldest statute.

Title of statute: South West African and Namibian legislation appear in ordinary typeface. South African legislation is indicated in italics. The title also indicates which South African amendments to South African legislation are applicable to Namibia.

Summary: This is a brief summary of the topics covered by the statute. For post-independence statutes, the date on which the statute came into force is given if this is a date other than the date the statute was published in the *Government Gazette*.

Applicability to SWA: For South African statutes, there is an explanation of how the statute became applicable to Namibia.

Transfer of administration to SWA: Various laws called “transfer proclamations” transferred the administration of certain South African statutes to South West Africa, primarily during the period 1977-1979. This information is important for determining which South African amendments to the statute are applicable to Namibia. The transfer proclamations are discussed in more detail below.

Amendments: Amendments to each statute are listed. The name of the amending act is omitted where it is simply a reference to the primary legislation (eg where the Namibian Citizenship Act is amended by the Namibian Citizenship Amendment Act). The name of the amending act is included in some cases where it provides information about the context of the amendment, particularly for amendments made since independence (eg where the Agricultural Bank Act is amended by the Posts and Telecommunications Companies Establishment Act).

Regulations: This part of the entry lists regulations and other subsidiary rules and notices. *These listings are not comprehensive.* However, for the period since independence, all regulations and most other subsidiary rules and notices have been included.

Appointments: For most statutes, recent appointments made in terms of the statute are listed. However, this information is not comprehensively listed.

Cases: Judicial decisions which relate to the statute are also included. *These listings are not comprehensive.* However, they include all Namibian cases published since independence in the Namibian Law Reports (published by the Legal Assistance Centre and Juta), as well as a few significant cases dating from before independence. The cases listed also include all District Labour Court and Labour Court judgments reported in the Namibia Law Reports or in the Namibian Labour Law Publication (available at www.namibia-law.com by subscription).

Generally *not* included are unreported cases available only in hard copy or via www.saflii.org or www.superiorcourts.org.na and Namibian cases reported only in Butterworths Constitutional Law Reports (BCLR) or in the South African Law Reports. This update was also done without reference to www.namlji.org.

Articles: This includes selected books and articles which discuss the legislation, as well as public educational materials on the statute in question. This feature is new with the 2010 update, and feedback on its usefulness or suggestions for inclusion would be welcomed.

Other information: Additional information which may be useful has been included with some entries.

Government Notices and General Notices NOT catalogued: Although key notices are logged under the relevant statutes, NAMLEX does not include notices pertaining to the following-

- advertisements
- announcements of vacancies
- bulk water supply tariffs
- changes of surnames
- closures of roads or erfs
- communications licences
- town planning schemes
- township establishment and boundaries
- farming units offered for allotment
- hunting seasons
- invitations for tenders
- prohibition and proposed prohibition of use of certain merchandise marks
- proclamation of district roads
- registration or de-registrations of close corporations
- registration or de-registrations of companies
- registration of air services
- registration of trademarks
- road carrier permits
- total allowable catches (fish).

ABBREVIATIONS

- AG** Administrator General
This refers to the Administrator-General of South West Africa. Where the term AG appears on its own in a citation, this refers to an AG Proclamation.
- GG** *Government Gazette*
Prior to Namibian independence, laws and regulations which were applicable to South West Africa were published in the *Government Gazette* of South Africa, in the *Official Gazette* of South West Africa and sometimes in both. At independence, Namibia began publication of the *Government Gazette* of the Republic of Namibia. Thus the term “Government Gazette” refers to two different publications, depending on the relevant date. The context should indicate whether the term refers to the Namibian *Government Gazette* or to the South African one.
- GN** Government Notice
“Government Notices” should not be confused with “General Notices”. The abbreviation GN is used only for “Government Notice” in this index. The term “General Notice” is spelled out.
- OG** *Official Gazette of SWA*
- Ord.** Ordinance
- Proc.** Proclamation
- RSA** Republic of South Africa
South Africa became the Republic of South Africa in 1961.
- SA** South Africa
- SWA** South West Africa or South West Africa/Namibia

TRANSFER PROCLAMATIONS

During the years 1977 to 1980, the administration of some South African statutes was transferred from South African government departments to the Administrator-General of South West Africa.

Although a few of these transfers were made by Proclamations of the State President of South Africa, most were effected by “Transfer Proclamations” promulgated by the Administrator-General. Each of these Transfer Proclamations applied to all South African statutes administered by a specific South African government department. Exceptions to the general transfer of powers from the department in question were listed in the Transfer Proclamation.

All of the Transfer Proclamations are listed for convenience in the index, in a category entitled “Transfer Proclamations”.

The procedure for effecting transfers

Most of the individual Transfer Proclamations refer to the “General Proclamation”, which is the Executive Powers Transfer (General Provisions) Proclamation, 1977 (AG 7/1977, as amended). This General Proclamation sets forth the mechanics of the transfer of powers.

Section 3(1) of the General Proclamation was the core of the administrative transfer. It stated that any reference to the “Minister”, the “Minister of Finance”, the “State President”, “Parliament” or the “Government of the Republic” should be construed as a reference to the Administrator-General, while a reference to the “State” should be construed as *including* a reference to the Administrator-General. A reference to the “Republic” was to be construed as a reference to the territory of South West Africa, and a reference to the “*Government Gazette*” of the Republic was to be construed as a reference to the “*Official Gazette*” of the territory of South West Africa.

If a statute was completely exempted from the operation of section 3(1) of the General Proclamation, then the administration of the statute was not transferred to South West Africa.

Transfer proclamations which did not actually refer to the General Proclamation followed a similar pattern.

The effect of transfer proclamations on amendments and repeals

If the administration of a statute was transferred to South West Africa by the General Proclamation, section 3(5) of the General Proclamation (as inserted by AG 10/1978 and amended by AG 20/1982) had the effect of “freezing” the statute as it stood at the date of transfer.

Section 3(5) as amended states:

No Act of the Parliament of the Republic --

- (a) *which repeals or amends any law –*
 - (i) *passed by Parliament and which applies in the Republic as well as in the territory; and*
 - (ii) *of which any or all the provisions are administered by or under the authority of the Administrator-General or the Council of Ministers in terms of a transfer proclamation or any other law; and*
- (b) *which is passed after the commencement of such transfer proclamation or other law*

shall, notwithstanding any provision of a law referred to in paragraph (a) or any other law passed after the commencement referred to in paragraph (b) that the law referred to in paragraph (a) or any amendment thereof applies in the territory, apply in the territory, unless it is expressly declared therein or in any other law that it shall apply in the territory.

The effect was that blanket provisions predating the transfer -- such as the frequently-used formula "This Act, and any amendment thereof, shall also apply in the territory of South West Africa" -- no longer operated to make South African amendments to the Act automatically applicable to South West Africa. Amendments to the statute in South Africa subsequent to the date of the relevant transfer proclamation were applicable to South West Africa *only* if the amending act, or some other law passed subsequent to the date of transfer, expressly made the amendments applicable to South West Africa.

The same rule applied to repeals. If a statute which had been transferred to South West Africa was repealed in South Africa, the repeal was not applicable to South West Africa unless the repealing act expressly stated that it also applied to South West Africa.

The effect of transfer proclamations on rules and regulations

The same principle applied to rules and regulations issued under a statute which had been transferred to South West Africa.

Section 3(4) of the General Proclamation states:

Any proclamation, regulation or rule which is issued or made after the commencement of any transfer proclamation by, or on the authority or with the approval of, the State President or the Minister under a law which at such commencement applies both in the territory and in the Republic, and which is published in the Government Gazette of the Republic, shall, notwithstanding the provisions of subsection (1), apply in the territory if such proclamation, regulation or rule or the notice by which it is so published, contains a statement that it was or is issued or made with the consent of the Administrator-General, and applies also in the territory: Provided that for the purposes of the application of such proclamation, regulation or rule in the territory, the provisions of subsection (1) [the section which interpreted terminology in the relevant laws so as to effect the transfer] shall apply.

The effect was that rules and regulations issued under South African laws applicable to South West Africa after the date of transfer did not apply to South West Africa unless this was explicitly stated. If subsequent rules and regulations were made applicable to South West Africa through this procedure, then their administration was transferred to South West Africa in the same way as that of the enabling act.

Additional information

Transfers are currently relevant only where statutes which originated in South Africa are still applicable in independent Namibia. Transfers of individual statutes are discussed in more detail under the NAMLEX entry for each such statute.

A BRIEF LEGAL HISTORY OF NAMIBIA

Prior to the colonial presence in Namibia, the laws in force were the customary laws of the various communities.

Germany first annexed portions of Namibia as a colony in 1884. The boundaries of the territory, which became known as German South West Africa, were set forth in agreements concluded in 1886 with Portugal and in 1890 with Great Britain. The territory was administered by German colonial officials, who initially issued only a small number of regulations. A Governor's Council representing the colonial settlers was established in 1908. This body was supplemented by a *Landesrat* comprising both elected and appointed members of the colonial community, in terms of the **Verordnung of 28 January 1909**. This Territorial Council was primarily an advisory body, with the power to change or modify the Governor's decisions.

German laws and administration were applied mainly in the central and southern parts of the country known as the "Police Zone". The northern areas of Namibia -- including the Kaokoveld, Ovambo, Okavango and Caprivi areas -- were not directly affected by German settlement.

German rule in Namibia effectively ended with the surrender of the German armed forces on 9 July 1915. Martial law was declared during the period of military occupation by South African forces in the **Proclamation of Martial Law 15 of 1915** (13 August 1915), which was repealed by Proclamation 76/1920. The legal measures taken during the period of martial law were ratified by **Proclamation 1 of 1921** (Union Gazette Extraordinary of 2 January 1921). During the period of martial law, German laws remained in force, with the exception of those which were specifically repealed. Administration was initially in the hands of a military governor, who was replaced by a South African administrator on 28 October 1915.

"South West Africa" became a Protectorate of South Africa in terms of the Peace Treaty of Versailles which was signed on 28 June 1919. The Mandate for South West Africa established pursuant to this treaty was reprinted in Government Notice 72 of 6 June 1921. The **Treaty of Peace and South West Africa Mandate Act 49 of 1919** gave effect to the Mandate for South West Africa. In general, this Act delegated administration of the territory of South West Africa to the Governor-General of South Africa, who was given both legislative and executive powers. The Governor-General subsequently delegated administrative powers over the Territory to the Administrator of South West Africa, in **SA Proclamation 1 of 2 January 1921**. The Administrator was advised by an Advisory Council established in terms of **SWA Proclamation 1 of 3 January 1921** (which was amended by Proclamation 51 of 1921). At the same time, the **Administration of Justice Proclamation 21 of 1919** introduced Roman-Dutch law to South West Africa.

In 1921 a Commission on South West Africa established by the South African government recommended that the Territory be administered as a "fifth province" of South Africa. However, for both political and economic reasons, the South African government did not act fully upon these recommendations. The **South West Africa Constitution Act 42 of 1925** provided for the appointment of an Administrator and the election of an all-white Legislative Assembly and Executive Committee. The Legislative Assembly had the power to make laws and ordinances, except on certain matters which were "reserved" and remained under the legislative power of the South African government. These reserved matters included defence; railways and harbours; posts and telegraphs; matters pertaining to the courts; immigration; customs and excise; banking and currency; and "native affairs". The Administrator had whatever administrative powers were delegated to him by the Governor-General in respect of these reserved matters.

In 1946, South Africa began moving towards the incorporation of South West Africa into the Union of South Africa. Consequently, the *South West Africa Constitution Act 42 of 1925* was substantially amended by the *South West Africa Affairs Amendment Act 23 of 1949*. This Act gave South West Africa direct representation in the South African Parliament. The South West African Legislative Assembly (which was now constituted somewhat differently) continued to have legislative power over anything which was not a reserved matter. The South African Parliament was competent to legislate on matters reserved from the South West African Legislative Assembly, but the Governor-General no longer had law-making powers for the territory. The Administrator of South West Africa remained empowered to administer reserved matters, subject to the direction and control of the Governor-General of South Africa.

The *South West Africa Affairs Amendment Act 55 of 1951* returned legislative power to the Governor-General, empowering him to make laws in respect of reserved matters by Proclamation in the *Government Gazette*, subject to the approval of the South African Parliament.

In a continued impetus towards centralisation, the *South West Africa Constitution Act 42 of 1925* was further amended by the *South West Africa Native Affairs Administration Act 56 of 1954*, which transferred administration of “native affairs” to the South African Minister of Native Affairs (later called the Minister of Bantu Administration and Development), who was competent to transfer certain powers to the Administrator of South West Africa in his capacity as a member of the Native Affairs Commission. To further complicate matters, at this stage the responsibility for matters affecting the “Basters” and “Coloureds” remained with the Administration of South West Africa. Later the South African Department of Coloured, Rehoboth and Nama Relations took over the administration of affairs relating to these groups.

The *South West Africa Constitution Act 42 of 1925* was replaced by the *South West Africa Constitution Act 39 of 1968*, which gave the South African government power to make laws in respect of an expanded list of reserved matters, including “Bantu affairs”; civil aviation; railways and harbours; employment in the public service; courts; postal and telephone services; police and the military; immigration control; customs and excise; and banking and currency. The SWA Administrator continued to have administrative power in respect of most of these matters, subject to the direction and control of the State President of South Africa, who had full powers to administer the territory “as an integral portion of the Republic”.

This legal regime was soon followed by the *Development of Self-Government for Native Nations in South West Africa Act 54 of 1968*, which was designed to assist “native nations in the territory of South West Africa” to “develop in an orderly manner to self-governing nations and independence”. The “native nations” were identified as Damaraland, Hereroland, Kaokoland, Okavangoland, Eastern Caprivi, Ovamboland and any other land subsequently set aside for the use of native nations by the State President of South Africa. The Legislative Councils in the different “native nations” were to have legislative power over certain listed topics -- including education; welfare; clinics; business, trade and industry; roads, sanitation and water supply; the administration of justice; and labour bureaux” -- while Executive Councils in each “native nation” would have administrative power over these matters.

Soon afterwards, the *South West Africa Affairs Act 25 of 1969* gave South Africa even tighter legal and administrative control over South West Africa. Many items were added to the existing list of reserved matters, including arms and ammunition; explosives; “riotous assemblies”; prisons; immorality; publications control; water affairs; mining and minerals; forestry; agriculture; fishing; income tax; deeds; trademarks; the registration of companies; labour matters; marriage; the registration of births, deaths and marriages; various welfare issues; and matters relating to “Coloureds, Namas and Basters”. The South West African

authorities could not enact legislation on any reserved matters without the permission of the State President of South Africa.

However, in the wake of the 1971 Advisory Opinion of the International Court of Justice and the subsequent political developments, there was a movement in the opposite direction, towards the eventual independence of South West Africa/Namibia. Reflecting this change in orientation, the *South West Africa Constitution Amendment Act 95 of 1977* empowered the State President of South Africa to make laws for the territory of South West Africa “with a view to the eventual attainment of independence”.

RSA Proclamation R249 of 28 September 1977 abolished the SWA seats in the South African Parliament. The office of Administrator-General for SWA/Namibia was established by *RSA Proclamation 180 of 19 August 1977*, and *RSA Proclamation 181 of 19 August 1977* empowered the Administrator-General to make laws for SWA/Namibia by Proclamation in the *Official Gazette*, as well as to repeal or amend laws passed by the South African Parliament insofar as they related to SWA/Namibia. At this stage, the administration of a number of laws was transferred from South Africa back to South West Africa in terms of a series of transfer proclamations promulgated between 1977 and 1980.

In the meantime, external pressure on South Africa to allow the people of SWA/Namibia to determine their own future led to the Turnhalle Constitutional Conference in 1975. This initiative, which was organised along ethnic lines, was boycotted by SWAPO and some other parties on the grounds that the process was irretrievably tainted by the prevailing climate of political repression.

The Turnhalle forum made recommendations for an “interim government”. Ignoring international opposition, in 1978 South Africa proceeded unilaterally with “internal” elections for a Constituent Assembly to draw up a constitution for an independent Namibia, pursuant to the **Constituent Assembly and Election Proclamation, 1978** (AG 63/1978). SWAPO and other parties boycotted these elections, which were marred by intimidation and propaganda and strongly criticised at an international level. In 1979, the **National Assembly Proclamation, 1979** (AG 21/1979) transformed this Constituent Assembly into a National Assembly with law-making powers. In addition, a Council of Ministers established in terms of the **Council of Ministers Proclamation, 1980** (AG 19/1980) was empowered to issue administrative directives to the Administrator.

In 1980, the **Representative Authorities Proclamation, 1980** (AG 8/1980) made provision for second-tier governmental authorities based on an ethnic division of the country into eleven “population groups”. The various second-tier authorities established pursuant to AG 8/1980 then assumed control over a number of issues, including communal land rights, education, health services and social welfare.

National legislative and executive authority reverted to the Administrator-General in 1983 after the DTA (which was the “ruling party” in accordance with the results of the “internal elections”) resigned from the National Assembly and the Council of Ministers.

In 1985, there was another attempt at internal negotiations at a Multi-Party Conference which led to the formation of the so-called “Transitional Government of National Unity”. This new transitional arrangement, which was rejected by SWAPO as well as many other groupings, was composed of a Legislative and Executive Authority established by *RSA Proclamation R.101 of 1985*, complemented by a Constitutional Council established by the **Constitutional Council Act 8 of 1985**. This governing system incorporated a “Bill of Fundamental Rights and Objectives” annexed to *RSA Proclamation R.101 of 1985*.

In the meantime, international negotiations had resulted in the passage of UN Security Council **Resolution 435 of 29 September 1976**, which set forth a framework for free and fair elections to be held under international supervision. Faced with increasing criticism at an international level combined with pressure from the armed struggle led by SWAPO from exile and the growing internal resistance, South Africa finally acceded to the United Nations plan for a transition to independence. Implementation of Resolution 435 began on 1 April 1989. It left the administration of the electoral process in the hands of the South West African Administrator-General, subject to the “supervision and control” of the United Nations represented by the UN Special Representative and the United National Transitional Assistance Group (UNTAG).

During the implementation period, the Administrator-General took over the functions of the Transitional Government of National Unity, as well as the functions of the second-tier ethnic authorities in terms of the **Repeal of the Laws on the National Assembly, the Cabinet and the Constitutional Council Proclamation, 1989** (AG 16/1989), and the **Representative Authorities Powers Transfer Proclamation, 1989** (AG 8/1989).

Resolution 435 called for the “repeal of all remaining discriminatory or restrictive laws, regulations or administrative measures which might abridge or inhibit” the objective of a free and fair election. This objective was addressed by the **First Law Amendment (Abolition of Discriminatory or Restrictive Laws for purposes of Free and Fair Election) Proclamation** (AG 14/1989) and the **Second Law Amendment (Abolition of Discriminatory or Restrictive Laws for purposes of Free and Fair Election) Proclamation** (AG 25/1989).

Elections were held in November 1989, pursuant to the **Registration of Voters (Constituent Assembly) Proclamation, 1989** (AG 19/1989), the **Registration of Political Organisations (Constituent Assembly) Proclamation, 1989** (AG 43/1989), and the **Election (Constituent Assembly) Proclamation, 1989** (AG 49/1989), as amended by AG 59/1989.

The role of the Constituent Assembly was determined primarily by the terms of UN Resolution 435, supplemented by the **Constituent Assembly Proclamation, 1989** (AG 62/1989). A Constitution was speedily adopted, and Namibia became an independent nation on 21 March 1990 with the **Constitution of the Republic of Namibia** as the Supreme Law.

Further details about the legal history of Namibia and the relevant political context can be found in A du Pisani, *SWA/Namibia: The Politics of Continuity and Change* (1986).

LEGAL BACKGROUND OF SPECIFIC AREAS

South African laws which were made applicable to South West Africa sometimes contained particular references to certain portions of Namibia: the Eastern Caprivi Zipfel, Walvis Bay or the Rehoboth Gebiet. There are also a few specific references to these areas in South West African and Namibian legislation. The reason for this is the peculiar legal history of these three areas, which is briefly outlined here.

Eastern Caprivi Zipfel

This area became a part of German South West Africa as a result of an agreement between Great Britain and Germany dated 1 July 1890, with the understanding that it would provide a corridor to the Zambezi River and thus to other areas in Africa which were under German control. It was subsequently named the Caprivi Zipfel (Strip) after the German Chancellor, Count von Caprivi.

The Eastern Caprivi Zipfel is defined in the *SA Eastern Caprivi Zipfel Administration Proclamation 147 of 1939* as “that part of the Mandated Territory of South West Africa which lies to the East of longitude 21° East”.

The Eastern Caprivi Zipfel has had an unusual administrative history in comparison to other parts of Namibia. From 1922 to 1929, it was administered by the British High Commissioner of South Africa as if it were part of the Bechuanaland Protectorate (now Botswana). (See *SA Proclamations 12 of 1922 and 23 of 1922*.) From 1929 until 1939, it was administered by the Administrator of South West Africa, in terms of *SA Proclamation 196 of 1929*, which authorised the Administrator to repeal or amend any laws in force in the Caprivi, and to make new laws applicable to the area. The *Caprivi Zipfel Administration Proclamation 26 of 1929* made provision for the laws of the Territory to apply to the “Eastern Caprivi Zipfel”.

Then, in 1939, administrative responsibility passed to the South African Minister of Native Affairs (later the Minister of Bantu Administration and Development), in terms of the *SA Eastern Caprivi Zipfel Administration Proclamation 147 of 1939*.

The *South West Africa Affairs Amendment Act 55 of 1951* gave the Governor-General of South Africa the power to make laws by Proclamation for the Eastern Caprivi, and to repeal or amend any other laws made applicable to the area, *except* for Acts of the South Africa Parliament made applicable to the Eastern Caprivi Zipfel after the date of the Governor-General’s empowerment. The 1951 Act also specified that no future Acts of Parliament and no Ordinances of the Legislative Assembly of South West Africa would be applicable to the Eastern Caprivi Zipfel unless “expressly declared to be so applicable”. (For the rest of the Territory of South West Africa, the Governor-General was empowered at this stage to make laws by Proclamation only in respect of matters for which the Legislative Assembly of South West Africa was not empowered to legislate.)

The *South West Africa Constitution Act 39 of 1968* made a similar distinction between the power of the State President of South Africa to make laws for the Territory of South West Africa in general, and his power to make laws for the Eastern Caprivi Zipfel. This Act also reiterated the requirement that legislation of the South African Parliament and the Legislative Assembly of South West Africa would be applicable to the Eastern Caprivi Zipfel only if this was expressly stated.

Thus, from 1939, administrative responsibility for the Eastern Caprivi Zipfel rested entirely with South Africa, with no authority over the area being delegated to the South West African administration.

Then, in 1977, when the *South West Africa Constitution Amendment Act 95 of 1977* transferred general administrative responsibility for the Territory from South Africa to the South West African administration, the Eastern Caprivi Zipfel was included without distinction.

The history of the Eastern Caprivi Zipfel is discussed in *Moraliswani v Mamili* (unreported judgement, Supreme Court of SWA, 1985/06/12).

Walvis Bay

Britain annexed Walvis Bay in 1878, an act which was formalised by the Cape Colonial Parliament's *Walfish Bay and St. John's River Annexation Act 35 of 1884* and the accompanying *Proclamation of Annexation 184 of 1884*.

From 7 August 1884, the port and settlement of Walvis Bay was administered as part of the Colony of the Cape of Good Hope. At this stage, the Cape Governor was authorised to legislate for Walvis Bay by proclamation.

From 31 May 1910 to 1915, Walvis Bay was treated as part of the Province of the Cape of Good Hope of South Africa, and was considered part of the Union of South Africa for legislative and administrative purposes. During the occupation of South West Africa by Union forces in the course of World War II, the **Proclamation of Martial Law 15 of 1915** provided that all proclamations and martial law regulations issued in the Protectorate of German South West Africa would apply to Walvis Bay "on account of its contiguity to the Protectorate".

After the Mandate for South West Africa was established pursuant to the Peace Treaty of Versailles, the *South West Africa Affairs Act 24 of 1922* gave the Governor-General of South Africa the power to set a date after which Walvis Bay would be administered "as if it were part of the mandated territory and as if inhabitants of the said port and settlement were inhabitants of the mandated territory". The Governor-General was also empowered to delegate his legislative powers for Walvis Bay to the Administrator of South West Africa for the purpose of bringing the laws of Walvis Bay into conformity with the rest of the territory. The act further provided that no future act passed by the Parliament of the Union of South Africa would apply to Walvis Bay *unless* this was specifically stated in the law, or the law was declared to be applicable to Walvis Bay by a Proclamation of the Governor-General.

The relevant date was set as 1 October 1922 by *SA Proclamation 145 of 1922*. This Proclamation also delegated all of the Governor-General's powers to make laws for Walvis Bay to the Administrator of South West Africa. The Administrator immediately enacted the **Walvis Bay Administration Proclamation 3 of 1922**, which repealed the South African laws in force in Walvis Bay and substituted the relevant South West African legislation. This Proclamation also provided that all future laws enacted by the Administrator for the territory would be automatically applicable to Walvis Bay, unless Walvis Bay was specifically *excluded*. Thus, from this date, Walvis Bay was treated as if it were part of the Territory of South West Africa.

The only legal distinction between Walvis Bay and the Territory of South West Africa was the requirement that laws made applicable to South West Africa by the South African Parliament applied to Walvis Bay only if this was expressly stated. This caused so much confusion that the *South West African Affairs Amendments Act 28 of 1944* removed this special requirement, providing that all laws made applicable to South West Africa by the South African Parliament would automatically apply to Walvis Bay. Nevertheless, specific references to Walvis Bay continued to be included in some of the South African laws which were applied to South West Africa, even though they were no longer necessary.

The legal effect of treating Walvis Bay as a part of South West Africa during this period is discussed in *Rex v Offen* 1935 SA 4 (AD), affirming 1934 SWA 73, and *R v Akkermann* 1954(1) SA 195 (SWA).

As pressure for an independent Namibia increased, South Africa took steps to tighten its hold on Walvis Bay, which was a strategic location in economic as well as military terms. Walvis Bay legally reverted to being administered as part the Cape Province of South Africa on 1 September 1977 in terms of the ***Walvis Bay Administration Proclamation, RSA Proclamation No. R.202 of 1977***. This Proclamation provided that all laws in force in Walvis Bay prior to this date would remain in force, but that any future laws which became operative in the Cape Province would also apply to Walvis Bay. The State President of South Africa already had broad powers to legislate for South West Africa and Walvis Bay in terms of the *South West Africa Constitution Act 39 of 1968*, and he exercised these powers in a series of proclamations to bring Walvis Bay back in line with South Africa on key matters such as labour law, mining and minerals, race relations, pass laws, the judiciary, parliamentary and provincial representation and various economic issues.

This situation predictably caused a great deal of legal confusion and inspired international protest. The United Nations Security Council passed **Resolution 432 of 27 July 1978** declaring that the territorial integrity of Namibia must be assured through the “reintegration” of Walvis Bay.

Although the **Namibian Constitution** explicitly stated that the national territory of Namibia includes the enclave, harbour and port of Walvis Bay, the resolution of the status of Walvis Bay was postponed as part of the negotiations around the independence process. According to the Supreme Court in *S v Redondo* 1992 NR 133 (SC), the Namibian legislature and courts were bound in terms of the Namibian Constitution to exercise jurisdiction over Walvis Bay from the date of Namibian independence “whatever difficulties there may be in the execution of such duties”. However, this case also held that the transitional provisions of the Constitution were intended to provide legal continuity in Walvis Bay as well as in the rest of Namibia. In other words, the laws in force in Walvis Bay at the date of independence remained in force until amended, repealed or declared unconstitutional, even if these were different from the laws in force in the rest of Namibia.

The full reincorporation of Walvis Bay into independent Namibia was achieved in 1994 in terms of the **Walvis Bay and Off-Shore Islands Act 1 of 1994**. This act provided that as from the effective date of reintegration, 1 March 1994, the laws immediately in force in Walvis Bay would cease to be applied, except insofar as specifically continued in terms of the present act, and that otherwise only the law of Namibia would henceforth apply. Specific provisions of the act then dealt with specific transitional matters. This had the effect of harmonising the laws in Walvis Bay with the laws in force in the rest of Namibia, while ensuring that no one was unfairly prejudiced by the change in legal regimes.

The legal history of Walvis Bay is discussed extensively in *S v Redondo* 1992 NR 133 (SC) at 143 and in L Berat, *Walvis Bay: Decolonization & International Law* (1990).

Rehoboth Gebiet

The Rehoboth Basters established a republic in 1870, prior to the formal colonisation of South West Africa by Germany. A constitution which came to be known as the **Paternal Laws** was adopted as a Constitution for the Baster people in 1872. The Paternal Laws provided for a supreme ruler known as a *Kaptein*, for a Council (*Kapteinsraad*) of two citizens to assist the *Kaptein*, and for a Parliament (*Volksraad*) consisting of a further two citizens.

In 1885, the first *Kaptein* of the Rehoboth Gebiet signed a treaty with the German colonial authorities which guaranteed the political autonomy of the Rehoboth Basters. Despite the

existence of this treaty, the German Imperial Government made several laws which were applicable in Rehoboth and involved itself in administration of the area to some degree. Nevertheless, the governing structures set forth in the Paternal Laws continued to operate.

After South Africa acquired the Mandate for South West Africa in terms of the Peace Treaty of Versailles, an agreement was reached in 1923 giving a limited form of self-government to the Rehoboth community. This Agreement described the boundaries of the “Rehoboth Gebiet” (subsequently altered by the Rehoboth Gebiet Affairs Proclamation 9 of 1928, the Rehoboth Gebiet Boundaries Amendment Proclamation 22 of 1941, and the Rehoboth Gebiet Boundaries Amendment Proclamation 36 of 1954); acknowledged the right and title of the Rehoboth community to the land which they then occupied; and gave the *Volksraad* law-making powers for the area, provided that the assent of the Administrator of South West Africa was obtained for all laws enacted. Laws passed for South West Africa as a whole were henceforth to be applicable to the Rehoboth Gebiet only if specifically extended to the area. This agreement was ratified and confirmed in **Proclamation 28 of 1923**.

The 1923 Agreement was rejected by a majority of the Basters, who demanded complete independence. As a result of this dissension, two *Volksraads* were elected and the opposing sections of the community recognised different persons as *Provisional Kapteins*. As a consequence of this dispute, all the powers which had vested in the Kaptein and the Volksraad under the 1923 Agreement were transferred by the Administrator to the Magistrate of the Rehoboth District in terms of the **Rehoboth Affairs Proclamation 31 of 1924**. This move was disregarded by a section of the community, which proceeded to hold new elections for another *Volksraad* and a *Kaptein*. A direct confrontation ensued, which was suppressed by the police and the defence force without bloodshed.

At this stage, the South African government appointed a Commission of Inquiry to make recommendations on the status of the Rehoboth Gebiet. Reporting in 1928, this Commission advised that the Magistrate of Rehoboth should retain the powers transferred to him in 1924, acting on the advice of an Advisory Council consisting of members of the Rehoboth Baster Community. An Advisory Board was established by the **Rehoboth Gebiet Affairs Proclamation 9 of 1928**.

However, from this point forward there was a gradual transfer of powers back to the Rehoboth Community, who continued to insist on their right to self-government. The basic 1924 assignment of authority to the local Magistrate remained in place until 1961, when the powers and duties set forth in the 1923 Agreement were transferred from the Magistrate and the Advisory Council back to the *Kaptein*, the *Kapteinsraad* and the *Volksraad* in terms of the **Rehoboth Gebiet Affairs Ordinance 20 of 1961**.

The restoration of powers culminated in the **Rehoboth Self-Government Act 56 of 1976**, which granted self-government to the citizens of the “Rehoboth Gebiet”. This Act made new provision for the election of a *Kaptein* and a Legislative Council, and the appointment of a Kaptein’s Council by the *Kaptein*. The Kaptein’s Council and the Legislative Council together constituted a Legislative Authority which was empowered to make laws on a wide range of specified matters, but the assent of the State President of South Africa was required for all laws passed by the Legislative Authority. The Act also provided that no laws made applicable to South West Africa after the commencement of the Act (including laws enacted by the South African Parliament as well as laws enacted by the Legislative Assembly of South West Africa) would be applicable to the Rehoboth Gebiet if they related to the specified matters over which the Rehoboth Legislative Authority had been given control.

During the implementation of Resolution 435, all the powers, duties and functions of the Kaptein's Council were transferred to the Administrator-General of South West Africa in terms of the **Government of Rehoboth Powers Transfer Proclamation, 1989** (AG 32/1989).

The **Namibian Constitution** repealed the *Rehoboth Self-Government Act 56 of 1976* in its entirety, making the Rehoboth Gebiet an integral part of Namibia.

As a legacy of the various manifestations of the “self-government” of Rehoboth, there are several matters in respect of which the laws that apply to the Rehoboth Gebiet are not the same as those that apply to the rest of Namibia. For example, as of 1997, the ***Registration of Deeds in Rehoboth Act 93 of 1976*** establishes a separate registry for deeds in the Rehoboth Gebiet, while the registration of deeds for the rest of Namibia falls under the ***Deeds Registries Act 47 of 1937***. Another example is the **Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941**, which applies to the administration of estates of persons who are members of the Rehoboth Baster Community, while the estates of other persons in Namibia are governed by the ***Administration of Estates Act 66 of 1965***.

From time to time, laws applicable to other parts of the territory of South West Africa have been made explicitly applicable to the Rehoboth Gebiet. (See, for example, Proclamation 12/1930.)

The history of the Rehoboth Gebiet is discussed in *Rehoboth Bastergemeente v Government of the Republic of Namibia & Others* 1996 NR 238 (SC).

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Departure from Namibia Regulation Act 34 of 1955 (CITIZENSHIP AND IMMIGRATION)
Development Bank of Namibia Act 8 of 2002 (FINANCE AND DEVELOPMENT)
Development Brigade Corporation Act 32 of 1992 (LABOUR)
Development Fund of South West Africa/Namibia Act 29 of 1987 (FINANCE AND DEVELOPMENT)
Development of Self-Government for Native Nations in South-West Africa Act 54 of 1968 ('BLACKS')
Diamond Act 13 of 1999 (MINING AND MINERALS)
Diplomatic Privileges Act 71 of 1951 (INTERNATIONAL LAW)
Dissolution of Marriages on Presumption of Death Act 31 of 1993 (MARRIAGE AND DIVORCE)
Divorce Laws Amendment Ordinance 18 of 1935 (MARRIAGE AND DIVORCE)
Dried Peas Control Ordinance 35 of 1957 (AGRICULTURE)
Education Act 16 of 2001 (EDUCATION)
Electoral Act 24 of 1992 (ELECTIONS)
Electricity Act 4 of 2007 (ELECTRICITY)
Employees' Compensation Act 30 of 1941 (LABOUR)
Enforcement of Foreign Civil Judgements Act 28 of 1994 (COURTS)
Engineering Profession Act 18 of 1986 (ENGINEERING)
***Environmental Investment Fund of Namibia Act 13 of 2001 (ENVIRONMENT)**
***Environmental Management Act 7 of 2007 (ENVIRONMENT)**
Estate Agents Act 112 of 1976 (ESTATE AGENTS)
Exchequer and Audit Amendment Proclamation, AG 35 of 1979 (FINANCE AND DEVELOPMENT)
Exchequer and Audit Proclamation, RSA Proclamation 85 of 1979 (FINANCE AND DEVELOPMENT)
Explosives Act 26 of 1956 (EXPLOSIVES)
Export Credit and Foreign Investments Re-insurance Act 78 of 1957 (IMPORT AND EXPORT)
Export Processing Zones Act 9 of 1995 (TRADE AND INDUSTRY)
Expropriation Act 63 of 1975 (LAND)
Expropriation Ordinance 13 of 1978 (LAND)
Extradition Act 11 of 1996 (CRIMINAL LAW AND PROCEDURE)
Ex-Volunteers Assistance Proclamation 2 of 1945 (PENSIONS)
Fencing Proclamation 57 of 1921 (LAND)
Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947 (AGRICULTURE)
Finance and Audit Ordinance 1 of 1926 (CRIMINAL LAW AND PROCEDURE)
Finance and Financial Adjustments Acts Consolidation Act 11 of 1977 (FINANCE AND DEVELOPMENT)
Financial Institutions (Investment of Funds) Act 39 of 1984 (FINANCIAL INSTITUTIONS)

Financial Intelligence Act 3 of 2007 (FINANCIAL INSTITUTIONS)
Fire Brigade Services Ordinance 10 of 1978 (REGIONAL AND LOCAL GOVERNMENT)
Foodstuffs, Cosmetics and Disinfectants Ordinance 18 of 1979 (HEALTH)
Foreign Courts Evidence Act 2 of 1995 (EVIDENCE)
Foreign Investments Act 27 of 1990 (TRADE AND INDUSTRY)
Forest Act 12 of 2001 (ENVIRONMENT)
Formalities in Respect of Contracts of Sale of Land Act 71 of 1969 (PURCHASE AND SALE)
Formalities in Respect of Leases of Land Act 18 of 1969 (LANDLORD AND TENANT)
Former Presidents' Pension and Other Benefits Act 18 of 2004 (PRESIDENT)
Friendly Societies Act 25 of 1956 (SOCIAL WELFARE)
Fugitive Offenders and Neighbouring Territories Evidence Proclamation 26 of 1920 (EVIDENCE)
Further Administration of Justice Proclamation 38 of 1920 (COURTS)
Gambling Act 51 of 1965 (CRIMINAL LAW AND PROCEDURE)
Game Products Trust Fund Act 7 of 1997 (ENVIRONMENT)
General Law Amendment Act 101 of 1969, section 29 (DEFENCE)
General Law Amendment Ordinance 12 of 1956, section 4 (ARMS AND AMMUNITION)
General Law Amendment Ordinance 12 of 1956, sections 6-8 (CRIMINAL LAW AND PROCEDURE)
General Law Amendment Ordinance 13 of 1962, section 7 (BIRTHS, MARRIAGES AND DEATHS)
General Law Amendment Ordinance 13 of 1962, section 8 (ARMS AND AMMUNITION)
General Law Amendment Ordinance 13 of 1962, section 9 (CRIMINAL LAW AND PROCEDURE)
General Law Amendment Ordinance 22 of 1958, sections 1-2 (COURTS)
Geneva Conventions Act 15 of 2003 (INTERNATIONAL LAW)
Government Service Pension Act 57 of 1973 (PENSIONS)
Hazardous Substances Ordinance 14 of 1974 (ENVIRONMENT)
Heraldry Act 18 of 1962 (INTELLECTUAL PROPERTY)
High Court Act 16 of 1990 (COURTS)
Higher Education Act 26 of 2003 (EDUCATION)
Honours System for Namibia, Proclamation 2 of 1995 (CONSTITUTION)
Hospitals and Charitable Institutions Ordinance 16 of 1930 (HOSPITALS)
Hospitals and Health Facilities Act 36 of 1994 (HOSPITALS)
Housing Levy Ordinance 18 of 1976 (HOUSING)
Identification Act 21 of 1996 (CENSUS AND STATISTICS)
Immigration Control Act 7 of 1993 (CITIZENSHIP AND IMMIGRATION)
Immovable Property (Removal or Modification of Restrictions) Act 94 of 1965 (LAND)
Import and Export Control Act 30 of 1994 (IMPORT AND EXPORT)
Importation of Cement Ordinance 24 of 1963 (IMPORT AND EXPORT)
Income Tax Act 24 of 1981 (INCOME TAX)
Income Tax Agreement Ratification Ordinance 13 of 1959 (INCOME TAX)
Indecent or Obscene Photographic Matter Act 37 of 1967 (CENSORSHIP)
Indemnity Proclamation of 1923 (PUBLIC SERVICE)
****Industrial Development Act 22 of 1940 (TRADE AND INDUSTRY)**
Inland Fisheries Resources Act 1 of 2003 (MARINE AND FRESHWATER RESOURCES)
Inquests Act 6 of 1993 (INQUESTS)
Insolvency Act 24 of 1936 (INSOLVENCY)
Inspection of Financial Institutions Act 38 of 1984 (FINANCIAL INSTITUTIONS)
International Co-operation in Criminal Matters Act 9 of 2000 (CRIMINAL LAW AND PROCEDURE)
International Health Regulations Act 28 of 1974 (HEALTH)
Interpretation of Laws Proclamation 37 of 1920 (LAW)
Intestate Succession Ordinance 12 of 1946 (SUCCESSION)
Intimidation Proclamation, AG. 24 of 1989 (CRIMINAL LAW AND PROCEDURE)
Judges Pensions Act 28 of 1990 (PENSIONS)
Judges' Remuneration Act 18 of 1990 (JUDGES)
Judicial Service Commission Act 18 of 1995 (JUDGES)
Karakul Pelt Export Duty Proclamation 34 of 1939 (AGRICULTURE)
Karakul Pelts and Wool Act 14 of 1982 (AGRICULTURE)

Karakul Sheep Farming Industry Protection Proclamation 31 of 1930 (AGRICULTURE)
Labour Act 11 of 2007 (LABOUR)
Land Survey Act 33 of 1993 (LAND)
Land Tenure Act 32 of 1966 (AGRICULTURE)
Land Titles Proclamation 2 of 1921 (LAND)
Law Reform and Development Commission Act 29 of 1991 (LAW)
Legal Aid Act 29 of 1990 (LEGAL PRACTITIONERS)
Legal Practitioners Act 15 of 1995 (LEGAL PRACTITIONERS)
Licensing of Totalisators Ordinance 5 of 1938 (REVENUE)
Limitations of Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970 (PRESCRIPTION)
Liquor Act 6 of 1998 (ALCOHOL, DRUGS AND TOBACCO)
***Livestock Improvement Act 25 of 1977 (AGRICULTURE)*
Local Authorities Act 23 of 1992 (REGIONAL AND LOCAL GOVERNMENT)
***Local Authorities Fire Brigade Services Act 5 of 2006 (REGIONAL AND LOCAL GOVERNMENT)**
Locust Suppression Proclamation 34 of 1923 (AGRICULTURE)
Long-term Insurance Act 5 of 1998 (INSURANCE)
Lord's Day Observance Proclamation 54 of 1921 (SUNDAYS AND PUBLIC HOLIDAYS)
***Lotteries Act 15 of 2002 (FINANCE AND DEVELOPMENT)**
Magistrates Act 3 of 2003 (COURTS)
Magistrates' Courts Act 32 of 1944 (COURTS)
Maintenance Act 9 of 2003 (MAINTENANCE)
Marine Resources Act 27 of 2000 (MARINE AND FRESHWATER RESOURCES)
Marine Traffic Act 2 of 1981 (SHIPPING)
Marketing Act 59 of 1968 (AGRICULTURE)
Marriage Act 25 of 1961 (MARRIAGE AND DIVORCE)
Married Persons Equality Act 1 of 1996 (MARRIAGE AND DIVORCE)
Matrimonial Affairs Ordinance 25 of 1955 (MARRIAGE AND DIVORCE)
Matrimonial Causes Jurisdiction Act 22 of 1939 (MARRIAGE AND DIVORCE)
Matrimonial Causes Jurisdiction Act 35 of 1945 (MARRIAGE AND DIVORCE)
Measuring Units and National Measuring Standards Act 76 of 1973 (WEIGHTS, MEASURES AND STANDARDS)
Meat Corporation of Namibia Act 1 of 2001 (AGRICULTURE)
Meat Industry Act 12 of 1981 (AGRICULTURE)
Medical Aid Funds Act 23 of 1995 (MEDICAL AID)
Medical Aid Scheme for Members of the National Assembly, Judges and Other Office Bearers Act 23 of 1990 (MEDICAL AID)
Medical and Dental Act 10 of 2004 (MEDICINE AND MEDICAL PROFESSIONS)
Medical, Dental and Pharmacy Act 13 of 1928 (MEDICINE AND MEDICAL PROFESSIONS)
Medicines and Related Substances Control Act 13 of 2003 (MEDICINE AND MEDICAL PROFESSIONS)
Members of Parliament and Other Office-Bearers Pension Fund Act 20 of 1999 (PENSIONS)
Members of Statutory Bodies Pension Act 94 of 1969 (PENSIONS)
Mental Health Act 18 of 1973 (MENTAL HEALTH AND MENTAL DISORDERS)
Merchandise Marks Act 17 of 1941 (INTELLECTUAL PROPERTY)
Merchant Shipping Act 57 of 1951 (SHIPPING)
Military Pensions Act 84 of 1976 (PENSIONS)
Minerals (Prospecting and Mining) Act 33 of 1992 (MINING AND MINERALS)
Minerals Development Fund of Namibia Act 19 of 1996 (MINING AND MINERALS)
Moratorium Act 25 of 1963 (DEFENCE)
Moratorium on the Payment of Stamp Duty or Transfer Duty in Respect of Rationalisation Schemes Act 13 of 1993 (REVENUE)
Motor Vehicle Accidents Fund Act 10 of 2007 (ROADS AND ROAD TRANSPORTATION)
Motor Vehicle Theft Act 12 of 1999 (ROADS AND ROAD TRANSPORTATION)
Mountain Catchment Areas Act 63 of 1970 (ENVIRONMENT)
Municipal Dog Tax Ordinance 13 of 1967 (ANIMALS)
Namaland Consolidation and Administration Act 79 of 1972 ('BLACKS')
Namibia Central Intelligence Service Act 10 of 1997 (DEFENCE)
Namibia College of Open Learning Act 1 of 1997 (EDUCATION)

Namibia Development Corporation Act 18 of 1993 (FINANCE AND DEVELOPMENT)
***Namibia Film Commission Act 6 of 2000 (FILMS)**
Namibia Financial Institutions Supervisory Authority Act 3 of 2001 (FINANCIAL INSTITUTIONS)
***Namibia Institute of Pathology Act 15 of 1999 (MEDICINE AND MEDICAL PROFESSIONS)**
Namibia Library and Information Service Act 4 of 2000 (LIBRARIES)
Namibia National Reinsurance Corporation Act 22 of 1998 (INSURANCE)
Namibia Press Agency Act 3 of 1992 (COMMUNICATIONS)
Namibia Qualifications Authority Act 29 of 1996 (LABOUR)
Namibia Red Cross Act 16 of 1991 (SOCIAL WELFARE)
Namibia Refugees (Recognition and Control) Act 2 of 1999 (CITIZENSHIP AND IMMIGRATION)
Namibia Sports Act 12 of 2003 (SPORTS)
Namibia Students Financial Assistance Fund Act 26 of 2000 (EDUCATION)
Namibia Tourism Board Act 21 of 2000 (TOURISM)
Namibia Water Corporation Act 12 of 1997 (WATER)
Namibia Wildlife Resorts Company Act 3 of 1998 (COMPANIES)
Namibian Broadcasting Act 9 of 1991 (COMMUNICATIONS)
Namibian Citizenship Act 14 of 1990 (CITIZENSHIP AND IMMIGRATION)
Namibian Citizenship Special Conferment Act 14 of 1991 (CITIZENSHIP AND IMMIGRATION)
Namibian Communications Commission Act 4 of 1992 (COMMUNICATIONS)
Namibian Constitution First Amendment Act 34 of 1998 (CONSTITUTION)
Namibian Constitution Second Amendment Act 7 of 2010 (CONSTITUTION)
Namibian Ports Authority Act 2 of 1994 (SHIPPING)
Namibian Time Act 3 of 1994 (WEIGHTS, MEASURES AND STANDARDS)
Namibian Transport Advisory Board Act 23 of 1991 (TRANSPORTATION)
National Anthem of the Republic of Namibia Act 20 of 1991 (CONSTITUTION)
National Art Gallery of Namibia Act 14 of 2000 (CULTURE AND CULTURAL INSTITUTIONS)
***National Arts Fund of Namibia Act 1 of 2005 (CULTURE AND CULTURAL INSTITUTIONS)**
National Coat of Arms of the Republic of Namibia Act 1 of 1990 (CONSTITUTION)
National Disability Council Act 26 of 2004 (DISABILITIES)
National Education Act 30 of 1980 (EDUCATION)
National Fishing Corporation of Namibia Act 28 of 1991 (MARINE AND FRESHWATER RESOURCES)
National Heritage Act 27 of 2004 (NATIONAL HERITAGE)
National Housing Development Act 28 of 2000 (HOUSING)
National Housing Enterprise Act 5 of 1993 (HOUSING)
National Pensions Act 10 of 1992 (PENSIONS)
National Planning Commission Act 15 of 1994 (CONSTITUTION)
National Road Safety Act 9 of 1972 (ROADS AND ROAD TRANSPORTATION)
National Supplies Procurement Act 89 of 1970 (TRADE AND INDUSTRY)
National Transport Services Holding Company Act 28 of 1998 (TRANSPORTATION)
National Vocational Training Act 18 of 1994 (EDUCATION)
National Welfare Act 79 of 1965 (SOCIAL WELFARE)
***National Youth Council Act 3 of 2009 (YOUTH)**
National Youth Service Act 6 of 2005 (YOUTH)
Native Administration Proclamation 15 of 1928 ('BLACKS')
Native Reserves Fencing Proclamation 12 of 1926 ('BLACKS')
Native Reserves Trust Funds Administration Proclamation 9 of 1924 ('BLACKS')
Native Trust Funds Proclamation 23 of 1939 ('BLACKS')
Natives Minimum Wage Proclamation 1 of 1944 (LABOUR)
Nature Conservation Ordinance 4 of 1975 (ENVIRONMENT)
Nederduitse Gereformeerde Kerk in Suidwes-Afrika (Private) Ordinance 38 of 1958 (CHURCHES)
New Era Publication Corporation Act 1 of 1992 (COMMUNICATIONS)
Newspaper and Imprint Registration Act 63 of 1971 (COMMUNICATIONS)
Nursing Act 8 of 2004 (MEDICINE AND MEDICAL PROFESSIONS)
Okavango Native Territory Affairs Proclamation 32 of 1937 ('BLACKS')

Ombudsman Act 7 of 1990 (CONSTITUTION)
Ordinance for Prevention and Combating of Alcoholism and Anti-Social Conduct 11 of 1965 (HEALTH)
Ovamboland Affairs Proclamation 27 of 1929 ('BLACKS')
Parliamentary Service and Administrators' Pensions Act 81 of 1971 (PENSIONS)
Patents, Designs, Trade Marks and Copyright Act 9 of 1916 (INTELLECTUAL PROPERTY)
Patents, Designs, Trade Marks and Copyright Proclamation 17 of 1923 (INTELLECTUAL PROPERTY)
Payment of Bank Notes Proclamation 3 of 1933 (CURRENCY)
Payment of Loans Proclamation 28 of 1933 (DEBTORS AND CREDITORS)
Payment System Management Act 18 of 2003 (FINANCIAL INSTITUTIONS)
Pension Funds Act 24 of 1956 (PENSIONS)
Pension Gratuities to Former Members of the National Assembly and of Legislative and Executive Authorities Proclamation, AG. 8/1990 (PENSIONS)
Pension Matters of Government Institutions Proclamation, AG. 56 of 1989 (PENSIONS)
Pensions Laws Amendment Act 83 of 1976 (PENSIONS)
Performing Animals Protection Act 24 of 1935 (ANIMALS)
Petroleum (Exploration and Production) Act 2 of 1991 (MINING AND MINERALS)
Petroleum (Taxation) Act 3 of 1991 (REVENUE)
Petroleum Products and Energy Act 13 of 1990 (FUEL AND ENERGY)
Pharmacy Act 9 of 2004 (MEDICINE AND MEDICAL PROFESSIONS)
***Plant Quarantine Act 7 of 2008 (ENVIRONMENT)**
Police Act 19 of 1990 (POLICE)
Police Offences Proclamation 27 of 1920 (CRIMINAL LAW AND PROCEDURE)
Political Ordinance of 1 April 1580, articles 19-29 (SUCCESSION)
Polytechnic of Namibia Act 33 of 1994 (EDUCATION)
Post Office Service Act 66 of 1974 (COMMUNICATIONS)
Posts and Telecommunications Act 19 of 1992 (COMMUNICATIONS)
Posts and Telecommunications Companies Establishment Act 17 of 1992 (COMMUNICATIONS)
Powers of the SWA Water and Electricity Corporation Act 14 of 1980 (ELECTRICITY)
Powers, Privileges and Immunities of Parliament Act 17 of 1996 (CONSTITUTION)
Prescribed Rate of Interest Act 55 of 1975 (DEBTORS AND CREDITORS)
Prescription Act 68 of 1969 (PRESCRIPTION)
Presidential Emoluments and Pensions Act 17 of 1990 (PRESIDENT)
Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981 (ENVIRONMENT)
Prevention of Counterfeiting of Currency Act 16 of 1965 (CURRENCY)
Prevention of Organised Crime Act 29 of 2004 (CRIMINAL LAW AND PROCEDURE)
Prevention of Undesirable Residue in Meat Act 21 of 1991 (AGRICULTURE)
Price Control Act 25 of 1964 (TRADE AND INDUSTRY)
Price Control Admissions of Guilt Proclamation 40 of 1944 (CRIMINAL LAW AND PROCEDURE)
Prisons Act 17 of 1998 (PRISONS)
Procedure and Evidence Proclamation 8 of 1938 (EVIDENCE)
Professional Land Surveyors', Technical Surveyors' and Survey Technicians' Act 32 of 1993 (LAND)
Prohibition of Disguises Act 16 of 1969 (CRIMINAL LAW AND PROCEDURE)
Promotion of the Density of Population in Designated Areas Act 18 of 1979 (LAND)
Promotion of the Economic Development of National States Act 46 of 1968 ('BLACKS')
Protection of Fundamental Rights Act 16 of 1988 (CRIMINAL LAW AND PROCEDURE)
Protection of Information Act 84 of 1982 (DEFENCE)
Public Accountants' and Auditors' Act 51 of 1951 (ACCOUNTANTS AND AUDITORS)
Public Gatherings Proclamation, AG. 23 of 1989 (PUBLIC GATHERINGS)
Public Health Act 36 of 1919 (HEALTH)
Public Holidays Act 26 of 1990 (SUNDAYS AND PUBLIC HOLIDAYS)
Public Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005 (CONSTITUTION)
Public Service Act 13 of 1995 (PUBLIC SERVICE)
Public Service Commission Act 2 of 1990 (PUBLIC SERVICE)

Publication of Local Regulations Proclamation 4 of 1917 (REGIONAL AND LOCAL GOVERNMENT)
Publications Act 42 of 1974 (CENSORSHIP)
Racial Discrimination Prohibition Act 26 of 1991 (CRIMINAL LAW AND PROCEDURE)
Radio Act 3 of 1952 (COMMUNICATIONS)
Railways and Harbours Finances and Accounts Act 48 of 1977 (RAILWAYS)
Railways and Harbours Pensions Act 35 of 1971 (PENSIONS)
Railways and Harbours Pensions Amendment Act 26 of 1941 (PENSIONS)
Railways and Harbours Pensions for Non-Whites Act 43 of 1974 (PENSIONS)
Railways and Harbours Special Pensions Act 36 of 1955 (PENSIONS)
Rating of Railway Property Act 25 of 1959 (RAILWAYS)
Reciprocal Enforcement of Maintenance Orders Act 3 of 1995 (MAINTENANCE)
Reciprocal Service of Civil Process Act 27 of 1994 (COURTS)
Recognition of Certain Marriages Act 18 of 1991 (MARRIAGE AND DIVORCE)
Redefinition of Magisterial Districts Proclamation 15 of 1950 (COURTS)
Regional Councils Act 22 of 1992 (REGIONAL AND LOCAL GOVERNMENT)
Registration of Deeds in Rehoboth Act 93 of 1976 (DEEDS)
Rehoboth Gebiet Income Tax Proclamation 92 of 1961 (INCOME TAX)
Removal of Restrictions Ordinance 15 of 1975 (LAND)
Rents Ordinance 13 of 1977 (LANDLORD AND TENANT)
***Research, Science and Technology Act 23 of 2004 (SCIENTIFIC RESEARCH)**
Reservation of State Land for Natives Ordinance 35 of 1967 ('BLACKS')
Riotous Assemblies Act 17 of 1956 (CRIMINAL LAW AND PROCEDURE)
Road Fund Administration Act 18 of 1999 (ROADS AND ROAD TRANSPORTATION)
Road Traffic and Transport Act 22 of 1999 (ROADS AND ROAD TRANSPORTATION)
Road Traffic Ordinance 30 of 1967 (ROADS AND ROAD TRANSPORTATION)
Road Transportation Act 74 of 1977 (ROADS AND ROAD TRANSPORTATION)
Roads Authority Act 17 of 1999 (ROADS AND ROAD TRANSPORTATION)
Roads Contractor Company Act 14 of 1999 (ROADS AND ROAD TRANSPORTATION)
Roads Ordinance 17 of 1972 (ROADS AND ROAD TRANSPORTATION)
Sale of Land on Instalments Act 72 of 1971 (PURCHASE AND SALE)
Scientific Research Council Act 46 of 1988 (SCIENTIFIC RESEARCH)
Sea Shore Ordinance 37 of 1958 (SEA AND SEASHORE)
Second Finance Act 27 of 1987 (INSURANCE)
Second General Law Amendment Act 94 of 1974, section 2 (EVIDENCE)
Second Hand Goods Act 23 of 1998 (TRADE AND INDUSTRY)
***Sectional Titles Act 2 of 2009 (HOUSING)**
Sectional Titles Act 66 of 1971 (HOUSING)
Security Commission Act 18 of 2001 (CONSTITUTION)
Security Enterprises and Security Officers Act 19 of 1998 (SECURITY OFFICERS)
Shop Hours and Shop Assistants Ordinance 15 of 1939 (LABOUR)
Short-term Insurance Act 4 of 1998 (INSURANCE)
Silver Coin (Control of Importation) Proclamation 26 of 1932 (CURRENCY)
Small Settlements Commonages Subdivision Proclamation 13 of 1926 (LAND)
Social Pensions Ordinance 2 of 1965 (PENSIONS)
Social Security Act 34 of 1994 (SOCIAL SECURITY)
Social Work and Psychology Act 6 of 2004 (MEDICINE AND MEDICAL PROFESSIONS)
Soil Conservation Act 76 of 1969 (ENVIRONMENT)
South Africa Medical Research Council Act 19 of 1969 (MEDICINE AND MEDICAL PROFESSIONS)
South West Africa Affairs Act 25 of 1969 (CONSTITUTION)
South West African Meat Industry Ordinance 39 of 1955 (AGRICULTURE)
Special Advisors and Regional Representatives Appointment Act 6 of 1990 (CONSTITUTION)
Sperrgebiet-Delimitation Proclamation 11 of 1920 (MINING AND MINERALS)
Squatters Proclamation, AG. 21 of 1985 (HOUSING)
Stamp Duties Act 15 of 1993 (REVENUE)
***Standards Act 18 of 2005 (WEIGHTS, MEASURES AND STANDARDS)**
Standards Act 33 of 1962 (WEIGHTS, MEASURES AND STANDARDS)
State Finance Act 31 of 1991 (FINANCE AND DEVELOPMENT)
State Hospitals Ordinance 17 of 1966 (HOSPITALS)

State Repudiation (Cultura 2000) Act 32 of 1991 (FINANCE AND DEVELOPMENT)
State-owned Enterprises Governance Act 2 of 2006 (COMPANIES)
Statistics Act 66 of 1976 (CENSUS AND STATISTICS)
Stock Brands Act 24 of 1995 (AGRICULTURE)
Stock Exchanges Control Act 1 of 1985 (STOCKS AND SECURITIES)
Stock Theft Act 12 of 1990 (CRIMINAL LAW AND PROCEDURE)
Subdivision of Agricultural Land Act 70 of 1970 (LAND)
Sugar Act 28 of 1936 (AGRICULTURE)
Sunday Trading Proclamation 12 of 1919 (SUNDAYS AND PUBLIC HOLIDAYS)
Supreme Court Act 15 of 1990 (COURTS)
Suretyship Amendment Act 57 of 1971 (DEBTORS AND CREDITORS)
Teachers' Education Colleges Act 25 of 2003 (EDUCATION)
Teachers' Pensions Proclamation 39 of 1931 (PENSIONS)
Tear-gas Act 16 of 1964 (ARMS AND AMMUNITION)
Temporary Employees Pension Fund Act 75 of 1979 (PENSIONS)
Tender Board of Namibia Act 16 of 1996 (TENDERS)
Territorial Sea and Exclusive Economic Zone of Namibia Act 3 of 1990 (SEA AND SEASHORE)
The acquisition of shares in Rössing Uranium Limited and the appointment of a director, AG. 31 of 1985 (MINING AND MINERALS)
The Apostolic Faith Mission of South Africa (Private) Act 24 of 1961 (CHURCHES)
Tobacco Growers Protection Ordinance 2 of 1933 (AGRICULTURE)
***Tobacco Products Control Act 1 of 2010 (ALCOHOL, DRUGS AND TOBACCO)**
Town and Regional Planners Act 9 of 1996 (LAND)
Town Planning Ordinance 18 of 1954 (LAND)
Townships and Division of Land Ordinance 11 of 1963 (LAND)
Trade Marks Act 48 of 1973 (INTELLECTUAL PROPERTY)
Trade Metrology Act 77 of 1973 (WEIGHTS, MEASURES AND STANDARDS)
Trade Practices Act 76 of 1976 (TRADE AND INDUSTRY)
Traditional Authorities Act 25 of 2000 (CUSTOMARY LAW)
Transfer Duty Act 14 of 1993 (REVENUE)
Transfer of Convicted Offenders Act 9 of 2005 (PRISONS)
Travelling Privileges Ordinance 14 of 1980 (PUBLIC SERVICE)
Treaty of Peace and South West Africa Mandate Act 49 of 1919 (INTERNATIONAL LAW)
Trespass of Animals Ordinance 16 of 1939 (ANIMALS)
Trespass of Donkeys Proclamation 18 of 1941 (ANIMALS)
Trespass Ordinance 3 of 1962 (LAND)
Trust Fund for Regional Development and Equity Provisions Act 22 of 2000 (REGIONAL AND LOCAL GOVERNMENT)
Trust Moneys Protection Act 34 of 1934 (TRUSTS)
Unit Trusts Control Act 54 of 1981 (STOCKS AND SECURITIES)
University of Namibia Act 18 of 1992 (EDUCATION)
Usury Act 73 of 1968 (DEBTORS AND CREDITORS)
Usury Proclamation 26 of 1921 (DEBTORS AND CREDITORS)
Vagrancy Proclamation 25 of 1920 (CRIMINAL LAW AND PROCEDURE)
Value-Added Tax Act 10 of 2000 (REVENUE)
Venereal Diseases Prevention Proclamation 5 of 1919 (HEALTH)
Veterans Act 2 of 2008 (SOCIAL WELFARE)
Veterinary and Para-Veterinary Professions Proclamation 14 of 1984 (ANIMALS)
Vexatious Proceedings Act 3 of 1956 (COURTS)
Vocational Education and Training Act 1 of 2008 (EDUCATION)
Walvis Bay and Off-Shore Islands Act 1 of 1994 (CONSTITUTION)
War Damage Insurance and Compensation Act 85 of 1976 (INSURANCE)
War Graves Control and Maintenance Ordinance 2 of 1927 (NATIONAL HERITAGE)
Water Act 54 of 1956 (WATER)
Water Research Act 34 of 1971 (WATER)
Water Resources Management Act 24 of 2004 (WATER)
Weeds Ordinance 19 of 1957 (AGRICULTURE)
Wills Act 7 of 1953 (SUCCESSION)
Witchcraft Suppression Proclamation 27 of 1933 (CRIMINAL LAW AND PROCEDURE)
Wreck and Salvage Act 5 of 2004 (SHIPPING)

INTERNATIONAL AGREEMENTS

This list includes all agreements signed or ratified by Namibia. The agreements which have not yet come into force internationally are indicated with an asterisk. For more detailed information on individual agreements, see the section on INTERNATIONAL LAW.

- Accession of Namibia to Southern African Development Co-ordination Conference (SADCC), 1979*
Africa Institute for the Environmentally Sound Management of Hazardous and Other Wastes Agreement, 2004
African Charter on Human and Peoples' Rights, 1981; Protocol on the establishment of the African Court on Human and Peoples' Rights, 1998 and Protocol on the Rights of Women in Africa, 2003
**African Charter on Democracy, Elections and Governance, 2007*
African Charter on the Rights and Welfare of the Child, 1990
African Civil Aviation Commission Constitution, 1969 and Constitution for the African Civil Aviation Commission (AFCAC)-revised version, 2009
**African Convention on the Conservation of Nature and Natural Resources (revised version), 2003*
African Maritime Transport Charter, 1994
African Nuclear Weapon Free Zone Treaty, 1996 (Treaty of Pelindaba)
African Regional Protocol Concerning Distribution of Seats in the Governing Body of the ILO
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 2009
African Union Convention on Preventing and Combating Corruption, 2003
African Youth Charter, 2006
African, Caribbean and Pacific (ACP) - European Union (EU) Partnership Agreement, Cotonou, 2000 ("COTONOU Agreement")
Agreement between the governments of the Republic of Angola, the Republic of Botswana, and the Republic of Namibia on the establishment of a permanent Okavango river basin water commission (OKACOM, Windhoek, 16 September 1994
Agreement between the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia and the Republic of South Africa on the Establishment of the Orange-Sengu River Commission
Agreement Establishing the African Development Bank, 1963, as amended by resolution 05-79 adopted by the Board of Governors on 17 May 1979 (concluded at Lusaka on 7 May 1982)
Agreement Establishing the International Fund for Agricultural Development, 1976
Agreement Establishing the NORSAD Fund and the NORSAD Agency
Agreement for the Establishment of Southern African Centre for Ivory Marketing (SACIM), 1991
Agreement for the Establishment of the African Export-Import Bank
Agreement for the Establishment of the African Rehabilitation Institute, 1981
Agreement on the Establishment of the African Civil Aviation Agency
**Agreement on the Establishment of the Zambezi Watercourse Commission, 2004*
Agreement to Establish the South Centre, 1994
Amelioration of Condition of Wounded and Sick in Armed Forces in the Field, 1949
Amelioration of Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949
Articles of Agreement of the International Bank for Reconstruction and Development, 1978
Articles of Agreement of the International Monetary Fund, 1944
AU Convention Governing Specific Aspects of Refugee Problems in Africa, 1969
Banjul Protocol on Marks within the Framework of the African Regional Industrial Property Organization, 1993
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989
Berne Convention for the Protection of Literary and Artistic Works, 1971 and Declaration of Continuity of Berne Convention for Protection of Literary and Artistic Works
Bilateral Road Transport Agreement (Namibia and Zimbabwe)
Charter of Fundamental Social Rights in SADC, 2003
Charter of the Regional Tourism Organisation of Southern Africa (RETOSA), 1997
Common Market in East and Southern Africa (COMESA) Treaty, 1994
Commonwealth Regional Health Community for East, Central and Southern Africa
**Comprehensive Nuclear-Test-Ban Treaty, 1996*
Constitution and Convention of the International Telecommunication Union, 1992

Constitution of the Food and Agriculture Organization of the United Nations, 1945

Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO), 1945

Constitution of the United Nations Industrial Development Organization, 1979

*Constitution of the World Health Organization, 1946; *Amendment to article 7 of the Constitution of the World Health Organization, 1965; *Amendment to article 74 of the Constitution of the World Health Organization, 1978; Amendments to articles 24 and 25 of the Constitution of the World Health Organization, 1986; Amendments to articles 24 and 25 of the Constitution of the World Health Organization, 1998*

*Constitutive Act of the African Union, 2000; Protocol relating to the Establishment of the Peace and Security Council of the African Union, 2002 and Establishment of the African Union Commission on International Law (AUCIL), 2009; *Protocol on Amendments to the Constitutive Act of the African Union, 2003 and Protocol on the Court of Justice of the African Union, 2004*

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

Convention Against Transnational Organised Crime, 2000; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000; and Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000

Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972

Convention Establishing a Customs Co-operation Council, 1950

Convention Establishing the World Intellectual Property Organization 1967, amended in 1979 (WIPO Convention)

Convention for the Safeguarding of the Intangible Cultural Heritage, 2003

Convention for the Unification of Certain Rules relating to International Carriage by Air, 1999

Convention of the African Energy Commission, 2001

Convention of the World Meteorological Organisation, 1947

Convention on Biological Diversity, 1992 and Cartagena Protocol on Biosafety, to the Convention on Biological Diversity, Montreal, 2000

Convention on Cluster Munitions, 2008

Convention on International Civil Aviation of 7 December 1944; Protocol on the Authentic Trilingual Text of the Convention, Buenos Aires, 1968; Protocol on the Authentic Quadrilingual Text of the Convention, Montreal 1977; Protocol relating to an Amendment to the Convention (Final Clause, Russian Text), Montreal, 1977; Protocol relating to an Amendment to the Convention (Article 56), Montreal, 1989; Protocol relating to an Amendment to the Convention (Article 50(a)), Montreal, 1990;

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973 and Amendment to Article XI of the Convention, Bonn (Germany), 22 June 1979

Convention on Privileges and Immunities of the United Nations, 1946

Convention on Psychotropic Substances, 1971

Convention on Rights of Persons with Disabilities, 2006 and Optional Protocol to Convention on Rights of Persons with Disabilities, 2006

Convention on Road Traffic, 1949

Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean, 2001

Convention on the Conservation of Antarctic Marine Living Resources, 1980

Convention on the Elimination of All Forms of Discrimination against Women, 1979 and Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women

Convention on the International Maritime Organization, 1948

Convention on the International Regulations for Preventing Collisions at Sea, 1972 (as amended)

Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997

Convention on the Physical Protection of Nuclear Material, 1980

Convention on the Prevention and Punishment of the Crime of Genocide, 1948

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997

Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005

Convention on the Protection of the Underwater Cultural Heritage, 2001

Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958

Convention on the Rights of the Child, 1989; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000; and Amendment to Article 43(2) of the Convention on the Rights of the Child adopted by the Conference of the States Parties on 12 December 1995

Convention on Wetlands of International Importance, especially as Waterfowl Habitat, 1971 (Ramsar Convention; Protocol to amend the Convention on Wetlands of International Importance especially Waterfowl Habitat, 1982 and Amendments to Article 6 and 7, 1987

Convention relating to the Status of Refugees, 1951 and Protocol relating to the Status of Refugees, 1967

Customs Union Agreement between South African Government, Botswana, Lesotho and Swaziland Declaration and Treaty Establishing the Southern African Development Community (SADC), 1992 and Agreements Amending the Treaty 2001, 2007, 2008, 2009-DES and 2009-ORGAN

Fourth ACP-EU Convention of Lomé and Protocol on the accession of three additional members of the European Union to the Fourth ACP-EU Convention of Lomé

Free Trade Agreement between European Free Trade Association and Southern African Customs Union States, 2005

General Agreement on Tariffs and Trade, 1947 and GATT instruments Nos. 1, 4, 5, 6, 8, 9, 11, 13, 17 and 18

Geneva Convention relative to Protection of Civilian Persons in Time of War, 1949

Geneva Convention relative to the Treatment of Prisoners of War, 1949

Hague Agreement concerning the International Deposits of Industrial Designs of 1925, as governed by the 1960 Act and the Geneva Act

Hague Convention on Abolishing the Requirement of Legalisation of Foreign Public Documents, 1961

Harare Protocol on Patents and Industrial Designs within the Framework of the African Regional Industrial Property Organization, 1982

ILO Convention 29 concerning Forced Labour, 1930

ILO Convention 87: Freedom of Association and the Right to Organise, 1948

ILO Convention 98: Right to Organise and Collective Bargaining, 1949

ILO Convention 100 on Equal Remuneration, 1951

ILO Convention 105 on the Abolition of Forced Labour, 1957

ILO Convention 111: Convention concerning Discrimination (Employment and Occupation), 1958

ILO Convention 138 on the Minimum Age for Admission to Employment and Work, 1973

ILO Convention 144: Tripartite Consultation (International Labour Standards), 1976

ILO Convention 150: Labour Administration, 1978

ILO Convention 158: Termination of Employment, 1982

ILO Convention 182 on the Prohibition and Immediate Elimination of the Worst Forms of Child Labour, 1999

ILO Convention 184 and Recommendation 192 on Safety and Health in Agriculture, 2001

Instrument of Amendment of ILO, 1986

**Instrument of Amendment of ILO, 1997*

International Agreement for the Creation of an International Office for dealing with Contagious Diseases of Animals, Paris, 1925

International Convention against Doping In Sport, 2005

International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto

International Convention for the Safety of Life at Sea, 1974 (as amended) and Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974, as amended

International Convention for the Suppression of the Financing of Terrorism, 1999

International Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 and Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988

International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (“Hague Rules”), 1924 and Protocols of 1968 and 1979

International Convention for the Unification of Certain Rules relating to the arrest of Sea-Going Ships, 1952

International Convention on Civil Liability for Oil Pollution Damage, 1969, as replaced by the 1992 Protocol, as amended in 2000

International Convention on Load Lines, 1966; and 1988 Protocol (adoption of tacit amendment procedure)

International Convention on Maritime Search and Rescue, 1979

International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978

**International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995*

International Convention on the Elimination of All Forms of Racial Discrimination, 1966

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as replaced by the 1992 Protocol

International Convention on the Harmonized Commodity Description and Coding System, 1983

International Convention on the Simplification and Harmonization of Customs Procedures, 1973

International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973

International Convention on Tonnage Measurement of Ships, 1969

International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended by the 1973 Protocol

International Covenant on Civil and Political Rights, 1966; Optional Protocol to the International Covenant on Civil and Political Rights, 1966; and Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty, 1989

International Covenant on Economic, Social and Cultural Rights, 1966

International Plant Protection Convention, 1951

International Sanitary Regulations, 1951

International Telecommunications Satellite Organisation (INTELSAT) and Amendments to the Agreement Relating to the International Telecommunications Satellite Organisation (INTELSAT/ITSO), 2000

International Treaty on Plant Genetic Resources for Food and Agriculture, 2001

Madrid Agreement concerning the International Registration of Marks, 1891 and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989

Multilateral Agreement between Governments of Angola, Comoros, Madagascar, Mozambique, Namibia, and South Africa on Coordination of Maritime Search and Rescue Services, 2007

OUA Convention on the Prevention and Combating of Terrorism, 1999

Paris Convention for the Protection of Industrial Property, 1883, as amended in 1979

Patent Cooperation Treaty, 1970, as amended in 1979, and modified in 1984 and 2001

**Phyto-Sanitary Convention for Africa, 1967*

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977

Protocol on the Authentic Quinquilingual Text of the Convention, Montreal, 1995;

**Protocol relating to an Amendment to the Convention (Final Clause, Arabic Text), Montreal, 1995; *Protocol on the Authentic Six-Language Text of the Convention, Montreal, 1998; *Protocol relating to an Amendment to the Convention (Final Clause, Chinese Text), Montreal, 1998; Annex 16 to the Convention on International Civil Aviation, Environmental Protection, Volume I — Aircraft Noise, Chicago, 1944*

Protocol on the Privileges and Immunities of the International Seabed Authority, 1998

Rome Statute of the International Criminal Court, 1998 and Agreement on the Privileges and Immunities of the International Criminal Court, 2002

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998

SACU Memorandum of Understanding on Road Transportation

SADC Protocol Against Corruption, 2001

SADC Protocol on Combating Illicit Drug Trafficking in the Southern African Region, 1996

SADC Protocol on Culture, Information and Sport, 2001

SADC Protocol on Education and Training, 1997

SADC Protocol on Energy, 1996

SADC Protocol on Extradition, 2002

**SADC Protocol on Finance and Investment, 2006*

SADC Protocol on Fisheries, 2001

SADC Protocol on Forestry, 2002

**SADC Protocol on Gender and Development, 2008*

SADC Protocol on Health, 1999
SADC Protocol on Immunities and Privileges, 1992
SADC Protocol on Legal Affairs, 2000
SADC Protocol on Mining, 1997
SADC Protocol on Mutual Legal Assistance in Criminal Matters, 2002
SADC Protocol on Politics, Defence and Security Co-operation, 2001; SADC Mutual Defence Pact, 2003; and Agreement amending the Protocol on Politics, 2009
**SADC Protocol on Science, Technology and Innovation, 2008*
SADC Protocol on Shared Watercourse Systems in the Southern African Region, 1995
SADC Protocol on the Control of Firearms, Ammunition and other Related Materials in the Southern African Development Community (SADC) Region, 2001
SADC Protocol on the Development of Tourism, 1998 and Agreement amending the Protocol on the Development of Tourism, 2009
**SADC Protocol on the Facilitation of Movement of Persons, 2005*
SADC Protocol on the Tribunal and the Rules of Procedure thereof, 2000; Agreement Amending the Protocol on the Tribunal, 2002; Agreement Amending the Protocol on the Tribunal, 2007; and Agreement Amending Article 6 of the Protocol on Tribunal, 2008
SADC Protocol on Trade, 1996; SADC Amendment Protocol on Trade, 2000; Agreement Amending Article 20 of the Protocol on Trade, 2008; and Agreement Amending Annex VI to Protocol on Trade concerning settlement of disputes amongst member states 2007
SADC Protocol on Transport, Communications and Meteorology, 1996
SADC Protocol on Wildlife Conservation and Law Enforcement, 1999
SADC Revised Protocol on Shared Watercourses, 2000
Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972
Statute of African Diamonds Producers Association, 2006
Statute of the International Atomic Energy Agency, 1956
Statutes of the International Institute for Democracy and Electoral Assistance, 2006
Stockholm Convention on Persistent Organic Pollutants, 2001
**Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977*
Treaty Establishing the African Economic Community, 1991 and Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament, 2001
Treaty on the Non-Proliferation of Nuclear Weapons, 1968
United Nations Convention Against Corruption, 2003
United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
United Nations Convention on the Law of the Sea, 1982; Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994; and Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995
United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994
United Nations Framework Convention on Climate Change, 1992 and Kyoto Protocol to the UN Framework Convention on Climate Change, 1997
United Nations Security Council Resolutions relating to Sanctions against UNITA
Universal Postal Union, 1964
Vienna Convention for the Protection of the Ozone Layer, 1985; Montreal Protocol on Substances that Deplete the Ozone Layer, 1987; Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, Adopted at the Fourth Meeting of the Parties at Copenhagen on 25 November 1992; Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, Adopted by the Ninth Meeting of the Parties at Montreal on 17 September 1997; and Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, Beijing, 3 December 1999
Vienna Convention on Consular Relations, 1963
Vienna Convention on Diplomatic Relations, 1961
WHO Framework Convention on Tobacco Control, 2003
WIPO Copyright Treaty, 1996
WIPO Performances and Phonograms Treaty, 1996
World Heritage Convention, 1975

ACCOUNTANTS AND AUDITORS

Public Accountants' and Auditors' Act 51 of 1951, with some South African amendments.

Summary: This Act governs the registration and regulation of public accountants and auditors.

Applicability to SWA: Section 1 defines "Republic" to include "the territory of South West Africa". Section 33 states "This Act shall apply also to the territory of South West Africa".

The definition of "Republic" did not appear to make amendments to the Act in South Africa automatically applicable to SWA. Three amending acts -- the *Public Accountants' and Auditors' Amendment Act 30 of 1962*; the *Public Accountants' and Auditors' Amendment Act 68 of 1965*; and the *Public Accountants' and Auditors' Amendment Act 53 of 1975* -- were made expressly applicable to SWA.

Amendments: Act 10/1994 amends sections 1, 3, 4, 5, 6, 12 and 29, and substitutes certain expressions.

Appointments: The Public Accountants' and Auditors' Board is appointed in GN 226/1995 (GG 1204), GN 3/2000 (GG 2259) and GN 118/2001 (GG 2552).

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on the Public Accountants' and Auditors' Board.

AGRICULTURE

Cold Storage Works and Abattoirs Proclamation 50 of 1921.

Summary: This Proclamation places limits on the construction and operation of cold storage works used for the export of meat.

Amendments: The Proclamation is amended by Proc. 3/1923 (which repeals section 5), and Ord. 13/1928 (which repeals section 4).

Locust Suppression Proclamation 34 of 1923.

Summary: This Proclamation places certain requirements on the occupiers of land relating to the notice and destruction of locust eggs and “voetgangers”. Although it is technically still in force, it appears to have been superseded to some extent by the *Agricultural Pests Act 3 of 1973*, which deals with locusts in sections 16 and 17. The Proclamation is repealed by the Plant Quarantine Act 7 of 2008, which had not come into force as of 30 June 2010.

Amendments: The Proclamation was extended to the Rehoboth Gebiet by Proc. 30/1924.

Agricultural Pests Ordinance 11 of 1927.

Summary: This Ordinance deals with insect pests, plant diseases, bee diseases, and the importation of exotic animals. Although it is technically still in force, it appears to have been superseded to some extent by the *Agricultural Pests Act 3 of 1973*, which covers the same topics. The Ordinance is repealed by the Plant Quarantine Act 7 of 2008, which had not come into force as of 30 June 2010.

Amendments: The Ordinance is amended by Ord. 3/1928, Ord. 9/1938 and Ord. 8/1939. It was extended to the Rehoboth Gebiet by Proc. 12/1930.

Agricultural Produce Export Ordinance 13 of 1928.

Summary: This Ordinance regulates the export of agricultural produce and meat.

Amendments: The application of this Ordinance is affected by Proc. 62/1931. Section 23 is amended by Ord. 3/1936. The Ordinance was extended to the Rehoboth Gebiet by AG 12/1930.

Karakul Sheep Farming Industry Protection Proclamation 31 of 1930.

Summary: This Proclamation regulates the export of Karakul sheep capable of breeding.

Amendments: The Proclamation is amended by Ord. 11/1938, Proc. 24/1951 and Ord. 25/1952. It was extended to the Rehoboth Gebiet by Proc. 30/1963.

Tobacco Growers Protection Ordinance 2 of 1933.

Summary: This Ordinance regulates the importation and sale of tobacco used for farming purposes.

Amendments: The Ordinance is amended by Ord. 7/1933.

***Sugar Act 28 of 1936*, with some South African amendments.**

Summary: This Act provides for the control of the sugar industry and regulates sugar prices. Its present status in Namibia is unclear.

Applicability to SWA: Section 10(2), which was added by Act 17 of 1955, states that “This Act shall apply also in the territory”, which is defined in section 13 of the Act as “the Territory of South West Africa”.

This wording does not seem to make amendments to the Act automatically applicable to SWA. However, the amendments contained in Act 17 of 1955 may be applicable to SWA since it was that amending act which applied the principal Act to SWA. There was only one other amending act in South Africa -- the *Sugar Amendment Act 26 of 1958* -- which was not made expressly applicable to Namibia.

The Act was repealed in South Africa in its entirety by the *Sugar Act 9 of 1978* (dated 10 March 1978), which does not mention SWA. The Act had not been transferred to SWA at this stage. Therefore, it is not clear whether the Act was repealed in respect of SWA as well as in respect of South Africa.

Transfer of administration to SWA: If the Act continued to apply in SWA after its repeal in South Africa, the relevant transfer proclamation would have been the Executive Powers (Commerce) Transfer Proclamation, AG 28 of 1978, dated 28 April 1978.

Karakul Pelt Export Duty Proclamation 34 of 1939.

Summary: This Proclamation regulates the export of karakul pelts.

Amendments: The Proclamation is amended by Ord. 5/1941, Ord. 7/1943, Ord. 7/1953, Ord.13/1957 and Ord. 9/1965.

Cattle Improvement Consolidation Ordinance 14 of 1941.

Summary: This Ordinance makes provision for the establishment and regulation of “cattle improvement areas”.

Amendments: The Ordinance is amended by Proc. 14/1941.

Abattoirs Restriction Proclamation 8 of 1944.

Summary: This Proclamation places restrictions on the types of animals which can be slaughtered in abattoirs.

Bonemeal and Superphosphates Control Proclamation 37 of 1944.

Summary: This Proclamation controls the importation, sale and supply of bonemeal, bonemeal products and superphosphates. It is still in force, but there is some overlap with the provisions of the *Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947*.

Amendments: The Proclamation is amended by Proc. 33/1947.

***Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947*, as amended in South Africa to March 1978.**

Summary: This Act governs the registration, importation, sale and use of the items listed in the title.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 24 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 the Act was transferred to SWA by the Executive Powers (Agricultural Technical Services) Transfer Proclamation (AG 11/1978), dated 2 March 1978.

Section 3(1)(b) of the transfer proclamation excluded section 2 of the Act (which deals with the designation of a Registrar of Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies by the Minister) from the operation of section 3(1) of the General Proclamation, meaning that this section of the Act continued to be administered by the South African Minister of Agriculture.

Section 3(1)(b) of the transfer proclamation also excluded the references to the “Republic” in sections 16(1) and 16(6)(a)(i) of the Act from the operation of section 3(1) of the General Proclamation, meaning that in these sections “Republic” retained the meaning it was given in the definition section of the Act (South Africa and SWA).

Section 3(1)(g) of the transfer proclamation exempted section 23 of the *Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Amendment Act 24 of 1977* (regarding promulgation of the Act by proclamation in the *Government Gazette*) from the operation of section 3(1) of the General Proclamation.

There was only one South African amendment to the Act after the date of transfer and prior to Namibian independence – the *Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Amendment Act 4 of 1980* – which was not made expressly applicable to SWA. This is the case despite the continuing definition of Republic to include SWA and despite the fact that some sections of the Act were excluded from transfer, as section 3(5) of the General Proclamation (as amended) states that:

No Act of the Parliament of the Republic

- (a) which repeals or amends any law –
 - (i) passed by Parliament and which applies in the Republic as well as in the territory; and
 - (ii) of which any or all the provisions are administered by or under the authority of the Administrator-General or the Council of Ministers in terms of a transfer proclamation or any other law; and
- (b) which is passed after the commencement of such transfer proclamation or other law

shall, notwithstanding any provision of a law referred to in paragraph (a) or any other law passed after the commencement referred to in paragraph (b) that the law referred to in paragraph (a) or any amendment thereof applies in the territory, apply in the territory, unless it is expressly declared therein or in any other law that it shall apply in the territory.

Amendments: The Medicines and Related Substances Control Act 13 of 2003 amends sections 1, 3, 7, 15, 23, and 26 and deletes section 7(2)(b).

Regulations: Prohibitions on certain types of farm feeds were issued in terms of section 7*bis* in GN 199/1998 (GG 1927) and GN 201/2003 (GG 3060).

Regulations concerning the registration of fertilizers, farm feeds, sterilizing plants and agricultural remedies are contained in GN 58/2007 (GG 3812), which repeals GN 202/2001. Regulations covering the same subject matter are contained in GN 112/2007 (GG 3863), which repeals GN 202/2001 and replaces GN 58/2007.

Related laws: See GN 179/2008 (GG 4088) for exemptions from the application of section 29 of the Medicines and Related Substances Control Act 13 of 2003 to certain substances registered under this Act.

Related international agreements: *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998*, which entered into force internationally on 24 February 2004; signature: 11 September 1998; deposit: 24 June 2005; effective date: 22 September 2005 (source: www.pic.int).

South West African Meat Industry Ordinance 39 of 1955.

Summary: This Ordinance provides for the control of the meat industry and establishes the South West Africa Meat Corporation. Although it is technically still in force, it appears to have been superseded in some respects by the Meat Trade Control Ordinance 20 of 1962, which was replaced by the Meat Industry Act 12 of 1981.

Amendments: Section 39 is repealed by Ord. 7/1958. See also Ordinance 8/1982 of the Representative Authority for the Whites.

Weeds Ordinance 19 of 1957.

Summary: This Ordinance provides for the eradication of plants which are identified as “weeds” by proclamation in the *Gazette*.

Dried Peas Control Ordinance 35 of 1957.

Summary: This Ordinance regulates the supply, sale and possession of dried peas with respect to “natives”.

Dairy Industry Act 30 of 1961, in part, as amended in South Africa to December 1977.

Summary: This Act governs the registration of dairy premises, the marketing of dairy products, and the dairy industry in general. Only the portions of the Act relating to margarine apply to Namibia.

Applicability to SWA: The Act was applied to SWA only in so far as it relates to margarine. Section 1 defines “Republic” as including the territory “in relation to margarine”. The “territory” is defined as “the territory of South West Africa, including the Eastern Caprivi Zipfel”. Section 35A states “This Act, and any amendment thereof which may be made from time to time, in so far as it relates to margarine or to a margarine factory, shall apply also in the territory.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Economics and Marketing) Transfer Proclamation (AG 18/1977), dated 20 December 1977.

Section 3(1) of the transfer proclamation excluded section 13 of the Act (which deals with the sale of falsely marked dairy produce) from the operation of section 3(1) of the General Proclamation, meaning that in this section “Republic” retained the meaning it was given in the definition section of the Act.

There were no amendments to the Act in South Africa after the date of transfer and prior to Namibian independence.

Amendments: The Importation of Margarine Amendment Proclamation (AG 32/1978) amends section 15 to prohibit the importation of margarine into South West Africa without a permit from the Administrator-General. Section 15(3) is deleted by Act 6/1997.

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

Summary: This Act 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*, which was not made expressly applicable to SWA.

Canned Fruit Export Marketing Act 100 of 1967, as amended in South Africa to April 1978.

Summary: This Act provides for the control and promotion of the marketing of canned fruit on export markets.

Applicability to SWA: Section 11 (as substituted by *Act 48 of 1971*) states that “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 (which was the responsibility of the Minister of Economic Affairs) was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978. There were no amendments to the Act in South Africa after the date of transfer.

The Act was repealed in South Africa by the *Marketing Amendment Act 79 of 1987*, which was not made expressly applicable to SWA.

Marketing Act 59 of 1968, as amended in South Africa to December 1977.

Summary: This Act regulates the production and sale of agricultural products, as well as the grading and standardisation of such products. It also establishes various boards and control bodies.

Applicability to SWA: Section 99(1), which was inserted by Act 78 of 1971, states “This act and any amendments thereof shall apply also in the territory, including the Eastern Caprivi Zipfel.” Section 99(2) states “Any proclamation, regulation or notice issued or made under this Act prior to the commencement of the Marketing Amendment Act, 1971, and which does not apply in the territory immediately prior to such commencement, shall, subject to the provisions of this Act, not apply in the territory.” “Republic” is defined to include the “territory”, which is defined as “the territory of South West Africa”.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Economics and Marketing) Transfer Proclamation (AG 18/1977), dated 20 December 1977.

The provisions of the Act which relate to the Karakul Scheme and the Wool Scheme published under the Act by Proclamation R.172 of 1968 and Proc. R.155 of 1972 were excluded from the operation of section 3(1) of the General Proclamation, meaning that they were not transferred to SWA.

The provisions of the Act relating to boards and control bodies relevant to these schemes were excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation “those provisions of any law... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of

persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”.

None of the amending acts in South Africa after the date of transfer were made expressly applicable to SWA. The *Marketing Amendment Act 79 of 1987* repealed section 99 of the Act (concerning applicability to SWA) in South Africa, but this amending Act was not made expressly applicable to SWA.

Amendments: The Meat Industry Act 12 of 1981 repealed the Act insofar as it relates to controlled products. The Karakul Pelts and Wool Act 14 of 1981 repealed the Act insofar as it relates to karakul pelts or wool. Act 19/1980 amends section 46D.

Regulations: The import of vegetable oil is governed by AG 31/1979 (as amended by AG 20/1986), which is issued under the authority of the principal Act. See also AG GN 112/1980, read together with Act 19/1980 (re: levies and regulations).

Agricultural Pests Act 3 of 1973, as amended in South Africa to March 1978.

Summary: This Act covers the registration of nurseries and the control and destruction of certain plants, insects and animals. It also regulates the importation of plants, insects, honey, honey bees and exotic animals. The Act is repealed by the Plant Quarantine Act 7 of 2008, which had not come into force as of 30 June 2010.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 36 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 (Agricultural Technical Services) Transfer Proclamation (AG 11/1978), dated 2 March 1978.

Section 3(1)(g) of the transfer proclamation excluded the reference to the “Minister” in section 15 of the Act (which concerns the payment of compensation) from the operation of section 3(1) of the General Proclamation, meaning that in this section “Minister” continued to refer to the South African Minister of Agriculture.

Section 3(2) of the transfer proclamation excluded all references to the “Republic” in the Act from the operation of section 3(1)(c) of the General Proclamation, meaning that “Republic” retained the meaning it was given in the definition section of the Act (South Africa and SWA).

Section 3(3) of the transfer proclamation excluded section 32 of the Act (which deals with appeals to the Minister) from the operation of section 4(1) of the General Proclamation, meaning that the Administrator-General was not authorised to delegate the powers transferred to him pursuant to this section of the Act.

There were no amendments to the Act in South Africa after the date of transfer. This Act was repealed in South Africa by the *Agricultural Pests Act 36 of 1983*, which was not made expressly applicable to SWA.

Regulations: Regulations concerning locusts are contained in AG GN 30/1989.

Regulations relating to importation permits and the lodging of appeals under section 32 of the Act are contained in GN 57/2007 (GG 3812).

Abattoir Industry Act 54 of 1976, as amended in South Africa to December 1977.

Summary: This Act covers a wide range of matters relating to abattoirs.

Applicability to SWA: Section 1 defines “the territory” as “the territory of South West Africa”. Section 75 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 (Agricultural Economics and Marketing) Transfer Proclamation (AG 18/1977), dated 20 December 1977.

Section 3(2) of the transfer proclamation provided that, notwithstanding section 3(2)(b) of the General Proclamation, references to the Minister of Agriculture in sections 3(1)(c) and (e) and sections 46(j) and (l) of the Act (which deal with certain powers and functions of the Abattoir Commission and the South African Abattoir Corporation), and in those sections relating to the National Marketing Council and the Agricultural Reference Board, should be construed as a reference to the Administrator-General.

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Livestock Improvement Act 25 of 1977, as amended in South Africa to March 1978.

Summary: This Act provides for the development and promotion of the livestock industry and regulates breeding. There is some question as to whether it has yet come into force in Namibia. The 1993 judgement of *S v Lofty-Eaton & Others (1)* 1993 NR 370 (HC) found that the Act had never been brought into operation in South West Africa or Namibia by proclamation, as section 38 of the Act requires. This case also found that the organs and procedures mentioned in section 16 must be in place before the Act can be operational.

Applicability to SWA: Section 1 defines “Republic” to include “the territory,” which is defined as “the territory of South West Africa”. Section 35 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.” However, section 38 stated that the Act would come into operation only on a date fixed by the State President by Proclamation in the Gazette.

Portions of the Act were brought into operation in South Africa as of 1 May 1979 by RSA Proc. R.80 of 1979. The Minister was acting in terms of section 38 of the Act, which was excluded from transfer to SWA, and so had the authority to bring the Act in force with respect to SWA. However, the Proclamation which brought the Act into force in RSA was arguably not applicable to SWA because it occurred after the date of transfer and yet made no explicit reference to SWA or to the consent of the SWA Administrator-General. Section 3(4) of the General Proclamation provides as follows:

(4) Any proclamation, regulation or rule which is issued or made after the commencement of any transfer proclamation by, or on the authority of, the State President or Minister under a law which at such commencement applies both in the territory and in the Republic, and which is published in the Government Gazette of the Republic, shall, notwithstanding the provisions of subsection (1) apply in the territory if such proclamation, regulation or rule or the notice by which it is so published, contains a statement that it was or is issued or made with the consent of the Administrator-General, and applies also in the territory: Provided that for the purposes of the application of such proclamation, regulation or rule in the territory, the provisions of subsection (1) shall apply.

A possible counterargument might be that the Act did not “apply” in both RSA and SWA before it was brought into force and so did not fall under section 3(4). However, it should be noted that the post-independence case of *S v Lofty-Eaton & Others (1)* 1993 NR 370 (HC) (discussed below) drew a distinction between “applying” and being “operative”, and found that the Act is not actually in force in Namibia.

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.

Section 3(1)(h) of the transfer proclamation excluded section 4(1) and the references to the “Minister” in section 33 and section 38 of the Act from the operation of section 3(1)(c) of the General Proclamation. Section 3(2) of the transfer proclamation excluded the Act from the operation of section 3(1)(c) of the General Proclamation, meaning that “Republic” retained the meaning given to it in the definition section of the Act (South Africa and SWA).

The provisions of the Act relating to the Advisory Board for Animal Production were excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation “those provisions of any law ... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”.

There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence -- the *Livestock Improvement Amendment Act 31 of 1984* -- which was not made expressly applicable to SWA. (This amending Act does not apply to SWA despite the continuing definition of Republic to include SWA, by virtue of section 3(5) of the General Proclamation, as amended.)

Amendments: The Act is substantially amended by Act 25/1993, which establishes a Livestock Improvement Board. However, Act 25/1993 does not repeal section 38, which requires that a date for the commencement of the Act be set by a Proclamation of the State President, nor does it otherwise expressly bring the primary Act into force.

Regulations: The nature of some of the notices issued under the Act indicates that Government believes the Act to be operative. However, we have not been able to locate any legal instrument bringing the Act into force in Namibia in light of the ruling in *S v Lofty-Eaton & Others (1)* 1993 NR 370 (HC).

See AG GN 61/1979, concerning kinds and breeds of animals to which the Act applies.

Regulations regarding artificial insemination, etc. are contained in GN 60/1993 (GG 653).

Notices have been issued under this Act in 2005 (GN 61/2005, GG 3439) and 2006 (GN 172/2006, GG 3721), issuing certificates of incorporation to livestock breeders' societies.

The dorper breed is declared to be a breed of animal in Namibia in GN 238/2009 (GG 4391). The Gellaper breed is declared to be a breed of animal in Namibia in GN 63/2010 (GG 4451).

Cases: *S v Lofty-Eaton & Others (1)* 1993 NR 370 (HC).

The relevant passage is quoted here at length as it may be relevant to the applicability of other South African statutes which mention "South West Africa":

The problem is that s 35 applied the Act to Namibia, but did not make it operative in Namibia because s 38 of the said Act provided:

'(1) This Act shall be called the Livestock Improvement Act, 1977, and shall come into operation on a date to be fixed by the State President by proclamation in the Gazette.

(2) Different dates may be fixed under s (1) in respect of different provisions of this Act.'

The proclamation which put part of the said Act into operation was Proc R80 of 1979, but only in South Africa. It must be assumed that the State President deliberately did not put the Act into operation in Namibia. He could have done so by merely stating in Proc R80 of 1979 that Proc R80 of 1979 applies in the territory of South West Africa, and is made with the consent of the Administrator-General.

Even in South Africa the said Livestock Improvement Act was passed and assented to by the State President and published in Government Gazette 5462 of 23 March 1977. Part of it was, however, only put into operation in South Africa by Proc R80 of 1979 on 1 May 1979.

The question is why? Again the answer is obvious. It was provided for in the Act itself that a large number of administrative organs and the appointment of officials to carry on the day-to-day administration of the Act would be in place once it, or a relevant part of it, would come into operation. So, for example:

(a) The Minister had to appoint 16 members to the Advisory Board in s 3 of that Act, of which two had to be officers of the Department of Agriculture and one had to be an officer of the Department of Agriculture, Economics and Marketing.

(b) The Minister had to appoint a Registrar in terms of s 4 of that Act.

(c) The Registrar had to invite a list of names of three persons to be submitted to him by each one of the 13 associations, Boards or companies contemplated in s 3(2)(b)(i)-(xiii).

(d) The Minister had to appoint the executive committee of the Studbook Association and the other committees contemplated in s 3(5)(c)(i)-(iii) read with s 16(2)(b).

(e) A register had to be prepared as contemplated in s 5 of the Act.

(f) Notices as contemplated in s 2 and regulations contemplated in s 34 had to be prepared to be ready for promulgation before, on or shortly after the date on which the Livestock Improvement Act had to come into operation.

(g) The application forms in terms whereof one could apply for -
(i) registration as an inseminator;

(ii) registration of premises as an artificial insemination centre;

(iii) a certificate for the approval of an animal to collect semen;

(iv) the renewal of a registration of an artificial insemination centre;

(v) the renewal of certificates in respect of animals for the collection of ova, and

the like - see, for example, the numerous forms and certificates contemplated in Schedules I-XVI of Government Gazette 6416, dated 27 April 1979.

It is important to note that, when a law provides for certain organs and procedures to be established without which the Act cannot be implemented properly, the Legislature usually

provides that the law will only become 'operative', as distinguished from 'applicable', on a date to be determined by the President, Administrator, Minister or similar entity by proclamation or notice in the Gazette.

The Legislature that enacts an Act may even provide for bringing different parts of an Act into operation on different dates, as was the case in the Livestock Improvement Act, 1977. This last procedure should of course only be used if the various sections or parts of such an Act are severable and would not be applicable to s 16(1) and (2)(a) and (b) of the Livestock Improvement Act 1977 and its various parts.

That an Act is capable of being administered (notwithstanding the fact that it has not as yet come into operation) is furthermore explicitly envisaged in s 12(3) of the Interpretation of Laws Proclamation 37 of 1920, which provides as follows:

'(3) Where a law confers a power -

- (a) to make any appointments; or
- (b) to make . . . rules, regulations or by-laws; or
- (c) to give notices; or
- (d) to prescribe forms; or
- (e) to do any other act or thing for the purpose of the law,

that power may, unless the contrary intention appears, be exercised at any time after the passing of the law so far as may be necessary for the purpose of bringing the law into operation at the commencement thereof, subject to this restriction that any instrument . . . rules, regulations or by-laws made . . . under the power shall not . . . come into operation until the law comes into operation.' (My emphasis.)

See also s 14 of the equivalent South African Act 33 of 1957, and *S v Manelis* 1965 (1) SA 748 (A) at 753.

It is common cause between the State and defence that at the time of the alleged offences, ie in April 1993, about six years after the Act was passed, the crucial organs and procedures for receiving, considering and deciding applications for written authorisation to import, as provided for in s 16 of the said Act, had still not been established in Namibia.

Mr Small is correct in contending that the Administrator-General had the power himself to declare the Act operative in Namibia, but for that an AG proclamation expressly stating that the Act is operative from a certain date would have been necessary. I do not understand Mr Small to contend that such an AG proclamation was ever issued.

In conclusion on this issue I must point out that the provision in an Act of Parliament that the date of operation is to be decided on and promulgated by an organ of the Executive may be regarded as an administrative function or as delegated legislation or a combination of both. In all instances, however, the decision to declare operative, and the declaration itself, must comply with the provisions of the enabling Act, and must in itself be reasonable and not ambiguous, particularly where it provides for criminal offences and criminal sanctions for non-compliance with the provisions of the Act.

To declare an Act operative, when essential organs or procedures for complying with the law and for avoiding a contravention and avoiding criminal sanctions are not yet established, appears to me not only to be *ultra vires* the enabling Act but in conflict with art 18 of the Namibian Constitution. See also art 21 of the Namibian Constitution; Steyn Die Uitleg van Wette 5th ed at 238-49.

Even if the State President, or the Administrator-General in this instance, declared the Act as a whole or parts of it operative at any point in time, when the organs and procedures to be set up under s 16 were not yet established, it seems to me that such declaration would in itself be *ultra vires* or unconstitutional, particularly insofar as it purported or purports to make s 16(1) and 16(2)-(8) of the said Act operative.

Meat Industry Act 12 of 1981.

Summary: This Act establishes a meat board and sets forth its objects, powers, duties and functions. It also provides for control over the grading, sale, import and export of livestock, meat and meat products, and the levies on these items. It was brought into operation by AG 30/1981.

Amendments: Prior to independence, the Act was amended by Act 3/1987 and AG

GN 20/1983. See also the Swameat Corporation Ordinance 2 of 1986 of the Legislative Assembly of the Whites (which has since been repealed by the Meat Corporation of Namibia Act 1 of 2001).

Act 21/1992, which was brought into operation by GN 125/1992 (GG 482), amends sections 1, 2, 4, 8, 10, 12 and 21, inserts section 10A, and substitutes certain expressions and the long title to make the Act consistent with an independent Namibia and to extend the powers of inspectors in certain circumstances.

The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends sections 4 and 8, and deletes sections 5, 7(1) and 15.

Regulations: Regulations are contained in General Notice 8/1982, as amended by General Notice 90/1982 (GG 3620).

Regulations are also contained in GN 110/1992 (GG 468), GN 126/1992 (GG 482), and General Notice 3/1993 (GG 567) (record-keeping).

Levies are contained in GN 4/1992 (GG 336), GN 93/1992 (GG 449), GN 127/1992 (GG 482), GN 120/1993 (GG 875), GN 227/1994 (GG 985), GN 116/2005 (GG 3498), GN 62/2006 (GG 3620), GN 114/2006 (GG 3672), GN 210/2006 (GG 3746) and GN 119/2007 (GG 3869).

GN 94/2007 (GG 3841) prohibits the import and export of certain controlled products.

A notification of measures to promote the interests of the meat industry in Namibia is contained in General Notice 115/2004 (GG 3214).

Prohibitions relating to abattoirs, factories and refrigeration plants of unregistered producers are addressed in General Notice 91/2006 (GG 3620).

Karakul Pelts and Wool Act 14 of 1982.

Summary: This Act establishes a Karakul Board and regulates classification, sale, marketing, packing, and the import and export of karakul pelts and wool. It was brought into operation by AG 30/1982.

Amendments: This Act is amended by Act 15/1986 and Act 22/1986. The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends sections 4 and 8, and deletes sections 5, 7(1) and 16.

Regulations: A levy and a special levy on wool are contained in GN 117/1991 (GG 289), replaced by GN 87/2002 (GG 2754). A levy and special levy on karakul pelts are contained in GN 40/2010 (GG 4440), as corrected by GN 66/2010 (GG 4451).

Control of the Importation and Exportation of Dairy Products and Dairy Product Substitutes Act 5 of 1986.

Summary: This Act controls the import and export of dairy products and dairy

product substitutes.

Prevention of Undesirable Residue in Meat Act 21 of 1991.

Summary: This Act controls the administration of certain products to animals which may cause undesirable residue in meat and meat products, and further regulates the marketing of meat and meat products. It came into force on 28 November 1994 (Proc. 29/1994, GG 975).

Amendments: Act 11/1994 amends sections 1 and 2.

Regulations: Regulations are contained in GN 219/1994 (GG 975). Prohibited substances are listed in GN 220/1994 (GG 975).

Agronomic Industry Act 20 of 1992.

Summary: This Act establishes the Namibian Agronomic Board and sets forth its powers and functions. It came into force on 5 October 1992 (Proc. 33/1992, GG 496).

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 1, 4, 5, 7, 8 and 15. (The State-owned Enterprises Act inconsistently refers to this Act as the “Agronomic Industry Act” in Schedule 1 and the “Namibian Agronomic Industry Act” in Schedule 2. The correct name is the Agronomic Industry Act. However, it establishes the “Namibian Agronomic Board”.)

Regulations: Agronomic crops are addressed in GN 45/1993 (GG 626), GN 293/1996 (GG 1435), GN 146/2002 (GG 2802) and GN 109/2008 (GG 4047).

Controlled products levies have been announced from time to time in terms of section 18(3) of the Act. The most recent such levies are contained in GN 145/2002 (GG 2802), GN 147/2002 (GG 2802), GN 116/2003 (GG 2990) and GN 111/2008 (GG 4047).

Regulations relating to the grading and classification of maize are contained in GN 71/1994 (GG 854). Standards for maize products are contained in GN 72/1994 (GG 854).

The importation of certain products without a permit is prohibited by GN 101/2006 (GG 3661) and GN 110/2008 (GG 4047).

Stock Brands Act 24 of 1995.

Summary: This Act consolidates and amends the laws relating to the branding of stock. It came into force on 9 April 1999 (GN 57/1999, GG 2078).

Amendments: Act 7/2001 inserts sections 20A and 21A and amends section 22.

Regulations: Regulations are contained in GN 73/2004 (GG 3187), which repeals the regulations in GN 58/1999 (GG 2078). GN 72/2004 (GG 3187) declares sheep and goats to be stock in terms of section 2. Regulation 7 is amended by GN 39/2007 (GG

3799) and GN 239/2009 (GG 4391).

Meat Corporation of Namibia Act 1 of 2001.

Summary: This Act establishes the Meat Corporation of Namibia (“Meatco”) to establish and manage abattoirs and other meat factories. This law replaces the Swameat Corporation Ordinance 2 of 1986 of the Legislative Assembly of the Whites. It came into force on 3 May 2001 (GN 80/2001, GG 2521).

Amendments: Act 21/2004 amends sections 5 and 9 and inserts section 30A. The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 1, 5, 7, 9 and 12, and substitutes section 8.

Appointments: The Board of Directors is announced in GN 182/2001 (GG 2607).

Agricultural Bank of Namibia Act 5 of 2003.

Summary: This Act provides for the Agricultural Bank of Namibia (Agribank), replacing the *Agricultural Bank Act 13 of 1944*. It came into operation on 15 November 2003 (GN 225/2003, GG 3092).

Amendments: Act 22/2004 amends sections 7, 8, 16, 22 and 29 and substitutes section 10. The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), substitutes section 7, and amends sections 8, 10, 11, 16 and 17.

Regulations: Certain activities are declared to be “activities related to agriculture” as defined in section 1 of the Act in GN 109/2006 (GG 3672).

Cases: The following cases involve previous legislation—

Du Plessis v Government of the Republic of Namibia 1994 NR 227 (HC) (section 10 of the previous *Agricultural Credit Act 28 of 1966* and section 23 of the *Agricultural Bank Amendment Act 27 of 1991*, which amended the previous *Agricultural Bank Act 13 of 1944*).

Articles:

Sidney Harring 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/projects/lead/Pdf/oneday.pdf.

Legal Assistance Centre, *Our Land We Farm: An analysis of the Namibian Commercial Agricultural Land Reform Process*, 2005, available at www.lac.org.na/projects/lead/Pdf/landwefarm.pdf

Sidney L Harring 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/projects/lead/Pdf/exprorep.pdf

Wolfgang Werner and Willem Odendaal, *Livelihoods after Land Reform*, Legal Assistance Centre, 2010, available at www.lac.org.na/projects/lead/Pdf/livelihoods_report_a.pdf and www.lac.org.na/projects/lead/Pdf/livelihoods_report_b.pdf.

Related international agreements: *Agreement Establishing the International Fund for Agricultural Development, 1976* (accession: 16 October 1992).

COMMISSIONS

Commission of Inquiry into the Meat Industry in South West Africa (AG 1/1984).

MISCELLANEOUS

Grading standards for whole and decorticated pearl millet (mahangu) grains are published for general information for prospective buyers and sellers in General Notice 89/2000 (GG 2353).

INTERNATIONAL LAW

International Agreement for the Creation of an International Office for dealing with Contagious Diseases of Animals, Paris, 1925

effective date of accession: 10 December 1990

(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>)

Constitution of the Food and Agriculture Organization of the United Nations, 1945

effective date in respect of Namibia: 1 December 1977

(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>.)

International Plant Protection Convention, 1951

ratification approved by Parliament: 20 October 2005

deposit: 23 February 2007 (source: www.fao.org/Legal/TREATIES/004s-e.htm)

Phyto-Sanitary Convention for Africa, 1967

(not yet in force within the AU)

ratification by Parliament: 20 October 2005 (source: Parliament)

deposit: none recorded on African Union website (source: www.africa-union.org)

International Treaty on Plant Genetic Resources for Food and Agriculture, 2001

signature: 9 November 2001

ratification approved by Parliament: 23 June 2004 (source: Parliament)

deposit: 7 October 2004 (source: www.fao.org/Legal/TREATIES/033s-e.htm)

See also **ANIMALS**.

See also Stock Theft Act 12 of 1990 (**CRIMINAL LAW AND PROCEDURE**).

See also **ENVIRONMENT**.

See also minimum wage for agricultural industry under Labour Act 11 of 2007 (**LABOUR**).

See also Agricultural (Commercial) Land Reform Act 6 of 1995 (**LAND**).

See also Aquaculture Act 18 of 2002 and Inland Fisheries Resources Act 1 of 2003 (**MARINE AND FRESHWATER RESOURCES**).

ALCOHOL, DRUGS AND TOBACCO

Liquor Act 6 of 1998.

Summary: This Act consolidates and amends the laws relating to the sale and supply of liquor. It came into force on 22 December 2001 (GN 250/2001, GG 2670). It replaces the following laws pertaining to liquor:

- Kaffir Beer (Rural Areas) Control Ordinance 36 of 1957
- *Chapter V, Railways and Harbours Control and Management Consolidation Act 70 of 1957*
- *section 22, General Law Amendment Act 102 of 1967*
- *Supply and Sale of Liquor Proclamation, 1967 (RSA Proc. R.231 of 1967)*
- *Supply and sale of liquor to Natives in South West Africa and the brewing and supplying of Kaffir Beer in South West Africa, RSA Proclamation 205 of 1968*
- Liquor Ordinance 2 of 1969
- *Arrangement appertaining to the sale and supply of liquor in Walvis Bay, 1984 (RSA Proc. R.21 of 1984)*
- section 5, National Transport Corporation Act 21 of 1987 (which was in the interim repealed by the National Transport Services Holding Company Act 28 of 1998, with effect from 1 April 1999).

In addition to regulating the licensing process, the Act forbids the sale of drinks that are more than 3% alcohol to persons under 18, prohibits the supply of liquor to employees as remuneration and forbids the consumption of liquor in public places.

Amendments: The Fourth Schedule of the Act is amended by GN 104/2006 (GG 3665) which contains requirements for shebeens.

Regulations: Regulations made under any of the laws repealed by the Act survive in terms of section 86 of the Act.

Regulations under the new Act are contained in GN 142/2001 (GG 2575), as amended by GN 251/2001 (GG 2670) (Fourth Schedule) and GN 105/2006 (GG 3665). These regulations came into force on the same date as the Act, and replace RSA GN 49/1969 as amended.

Appointments: Regional Liquor Licensing Committees are appointed in GN 20/2002 (GG 2692), GN 41/2003 (GG 2933), GN 77/2004 (GG 3189), GN 178/2004 (GG 3261), GN 34/2005 (GG 3410), GN 150/2006 (GG 3699), GN 153/2007 (GG 3900), GN 55/2008 (GG 4005), GN 239/2008 (GG 4136), GN 35/2009 (GG 4225), GN 136/2009 (GG 4278) and GN 62/2010 (GG 4451).

Cases: *S v Teek* 2009 (1) NR 127 (SC) (addresses credibility of child evidence in case involving allegations under section 71(s) of Act).

The following cases pertain to the Liquor Ordinance 2 of 1969 which has been replaced by the Liquor Act 6 of 1998:

- Marais v The Chairman of the Liquor Licensing Board of Namibia* 1991 NR 306 (HC)
- Swanepoel v Marais & Others* 1992 NR 1 (HC)
- Weyand v Chairman, Liquor Licensing Board* 1993 NR 150 (HC).

Articles: Legal Assistance Centre, *Alcohol and Youths: Suggestions for Law Reform, Monograph 4*, 2009.

Tobacco Products Control Act 1 of 2010.

Summary: This Act establishes a Tobacco Products Control Committee and a Tobacco Products Control Fund and provides measures to reduce supply and demand in respect of tobacco products, to prohibit the sale of tobacco to persons under 18 and to protect against exposure to tobacco smoke. It is designed to make Namibia compliant with the World Health Organisation Framework Convention on Tobacco Control. It will come into force on a date set by the Minister.

Related international agreement: *WHO Framework Convention on Tobacco Control, 2003* (entered into force internationally on 27 February 2005; signature: 29 January 2004; ratification approved by Parliament: 26 October 2005; deposit: 7 November 2005; effective date: 5 February 2006). (source: WHO, www.who.int/fctc)

INTERNATIONAL LAW

Convention on Psychotropic Substances, 1971

accession: 31 March 1998

Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972

accession: 31 March 1998

Note: The UN Treaty Data Base lists two other drug-related treaties to which “South West Africa (Namibia)” is party by means of territorial application. However, this may no longer apply to independent Namibia.

* *Final Act of the United Nations Opium Conference held at United Nations Headquarters, New York, from 11 May to 18 June 1953; Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, 1953* (territorial application as of 9 March 1960, with effect from 8 March 1963)

* *Protocol bringing under international control drugs outside the scope of the Convention of 13 July 1931 for limiting the manufacturing and regulating the distribution of narcotic drugs, as amended by the Protocol signed at Lake Success on 11 December 1946. Signed at Paris on 19 November 1948* (territorial application as of 5 October 1954, with effect from 4 November 1954)

United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988

(entered into force internationally on 11 November 1990)

ratification approved by Parliament: 26 February 2009 (source: Parliament)

accession: 6 March 2009 (source: Ministry of Foreign Affairs)

WHO Framework Convention on Tobacco Control, 2003

(entered into force internationally on 27 February 2005)

signature: 29 January 2004

ratification approved by Parliament: 26 October 2005

deposit: 7 November 2005; effective date: 5 February 2006 (source: WHO, www.who.int/fctc)

SADC Protocol on Combating Illicit Drug Trafficking in the Southern African Region, 1996

(entered into force within SADC on 20 March 1999) (source: SADC)
signature: 24 August 1996 (source: SADC)
ratification: 18 August 1998 (source: SADC; Ministry of Foreign Affairs)

See also Tobacco Growers Protection Ordinance 2 of 1933 (**AGRICULTURE**).

See also **CRIMINAL LAW AND PROCEDURE**.

See also Ordinance for Prevention and Combating of Alcoholism and Anti-Social Conduct 11 of 1965 (**HEALTH**).

See also Medicines and Related Substances Control Act 13 of 2003 (**MEDICINE AND MEDICAL PROFESSIONS**)

See also Brewers & Distillers Licences Duty Proclamation 3 of 1924 (**REVENUE**).

ANIMALS

Performing Animals Protection Act 24 of 1935, as amended in South Africa prior to Namibian independence.

Summary: This Act regulates the exhibition and training of performing animals.

Applicability to SWA: 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: Section 11 of the Act defines “Minister” as “the Minister to whom the administration of this Act has been assigned”. Therefore, it is not clear if there was an applicable transfer proclamation.

Trespass of Animals Ordinance 16 of 1939.

Summary: The Ordinance regulates trespass by animals, provides for the recovery of fees and damages and establishes pounds.

Amendments: This Ordinance is amended by Proc. 21/1943 and Ord. 9/1944.

Trespass of Donkeys Proclamation 18 of 1941.

Summary: This Proclamation regulates trespass by donkeys.

Animal Diseases and Parasites Act 13 of 1956, as amended in South Africa to February 1978.

Summary: The Act establishes control mechanisms for dealing with animal diseases and parasites.

Applicability to SWA: Section 35A states “This Act and any amendment thereof shall also apply in the territory, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Technical Services) Transfer Proclamation (AG 11/78), dated 24 February 1978, gazetted on 2 March 1978. The Act was repealed in South Africa by the *Animal Diseases Act 35 of 1984*, which was not made expressly applicable to SWA.

Amendments: Act 3/1996 amends the Act to make it consistent with an independent Namibia. Act 10/2005 (GN 111/2005, GG 3496) redefines certain expressions in section 1, amends section 19 to prohibit searches of the homes of individuals without a warrant and amends the penalties in section 28.

Regulations: Regulations are contained in RSA GN R.1531 of 4 October 1963, as amended by-

RSA GN R. 428 of 26 March 1965

RSA GN R.1688 of 29 October 1965
RSA GN R. 957 of 24 June 1966
RSA GN R. 702 of 26 April 1968
RSA GN R.1116 of 28 June 1968
RSA GN R. 55 of 17 January 1969
RSA GN R. 947 of 13 June 1969
RSA GN R.1924 of 25 October 1974
RSA GN R.1389 of 25 July 1975
RSA GN R.2028 of 14 September 1979
RSA GN R.1684 of 15 August 1980
AG GN 90 of 14 June 1982
AG GN 179 of 15 December 1982
GN 22 of 1 February 1986
GN 155 of 15 September 1987
GN 114/1995 (GG 1103).

Animal Identification Regulations are contained in GN 29/2009 (GG 4217), as amended by GN 201/2009 (GG 4350) (Regs 3 and 16).

Cases: *S v Lofty-Eaton & Others (1)* 1993 NR 370 (HC).

Animals Protection Act 71 of 1962, as amended in South Africa to November 1979.

Summary: This Act is concerned with the prevention of cruelty to animals.

Applicability to SWA: Section 10A 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, as amended), dated 12 November 1979. None of the amendments to the Act in South Africa after that date were made expressly applicable to SWA.

Cases: *Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State*, 1991 NR 178 (SC) (section 2(1) on penalties).

Municipal Dog Tax Ordinance 13 of 1967.

Summary: The Ordinance provides for the control and taxation of the keeping of dogs within municipal areas.

Amendments: This Ordinance is amended by Ord. 41/1967, Ord. 12/1973, Ord. 8/1978, Ord. 1/1979, Ord. 2/1980, Ord. 15/1980, AG 19/1983, GN 4/85, AG 8/1986, Act 14/1987, Act 30/1987 and GN 15/87. Act 23/1992 repeals section 18.

Regulations: Model Regulations for the Control of Dogs in Local Authority Areas are contained in GN 166/2008 (GG 4077). (Note that there is a corrected version of GG 4077.)

Veterinary and Para-Veterinary Professions Proclamation 14 of 1984.

Summary: This Proclamation establishes a Veterinary Council and governs the registration of persons in veterinary professions. It was brought into operation by AG 23/1984.

Regulations: Regulations are contained in AG GN 76/1985, as amended by GN 96/1997 (GG 1557), GN 133/2002 (GG 2776) and GN 57/2008 (GG 4005).

Appointments/elections: The results of elections to the Veterinary Council are announced in General Notice 132/1990 (GG 81), General Notice 130/1993 (GG 657), General Notice 250/1996 (GG 1395), General Notice 294/1999 (GG 2204) and General Notice 380/2002 (GG 2867).

See also **AGRICULTURE**.

See also Stock Theft Act 12 of 1990 (**CRIMINAL LAW AND PROCEDURE**).

See also Importation of Exotic Mammals and Birds Proclamation 11 of 1928 (**IMPORT AND EXPORT**).

See also **MARINE AND FRESHWATER RESOURCES**.

See also Controlled Game Products Proclamation 42 of 1980 (**TRADE AND INDUSTRY**).

APPROPRIATIONS

This section lists only the appropriation acts passed since independence.

Appropriation Act 11 of 1990.

Additional Appropriation Act 1 of 1991.

Appropriation Act 11 of 1991.

Additional Appropriation Act 2 of 1992.

Appropriation Act 16 of 1992.

Additional Appropriation Act 1 of 1993.

Appropriation Act 8 of 1993.

Additional Appropriation Act 5 of 1994.

Appropriation Act 7 of 1994.

Additional Appropriation Act 8 of 1995.

Appropriation Act 11 of 1995.

Additional Appropriation Act 28 of 1995.

Appropriation Act 4 of 1996.

Additional Appropriation Act 25 of 1996.

Appropriation Act 2 of 1997.

Additional Appropriation Act 16 of 1997.

Appropriation Act 16 of 1998.

Additional Appropriation Act 35 of 1998.

Appropriation Act 9 of 1999.

Additional Appropriation Act 5 of 2000.

Appropriation Act 13 of 2000.

Additional Appropriation Act 23 of 2000.

Appropriation Act 9 of 2001.

Additional Appropriation Act 14 of 2001.

Appropriation Act 2 of 2002.

Additional Appropriation Act 16 of 2002.

Appropriation Act 6 of 2003.

Additional Appropriation Act 17 of 2003.

Appropriation Act 1 of 2004.

Additional Appropriation Act 2 of 2005.

Appropriation Act 7 of 2005.

Appropriation Act 1 of 2006.

Additional Appropriation Act 3 of 2006.

Appropriation Act 1 of 2007.

Appropriation Act 2 of 2008.

Appropriation Act 4 of 2009 (GG 4280).

ARBITRATION

Arbitration Act 42 of 1965, as amended in South Africa prior to Namibian independence.

Summary: This Act provides for the settlement of disputes by arbitration tribunals.

Applicability to SWA: Section 41 states “This Act and any amendment thereof shall apply also in the territory.” Section 1 defines “the territory” as “the territory of South West Africa including that portion of the territory known as the ‘Rehoboth Gebiet’, and the Eastern Caprivi Zipfel referred to in subsection (3) of section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951)”.

Transfer of administration to SWA: There is no reference to any minister in the Act, so it is not clear from the face of the Act what transfer proclamation, if any, was applicable. In any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Cases:

Erongo Mining and Exploration Co Ltd t/a Navachab Gold Mine v Mineworkers Union of Namibia 1993 NR 270 (LC) (section 30)
Nel v Kalahari Holdings (Pty) Ltd 1995 NR 244 (HC) (sections 3(1) and (6))
RL Civil Engineering v Ministry of Regional and Local Government and Housing & Another 1998 NR 61 (HC) (sections 4(2) and 21(f)).

Related international agreements: The *Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958* (the “New York” Convention), which entered into force internationally on 7 June 1959, is relevant. The Ministry of Foreign Affairs lists Namibia as a party to this Convention, but Namibia is not listed as a State Party on www.uncitral.org and the accession could not be located in the Parliament records.

See also **LABOUR**.

ARCHITECTS AND QUANTITY SURVEYORS

Architects' and Quantity Surveyors' Act 13 of 1979.

Summary: This Act provides for the establishment of a Namibia Council for Architects and Quantity Surveyors, and for the registration of persons in these professions. It was brought into operation by AG 36/1979 and AG 10/1983 (section 13(1)(b)).

Amendments: The application of the Act is affected by AG GN 69/1989 and AG GN 79/1989. Act 11/1992 amends sections 1, 2, 3, 11, and 25, and substitutes certain words and expressions and the long title of the Act to make it consistent with an independent Namibia.

Regulations: Minimum fees are contained in GN 250/1998 (GG 1968), as amended by GN 221/2003 (GG 3082), which provides that architects shall be remunerated for their standard services at a fee calculated as a percentage of the cost of the works, except where the nature of the work renders percentage fees inapplicable. In the latter case the fees shall be calculated on an hourly basis in accordance with Annexure 2 of the Notice. Annexure 2 of the Notice provides for payment on the basis of hourly rates determined by the Namibia Council for Architects and Quantity Surveyors.

GN 232/2009 (GG 4386) provides for the minimum hourly fee as prescribed by the Minister of Works and Transport on the recommendation of the Namibia Council for Architects and Quantity Surveyors.

Note: GN 237/1997 (GG 1741), which covers fees, has not technically been repealed. It was corrected by GN 13/1998 (GG 1796): the words 'per hour' were added after the specified minimum fee of N\$250 to be chargeable by architects and quantity surveyors. GN 156/2002 (GG 2810) repealed GN 13/1998, and probably also intended to repeal GN 237/1997 since it is not useful without the amending provision in GN 13/1998. Furthermore, GN 156/2002 prescribed a new minimum fee on an hourly basis, therefore rendering GN 237/1997 obsolete. The only relevant regulations on this issue would now seem to be contained in GN 232/2009 (GG 4386).

Exemptions from the provisions of section 13 are contained in GN 190/1994 (GG 948). Exemptions from the provisions of sections 11 and 13 in respect of work for the Millennium Challenge Account are contained in GN 12/2009 (GG 4210).

Appointments: The Namibian Council for Architects and Quantity Surveyors is appointed in GN 15/1990 (GG 33), GN 143/1992 (GG 512), GN 61/1993 (GG 662), GN 114/1994 (GG 870), GN 86/1995 (GG 1090), GN 123/1996 (GG 1320), GN 44/1997 (GG 1518), GN 48/1998 (GG 1816), GN 128/1998 (GG 1885), GN 253/1999 (GG 2229), GN 280/1999 (GG 2248), GN 211/2001 (GG 2630), GN 84/2003 (GG 2956), GN 45/2004 (GG 3169), GN 198/2006 (GG 3738), GN 23/2009 (GG 4216) and GN 207/2009 (GG 4357).

See also Namibia Qualifications Authority Act 29 of 1996 (re: occupational standards) (**LABOUR**).

ARCHIVES

Archives Act 12 of 1992.

Summary: This Act deals with the custody, care and control of archives.

See also **LIBRARIES.**

ARMS AND AMMUNITION

General Law Amendment Ordinance 12 of 1956, section 4.

Summary: Section 4 of this Ordinance makes the possession and sale of dangerous weapons a criminal offence.

Amendments: Section 4 was repealed in respect of Rehoboth by Act 5/1980 of Rehoboth (*Rehoboth Official Gazette* 34 of 24 July 1980).

General Law Amendment Ordinance 13 of 1962, section 8.

Summary: Section 8 of this Ordinance makes the pointing of firearms a criminal offence.

***Tear-gas Act 16 of 1964*, as amended in South Africa to November 1979.**

Summary: This Act regulates the possession, manufacture and importation of tear-gas and articles which are used to release tear-gas.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 6 states “This Act shall apply also in the territory of South West Africa (including the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951)), and in relation to all persons 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 said territory.”

Although the wording of section 6 did not make amendments to the Act in South Africa automatically applicable to SWA, they may be applicable by virtue of the definition of “Republic” in section 1. In any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979.

Section 3(1)(l) of the transfer proclamation excluded the references to the “Republic” throughout the Act from the operation of section 3(1) of the General Proclamation, meaning that Republic retained the meaning it was given in the definition section of the Act (South Africa and SWA).

There were no amendments to the Act in South Africa after the date of transfer and prior to Namibian independence.

Arms and Ammunition Act 7 of 1996.

Summary: This Act regulates the possession, sale, manufacture, import and export of arms and ammunition. It came into force on 1 April 1998, replacing the *Arms and Ammunition Act 75 of 1969*.

Amendments: The Combating of Domestic Violence Act 4 of 2003 amends Schedule 1. The General Law Amendment Act 14 of 2005 amends section 1 of the Act.

Regulations: Regulations are made in terms of the new Act in GN 67/1998 (GG 1830). These repeal the following regulations made in terms of the previous Act: RSA GN R.1474 of 27 August 1971, RSA GN R.1235 of 20 July 1973, RSA GN R.1023 of 26 May 1978 and RSA GN No.2216 of 31 October 1980.

Cases: The following cases concern the present Act –

S v Likuwa 1999 NR 151 (HC) (examining purpose of section 29(1)(a); striking the words “of not less than 10 years, but” from section 38(2)(a) of the Act on constitutional grounds)

S v Pieters 2005 NR 171 (HC) (section 10)

S v Nakangombe 2006 (2) NR 567 (HC) (appropriate sentence under section 38; declaration of unfitness under section 10 confirmed)

S v Hamukoto 2007 (1) NR 364 (HC) (section 38(2)(a) provides that sentence under section 29(1)(a) may not be suspended for offender over age 18; peremptory provisions of section 10(7))

S v Thomas & Others 2007 (1) NR 365 (HC) (meaning of “possess”; possession through another is possible as long as parties have a common intention for control of the article)

S v Jason & Another 2008 (1) NR 359 (SC) (appropriate sentence under section 2).

The following cases concern the *Arms and Ammunition Act 75 of 1969*-

S v Maseka 1991 NR 249 (HC)

S v Wapota 1991 NR 353 (HC)

S v Matheus 1991 NR 376 (HC) at 382E

S v William 1992 NR 268 (HC)

S v Marungu 1993 NR 389 (HC)

S v Shini 1993 NR 393 (HC).

NOTE

The case of *S v Velskoen* 1991 NR 325 (HC) concerns a conviction under the *Dangerous Weapons Act 71 of 1968*. However nothing in this Act made it applicable to SWA at any stage, and the authors of the index have not been able to locate any other legislation applying it to SWA or Namibia.

INTERNATIONAL LAW

Treaty on the Non-Proliferation of Nuclear Weapons, 1968

accession: 2 October 1992; effective date: 7 October 1992

(sources: US State Department, www.state.gov/www/global/arms/treaties/afrinwfz.html)

Consortium for International Earth Science Information Network: <http://sedac.ciesin.org/>)

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993

signature: 13 January 1993

ratification: 24 November 1995

Comprehensive Nuclear-Test-Ban Treaty, 1996

(not yet in force internationally as of 20 January 2005)

signature: 24 September 1996

ratification: 29 June 2001

African Nuclear Weapon Free Zone Treaty, 1996 (Treaty of Pelindaba)

signature: 4 November 1996

(source: www.africa-union.org)

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997

signature: 3 December 1997

ratification: 21 September 1998

Convention on Cluster Munitions, 2008

(entered into force 1 August 2010)

signature: 3 December 2008

deposit: None recorded. (source: www.clusterconvention.org)

SADC Protocol on the Control of Firearms, Ammunition and other Related Materials in the Southern African Development Community (SADC) Region, 2001

(entered into force within SADC on 8 November 2004) (source: SADC)

signature: 14 August 2001 (source: SADC)

ratification approved by Parliament: 3 July 2002 (source: Parliament)

ratification: 8 October 2004 (source: SADC)

See also **EXPLOSIVES**.

AVIATION

Carriage by Air Act 17 of 1946, as amended in South Africa to March 1978.

Summary: This Act gives effect to the Warsaw Convention that governs international air travel.

Applicability to SWA: Section 1 defines “Republic” to include “any territory in respect of which Parliament is competent to legislate”.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978.

Section 3(1)(a) of the transfer proclamation excluded section 5 of the Act (which deals with the ratification of amendments to the Warsaw Convention by the State President) from the operation of section 3(1) of the General Proclamation, meaning that the administration of this section was not transferred to SWA.

Section 3(2) of the transfer proclamation excluded the reference to “Republic” throughout the Act from the operation of section 3(1)(c) of the General Proclamation, and specified that it should be read to include SWA as well as South Africa.

The provisions of the Act relating to the National Transport Commission and the Civil Aviation Advisory Committee were excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation “those provisions of any law ... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”.

There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence -- the *Carriage by Air Amendment Act 81 of 1979* -- which was not made expressly applicable to SWA.

Amendments: Act 14/1992 amends sections 1, 3, 5 and 7 and substitutes certain expressions to make the Act consistent with an independent Namibia, and to provide for the conversion of sums in francs into Namibian currency in respect of claims against carriers.

Regulations: See GN 265/1998 (GG 1982), which deals with the conversion of sums into francs in terms of section 3(7).

Air Services Act 51 of 1949, as amended in South Africa to March 1978.

Summary: This Act provides for the licensing and control of air carriers.

Applicability to SWA: Section 24 states “The provisions of this Act and any amendment thereof shall apply in respect of any air services provided by the Railway Administration, and shall also apply to the Territory of South West Africa”, which is

defined in section 1 to include “the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951).”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978.

Section 3(1)(b) of the transfer proclamation excluded section 2(2) of the Act (which refers to bilateral agreements between South Africa and other countries) from the operation of section 3(1) of the General Proclamation, meaning that the reference to the “Government of the Republic” in this section was not to be construed as a reference to the Administrator-General. Section 3(1)(h) of the transfer proclamation excluded section 15 of the *Air Services Amendment Act 43 of 1973* from the operation of section 3(1) of the General Proclamation.

Section 3(2) of the transfer proclamation excluded the reference to the “Republic” throughout the Act from the operation of section 3(1)(c) of the General Proclamation, and provided that “Republic” should be deemed to include “the territory”.

There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence -- the *Transfer of Powers and Duties of the State President Act 97 of 1986* -- which was not made expressly applicable to SWA.

Amendments: Act 6/1991 amends the Act substantially to make it consistent with an independent Namibia (affecting sections 1, 2, 3, 4, 7, 8, 11, 13, 16, 17, 19, 20, 22, 24 and the substitution of certain words).

The Posts and Telecommunications Companies Establishment Act 17 of 1992 amends section 11.

Act 31/1998 amends sections 4, 9 and 11 and repeals section 10.

The Road Traffic and Transport Act 22 of 1999 amends section 1.

Regulations: Civil Air Services Regulations are contained in RSA GN R.449 of 20 March 1964, as amended by RSA GN R.1799 of 10 November 1967, GN 224/1995 (GG 1204) and GN 59/1998 (GG 1825).

Application: Visiting aircraft are excluded from the application of section 2(1) of the Act in terms of modifications set forth in GN 58/1998 (GG 1826).

Aviation Act 74 of 1962, as amended in South Africa to March 1978.

Summary: This Act gives effect to certain international conventions concerning aviation and regulates domestic flying.

Applicability to SWA: Section 1 defines “Republic” to include “any territory in respect of which Parliament is competent to legislate”.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978.

Section 3(2)(d) of the transfer proclamation excluded the references to the “Republic” throughout the Act from the operation of section 3(1)(c) of the General Proclamation and provided that “Republic” should be deemed to include “the territory”.

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Amendments: Sections 4 and 5 of the Executive Powers (Transport) Transfer Proclamation (AG 14/1978) amend the Act.

Act 10/1991 amends the Act substantially to make it consistent with an independent Namibia (affecting sections 1, 2, 3, 5, 6, *6bis*, 7, 9, 13, 15, 22, 22A, inserting section 16, repealing section 10 and substituting certain words and the long title).

The Liquor Act 6 of 1998 amends section 1 and *6bis*.

Act 27/1998, which was brought into operation by GG 273/1998 (GG 1993), amends sections 1, 5, 19, 22 and 22A.

Regulations: State Airport Regulations are contained in RSA GN R.1974 of 20 December 1963, as amended by-

- RSA GN R. 397 of 20 March 1964
- RSA GN R.2027 of 24 December 1965
- RSA GN R. 943 of 23 June 1967
- RSA GN R.1031 of 26 June 1970
- RSA GN R.2233 of 11 December 1970
- RSA GN R. 331 of 9 March 1973
- RSA GN R.1258 of 27 July 1973
- RSA GN R.1564 of 31 August 1973
- RSA GN R.1677 of 14 September 1973
- RSA GN R.2443 of 21 December 1973
- RSA GN R. 774 of 18 April 1975
- RSA GN R. 142 of 30 January 1976
- RSA GN R.1472 of 20 August 1976
- RSA GN R.2512 of 24 December 1976
- RSA GN R.2633 of 30 December 1977
- RSA GN R. 441 of 10 March 1978
- RSA GN 12 of 15 January 1988
- GN 223/1995 (GG 1204)
- GN 235/1997 (GG 1739)
- GN 61/1998 (GG 1825)
- GN 215/1998 (GG 1942)
- GN 255/1998 (GG 1972).

Air Navigation Regulations are contained in RSA GN R.141 of 30 January 1976, as amended by-

- RSA GN R.1283 of 23 July 1976
- RSA GN R.2380 of 18 November 1977
- GN 225/1995 (GG 1204)
- GN 60/1998 (GG 1825).

These are supplemented by Safety Directive No. DCA 97-1, published in General Notice 223/1997 (GG 1639), effective as from 1 April 1997.

Regulations Regarding the Investigation of Aircraft Accidents are contained in GN

82/2000 (GG 2298). These regulations replace RSA GN R. 120 of 26 January 1973.

Namibian Civil Aviation Regulations, 2001 are published in GN 1/2001 (GG 2467). These regulations, which came into force on 2 March 2001, cover the following topics:

- Procedures
- Aircraft
- Personnel
- Rules of the Air and General Operating Rules
- Certificated Aircraft Operators and Other Flight Operations
- Aerodromes and Heliports
- Organisations
- Air Traffic Services
- Aeronautical Information and Related Services
- Administration.

These regulations repeal Chapters 2-3, 6, 10-11, 12-16, 21-24 of the Air Navigation Regulations, 1976 (as amended), along with the portions of Chapters 1, 2, 3, 4, 5, 7, 8, 9 and 25 relating to pilots and to flight engineers. They also repeal the Rules of the Air, Air Traffic Services, Search and Rescue and Overflight Regulations, 1975 (RSA GN R.1753 of 19 September 1975) and the Air Navigation Regulations, 1963 (RSA GN R.1779 of 1963, as amended by GN 11/1988 and GN 62/1998 (GG 1825).

The 2001 regulations are amended by GN 57/2006 (GG 3615) and GN 201/2006 (GG 3741).

Regulations on Technical Standards relating to Cabin Crew Licensing are contained in GN 120/2002 (GG 2773), which came into force on 1 September 2002.

The following technical standards have been issued in terms of Regulation 11.03.5 of the Namibian Civil Aviation Regulations, 2001:

NAM-CAT-DO Design organisations for products and appliances	GN 50/2003 (GG 2939)
NAM-CATS-MORG Manufacturing Organisations	GN 51/2003 (GG 2939)
NAM-CATS-ARM Registration and marking	GN 52/2003 (GG 2939)
NAM-CATS-OPS 98 Operation of powered paragliders	GN 53/2003 (GG 2939)
NAM-CATS-MR Medical certification	GN 54/2003 (GG 2940)
NAM-CATS-OPS 100 Operation of gyroplanes	GN 55/2003 (GG 2941)
NAM-CATS-OPS 102 Operation of free balloons and airships	GN 56/2003 (GG 2941)
NAM-CATS-AMO Aircraft maintenance organisations	GN 57/2003 (GG 2941)
NAM-CATS-AH Licensing and operation of aerodromes and heliports	GN 58/2003 (GG 2941)
NAM-CAT-OPS 133 Helicopter external-load operations	GN 59/2003 (GG 2944)
NAM-CAT-OPS 105 Operation of parachutes	GN 60/2003 (GG 2944)
NAM-CAT-OPS 106 Operation of hang gliders	GN 61/2003 (GG 2944)
NAM-CAT-OPS 104 Operation of gliders	GN 62/2003 (GG 2944)
NAM-CATS-ARO Aviation recreation organisations	GN 63/2003 (GG 2944)
NAM-CATS-AIRS Aeronautical information services	GN 64/2003 (GG 2944)
NAM-CAT-DG Conveyance of dangerous goods	GN 65/2003 (GG 2944)
NAM-CAT-OPS 103 Operation of microlight aeroplanes	GN 66/2003 (GG 2944)
NAM-CATS-GMR General maintenance rules	GN 67/2003 (GG 2945)
NAM-CATS-ENVIRO Noise certification	GN 68/2003 (GG 2945)

NAM-CATS-ATO Aircraft training organisations	GN 157/2003 (GG 3024)
NAM-CATS-OPS Agricultural Operations	GN 158/2003 (GG 3024)
NAM-CATS-AR Certification procedures for products and parts and aircraft worthiness	GN 159/2003 (GG 3025)
NAM-CATS-AR Air Traffic Service Personnel Licensing	GN 160/2003 (GG 3026)
NAM-CATS-OPS 91 General Operating and Flight Rules	GN 186/2003 (GG 3045)
NAM-CATS-OPS 135 Air Transport Operations - Small Aeroplanes	GN 187/2003 (GG 3047)
NAM-CATS-OPS 121 Air Transport Operations - Large Aeroplanes	GN 257/2003 (GG 3112)
NAM-CATS-ATS Airspace and Air Transport Services	GN 9/2004 (GG 3135)
NAM-CATS-AMEL Aircraft Maintenance Engineer Licensing	GN 54/2004 (GG 3179)
NAM-CATS-OPS 127 Air Transport Operations - Helicopters	GN 55/2004 (GG 3180)

Draft regulations: A proposed structure for future Civil Aviation Regulations was published for comment in General Notice 201/1997 (GG 1627). Proposed regulations were published for comment in General Notices 201-212/1997, General Notices 224-251/1997, General Notice 39/1998, General Notice 171/2001, General Notice 31/2002, General Notices 159-178/2002, General Notices 73-82/2003, General Notice 34/2005 (GG 3382), General Notice 235/2006 (GG 3678), General Notices 173-175/2007 (GG 3865), General Notice 232/2007 (GG 3890), General Notice 357/2007 (GG 3941), General Notice 386/2007 (GG 3949), General Notice 40/2008 (GG 3995), General Notice 161/2008 (GG 4062) and GN 141/2009 (GG 4287).

Designations: The Executive Committee of the United Hang Gliding Association of Namibia is named as the designated body to give effect to regulation 149.01.2(1) of the Civil Aviation Regulations, 2001 (GN 98/2005, GG 3447).

Aerodrome Ordinance 12 of 1963.

Summary: This Ordinance provides for the establishment, management and maintenance of airports.

Amendments: Section 3(1) of the Ordinance was assigned to the administration of the Minister of Transport by GN 179/86.

Civil Aviation Offences Act 10 of 1972, as amended in South Africa to March 1978.

Summary: This Act gives effect to several conventions concerning air travel and includes measures designed to ensure the safety of aircraft and airports.

Applicability to SWA: Section 1 defines “Republic” to include “any territory in respect of which Parliament is competent to legislate”. Section 9 states “This Act and every amendment thereof shall also apply in every territory in respect of which Parliament is competent to legislate.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978. None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Amendments: Act 9/1992 amends sections 1, 2 and 3, inserts sections 2A-2M, repeals section 9, and substitutes certain expressions in the Act and the long title. Among other things, these amendments are aimed at providing additional security measures. The Airports Company Act 25 of 1998 amends sections 1 and 2B and inserts section 2N.

Regulations: Regulations concerning security are contained in GN 181/1996 (GG 1348).

Airports Company Act 25 of 1998.

Summary: This Act provides for the incorporation of a company to undertake the operation, management and control of certain aerodromes in Namibia. The bulk of the Act came into operation on 1 November 1998 (GN 261/1998, GG 1981). Sections 5-13 and sections 15-18 came into operation on 5 February 1999 (GN 19/1999, GG 2045), on the date of transfer of certain aerodromes to the Company. (This date of transfer was originally set as 5 November 1998 by GN 262/1998 (GG 1981), but this notice was withdrawn by GN 275/1998 (GG 1993).)

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends sections 1-11 and 14.

Regulations: Charges set forth in GN 263/1998 (GG 1981) were withdrawn by GN 275/1998 (GG 1993). Aerodrome and airport charges are contained in GN 20/1999 (GG 2045).

Cases: *Westair Aviation (Pty) Ltd & Others v Namibia Airports Company Ltd & Another* 2001 NR 256 (HC).

COMMISSIONS

Commission of Inquiry into the Aviation Regulatory Practices of the Directorate: Civil Aviation in the Ministry of Works, Transport and Communication (Proc. 9/1997, GG 1611).

See also GN 153/1997 (GG 1611).

Commission of Enquiry into the Activities, Management and Operations of Air Namibia (Pty) Ltd (Proc. 18/2001, GG 2616)

See also GN 194/2001 (GG 2616) and GN 230/2001 (GG 2647).

INTERNATIONAL LAW

Convention on International Civil Aviation of 7 December 1944

accession: 30 April 1991, effective 30 May 1991

(source: International Civil Aviation Organization)

Protocol on the Authentic Trilingual Text of the Convention, Buenos Aires, 1968

acceptance: 30 May 1991 (source: International Civil Aviation Organization)

Protocol on the Authentic Quadrilingual Text of the Convention, Montreal 1977

acceptance: 2 November 2000 (source: Parliament); effective: 19 October 2001 (source: International Civil Aviation Organization)

Protocol relating to an Amendment to the Convention (Final Clause, Russian Text), Montreal, 1977

ratification: 2 November 2000, deposited 27 September 2001 (source: International Civil Aviation Organization)

Protocol relating to an Amendment to the Convention (Article 56), Montreal, 1989

ratification: 2 November 2000, deposited 27 September 2001 (source: International Civil Aviation Organization)

Protocol relating to an Amendment to the Convention (Article 50(a)), Montreal, 1990

ratification: 2 November 2000, deposited 27 September 2001 (source: International Civil Aviation Organization)

Protocol on the Authentic Quinquilingual Text of the Convention, Montreal, 1995

acceptance: 2 November 2000 (source: Parliament); effective: 19 October 2001 (source: International Civil Aviation Organization)

Protocol relating to an Amendment to the Convention (Final Clause, Arabic Text), Montreal, 1995

(not yet in force internationally as of 20 January 2005)

ratification by Parliament: 2 November 2000

deposit: 27 September 2001 (source: International Civil Aviation Organization)

Protocol on the Authentic Six-Language Text of the Convention, Montreal, 1998

(not yet in force internationally as of 20 January 2005)

acceptance: 2 November 2000 (source: Parliament)

effective: 19 October 2001 (source: International Civil Aviation Organization)

Protocol relating to an Amendment to the Convention (Final Clause, Chinese Text), Montreal, 1998

(not yet in force internationally as of 20 January 2005)

ratification by Parliament: 2 November 2000 (source: Parliament)

deposit: 5 November 2001 (source: International Civil Aviation Organization)

Annex 16 to the Convention on International Civil Aviation, Environmental Protection, Volume I — Aircraft Noise, Chicago, 1944

effective date in respect of Namibia: 30 May 1991

(source: ENTRI – Environmental Treaties and Resource Indicators -

<http://sedac.ciesin.columbia.edu:9080/>)

Convention for the Unification of Certain Rules relating to International Carriage by Air, 1999

(came into force internationally on 4 November 2003)

ratification by Parliament: 7 March 2001

deposit: 27 September 2001 (sources: Parliament; International Civil Aviation Organization)

African Civil Aviation Commission Constitution, 1969

signature: 21 February 2002

ratification approved by Parliament: 12 March 2002

deposit: 10 May 2002 (source: www.africa-union.org)

Constitution for the African Civil Aviation Commission (AFCAC)-revised version, 2009

(entered into force within the AU on 23 October 2009, superseding the *African Civil Aviation Commission (AFAC) Constitution, 1969*) (source: www.africa-union.org)

signature: 11 May 2010 (source: African Union website: www.africa-union.org)

Agreement on the Establishment of the African Civil Aviation Agency

signature: 28 June 2007 (source: Proc. 17/2007 (GG 3928))

See also State-owned Enterprises Governance Act 2 of 2006 (**COMPANIES**), which affects Air Namibia (Pty) Ltd.

BIRTHS, MARRIAGES AND DEATHS

General Law Amendment Ordinance 13 of 1962, section 7.

Summary: Section 7 of this Ordinance makes concealment of the birth of a child a criminal offence.

Births, Marriages and Deaths Registration Act 81 of 1963, as amended in South Africa to March 1978.

Summary: This Act governs the registration of births, deaths and marriages.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 51A states “This Act, except sections 7A and 42(4), and any amendment thereof, and any regulations made under this Act, shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel, and in such application the word ‘Bantu’ shall be construed as ‘native’ and any compound or derivative of ‘Bantu’ shall be construed as a corresponding compound or derivative of the word ‘native’.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Interior) Transfer Proclamation (AG 17/1978), dated 30 March 1978.

Section 3(2)(c) of the transfer proclamation excluded the reference to the “Republic” throughout the Act from the operation of section 3(1) of the General Proclamation, meaning that “Republic” retained the meaning given to it in the definition section of the Act (South Africa and SWA).

There were two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence -- the *Births, Marriages and Deaths Registration Amendment Act 35 of 1982*, and the *Marriages, Births and Deaths Amendment Act 41 of 1986* -- neither of which was made expressly applicable to SWA.

Amendments: Act 5/1987 makes substantial amendments to this Act.

Regulations: Regulations are contained in RSA GN 214 of 24 December 1987. These regulations are amended by GN 128/2001 (GG 2564). (There may also be pre-independence amendments which have not been recorded here.)

Burial Place Ordinance 27 of 1966.

Summary: This Ordinance prohibits the desecration or disturbance of graves and regulates exhumation.

Crematorium Ordinance 6 of 1971.

Summary: This Ordinance provides for the establishment, maintenance, management, use and control of crematoria.

See also **MARRIAGE AND DIVORCE.**

See also **NATIONAL HERITAGE.**

‘BLACKS’

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

Concessions from Natives Proclamation 8 of 1915.

Summary: This Proclamation provides that concessions for mineral, trading and other rights obtained (and to be obtained) by private individuals from “coloured and native inhabitants” shall be invalid.

Native Reserves Trust Funds Administration Proclamation 9 of 1924.

Summary: This Proclamation requires that separate Native Reserve Trust Funds be set up for each native reserve established pursuant to the Native Administration Proclamation 11 of 1922 (which is no longer in force), and governs the administration of such funds. It appears to be obsolete.

Amendments: The Proclamation is amended by Proc. 15/1928, Proc. 21/1936, Proc. 6/1939, Ord. 11/1954, RSA Proc. 62/1963, RSA Proc. 228/1969 and RSA Proc. 84/1977.

This Proclamation was repealed in Damaraland by the Damara Community and Regional Authorities and Paramount Chief and Headman Ordinance 2 of 1986 of the Damara Legislative Assembly (OG 5355). Repeals in respect of other areas may exist, but have not been located.

Native Reserves Fencing Proclamation 12 of 1926.

Summary: This Proclamation provides for the recovery of the costs of fencing native reserves from the reserves’ inhabitants.

Native Administration Proclamation 15 of 1928.

Summary: The surviving portions of this Proclamation deal with primarily with the marriage and succession of “natives”.

The Proclamation, with the exception of Chapter IV on Marriage and Succession, came into force in all of South West Africa on 1 January 1930 (GN 165 of 11 December 1929). Selected portions of Chapter IV -- section 17(6) and sections 18(3) and (9) -- were subsequently applied to the area north of the Police Zone with retroactive effect from 1 August 1950 (GN 67 of 1 April 1954).

The whole of section 18 and its accompanying regulations was made applicable to the whole of South West Africa *with the exception of Owambo, Kavango and Caprivi* by RSA Proclamation R.192 of 15 February 1974.

Thus, only sections 17(6) on marriage and sections 18(3) and 18(9) on succession apply in Owambo, Kavango and Caprivi (with effect from 1950). None of section 17 on marriage applies elsewhere, but the whole of section 18 on succession applies to the remainder of Namibia (with effect from 1974).

Amendments: The Proclamation is amended by Proc. 25/1937, Proc. 24/1941, Proc. 35/1943, Ord. 11/1954, Ord. 4/1955, RSA Proc. 360 of 1968, RSA Proc. 41/1973, AG 46/1978, Act 27/1985, Ord. 2/1986 (Damaras), AG 14/1989 and Act 23/1992.

The Traditional Authorities Act 17 of 1995 repeals the remaining sections of the Proclamation *with the exception of* sections 17, 18, 23, 24, 25, 26 and 27 and any regulations made in terms of those sections.

The Estates and Succession Amendment Act 15 of 2005 repeals portions of section 18, but provides that they shall “continue to be of force in relation to persons to whom the relevant rules would have been applicable had the said provisions not been repealed”.

Regulations: Regulations relating to the “administration and distribution of native estates” in the area north of the Police Zone were issued pursuant to section 18(9) in GN 70 of 1 April 1954. These regulations were subsequently extended to the whole of South West Africa *with the exception of* Owambo, Kavango and Caprivi by RSA Proc. R.192 of 15 February 1974.

The Proclamation was affected by RSA Proc. 2/1973 (criminal jurisdiction of native commissioners).

Comment: This Proclamation was once supplemented by the Native Administration Proclamation 11 of 1922, which was repealed in its entirety by the Local Authorities Act 23 of 1992, effective 31 August 1992.

Cases: *Mofuka v Mofuka* 2001 NR 318 (HC), 2003 NR 1 (SC); *Berendt & Another v Stuurman & Others*, 2003 NR 81 (HC) (declares sections 18(1), (2) and (9) unconstitutional with effect as of 30 June 2005; time period extended to 30 December 2005 by *Government of the Republic of Namibia v The Master of the High Court & 3 Others*, case no 105/2003; see Estates and Succession Amendment Act 15 of 2005); *Kavendjaa v Kaunozondungo NO & Others* 2005 NR 450 (HC) (section 18 and related regulations); *Nakashololo v Nakashololo* 2007 (1) NR 27 (HC) (factual enquiry finds joint oral declaration to marriage officer before solemnisation of marriage, attested to by marriage officer, sufficient to make marriage in community of property in terms of section 17(6)); *Valindi v Valindi & Another* 2009 (2) NR 504 (HC) (factual enquiry concerning section 17(6)).

Articles: Law Reform and Development Commission, *Report on Uniform Consequences of Common Law Marriages (Repeal of Section 17(6) of Native Administration Proclamation, 1928 (Proclamation 15 of 1928)* (LRDC 11).

Additional information: The history of the application of this Proclamation to persons in various parts of Namibia is complex; as one judicial opinion recently stated, “any discussion of the wider aspects of the Proclamation and the regulations made thereunder has always created more heat than light” (*Nakashololo v Nakashololo* 2007 (1) NR 27 (HC) at 28I). For this reason, some excerpts on the Proclamation’s history and purpose have been included below.

The Native Administration Proclamation 15 of 1928 is modelled on South Africa’s Black Administration Act 38 of 1927. The Administrator of South West Africa gave the following explanation of the Proclamation’s purpose to the League of Nations:

It may be stated that to meet the position legislation is being introduced which a) will simplify procedure in native cases generally; b) will give Native

Commissioners power to deal with all matrimonial cases and so cheapen and expedite proceedings. There will, of course, be a right of appeal to the High Court; c) will secure the inheritances under native law of the offspring of a marriage or alliance contracted under native custom in the event of a marriage in accordance with civil law being entered into subsequently; d) will simplify marriage procedure.” (UG 31/1928: para 41)

The Native Administration Proclamation 15 of 1928, with the exception of Chapter IV on Marriage and Succession, generally came into force in all of South West Africa on 1 January 1930 (GN 165 of 11 December 1929).

Selected portions of Chapter IV -- section 17(6) and sections 18(3) and (9) -- were subsequently applied to the area north of the Police Zone with retroactive effect from 1 August 1950 (GN 67 of 1 April 1954).

On 1 April 1954, regulations concerning inheritance were promulgated, in terms of section 18(9) of the Proclamation, in GN 70 of 1 April 1954 (hereinafter referred to as ‘Regulation GN 70’). These regulations were by their own terms applicable only “to native estates in that portion of the territory north of the Police Zone”.

The Police Zone is the area south of (‘within’) an imaginary line drawn through Namibia. It is defined in the First Schedule to Proclamation 26 of 1928. The area north of (‘outside’) the Police Zone was primarily viewed as labour reserves during the early colonial period. During German colonization, there was no direct colonial rule of this area. When South Africa assumed administration of Namibia, it had no clear policy on how to deal with this area.

The whole of section 18 of the Proclamation and Regulation GN 70 was made applicable to the whole of South West Africa *with the exception of* Owambo, Kavango and Caprivi by RSA Proclamation R.192 of 15 February 1974.

Technically, RSA Proclamation R.192 of 15 February 1974 excludes the areas “referred to paragraphs (d), (e) and (f) of section 2(1) of the Development of Self-Government for Native Nations in South West Africa Act, 1968 (Act 54 of 1968)”.

The result was as follows:

- (1) In Owambo, Kavango and Caprivi, sections 17(6) on applied to marriages between Africans, and sections 18(3) and 18(9) on succession and Regulation GN 70 applied (with effect from 1950).
- (2) In all of Namibia north of the old Police Zone, section 17(6) on marriage applied to marriages between Africans (with effect from 1950).
- (3) Inside the old Police Zone, none of section 17 on marriage applied.
- (4) In all of Namibia *other than* Owambo, Kavango and Caprivi, the whole of section 18 on succession, including Regulation GN 70, applied (with effect from 1974).

The Native Administration Proclamation Amendment Act 27 of 1985 repealed sections 18(3), 18(4), 18(5), 18(7), 18(8) and 18(9)(c).

In *Berendt & Another v Stuurman & Others*, 2003 NR 81 (HC), the High Court declared sections 18(1), 18(2) and 18(9) and Regulation GN 70 to be in conflict with the Constitution.

The Estates and Succession Amendment Act 15 of 2005 repeals subsections 18(1), 18(2), 18(9) and 18(10), but states:

Despite the repeal of the provisions referred to in subsection (1), the rules of intestate succession that applied by virtue of those provisions before the date of their repeal continue to be of force in relation to persons to whom the relevant rules would have been applicable had the said provisions not been repealed.

This would appear to leave the subsections in question, along with Regulation GN 70, applicable to the same persons in the same parts of Namibia as before the *Berendt* case.

However, the constitutionality of the approach taken by the Estates and Succession Amendment Act 15 of 2005 is an open question.

Legal Assistance Centre, 2010

The Western concept of a civil marriage and the legal consequences thereof were foreign to the indigenous peoples of Southern Africa during the pre-colonial era. There was one of (potentially) polygynous customary unions concluded without formal officiation according to the tradition of each tribe and cemented by bridewealth agreements between the families of the partners in such unions. The arrival of European colonial powers in Southern Africa and their 'mission to "civilize" their colonies' (T W Bennett *Application of Customary Law in Southern Africa* (1985) at 138) had a far-reaching impact upon African customary legal systems. A choice was given to members of those indigenous groups to conclude civil marriages. The personal and proprietary consequences of those marriages were, however, not only foreign to the indigenous people but, if so contracted, had the potential to cause serious prejudice to other parties in existing customary unions.

Hence, uncoordinated attempts were made prior to 1928 to address those concerns by legislation (see J M T F Labuschagne 'Spanningsveld tussen die Psigo-Kulturele en die Juridiese: Opmerkinge oor die Vermonsregtelike gevolge van gemeenregtelike Huwelike tussen Swartes' *THRHR* (1995) 302 at 303-304). From 1 January 1929 the position was comprehensively regulated in South Africa by s 22 of the Native Administration Act, 1927. Being a mandated territory of the Republic of South Africa at the time, the legislative authorities in the then South West Africa soon followed suit with the promulgation of the Native Administration Proclamation, 1928. Section 17 dealt with 'Marriage' in almost identical terms as s 22 of Act 38 of 1927 (RSA).

However, whereas s 22 became of force and effect in South Africa from the beginning of 1929, s 17 of Proc 15 of 1928 did not. In terms of s 27 of the Proclamation, the Administrator had to fix the date on which it would commence by notice in the Gazette and he could exclude from application in such notice any specified part or provision of the Proclamation 'which shall thereupon not apply until brought into operation by a further notice'. When the Administrator brought the Proclamation into operation with effect from 1 January 1930 by Government Notice 165 of 11 December 1929, he expressly excluded Chap IV (which contains s 17). That chapter, with all the legislative intentions to protect customary unions, was never applied in Namibia. That is, except for ss 17(6) and 18(3) and (9), which were applied with effect from 1 August 1950 only to the area north of the 'Police Zone' as defined in the first schedule to the Proclamation. That area includes Ovamboland.

Section 17(6) of the Proclamation (as amended by s 6 of Act 27 of 1985) provides as follows:

'A marriage between Blacks, contracted after the commencement of this Proclamation, shall not produce the legal consequences of marriage in community of property between the spouses: Provided that in the case of a marriage contracted otherwise than during the subsistence of a customary union between the husband and any woman other than the wife it shall be competent for the intending spouses at any time within one month previous to the celebration of such marriage to declare jointly before any magistrate or marriage officer (who is hereby authorised to attest such declaration) that it is their intention and desire that community of property and of profit and loss shall result from their marriage, and thereupon such community shall result from their marriage.'

... the plaintiff did not challenge the constitutionality of s 17(6)... and did not attack the validity of GN 67 of 1954 or the retroactive effect thereof on the pleadings or in argument. Hence, those questions do not arise for decision and I shall refrain from expressing any view thereon....

The legislative intention behind the promulgation of the subsection, according to Bennett (op cit at 155) (dealing with an almost identical s 22(6) of the RSA Act), was to ensure that 'the parties to the marriage would not be caught unawares by a property system with which they would be unfamiliar'.

The effect of this section on the legal consequences of civil marriages between Blacks contracted after 31 July 1950 in the area defined as the 'Police Zone' is significant. No longer does community of property follow unless excluded - rather, the converse applies: The marriage is out of community of property, unless declared or agreed otherwise. After a careful and authoritative analysis of s 22(6) of the RSA Act, Watermeyer CJ concluded as follows in *Ex parte Minister of Native Affairs: in re Molefe v Molefe* (1946 AD 315 at 320):

'The proprietary rights of native spouses who contract a valid marriage at a time when no customary union subsists between the husband and another woman, and who do not make a declaration in terms of s 22(6) of Act 38 of 1927, will, except in so far as there is a specific statutory provision, depend upon whether or not parties have entered into any antenuptial agreement with regard to their proprietary rights after marriage. If they have entered into such an antenuptial agreement then their proprietary rights will depend upon the legal effects, whatever they may be, of such agreement. If they have not entered into any such antenuptial agreement then, since community of property, and of profit and loss, does not result from marriage, each spouse retains, subject to any statutory provision, the ownership of his or her own property, but the control of the property of the spouses vests in the husband by virtue of his marital power.'

Those remarks apply, *mutatis mutandis*, to s 17(6).

Mofuka v Mofuka 2001 NR 318 (HC) at 320B-322E

Ovamboland Affairs Proclamation 27 of 1929.

Summary: This Proclamation enables the Administrator to make regulations for the government of Ovamboland, the establishment of a trust fund and the establishment of the Ovamboland Police.

Amendments: The Proclamation is amended by Proc. 26/1930, Proc. 34/1940, Proc. 38/1940, Proc. 15/1941, Proc. 20/1941, Proc. 2/1948, Proc. 52/1950, SA GN 1503/1957 and RSA Proc. R.1/1976.

Caprivi Zipfel Affairs Proclamation 27 of 1930.

Summary: This Proclamation makes provision for the establishment of trust funds for any "tribe or aggregate of tribes" in the Caprivi Zipfel, and for the Administrator to make regulations for the area or particular classes of persons or "tribes or portions of tribes" in the area.

Okavango Native Territory Affairs Proclamation 32 of 1937.

Summary: This Proclamation enables the Administrator to make regulations for the government of the Okavango Native Territory, the establishment of a trust fund and the establishment of the Okavango Native Territory Police.

Amendments: This Proclamation is amended by Proc. 38/1940, Proc. 26/1948 and Proc. 53/1950.

Native Trust Funds Proclamation 23 of 1939.

Summary: This Proclamation established the "Herero Tribal Trust Fund" and

authorised the Administrator-General to establish similar funds for other “tribes” or “aggregations of natives”. It did not repeal the Native Reserves Trust Funds Administration Proclamation 9 of 1924, although there is some overlap between the two. However, the 1929 Proclamation ties the funds created under it to the land, while this Proclamation relates rather to groups of people.

Black Reserves (South West Africa) Act 44 of 1945.

Summary: This Act authorises the dis-establishment of one area reserved for Black occupation, in exchange for the establishment of another.

Applicability to SWA: This Act applies specifically to South West Africa. It governed only the one particular transaction and has no ongoing applicability.

Black Affairs Act 55 of 1959, as amended in South Africa to 1970.

Summary: This Act establishes a Commission for Black Affairs, so as to facilitate the administration of black affairs. It was repealed in South Africa by Act 108/1991.

Applicability to SWA: Section 16A, which was inserted by Act 49/1970, provides that “sections 2, 3 and 4 and any regulation made under section 15(1)(a) shall also apply in respect of the territory of South-West Africa, including the Eastern Caprivi Zipfel”. This wording does not appear to make South African amendments automatically applicable to SWA, and none of the amending acts after Act 49/1970 were made expressly applicable to SWA.

Transfer of administration to SWA: The administration of the Act was transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977, as amended), dated 28 September 1977.

Reservation of State Land for Natives Ordinance 35 of 1967.

Summary: This Ordinance authorises the Administrator-General of South West Africa to set aside and reserve state land “for the sole use and occupation of natives”.

Amendments: This Ordinance is amended by Ord. 5/1969, Ord. 19/1971, Ord. 16/1974, Ord. 5/1975, Ord. 6/1977 and Ord. 5/1978.

Development of Self-Government for Native Nations in South-West Africa Act 54 of 1968.

Summary: This Act was intended to assist the “native nations” in South West Africa to “develop in an orderly manner to self-governing nations and independence”. It seems to remain in force in technical terms in some areas of “South West Africa”.

Section 52 of the Representative Authorities Proclamation, AG 8/1980 (as amended by AG 4/1981) provided that the Act would be repealed in Hereroland, Kaokoland, Kavango, Eastern Caprivi, Owamboland and Damaraland when representative authorities for these areas came into operation, and in other parts of the territory on a

date determined by the Administrator-General by proclamation. No proclamation specifying dates for repeals in other parts of South West Africa has been located.

Promotion of the Economic Development of National States Act 46 of 1968, as amended in South Africa prior to Namibian independence.

Summary: This Act provides for the establishment of development corporations so as to carry out the economic development of homelands (“national states”).

Applicability to SWA: Section 32 states “This Act and any amendment thereof also apply in the territory of South-West Africa, including that portion of the said territory known as the Eastern Caprivi Zipfel and mentioned in section 3 of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951).”

Transfer of administration to SWA: The relevant transfer proclamation is the Executive Powers Transfer Proclamation (AG 3/1977, as amended), dated 28 September 1977. However, this Act is excluded from the operation of section 3(1) of the transfer proclamation by section 3(2)(b), meaning that it was not transferred to SWA.

Namaland Consolidation and Administration Act 79 of 1972, as amended in South Africa to September 1977.

Summary: This Act sets aside an area in South West Africa for the sole use and occupation of the Nama and provides for the administration of this area.

Applicability to SWA: This Act obviously applies to South West Africa by virtue of its subject matter.

Transfer of administration to SWA: The administration of this Act is transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977, as amended), dated 28 September 1977. There were no amendments to the Act in South Africa prior to Namibian independence.

Amendments: AG 39/1978 amends this Act by adding specified areas of land to Namaland. Act 15/1979 amends section 1, section 2 and Schedule 1. The Representative Authority of the Namias Proclamation (AG 35/1980) (which was repealed by the Namibian Constitution) repeals section 3, amends 6 and affects the application of Schedule 1. AG 71/1980 amends section 2 and Schedule 1. Act 4/1986 also amends section 2 and Schedule 1.

See also Native Stock Brands Proclamation 15 of 1923 and Dried Peas Control Ordinance 35 of 1957 (**AGRICULTURE**).

See also Kaffir Beer (Rural Areas) Control Ordinance 36 of 1957 (**ALCOHOL, DRUGS AND TOBACCO**).

See also Racial Discrimination Prohibition Act 26 of 1991 (**CRIMINAL LAW AND PROCEDURE**).

See also **CUSTOMARY LAW**.

See also Natives Minimum Wage Proclamation 1 of 1944 (**LABOUR**).

See also Crown Land Disposal Proclamation 13 of 1920 (reservation of land for the use of “aboriginal natives, coloured persons and Asiatics”) (**LAND**).

See also Consent to Operations on Native Minors Proclamation 37 of 1943 (**MEDICINE AND MEDICAL PROFESSIONS**).

See also *Black Authorities Service Pensions Act 6 of 1971* and *Railways and Harbours Pensions for Non-Whites Act 43 of 1974* (**PENSIONS**).

CENSORSHIP

Indecent or Obscene Photographic Matter Act 37 of 1967, as amended in South Africa to November 1979.

Summary: This Act makes it an offence to possess indecent or obscene photographic matter.

Applicability to SWA: Section 4A 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, as amended), dated 12 November 1979. The only amendment to the Act in South Africa after that date and prior to Namibian independence -- the *Indecent or Obscene Photographic Matter Amendment Act 72 of 1983* -- is duplicated by the SWA Indecent or Obscene Photographic Matter Amendment Act 4 of 1985.

Amendments: Act 4/1985 amends the Act to extend the meaning of “cinematograph film”.

Cases: *Fantasy Enterprises CC t/a Hustler The Shop v Minister of Home Affairs & Another; Nasilowski & Another v Minister of Justice & Others* 1998 NR 96 (HC) (section 2(1) of the Act declared unconstitutional).

Publications Act 42 of 1974, as amended in South Africa prior to Namibian independence.

Summary: This Act establishes a Directorate of Publications and provides for the control of certain publications, objects, films and public entertainments.

Applicability to SWA: Section 46 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.” Section 47 defines “Republic” to include “the territory of South West Africa”.

Transfer of administration to SWA: The Act was under the authority of “the Minister to whom the administration of this Act is from time to time assigned” rather than under any particular government department (section 47). Section 3(2) of the Executive Powers (Interior) Transfer Proclamation (AG 17/1978) specifically exempted the Act from the operation of section 3(1) of the General Proclamation, meaning that the administration of the Act was not transferred to SWA by that transfer proclamation.

Certain powers under the Act were transferred to the Administrator-General by the Publications Proclamation (AG 43/1978). However, this Proclamation did not seem to function as a transfer proclamation. Under section 2 of AG 3/1978, the Administrator-General was given the power to amend, set aside or substitute any decision made by any committee referred to in the principal Act, by the Publications Appeal Board, or by the Directorate of Publications. However, these bodies were still in a position to

make decisions which were applicable to South West Africa if the Administrator-General did not intervene.

Amendments: The Publications Proclamation (AG 43/1978) amends this Act by giving the Administrator-General the power to overrule the Publications Appeal Board or any of the other committees or persons referred to in the Act.

The First Law Amendment (Abolition of Discriminatory or Restrictive Laws for the Purposes of Free and Fair Election) Proclamation (AG 14/1989) amends the definition of “undesirable” in section 48 of the Act.

The Customs and Excise Act 20 of 1998 repeals section 49.

See also General Law Amendment Ordinance 22 of 1958, section 1 (which makes it an offence to publish details of any person under 18 years old who is a party to civil proceedings) (**COURTS**).

See also *Criminal Procedure Act 51 of 1977*, section 154 (which prohibits the publication of any information which may reveal the identity of an accused or a witness in criminal proceedings who is under the age of 18, as well as the publication of information about any criminal proceedings held in closed court) (**CRIMINAL LAW AND PROCEDURE**).

See also *Protection of Information Act 84 of 1982* (which prohibits the disclosure of security-related information) (**DEFENCE**).

CENSUS AND STATISTICS

Census of Dwellings Proclamation 24 of 1945.

Summary: This Proclamation makes provision for the taking of a census of dwellings.

Statistics Act 66 of 1976, as amended in South Africa to December 1977.

Summary: This Act covers the taking of censuses and the compilation, processing and publishing of statistics.

Applicability to SWA: The Act was made applicable to SWA by section 21 (repealed in South Africa in 1986), which states “This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The administration of the Act was transferred to SWA by the Executive Powers (Statistics) Transfer Proclamation (AG 15/1977), dated 1 December 1977.

The provisions of the Act relating to the Statistics Advisory Council were apparently excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation “those provisions of any law... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”. However, the transfer proclamation provided that, notwithstanding this exemption, the first reference to the Minister in section 2(7) of the Act (concerning reports of the Statistics Advisory Council) should be construed as including a reference to the Administrator-General.

The transfer proclamation also provided that section 4(1) of the General Proclamation (concerning the Administrator-General’s power to delegate), would not apply to the powers conferred on the Administrator-General by section 6 of the Act (the duty to frame certain documents).

There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence -- the *Statistics Amendment Act 25 of 1986* -- which was not made expressly applicable to SWA.

Amendments: The Act is amended by AG 16/1981.

Administration of Act: The administration of the Act is assigned to the Director-General of Planning in Proc. 27/2008 (GG 4091).

Regulations: Regulations are contained in-

- RSA GN R.1133/1976
- RSA GN R.1138/1976
- RSA GN R.1437/1976
- RSA GN R.1444/1976
- RSA GN R.1436/1976

RSA GN R.1508/1976
RSA GN R.1729/1976
RSA GN R. 200/1977
RSA GN R. 201/1977
RSA GN R. 502/1977
RSA GN R. 704/1977
RSA GN R. 758/1977
RSA GN R. 758/1977
RSA GN R. 974/1977
AG 188/1980
AG GN 93/1981
AG GN 74/1984
GN 39/1986
GN 181/1987
AG GN 11/1989
GN 101/1991 (GG 253)
GN 54/1999 (GG 2076) (child economic activities)
GN 168/2001 (GG 2597) (particulars for 2001 census)
GN 176/2004 (GG 3256) (labour force activities)
GN 177/2004 (GG 3256) (labour force activities)
GN 25/2005 (GG 3393) (agricultural activities)
GN 26/2005 (GG 3393) (agricultural activities)
GN 235/2008 (GG 4131) (labour force survey)
GN 146/2009 (GG 4301) (business enterprises and business establishments)
GN 162/2009 (GG 4314) (household income and expenditure)
GN 116/2010 (GG 4495) (dwellings and other building structures).

Identification Act 21 of 1996.

Summary: This Act provides for a population register and for the issue of identity documents. It replaces the *Identity Documents in South West Africa Act 37 of 1970* and the Identification of Persons Act 2 of 1979. The Act came into force on 18 May 2001 (GN 95/2001, GG 2533).

Regulations: Regulations are contained in GN 96/2001 (GG 2533).

Identity documents issued under the previous acts will continue to be valid until a date determined by the Minister of Home Affairs and announced in the *Government Gazette*.

CHILDREN

Children's Act 33 of 1960, as amended in South Africa to 1977-1978 (depending on the "population group" involved).

Summary: This Act regulates adoption of children. It provides for the appointment of Commissioners of Child Welfare and for the establishment of Children's Courts. It also deals with the protection of children from neglect, abuse and exploitation and provides for certain institutions for children and juveniles. It replaced the Children's Ordinance 31 of 1961.

Applicability to SWA: The Act was made applicable to Namibia by the Children's Amendment Act 74 of 1973, which came into force only on 1 January 1977, by virtue of RSA Proc. 264 of 17 December 1976 (GG 5360).

As amended, section 1 defined "Republic" to include "the territory", which is defined as "the territory of South West Africa". The additional section 93A states "This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel." (Act 74/1953 also made a number of other amendments, the purpose of which was to provide continuity with the repealed Children's Ordinance 31 of 1961.)

Responsibility for the administration of the Act in respect of different racial groups was delegated to different ministries by RSA Proc. 263 of 17 December 1977 (GG 5360) which also came into force on 1 January 1977 and explicitly stated that it was applicable to SWA.

Transfer of administration to SWA: Because responsibility for administering the Act lay with different South African ministries, different transfer proclamations applied.

Matters administered by the Minister of Coloured, Rehoboth and Nama Relations and by the Minister of Bantu Administration and Development were transferred to the Administrator-General by the Executive Powers Transfer Proclamation (Bantu Administration and Development; Bantu Education; Coloured Rehoboth and Nama Relations; Water), AG 3 of 1977, dated 28 September 1977. This transfer applied to the Act as it related to Bastards of Rehoboth, Coloured persons and Namas, and to Asians in schools of industries and reform schools, with the exception of Indians in reform schools.

Matters administered by the Minister of Social Welfare and Pensions were transferred to the Administrator-General by the Executive Powers (Social Welfare and Pensions) Transfer Proclamation, AG 11 of 1977, dated 30 November 1977.

Matters administered by the Minister of the Interior were transferred to the Administrator-General by the Executive Powers (Interior) Transfer Proclamation, AG 17 of 1978, dated 30 March 1978. This transfer applied to the Act as it related to Chinese persons.

Matters administered by the Minister of National Education were transferred to the Administrator-General by the Executive Powers (National Education) Transfer Proclamation (AG 1/1978), dated 11 January 1978. This transfer applied to the Act as it related to schools of industries and reform schools for White persons.

Matters administered by the Minister of Indian Affairs were not transferred to SWA. This included the Act as it applied to Indians and Zanzibari Arabs, with the exception of Indians and Zanzibari Arabs in reform schools.

There was one amendment to the Act in South Africa after the date of the various transfers and prior to Namibian independence -- the *Special Courts for Blacks Abolition Act 34 of 1986* -- which was not made expressly applicable to Namibia.

Amendments: Act 7/1981 of Rehoboth made the *Children's Amendment Act 15 of 1977* (which was already applicable to other parts of SWA) applicable to Rehoboth.

Section 104 is repealed by the Prisons Act 17 of 1998.

Regulations: Different sets of regulations for Coloureds, Namas, Basters, Bantus and Whites remain in force, although they are no longer applied in practice:

Bantus

GN R1086 of 22 July 1960 (GG 6494) as amended by-

- GN R 17 of 4 January 1963 (GG 412)
- GN R 46 of 10 January 1964 (GG 691)
- GN R 350 of 13 March 1964 (GG 744)
- GN R 408 of 13 March 1970 (GG 2667)
- GN R 409 of 20 March 1970 (GG 2671)
- GN R1099 of 10 July 1970 (GG 2751)
- GN R 683 of 30 April 1971 (GG 3083), which substitutes all of the provisions dealing with financial assistance
- GN R1791 of 8 October 1971 (GG 3280)
- GN R1842 of 20 October 1972 (GG 3682)
- GN R2417 of 21 December 1973 (GG 4112)
- GN R1000 of 14 June 1974 (GG 4301)
- GN R 445 of 7 March 1975 (GG 4601)
- GN R1747 of 19 September 1975 (GG 4847)
- GN R1620 of 3 September 1976 (GG 5276)
- GN R1798 of 9 September 1977 (GG 5733)
- AG GN 42 of 17 August 1978 (OG 3810), which is a duplication of RSA GN R 1279 of 23 June 1978

Whites

GN R2433 of 10 Dec. 1976 (GG 5357) as amended by-

- GN R2173 of 28 October 1977 (GG 5790).

Coloureds

GN R 69 of 21 January 1977 (GG 5384) as amended by-

- GN R 1750 of 2 September 1977 (GG 5725)
- AG GN 51/1978 of 28 August 1978 (OG 3815)
- AG GN 59/1978 of 25 September 1978 (OG 3830)
- AG GN 38/1979 of 5 June 1979 (OG 3971)
- AG GN 89 of 28 September 1979 (OG 4024).

Basters

GN R 295 of 4 March 1977 (GG 5420) as amended by-

- GN R 1749 of 2 September 1977 (GG 5725)
- AG GN 63 of 29 September 1978 (OG 3837)
- AG GN 79 of 30 November 1978 (OG 3869)
- Official Notice 1, OG 1 of Rehoboth, 31 August 1979

Official Notice 7, OG 3 of Rehoboth, 28 September 1979
Official Notice 9, OG 4 of Rehoboth, 28 December 1979
Official Notice 7, OG 18 of Rehoboth, 5 December 1980
Official Notice 13, OG 43 of Rehoboth, 23 October 1981.

Namas

GN R 342 of 4 March 1977 (GG 5434) as amended by-
GN R1751 of 2 September 1977 (GG 5725)
AG GN 50 of 28 August 1978 (OG 3015)
AG GN 59/1978 of 25 September 1978 (OG 3830)
AG GN 38/1979 of 5 June 1979 (OG 3971)
AG GN 90 of 28 September 1979 (OG 4024).

Chinese

GN R 554 of 15 April 1977 (GG 5502) as amended by-
GN R2082 of 14 October 1977 (GG 5768).

The regulations which apply to Whites initially came into force on 1 January 1977 as general regulations and contain no specific reference to Whites. Thus, they would also apply to anyone not covered by one of the other sets of regulations subsequently promulgated, such as Indians or Arabs.

It should be noted that the various ethnic authorities established pursuant to AG 8/1980 were given authority over certain provisions of the Act and may have made amendments to the regulations which have not been located.

Cases: *Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State*, 1991 NR 178 (SC) (sections 32, 92(1)); *S v Van der Bergh* 2003 NR 69 (HC) (suggestion that youthful offender is a child in need of care as defined by this Act); *Detmold & Another v Minister of Health and Social Services & Others* 2004 NR 174 (HC)(section 71(2)(f) declared unconstitutional and therefore invalid).

Articles: Oliver C Ruppel and Pombili L Shipila, "Adoption: Statutory and customary law aspects from a Namibian perspective" in Oliver C Ruppel, ed, *Children's Rights in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2009, available at www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-18139/index.html (reviewed by Norman Tjombe in *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.namibialawjournal.org).

Age of Majority Act 57 of 1972, as amended in South Africa to November 1979.

Summary: This Act sets the age of majority at twenty-one and provides for other related matters.

Applicability to SWA: Section 8 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, as amended), dated 12 November 1979. There were no amendments to the Act in South Africa after that date and prior to Namibian independence.

Articles: R Coomer & D Hubbard, “A major decision: Considering the age of majority in Namibia”, Oliver C Ruppel, ed, *Children’s Rights in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2009, available at www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-18139/index.html (reviewed by Norman Tjombe in *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.namibialawjournal.org).

Children’s Status Act 6 of 2006

Summary: This Act removes discrimination against children born outside marriage, provides for custody, access and guardianship in respect of such children and provides procedures for the appointment of custodians and guardians for all children upon the death of their parent or guardian. The Act came into force on 3 November 2008 (GN 266/2008, GG 4154).

Regulations: Regulations are contained in GN 267/2008 (GG 4154).

Cases: The applicability of section 16 on the inheritance rights of children born outside marriage, through section 26(2), is implicitly extended by *Frans v Paschke & Others* 2007 (2) NR 520 (HC), which finds the common law rule that children born outside marriage may not inherit intestate from their fathers unconstitutional with effect from 21 March 1990.

Articles: Felicity !Owoses-/Goagoses, “Custody and guardianship of children” in Oliver C Ruppel, ed, *Children’s Rights in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2009, available at www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-18139/index.html (reviewed by Norman Tjombe in *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.namibialawjournal.org); Tousy Namiseb, “The Children’s Status Act, 2006 (No. 6 of 2006)”, *Namibia Law Journal*, Volume 1, Issue 2, 2009, available at www.namibialawjournal.org.

MISCELLANEOUS

General Notice 250/2001 (GG 2601) proclaims 28 September as the Day of the Namibian Child “in order to re-dedicate Namibia’s commitment to her children”.

SELECTED CASES

Ex Parte Attorney-General, Namibia: Re: Corporal Punishment by Organs of the State, 1991 NR 178 (SC) (Constitutionality of corporal punishment)

Uirab v Minister of Basic Education, Case No I 1257/2005 (High Court) (corporal punishment in school)

S v Nkasi (CC 02/2010) [2010] NAHC 9 (24 March 2010) (child abuse which began as corporal punishment by parent)

S v Glaco 1993 NR 141 (HC) (murder of newborn infant)

S v Shaningwa 2006 (2) NR 552 (HC) (murder of newborn infant)

S v Kaulinge (CC14/2007) [2007] NAHC 30 (19 April 2007)(murder of newborn infant)

S v Uupindi (CC15/2007) [2007] NAHC 31 (20 April 2007)(murder of newborn infant)

S v Jeremia 1993 NR 227 (HC) (severe sentence for child abuse)

S v Teek 2009 (1) NR 127 (SC) (detailed discussion of credibility of evidence of children)

SELECTED ARTICLES

- D LeBeau and G Spence, *Towards the elimination of the worst forms of child labour in Namibia*. Windhoek: University of Namibia, 2004.
- Dr M E Terry, *Elimination of Child Labour in Namibia: A discussion document on what is known, existing policy and programmes and possible gaps*, Windhoek: Ministry of Labour and Social Welfare, 2007
- Lotta N Ambunda and Willard T Mugadza, “The protection of children’s rights in Namibia: Law and policy”, in Oliver C Ruppel, ed, *Children’s Rights in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2009, available at www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-18139/index.html (reviewed by Norman Tjombe in *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.namibialawjournal.org)
- Faith Chipepera and Katharina G Ruppel-Schlichting, “Children’s right to citizenship” in Oliver C Ruppel, ed, *Children’s Rights in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2009, available at www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-18139/index.html (reviewed by Norman Tjombe in *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.namibialawjournal.org)
- Clever Mapaure, “Child labour: A universal problem from a Namibian perspective” in Oliver C Ruppel, ed, *Children’s Rights in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2009, available at www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-18139/index.html (reviewed by Norman Tjombe in *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.namibialawjournal.org)
- Joab T Mudzanapabwe, “Child suggestibility in the Namibian justice system” in Oliver C Ruppel, ed, *Children’s Rights in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2009, available at www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-18139/index.html (reviewed by Norman Tjombe in *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.namibialawjournal.org)
- Oliver C Ruppel, “The protection of children’s rights under international law from a Namibian perspective” in Oliver C Ruppel, ed, *Children’s Rights in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2009, available at www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-18139/index.html (reviewed by Norman Tjombe in *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.namibialawjournal.org)
- Francois-X Bangamwabo, *Towards the elimination of the worst forms of child labour in Namibia: The implementation and internalisation of international law relating to the worst forms of child labour*, *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.namibialawjournal.org.

INTERNATIONAL LAW

Convention on the Rights of the Child, 1989

signature: 26 September 1990

ratification: 30 September 1990

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000

(entered into force internationally on 12 February 2002)

signature: 8 September 2000 (source: Ministry of Foreign Affairs)

ratification: 16 April 2002 (source: UNICEF)

Note: Namibia’s ratification of this Optional Protocol was accompanied by a declaration on the minimum recruitment age (age 18) for the Namibia Defence Force (source: Ministry of Foreign Affairs).

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000

(entered into force internationally on 18 January 2002)
signature: 8 September 2000 (source: Ministry of Foreign Affairs)
ratification: 16 April 2002 (sources: Ministry of Foreign Affairs; UNICEF)

Amendment to Article 43(2) of the Convention on the Rights of the Child adopted by the Conference of the States Parties on 12 December 1995

(entered into force internationally on 18 November 2002)
ratification: 11 December 2001 (source: Ministry of Foreign Affairs)

African Charter on the Rights and Welfare of the Child, 1990

signature: 13 July 1999
ratification approved by Parliament: 23 July 2004
deposit: 26 August 2004 (source: www.africa-union.org)

ILO Convention 138 on the Minimum Age for Admission to Employment and Work, 1973

ratification: 15 November 2000 (source: ILOLEX, <http://ilolex.ilo.ch:1567/cgi-lex/>)

ILO Convention 182 on the Prohibition and Immediate Elimination of the Worst Forms of Child Labour, 1999

ratification: 15 November 2000 (source: Ministry of Foreign Affairs)

Protocol to the Convention Against Transnational Organised Crime, 2000 to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

(entered into force internationally on 25 December 2003)
signed: 13 December 2000 (source: Ministry of Foreign Affairs)
ratification: 16 August 2002 (source: www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html)

See also *Statistics Act 66 of 1976* (collection of statistics on child economic activities) (**CENSUS AND STATISTICS**).

See also *Combating of Immoral Practices Act 21 of 1980* (re: sexual offences against children under age 16) (**CRIMINAL LAW AND PROCEDURE**).

See also *Combating of Domestic Violence Act 4 of 2003* (**DOMESTIC VIOLENCE**).

See also *Consent to Operations on Native Minors Proclamation 37 of 1943* (**MEDICINE AND MEDICAL PROFESSIONS**).

See also **EDUCATION**.

See also *Recognition of Certain Marriages Act 18 of 1991* (re: adoption of children) (**MARRIAGE AND DIVORCE**).

See also **YOUTH**.

CHURCHES

Nederduitse Gereformeerde Kerk in Suidwes-Afrika (Private) Ordinance 38 of 1958.

Summary: This Ordinance transfers the Namibian assets of the Nederduitse Gereformeerde Kerk in Suid-Afrika to the Nederduitse Gereformeerde Kerk in Suidwes-Afrika.

The Apostolic Faith Mission of South Africa (Private) Act 24 of 1961,
as amended in South Africa prior to Namibian independence.

Summary: This Act makes the named church a body corporate.

Applicability to SWA: Section 8A states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in Section 38(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968).”

See also Control of Sites (Churches, Schools and Missions) Proclamation 31 of 1932
(LAND).

CITIZENSHIP AND IMMIGRATION

Aliens Act 1 of 1937, as amended in South Africa to February 1978.

Summary: This Act governs the presence of anyone who is not a South African citizen in South Africa and South West Africa.

Applicability to SWA: The definition of “Union” in section 1 includes “the territory of South West Africa”. Section 13*bis* states “This Act and any amendment thereof shall also apply in the territory of South West Africa, including that portion thereof known as the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Immigration) Transfer Proclamation (AG 9/1978), dated 10 February 1978. Section 3 of the transfer proclamation excluded sections 8(1) and 12(1) of the Act from the operation of section 3(1) of the General Proclamation.

The Executive Powers (Interior) Transfer Proclamation (AG 17/1978), dated 30 March 1978, was also applicable to this Act. Section 3(2)(a) of this transfer proclamation excluded section 12(1) of the Act from the operation of section 3(1)(c) of the General Proclamation, which deals with the interpretation of the term “Republic”.

The provisions of the Act relating to the Immigrant Selection Board were excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation “those provisions of any law ... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”.

None of the amendments to the Act in South Africa after the date of the transfer proclamations were made expressly applicable to SWA.

Amendments: The First Law Amendment (Abolition of Discriminatory or Restrictive Laws for the Purposes of Free and Fair Election) Proclamation (AG 14/1989) amends the definition of “alien”.

The Aliens and Immigration Laws Amendment Proclamation (AG 15/1989) makes extensive amendments to the Act.

The Namibian Citizenship Act 14 of 1990 also amends the Act. In addition, it repeals virtually all of the RSA amending acts in their entirety, as well as selected provisions in a number of related laws: Act 26 of 1939; Act 1 of 1949; Act 59 of 1961; the remainder of Act 61 of 1961; sections 6-16 and 29 of Act 69 of 1962; Act 30 of 1963; sections 2, 9, 10, 11 of Act 23 of 1964; Act 7 of 1967; section 5, 6, 7, 14 of Act 61 of 1967; Act 12 of 1971; Act 40 of 1973; section 4 of AG 17/1978; section 4 of AG 14/1989; sections 2-11 and 13-53 of AG 15/1989.

Further alterations were made by Act 7/1993, which repealed sections 2-8*ter* and 10-13*bis* of the primary Act and section 29 of one SWA amending act, Act 14/1990.

It should be noted that the amendments made to the Act in SWA and Namibia have been so extensive that hardly any of the original RSA Act remains.

Regulations: GN 100/1986 amends the regulations enacted pursuant to this Act.

Cases:

S v Mwebo 1990 NR 27 (HC)

Swart v Minister of Home Affairs 1997 NR 268 (HC) deals with aspects of the Act which were repealed by the Immigration Control Act 7 of 1993 (sections 1, 2 and 12 (1)(a))

Müller v President of the Republic of Namibia & Another 1999 NR 190 (SC) (section 9) (critiqued in E Bonthuys, “‘Deny Thy Father and Refuse Thy Name’: Namibian Equality Jurisprudence and Married Women’s Surnames”, *South African Law Journal*, 117 (3): 464, 2000).

Departure from Namibia Regulation Act 34 of 1955, as amended in South Africa prior to Namibian independence.

Summary: This Act regulates the departure of persons from Namibia. More specifically, it prohibits departure without a passport or a permit, or at a place other than an official border post. It also makes it an offence to assist anyone to leave the country illegally.

Applicability to SWA: Section 1 defines “Union” to include “the territory of South West Africa”. Section 10 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including that portion thereof known as the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Interior) Transfer Proclamation (AG 17/1978), dated 30 March 1978. However, section 3(1)(6) of this Proclamation excluded the Act from the operation of section 3(1) of the General Proclamation, meaning that the administration of the Act was not transferred to SWA.

Amendments: Act 4/1993, which commenced on 22 September 1994 (GN 172/1994, GG 925), amends sections 1, 2, 6, 8 and 9; inserts section 6A; repeals section 10; and substitutes certain expressions and the long title. It also substitutes section 11 to change the name of the Act (from “Departure from the Union Regulation Act”).

Regulations: Regulations are contained in GN 136/1994 (GG 895).

Cases: *S v Lofty-Eaton & Others (1)* 1993 NR 370 (HC).

Namibian Citizenship Act 14 of 1990.

Summary: This Act regulates the acquisition and loss of Namibian citizenship in accordance with Article 4 of the Constitution. It was brought into operation by Proc. 13/1990 (GG 72).

Amendments: The Immigration Control Act 7 of 1993 amends section 29.

Regulations: Regulations are contained in GN 14/1991 (GG 154).

Cases:

Alberts v Government of Namibia & Another 1993 NR 85 (HC)
Swart v Minister of Home Affairs 1997 NR 268 (HC) (section 5)
Thloro v Minister of Home Affairs 2008 (1) NR 97 (HC) (section 5(1)(g) requiring renunciation of foreign citizenship in order to attain Namibian citizenship by naturalisation and section 26 prohibiting dual citizenship both held to be constitutional; judgment notes that section 26 must be interpreted in light of overall constitutional scheme for citizenship, meaning that citizenship by birth may not be regulated or derogated from by statutory provisions and that citizenship by descent may be regulated only by a requirement of registration)
Minister of Home Affairs v Dickson & Another 2008 (2) NR 665 (SC)(ordinary residence for purposes of acquiring citizenship by marriage means lawful residence).

Namibian Citizenship Special Conferment Act 14 of 1991.

Summary: This Act makes provision for the conferment of Namibian citizenship upon certain descendants of person who left Namibia because of persecution by the colonial government.

Immigration Control Act 7 of 1993.

Summary: This Act regulates and controls the entry of persons into Namibia and their residence inside the country. It also provides for the removal from Namibia of certain immigrants. It came into force on 29 July 1994 (GN 133/1994, GG 895).

Regulations: Regulations are contained in GN 134/1994 (GG 895), which (among other things) lists the “aids virus” as a contagious disease for immigration purposes. Maximum amounts in terms of section 11(2)(a) are set in GN 135/1994 (GG 895). The portions of the regulations relating to fees for various visas and permits are amended by GN 82/2008 (GG 4029).

Cases: The following cases were decided under this Act’s predecessor, the *Admission of Persons to the Republic Regulation Act 59 of 1972*-

Djama v Government of the Republic of Namibia 1992 NR 37 (HC)
S v Luanda & Another 1993 NR 287 (HC).

The following cases deal with the present Act-

Swart v Minister of Home Affairs 1997 NR 268 (HC) (sections 1, 2(1)(b), 22; also discusses section 1 of the previous *Admission of Persons to the Republic Regulation Act 59 of 1972* and section 3(2)(b) of the previous *Residence of Certain Persons in South West Africa Regulation Act 33 of 1985*)

S v Ithilenga 1997 NR 239 (HC) (section 56(d))

Correia v Commanding Officer, Windhoek Prison & Another 1999 NR 48 (SC) 9(sections 24, 36, 39(2)(h), 41, 42(4)(b)(i))

S v Russel 1999 HR 39 (HC) (section 30(1)(a)–meaning of “employment”)

Frank & Another v Chairperson of the Immigration Selection Board 1999 NR 257 (HC); 2001 NR 107 (SC) (Immigration Selection Board as an administrative body subject to Article 18 of the Constitution; interpretation of section 26(3)(e); factors relevant to decision on permanent residence)

Sikunda v Government of the Republic of Namibia (3) 2001 NR 181 (HC)

(section 49); *Government of the Republic of Namibia v Sikunda* 2002 NR 203 (SC) (section 49; Composition of the Security Commission pursuant to Article 114 of the Constitution; Security Commission as subject to Articles 18 and 12 of the Constitution)

Lalandii (Pty) Ltd v Butshingi NLLP 2002 (2) 409 NLC (no legal obligation on potential employer to furnish letter of motivation in support of application to regularise immigration status)

Miller & Paschke v The Law Society of Namibia NLLP 2002 (2) 328 NHC (discussion of application of Act to non-Namibians married to Namibian citizens and domiciled in Namibia)

Mulopo v Minister of Home Affairs 2004 NR 164 (HC) (right to fair administrative action based on valid reasons, failure to establish right to residence based on Namibian citizenship of children and effect of failure to join Immigration Selection Board)

Zhu v Minister of Home Affairs & Another 2004 NR 170 (HC) (deportation cannot be imminent without a directive from an immigration tribunal)

S v Mushwena & Others 2004 NR 276 (SC) (general discussion)

S v Ngono 2005 NR 34 (HC) (section 12)

S v Makonde, Case No 123/2005 (appropriate sentence for contravention of section 29(5); quoted in *S v Jeremani* 2009 (1) NR 149 (HC).

S v Cambinda; S v Agostino; S v Carvalho 2006 (2) NR 550 (HC) (appropriate sentences for offences under Act)

S v Koch 2006 (2) NR 513 (SC) (section 47 of Act discussed in *dicta* at 525-26).

S v Marisa 2006 (2) NR 586 (HC) (sentence imposed under section 29(5) confirmed)

Getachew v Government of the Republic of Namibia 2006 (2) NR 720 (HC), 2008 (1) NR 1 (SC) (sections 22, 24, 35 and 42)

Minister of Home Affairs v Dickson & Another 2008 (2) NR 665 (SC)(section 22)

S v Jeremani 2009 (1) NR 149 (HC) (appropriate sentence for contravention of section 29(5))

S v Willem; S v Nkomo 2009 (1) NR 352 (HC) (formulation of charges under section 12(1) and (4)).

Namibia Refugees (Recognition and Control) Act 2 of 1999.

Summary: This Act concerns the recognition and control of refugees in Namibia and gives effect to certain provisions of international conventions on refugees to which Namibia is party. It came into force on 22 September 2000 (GN 234/2000, GG 2412).

Regulations: Namibia Refugees (Recognition and Control) Regulations are contained in GN 236/2000 (GG 2412).

Osire was declared as a reception area for refugees and others in GN 235/2000 (GG 2412).

Related international agreements: The Namibia Refugees (Recognition and Control) Regulations make reference to compliance with Article 35 of the UN Convention on Refugees, 1951 and Article II of the Protocol on Refugees, 1967.

Cases: *S v Isaac* 2004 NR 122 (HC).

INTERNATIONAL LAW

Convention relating to the Status of Refugees, 1951

accession: 17 February 1995

Reservation: "The Government of the Republic of Namibia reserves the right to designate a place or places for principal reception and residence for refugees or to restrict their freedom of movement in consideration of national security so required or make it advisable."

Protocol relating to the Status of Refugees, 1967.

There was some technical confusion concerning the deposit of Namibia's instrument of accession to this Protocol. The situation was clarified in an official communication from the United Nations dated on 11 June 2004, when Namibia's instrument of accession was accepted in deposit with effect from 17 February 1995 (the date when it was originally tendered). (United Nations Reference LA41TR/1/V-5/1)

AU Convention Governing Specific Aspects of Refugee Problems in Africa, 1969

accession: 2 September 1994 (source: Ministry of Foreign Affairs)

Note: The African Union website (file updated 11 November 2009) records a signature date of 11 November 2009 for Namibia, and no accession or deposit. (source: www.africa-union.org)

Convention Against Transnational Organised Crime, 2000

(entered into force internationally on 29 September 2003)

signature: 13 December 2000 (source: Ministry of Foreign Affairs; Parliament)

ratification: 16 August 2002

(source: www.unodc.org/unodc/crime_cicp_signatures.html)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

(entered into force internationally on 25 December 2003)

signature: 13 December 2000 (source: Ministry of Foreign Affairs)

ratification: 16 August 2002

(source: www.unodc.org/unodc/crime_cicp_signatures.html)

Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000

(entered into force internationally on 28 January 2004)

signed: 13 December 2000 (source: Ministry of Foreign Affairs)

ratification: 16 August 2002

(source: www.unodc.org/unodc/crime_cicp_signatures.html)

Note: Namibia has not yet signed the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, 2001.

SADC Protocol on the Facilitation of Movement of Persons, 2005

(not yet in force within SADC as of 23 June 2010) (source: SADC)

signature: 18 August 2005

not ratified by Namibia as of 23 June 2010 (source: SADC)

Cases: *S v Mushwena & Others* 2004 NR 276 (SC) (*per* minority opinion of O'Linn, AJA) refers to the "Convention relating to the Status of Refugees and Stateless Persons as Supplemented by the Protocol relating to the Status of Refugees" (confirming that Namibia acceded to the Protocol on 17 February 1995) and the OAU Convention governing the Specific Aspects of Refugee Problems in Africa, adopted by the Assembly of Heads of State and Governments of the OAU in Resolution No. 10 (no date cited in the opinion).

‘COLOURED PERSONS’

See Concessions from Natives Proclamation 8 of 1915 (re: invalidity of concessions for mineral, trading and other rights obtained from “coloured and native inhabitants”) (**‘BLACKS’**)

See Racial Discrimination Prohibition Act 26 of 1991 (**CRIMINAL LAW AND PROCEDURE**).

See Crown Land Disposal Proclamation 13 of 1920 (re: reservation of land for the use of “aboriginal natives, coloured persons and Asiatics”) (**LAND**).

See *Railways and Harbours Pensions for Non-Whites Act 43 of 1974* (**PENSIONS**).

COMMISSIONS

Commissions' Powers Ordinance 6 of 1927.

Summary: This Ordinance confers certain powers, jurisdiction and privileges upon commissions enquiring into matters of public concern. It appears to have been superseded by the *Commissions Act 8 of 1947*.

Amendments: This Ordinance is amended by Ord. 2/1976.

Commissions Act 8 of 1947, as amended in South Africa prior to Namibian independence.

Summary: This Act empowers the Governor-General (and now the State President) to appoint commissions to investigate matters of public concern.

Applicability to SWA: The Act was made applicable to South West Africa by RSA Proc. 149 of 29 August 1980. Section 6A(1) states "This Act shall apply also in the Territory of South West Africa, including the Eastern Caprivi Zipfel." As the Act applies to South West Africa, the Administrator-General is empowered to appoint commissions in addition to the Governor-General (section 6A(2)).

Transfer of administration to SWA: There is no reference to any minister in the Act, so it is not clear what transfer proclamation, if any, was applicable. In any event, the last amendment to the Act in South Africa prior to Namibian independence was in 1967.

Amendments: In addition to the amendments made to the Act by South African legislation, it should be noted that the Commissions Amendment Proclamation (RSA Proclamation R.149 of 1980) also contains amendments to this Act.

Commissions: The following Commissions were established in terms of the Act by the SWA administration:

- Commission of Inquiry into Health Services (AG 19/1981).
- Commission of Inquiry into Public Holidays (AG 32/1981).
- Commission of Inquiry into Alleged Irregularities and Misapplication of Property in Representative Authorities in, and the Central Authority of, South West Africa (AG 29/1982).
- Commission of Inquiry into Security Legislation in South West Africa (AG 18/1983).
- Commission of Inquiry into the Meat Industry in South West Africa (AG 1/1984).
- Commission of Inquiry into Labour Matters in South West Africa (AG 32/1987).

During the election campaign which was part of the implementation of UN Resolution 435, AG 11/1989 established a Commission for the Prevention and Combating of Intimidation and Election Malpractices, but this Commission did not operate in terms of the Commissions Act.

The following commissions have been established in terms of the Act since Namibian

independence:

Commission on Higher Education (Proc. 1/1991, GG 144).

See also GN 5/1991 (GG 144).

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).

Commission of Inquiry into Alleged Instances of Irregularities in Respect of Property of the Central Government of Namibia (Proc. 12/1991, GG 200).

See also GN 57/1991 (GG 200).

Commission of Inquiry into the Procedures and Practices Applied in the Allocation and Utilisation of Existing Fishing Rights (Proc. 18/1991, GG 258).

See also GN 103/1991 (GG 258).

Commission of Inquiry into the Cause of Resistance by Certain Members of the Caprivi Community to the Appointment of Certain Senior Public Servants (Education) (Proc. 26/1991, GG 286).

See also GN 114/1991 (GG 286).

Commission of Inquiry into Labour Related Matters Affecting Agricultural Employees and Domestic Employees (Proc. 1/1995, GG 1020).

See also GN 14/1991 (GG 1020), as amended by GN 55/1995 (GG 1044).

Commission of Inquiry into Legislation for the More Effective Combating of Crime in Namibia (Proc. 2/1996, GG 1285).

See also GN 75/1996 (GG 1285).

Commission of Inquiry into the Aviation Regulatory Practices of the Directorate: Civil Aviation in the Ministry of Works, Transport and Communication (Proc. 9/1997, GG 1611).

See also GN 153/1997 (GG 1611).

Commission on Education, Culture and Training (Proc. 13/1999, GG 2059).

See also GN 39/1999 (GG 2059).

Commission of Enquiry into the Activities, Management and Operations of Transnamib Holdings Limited (Proc 3/2001, GG 2499).

See also GN 51/2001 (GG 2499).

Commission of Enquiry into the Activities, Management and Operations of Air Namibia (Pty) Ltd (Proc. 18/2001, GG 2616)

See also GN 194/2001 (GG 2616) and GN 230/2001 (GG 2647).

Commission of Inquiry into the Activities, Affairs, Management and Operation of the Social Security Commission (Proc.7/2002, GG 2857).

See also GN 200/2002 (GG 2857), GN 81/2003 (GG 2956).

Commission of Inquiry into the Activities, Affairs, Management and Operation of the Roads Authority (Proc.21/2002, GG 3031).

See also GN 172/2003 (GG 3031).

Commission of Inquiry into the Activities, Affairs, Management and Operation of the former Amalgamated Commercial Holding (Pty) Ltd (AMCOM) Registration No. 93/261 and the former Development Brigade Corporation (DBC) Established Under Section 2 of the Development Brigade Corporation Act (Proc.38/2004, GG 3221).

See also GN 132/2004 (GG 3221).

COMMUNICATIONS

This section now combines the laws previously indexed under BROADCASTING, POSTS AND TELECOMMUNICATIONS and PRESS AND PRINTING, to reflect the increasing integration of these modes of communication and their legal regulation.

Radio Act 3 of 1952, as amended in South Africa to April 1978.

Summary: This Act regulates radio activities. It is repealed by the Communications Act 8 of 2009, which had not come into force as of 30 June 2010.

Applicability to SWA: Section 19A(1) 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 (Posts and Telecommunications) Transfer Proclamation (AG 12/1978, as amended), which came into operation on 1 April 1978.

Section 3(3)(a) of the transfer proclamation excluded the references to the “Republic” in the Act from the operation of section 3(1) of the General Proclamation. There are only two references to the Republic in the Act, in the following sections:

- section 7(3), which concerns international telecommunication provisions to which the Republic is a party; and
- section 18(d), which empowers the Minister of Posts and Telecommunications to make regulations relating to the operation of radio installations on board ships within the territorial waters of the Republic or on aircraft in or flying over the Republic.

Although “Republic” is not defined in the Act, it was probably interpreted to mean South Africa and SWA in these sections because of the effect of section 19A(1), which makes the Act applicable to SWA.

Section 3(6) of the transfer proclamation excluded section 14(5) of the Act -- which concerns appeals to the Administrator-General by persons whose licenses or permits have been cancelled -- from the operation of the provisions of section 4(1) of the General Proclamation (which authorised the delegation of powers by the Administrator-General). Thus, where an appeal was made to the Administrator-General under this section, he could not delegate his power to confirm or overturn the initial decision.

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Amendments: AG 37/1979 brings the RSA *Radio Amendment Act 2 of 1978* into operation in SWA with effect from 1 January 1980.

The Act is substantially amended by the Namibian Broadcasting Act 9 of 1991.

Amendments are also made by the Namibia Communications Commission Act 4 of 1992 and by the Posts and Telecommunications Companies Establishment Act 17 of 1992.

Regulations: The regulations issued in terms of the Act (contained in RSA GN R.2862 of 28 December 1979 as amended) have been amended since independence

by GN 71/1990 (GG 102), GN 76/1992 (GG 427), General Notice 286/1993 (GG 760), N 250/1997 (GG 1741), GN 52/1999 (GG 2057), GN 147/2001 (GG 2579) and GN 245/2001 (GG 2663). GN 250/2004 (GG 3326) further amends GN R.2862 and repeals GN 147/2001 and GN 245/2001. GN R.2862 is also amended by GN 6/2006 (GG 3573) and GN 213/2007 (GG 3942).

Newspaper and Imprint Registration Act 63 of 1971, as amended in South Africa to March 1978.

Summary: This Act provides for the registration of newspapers and printer's imprints and requires that the printer of all printed matter be identified.

Applicability to SWA: Section 1 defines "Republic" to include "the territory of South West Africa". Section 14(1) states that "this Act and any amendment thereof shall also apply 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 (Interior) Transfer Proclamation (AG 17/1978), dated 30 March 1978.

Section 3(2)(c) of the transfer proclamation excluded section 8 of the Act from the operation of section 3(1)(c) of the General Proclamation, which concerns the interpretation of the term "Republic". Section 8 requires that the editor of a newspaper published in the Republic must reside in the Republic; "Republic" in this section retained the meaning it was given in the definition section of the Act (South Africa and SWA).

The only amendment to the Act in South Africa after the date of transfer and prior to Namibian independence -- the *Registration of Newspapers Amendment Act 98 of 1982* -- was not made expressly applicable to SWA.

Post Office Service Act 66 of 1974, as amended in South Africa to April 1978.

Summary: This Act governs employment in the Department of Posts and Telecommunications.

Applicability to SWA: Section 1 defines "Republic" to include "the territory", which is defined as "the territory of South West Africa".

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Post and Telecommunications) Transfer Proclamation (AG 12/1978, as amended), which came into operation on 1 April 1978. None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Amendments: Sections 55 and 56 are repealed by the Posts and Telecommunications Companies Establishment Act 17 of 1992.

Namibian Broadcasting Act 9 of 1991.

Summary: This Act provides for the establishment of a broadcasting corporation for Namibia and sets forth its objectives, powers, duties and functions.

Amendments: Sections 1 and 6 are amended by section 1 of the General Law Amendment Act 18 of 2000, which came into operation on 2 February 2001 (GN 25/2001, GG 2483). The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends sections 6, 8 and 13.

Regulations: Regulations regarding television licences are contained in GN 118/1993 (GG 726). License fees are addressed in General Notice 245/1995 (GG 1128). Regulation 6 and the Annexure on television licence fees are amended by General Notice 95/1999 (GG 2113), which raises the standard television licence fee from N\$132 to N\$180. The Annexure on licenses is substituted in its entirety by GN 220/2001 (GG 2637), which is substituted in turn by GN 235/2004 (GG 3313), both of which set a sliding scale for license fees.

Appointments: The initial board was appointed by GN 88/1990 (GG 120), with the appointments of new board members being announced in GN 93/1995 (GG 1062) and GN 175/2000 (GG 2374).

Cases: *Kruger & Others v Namibian Broadcasting Corporation* 2006 (1) NR 233 (LC), *Namibian Broadcasting Corporation v Kruger & Others* 2009 (1) NR 196 (SC) (voluntary retrenchment of employees).

New Era Publication Corporation Act 1 of 1992.

Summary: This Act establishes a publication corporation for Namibia and sets forth its powers, duties and functions.

Amendments: Sections 1 and 5 are amended by section 2 of the General Law Amendment Act 18 of 2000, which is deemed to have come into operation on 29 November 2000 (GN 25/2001, GG 2483). The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends sections 5, 6 and 10.

Appointments: The appointment of a Board of Directors is announced in GN 26/2001 (GG 2483) and GN 60/2004 (GG 3181).

Namibia Press Agency Act 3 of 1992.

Summary: This Act establishes a news agency for Namibia and sets forth its powers, duties and functions.

Amendments: Sections 1 and 6 are amended by section 3 of the General Law Amendment Act 18 of 2000, which is deemed to have come into operation on 29 November 2000 (GN 25/2001, GG 2483). Act 13/2004 amends sections 4, 5, 6, 11, and 14. The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends sections 6, 7, 11 and 13.

Appointments: The appointment of Boards of Directors is announced in GN 114/1992 (GG 468), GN 197/1998 (GG 1927) and GN 27/2001 (GG 2483).

Application: The application of the Act is affected by the State-owned Enterprises Governance Act 2 of 2006.

Namibian Communications Commission Act 4 of 1992.

Summary: This Act establishes a Namibian Communications Commission and sets forth its powers, duties and functions, which include the issuing of broadcast licences and the control and supervision of certain broadcasting activities and programme content. It came into force on 7 April 1992 (Proc. 24/1992, GG 458). It is repealed by the Communications Act 8 of 2009, which had not come into force as of 30 June 2010.

Amendments: Act 1/1995 amends sections 1, 11, and 27 and adds section 22A. These amendments empower the commission to issue postal service licences and telecommunications service licences. Act 4/2004 amends sections 22A and 22B. It was deemed to have come into effect on 1 June 2003.

Sections 1 and 3 of the Act are amended by section 4 of the General Law Amendment Act 18 of 2000, which came into operation on 2 February 2001 (GN 25/2001, GG 2483).

Regulations: Regulations are contained in GN 25/1994 (GG 802), as amended by GN 251/2004 (GG 3326), GN 6/2006 (GG 3573) and GN 212/2007 (GG 3942).

Regulations pertaining to VSAT (very small aperture terminal) telecommunications licences are contained in GN 108/2007 (GG 3858).

Applications for licences and licence grants have not been recorded here.

Appointments: Commission members are appointed in General Notice 230/1998 (GG 1951), General Notice 307/2000 (GG 2447), General Notice 171/2003 (GG 3034) and GN 59/2004 (GG 3181).

Posts and Telecommunications Companies Establishment Act 17 of 1992.

Summary: This Act provides for the incorporation of a postal company, a telecommunications company and a holding company, and for the transfer of Namibia's postal and telecommunications enterprises to the postal and telecommunications companies. It also provides for the conditions of service of persons transferred to or employed by the postal or telecommunications companies, and for the control of the Post Office Savings Bank by the postal company.

Section 10 of the Act provided that the Act, with the exception of Chapter I, would come into force on a date to be determined by the Minister in the *Government Gazette*. The entire Act actually came into force at the same time: Chapter I came into force on 31 July 1992, the date of publication of the Act, and the remainder of the Act came into force on 31 July 1992 by virtue of GN 88/1992 (GG 446).

Amendments: The Customs and Excise Act 20 of 1998 repeals the amendments to the Customs and Excise Act 91 of 1964 set forth in the Schedule to this Act. Act 20/2000 amends section 2 of the Act to reduce the number of company directors.

The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 2.

Regulations: A transfer date in terms of the Act was determined in GN 89/1992 (GG 446).

See also General Notice 279/2002 (GG 2823) with respect to the application to Telecom Namibia of amendments to the Value-Added Tax Act 10 of 2000.

Posts and Telecommunications Act 19 of 1992.

Summary: This Act provides for the regulation and control of postal and telecommunications services. It also sets forth the powers, duties and functions of Namibia Post Limited and Telecom Namibian Limited. Section 55 of the Act provides that the Act is deemed to have come into force on 1 August 1992, *with the exception of* section 2 (prohibition of conduct of a postal service or a telecommunications service), which was deemed to have come into force on 15 February 1995 (GN 126/2000, GG 2340).

Amendments: Act 20/1995 adds section 18A, which enables Namibian Post Ltd. to prescribe and levy service fees.

The Communications Act 8 of 2009 (which is not yet in force) repeals Chapters II and IV and section 45.

Regulations: Post Office Savings Bank Regulations are promulgated in General Notice 113/1996 (GG 1322), as amended by General Notice 276/1997 (GG 1684) and General Notice 64/1998 (GG 1829). These replace the “Savings Bank Regulations” contained in GN 16/1961 (as amended).

Tariffs set in terms of the Act are set and amended periodically and have not been recorded here.

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on the Post Office Savings Bank.

Communications Act 8 of 2009.

Summary: This Act provides for the regulation of telecommunications services and networks, broadcasting, postal services and the use and allocation of radio spectrum. It establishes an independent Communications Regulatory Authority of Namibia and an Association to manage the internet domain “.na”. It also provides for the interception of telecommunications.

The Act repeals the Radio Act 3 of 1952 and the Namibian Communications Commission Act 4 of 1992, and replaces some sections of the Posts and Telecommunications Act 19 of 1992. It will come into force on a date determined by the Minister.

Application of law: The application of this Act with respect to the Communications

Regulatory Authority of Namibia is affected by the State-owned Enterprises Governance Act 2 of 2006.

Regulations: There is no savings clause for regulations made under the repealed laws. Licences issued under the repealed laws must be reviewed for compliance with this Act, but remain valid until so reviewed. (Notices in respect of licences under the repealed laws and under this Act have not been recorded here.)

INTERNATIONAL LAW

Universal Postal Union, 1964

accession: 20 February 1992

International Telecommunications Satellite Organisation (INTELSAT)

accession: 11 October 1993 (source: Ministry of Foreign Affairs)

Amendments to the Agreement Relating to the International Telecommunications Satellite Organisation (INTELSAT/ITSO), 2000 (effective 18 July 2001)

signature: 18 November 2000

letter of approval: 8 July 2002 (source: Ministry of Foreign Affairs)

Constitution and Convention of the International Telecommunication Union, 1992

accession: 2 August 1994

SADC Protocol on Transport, Communications and Meteorology, 1996

(entered into force within SADC on 6 July 1998) (source: SADC)

signature: 24 August 1996 (source: SADC)

ratification: 19 September 1997 (source: SADC; Ministry of Foreign Affairs)

See Proc. 24/1997 (GG 1723).

See also **CENSORSHIP**.

See also General Law Amendment Ordinance 22 of 1958, section 1 (which makes it an offence to publish details of any person under 18 years old who is a party to civil proceedings) (**COURTS**).

See also *Criminal Procedure Act 51 of 1977*, section 154 (which prohibits the publication of any information which may reveal the identity of an accused or a witness in criminal proceedings who is under the age of 18, as well as the publication of information about any criminal proceedings held in closed court) (**CRIMINAL LAW AND PROCEDURE**).

See also *Protection of Information Act 84 of 1982* (which prohibits the disclosure of security-related information) (**DEFENCE**).

See also **FILMS**.

See also Exchequer and Audit Amendment Proclamation, AG 35 of 1979 (re: Post Office Account) (**FINANCE AND DEVELOPMENT**).

COMPANIES

Companies Act 61 of 1973, in part, as amended in South Africa to October 1978.

Summary: This Act regulates companies comprehensively. It is repealed by the Companies Act 28 of 2004, which was not in force as of 30 June 2010.

Applicability to SWA: Portions of the Act were made applicable to South West Africa by the *Registration and Incorporation of Companies in South West Africa Proclamation* (RSA Proclamation 234 of 22 September 1978), which came into operation on 1 October 1978. This Proclamation is based on the Act as amended up to the date of the Proclamation, and the Proclamation further amends the Act as it applies to South West Africa.

Further amendments applicable to SWA are added by the *Registration and Incorporation of Companies in South West Africa Proclamation* (RSA Proclamation 234 of 1978) and the *Registration and Incorporation of Companies in South West Africa Amendment Proclamation* (RSA Proclamation 23 of 1979).

Transfer of administration to SWA: Section 23 of RSA Proclamation 234 of 1978 states that “the provisions of sections 3(4), 4 and 4bis of the Executive Powers Transfer (General Provisions) Proclamation, 1977, of the Administrator-General, shall apply *mutatis mutandis* in relation to the Act as if this Proclamation were a Transfer Proclamation referred to in that Proclamation: Provided that in such application any reference in the said provisions to section 3(1) of that Proclamation shall be deemed to be deleted”. RSA Proclamation 234 of 1978 also makes certain amendments to the Act which had the effect of transferring the administration of the Act to SWA.

Amendments: As already noted, the Act has been amended by RSA Proclamation 234 of 22 September 1978, RSA Proclamation 234 of 1978, RSA Proclamation 23 of 1979.

Act 3/1989 inserts sections 29A, 29B, 29C and 29D to provide for the conversion of close corporations into companies and vice versa.

The Married Persons Equality Act 1 of 1996 amends sections 216 and 218.

Regulations: Companies Administrative Regulations are contained in RSA GN R.1948 of 19 October 1973, as amended by RSA GN R. 2384/1973 (14 December 1973), RSA GN R.119/1975 (17 January 1975), RSA GN R.1665/1976 (10 September 1976), RSA GN R.1911/1976 (22 October 1976), RSA GN R.787/1977 (6 May 1977), RSA GN R.2044/1977 (7 October 1977), RSA GN R.1391/1978 (30 June 1978) and GN 13/1997 (GG 1498).

Various companies are deemed to be companies incorporated in Namibia under Chapter IV of the Act. These have not been recorded here.

Directives on names of companies are contained in General Notice 17/1993 (GG 596).

Exemptions: The National Transport Corporation Act 21 of 1987 (which was repealed by the National Transport Services Holding Company Act 28 of 1998 with

effect from 1 April 1999) affected the application of this Act to the National Transport Corporation.

Section 3 of the National Fishing Corporation of Namibia Act 28 of 1991 concerns the application of the Act to the National Fishing Corporation.

Section 26 of the National Housing Enterprise Act 5 of 1993 concerns the application of the Act to the National Housing Enterprise.

Section 27 of the National Development Corporation Act 18 of 1993 concerns the application of the Act to the National Development Corporation.

Sections 2 and 12 of the Namibia Wildlife Resorts Company Act 3 of 1998 affect the application of the Act to Namibia Wildlife Resorts Limited.

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on the Registrar of Companies and on persons carrying on certain kinds of businesses.

Cases:

- Grüttemeyer NO v General Diagnostic Imaging* 1991 NR 441 (HC) (section 242(4))
Ex Parte Sudurhavid (Pty) Ltd: In Re Namibia Marine Resources (Pty) Ltd v Ferina (Pty) Ltd 1992 NR 316 (HC)
Augusto v Socieda de Angolana de Comercio International Limitada (Sacilda) 1997 NR 213 (HC) (section 38(1))
Da Silva Augusto v Sociedade Angolana de Comercio Internacional Limitada 1999 (2) SA 788 (NmHC) (section 38(1))
Northbank Diamonds Ltd v FTK Holland BV & Others 2002 NR 284 (SC) (section 13).
Seasonaire v Mahe Construction (Pty) Ltd 2002 NR 53 (HC) (section 49(1)(b))
Cellphone Warehouse (Pty) Ltd v Mobile Telecommunications Ltd 2002 NR 318 (HC) (section 13)
Mahe Construction (Pty) Ltd v Seasonaire 2002 NR 398 (SC) (section 49(1)(b))
Gases & Others v The Social Security Commission & Others 2005 NR 325 (HC) (refusal of application to stay section 417 enquiry pending outcome of challenge to constitutionality of that provision)
JCL Civils Namibia (Pty) Ltd v Steenkamp 2007 (1) NR 1 (HC) (proof of sanction and registration of offer of compromise)
Ex Parte Nednamibia Holdings Ltd 2007 (2) NR 446 (HC) (section 311)
Moder v Farm Audiwib (Neu Schwaren) (Pty) Ltd 2007 (2) NR 6 (SC) (section 73)
Norval & Others v Consolidated Sugar Investments (Namibia) (Pty) Ltd & Others 2007 (2) NR 689 (HC) (sections 20, 65(2) and Table B)
Absolut Corporate Services (Pty) Ltd v Tsumeb Municipal Council & Another 2008 (1) NR 372 (HC)(section 64; production of registration number insufficient proof of existence of company; best evidence is certificate of incorporation)
De Villiers v Axiz Namibian (Pty) Ltd 2009 (1) NR 40 (HC) (section 424 of this Act discussed in connection with interpretation of section 64(1) of Close Corporations Act 26 of 1988)
Council of the Municipality of Windhoek v Bruni NO & Others 2009 (1) NR 151 (HC) (appointment of joint liquidators; sections 367 and 381)
Oshakati Tower (Pty) Ltd v Executive Properties CC & Others (2) 2009 (1) NR 232 (HC)(section 228).

Close Corporations Act 26 of 1988.

Summary: This Act provides for the establishment of close corporations. All sections of the Act came into force on 1 March 1994, *except for* section 5, 14 and 30 which came into force on 25 July 1994 (Act 8/1994; Proc. 9/1994, GG 820).

Amendments: The Act is substantially amended by Act 8/1994. The Married Persons Equality Act 1 of 1996 deletes section 32(2).

Regulations: Regulations are contained in GN 43/1994 (GG 829), which is amended by GN 97/2006 (GG 3658), and in GN 3/1994 (GG 863).

GN 96/2006 (GG 3658) identifies professions whose members are qualified to perform the duties of an accounting officer.

Related laws: The Companies Amendment Act 3 of 1989 amends the *Companies Act 61 of 1973* to provide for the conversion of close corporations into companies and vice versa.

Cases:

Oshuunda CC v Blaauw & Another 2001 NR 230 (HC)

Doeseb & Others v Kheibeb & Others 2004 NR 81 (HC), 2006 (2) NR 702 (SC)

Bahlsen v Nederloff & Another 2006 (2) NR 416 (HC)

Norval & Others v Consolidated Sugar Investments (Namibia) (Pty) Ltd & Others 2007 (2) NR 689 (HC)

Gonschorek & Others v Asmus & Another 2008 (1) NR 262 (SC)

Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (1) NR 290 (SC) (right of individual who is not a legal practitioner to represent a one-person close corporation in court as its “alter ego”)

De Villiers v Axiz Namibian (Pty) Ltd 2009 (1) NR 40 (HC) (section 64(1))

S v Kapia & Others 2009 (1) NR 52 (HC) (formulation and particularity of charges of various offences under Act)

Nationwide Detectives and Professional Practitioners CC v Ondangwa Town Council 2009 (1) NR 308 (HC) (effect of deregistration under section 26).

Namibia Wildlife Resorts Company Act 3 of 1998.

Summary: This Act creates a company known as Namibia Wildlife Resorts Limited and provides for the transfer to this company of the state’s wildlife resorts enterprise (including the resorts in Etosha National Park, in other game parks and nature reserves and in any tourist recreation area). In terms of the Act, the state is the only shareholder of the company.

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends sections 4 and 5.

Regulations: Title, rights and interests in certain immovable properties were transferred to the Namibia Wildlife Resorts Company by GN 161/2007 (GG 3900). This transfer includes land in a number of public parks: Gross Barmen, Popa Falls, Duwiseb, Hobas, Daan Viljoen, two erven at Lüderitz, Sesriem, Etosha (Namutoni, Halali and Okaukeujo), Torra Bay, Terrace Bay, Naukluft, Reho Spa and Khorixas Rest Camp.

Companies Act 28 of 2004.

Summary: This Act regulates companies comprehensively. It repeals the *Companies Act 61 of 1973*, the *Registration and Incorporation of Companies in South West Africa Proclamation 234 of 1978*, and sections 31 and 32 of the Married Persons Equality Act 1 of 1996. It had not come into force as of 30 June 2010.

Amendments: Act 9/2007, which will come into force on a date set by the Minister, amends section 82.

Regulations: Regulations pertaining to the winding-up and judicial management of companies made under the previous act remain in force. These regulations are contained in GN R.2490 of 28 December 1973.

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on persons carrying on certain kinds of businesses.

State-owned Enterprises Governance Act 2 of 2006.

Summary: This Act makes provision for the efficient governance of State-owned enterprises, their restructuring and the monitoring of their performance. It establishes the State-owned Enterprises Governance Council. The Act came into operation on 7 October 2006 (Proc. 13/2006, GG 3733).

Amendments: Act 5/2008 amends sections 15 and 27, substitutes section 48 and validates the appointment of certain board members. The changes to sections 15 and 48 are deemed to have come into operation at the same time as the principal Act, while the remainder of the amendments came into operation on the date the amending Act was gazetted (22 October 2008).

Schedule 1 of the Act is amended by section 134(2) of the Communications Act 8 of 2009.

Application: This Act affects a number of companies other than those established or governed by specific statutes (Air Namibia (Pty) Ltd, National Petroleum Corporation of Namibia (Pty) Ltd, August 26 Holdings Company (Pty) Ltd, Windhoek Machinen Fabrik (Pty) Ltd, Namibia Bricks Enterprise (Pty) Ltd and Star Protection Services (Pty) Ltd) and one association not for gain (National Theatre of Namibia).

Appointments: GN 232/2008 (GG 4131) determines the number and terms of board members of the Namibia Airports Company, Namibia Ports Authority, Roads Authority, Roads Contractor Company and Transnamib Holdings Company. Members of the Boards of these enterprises are announced in GN 11/2009 (GG 4210).

COMMISSIONS

Commission of Enquiry into the Activities, Management and Operations of Transnamib Holdings Limited (Proc 3/2001, GG 2499).

See also GN 51/2001 (GG 2499).

Commission of Enquiry into the Activities, Management and Operations of Air Namibia (Pty) Ltd (Proc. 18/2001, GG 2616)

See also GN 194/2001 (GG 2616) and GN 230/2001 (GG 2647).

Commission of Inquiry into the Activities, Affairs, Management and Operation of the Roads Authority (Proc.21/2002, GG 3031).

See also GN 172/2003 (GG 3031).

Commission of Inquiry into the Activities, Affairs, Management and Operation of the former Amalgamated Commercial Holding (Pty) Ltd (AMCOM) Registration No. 93/261 and the former Development Brigade Corporation (DBC) Established Under Section 2 of the Development Brigade Corporation Act (Proc.38/2004, GG 3221).

See also GN 132/2004 (GG 3221).

See also Development Brigade Corporation Act 32 of 1992 (**LABOUR**).

See also Posts and Telecommunications Companies Establishment Act 17 of 1992 (**COMMUNICATIONS**).

CONSTITUTION

The pre-independence laws, while still technically in force, are primarily of historical interest.

Commonwealth Relations (Temporary Provision) Act 41 of 1961.

Summary: This Act provides that references to any Commonwealth country or countries in laws in force in South Africa or South West Africa immediately prior to 31 May 1961 shall not be automatically affected by the establishment of the Republic of South Africa.

Applicability to SWA: Section 3 states “This Act shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951).”

South West Africa Affairs Act 25 of 1969, as amended in South Africa prior to Namibian independence.

Summary: This Act related to the administration of South West Africa, principally by transferring authority over a number of issues to Ministers of the relevant South African departments, by extending the power of the State President to make South African laws applicable to South West Africa, and by changing several of the financial aspects of the administration of the territory. It was repealed in South Africa by Act 108/1993 and has no current relevance to Namibia.

Applicability to SWA: According to sections 1 and 24, this Act applies to “the territory of South West Africa,” including the Eastern Caprivi Zipfel.

Amendments: The application of this Act was affected by the subsequent SWA Transfer Proclamations, which transferred administration of certain matters back to South West Africa.

The Customs and Excise Act 20 of 1998 repeals section 6.

National Coat of Arms of the Republic of Namibia Act 1 of 1990.

Summary: This Act determines the national coat of arms for the Republic of Namibia, in accordance with Article 2(2) of the Constitution.

Assignment of Powers Act 4 of 1990.

Summary: This Act empowers the President to establish departments and other administrative divisions and to assign the administration of certain laws to the Prime Minister or to any Minister. It also provides for the temporary performance of the functions of the Prime Minister or a Minister by another Minister.

Regulations: Specific assignments of powers are made in GN 61/1991 (GG 211), GN 62/1991 (GG 211), GN 98/1992 (GG 455), GN 141/1993 (GG 750), GN 277/1999 (GG 2248), Proc. 1/2002 (GG 2704) and Proc. 8/2005 (GG 3456). (See also GN 28/2002, GG 2704.)

Special Advisors and Regional Representatives Appointment Act 6 of 1990.

Summary: This Act provides for the appointment of persons as Special Advisors to the Cabinet or Ministers. It also sets forth the powers, duties and functions of such appointees. (It originally provided for the appointment of persons as regional representatives, but this portion of the Act has been repealed.)

Amendments: Section 2 of the Act was repealed by the Regional Councils Act 22 of 1992 as of 30 November 1992.

Appointments: Regional representatives were appointed in Proc. 14/1990 (GG 75).

A Special Advisor: National Security was appointed in Proc. 7/1994 (GG 813).

Special Advisors to the President on political and economic matters are appointed in Proc. 32/1997 (GG 1759).

The appointment of a Special Advisor (Commercial Law) to the Attorney-General is renewed in Proc. 40/2004 (GG 3253), but the original appointment could not be located.

A Special Advisor to the Minister of Labour and Social Welfare is appointed in Proc. 3/2005 (GG 3433). (Note that the original Gazette was replaced by another Government Gazette 3433 with the same date; the correct version states at the top: "This Gazette replaces Gazette No. 3433 of 18 May 2005.") A Special Advisor (labour matters) to the Minister of Labour and Social Welfare is appointed in Proc. 14/2008 (GG 4022).

A Special Advisor to the Minister of Veterans Affairs is appointed in Proc. 5/2007 (GG 3785).

A Special Advisor (Commercial Lawyer) to the Minister of Justice is appointed in Proc. 13/2007 (GG 3900).

A Special Advisor to the Director-General of the National Planning Commission is appointed in Proc. 2/2009 (GG 4197).

A Special Advisor to the President on Political Matters and a Special Advisor to the Minister of Veterans' Affairs are appointed in Proc. 21/2009 (GG 4391).

A Special Advisor to the Minister of Health and Social Services is appointed in Proc. 9/2010 (GG 4468).

Ombudsman Act 7 of 1990.

Summary: This Act defines the powers, duties and functions of the Ombudsman in accordance with Chapter 10 of the Constitution.

Appointments: Appointments have been made by Proc. 10/1990 (Acting Ombudsman); Proc. 16/1992 (Ombudsman); Proc. 7/1993 and Proc. 8/1993 (Deputy Ombudsman); Proc. 7/1996 (Ombudsman); Proc. 29/2003 (Acting Ombudsman) and

Proc. 39/2004 (Ombudsman).

Articles: John Walters, “The protection and promotion of human rights in Namibia: The constitutional mandate of the Ombudsman” in N Horn & A Boesl (eds), *Human Rights and the Rule of Law in Namibia*, Windhoek: Macmillan Namibia, 2008, available at www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-16045/index.html; Katharina G Ruppel-Schlichting, “The independence of the Ombudsman in Namibia”, in Nico Horn & Anton Boesl, *The Independence of the Judiciary in Namibia*, Konrad Adenauer Stiftung, 2008, available at www.kas.de/proj/home/pub/8/2/year-2008/dokument_id-15058/index.html.

National Anthem of the Republic of Namibia Act 20 of 1991.

Summary: This Act sets forth the national anthem of Namibia and empowers the President to make regulations in respect of the use of the anthem.

Walvis Bay and Off-Shore Islands Act 1 of 1994.

Summary: This Act gives effect to Article 1(4) of the Constitution by providing for the transfer of control over Walvis Bay and the off-shore islands from South Africa to Namibia. It came into force on 1 March 1994 (Proc. 6/1994, GG 806).

Amendments: The application of the Act is affected by Procs. 15/1994 and 16/1994 (GG 873). Act 14/1998 amends clause 1 of Part III of the Schedule to provide for the retrospective application of certain provisions of the Local Authorities Act 23 of 1992. The Road Traffic and Transport Act 22 of 1999 repeals Clause 2 of Part IV of the Schedule.

Cases: *Gauiseb v Minister of Home Affairs* 1996 NR 90 (HC); *Municipality of Walvis Bay v Du Preez* 1999 NR 106 (LC) (section 13; Part III, sections 1(6) and 5(c)). The Act is also discussed in *dicta* in *Thloro v Minister of Home Affairs* 2008 (1) NR 97 (HC) beginning at 112E.

National Planning Commission Act 15 of 1994.

Summary: This Act provides for the membership, powers, functions and personnel of the National Planning Commission referred to in Article 129(1) of the Constitution.

Honours System for Namibia, Proclamation 2 of 1995.

Summary: This Proclamation establishes an honours system for Namibia consisting of decorations, medals and awards. It was enacted in terms of Article 32(3)(h) of the Namibian Constitution.

Powers, Privileges and Immunities of Parliament Act 17 of 1996.

Summary: This Act provides for the right of freedom of speech and debate as well as

other powers, privileges and immunities for Parliamentarians. It also establishes a Committee of Privileges to investigate the conduct of Parliamentarians.

Namibian Constitution First Amendment Act 34 of 1998.

Summary: This Act amends Article 134 of the Namibian Constitution to provide that the first President of Namibia may hold office for three terms.

Application of Laws to the Eastern Caprivi Zipfel Act 10 of 1999.

Summary: This Act is necessary because section 38(5) of the South-West Africa Constitution Act 39 of 1968 (which was repealed by Article 14 of the Namibian Constitution) provided that laws applied to South West Africa after 1 November 1951 would apply in the Eastern Caprivi Zipfel only if this was expressly stated. In light of this historical exclusion, this Act gives Ministers the power to make the laws which they administer applicable to the Eastern Caprivi Zipfel by notice in the *Gazette*.

Declaration of State of Emergency: Caprivi, Proclamation 23 of 1999.

Summary: This Proclamation declared a state of emergency in the Caprivi Region in terms of Article 26(1) of the Constitution, effective as of 2 August 1999. It was revoked on 26 August 1999 by Proc. 27/1999 and has no ongoing effect.

Regulations: Emergency Regulations were promulgated in Proc. 24/1999 (GG 2157). These were also revoked by Proc. 27/1999.

Lists of persons detained under the Emergency Regulations were published in GN 172/1999 (GG 2167) and GN 173/1999 (GG 2172).

It is relevant to note that the Katima Mulilo police cells (in the Caprivi Region) were declared to be a prison in terms of the Prisons Act 17 of 1998 by GN 160/1999 (GG 2163).

Appointments: An Advisory Board as referred to in Article 26(5)(c) of the Constitution was appointed with respect to the state of emergency by Proc. 25/1999 (GG 2159).

Cases: *Mazila v Minister of Home Affairs* 2000 NR 224 (HC) (applicability of the regulations to areas outside the Caprivi Region).

Security Commission Act 18 of 2001.

Summary: This Act relates to the Security Commission established by Article 114 of the Namibian Constitution. In terms of the Constitution, the Security Commission has the function of making recommendations to the President on the appointment of the Chief of the Defence Force, the Inspector-General of Police and the Commissioner of Prisons. The Act gives the Commission additional powers relating to internal security. The Act came into force on 2 May 2002 (GN 65/2002, GG 2734).

Appointments: Members of the Security Commission were appointed in terms of the Constitution by Proc. 18/1992.

Cases: *Government of the Republic of Namibia v Sikunda* 2002 NR 203 (SC) (Composition of the Security Commission pursuant to Article 114 of the Constitution; Security Commission as subject to Articles 18 and 12 of the Constitution)

Public Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005.

Summary: This Act establishes a Commission to make recommendations to the President on the remuneration, benefits and conditions of office of Members of Parliament, members of Regional Councils and other persons whom the President declares to be public office-bearers by Proclamation. It came into operation on 3 August 2005 (Proc. 9/2005, GG 3473).

Regulations: Persons who hold certain offices are declared to be officer-bearers for the purposes of this Act in Proc. 6/2008 (GG 3983).

Percentage increases in the remuneration of certain office-bearers are specified in Proc. 1/2009 (GG 4192) and Proc. 6/2010 (GG 4440).

Namibian Constitution Second Amendment Act 7 of 2010.

Summary: This Act does the following-

- amends Article 4 of the Namibian Constitution to extend the residency requirements for citizenship by marriage and naturalisation;
- amends or substitutes Articles 9, 23, 32, 47, 91, 93, 114 and Chapter 15 to alter the term “prison service” to “correctional service” and the term “Commissioner of Prisons” to “Commissioner General of Correctional Services”;
- amends Article 70 to change the term of office of members of the National Council from 6 years to 5 years;
- amends Article 82 to remove the possibility of extending the retirement age of judges by Act of Parliament and to provide that judges who are non-Namibian citizens must be appointed under a fixed-term contract of employment;
- amends Article 91 to remove corruption from the remit of the Ombudsman;
- inserts Article 94A on Anti-Corruption Measures, which makes the Anti-Corruption Commission a Constitutional body;
- substitutes Article 107 on the remuneration of members of Regional Councils; amends Article 109 on the terms of office of Management Committees of Regional Councils;
- amends Article 23 and substitutes Chapter 15 to place provisions on the defence force ahead of those on the police force.

The Act came into force on the date of its publication (GG 4480, 7 May 2010), with the exception of the amendments to Articles 70 and 109 (concerning terms of office) which come into effect on the date that the term of office of the existing members of the National Council ends.

CONSTITUTIONAL APPOINTMENTS

(in chronological order)

President of the Republic of Namibia, Proc. 2/1990 (GG 8)
First Chief of the Defence Force, Proc. 7/1990
First Inspector-General of Police and First Commissioner of Prisons, Proc. 8/1990
Acting Ombudsman, Proc. 10/1990
First Delimitation Commission and the Duties thereof, Proc. 12/1990
Chief Justice, Judge President, Judge of the High Court and Prosecutor-General, Proc. 31/1991
Ombudsman, Proc. 16/1992
Members of the Security Commission, Proc. 18/1992
Deputy Ombudsman, Proc. 7/1993 and Proc. 8/1993
Minister, Proc. 4/1994
Deputy Ministers, Proc. 22/1994
Various officials, Proc. 8/1995 (GG 1071), Proc. 8/1995 (GG 1071)
Delimitation Commission, Proc. 9/1995 (GG 1089)
Ombudsman, Proc. 7/1996
Commissioner of Prisons, Proc. 34/1997 (GG 1765)
Inspector-General of Police, Proc. 35/1997 (GG 1765)
Director-General of Namibia Central Intelligence Service, Proc. 14/1999 (GG 2062)
Ministers and Deputy Ministers, Proc. 18/1999 (GG 2088)
Deputy-Minister of Information and Broadcasting, Proc. 31/1999 (GG 2213).
Ministers, Deputy Ministers and Members of Parliament, Proc. 8/2000 (GG 2366)
Minister of Lands, Resettlement and Rehabilitation, and Attorney-General, Proc. 5/2001 (GG 2501)
Delimitation Commission, Proc. 6/2002 (GG 2855)
Acting Prosecutor-General, Proc. 8/2002 (GG 2869)
Extension of Term of Acting Prosecutor-General, Proc. 20/2003 (GG 3023)
Ministers and Deputy Ministers, Proc. 28/2003 (GG 3060)
Acting Ombudsman, Proc. 29/2003 (GG 3071)
Extension of term of Acting Prosecutor-General, Proc. 31/2003 (GG 3101)
Prosecutor-General, Proc. 32/2003 (GG 3101)
Ombudsman, Proc. 39/2004 (GG 3229)
Establishment of Ministries and Appointment of Ministers and Deputy Ministers and other officials, Proc. 4/2005 (GG 3436)
Minister and Deputy Ministers, Proc. 6/2005 (GG 3436)
Inspector-General of Police, Proc. 7/2005 (GG 3450)
Deputy-Minister of Works, Acting Judges of the High Court and Judge of the Supreme Court, Proc. 20/2005 (GG 3562)
Dissolution and establishment of Ministries and Appointment of Ministers and Deputy Ministers, Proc. 17/2008 (GG 4039)
Transfer of National Forensic Institute of Namibia from Ministry of Home Affairs and Immigration to Ministry of Safety and Security, Proc. 18/2008 (GG 4047).
Attorney-General in Interim, Proc. 3/2009 (GG 4202)
Prime Minister, Deputy Prime Minister, Ministers and Deputy Ministers, Proc. 8/2010 (GG 4468).

Appointments of judges and acting judges are listed under **JUDGES**. See also appointments made in terms of the Special Advisors and Regional Representatives Appointment Act 6 of 1990 (**CONSTITUTION**), Electoral Act 24 of 1992 (**ELECTIONS**), Bank of Namibia Act 15 of 1997

(FINANCIAL INSTITUTIONS) and Judicial Service Commission Act 18 of 1995 (**JUDGES**).

CASES ON CONSTITUTIONAL APPOINTMENTS

Ex Parte Attorney-General: In re The Constitutional Relationship between the Attorney-General and the Prosecutor-General 1998 NR 282 (SC)

Ekandjo-Imalwa v The Law Society of Namibia & Another; The Law Society of Namibia & Another v The Attorney-General of the Republic of Namibia & Others 2003 NR 123 (HC)

S v Zembukura (2) 2003 NR 200 (HC).

CONFERMENT OF NATIONAL HERO STATUS

(in terms of Article 32(3)(h) of the Namibian Constitution)

The late David Moses Merero, Proc. 5/2004 (GG 3138)

The late Maxton Joseph Mutonyovume, Proc. 32/2004 (GG 3191)

The late Reverend Markus Kooper, Proc. 19/2005 (GG 3562)

The late Dr Mosé Tenaani Tjitendero, Proc. 5/2006 (GG 3628)

The late Mr Richard Kapelwa Kabajani, Proc. 10/2007 (GG 3846)

The late Honourable John Alphons Pandeni, Minister of Regional and Local Government, Housing and Rural Development, Proc. 13/2008 (GG 4019)

The late Mr Nikolaus Onverwag “Niko” Bessinger, Proc. 15/2008 (GG 4023)

The late Honourable Rev Dr. Hendrik Witbooi, Pastor and Presiding elder of the African Methodist Episcopal Church, Captain of the /Khowese Community and First Deputy Prime Minister of the Republic of Namibia, Proc. 15/2009 (GG 4363).

OTHER HONOURS

(in terms of Article 32(3)(h) of the Namibian Constitution)

The late Honourable Chief Munyuku Nguvuava II, Paramount Chief of the Mbanderu community and Deputy Chairperson of the Council of Traditional Leaders (State funeral), Proc. 10/2008 (GG 4005)

The late Meekulu Mpingana-Helvi Kondombolo (State funeral), Proc. 40/2008 (GG 4177).

SELECTED ARTICLES

G Naldi, *Constitutional Rights in Namibia: A Comparative Analysis with International Human Rights*, Juta & Co Ltd, 1995

Gerhard Erasmus, “The Constitution: Its Impact on Namibian Statehood and Politics” in C Keulder, ed, *State, Society and Democracy; A Reader in Namibian Politics*, Konrad Adenauer Stiftung, 2000, reprinted 2010, available at www.kas.de/proj/home/pub/8/2/year-2010/dokument_id-18730/index.html

M Hinz, S Amoo and D van Wyk, eds, *The Constitution at Work: 10 years of Namibian Nationhood*. Pretoria: University of South Africa, 2002.

Sam K Amoo, “The constitutional jurisprudential development in Namibia since 1985” in N Horn & A Boesl (eds), *Human Rights and the Rule of Law in Namibia*, Windhoek: Macmillan Namibia, 2008, available at www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-16045/index.html

Oliver C Ruppel, “The protection of children’s rights under international law from a Namibian perspective” in Oliver C Ruppel, ed, *Children’s Rights in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2009, available at www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-18139/index.html (reviewed

by Norman Tjombe in *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.namibialawjournal.org)
Clever Mapaire, “Decoding the right to equality: A scrutiny of judiciary perspicacity over 20 years of Namibia’s existence”, *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.namibialawjournal.org
N Horn, A Boesl and A du Pisani, eds, *Twenty years of constitutional democracy in Namibia*, Windhoek [forthcoming], 2010.

See also Bank of Namibia Act 15 of 1997 (**FINANCIAL INSTITUTIONS**).

See also Council of Traditional Leaders Act 13 of 1997 (**CUSTOMARY LAW**).

See also Namibia Central Intelligence Service Act 10 of 1997 (**DEFENCE**).

See also **JUDGES**.

See in particular Judicial Service Commission Act 18 of 1995 (**JUDGES**).

See Crown Liabilities Act 1 of 1910 (state liability) (**LAW**).

See also Members of Parliament and other Office-Bearers Pension Fund Act 20 of 1999 (**PENSIONS**).

See also **POLICE**.

See also **PRESIDENT**.

See also **PRISONS**.

See also **PUBLIC SERVICE**.

See in particular Public Service Commission Act 2 of 1990 (**PUBLIC SERVICE**).

See also **REGIONAL AND LOCAL GOVERNMENT**.

CONTRACTS

Conventional Penalties Act 15 of 1962, with South African amendments.

Summary: This Act alters the pre-existing common law by providing for the enforceability of penalty stipulations in breaches of contract.

Applicability to SWA: Section 6 of the Act states “This Act shall apply also in the territory of South West Africa.” The only amendment to the Act in South Africa prior to Namibian independence is contained in section 18(1) of the *General Law Amendment Act 102 of 1967*, and it is made expressly applicable to South West Africa by section 18(2).

Transfer of administration to SWA: There is no reference to any minister in the Act, so it is not clear what transfer proclamation, if any, was applicable.

Amendments: As noted above, the Act is amended by the RSA *General Law Amendment Act 102 of 1967*.

Cases: *Barotti Furniture (Pty) Ltd v Moodley* 1996 NR 295 (HC).

CO-OPERATIVES

Co-operatives Act 23 of 1996.

Summary: This Act regulates the formation, registration and winding-up of co-operatives. It replaces the Co-operative Societies Ordinance 15 of 1946.

Regulations: Fees for registration and provisional registration of co-operatives are set in GN 66/1997 (GG 1537).

Notices relating to the establishment and winding up of particular co-operatives have not been recorded here.

Articles: *Book 1-Cooperatives in Namibia: Introduction, Book 2-Guide to the Namibian Cooperatives Act, Book 3-Guide to the Model By-laws for Namibian Cooperatives*, Division of Cooperative Development, Ministry of Agriculture, Water and Rural Development, undated.

COURTS

Colonial Courts of Admiralty Act, 1890, as applied in the Cape of Good Hope as of 1 January 1920.

Summary: This Act concerns the admiralty jurisdiction of the courts. It applies two statutes from English admiralty law -- the Admiralty Court Act 1840 and the Admiralty Court Act 1861

See *Freiremar SA v The Prosecutor-General of Namibia & Another* 1996 NR 18 (HC).

It appears that it may also apply the English Vice-Admiralty Courts Act 1863.

See *MV "Jute Express" v Owners of the Cargo Lately Laden on Board the MV "Jute Express"* (296/91) [1992] ZASCA 44; [1992] 2 All SA 95 (A) (27 March 1992).

Applicability to SWA: The Act was applied to South West Africa by virtue of Administration of Justice Proclamation 21 of 1919.

See *Freiremar SA v The Prosecutor-General of Namibia & Another* 1996 NR 18 (HC) at 27I-28F and *International Underwater Sampling Limited & Another v Mep Systems (Pty) Ltd* (AC 11/2009) [2010] NAHC 10 (12 January 2010).

Regulations: A set of rules known as the Vice Admiralty Rules were made in terms of the 1840 and the 1861 Acts.

See *Namibia Ports Authority v M V 'Rybak Leningrada* 1996 NR 355 (HC).

The Rules for the Vice-Admiralty Courts in Her Majesty's Possessions Abroad, 1883 are also applicable.

See *Bourgwells Ltd (Owners of MFV Ofelia) v Shepalov & Others* 1998 NR 307 (HC).

Note: The Admiralty Proceedings Rules do not apply in Namibia, according to *Bourgwells Ltd (Owners of MFV Ofelia) v Shepalov & Others* 1998 NR 307 (HC).

Cases:

Namibia Ports Authority v M V 'Rybak Leningrada' 1996 NR 355 (HC)

Bourgwells Ltd (Owners of MFV Ofelia) v Shepalov & Others 1998 NR 307 (HC), 1999 NR 410 (HC)

Green Fisheries Corporation v Lubrication Specialist (Pty) Ltd 2003 NR 50 (HC) (Vice Admiralty Court Rules 29 and 30; basis for an action *in rem*)

International Underwater Sampling Limited & Another v Mep Systems (Pty) Ltd (AC 11/2009) [2010] NAHC 10 (12 January 2010).

See also *Banco Exterior De Espana SA & Another v Government of the Republic of Namibia & Another* 1996 NR 1 (HC) for further discussion of jurisdiction over admiralty law.

Further Administration of Justice Proclamation 38 of 1920.

Summary: This Proclamation provides for the procedure of circuit courts of the High Court.

Amendments: The SA *Supreme Court Act 59 of 1959* repeals sections 2-6, 8, 9 and

12. The *RSA Civil Proceedings Evidence Act 25 of 1965* amends section 11.

Magistrates' Courts Act 32 of 1944, as amended in South Africa to November 1979.

Summary: This Act consolidates all laws relating to magistrates' courts.

Applicability to SWA: Section 1 defines "territory" as "the territory of South West Africa", and "province" and "Republic" are both defined to include the territory. Section 115A states "This Act and any amendment thereof shall apply also in the territory, 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, as amended), dated 12 November 1979.

Section 3(1)(d) of the transfer proclamation excluded all references to "Republic" in the Act from the operation of section 3(1) of the General Proclamation, meaning that "Republic" retained the meaning it was given in the definition section of the Act (South Africa and SWA).

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Amendments: Act 14/1981, which is brought into operation by AG 19/1986, amends section 92. Act 11/1985 amends the Act substantially. The Appeals Amendment Act 29 of 1985, which is brought into operation by AG 19/1986, amends sections 1 and 83. Act 9/1990 amends section 1 and 10 of the Act (with regard to the administration of the Act and the qualifications for the appointment of judicial officers). The Married Persons Equality Act 1 of 1996 amends section 5 and deletes section 111(4).

Act 9/1997, which came into force on 3 November 1997 (GN 220/1997, GG 1722), increases the limits on the jurisdiction of magistrates' courts, by altering sections 29, 46, 50, 65I, 74 and 92. In terms of these amendments, the basic limit for civil actions is N\$25 000. For criminal actions, a magistrates' court may impose a sentence of up to five years or a fine of up to N\$20 000, and a regional magistrates' court may impose a sentence of up to 20 years and a fine of up to N\$100 000.

Act 1/1999 amends the minimum qualifications for regional magistrates, gives regional courts jurisdiction for murder trials, and repeals the provisions relating to imprisonment for failure to satisfy an order of court to pay a judgement debt (affecting sections 9, 12, 65A, 65C, 65D, 65E, 65F, 65G, 65H, 65J, 65K, 65L, 89, 106, 106A, 106B and 109).

The Magistrates Act 3 of 2003 (the relevant portion of which came into force on 30 June 2003 – GN 125/2003, GG 3001) amends sections 1 and 66, substitutes section 8 and repeals sections 9, 9bis, 10, 11 and 12.

Act 6/2009 (GG 4308) amends the composition of the Rules Board in section 25.

Regulations: The Rules of Court are contained in RSA GN R.1108 of 21 June 1968, as amended by—

RSA GN R.3002 of 25 July 1969

RSA GN R. 490 of 26 March 1970
 RSA GN R.1752 of 16 October 1970
 RSA GN R. 947 of 2 June 1972
 RSA GN R.1115 of 28 June 1974
 RSA GN R.1285 of 19 July 1974
 (which corrects RSA GN R.1115 of 28 June 1974)
 RSA GN R. 689 of 23 April 1976
 RSA GN R. 261 of 25 February 1977
 RSA GN R.2221 of 28 October 1977
 RSA GN R. 327 of 24 February 1978
 RSA GN R.2222 of 10 November 1978
 RSA GN R.1194 of 8 June 1979
 RSA GN R.1449 of 29 June 1979
 RSA GN R. 652 of 28 March 1980
 RSA GN R.1314 of 27 June 1980
 RSA GN R.1800 of 28 August 1981
 RSA GN R.1139 of 11 June 1982
 RSA GN R.1689 of 29 July 1983
 RSA GN R.1946 of 9 September 1983
 (which corrects RSA GN R.1689 of 29 July 1983)
 RSA GN 1338 of 29 June 1984
 GN 148/1985 (31 December 1985)
 GN 36/1987 (16 March 1987)
 AG GN 86/1989 (15 August 1989)
 AG GN 122/1989 (fees) (1 December 1989)
 GN 178/1992 (GG 537) (tariffs and fees)
 GN 43/1997 (GG 1513) (Rules 6(5)(a), 10 and 37(1), and Annexure 2, Table
 C - provisions and fees pertaining to messengers of the court)
 GN 75/2000 (GG 2284) (Rules 2, 5, 6, 8, 9, 12, 13, 29, 30, 33, 34, 35, 38, 41,
 43, 48, 48A, 49, 51, 59, 66, Annexure 1 and Annexure 2)
 GN 200/2007 (GG 3930) (Rules 12, 13,41,49, 60 and Annexure 2-Table C).

Additional places for holding courts are designated in GN 47/1991 (GG 181), GN 181/1992 (GG 540), GN 37/1993 (GG 617) GN 249/1997 (GG 1741) and GN 92-93/2002 (GG 2755).

The configuration of magisterial districts is affected by GN 89/1991 (GG 244), GN 22/1994(GG 799), GN 23/1994 (GG 799), GN 122/1997 (GG 1585), GN 21/1999 (GG 2046), GN 22/1999 (GG 2046) GN 177/2000 (GG 2374) and GN 94/2002 (GG 2755).

Officers competent to perform service of process in terms of section 15(4) are designated in AG GN 84/1989.

The Magistrate's Court Rules (Rehoboth) Amendment Proclamation (AG 29/1979) applies the amendments to the Magistrate's Court Rules contained in RSA GN R.2222 of 1978 to the Rehoboth Gebiet.

Appointments: Members of the Magistrates Commission are announced in General Notice 169/2003 (GG 3020).

Cases:

section 1:

Alexander v Minister of Justice & Others 2009 (2) NR 712 (HC) (“judicial officer” and “Chief: Lower Courts”)

- section 9:
S v Kauma 1992 NR 17 (HC)
Mostert v The Minister of Justice 2002 NR 76 (HC); 2003 NR 11 (SC)
 (declaring sections 9 of the Act unconstitutional, but giving Parliament until 30 June 2003 to correct the defect; see Magistrate's Act 3 of 2003)
- section 10:
Mostert v The Minister of Justice 2003 NR 11 (SC) (declaring section 10 of the Act unconstitutional, but giving Parliament until 30 June 2003 to correct the defect; see Magistrate's Act 3 of 2003)
- section 12(1):
Garces v Fouche & Others 1997 NR 278 (HC)
- section 14(2)(b):
Engelbrecht & Others v Hennes 2007 (1) NR 236 (LC) (deputy messengers appointed pursuant to this section fail to prove that they are employees in terms of labour law)
- section 19:
Engelbrecht & Others v Hennes 2007 (1) NR 236 (LC) (provisions of section 19 on deputy messengers mean that if they are not employees they must be agents)
- section 65:
Julius v Commanding Officer, Windhoek Prison & Others; Nel v Commanding Officer, Windhoek Prison & Others 1996 NR 390 (HC)
 (declaring unconstitutional parts of section 65 concerning imprisonment for civil debt)
- section 66:
Vermaak & Another v Messenger of the Court of Swakopmund & Another 2005 NR 14 (HC)
- section 83:
Thiro v M & Z Motors NLLP 2002 (2) 370 NLC
- section 89(1):
S v Handukene 2007 (2) NR 606 (HC) (lack of jurisdiction of district magistrate's court over common-law crime of rape applies equally to charge of rape under Combating of Rape Act 8 of 2000)
- section 92:
Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State, 1991 NR 178 (SC)
- section 106:
S v Muronga 2004 NR 134 (HC)
S v Ndakolute 2005 NR 37 (HC)
S v Paulus 2007 (2) NR 622 (HC)(no provision for summary enquiry)
- section 108:
S v Amujekela 1991 NR 303 (HC)
S v Ndihalwa 1997 NR 98 (HC)
S v Hekandjo 1998 NR 142 (HC)
S v Paaie 2006 (1) NR 250 (HC)
S v Cloete 2006 (2) NR 430 (HC)
S v Paulus 2007 (2) NR 622 (HC) (non-appearance in court not covered)
S v Shikesho 2007 (2) NR 625 (HC) (summary conviction under this section inappropriate when accused under influence of alcohol and unable to comprehend proceedings)
- generally:
S v Myburgh 2008 (2) NR 592 (SC) (suggestion to legislature to amend Act to extend jurisdiction of magistrate's courts, especially regional

magistrate's courts, to order permanent stays of prosecution in appropriate criminal cases).

Cases on Magistrate's Court Rules:

Rule 7:

Duntrust (Pty) Ltd v H Sedlacek t/a GM Refrigeration 2005 NR 174 (HC)

Rule 17:

Olivier v Kaizemi 2005 NR 290 (HC)

Tsabo v Gobabis Municipality NLLP 2003 (4) 25 NLC

Rule 22:

Lewis v Sampoio 2000 NR 186 (SC)

Rule 36(d):

Standard Bank of Namibia Ltd v Potgieter & Another 2000 NR 120 (HC)

Rule 43:

Vermaak & Another v Messenger of the Court of Swakopmund & Another 2005 NR 14 (HC)

Rule 49:

Lewis v Sampoio 2000 NR 186 (SC)

Brand v Swart 2002 NR 63 (HC)

Rule 51(4):

Mostert v First National Bank of Namibia Ltd. & Another 2000 NR 54 (HC)

Rule 55A:

Olivier v Kaizemi 2005 NR 290 (HC)

Rule 59(6):

Standard Bank of Namibia Ltd v Potgieter & Another 2000 NR 120 (HC)

Rule 62:

CIC Holdings Ltd v Beukes & Another 2003 NR 106 (HC) (application of rule to district labour court matter; overturned on other grounds in *Beukes & Another v CIC Holdings Ltd* 2005 NR 534 (SC))

Rule 66:

S v Hoadums 1990 NR 259 (HC)

S v Veiko 1994 NR 79 (HC)

Rule 67(1):

S v Wellington 1990 NR 20 (HC)

S v Gey van Pittius & Another 1990 NR 35 (HC).

S v Kakololo 2004 NR 7 (HC)

Rule 67(3):

S v Tases 2003 NR 103 (HC).

Articles: Francois X Bangamwabo and Clever Mapaure, "The constitutionality or otherwise of section 66(1) of the Magistrates' Courts Act, 1944 (No. 32 of 1944)", *Namibia Law Journal*, Volume 2, Issue 1, 2010, available at www.namibialawjournal.org.

Redefinition of Magisterial Districts Proclamation 15 of 1950.

Summary: This Proclamation defines the geographical boundaries of magisterial districts.

Amendments: This Proclamation is amended by-

Proc. 19/1952

Proc. 49/1952

Proc. 51/1954

Proc. 10/1955
Proc. 54/1955
Proc. 20/1956
Proc. 69/1956
Proc. 10/1957
Proc. 11/1957
Proc. 19/1957
Proc. 55/1957
Proc. 65/1957
SA Proc. 68 of 1957
Proc. 43/1958
Proc. 25/1959
Proc. 36/1959
Proc. 39/1960
Proc. 73/1961
Proc. 48/1962.

Vexatious Proceedings Act 3 of 1956.

Summary: This Act places restrictions on frivolous legal proceedings.

Applicability to SWA: Section 3 states “This Act shall apply also in the territory of South West Africa,” and section 1 defines “court” accordingly.

Transfer proclamation: Although this Act makes no reference to any minister, it probably fell under the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979. The wording of the Act did not make South African amendments automatically applicable to SWA. In any event, there were no amendments to the Act in South Africa prior to Namibian independence.

General Law Amendment Ordinance 22 of 1958, sections 1-2.

Summary: Section 1 of this Ordinance makes it an offence to publish details of any person under 18 years old who is a party to civil proceedings. Section 2 of this Act (now obsolete) recognises the official title of “landdros”.

Amendments: Section 1(1) is amended by Ord. 13/1962, to change the relevant age to 18. Section 2 is amended by Ord. 29/1963.

Admiralty Jurisdiction Regulation Act 5 of 1972, as amended in South Africa to November 1979.

Summary: This Act requires the High Court, when sitting as a court of admiralty, to refer back to the law of England.

Applicability to SWA: Section 5 of this Act 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, as amended), dated 12 November 1979.

Section 3(1)(r) of the transfer proclamation excluded sections 1 and 2 of the Act from the operation of section 3(1) of the General Proclamation.

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA. The Act was repealed in its entirety in South Africa by the *Admiralty Jurisdiction Regulation Act 105 of 1983*, which was not applicable to SWA.

Supreme Court Act 15 of 1990.

Summary: This Act provides for the jurisdiction of the Supreme Court of Namibia in accordance with Article 79 of the Namibian Constitution.

Amendments: The Judicial Service Commission Act 18 of 1995 amends section 9. The Appeal Laws Amendment Act 10 of 2001 amends section 14. Act 4/2002 amends section 8.

Regulations: The Rules of the Supreme Court are contained in GN 56/1990 (GG 86). GN 119/2003 (GG 2994) amends Rule 8.

Fees: The tariff of fees contained in GN 56/1990 (GG 86) is altered by GN 80/2003 (GG 2949).

Cases:

S v Strowitzki 2003 NR 145 (SC)(sections 6 and 16(1))

Wirtz v Orford & Another 2005 NR 175 (SC)(sections 7 and 13), approved in *Dresselhaus Transport CC v Government of the Republic of Namibia* 2005 NR 214 (SC) at 252D

S v Koch 2006 (2) NR 513 (SC)(section 14(1))

Gonschorek & Others v Asmus & Another 2008 (1) NR 262 (SC) (section 19(a))

Christian v Metropolitan Life Namibia Retirement Annuity Fund & Others 2008 (2) NR 753 (SC) (section 16)

M Pupkewitz & Sons (Pty)Ltd t/a Pupkewitz Megabuilt v Kurz 2008 (2) NR 775 (SC) (section 14)

Schroeder & Another v Solomon & Another 2009 (1) NR 1 (SC) (section 16).

Cases on Supreme Court Rules:

generally:

S v Strowitzki 2003 NR 145 (SC)(potential conflict with Constitution raised but not decided, at 156F-157A)

Channel Life Namibia Ltd v Otto 2008 (2) NR 432 (SC) (duty of practitioners to ensure that record is complete and compliant with rules of court discussed at 445F-ff)

Rule 3:

M Pupkewitz & Sons (Pty)Ltd t/a Pupkewitz Megabuilt v Kurz 2008 (2) NR 775 (SC)

Rule 5:

Wirtz v Orford & Another 2005 NR 175 (SC)

Meat Processors (Pty) Ltd t/a Namibia Meat v Nunes 2005 NR 431 (HC)

Gurirab v Government of the Republic of Namibia & Others 2006 (2) NR 485 (SC)
Channel Life Namibia Ltd v Otto 2008 (2) NR 432 (SC)
Kamwi v Duvenhage & Another 2008 (2) NR 656 (SC)
M Pupkewitz & Sons (Pty)Ltd t/a Pupkewitz Megabuilt v Kurz 2008 (2) NR 775 (SC)

Rule 8:

Kamwi v Duvenhage & Another 2008 (2) NR 656 (SC)

Rule 11:

Kamwi v Duvenhage & Another 2008 (2) NR 656 (SC)

Rule 13:

Afshani & Another v Vaatz [2003] NASC 7 SA 9/2002
(unreported)(discussion of contradictions of rule and need for amendment)

Rule 14:

Afshani & Another v Vaatz 2007 (2) NR 381 (SC) (effect of section 92(1) of Legal Practitioners Act 15 of 1995 on this rule)

Rule 18:

Kamwi v Duvenhage & Another 2008 (2) NR 656 (SC).

Articles: Raymond Heathcote, "Section 16 of the Supreme Court Act", *Namibia Law Journal*, Volume 1, Issue 1, 2009 available at www.namibialawjournal.org (discussing *Christian v Metropolitan Life Namibia Retirement Annuity Fund & Others* 2008 (2) NR 753 (SC) and *Schroeder & Another v Solomon & Another* 2009 (1) NR 1 (SC)).

High Court Act 16 of 1990.

Summary: This Act provides for the jurisdiction of the High Court of Namibia in accordance with Article 80 of the Namibian Constitution.

Amendments: Section 93 of the Legal Practitioners Act 15 of 1995 amends section 3. The Judicial Service Commission Act 18 of 1995 also amends section 3. The International Co-operation in Criminal Matters Act 9 of 2000 amends section 29. The Appeal Laws Amendment Act 10 of 2001 amends section 18. Act 3/2002 amends section 8.

Regulations: The Rules of the High Court are contained in GN 59/1990 (GG 90), as amended by GN 187/1992 (GG 549), GN 148/1993 (GG 757), GN 81/1996 (GG 1293), GN 182/1996 (GG 1350), GN 221/1997 (GG 1727), GN 69/1998 (GG 1829), GN 141/2006 (GG 3690) and GN 6/2008 (GG 3983). Sittings of the court and court terms are addressed in GN 60/1990 (GG 90) and GN 189/2000 (GG 2386).

Cases:

section 2:

Van As & Another v Prosecutor-General 2000 NR 271 (HC) (section 2 read together with section 16)

section 4:

National Union of Namibian Workers v Naholo 2006 (2) NR 659 (HC)

section 13:

Wirtz v Orford & Another 2005 NR 175 (SC)

section 16:

S v Campbell & Others 1990 NR 310 (HC)

Pietersen v Ohlthaver & List Retirement Fund & Another 1996 NR 255 (LC)
(discussion of section 16(d) in dicta)

Van As & Another v Prosecutor-General 2000 NR 271 (HC) (section 2 read together with section 16)

Seasonaire v Mahe Construction (Pty) Ltd 2002 NR 53 (HC)

National Union of Namibian Workers v Naholo 2006 (2) NR 659 (HC)

section 18:

S v Strowitzki 1994 NR 265 (HC) (section 18(2)(a)(i))

S v Delie (1) 2001 NR 181 (HC); *S v Delie (2)* 2001 NR 286 (SC)

Afshani & Another v Vaatz [2003] NASC 7 SA 9/2002 (unreported)(whether the decision of a judge in chambers in terms of Rule 48 constitutes a judgment or order under section 18)

Namibia Grape Growers and Exporters Association & Others v The Ministry of Mines and Energy & Others 2004 NR 194 (SC) (appeal against order for costs in terms of section 18(3))

Beukes v Peace Trust NLLP 2004 (4) 102 NLC (attributes of a judgement or order which is appealable under section 18(3))

Aussenkehr Farms (Pty) Ltd & Another v Minister of Mines and Energy & Another 2005 NR 21 (SC)

Wirtz v Orford & Another 2005 NR 175 (SC)

Meat Processors (Pty) Ltd t/a Namibia Meat v Nunes 2005 NR 431 (HC)

Vaatz: In re Schweiger v Gamikaub (Pty) Ltd 2006 (1) NR 161 (HC) (section 18(3))

S v Koch 2006 (2) NR 513 (SC) (section 18(1) discussed in dicta at 520-22)

JCL Civils Namibia (Pty) Ltd v Steenkamp 2007 (1) NR 1 (SC)

Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (1) NR 290 (SC)

Handl v Handl 2008 (2) NR 489 (SC)

Minister of Home Affairs, Minister Ekandjo v Van der Berg 2008 (2) NR 548 (SC)

M Pupkewitz & Sons (Pty) Ltd t/a Pupkewitz Megabuilt v Kurz 2008 (2) NR 775 (SC) (section 14)

section 19:

SOS Kinderdorf International v Effie Lentin Architects 1992 NR 390 (HC) (section 19(1))

MFV Kapitan Solyanik Ukrainian-Cyprus Insurance Co & Another v Namack International (Pty) Ltd 1999 (2) SA 926 (NmHC) (section 19(1))

S v Katuta 2006 (1) NR 61 (HC) (section 19(1)(b))

JCL Civils Namibia (Pty) Ltd v Steenkamp 2007 (1) NR 1 (SC)

section 20:

S v Gawanab 1997 NR 61 (HC)

Hitula v Chairperson of District Labour Court Windhoek & Another 2005 NR 83 (LC) (section 20 as applied *mutatis mutandis* by section 111, Labour Act 6 of 1992)

S v Handukene 2007 (2) NR 606 (HC) (section 20(1)(a))

section 30:

Nationwide Detectives & Professional Practitioners v Standard Bank of Namibia Ltd 2007 (2) NR 592 (HC), 2008 (1) NR 290 (SC) (Registrar's powers to tax a lay-litigant's bill of costs in terms of section 30(1))

generally:

S v Myburgh 2008 (2) NR 592 (SC) (High Court as only "competent court" for purposes of Article 25 of Constitution).

Cases on High Court Rules:

generally:

- Swanepoel v Marais & Others* 1992 NR 1 (HC)
- Adriaans v McNamara* 1993 NR 188 (HC)
- Johnston v Indigo Sky Gems (Pty) Ltd* 1997 NR 239 (HC)
- Ark Trading v Meridien Financial Services (Pty) Ltd* 1999 NR 230 (HC)
(discussion of importance of complying with rules of court)
- Van Zyl & Another v Smit & Another* 2007 (1) NR 314 (HC) (Practice Directives)
- Council of the Municipality of Windhoek v Bruni NO & Others* 2009 (1) NR 151 (HC) (Practice Directives)

Rule 4:

- Beauhomes Real Estate (Pty) Ltd t/a Re/max Real Estate Centre & Another v Namibia Estate Agents Board* 2008 (2) NR 427 (HC)

Rule 5(5):

- Vahekeni v Vahekeni* 2008 (1) NR 125 (SC)

Rule 6:

- Doeseb & Others v Kheibeb & Others* 2004 NR 81 (HC) (*ex parte* order in the form of an Anton Pillar)

Rule 6(1):

- Mahamat v First National Bank of Namibia Ltd* 1995 NR 199 (HC)
- Law Society of Namibia v Kamwi & Another* 2005 NR 91 (HC)

Rule 6(4):

- Transnamib v Essjay Ventures Limited* 1996 NR 188 (HC)
- Government of the Islamic Republic of Iran v Berends* 1997 NR 140 (HC)

Rule 6(5):

- Transnamib v Essjay Ventures Limited* 1996 NR 188 (HC)
- Coin Security Namibia (Pty) Ltd v Jacobs & Another* 1996 NR 279 (HC)
- Government of the Islamic Republic of Iran v Berends* 1997 NR 140 (HC)
- Seasonaire v Mahe Construction (Pty) Ltd* 2002 NR 53 (HC)
- Knouwds NO v Josea & Another* 2007 (2) NR 792g
- Ondjava Construction CC & Others v Haw Retailers* 2008 (1) NR 45 (HC)
- Shixwameni & Others v Congress of Democrats & Others* 2008 (1) NR 134 (HC)
- Hepute & Others v Minister of Mines and Energy & Another* 2008 (2) NR 399 (SC)
- Minister of Agriculture, Water and Forestry v O'Linn* 2008 (2) NR 792 (SC)
- Oshakati Tower (Pty) Ltd v Executive Properties CC & Others* 2009 (1) NR 99 (HC) (deals with Rule 6(5)(g) although this rule is not cited in the case)
- Council of the Municipality of Windhoek v Bruni NO & Others* 2009 (1) NR 151 (HC)

Rule 6(6):

- Vahekeni v Vahekeni* 2008 (1) NR 125 (SC)

Rule 6(11):

- Eimbeck v Inspector-General of the Namibian Police & Another* 1995 NR 13 (HC)
- Government of the Islamic Republic of Iran v Berends* 1997 NR 140 (HC)
- Gariseb v Bayerl* 2003 NR 118 (HC)

Rule 6(12):

- RL Civil Engineering v Ministry of Regional and Local Government and Housing & Another* 1998 NR 61 (HC)
- Swanepoel v Minister of Home Affairs & Others* 2000 NR 93 (HC)
- Bergmann v Commercial Bank of Namibia Ltd & Another* 2001 NR 48 (HC)
- Congress of Democrats & Others v Electoral Commission* 2005 NR 44 (HC)
- Sheehama v Inspector-General, Namibian Police* 2006 (1) NR 106 (HC)

Clear Channel Independent Advertising Namibia (Pty) Ltd & Another v Transnamib Holdings Ltd & Others 2006 (1) NR 121 (HC)
Habenicht v Chairman of the Board of Namwater Ltd & Others NLLP 2004 (4) 18 NHC (in labour law context)
Christian v Metropolitan Life Namibia Retirement Annuity Fund & Others 2008 (2) NR 753 (SC)

Rule 6(15):

Vaatz v Law Society of Namibia 1990 NR 332 (HC)
Cultura 2000 v Government of the Republic of Namibia 1992 NR 110 (HC)
Law Society of Namibia v Kamwi & Another 2005 NR 91 (HC)
Oshakati Tower (Pty) Ltd v Executive Properties CC & Others (2) 2009 (1) NR 232 (HC)

Rule 8(3):

Zhou v Hong 2006 (1) NR 84 (HC)

Rule 10:

The Municipality of Walvis Bay v The Occupiers of the Caravan Sites at the Long Beach Caravan Park Walvis Bay Republic of Namibia 2005 NR 2007 (HC)

Rule 12:

Ex Parte Sudurhavid (Pty) Ltd: In Re Namibia Marine Resources (Pty) Ltd v Ferina (Pty) Ltd 1992 NR 316 (HC)
Yam Diamond Recovery (Pty) Ltd in re Hofmeister v Basson & Others / Hofmeister v Basson & Others 1999 NR 206 (HC)
Namibia Insurance Association v Government of Namibia 2001 NR 1 (HC)
The Municipality of Walvis Bay v The Occupiers of the Caravan Sites at the Long Beach Caravan Park Walvis Bay Republic of Namibia 2005 NR 2007 (HC)

Rule 14:

Meridien Financial Services (Pty) Ltd v Ark Trading 1998 NR 48 (HC), confirmed in *Ark Trading v Meridien Financial Services (Pty) Ltd* 1999 NR 230 (HC)

Rule 15:

RL Civil Engineering v Ministry of Regional and Local Government and Housing & Another 1998 NR 61 (HC)
The Municipality of Walvis Bay v The Occupiers of the Caravan Sites at the Long Beach Caravan Park Walvis Bay Republic of Namibia 2005 NR 2007 (HC)
Nationwide Detectives and Professional Practitioners CC v Ondangwa Town Council 2009 (1) NR 308 (HC)

Rule 16:

S v Bushebi 1998 NR 239 (SC)
Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (1) NR 290 (SC) (right of individual who is not a legal practitioner to represent a one-person close corporation in court as its “alter ego”)

Rule 18:

Hepute & Others v Minister of Mines and Energy & Another 2008 (2) NR 399 (SC)

Rule 18(4):

Yam Diamond Recovery (Pty) Ltd in re Hofmeister v Basson & Others; Hofmeister v Basson & Others 1999 NR 206 (HC)
Namibia Beverages v Amupolo 1999 NR 303 (HC)
Makono v Nguvauva 2003 NR 138 (HC)
Coastal Fish Traders (Pty) Ltd v Wilson & Another 2006 (2) NR 573 (HC)

Rule 18(10):

- Hipandulwa v Kamupunya* 1993 NR 254 (HC)
- Rule 20(2):
Namibia Beverages v Amupolo 1999 NR 303 (HC)
- Rule 21(3):
Council of the Municipality of Windhoek v MW Coetzee t/a MW Coetzee Builders 1999 NR 129 (HC)
- Rule 22(3):
Makono v Nguvauva 2003 NR 138 (HC)
- Rule 23(1):
Gauseb v Minister of Home Affairs 1996 NR 90 (HC)
Council of the Municipality of Windhoek v MW Coetzee t/a MW Coetzee Builders 1999 NR 129 (HC)
- Rule 26:
Council of the Municipality of Windhoek v MW Coetzee t/a MW Coetzee Builders 1999 NR 129 (HC)
- Rule 27:
Adriaans v McNamara 1993 NR 188 (HC)
Xoagub v Shipena 1993 NR 215 (HC)
Transnamib v Essjay Ventures Limited 1996 NR 188 (HC)
Rothe v Asmus & Another 1996 NR 406 (HC)
S v Nakapela & Another 1997 NR 184 (HC)
Government of the Islamic Republic of Iran v Berends 1997 NR 140 (HC)
Johnston v Indigo Sky Gems (Pty) Ltd 1997 NR 239 (HC)
Seaflower Whitefish Corporation Ltd v Namibian Ports Authority 2000 NR 57 (HC)
The Nation (Pty) Ltd. v Meyer 2002 (2) 55 NHC
Vaatz: In re Schweiger v Gamikaub (Pty) Ltd 2006 (1) NR 161 (HC)
Dimensions Properties v Municipal Council of Windhoek 2007 (1) NR 288
China State Construction Engineering Corporation v Pro Joinery CC 2007 (2) NR (HC) (Rule 27(3): a procedural irregularity which constitutes a nullity cannot be condoned)
Solomon v De Klerk 2009 (1) NR 77 (HC)
- Rule 28:
South Bakels (Pty) Ltd & Another v Quality Products & Another 2008 (2) NR 419 (HC)
- Rule 28(1)-(2):
Meyer v Deputy Sheriff, Windhoek & Others 1999 NR 146 (HC)
- Rule 28(4):
Rothe v Asmus & Another 1996 NR 406 (HC)
Andreas v La Cock & Another 2006 (2) NR 472 (HC)
- Rule 28(6):
Commercial Bank of Namibia v Grobler 2002 NR 24 (HC)
- Rules 28(7):
Meyer v Deputy Sheriff, Windhoek & Others 1999 NR 146 (HC)
- Rule 30:
Gariseb v Bayerl 2003 NR 118 (HC)
Wirtz v Orford & Another 2005 NR 175 (SC)
Kamwi v Law Society of Namibia 2007 (2) NR 400 (HC)
China State Construction Engineering Corporation v Pro Joinery CC 2007 (2) NR (HC)
Ondjava Construction CC & Others v Haw Retailers 2008 (1) NR 45 (HC)
Beauhomes Real Estate (Pty) Ltd t/a Re/max Real Estate Centre & Another v Namibia Estate Agents Board 2008 (2) NR 427 (HC)

Christian t/a Hope Financial Services v Chairman of Namibia Financial Institutions Supervisory Authority & Others 2009 (1) NR 22 (HC)
(discussion of Rule 30 applications in passing)

Rule 31(2)(a):

Hipandulwa v Kamupunya 1993 NR 254 (HC)
Yam Diamond Recovery (Pty) Ltd in re Hofmeister v Basson & Others / Hofmeister v Basson & Others 1999 NR 206 (HC)
China State Construction Engineering Corporation v Pro Joinery CC 2007 (2) NR (HC)

Rule 31(2)(b):

Grüttemeyer NO v General Diagnostic Imaging 1991 NR 441 (HC)
Maia v Total Namibia 1998 NR 303 (HC)
Adriaans v McNamara 1993 NR 188 (HC)
Xoagub v Shipena 1993 NR 215 (HC)
Government of the Islamic Republic of Iran v Berends 1997 NR 140 (HC)
Mutjavikua v Mutual & Federal Insurance Company Ltd 1998 NR 57 (HC)
Namcon CC v Tula's Plumbing CC 2005 NR 39 (HC)
Mhungu v Commercial Bank of Namibia Ltd NLLP 2002 (2) 299 HC
Minister of Home Affairs, Minister Ekandjo v Van der Berg 2008 (2) NR 548 (SC)

Rule 32:

Commercial Bank of Namibia Ltd v Trans Continental Trading (Namibia) & Others 1991 NR 135 (HC)
Rule 32(3)(b): *Standard Bank of Namibia Ltd v Veldsman* 1993 NR 391 (HC)
Kühn v Levey & Another 1996 NR 362 (HC)
Kramp v Rostami 1998 NR 79 (HC)
Namibia Petroleum (Pty) Ltd v Vermaak 1998 NR 155 (HC)
Bank Windhoek Ltd v Kessler 2001 NR 234 (HC)
Bierman NO v Combrink 2006 (2) NR 447 (HC)
Namibia Breweries Limited v Serrao 2007 (1) NR 49 (HC)
Kamwi v Ministry of Finance 2007 (1) NR 167 (HC)
Ritz Reise (Pty) Ltd v Air Namibia (Pty) Ltd 2007 (1) NR 222 (HC)
Namibia Airports Company Ltd v Conradie 2007 (1) NR 375 (HC)
Mauno Haindongo t/a Omawa Wholesalers v African Experience (Pty) Ltd 2006 (1) NR 56 (HC)
Gamikaub (Pty) Ltd v Schweiger 2008 (2) NR 464 (SC)
Easy Life Management (Cape)(Pty) Ltd & Another v Easy Fit Cupboards Windhoek CC & Others 2008 (2) NR 686 (HC)

Rule 33:

Freiremar SA v The Prosecutor-General of Namibia & Another 1996 NR 18 (HC)
Van As & Another v Prosecutor-General 2000 NR 271 (HC)

Rule 34 (10):

Prior t/a Pro Security v Jacobs t/a Southern Engineering 2007 (2) NR 564 (HC)

Rule 35:

South African Sugar Association v Namibia Sugar Distributors (Pty) Ltd 1999 NR 241 (HC)
Waltraut Fritzsche t/a Reit Safari v Telecom Namibia Ltd 2000 NR 201 (HC)
Bank Windhoek Ltd v Kessler 2001 NR 234 (HC)
Kanyama v Cupido 2007 (1) NR 216 (HC)
Kauaaka & Others v St Phillips Faith Healing Church 2007 (1) NR 276 (HC)
Marco Fishing (Pty) Ltd v Government of the Republic of Namibia & Others 2008 (2) NR 742 (HC)

Rule 39:

- Christian v Metropolitan Life Namibia & Another* 2007 (1) NR 255 (HC)
(exception to rule that party seeking postponement is responsible for wasted costs)
- Rule 40(6):
Aluminium City CC v Scandia Kitchens & Joinery (Pty) Ltd 2007 (2) 494 (HC)
- Rule 42:
Nationwide Detectives & Professional Practitioners v Standard Bank of Namibia Ltd 2007 (2) NR 592 (HC), 2008 (1) NR 290 (SC)
Prosperita Glass CC t/a Mr Glass v Pretorius t/a Ben Pretorius Building Contractor 2008 (1) NR 368 (HC)
National Housing Enterprise v Beukes & Others 2009 (1) NR 82 (LC)
- Rule 43:
Eger v Eger 1997 NR 126 (HC)
Dreyer v Dreyer 2007 (2) NR 553 (HC)
- Rule 43:
Handl v Handl 2008 (2) NR 489 (SC)
- Rule 44:
Grüttemeyer NO v General Diagnostic Imaging 1991 NR 441 (HC)
Sylvie McTeer Properties v Kuhn & Others 2005 NR 519 (HC)
Schacht v Schweiger 2007 (1) NR 62 (HC)
Kamwi v Law Society of Namibia 2007 (2) NR 400 (HC)
De Villiers v Axiz Namibian (Pty) Ltd 2009 (1) NR 40 (HC)
- Rule 45:
Appolus v Shipanga & Others 1992 NR 273 (HC)
Hindjou v The Government of the Republic of Namibia 1997 NR 112 (SC)
Deputy Sheriff of Gobabis v Eiman & Another 1999 NR 310 (HC)
Jantjies v Jantjies & Another 2001 NR 26 (HC)
- Rule 45(12):
Bank Windhoek Ltd v Kusch 2003 NR 67 (HC)
- Rule 47:
Telecom Namibia & Another v Mwellie 1996 NR 289 (HC)
Cellphone Warehouse (Pty) Ltd v Mobile Telecommunications Ltd 2002 NR 318 (HC)
Hepute & Others v Minister of Mines and Energy & Another 2007 (1) NR 124 (HC), 2008 (2) NR 399 (SC)
- Rule 48:
Vaatz v Law Society of Namibia 1993 NR 465 (HC)
Afshani & Another v Vaatz [2003] NASC 7 SA 9/2002 (unreported)(whether the decision of a judge in chambers in terms of Rule 48 constitutes a judgment or order under section 18)
Pinkster Gemeente Van Namibia v Navolgers Van Christus Kerk SA 2002 NR 14 (HC)
- Rule 49:
Vaatz: In re Schweiger v Gamikaub (Pty) Ltd 2006 (1) NR 161 (HC)
- Rule 49(6)(a):
Maia v Total Namibia 1998 NR 303 (HC)
- Rule 49(11):
Deputy Sheriff for Caprivi Region v Mboози 2005 NR 172 (HC)
- Rule 49(13):
Telecom Namibia & Another v Mwellie 1996 NR 289 (HC)
Louw v Chairperson of the District Labour Court, Windhoek & Others 2001 NR 197 (HC) (Rule 49(13) declared unconstitutional)
- Rule 51:
S v Tjiho 1991 NR 361 (HC)

Rule 53:

Van der Berg v Chairman of the Disciplinary Committee (Oranjemund) of Consolidated Diamond Mines (Pty) Ltd & Others 1991 NR 417 (HC)
S v Gawanab 1997 NR 61 (HC)
Aonin Fishing (Pty) Ltd & Another v Minister of Fisheries and Marine Resources 1998 NR 147 (HC)
Open Learning Group Namibia Finance CC v Permanent Secretary, Ministry of Finance & Others 2006 (1) NR 275 (HC)
Immanuel v Minister of Home Affairs & Another 2006 (2) NR 687 (HC)
Mbanderu Traditional Authority & Another v Kahurre & Others 2008 (1) NR 55 (SC)
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)

Rule 54:

Pietersen-Diergaardt v Fischer 2008 (1) NR 307 (HC) (condonation of breaches of this rule)

Rule 58:

Katuematima v Tjaveandja & Others 1996 NR 339 (HC)

Rule 60:

Yam Diamond Recovery (Pty) Ltd in re Hofmeister v Basson & Others / Hofmeister v Basson & Others 1999 NR 206 (HC)
Zhou v Hong 2006 (1) NR 84 (HC)
S v Malumo & 116 Others (No 3) 2008 (2) NR 512 (HC)

Rule 62(4):

Motor Vehicle Accident Fund v Gerber 2004 NR 119 (HC)

Rule 63:

Kramp v Rostrami 1998 NR 79 (HC)
Ekanjjo-Imalwa v The Law Society of Namibia & Another; The Law Society of Namibia & Another v The Attorney-General of the Republic of Namibia & Others 2003 NR 123 (HC)
Zhou v Hong 2006 (1) NR 84 (HC)

Rule 69(3):

Channel Life Namibia Limited v Finance in Education (Pty) Ltd 2004 NR 125 (HC)

Rule 70:

Vaatz v Law Society of Namibia 1993 NR 465 (HC)
Hameva & Another v Minister of Home Affairs, Namibia 1996 NR 380 (SC).
Pinkster Gemeente Van Namibia v Navolgers Van Christus Kerk SA 2002 NR 14 (HC)
Nate Ndauendapo & Associates v Aussenkehr Farms (Pty)Ltd & Others 2007 (1) NR 162 (HC)
Nationwide Detectives & Professional Practitioners v Standard Bank of Namibia Ltd 2007 (2) NR 592 (HC) (Rule 70 read with Sixth Schedule prescribed by GN 141/2006)

other:

Channel Life Namibia Limited v Finance in Education (Pty) Ltd 2004 NR 125 (HC) (costs in an urgent application where parties agreed not to proceed; application of rule that a party should at the earliest opportunity take all steps to end litigation or curtail costs associated with it)
Christian v Metropolitan Life Namibia Retirement Annuity Fund & Others 2008 (2) NR 753 (SC) (Practice Directions 1/2002 and 1/2007; whether Practice Directives generally binding on lay litigants discussed in *dicta* at 771).

Reciprocal Service of Civil Process Act 27 of 1994.

Summary: This Act provides for the reciprocal service of process in civil matters in Namibian and in designated countries.

Regulations: The Republic of South Africa is declared to be a designated country in terms of section 2(1) of the Act by GN 113/1995 (GG 1095).

Enforcement of Foreign Civil Judgements Act 28 of 1994.

Summary: This Act provides that civil judgements granted in designated countries may be enforced in magistrates' courts in Namibia. It replaces the *Reciprocal Enforcement of Civil Judgements Act 9 of 1966*.

Amendments: The International Co-operation in Criminal Matters Act 9 of 2000 amends section 1.

Regulations: The Republic of South Africa is declared to be a designated country in terms of section 2(a) of the Act by GN 112/1995 (GG 1095).

Community Courts Act 10 of 2003.

Summary: This Act provides for the recognition and establishment of community courts, and the application of customary law by these courts. It sets the jurisdiction and procedure of community courts, and provides an appeal procedure. This Act repeals Proclamation No. R.348 of 1967, Proclamation No. R.320 of 1970, Proclamation No. 160 of 1975, Ordinance No. 2 of 1986, and Ordinance No. 3 of 1986. It came into operation on 17 November 2003 (GN 236/2003, GG 3095).

Regulations: Regulations are contained in GN 237/2003 (GG 3095). The period for application for recognition as community court is set as 17 November 2003-31 March 2004 in GN 238/2003 (GG 3095), and extended to 31 December 2004 by GN 52/2004 (GG 3176).

Establishment of community courts: Community courts are established in GN 86-114 (GG 4262) and GN 52-61/2010 (GG 4450). These notices also designate areas of jurisdiction and appoint assessors and justices.

Articles: N Horn, "Criminal or Civil Procedure? The Possibility of a Plea of *Autrefois* in the Namibian Community courts Act" 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.

Magistrates Act 3 of 2003.

Summary: This Act provides for the establishment of a Magistrates Commission and establishes a magistracy outside the Public Service. Part II of the Act came into force on 20 June 2003, and the remainder of the Act came into force on 30 June 2003 (GN 125/2003, GG 3001).

Amendments: Act 23/2003 amends section 11 of the Act. Act 5/2009 (GG 4307) amends sections 1 and 11, and substitutes the expression “Chief Magistrate” for “Chief: Lower Courts” and ‘Chief of lower courts’.

Regulations: “Regulations regarding Magistrates”, which came into operation on 30 June 2003, are contained in GN 130/2003 (GG 3007). The remuneration of magistrates is increased in GN 44/2009 (GG 4236).

Appointments: The members of the Magistrates’ Commission are announced in GN 153/2009 (GG 4310).

Cases: *Mostert & Another v The Magistrates’ Commission & Another* 2005 NR 491 (HC) (section 5); *Alexander v Minister of Justice & Others* 2009 (2) NR 712 (HC) (section 11(7)); appointment of acting magistrates by Magistrates Commission is generally constitutional, but appointment of Chief: Lower Courts as acting magistrate is impermissible violation of independence of judiciary).

UNIFORM RULES OF COURT

The **Uniform Rules of Court** are no longer applicable in Namibia. However, cases concerning these rules may contain information which is useful for the interpretation of other court rules and so are listed here:

Rule 6(11):

Krauer & Another v Metzger (1) 1990 NR 41 (HC)

Rule 6(12)(b):

Salt & Another v Smith 1990 NR 87 (HC)

Rule 31(2)(b):

Krauer & Another v Metzger (1) 1990 NR 41 (HC)

Krauer & Another v Metzger (2) 1990 NR 135 (HC)

Maia v Total Namibia (Pty) Ltd 1990 NR 216 (HC)

SOS-Kinderdorf International v Effie Lentin Architects 1990 NR 300 (HC)

Argos Fishing Company Ltd v Friopesca SA 1991 NR 106 (HC)

SOS Kinderdorf International v Effie Lentin Architects 1992 NR 390 (HC)

Rule 45(1):

Namib Building Society v Du Plessis 1990 NR 161 (HC)

Rule 53:

Federal Convention of Namibia v Speaker, National Assembly of Namibia & Others 1991 NR 69 (HC)

Booyesen v Kalokwe NO & Others 1991 NR 95 (HC)

Rule 63:

De Roeck v Campbell & Others (1) 1990 NR 28 (HC).

SELECTED ARTICLES

Law Reform and Development Commission, *Report on Small Claims Courts* (LRDC 6)

Nico Horn & Anton Boesl, *The Independence of the Judiciary in Namibia*, Konrad Adenauer Stiftung, 2008, available at www.kas.de/proj/home/pub/8/2/year-2008/dokument_id-15058/index.html.

INTERNATIONAL LAW

SADC Protocol on the Tribunal and the Rules of Procedure thereof, 2000

(entered into force within SADC on 14 August 2001) (source: SADC; www.sadc-tribunal.org)

signature: 7 August 2000 (source: SADC)

ratification: 2 October 2001 (source: SADC; Ministry of Foreign Affairs)

SADC Agreement Amending the Protocol on the Tribunal, 2002

entered into force within SADC on 3 October 2002 (source: SADC)

signature: 3 October 2002 (source: SADC; www.sadc-tribunal.org)

SADC Agreement Amending the Protocol on the Tribunal, 2007

entered into force within SADC on 17 August 2007 (source: SADC)

signature: 17 August 2007 (source: SADC; www.sadc-tribunal.org)

SADC Agreement Amending Article 6 of the Protocol on Tribunal, 2008

entered into force within SADC on 17 August 2008 (source: SADC)

signature: 17 August 2008 (source: SADC; www.sadc-tribunal.org)

Note:

In the original 1992 SADC Treaty Article 16 on the Tribunal stated:

1. The Tribunal shall be constituted to ensure adherence to and the proper interpretation of the provisions of this Treaty and subsidiary instruments and to adjudicate upon such disputes as may be referred to it.

2. The composition, powers, functions, procedures and other related matters governing the Tribunal shall be prescribed in a Protocol adopted by the Summit.

3. Members of the Tribunal shall be appointed for a specified period.

4. The Tribunal shall give advisory opinions on such matters as the Summit or the Council may refer to it.

5. The decisions of the Tribunal shall be final and binding.

The 2000 SADC Summit adopted a Tribunal Protocol which included requirements that it must be ratified in Article 35. It was also specified in Article 38 that the Protocol would “come into force” only after two thirds of SADC Members had ratified it. However, after the underlying SADC Treaty was amended in 2001, Article 16 on the Tribunal stated:

1. The Tribunal shall be constituted to ensure adherence to and the proper interpretation of the provisions of this Treaty and subsidiary instruments and to adjudicate upon such disputes as may be referred to it.

2. The composition, powers, functions, procedures and other related matters governing the Tribunal shall be prescribed in a Protocol, which shall, notwithstanding the provisions of Article 22 of this Treaty, form an integral part of this Treaty, adopted by the Summit.

3. Members of the Tribunal shall be appointed for a specified period.

4. The Tribunal shall give advisory opinions on such matters as the Summit or the Council may refer to it.

5. The decisions of the Tribunal shall be final and binding.

As a result, the 2000 Tribunal Protocol came into force on 14 August 2001, the effective date of the amendments to the SADC Treaty.

In 2002, to end any uncertainty and to bring the Tribunal Protocol in line with the 2001 amendments to the SADC Treaty, the SADC Summit accepted an amendment to the Tribunal Protocol to cancel its requirement for ratification by Member States, deleting Articles 35 and 38.

Similarly, Article 37 of the 2000 Tribunal Protocol makes the following provision for amendments:

1. Any State which is a Party to this Protocol may propose an amendment thereto.

2. Proposals for amendment to this Protocol may be made to the Executive Secretary who shall duly notify all States of the proposed amendment or amendments at least thirty (30)

days in advance of consideration of the amendment by the Committee of Ministers. Such period of notice may be waived by the States.

3. *An amendment to this Protocol shall be adopted by a decision of three (3) quarters of all the members of the Summit who are Parties to this Protocol, and shall become effective subject to Article 36 of this Protocol.*

After the 2002 amendments, Article 37 read as follows:

1. *Any Member State may propose an amendment to this Protocol.*
2. *Proposals for amendment to this Protocol may be made to the Executive Secretary who shall duly notify all Member States of the proposed amendments at least thirty (30) days in advance of consideration of the amendment by Member States but such period of notice may be waived by Member States.*
3. *Amendments to this Protocol shall be adopted by a decision of three quarters of all the Members of the Summit and shall become effective within thirty (30) days after such adoption.*

www.sadc-tribunal.org/docs/Protocol_on_Tribunal_and_Rules_thereof.pdf
www.thestandard.co.zw/opinion/21583-chinamasa-wrong-on-sadc-tribunal-pull-out.html

Articles: Oliver C Ruppel and Francois X Bangamwabo, “The SADC Tribunal: a legal analysis of its mandate and role in regional integration”, in Anton Boesl and Trudi Hartzenberg, eds, *Monitoring Regional Integration in Southern Africa Yearbook 2008*, Konrad Adenauer Stiftung, available at www.kas.de/upload/auslandshomepages/namibia/MRI2008/MRI2008_08_Ruppel.pdf ; Karin Klazen, “Towards a Southern African Development Community: The SADC Tribunal and its recent cases”, *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.namibialawjournal.org.

See also *Criminal Procedure Act 51 of 1977* (**CRIMINAL LAW AND PROCEDURE**).

See also *Extradition Act 11 of 1996* (**CRIMINAL LAW AND PROCEDURE**).

See also **EVIDENCE**.

See also **JUDGES**.

See also *Amendment of Execution (Mortgaged Properties) Proclamation 6 of 1933* (re: execution of judgements in respect of immovable property) (**LAND**).

See also **LAW**.

See also **LEGAL PRACTITIONERS**.

CRIMINAL LAW AND PROCEDURE

Vagrancy Proclamation 25 of 1920.

Summary: This Proclamation is directed at suppressing trespass, idleness and vagrancy.

Amendments: The Proclamation is amended by Proc. 32/1927 and Ord. 3/1962. It was extended to the Rehoboth Gebiet by Proc. 7/1939.

Police Offences Proclamation 27 of 1920.

Summary: This Proclamation criminalises a miscellany of activities, primarily nuisances such as littering and swearing.

Amendments: This Proclamation is amended by Ord. 3/1962, Ord. 15/1962, Act 21/1980 and the RSA *Prohibition of Disguises Act 16 of 1969*. It was modified and applied to the Rehoboth Gebiet by Proc. 5/1937.

Cases: *S v Boois*; *S v Thomas* 1991 NR 455 (HC); *S v Kamudulunge* 2007 (2) NR 608 (HC) (competent sentence for contravention of section 9(1)).

Finance and Audit Ordinance 1 of 1926.

Summary: Only section 24D remains in force. This section provides that the government may pay a reward to informers whose information assists in law enforcement relating to illegal dealing in precious stones or metals.

Amendments: The Ordinance was extended to the Rehoboth Gebiet by Proc. 12/1930. Act 1/1982 repeals all of the Ordinance *except* sections 24D and 26A.

The Tender Board of Namibia Act 16 of 1996 repeals section 26A, leaving only section 24D in force. Section 24D is amended by Act 14/1973 and Ord. 28/1969.

Witchcraft Suppression Proclamation 27 of 1933.

Summary: This Proclamation attempts to suppress witchcraft by criminalising various activities.

Amendments: The Proclamation was extended to the Rehoboth Gebiet by Proc. 12/1936.

Price Control Admissions of Guilt Proclamation 40 of 1944.

Summary: This Proclamation has been superseded by the *Criminal Procedure Act 51 of 1977* which deals comprehensively with all admissions of guilt. However, the Proclamation has not been technically repealed.

Amendments: The Proclamation is amended by Ord. 11/1954 and Ord. 17/1958.

Criminal Law Amendment Act 8 of 1953, as amended in South Africa to November 1979.

Summary: This Act provides special increased penalties for offences committed in the course of protests or campaigns against any law of the Republic.

Applicability to SWA: This Act was not made specifically applicable to South West Africa. However, section 8 indicates that the Act applies to South West Africa by providing special instructions for the removal of “undesirable inhabitants” of the Territory of South West Africa.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979. There were no amendments to the Act in South Africa after the date of transfer. The Act was repealed in South Africa by section 73 of the *Internal Security Act 74 of 1982*, which was not applicable to South West Africa.

Amendments: The Second Law Amendment (Abolition of Discriminatory or Restrictive Laws for the Purposes of Free and Fair Election) Proclamation (AG 25/1989) repeals sections 8 and 9 of this Act.

Cases: *Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State*, 1991 NR 178 (SC) (sections 1 and 2).

General Law Amendment Ordinance 12 of 1956, sections 6-8.

Summary: Sections 6-8 of this Ordinance deal with stolen goods.

Amendments: This portion of the Act is amended by Ord. 36/1965.

Cases:

- S v Kakulu* 1990 NR 282 (HC)
- S v Thomas* 1990 NR 352 (HC)
- S v Kamati* 1991 NR 116 (HC)
- S v Shikwetepo & Another* 1993 NR 356 (HC)
- S v Greenwood* 1994 NR 1 (HC)
- S v David* 1994 NR 39 (HC)
- S v Kapolo* 1995 NR 129 (HC)
- S v Gaogoseb* 1995 NR 165 (HC)
- S v Abraham* 1997 NR 59 (HC)
- S v Nakapela & Another* 1997 NR 184 (HC)
- S v Aixas & Another* 2007 (1) NR 46 (HC).

Riotous Assemblies Act 17 of 1956, as amended in South Africa to November 1979.

Summary: Most of this Act was repealed in 1982. The remaining sections give the State President power to regulate the transportation of explosives and deal with the

criminal offences of incitement to public violence, conspiracy, attempted crimes, and inducement to commit crimes.

Applicability to SWA: Section 19A, which has not been repealed, 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, as amended), dated 12 November 1979.

Section 3(1)(f) of the transfer proclamation excluded the term “Republic” from the provisions of section 3(1)(c) of the General Proclamation *except* where it occurs for the second and third times in section 5 of the Act. Therefore, “Republic” retained the meaning it was given in the definition section of the Act (South Africa and SWA) *except* in the indicated places in section 5, where it meant only SWA.

After the date of transfer, much of the Act was repealed by the *Intimidation Act 72 of 1982*, which was applicable to SWA by virtue of AG 29/1985. Other portions of the Act were repealed in South Africa by the *Internal Security Act 74 of 1982*, which was not applicable to SWA. Therefore the Act applied to South West Africa as it stood after Act 72 of 1982, but before Act 74 of 1982.

Amendments: The Riotous Assemblies Amendment Proclamation (AG 10/1977) repeals sections 4 and 19 and amends sections 1, 2, 3 and 7. The First Law Amendment (Abolition of Discriminatory or Restrictive Laws for the Purposes of Free and Fair Election) Proclamation (AG 14/1989) repeals sections 2, 6 and 7(1)(a), amends section 4 (which had already been repealed by AG 10/1977), and amends section 5 and section 7(1)(b). The Public Gatherings Proclamation (AG 23/1989) repeals sections 1, 3, 5, 7, 8 and 9.

Thus, the only remaining sections of the Act are sections 16, 17, 18, 19A, 20 and 21.

Cases: *S v Campbell & Others* 1990 NR 310 (HC); *Awaseb, Geinub, Lange v S*, High Court, Case No. CA 46/2003 (unreported).

General Law Amendment Ordinance 13 of 1962, section 9.

Summary: Section 9 of this Ordinance sets forth the criminal offences of attempt, conspiracy and inducing another to commit an offence.

Criminal Procedure Ordinance 34 of 1963.

Summary: Only sections 300(3) and 370 are still in force. Section 300(3) makes it a criminal offence to give two conflicting statements under oath. Section 370 deals with the binding over of persons to keep the peace. The other sections of the Ordinance have been repealed by the *Criminal Procedure Act 51 of 1977*. (These sections are the South West African counterparts of sections 319(3) and 384 of the *Criminal Procedure Act 55 of 1956* applicable in South Africa.)

Cases: *S v Somses* 1999 NR 296 (HC) (section 300(3)); *S. v Gariseb* 2002 NR 112 (HC) (section 300(3)).

Gambling Act 51 of 1965.

Summary: This Act prohibits lotteries, sports pools and games of chance.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 12 states “This Act (with the exception of section thirteen) shall apply also in the territory of South West Africa (including the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and in relation to all persons 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 said territory”. (The excluded section is an amendment to another Act.)

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979. There were no amendments to the Act in South Africa prior to Namibian independence.

Amendments: The Posts and Telecommunications Companies Establishment Act 17 of 1992 repeals section 13.

The application of the Act is affected by the Casinos and Gambling Houses Act 32 of 1994 and the Lotteries Act 15 of 2002. (See also the Licensing of Totalisators Ordinance 5 of 1938.)

Prohibition of Disguises Act 16 of 1969, as amended in South Africa prior to Namibian independence.

Summary: This Act sets forth penalties for being in disguise in suspicious circumstances.

Applicability to SWA: Section 3 states “This Act and any amendment thereof which may be made from time to time, shall apply also in the territory of South West Africa, including that part of the said territory known as the Eastern Caprivi Zipfel and defined in the Eastern Caprivi Zipfel Administration Proclamation, 1939 (Proclamation No. 147 of 1939 of the Republic).”

Transfer of administration to SWA: It is not clear what transfer proclamation, if any, applied to this Act. In any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Criminal Procedure Act 51 of 1977, as amended in South Africa to November 1979.

Summary: This Act governs procedure in criminal proceedings.

Applicability to SWA: Section 1 defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”. “State”, in relation to a department of State, is defined to include “the Administration of the territory”. Section 343 states “This Act shall apply also in the territory, including the Eastern Caprivi Zipfel.”

The wording of section 343 did not make amendments to the Act in South Africa automatically applicable to SWA, but they may have been applicable by virtue of the definition of “Republic” in section 1 of the Act. None of the amendments to the Act in South Africa prior to Namibian independence were made expressly applicable to SWA.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979.

Section 3(1)(t) of the transfer proclamation (as amended) excluded the following provisions of the principal Act from the operation of section 3(1) of the General Proclamation:

- sections 77, 78 and 79 (except 79(11)): These provisions concern the capacity of the accused to understand proceedings, *i.e.* mental illness and criminal responsibility. (Section 79(11) concerns the tariff used to compensate a court psychiatrist. It is *not* excluded from the operation of section 3(1), meaning that here “Minister” was interpreted to mean Administrator-General.)
- section 106(1)(e): Under this provision, an accused may plead that he has received a free pardon from the State President under section 327(b), which is similarly excluded from the operation of section 3(1).
- section 111: This section allows the Minister to remove trials to the jurisdiction of another attorney-general.
- section 279(1)(b), (2) and (3): These provisions deal with the commutation of death sentences by the State President.
- section 323: This section concerns the ability of the Minister of Justice to refer a case where the death sentence has been imposed to the Appellate Division for consideration.
- section 325: This section concerns the State President’s power to extend mercy to any person.
- section 327: This section concerns the State President’s power to issue a pardon or substitute a verdict of the court.
- section 333: Under this provision, the Minister of Justice may refer questions to the Appellate Division on a question of law.

These powers were not transferred to the Administrator-General.

Section 3(1)(t) of the transfer proclamation also exempted the following sections from the operation of section 3(1)(c) of the General Proclamation (concerning the interpretation of the term “Republic”):

- section 3: This section establishes the Attorney-General as the prosecuting authority for the State.
- section 212(4)(a): This section deals with proof of certain facts by affidavit or certificate.
- section 229: This section deals with evidence of times of sunrise and sunset. (“Republic” is excluded from the operation of section 3(1)(c) only the first time it occurs here.)
- section 328: This section concerns the enforceability of a warrants, subpoenas, summons, etc. executed within the Republic.

Thus, “Republic” in the indicated places in these provisions retained the meaning it was given in the definition section of the Act (South Africa and SWA).

Section 3(1)(t) of the transfer proclamation also excluded from the operation of section 3(1) of the General Proclamation all references to the “State,” in relation to

the authority to institute and conduct a prosecution and to make seizures.

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Amendments: The Criminal Procedure Amendment Act 15 of 1981, which is brought into operation by AG 31/1981, amends sections 114 and 116.

The Police Amendment Proclamation (AG 21/1983) affects the application of section 20.

The Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended by AG 24/1983) affects the application of section 3.

The Appeals Amendment Act 29 of 1985, which is brought into operation by AG 19/1986, amends sections 315-319 and 323.

The Criminal Procedure Matters Act 31 of 1985 amends the Act substantially (affects sections 24, 37, 42, 55, 56, 57, 60, 68A, 112, 119, 121, 145, 146, 169, 170, 188, 262, 296, 297, 300, 302, 307, Schedule 2 (Part II)).

The Criminal Procedure Amendment Act 5 of 1991 amends several provisions relating to bail (sections 59, 60, 61, 68, 72, 307 and Schedule 2).

The Criminal Procedure Amendment Act 26 of 1993 amends the Act to allow appeals by either party to the High Court and the Supreme Court (sections 310, 311, 316, 316A, 320, 321, 322).

The Combating of Rape Act 8 of 2000 amends sections 1, 60A, 62, 153, 154 and 227 of the Act, and inserts sections 211A and 227A.

The International Co-operation in Criminal Matters Act 9 of 2000 amends sections 171-173.

The Appeal Laws Amendment Act 10 of 2001 substitutes section 315 and amends section 316.

The Combating of Domestic Violence Act 4 of 2003 amends sections 60A, 62 and 153.

The Maintenance Act 9 of 2003 amends section 195.

The Criminal Procedure Amendment Act 24 of 2003 inserts sections 158A and 216A and amends sections 164, 166, 212 (dealing with vulnerable witnesses and related matters).

Regulations: Peace officers are declared in RSA GN R.159 of 2 February 1979, AG GN 85/1989, GN 92/2001 (GG 2530) which is amended by GN 241/2003 (GG 3102) and GN 74/2003 (GG 2946). Road inspectors are declared peace officers in terms of offences relating to road transportation in GN 219/1996 (GG 1395) and in GN 92/2001 (GG 2530). See also GN 206/2008 (GG 4113), which declares traffic officers appointed under the Road Traffic and Transport Act to be peace officers in respect of certain offences.

Cases:

- section 3:
Ex Parte Attorney-General In Re: The Constitutional Relationship Between the Attorney-General and the Prosecutor-General 1998 NR 282 (SC)
 (section 3(5) unconstitutional)
- section 6:
S v Hausiko 1992 NR 225 (HC)
- section 10:
S. v Noble 2002 NR 67 (HC)
- section 20:
Samco Import & Export CC & Another v Magistrate of Eenhana & Others
 2009 (1) NR 290 (HC)
- section 21:
S v Diergaardt 2000 NR 78 (HC)
Swanepoel v Minister of Home Affairs & Others 2000 NR 93 (HC)
Samco Import & Export CC & Another v Magistrate of Eenhana & Others
 2009 (1) NR 290 (HC)
- section 22:
S v Diergaardt 2000 NR 78 (HC)
- section 35:
Banco Exterior De Espana SA & Another v Government of the Republic of Namibia & Another 1996 NR 1 (HC)
- section 37:
S v Ndikwetepo & Others 1992 NR 232 (SC)
S v Eigowab 1994 NR 192 (HC)
S v Malumo & Others 2006 (2) NR 629 (HC)
- section 39:
S v Boois; S v Thomas 1991 NR 455 (HC)
S v Araeb 2006 (2) NR 569 (HC) (law on arrest discussed in connection with charge of escape from lawful custody)
- section 40:
De Jager v Government of the Republic of Namibia & Another 2006 (1) NR 198 (HC)
S v Kazondandona 2007 (2) NR 394 (HC)
McNab & Others v Minister of Home Affairs & Others 2007 (2) NR 531 (HC)
- section 42:
S v Coetzee 1993 NR 313 (HC)
- section 43:
Swanepoel v Minister of Home Affairs & Others 2000 NR 93 (HC)
- section 49:
S v William 1992 NR 268 (HC)
S v Coetzee 1993 NR 313 (HC)
S v Mwinga & Others 1995 NR 166 (SC)
S v Johannes 2009 (2) NR 579 (HC)
- section 50:
S v Mbahapa 1991 NR 274 (HC)
Garces v Fouche & Others 1997 NR 278 (HC)
Minister of Home Affairs v Bauleth 2004 NR 68 (HC)
Getachew v Government of the Republic of Namibia 2006 (2) NR 720 (HC),
 2008 (1) NR 1 (SC)
- section 51:
S v Matsuis 1993 NR 234 (HC)
S v Matthias 1993 NR 420 (HC)
- section 60 (bail):
S v Acheson 1991 NR 1 (HC)

- S v Aikela* 1992 NR 30 (HC)
- S v Du Plessis & Another* 1992 NR 74 (HC)
- S v Hendriks* 1992 NR 382 (HC)
- Garces v Fouche & Others* 1997 NR 278 (HC)
- S v Pineiro & Others* 1999 NR 18 (HC)
- S v Swartbooi* 2003 NR 143 (HC)
- S v Yugin & Others* 2005 NR 196 (HC)
- section 61:
 - S v Aikela* 1992 NR 30 (HC)
 - S v Du Plessis & Another* 1992 NR 74 (HC)
 - S v Pineiro & Others* 1999 NR 18 (HC)
 - Gurirab v Government of The Republic of Namibia & Others* 2002 NR 114 (HC); 2006 (2) NR 485 (SC)
 - S v Gaseb* 2007 (1) NR 310 (HC)
- section 62:
 - S v Aikela* 1992 NR 30 (HC)
- section 63:
 - S v Aikela* 1992 NR 30 (HC)
- section 65:
 - S v Du Plessis & Another* 1992 NR 74 (HC)
 - S v Timotheus* 1995 NR 109 (HC)
 - S v Gaseb* 2007 (1) NR 310 (HC)
- section 67:
 - S v Swartbooi* 1990 NR 389 (HC)
 - S v Lukume* 2000 NR 115 (HC)
 - S v Muronga* 2004 NR 134 (HC) (powers of magistrate where accused fails to appear after release on bail)
 - S v Paulus* 2007 (2) NR 622 (HC) (no authority under this section to convict accused on bail who fails to appear in court of contempt of court)
- section 68:
 - S v Aikela* 1992 NR 30 (HC)
- section 72:
 - Minister of Home Affairs v Bauleth* 2004 NR 68 (HC)
- section 73:
 - S v Mwambazi* 1991(2) SACR 149 (Nm)
 - S v Bruwer* 1993(2) SACR 306 (Nm)
 - S v Lukas* 1999 NR 394 (HC)
 - S v M* 2006 (1) NR 156 (HC)
- section 74:
 - S v Shivute & Several Other Cases* 1991 NR 433 (HC) at 439
 - S v Kilika & Others* 1992 NR 25 (HC)
 - S v Lambert* 1993 NR 303 (HC)
 - S v Lukas* 1999 NR 394 (HC)
 - S v M* 2006 (1) NR 156 (HC)
- section 77:
 - S v Kleynhans* 1991 NR 22 (HC)
 - S v Samuel* 1994 NR 51 (HC)
 - S v Amamub* 2000 NR 207 (HC)
- section 78:
 - S v Shivute* 1991 NR 123 (HC)
 - S v Samuel* 1994 NR 51 (HC)
- section 79:
 - S v Hansen* 1994 NR 5 (HC)
 - S v Amamub* 2000 NR 207 (HC)
- section 83:

- S v Seibeb & Another; S v Eixab* 1997 NR 254 (HC)
S v Gaseb & Others 2000 NR 139 (SC)s
- section 84:
S v Mariu 1991 NR 149 (HC)
S v Inatius; S v Shapanga & Two Others 1991 NR 261 (HC)
S v Nakare 1992 NR 99 (HC)
S v Ngono 2005 NR 34 (HC)
S v Katari 2006 (1) NR 205 (HC)
S v Aukemeb 2009 (1) NR 19 (HC)
S v Kapia & Others 2009 (1) NR 52 (HC)
- section 85:
S v Lofty-Eaton & Others (1) 1993 NR 370 (HC)
S v Ngono 2005 NR 34 (HC)
S v Kapia & Others 2009 (1) NR 52 (HC)
- section 86:
S v Claasen 1992 NR 98 (HC)
S v Petrus 1993 NR 215 (HC)
S v Kariko & Another 1998 NR 13 (HC)
- section 87:
S v Van Rooyen 1993 NR 235 (HC)
S v Kapia & Others 2009 (1) NR 52 (HC)
- section 88:
S v Nakare 1992 NR 99 (HC)
S v Petrus 1993 NR 215 (HC)
- section 105:
S v Uirab 1999 NR 327 (HC)
S v Makendano 2007 (1) NR 251 (HC)
- section 106:
S v Mushwena & Others 2004 NR 35 (HC), 2004 NR 276 (SC)
S v Makendano 2007 (1) NR 251 (HC)
S v Myburgh 2008 (2) NR 592 (SC)
- section 110:
S v Makendano 2007 (1) NR 251 (HC)
- section 112:
S v Valede & Others 1990 NR 81 (HC)
S v Drayer & Another 1990 NR 237 (HC)
S v Muhenje & Another; S v Ngorera 1991 NR 91 (HC)
S v Maans 1991 NR 119 (HC)
Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)
S v Aniseb & Another 1991 NR 203 (HC)
S v Davids 1991 NR 255 (HC)
S v Shivute & Several Other Cases 1991 NR 433 (HC)
S v Kilika & Others 1992 NR 25 (HC)
S v Hausiko 1992 NR 225 (HC)
S v Beukes 1993 NR 21 (HC)
S v Bruwer 1993 NR 219 (HC)
S v Goeieman 1993 NR 227 (HC)
S v Haimo 1993 NR 301 (HC)
S v Haufiko 1993 NR 317 (HC)
S v Namuhuya 1994 NR 57 (HC)
S v Maniping/S v Thwala 1994 NR 69 (HC)
S v Mostert 1994 NR 83 (HC)
S v Geiseb 1994 NR 175 (HC)
S v Mostert / S v de Koker 1995 NR 131 (HC)

- S v Gaogoseb* 1995 NR 165 (HC)
- S v Kajamse; S v Gaseb & Another* 2002 NR 101 (HC)
- S v Isaac* 2004 NR 122 (HC)
- S v Kaevarua* 2004 NR 144 (HC)
- S v Tjivikua* 2005 NR 252 (HC)
- S v Forbes & Others* 2005 NR 384 (HC)
- S v Thomas* 2006 (1) NR 83 (HC)
- S v Kauleefelwa* 2006 (1) NR 102 (HC)
- S v Kasanga* 2006 (1) NR 348 (HC)
- S v Garoeb* 2006 (2) NR 500 (HC)
- S v Botha* 2007 (1) NR 40 (HC)
- S v Aludhilu* 2007 (1) NR 70 (HC)
- S v Rooi* 2007 (1) NR 282 (HC)
- S v Hengua* 2007 (2) NR 532 (HC)
- S v Combo & Another* 2007 (2) NR 619 (HC)
- S v Kharuxab* 2008 (1) NR 345 (HC)
- S v Nashapi* 2009 (2) NR 803 (HC)
- section 113:
 - S v Shivute & Several Other Cases* 1991 NR 433 (HC)
 - S v Hausiko* 1992 NR 225 (HC)
 - S v Haufiko* 1993 NR 317 (HC)
- section 114:
 - S v Kauleefelwa* 2006 (1) NR 102 (HC)
- section 115:
 - S v Wellington* 1990 NR 20 (HC)
 - S v Tjiho (2)* 1990 NR 266 (HC)
 - S v Cachimbembo* 1990 NR 290 (HC)
 - S v Sanders* 1990 NR 348 (HC)
 - S v Muhenje & Another; S v Ngorera* 1991 NR 91 (HC)
 - S v Shivute* 1991 NR 123 (HC)
 - S v Kau & Others* 1995 NR 1 (SC)
 - S v Kahuimbe* 1995 NR 77 (HC)
 - S v Shikongo & Others* 1999 NR 375 (SC)
- section 116:
 - S v Scott & Others* 2009 (1) NR 58 (HC)
- section 118:
 - S v Wellington* 1990 NR 20 (HC)
- section 119:
 - S v Shikongo & Others* 1999 NR 375 (SC)
 - S v Forbes & Others* 2005 NR 384 (HC)
 - S v Kasanga* 2006 (1) NR 348 (HC)
- section 121:
 - S v Kasanga* 2006 (1) NR 348 (HC)
- section 122:
 - S v Shikongo & Others* 1999 NR 375 (SC)
- section 123:
 - S v Petrus* 1993 NR 215 (HC)
- section 144:
 - S v Kramer & Others* 1990 NR 49 (HC)
- section 151:
 - S v Haikele & Others* 1992 NR 54 (HC)
- section 158:
 - Florin v Magistrate of Swakopmund & Another* 1999 NR 253 (HC)
 - S v Taapopi & Another* 2001 NR 101 (HC)
 - S v Malumo & 119 Others* 2004 NR 135 (HC)

- section 159:
S v Khumalo 1991 NR 166 (SC)
S v Malumo & 119 Others 2004 NR 135 (HC)
S v Simiyasa 2007 (1) NR 285 (HC)
- section 160(3)(b):
S v Khumalo 1991 NR 166 (SC)
- section 161:
S v Kapia & Others 2009 (1) NR 52 (HC)
- section 162:
S v Malumo & 116 Others (No 2) 2008 (2) NR 509 (HC)
- section 164:
S v Monday 2002 NR 167 (SC) (general discussion of evidence of young witnesses)
S v Boois 2004 NR 74 (HC) (deals with section 164 prior to its amendment by Criminal Procedure Amendment Act 24 of 2003)
S v Zingolo 2005 NR 349 (HC) (Court applies cautionary rule to evidence of child in rape case heard before amendment of Act on this point by Criminal Procedure Amendment Act 24 of 2003)
S v Nango 2006 (1) NR 141 (HC) (assessment of evidence of child witnesses in rape case)
S v VM 2009 (2) NR 766 (HC) (deals with section 164 prior to its amendment by Criminal Procedure Amendment Act 24 of 2003)
- section 167:
S v Mbali 1990 NR 1 (HC)
S v Dawid 1990 NR 206 (HC)
S v van den Berg 1995 NR 23 (HC)
S v Zingolo 2005 NR 349 (HC)
S v Chanda 2005 NR 398 (HC)
S v Kakalolo 2006 (1) NR 266 (HC)
S v Malumo & Others 2007 (2) NR 443 (HC)
- section 168:
S v Acheson 1991 NR 1 (HC)
S v Nunes 2001 NR 43 (HC)
Gurirab v Government of the Republic of Namibia & Others 2002 NR 114 (HC); 2006 (2) NR 485 (SC)
S v Malumo & 119 Others 2004 NR 135 (HC)
- section 170:
S v Ndakolute 2005 NR 37 (HC)
- section 171:
S v Acheson 1991 NR 1 (HC)
S v Lofty-Eaton & Others (2) 1993 NR 405 (HC)
- section 174:
S v Campbell & Others 1990 NR 310 (HC)
S v Kooper 1995 NR 80 (HC)
S v Paulus & Another 1996 NR 374 (HC)
S v Le Roux 2000 NR 209 (HC)
S v Mushwena & Others 2004 NR 35 (HC), 2004 NR 276 (SC)
S v Nakale & Others 2006 (2) NR 455 (HC)
S v Teek 2009 (1) NR 127 (SC)
- section 175:
S v Khoeinmab 1991 NR 99 (HC)
S v Kamati 1991 NR 116 (HC)
- section 176:
S v Kaipa 1993 NR 190 (HC)
- section 179:

S v Lukas 1999 NR 394 (HC)
 section 182:
S v Haita 1993 NR 368 (HC)
 section 186:
S v Dawid 1990 NR 206 (HC)
S v van den Berg 1995 NR 23 (HC)
S v Zingolo 2005 NR 349 (HC)
S v Malumo & 116 Others (No 1) 2008 (2) NR 502 (HC) (discussed at 506I-507C)
 section 189:
S v Smith 1999 NR 182 (HC)
 section 190:
S v Taapopi & Another 2001 NR 101 (HC)
S v Malumo & 116 Others (No 1) 2008 (1) NR 34 (HC); *S v Malumo & 116 Others* 2008 (1) NR 348 (HC); *S v Malumo & 116 Others (No 1)* 2008 (2) NR 502 (HC); *S v Malumo & 116 Others (No 4)* 2008 (2) NR 515 (HC)
 section 197:
S v Appelgrein 1995 NR 118 (HC)
 section 204:
S v Johannes & Others 1991 NR 122 (HC)
S v Myburgh 2008 (2) NR 592 (SC)
 section 206:
S v Nassar 1994 NR 233 (HC)
 section 208:
S v Noble 2002 NR 67 (HC)
 section 209:
S v Eiseb & Another 1990 NR 142 (HC)
 section 211:
S v Appelgrein 1995 NR 118 (HC)
 section 212:
S v Zingolo 2005 NR 349 (HC)
S v Garoeb 2006 (2) NR 500 (HC)
 section 213:
S v Taapopi & Another 2001 NR 101 (HC)
 section 215:
S v Sibihlo & Others 1997 NR 29 (HC)
 section 217:
S v Titus 1991 NR 318 (HC)
S v Somseb 1991 NR 339 (HC)
S v Kauma 1992 NR 17 (HC)
S v Tjihorero & Another 1993 NR 398 (HC)
S v Shikunga & Another 1997 NR 156 (SC) (holding that section 217(1)(b)(ii) is unconstitutional)
S v Kukame 2007 (2) NR 815 (HC)
S v Malumo & 116 Others (No 1) 2008 (1) NR 34 (HC)
S v Malumo & 116 Others (No 5) 2008 (2) NR 520 (HC)
 section 218:
S v Minnies & Another 1990 NR 177 (HC)
 section 219A:
S v Malumo & Others 2007 (1) NR 72 (HC)
S v Malumo & Others 2007 (2) NR 198 (HC)
S v Kukame 2007 (2) NR 815 (HC)
S v Malumo & 116 Others (No 1) 2008 (1) NR 34 (HC)
 section 220:

- S v Kahuimbe* 1995 NR 77 (HC)
- S v Boois* 2004 NR 74 (HC)
- section 221:
 - S v De Villiers* 1992 NR 363 (HC)
- section 222:
 - S v Taapopi & Another* 2001 NR 101 (HC)
- section 224:
 - S v Blaauw's Transport (Pty) Ltd & Another* 2006 (2) NR 587 (HC)
- section 232:
 - S v Malumo & Others* 2006 (2) NR 629 (HC)
- section 233:
 - S v Kukame* 2008 (1) NR 313 (HC) (question as to whether an item admitted into evidence was a “public document” under this section)
- section 234:
 - S v Kukame* 2008 (1) NR 313 (HC) (“official document”)
- section 245:
 - S v Mwambazi* 1990 NR 353 (HC)
 - S v Van Rooyen* 1993 NR 235 (HC)
- section 256:
 - S v Esterhuizen & Another* 1990 NR 283 (HC)
- section 258:
 - S v Katari* 2006 (1) NR 205 (HC)
- section 261:
 - S v Ntantu & Others* 1992 NR 293 (HC)
- section 262:
 - S v Dixon* 1995 NR 115 (HC)
 - S v Kharuxab* 2008 (1) NR 345 (HC)
- section 264:
 - S v Aixas & Another* 2007 (1) NR 46 (HC)
- section 270:
 - S v Kuvare* 1992 NR 7 (HC)
 - S v Seibeb & Another; S v Eixab* 1997 NR 254 (HC)
 - S v Babiep* 1999 NR 170 (HC)
- section 271:
 - S v Johny & Another* 1992 NR 296 (HC)
- section 274:
 - S v Maans* 1991 NR 119 (HC)
- section 275:
 - S v Arebeb* 1997 NR 1 (HC)
 - S v Gawaseb* 2007 (2) NR 600 (HC)
- section 276:
 - S v Njuluwa* 2000 NR 97 (HC) (sentence may not include order that convicted person may not be paroled)
- section 277:
 - S v Tcoeib* 1991 NR 263 (HC) (See also *S v Tcoeib* 1992 NR 198 (HC); 1999 NR 24 (SC) which deal with life imprisonment, but do not make specific reference to this section.)
- section 280:
 - S v Ndikwetepo & Others* 1993 NR 319 (SC)
 - S v Auala (No 2)* 2008 (1) NR 240 (HC) (sentencing under section 280(2))
- section 286:
 - S v Miller* 1999 NR 31 (HC)
- section 287:
 - S v Mynhardt; S v Kuinab* 1991 NR 336 (HC)
 - S v Mukata* 2005 NR 323 (HC)

- section 288:
S v Mukata 2005 NR 323 (HC)
- section 290:
Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)
S v Gaogoses 1994 NR 77 (HC)
- section 292:
Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)
- section 293:
Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)
- section 294:
Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)
- section 295:
Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)
- section 297:
S v Kakulu & Another 1990 NR 282 (HC)
S v Goroseb 1990 NR 308 (HC)
S v Skrywer 1990 NR 343 (HC)
S v Oupietti; S v Boois; S v Josef & Another 1991 NR 93 (HC)
S v Simon 1991 NR 104 (HC)
S v Maans 1991 NR 119 (HC)
S v Brand & Various Other Cases 1991 NR 356 (HC)
S v Matheus 1991 NR 376 (HC)
S v Isaacks 1992 NR 265 (HC)
S v Diergaardt 1993 NR 421 (HC)
S v H 1995 NR 136 (HC)
S v Nangolo 1995 NR 209 (HC)
S v Nvula; S. v Olivier 2002 NR 106 (HC)
S v Namene 2002 NR 125 (HC)
S v Petrus 2006 (1) NR 118 (HC), repeated in 2007 (1) NR 44 (HC)
- section 300:
S v Shivikua 1991 NR 101 (HC)
S v Tjisuta 1991 NR 146 (HC)
S v Useb & Another 1994 NR 81 (HC)
S v Panduleni 1995 NR 125 (HC)
S v Hendriks 2004 NR 20 (HC)
- section 302:
S v Shivute & Several Other Cases 1991 NR 433 (HC)
Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)
S v Gawanab 1997 NR 61 (HC)
- section 303:
S v Sanders 1990 NR 348 (HC)
S v Shivute & Several Other Cases 1991 NR 433 (HC)
- section 304:
Booyesen v Kalokwe NO & Others 1991 NR 95 (HC)
S v Baptista 1991 NR 103 (HC)
S v Kaipa 1993 NR 190 (HC)
S v Arebeb 1997 NR 1 (HC)
S v Gawanab 1997 NR 61 (HC)
S v Katuta 2006 (1) NR 61 (HC)

- S v Immanuel* 2007 (1) NR 327 (HC)
- section 308:
Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)
- section 309:
Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)
S v Wasserfall 1992 NR 18 (HC)
S v Arebeb 1997 NR 1 (HC)
S v Uirab 1999 NR 327 (HC)
S v Ganeb 2001 NR 294 (HC) (section 309(4)(a) read with section 305 found unconstitutional)
S v Katuta 2006 (1) NR 61 (HC)
S v Kakalolo 2006 (1) NR 266 (HC)
- section 310 (as amended by Act 26/1993):
S v van den Berg 1995 NR 23 (HC)
S v Gawanab 1997 NR 61 (HC)
S v Mujiwa 2007 (1) HR 34 (HC)
- section 311 (as amended by Act 26/1993):
S v Delie (2) 2001 NR 286 (SC)
- section 312:
S v Bruwer 1993 NR 219 (HC)
- section 316:
S v Tjiho 1991 NR 361 (HC)
S v Ngavondueza 1993 NR 360 (HC)
S v Strowitzki 1994 NR 265 (HC)
S v Strowitzki 2003 NR 145 (SC)
Mushwena & Others v Government of the Republic of Namibia & Another (2) 2004 NR 94 (HC)
S v Munuma & Others 2006 (2) NR 602 (HC)
S v Nowaseb 2007 (2) NR 640 (HC)
S v Ningisa & Others 2008 (2) NR 731 (HC) (leave to appeal and petition procedures held to be constitutional)
- section 316A:
S v Strowitzki 1994 NR 265 (HC)
- section 317:
S v Malumo & Others 2006 (1) NR 323 (HC)
S v Myburgh 2008 (2) NR 592 (SC) (discussed in *dicta* at 598F-ff)
- section 319:
S v Khumalo 1991 NR 166 (SC)
S v Pineiro & Others 1999 NR 13 (HC)
- section 321:
Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 NR 178 (SC)
S v Hendriks 1992 NR 382 (HC)
- section 322:
S v Khumalo 1991 NR 166 (SC)
S v Gurirab & Others 2008 (1) NR 316 (SC) (appeal court empowered to substitute conviction on a more serious crime for conviction on a less serious crime)
- section 324:
S v Khumalo 1991 NR 166 (SC)
- section 328:
S v Acheson 1991 NR 1 (HC)
- section 335:

- S v Tjiho* (1) 1990 NR 242 (HC)
sentencing:
- Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State* 1991 NR 178 (SC) (sentences involving corporal punishment unconstitutional)
 - S v Van Rooyen & Another* 1992 NR 165 (HC) (guidelines)
 - S v Tcoeib* 1991 NR 263 (HC); 1992 NR 198 (HC); 1999 NR 24 (SC) (life imprisonment)
 - S v Ndikwetepo & Others* 1993 NR 319 (SC) consecutive sentences should not produce a cumulative sentence which is totally out of proportion to the gravity of the individual offences)
 - S v Van Wyk* 1993 NR 426 (SC) (racist motives as an aggravating factor in sentencing)
 - S v Khumalo & Another* 194 NR 3 (HC) (factors to be taken into account)
 - S v Britz* 1994 NR 25 (HC) (community service)
 - S v Redelinghuys* 1995 NR 21 (HC) (concurrent sentences)
 - S v Mostert/S v de Koker* 1995 NR 131 (HC) (composite sentences)
 - S v Clay* 1996 NR 184 (HC) (factors to be taken into account)
 - S v Moses* 1996 NR 387 (SC) (father's murder of daughter)
 - S v Arebeb* 1997 NR 1 (HC) (suspended sentences)
 - S v Kandume* 1997 NR 79 (HC) (suspended sentences)
 - S v Alexander* 1998 NR 84 (HC) (life imprisonment)
 - S v Kambu* 1998 NR 194 (HC) (appropriateness of fines rather than imprisonment; consecutive sentences)
 - S v Mouton & Another* 1999 NR 215 (HC) (kidnapping)
 - S v Uweuseb* 1999 NR 339 (HC) (court exercises discretion to allow appellant to withdraw appeal against sentence after receipt of notice that increased sentence will be also considered by court of appeal)
 - S v Shapumba* 1999 NR 342 (SC) (sentencing for rape in a case where another rape was committed while accused was out on bail)
 - S v Skrywer* 2005 NR 288 (HC)(consistency in sentencing)
 - S v Stuurman* 2005 NR 396 (HC) (weighing effect of previous convictions)
 - S v Katjire* 2005 NR 429 (HC) (global sentences only to be imposed in exceptional circumstances)
 - S v Ganes* 2005 NR 472 (HC) (fraud)
 - S v Drotsky* 2005 NR 487 (HC) (housebreaking)
 - S v Alexander* 2006 (1) NR 1 (SC) (use of concurrent sentence for associated robbery-murder to avoid "double jeopardy")
 - S v Petrus* 2006 (1) NR 118 (HC), repeated in 2007 (1) NR 44 (HC) (suspended sentence for property crime on condition of compensation to be encouraged, but requires enquiry into *quantum* of damages)
 - S v Kastoor* 2006 (2) NR 450 (HC) (criticism of "impatience, frustration and anger" exhibited by magistrate, and concluding that magistrate did not approach sentencing in a "balanced way")
 - S v Haufiku* 2007 (1) NR 94 (HC) (condition of suspended sentence should clearly refer to offences *committed* during period of suspension)
 - S v Bonifatius* 2007 (1) NR 115 (HC) (condition of suspended sentence should not refer to convictions *during period of suspension*, but only to commission of offence during that period)
 - S v Paulus* 2007 (1) NR 116 (HC) (housebreaking and theft of minor amount of money)
 - S v Bohitile* 2007 (1) NR 137 (HC) (context of domestic violence as an aggravating factor in sentencing)
 - S v Kasita* 2007 (1) NR 190 (HC) (housebreaking and theft; court obligated to provide reasons for sentence imposed)

- S v Nangolo* 2007 (1) NR 304 (HC) (formulation of conditions of suspended sentence must be clear)
- S v Simon* 2007 (2) NR 500 (HC) (culpable homicide)
- S v Witbooi & Others* 2007 (2) NR 604 (HC) (sentence cannot be divided in two parts and suspended under separate conditions; procedure for bringing suspended sentence into operation)
- S v Kamudulunge* 2007 (2) NR 608 (HC) (formulation of conditions of suspension)
- S v Imene* 2007 (2) NR 770 (HC) (sentence for housebreaking and theft confirmed)
- S v Auala (No 2)* 2008 (1) NR 240 (HC) (sentencing for offences relating to theft of diamonds and for escaping before being locked up)
- S v Shikudute* 2008 (1) NR 344 (HC) (concurrent sentences appropriate for first offender where incidents were interlinked)
- S v Jason & Another* 2008 (1) NR 359 (SC) (appeal of sentences imposed for murder, robbery and related offences)
- S v Myburgh* 2008 (2) NR 592 (SC) (fraud)
- S v Akonda* 2009 (1) NR 17 (HC) (counts should be taken together for sentence only in exceptional circumstances or where part of one transaction; imprecise formulation of condition of suspension)
- S v Jeremani* 2009 (1) NR 149 (HC) (imposition of fine which accused is unable to pay is tantamount to direct imprisonment)
- S v Martin* 2009 (1) NR 306 (HC) (fact that accused pleaded not guilty cannot be treated as aggravating factor in sentencing)
- S v Frans* 2009 (1) NR 356 (HC) (procedure for putting suspended sentence on previous conviction into operation)
- S v Johannes* 2009 (2) NR 579 (HC) (sentence for murder by police officer who shot and killed fleeing criminal suspect)
- S v Shipena* 2009 (2) NR 810 (HC) (theft, fraud and forgery by police officer)
- youthful offenders:
- S v Shivute & Several Other Cases* 1991 NR 433 (HC) at 439
- S v Kilika & Others* 1992 NR 25 (HC)
- S v Goagoseb* 1992 NR 35 (HC)
- S v G* 1993 NR 225 (HC)
- S v Lambert* 1993 NR 303 (HC)
- S v Gaogoses* 1994 NR 77 (HC)
- S v Kukinaka* 1994 NR 82 (HC)
- S v H* 1995 NR 136 (HC)
- S v Lukas* 1999 NR 394 (HC)
- S v van der Bergh* 2003 NR 69 (HC) (importance of pre-sentencing report)
- S v Erickson* 2007 (1) NR 164 (HC) (youthfulness as a mitigating factor)
- S v AS* 2009 (1) NR 118 (HC) (criminal accountability of 10-year-old convicted of culpable homicide)
- Criminal Procedure Amendment Act 5 of 1991 (amendments re: bail):
- S v Du Plessis & Another* 1992 NR 74 (HC)
- S v Timotheus* 1995 NR 109 (HC)
- other:
- S v Imene* 2007 (2) NR 770 (HC) (admissibility of shoe prints as evidence)
- S v Myburgh* 2008 (2) NR 592 (SC) (discussion of meaning of term “released” in various sections, in contrast to “acquit” and other language; suggestion to legislature to amend Act to extend jurisdiction of magistrate’s courts to order permanent stays of prosecution)
- S v Haihambo* 2009 (1) NR 176 (HC) (photo identification)

Akuake v Jansen van Rensburg 2009 (1) NR 403 (HC) (requirements to sustain claim of malicious criminal prosecution)
S v Andreas 2009(2) NR 473 (HC) (fact that evidence of accused is false does not necessarily lead to conviction unless state has proved its case beyond reasonable doubt).

Articles:

Daina Wise & Dianne Hubbard *Children in Court: Protecting Vulnerable Witnesses*, Legal Assistance Centre, 1998
Legal Assistance Centre, “Chapter 4: Law Reform on Vulnerable Witnesses” in Legal Assistance Centre, *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act, 2006* (discussing the Criminal Procedure Amendment Act 24 of 2003), available at www.lac.org.na/projects/grap/Pdf/rapefull.pdf
Kaijata Kanguuehi, “S v Teek: A critical review and analysis”, *Namibia Law Journal*, Volume 1, Issue 2, 2009, available at www.namibialawjournal.org
Sam K Amoo, “The jurisprudence of the rights to trial within a reasonable time in Namibia and Zambia”, *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.namibialawjournal.org
Jamil D Mujuzi, “The constitutionality of different types of life imprisonment suggested in the Criminal Procedure Act, 2004”, *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.namibialawjournal.org
See the entry for the Prisons Act 17 of 1998 (**PRISONS**) for articles on conditions in police cells.

Boxing and Wrestling Control Act 11 of 1980.

Summary: This Act establishes boards of control for boxing and wrestling. It was brought into operation by AG 5/1981.

Amendments: The Act was amended by Act 25/1980 and by the Married Persons Equality Act 1 of 1996 (which repeals section 13).

Combating of Immoral Practices Act 21 of 1980.

Summary: This Act covers the keeping of brothels, various acts related to prostitution, and various other sexual offences.

Amendments: The Married Persons Equality Act 1 of 1996 amends section 2. Act 7/2000, which came into force on 15 June 2000 (GN 141/2000, GG 2348), amends sections 1 and 14 (sexual offences with youths).

Cases:

S v Narib 1994 NR 176 (HC) (section 14)
Fantasy Enterprises CC t/a Hustler The Shop v Minister of Home Affairs & Another; Nasilowski & Another v Minister of Justice & Others 1998 NR 96 (HC) (section 17(1) of the Act declared unconstitutional)
S v Le Roux 2000 NR 209 (HC) (section 14; requirement of *mens rea* in respect of age)
Hendricks & Others v Attorney General, Namibia, & Others 2002 NR 353 (HC) (constitutionality of sections 1(i), 2, 10 and 12)
S v J 2008 (1) NR 30 (HC) (section 14)

S v Teek 2009 (1) NR 127 (SC) (addresses credibility of child evidence in case involving allegations under sections 14 and 16 of Act).

Articles: Legal Assistance Centre, *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act, 2006* (discussing the Combating of Immoral Practices Act Amendment Act 7 of 2000), available at www.lac.org.na/projects/grap/Pdf/rapefull.pdf; Legal Assistance Centre, “*Whose Body Is It?*”: *Commercial Sex Work and the Law in Namibia*, 2002, available at www.lac.org.na/projects/grap/Pdf/commsex.pdf.

Protection of Fundamental Rights Act 16 of 1988.

Summary: This Act provides for the protection of certain fundamental rights.

Amendments: AG 14/1989 repeals section 2 and amends the penalties in section 3(e).

Cases: *NANSO & Others v Speaker of the National Assembly for South West Africa & Others* 1990 (1) SA 617 (SWA) (declaring portions of the law invalid in terms of the pre-independence Bill of Fundamental Rights).

Amnesty Proclamation, AG 13 of 1989.

Summary: This Proclamation grants amnesty for offences committed by persons in exile, so that they may return to Namibia.

Amendments: The application of the Act is affected by AG GN 110/1989 and AG GN 16/1990.

Intimidation Proclamation, AG 24 of 1989.

Summary: This Proclamation makes it an offence to intimidate any other person.

Regulations: See General Notice 143/1992 (GG 503), which refers to the Proclamation in connection with guidelines for the holding of elections.

Stock Theft Act 12 of 1990.

Summary: This Act consolidates and amends the laws relating to the theft of stock and produce.

Amendments: Act 4/1991 amends sections 6, 7, 9 and 14. It also inserts section 12A and repeals section 13.

Act 19/1993, which commenced on 1 October 1993 (GN 117/1993, GG 725), repeals section 12A and amends the penalty sections. It transfers the administration of the Act from the Minister of Justice to the Minister of Home Affairs, provides minimum sentences for certain offences, and removes the restriction on adjudication of such cases by traditional leaders.

Act 19/2004 amends sections 1, 14 and 17 and substitutes section 15A. Amongst other things, this amending act provides for minimum sentences for certain offences and compensation in respect of certain offences.

The General Law Amendment Act 14 of 2005 amends section 1 of the said Act.

Regulations: Regulations are contained in GN 113/1991 (GG 282). Licensed auctioneers are exempted from compliance with certain provisions of the Act by GN 108/1991 (GG 276).

Cases:

S v Shikango, S v Kahavika & Another 1990 NR 3 (HC) (previous stock theft legislation)

S v Tjisuta 1991 NR 146 (HC)

S v Inatius; S v Shapanga & Two Others 1991 NR 261 (HC)

S v Amujekela 1991 NR 303 (HC)

S v Shivute & Several Other Cases 1991 NR 433 (HC) at 438

S v Vekueminina & Others 1992 NR 255 (HC)

S v Soabeb & Others 1992 NR 280 (HC) (common law crime of stock theft)

S v Kamajame & Others 1993 NR 192 (HC) (common law crime of stock theft)

S v Useb & Another 1994 NR 81 (HC) (common law crime of stock theft)

S v Koortzen 1994 NR 356 (HC) (section 14)

S v Kooper 1995 NR 80 (HC)

S v Panduleni 1995 NR 125 (HC) (section 17)

S v Nangolo 1995 NR 209 (HC)

S v Vries 1998 NR 244 (HC) (dealing with the constitutionality of the minimum sentence in section 14(1)(b), and striking out the words 'of not less than three years, but' from that provision).

S v Nghitukwa 2005 NR 116 (HC) (accused must be sentenced under unamended Act when it was not clearly established that theft took place after commencement of Act which amended relevant sentence)

S v Kauleefelwa 2006 (1) NR 102 (HC) (section 12-stock theft is a crime created by the Act but a manifestation of the common-law crime of theft; dicta on proper application of section 14)

S v Guim & Another 2008 (1) NR 305 (HC) (importance of evidence of value of stock in sentencing)

S v Afrikaner 2008 (2) NR 424 (HC) (district magistrate's court has no jurisdiction to impose sentences under this Act)

S v Zemburuka 2008 (2) NR 737 (HC) (sentencing under section 14 prior to 2004 amendments)

S v Scott & Others 2009 (1) NR 58 (HC) (sections 14 and 15A-procedure for transfer from district court to regional court for sentencing).

Racial Discrimination Prohibition Act 26 of 1991.

Summary: This Act gives effect to Article 23 of the Namibian Constitution by making certain acts of racial discrimination and apartheid criminally punishable. It covers public amenities, the provision of goods and services, transactions relating to immovable property, educational and medical institutions, employment, associations, religious services, the incitement of racial disharmony and victimisation.

Amendments: The Liquor Act 6 of 1998 repeals section 20. Act 26/1998 amends section 11, 14 and 17. The Affirmative Action (Employment) Act 29/1998 amends

section 7.

Cases:

See *Kauesa v Minister of Home Affairs* 1994 NR 102 (HC), which was overruled on other points by *Kauesa v Minister of Home Affairs* 1995 NR 175 (SC), for a discussion of the constitutionality of portions of this Act. *S v Smith NO & Others* 1996 NR 367 (HC) rules that section 11(1) is in conflict with Article 21(1) and (2) of the Constitution and refers it back to Parliament for amendment. See also *S v Hotel Onduri (Pty) Ltd & Another* 1993 HR 78 (HC), which concerns the previous Abolition of Racial Discrimination Act 3 of 1979.

Articles: Nico Horn, “Freedom of expression and hate speech in Namibia”, *Namibia Law Journal*, Volume 1, Issue 1, 2009, available at www.namibialawjournal.org.

Related international agreements:

International Convention on the Elimination of All Forms of Racial Discrimination, 1966 (accession: 11 November 1982).

Namibia has NOT agreed to the following amendment, which is not yet in force internationally:

* *Amendment to article 8 of the International Convention on the Elimination of all Forms of Racial Discrimination*, 1992.

Cases: *Kauesa v Minister of Home Affairs & Others* 1994 NR 102 (HC).

International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973 (accession: 11 November 1982).

Extradition Act 11 of 1996.

Summary: This Act provides for the extradition of persons accused or convicted of certain offences committed within the jurisdiction of certain countries. It came into force on 1 August 1996 (GN 199/1996, GG 1370), replacing the Extradition Act 67 of 1962.

Regulations: Countries to which extradition of persons from Namibia may be effected in terms of section 4(1)(b) of the Act are listed in Proc. 5/1997 (GG 1534), Proc. 11/1999 (GG 2047), Proc. 22/2001 (GG 2656), Proc. 8/2003 (GG 2946), Proc. 3/2006 (GG 3614) and Proc. 10/2006 (GG 3711).

Cases: *S v Biglione* 2000 NR 127 (HC); *S v Mushwena & Others* 2004 NR 35 (HC), 2004 NR 276 (SC); *S v Koch* 2006 (2) NR 513 (SC); *Alexander v Minister of Justice & Others* 2009 (2) NR 712 (HC).

Related international agreements: *SADC Protocol on Extradition*, 2002 (entered into force within SADC on 1 September 2006), signature: 3 October 2002, ratification: 1 February 2007 (source: SADC).

Combating of Rape Act 8 of 2000.

Summary: This Act sets forth a new definition of rape, minimum sentences for rape, new rules of evidence in rape cases, special provisions concerning bail in rape cases,

and new rules concerning privacy in respect of rape cases. It came into force on 15 June 2000 (GN 140/2000, GG 2348).

Amendments: Sections 11-18 are repealed by the Criminal Procedure Act 25 of 2004, which is not yet in force.

Cases: The following cases pertain to this Act-

- S v Lopez* 2003 NR 162 (HC) (marital rape case dealing with unlawful detention under section 2(2)(e); “substantial and compelling circumstances” under section 3(2))
- Awaseb, Geinub, Lange v S*, High Court, Case No. CA 46/2003 (unreported) (offence of attempted rape is a competent verdict on a charge of rape under Act, by virtue of section 18 of Riotous Assemblies Act 17 of 1956)
- S v Kaanjuka* 2005 NR 201 (HC) (appropriateness of sentence)
- S v Zingolo* 2005 NR 349 (HC) (requirements for admissibility of medical evidence and cautionary rule applied to evidence of child)
- S v Gurirab* 2005 NR 510 (HC) (meaning of “substantial and compelling circumstances” in section 3(2))
- S v Katuta* 2006 (1) NR 61 (HC) (testimony about having ‘sex’ insufficient to prove sexual act under section 2(1)(a), as defined by section 1)
- S v Domingo* [2005] NAHC 37 (meaning of grievous bodily harm in section 3(1)(a)(iii)(aa)) (meaning of grievous bodily or mental harm in section 3(1)(a)(iii)(aa); appropriate punishment)
- S v Nango* 2006 (1) NR 141 (HC) (incorrect application of sentencing provisions corrected on appeal; weighing of evidence of child rape victim and child witness)
- S v M* 2006 (1) NR 156 (HC) (conviction of rape of 8-year-old boy by 16-year-old boy overturned on procedural grounds)
- S v Kauzuu* 2006 (1) NR 225 (HC) (sentence of 20 years for repeated rape of 14-year-old child of girlfriend, resulting in pregnancy, reduced to 15 years on appeal to take into account certain mitigating factors and time spent in custody awaiting trial)
- S v Hoaseb* 2006 (1) NR 317 (HC) (finding that weapon mentioned in testimony was not used in furtherance of the rape, affecting applicable minimum sentence)
- S v Limbare* 2006 (2) NR 505 (HC) (role of judicial discretion in sentencing under Act, and “substantial and compelling circumstances” under section 3(2))
- S v Bezuidenhout* 2006 (2) NR 613 (HC) (effect on sentencing of previous conviction of rape which occurred many years previously and prior to enactment of statute)
- S v Karenga* 2007 (1) NR 135 (HC) (attempted rape not expressly provided for in Act, but can be charged under common law, or as a competent verdict for rape under the Act by virtue of section 256 of the Criminal Procedure Act 51 of 1977)
- S v S* 2007 (1) NR 305 (HC) (conviction involving rape of 14-year-old; alibi of accused rejected)
- S v Gaseb* 2007 (1) NR 310 (HC) (bail denied in case alleging rape of 9-year-old; court has wider discretion to refuse bail in respect of offences listed in Part IV of Schedule 2 of Act 51 of 1977, which include rape; “sexual assault of women and girls is a serious concern to all and sundry”)
- S v M* 2007 (2) NR 434 (HC) (meaning of grievous bodily or mental harm in section 3(1)(a)(iii)(aa); appropriate punishment)

- S v Handukene* 2007 (2) NR 606 (HC) (district magistrate's court has no jurisdiction over charge of rape under Act except for plea under section 119 of Criminal Procedure Act 51 of 1977)
- S v Kukame* 2007 (2) NR 815 (HC) (rape and murder of 3-year-old; case deals with admissibility of confession & pointing out)
- S v J* 2008 (1) NR 30 (HC) (penetration of 8-year-old not established)
- S v Teek* 2009 (1) NR 127 (SC) (addresses credibility of child evidence in case involving allegations under section 2(1)(a) of Act).

The following cases concern the common-law crime of rape-

- S v Shapumba* 1999 NR 342 (SC) (sentencing for common-law crime of rape in a case where another rape was committed while accused was out on bail; 15 years for the one rape and 9 years for the other, to run concurrently in part for effective total of 18 years imprisonment)
- S v Katamba* 1999 NR 348 (SC) (acquittal on charge of rape of 11-year-old overturned on appeal, in conjunction with a holding that the cautionary rule in sexual cases should not be applied by Courts in Namibia)
- S v Gaseb & Others* 2000 NR 139 (SC) (multiple charges and convictions in respect of gang rape)
- S v Le Roux* 2000 NR 209 (HC) (lack of evidence of rape in context of application for discharge).

The following civil action concerns a duty of care in respect of the rape of a mentally disabled child which occurred whilst she was wrongfully allowed to spend a weekend outside her school hostel-

- Vivier NO & Another v Minister of Basic Education, Sport & Culture* 2007 (2) NR 725 (HC)

Articles:

- Dianne Hubbard, "A Critical Discussion of the Law on Rape in Namibia", Windhoek: Namibian Institute for Social and Economic Research (NISER), University of Namibia, 1991, republished in S Bazilli, editor, *Putting Women on the Agenda*, Johannesburg: Raven Press, 1991
- Dianne Hubbard, "Should a Minimum Sentence for Rape be Imposed in Namibia?", *Acta Juridica* 1994; reprinted in Christina Murray, editor, *Gender and the New South African Legal Order*, Cape Town: Juta & Co, 1994
- Law Reform and Development Commission, *Report on the Law pertaining to Rape* (LRDC 4), 1997
- Legal Assistance Centre, *Guide to the Combating of Rape Act*, 2001, available at www.lac.org.na/laws/pdf/comrape.pdf (languages: English, Afrikaans, Oshiwambo, Otjiherero, Khoekhoegowab, Silozi, Rukwangali)
- Legal Assistance Centre *Guidelines for Service Providers on the Combating of Rape Act*, 2005, available at www.lac.org.na/grap/Pdf/rapeguidlin.pdf
- Legal Assistance Centre, *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act*, 2006, available at www.lac.org.na/projects/grap/Pdf/rapefull.pdf (full report) and www.lac.org.na/projects/grap/Pdf/rapesum.pdf (summary)
- Legal Assistance Centre, *Withdrawn: A Study of Rape Case Withdrawals*, 2009, available at www.lac.org.na/projects/grap/Pdf/RapeWithdrawn.pdf
- Allison De Smet & Dianne Hubbard, "*Substantial and Compelling Circumstances*" in *Rape Cases*, Legal Assistance Centre, 2009.

International Co-operation in Criminal Matters Act 9 of 2000.

Summary: This Act facilitates the provision of evidence and the execution of sentences in criminal cases, and the confiscation and transfer of the proceeds of crime, between Namibia and certain designated foreign states. It came into operation on 15 September 2001 (GN 185/2001, GG 2614).

Amendments: This Act is substantially amended by the Prevention of Organized Crime Act 29 of 2004. Schedule 2 is amended by the Criminal Procedure Act 25 of 2004, which is not yet in force. Schedule 1 is amended by the addition of the Federal Republic of Germany, by GN 107/2005 (GG 3491) and several other countries in GN 167/2006 (GG 3714).

Regulations: Regulations are contained in GN 186/2001 (GG 2614).

Anti-Corruption Act 8 of 2003.

Summary: This Act establishes an Anti-Corruption Commission and provides for the prevention and punishment of corruption. It repeals the *Prevention of Corruption Ordinance 2 of 1928* and amends Schedule 3 of the Public Service Act 13 of 1995. It came into operation on 15 April 2005 (GN 37/2005, GG 3411).

Cases: *S v Nakale & Others (No 1)* 2007 (2) NR 405 (HC) (conviction); *S v Nakale & Others (No 2)* 2007 (2) NR 427 (HC) (sentencing); *Prosecutor-General v Lameck & Others* 2009 (2) NR 738 (HC) (sections 32-33, 42(2)).

Articles: *Say no way to corruption: Be patriotic!*, Windhoek: Anti-Corruption Commission (undated public education material on the law), available at www.accnamibia.org/.

Prevention of Organised Crime Act 29 of 2004.

Summary: This Act contains measures to combat organised crime, money laundering and criminal gang activities, and establishes a Criminal Assets Recovery Fund and a Criminal Assets Committee. It substantially amends the International Co-operation in Criminal Matters Act 9 of 2000. It came into force on 5 May 2009 (GN 77/2009, GG 4254).

Amendments: Act 10/2008 amends section 1, 11, 77 and 100, and substitutes sections 9 and 10.

Application of law: The application of section 9 of the Act is affected by section 53 of the Financial Intelligence Act 3 of 2007.

Regulations: Regulations are contained in GN 78/2009 (GG 4254). Rules for High Court proceedings in terms of Chapters 5-6 of the Act are contained in GN 79/2009 (GG 4254).

Cases: *Prosecutor-General v Lameck & Others* 2009 (2) NR 738 (HC).

Criminal Procedure Act 25 of 2004.

Summary: This Act governs procedure in criminal proceedings. It replaces all that remains of the Criminal Procedure Ordinance 1963 (sections 300(3) and 370) and the *Criminal Procedure Act 51 of 1977*. It will come into force on a date set by the Minister.

Regulations: All regulations, rules, notices and other actions made in terms of the *Criminal Procedure Act 51 of 1977* survive under this Act.

Articles: “Chapter 17: Rape and the New Criminal Procedure Act 25 of 2004” in Legal Assistance Centre, *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act*, 2006, available at www.lac.org.na/projects/grap/Pdf/rapefull.pdf; Pamela J Schwikkard, “The evidence of sexual complainants and the demise of the 2004 Criminal Procedure Act”, *Namibia Law Journal*, Volume 1, Issue 1, 2009, available at www.namibialawjournal.org.

COMMISSIONS

Commission of Inquiry into Legislation for the More Effective Combating of Crime in Namibia (Proc. 2/1996, GG 1285).

See also GN 75/1996 (GG 1285).

MISCELLANEOUS

Sentences of death are commuted in Proc. 13/1991 (GG 203).

Presidential pardons extended to certain categories of prisoners are announced in:

- Proclamation 15/1993 (GG 642)
- Proclamation 11/1994 (GG 836)
- Proclamation 3/1995 (GG 1051)
- Proclamation 4/1997 (GG 1533)
- Proclamation 1/2000 (GG 2306)
- Proclamation 12/2003 (GG 2956)
- Proclamation 1/2005 (GG 3397)
- Proclamation 4/2006 (GG 3626)
- Proclamation 6/2009 (GG 4230).

INTERNATIONAL LAW

Rome Statute of the International Criminal Court, 1998

(came into force internationally on 1 July 2002)

signature: 27 October 1998

ratification: 25 June 2002 (source: www.iccnw.org)

Agreement on the Privileges and Immunities of the International Criminal Court, 2002

(came into force internationally on 22 July 2004)

signature: 10 September 2002

ratification approved by Parliament: 2 July 2003 (source: Parliament)

deposit: 29 January 2004 (source: www.iccnw.org)

International Convention for the Suppression of the Financing of Terrorism, 1999

(came into force internationally on 10 April 2002)

signature: 10 November 2001; not yet ratified by Namibia

(source: <http://untreaty.un.org>)

Convention Against Transnational Organised Crime, 2000

(entered into force internationally on 29 September 2003)

signature: 13 December 2000 (source: Ministry of Foreign Affairs; Parliament)

ratification: 16 August 2002

(source: www.unodc.org/unodc/crime_cicp_signatures.html)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

(entered into force internationally on 25 December 2003)

signature: 13 December 2000 (source: Ministry of Foreign Affairs)

ratification: 16 August 2002

(source: www.unodc.org/unodc/crime_cicp_signatures.html)

Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000

(entered into force internationally on 28 January 2004)

signed: 13 December 2000 (source: Ministry of Foreign Affairs)

ratification: 16 August 2002

(source: www.unodc.org/unodc/crime_cicp_signatures.html)

Note: Namibia has not yet signed the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, 2001.

United Nations Convention Against Corruption, 2003

(entered into force 14 December 2005)

signature: 9 December 2003

ratification approved by Parliament: 28 April 2004 (source: Parliament)

deposit: 3 August 2004 (source: <http://untreaty.un.org>)

African Union Convention on Preventing and Combating Corruption, 2003

(entered into force within the AU on 5 August 2006)

signature: 9 December 2003

ratification approved by Parliament: 28 April 2004 (source: Parliament); 5 August 2004 (source: www.africa-union.org)

deposit: 26 August 2004 (source: www.africa-union.org)

SADC Protocol Against Corruption, 2001

(entered into force within SADC on 6 July 2005) (source: SADC)

signature: 14 August 2001 (source: SADC)

ratification approved by Parliament: 27 April 2004 (source: Parliament)

ratification: 23 June 2005 (source: SADC)

SADC Protocol on Extradition, 2002

(entered into force within SADC on 1 September 2006) (source: SADC)

signature: 3 October 2002 (source: SADC)

ratification approved by Parliament: 7 November 2006 (source: Parliament)

ratification: 1 February 2007 (source: SADC)

SADC Protocol on Mutual Legal Assistance in Criminal Matters, 2002

(entered into force within SADC on 2 March 2004) (source: SADC)

signature: 3 October 2002 (source: SADC)

ratification approved by Parliament: 7 November 2006 (source: Parliament)

ratification: 1 February 2007 (source: SADC)

SELECTED ARTICLES

Legal Assistance Centre, *Baby-dumping and Infanticide, Monograph 1*, 2008, available at www.lac.org.na/projects/grap/Pdf/mono1infant.pdf

Legal Assistance Centre, *Stalking: Proposed New Legislation for Namibia, Monograph 3*, 2008, available at www.lac.org.na/projects/grap/Pdf/mono3stalking.pdf.

See also **ALCOHOL, DRUGS AND TOBACCO**.

See also **ARMS AND AMMUNITION**.

See also Civil Aviation Offences Act 10 of 1972 (**AVIATION**).

See also Prevention of Counterfeiting of Currency Act 16 of 1965 (**CURRENCY**).

See also Combating of Domestic Violence Act 4 of 2003 (**DOMESTIC VIOLENCE**).

See also Financial Intelligence Act 3 of 2007 on the combating of money-laundering (**FINANCIAL INSTITUTIONS**).

See also Trespass Ordinance 3 of 1962 (**LAND**).

See also Abortion and Sterilization Act 2 of 1975 (**MEDICINE AND MEDICAL PROFESSIONS**).

See also *Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971* (drug-related offences) (**MEDICINE AND MEDICAL PROFESSIONS**).

See also Diamond Act 13 of 1999 (diamond-related offences) (**MINING AND MINERALS**).

See also **PUBLIC GATHERINGS**.

See also Road Traffic and Transport Act 22 of 1999 (traffic offences) and Motor Vehicle Theft Act 12 of 1999 (**ROADS AND ROAD TRANSPORTATION**).

CULTURE AND CULTURAL INSTITUTIONS

Cultural Institutions Act 29 of 1969, as amended in South Africa to January 1978.

Summary: This Act provides for the payment of government subsidies to cultural institutions.

Applicability to SWA: Section 18 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including that part of the said territory known as the Eastern Caprivi Zipfel and referred to in section 38(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968).”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (National Education) Transfer Proclamation (AG 1/1978), dated 11 January 1978.

Section 3(2)(d) of the transfer proclamation excluded section 16 of the Act from the operation of section 3(1) of the General Proclamation.

There were two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence, neither of which was made expressly applicable to SWA.

Cultural Promotion Ordinance 9 of 1980.

Summary: This Ordinance provides for the promotion of culture in relation to the “white population group”.

Amendments: This Ordinance is amended by the Libraries Ordinance 4 of 1981 (Administration for Whites), which has since been repealed.

Regulations: Permanent committees are established in GN 28/1981.

National Art Gallery of Namibia Act 14 of 2000.

Summary: This Act establishes a National Art Gallery and provides for its objects. It came into force on 10 September 2001 (GN 177/2001, GG 2603).

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 1 and substitutes section 5.

Regulations: GN 178/2001 (GG 2603) sets 10 September 2001 as the date on which the National Art Gallery of Namibia must assume responsibility over the Government collection.

National Arts Fund of Namibia Act 1 of 2005.

Summary: This Act establishes the National Arts Fund and a Council to control and manage the Fund. It was not yet in force as of 30 June 2010.

INTERNATIONAL LAW

Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO), 1945

Namibia has been a member state of this organisation since 2 November 1978.

(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>.)

Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972

accession: 6 April 2000 (source: www.epi.freedom.org/whtrty.htm)

World Heritage Convention, 1975

accession: 6 April 2000 (source: UNESCO. www.unesco.org/whc)

UNESCO Convention on the Protection of the Underwater Cultural Heritage, 2001

(entered into force internationally on 2 January 2009)

ratification by Parliament: 11 March 2010 (source: Parliament)

ratification not registered with UNESCO as of June 2010 (source: UNESCO, www.unesco.org)

Convention for the Safeguarding of the Intangible Cultural Heritage, 2003

(entered into force internationally on 20 April 2006)

ratification approved by Parliament: 7 November 2006

deposit: 19 September 2007; effective date: 19 December 2007

(source: UNESCO, www.unesco.org)

Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005

(entered into force internationally on 18 March 2007)

deposit: 29 November 2006 (source: UNESCO, www.unesco.org)

SADC Protocol on Culture, Information and Sport, 2001

(entered into force within SADC on 7 January 2006) (source: SADC)

signature: 14 August 2001

ratification approved by Parliament: 29 October 2002 (source: Parliament)

ratification: 2 December 2002 (source: SADC)

See also **CUSTOMARY LAW**.

See also State Repudiation (Cultura 2000) Act 32 of 1991 (**FINANCE AND DEVELOPMENT**).

See also **NATIONAL HERITAGE**.

CURRENCY

Silver Coin (Control of Importation) Proclamation 26 of 1932.

Summary: This Proclamation controls the importation of silver coins.

Amendments: The Proclamation is amended by Proc. 33/1932.

Payment of Bank Notes Proclamation 3 of 1933.

Summary: This Proclamation provides that the holder of a bank note shall not be entitled to be paid in gold.

Currency and Exchanges Act 9 of 1933, in part, as amended in South Africa prior to Namibian independence.

Summary: This Act regulates legal tender, currency, exchange and banking. The only section applicable to Namibia is section 9 which relates to regulations.

Applicability to SWA: Section 9 of the Act was made applicable to SWA by the addition of sub-section (6) by Act 36 of 1950 (with effect from 23 June 1950), which states that “the provisions of this section shall apply also to the Territory of South-West Africa”.

Regulations: Regulations are contained in RSA GN R.1112 of 1 December 1961, as amended by-

- RSA GN R. 872 of 3 June 1966
- RSA GN R.1647 of 21 October 1966
- RSA GN R. 650 of 19 April 1968
- RSA GN R. 355 of 5 March 1976
- RSA GN R. 357 of 20 February 1981
- RSA GN R.2610 of 30 November 1984
- RSA GN R.2868 of 23 December 1985
- RSA GN R. 957 of 4 May 1987
- RSA GN R.1416 of 23 June 1987
- RSA GN R. 224 of 19 February 1988
- RSA GN R. 881 of 29 April 1988
- RSA GN R.1472 of 18 July 1988
- RSA Proc. R.157 of 1 September 1985
- GN 4/1990 (GG 24)
- GN 20/1990 (GG 49)
- GN 49/1990 (GG 76)
- GN 52/1991 (GG 196)
- GN 111/1995 (GG 1095)
- GN 218/1996 (GG 1387)
- GN 135/2004 (GG 3232)
- GN 19/2005 (GG 3386).

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007.

Cases: *Ruch v Ferrari* 1993 NR 103 (HC), 1994 NR 287 (SC); *Samco Import & Export CC & Another v Magistrate of Eenhana & Others* 2009 (1) NR 290 (HC) (Exchange Control Regulations).

Prevention of Counterfeiting of Currency Act 16 of 1965, in part, as amended in South Africa prior to Namibian independence.

Summary: This Act sets forth in detail various offences relating to counterfeiting.

Applicability to SWA: Section 1 states “Sections one to four, inclusive, and section twelve, and any amendment thereof, shall apply also in the territory of South West Africa, including that portion thereof known as the Eastern Caprivi Zipfel and referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and in relation to all persons in that portion of the said territory known as the ‘Rehoboth Gebiet’ which is defined in the First Schedule to Proclamation No. 28 of 1923 of the Administrator of that territory.” (Those sections which do *not* apply to SWA are all amendments to other acts.)

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007.

NOTES AND COINS

(issued in terms of the Bank of Namibia Act 8 of 1990)

Proclamation 19/1993 (GG 682)

General Notice 339/1996 (GG 1452)

COMMEMORATIVE NOTES AND COINS

(issued in terms of the Bank of Namibia Act 8 of 1990)

General Notice 74/1995 (GG 1057)

General Notice 125/1995 (GG 1083)

General Notice 91/1996 (GG 1308)

General Notice 54/1999 (GG 2067)

See also Bank of Namibia Act 15 of 1997 (**FINANCIAL INSTITUTIONS**).

CUSTOMARY LAW

Council of Traditional Leaders Act 13 of 1997.

Summary: This Act 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 came into force on 31 March 1998 (GN 64/1998, GG 1828).

Amendments: Act 31/2000 amends sections 1, 3, 12 and 14.

Appointments: GN 150/2009 (GG 4305) appoints members of the Council.

Traditional Authorities Act 25 of 2000.

Summary: This Act provides for the election or recognition of traditional authorities and sets forth their functions, duties and powers. It replaces the Traditional Authorities Act 17 of 1995. It came into force on 17 May 2001 (GG 2532).

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

Chiefs and councillors under the previous law-

Designations of traditional authorities made under the previous law continue to be valid. Designations of 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), GN 61/2001 (GG 2513), GN 63/2002 (GG 2733) and GN 64/2002 (GG 2733).

Chiefs and heads of traditional communities under current law-

Designations relating to the recognition of chiefs and heads of traditional communities in terms of section 6(2) of this Act are contained in Proc. 2/2002, Proc. 3/2002 (GG 2733) and Proc. 61/2004 (GG 3344). (Note that the original GG 3344 was replaced by a subsequent corrected version). Additional designations of chiefs are made in Proc. 9/2006 (GG 3688), Proc. 12/2008 (GG 4018), Proc. 26/2008 (GG 4090), Proc. 9/2009 (GG 4320) and Proc. 5/2010 (GG 4423). (Note that the original GG 3688 was replaced by a subsequent corrected version). The removal from office of a chief of a traditional community is recognized in Proc. 60/2004 (GG 3344).

Traditional councillors under current law-

Senior traditional councillors and traditional councillors recognised in terms of section 10(5) are announced in GN 63/2002, GN 64/2002 (GG 2733), GN 130/2004 (GG 3218), GN 267/2004 (GG 3344), GN 87/2006 (GG 3648), GN 68/2008 (GG 4018), GN 181/2008 (GG 4090), GN 115/2009 (GG 4263), GN

205/2009 (GG 4355), GN 43/2010 (GG 4441) and GN 110/2010 (GG 4490).
(Note that the original GG 3344 was replaced by a subsequent corrected version.)

Cases: *Mbanderu Traditional Authority & Another v Kahurre & Others* 2008 (1) NR 55 (SC).

Articles: Manfred O Hinz, "Traditional governance and African customary law: Comparative observations from a Namibian perspective" in N Horn & A Boesl (eds), *Human Rights and the Rule of Law in Namibia*, Windhoek: Macmillan Namibia, 2008, available at www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-16045/index.html.

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).

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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

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/proj/home/pub/8/2/year-2010/dokument_id-18730/index.html

- 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
- 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 and 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?*, Windhoek: Konrad Adenauer Stiftung, 2008, available at www.kas.de/proj/home/pub/8/2/dokument_id-15086/index.html (reviewed by Chuma Himonga in *Namibia Law Journal*, Volume 1, Issue 1, 2009, available at www.namibialawjournal.org).
- 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.namibialawjournal.org.

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**).

CUSTOMS AND EXCISE

Customs and Excise Act 20 of 1998.

Summary: This Act replaces the *Customs and Excise Act 91 of 1964*. It came into force on 1 August 1988 (GN 186/1998, GG 1918).

Amendments: Schedule 1 is amended by GN 208/1998, GN 209/1998 (GG 1943), GN 71/1999 (GG 2092), GN 13/2002 (GG 2688), GN 14/2002 (GG 2688) and GN 146/2007 (GG 3896).

Schedules 1 and 5 are amended by GN 93/2000 (GG 2305). Schedule 1 is amended by GN 187/2000 (GG 2386), which also implements Article 6 of the Customs Union Agreement, 1969. Schedule 1 is further amended by GN 61/2007 (GG 3817), which relates to the implementation of the Customs Union Agreement 2002; however, GN 61/2007 was withdrawn by GN 97/2008 (GG 4038).

Schedule 1 is further amended by GN 116/2001 (GG 2548), which deals with the SADC Protocol on Trade, GN 61/2004 (GG 3181) as amended by GN 145/2004 (GG 3237) and GN 115-116/2004 (GG 3207).

Regulations: Regulations promulgated under the previous act remain in force in terms of section 131 of the new Act.

Regulations concerning Export Processing Zones are contained in GN 87/1996 (GG 1298).

Rules concerning the visa arrangement between Namibia and the USA for exports of textiles and clothing from Namibia to the USA are contained in GN 225/2001 (GG 2642), which was subsequently replaced by GN 231/2001 (GG 2653). GN 37/2004 (GG 3158) amends GN 231/2001, and is deemed to come into effect on 1 August 2003.

The rules designating places of entry, authorised roads, routes and related matters contained in RSA GN R.1771 of 5 October 1973 are amended by GN 222/2002 (GG 2879).

Notification of taxation proposals for additional duties in respect of the importation of certain pasta products is contained in GN 70/2008 (GG 4022). Notification of taxation proposals for additional duties in respect of the importation of certain categories of milk is contained in GN 71/2008 (GG 4022). Notification of taxation proposals for additional duties in respect of a range of products is contained in GN 165/2008 (GG 4075).

Cases: *S v Lofty-Eaton & Others (1)* 1993 NR 370 (HC) (with reference to *Customs and Excise Act 91 of 1964*); *S v Kramash* 1998 NR 186 (HC) (section 14(1)).

INTERNATIONAL LAW

Convention Establishing a Customs Co-operation Council, 1950

accession: 1 July 1992

Customs Union Agreement between South African Government, Botswana, Lesotho and Swaziland

accession: 6 July 1990

International Convention on the Simplification and Harmonization of Customs Procedures, 1973

accession approved by Parliament: 9 October 2003

deposit: 2004 (source: Ministry of Foreign Affairs)

International Convention on the Harmonized Commodity Description and Coding System, 1983

accession approved by Parliament: 9 October 2003

deposit: 2004 (source: Ministry of Foreign Affairs)

SELECTED ARTICLES

Oliver C Ruppel, "SACU 100: Reflections on the world's oldest customs union", *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.namibialawjournal.org.

See also **IMPORT AND EXPORT**.

DAMAGES

Apportionment of Damages Act 34 of 1956, as amended in South Africa to November 1979.

Summary: This Act apportions damages in cases of contributory negligence or joint or several liability.

Applicability to SWA: Section 6 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Transfer proclamation: Although this Act makes no reference to any minister, it probably fell under the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979. There was only one South African amending act after the date of transfer – the *Matrimonial Property Act 88 of 1984* – which was not made expressly applicable to SWA. .

Application: Section 37 of the Motor Vehicle Accidents Fund Act 10 of 2007 affects the application of this Act.

Cases:

Beukes v Mutual & Federal Insurance 1990 NR 105 (HC)

Johannes v South West Transport (Pty) Ltd 1992 NR 358 (HC), confirmed on other points on appeal to a full bench in 1994(1) SA 200 (Nm)

FS v Minister of Safety and Security 2009 (2) NR 417 (SC).

Assessment of Damages Act 9 of 1969, as amended in South Africa to November 1979.

Summary: This Act amends the law regarding assessment of damages for loss of support as a result of a person’s death.

Applicability to SWA: Section 2 states “The provisions of 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 section 35(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968).”

Transfer proclamation: Although this Act makes no reference to any minister, it probably fell under the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979. There were no amendments to the Act in South Africa after the date of transfer and prior to Namibian independence.

Application: Section 37 of the Motor Vehicle Accidents Fund Act 10 of 2007 affects the application of this Act.

See also Crown Liabilities Act 1 of 1910 (state liability) (**LAW**).

DEBTORS AND CREDITORS

Usury Proclamation 26 of 1921.

Summary: This Proclamation regulates the rates of interest on loans. Although it has not been technically repealed, it has been superseded by the *Usury Act 73 of 1968*.

Amendments: This Proclamation is amended by Ord. 25/1965.

Payment of Loans Proclamation 28 of 1933.

Summary: This Proclamation, which is now presumably obsolete, provides that repayment of money based on references to the price of gold, shall not be affected by variations in the price of gold.

Usury Act 73 of 1968, as amended in South Africa prior to Namibian independence.

Summary: This Act provides for the limitation and disclosure of finance charges on loan and credit transactions and sets maximum rates of interest for loans.

Applicability to SWA: Section 1 defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”. Section 19(1) states “The provisions of this Act and any amendment thereof shall apply also in the territory of South West Africa, including the area known as the Eastern Caprivi Zipfel and referred to in section 3(3) of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and also in relation to all persons in that portion of the 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.”

Amendments: Section 15(e) of the Act is repealed by Act 1/2000 (GG 2269). The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 amends section 1.

Regulations: Maximum annual finance charge rates are announced in government notices from time to time. See GN 97/1992 (GG 455), GN 39/1993 (GG 617), GN 27/1994 (GG 807), GN 47/1995 (GG 1037), GN 97/1995 (GG 1090), GN 154/1995 (GG 1151), GN 126/1997 (GG 1590), GN 6/2000 (GG 2259), GN 135/2002 (GG 2782) and General Notice 196/2004 (GG 3266).

Certain exemptions relating to micro loan transactions are set forth in GN 34/2000 (GG 2267), which is replaced by GN 136/2002 (GG 2782), replaced in turn by GN 189/2004 (GG 3266).

Cases: *Open Learning Group Namibia Finance CC v Permanent Secretary, Ministry of Finance & Others* 2006 (1) NR 275 (HC).

Suretyship Amendment Act 57 of 1971.

Summary: This Act repeals the common law rules which previously protected women from the consequences of suretyship.

Applicability to SWA: Section 4 states “This Act shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.” This wording would not make amendments to the Act in South Africa automatically applicable to SWA, but there were no amendments to the Act in South Africa prior to Namibian independence.

Amendments: The Bills of Exchange Act 22 of 2003 repeals the entire reference to the Bills of Exchange Act 34 of 1964 in the Schedule to the Act.

Prescribed Rate of Interest Act 55 of 1975, as amended in South Africa prior to Namibian independence.

Summary: This Act prescribes the calculation of interest on debts in certain circumstances and provides for payment of interest on certain judgement debts.

Applicability to SWA: Section 4 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Participation Bonds Act 55 of 1981, as amended in South Africa prior to Namibian independence.

Summary: This Act provides for the rights of participants in certain mortgage bonds.

Applicability to SWA: Section 16 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

DEEDS

Deeds Registries Act 47 of 1937, as amended in South Africa to November 1979.

Summary: This Act regulates the registration of deeds.

Applicability to SWA: Section 102A states “This Act and any amendment thereof, save sections 70 to 74*bis*, inclusive, and sections 84 and 85, shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel, but excluding the Rehoboth Gebiet as described in section 6 of the Rehoboth Self-Government Act, 1976.” (The excluded sections relate to mineral rights and prospecting contracts.) Section 102 defines “Government,” “provincial administration,” “Republic,” “State,” and “Territory” accordingly.

Section 16 of the *Deeds Registries Amendment Act 3 of 1972*, which makes the principal Act applicable to South West Africa, repeals a number of SWA laws relating to the registration of deeds. This amending Act also specifically excludes certain mining titles from its coverage.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979.

Section 3(1)(b) of the transfer proclamation excluded section 103(2), all the references to the “Republic” and all the references to the “State” in the Act from the operation of section 3(1) of the General Proclamation. However, the references to “the Government of the Republic” in sections 3(1)(c) and (l) and section 99 of the Act were to be construed as including a reference to the Administrator-General.

The provisions of the Act relating to the Deeds Registry Regulation Board were excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation “those provisions of any law ... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”.

Only one of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence -- the *Deeds Registries Amendment Act 27 of 1982* -- was made expressly applicable to SWA.

Amendments: The Executive Powers (Justice) Transfer Proclamation (AG 33/1979 as amended by AG 32/1985) amends sections 2, 9, 45, 45*bis*, 48 and 102 of the Act.

Act 26/1985, which is brought into operation by AG 21/1986, makes substantial amendments to the Act.

Act 2/1996, which was brought into force on 15 July 1996 by GN 155/1996 (GG 1340), amends several sections of the Act, inserts section 45*ter*, repeals section 94 and substitutes certain expressions.

Act 22/1996 amends sections 17 and 45ter of the Act, as well as the short title of the Deeds Registries Amendment Act 2 of 1996 (which incorrectly titled the amending act as the “Deeds Registries Amendment Act 1995”).

Regulations: A comprehensive new set of regulations was promulgated in GN 180/1996 (GG 1343), as corrected by GN 193/1996 (GG 1361) and GN 312/1996 (GG 1457). GN 36/2004 (GG 3155) substantially amends the regulations contained in GN 180/1996 (GG 1343). They are further amended by GN 77/2007 (GG 3824) (Annexure 1) and GN 137/2009 (GG 4278) (Regulation 8).

Cases: *Vaatz v Registrar of Deeds, Namibia: In re Grootfontein Municipality*; *Vaatz v Registrar of Deeds, Namibia: In re Nöckel’s Estate* 1993 NR 171 (HC); *Vaatz v Law Society of Namibia & Others* 1996 NR 272 (HC); *Oshakati Tower (Pty) Ltd v Executive Properties CC & Others (2)* 2009 (1) NR 232 (HC).

Registration of Deeds in Rehoboth Act 93 of 1976, as amended in South Africa to September 1977.

Summary: This Act makes special provision for the registration of deeds in the Rehoboth Gebiet.

Applicability to SWA: This Act applies specifically to the Rehoboth Gebiet, as described in section 6 of the *Rehoboth Self-Government Act 56 of 1976*.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977, as amended), dated 28 September 1977. There were no amendments to the Act in South Africa after the date of transfer and prior to Namibian independence.

Amendments: The Act is amended by Act 8/1991 (Rehoboth). Act 35/1994 amends sections 1, 13, 48, 49 and 52. Act 8/1996, which was brought into force on 15 July 1996 by GN 184/1996 (GG 1353), amends sections 1 (definition of “owner”) and 10 (registration of property in the name of married persons) and inserts section 10bis (endorsement of deeds forming part of joint estate of marriage).

Regulations: Regulations are contained in RSA GN R.2372 of 3 December 1976, as amended by AG GN 28 of 7 July 1978 and GN 75/2007 (GG 3824).

Cases: *Eksteen v Registrar of Deeds for Rehoboth & Others* 1994 NR 217 (HC) (section 10(3)); *Beukes & Others v Engelbrecht & Others* 2005 NR 305 (HC (section 53)).

DEFENCE

Moratorium Act 25 of 1963.

Summary: This Act provides for moratoriums on contractual debts, prescription of civil legal remedies and similar matters for persons fulfilling their military service requirements. It has no practical effect in Namibia as it applies only to conscripts.

Applicability to SWA: Section 7 states “This Act shall also apply in the territory of South West Africa.” This wording did not make amendments to the Act in South Africa automatically applicable to SWA, and none of the amending acts in South Africa prior to Namibian independence were made specifically applicable to SWA.

Civil Defence Act 39 of 1966, as amended in South Africa to 1977.

Summary: This Act provides for a Directorate of Civil Defence in the public service and deals with emergency powers. It was repealed in its entirety in South Africa by the *Civil Protection Act 67 of 1977*.

Applicability to SWA: Section 19 states “This Act and any amendments thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951).” The Act’s applicability to South West Africa is affected by RSA Proc. 205/1969 (RSA GG 2495, dated 1 August 1969). The repealing act (which was not technically an amending act) was not made explicitly applicable to South West Africa.

Amendments: The Defence Act 1 of 2002 repeals sections 20, 21 and 22.

General Law Amendment Act 101 of 1969, section 29, as amended in South Africa by *General Law Amendment Act 102 of 1972*.

Summary: Section 29 authorises the withholding of evidence from any court of law if the Administrator-General (or the responsible Minister) is of the opinion that disclosure of the information could be detrimental to state security.

Applicability to SWA: Section 29(3) states “The provisions of this section and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Civil Defence Proclamation, AG 54 of 1978.

Summary: This Proclamation deals with disasters and civil defence.

Regulations: Regulations are contained in AG GN 701/1980 and AG GN 3/1981.

Civil Defence Ordinance 3 of 1979.

Summary: This Ordinance deals with disasters and civil defence. It should be read together with the Civil Defence Proclamation, AG 54 of 1978.

Amendments: The Ordinance is amended by Act 19/1986.

Regulations: Regulations are contained in AG GN 9/1981.

Protection of Information Act 84 of 1982.

Summary: This Act makes it an offence to disclose certain information which might be prejudicial to the security or interests of South Africa. It authorises prosecution within South Africa for offences committed elsewhere. (It also repeals the *Official Secrets Act 16 of 1956* and its amendments.)

Applicability to SWA: The Security Matters Proclamation (AG 29/1985) makes the Act applicable to South West Africa, with minor amendments.

Amendments: Section 45 of the National Intelligence Act 19 of 1987 amends section 7 of the Act. The Namibia Central Intelligence Service Act 10 of 1997 amends section 1.

Namibia Central Intelligence Service Act 10 of 1997..

Summary: This Act replaces the National Intelligence Act 19 of 1987 inherited from South Africa by establishing a Namibia Central Intelligence Service. One matter of general interest is that a judicial direction is required in terms of the Act for the interception or monitoring of communications and the search of premises. The Act came into force on 5 June 1998 (Proc. 12/1998, GG 1876).

Regulations: Regulations are contained in GN 118/1998 (GG 1876). Access to certain premises under the control of the Namibia Central Intelligence Service is prohibited by GN 133/2005 (GG 3517) and Proc. 8/2007 (GG 3803).

GN 178/2005 (GG 3553) contains directives relating to proceedings before a judge of the High Court under sections 19 and 25.

Appointments: The Director-General of the Namibia Central Intelligence Service is appointed in Proc. 14/1999 (GG 2062).

Defence Act 1 of 2002.

Summary: This Act replaces the *Defence Act 44 of 1957*. The Namibian Defence Force established under the previous Act continues to exist under the new Act. The Act came into force on 15 July 2002 (GN 109/2002, GG 2765).

Regulations: Regulations made under the previous Act remain in force in terms of section 94. The regulations in force under the previous Act are as follows (supplied for this publication by the Ministry of Defence):

Chapter I - Introduction
RSA GN R.1204 of 5 August 1966

amended by:
RSA GN R.605 of 19 April 1968

Chapter II - Organisation and Control

RSA GN R.1208 of 26 November 1971

amended by

RSA GN R.2360 of 14 December 1973 (Reg 19(1))

RSA GN R.1387 of 13 August 1976 (Reg 21)

RSA GN R.1298 of 20 June 1980 (Reg 4)

RSA GN R.415 of 7 March 1986 (Reg 16(4))

Chapter III – Officers and Candidate Officers

(now re-named Officers and Officer Cadets)

RSA GN R.2213 of 10 December 1971

amended by:

RSA GN R.507 of 29 March 1974 (Reg 3(1) + (2))

RSA GN R.314 of 22 February 1976 (Regs 3, 9(2), 11(4),
13(2) and 24)

RSA GN R.572 of 23 March 1978 (Reg 8(1))

RSA GN R.832 of 21 April 1978 (Reg 2(1) + (3))

RSA GN R.2203 of 24 October 1986 (Reg 24(2))

replaced by:

GN 138/2005 (GG 3525)

Chapter IV – Other Ranks

RSA GN R.274 of 26 February 1971

amended by:

RSA GN R.2211 of 1 December 1972 (Regs 3(2), 22(3))

RSA GN R.261 of 23 February 1973 (Reg 24(4))

RSA GN R.918 of 9 May 1975 (Reg 21(4))

RSA GN R.314 of 27 February 1976 (Regs 1(1)(c) + (8),
5(2), 20, 22(1) + (3))

RSA GN R.832 of 21 April 1978 (Reg 1(7))

RSA GN R.2203 of 24 October 1986 (Reg 20(2))

replaced by:

GN 138/2005 (GG 3525)

Chapter V – Financial Matters

RSA GN R.678 of 26 April 1974

amended by:

RSA GN R.1365 of 9 August 1974 (Reg 5A)

RSA GN R.314 of 27 February 1976 (Reg 16(1) + (3))

RSA GN R.623 of 9 April 1976 (Regs 2, 3(2) + (4))

RSA GN R.1387 of 13 August 1976 (Reg 42(5))

RSA GN R.1708 of 26 August 1988 (Reg 9(2))

Chapter VI – Leave of Absence

RSA GN R.2110 of 26 November 1971

amended by:

RSA GN R.1387 of 13 November 1976 (Regs 19, 27, 46A,
47(2))

Chapter VII – Training

RSA GN R.1983 of 13 November 1971

amended by:

RSA GN R.1365 of 9 August 1974 (Regs 7, 8, 9)

RSA GN R.314 of 27 February 1976 (Reg 4(2))

Chapter VIII – Compulsory Insurance for Military Service

RSA GN R.493 of 14 March 1980

amended by:

RSA GN R.2203 of 24 October 1986 (Reg 7(2))

Chapter IX – Institutions and Funds

RSA GN R.276 of 25 February 1966

amended by:

RSA GN R.25 of 6 January 1967 (Regs 32(2)(b), 71)

RSA GN R.605 of 19 April 1968 (Reg 62)

RSA GN R.1867 of 18 October 1968 (Reg 64A)

RSA GN R.2334 of 20 December 1968 (Reg 11)

RSA GN R.122 of 31 January 1969 (Reg 35(2) + (3))

RSA GN R.36 of 8 January 1971 (Regs 17(2), 32(2), 60(1),
68(1))

RSA GN R.270 of 26 February 1971 (Regs 63(1)(a))

RSA GN R.1724 of 1 October 1971 (Reg 62)

RSA GN R.314 of 27 February 1976 (Reg 59(2))

RSA GN R.1387 of 13 August 1976 (Regs 59(2), 68(1))

RSA GN R.2775 of 7 December 1979 (Regs 10(3), 62(2))

RSA GN R.494 of 14 March 1980 (Preamble)

RSA GN R.1708 of 26 August 1988 (Regs 11(1)(c)(iii), 69,
70, 71)

Chapter XI – Performance of Police Functions by Military Police Officials

RSA GN R.91 of 17 January 1986

Chapter XIII – Police functions by Defence Force

RSA GN R.2772 of 13 December 1985

Chapter XV – Medical Matters

RSA GN R.203 of 13 February 1970

amended by:

RSA GN R.169 of 12 February 1971 (Part V)

RSA GN R.1394 of 10 August 1973 (Reg 18)

RSA GN R.439 of 7 March 1975 (Regs 8, 9 14(5) + (7),
25(1))

Chapter XIX – Combat Service

RSA GN R.1223 of 20 August 1965

amended by:

RSA GN R.1322 of 2 August 1968 (Reg 3)

RSA GN R.331 of 27 February 1970 (Reg 3)

RSA GN R.347 of 5 March 1976 (Reg 21)

RSA GN R.832 of 21 April 1978 (Reg 20(2) + (3)).

Regulations relating to the performance of police duties by members of the Defence Force are contained in GN 234/1994 (GG 993) and GN 241/1994 (GG 1002). (To avoid confusion, it should be noted that there were two Government Notices numbered 241 in 1994.) GN 193/1995 (GG 179) and GN 46/1999 (GG 2075) designate certain areas for training purposes.

In respect of these surviving regulations, it is relevant to note that section 60(1) of the Defence Amendment Act 20 of 1990 provided as follows: “The regulations made under the provisions of the principal Act and the rules made under the Military Discipline Code, which were in force on the date immediately prior to the commencement of the First Law Amendment (Abolition of Discriminatory or Restrictive Laws for purposes of Free and Fair Election) Proclamation (Proclamation AG. 14 of 1989), in so far as they relate to a provision of the principal act or the said Code, as the case may be, amended in terms of the provisions of this Act, shall, with effect from the commencement of this Act, apply in Namibia, unless the President determines otherwise or unless it would in any particular case be obviously inappropriate.”

Under the 2002 act, rules relating to the Military Discipline Code are contained in GN 223/2008 (GG 4114).

Cases: *Mwandingi v Minister of Defence of Namibia* 1995 NR 91 (HC) concerns the Security Districts Proclamation (AG 9/1977), which has been repealed (focusing on the concept of “reasonable suspicion”). *S v Mushwena & Others* 2004 NR 276 (SC) discusses section 95 of the Act in *dicta* at 423-24 (*per* Mtambanengwe AJA) and 393-34 (*per* O’Linn, AJA). *S v Myburgh* 2008 (2) NR 592 (SC) discusses the language of section 103ter (4)-(5) as these provisions stood prior to Namibian independence in *dicta* at 615F-G.

APPOINTMENTS

Appointment of First Chief of Defence Force, Proc. 7/1990.

INTERNATIONAL LAW

The first four conventions are often referred to as the “Geneva Conventions”.

Amelioration of Condition of Wounded and Sick in Armed Forces in the Field, 1949

accession: 21 March 1990 (instrument of succession by United Nations Council for Namibia on behalf of Namibia, 18 October 1983 , with effect from 18 April 1984).

Amelioration of Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949

accession: 21 March 1990 (instrument of succession by United Nations Council for Namibia on behalf of Namibia, 18 October 1983 , with effect from 18 April 1984)

Geneva Convention relative to the Treatment of Prisoners of War, 1949

accession: 21 March 1990 (instrument of succession by United Nations Council for Namibia on behalf of Namibia, 18 October 1983 , with effect from 18 April 1984)

Geneva Convention relative to Protection of Civilian Persons in Time of War, 1949

accession: 21 March 1990 (instrument of succession by United Nations Council for Namibia on behalf of Namibia, 18 October 1983 , with effect from 18 April 1984)

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977

accession: 21 March 1990 (instrument of succession by United Nations Council for Namibia on behalf of Namibia, 18 October 1983 , with effect from 18 April 1984)

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977

accession: 21 March 1990 (instrument of succession by United Nations Council for Namibia on behalf of Namibia, 18 October 1983 , with effect from 18 April 1984)

Rome Statute of the International Criminal Court, 1998

(came into force internationally on 1 July 2002)

signature: 27 October 1998

ratification: 25 June 2002 (source: www.iccnw.org)

Agreement on the Privileges and Immunities of the International Criminal Court, 2002

(came into force internationally on 22 July 2004)

signature: 10 September 2002

ratification approved by Parliament: 2 July 2003 (source: Parliament)

deposit: 29 January 2004 (source: www.iccnw.org)

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000

(entered into force internationally on 12 February 2002)

signature: 8 September 2000 (source: Ministry of Foreign Affairs)

ratification: 16 April 2002 (source: UNICEF)

Note: Namibia's ratification of this Optional Protocol was accompanied by a declaration on the minimum recruitment age (age 18) for the Namibia Defence Force (source: Ministry of Foreign Affairs).

SADC Protocol on Politics, Defence and Security Co-operation, 2001

(entered into force within SADC on 2 March 2004) (source: SADC)

signature: 14 August 2001 (source: SADC)

ratification approved by Parliament: 1 October 2002 (source: Parliament)

ratification: 8 November 2002 (source: Ministry of Foreign Affairs);

2 December 2002 (source: SADC)

SADC Mutual Defence Pact, 2003

(entered into force within SADC 17 August 2008) (source: SADC)

signature: 26 August 2003 (source: SADC)

ratification approved by Parliament: 19 November 2003 (source: Parliament)

ratification: 11 October 2004 (source: SADC)

Agreement amending the Protocol on Politics, 2009

(entered into force within SADC on 8 September 2009) (source: SADC)

signature: 8 September 2009 (source: SADC)

no ratification appears to be needed

See also Security Commission Act 18 of 2001 (**CONSTITUTION**).

See also National Supplies Procurement Act 89 of 1970 (**TRADE AND INDUSTRY**)

DISABILITIES

Aged Persons Act 81 of 1967, as amended in South Africa prior to Namibian independence.

Summary: This Act provides for the protection and welfare of certain aged and debilitated persons.

Applicability to SWA: Section 1 defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”. Section 21A (which was added by a 1971 amendment) states “This Act and any amendment thereof shall, save in so far as it has already been declared to be applicable in the territory in terms of section 16(1) of the Pension Laws Amendment Act, 1968 (Act No. 79 of 1968), also apply in the territory, including the Eastern Caprivi Zipfel.”

The original Act also dealt with old age pensions, but this portion of the Act was repealed by the *Social Pensions Act 37 of 1973*, which was applicable to SWA.

Transfer of administration to SWA: Section 21 of the Act gives the State President the power to assign the administration of the Act to one or more Ministers and to vary this assignment from time to time. Therefore it is not clear from the face of the Act which transfer proclamation, if any, was applicable.

Blind Persons Act 26 of 1968, as amended in South Africa prior to Namibian independence.

Summary: This Act concerns the promotion of the welfare of blind persons.

Applicability to SWA: Section 1 defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”. Section 18A (which was added by a 1971 amendment) states “This Act and any amendment thereof shall, save in so far as it has already been declared to be applicable in the territory in terms of section 16(1) of the Pension Laws Amendment Act, 1968 (Act No. 79 of 1968), also apply in the territory, including the Eastern Caprivi Zipfel.”

The original Act also covered pensions for blind persons, but this portion of the Act was repealed by section 21 of the *Social Pensions Act 37 of 1973*, which was applicable to SWA.

Transfer of administration to SWA: Section 18 of the Act gives the State President the power to assign the administration of the Act to one or more Ministers and to vary this assignment from time to time. Therefore it is not clear from the face of the Act which transfer proclamation, if any, was applicable.

National Disability Council Act 26 of 2004

Summary: This Act establishes a National Disability Council and provides for its functions and powers. The Schedule to the Act contains the National Policy on Disability. The Act came into force on 30 October 2009 (GN 211/2009, GG 4371).

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 5 and 7.

INTERNATIONAL LAW

Agreement for the Establishment of the African Rehabilitation Institute, 1981

accession: 22 August 1996 (source: Ministry of Foreign Affairs)

deposit: 25 September 1996 (source: Ministry of Foreign Affairs)

Convention on Rights of Persons with Disabilities, 2006

(entered into force internationally on 3 May 2008)

signature: 25 April 2007 (source: www.un.org)

ratification by Parliament: 12 September 2007 (source: Parliament)

deposit: 4 December 2007 (source: www.un.org)

Optional Protocol to Convention on Rights of Persons with Disabilities, 2006

signature: 25 April 2007 (source: www.un.org)

ratification by Parliament: 12 September 2007 (source: Parliament)

deposit: 4 December 2007 (source: www.un.org)

See also *Employees' Compensation Act 30 of 1941* (**LABOUR**).

See also **MENTAL HEALTH AND MENTAL DISORDERS**.

See also National Pensions Act 10 of 1992 (re: pensions for blind and disabled persons) (**PENSIONS**).

DOMESTIC VIOLENCE

Combating of Domestic Violence Act 4 of 2003.

Summary: This Act provides for the issuing of protection orders by magistrates' courts in domestic violence cases, deals with matter relating to domestic violence offences and provides for police duties in respect of domestic violence. It came into operation on 17 November 2003 (GN 234/2003, GG 3093).

Amendments: The Second Schedule is amended by the Criminal Procedure Act 25 of 2004, which is not yet in force.

Regulations: Regulations are contained in GN 235/2003 (GG 3094).

Cases: *Valindi v Valindi & Another* 2009 (2) NR 504 (HC) (divorce case which discusses a protection order application and the resulting protection order at 518G-ff).

SELECTED CASES

S v Bohitile 2007 (1) NR 137 (HC) (context of domestic violence as an aggravating factor in sentencing)

SELECTED ARTICLES

Dianne Hubbard & Daina Wise, *Domestic Violence: Proposals for Law Reform*, Legal Assistance Centre, 1998

Legal Assistance Centre/Law Reform & Development Commission, *Domestic Violence Cases Reported to the Namibian Police: Case Characteristics and Police Response*, 1999

Law Reform and Development Commission, *Report on Domestic Violence* (LRDC 10), 2004

Legal Assistance Centre, *Guide to the Combating of Domestic Violence Act*, 2005, available at www.lac.org.na/grap/Pdf/guiddomvio.pdf (languages: English, Afrikaans, Oshiwambo, Otjiherero, Khoekhoegowab)

Legal Assistance Centre, *Guidelines for Service Providers on the Combating of Domestic Violence Act*, 2005, available at www.lac.org.na/grap/Pdf/dvguidlin.pdf.

EDUCATION

National Education Act 30 of 1980.

Summary: The remaining portions of this Act relate only to tertiary education, with the exception of tertiary education at the Academy for Tertiary Education (which has been replaced by other institutions since independence). The Act was brought into operation on 1 April 1981 by AG 6/1981.

Amendments: The Act is amended by AG 39/1984 (which repealed sections 13-24 and amended other sections) and Act 12/1988. The Act is repealed by the Education Act 16 of 2001 in so far as it applies to schools and education other than tertiary education. The Act is repealed by the Teachers' Education Colleges Act 25 of 2003 insofar as it applies to teachers' education colleges.

Regulations: Regulations are contained in AG GN 49/1981, AG GN 73/1982, AG GN 74/1982, GN 162/1986 and GN 215/1987 (as amended by AG 25/1989).

University of Namibia Act 18 of 1992.

Summary: This Act establishes the University of Namibia and provides for the administration and control of its affairs. It came into force on 31 August 1992 (GN 109/1992, GG 462).

Amendments: Sections 26-28 are amended by Act 33/1994.

National Vocational Training Act 18 of 1994.

Summary: This Act regulates the training of apprentices and vocational trainees. It establishes a Vocational Training Board and trade advisory committees; provides for the establishment of vocational standards and training schemes and the designation of trades; provides for the establishment of a National Trade Testing and Certification Centre; provides for the training and certification of apprentices and the registration of vocational training centres; and establishes a Vocational Training Fund. Parts I-VII and IX-XI came into force on 1 September 1996 and Part VIII on 1 January 1997 (GN 233/1996).

This Act is repealed in its entirety by the Vocational Education and Training Act 1 of 2008, which came into force on 2 June 2008 (GN 126/2008, GG 4053). However, certain portions of this Act remain operational despite the repeal. Section 49(12) of Act 1/2008 provides that sections 17-28 inclusive of this Act remain in force as if it had not been repealed, until a date determined by the Minister by notice in the *Government Gazette*. Section 49(15) similarly provides that section 32(1)-(2) of this Act remain in force as if this Act had not been repealed, until a date determined by the Minister by notice in the *Government Gazette*.

The National Trade Testing and Certification Centre established under section 30 of this Act continues to perform its functions as if this Act has not been repealed, until a date determined by the Minister by notice in the *Government Gazette*.

Amendments: Act 10/1996 amends sections 1, 5, 14, 29 and 54.

Regulations: Regulations are contained in GN 234/1996 (GG 1399).

Certain vocational standards are approved in terms of section 13(3) in GN 9/1997 (GG 1489) and GN 190/2000 (GG 2387).

Designations of trades are contained in GN 192/2000 (GG 2387).

Trades are designated in terms of section 14(1)(b) in GN 10/1997 (GG 1489), which substitutes paragraph (b) of GN R. 2473 of 21 December 1973.

Polytechnic of Namibia Act 33 of 1994.

Summary: This Act establishes a Polytechnic of Namibia and provides for its administration and control. It came into force on 15 December 1994 (GN 241/1994, GG 1000).

Regulations: Certain bodies are designated in terms of section 6 by GN 96/1995 (GG 1090).

Namibia College of Open Learning Act 1 of 1997.

Summary: This Act establishes the Namibian College of Open Learning (NAMCOL) which aims to broaden access to education by providing alternatives to school-based education. It came into operation on 25 September 1997 (Proc. 15/1997, GG 1682).

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 7, 8, 14 and 20.

Regulations: The administration of the Act is assigned to the Minister of Basic Education and Culture by Proc. 15/1997 (GG 1682).

Namibia Students Financial Assistance Fund Act 26 of 2000.

Summary: This Act establishes a fund to facilitate study and research by students at approved institutions of higher education. It came into force on 15 May 2002 (GN 72/2002, GG 2738).

Regulations: Regulations are contained in GN 246/2001 (GG 2664).

Education Act 16 of 2001.

Summary: This Act covers schools and hostels in Namibia, as well as the Teaching Service. It establishes a National Advisory Council on Education, a National Examination Assessment and Certification Board, Regional Education Forums, School Boards, an Education Development Fund and a Teaching Service Committee. It repeals the following laws:

- Education Ordinance 27 of 1962

- *Black Special Education Act 24 of 1964*
- *Coloured Persons in South West Africa Education Act 63 of 1972*
- *Basters of Rehoboth Education Act 85 of 1972*
- *Namas in South West Africa Education Act 86 of 1972*
- Education Ordinance 21 of 1975
- Mentally Retarded Coloured, Baster and Nama Children's Training Proclamation, AG 76 of 1978
- National Education Act 30 of 1980 (in so far as it applies to schools and education other than tertiary education).

The Act came into force on 28 October 2002 (GN 186/2002, GG 2841). However, in terms of section 84(2) of the Act, sections 77(1)(g), (h) and (i) (certain offences) come into operation 12 months after this date.

Amendments: The Higher Education Act 26 of 2003 amends column 3 of the Schedule to the Act.

Regulations: Regulations are contained in GN 187/2002 (GG 2841) as amended by GN 15/2004 (GG 3144). Categories of State-Aided Private Schools in respect of section 49 of the Act are set out in GN 188/2002 (GG 2841).

General Rules of Conduct for Learners at State Schools are contained in GN 189/2002 (GG 2841).

Minimum requirements and standards pertaining to the Namibia Senior Secondary Certificate are contained in GN 228/2009 (GG 4383).

Cases: *U v Minister of Education, Sports and Culture & Another* 2006 (1) NR 168 (HC) (award of damages in respect of corporal punishment in violation of section 56(1) of Act; statute is not explicitly mentioned in case); *Elio & Another v Permanent Secretary of Education & Another* 2008 (2) NR 532 (LC) (sections 16-17; employment of principal).

Teachers' Education Colleges Act 25 of 2003.

Summary: This Act provides for the establishment of teachers' education colleges for the education and training of students and serving teachers, in order to enable them to obtain the necessary qualifications or to better such qualifications. It repeals the National Education Act 30 of 1980 in so far as it applies to teachers' education colleges. The Act came into force on 1 April 2005 (GN 18/2005 GG 3386).

Higher Education Act 26 of 2003.

Summary: This Act regulates higher education, provides for the establishment of a National Council for Higher Education, provides for the registration of private higher education institutions, provides for funding of public higher education institutions, and provides for the establishment of a panel of enquiry into the affairs of higher education. It came into force on 1 March 2005 (GN 17/2005, GG 3386).

Amendments: The Vocational Education and Training Act 1 of 2008 amends sections 1 and 7.

Regulations: Regulations for the registration of private higher education institutions

are contained in GN 160/2009 (GG 4312).

Appointments: Members of the National Council for Higher Education are announced in GN 5/2006(GG 3573) and GN 10/2009 (GG 4210).

Vocational Education and Training Act 1 of 2008.

Summary: This Act regulates vocational education and training and provides for its funding. It establishes a Namibia Training Authority and a National Training Fund. It also provides for inspectors and quality system auditors. It replaces the National Vocational Training Act 18 of 1994. The Act came into force on 2 June 2008 (GN 126/2008, GG 4053).

Section 49(12) provides that sections 17-28 inclusive of the previous Act remain in force as if that Act had not been repealed, until a date determined by the Minister by notice in the *Government Gazette*. Section 49(15) provides that section 32(1)-(2) of the previous Act remain in force as if that Act had not been repealed, until a date determined by the Minister by notice in the *Government Gazette*.

Regulations: Regulations, notices, registrations and other directives made under the previous law survive in terms of section 49. These include the following:

Regulations are contained in GN 234/1996 (GG 1399).

Certain vocational standards are approved in terms of section 13(3) in GN 9/1997 (GG 1489) and GN 190/2000 (GG 2387).

Designations of trades are contained in GN 192/2000 (GG 2387). Trades are designated in terms of section 14(1)(b) in GN 10/1997 (GG 1489), which substitutes paragraph (b) of GN R. 2473 of 21 December 1973.

Appointments: The Vocational Training Board appointed under the previous law continues to exist until the Board of the Namibia Training Authority is appointed under the Act.

The National Trade Testing and Certification Centre established under section 30 of the previous Act continues to perform its functions as if that Act had not been repealed, as well as the functions of the Vocational Training Board under this Act, until a date determined by the Minister by notice in the *Government Gazette*.

COMMISSIONS

Commission on Higher Education, Proc. 1/1991.

See also GN 5/1991 (GG 144).

Commission of Inquiry into the Cause of Resistance by Certain Members of the Caprivi Community to the Appointment of Certain Senior Public Servants (Education), Proc. 26/1991 (GG 286).

See also GN 114/1991 (GG 286).

Commission on Education, Culture and Training. Proc. 13/1999 (GG 2059).

See also GN 39/1999 (GG 2059).

INTERNATIONAL LAW

Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO), 1945

effective date in respect of Namibia: 2 November 1978.

(source: Environmental treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>.)

SADC Protocol on Education and Training, 1997

(entered into force within SADC on 31 July 2000) (source: SADC)

signed: 8 September 1997 (source: SADC)

ratification: 18 August 1998 (source: SADC; Ministry of Foreign Affairs)

See also **ARCHIVES**.

See also Namibia Qualifications Authority Act 29 of 1996 (re: curriculum standards and training programmes for achieving occupational standards) (**LABOUR**).

See also Control of Sites (Churches, Schools and Missions) Proclamation 31 of 1932 (**LAND**).

See also **LIBRARIES**.

ELECTIONS

Electoral Act 24 of 1992.

Summary: This Act governs elections for the office of President, the National Assembly, regional councils and local authority councils. It also provides for the establishment of an Electoral Commission, for the registration of voters and political parties, and for the conduct of elections.

Amendments: The Act is substantially amended by Act 23/1994.

The definition of “party list” is amended by the Local Authorities Amendment Act 3 of 1997, to conform with the amendment of the Local Authorities Act 23 of 1992 to defer the change from election on a party list system to election on a ward basis until after the second local elections.

Act 30/1998, which did not come into force until July 1999, amends sections 1, 3, 5, 9, 11, 20, 21, 25, 26, 62, 68, 74, 76 and 93 and substitutes certain expressions. Act 11/1999 amends amending Act 30/1998. Act 30/1998 came into force together with Act 11/1999 on 13 July 1999, with the exception of sections 10 and 11 of Act 30/1998 which were deemed by section 5 of Act 11/1999 to have come into operation on 1 October 1998.

Act 19/1999 amends sections 28A, 51, 87, 87A, 88 and 89 of the Act.

Act 20/2002 amends section 15 (pertaining to the period for the second general registration of voters) and is deemed to have come into operation on 23 October 2002.

Act 7/2003, which came into operation on 8 July 2003 (GN 146/2003, GG 3014), makes substantial amendments.

Act 4/2006 (GG 3759) amends sections 49 and 69 of the Act.

The Act is substantially amended by Act 7/2009 (GG 4322) which came into operation on the date of publication (14 August 2009), with the exception of new section 79B (concerning voting machines) which will be brought into force on a date set by the Minister.

Regulations: Regulations for the registration of voters and political parties are contained in GN 128/1992 (GG 482), GN 141/1992 (GG 504), GN 149/1992 (GG 513) and GN 197/1994 (GG 956). Regulations relating to the Registration of Voters and Political Parties are contained in GN 147/2003, as amended by GN 149/2003, which repeals the regulations in GN 128/1992, as amended by GN 197/1994.

Regulations for the nomination of candidates are contained in GN 141/1992 (GG 504), as amended by GN 149/1992 (GG 513), GN 196/1994 (GG 956) and GN 271/1998 (GG 1985).

Regulations for the general conduct of elections are contained in GN 152/1992 (GG 518), as amended by GN 205/1994 (GG 965).

Guidelines for political parties are published in General Notice 143/1992 (GG 503).

GN 172/1992 (GG 530) states that the Directorate of Elections will resort under the Office of the Prime Minister.

A Code of Conduct Governing Persons Accredited to Provide Voter Education for or in Respect of Elections is contained in General Notice 241/2009 (GG 4352).

A Code of Conduct Governing Accredited Observers and Persons Appointed by Accredited Observers is contained in General Notice 242/2009 (GG 4352).

Appointments: An initial Director of Elections and an Electoral Commission are appointed in Proc. 44/1992 (GG 509).

An Acting Director of Elections is appointed in Proc. 16/1993 (GG 648), and a Director of Elections in Proc. 24/1993 (GG 727), as amended by Proc. 26/1993 (GG 750). A Director of Elections is appointed in Proc. 23/2003 (GG 3035) and Proc. 28/2008 (GG 4093).

Members of the Electoral Commission are announced in Proc. 15/1999 (GG 2070), Proc. 10/2000 (GG 2391), Proc. 37/2004 (GG 3219), Proc. 10/2005 (GG 3485), Proc. 7/2007 (GG 3789) and Proc. 16/2007 (GG 3928).

Members of the Selection Committee are appointed in GN 109/2000 (GG 2313), GN 229/2001 (GG 2647), GN 64/2005 (GG 3440) and GN 165/2006 (GG 3714).

Returning officers are listed in Proc. 27/1994, as amended by Proc. 31/1994 (GG 990).

Cases: *Garoeb & Others v President of the Republic of Namibia & Others* 1992 NR 342 (HC); *DTA of Namibia & Another v SWAPO Party of Namibia & Others* 2005 NR 1(HC); *Congress of Democrats & Others v Electoral Commission* 2005 NR 44 (HC); *Rally for Democracy and Progress & Others v Electoral Commission of Namibia & Others* 2009 (2) NR 793 (HC) (section 93(4) as amended in 1998, section 109).

Related international agreements: See SADC Parliamentary Forum, *Norms and Standards for Elections in the SADC Region*, adopted by the SADC Parliamentary Forum Plenary Assembly on 25 March 2001, available at www.eisa.org.za/PDF/sadcpf.pdf. See also *Statutes of the International Institute for Democracy and Electoral Assistance, 2006*, which entered into force 21 November 2008 (source: www.idea.int), accession approved by Parliament: 9 July 2008 (source: Parliament).

RELATED MATTERS

Establishment of the First Delimitation Commission, Proc. 12/1990 (GG 69)

Appointment of Delimitation Commission, Proc. 9/1995 (GG 1089)

Appointment of Delimitation Commission, Proc. 6/2002 (GG 2855).

KEY DOCUMENTS FOR SPECIFIC ELECTIONS

First local and regional elections, 1992

registration period: Proc. 29/1992 (GG 485), extended in Proc. 43/1992 (GG 508)

dates of local elections: Proc. 38/1992 (GG 502)

dates of regional elections: Proc. 39/1992 (GG 502)
provisional local authority voters' register: GN 150/1992 (GG 516)
provisional national voters' register: GN 151/1992 (GG 517)
polling stations: GN 154/1992 (GG 520), GN 155/1992 (GG 521), GN 179/1992 (GG 538)
regional candidates: GN 155/1992 (GG 521), GN 156/1992 (GG 526), GN 180/1992 (GG 539)
local authority candidates: GN 157/1992 (GG 528), as amended by GN 183/1992 (GG 544)
results-Regional Councils: GN 153/1992 (GG 519), GN 184/1992 (GG 545) as amended by GN 29/1993 (GG 601)
results-Local Authorities: GN 185/1992 (GG 547)

First Walvis Bay local election, 1994

A local authority was established for Walvis Bay by Proc. 16/1994 (GG 873), as amended by Proc. 17/1994 (GG 893). See *Municipality of Walvis Bay v Du Preez* 1999 NR 106 (LC), for a discussion of the validity of this election.

party lists: GN 144/1994 (GG 905)
results: GN 157/1994 (GG 915)

Local authority by-elections

(Vacancies in local councils which did not result in by-elections are not listed here.)

Aroab:

candidates: GN 9/1993 (GG 572)
results: GN 27/1993 (GG 601)

Regional council by-elections

Keetmanshoop Rural Constituency, Karas Region:

candidates: GN 10/1993 (GG 572)
results: GN 28/1993 (GG 601)

Olukunda Constituency, Oshikoto Region:

results: GN 11/1993 (GG 572)

Kabe Constituency, Caprivi Region:

candidates: GN 58/1993 (GG 651)
results: GN 65/1993 (GG 666)

Omupundja Constituency, Oshana Region:

results: GN 226/1994 (GG 985).

Gobabis Constituency, Omaheke Region:

candidates: GN 79/1995 (GG 1082)
results: GN 115/1995 (GG 1102)

Okongo Constituency, Ohangwena Region:

results: GN 212/1995 (GG 1191)

Katima Mulilo Constituency, Caprivi Region:

candidates: GN 258/1996 (GG 1412)
results: GN 295/1996 (GG 1437)

Ompundja Constituency, Oshana Region:

results: GN 180/1997 (GG 1674)

Kapako Constituency, Okavango Region

results: GN 44/1998 (GG 1811)

General election, 1994

supplementary registration of voters: Proc. 19/1994 (GG 903), Proc. 24/1994 (GG 940)

lists of candidates for President: GN 216/1994 (GG 973)

lists of candidates for National Assembly: GN 217/1994 (GG 973), as amended by

GN 238/1994 (GG 998)
results-President: GN 242/1994 (GG 1003), as corrected by GN 13/1995 (GG 1009)
results-National Assembly: GN 243/1994 (GG 1003)

Second local authority elections, 1998

date of elections: Proc. 17/1997 (GG 1698), revoked by Proc. 25/1997 (GG 1733);
Proc. 29/1997 (GG 1748)
polling stations: GN 208/1997 (GG 1707), GN 279/1997 (GG 1755)
increase of number of members of Swakopmund and Windhoek municipal councils:
Proc. 22/1997 (GG 1714)
lists of political parties and candidates: GN 6/1998 (GG 1788)
results: GN 35/1998 (GG 1805)

Second regional authority elections, 1999

date of election: Proc. 17/1998 (GG 1970), replaced by Proc. 18/1998 (GG 1974)
list of candidates and elected members: GN 279/1998 (GG 1998)
results: GN 42/1999 (GG 2069), as amended by GN 189/1999 (GG 2185)

Local authority by-elections

(Vacancies in local councils which did not result in by-elections are not listed here.)

Rehoboth:

candidates: GN 140/2001 (GG 2574)
results: GN 187/2001 (GG 2615)

Regional council by-elections

Wanaheda Constituency, Khomas Region:

candidates: GN 102/1999 (GG 2120)
results: not published

Walvis Bay Urban Constituency, Erongo Region:

candidates: GN 102/1999 (GG 2120)
results: not published

Gobabis Constituency, Omaheke Region:

candidates: GN 120/2000 (GG 2334)
results: GN 184/2000 (GG 2382)

Rundu Urban Constituency, Kavango Region:

candidates: GN 285/2000 (GG 2449)
results: GN 14/2001 (GG 2473).

Kapako Constituency, Kavango Region

candidates: GN 83/2001 (GG 2525)
results: GN 141/2001 (GG 2574)

Karibib Constituency, Erongo Region

candidates: GN 242/2001 (GG 2658)
results: GN 11/2002 (GG 2684)

Oshikango Constituency, Ohangwena Region

candidates: GN 242/2001 (GG 2658)
results: GN 11/2002 (GG 2684)

Rehoboth Urban West Constituency, Hardap Region:

candidates: GN 49/2003 (GG 2938)
results: GN 98/2003 (GG 2974)

Kapako Constituency, Kavango Region:

candidates: GN 108/2003 (GG 2989)
results: not published

Oshikango Constituency, Ohangwena Region:

candidates: not yet available
results: not published

Windhoek West Constituency, Khomas Region
candidates: GN 198/2003 (GG 3058)
results: not published

Grootfontein Constituency, Otjozondjupa Region
candidates: GN 10/2004 (GG 3137)
results: GN 43/2004 (GG 3166)

Tsumeb Constituency, Oshikoto Region:
candidates: GN 44/2004 (GG 3166)
results: GN 107/2004 (GG 3203)

Otjinene Constituency, Omaheke Region:
candidates: GN 94/2004 (GG 3201)
results: not published

Okakarara Constituency; Otjozondjupa Region:
candidates: GN 95/2004 (GG 3201)
results: not published

Aminuis Constituency; Omaheke Region:
candidates: GN 96/2004 (GG 3201)
results: not published

Tsumkwe Constituency; Otjozondjupa Region:
candidates: GN 97/2004 (GG 3201)
results: not published

Omatako Constituency; Otjozondjupa Region:
candidates: GN 98/2004 (GG 3201)
results: not published

General election, 1999

supplementary registration of voters: Proc. 26/1999 (GG 2169)
lists of candidates for President: GN 254/1999 (GG 2233)
lists of candidates for National Assembly: GN 255/1999 (GG 2233)
results-President: GN 22/2000 (GG 2261)
results-National Assembly: GN 23/2000 (GG 2261)

Third local authority elections; 2004

supplementary registration of voters Proc. 11/2004 (GG 3170)
date of elections: Proc. 18/2004 (GG 3173)
provisional voters' register: GN 81/2004 (GG 3194)
voters' registers: GN 101/2004 (GG 3203)
polling days and polling stations GN 99/2004 (GG 3201)
list of political parties and candidates: GN 100/2004 (GG 3202)
results: GN 190/2004 (GG 3268)

General election, 2004

supplementary registration of voters: Proc. 42/2004 (GG 3274)
polling days – President: Proc. 43/2004 (GG 3280)
polling days – National Assembly: Proc. 44/2004 (GG 3280)
provisional voters' registers: GN 216/2004 (GG 3292), revoked by GN 222/2004 (GG 3297)
list of candidates for President: GN 237/2004 (GG 3316)
party lists for National Assembly: GN 238/2004 (GG 3316)
polling stations: GN 239/2004 (GG 3316) as amended by GN 243/2004 (GG 3321)
national voters' registers: GN 242/2004 (GG 3318)
results-President: GN 3/2005 (GG 3366)
results-National Assembly: GN 4/2005 (GG 3366); another set of results for the same election reporting slightly different figures is published in GN 31/2005 (GG 3399) without any reference to the previous Government Notice.

Third regional council elections; 2004

date of election: Proc. 47/2004 (GG 3292)
provisional voters' registers: GN 216/2004 (GG 3292), revoked by GN 222/2004 (GG 3297).
polling days and polling stations Proc. 48/2004 (GG 3292) as amended by Proc. 57/2004 (GG 3329).
candidates, polling days, and polling stations: GN 252/2004 (GG 3329)
results: GN 5/2005 (GG 3366)

Regional council by-elections

Rundu Rural West Constituency, Kavango Region:

candidates: GN 228/2007 (GG 3958)
results: GN 14/2008 (GG 3983)

Eenhana Constituency, Ohangwena Region:

candidates: GN 58/2008 (GG 4006)
results: not yet published as of 30 June 2010

Tobias Hainyeko Constituency, Khomas Region:

candidates: GN 252/2008 (GG 4141)
results: GN 271/2008 (GG 4170)

Okahandja Constituency, Otjozondjupa Region

candidates: GN 16/2010 (GG 4425)
results: GN 44/2010 (GG 4442).

New local authorities, 2005 (Oshikuku, Okahao and Ruacana)

list of political parties and candidates: GN 159/2005 (GG 3540)
results: GN 50/2006 (GG 3592).

New local authority, 2007 (Nkurenkuru)

list of political parties and candidates: GN 56/2007 (GG 3810), which revokes GN 22/2007 (GG 3790)
results: GN 74/2007 (GG 3821).

New local authority, 2008 (Omuthiya)

candidates: GN 226/2008 (GG 4118), which withdraws GN 42/2008
results: GN 89/2008 (GG 4013); GN 251/2008 (GG 4141)

General election, 2009

supplementary registration of voters: Proc. 11/2009 (GG 4334)
polling days – President and National Assembly: Proc. 12/2009 (GG 4348)
polling date for persons voting abroad: GN 192/2009 (GG 4348)
polling date for persons on board vessels: GN 193/2009 (GG 4348)
provisional voters' registers: GN 203/2009 (GG 4352)
list of candidates for President: GN 222/2009 (GG 4375)
party lists for National Assembly: GN 224/2009 (GG 4375)
polling stations: GN 223/2009 (GG 4375)
final voters' register: GN 225/2009 (GG 4375)
results-President: GN 246/2009 (GG 4397)
results-National Assembly: GN 247/2009 (GG 4397)

See also Intimidation Proclamation, AG 24 of 1989, in connection with General Notice 143/1992, which contains certain guidelines for the holding of elections (**CRIMINAL LAW AND PROCEDURE**).

See also **REGIONAL AND LOCAL GOVERNMENT.**

ELECTRICITY

Powers of the SWA Water and Electricity Corporation Act 14 of 1980.

Summary: This Act gives certain powers to the SWA Water and Electricity Corporation (Pty) Ltd, subject to the approval of the Minister of Mines and Energy. (This corporation is now known as “NamPower”.)

Application of Act: Namibia Power Corporation (Pty) Ltd is deemed to be a company registered in terms of Chapter IV of the *Companies Act 61 of 1973* by Proc.7/1998 (GG 1849). The application of the Act is also affected by the State-owned Enterprises Governance Act 2 of 2006.

Electricity Act 4 of 2007.

Summary: This Act provides for the establishment and functions of the Electricity Control Board. It replaces the Electricity Act 2 of 2000, which in turn replaced the Electric Power Proclamation 4 of 1922. The Act came into force on 15 November 2007 (GN 201/2007, GG 3933).

Regulations: Regulations made in terms of the previous Act survive by virtue of section 46(3):

Electricity Regulations (Administrative) are contained in GN 168/2000 (GG 2371).

Levies in terms of section 13 of the previous 2000 Act are addressed in GN 60/2007 (GG 3817), which repeals GN 145/2001 (GN 2579). However, section 46 of the 2007 Act provides that GN 145/2001 shall be effective from 16 July 2001 and not 1 July 2001, along with any amendments to the schedule of approved tariffs contained in a licensee’s licence to retrospectively recover such levies from its customers.

ENGINEERING

Engineering Profession Act 18 of 1986.

Summary: This Act regulates the engineering profession. It was brought into operation by AG 1/1987 and AG 5/1989.

Amendments: Act 25/1991 amends sections 1, 2, 3, 11, 12, 16, and 26 and substitutes certain words and expressions and the long title. GN 22/2004 (GG 3154) amends Schedule II to the Act.

Regulations: Remuneration and allowances payable to Council members are addressed in GN 160/1987. Council rules are contained in GN 31/1988.

Regulations on the requirements and procedure for registration are contained in GN 159/1987 and GN 161/1987, as amended by General Notice 192/1989 and GN 71/1998 (GG 1829). Regulations concerning registration and annual registration fees are contained in GN 161/1987, as amended by General Notice 192/1989, GN 71/1998, General Notice 336/1999 (GG 2229), General Notice 365/1999 (GG 2248), General Notice 117/2002 (GG 2759) and General Notice 87/2003 (GG 2974).

Tariffs of fees are addressed in GN 80/1992 (GG 437) and GN 24/1993 (GG 593), as amended by GN 238/1997 (GG 1741), GN 14/1998 (GG 1796), GN 157/2002 (GG 2810), GN 49/2006 (GG 3591), GN 199/2006 (GG 3738), GN 205/2007 (GG 3933), GN 265/2008 (GG 4153) and GN 42/2010 (GG 4440).

Note: It appears from the subject matter of these regulations that GN 24/1993 (GG 593) may have been superseded; however it has not been repealed by any of the subsequent notices.

GN 60/2005 (GG 3402) deals with registration and annual registration fees for surveyors.

Exemptions from the provisions of sections 11, 12, 13, 16 and 17 in respect of work for the Millennium Challenge Account are contained in GN 13/2009 (GG 4210).

Lists of registered members and cancellations and reinstatements of registrants are published from time to time, but these have not been recorded here.

Appointments: Members of the Engineering Council are appointed in GN 16/1990 (GG 33), GN 148/1992 (GG 512), GN 32/1993 (GG 605), GN 153/1994 (GG 913), GN 27/1996 (GG 1255), GN 72/1989 (GG 1829), GN 276/1999 (GG 2248), General Notice 20/2004 (GG 3154), GN 93/2006 (GG 3658) and GN 186/2007 (GG 3919).

See also Namibia Qualifications Authority Act 29 of 1996 (re: occupational standards) (**LABOUR**).

ENVIRONMENT

Soil Conservation Act 76 of 1969, as amended in South Africa to March 1978.

Summary: This Act covers the prevention and combating of soil erosion; the conservation, improvement and manner of use of the soil and vegetation; and the protection of water sources.

Applicability to SWA: Section 27A (inserted in 1971) states “This Act and any amendment thereof shall also apply in the territory”, which is defined in section 1 as “the territory of South West Africa”.

Transfer of administration to SWA: The administration of the Act was transferred to SWA by the Executive Powers (Agricultural Technical Services) Transfer Proclamation (AG 11/1978), dated 2 March 1978.

The reference to the “Minister” in section 24 of the Act (which deals with limitation of liability) was excluded from the operation of the General Proclamation, meaning that in this section “Minister” continued to refer to the South African Minister of Agriculture.

There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence -- the *Forest Act 122 of 1984* -- which was not made expressly applicable to SWA.

Amendments: Section 13 is amended by the Forest Act 12 of 2001.

Regulations: Regulations are contained in RSA GN R.2121/1973. See also the regulations promulgated under the Communal Land Reform Act 5 of 2002, contained in GN 37/2003 (GG 2926). Regulation 31 and 32 deal with the prevention of soil erosion and the protection of pastoral resources.

Mountain Catchment Areas Act 63 of 1970.

Summary: This Act provides for the management and conservation of land in designated mountain catchment areas.

Applicability to SWA: Section 19 states “This Act shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.” This wording did not make amendments to the Act in South Africa automatically applicable to SWA, and none of the amending acts were made specifically applicable to SWA.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Forestry) Transfer Proclamation (AG 16/1977), dated 1 December 1977.

Hazardous Substances Ordinance 14 of 1974.

Summary: This ordinance provides for the control of toxic substances. It covers manufacture, sale, use, disposal and dumping as well as import and export.

Amendments: This Ordinance is affected by the Health Act 21 of 1988, which made it applicable to all of SWA.

The Ordinance is amended by the Atomic Energy and Radiation Protection Act 5 of 2005 (GN 50/2005, GG 3429), which was not yet in force as of 30 June 2010.

Nature Conservation Ordinance 4 of 1975.

Summary: This Ordinance covers game parks and nature reserves, the hunting and protection of wild animals (including game birds), problem animals, fish, and the protection of indigenous plants. It also establishes a Nature Conservation Board.

Amendments: The Ordinance is amended by Ord. 4/1977, Ord. 16/1980, Act 27/1986, Act 6/1988, Act 17/1988, Act 31/1990 (sections 20, 26 and Schedule 3), and Act 5/1996 (brought into force on 29 April 1997 by GN 78/1997, GG 1546) (conservancies). The Ordinance is also amended by the Inland Fisheries Resources Act 1 of 2003, which came into force on 6 June 2003 (GN 117/2003, GG 2992) (sections 18, 65-71 and 84).

Schedules 3 and 4 are amended by GN 75/1987. Schedule 3 is further amended by GN 115/1978 and GN 90/1988. Schedule 4 is further amended by GN 131/1996 (GG 1320).

The application of the Ordinance is affected by the Provision for Control of the Import, Export and Possession of and Trading in Controlled Game Products Proclamation, AG 42/1980.

Regulations: The basic set of regulations under the Ordinance is contained in GN 240/1976 (OG 3556). These regulations are amended as follows-

GN 256/1976 (Regs 4(1)-(2))	OG 3563
GN 112/1977 (Regs 4,36A-E)	OG 3599
GN 248/1977 (Regs 99, 108, 146, 154)	OG 3638
GN 302/1977 (Reg 1)	OG 3644
GN 314/1977 (Reg 4(1))	OG 3647
GN 364/1977 (Regs 8,73)	OG 3659
GN 32/1978 (Reg 1)	OG 3705
GN 114/1978 (Reg 1)	OG 3741
GN 190/1978 (Regs 9,26)	OG 3798
GN 247/1978 (Reg 1, Chpt 12)	OG 3845
GN 10/1979 (Regs 4,5,6(3), 7)	OG 3894
GN 50/1979 (Regs 36,104,114-16, Chpt 17A)	OG 3916
GN 56/1979 (Reg 103)	OG 3916
AG GN 8/1981 (Regs 1,4)	OG 4368
AG GN 41/1982 (Chpt 11A-11B)	OG 4609
AG GN 23/1983 (Chpt 11)	OG 4741
AG GN 49/1983 (Reg 115)	OG 4752
AG GN 61/1983 (Regs 1,4-7)	OG 4757
AG GN 72/1984 (Reg 4)	OG 4901
GN 3/1985 (Reg 31)	OG 5064
AG GN 36/1985 (Reg 122)	OG 5019
GN 101/1985 (Reg 25A)	OG 5125

GN 121/1985 (Reg 4)	OG 5134
GN 122/1986 (Reg 125)	OG 5219
GN 242/1986 (definitions, Regs 28,36)	OG 5297
GN 81/1987 (Reg 27)	OG 5365
GN 89/1988 (definitions, Regs 60,101, 106-111, 114-115,117-118, 125,147-148, Chpt 12A)	OG 5547
AG GN 37/1989 (Reg 128A)	OG 5733
AG GN 44/1989 (Reg 118K, Schedule C)	OG 5751
GN 152/1993 (deletes Reg 128B)	GG 765
GN 83/1997 (Regs 147, 148, Chapter XVIIIB on Conservancies and Wildlife Councils; replaces GN 304/1996, GG 1446)	GG 1554
GN 119/1997 (Regs 107, 108, 108A, 108B-bow hunting guides, 110A-bow hunting for trophies, 111, 114, 115(1), 118).	GG 1580
GN 59/2009 (Regs 101, 115, 118A, 118C, 122, 128B and Schedule D)	GG 4236
GN 9/2010 (predator trophy hunting)	GG 4416

The topics covered in the regulations include tariffs (game parks); regulations relating to game parks; swimming baths and use of boats in game parks; inland fisheries; keeping game and other wild animals in captivity; game dealers; game skins; protected plants and permits for them; regulations for cage bird societies; trophy hunting, manufacturing and dealers' licences and the export of trophies; hunting of huntable game, hunting at night and the export of game and game meat; sea bird guano; private game parks and nature reserves; succulent societies; game-proof fences, recognition and regulation of associations; and registers for coyote getters.

GN 203/1973 (which is amended by GN 132/1996 (GG 1320) declares certain animals as problems animals. GN 246/1977 (OG 3638) contains prohibitions on the export of processed or tanned leopard & cheetah skins.

GN 90/2009 (GG 4236) places a moratorium on permits for the importation of large predators and alien species of wild animals into Namibia.

Most of the other Government Notices issued in terms of the Ordinance deal with the establishment or dis-establishment of private game parks, hunting seasons, honorary nature conservators, and the boundaries of public game parks, nature reserves and conservancies. These notices have not been recorded here.

Cases:

S v Ngombe 1990 NR 165 (HC)

S v Machinga 1990 NR 157 (HC) (Controlled Game Products Proclamation 42 of 1980)

Skeleton Coast Safaris v Namibia Tender Board & Others 1993 NR 288 (HC) (section 17(1))

S v Makwele 1994 NR 53 (HC) (sections 20(1) and 30(1)(a))

S v Koortzen 1994 NR 356 (HC) (sections 27(1), 38(1)(a) and 50(1))

S v Kau & Others 1995 NR 1 (SC) (sections 26(1) and 85(2))

S v Vorster 1996 NR 177 (HC) (sections 30(1)(a), 27(1) and 89)

S v Seibeb & Another; S v Eixab 1997 NR 254 (HC) (sections 27(1), 30(1)(a), 40(1)(a))

S v Maritz 2004 NR 22 (HC) (sections 30(1) and 31(1); *mens rea* in the form of *culpa* applies to the offence of hunting huntable game under section 30(1))

S v Aukemeb 2009 (1) NR 19 (HC) (formulation of charge under section 50A and

appropriate sentencing)
Van Rensburg & Another v Government of the Republic of Namibia 2009 (2) NR 431 (HC) (sections 26(5), 48(1) and 81(1))
Uffindell t/a Aloe Hunting Safaris v Government of Namibia & Others 2009 (2) NR 670 (HC) (constitutionality of application of trophy hunting provisions in sections 28(1)(a), 36(1)(a) and 78(f) by private treaty rather than public auction, to applicants who were denied opportunity to participate in public auction, as mechanism to redress their wrongful exclusion).

Atmospheric Pollution Prevention Ordinance 11 of 1976.

Summary: This Ordinance provides for the prevention of air pollution.

Amendments: This Ordinance is affected by the Health Act 21 of 1988, which made it applicable to all of SWA.

Regulations: The entire area of Namibia, with the exception of East Caprivi, is proclaimed as a controlled area for the purposes of section 4(1)(a) of the Ordinance in GN 309/1976.

Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981, as amended in South Africa to Namibian independence.

Summary: This Act prohibits the discharge of oil from ship, tanker or off-shore installation and gives the state certain powers to prevent such pollution and to deal with the removal of oil spills.

Applicability to SWA: RSA Proclamation 93/1985 makes the Act “and all amendments thereof” applicable to SWA from 7 June 1985.

Transfer of administration to SWA: The relevant transfer proclamation is the Executive Powers (Transport) Transfer Proclamation (AG 14/1989), dated 15 March 1978). However, section 3(1)(e) of the transfer proclamation excludes this Act from the operation of the General Proclamation, meaning that the administration of the Act was not transferred to SWA.

Amendments: Act 24/1991 amends sections 1, 7, 8, 9, 12, 19, 20, 21, 27 and 30; repeals section 26; and substitutes certain expressions to make the Act consistent with an independent Namibia and to abolish the Oil Pollution Prevention Fund. The Namibian Ports Authority Act 2 of 1994 amends section 21 of the Act.

Game Products Trust Fund Act 7 of 1997.

Summary: This Act establishes a Game Products Trust Fund to support the conservation and management of wildlife resources and rural development. It also establishes a Game Products Trust Fund Board. The Act came into force on 1 September 1998 (GN 196/1998, GG 1927).

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 5, 6, 7 and 10.

Forest Act 12 of 2001.

Summary: This Act consolidates the laws relating to the use and management of forests and forest produce, provides for the control of forest fires and creates a Forestry Council. It replaces the Preservation of Bees and Honey Proclamation (Proc. 1/1923), the Preservation of Trees and Forests Ordinance 37 of 1952 and the *Forest Act 72 of 1968*. It came into force on 15 August 2002 (GN 138/2002, GG 2793).

Amendments: Act 13/2005 (GG 3564) extends the composition of the Forestry Council and amends sections 1, 2 and 4.

Regulations: Areas declared as community forests under section 15(3) are published from time to time but have not been recorded here.

Environmental Investment Fund of Namibia Act 13 of 2001.

Summary: This Act establishes an Environmental Investment Fund of Namibia to be used to support sustainable environmental and natural resource management. It will come into force on a date set by notice in the *Government Gazette*.

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 7, 9, 14 and 21 and deletes section 8.

Atomic Energy and Radiation Protection Act 5 of 2005.

Summary: This Act provides for protection of the environment of the people in current and future generations against harmful effects of radiation, by controlling radiation sources and nuclear materials. It also establishes an Atomic Energy Board and a National Radiation Protection Authority. This Act had not yet entered into force as of 30 June 2010, except for section 44 which deals with the administration of the Act and came into operation on 16 May 2005 (GN 50/2005, GG 3429).

Administration: The administration of the Act is assigned to the Ministry of Health and Social Services by Proc. 19/2008 (GG 4066).

Related international agreements: *Statute of the International Atomic Energy Agency, 1956*, effective date in respect of Namibia: 17 February 1983 (source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>).

Biosafety Act 7 of 2006.

Summary: This Act regulates genetically modified organisms and specified products derived from genetically modified organisms, and establishes a Biosafety Council. It will come into force on a date set by the Minister responsible for science and technology.

Environmental Management Act 7 of 2007.

Summary: This Act provides a framework for decision-making on matters affecting the environment, to promote sustainable management of the environment. It provides a process for environmental assessment and control and establishes a Sustainable Development Advisory Council and provides for the appointment of an Environmental Commissioner and environmental officers. It will come into force on a date set by the Minister.

Articles: Ministry of Environment and Tourism, *Guide to the Environmental Management Act No 7 of 2007*, 2008.

Plant Quarantine Act 7 of 2008.

Summary: This Act provides for the preventing, monitoring, controlling and eradication of plant pests and regulated the movement of plants and plant products. It also provides for the certification of the phytosanitary standards of plants and plant products exported from Namibia and affects compliance with the International Plant Protection Convention of 1951. It repeals the Locusts Suppression Proclamation 34 of 1923, the Agricultural Pests Ordinance 11 of 1927 and the *Agricultural Pests Act 3 of 1973*. The Act will come into force on a date set by the Minister.

Regulations: Anything done under the repealed laws survives if it could have been done under a corresponding provision of this Act.

Regulations made under the *Agricultural Pests Act 3 of 1973* include the following:

Regulations concerning locusts are contained in AG GN 30/1989.

Regulations relating to importation permits and the lodging of appeals are contained in GN 57/2007 (GG 3812).

SELECTED ARTICLES

Ministry of Environment and Tourism, *Toolbox for the Establishment of Communal Area Conservancies*, 1996

Andrew Corbett and Clement Daniels, *Legislation and Policies Affecting Community-Based Natural Resources Management in Namibia*, Social Science Division, University of Namibia, 1996, available at www.lac.org.na/projects/lead/Pdf/cbnrm1.pdf

Andrew Corbett and Brian TB Jones, *The legal aspects of Governance in Community-Based Natural Resources Management (CBNRM) in Namibia: DEA Research and Discussion Paper No 41*, Windhoek: Ministry of Environment and Tourism, 2000, available at www.cbnrm.net/pdf/corbett_001.pdf

Manfred O Hinz, *Without Chiefs There Would Be No Game: Customary Law and Nature Conservation*, Windhoek: Out of Africa Publishers, 2003

Shirley Bethune, Maria Amakali and Kevin Roberts, *Review of Namibian legislation and policies pertinent to environmental flows*”, *Physics and Chemistry of the Earth, Parts A/B/C* , Volume 30, Issues 11-16, pages 894-902, 2005

MO Hinz & OC Ruppel , eds, *Biodiversity and the ancestors: Challenges to customary and environmental law*, Windhoek: Namibian Scientific Society, 2008 (reviewed by Thomas Falk in *Namibia Law Journal*, Volume 1, Issue 1, 2009, available at www.namibialawjournal.org)

Legal Assistance Centre/Stanford Law School, *Striking a Better Balance; An Investigation of Mining Practices in Namibia's Protected Areas*, 2009, available at

INTERNATIONAL LAW

International Plant Protection Convention, 1951

ratification approved by Parliament: 20 October 2005

deposit: 23 February 2007 (source: www.fao.org/Legal/TREATIES/004s-e.htm)

Phyto-Sanitary Convention for Africa, 1967

(not yet in force within the AU)

ratification by Parliament: 20 October 2005 (source: Parliament)

deposit: none recorded on African Union website (source: www.africa-union.org)

International Convention on Civil Liability for Oil Pollution Damage, 1969, as replaced by the 1992 Protocol, as amended in 2000

accession approved by Parliament: 9 October 2001 (source: Parliament)

deposit: 18 December 2002; effective date: 18 December 2003

(source: International Maritime Organisation, www.imo.org)

Compensation for Oil Pollution Damage, 1971, as replaced by the 1992 Protocol

accession approved by Parliament: 9 October 2001 (source: Parliament)

deposit: 18 December 2002; defective date: 18 December 2003

(source: International Maritime Organisation, www.imo.org)

Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972

accession: 6 April 2000 (source: www.epi.freedom.org/whtrty.htm)

World Heritage Convention, 1975

accession: 6 April 2000 (source: www.unesco.org/whc)

International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto

accession approved by Parliament: 9 October 2001 (source: Parliament)

deposit: 18 December 2002; effective date: 18 March 2003

(source: International Maritime Organisation, www.imo.org)

Note: Namibia has also acceded to Annexes I/II (Prevention of Pollution by Oil/Control of Pollution by Noxious Liquid Substances), III (Prevention of Pollution by Harmful Substances in Packaged Form) and V (Prevention of Pollution by Garbage from Ships), but has NOT acceded to Annex IV (Prevention of Pollution by Sewage from Ships) or the 1997 Protocol adding Annex VI (Prevention of Air Pollution from Ships). (source: International Maritime Organisation, www.imo.org)

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973

accession: 18 December 1990; effective: 18 March 1991

(source: www.cites.org/eng/parties/alphabet.shtml; <http://sedac.ciesin.org/>)

Amendment to Article XI of the Convention, Bonn (Germany), 22 June 1979

(entered into force on 13 April 1987)

accession: 18 December 1990, effective 18 March 1991

(source: www.cites.org/eng/parties/bonn.shtml)

Namibia has NOT agreed to the following amendment:

* *Amendment to Article XXI of the Convention, Gaborone (Botswana), on 30 April 1983* (not yet in force internationally as of 20 January 2005).

Vienna Convention for the Protection of the Ozone Layer, 1985
accession: 20 September 1993; effective date: 20 December 1993
(source: <http://sedac.ciesin.org/>)

Montreal Protocol on Substances that Deplete the Ozone Layer, 1987
accession: 20 September 1993; effective date: 20 December 1993
(source: <http://sedac.ciesin.org/>)

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, Adopted at the Fourth Meeting of the Parties at Copenhagen on 25 November 1992
ratification by Parliament: 28 March 2003 (source: Parliament)
acceptance: 28 July 2003 (source: http://ozone.unep.org/Ratification_status/)
effective date: 26 October 2003 (source: www.treaties.un.org)

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, Adopted by the Ninth Meeting of the Parties at Montreal on 17 September 1997
(entered into force internationally on 10 November 1999)
ratification by Parliament: 19 April 2006 (source: Parliament)
acceptance: 1 October 2007 (source: http://ozone.unep.org/Ratification_status/)
effective date: 30 December 2007 (source: www.treaties.un.org)

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, Beijing, 3 December 1999
(entered into force internationally on 25 February 2002)
ratification by Parliament: 19 April 2006 (source: Parliament)
acceptance: 01 October 2007 (source: http://ozone.unep.org/Ratification_status/)
effective date: 30 December 2007 (source: www.treaties.un.org)

Convention on Wetlands of International Importance, especially as Waterfowl Habitat, 1971 (Ramsar Convention)
effective date in respect of Namibia: 23 December 1995
(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>.)

Protocol to amend the Convention on Wetlands of International Importance especially Waterfowl Habitat, 1982 (came into force 1 October 1986)
accession: 23 December 1995
(sources: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>;
International Environmental Policy Reference Guide
<http://environment.harvard.edu/guides/intenvpol/indexes/treaties/RAMSAR.html#prot>)

Amendments to Article 6 and 7, 1987
accession: 23 December 1995
(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>
International Environmental Policy Reference Guide
<http://environment.harvard.edu/guides/intenvpol/indexes/treaties/RAMSAR.html#prot>)

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989
accession: 15 May 1995; effective date: 13 August 1995 (source: <http://sedac.ciesin.org/>)

On 31 January 1995, the Government of Egypt informed the Secretary-General that its instrument of accession should have been accompanied by three declarations, one of which concerns Namibia. These declarations were not transmitted to the Secretary-General at the

time of the instrument of accession. In keeping with the depository practice followed in similar cases, the Secretary-General proposed to receive the declarations in question for deposit in the absence of any objection on the part of any of the Contracting States, either to the deposit itself or to the procedure envisaged, within a period of 90 days from the date of their circulation (i.e. 17 July 1995). However, the Secretary-General received several objections, meaning that the declarations were not accepted for deposit. Namibia itself did not make any declarations at the time of accession.

Third Declaration

The Governments of Bahrain, Belgium, Benin, Côte d'Ivoire, Denmark, Egypt, the Federal Republic of Germany, Finland, France, the German Democratic Republic, Ghana, Greece, Hungary, Italy, Jordan, Kenya, Kuwait, Lebanon, Luxembourg, Malaysia, Malta, Namibia, Netherlands, Niger, Norway, the Philippines, Portugal, Saudi Arabia, Senegal, Sweden, Switzerland, Turkey, the United Arab Emirates and the United Kingdom of Great Britain and Northern Ireland. Sweden, Switzerland, Turkey, the United Arab Emirates and the United Kingdom of Great Britain and Northern Ireland, as well as the Commission of the European Union, which will sign the Convention and/or the final document referring to the Control of Transboundary Movements of Hazardous Wastes and their Disposal, (referred to hereinafter as "the Convention"),

Concerned that the transboundary movement of hazardous wastes constitutes a great danger to the health of both humans and the environment,

Considering that the developing countries have a limited ability to manage wastes, especially hazardous wastes, in an environmentally sound manner,

Believing that a reduction in the production of hazardous wastes and their disposal in environmentally sound conditions in the country which exports them must be the goal of waste management policy,

Convinced that the gradual cessation of transboundary movements of hazardous wastes will undoubtedly be a major incentive to the development of appropriate national facilities for the disposal of wastes,

Recognizing the right of every State to ban the import to or export from its territory of hazardous wastes,

Welcoming the signature of the Convention,

Believing it necessary, before applying the provisions of the Convention to impose immediate and effective control on transboundary movement operations, especially to developing countries, and to reduce them,

Declare the following:

- 1. The signatories to this Convention affirm their strong determination that wastes should be disposed of in the country of production.*
- 2. The signatories to this Convention request States which accede to the Convention to do so by making every possible effort to effect a gradual cessation of the import and export of wastes for reasons other than their disposal in facilities which will be set up within the framework of regional cooperation.*
- 3. The signatories to this Convention will not permit wastes to be imported to or exported from countries deficient in the technical, administrative and legal expertise in administering wastes and disposing of them in an environmentally sound manner.*

4. The signatories to this Convention affirm the importance of assistance to develop appropriate facilities intended for the final disposal of wastes produced by countries referred to in paragraph 3 above.

5. The signatories to this Convention stress the need to take effective measures within the framework of the Convention to enable wastes to be reduced to the lowest possible level and to be recycled.

Namibia has NOT agreed to the following amendment:

* *Amendment to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1995* (not yet in force internationally).

International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990

accession approved by Parliament: 21 September 2006 (source: Parliament)

deposit: 18 June 2007; effective date: 18 September 2007

(source: International Maritime Organisation, www.imo.org)

Agreement for the Establishment of Southern African Centre for Ivory Marketing (SACIM), 1991

in force in Namibia: 20 June 1991

(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri/>.)

Note: The name SACIM was changed to the Southern African Convention for Wildlife Management (SACWM) in 1996. (source: www.art.org.uk/newsletter/1996_09_expands.html)

United Nations Framework Convention on Climate Change, 1992

(entered into force internationally on 21 March 1994)

signature: 12 June 1992

ratification: 16 May 1995; effective date: 14 August 1995 (source: <http://sedac.ciesin.org/>)

Kyoto Protocol to the UN Framework Convention on Climate Change, 1997

(entered into force internationally on 16 February 2005)

accession approved by Parliament: 12 November 2002 (source: Parliament)

accession: 4 September 2003 (source: <http://untreaty.un.org>)

Convention on Biological Diversity, 1992

signature: 12 June 1992

ratification: 16 May 1997

Cartegena Protocol on Biosafety, to the Convention on Biological Diversity, Montreal, 2000

(entered into force internationally on 11 September 2003) (source: <http://untreaty.un.org>)

signature: 24 May 2000 (source: <http://untreaty.un.org>)

ratification approved by Parliament: 29 September 2004 (source: Parliament)

deposit: 10 February 2005; effective date: 11 May 2005 (source: <http://untreaty.un.org>)

United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994

signature: 24 October 1994

ratification: 16 May 1997

Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997

signature: 19 May 2000

ratification: 29 August 2001

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998

(entered into force internationally on 24 February 2004)
signature: 11 September 1998
deposit: 24 June 2005; effective date: 22 September 2005 (source: www.pic.int)

Stockholm Convention on Persistent Organic Pollutants, 2001

(entered into force on 17 May 2004)
accession: 24 June 2005; effective date: 22 September 2005 (source: <http://chm.pops.int/>)

SADC Protocol on Shared Watercourse Systems in the Southern African Region, 1995

(entered into force within SADC on 28 September 1998) (source: SADC)
signature: 28 August 1995 (source: SADC)
ratification: 5 June 1998 (source: SADC; Ministry of Foreign Affairs)

SADC Revised Protocol on Shared Watercourses, 2000

(entered into force within SADC on 22 September 2003) (source: SADC)
signature: 7 August 2000 (source: SADC)
ratification: 11 September 2001 (source: SADC; Ministry of Foreign Affairs)

SADC Protocol on Wildlife Conservation and Law Enforcement, 1999

(entered into force within SADC on 30 November 2003) (source: SADC)
signature: 18 August 1999 (source: SADC)
ratification: 14 January 2000 (source: SADC; Ministry of Foreign Affairs)

SADC Protocol on Forestry, 2002

(entered into force within SADC on 1 September 2006) (source: SADC)
signature: 17 August 2008
ratification approved by Parliament: 2 April 2009 (source: Parliament)
ratification: 29 April 2009 (source: SADC)

Africa Institute for the Environmentally Sound Management of Hazardous and Other Wastes Agreement, 2004

(entered into force internationally on 17 January 2008) (source: www.africainstitute.info)
ratification by Parliament: 25 October 2006 (source: Parliament)

Agreement between the governments of the Republic of Angola, the Republic of Botswana, and the Republic of Namibia on the establishment of a permanent Okavango river basin water commission (OKACOM, Windhoek, 16 September 1994

effective date: 15 September 1994

Agreement between the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia and the Republic of South Africa on the Establishment of the Orange-Sengou River Commission

ratification approved by Parliament: 19 June 2001 (source: Ministry of Foreign Affairs)
letter of notification: 2 August 2001 (source: Ministry of Foreign Affairs)

International Treaty on Plant Genetic Resources for Food and Agriculture, 2001

signature: 9 November 2001
ratification approved by Parliament: 23 June 2004 (source: Parliament)
ratification: 7 October 2004
(source: www.fao.org/Legal/TREATIES/033s-e.htm)

See also **AGRICULTURE**.

See also **ANIMALS**.

See also Namibia Wildlife Resorts Company Act 3 of 1998 (**COMPANIES**).

See also **FUEL AND ENERGY**.

See also **HEALTH**.

See also Labour Act 11 of 2007 (section 40: hazards extending beyond workplace) (**LABOUR**).

See also **LAND**.

See also **MARINE AND FRESHWATER RESOURCES**.

See also **MINING AND MINERALS**.

See also **SEA AND SEASHORE**.

See also Controlled Game Products Proclamation 42 of 1980, Foreign Investments Act 27 of 1990 and Controlled Wildlife Products and Trade Act 9 of 2008 (**TRADE AND INDUSTRY**).

See also **WATER**.

ESTATE AGENTS

Estate Agents Act 112 of 1976, as amended in South Africa to April 1978.

Summary: This Act establishes an Estate Agents Board and an Estate Agents Fidelity Fund and regulates the activities of estate agents.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 36 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 (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978. None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Amendments: Act 28/1987, which is brought into operation by AG 5/1988, amends the Act substantially.

Regulations: Regulations on standards of training are contained in RSA GN R.1409 of 1 July 1983 (as amended) and GN 221/1996 (GG 1395).

Regulations on fidelity fund and regulation certificates are contained in RSA GN R.1798 of 1986, RSA GN R.2106 of 1986, AG GN 97/1989, GN 222/1996 (GG 1395).

A Code of Conduct for Estate Agents is addressed in GN 571/1985, GN 98/1989 and GN 16/1996 (GG 1242).

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on estate agents and on the Estate Agents Board.

See also **LAND**.

See also **PURCHASE AND SALE**.

ESTATES

Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941.

Summary: This Proclamation regulates the administration of estates in Rehoboth.

Amendments: The Estates and Succession Amendment Act 15 of 2005 repeals the Proclamation, but provides that the rules of intestate succession that applied by virtue of Schedule 2 of the Proclamation before the date of its repeal “continue to be of force in relation to persons to whom the relevant rules would have been applicable had the said Proclamation not been repealed”. Section 3 of the amending Act addresses the administration of the principal Act.

Assignment of powers: GN 43/2006 (GG 3591) assigns certain powers of the Master of the High Court to magistrates.

Administration of Estates Act 66 of 1965, as amended in South Africa to November 1979.

Summary: This Act governs the liquidation and distribution of the estates of deceased persons.

Applicability to SWA: Section 1 defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”. Section 108A states “This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel, but shall, in the territory known as the ‘Rehoboth Gebiet’ and defined in the First Schedule to the agreement referred to in the Schedule to Proclamation No. 28 of 1923, of the territory, not apply to the estate of any person to whom Proclamation No. 36 of 1941, of the territory, applies” -- thus excluding the Rehoboth Gebiet from the operation of the Act.

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.

Section 3(1)(o) of the Transfer Proclamation excluded sections 2, 88, 91, 92, 93, 97 and 103(1)(b) from the operation of section 3(1) of the General Proclamation. All the references to the “Republic” in the Act were also excluded from section 3(1) of the General Proclamation, meaning that “Republic” retained the meaning given to it in the definition section of the Act (South Africa and SWA).

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Amendments: Act 17/1981 amends sections 18, 29 and 34 of the Act. Act 6/1986 and Act 2/1987 make substantial amendments to the Act. The Married Persons Equality Act 1 of 1996 repeals section 17, amends section 72 and substitutes section 85. Act 15/2001, which came into operation on 1 July 2002 (GN 107/2002, GG 2760), amends sections 1, 18, 28, 30, 34, 80, 90, 91, 93, 102 and 103 of the Act.

The Estates and Succession Amendment Act 15 of 2005 makes the Act applicable to all deceased estates, whether testate or intestate, of persons who died on or after the date of commencement of the amending Act (29 December 2005). It also inserts section 4A which authorises the Minister to assign functions of the Master to magistrates. Section 3 of the amending Act addresses the administration of the principal Act.

Regulations: Regulations are contained in RSA GN R.473 of 24 March 1972; RSA GN R.817 of 13 May 1977, RSA GN R.1209 of 13 June 1980; RSA GN 107 of 15 November 1985, GN 56/1993 (GG 645), GN 33/1999 (GG 2051) and GN 108/2002 (GG 2760).

Cases: *Berendt & Another v Stuurmann & Others* 2003 NR 81 (HC) (the application of the Act); *Kuhlmann & Others v The Master & Others* 2007 (2) NR 611 (HC) (review under section 95 of Master's refusal to appoint co-executor under section 18; Master's role under sections 18 and 19)

See also **SUCCESSION**.

EVIDENCE

Fugitive Offenders and Neighbouring Territories Evidence Proclamation 26 of 1920.

Summary: The remaining portions of this Proclamation deal with the attendance of witnesses resident in Namibia at courts in South Africa. It has been superseded by the Foreign Courts Evidence Act 2 of 1995 but has not been technically repealed.

Amendments: This Proclamation is amended by the RSA *Extradition Act 67 of 1962* and repealed in part by the RSA *Criminal Procedure Act 51 of 1977*. The Schedule is amended by the *Foreign Courts Evidence Act 80 of 1962*.

Procedure and Evidence Proclamation 8 of 1938.

Summary: Most of this Proclamation has been repealed. The only remaining provision is section 7, which states that in criminal proceedings arising out of the fact that a cheque has been dishonoured, the onus is on the accused to prove that he had good reason to believe that the cheque would be honoured on the due date.

Amendments: This Proclamation is amended by Ord. 11/1954, Act 59/1959, the SA *Supreme Court Act 59 of 1959* (which repeals section 4), the RSA *Civil Proceedings Evidence Act 25 of 1965* (which repeals sections 1-3 and 5), and the RSA *Maintenance Amendment Act 39 of 1970* (which repeals section 6).

Civil Proceedings Evidence Act 25 of 1965, as amended in South Africa to November 1979.

Summary: This Act regulates the law of evidence in civil proceedings.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 43 states “This Act and any amendment thereof which may be made from time to time shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951).”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979.

Section 3(1)(n) of the transfer proclamation excluded all references to the “Republic” in the Act from the operation of section 3(1) of the General Proclamation, meaning that “Republic” retained the meaning given to it in the definition section of the Act (South Africa and SWA).

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Cases: *Cultura 2000 v Government of the Republic of Namibia* 1992 NR 110 (HC); *S v Taapopi & Another* 2001 NR 101 (HC) (sections 34-35); *Seagull’s Cry CC v*

Council of the Municipality of Swakopmund & Others 2009 (2) NR 769 (HC) (section 5 discussed at 782G-H).

Second General Law Amendment Act 94 of 1974, section 2.

Summary: Section 2 of this Act requires the permission of the Minister of Trade and Industry for the furnishing of information on business carried on in or outside Namibia in compliance with any order, direction or letter of request emanating from outside Namibia in connection with any civil proceedings.

Applicability to SWA: The text of the Act itself makes no reference to South West Africa. Legal authority for the application of the Act to South West Africa has not been located, but section 2 of the Act was amended in post-independence Namibia.

Amendments: The International Co-operation in Criminal Matters Act 9 of 2000 substitutes section 2.

Computer Evidence Act 32 of 1985.

Summary: This Act provides for the admissibility of computer evidence in civil proceedings. It was brought into operation by AG 25/1987.

Foreign Courts Evidence Act 2 of 1995.

Summary: This Act provides for the obtaining of evidence of persons in Namibia by courts outside Namibia. It replaces the South African *Foreign Courts Evidence Act 80 of 1962*.

Amendments: The Schedules to the Act are amended by GN 39/1994 (GG 821). The International Co-operation in Criminal Matters Act 9 of 2000 amends section 2.

Cases: The following case concerns the predecessor to this Act, the *Foreign Courts Evidence Act 80 of 1962*-
S v Lofty-Eaton & Others (2) 1993 NR 405 (HC).

See also Combating of Rape Act 8 of 2000 (re: evidence in rape cases) (**CRIMINAL LAW AND PROCEDURE**).

See also *General Law Amendment Act 101 of 1969*, section 29 (re: withholding evidence from a court of law in the interests of national security) (**DEFENCE**).

EXPLOSIVES

Explosives Act 26 of 1956, as amended in South Africa to April 1978.

Summary: This Act regulates the manufacture, storage, sale, transport, import, export, use and possession of a wide range of explosives.

Applicability to SWA: Section 31A 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 (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978. (At that time, the Act was administered by the Minister of Economic Affairs. In South Africa, the *Explosives Amendment Act 5 of 1981* substituted the Minister of Police for the Minister of Economic Affairs.)

Section 3(1)(c) of the transfer proclamation excluded the reference to the “Republic” in the Act from the operation of section 3(1) of the General Proclamation.

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Amendments: Act 16/1986 amends the Act substantially. The Police Act 19 of 1990 amends the definition of “Minister” in section 1.

Regulations: AG GN 49/1989 amends the regulations to the Act set forth in RSA Government Notice R.1604 of 1972, as amended by RSA Government Notices R.2371 of 1973, R.155 of 1977, R.2153 of 1977, R.2135 of 1979 and R.2292 of 1979. Further amendments are contained in GN 51/2002 (GG 2717). RSA GN R.1603/1972 lists authorised explosives.

Cases: *S v Haimo* 1993 NR 301 (HC).

INTERNATIONAL LAW

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993

signature: 13 January 1993; ratification: 24 November 1995

Comprehensive Nuclear-Test-Ban Treaty, 1996 (not yet in force internationally)

signature: 24 September 1996

ratification: 29 June 2001

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997

signature: 3 December 1997 ratification: 21 September 1998.

See also **ARMS AND AMMUNITION**.

FILMS

Namibia Film Commission Act 6 of 2000.

Summary: This Act establishes a Namibia Film Commission to encourage film production in Namibia, as well as a Film and Video Development Fund. It also regulates activities relating to film production, and provides for the encouragement and promotion of a film industry in Namibia. It will come into force on a date set by the minister responsible for information and broadcasting.

Amendments: Act 11/2001 amends sections 1 and 5.

Appointments: Members of the Namibia Film Commission are appointed in GN 220/2002 (GG 2879) and GN 69/2003 (GG 2946).

FINANCE AND DEVELOPMENT

Finance and Financial Adjustments Acts Consolidation Act 11 of 1977,
in part, as amended in South Africa prior to Namibian independence.

Summary: This Act consolidates a number of previous laws dealing with a variety of financial matters. Only sections 5, 9(1), 41 and 47 of the Act were relevant to SWA, and none of these appear to have ongoing effect.

Applicability to SWA: Only certain sections of the Act were ever relevant or applicable to SWA.

Section 5 requires the Administration of South West Africa to pay a contribution toward certain pensions.

Section 9(1) exempts Black governments, assemblies, councils and authorities from payment of duties, fees and other taxes, and section 9(2) states “This section and any amendment thereof shall apply also in territory of South West Africa, including the Eastern Caprivi Zipfel.”

Section 41 allows money owed on a loan from the Administration of South West Africa to a magistrate of Rehoboth to be used for the promotion of the welfare of the residents of the “Rehoboth Gebiet”.

Section 47 requires that the Revenue Fund of South West Africa repay amounts that were paid into it from inactive Post Office Savings Accounts under a previous SWA Ordinance.

Exchequer and Audit Proclamation, RSA Proclamation 85 of 1979,
as amended by *RSA Proclamation R.101 of 1979*.

Summary: The only provision of this Proclamation applicable to Namibia after independence is section 3 (as amended), which establishes a Central Revenue Fund for the deposit of all revenue as defined in section 1 of the State Finance Act 1 of 1982, which has since been replaced by the State Finance Act 31 of 1991.

Applicability to SWA: The original Proclamation applied the *Exchequer and Audit Act 66 of 1975* to SWA. However, this Act was repealed in SWA by the State Finance Act 1 of 1982.

Amendments: Most of the Proclamation is repealed by the State Finance Act 1 of 1982. Section 3 is amended by the National Assembly and Council of Ministers Proclamations Repeal Proclamation (AG 3/1983).

Exchequer and Audit Amendment Proclamation, AG 35 of 1979.

Summary: The sections of this Proclamation which remain in force establish the Central Revenue Account and the Post Office Account for revenue from the Directorate of Posts and Telecommunications.

Amendments: Numerous sections of the Proclamation are repealed by the Posts and Telecommunications Companies Establishment Act 17 of 1992.

Development Fund of South West Africa/Namibia Act 29 of 1987.

Summary: This Act established the Development Fund of South West Africa/Namibia. It does not appear to have any ongoing effect.

State Finance Act 31 of 1991.

Summary: This Act regulates the treatment of state moneys, stamps, securities, forms having a face value or a potential value, equipment, stores and other movable goods owned or leased by the state. It also covers the defrayal of expenditure on services of the state; payments made from bank accounts maintained in respect of state monies; the recovery of losses or damages caused to the state; the powers and duties of the Treasury and the Auditor-General; the raising and repayment of loans by the state; the determination of interest rates in respect of certain debts due to the state; and the furnishing of guarantees, indemnities and securities by the government in respect of certain statutory institutions, banks, companies or juristic persons. It replaces the State Finance Act 1 of 1982.

Amendments: The Act is amended by the Public Service Act 13 of 1995.

Directives: Administrative Directive 1/2006 relating to over-expenditure is contained in GN 56/2006 (GG 3611). It calls attention to sections 6, 9, 16 and 17 of the Act.

Cases:

S v Skivikua 1991 NR 101 (HC)

Eimbeck v Inspector-General of the Namibian Police & Another 1995 NR 13 (HC)(sections 1(1), 6, 7, 17 and 21).

State Repudiation (Cultura 2000) Act 32 of 1991.

Summary: This Act provides for the repudiation of certain actions taken under laws in force prior to independence, pursuant to Article 140(3) of the Constitution. It came into force on 12 March 1992 (Proc. 5/1992, GG 366).

Regulations: Proc. 5/1992 (GG 366) assigned the administration of the Act to the Minister of Finance.

Cases: Much of the Act was declared unconstitutional in *Cultura 2000 v Government of the Republic of Namibia* 1992 NR 110 (HC) and *Government of the Republic of Namibia v Cultura 2000 & Another* 1993 NR 328 (SC).

Assistance Fund of South West Africa Repeal Act 13 of 1992.

Summary: This Act repeals the Assistance Fund of South West Africa Act 1 of 1979 and provides that all moneys in the Assistance Fund be transferred to the State Revenue Fund. It has no other ongoing effect.

Namibia Development Corporation Act 18 of 1993.

Summary: This Act establishes the Namibia Development Corporation and sets forth its powers, duties and functions. The Act came into force on 1 September 1993 (GN 99/1993, GG 707). It replaces the First National Development Corporation Proclamation (AG 61/1978).

This Act is repealed by section 22 of the Development Bank of Namibia Act 8 of 2002, but that section has never been brought into force.

Cases: *Namibia Development Corporation v Visagie* NLLP 1998 (1) 166 NLC (section 29 and personnel regulations); *Visagie v Namibia Development Corporation* 1999 NR 219 (HC) (appeal from Labour Court judgement which discusses the personnel regulations).

Development Bank of Namibia Act 8 of 2002.

Summary: This Act establishes a Development Bank of Namibia to promote economic growth and social development through the financing of key development activities. It came into force on 15 May 2003, with the exception of sections 21 and 22 (GN 99/2003, GG 2978). Section 21 of the Act came into force on 14 July 2005 (GN 76/2005, GG 3459). Section 22, which repeals the Namibia Development Corporation Act 18 of 1993, was not yet in force as of 19 April 2010. (This was confirmed by the Development Bank of Namibia, which also reports that the Ministry of Finance transferred the Development Fund of Namibia assets to the Development Bank of Namibia on 14 July 2005.)

Note: The Namibia Development Corporation informed Namlex researchers that government policy changed in October 2007, with the result that section 22 is not expected to come into force. It is anticipated that the Namibia Development Corporation Act 18 of 1993 may be revised instead, although it is possible that a study will first be conducted to determine how the Development Fund will be handled.

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 9 and 13.

Regulations: GN 77/2005 (GG 3459) transfers the assets, liabilities, rights and obligations of the Development Fund of South West Africa/Namibia to the Development Bank of Namibia with effect from 14 July 2005.

Cases: The following cases deal with the Namibia Development Corporation Act 18 of 1993, which was replaced (but not yet repealed) by this Act:

Namibia Development Corporation v Visagie NLLP 1998 (1) 166 NLC (section 29 and personnel regulations)

Visagie v Namibia Development Corporation 1999 NR 219 (HC) (appeal from Labour Court judgement which discusses the personnel regulations).

Lotteries Act 15 of 2002.

Summary: This Act establishes a Lotteries Board for the promotion and conduct of

the National Lottery, and provides for the administration of the National Lottery Trust Fund and the Social Upliftment Fund. The National Lottery is to be conducted for the benefit of social welfare, sport and cultural activities and for the social upliftment of the Namibian people. The Act will come into force on a date set in the *Government Gazette*.

Related laws: See *Gambling Act 51 of 1965* (CRIMINAL LAW AND PROCEDURE).

INTERNATIONAL LAW

Articles of Agreement of the International Monetary Fund, 1944

accession: 25 September 1990 (source: www.imf.org/)

Agreement Establishing the African Development Bank, 1963, as amended by resolution 05-79 adopted by the Board of Governors on 17 May 1979 (concluded at Lusaka on 7 May 1982)

accession: 10 April 1994

Agreement Establishing the International Fund for Agricultural Development, 1976

accession: 16 October 1992

Articles of Agreement of the International Bank for Reconstruction and Development, 1978

accession: 25 September 1990

Constitution of the United Nations Industrial Development Organization, 1979

accession: 21 February 1986

Agreement to Establish the South Centre, 1994

signature: 30 September 1994; ratification: 24 October 2000 (source: Parliament)

Treaty Establishing the African Economic Community, 1991

ratification: 20 December 1991 (source: Ministry of Foreign Affairs)

Agreement Establishing the NORSED Fund and the NORSED Agency

(Nordic-Southern African Development Community)

accession: 15 April 1992 (source: Ministry of Foreign Affairs)

Agreement for the Establishment of the African Export-Import Bank

accession: 2003 (source: Ministry of Foreign Affairs)

SADC Protocol on Finance and Investment, 2006

(entered into force within SADC 16 April 2010) (source: SADC)

signature: 18 August 2008 (source: SADC)

ratification approved by Parliament: 2 March 2010 (source: Parliament)

ratification: 16 March 2010 (source: SADC)

Note: The UN Treaty Date Base lists Namibia as a party to the following agreement by virtue of territorial application prior to independence. This may no longer have effect in independent Namibia.

* *Agreement on German external debts, 1953* (territorial application as of 1 January 1954, with effect from 1 January 1954).

See also Agricultural Bank of Namibia Act 5 of 2003 (**AGRICULTURE**).

See also Environment Investment Fund of Namibia Act 13 of 2001 (**ENVIRONMENT**).

See also **FINANCIAL INSTITUTIONS**.

See also National Housing Enterprise Act 5 of 1993 and National Housing Development Act 28 of 2000 (**HOUSING**).

See also **REVENUE**.

See also Trust Fund for Regional Development and Equity Provisions Act 22 of 2000 (**REGIONAL AND LOCAL GOVERNMENT**).

See also Road Fund Administration Act 18 of 1999 (**ROADS AND ROAD TRANSPORTATION**).

See also **TENDERS**.

See also the National Youth Service Act 6 of 2005 (Youth Service Fund) and the National Youth Council Act 6 of 2005 (Youth Development Fund) (**YOUTH**).

FINANCIAL INSTITUTIONS

Financial Institutions (Investment of Funds) Act 39 of 1984, as amended in South Africa prior to Namibian independence.

Summary: This Act governs the administration of funds and trust property by financial institutions.

Applicability to SWA: Section 10 states “This Act and any amendment thereof shall also apply in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Cases: *Chief Executive Officer of Namibia Financial Institutions Supervisory Authority v Legal Shields Namibia Ltd* 2005 NR 151 (HC).

Inspection of Financial Institutions Act 38 of 1984, as amended in South Africa prior to Namibian independence.

Summary: This Act provides for inspection of the affairs of insurers, pension fund organisations, friendly societies, medical schemes and unit trust schemes.

Applicability to SWA: Section 10 states “This Act and any amendment thereof also apply to the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Amendments: The Building Societies Act 2 of 1986 repeals the portions of this Act relating to building societies. The Married Persons Equality Act 1 of 1996 substitutes section 62. The Banking Institutions Act 2 of 1998 repeals section 11(1). The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 amends sections 1 and 2.

Building Societies Act 2 of 1986.

Summary: This Act regulates the registration, management and dissolution of building societies.

Amendments: Prior to independence, this Act was amended by Act 15/1987.

Act 25/1990 amends sections 1, 2 and 49 and substitutes certain words and expressions.

Act 8/1992 amends section 38 so as to remove the prescribed limitation on the amount which may be advanced by a building society on immovable property used for residential purposes.

Act 25/1994 substitutes the title of Chapter VII and adds a new section 52A.

Regulations: The application of the Act is affected by GN 61/1990 (role of the Central Bank), GN 63/1990 (approval to undertake certain business), GN 64/1990 (approval of certain shares and loans as securities), GN 54/1993 and GN 187/1999 (liquid assets).

Bank of Namibia Act 15 of 1997.

Summary: This Act replaces the Bank of Namibia Act 8 of 1990. It provides for the continuation of the Bank of Namibia as a central bank. It also regulates the issue of bank notes and coins, and the monetary system. The Act came into force, with the exception of section 35, on 16 February 1998 (GN 11/1998, GG 1794). Section 35 came into force on 1 June 1998 (GN 117/1998, GG 1872).

Amendments: Act 11/2004 amends sections 1, 4, 5, 8, 9, 26, 35, 46 and 56, inserts sections 3A and 3B, substitutes sections 17 and 54.

Regulations: Regulations, directives, appointments, etc. made in terms of the previous law continue to be valid in terms of section 60 of the Act.

Orders and Rules contained under the Exchange Control Regulations issued under a previous law are published in RSA GN R.1112 of 1 December 1961, as amended by GN 4/1990 (GG 24), GN 20/1990 (GG 49), GN 218/1996 (GG 1387), General Notice 251/2007 (GG 3900) and General Notice 254/2009 (GG 4364).

Liquid assets are addressed in GN 125/1993 (GG 732). The application of the previous act is affected by GN 61/1990, which deals with building societies.

Monetary units and symbols are set forth in Proc. 19/1993 (GG 682), General Notice 339/1996 (GG 1452) and General Notice 8/2000 (GG 2258) (enhanced N\$50 and N\$100 banknotes) . However, Proclamation 19/1993 is repealed by Act 11/2004.

Commemorative coins are announced in General Notice 74/1995 (GG 1057), General Notice 125/1995 (GG 1083) General Notice 91/1996 (GG 1308), General Notice 54/1999 (GG 2067) and General Notice 7/2000 (GG 2258).

A Directive on the Minimum Reserve Requirement is issued pursuant to section 35 of the Act in General Notice 101/2005 (GG 3449).

See also directives issued under the Payment System Management Act 18 of 2003.

Appointments: The Board is appointed by Proc. 11/1990, Proc. 6/1993, Proc. 4/2002 (GG 2746), Proc. 6/2007 (GG 3785), Proc. 16/2008 (GG 4039) and Proc. 39/2008 (GG 4156).

Governors are appointed by Proc. 4/1993 (GG 581), Proc. 3/1994 (GG 791) and Proc. 10/2010 (GG 4468). A deputy governor is appointed by Proc. 5/1993 (GG 581).

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on the Bank of Namibia.

Cases: The following cases concern the previous Bank of Namibia Act 8 of 1990-
S v Kamapoha 1994 NR 322 (HC)
S v Appelgrein 1995 NR 118 (HC)
Dowles Manor Properties Ltd v Bank of Namibia 2005 NR 59 (HC).

Banking Institutions Act 2 of 1998.

Summary: This Act consolidates and amends the laws relating to banking institutions. It replaces the *Banks Act 23 of 1965*. The Act came into force on 1 April 1998 (GN 63/1998, GG 1827).

Regulations: Regulations made in terms of the previous *Banks Act 23 of 1965* survive in terms of section 74(2) of the new Act.

Regulations pertaining to fees are contained in GN 234/2009 (GG 4386). (Previous regulations on fees were contained in GN 75/1998 (GG 1831), which repeals Parts II, III, VI and VII of RSA GN R.2747 of 31 December 1986.)

In addition, there are a number of determinations in terms of the Act:

Appointment, Duties and Responsibilities of
Directors and Principal Officers of Banking Institutions (BID 1)
General Notice 119/1998 (GG 1899)

Asset Classification, Suspension of
Interest and Provisioning (BID 2)
General Notice 278/2003 (GG 3078)

BID-3 replaced by Financial Intelligence Act 3 of 2007 and associated regulations.

Limits on Exposures to Single Borrowers (BID 4)
General Notice 290/2009 (GG 4373)

Measurement and Calculation of Capital Charges
for Credit Risk, Operational Risk and Market Risk (BID 5)
General Notice 291/2009 (GG 4373)

Minimum Liquid Assets (BID 6)
General Notice 292/2009 (GG 4373)

Minimum Local Assets (BID 7)
General Notice 199/2007 (GG 3879)

Fees payable in terms of section 64(6) (BID 8)
General Notice 126/1998 (GG 1899)

Fraud and Other Economic Crime (BID 9)
General Notice 16/1999 (GG 2026)

Appointment, Duties and Responsibilities
of Independent Auditors (BID 10)
General Notice 280/1999 (GG 2190)

BID-11 not yet finalised.

Compulsory Suspension of Cheque Accounts
by Banking Institutions (BID 12)
General Notice 17/1999 (GG 2026)

Disclosure of Bank Charges,
Fees and Commissions (BID 13)
General Notice 18/1999 (GG 2026)

Minimum Insurance for Banking Institutions (BID 14)
General Notice 89/1999 (GG 2105)

Limits on Inter-Bank Placements (BID 15)
General Notice 282/2003 (GG 3078)

Country Risk Management (BID 17)
General Notice 100/2007 (GG 3840)

Public Disclosures for Banking Institutions (BID 18)
General Notice 293/2009 (GG 4373)

Localization of Core Banking Systems (BID 19)

General Notice 272/2008 (GG 4109)
Internal Capital Adequacy Assessment Process (BID 20)
General Notice 294/2009 (GG 4373)
Interest Rate Risk in the Banking Book (BID 21)
General Notice 295/2009 (GG 4373)

Note: BID-16 was repealed by General Notice 80/2010 (GG 4447). Note that there are two versions of this Government Gazette. The correct citation is GN 80/2010 and not GN 86/2010 as stated in the erroneous Government Gazette.

See also General Notice 100/2009 (GG 4284) for a declaration of conduct which constitutes “receiving of funds from the public” under section 1 for the purpose of ascertaining if a person is conducting banking business.

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on persons who carry on banking business or receive funds from the public as defined in section 1 of the Act, and institutions or bodies designated under section 2(2)(p) of the Act.

Namibia Financial Institutions Supervisory Authority Act 3 of 2001.

Summary: This Act establishes an authority to exercise supervision over the business of financial institutions and services. It came into force on 14 May 2001 (GN 85/2001, GG 2528).

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 5, 10, 13, 14 and 16, substitutes section 7 and deletes section 12.

Regulations: Irregular or undesirable practices pertaining to registered medical aid funds are declared in GN 121/2002 (GG 2774).

The Road Fund Administration is designated as an institution which may issue loan stock in General Notice 202/2002 (GG 2796).

Appeal Regulations are contained in GN 160/2006 (GG 3705).

Provisions pertaining to levies on financial institutions are contained in GN 82/2002 (GG 2746) as amended by GN 154/2002 (GG 2804), which is replaced by GN 78/2003 (GG 2947) as amended by GN 64/2004 (GG 3181), GN 160/2004 (GG 3254) and GN 161/2004 (GG 3254).

Appointments: Members of the Board are announced in GN 124/2001 (GG 2552), GN 78/2005 (GG 3460) and GN 119/2009 (GG 4270).

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on financial institutions and on the Namibia Financial Institutions Supervisory Authority.

Cases: *Open Learning Group Namibia Finance CC v Permanent Secretary, Ministry of Finance & Others* 2006 (1) NR 275 (HC).

Payment System Management Act 18 of 2003.

Summary: This Act provides for the management, administration, operation, regulation, oversight and supervision of payment, clearing and settlement systems in Namibia. It came into force on 15 May 2004 (GN 111/2004, GG 3207).

Amendments: Act 6/2010 amends sections 1 and 2, inserts sections 16A and 16B and substitutes section 17.

Regulations: A Directive on conduct within the National Payment System in Namibia (PSDIR-1) is contained in General Notice 183/2007 (GG 3872).

A determination on the issuing of a payment instrument (PSD-1) is contained in General Notice 184/2007 (GG 3872).

A determination on the reduction of the item limit for domestic cheque payments within the Namibian National Payment System (PSD-2) is contained in General Notice 255/2009 (GG 4365).

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007.

Financial Intelligence Act 3 of 2007.

Summary: This Act is designed to combat money-laundering. It establishes an Anti-Money Laundering Advisory Council and places duties on certain financial and other institutions to collect financial intelligence data. It came into force on 5 May 2009 (GN 73/2009, GG 4253).

Regulations: Regulations are contained in GN 74/2009 (GG 4253).

Exemption orders in terms of section 51 of the Act are contained in GN 75-76/2009 (GG 4253).

General Notice 68/2009 (GG 4256) contains a Determination on the Period within Which an Accountable Institution May Not Proceed with the Carrying Out of a Transaction (FICD 1). General Notice 69/2009 (GG 4256) contains a Determination on the Period for Establishment of Identity of Existing Clients by Accountable Institutions (FICD 2). General Notice 70/2009 (GG 4256) contains a Determination on (1) the Amount of Transaction above Which Accountable Institutions Must Establish Identity of Clients; and (2) the Period during Which Multiple Transactions Must Be Considered a Single Transaction, (FICD 3).

INTERNATIONAL LAW

Agreement Establishing the African Development Bank, 1963, as amended by resolution 05-79 adopted by the Board of Governors on 17 May 1979 (concluded at Lusaka on 7 May 1982)

accession: 10 April 1994

Agreement Establishing the International Fund for Agricultural Development, 1976

accession: 16 October 1992

See also Agricultural Bank of Namibia Act 5 of 2003 (**AGRICULTURE**).

See also **FINANCE AND DEVELOPMENT**.

See also Posts and Telecommunications Companies Establishment Act 17 of 1992 and Posts and Telecommunications Act 19 of 1992 with regard to the Post Office Savings Bank. (**COMMUNICATIONS**).

FUEL AND ENERGY

Petroleum Products and Energy Act 13 of 1990.

Summary: This Act provides measures for the saving of petroleum products and economy in the cost of distributing such products. It controls pricing and certain information about petroleum products, and regulates certain services in connection with motor vehicles. The Act also establishes a National Energy Fund and a National Energy Council, and provides for levies on fuel.

Amendments: Act 29/1994 amends sections 2, 14, 15 and 21. Act 11/1997 amends sections 1 and 38 and inserts sections 76A and 76B. Act 3/2000, which came into operation on 3 July 2000 (GN 154/2000, GG 2357), amends sections 1, 6, 8 and 21 and inserts section 2A and 4A. Act 16/2003, which came into force on 17 March 2005 (GN 29/2005, GG 3396), amends sections 1, 2A, 11,13, 17, 18, 19, and the long title, and inserts sections 11A, 11B, 18A, 18B, 19A and 19B.

Regulations: GN 48/1991 (GG 183), which is replaced by GN 112/1991 (GG 281), concerns regulations on the purchase, sale, supply, acquisition, possession, disposal, storage, transportation, recovery and re-refinement of used mineral oil.

Other regulations are contained in GN 38/1993 (GG 617), which repeals the regulations in RSA GN R.1614/1985.

Regulations are also contained in GN 155/2000 (GG 2357), which repeals the regulations in RSA GN R.1829 of 28 August 1981, R.1614 of 19 July 1985, R.2298 of 11 October 1985 and R.1100 of 2 June 1986. GN 155/2000 is amended by GN 202/2002 (GG 2866), which amends regulations 7, 14, 21, 28 and 44; substitutes regulation 30; inserts regulation 31A and amends Annexure A.

GN 93/2003 (GG 2970) concerns arbitration procedures.

GN 230/2004 (GG 3307) concerns the funding of approved agencies; it is replaced by GN 30/2005 (GG 3397).

Specifications and standards pertaining to Regulations 44 and 45 of the Petroleum Products Regulations issued in terms of GN 155/2000 are applied by GN 166/2007 (GG 3900). (Previous specifications and standards were applied by GN 21/2002 (GG 2696) and GN 75/2003 (GG 2946).)

Regulations relating to the reselling price of petrol products are contained in the following, each of which revokes or replaces the previous one in the list; the entire list is retained here, as it provides an interesting historical record of the movement of petrol prices.

- GN 48/1990 (GG 70)
- GN 62/1990 (GG 94)
- GN 72/1990 (GG 104)
- GN 23/1991 (GG 166)
- GN 130/1991 (GG 299)
- GN 56/1992 (GG 407)
- GN 46/1993 (GG 631) as amended by GN 51/1994 (GG 832) (to add Walvis Bay)
- GN 80/1995 (GG 1080)

GN 77/1996 (GG 1292)
GN 93/1996 (GG 1306)
GN 200/1996 (GG 1372)
GN 7/1997 (GG 1481)
GN 69/1997 (GG 1538)
GN 152/1997 (GG 1606)
GN 200/1997 (GG 1704)
GN 5/1998 (GG 1774)
GN 90/1998 (GG 1845)
GN 171/1998 (GG 1910)
GN 251/1998 (GG 1971)
GN 9/1999 (GG 2029)
GN 80/1999 (GG 2097)
GN 119/1999 (GG 2142)
GN 203/1999 (GG 2203)
GN 1/2000 (GG 2255)
GN 98/2000 (GG 2310)
GN 119/2000 (GG 2332)
GN 149/2000 (GG 2351)
GN 221/2000 (GG 2406)
GN 21/2001 (GG 2476)
GN 60/2001 (GG 2510)
GN 148/2001 (GG 2580)
GN 59/2002 (GG 2725)
GN 185/2002 (GG 2834)
GN 8/2000 (GG 2901)
GN 148/2003 (GG 3017)
GN 218/2003 (GG 3073)
GN 3/2004 (GG 3132)
GN 74/2004 (GG 3188)
GN 140/2004 (GG 3236)
GN 40/2005 (GG 3417)
GN 92/2005 (GG 3472)
GN 129/2005 (GG 3503)
GN 19/2006 (GG 3579)

Note that there are two versions of GG 3579, both dated 18 January 2006. The correct version states at the top "This Gazette replaces Gazette 3579 of 18 January 2006."

GN 63/2006 (GG 3621)
GN 81/2006 (GG 3643)
GN 106/2006 (GG 3667)
GN 123/2006 (GG 3681)
GN 181/2006 (GG 3737)
GN 218/2006 (GG 3753)
GN 4/2007 (GG 3774)
GN 40/2007 (GG 3801)
GN 59/2007 (GG 3801)
GN 86/2007 (GG 3828)
GN 89/2007 (GG 3828)
GN 115/2007 (GG 3867)
GN 131/2007 (GG 3883)
GN 223/2007 (GG 3953)
GN 40/2008 (GG 3992)
GN 66/2008 (GG 4013)
GN 74/2008 (GG 4028)

GN 108/2008 (GG 4046)
GN 134/2008 (GG 4060)
GN 169/2008 (GG 4081)
GN 190/2008 (GG 4100)
GN 230/2008 (GG 4123)
GN 249/2008 (GG 4137)
GN 268/2008 (GG 4159)
GN 286/2008 (GG 4182)
GN 6/2009 (GG 4196)
GN 40/2009 (GG 4196)
GN 65/2009 (GG 4242)
GN 139/2009 (GG 4282)
GN 145/2009 (GG 4295)

This notice revokes GN 138 of 17 June 2009. There is no such notice. It was clearly meant to revoke GN 139 of 17 June 2009. (GN 138 of 19 June 2009 is the promulgation of the Appropriation Act 4 of 2009.)

GN 164/2009 (GG 4318)
GN 189/2009 (GG 4338)
GN 204/2009 (GG 4354)
GN 245/2009 (GG 4394)
GN 15/2010 (GG 4424)
GN 78/2010 (GG 4461)
GN 109/2010 (GG 4488)
GN 127/2010 (GG 4504).

Cases: *BP Namibia (Pty) Ltd v Southline Retail Centre CC* 2009 (10 NR 268 (HC)).
(Note: The Act is mistakenly referred to in the headnote as the Petroleum Products Act 120 of 1977).

INTERNATIONAL LAW

Statute of the International Atomic Energy Agency, 1956

effective date in respect of Namibia: 17 February 1983.

(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>.)

Convention of the African Energy Commission, 2001

(entered into force within AU on 13 December 2006)

ratification approved by Parliament: 20 June 2006 (source: Parliament); 14 May 2007 (source:

www.africa-union.org)

deposit: 30 May 2007 (source: www.africa-union.org)

SADC Protocol on Energy, 1996

(entered into force within SADC on 17 April 1998) (source: SADC)

signature: 24 August 1996 (source: SADC)

See also State-owned Enterprises Governance Act 2 of 2006 (**COMPANIES**), which affects the National Petroleum Corporation of Namibia (Pty) Ltd.

See also **ELECTRICITY**.

See also Atomic Energy and Radiation Protection Act 5 of 2005 (**ENVIRONMENT**).

HEALTH

Venereal Diseases Prevention Proclamation 5 of 1919.

Summary: This Proclamation authorised military magistrates to order persons infected with venereal disease to obtain medical treatment. It is still technically in force.

Public Health Act 36 of 1919, as amended by SA Proclamation 36 of 1920.

Summary: This Act makes provision for the prevention and control of infectious diseases, venereal diseases and epidemics. It also regulates sanitation, food and public water supplies.

Applicability to SWA: This Act was made applicable to South West Africa by the Public Health Proclamation (SA Proclamation 36 of 1920) which also amended the Act as it applied to SWA. This Proclamation did not make future amendments to the Act in South Africa automatically applicable to SWA, and none of the subsequent amending acts were made expressly applicable.

Transfer of administration to SWA: Section 159 defines “Minister” as “the Minister holding the portfolio of Health”. Therefore the administration of this Act was probably transferred to SWA by the Executive Powers (Health) Transfer Proclamation (AG 14/1977), dated 1 December 1977.

The Act was replaced in South Africa by the *Health Act 63 of 1977*. This repealing act came into force on 1 September 1977, prior to the probable date of transfer. However, it was not made expressly applicable to SWA and would not have applied automatically.

Amendments: SA Proclamation 36 of 1920 amends the Act as it applies to SWA. Proc. 28/1923 makes SA Proclamation 36 of 1920 applicable to the Rehoboth Gebiet.

Ord. 7/1932 amends section 36 of the Act. Proc. 16/1936 amends section 71. Proc. 20/1938 amends section 86 and inserts sections 26*bis* and 34*bis*. Ord. 50/1957 amends section 50 and section 51. Ord. 35/1958 amends sections 5, 115, and 159, and inserts sections 8, 8*bis*, 8*ter*, 17*bis*, 91*bis*, 92*bis*, 96*bis* and 124*bis*. Ord. 10/1964 amends section 16. The Health Act 21 of 1988 extends the application of the Act to all parts of SWA.

Regulations: Regulations concerning slaughtering and meat inspection are contained in SA GN 140 of 10 November 1926, as applied to SWA by GN 94 of 18 June 1927. These regulations are amended by AG 76/1989.

Ordinance for Prevention and Combating of Alcoholism and Anti-Social Conduct 11 of 1965.

Summary: This Ordinance provides for the certification of institutions for the treatment of person addicted to drink, drugs, gambling, etc. and the detention of such persons for treatment.

International Health Regulations Act 28 of 1974, as amended to December 1977.

Summary: This Act applies the International Health Regulations adopted by the World Health Assembly in 1969 to South Africa.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 5 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 (Health) Transfer Proclamation (AG 14/1977), dated 1 December 1977. There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence -- the *Transfer of Powers and Duties of the State President Act 97 of 1986* -- which was not made expressly applicable to SWA.

Regulations: Regulations and designations of approved ports and airports are contained in RSA Proclamation 139/1975, Proclamation 241/1975 and RSA Proclamation 2001/1975.

Foodstuffs, Cosmetics and Disinfectants Ordinance 18 of 1979.

Summary: This Ordinance controls the sale, manufacture and import of foodstuffs, cosmetics and disinfectants.

Amendments: This Ordinance originally authorised local authorities to enforce it locally. It was extended to all of SWA by the Health Act 21 of 1988.

Regulations: Basic regulations are contained in GN 195/1968, as amended prior to independence. Standards regarding salt and iodised salt are amended in GN 124/1994 (GG 883).

Related laws: See GN 179/2008 (GG 4088) for exemptions from the application of section 29 of the Medicines and Related Substances Control Act 13 of 2003 to certain substances approved under this Act.

COMMISSIONS

Commission of Inquiry into Health Services (AG 19/1981).

INTERNATIONAL LAW

International Sanitary Regulations, 1951

territorial application: *International Health Regulations Act 28 of 1974*

According to the UN Treaty Data Base, this includes adoption of the following amendments:

- * *Additional regulations amending the International Sanitary Regulations, 1951 with respect to the sanitary control of pilgrim traffic, 1956*
- * *Additional regulations amending the International Sanitary Regulations, 1951 in particular with respect to the Health Part of the Aircraft General Declaration, 1960*
- * *Additional regulations amending the International Sanitary Regulations, 1951 in particular with respect to notifications, 1963*
- * *Additional regulations amending the International Sanitary Regulations, 1951 in particular with respect to disinfecting of ships and aircraft, 1965*

Constitution of the World Health Organization, 1946

definitive signature/acceptance: 23 April 1990

Amendment to article 7 of the Constitution of the World Health Organization, 1965

(not yet in force internationally)

acceptance: 21 September 2004

Amendment to article 74 of the Constitution of the World Health Organization, 1978

(not yet in force internationally)

acceptance: 21 September 2004

Amendments to articles 24 and 25 of the Constitution of the World Health Organization, 1986

acceptance: 11 November 1991

Amendments to articles 24 and 25 of the Constitution of the World Health Organization, 1998

acceptance: 26 March 1999

Namibia has NOT accepted the following amendments:

- * Amendments to articles 24 and 25 of the Constitution of the World Health Organization, 1959
- Amendments to articles 24 and 25 of the Constitution of the World Health Organization, 1967
- * Amendments to articles 34 and 55 of the Constitution of the World Health Organization, 1973
- * Amendments to articles 24 and 25 of the Constitution of the World Health Organization, 1976

Commonwealth Regional Health Community for East, Central and Southern Africa

accession: 19 December 1991 (source: Ministry of Foreign Affairs)

WHO Framework Convention on Tobacco Control, 2003

(entered into force internationally on 27 February 2005)

signature: 29 January 2004

ratification approved by Parliament: 26 October 2005

deposit: 7 November 2005; effective date: 5 February 2006 (source: WHO, www.who.int/fctc)

International Convention against Doping In Sport, 2005

(entered into force internationally on 1 February 2007)

ratification by Parliament: 21 September 2006 (source: Parliament)

deposit: 29 November 2006 (source: UNESCO, www.unesco.org)

SADC Protocol on Health, 1999

(entered into force within SADC on 14 August 2004) (source: SADC)

signature: 18 August 1999 (source: SADC)

ratification: 10 July 2000 (source: SADC; Ministry of Foreign Affairs)

See also **DISABILITIES**.

See also **HOSPITALS**.

See also **LABOUR** (health and safety at workplaces).

See also **MEDICINE AND MEDICAL PROFESSIONS**.

See also **MENTAL HEALTH AND MENTAL DISORDERS**.

HOSPITALS

Hospitals and Charitable Institutions Ordinance 16 of 1930.

Summary: This Ordinance provides for the establishment and management of hospitals and other charitable institutions. It is apparently still in force, although it has been superseded by subsequent legislation (at least with respect to hospitals).

Amendments: The Ordinance is amended by Proc. 1/1934, Ord. 10/1938, Ord. 5/1944, Ord. 22/1953, Ord. 24/1955, Ord. 11/1960 and Ord. 14/1969.

State Hospitals Ordinance 17 of 1966.

Summary: This Ordinance has no ongoing force and effect. The only provisions which remain in force (sections 10, 11, 12, 16, 17 and 18) relate to transitional matters.

Amendments: This Ordinance (with the exception of the transitional provisions) is repealed by Ord. 14/1972.

Hospitals and Health Facilities Act 36 of 1994.

Summary: This Act consolidates and amends the laws relating to state and private hospitals and health facilities (which are broadly defined to include clinics, pharmacies, laboratories, pharmacies, etc.). It replaces the Hospitals Ordinance 14 of 1972 and came into force on 15 February 1995 (GN 25/1995, GG 1028).

Amendments: Act 1/1998 amends sections 1, 2, 4, 5, 18, 19, 23, 24, 27, 31, 38 and 39 of the Act.

Regulations: Regulations made under the previous legislation survive in terms of section 39(2).

In terms of the new Act, regulations concerning the classification of hospitals and health facilities are contained in GN 184/2001 (GG 2609).

Regulations relating to the classification of state hospitals, the admission of state patients and the fees payable by patients are contained in GN 73/2010 (GG 4459). (These regulations repeal previous regulations contained in GN 43/1993 (GG 621), as amended by GN 199/1995 (GG 1183) and GN 12/2001 (GG 2468).)

Tariffs for state patients continue to be determined in accordance with GG 621 of 5 April 1993.

Cases: *Lisse v The Minister of Health and Social Services* 2004 NR 107 (HC), *Minister of Health and Social Services v Lisse* 2006 (2) NR 739 (SC); *Kaulinge v Minister of Health and Social Services* 2006 (1) NR 377 (HC).

See also **HEALTH**.

See also **MEDICAL AID**.

See also **MEDICINE AND MEDICAL PROFESSIONS**.

HOUSING

Sectional Titles Act 66 of 1971, as amended in South Africa to November 1979.

Summary: This Act provides for the division of buildings into sections and sets forth the details of sectional ownership.

Applicability to SWA: Section 43 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, as amended), dated 12 November 1979. Section 3(1)(q) of the transfer proclamation excluded section 26(4)(c) of the Act (which refers to compliance with the *Group Areas Act 36 of 1966*) from the operation of section 3(1) of the General Proclamation. None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA. The Act was replaced in South Africa by the *Sectional Titles Act 95 of 1986*, which was not applicable to SWA.

Regulations: Regulations are contained in RSA GN R.475 of 30 March 1973, as amended by RSA GN R.2579 of 29 December 1978, AG GN 82/1982, GN 195/1996 (GG 1367), GN 76/2007 (GG 3824) and GN 229/2007 (GG 3960).

Housing Levy Ordinance 18 of 1976.

Summary: This Ordinance establishes a housing levy fund to be used for the provision of housing for employees in “declared housing areas”, using a levy obtained from employers.

Squatters Proclamation, AG 21 of 1985.

Summary: This Act provides for the removal of persons unlawfully present on land or in buildings, and for the demolition of structures which are unlawfully erected. The portions of the Proclamation which did not come into force immediately were brought into operation by AG 28/1986.

National Housing Enterprise Act 5 of 1993.

Summary: This Act 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 replaces the National Building and Investment Corporation of South West Africa Proclamation (AG 60/1978).

Amendments: Act 32/2000 (which came into force on 5 March 2001 - 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, which was brought into

operation by Proc. 13/2006 (GG 3733), amends section 5, 6, 8 and 10.

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

National Housing Development Act 28 of 2000.

Summary: This Act 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 replaces the Native Housing Levy and Contributions Ordinance 22 of 1961 and the Housing Ordinance of the Administration of Coloureds 4 of 1983. The Act came into force on 5 March 2001 (GN 36/2001, GG 2492).

Regulations: Regulations contained in GN 44/2001 (GG 2492) are 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 General Notice 156/2003 (GG 3019), GN 258/2004 (GG 3334), GN 110/2006 (GG 3672) and GN 34/2008 (GG 3991). Alternate committee members are appointed in GN 24/2009 (GG 4216).

Sectional Titles Act 2 of 2009.

Summary: This Act 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 replaces the *Sectional Titles Act 66 of 1971*. It will come into force on a date set by the Minister.

Regulations: Regulations made under the previous Act survive in terms of this Act- Regulations are contained in RSA GN R.475 of 30 March 1973, as amended by RSA GN R.2579 of 29 December 1978, AG GN 82/1982, GN 195/1996 (GG 1367), GN 76/2007 (GG 3824) and GN 229/2007 (GG 3960).

SELECTED ARTICLES

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/projects/lead/Pdf/aplaceweanttocallourown.pdf.

See also National Housing Enterprise Act 5 of 1993 (**FINANCE AND DEVELOPMENT**).

See also **LAND**.

See also **LANDLORD AND TENANT**.

HUMAN RIGHTS

INTERNATIONAL LAW

Note: The topic of human rights is a very broad one. The international treaties listed here are core documents which cover a range of human rights issues. International treaties covering more specific topics have been listed under those topics.

UNITED NATIONS

date of admission to United Nations – 23 April 1990

- includes acceptance of the *Charter of the United Nations*
- includes adoption of the *Statute of the International Court of Justice* annexed to the Charter of the United Nations
- also generally understood to include endorsement of the *Universal Declaration of Human Rights*

MULTILATERAL TREATIES

Convention on the Prevention and Punishment of the Crime of Genocide, 1948

accession: 28 November 1994

International Convention on the Elimination of All Forms of Racial Discrimination, 1966

accession: 11 November 1982

Namibia has NOT agreed to the following amendment, which is not yet in force internationally:

* *Amendment to article 8 of the International Convention on the Elimination of all Forms of Racial Discrimination, 1992.*

Cases: *Kauesa v Minister of Home Affairs & Others* 1994 NR 102 (HC).

International Covenant on Economic, Social and Cultural Rights, 1966

accession: 28 November 1994; ; effective date: 28 February 1995

International Covenant on Civil and Political Rights, 1966

accession: 28 November 1994; effective date: 28 February 1995

Optional Protocol to the International Covenant on Civil and Political Rights, 1966

accession: 28 November 1994

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty, 1989

accession: 28 November 1994

Cases: *Kauesa v Minister of Home Affairs & Others* 1994 NR 102 (HC); *Namunjepo & Others v Commanding Officer, Windhoek Prison & Another* 1999 NR 271 (SC) at 284H-ff; *Frank & Another v Chairperson of the Immigration Selection Board* 2001 NR 107 (SC); *Government of the Republic of Namibia & Others v Mwilma & all other accused in the Caprivi treason trial* 2002 NR 235 (SC); *S v Mushwena & Others* 2004 NR 276 (SC) at 320-22, 371, 390; *S v Myburgh* 2008 (2) NR 592 (SC) at 597I-598A; *Alexander v Minister of Justice & Others* 2009 (2) NR 712 (HC).

International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973

accession: 11 November 1982

Convention on the Elimination of All Forms of Discrimination against Women, 1979

accession: 23 November 1992

Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women

effective date: 22 December 2000 (This is the date on which the Optional Protocol came into force internationally after being ratified by the first 10 countries, one of which is Namibia. The Namibian Parliament approved the Optional Protocol on 17 May 2000.)

Namibia has NOT agreed to the following amendment, which is not yet in force internationally:

* *Amendment to article 20, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination Against Women, 1995.*

Cases: *Müller v President of the Republic of Namibia & Another* 1999 NR 190 (SC) at 205E-F.

African Charter on Human and Peoples' Rights, 1981

accession: 30 July 1992

deposit: 16 August 1992

(source: African and International Instruments Online, www.oneworld.org/afronet/links/banjul_ratif1.htm; Ministry of Foreign Affairs)

Protocol to the African Charter on Human and Peoples' Rights on the establishment of the African Court on Human and Peoples' Rights, 1998

(entered into force within the AU on 15 January 2004)

signature: 9 June 1998

ratification approved by Parliament: 7 November 2000 (source: Parliament)

deposit: No deposit is recorded on the African Union website. (www.africa-union.org)

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003

(entered into force within the AU on 25 November 2005)

signature: 9 December 2003 (source: www.africa-union.org)

ratification approved by Parliament: 8 July 2004 (source: Parliament)

deposit: 26 August 2004 (source: www.africa-union.org)

Reservation: Namibia will not be bound by Article 6(d) until it has enacted legislation regarding the recording and registration of customary marriages. (source: Ministry of Foreign Affairs)

Cases: *Kauesa v Minister of Home Affairs & Others* 1994 NR 102 (HC); *Sikunda v Government of the Republic of Namibia & Another* (1) 2001 NR 67 (HC); *Frank & Another v Chairperson of the Immigration Selection Board* 2001 NR 107 (SC); *Alexander v Minister of Justice & Others* 2009 (2) NR 712 (HC).

African Charter on the Rights and Welfare of the Child, 1990

signature: 13 July 1999

ratification approved by Parliament: 23 July 2004

deposit: 26 August 2004 (source: www.africa-union.org)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

accession: 28 November 1994

Namibia has NOT agreed to the following amendments, which are not yet in force internationally:

* *Amendments to articles 17 (7) and 18 (5) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1992.*

Cases: *Namunjepo & Others v Commanding Officer, Windhoek Prison & Another* 1999 NR 271 (SC) at 284H-ff.

Convention on the Rights of the Child, 1989

signature: 26 September 1990

ratification: 30 September 1990

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000

(entered into force internationally on 12 February 2002)

signature: 8 September 2000 (source: Ministry of Foreign Affairs)

ratification: 16 April 2002 (source: UNICEF)

Note: Namibia's ratification of this Optional Protocol was accompanied by a declaration on the minimum recruitment age (age 18) for the Namibia Defence Force (source: Ministry of Foreign Affairs).

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000

(entered into force internationally on 18 January 2002)

signature: 8 September 2000 (source: Ministry of Foreign Affairs)

ratification: 16 April 2002 (sources: Ministry of Foreign Affairs; UNICEF)

Amendment to Article 43(2) of the Convention on the Rights of the Child adopted by the Conference of the States Parties on 12 December 1995

(entered into force internationally on 18 November 2002)

ratification: 11 December 2001 (source: Ministry of Foreign Affairs)

Convention on Rights of Persons with Disabilities, 2006

(entered into force internationally on 3 May 2008)

signature: 25 April 2007 (source: www.un.org)

ratification by Parliament: 12 September 2007 (source: Parliament)

deposit: 4 December 2007 (source: www.un.org)

Optional Protocol to Convention on Rights of Persons with Disabilities, 2006

signature: 25 April 2007 (source: www.un.org)

ratification by Parliament: 12 September 2007 (source: Parliament)

deposit: 4 December 2007 (source: www.un.org)

SADC Protocol on Gender and Development, 2008

(not yet in force within SADC as of 23 June 2010) (source: SADC)

signature: 17 August 2008 (source: SADC)

ratification approved by Parliament: 7 October 2009 (source: Parliament)

SADC list of ratifications dated 23 June 2010 does not show ratification by Namibia

See also **INTERNATIONAL LAW**.

IMPORT AND EXPORT

Export Credit and Foreign Investments Re-insurance Act 78 of 1957,
as amended in South Africa prior to Namibian independence.

Summary: This Act provides for state re-insurance of insurance contracts relating to exports in order to promote foreign trade.

Applicability to SWA: Section 1 defines “Republic” to include “the Territory”, which is defined as “the Territory of South West Africa and includes for all purposes the portion of the Territory known as the ‘Rehoboth Gebiet’ and defined in the First Schedule to Proclamation No. 28 of 1923”. Section 12 states “This Act and any amendment thereof, whensoever enacted, shall apply also in the Territory.”

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978. However, section 3(1)(d) of the transfer proclamation excluded this Act from the operation of section 3(1) of the General Proclamation, meaning that the administration of the Act was not transferred to SWA.

Importation of Cement Ordinance 24 of 1963.

Summary: This Ordinance authorises the government to prohibit or regulate the import of cement, cementitious material or slag by notice in the *Government Gazette*. No such notices have been located.

Import and Export Control Act 30 of 1994.

Summary: This Act provides for import and export control. It replaces the *Import and Export Control Act 45 of 1963*.

Regulations: Import and export issues are addressed in AG GN 6/1981 (export permits), AG GN 7/1981 and GN 33/1987 (import permits), all of which appear to survive under the new legislation.

The export of returnable bottles is prohibited by GN 176/1992 (GG 536), which was issued under the previous legislation.

The import of certain ozone depleting substances is prohibited by GN 80/2004 (GG 3193).

The import of certain motor vehicles is prohibited by GN 257/2004 (GG 3334).

See also **CUSTOMS AND EXCISE**.

See also:

- * Cold Storage Works and Abattoirs Proclamation 50 of 1921 (export of meat)
 - * Agricultural Pests Ordinance 11 of 1927 (importation of exotic animals)
 - * Agricultural Produce Export Ordinance 13 of 1928 (export of agricultural produce and meat)
 - * Karakul Sheep Farming Industry Protection Proclamation 31 of 1930 (export of Karakul sheep)
 - * Tobacco Growers Protection Ordinance 2 of 1933 (import of tobacco for farming purposes)
 - * Karakul Pelt Export Duty Proclamation 34 of 1939 (export of karakul pelts);
 - * Bonemeal and Superphosphates Control Proclamation 37 of 1944 (import of bonemeal products)
 - * *Dairy Industry Act 30 of 1961* (import of margarine)
 - * *Agricultural Pests Act 3 of 1973* (importation of plants, insects, honey, honey bees and exotic animals)
 - * *Marketing Act 59 of 1968* (regulations concerning the import of vegetable oil were issued under the authority of this Act)
 - * Meat Industry Act 12 of 1981 (import and export of livestock, meat and meat products)
 - * Karakul Pelts and Wool Act 14 of 1982 (import and export of karakul pelts and wool)
 - * Control of the Importation and Exportation of Dairy Products and Dairy Product Substitutes Act 5 of 1986 (import and export of dairy products and dairy product substitutes)
- (AGRICULTURE).**

- * Tobacco Products Control Act 1 of 2010 (import of tobacco products)
- (ALCOHOL, DRUGS AND TOBACCO).**

- * *Tear-gas Act 16 of 1964* (importation of tear-gas and articles which are used to release tear-gas)
 - * Arms and Ammunition Act 7 of 1996 (import and export of arms and ammunition)
- (ARMS AND AMMUNITION).**

- * Silver Coin (Control of Importation) Proclamation 26 of 1932 (importation of silver coins)
- (CURRENCY).**

- * Preservation of Trees and Forests Ordinance 37 of 1952 (import and export of trees and forest produce)
 - * Forest Act 12 of 2001 (provides for regulations governing export of forest produce)
 - * Nature Conservation Ordinance 4 of 1975 (import and export of game and game products)
 - * Plant Quarantine Act 7 of 2008 **(ENVIRONMENT)** (import and export of plants and plant products)
- (ENVIRONMENT).**

- * *Explosives Act 26 of 1956* (import and export of explosives)
- (EXPLOSIVES).**

- * Foodstuffs, Cosmetics and Disinfectants Ordinance 18 of 1979 (import of foodstuffs, cosmetics and disinfectants)
- (HEALTH).**

- * Diamond Act 13 of 1999 (import and export of diamonds)
- (MINING AND MINERALS).**

- * Aquaculture Act 18 of 2002 (import and export of aquatic organisms and aquaculture products)
- * Inland Fisheries Resources Act 1 of 2003 (import and export of fish)
(MARINE AND FRESHWATER RESOURCES).

- * Controlled Game Products Proclamation 42 of 1980 (export of game and game products)
- * Export Processing Zones Act 9 of 1995
(TRADE AND INDUSTRY).

INCOME TAX

Income Tax Agreement Ratification Ordinance 13 of 1959.

Summary: This Ordinance ratifies a double taxation treaty between South Africa and South West Africa.

Amendments: The Ordinance is amended by Ord. 4/1970 and Ord. 7/1973.

Rehoboth Gebiet Income Tax Proclamation 92 of 1961.

Summary: This Proclamation has been superseded by the Income Tax Act 24 of 1981.

Income Tax Act 24 of 1981.

Summary: This Act covers income tax comprehensively.

Amendments: This Act was amended prior to independence by Act 12/1982, AG 10/1985, Act 13/1985, Act 11/1986, Act 8/1987, Act 1/1989 and AG 25/1989.

It has been amended since independence by-

- Act 3/1991 (re: petroleum)
- Act 8/1991 (re: housing benefits)
- Act 12/1991 (re: married women)
- Act 33/1991 (re: employees made redundant and removal of gender distinctions regarding age in the provision affecting applicability of exemption of lump sum paid to retrenched employee)
- Act 25/1992 (re: removal of remaining distinctions between men and women, and between married and single persons; tax exemptions for certain categories of persons; deductions relating to pensions and annuities; capital write-offs; and other matters)
- Act 10/1993 (various amendments)
- Act 17/1994 (various amendments)
- Act 22/1995 (various amendments, including amendments on the taxation of pensions or annuities transferred from one fund to another, the income of unit trusts and deductions in respect of donations to registered welfare organisations and educational institutions)
- Act 12/1996 (various amendments)
- Act 5/1997 (various amendments; note that this amending act contains different commencement dates for different sections and for different categories of taxpayers)
- Act 13/1998 (increase in rate of income tax)
- Act 7/1999 (new tax rates)
- Act 21/1999 (various amendments)
- Appeal Laws Amendment Act 10 of 2001 (section 76)
- Act 7/2002 (various amendments)
- Act 11/2003 (amendment to Schedule 4 - rates of normal tax).
- Act 4/2005 (various amendments; note that this amending act contains different commencement dates for different sections and for different

categories of taxpayers)
Act 5/2007 (various amendments; note that this amending act contains different commencement dates for different sections and for different categories of taxpayers; see GN 118/2009, GG 4270 regarding commencement dates)
Act 5/2010 (various amendments; note that this amending act contains different commencement dates for different sections and for different categories of taxpayers).

Regulations: Regulations regarding the standard value of livestock are contained in GN 1/1993 (GG 772) and GN 50/1995 (GG 1037).

A special court for hearing income tax appeals is constituted in GN 320/1996 (GG 1462), replacing the court constituted in AG 31/1981. Additional special courts for hearing income tax appeals are constituted in GN 222/1997, GN 223/1997 (GG 1730), GN 158/2000 (GG 2361), and GN 88-90/2004 (GG 3198).

Rates for exemption under section 16(1)(m)(iii) are set in GN 115/1991 (GG 287), GN 21/1997 (GG 1504) and GN 102/1997 (GG 1569).

The most recent deduction tables for employees' tax (PAYE 10, VOLUME 18) were brought into force by GN 180/2009 (GG 4337).

The most recent tables for optional use by provisional taxpayers (PAYE 12, VOLUME 18) were brought into force by GN 181/2009 (GG 4337).

An amount in terms of section 73A(1) of the Act is fixed at N\$100 000 in GN 107/2006 (GG 3672).

Legal practitioners are appointed to serve on the panel in terms of section 73A(4) in GN 108/2006 (GG 3672).

The application of the Act is affected by AG 14/1982 and GN 31/1987. The application of the Act in Export Processing Zones is affected by section 7 of the Export Processing Zones Act 9 of 1995. The application of the Act is addressed in the Demutualisation Levy Act 9 of 2002.

Cases:

Esselmann v Secretary of Finance 1990 NR 250 (SC)

Hindjou v The Government of the Republic of Namibia 1997 NR 112 (SC) (sections 83(1)(b) and 84 not contrary to Articles 12 or 78 of Constitution).

Oryx Mining and Exploration (Pty) Ltd v Secretary for Finance 1999 NR 80 (SC)

Minister of Finance v De Beers Marine (Pty) Ltd 2007 (1) NR 17 (SC).

See also *S v Koch* 2006 (2) NR 513 (SC) (section 76(2) of Act discussed in *dicta* at 526) and *Engelbrecht & Others v Hennes* 2007 (1) NR 236 (LC) (deductions from commissions made in terms of this Act not necessarily an indication of an employment relationship).

Related international agreements:

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income between Republic of South Africa, United Kingdom of Great Britain and Northern Ireland and Southwest Africa (Namibia), 1962

signed at Cape Town, on 28 May 1962; exchange of notes (with annex) constituting an agreement extending to South West Africa the above-mentioned Convention. Pretoria, 8 August, 1962; registered by the Republic of South Africa on 19 July 1963

Convention between the Government of the Republic of Namibia and the Government of the Kingdom of Sweden for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, 16 July 1993

contained in the Schedule to Proclamation 3/1999 (GG 2034)

Agreement between the Republic of Namibia and the Federal Republic of Germany for the avoidance of Double Taxation with Respect to Taxes on Income and Capital, 2 December 1993

contained in the Schedule to Proclamation 1/1999 (GG 2032)

(Note: There are two Proclamations numbered "Proc. 1/1999" in the 1999 government gazettes – one in GG 2022 and one in GG 2032. The Proclamation pertaining to double taxation and fiscal evasion with respect to Germany is listed as "Proclamation 9/1999" in the Quarterly Return for January-March 1999.)

Agreement between the Government of the Republic of Namibia and the Government of the Republic of Mauritius for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, 4 March 1995

contained in the Schedule to Proclamation 5/1999 (GG 2036)

Convention between the Government of the Republic of Namibia and the Government of the French Republic for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, 29 May 1996

contained in the Schedule to Proclamation 4/1999 (GG 2033)

Convention between the Government of the Republic of Namibia and the Government of the Republic of India for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, 15 February 1997

contained in the Schedule to Proclamation 6/1999 (GG 2035)

Convention between the Government of the Republic of Namibia and the Government of the Republic of Romania for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, 25 February 1998

contained in the Schedule to Proclamation 7/1999 (GG 2038)

Convention between the Government of the Republic of Namibia and the Government of the Russian Federation for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, 30 March 1998

contained in the Schedule to Proclamation 4/1999 (GG 2033)

Agreement between the Government of the Republic of Namibia and the Government of the Republic of South Africa for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, 18 May 1998

contained in the Schedule to Proclamation 10/1999 (GG 2037)

Agreement between Namibian and Malaysia on the Avoidance of Double Taxation, 9 November 2001

source: Parliament.

Agreement between Namibian and Malaysia on the Avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income, 28 July, 1998.
contained in the Schedule to Proclamation 46/2004 (GG 3284)

Agreement between the Government of the Republic of Namibia and the Government of the Republic of Botswana for the avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, 16 June 2004
contained in the Schedule to Proclamation 13/2005 (GG 3514)

INQUESTS

Inquests Act 6 of 1993.

Summary: This Act provides for the holding of inquests in cases of deaths or alleged deaths apparently occurring otherwise than from natural causes. It came into force on 1 January 1994 (GN 156/1993, GG 756), replacing the South African *Inquests Act 58 of 1959*.

Amendments: The International Co-operation in Criminal Matters Act 9 of 2000 amends section 17.

Cases: *Wucher v Retief & Another* 1998 NR 21 (HC); *S v Smith* 1999 NR 182 (HC).

INSOLVENCY

Insolvency Act 24 of 1936, as amended in South Africa to November 1979.

Summary: This Act governs insolvent persons and their estates. It details the sequestration procedure, and the rights of various creditors.

Applicability to SWA: Section 1 defines “Republic” to include “the mandated territory of South West Africa,” and “Gazette” and “Supreme Court” are defined accordingly. Section 158*ter* states “This Act and any amendment thereof shall apply also in the Territory, including that portion of the 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).”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979.

Section 3(1)(a) of the transfer proclamation excluded the references to the “Republic” in the Act from the operation of section 3(1) of the General Proclamation, except where it occurs for the second and third times in section 148 of the Act. This means that the designated references to “Republic” in section 148 were to be construed as references to the Territory only, while elsewhere “Republic” retained the meaning given to it in the definition section of the Act (South Africa and SWA).

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Amendments: Section 50 of the Sales Tax Proclamation (AG 40/1978) amends section 99 of this Act regarding the payment of sales tax from a sequestrated estate.

Act 18/1980 makes the *Insolvency Amendment Act 78 of 1980* applicable to South West Africa.

Act 14/1985 amends the Act substantially.

AG 17/1986 amends Tariff A in the Second Schedule to the Act. Proc. 12/1999 (GG 2051) substitutes Tariff A and Tariff B in the Second Schedule and the tariff of fees in the Third Schedule.

Act 12/2005 (GG 3551), which will come into force on a date set by the Minister of Justice, amends the Act substantially.

Regulations: The regulations promulgated in RSA GN R.1379 of 24 August 1962 are amended by GN 32/1999 (GG 2051).

A tariff of fees is contained in GN 37/1999 (GG 2051), which withdraws RSA General Notice 681 of 1 November 1974.

Cases:

Bekker NO v Kotzé & Another 1994 NR 345 (HC) (section 18(3)). See also the related case of *Bekker NO v Kotzé & Another* 1994 NR 373 (HC).

Barotti Furniture (Pty) Ltd v Moodley 1996 NR 295 (HC)
Commercial Bank of Namibia v Myburgh & Another 1996 NR 330 (HC)
JCL Civils Namibia (Pty) Ltd v Steenkamp 2007 (1) NR 1 (HC) (secured
creditor).

INSURANCE

War Damage Insurance and Compensation Act 85 of 1976, as amended in South Africa prior to Namibian independence.

Summary: This Act establishes a War Damage Fund for state insurance schemes against the risk of war damage, and for compensation for war damage on conditions determined by the Minister of Finance. “War damage” includes damage to specified property arising from “any hostile action directed against the security of the Republic,” and from attempts by the security forces of the Republic or any of its allies to suppress such hostile action, but only if the Minister of Finance declares these defensive actions to have caused war damage.

Applicability to SWA: Section 12 states “This Act and any amendment thereof shall apply also in the territory of South West Africa.”

Second Finance Act 27 of 1987.

Summary: This Act identifies certain special risks (including riot or civil commotion, strikes, lock outs and labour disturbances in addition to acts to overthrow or influence any State or Government or any local authority with force or by means of fear, terrorism or violence), authorises Cabinet to enter into an agreement with a registered insurer for coverage of such special risks, and authorises Cabinet to undertake to pay annually to the insurer an amount equal to any loss sustained by the insurer during that year in respect of such risks. The National Special Risks Insurance Association (NASRIA) is registered insurer which operates in terms of this agreement. See www.nasria.com.na.

Regulations: The operation of the National Special Risks Association (NASRIA) is affected by the State-Owned Enterprises Governance Act 2 of 2006.

Short-term Insurance Act 4 of 1998.

Summary: This Act regulates the short-term insurance business in Namibia. It came into force on 1 July 1998 (GN 142/1998, GG 1887), replacing the portions of the *Insurance Act 27 of 1943* dealing with short-term insurance.

Amendments: The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 amends section 1 and substitutes section 4.

Regulations: Regulations made in terms of previous legislation survive in terms of section 72 of the new Act. However, new regulations are contained in GN /1998 (GG 1887). These regulations repeal a large number of regulations made in terms of the previous Act insofar as they relate to short-term insurance.

A declaration in terms of section 25(3) is contained in GN 10/2003 (GG 2909).

GN 123/2007 (GG 3877) determines the percentage of value of each reinsurance contract to be ceded by way of reinsurance to the Namibia National Reinsurance

Corporation in respect of all classes of reinsurance business specified in Schedule 1 of the Act.

Cases: *Chief Executive Officer of Namibia Financial Institutions Supervisory Authority v Legal Shields Namibia Ltd* 2005 NR 151 (HC).

Long-term Insurance Act 5 of 1998.

Summary: This Act regulates the long-term insurance business in Namibia. It came into force on 1 July 1998 (GN 144/1998, GG 1888), replacing the remaining portions of the *Insurance Act 27 of 1943*.

Amendments: The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 amends section 1 and substitutes section 4.

Regulations: Regulations made in terms of previous legislation survive in terms of section 73 of the new Act. However, new regulations are contained in GN 145/1998 (GG 1887), as amended by GN 47/2000 (GG 2274), GN 143/2001 (GG 2579) and GN 31/2008 (GG 3985). These regulations repeal a large number of regulations made in terms of the previous Act insofar as they are unrepealed by the Short-Term Insurance Regulations.

National standards developed by the Long-Term Insurance Industry are published for public comment and general information in General Notice 228/2002 (GG 2805).

A declaration in terms of section 25(3) is contained in GN 11/2003 (GG 2909).

Appointments: Appointments to the Namibian National Reinsurance Corporation Board are announced in GN 17/2006 (GG 3577).

Cases:

Channel Life Namibia Limited v Finance in Education (Pty) Ltd 2004 NR 125 (HC)

Otto v Channel Life Namibia Ltd & Another 2007 (1) NR 328 (HC), *Channel Life Namibia Ltd v Otto* 2008 (2) NR 432 (SC) (section 54(1))

Ex Parte Momentum Group Ltd & Another 2007 (2) NR 453 (HC) (section 36)

See also *Wilke NO v Swabou Life Assurance Company Limited* 1997 NR 224 (HC), confirmed in *Wilke NO v Swabou Life Assurance Company Limited* 2000 NR 23 (HC), which concerns section 63(3) of the previous *Insurance Act 27 of 1943*.

Namibia National Reinsurance Corporation Act 22 of 1998.

Summary: This Act provides for the establishment of the Namibia National Reinsurance Corporation to carry on reinsurance business in Namibia. It came into force on 1 July 1999 (GN 108/1999, GG 2129).

Regulations: In terms of section 39(5), the percentage of value of reinsurance contracts to be ceded is set by GN 109/1999 (GG 2129), which was subsequently replaced by GN 3/2003 (GG 2893) and then by GN 123/2007 (GG 3877).

In terms of section 39(2), classes of insurance business and percentage of value of policies to be ceded is set by GN 110/1999 (GG 2129), which was subsequently replaced by GN 4/2003 (GG 2893).

In terms of section 43(2), the rate of reinsurance commission payable in respect of insurance business ceded or offered to the Namibia National Reinsurance Corporation is set by GN 111/1999 (GG 2129), which was subsequently replaced in its entirety by GN 46/2000 (GG 2274) and GN 124/2007 (GG 3877).

The effective date for the three initial notices in terms of the Act, GN 19-111/1999, was set at 1 September 1999, changed to 1 November 1999 by GN 183-185/1999 (GG 2179), then changed to 1 January 2000 by GN 245-247/1999 (GG 2224), then to 1 April 2000 by GN 8-10/2000 (GG 2259), then to 17 April 2000 by GN 44-46/2000 (GG 2274), then to 22 August 2000 by GN 150-152/2000 (GG 2354), then to 1 October 2000 by GN 203-205/2000 (GG 2399), then to 1 November 2000 by GN 238-240/2000 (GG 2417), then to 1 February 2001 by GN 265-267/2000 (GG 2439). A further change to the effective date was made by GN 2-4/2003 (GG 2893), which applied retrospectively and changed the relevant date for these notices to 1 January 2002.

Regulations relating to the short-term and long-term reinsurance business are contained in GN 155/1999 (GG 2160).

Appointments: The members of the Board of Directors are announced in GN 112/1999 (GG 2129) and GN 190/2002 (GG 2845).

Application: The application of this Act is affected by the State-Owned Enterprises Governance Act 2 of 2006.

Cases: *Namibia Insurance Association v Government of Namibia* 2001 NR 1 (HC).

Demutualisation Levy Act 9 of 2002.

Summary: This Act provides for a levy on the free reserves of mutual insurers in respect of their demutualisation.

See also *Export Credit and Foreign Investments Re-insurance Act 78 of 1957 (IMPORT AND EXPORT)*.

INTELLECTUAL PROPERTY

Patents, Designs, Trade Marks and Copyright Act 9 of 1916, as amended in South Africa to April 1978.

Summary: Only the portions of this Act relating to patents and designs remain in force in Namibia.

Applicability to SWA: The portions of this Act relating to patents were made applicable to Namibia by section 5 of the Patents, Designs, Trade Marks and Copyright Proclamation 17 of 1923. They were replaced in South Africa by the *Patents Act 37 of 1952*, which was not applicable to SWA.

The portions of this Act relating to designs were made applicable to SWA by section 9 of the Patents, Designs, Trade Marks and Copyright Proclamation 17 of 1923. They were replaced in South Africa by the *Patents Act 37 of 1952*, which was not applicable to SWA.

Section 17 of the Patents, Designs, Trade Marks and Copyright Proclamation 17 of 1923 originally made the provisions of this Act relating to copyright applicable to South West Africa. These portions of the Act were subsequently replaced by the *Copyright Act 62 of 1963*, which was made expressly applicable to SWA.

Section 13 of the Patents, Designs, Trade Marks and Copyright Proclamation 17 of 1923 originally made the provisions of this Act relating to trademarks applicable to South West Africa. These portions of the Act were subsequently replaced by the *Trademarks Act 62 of 1963* in South Africa, and by the *Trade Marks in South West Africa Act 48 of 1973* in South West Africa.

The definition of “Union Act” in section 18 of the Patents, Designs, Trade Marks and Copyright Proclamation 17 of 1923 made it clear that the specified portions of the Act applied to SWA along with “any amendment thereto”.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978.

There were no amendments to the Act in South Africa after that date.

Cases: *Ex Parte Hendrik Krekel* (unreported judgement, SWA Supreme Court, 1983/11/11); *Gemfarm Investments v Trans Hex Group* 2009 (2) NR 477 (HC) (canvasses legislative history, holding that South Africa’s *Patents Act 37 of 1952* did not in any way repeal or otherwise affect the application or enforceability of the Proclamation in South West Africa; holding also that section 23(2) of the 1916 Act never applied to SWA).

Patents and Designs Proclamation 17 of 1923.

Summary: This Proclamation was originally called the Patents, Designs, Trade Marks and Copyright Proclamation. Only sections 1-9 and 18-24 as they relate to patents and designs remain in force.

Amendments: This Proclamation is amended by Proc. 33/1940, Proc. 30/1944, Ord. 10/1951, Ord. 26/1956 and Ord. 35/1960. It was extended to the Rehoboth Gebiet by Proc. 12/1930.

The RSA *Copyright Act 62 of 1963*, which was made expressly applicable to SWA, repealed sections 14-17*bis* of the Proclamation, and the remainder of the Proclamation insofar as it relates to copyrights, *except for* section 18*bis*.

The RSA *Trade Marks in South West Africa Act 48 of 1973* repealed sections 10-13 of the Proclamation, and the remainder of the Proclamation insofar as it relates to trade marks.

The Namibia Library and Information Services Act 4 of 2000 repealed section 18*bis*, which dealt with copyright.

Regulations: *Gemfarm Investments v Trans Hex Group* 2009 (2) NR 477 (HC) discusses the applicability of regulations by virtue of section 19 of this Proclamation (at 495I-ff).

Cases: *Gemfarm Investments v Trans Hex Group* 2009 (2) NR 477 (HC) (canvasses legislative history and interprets sections 1 and 18 to mean that only inventions in Namibia may be registered as patents and only by persons who are not importers).

Gemfarm Investments v Trans Hex Group 2009 (2) NR 477 (HC) refers to patent legislation as “probably the most neglected area of statutory regulation in Namibia”:

In a world increasingly driven by globalised economies and markets; in an age where more technological advances have been made in a single century than in all the centuries which have preceded it combined; at a time when commerce and industries are increasingly based on and benefiting from the power of knowledge converted into ideas, inventions and technologies for the benefit of humankind and its environment, it should be a serious legislative concern that our statutory laws designed to record, preserve and protect those ideas, inventions and technologies are marooned in outdated, vague and patently inadequate enactments passed by colonial authorities in this country about a century ago (at 481J-482C).

Merchandise Marks Act 17 of 1941, as amended in South Africa to April 1978.

Summary: This Act regulates the marking of merchandise and the packaging in which merchandise is sold.

Applicability to SWA: Section 1 defines “Union” to include “the Territory”, which is defined as “the territory of South West Africa”. Section 21*bis* states “This Act and any amendment thereof which may be made from time to time shall apply also in the Territory, including the Eastern Caprivi Zipfel referred to in section 3 of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and in relation to all persons in that portion of the Territory known as the ‘Rehoboth Gebiet’ and defined in the First Schedule to Proclamation No. 28 of 1923 of the Territory.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978.

Section 3(1)(a) of the transfer proclamation excluded the reference to the “Republic” in the Act from section 3(1) of the General Proclamation, meaning that “Republic” retained the meaning given to it in the definition section of the Act (South Africa and SWA).

One amendment to the Act in South Africa after the date of transfer and prior to Namibian independence -- the *Merchandise Marks Amendment Act 54 of 1987* -- contains an explicit reference to SWA.

Heraldry Act 18 of 1962, as amended in South Africa prior to Namibian independence.

Summary: This Act provides for the registration of coats of arms, badges and other emblems and established bodies to oversee this and all related matters.

Applicability to SWA: Section 1 defines “territory” as “the territory of South West Africa, including that part of the said territory known as the Eastern Caprivi Zipfel and referred to in section 38(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968)”. Section 27 states “This Act and any amendment thereof shall also apply to the territory.”

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (National Education) Transfer Proclamation (AG 1/1978), dated 11 January 1978. However, section 3(2)(b) of the transfer proclamation excluded this Act from the operation of section 3(1) of the General Proclamation, meaning that the administration of the Act was not transferred to SWA.

Trade Marks Act 48 of 1973, as amended in South Africa to April 1978.

Summary: This Act covers the registration of trade marks and certification marks. It was originally known as the *Trade Marks in South West Africa Act*.

Applicability to SWA: Section 82 states “This Act and any amendment thereof shall apply also in the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978. There were no amendments to the Act in South Africa prior to Namibian independence.

Regulations: Regulations are contained in RSA GN R.2498 of 14 December 1973 (initially cited as RSA GN R. 2437/1973, but corrected by RSA GN R.87/1974). Amendments to these regulations are contained in AG GN 40/1989 (15 July 1989). GN 13/2001 (GG 2470) substitutes Schedule 1 of these regulations, with effect from 1 February 2001.

Cases: *Sparletta (Pty) Ltd v Namibia Breweries Ltd* 1991 NR 384 (HC).

Copyright and Neighbouring Rights Protection Act 6 of 1994.

Summary: This Act provides for the protection of copyrights and performers’ rights. It replaces the *Copyright Act 63 of 1965*. The Act came into force on 15 March 1996

(GN 64/1996, GG 1273).

Regulations: Regulations are contained in GN 32/1996 (GG 1257).

Related international agreements: See below. Certain provisions of the Act are made applicable to the countries of the Berne Copyright Union by GN 127/2001 (GG 2562).

Cases: *S v Marume* 2007 (1) NR 12 (HC).

Articles: Enynna S Nwauche, "The public interest in Namibian copyright law", *Namibia Law Journal*, Volume 1, Issue 1, 2009, available at www.namibialawjournal.org.

INTERNATIONAL LAW

Unless otherwise indicated, the source for the information in this section is the website of the World Intellectual Property Organization (www.wipo.org/treaties/).

Paris Convention for the Protection of Industrial Property, 1883, as amended in 1979

revised at Brussels (1900), Washington (1911) The Hague (1925), London (1934), Portugal (1958) and Stockholm (1967) and amended on 28 September 1979

ratification by Parliament: 28 March 2003 (source: Parliament)

deposit: 29 December 2003; effective date: 1 January 2004

Convention Establishing the World Intellectual Property Organization 1967, amended in 1979 (WIPO Convention)

accession: 23 December 1991

Namibia has NOT yet agreed to the following amendment:

* *Amendment to Article 9(3) of the WIPO Convention, 2000 (not yet in force internationally)*

Berne Convention for the Protection of Literary and Artistic Works, 1971

Berne Convention (1886), completed at Paris (1896), revised at Berlin (1908), completed at Berne (1914), revised at Rome (1928), at Brussels (1948), at Stockholm (1967) and at Paris (1971)

accession: 21 March 1990

effective date in respect of 1971 revisions (Paris): 24 December 1993

Declaration of Continuity of Berne Convention for Protection of Literary and Artistic Works

accession: 16 September 1993 (source: Ministry of Foreign Affairs)

Note: Certain provisions of Namibia's Copyright and Neighbouring Rights Protection Act 6 of 1994 are made applicable to the countries of the Berne Copyright Union by GN 127/2001 (GG 2562).

WIPO Copyright Treaty, 1996

signature: 20 December 1996

not yet ratified by Namibia

WIPO Performances and Phonograms Treaty, 1996

signature: 20 December 1996

not yet ratified by Namibia

Madrid Agreement concerning the International Registration of Marks, 1891

accession: 31 March 2004

Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989

accession: 31 March 2004

Hague Agreement concerning the International Deposits of Industrial Designs of 1925, as governed by the 1960 Act and the Geneva Act

accession: 31 March 2004

Patent Cooperation Treaty, 1970, as amended in 1979, and modified in 1984 and 2001

ratification by Parliament: 28 March 2003 (source: Parliament)

accession: 1 October 2003; effective date: 1 January 2004

Reservation: Namibia does not consider itself bound by Article 59 of the Treaty.
(source: Ministry of Foreign Affairs)

Harare Protocol on Patents and Industrial Designs within the Framework of the African Regional Industrial Property Organization, 1982

accession approved by Parliament: 28 March 2003

(source: Ministry of Foreign Affairs)

Banjul Protocol on Marks within the Framework of the African Regional Industrial Property Organization, 1993

accession approved by Parliament: 28 March 2003

(source: Ministry of Foreign Affairs)

INTERNATIONAL LAW

Treaty of Peace and South West Africa Mandate Act 49 of 1919.

Summary: This Act gave effect to the Mandate for South West Africa established pursuant to the Treaty of Versailles by delegating authority for the administration of South West Africa to the Governor-General of South Africa. It was to cease to have effect on 1 July 1920 by its own terms (section 5), but it was extended by section 2 of the *Treaties of Peace Act 32 of 1921* until such time as it is repealed. It was repealed in South Africa by section 36 of *General Law Amendment Act 108 of 1993*.

Applicability to SWA: The Act applied to SWA by virtue of its subject matter.

Diplomatic Privileges Act 71 of 1951, as amended in South Africa prior to Namibian independence.

Summary: This Act confers diplomatic immunity on diplomats.

Applicability to SWA: The Act was made applicable to South West Act by State President Proclamation 63 of 5 May 1989 (RSA GG 11681).

Related international agreements:

Vienna Convention on Diplomatic Relations, 1961
accession: 14 September 1992.

Namibia has NOT joined the following related agreements:

- * *Optional Protocol to the Vienna Convention on Diplomatic Relations concerning Acquisition of Nationality, 1961*
- * *Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes, 1961.*

Vienna Convention on Consular Relations, 1963
accession: 14 September 1992.

Namibia has NOT joined the following related agreement:

- * *Optional Protocol to the Vienna Convention on Consular Relations concerning Acquisition of Nationality, 1963 or the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes, 1963.*

Convention on Privileges and Immunities of the United Nations, 1946
accession approved by Parliament: 24 April 2006
accession: 17 July 2006 (source: www.un.org)

SADC Protocol on Immunities and Privileges, 1992
(entered into force within SADC on 30 September 1993) (source: SADC)
signature: 17 August 1992 (source: SADC)
ratification: 14 December 1992 (source: SADC; Ministry of Foreign Affairs)

Geneva Conventions Act 15 of 2003.

Summary: This Act gives effect to certain conventions done at Geneva on 12 August 1949 and to the protocols to those conventions. It came into operation 1 October 2004 (GN 207/2004, GG 3290). The conventions are

Amelioration of Condition of Wounded and Sick in Armed Forces in the Field, 1949

Amelioration of Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949

Geneva Convention relative to the Treatment of Prisoners of War, 1949

Geneva Convention relative to Protection of Civilian Persons in Time of War, 1949.

RELATED MATTERS

Proc. 7/1997 (GG 1605) announces the signing and ratification of the Fourth ACP-EU Convention of Lomé.

Proc. 24/1997 (GG 1723) announces the signing and ratification of the SADC Protocol on Transport, Communications and Meteorology.

Proc. 7/1997 (GG 1605) announces the consent and ratification of the Protocol on the accession of three additional members of the European Union to the Fourth ACP-EU Convention of Lomé.

Proc. 6/1998 (GG 1803) announces the accession to the memorandum of understanding on road transportation in the Southern African Customs Union.

Proc. 10/1998 (GG 1862) announces the signing and ratification of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

Agreements relating to double taxation and fiscal evasion are announced in Proc. 1/1999 (GG 2032)(Germany), Proc. 4/1999 (GG 2033)(France), Proc. 3/1999 (GG 2034)(Sweden), Proc. 6/1999 (GG 2035)(India), Proc. 5/1999 (GG 2036)(Mauritius), Proc. 10/1999 (GG 2037)(South Africa), Proc. 7/1999 (GG 2038)(Romania) and Proc. 8/1999 (GG 2039)(Russian Federation). (Note: There are two Proclamations numbered "Proc. 1/1999" in the 1999 government gazettes – one in GG 2022 and one in GG 2032. The Proclamation pertaining to double taxation and fiscal evasion with respect to Germany appears in GG 2032 and is listed as "Proc. 9/1999" in the Quarterly Return for January-March 1999.)

Proclamation 7 of 2000 (GG 2359) publishes a bilateral transport agreement between Zimbabwe and Namibia, and regulations relating to this agreement are contained in GN 156/2000 (GG 2359).

GN 59/2001 (GG 2509) publishes for information the United Nations Security Council Resolutions relating to Sanctions against UNITA.

GN 116/2001 (GG 2548) deals with the SADC Protocol on Trade, in connection with Schedule 1 of the Customs and Excise Act 20 of 1998.

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N Horn, "International Human Rights Norms and Standards: The Development of Namibian Case and Statutory Law" in N Horn & A Boesl (eds), *Human Rights and the Rule of Law in Namibia*, Windhoek: Macmillan Namibia, 2008, available at www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-16045/index.html

- Francois-Xavier Bangamwabo, “The implementation of international and regional human rights instruments in the Namibian legal framework”, in N Horn & A Boesl (eds), *Human Rights and the Rule of Law in Namibia*, Windhoek: Macmillan Namibia, 2008 available at www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-16045/index.html
- Salome M Chomba, “The universality of human rights: Challenges for Namibia” in N Horn & A Boesl (eds), *Human Rights and the Rule of Law in Namibia*, Windhoek: Macmillan Namibia, 2008, available at www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-16045/index.html.
- Onkemetse Tshosa, “The status of international law in Namibian national law: A critical appraisal of the constitutional strategy”, *Namibia Law Journal*, Volume 2, Issue 1, 2010, available at www.namibialawjournal.org.

INTERNATIONAL AGREEMENTS

BACKGROUND

International agreements are referred to by various names – such as “treaties”, “conventions”, “covenants” and “accords”. Such terminology is not used consistently, and the title given to the agreement generally has no particular legal effect. The term “treaty” is the generic term which is used for all such international instruments. The term “international agreements” is also used in this way.

Generally, the first step in the creation of an international agreement is the negotiation of a text, which can be a long and difficult process. This usually takes place in an international forum, such as the United Nations. Usually a draft text is discussed, amended and modified through a process of consultation, bargaining and compromise, until a sufficient degree of consensus is reached. The text is then adopted by the negotiating states. (“Adoption” does not make the agreement binding, but indicates acceptance of the text for consideration by states.) Written records of the formal negotiations are kept. These records are called the *travaux préparatoires* [French for preparatory works], and they can be very helpful in interpreting the final text.

The Constitutions of some countries set forth the processes which are required to bring treaties into force in that state. The treaty itself will sometimes state what procedure is required to bring it into force in individual states.

In some cases, signature by the head of state is sufficient to bind the state to the treaty. If so, this is referred to as a “definitive signature”. More commonly, “signature” by a state expresses an intent to become bound by the treaty at a later stage – once appropriate domestic procedures, such as approval by the legislature, have been carried out.

“Ratification” is the international act whereby a state formally indicates its consent to be bound to a treaty, where the treaty itself is not yet in force. In the case of bilateral treaties, ratification is usually accomplished by exchanging the requisite instruments, while in the case of multilateral treaties the usual procedure is for the depositary to collect the ratifications of all states, keeping all parties informed of the situation. The treaty itself will often provide that it will come into force once a specified number of ratifications have been deposited. The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty at the domestic level and to enact the necessary legislation to give domestic effect to that treaty.

“Accession” is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. Accession normally occurs after the treaty has entered into force. It has the same legal effect as ratification.

Sometimes a state will enter “reservations” to a treaty. This means that the state accepts the multilateral treaty in general, but refuses to bind itself to compliance with particular provisions. Reservations must not be incompatible with the overall object and purpose of the treaty.

States may also make “declarations” which clarify their understanding of particular provisions. Unlike reservations, declarations do not exclude the legal effect of such provisions but simply explain the state’s interpretation of them.

In terms of international law, a state is not bound by a treaty until the instrument of ratification or accession has been deposited with the appropriate institution. For example, the Secretary-General is the depositary of many multilateral treaties. Other examples of depositaries are international organizations or the government of the state where the treaty was signed.

Some international agreements have such widespread acceptance that they are regarded as international customary law. This means that their standards are applied universally, even where there has been no specific acceptance by a particular state. For example, the Universal Declaration of Human Rights is widely considered to have become part of international customary law.

The customary rules relating to international agreements have been codified in two treaties, the 1969 Vienna Convention on the Law of Treaties, which contains rule for treaties concluded between states, and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (which has not yet come into force). (Namibia has not yet agreed to either of these treaties, but they are still relevant to Namibia as statements of international customary law.)

THE NAMIBIAN CONSTITUTION

Article 32(3)(e) empowers the President of Namibia to “negotiate and sign international agreements, and to delegate such power”.

Article 63(2)(e) of the Namibian Constitution gives the National Assembly the power “to agree to the ratification of or accession to international agreements which have been negotiated and signed in terms of Article 32(3)(e) hereof”.

Article 144 states: “Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding on Namibia under this Constitution shall form part of the law of Namibia.”

Article 143 provides that “All existing international agreements binding upon Namibia shall remain in force unless and until the National Assembly acting under Article 63(2)(d) hereof otherwise decides.”

MULTILATERAL TREATIES IN FORCE IN NAMIBIA

This list includes some of the major multilateral treaties to which Namibia is a party, organised by subject matter. It is not a comprehensive list, and it does not generally list bilateral treaties. Non-binding declarations and memoranda of understanding have not generally been included.

The dates for accession or ratification given by the Ministry of Foreign Affairs and Parliament do not always agree with those published by the United Nations and other international sources. The dates from the Ministry of Foreign Affairs and Parliament appear to reflect the dates on which accession/ratification was approved by Parliament. The accession/ratification dates from international sources normally reflect the dates on which the instrument of accession/ratification was deposited with the appropriate international authority because, in the eyes of international law, accession/ratification is not technically complete until this deposit takes place. For the sake of clarity, the entries in NAMLEX (where relevant) indicate dates for “accession/ratification approved by Parliament” and for “deposit”. Because of the potential confusion concerning dates, the following list indicates sources.

The treaties which Namibia has signed or acceded to/ratified are listed below under the following topics. An alphabetical list of the treaties appears at the front of this volume, below the alphabetical list of statutes, and some treaties are also cross-referenced under individual topics in NAMLEX.

UNITED NATIONS
AFRICAN UNION
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)

AGRICULTURE
ARMED CONFLICT
ARMS AND AMMUNITION
COMMUNICATIONS
CRIME
CULTURE
DIPLOMATIC AND CONSULAR RELATIONS
DISARMAMENT
DRUGS
EDUCATION
ELECTIONS
ENERGY

ENVIRONMENT
FINANCE AND DEVELOPMENT
HEALTH
HUMAN RIGHTS
IMMIGRATION
INTELLECTUAL PROPERTY
LABOUR
LAW
MARINE AND FRESHWATER RESOURCES
METEOROLOGY
MINING
REFUGEES AND STATELESS PERSONS
SANCTIONS
SCIENCE AND TECHNOLOGY
TOURISM
TRADE
TRANSPORT
 Aviation
 Roads and road transportation
 Shipping and maritime
WEIGHTS, MEASURES AND STANDARDS

UNITED NATIONS

date of admission to United Nations – 23 April 1990

- includes acceptance of the *Charter of the United Nations*
- includes adoption of the *Statute of the International Court of Justice* annexed to the Charter of the United Nations
- also generally understood to include endorsement of the *Universal Declaration of Human Rights*

Convention on Privileges and Immunities of the United Nations, 1946

accession approved by Parliament: 24 April 2006

accession: 17 July 2006 (source: www.un.org)

AFRICAN UNION

Constitutive Act of the African Union, 2000

(replacing the OAU and the AEC with one unified institution)

signature: 27 October 2000

ratification approved by Parliament: 28 February 2001

deposit: 31 March 2001

(source: South African Department of Foreign Affairs, www.dfa.gov.za/events/oau-au.htm)

Protocol relating to the Establishment of the Peace and Security Council of the African Union, 2002

(entered into force within the AU on 26 December 2003)

signature: 9 July 2002

ratification approved by Parliament: 19 November 2003

deposit: 9 December 2003 (source: www.africa-union.org)

Establishment of the African Union Commission on International Law (AUCIL), 2009

(entered into force automatically upon adoption by the Assembly in February 2009)

Phyto-Sanitary Convention for Africa, 1967

(not yet in force within the AU)

ratification by Parliament: 20 October 2005 (source: Parliament)

deposit: none recorded on African Union website (source: www.africa-union.org)

AU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969

accession: 2 September 1994 (source: Ministry of Foreign Affairs)

Note: The African Union website (file updated 11 November 2009) records a signature date of 11 November 2009 for Namibia, and no accession or deposit. (source: www.africa-union.org).

Cases: *S v Mushwena & Others* 2004 NR 276 (SC) (*per* O'Linn, AJA) refers to the "Convention relating to the Status of Refugees and Stateless Persons as Supplemented by the Protocol relating to the Status of Refugees" (confirming that Namibia acceded to the Protocol on 17 February 1995) and the OAU Convention governing the Specific Aspects of Refugee Problems in Africa, adopted by the Assembly of Heads of State and Governments of the OAU in Resolution No. 10 (no date cited in the judgment).

African Civil Aviation Commission Constitution, 1969

signature: 21 February 2002

ratification approved by Parliament: 12 March 2002

deposit: 10 May 2002 (source: African Union website-www.africa-union.org)

Constitution for the African Civil Aviation Commission (AFCAC)-revised version, 2009

(entered into force within the AU on 23 October 2009, superseding the *African Civil Aviation Commission Constitution, 1969*) (source: African Union website-www.africa-union.org)

signature: 11 May 2010 (source: African Union website-www.africa-union.org)

African Charter on Human and Peoples' Rights, 1981

accession: 30 July 1992

deposit: 16 August 1992

(source: African and International Instruments Online, www.oneworld.org/afonet/links/banjul_ratif1.htm; Ministry of Foreign Affairs)

Protocol to the African Charter on Human and Peoples' Rights on the establishment of the African Court on Human and Peoples' Rights, 1998

(entered into force within the AU on 15 January 2004)

signature: 9 June 1998

ratification approved by Parliament: 7 November 2000 (source: Parliament)

deposit: No deposit is recorded on the African Union website www.africa-union.org.

Protocol to the African Charter for Human and Peoples' Rights on the Rights of Women in Africa, 2003

(entered into force within the AU on 25 November 2005)

signature: 9 December 2003 (source: www.africa-union.org)

ratification approved by Parliament: 8 July 2004 (source: Parliament)

deposit: 26 August 2004 (source: www.africa-union.org)

Reservation: Namibia will not be bound by Article 6(d) until it has enacted legislation regarding the recording and registration of customary marriages. (source: Ministry of Foreign Affairs)

Cases: *Kauesa v Minister of Home Affairs & Others* 1994 NR 102 (HC); *Sikunda v Government of the Republic of Namibia & Another* (1) 2001 NR 67 (HC); *Frank & Another v Chairperson of the Immigration Selection Board* 2001 NR 107 (SC); *Alexander v Minister of Justice & Others* 2009 (2) NR 712 (HC).

Agreement for the Establishment of the African Rehabilitation Institute, 1981

accession: 22 August 1996 (source: Ministry of Foreign Affairs)
deposit: 25 September 1996 (source: Ministry of Foreign Affairs)

African Charter on the Rights and Welfare of the Child, 1990

signature: 13 July 1999
ratification approved by Parliament: 23 July 2004
deposit: 26 August 2004 (source: www.africa-union.org)

Treaty Establishing the African Economic Community, 1991

signature: 3 June 1991 (source: Ministry of Foreign Affairs; www.africa-union.org)
ratification: 28 June 1992 (source: Ministry of Foreign Affairs; www.africa-union.org)
deposit: 1 July 1992 (source: Ministry of Foreign Affairs; www.africa-union.org)

Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament, 2001

(came into force within the AU on 14 December 2003)
signature: 7 May 2001
ratification approved by Parliament: 9 July 2002 (source: Parliament)
deposit: 13 August 2002 (source: www.africa-union.org)

African Union Convention on Preventing and Combating Corruption, 2003

(entered into force within the AU on 5 August 2006)
signature: 9 December 2003
ratification approved by Parliament: 28 April 2004 (source: Parliament);
5 August 2004 (source: www.africa-union.org)
deposit: 26 August 2004 (source: www.africa-union.org)

African Civil Aviation Commission Constitution, 1969

signature: 21 February 2002
ratification approved by Parliament: 12 March 2002 (source: Parliament)
deposit: 10 May 2002 (source: www.africa-union.org)

Constitution for the African Civil Aviation Commission (AFCAC)-revised version, 2009

(entered into force within the AU on 23 October 2009, superseding the *African Civil Aviation Commission (AFAC) Constitution, 1969*) (source: www.africa-union.org)
signature: 11 May 2010 (source: www.africa-union.org)

Convention of the African Energy Commission, 2001

(entered into force within AU on 13 December 2006)
ratification approved by Parliament: 20 June 2006 (source: Parliament);
14 May 2007 (source: www.africa-union.org)
deposit: 30 May 2007 (source: www.africa-union.org)

African Youth Charter, 2006

(entered into force within the AU on 8 August 2009)
signature: 16 May 2008
ratification approved by Parliament: 13 March 2008 (source: Parliament);
17 July 2008 (source: www.africa-union.org)
deposit: 23 July 2008 (source: www.africa-union.org)

The following treaties, conventions and protocols of the African Union have been signed but NOT ratified by Namibia:

African Nuclear-Weapon-Free-Zone Treaty, 1996 (Treaty of Pelindaba)

signature: 11 April 1996 (source: www.africa-union.org).

African Maritime Transport Charter, 1994

signature: 13 July 1999 (source: www.africa-union.org).

OAU Convention on the Prevention and Combating of Terrorism, 1999

signature: 14 July 1999 (source: www.africa-union.org).

Namibia has not yet signed or ratified the Protocol to this Convention adopted in 2004, which is not yet in force in the AU.

African Convention on the Conservation of Nature and Natural Resources (revised version), 2003

(not yet in force within the AU)

signature: 6 December 2003 (source: www.africa-union.org).

Protocol on Amendments to the Constitutive Act of the African Union, 2003

(not yet in force within the AU)

signature: 9 December 2003

Protocol on the Court of Justice of the African Union, 2004

(entered into force within the AU on 11 February 2009)

signature: 9 December 2003 (source: www.africa-union.org).

African Charter on Democracy, Elections and Governance, 2007

(not yet in force within the AU)

signature: 10 May 2007 (source: www.africa-union.org).

African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 2009

signature: 23 October 2009 (source: www.africa-union.org).

The following treaties, conventions and protocols of the African Union have NOT been signed or ratified by Namibia:

African Convention on the Conservation of Nature and Natural Resources, 1968 and African Convention on the Conservation of Nature and Natural Resources (Revised Version), 2003 (not yet in force within the AU)

Note: Both remain potentially relevant; Article 34 of the revised 2003 Convention states that only the 2003 Convention shall apply between parties which are bound by it, but that relationships between parties to the original 1968 Convention and Parties to the 2003 Convention shall be governed by the provisions of the original Convention.

Constitution of the Association of African Trade Promotion Organisations, 1974

Inter-African Convention Establishing an African Technical Co-operation

Programme, 1975 (not yet in force within the AU)

OAU Convention for the Elimination of Mercenarism in Africa, 1977

Cultural Charter for Africa, 1976

Convention for the Establishment of the African Centre for Fertilizer Development,

1985 (not yet in force within the AU)

Bamako Convention on the Ban of the Import into Africa and the Control of Trans-Boundary Movement and Management of Hazardous Waste within Africa, 1991

African Union Non-Aggression and Common Defence Pact, 2005

Charter for African Cultural Renaissance, 2006 (not yet in force within the AU)

Protocol on the Statute of the African Court of Justice and Human Rights, 2008

This Protocol, which is not yet in force in the AU, will replace the *Protocol to the African Charter for Human and People's Rights on the establishment of the African Court on Human and People's Rights, 1998* and the *Protocol on the Court of Justice of the African Union, 2004*.

African Charter on Statistics, 2009

Protocol on the African Investment Bank, 2009.

SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)

Accession of Namibia to Southern African Development Co-ordination Conference (SADCC), 1979

accession: 1 April 1990 (source: Ministry of Foreign Affairs)

Declaration and Treaty Establishing the Southern African Development Community (SADC), 1992

(entered into force within SADC on 30 September 1993) (source: SADC)

signature: 17 August 1992 (source: SADC)

ratification: 14 December 1992 (source: SADC; Ministry of Foreign Affairs)

Note: Article 36 of the Treaty provides as follows: (1) *An amendment of this Treaty shall be adopted by a decision of three-quarters of all the Members of the Summit.* (2) *A proposal for the amendment of this Treaty may be made to the Executive Secretary by any Member State for preliminary consideration by the Council, provided, however, that the proposed amendment shall not be submitted to the Council for preliminary consideration until all Member States have been duly notified of it, and a period of three months has elapsed after such notification.*

Agreement Amending the Treaty, 2001

(entered into force in SADC on 14 August 2001) (source: SADC)

signature: 14 August 2001 (source: Ministry of Foreign Affairs)

Agreement Amending Article 22 of the Treaty, 2007

(entered into force in SADC on 17 August 2007) (source: SADC)

signature: 17 August 2007 (source: SADC)

Agreement Amending the Treaty, 2008

(entered into force in SADC on 17 August 2008) (source: SADC)

signature: 17 August 2008 (source: SADC)

Agreement Amending the Treaty 2009 – DES

(entered into force in SADC on 8 September 2009) (source: SADC)

signature: 8 September 2009 (source: SADC)

Agreement Amending the Treaty 2009 – ORGAN

(entered into force in SADC on 8 September 2009) (source: SADC)

signature: 8 September 2009 (source: SADC)

SADC Charters

Charter of the Regional Tourism Organisation of Southern Africa (RETOSA), 1997

This Charter enters into force upon signature by member states, without ratification.

(entered into force within SADC on 8 September 1997) (source: SADC)

signature: 8 September 1997 (source: SADC; Ministry of Foreign Affairs)

Charter of Fundamental Social Rights in SADC, 2003

This Charter enters into force upon signature by member states, without ratification.

(entered into force within SADC on 26 August 2003) (source: SADC)

signature: 26 August 2003 (source: SADC)

SADC Protocols

Since 2001, SADC Protocols require ratification by two-thirds of the member states to come into force.

In the original 1992 SADC Treaty Article 22 on Protocols stated:

1. Member States shall conclude such Protocols as may be necessary in each area of co-operation, which shall spell out the objectives and scope of, and institutional mechanisms for, co-operation and integration.
2. Each Protocol shall be approved by the Summit on the recommendation of the Council, and shall thereafter become an integral part of this Treaty.
3. Each Protocol shall be subject to signature and ratification by the parties thereto.

After the SADC Treaty was amended in 2001, Article 22 on Protocols stated:

1. Member States shall conclude such Protocols as may be necessary in each area of co-operation, which shall spell out the objectives and scope of, and institutional mechanisms for, co-operation and integration.
2. Each Protocol shall be approved by the Summit on the recommendation of the Council.
3. Each Protocol shall be open to signature and ratification.
4. Each Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by two thirds of the Member States.
5. Once a Protocol has entered into force, a Member State may only become a party thereto by accession.
6. Each Protocol shall remain open for accession by any State subject to Article 8 of this Treaty.
7. The original texts of each Protocol and all instruments of ratification and accession shall be deposited with the Executive Secretary who shall transmit certified copies thereof to all Member States.
8. The Executive Secretary shall register each Protocol with the Secretariat of the United Nations Organization and the Commission of the African Union.
9. Each Protocol shall be binding only on the Member States that are party to the Protocol in question.

SADC Protocol on Immunities and Privileges, 1992

(entered into force within SADC on 30 September 1993) (source: SADC)

signature: 17 August 1992 (source: SADC)

ratification: 14 December 1992 (source: SADC; Ministry of Foreign Affairs)

SADC Protocol on Shared Watercourse Systems in the Southern African Region, 1995

(entered into force within SADC on 28 September 1998) (source: SADC)

signature: 28 August 1995 (source: SADC)

ratification: 5 June 1998 (source: SADC; Ministry of Foreign Affairs)

SADC Revised Protocol on Shared Watercourses, 2000

(entered into force within SADC on 22 September 2003) (source: SADC)

signature: 7 August 2000 (source: SADC)

ratification: 11 September 2001 (source: SADC; Ministry of Foreign Affairs)

SADC Protocol on Combating Illicit Drug Trafficking in the Southern African Region, 1996

(entered into force within SADC on 20 March 1999) (source: SADC)

signature: 24 August 1996 (source: SADC)

ratification: 18 August 1998 (source: SADC; Ministry of Foreign Affairs)

SADC Protocol on Energy, 1996

(entered into force within SADC on 17 April 1998) (source: SADC)
signature: 24 August 1996 (source: SADC)
ratification: 17 January 1998 (source: SADC; Ministry of Foreign Affairs)

SADC Protocol on Trade, 1996

(entered into force within SADC on 25 January 2000) (source: SADC)
signature: 24 August 1996 (source: SADC)
ratification: 22 December 1998 (source: SADC; Ministry of Foreign Affairs)

SADC Amendment Protocol on Trade, 2000

(entered into force within SADC on 7 August 2000) (source: SADC)
signature: 7 August 2000 (source: SADC)
ratification: 4 April 2001 (source: Ministry of Foreign Affairs)
date of implementation: 4 June 2001 (source: Ministry of Foreign Affairs)
SADC list of ratifications dated 23 June 2010 does not show ratification by Namibia

Agreement Amending Article 20 of the Protocol on Trade, 2008

(entered into force within SADC on 17 August 2008) (source: SADC)
signature: 17 August 2008
no ratification appears to be needed

Agreement Amending Annex VI to Protocol on Trade concerning settlement of disputes amongst member states 2007

(entered into force within SADC on 17 August 2007) (source: SADC)
signature: 17 August 2007 (source: SADC)
no ratification appears to be needed

Note: See GN 116/2001 (GG 2548), which relates to the implementation of the SADC Protocol on trade in Namibia.

SADC Protocol on Transport, Communications and Meteorology, 1996

(entered into force within SADC on 6 July 1998) (source: SADC)
signature: 24 August 1996 (source: SADC)
ratification: 19 September 1997 (source: SADC; Ministry of Foreign Affairs)
See Proc. 24/1997 (GG 1723).

SADC Protocol on Education and Training, 1997

(entered into force within SADC on 31 July 2000) (source: SADC)
signed: 8 September 1997 (source: SADC)
ratification: 18 August 1998 (source: SADC; Ministry of Foreign Affairs)

SADC Protocol on Mining, 1997

(entered into force within SADC on 10 February 2000) (source: SADC)
signature: 8 September 1997 (source: SADC)
ratification: 22 December 1998 (source: SADC; Ministry of Foreign Affairs)

SADC Protocol on the Development of Tourism, 1998

(entered into force within SADC on 26 November 2002) (source: SADC)
signature: 14 September 1998 (source: SADC)
ratification: 13 June 2000 (source: SADC; Ministry of Foreign Affairs)

Agreement amending the Protocol on the Development of Tourism, 2009

(entered into force within SADC on 8 September 2009)
signature: 8 September 2009
no ratification appears to be needed

SADC Protocol on Wildlife Conservation and Law Enforcement, 1999

(entered into force within SADC on 30 November 2003) (source: SADC)

signature: 18 August 1999 (source: SADC)

ratification: 14 January 2000 (source: SADC; Ministry of Foreign Affairs)

SADC Protocol on Health, 1999

(entered into force within SADC on 14 August 2004) (source: SADC)

signature: 18 August 1999 (source: SADC)

ratification: 10 July 2000 (source: SADC; Ministry of Foreign Affairs)

SADC Protocol on the Tribunal and the Rules of Procedure thereof, 2000

(entered into force within SADC on 14 August 2001) (source: SADC; www.sadc-tribunal.org)

signature: 7 August 2000 (source: SADC)

ratification: 2 October 2001 (source: SADC; Ministry of Foreign Affairs)

SADC Agreement Amending the Protocol on the Tribunal, 2002

entered into force within SADC on 3 October 2002 (source: SADC)

signature: 3 October 2002 (source: SADC; www.sadc-tribunal.org)

SADC Agreement Amending the Protocol on the Tribunal, 2007

entered into force within SADC on 17 August 2007 (source: SADC)

signature: 17 August 2007 (source: SADC; www.sadc-tribunal.org)

SADC Agreement Amending Article 6 of the Protocol on Tribunal, 2008

entered into force within SADC on 17 August 2008 (source: SADC)

signature: 17 August 2008 (source: SADC; www.sadc-tribunal.org)

Note:

In the original 1992 SADC Treaty Article 16 on the Tribunal stated:

1. *The Tribunal shall be constituted to ensure adherence to and the proper interpretation of the provisions of this Treaty and subsidiary instruments and to adjudicate upon such disputes as may be referred to it.*
2. ***The composition, powers, functions, procedures and other related matters governing the Tribunal shall be prescribed in a Protocol adopted by the Summit.***
3. *Members of the Tribunal shall be appointed for a specified period.*
4. *The Tribunal shall give advisory opinions on such matters as the Summit or the Council may refer to it.*
5. *The decisions of the Tribunal shall be final and binding.*

The 2000 SADC Summit adopted a Tribunal Protocol which included requirements that it must be ratified in Article 35. It was also specified in Article 38 that the Protocol would “come into force” only after two thirds of SADC Members had ratified it. However, after the underlying SADC Treaty was amended in 2001, Article 16 on the Tribunal stated:

6. *The Tribunal shall be constituted to ensure adherence to and the proper interpretation of the provisions of this Treaty and subsidiary instruments and to adjudicate upon such disputes as may be referred to it.*
7. ***The composition, powers, functions, procedures and other related matters governing the Tribunal shall be prescribed in a Protocol, which shall, notwithstanding the provisions of Article 22 of this Treaty, form an integral part of this Treaty, adopted by the Summit.***
8. *Members of the Tribunal shall be appointed for a specified period.*
9. *The Tribunal shall give advisory opinions on such matters as the Summit or the Council may refer to it.*
10. *The decisions of the Tribunal shall be final and binding.*

As a result, the 2000 Tribunal Protocol came into force on 14 August 2001, the effective date of the amendments to the SADC Treaty.

In 2002, to end any uncertainty and to bring the Tribunal Protocol in line with the 2001 amendments to the SADC Treaty, the SADC Summit accepted an amendment the Tribunal Protocol to cancel its requirement for ratification by Member States, deleting Articles 35 and 38.

Similarly, Article 37 of the 2000 Tribunal Protocol makes the following provision for amendments:

4. *Any State which is a Party to this Protocol may propose an amendment thereto.*
5. *Proposals for amendment to this Protocol may be made to the Executive Secretary who shall duly notify all States of the proposed amendment or amendments at least thirty (30) days in advance of consideration of the amendment by the Committee of Ministers. Such period of notice may be waived by the States.*
6. *An amendment to this Protocol shall be adopted by a decision of three (3) quarters of all the members of the Summit who are Parties to this Protocol, and shall become effective subject to Article 36 of this Protocol.*

After the 2002 amendments, Article 37 read as follows:

4. *Any Member State may propose an amendment to this Protocol.*
5. *Proposals for amendment to this Protocol may be made to the Executive Secretary who shall duly notify all Member States of the proposed amendments at least thirty (30) days in advance of consideration of the amendment by Member States but such period of notice may be waived by Member States.*
6. *Amendments to this Protocol shall be adopted by a decision of three quarters of all the Members of the Summit and shall become effective within thirty (30) days after such adoption.*

www.sadc-tribunal.org/docs/Protocol_on_Tribunal_and_Rules_thereof.pdf
www.thestandard.co.zw/opinion/21583-chinamasa-wrong-on-sadc-tribunal-pull-out.html

Articles: Oliver C Ruppel and Francois X Bangamwabo, “The SADC Tribunal: a legal analysis of its mandate and role in regional integration”, in Anton Boesl and Trudi Hartzenberg, eds, *Monitoring Regional Integration in Southern Africa Yearbook 2008*, Konrad Adenauer Stiftung, available at www.kas.de/upload/auslandshomepages/namibia/MRI2008/MRI2008_08_Ruppel.pdf ; Karin Klazen, “Towards a Southern African Development Community: The SADC Tribunal and its recent cases”, *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.namibialawjournal.org.

SADC Protocol on Legal Affairs, 2000

(entered into force within SADC on 1 September 2006) (source: SADC)

signature: 7 August 2000 (source: SADC)

ratification: 2 October 2001 (source: SADC; Ministry of Foreign Affairs)

SADC Protocol on Fisheries, 2001

(entered into force within SADC on 8 August 2003) (source: SADC)

signature: 14 August 2001 (source: SADC)

ratification: 21 June 2002 (source: SADC; Ministry of Foreign Affairs)

SADC Protocol Against Corruption, 2001

(entered into force within SADC on 6 July 2005) (source: SADC)

signature: 14 August 2001 (source: SADC)

ratification approved by Parliament: 27 April 2004 (source: Parliament)

ratification: 23 June 2005 (source: SADC)

SADC Protocol on Politics, Defence and Security Co-operation, 2001

(entered into force within SADC on 2 March 2004) (source: SADC)

signature: 14 August 2001 (source: SADC)

ratification approved by Parliament: 1 October 2002 (source: Parliament)

ratification: 8 November 2002 (source: Ministry of Foreign Affairs);
2 December 2002 (source: SADC)

SADC Mutual Defence Pact, 2003

(entered into force within SADC 17 August 2008) (source: SADC)
signature: 26 August 2003 (source: SADC)
ratification approved by Parliament: 19 November 2003 (source: Parliament)
ratification: 11 October 2004 (source: SADC)

Agreement amending the Protocol on Politics, 2009

(entered into force within SADC on 8 September 2009) (source: SADC)
signature: 8 September 2009 (source: SADC)
no ratification appears to be needed

SADC Protocol on the Control of Firearms, Ammunition and other Related Materials in the Southern African Development Community (SADC) Region, 2001

(entered into force within SADC on 8 November 2004) (source: SADC)
signature: 14 August 2001 (source: SADC)
ratification approved by Parliament: 3 July 2002 (source: Parliament)
ratification: 8 October 2004 (source: SADC)

SADC Protocol on Culture, Information and Sport, 2001

(entered into force within SADC on 7 January 2006) (source: SADC)
signature: 14 August 2001
ratification approved by Parliament: 29 October 2002 (source: Parliament)
ratification: 2 December 2002 (source: SADC)

SADC Protocol on Extradition, 2002

(entered into force within SADC on 1 September 2006) (source: SADC)
signature: 3 October 2002 (source: SADC)
ratification approved by Parliament: 7 November 2006 (source: Parliament)
ratification: 1 February 2007 (source: SADC)

SADC Protocol on Forestry, 2002

(entered into force within SADC on 1 September 2006) (source: SADC)
signature: 17 August 2008
ratification approved by Parliament: 2 April 2009 (source: Parliament)
ratification: 29 April 2009 (source: SADC)

SADC Protocol on Mutual Legal Assistance in Criminal Matters, 2002

(entered into force within SADC on 2 March 2004) (source: SADC)
signature: 3 October 2002 (source: SADC)
ratification approved by Parliament: 7 November 2006 (source: Parliament)
ratification: 1 February 2007 (source: SADC)

SADC Protocol on the Facilitation of Movement of Persons, 2005

(not yet in force within SADC as of 23 June 2010) (source: SADC)
signature: 18 August 2005
not ratified by Namibia as of 23 June 2010 (source: SADC)

SADC Protocol on Finance and Investment, 2006

(entered into force within SADC 16 April 2010) (source: SADC)
signature: 18 August 2008 (source: SADC)
ratification approved by Parliament: 2 March 2010 (source: Parliament)
ratification: 16 March 2010 (source: SADC)

SADC Protocol on Science, Technology and Innovation, 2008

(not yet in force within SADC as of 23 June 2010) (source: SADC)

ratification approved by Parliament: 7 October 2009 (source: Parliament)

SADC list of ratifications dated 23 June 2010 does not show ratification by Namibia

SADC Protocol on Gender and Development, 2008

(not yet in force within SADC as of 23 June 2010) (source: SADC)

signature: 17 August 2008 (source: SADC)

ratification approved by Parliament: 7 October 2009 (source: Parliament)

SADC list of ratifications dated 23 June 2010 does not show ratification by Namibia

Other SADC Agreements

A SADC Memorandum of Understanding is a preliminary legal document describing an interim agreement between parties. It establishes the principles that will guide the implementation of programmes or projects; defines the expectations, terms, and conditions of the working relationship between the parties; and identifies areas of mutual concern. Most Memoranda of Understanding imply that a more formal legal document will be forthcoming (source: SADC Parliamentary Forum, *Compendium of SADC Protocols*, SaferAfrica, May 2007). Because such memoranda do not appear to be legally binding, they have not been listed here.

Other agreements which are clearly non-binding have not been listed here, although some are referenced under individual subjects as they may assist statutory interpretation.

Agreement on the Establishment of the Zambezi Watercourse Commission, 2004

(not yet in force within SADC as of 23 June 2010) (source: SADC)

signature: 13 July 2004 (source: SADC)

ratification: 11 July 2005 (source: SADC)

AGRICULTURE

International Agreement for the Creation of an International Office for dealing with Contagious Diseases of Animals, Paris, 1925

effective date of accession: 10 December 1990

(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>)

Constitution of the Food and Agriculture Organization of the United Nations, 1945

effective date in respect of Namibia: 1 December 1977

(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>.)

International Plant Protection Convention, 1951

ratification approved by Parliament: 20 October 2005

deposit: 23 February 2007 (source: www.fao.org/Legal/TREATIES/004s-e.htm)

Phyto-Sanitary Convention for Africa, 1967

(not yet in force within the AU)

ratification by Parliament: 20 October 2005 (source: Parliament)

deposit: none recorded on African Union website (source: www.africa-union.org).

International Treaty on Plant Genetic Resources for Food and Agriculture, 2001

signature: 9 November 2001
ratification approved by Parliament: 23 June 2004. (source: Parliament)
deposit: 7 October 2004 (source: www.fao.org/Legal/TREATIES/033s-e.htm)

ARMED CONFLICT

The first four conventions are often referred to as the “Geneva Conventions”.

Amelioration of Condition of Wounded and Sick in Armed Forces in the Field, 1949

accession: 21 March 1990 (instrument of succession by United Nations Council for Namibia on behalf of Namibia, 18 October 1983 , with effect from 18 April 1984)

Amelioration of Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949

accession: 21 March 1990 (instrument of succession by United Nations Council for Namibia on behalf of Namibia, 18 October 1983 , with effect from 18 April 1984)

Geneva Convention relative to the Treatment of Prisoners of War, 1949

accession: 21 March 1990 (instrument of succession by United Nations Council for Namibia on behalf of Namibia, 18 October 1983 , with effect from 18 April 1984)

Geneva Convention relative to Protection of Civilian Persons in Time of War, 1949

accession: 21 March 1990 (instrument of succession by United Nations Council for Namibia on behalf of Namibia, 18 October 1983 , with effect from 18 April 1984)

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977

accession: 21 March 1990 (instrument of succession by United Nations Council for Namibia on behalf of Namibia, 18 October 1983 , with effect from 18 April 1984)

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977

accession: 21 March 1990 (instrument of succession by United Nations Council for Namibia on behalf of Namibia, 18 October 1983 , with effect from 18 April 1984)

Rome Statute of the International Criminal Court, 1998

(came into force internationally on 1 July 2002)

signature: 27 October 1998

ratification: 25 June 2002 (source: www.iccnw.org)

Agreement on the Privileges and Immunities of the International Criminal Court, 2002

(came into force internationally on 22 July 2004)

signature: 10 September 2002

ratification approved by Parliament: 2 July 2003 (source: Parliament)

deposit: 29 January 2004 (source: www.iccnw.org)

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000

(entered into force internationally on 12 February 2002)

signature: 8 September 2000 (source: Ministry of Foreign Affairs)

ratification: 16 April 2002 (source: UNICEF)

Note: Namibia's ratification of this Optional Protocol was accompanied by a declaration on the minimum recruitment age (age 18) for the Namibia Defence Force (source: Ministry of Foreign Affairs).

SADC Protocol on Politics, Defence and Security Co-operation, 2001

(entered into force within SADC on 2 March 2004) (source: SADC)

signature: 14 August 2001 (source: SADC)

ratification approved by Parliament: 1 October 2002 (source: Parliament)

ratification: 8 November 2002 (source: Ministry of Foreign Affairs);

2 December 2002 (source: SADC)

SADC Mutual Defence Pact, 2003

(entered into force within SADC 17 August 2008) (source: SADC)

signature: 26 August 2003 (source: SADC)

ratification approved by Parliament: 19 November 2003 (source: Parliament)

ratification: 11 October 2004 (source: SADC)

Agreement amending the Protocol on Politics, 2009

(entered into force within SADC on 8 September 2009) (source: SADC)

signature: 8 September 2009 (source: SADC)

no ratification appears to be needed

ARMS AND AMMUNITION

SADC Protocol on the Control of Firearms, Ammunition and other Related Materials in the Southern African Development Community (SADC) Region, 2001

(entered into force within SADC on 8 November 2004) (source: SADC)

signature: 14 August 2001 (source: SADC)

ratification approved by Parliament: 3 July 2002 (source: Parliament)

ratification: 8 October 2004 (source: SADC)

Convention on Cluster Munitions, 2008

(entered into force 1 August 2010)

signature: 3 December 2008

deposit: None recorded. (source: www.clusterconvention.org)

SEE ALSO DISARMAMENT.

COMMUNICATIONS

Universal Postal Union, 1964

accession: 20 February 1992 (source: Ministry of Foreign Affairs)

International Telecommunications Satellite Organisation (INTELSAT)

accession: 11 October 1993 (source: Ministry of Foreign Affairs)

Amendments to the Agreement Relating to the International Telecommunications Satellite Organisation (INTELSAT/ITSO), 2000 (effective 18 July 2001)

signature: 18 November 2000

letter of approval: 8 July 2002 (source: Ministry of Foreign Affairs)

Constitution and Convention of the International Telecommunication Union, 1992

accession: 2 August 1994 (source: Ministry of Foreign Affairs)

SADC Protocol on Transport, Communications and Meteorology, 1996

(entered into force within SADC on 6 July 1998) (source: SADC)

signature: 24 August 1996 (source: SADC)

ratification: 19 September 1997 (source: SADC; Ministry of Foreign Affairs)

See Proc. 24/1997 (GG 1723).

CRIME

Rome Statute of the International Criminal Court, 1998

(came into force internationally on 1 July 2002)

signature: 27 October 1998

ratification: 25 June 2002 (source: www.iccnw.org)

Agreement on the Privileges and Immunities of the International Criminal Court, 2002

(came into force internationally on 22 July 2004)

signature: 10 September 2002

ratification approved by Parliament: 2 July 2003 (source: Parliament)

deposit: 29 January 2004 (source: www.iccnw.org)

International Convention for the Suppression of the Financing of Terrorism, 1999

(came into force internationally on 10 April 2002)

signature: 10 November 2001; not yet ratified by Namibia

(source: http://untreaty.un.org/ENGLISH/Status/Chapter_xviii/treaty11.asp)

Convention Against Transnational Organised Crime, 2000

(entered into force internationally on 29 September 2003)

signature: 13 December 2000 (source: Ministry of Foreign Affairs; Parliament)

ratification: 16 August 2002

(source: www.unodc.org/unodc/crime_cicp_signatures.html)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

(entered into force internationally on 25 December 2003)

signature: 13 December 2000 (source: Ministry of Foreign Affairs)

ratification: 16 August 2002

(source: www.unodc.org/unodc/crime_cicp_signatures.html)

Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000

(entered into force internationally on 28 January 2004)

signed: 13 December 2000 (source: Ministry of Foreign Affairs)

ratification: 16 August 2002

(source: www.unodc.org/unodc/crime_cicp_signatures.html)

Note: Namibia has not yet signed the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, 2001.

CULTURE

Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO), 1945

Namibia has been a member state of this organisation since 2 November 1978.

(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>.)

Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972
accession: 6 April 2000 (source: www.epi.freedom.org/whtrty.htm)

World Heritage Convention, 1975
accession: 6 April 2000 (source: www.unesco.org/whc)

Convention on the Protection of the Underwater Cultural Heritage, 2001
(entered into force internationally on 2 January 2009)
ratification by Parliament: 11 March 2010 (source: Parliament)
ratification not registered with UNESCO as of June 2010 (source: UNESCO, www.unesco.org)

Convention for the Safeguarding of the Intangible Cultural Heritage, 2003
(entered into force internationally on 20 April 2006)
ratification approved by Parliament: 7 November 2006
deposit: 19 September 2007; effective date: 19 December 2007
(source: UNESCO, www.unesco.org)

Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005
(entered into force internationally on 18 March 2007)
deposit: 29 November 2006 (source: UNESCO, www.unesco.org)

SADC Protocol on Culture, Information and Sport, 2001
(entered into force within SADC on 7 January 2006) (source: SADC)
signature: 14 August 2001
ratification approved by Parliament: 29 October 2002 (source: Parliament)
ratification: 2 December 2002 (source: SADC)

DIPLOMATIC AND CONSULAR RELATIONS

Vienna Convention on Diplomatic Relations, 1961
accession: 14 September 1992
Namibia has NOT joined the following related agreements:
* *Optional Protocol to the Vienna Convention on Diplomatic Relations concerning Acquisition of Nationality, 1961*
* *Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes, 1961.*

Vienna Convention on Consular Relations, 1963
accession: 14 September 1992
Namibia has NOT joined the following related agreement:
* *Optional Protocol to the Vienna Convention on Consular Relations concerning Acquisition of Nationality, 1963 or the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes, 1963.*

Convention on Privileges and Immunities of the United Nations, 1946
accession approved by Parliament: 24 April 2006
accession: 17 July 2006 (source: www.un.org)

SADC Protocol on Immunities and Privileges, 1992
(entered into force within SADC on 30 September 1993) (source: SADC)
signature: 17 August 1992 (source: SADC)
ratification: 14 December 1992 (source: SADC; Ministry of Foreign Affairs)

DISARMAMENT

Treaty on the Non-Proliferation of Nuclear Weapons, 1968

accession: 2 October 1992; effective date: 7 October 1992

(sources: US State Department, www.state.gov/www/global/arms/treaties/afrinwfz.html

Consortium for International Earth Science Information Network: <http://sedac.ciesin.org/>)

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993

signature: 13 January 1993

ratification: 24 November 1995

Comprehensive Nuclear-Test-Ban Treaty, 1996

(not yet in force internationally as of 20 January 2005)

signature: 24 September 1996

ratification: 29 June 2001

African Nuclear Weapon Free Zone Treaty, 1996 (Treaty of Pelindaba)

signature: 4 November 1996

(source: www.africa-union.org)

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997

signature: 3 December 1997

ratification: 21 September 1998

Convention on Cluster Munitions, 2008

(entered into force 1 August 2010)

signature: 3 December 2008

deposit: None recorded. (source: www.clusterconvention.org)

SEE ALSO ARMS AND AMMUNITION.

DRUGS

Convention on Psychotropic Substances, 1971

accession: 31 March 1998

Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972

accession: 31 March 1998

Note: The UN Treaty Data Base lists two other drug-related treaties to which “South West Africa (Namibia)” is party by means of territorial application. However, this may no longer apply to independent Namibia.

* *Final Act of the United Nations Opium Conference held at United Nations Headquarters, New York, from 11 May to 18 June 1953; Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, 1953* (territorial application as of 9 March 1960, with effect from 8 March 1963)

* *Protocol bringing under international control drugs outside the scope of the Convention of 13 July 1931 for limiting the manufacturing and regulating the distribution of narcotic drugs, as amended by the Protocol signed at Lake Success on 11 December 1946.*

Signed at Paris on 19 November 1948 (territorial application as of 5 October 1954, with effect from 4 November 1954)

United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988

(entered into force internationally on 11 November 1990)

ratification approved by Parliament: 26 February 2009 (source: Parliament)

accession: 6 March 2009 (source: Ministry of Foreign Affairs)

SADC Protocol on Combating Illicit Drug Trafficking in the Southern African Region, 1996

(entered into force within SADC on 20 March 1999) (source: SADC)

signature: 24 August 1996 (source: SADC)

ratification: 18 August 1998 (source: SADC; Ministry of Foreign Affairs)

EDUCATION

Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO), 1945

effective date in respect of Namibia: 2 November 1978.

(source: Environmental treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>.)

SADC Protocol on Education and Training, 1997

(entered into force within SADC on 31 July 2000) (source: SADC)

signed: 8 September 1997 (source: SADC)

ratification: 18 August 1998 (source: SADC; Ministry of Foreign Affairs)

ELECTIONS

Statutes of the International Institute for Democracy and Electoral Assistance, 2006

(entered into force 21 November 2008) (source: www.idea.int)

accession approved by Parliament: 9 July 2008 (source: Parliament)

ENERGY

Statute of the International Atomic Energy Agency, 1956

effective date in respect of Namibia: 17 February 1983.

(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>.)

Convention of the African Energy Commission, 2001

(entered into force within AU on 13 December 2006)

ratification approved by Parliament: 20 June 2006 (source: Parliament); 14 May 2007 (source:

www.africa-union.org)

deposit: 30 May 2007 (source: www.africa-union.org)

SADC Protocol on Energy, 1996

(entered into force within SADC on 17 April 1998) (source: SADC)

signature: 24 August 1996 (source: SADC)

ENVIRONMENT

International Plant Protection Convention, 1951

ratification approved by Parliament: 20 October 2005

deposit: 23 February 2007 (source: www.fao.org/Legal/TREATIES/004s-e.htm)

Phyto-Sanitary Convention for Africa, 1967

(not yet in force within the AU)

ratification by Parliament: 20 October 2005 (source: Parliament)

deposit: none recorded on African Union website (source: www.africa-union.org).

International Convention on Civil Liability for Oil Pollution Damage, 1969, as replaced by the 1992 Protocol, as amended in 2000

accession approved by Parliament: 9 October 2001 (source: Parliament)

deposit: 18 December 2002; effective date: 18 December 2003

(source: International Maritime Organisation, www.imo.org)

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as replaced by the 1992 Protocol

accession approved by Parliament: 9 October 2001 (source: Parliament)

deposit: 18 December 2002; defective date: 18 December 2003

(source: International Maritime Organisation, www.imo.org)

Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972

accession: 6 April 2000 (source: www.epi.freedom.org/whtrty.htm)

World Heritage Convention, 1975

accession: 6 April 2000 (source: www.unesco.org/whc)

International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto

accession approved by Parliament: 9 October 2001 (source: Parliament)

deposit: 18 December 2002; effective date: 18 March 2003

(source: International Maritime Organisation, www.imo.org)

Note: Namibia has also acceded to Annexes I/II (Prevention of Pollution by Oil/Control of Pollution by Noxious Liquid Substances), III (Prevention of Pollution by Harmful Substances in Packaged Form) and V (Prevention of Pollution by Garbage from Ships), but has NOT acceded to Annex IV (Prevention of Pollution by Sewage from Ships) or the 1997 Protocol adding Annex VI (Prevention of Air Pollution from Ships). (source: International Maritime Organisation, www.imo.org)

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973

accession: 18 December 1990; effective: 18 March 1991

(source: www.cites.org/eng/parties/alphabet.shtml; <http://sedac.ciesin.org/>)

Amendment to Article XI of the Convention, Bonn (Germany), 22 June 1979

(entered into force on 13 April 1987)

accession: 18 December 1990, effective 18 March 1991

(source: www.cites.org/eng/parties/bonn.shtml)

Namibia has NOT agreed to the following amendment:

* *Amendment to Article XXI of the Convention, Gaborone (Botswana), on 30 April 1983* (not yet in force internationally).

Vienna Convention for the Protection of the Ozone Layer, 1985

accession: 20 September 1993; effective date: 20 December 1993

(source: <http://sedac.ciesin.org/>)

Montreal Protocol on Substances that Deplete the Ozone Layer, 1987

accession: 20 September 1993; effective date: 20 December 1993
(source: <http://sedac.ciesin.org/>)

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, Adopted at the Fourth Meeting of the Parties at Copenhagen on 25 November 1992

ratification by Parliament: 28 March 2003 (source: Parliament)
acceptance: 28 July 2003 (source: http://ozone.unep.org/Ratification_status/)
effective date: 26 October 2003 (source: www.treaties.un.org)

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, Adopted by the Ninth Meeting of the Parties at Montreal on 17 September 1997

(entered into force internationally on 10 November 1999)
ratification by Parliament: 19 April 2006 (source: Parliament)
acceptance: 1 October 2007 (source: http://ozone.unep.org/Ratification_status/)
effective date: 30 December 2007 (source: www.treaties.un.org)

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, Beijing, 3 December 1999

(entered into force internationally on 25 February 2002)
ratification by Parliament: 19 April 2006 (source: Parliament)
acceptance: 01 October 2007 (source: http://ozone.unep.org/Ratification_status/)
effective date: 30 December 2007 (source: www.treaties.un.org)

Convention on Wetlands of International Importance, especially as Waterfowl Habitat, 1971 (Ramsar Convention)

effective date in respect of Namibia: 23 December 1995
(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>.)

Protocol to amend the Convention on Wetlands of International Importance especially Waterfowl Habitat, 1982 (came into force 1 October 1986)

accession: 23 December 1995
(sources: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>;
International Environmental Policy Reference Guide
<http://environment.harvard.edu/guides/intenvpol/indexes/treaties/RAMSAR.html#prot>)

Amendments to Article 6 and 7, 1987

accession: 23 December 1995
(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>
International Environmental Policy Reference Guide
<http://environment.harvard.edu/guides/intenvpol/indexes/treaties/RAMSAR.html#prot>)

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989

accession: 15 May 1995; effective date: 13 August 1995 (source: <http://sedac.ciesin.org/>)

On 31 January 1995, the Government of Egypt informed the Secretary-General that its instrument of accession should have been accompanied by three declarations, one of which concerns Namibia. These declarations, were not transmitted to the Secretary-General at the time the instrument of accession. In keeping with the depositary practice followed in similar cases, the Secretary-General proposed to receive the declarations in question for deposit in the absence of any objection on the part of any of the Contracting States, either to the deposit itself or to the procedure envisaged, within a period of 90 days from the date of their circulation (i.e. 17 July 1995). However, the Secretary-General received several objections, meaning that the

declarations were not accepted for deposit. Namibia itself did not make any declarations at the time of accession.

Third Declaration

The Governments of Bahrain, Belgium, Benin, Côte d'Ivoire, Denmark, Egypt, the Federal Republic of Germany, Finland, France, the German Democratic Republic, Ghana, Greece, Hungary, Italy, Jordan, Kenya, Kuwait, Lebanon, Luxembourg, Malaysia, Malta, Namibia, Netherlands, Niger, Norway, the Philippines, Portugal, Saudi Arabia, Senegal, Sweden, Switzerland, Turkey, the United Arab Emirates and the United Kingdom of Great Britain and Northern Ireland. Sweden, Switzerland, Turkey, the United Arab Emirates and the United Kingdom of Great Britain and Northern Ireland, as well as the Commission of the European Union, which will sign the Convention and/or the final document referring to the Control of Transboundary Movements of Hazardous Wastes and their Disposal, (referred to hereinafter as "the Convention"),

Concerned that the transboundary movement of hazardous wastes constitutes a great danger to the health of both humans and the environment,

Considering that the developing countries have a limited ability to manage wastes, especially hazardous wastes, in an environmentally sound manner,

Believing that a reduction in the production of hazardous wastes and their disposal in environmentally sound conditions in the country which exports them must be the goal of waste management policy,

Convinced that the gradual cessation of transboundary movements of hazardous wastes will undoubtedly be a major incentive to the development of appropriate national facilities for the disposal of wastes,

Recognizing the right of every State to ban the import to or export from its territory of hazardous wastes,

Welcoming the signature of the Convention,

Believing it necessary, before applying the provisions of the Convention to impose immediate and effective control on transboundary movement operations, especially to developing countries, and to reduce them,

Declare the following:

- 1. The signatories to this Convention affirm their strong determination that wastes should be disposed of in the country of production.*
- 2. The signatories to this Convention request States which accede to the Convention to do so by making every possible effort to effect a gradual cessation of the import and export of wastes for reasons other than their disposal in facilities which will be set up within the framework of regional cooperation.*
- 3. The signatories to this Convention will not permit wastes to be imported to or exported from countries deficient in the technical, administrative and legal expertise in administering wastes and disposing of them in an environmentally sound manner.*
- 4. The signatories to this Convention affirm the importance of assistance to develop appropriate facilities intended for the final disposal of wastes produced by countries referred to in paragraph 3 above.*

5. The signatories to this Convention stress the need to take effective measures within the framework of the Convention to enable wastes to be reduced to the lowest possible level and to be recycled.

Namibia has NOT agreed to the following amendment:

* *Amendment to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1995* (not yet in force internationally).

International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990

accession approved by Parliament: 21 September 2006 (source: Parliament)

deposit: 18 June 2007; effective date: 18 September 2007

(source: International Maritime Organisation, www.imo.org)

Agreement for the Establishment of Southern African Centre for Ivory Marketing (SACIM), 1991

in force in Namibia: 20 June 1991

(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri/>.)

Note: The name SACIM was changed to the Southern African Convention for Wildlife Management (SACWM) in 1996. (source: www.art.org.uk/newsletter/1996_09_expands.html)

United Nations Framework Convention on Climate Change, 1992

(entered into force internationally on 21 March 1994)

signature: 12 June 1992

ratification: 16 May 1995; effective date: 14 August 1995 (source: <http://sedac.ciesin.org/>)

Kyoto Protocol to the UN Framework Convention on Climate Change, 1997

(entered into force internationally on 16 February 2005)

accession approved by Parliament: 12 November 2002 (source: Parliament)

accession: 4 September 2003 (source: <http://untreaty.un.org/>)

Convention on Biological Diversity, 1992

signature: 12 June 1992

ratification: 16 May 1997

Cartegena Protocol on Biosafety, to the Convention on Biological Diversity, Montreal, 2000

(entered into force internationally on 11 September 2003) (source: <http://untreaty.un.org/>)

signature: 24 May 2000 (source: <http://untreaty.un.org/>)

ratification approved by Parliament: 29 September 2004 (source: Parliament)

deposit: 10 February 2005; effective date: 11 May 2005 (source: <http://untreaty.un.org/>)

United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994

signature: 24 October 1994

ratification: 16 May 1997

Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997

signature: 19 May 2000

ratification: 29 August 2001

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998

(entered into force internationally on 24 February 2004)

signature: 11 September 1998

deposit: 24 June 2005; effective date: 22 September 2005 (source: www.pic.int)

Stockholm Convention on Persistent Organic Pollutants, 2001

(entered into force on 17 May 2004)

accession: 24 June 2005; effective date: 22 September 2005 (source: <http://chm.pops.int/>)

SADC Protocol on Shared Watercourse Systems in the Southern African Region, 1995

(entered into force within SADC on 28 September 1998) (source: SADC)

signature: 28 August 1995 (source: SADC)

ratification: 5 June 1998 (source: SADC; Ministry of Foreign Affairs)

SADC Revised Protocol on Shared Watercourses, 2000

(entered into force within SADC on 22 September 2003) (source: SADC)

signature: 7 August 2000 (source: SADC)

ratification: 11 September 2001 (source: SADC; Ministry of Foreign Affairs)

SADC Protocol on Wildlife Conservation and Law Enforcement, 1999

(entered into force within SADC on 30 November 2003) (source: SADC)

signature: 18 August 1999 (source: SADC)

ratification: 14 January 2000 (source: SADC; Ministry of Foreign Affairs)

SADC Protocol on Forestry, 2002

(entered into force within SADC on 1 September 2006) (source: SADC)

signature: 17 August 2008

ratification approved by Parliament: 2 April 2009 (source: Parliament)

ratification: 29 April 2009 (source: SADC)

Africa Institute for the Environmentally Sound Management of Hazardous and Other Wastes Agreement, 2004

(entered into force internationally on 17 January 2008) (source: www.africainstitute.info)

ratification by Parliament: 25 October 2006 (source: Parliament)

Agreement between the governments of the Republic of Angola, the Republic of Botswana, and the Republic of Namibia on the establishment of a permanent Okavango river basin water commission (OKACOM, Windhoek, 16 September 1994

effective date: 15 September 1994

Agreement between the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia and the Republic of South Africa on the Establishment of the Orange-Sengu River Commission

ratification approved by Parliament: 19 June 2001 (source: Ministry of Foreign Affairs)

letter of notification: 2 August 2001 (source: Ministry of Foreign Affairs)

SEE ALSO MARINE AND FRESHWATER RESOURCES.

FINANCE AND DEVELOPMENT

Articles of Agreement of the International Monetary Fund, 1944

accession: 25 September 1990 (source: www.imf.org/)

Agreement Establishing the African Development Bank, 1963, as amended by resolution 05-79 adopted by the Board of Governors on 17 May 1979 (concluded at Lusaka on 7 May 1982)

accession: 10 April 1994

Agreement Establishing the International Fund for Agricultural Development, 1976

accession: 16 October 1992

Articles of Agreement of the International Bank for Reconstruction and Development, 1978

accession: 25 September 1990

Constitution of the United Nations Industrial Development Organization, 1979

accession: 21 February 1986

Agreement to Establish the South Centre, 1994

signature: 30 September 1994

ratification: 24 October 2000 (source: Parliament)

Treaty Establishing the African Economic Community, 1991

ratification: 20 December 1991

Agreement Establishing the NORSAD Fund and the NORSAD Agency

(Nordic-Southern African Development Community)

accession: 15 April 1992 (source: Ministry of Foreign Affairs)

Agreement for the Establishment of the African Export-Import Bank

accession: 2003 (source: Ministry of Foreign Affairs)

SADC Protocol on Finance and Investment, 2006

(entered into force within SADC 16 April 2010) (source: SADC)

signature: 18 August 2008 (source: SADC)

ratification approved by Parliament: 2 March 2010 (source: Parliament)

ratification: 16 March 2010 (source: SADC)

Note: The UN Treaty Date Base lists Namibia as a party to the following agreement by virtue of territorial application prior to independence. This may no longer have effect in independent Namibia.

* *Agreement on German external debts, 1953* (territorial application as of 1 January 1954, with effect from 1 January 1954).

HEALTH

International Sanitary Regulations, 1951

territorial application: *International Health Regulations Act 28 of 1974 (HEALTH)*

According to the UN Treaty Data Base, this includes adoption of the following amendments:

* *Additional regulations amending the International Sanitary Regulations, 1951 with respect to the sanitary control of pilgrim traffic, 1956*

* *Additional regulations amending the International Sanitary Regulations, 1951 in particular with respect to the Health Part of the Aircraft General Declaration, 1960*

* *Additional regulations amending the International Sanitary Regulations, 1951 in particular with respect to notifications, 1963*

* *Additional regulations amending the International Sanitary Regulations, 1951 in particular with respect to disinfecting of ships and aircraft, 1965*

Constitution of the World Health Organization, 1946

definitive signature/acceptance: 23 April 1990

Amendment to article 7 of the Constitution of the World Health Organization, 1965

(not yet in force internationally)

acceptance: 21 September 2004

Amendment to article 74 of the Constitution of the World Health Organization, 1978 (not yet in force internationally).

acceptance: 21 September 2004

Amendments to articles 24 and 25 of the Constitution of the World Health Organization, 1986

acceptance: 11 November 1991

Amendments to articles 24 and 25 of the Constitution of the World Health Organization, 1998

acceptance: 26 March 1999

Namibia has NOT accepted the following amendments:

* Amendments to articles 24 and 25 of the Constitution of the World Health Organization, 1959

* Amendments to articles 24 and 25 of the Constitution of the World Health Organization, 1967

* Amendments to articles 34 and 55 of the Constitution of the World Health Organization, 1973

* Amendments to articles 24 and 25 of the Constitution of the World Health Organization, 1976

Commonwealth Regional Health Community for East, Central and Southern Africa

accession: 19 December 1991 (source: Ministry of Foreign Affairs)

Agreement for the Establishment of the African Rehabilitation Institute, 1981

accession: 22 August 1996 (source: Ministry of Foreign Affairs)

deposit: 25 September 1996 (source: Ministry of Foreign Affairs)

WHO Framework Convention on Tobacco Control, 2003

(entered into force internationally on 27 February 2005)

signature: 29 January 2004

ratification approved by Parliament: 26 October 2005

deposit: 7 November 2005; effective date: 5 February 2006 (source: WHO, www.who.int/fctc)

International Convention against Doping In Sport, 2005

(entered into force internationally on 1 February 2007)

ratification by Parliament: 21 September 2006 (source: Parliament)

deposit: 29 November 2006 (source: UNESCO, www.unesco.org)

SADC Protocol on Health, 1999

(entered into force within SADC on 14 August 2004) (source: SADC)

signature: 18 August 1999 (source: SADC)

ratification: 10 July 2000 (source: SADC; Ministry of Foreign Affairs)

HUMAN RIGHTS

Convention on the Prevention and Punishment of the Crime of Genocide, 1948

accession: 28 November 1994

International Convention on the Elimination of All Forms of Racial Discrimination, 1966

accession: 11 November 1982

Namibia has NOT agreed to the following amendment, which is not yet in force internationally:

* *Amendment to article 8 of the International Convention on the Elimination of all Forms of Racial Discrimination, 1992.*

Cases: *Kauesa v Minister of Home Affairs & Others* 1994 NR 102 (HC).

International Covenant on Economic, Social and Cultural Rights, 1966

accession: 28 November 1994; ; effective date: 28 February 1995

International Covenant on Civil and Political Rights, 1966

accession: 28 November 1994; effective date: 28 February 1995

Optional Protocol to the International Covenant on Civil and Political Rights, 1966

accession: 28 November 1994

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty, 1989

accession: 28 November 1994

Cases: *Kauesa v Minister of Home Affairs & Others* 1994 NR 102 (HC); *Namunjepo & Others v Commanding Officer, Windhoek Prison & Another* 1999 NR 271 (SC) at 284H-ff; *Frank & Another v Chairperson of the Immigration Selection Board* 2001 NR 107 (SC); *Government of the Republic of Namibia & Others v Mwilma & all other accused in the Caprivi treason trial* 2002 NR 235 (SC); *S v Mushwena & Others* 2004 NR 276 (SC) at 320-22, 371, 390; *S v Myburgh* 2008 (2) NR 592 (SC) at 597I-598A; *Alexander v Minister of Justice & Others* 2009 (2) NR 712 (HC).

International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973

accession: 11 November 1982

Convention on the Elimination of All Forms of Discrimination against Women, 1979

accession: 23 November 1992

Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women

effective date: 22 December 2000 (This is the date on which the Optional Protocol came into force internationally after being ratified by the first 10 countries, one of which is Namibia. The Namibian Parliament approved the Optional Protocol on 17 May 2000.)

Namibia has NOT agreed to the following amendment, which is not yet in force internationally:

* *Amendment to article 20, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination Against Women, 1995.*

Cases: *Müller v President of the Republic of Namibia & Another* 1999 NR 190 (SC) at 205E-F.

African Charter on Human and Peoples' Rights, 1981

accession: 30 July 1992

deposit: 16 August 1992

(source: African and International Instruments Online,

www.oneworld.org/afronet/links/banjul_ratif1.htm; Ministry of Foreign Affairs)

Protocol to the African Charter on Human and Peoples' Rights on the establishment of the African Court on Human and Peoples' Rights, 1998

(entered into force within the AU on 15 January 2004)
signature: 9 June 1998
ratification approved by Parliament: 7 November 2000 (source: Parliament)
deposit: No deposit is recorded on the African Union website. (www.africa-union.org)

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003

(entered into force within the AU on 25 November 2005)
signature: 9 December 2003 (source: www.africa-union.org)
ratification approved by Parliament: 8 July 2004 (source: Parliament)
deposit: 26 August 2004 (source: www.africa-union.org)

Reservation: Namibia will not be bound by Article 6(d) until it has enacted legislation regarding the recording and registration of customary marriages.
(source: Ministry of Foreign Affairs)

Cases: *Kauesa v Minister of Home Affairs & Others* 1994 NR 102 (HC); *Sikunda v Government of the Republic of Namibia & Another* (1) 2001 NR 67 (HC); *Frank & Another v Chairperson of the Immigration Selection Board* 2001 NR 107 (SC); *Alexander v Minister of Justice & Others* 2009 (2) NR 712 (HC).

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

accession: 28 November 1994

Namibia has NOT agreed to the following amendments, which are not yet in force internationally:

* *Amendments to articles 17 (7) and 18 (5) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1992.*

Cases: *Namunjepo & Others v Commanding Officer, Windhoek Prison & Another* 1999 NR 271 (SC) at 284H-ff.

Convention on the Rights of the Child, 1989

signature: 26 September 1990
ratification: 30 September 1990

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000

(entered into force internationally on 12 February 2002)
signature: 8 September 2000 (source: Ministry of Foreign Affairs)
ratification: 16 April 2002 (source: UNICEF)

Note: Namibia's ratification of this Optional Protocol was accompanied by a declaration on the minimum recruitment age (age 18) for the Namibia Defence Force (source: Ministry of Foreign Affairs).

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000

(entered into force internationally on 18 January 2002)
signature: 8 September 2000 (source: Ministry of Foreign Affairs)
ratification: 16 April 2002 (sources: Ministry of Foreign Affairs; UNICEF)

Amendment to Article 43(2) of the Convention on the Rights of the Child adopted by the Conference of the States Parties on 12 December 1995

(entered into force internationally on 18 November 2002)
ratification: 11 December 2001 (source: Ministry of Foreign Affairs)

African Charter on the Rights and Welfare of the Child, 1990

(entered into force internationally on 29 November 1999)

signed: 13 July 1999

ratification approved by Parliament: 23 July 2004 (source: Parliament)

deposit: 26 August 2004 (source: www.africa-union.org)

Convention on Rights of Persons with Disabilities, 2006

(entered into force internationally on 3 May 2008)

signature: 25 April 2007 (source: www.un.org)

ratification by Parliament: 12 September 2007 (source: Parliament)

deposit: 4 December 2007 (source: www.un.org)

Optional Protocol to Convention on Rights of Persons with Disabilities, 2006

signature: 25 April 2007 (source: www.un.org)

ratification by Parliament: 12 September 2007 (source: Parliament)

deposit: 4 December 2007 (source: www.un.org)

SADC Protocol on Gender and Development, 2008

(not yet in force within SADC as of 23 June 2010) (source: SADC)

signature: 17 August 2008 (source: SADC)

ratification approved by Parliament: 7 October 2009 (source: Parliament)

SADC list of ratifications dated 23 June 2010 does not show ratification by Namibia

IMMIGRATION

SADC Protocol on the Facilitation of Movement of Persons, 2005

(not yet in force within SADC as of 23 June 2010) (source: SADC)

signature: 18 August 2005

not ratified by Namibia as of 23 June 2010 (source: SADC)

INTELLECTUAL PROPERTY

Unless otherwise indicated, the source for the information in this section is the website of the World Intellectual Property Organization (www.wipo.org/treaties).

Paris Convention for the Protection of Industrial Property, 1883, as amended in 1979

revised at Brussels (1900), Washington (1911) The Hague (1925), London (1934), Portugal (1958) and Stockholm (1967) and amended on 28 September 1979

ratification by Parliament: 28 March 2003 (source: Parliament)

deposit: 29 December 2003; effective date: 1 January 2004

Convention Establishing the World Intellectual Property Organization 1967, amended in 1979 (WIPO Convention)

effective date of accession: 23 December 1991

Namibia has NOT yet agreed to the following amendment:

* *Amendment to Article 9(3) of the WIPO Convention, 2000 (not yet in force internationally)*

Berne Convention for the Protection of Literary and Artistic Works, 1971

Berne Convention (1886), completed at Paris (1896), revised at Berlin (1908), completed at Berne (1914), revised at Rome (1928), at Brussels (1948), at Stockholm (1967) and at Paris (1971)

accession: 21 March 1990

effective date in respect of 1971 revisions (Paris): 24 December 1993

Declaration of Continuity of Berne Convention for Protection of Literary and Artistic Works

accession: 16 September 1993 (source: Ministry of Foreign Affairs)

Note: Certain provisions of Namibia's Copyright and Neighbouring Rights Protection Act 6 of 1994 are made applicable to the countries of the Berne Copyright Union by GN 127/2001 (GG 2562).

WIPO Copyright Treaty, 1996

signature: 20 December 1996

not yet ratified by Namibia

WIPO Performances and Phonograms Treaty, 1996

signature: 20 December 1996

not yet ratified by Namibia

Madrid Agreement concerning the International Registration of Marks, 1891

accession: 31 March 2004

Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989

accession: 31 March 2004

Hague Agreement concerning the International Deposits of Industrial Designs of 1925, as governed by the 1960 Act and the Geneva Act

accession: 31 March 2004

Patent Cooperation Treaty, 1970, as amended in 1979, and modified in 1984 and 2001

ratification by Parliament: 28 March 2003 (source: Parliament)

accession: 1 October 2003; effective date: 1 January 2004

Reservation: Namibia does not consider itself bound by Article 59 of the Treaty.
(source: Ministry of Foreign Affairs)

Harare Protocol on Patents and Industrial Designs within the Framework of the African Regional Industrial Property Organization, 1982

accession approved by Parliament: 28 March 2003

(source: Ministry of Foreign Affairs)

Banjul Protocol on Marks within the Framework of the African Regional Industrial Property Organization, 1993

accession approved by Parliament: 28 March 2003

(source: Ministry of Foreign Affairs)

LABOUR

Except where otherwise indicated, this data comes from the database of the Washington (USA) office of the International Labour Organisation, which is available at <http://usa.ilo.org/aboutilo/convent.html>.

African Regional Protocol Concerning Distribution of Seats in the Governing Body of the ILO

accession: 17 October 1997 (source: Ministry of Foreign Affairs)

Instrument of Amendment of ILO, 1986

accession: 17 October 1997 (source: Ministry of Foreign Affairs)

Instrument of Amendment of ILO, 1997

(not yet in force internationally as of 27 February 2003)

ratification: 27 January 1999

ILO Convention 29 concerning Forced Labour, 1930

accession: 15 November 2000 (source: ILOLEX, <http://ilolex.ilo.ch:1567/cgi-lex/>)

ILO Convention 87: Freedom of Association and the Right to Organise, 1948

accession: 3 January 1995

ILO Convention 98: Right to Organise and Collective Bargaining, 1949

accession: 3 January 1995

ILO Convention 105 on the Abolition of Forced Labour, 1957

accession: 15 November 2000 (source: ILOLEX, <http://ilolex.ilo.ch:1567/cgi-lex/>)

ILO Convention 100 on Equal Remuneration, 1951

accession approved by Parliament: 10 March 2010 (source: Parliament)

accession: 6 April 2010 (source: www.ilo.org)

ILO Convention 111: Convention concerning Discrimination (Employment and Occupation), 1958

accession (without protocol): 3 November 2000 (with proviso relating to “national extraction”); 23 October 2001 (with no proviso) (source: Parliament)

ILO Convention 138 on the Minimum Age for Admission to Employment and Work, 1973

accession: 15 November 2000 (source: ILOLEX, <http://ilolex.ilo.ch:1567/cgi-lex/>)

ILO Convention 144: Tripartite Consultation (International Labour Standards), 1976

accession: 3 January 1995

ILO Convention 150: Labour Administration, 1978

accession: 28 June 1996

ILO Convention 158: Termination of Employment, 1982

accession: 28 June 1996

ILO Convention 182 on the Prohibition and Immediate Elimination of the Worst Forms of Child Labour, 1999

ratification: 15 November 2000 (source: Ministry of Foreign Affairs)

ILO Convention 184 and Recommendation 192 on Safety and Health in Agriculture, 2001

ratification: 8 November 2001 (source: Parliament)

Cases: *Namibia Development Corporation v Visagie* NLLP 1998 (1) 166 NLC (Article 13).

Charter of Fundamental Social Rights in SADC, 2003

This Charter enters into force upon signature by member states, without ratification.

(entered into force within SADC on 26 August 2003) (source: SADC)

signature: 26 August 2003 (source: SADC)

SADC Protocol on the Facilitation of Movement of Persons, 2005

(not yet in force within SADC as of 23 June 2010) (source: SADC)

signature: 18 August 2005

not ratified by Namibia as of 23 June 2010 (source: SADC)

LAW

Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the "New York" Convention)

(entered into force internationally on 7 June 1959)

The Ministry of Foreign Affairs lists Namibia as a party to this Convention, but Namibia is not listed as a State Party on www.uncitral.org and the accession could not be located in the Parliament records.

Hague Convention on Abolishing the Requirement of Legalisation of Foreign Public Documents, 1961

accession: 25 April 2000

entry into force in respect of Namibia: 30 January 2001

(source: Hague Conference: www.hcch.net/)

Cases: *S v Koch* 2006 (2) NR 513 (SC).

Note: This is the only Hague Convention under the Hague Conference on Private International Law to which Namibia is a party. Namibia is not a member of the Hague Conference.

(source: Hague Conference: www.hcch.net/)

United Nations Convention Against Corruption, 2003

(entered into force 14 December 2005)

signature: 9 December 2003

ratification approved by Parliament: 28 April 2004 (source: Parliament)

deposit: 3 August 2004 (source: <http://untreaty.un.org>)

African Union Convention on Preventing and Combating Corruption, 2003

(entered into force within the AU on 5 August 2006)

signature: 9 December 2003

ratification approved by Parliament: 28 April 2004 (source: Parliament); 5 August 2004 (source: www.africa-union.org)

deposit: 26 August 2004 (source: www.africa-union.org)

SADC Protocol on Legal Affairs, 2000

(entered into force within SADC on 1 September 2006) (source: SADC)

signature: 7 August 2000 (source: SADC)

ratification: 2 October 2001 (source: SADC; Ministry of Foreign Affairs)

SADC Protocol Against Corruption, 2001

(entered into force within SADC on 6 July 2005) (source: SADC)

signature: 14 August 2001 (source: SADC)

ratification approved by Parliament: 27 April 2004 (source: Parliament)

ratification: 23 June 2005 (source: SADC)

SADC Protocol on Extradition, 2002

(entered into force within SADC on 1 September 2006) (source: SADC)

signature: 3 October 2002 (source: SADC)

ratification approved by Parliament: 7 November 2006 (source: Parliament)

ratification: 1 February 2007 (source: SADC)

SADC Protocol on Mutual Legal Assistance in Criminal Matters, 2002

(entered into force within SADC on 2 March 2004) (source: SADC)

signature: 3 October 2002 (source: SADC)
ratification approved by Parliament: 7 November 2006 (source: Parliament)
ratification: 1 February 2007 (source: SADC)

MARINE AND FRESHWATER RESOURCES

United Nations Convention on the Law of the Sea, 1982

signature: 10 December 1982
ratification: 18 April 1983; effective date: 16 November 1994
(represented by the United Nations Council for Namibia as stipulated in Article 305, paragraph 1 (b), of the Convention) (source: <http://sedac.ciesin.org/>)

Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994

signature: 29 July 1994
accession by means of the simplified procedure set out in articles 4 (3)(c) and 5: 16 Nov 1994
effective date: 28 July 1996 (source: <http://sedac.ciesin.org/>)

Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995 (came into force internationally on 11 December 2003)

signature: 19 April 1996
ratification: 8 April 1998 (Proc. 10/1998, GG 1862)

Cases: *S v Curras* 1991 NR 208 (HC); *Pineiro & Others v Minister of Justice & Others* 1991 NR 283 (HC); *S v Carracelas & Others (2)* 1992 NR 329 (HC); *S v Martinez* 1993 NR 1 (HC); *S v Pineiro & Others (1)* 1993 NR 24 (HC).

International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995

(not yet in force internationally)
deposit: 18 December 2008 (source: International Maritime Organization, www.imo.org)

Protocol on the Privileges and Immunities of the International Seabed Authority, 1998

(entered into force internationally on 31 May 2003)
signature: 24 September 1999
(not ratified by Namibia as of 20 January 2005, according to the International Seabed Authority)

Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean, 2001

ratification: 15 November 2001 (source: www.fao.org)

Convention on the Conservation of Antarctic Marine Living Resources, 1980

accession: 29 January 2000
(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri/>.)

SADC Protocol on Fisheries, 2001

(entered into force within SADC on 8 August 2003) (source: SADC)
signature: 14 August 2001 (source: SADC)
ratification: 21 June 2002 (source: SADC; Ministry of Foreign Affairs)

METEOROLOGY

Convention of the World Meteorological Organisation, 1947

accession: 16 November 1993 (source: Ministry of Foreign Affairs)

effective date in respect of Namibia: 8 March 1991 (source: <http://sedac.ciesin.org/>)

SADC Protocol on Transport, Communications and Meteorology, 1996

(entered into force within SADC on 6 July 1998) (source: SADC)

signature: 24 August 1996 (source: SADC)

ratification: 19 September 1997 (source: SADC; Ministry of Foreign Affairs)

See Proc. 24/1997 (GG 1723).

MINING

SADC Protocol on Mining, 1997

(entered into force within SADC on 10 February 2000) (source: SADC)

signature: 8 September 1997 (source: SADC)

ratification: 22 December 1998 (source: SADC; Ministry of Foreign Affairs)

Statute of African Diamonds Producers Association, 2006

formed on 4 November 2006

ratification by Parliament, 25 April 2007 (source: Parliament)

REFUGEES AND STATELESS PERSONS

Convention relating to the Status of Refugees, 1951

accession: 17 February 1995

Reservation: "The Government of the Republic of Namibia reserves the right to designate a place or places for principal reception and residence for refugees or to restrict their freedom of movement in consideration of national security so required or make it advisable."

Protocol relating to the Status of Refugees, 1967

There was some technical confusion concerning the deposit of Namibia's instrument of accession to this Protocol. The situation was clarified in an official communication from the United Nations dated on 11 June 2004, when Namibia's instrument of accession was accepted in deposit with effect from 17 February 1995 (the date when it was originally tendered). (United Nations Reference LA41TR/1/V-5/1)

AU Convention Governing Specific Aspects of Refugee Problems in Africa, 1969

accession: 2 September 1994 (source: Ministry of Foreign Affairs)

Note: The African Union website (file updated 11 November 2009) records a signature date of 11 November 2009 for Namibia, and no accession or deposit. (source: www.africa-union.org)

Cases: *S v Mushwena & Others* 2004 NR 276 (SC) (*per* O'Linn, AJA) refers to the "Convention relating to the Status of Refugees and Stateless Persons as Supplemented by the Protocol relating to the Status of Refugees" (confirming that Namibia acceded to the Protocol on 17 February 1995) and the OAU Convention governing the Specific Aspects of Refugee Problems in Africa, adopted by the Assembly of Heads of State and Governments of the OAU in Resolution No. 10 (no date cited in the judgment).

SANCTIONS

United Nations Security Council Resolutions relating to Sanctions against UNITA (see GN 59/2001, GG 2509)

National publication for information purposes of various UN Security Council Resolutions providing for sanctions against UNITA, binding on Namibia “by virtue of its membership of the United Nations”. Topics covered by the sanctions include the sale of arms, ammunition and other military equipment, as well as petroleum and petroleum products; immigration and transit by senior UNITA officials; aircraft, aircraft components and related matters; freezing of funds of UNITA and its senior officials; import of uncontrolled diamonds from Angola; mining equipment and services; vehicles, vehicle spare parts and transportation services.

SCIENCE AND TECHNOLOGY

SADC Protocol on Science, Technology and Innovation, 2008

(not yet in force within SADC as of 23 June 2010) (source: SADC)

ratification approved by Parliament: 7 October 2009 (source: Parliament)

SADC list of ratifications dated 23 June 2010 does not show ratification by Namibia

TOURISM

Charter of the Regional Tourism Organisation of Southern Africa (RETOSA), 1997

This Charter enters into force upon signature by member states, without ratification.

(entered into force within SADC on 8 September 1997) (source: SADC)

signature: 8 September 1997 (source: SADC; Ministry of Foreign Affairs)

SADC Protocol on the Development of Tourism, 1998

(entered into force within SADC on 26 November 2002) (source: SADC)

signature: 14 September 1998 (source: SADC)

ratification: 13 June 2000 (source: SADC; Ministry of Foreign Affairs)

Agreement amending the Protocol on the Development of Tourism, 2009

(entered into force within SADC on 8 September 2009)

signature: 8 September 2009

no ratification appears to be needed

TRADE

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973

accession: 18 December 1990; effective: 18 March 1991

(source: www.cites.org/eng/parties/alphabet.shtml.)

Amendment to Article XI of the Convention, Bonn (Germany), 22 June 1979

(entered into force on 13 April 1987)

accession: 18 December 1990, effective 18 March 1991

(source: www.cites.org/eng/parties/bonn.shtml)

Namibia has NOT agreed to the following amendment:

* *Amendment to Article XXI of the Convention, Gaborone (Botswana), on 30 April 1983* (not yet in force internationally as of 20 January 2005).

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998

(entered into force internationally on 24 February 2004)

signature: 11 September 1998

deposit: 24 June 2005; effective date: 22 September 2005 (source: www.pic.int)

General Agreement on Tariffs and Trade, 1947 and GATT instruments Nos. 1, 4, 5, 6, 8, 9, 11, 13, 17 and 18

date of succession: 21 March 1990

Namibia became a party to the General Agreement on Tariffs and Trade and the following GATT instruments by means of succession, effective as of the date of independence. Multilateral instruments relating to the General Agreement on Tariffs and Trade (protocols, declarations, etc.) which were concluded after 1 February 1955 are deposited with the Director-General of the Contracting Parties to the General Agreement on Tariffs and Trade rather than with the Secretary-General of the United Nations and are not reflected in this list.

1. Protocol of Provisional Application of the General Agreement on Tariffs and Trade, signed at Geneva on 30 October 1947
4. Protocol modifying certain provisions of the General Agreement on Tariffs and Trade, signed at Havana on 24 March 1948
5. Special Protocol modifying article XIV of the General Agreement on Tariffs and Trade, signed at Havana on 24 March 1948
6. Special Protocol relating to article XXIV of the General Agreement on Tariffs and Trade, signed at Havana on 24 March 1948
8. Protocol modifying part I and article XXIX of the General Agreement on Tariffs and Trade, signed at Geneva on 14 September 1948
9. Protocol modifying part II and article XXVI of the General Agreement on Tariffs and Trade, signed at Geneva on 14 September 1948
11. Third Protocol of Rectifications to the General Agreement on Tariffs and Trade, signed at Annecy on 13 August 1949
13. Protocol modifying article XXVI of the General Agreement on Tariffs and Trade, signed at Annecy on 13 August 1949
17. Fourth Protocol of Rectifications to the General Agreement on Tariffs and Trade, signed at Geneva on 3 April 1950
18. Fifth Protocol of Rectifications to the General Agreement on Tariffs and Trade, signed at Torquay on 16 December 1950

Convention Establishing a Customs Co-operation Council, 1950

accession: 1 July 1992 (source: Ministry of Foreign Affairs)

Fourth ACP-EU Convention of Lomé

ratification: 15 October 1996 (Proc. 7/1997, GG 1605)

Protocol on the accession of three additional members of the European Union to the Fourth ACP-EU Convention of Lomé

ratification: 24 June 1997 (Proc. 7/1997, GG 1605)

African, Caribbean and Pacific (ACP) - European Union (EU) Partnership Agreement, Cotonou, 2000 (“COTONOU Agreement”)

(came into force internationally on 1 April 2003; to eventually replace all trade arrangements made under the Fourth ACP-EU Convention of Lomé)

signature: 23 June 2000

ratification approved by Parliament: 14 May 2002 (source: Parliament)

ratification: 7 June 2002 (source: ACP Secretariat, www.acpsec.org/)

Treaty Establishing the African Economic Community, 1991

signature: 3 June 1991 (source: Ministry of Foreign Affairs)

ratification: 28 June 1992 (source: Ministry of Foreign Affairs)

deposit: 1 July 1992 (source: Ministry of Foreign Affairs)

Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament, 2001

(came into force within the AU on 14 December 2003) (source: www.africa-union.org)

signature: 7 May 2001

ratification approved by Parliament: 9 July 2002 (source: Parliament)

deposit: 13 August 2002 (source: www.africa-union.org)

Common Market in East and Southern Africa (COMESA) Treaty, 1994

signature: 5 November 1993 (never ratified) (source: Ministry of Trade and Industry)

Note: Cabinet announced that Namibia would pull out of COMESA with effect from May 2004. (See *The Namibian*, 16 May 2003.)

Customs Union Agreement between South African Government, Botswana, Lesotho and Swaziland

accession: 6 July 1990 (source: Ministry of Foreign Affairs)

Agreement for the Establishment of Southern African Centre for Ivory Marketing (SACIM), 1991

in force in Namibia: 20 June 1991

(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri/>.)

Note: The name SACIM was changed to the Southern African Convention for Wildlife Management (SACWM) in 1996. (source: www.art.org.uk/newsletter/1996_09_expands.html)

SADC Protocol on Trade, 1996

(entered into force within SADC on 25 January 2000) (source: SADC)

signature: 24 August 1996 (source: SADC)

ratification: 22 December 1998 (source: SADC; Ministry of Foreign Affairs)

SADC Amendment Protocol on Trade, 2000

(entered into force within SADC on 7 August 2000) (source: SADC)

signature: 7 August 2000 (source: SADC)

ratification: 4 April 2001 (source: Ministry of Foreign Affairs)

date of implementation: 4 June 2001 (source: Ministry of Foreign Affairs)

SADC list of ratifications dated 23 June 2010 does not show ratification by Namibia

Agreement Amending Article 20 of the Protocol on Trade, 2008

(entered into force within SADC on 17 August 2008) (source: SADC)

signature: 17 August 2008

no ratification appears to be needed

Agreement Amending Annex VI to Protocol on Trade concerning settlement of disputes amongst member states 2007

(entered into force within SADC on 17 August 2007) (source: SADC)

signature: 17 August 2007 (source: SADC)

no ratification appears to be needed

Note: See GN 116/2001 (GG 2548), which relates to the implementation of the SADC Protocol on trade in Namibia.

International Convention on the Simplification and Harmonization of Customs Procedures, 1973

accession approved by Parliament: 9 October 2003
accession: 2004 (source: Ministry of Foreign Affairs)

International Convention on the Harmonized Commodity Description and Coding System, 1983

accession approved by Parliament: 9 October 2003
accession: 2004 (source: Ministry of Foreign Affairs)

Memorandum of Understanding between the Governments of the Republics of Botswana, Namibia and South Africa on the Development and Management of the Trans-Kalahari Corridor, 2003

signature: 3 November 2003
ratification: 21 February 2007
published in GN 193/2007 (GG 3927)

Note: Memoranda of understanding are not generally legally binding.

Free Trade Agreement between European Free Trade Association and Southern African Customs Union States, 2005

signature: 26 June 2006 (source: www.efta.int)
ratified by Parliament: 9 October 2007 (source: Parliament)
entered into force: 1 May 2008 (source: www.efta.int)

TRANSPORT

Convention on the Physical Protection of Nuclear Material, 1980

accession approved by Parliament: 26 June 2002 (source: Parliament)
accession: 2 October 2002; effective date: 1 November 2002
(sources: Ministry of Foreign Affairs; www.iaea.or.at/worldatom/Documents/Legal/cppn_status.pdf)

SADC Protocol on Transport, Communications and Meteorology, 1996

(entered into force within SADC on 6 July 1998) (source: SADC)
signature: 24 August 1996 (source: SADC)
ratification: 19 September 1997 (source: SADC; Ministry of Foreign Affairs)
See Proc. 24/1997 (GG 1723).

Aviation

Convention on International Civil Aviation of 7 December 1944

accession: 30 April 1991, effective 30 May 1991
(source: International Civil Aviation Organization)

Protocol on the Authentic Trilingual Text of the Convention, Buenos Aires, 1968

acceptance: 30 May 1991 (source: International Civil Aviation Organization)

Protocol on the Authentic Quadrilingual Text of the Convention, Montreal 1977

acceptance: 2 November 2000 (source: Parliament); effective: 19 October 2001
(source: International Civil Aviation Organization)

Protocol relating to an Amendment to the Convention (Final Clause, Russian Text), Montreal, 1977

ratification: 2 November 2000, deposited 27 September 2001
(source: International Civil Aviation Organization)

Protocol relating to an Amendment to the Convention (Article 56), Montreal, 1989

ratification: 2 November 2000, deposited 27 September 2001

(source: International Civil Aviation Organization)

Protocol relating to an Amendment to the Convention (Article 50(a)), Montreal, 1990

ratification: 2 November 2000, deposited 27 September 2001

(source: International Civil Aviation Organization)

Protocol on the Authentic Quinquilingual Text of the Convention, Montreal, 1995

acceptance: 2 November 2000 (source: Parliament)

effective: 19 October 2001 (source: International Civil Aviation Organization)

Protocol relating to an Amendment to the Convention (Final Clause, Arabic Text), Montreal, 1995

(not yet in force internationally as of 20 January 2005)

ratification: 2 November 2000, deposited 27 September 2001

(source: International Civil Aviation Organization)

Protocol on the Authentic Six-Language Text of the Convention, Montreal, 1998

(not yet in force internationally as of 20 January 2005)

acceptance: 2 November 2000 (source: Parliament)

effective: 19 October 2001 (source: International Civil Aviation Organization)

Protocol relating to an Amendment to the Convention (Final Clause, Chinese Text), Montreal, 1998

(not yet in force internationally as of 20 January 2005)

ratification: 2 November 2000 (source: Parliament)

deposited: 5 November 2001 (source: International Civil Aviation Organization)

Annex 16 to the Convention on International Civil Aviation, Environmental Protection, Volume I — Aircraft Noise, Chicago, 1944

effective date in respect of Namibia: 30 May 1991

(source: ENTRI – Environmental Treaties and Resource Indicators -

<http://sedac.ciesin.columbia.edu:9080/>)

Convention for the Unification of Certain Rules relating to International Carriage by Air, 1999

(came into force internationally on 4 November 2003)

ratification: 7 March 2001, deposited 27 September 2001

(sources: Parliament; International Civil Aviation Organization)

African Civil Aviation Commission Constitution, 1969

signature: 21 February 2002

ratification approved by Parliament: 12 March 2002

deposit: 10 May 2002 (source: www.africa-union.org)

Constitution for the African Civil Aviation Commission (AFCAC)-revised version, 2009

(entered into force within the AU on 23 October 2009, superseding the *African Civil Aviation Commission Constitution, 1969*) (source: www.africa-union.org)

signature: 11 May 2010 (source: African Union website: www.africa-union.org)

Agreement on the Establishment of the African Civil Aviation Agency, DATE

signature: 28 June 2007 (source: Proc. 17/2007 (GG 3928))

Roads and road transportation

Convention on Road Traffic, 1949

succession: 13 October 1993

SACU Memorandum of Understanding on Road Transportation

accession: 2 February 1998 (Proc. 6/1998, GG 1803)

Note: SADC memoranda of understanding are non-binding.

Memorandum of Understanding between the Governments of the Republics of Botswana, Namibia and South Africa on the Development and Management of the Trans-Kalahari Corridor, 2003

signature: 3 November 2003

ratification: 21 February 2007

published in GN 193/2007 (GG 3927)

Note: Memoranda of understanding are not generally legally binding.

Bilateral Road Transport Agreement (Namibia and Zimbabwe)

ratification: 17 February 2000 (Proc. 7/2000, GG 2359)

Note: This index does not generally list bilateral agreements, but includes this one since it was gazetted in Namibia.

Shipping and maritime

International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (“Hague Rules”), 1924 and Protocols of 1968 and 1979

accession approved by Parliament: 6 November 2007 (source: Parliament)

deposit not registered with Comité Maritime International as of 2009

(source: www.comitemaritime.org)

Convention on the International Maritime Organization, 1948

accession: 27 October 1994

(source: UN Treaty Database, <http://untreaty.un.org>)

On 27 October 1994, the UN also received instruments of acceptance in respect of Namibia for the following

- * 1964 amendments to articles 17 and 18
- * 1965 amendment to article 28 of the Convention
- * 1974 amendments to articles 10, 16, 17, 18, 20, 28, 31 and 32 of the Convention
- * 1975 amendments to the title and substantive provisions of the Convention
- * 1977 amendments to the Convention relating to the institutionalisation of the Committee on technical co-operation in the Convention
- * 1979 amendments to articles 17, 18, 20 and 51 of the Convention

Namibia subsequently accepted the following:

- * 1991 amendments to the IMO Convention relating to the institutionalisation of the Facilitation Committee in the Convention (not yet in force internationally as of 31 March 2003) (acceptance: 28 November 2000)
- * 1993 amendments to articles 16, 17 and 19 (b) of the Convention on the International Maritime Organization (which entered into force internationally on 7 November 2002) (acceptance: 10 September 2001).

International Convention for the Unification of Certain Rules relating to the arrest of Sea-Going Ships, 1952

accession: 13 June 2001 (source: Parliament)

International Convention on Load Lines, 1966

accession approved by Parliament: 13 June 2001 (source: Parliament)

deposit: 22 February 2002; effective date: 22 May 2002

(source: International Maritime Organization, www.imo.org)

1988 Protocol (adoption of tacit amendment procedure)

accession: 22 February 2002; effective date: 22 May 2002

(source: International Maritime Organisation, www.imo.org)

International Convention on Tonnage Measurement of Ships, 1969

accession: 27 November 2000; effective date: 27 February 2001

(source: International Maritime Organization, www.imo.org)

International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended by the 1973 Protocol

accession approved by Parliament: 6 March 2002 (source: Parliament)

deposit: 12 March 2004; effective date: 10 June 2004

(source: International Maritime Organization, www.imo.org)

International Convention on Civil Liability for Oil Pollution Damage, 1969, as replaced by the 1992 Protocol, as amended in 2000

accession approved by Parliament: 9 October 2001 (source: Parliament)

deposit: 18 December 2002; effective date: 18 December 2003

(source: International Maritime Organisation, www.imo.org)

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as replaced by the 1992 Protocol

accession approved by Parliament: 9 October 2001 (source: Parliament)

deposit: 18 December 2002; defective date: 18 December 2003

(source: International Maritime Organisation, www.imo.org)

Convention on the International Regulations for Preventing Collisions at Sea, 1972 (as amended)

accession: 27 November 2000 (source: International Maritime Organization, www.imo.org)

International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto

accession approved by Parliament: 9 October 2001 (source: Parliament)

deposit: 18 December 2002; effective date: 18 March 2003

(source: International Maritime Organisation, www.imo.org)

Note: Namibia has also acceded to Annexes I/II (Prevention of Pollution by Oil/Control of Pollution by Noxious Liquid Substances), III (Prevention of Pollution by Harmful Substances in Packaged Form) and V (Prevention of Pollution by Garbage from Ships), but has NOT acceded to Annex IV (Prevention of Pollution by Sewage from Ships) or the 1997 Protocol adding Annex VI (Prevention of Air Pollution from Ships). (source: International Maritime Organisation, www.imo.org)

International Convention for the Safety of Life at Sea, 1974 (as amended)

accession: 27 November 2000; effective date: 27 February 2001

(source: International Maritime Organization, www.imo.org)

Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974, as amended

accession: 27 November 2000; effective date: 27 February 2001
(source: International Maritime Organization, www.imo.org)

Namibia is NOT a party to the following protocol:

* *Protocol of 1988 relating to the Harmonized System of Surveys and Certification*

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978

accession approved by Parliament: 28 February 2002 (source: Parliament)
deposit: 24 January 2005; effective date: 24 April 2005
(source: International Maritime Organization, www.imo.org)

International Convention on Maritime Search and Rescue, 1979

accession approved by Parliament: 23 October 2002 (source: Parliament)
deposit: 12 March 2004; effective date: 11 April 2004
(source: International Maritime Organization, www.imo.org)

International Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988

accession approved by Parliament: 22 April 2003
deposit: 10 July 2004; effective date: 18 October 2004
(source: International Maritime Organization, www.imo.org)

Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988

deposit: 7 September 2005; effective date: 6 December 2005
(source: International Maritime Organization, www.imo.org)

International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990

accession approved by Parliament: 21 September 2006 (source: Parliament)
deposit: 18 June 2007; effective date: 18 September 2007
(source: International Maritime Organisation, www.imo.org)

Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977

(not yet in force internationally)

Namibia reportedly signed in 2007, but no ratification is recorded.

(sources: "Protocol 'given the nod' ", *The Namibian*, 29 October 2007; International Maritime Organisation, www.imo.org)

International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995

(not yet in force internationally)

deposit: 18 December 2008 (source: International Maritime Organization, www.imo.org)

Multilateral Agreement between Governments of Angola, Comoros, Madagascar, Mozambique, Namibia, and South Africa on Coordination of Maritime Search and Rescue Services, 2007

ratification approved by Parliament: 27 June 2007 (source: Parliament)

WEIGHTS, MEASURES AND STANDARDS

***Memorandum of Understanding on Co-operation in Standardization, Quality Assurance,
Accreditation and Metrology in SADC, 1999***

signed: 9 November 1999 (source: Ministry of Foreign Affairs)

Note: SADC Memoranda of Understanding are non-binding.

JUDGES

Judges' Remuneration Act 18 of 1990.

Summary: This Act covers remuneration, additional service benefits and motor vehicles for judges.

Amendments: Proc. 12/1994 (GG 848) amends the First Schedule to the Act. Act 24/1994 amends sections 2 and 3, substitutes the First and Second Schedules, and repeals Proc. 12/1994. Proc. 2/1999 (GG 2022), Proc. 14/2003 (GG 2974) and Proc. 11/2007 (GG 3869) amend the Second Schedule.

Regulations: Regulations are contained in GN 1/1999 (GG 2022), GN 107/2003 (GG 2986) and GN 33/2005 (GG 3410).

Judicial Service Commission Act 18 of 1995.

Summary: This Act governs the operation of the Judicial Service Commission established by Article 85 of the Constitution. It came into force on 20 November 1995 (GN 220/1995, GG 1197).

Appointments: See Proc. 1/1990, GN 96/2002 (GG 2759) and Proc. 7/2009 (GG 4251).

Cases: *S v Zemburuka (2)* 2003 NR 200 (HC).

APPOINTMENTS OF JUDGES AND ACTING JUDGES

Chief Justice, Judge President, Judge of the High Court and Prosecutor-General, Proc. 31/1991

High Court Judges, Proc. 17/1992

High Court Judge, Proc. 26/1994

Chief Justice of the Supreme Court, High Court Judge, and Acting High Court Judge, Proc. 1/1999 (GG 2022)

(Note: There are two Proclamations numbered "Proc. 1/1999" in the 1999 government gazettes – one in GG 2022 and one in GG 2032. The one referred to here appears in GG 2022.)

Judges of the High Court, Judge President of the High Court, Judge of the Supreme Court, Proc. 22/2003 (GG 3034)

Acting Judges of the Supreme Court and High Court, Proc. 30/2003 (GG 3092)

Acting Judge of the High Court, Proc. 3/2004 (GG 3128)

Acting Judges of the High Court, Proc. 4/2004 (GG 3133)

Acting Judges of the High Court, Proc. 35/2004 (GG 3207)

Acting Judges of the High Court, Proc. 36/2004 (GG 3207)

Acting Chief Justice of the Supreme Court, Judges of the High Court, Proc. 41/2004 (GG 3259)

Acting Judges of the High Court, Proc. 49/2004 (GG 3304)

Acting Chief Justice of the Supreme Court, Acting Judges of the High Court, Proc. 55/2004 (GG 3319)

Chief Justice of the Supreme Court, Judge President of the High Court, Proc. 56/2004 (GG 3322)

Acting Judges of the High Court, Proc. 58/2004 (GG 3336)

Acting Judge of the High Court, Proc. 59/2004 (GG 3336)
 Acting Judges of the High Court, Proc. 2/2005 (GG 3410)
 Acting Judges of the High Court, Proc. 16/2005 (GG 3532)
 Deputy-Minister of Works, Acting Judges of the High Court and Judge of the Supreme Court,
 Proc. 20/2005 (GG 3562)
 Acting Judges of the High Court, Proc. 2/2006 (GG 3603)
 Acting Judges of the High Court, Proc. 6/2006 (GG 3632)
 Acting Judge of the High Court, Proc. 7/2006 (GG 3647)
 Acting Judge of the High Court, Proc. 8/2006 (GG 3679)
 Acting Judges of the High Court, Proc. 11/2006 (GG 3715)
 Judge of the High Court, Proc. 14/2006 (GG 3746)
 Acting Judges of the High Court, Proc. 9/2007 (GG 3826)
 Acting Judges of the High Court, Proc. 12/2007 (GG 3877)
 Acting Judges of the Supreme Court and High Court, Proc. 14/2007 (GG 3912)
 Acting Judge of the High Court, Proc. 15/2007 (GG 3928)
 Acting Judge of the High Court, Proc. 18/2007 (GG 3928)
 Acting Judges of the High Court, Proc. 11/2008 (GG 4005)
 Acting Judge of the High Court, Proc. 20/2008 (GG 4066)
 Judge of the High Court, Proc. 21/2008 (GG 4066)
 Acting Judges of the Supreme Court, Proc. 25/2008 (GG 4085)
 Acting Judge of the High Court, Proc. 30/2008 (GG 4101)
 Acting Judges of the High Court, Proc. 36/2008 (GG 4129)
 Acting Judges of the Supreme Court, Proc. 37/2008 (GG 4153)
 Acting Judges of the Supreme Court and High Court, Proc. 38/2008 (GG 4156)
 Acting Judges of the Supreme Court and High Court, Proc. 4/2009 (GG 4225)
 Acting Judges of the High Court, Proc. 8/2009 (GG 4260)
 Acting Judges of the Supreme Court and High Court, Proc. 16/2009 (GG 4371)
 Acting Judges of the High Court, Proc. 17/2009 (GG 4371)
 Judges of the High Court, and Acting Judges of the Supreme Court and High Court, Proc.
 20/2009 (GG 4391)
 Judges and Acting Judges of the High Court and Supreme Court, Proc. 7/2010 (GG 4440)

SELECTED ARTICLES

Peter Von Doepp, *Politics and Judicial Decision Making in Namibia: Separate or Connected Realms?*, IPPR Briefing Paper No 39, October 2006, available at www.ippr.org.na/Briefing_Papers/BP39.pdf (analysis of 250 cases to test judicial independence)

Nico Horn & Anton Boesl, *The Independence of the Judiciary in Namibia*, Konrad Adenauer Stiftung, 2008, available at www.kas.de/proj/home/pub/8/2/year-2008/dokument_id-15058/index.html (reviewed by Yvonne Dawaseb in *Namibia Law Journal*, Volume 1, Issue 1, 2009, available at www.namibialawjournal.org).

See also **COURTS**.

See also Medical Aid Scheme for Members of the National Assembly, Judges and Other Office Bearers Act 23 of 1990 (**MEDICAL AID**).

See also Judges' Pensions Act 28 of 1990 (**PENSIONS**).

LABOUR

Shop Hours and Shop Assistants Ordinance 15 of 1939.

Summary: This Ordinance governs shop hours and certain working conditions of shop assistants.

Amendments: This Ordinance is amended by Ord. 4/1940, Proc. 34/1950, Proc. 50/1950, Ord. 10/1952, Ord. 5/1957, Ord. 39/1957, Ord. 4/1959 and Act 12/1986.

Employees' Compensation Act 30 of 1941, as amended in South Africa prior to Namibian independence.

Summary: This Act makes provision for the compensation of workers or their dependants if the worker is injured or killed in the course of employment. It was previously known as the Workmen's Compensation Act.

Applicability to SWA: Section 109*bis* states "This Act and any amendment thereto shall apply also in the territory including the portion of the territory known as the 'Rehoboth Gebiet' and in relation to all persons in the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951) and defined in the First Schedule to Proclamation No. 28 of 1923 of the territory."

Section 109*bis* also provides that all proclamations and notices issued under the principal Act prior to the 1956 amendment that made it applicable to SWA shall automatically apply to SWA, unless their applicability is expressly limited to an area that excludes SWA.

Section 1 defines "employers' organization", "Gazette", "provincial or local division of the Supreme Court", "territory" and "Republic" appropriately to include South West Africa.

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Labour) Transfer Proclamation, (AG 17/1977), dated 20 December 1977. However, section 3 of the transfer proclamation excluded this Act from the operation of Section 3(1) of the General Proclamation, meaning that the administration of this Act was not transferred to SWA.

Amendments: Act 9/1982 makes minor amendments to section 70 of the Act. Substantial amendments are made by RSA Proclamation 45 of 9 March 1990, in preparation for Namibian independence.

Act 5/1995, which came into force on 1 March 1995 (GN 52/1995, GG 1039), amends the Act substantially and changes its name from the Workmen's Compensation Act to the Employees' Compensation Act.

Sections 25(5) and 37 of the National Education Act 30 of 1980, which is brought into operation by AG 6/1981, provide that state teachers in South West Africa are to be deemed "workmen" while students at government schools may not be deemed "workmen". (However, this Act was repealed by the Education Act 16 of 2001 except

insofar as it applies to tertiary education, and by the Teachers' Education Colleges Act 25 of 2003 insofar as it applies to teachers' education colleges.)

Regulations: Regulations are contained in RSA GN R.581 of 1961, as amended by RSA Proc. 45/1990 (in addition to previous amendments which are not recorded here) and GN 47/2004 (GG 3169).

The amount referred to in section 3(2)(b) (exclusion of persons as employees) is set at N\$72 000 with effect from 1 March 2001 (GN 100/2001, GG 2544).

The amounts of compensation for temporary, partial, total and permanent disablement and death are increased in GN 46/2004 (GG 3169).

Tariffs of fees published in terms of the Act from time to time have not been recorded here. Notices of unclaimed payments have also not been recorded here.

Natives Minimum Wage Proclamation 1 of 1944.

Summary: This Proclamation, which appears to be obsolete, provides for the payment of minimum wages to "natives".

Amendments: This Proclamation is amended by Proc. 5/1944.

Development Brigade Corporation Act 32 of 1992.

Summary: This Act provides for the establishment of the Development Brigade Corporation, with the object of engaging in agricultural and other business activities for the purpose of providing training and skills development opportunities to unemployed persons. It came into force on 1 February 1993 (GN 15/1993, GG 580).

Regulations: Proc. 3/1993 (GG 577) and Proc. 20/1993 (GG 715) both relate to the designation of the Minister responsible for administering the Act.

Appointments: Directors are appointed in GN 113/1994 (GG 870).

Commissions: Commission of Inquiry into the Activities, Affairs, Management and Operation of the former Amalgamated Commercial Holding (Pty) Ltd (AMCOM) Registration No. 93/261 and the former Development Brigade Corporation (DBC) Established Under Section 2 of the Development Brigade Corporation Act (Proc.38/2004, GG 3221).

See also GN 132/2004 (GG 3221).

Namibia Qualifications Authority Act 29 of 1996.

Summary: This Act establishes a Namibia Qualification Authority which deals with matters relating to occupational standards for any occupation, job, post or position in any career structure, as well as appropriate curriculum standards. It came into force on 1 June 1998, and the administration of the Act was assigned to the Ministry of Higher Education, Vocational Training Science and Technology (Proc. 11/1998, GG 1861).

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 5, 6, 10 and 11.

The Vocational Education and Training Act 1 of 2008 amends sections 5 and 15.

Regulations: National Professional Standards for teachers are approved pursuant to section 3(c) in General Notice 356/2006 (GG 3739).

Regulations for the accreditation of persons, institutions or organisations are contained in GN 124/2006 (GG 3684).

Regulations relating to the evaluation of qualifications are contained in GN 182/2007 (GG 3914).

Regulations setting up the National Qualifications Framework for Namibia are contained in GN 125/2006 (GG 3685). Qualifications pursuant to this framework are registered as follows:

- Hospitality and Tourism - General Notice 129/2007 (GG 3850)
- Postal Services - General Notice 51/2010 (GG 4435)
- Business, Commerce and Management Studies - General Notice 53/2010 (GG 4435)
- Physical, Mathematical and Computer Sciences and Law, Military Science and Security - General Notice 54/2010 (GG 4435)
- Montessori Pre-primary and Primary Teaching Diplomas - General Notice 56/2010 (GG 4435) (Note that the heading of this notice is in error and might be misleading.)

Unit standards are registered as follows (in alphabetical order):

- Assessment - General Notice 132/2007 (GG 3850).
- Automotive Mechanics - General Notice 355/2006 (GG 3739), General Notice 134/2007 (GG 3850).
- Bricklaying - General Notice 355/2006 (GG 3739).
- Clothing Production - General Notice 355/2006 (GG 3739).
- Foundational Skills (Communication & Numeracy) – General Notice 299/2007 (GG 3914)
- HIV and AIDS Awareness – General Notice 296/2007 (GG 3914).
- Hospitality - General Notice 355/2006 (GG 3739).
- Hospitality and Tourism - General Notice 130-131/2007 (GG 3850).
- Information Communication Technology Fundamentals - General Notice 355/2006 (GG 3739).
- Information Communication Technology for Educators - General Notice 133/2007 (GG 3850).
- Mechanical Engineering-Metal Fabrication are registered in General Notice 135/2007 (GG 3850).
- Moderation of Assessment - General Notice 384/2007 (GG 3946)
- Office Administration - General Notice 355/2006 (GG 3739)
- Postal Services - General Notice 52/2010 (GG 4435) (Note that the heading of this notice is in error and might be misleading.)
- Road Construction and Maintenance - General Notice 66/2010 (GG 4435)
- Standards Setting - General Notice 55/2010 (GG 4435)

Accreditations of certain courses at certain institutions are published from time to time but have not been recorded here.

Affirmative Action (Employment) Act 29 of 1998.

Summary: This Act establishes an Employment Equity Commission and provides for affirmative action measures to achieve equal opportunity in employment for racially disadvantaged persons, women and persons with disabilities. It came into force, with the exception of section 2, sections 19-43 and sections 45-48, on 18 November 1998 (GN 278/1998, GG 1996). The remaining sections all came into force on 6 August 1999 (GN 156/1999, GG 2161).

Amendments: Act 6/2007 amends sections 1, 10, 23, 24, 30, 44, 45 and 47. The Labour Act 11 of 2007 amends section 45.

Regulations: A “relevant employer” for the purposes of the Act is defined as an employer which employs 50 or more employees by GN 158/1999 (GG 2161), which also contains guidelines for calculation and interpretation of this rule. GN 158/1999 is replaced by GN 95/2006 (GG 3658), which defines “relevant employer” as an employer which employs 25 or more employees.

Regulations are contained in GN 159/1999 (GG 2161).

GN 157/1999 (GN 2161) provides that the first affirmative action report by “an Office, Ministry or Agency in the Public Service, or by a parastatal, identified as a relevant employer” must be submitted by 6 August 2000.

Cases: *Elio & Another v Permanent Secretary of Education & Another* 2008 (2) NR 532 (LC). The Act is discussed in *dicta* in *Thloro v Minister of Home Affairs* 2008 (1) NR 97 (HC) beginning at 113C.

Articles: Namibia Institute for Democracy, *Implementing Affirmative Action in Namibia: A summarised guide to the Affirmative Action (Employment) Act (Act 29 of 1998)*, third edition, 2000, available at www.nid.org.na/pdf/publications/aff_action.pdf.

Related international agreements:

Convention on the Elimination of All Forms of Discrimination against Women, 1979
accession: 23 November 1992

Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women

effective date: 22 December 2000 (This is the date on which the Optional Protocol came into force internationally after being ratified by the first 10 countries, one of which is Namibia. The Namibian Parliament approved the Optional Protocol on 17 May 2000.)

Namibia has NOT agreed to the following amendment, which is not yet in force internationally:

* *Amendment to article 20, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination Against Women, 1995.*

SADC Protocol on Gender and Development, 2008

(not yet in force within SADC as of 23 June 2010) (source: SADC)

signature: 17 August 2008 (source: SADC)

ratification approved by Parliament: 7 October 2009 (source: Parliament)

SADC list of ratifications dated 23 June 2010 does not show ratification by Namibia

Labour Act 11 of 2007.

Summary: This Act consolidates and amends the labour law. It entrenches fundamental labour rights and protections, regulates the basic terms and conditions of employment, ensures the health, safety and welfare of employees, protects employees against unfair labour practices, regulates the registration of trade unions and employers' organizations, regulates collective labour relations, provides for the systemic prevention and resolution of labour disputes, establishes the Labour Advisory Council, Labour Court, Wages Commission and labour inspectorate, and provides for the appointment of the Labour Commissioner and Deputy Labour Commissioner.

This Act repeals both the Labour Act 6 of 1992 and the Labour Act 15 of 2004, which was brought only partially into force. There is an extensive Schedule of transitional provisions. Any reference to the 1992 Act in any law must be construed insofar as possible as a reference to the corresponding provision of this Act.

The Labour Act 15 of 2004 was intended to repeal the Labour Act 6 1992, but it never came into force in its entirety. Sections 75, 97(a), (b), (c), (e) and (h), 94(1) and (4), 98, 99, 100 and 101 and items 1 and 11(3) of Schedule 1 came into force on 30 November 2005 (GN 162/2005, GG 3534). Section 118 and item 13(1) of Schedule 1 came into force on 27 January 2006 (GN 20/2006, GG 3582).

All of the Act other than section 128 (prohibiting labour hire) came into force on 1 November 2008 (GN 260/2008, GG 4151). Section 128 of the Act came into force on 1 March 2009 (GN 1/2009, GG 4192).

Application of Act: Section 5 of the Act applies to all employers and employees. The remainder of the Act applies to all employers and employees except members of the Namibian Defence Force, the Namibian Police Force, municipal police services, the Namibian Central Intelligence Service or the Prison Service (unless the laws governing any of these services provide otherwise).

Application of the 1992 Act was addressed in the following:

Export processing zones are exempted from the operation of certain provisions of the Labour Act by section 8 of the Export Processing Zones Act 9 of 1995 (as amended by Act 6/1996).

Section 35 of the Namibia Central Intelligence Service Act 10 of 1997 provides that the Labour Act will not apply to the administration of the Service or to its staff members, with the exception of sections 35, 39, 40, 41, 52, 106 and 107.

Section 40 of the Namibia Water Corporation Act 12 of 1997 provides that employees who would cause or prolong a disruption of water supply to a customer by withholding their services shall be deemed to be rendering an essential service for the purposes of section 79 of the Act.

Exemptions: The following work is exempted from the prohibition on work on Sundays and public holidays in section 33(1) of the 1992 Act:

- GN 100/1998 (GG 1856): work by employees engaged in providing an essential service in a hospital, clinic, pharmacy, radiography, medical laboratory, mortuary, children's home or ambulance service
replaced by GN 301/1998 (GG 2010): nursing services, ambulance services, radiographic services, admission services,

porter's services, cleaning services, medical laboratory services, medical professional services, pharmacy services, health assistance (mortuary) services, child care services, Chief Children's Home Superintendent's services, driving services, Engineering Technician's services, Medical Assistant's services, Security Orderly's services and watchman's services.

- GN 49/2000 (GG 2280): security officers "who are engaged in the security services rendered by the security enterprises" (revoking any previous exemptions granted to any security enterprise in respect of Sunday and holiday work).
- GN 248/2000 (GG 2426): employees engaged in the continuous metallurgic process of Navachab Gold Mine
- GN 249/2000 (GG 2426): employees engaged in diamond mining operations by vessel (referred to as the Ocean Diamond Mining System)
- GN 77/2002 (GG 2746): all work activities of employees of Anglo Base Namibia (Proprietary) Limited Project
- GN 116/2002 (GG 2765): all work activities of employees of Trans Hex Marine (Namibia) (Proprietary) Limited, exempted on the basis of section 33(2)(f) pertaining to continuous operations
- GN 42/2003 (GG 2933): employees of the pre-treatment facility plant of the Namdeb Diamond Corporation (Pty) Ltd
- GN 43/2003 (GG 2933): employees of Ramatex Textiles Namibia (Pty) Ltd
- GN 38/2004 (GG 3161): employees of the Namdeb Diamond Corporation (Pty) Ltd – Pocket Beaches Project
- GN 141/2004 (GG 3237): employees of the Etosha Fishing Corporation (Pty) Ltd
- GN 268/2004 (GG 3345): employees of the Roads Authority: Roads Transport Inspection Services
- GN 269/2004 (GG 3345): employees in Namdeb Diamond Corporation (Pty) Ltd – Recovery Tailings Retreatment Plants, Sort House and No. 2 Plant
- GN 100/2005 (GG 3482): work activities in the farming division of WUM Properties
- GN 142/2005 (GG 3529): work performed in Namdeb Diamond Corporation (Pty) Ltd - Articulated Dump Truck Stripping Operations
- GN 1/2006 (GG 3573): work performed in petrol stations of Pupkewitz Motor Division in Ondangwa and Rundu, exempted on the basis of section 33(2)(f) pertaining to continuous operations
- GN 2/2006 (GG 3573): work in Okorusu Fluorspar (Pty) Ltd – Metallurgical Plants, exempted on the basis of section 33(2)(f) pertaining to continuous operations
- GN 83/2006 (GG 3647): work performed in Namdeb Diamond Corporation (Pty) Ltd – Marine Dredging Treatment Plant, exempted on the basis of section 33(2)(f) pertaining to continuous operations
- GN 3/2007 (GG 3771): work performed in Langer Heinrich Uranium (Pty) Ltd, exempted on the basis of section 33(2)(f) pertaining to continuous operations.
- GN 135/2007 (GG 3887): NAMPOST Ltd, exempted on the basis of section 33(2)(f) pertaining to continuous operations.
- GN 171/2008 (GG 4085): work in Reptile Uranium (Pty) Ltd.
- GN 172/2008 (GG 4085): work in PowerCom (Pty) Ltd-Customer Care Centre.

The following work is declared to be continuous operations in terms of section 15 of

the 2007 Act:

- GN 196/2009 (GG 4350): operations at Telecom Namibia, Customer Contact Centre and Information Communication Technology Technical Helpdesk
- GN 212/2009 (GG. 4371): Areva Resources Namibia
- GN 213/2009 (GG. 4371): Namib Mills (Pty) Ltd.

Regulations: Regulations, notices, declarations, registrations, collective agreements and exemptions from collective agreements made under the 1992 Act generally remain in force.

Regulations and notices made under the 1992 Act and still in force include the following:

GN 173/1992 (GG 533) sets 15 October 1991 as the relevant date for purposes of section 52(1)(a).

Particulars to be submitted by employers in the agricultural sector are contained in GN 115/2003 (GG 2990), which is replaced by GN 171/2003 (GG 3030); GN 89/2005 (GG 3465) again withdraws GN 115/2003 (although it was probably meant to replace GN 171/2003), and sets forth particulars to be submitted by employers in the agricultural sector.

Regulations relating to the health and safety of employees at work are contained in GN 156/1997 (GG 1617). The administration of these regulations is assigned to various ministers by Proc. 10/1997 (GG 1615).

Guidelines and instructions pertaining to HIV/AIDS in employment are issued in GN 78/1998 (GG 1835).

Regulations and notices made under the 2007 Act include the following:

General regulations are contained in GN 261/2008 (GG 4151), which replaces GN 174/1992 and GN 175/1992.

Rules relating to the conduct of conciliation and arbitration before the Labour Commissioner are contained in GN 262/2008 (GG 4151).

Registered collective agreements: Registered collective agreements have been declared binding on three industries:

Construction industry: GN 298/1996 (GG 1444) contains an agreement between the Metal and Allied Namibian Workers Union and the Construction Industries Federation of Namibia (dealing with minimum wages and minimum productivity levels) which is binding on the entire industry. Another agreement between these two parties (dealing with minimum wages, minimum protective clothing, minimum productivity levels, performance standards, living away allowance, safety, stop order facilities, service allowance and shop steward training) is declared to be binding on the entire industry in GN 272/1997 (GG 1752), as extended by GN 300/1998 (GG 2010) and as amended in accordance with the subsequent agreement published in GN 135/1999 (GG 2144). The applicability of this agreement was extended indefinitely by GN 85/2000 (GG 2301). It will remain in force until replaced by a further collective agreement. A collective agreement between the Metal and Allied Namibian Workers Union and the Construction Industries Federation of Namibia was declared binding on the parties and (with the exception of certain clauses) on the entire construction industry in GN 39/2003 (GG 2927). This agreement sets minimum wages for various construction employees. It is amended by another registered collective agreement between these parties, which is declared binding on the entire construction industry (with the exception of employers and employees

engaged in any “labour-based project”) in GN 24/2005 (GG 3392). This agreement is amended by GN 224/2008 (GG 4115), which is amended by GN 129/2009 (GG 4271). The agreement sets minimum wages for different categories of employees in the construction industry, currently starting at N\$9.57/hour for a labourer (from 1 March 2010).

Agricultural industry: A registered collective agreement between the Agricultural Employers’ Association (AEA), the Namibian National Farmers’ Union (NNFU) and the Namibia Farm Workers’ Union (NFWU) is declared binding on the entire agricultural industry in GN 77/2003 (GG 2946). This agreement sets a minimum wage for agricultural employees at N\$2.20/hour for entry level, plus (where the employee is required to live on the premises) housing with sanitation and water, and either food rations sufficient for the employee and any dependants or a minimum supplementary allowance of N\$210/month. Alternatively, an employee who resides on agricultural land must be allowed to keep livestock and carry on cultivation as necessary for the reasonable needs of the employee and dependants. A new agreement which is binding on the industry is contained in GN 237/2009 (GG 4390). It raises the entry-level minimum wage for agricultural employees at N\$2.87/hour, and the supplementary allowance in the absence of food rations (which may not exceed 35% of the employee’s basic wages) to N\$300/month.

Security industry: A registered collective agreement relating to employers and employee in the security industry which is declared binding on the entire industry is contained in GN 132/2005 (GG 3516). This agreement sets a minimum wage for entry-level security guards, at N\$25 per 12-hour shift (N\$2.09/hour). It is amended by a Memorandum of Agreement contained in GN 202/2008 (GG 4112), which raises the minimum wage for security personnel to N\$3.00 per hour and addresses the provision of uniforms. A new agreement for this industry, which raises the minimum wage for entry level security officers to N\$3.80 per hour and N\$4.00 shift bonus, is contained in GN 190/2009 (GG 4342).

Codes of Good Practice: A Code of Good Practice on Industrial Action (Strikes and Lock-outs), issued in terms of section 137(1)(a) of the 2007 Act, is contained in GN 208/2009 (GG 4361).

A Code of Good Practice on Picketing, issued in terms of section 137(1)(a) of the 2007 Act, is also contained in GN 208/2009 (GG 4361).

Labour Court Rules: Labour Court Rules are contained in GN 279/2008 (GG 4175), repealing the rules contained in GN 63/1994 (GG 841). The new rules became effective on 15 January 2009.

The Rules of the District Labour Courts are contained in GN 138/1993 (GG 747). These courts no longer exist in Namibia (see section 16(b) of Schedule 1 of the Act), although pending cases before district labour courts are to be completed in terms of section 15(4) of Schedule 1 of the Act.

Cases: The following cases concern the current **Labour Act 11 of 2007-**

Africa Personnel Services (Pty) Ltd v Government of the Republic of Namibia & Others 2009(2) NR 596 (SC) (section 128 prohibiting labour hire struck down as unconstitutional).

The following cases were decided when the **Labour Act 6 of 1992** was the operative law-

General

arbitration proceedings:

Erongo Mining and Exploration Co Ltd t/a Navachab Gold Mine v Mineworkers Union of Namibia 1993 NR 270 (LC)

change in conditions of employment:
Thiro v M & Z Motors NLLP 2002 (2) 370 NLC

constructive dismissal:
Transnamib Limited v Swartz NLLP 2002 (2) 60 NLC
Cymot (Pty) Ltd v McLoud 2002 NR 391 (LC)

costs of appeal:
Ikuambi v Tax Free Warehouse NLLP 2002 (2) 273 NLC

delay in challenging lawfulness of dismissal:
Kröger v Transnamib Limited (Air Namibia) & Others 1995 NR 84 (HC);
Krüger v Transnamib Limited (Air Namibia) & Others 1996 NR 168 (SC) (Note: The spellings of *Kröger/Krüger* are inconsistent between the High Court case and the supreme court case in the hard copy of the Namibian Law Reports.)

disciplinary code:
City Council of Windhoek v Pieterse 2000 NR 196 (LC) (effect of Industrial Relations Code as an internal disciplinary code, considered in the context of an application for rescission of a default judgement, on the issue of whether appellant showed a *bona fide* defence with some *prima facie* prospect of success)

disciplinary hearing:
Namibia Tourism Board v Kauapirura-Angula 2009 (1) NR 185 (LC)

“duress”:
Vlasiu v President of the Republic of Namibia & Others 1994 NR 332 (LC)

employment contracts:
Vlasiu v President of the Republic of Namibia & Others 1994 NR 332 (LC)
Kruger v The Council of the Municipality of Windhoek & Another NLLP 1998 (1) 157 NLC; 2002 (2) 114 NLC (interpretation of Conciliation Board Agreement governing terms and conditions of employment with respect to retirement age)
Bucher v Kalahari Express Airlines NLLP 2002 (2) 104 NLC (letter of appointment)
Ocean Diamond Mining SA v Louw NLLP 2002 (2) 276 RSA HC (C) (ruling by High Court of South Africa on restraint of trade provision in employment contract between Namibian employee and Namibian subsidiary)
Van Rooyen v University of Namibia 2004 NR 150 (LC) (effect of mistake in respect of employment contract)

failure to exhaust internal grievance procedures:
Van Heerden v Municipal Council of Walvis Bay NLLP 2002 (2) 306 NLC

jurisdiction:
K Golin t/a Golin Engineering v Cloete 1995 NR 254 (LC) (jurisdiction of district labour court and Labour Court after parties have reached a settlement in respect of alleged unfair dismissal)
Drysdale v Namibia Breweries Ltd & Another 1996 NR 301 (LC) (respective jurisdiction of district labour court and Labour Court)
CIC Holdings Ltd v Beukes & Another 2003 NR 106 (HC) (exclusive jurisdiction of Labour Court); *Beukes & Another v CIC Holdings Ltd* 2005 NR 534 (SC) (jurisdiction of Labour Court and High Court)
Habenicht v Chairman of the Board of Namwater Ltd & Others NLLP 2004 (4) 18 NHC (High Court versus district labour court as appropriate forum)
Reilly v Namibian Ports Authority 2005 NR 319 (LC) (jurisdiction of Labour Court and district labour court)

National Union of Namibian Workers v Naholo 2006 (2) NR 659 (HC)
(jurisdiction of district labour court, Labour Court and High Court)
Kiggundu & Others v Roads Authority & Others 2007(1) NR 175 (LC)
(jurisdiction of Labour Court and district labour court)

“managerial prerogative”:

Consolidated Diamond Mines (Pty) Ltd v Mine Workers’ Union of Namibia & Others (1) 1994 NR 180 (LC)

natural justice in disciplinary proceedings:

National Union of Namibian Workers v Naholo 2006 (2) NR 659 (HC)

recognition agreements:

Consolidated Diamond Mines (Pty) Ltd v Mine Workers’ Union of Namibia & Others (1) 1994 NR 180 (LC)

retirement age:

Kruger v The Council of the Municipality of Windhoek & Another NLLP 1998 (1) 157 NLC; 2002 (2) 114 NLC (determination of retirement age in view of changed pension fund agreement)

retrenchment:

Schutte & Others v Telecom Namibia Ltd (LC 2/98) (meaning of retrenchment)

Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd 2005 NR 257 (LC) (meaning of retrenchment)

Kruger & Others v Namibian Broadcasting Corporation 2006 (1) NR 233 (LC), *Namibian Broadcasting Corporation v Kruger & Others* 2009 (1) NR 196 (SC) (voluntary retrenchment)

rule nisi:

SWA Meat Corporation Ltd v Namibia Wholesale and Retail Workers Union & Others NLLP 1998 (1) 199 NLC (discharge of rule nisi when underlying purpose for it has fallen away because strike has ended)

sanctions for misconduct:

Foodcon (Pty) Ltd v Schwartz NLLP 2002 (2) 181 NLC

settlement agreements:

Mbome & Another v Foodcon Fishing Product NLLP 2002 (2) 202 NLC

sex discrimination (staff housing scheme):

Van Heerden v Municipal Council of Walvis Bay NLLP 2002 (2) 306 NLC

stay of District Labour Court judgement pending appeal:

Rössing Uranium Ltd v Cloete & Another 1999 NR 98 (LC)

“transfer” versus “promotion”:

Northern Fishing (Pty) v Tsuseb NLLP 2002 (2) 253 NLC

unfair labour practice:

Minister of Works Transport and Communication v Namupembe 2003 NR 90 (LC)

Labour Act 6 of 1992

section 1:

African Granite Co v Mineworkers Union of Namibia & Others 1993 NR 91 (LC) (“remuneration”)

Smit v Standard Bank Namibia 1994 NR 366 (LC) (“dispute”; “dispute of interests”; “dispute of rights”)

Paxton v Namib Rand Desert Trails (Pty) Ltd 1996 NR 109 (LC) (“employee” and “employer”)

Kruger v Office of the Prime Minister & Another 1996 NR 321 (LC) (“remuneration”)

Municipality of Windhoek v Van Wyk & Others 1999 NR 313 (LC) (“overtime”)

Hannah v Government of the Republic of Namibia 2000 NR 46 (LC) (judge does not fall within definition of “employee”)

Ameib Ranch Guest Farm v Matrefu & Others 2002 NR 311 (LC) (“strike”)

De Wee v Ackermanns (Pty) Ltd 2004 NR 30 (LC) (“casual employee”)

Engelbrecht & Others v Hennes 2007 (1) NR 236 (LC) (“employee” versus agent)

Van Wyk & Another v Rumingo & Others NLLP 2004 (4) 1 NLC; 1997 NR 102 (HC) (“employee” v independent contractor)

section 2:

Bourgwells Ltd v Shepalov & Others 1999 NR 410 (HC) (section 2(1))

section 4:

Thiro v M & Z Motors NLLP 2002 (2) 370 NLC

section 18:

Smit v Standard Bank Namibia 1994 NR 366 (LC) (jurisdiction)

Consolidated Diamond Mines (Pty) Ltd v Mineworkers Union of Namibia 1994 NR 360 (LC) (declaratory orders)

Nyambe v City Savings 1996 NR 31 (LC) (jurisdiction in terms of section 18(1))

Hailemo v Security Force Services 1996 NR 99 (LC) (representation of parties in Labour Court)

Pietersen v Ohlthaver & List Retirement Fund & Another 1996 NR 255 (LC) (jurisdiction to make declaratory orders)

Drysdale v Namibia Breweries Ltd & Another 1996 NR 301 (LC) (Labour Court’s lack of jurisdiction to hear a case of first instance concerning constructive dismissal)

Hannah v Government of the Republic of Namibia 2000 NR 46 (LC) (meaning of “employment” in section 18(1)(e))

CIC Holdings Ltd v Beukes & Another 2003 NR 106 (HC) (exclusive jurisdiction of Labour Court); *Beukes & Another v CIC Holdings Ltd* 2005 NR 534 (SC) (jurisdiction of Labour Court and High Court)

Cronje v Municipality Council of Mariental NLLP 2004 (4) 129 NSC (jurisdiction of Labour Court and district labour court)

Hitula v Chairperson of District Labour Court Windhoek & Another 2005 NR 83 (LC)(section 18(1)(c))

Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd 2005 NR 257 (LC) (jurisdiction of Labour Court)

Reilly v Namibian Ports Authority 2005 NR 319 (LC) (jurisdiction of Labour Court and district labour court)

Kiggundu & Others v Roads Authority & Others 2007 (1) NR 175 (LC)

Elio & Another v Permanent Secretary of Education & Another 2008 (2) NR 532 (LC) (review of decision of Permanent Secretary)

Kurtz v Nampost Namibia Ltd & Another 2009 (2) NR 696 (LC) (section 18(1)(e); right to legal representation at disciplinary hearing on complex charges, where Human Resources Manual provided for this in exceptional circumstances)

See also cases generally discussing jurisdiction in labour matters, listed above.

section 19:

Hailemo v Security Force Services 1996 NR 99 (LC) (section 19(3); representation of parties in Labour Court)

Namibia Development Corporation v Visagie NLLP 1998 (1) 166 NLC (section 19(1)(a))

section 20:

Vlasiu v President of the Republic of Namibia & Others 1994 NR 332 (LC)

President of the Republic of Namibia & Others v Vlasiu 1996 NR 36 (LC)

Pietersen v Ohlthaver & List Retirement Fund & Another 1996 NR 255 (LC)
Drysdale v Namibia Breweries Ltd & Namibia Resorts International 1996 NR 301 (LC)
Louw v The Chairperson of the District Labour Court & Another (Case 1) NLLP 2002 (2) 147 NLC (appeal versus review of costs order under this section)
Beukes v Peace Trust NLLP 2004 (4) 102 NLC
Cronje v Municipality Council of Mariental NLLP 2004 (4) 129 NSC
Transnamib Holdings Limited v Carstens NLLP 2004 (4) 209 NLC
Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd 2005 NR 257 (LC)
Kruger & Others v Namibian Broadcasting Corporation 2006 (1) NR 233 (LC), *Namibian Broadcasting Corporation v Kruger & Others* 2009 (1) NR 196 (SC)
Commercial Investment Corporation (Pty) Ltd v Namibian Food and Allied Workers Union & Others 2007 (2) NR 467 (LC)
National Housing Enterprise v Beukes & Others 2009 (1) NR 82 (LC)
Kurtz v Nampost Namibia Ltd & Another 2009 (2) NR 696 (LC)

section 21:

President of the Republic of Namibia & Others v Vlasiu 1996 NR 36 (LC) (application for leave to appeal; meaning of “questions of law”)
The Council of the Municipality of Windhoek & Another v Kruger NLLP 1998 (1) 161 NLC (points in limine challenging authority of municipality to apply for leave to appeal)
Rumingo & Others v Van Wyk 1997 NR 102 (HC) (interpretation of “question of law”)
Visagie v Namibia Development Corporation NLLP 1998 (1) 182 NLC (application for leave to appeal; meaning of “questions of law”); *Visagie v Namibia Development Corporation* 1999 NR 219 (HC) (questions of law versus findings of fact)
Beukes v Peace Trust NLLP 2004 (4) 102 NLC
Cronje v Municipality Council of Mariental NLLP 2004 (4) 129 NSC
Namibian Broadcasting Corporation v Mubita NLLP 2004 (4) 114 NLC
Transnamib Holdings Limited v Carstens NLLP 2004 (4) 209 NLC
S v Koch 2006 (2) NR 513 (SC) (section discussed in *dicta* at 526)
Cymot (Pty) Ltd v Cloete & Another 2007 (1) NR 320 (LC)

section 22:

Hailemo v Security Force Services 1996 NR 99 (LC) (representation of parties in Labour Court)

section 24:

Poolman & Others v Transnamib Ltd 1997 NR 89 (HC); *Transnamib Ltd v Poolman & Others* 1999 NR 399 (SC)
Karuaihe-Martin v Telecom Namibia NLLP 2002 (2) 267 NLC
Van Heerden v Municipal Council of Walvis Bay NLLP 2002 (2) 306 NLC
Thiro v M & Z Motors NLLP 2002 (2) 370 NLC
Jansen van Vuuren v Namibia Water Corporation Limited 2006 (2) NR 607 (LC)

section 25:

Erongo Mining and Exploration Co Ltd t/a Navachab Gold Mine v Mineworkers Union of Namibia 2000 NR 70 (LC)

section 28 (shift work):

Municipality of Windhoek v Van Wyk & Others 1999 NR 313 (LC) (non-active standby duty of firemen does not constitute shift work for the purposes of this section)

- Erongo Mining and Exploration Co Ltd t/a Navachab Gold Mine v Mineworkers Union of Namibia* 2000 NR 70 (LC) (effect when read together with section 25)
- section 32 (overtime):
- Poolman & Others v Transnamib Ltd* 1997 NR 89 (HC) (calculation of “day”)
- Municipality of Windhoek v Van Wyk & Others* 1999 NR 313 (LC) (parties can enter into an agreement about what constitutes “work” for purposes of overtime payment; non-active standby duty of firemen does not constitute “work” for the purposes of this section)
- section 33 (Sundays and public holidays):
- Municipality of Windhoek v Van Wyk & Others* 1999 NR 313 (LC) (non-active standby duty of firemen does not constitute “work” for the purposes of this section)
- Erongo Mining and Exploration Co Ltd t/a Navachab Gold Mine v Mineworkers Union of Namibia* 2000 NR 70 (LC) (meaning of “remuneration” in section 33(3)(a))
- section 34 (night work):
- Municipality of Windhoek v Van Wyk & Others* 1999 NR 313 (LC) (non-active standby duty of firemen does not constitute work performed at night for the purposes of this section)
- section 39:
- Erundu Stevedoring (Pty) Ltd v Namibia Seaman & Allied Workers Union* NLLP 2004 (4) 187 NLC (meaning of “on full remuneration”; leave to appeal to Supreme Court granted)
- Municipal Council, City of Windhoek v Swarts* 2006 (1) NR 341 (LC)
- section 45:
- Smit v Standard Bank Namibia* 1994 NR 366 (LC) (unfair dismissal)
- Navachab Gold Mine v Izaaks* 1996 NR 79 (LC) (section 45(1): unfair dismissal; fair and valid reason for dismissal)
- Hailemo v Security Force Services* 1996 NR 99 (LC) (unfair dismissal)
- Kamanya & Others v Kuiseb Fish Products Ltd* 1996 NR 123 (LC) (effect of failure to employ fair procedure where there is a fair reason for dismissal)
- Society for the Prevention of Cruelty to Animals v Terblanche* 1996 NR 398 (HC) (unfair dismissal; procedure)
- M Pupkewitz & Sons v Kankara* 1997 NR 70 (LC) (unfair dismissal; substantive fairness)
- Rossam v Kraatz Welding Engineering Ltd* 1998 NR 90 (LC) (unfair dismissal; procedural fairness)
- Goagoseb v Arechenab Fishing and Development Co* NLLP 1998 (1) 143 NLC; NLLP 2004 (4) 10 NLC (unfair dismissal)
- Anguwo & Others v Northern Fishing Company* NLLP 1998 (1) 196 NLC (reinstatement of some but not others following an illegal strike action constitutes *prima facie* case of unfair labour practice)
- Swakopmund Hotel & Entertainment Centre v Kariab* NLLP 1998 (1) 213 NLC (unfair dismissal; substantive fairness)
- Cross Country Carriers v Farmer* NLLP 1998 (1) 226 NLC; NLLP 2002 (2) 34 NLC (employee’s failure to tender services does not constitute a “dismissal”)
- Njathi v Permanent Secretary, Ministry of Home Affairs* 1998 NR 167 (LC) (dismissal by operation of section 24(5) of Public Service Act is for fair and valid reason and in accordance with fair procedure)
- Oa-Eib v Swakopmund Hotel & Entertainment Centre* 1999 NR 137 (LC) (unfair dismissal; procedural and substantive fairness)

Hartlief Continental Meat Products (Pty) Ltd v Mutota & Others NLLP 2002 (2) 45 NLC (unfair dismissal; procedural and substantive fairness)

Links v Cross Country Carriers NLLP 2002 (2) 291 NLC (effect of failure to employ fair procedure where there is a fair reason for dismissal)

Namibia Dairies (Pty) Ltd v Nafau & Others NLLP 2002 (2) 314 NLC (unfair dismissal)

Mazian v Transnamib Transport (Pty) Ltd NLLP 2002 (2) 352 NLC (unfair dismissal; interpretation of section 45(1) and procedural unfairness)

Kurtz v Nampost Namibia Ltd & Another 2009 (2) NR 696 (LC) (fair procedure; right to legal representation at disciplinary hearing on complex charges, where Human Resources Manual provided for this in exceptional circumstances)

sections 45-46:

Du Toit v The Office of the Prime Minister 1996 NR 52 (LC) (holding: sections 45 and 46 (unfair dismissal) do not apply to termination of employment by notice in terms of a contract or a collective agreement in terms of section 47 if sections 47, 49, 51 and 52 read with sections 69-72 are complied with; dicta: sections 45 and 46 on unfair dismissal do not apply to fixed term contracts which expire by the effluxion of time, with the possible exception of cases where there is an “expectation of tenure”)

PEP Stores Namibia (Pty) Ltd v Iyambo & Others 2001 NR 211 (LC) (principle of collective guilt not a fair basis for dismissal)

Hailulu v Council of the Municipality of Windhoek 2002 NR 305 (LC) (unfair dismissal)

Model Pick ‘n Pay Family Supermarket v Mwaala 2003 NR 175 (LC) (dismissal for theft/dishonesty; when courts will interfere with decision of employer to impose sanction of dismissal)

Shiimi v Windhoek Schlachtereij (Pty) Ltd NLLP 2002 (2) 224 NLC (appropriate award to employee in respect of unfair dismissal)

PEP Stores (Namibia) (Pty) Ltd. v Iyambo & Others NLLP 2002 (2) 336 NLC

Swartbooi v Heunis NLLP 2002 (2) 367 NLC

Namibia Beverages v Hoaës NLLP 2002 (2) 380 NLC (repeated in NLLP 2004 (4) 1 NLC)

Meintjies v Joe Gross t/a Joe’s Beerhouse 2003 NR 221 (HC); confirmed in *Joe Gross t/a Joe’s Beerhouse v Meintjies* 2005 NR 413 (SC) (sections 45 and 46 on unfair dismissal apply to contracts terminated in accordance with sections 47-53)

Kausiona v Namibian Institute of Mining & Technology (NIMT) NLLP 2004 (4) 43 NLC

De Wee v Ackermanns (Pty) Ltd 2004 NR 30 (LC) (unfair dismissal of an employee in a situation with a lower degree of permanency but which does not meet the statutory definition of “casual employee”)

Metropolitan Namibia Ltd v Haimbili NLLP 2004 (4) 110 NLC (dismissal upheld in case involving employee dishonesty)

Van den Heever v Imcor Zinc (Pty) Ltd NLLP 2004 (4) 257 NLC (procedural and substantive fairness of dismissal)

Kahoro & Another v Namibia Breweries Limited 2008 (1) NR 382 (SC) (in the absence of a fair procedure, the employer bears the onus of proving that there was nevertheless a fair and valid reason for a dismissal)

LL Diamonds (Pty) Ltd v Thobias 2009 (1) NR 346 (LC) (dismissal of employee on probation requires proper enquiry into employee’s work performance)

section 46:

Navachab Gold Mine v Izaaks 1996 NR 79 (LC) (section 46(1)-remedies)

Hailemo v Security Force Services 1996 NR 99 (LC) (section 46(3)-standard of proof of fair dismissal by employer is balance of probabilities; section 46(4); considerations relevant to determining fairness)

Drysdale v Namibia Breweries Ltd & Another 1996 NR 301 (LC)

Society for the Prevention of Cruelty to Animals v Terblanche 1996 NR 398 (HC) (section 46(1)-remedies)

M Pupkewitz & Sons v Kankara 1997 NR 70 (LC) (section 46(1)(a)(iii)-remedies; section 46(4)(b)-nature of order in respect of unfair dismissal)

Namibia Development Corporation v Visagie NLLP 1998 (1) 166 NLC (section 46(3)-employer's duty to lead evidence first in accordance with burden of proof as stated in this section)

Swakopmund Hotel & Entertainment Centre v Kariab NLLP 1998 (1) 213 NLC (section 46(3)-employer's burden of proving fair dismissal not discharged)

Rossam v Kraatz Welding Engineering Ltd 1998 NR 90 (LC) (section 46(4); appropriate relief for unfair dismissal)

Engelbrecht v Transnamib Holdings Ltd 2003 NR 40 (LC); *Transnamib Holdings Ltd v Engelbrecht* 2005 NR 372 (SC) (meaning of the term "reinstatement" in section 46(1)(a)(i))

Commercial Bank of Namibia Ltd. v Van Wyk NLLP 2004 (4) 250 NLC (grounds for dismissal upheld)

Model Pick 'n Pay Family Supermarkets v Mukosho NLLP 2004 (4) 219 NLC (grounds for dismissal upheld)

Josob v Namibia Breweries (Pty) Ltd 2008 (1) NR 117 (LC) (onus of proof)

Parcel Force Namibia (Pty) Ltd v Tsaeb 2008 (1) NR 248 (LC) (unfair dismissal and appropriate remedies; order for reinstatement confirmed despite long passage of time)

Pioneerspark Service Station v Afrikaner & Another 2008 (1) NR 353 (LC) (dismissal on ground of dishonest conduct held to be fair despite fact that employee did not benefit from the dishonesty)

section 47:

African Granite Co v Mineworkers Union of Namibia & Others 1993 NR 91 (LC) (section 47(1)-notice requirements; section 47(5)-"remuneration")

Meintjies v Joe Gross t/a Joe's Beerhouse 2003 NR 221 (HC); confirmed in *Joe Gross t/a Joe's Beerhouse v Meintjies* 2005 NR 413 (SC) (termination of contract by notice in terms of section 47 constitutes a dismissal as contemplated by section 45)

Kiggundu & Others v Roads Authority & Others 2007 (1) NR 175 (LC) (termination of contract with pay in lieu of notice constitutes a dismissal as contemplated by section 45 and requires a fair procedure)

section 50 (retrenchment):

African Granite Co v Mineworkers Union of Namibia & Others 1993 NR 91 (LC) (requirements of notice of intention to retrench; meaning of "opportunity to negotiate")

Goagoseb v Arechenab Fishing & Development Co NLLP 1998 (1) 143 NLC; NLLP 2004 (4) 10 NLC (section 50(1)(b)-retrenchment)

Namibia Development Corporation v Visagie NLLP 1998 (1) 166 NLC (employer's duties concerning intended retrenchment; interpretation of section 50(1)(b) as providing only for an opportunity to negotiate in relation to the effects of the proposed retrenchment); *Visagie v Namibia Development Corporation* 1999 NR 219 (HC) (discussing

- meaning of “intends” and “negotiate”, and overturning finding of Labour Court on compliance with section 50(1)(b))
- Anguwo & Others v Northern Fishing Company NLLP* 1998 (1) 196 NLC (dismissal following illegal strike action cannot be categorised as retrenchment)
- HS Contractors v Vihanga NLLP* 2002 (2) 138 NLC (compliance with section 50(1) and procedure in respect of criminal offences under section 50(2))
- Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd* 2005 NR 257 (LC) (section 50(1)(b)-validity of purported retrenchment)
- Namibian Broadcasting Corporation v Kruger & Others* 2009 (1) NR 196 (SC)
- Seebach v Tauber & Corssen Trading (Pty) Ltd & Another* 2009 (1) NR 339 (LC)
- section 52:
- Namibia Wholesale and Retail Workers Union (NWRWU) & Others v Democratic Media Holdings* 1998 NR 109 (LC) (section 52(1)-deduction of employer’s contribution to pension fund from severance allowance following retrenchment)
- Lalandii (Pty) Ltd v Butshingi NLLP* 2002 (2) 409 NLC (section has no application to person with whom there was no subsisting employment contract)
- section 54:
- Mineworkers Union of Namibia v Damara Granite (Pty) Ltd NLLP* 2002 (2) 173 NLC
- section 58:
- PEP Stores Namibia (Pty) Ltd v Iyambo & Others* 2001 NR 211 (LC)
- Mineworkers Union of Namibia v Damara Granite (Pty) Ltd NLLP* 2002 (2) 173 NLC
- Namibia Seaman and Allied Workers Union (NASAWU) v Lalandi Fishing (Pty) Ltd & Others* 2003 NR 71 (LC)
- NASAWU v Lalandi Fishing (Pty) Ltd & Others NLLP* 2004 (4) 76 NLC
- section 67:
- Namdeb Diamond Corporation (Pty) Ltd v Mineworkers Union of Namibia NLLP* 2002 (2) 188 NLC (duty to bargain and good faith negotiation)
- Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd* 2005 NR 257 (LC) (in relation to jurisdiction of Labour Court)
- section 74:
- Jansen van Vuuren v Namibia Water Corporation Limited* 2006 (2) NR 607 (LC)
- Elio & Another v Permanent Secretary of Education & Another* 2008 (2) NR 532 (LC)
- section 79:
- Smit v Standard Bank Namibia* 1994 NR 366 (LC) (section 79(2)(a)(i)(aa)-lock-outs)
- section 81:
- Consolidated Diamond Mines (Pty) Ltd v Mineworkers Union of Namibia* 1994 NR 360 (LC) (section 81(6)-duties of employees not participating in strike)
- Navachab Joint Venture t/a Navachab Gold Mine v Mineworkers Union of Namibia & Others* 1995 NR 225 (LC) (section 81(3)-right to picket)
- SWA Meat Corporation Ltd v Namibia Wholesale and Retail Workers Union & Others NLLP* 1998 (1) 199 NLC (section 81(1)-notice of strike action need not include exact date and time of intended strike; confirmation of *Navachab Joint Venture t/a Navachab Gold Mine v*

Mineworkers Union of Namibia 1995 NR 225 (LC) on section 81(3)-
interpretation of right to picket)

section 82:

SWA Meat Corporation Ltd v Namibia Wholesale and Retail Workers Union & Others NLLP 1998 (1) 199 NLC (interpretation of endangerment of “life, health or safety of any person”)

section 107:

Nanditume v Minister of Defence 2000 NR 103 (LC) (exclusion of applicant from the NDF solely on the basis that he was found to be HIV positive constitutes unfair discrimination in terms of section 107)

Kiggundu & Others v Roads Authority & Others 2007 (1) NR 175 (LC) (does not cover discrimination on the grounds of nationality)

section 111:

Hitula v Chairperson of District Labour Court Windhoek & Another 2005 NR 83 (LC)(section 111(1)(c))

The following cases concern the **Labour Court Rules 1994** contained in GN 63/1994 (GG 841) and now repealed, and the **District Labour Court Rules** contained in GN 138/1993 (GG 747).

Labour Court Rules 1994

Rule 1:

Nyambe v City Savings 1996 NR 31 (LC)

Rule 4(3):

Hailemo v Security Force Services 1996 NR 99 (LC) (Rule 4(3) held to be *ultra vires* section 22 of the Labour Act)

Rule 6(16)-(17)

Mineworkers Union of Namibia (MUN) v CSO Valuations (Pty) Ltd 2002 (2) 208 NLC

Rule 6(23):

Namibia Food and Allied Workers Union v Cadilu Fishing (Pty) Ltd 2005 NR 113 (LC)

Beukes & Others v National Housing Enterprise 2007 (1) NR 142 (LC)

Rule 6(25):

Van Rooyen v University of Namibia 2004 NR 150 (LC)

Rule 6(27):

Nyambe v City Savings 1996 NR 31 (LC)

Rule 8(1):

Van Rooyen v University of Namibia 2004 NR 150 (LC)

Hitula v Chairperson of District Labour Court Windhoek & Another 2005 NR 83 (LC)

Rule 9(b):

Nyambe v City Savings 1996 NR 31 (LC)

Rule 12:

Vlasiu v President of the Republic of Namibia & Others 1994 NR 332 (LC)

Nyambe v City Savings 1996 NR 31 (LC)

Rule 15(2):

Elio & Another v Permanent Secretary of Education & Another 2008 (2) NR 532 (LC)

Rule 18:

Shiimi v Windhoek Schlachtereij (Pty) Ltd NLLP 2002 (2) 224 NLC

Windhoek Optics (Pty) Ltd v De Jager NLLP 2004 (4) 22 NLC

Ministry of Regional and Local Government and Housing v Muyunda 2005 NR 107 (LC)

Rule 19(2):

Ministry of Basic Education, Sports & Culture v Sauer NLLP 2004 (4) 192
NLC.

District Labour Court Rules

Rule 4:

Town Debt Collecting CC & Another v Boois & Another NLLP 2002 (2) 392
NLC

Rule 6:

Transnamib Holdings Ltd v Garoeb NLLP 2004 (4) 68 NLC

Rule 7:

Anguwo & Others v Northern Fishing Company NLLP 1998 (1) 196 NLC
(effect of failure of respondent to oppose)

Thiro v M & Z Motors NLLP 2002 (2) 370 NLC

De Wee v Ackermanns (Pty) Ltd 2004 NR 30 (LC)

Elleries Furniture Namibia (Pty) Ltd t/a Furncity Furniture v De Vos NLLP
2004 (4) 35 NLC

Rule 10:

Transnamib Holdings Ltd v Lourens NLLP 2002 (2) 360 NLC

Transnamib Holdings Ltd v Cartstens 2003 NR 213 (LC)

Louw v The Chairperson of the District Labour Court & Another (Case 1)
NLLP 2002 (2) 147 NLC (stated in *dicta* that because spirit of rule is
to avoid formality, unsworn translations may be received into
evidence)

Elleries Furniture Namibia (Pty) Ltd t/a Furncity Furniture v De Vos NLLP
2004 (4) 35 NLC

Transnamib Holdings Ltd v Garoeb NLLP 2004 (4) 68 NLC

Transnamib Holdings Limited v Carstens NLLP 2004 (4) 209 NLC

Hitula v Chairperson of District Labour Court Windhoek & Another 2005
NR 83 (LC)

Mdaka v Gendev of Namibia 2005 NR 483 (LC)

Rule 13:

Stahn t/a HS Contractors v Kapuka & Others 2000 NR 133 (LC) (joint
complaint)

Rule 18:

Namibia Beverages v Hoaës NLLP 2002 (2) 380 NLC (repeated in NLLP
2004 (4) 1 NLC)

Rule 19:

Uazeua & Others v Smith t/a Jakaranda Restaurant 2001 NR 227 (LC)

Shiimi v Windhoek Schlachtereij (Pty) Ltd NLLP 2002 (2) 224 NLC

Thiro v M & Z Motors NLLP 2002 (2) 370 NLC

Tjihiua v Windhoek Municipality NLLP 2002 (2) 413 NLC

Windhoek Optics (Pty) Ltd v De Jager NLLP 2004 (4) 22 NLC

Kausiona v Namibian Institute of Mining & Technology (NIMT) NLLP 2004
(4) 43 NLC

Rule 21:

Beukes & Another v CIC Holdings Ltd 2005 NR 534 (SC)

Rule 22:

Transnamib Holdings Ltd v Cartstens 2003 NR 213 (LC)

Town Debt Collecting CC & Another v Boois & Another NLLP 2002 (2) 392
NLC

Transnamib Holdings Ltd v Garoeb NLLP 2004 (4) 68 NLC

Transnamib Holdings Limited v Carstens NLLP 2004 (4) 209 NLC

Hitula v Chairperson of District Labour Court Windhoek & Another 2005
NR 83 (LC) (*obiter* noting problems of construction),

The following are post-independence cases dealing with the previous **Conditions of Employment Act 12 of 1986-**

Namib Wood Industries (Pty) Ltd v Mutiltha & Another 1991 NR 158 (HC)
Van der Berg v Chairman of the Disciplinary Committee (Oranjemund) of Consolidated Diamond Mines (Pty) Ltd & Others 1991 NR 417 (HC)
Nangombe & Others v Ackermans Ltd 1992 NR 10 (HC)
Engels v Allied Chemical Manufacturers (Pty) Ltd 1992 NR 372 (HC).

The following case concerns **ILO Convention 158:**

Namibia Development Corporation v Visagie NLLP 1998 (1) 166 NLC (Article 13)

Articles:

Herbert Jauch, *ILO Fact Boxes: Namibia's Labour Act, No 11 of 2007*, South Africa: ILSSA Project, International Labour Office (ILO), available from the Labour Resource and Research Institute (LaRRI), Windhoek

Nico Horn and Kaijata Kanguuehi, "*African Personnel Services v Government of Namibia & Others*, decided on 1 December 2008. Case No. A4/2008", *Namibia Law Journal*, Volume 1, Issue 1, 2009, available at www.namibialawjournal.org

Fritz Nghiishililwa, "The banning of labour hire in Namibia: How realistic is it?", *Namibia Law Journal*, Volume 1, Issue 2, 2009, available at www.namibialawjournal.org.

COMMISSIONS

Commission of Inquiry into Labour Matters in South West Africa (AG 32/1987).

Commission of Inquiry into Labour Related Matters Affecting Agricultural Employees and Domestic Employees (Proc. 1/1995, GG 1020).

See also GN 14/1991 (GG 1020), as amended by GN 55/1995 (GG 1044).

INTERNATIONAL LAW

Except where otherwise indicated, this data comes from the database of the Washington (USA) office of the International Labour Organisation, which is available at <http://usa.ilo.org/aboutilo/convent.html>.

African Regional Protocol Concerning Distribution of Seats in the Governing Body of the ILO

accession: 17 October 1997 (source: Ministry of Foreign Affairs)

Instrument of Amendment of ILO, 1986

accession: 17 October 1997 (source: Ministry of Foreign Affairs)

Instrument of Amendment of ILO, 1997

(not yet in force internationally as of 27 February 2003)

ratification: 27 January 1999

ILO Convention 29 concerning Forced Labour, 1930

accession: 15 November 2000 (source: ILOLEX, <http://ilolex.ilo.ch:1567/cgi-lex/>)

ILO Convention 87: Freedom of Association and the Right to Organise, 1948

accession: 3 January 1995

ILO Convention 98: Right to Organise and Collective Bargaining, 1949

accession: 3 January 1995

ILO Convention 105 on the Abolition of Forced Labour, 1957

accession: 15 November 2000 (source: ILOLEX, <http://ilolex.ilo.ch:1567/cgi-lex/>)

ILO Convention 100 on Equal Remuneration, 1951

accession approved by Parliament: 10 March 2010 (source: Parliament)

accession: 6 April 2010 (source: www.ilo.org)

ILO Convention 111: Convention concerning Discrimination (Employment and Occupation), 1958

accession (without protocol): 3 November 2000 (with proviso relating to “national extraction”); 23 October 2001 (with no proviso) (source: Parliament)

ILO Convention 138 on the Minimum Age for Admission to Employment and Work, 1973

accession: 15 November 2000 (source: ILOLEX, <http://ilolex.ilo.ch:1567/cgi-lex/>)

ILO Convention 144: Tripartite Consultation (International Labour Standards), 1976

accession: 3 January 1995

ILO Convention 150: Labour Administration, 1978

accession: 28 June 1996

ILO Convention 158: Termination of Employment, 1982

accession: 28 June 1996

ILO Convention 182 on the Prohibition and Immediate Elimination of the Worst Forms of Child Labour, 1999

ratification: 15 November 2000 (source: Ministry of Foreign Affairs)

ILO Convention 184 and Recommendation 192 on Safety and Health in Agriculture, 2001

ratification: 8 November 2001 (source: Parliament)

Cases: *Namibia Development Corporation v Visagie* NLLP 1998 (1) 166 NLC (Article 13).

Charter of Fundamental Social Rights in SADC, 2003

This Charter enters into force upon signature by member states, without ratification.

(entered into force within SADC on 26 August 2003) (source: SADC)

signature: 26 August 2003 (source: SADC)

SADC Protocol on the Facilitation of Movement of Persons, 2005

(not yet in force within SADC as of 23 June 2010) (source: SADC)

signature: 18 August 2005

not ratified by Namibia as of 23 June 2010 (source: SADC)

See also articles on child labour listed under **CHILDREN**.

See also National Vocational Training Act 20 of 1994 (**EDUCATION**).

See also Petroleum (Exploration and Production) Act 2 of 1991 (regulations on health, safety and welfare of employees) (**MINING AND MINERALS**)

See also Posts and Telecommunications Companies Establishment Act 17 of 1992 with regard to the conditions of service of employees of the posts and telecommunications companies (**COMMUNICATIONS**).

See also **PUBLIC SERVICE**.

See also as examples of municipal regulations on trading: Windhoek Municipality: Amendment of Street and Traffic Regulations (General Notice 27/1994, GG 797) (including rules regarding hawking by children), Walvis Bay Municipality: Regulations on informal trading (General Notice 291/1998, GG 2000), and Windhoek Municipality: Street Trading Regulations (General Notice 252/1999, GG 2179) (**REGIONAL AND LOCAL GOVERNMENT**).

See also Social Security Act 34 of 1994 (**SOCIAL SECURITY**).

See also Export Processing Zones Act 9 of 1995 (**TRADE AND INDUSTRY**).

LAND

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

Crown Lands (Trespass) Proclamation 7 of 1919.

Summary: This Proclamation 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, Proc. 31/1938 and Proc. 18/1948.

Crown Land Disposal Proclamation 13 of 1920.

Summary: This Proclamation made the Crown Land Disposal Ordinance, 1903, of the Transvaal applicable to South West Africa, and thus 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, SA Proc. 200 of 1950, Ord. 7/1951, Ord. 36/1958 and Ord. 17/1965. It was repealed in respect of Walvis Bay by RSA Proclamation 149 of 20 August 1982.

Land Titles Proclamation 2 of 1921.

Summary: This Proclamation makes provision for the issue of registered title to certain lands in the territory.

Amendments: This Proclamation is amended by Proc. 14/1922, Proc. 1/1937, Proc. 6/1942, Proc. 3/1949 and the RSA *Registration of Deeds in Rehoboth Act 93 of 1976*. It was applied to the Rehoboth Gebiet by Proc. 12/1930.

Fencing Proclamation 57 of 1921.

Summary: This Proclamation relates to the erection and maintenance of dividing fences between adjoining properties.

Amendments: This Proclamation is amended by Proc. 13/1923, Proc. 18/1925, Proc. 28/1925, Ord. 4/1928, Proc. 22/1935, Proc. 14/1950, Proc. 48/1950, Ord. 44/1952, Ord. 21/1955, Ord. 6/1958, Ord. 14/1958, Ord. 34/1959, Ord. 23/1963 and Ord. 26/1965.

It must be read together with Ord. 4/1928, which concerns contributions towards the costs of dividing fences. It must also be read together with Ord. 6/1957 (as amended by Ord. 28/1959), which concerns jackal-proof fencing.

Small Settlements Commonages Subdivision Proclamation 13 of 1926.

Summary: This Proclamation 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 empowers the Administrator to set aside portions of land designated as “reserves for natives or Coloured persons” as sites for churches, schools or missions.

Amendment of Execution (Mortgaged Properties) Proclamation 6 of 1933.

Summary: This Proclamation amends the law relating to the execution of judgements in respect of immovable property, in order to provide assistance to mortgage debtors “in view of the prevailing financial depression”. There is, however, no time limit on its application.

Town Planning Ordinance 18 of 1954.

Summary: This Ordinance makes provision for town planning schemes. It was brought into operation by Proc. 66/1960.

Amendments: The Ordinance is amended by Ord. 13/1968, Ord. 13/1970, Ord. 11/1973, Ord. 23/1973, Ord. 10/1977 and Ord. 5/1979. It is also substantially amended by Act 27/1993, which makes it consistent with an independent Namibia. It is further amended by Act 15/2000 (sections 2, 4, 47).

The application of the Ordinance in Export Processing Zones is affected by section 5(e) of the Export Processing Zones Act 9 of 1995.

Regulations: Regulations pertaining to fees are contained in GN 11/2008 (GG 3983).

Cases: *Grobbelaar & Another v Walvis Bay Municipality & Another* 1997 NR 259 (HC).

The following case concerns the Windhoek Town Planning Scheme prepared in terms of the Ordinance-

Ohlthaver & List Finance & Trading Corporation Ltd & Others v Minister of Regional and Local Government and Housing & Others 1996 NR 213 (SC).

Trespass Ordinance 3 of 1962.

Summary: This Ordinance 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.

Cases: *S v Mynhardt*; *S v Kuinab* 1991 NR 336 (HC); *S v Williams* 2007 (2) NR 399 (HC).

Townships and Division of Land Ordinance 11 of 1963.

Summary: This ordinance relates to the establishment of townships.

Amendments: The Ordinance is amended by Ord. 36/1967, Ord. 7/1969, Ord. 2/1970, Ord. 10/1973, Ord. 17/1975, Ord. 9/1977, Act 3/1985, Act 28/1992 (which is brought into operation by GN 142/1992, GG 511), Act 21/1998 and Act 11/2000.

The schedule to the Ordinance is amended by GN 63/1999 (GG 2083).

The application of the Ordinance in Export Processing Zones is affected by section 5(e) of the Export Processing Zones Act 9 of 1995.

Regulations: Township Board Regulations are contained in GN 165/1973. Regulations relating to fees are contained in GN 10/2008 (GG 3983). Notices relating to specific townships have not been recorded.

Cases: *Erongo Regional Council v Wlotzkasbaken Home Owners Association* 2009 (1) NR 252 (SC) (discussion of township development process applied to Wlotzkasbaken).

Immovable Property (Removal or Modification of Restrictions) Act 94 of 1965, as amended in South Africa prior to Namibian independence.

Summary: This Act concerns restrictions imposed on land by wills and similar instruments.

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.”

Subdivision of Agricultural Land Act 70 of 1970, as amended in South Africa to March 1978.

Summary: This Act 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 were made expressly applicable to SWA.

Amendments: The RSA *Subdivision of Agricultural Land Amendment Act 55 of 1972* and the RSA *Subdivision of Agricultural Land Amendment Act 19 of 1974* were repealed in respect of Rehoboth by Act 5/1981 (Rehoboth).

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

Removal of Restrictions Ordinance 15 of 1975.

Summary: This Ordinance provides for the alteration, suspension or removal of restrictions on the usages of land.

Expropriation Act 63 of 1975, as amended in South Africa to February 1978.

Summary: This Act deals with the expropriation of land. It commenced on 1 January 1977, in terms of RSA Proc. 273 of 1976. The Act applied to SWA only in respect of expropriations by the Railway Administration.

Applicability to SWA: Section 4(4) of the Act states: "The provisions of this section, and the other provisions of this Act, in so far as they are connected with the application of this section, shall also apply in the territory of South West Africa, including the Eastern Caprivi Zipfel". Section 4 makes sections 7-24 of the Act applicable to expropriations by the Railway Administration in terms of the Railways and Harbours Control and Management (Consolidation) Act 70 of 1957 (which is no longer in force in Namibia).

Applicability to SWA: The Act was originally administered by the Minister of Agriculture. The administration of this Act was apparently transferred to SWA by the Executive Powers (Community Development) Transfer Proclamation (AG 8/1978), dated 10 February 1978.

Amendments: The National Transport Corporation Act 21 of 1987 (which was repealed by the National Transport Services Holding Company Act 28 of 1998 with effect from 1 April 1999) repeals section 4 of the Act -- which includes the section that made the Act applicable to SWA.

Section 139 of the Minerals (Mining and Prospecting) Act 33 of 1992 repeals sections 74 and 75 of the Act, although it is not clear that these sections were ever applicable to Namibia.

Expropriation Ordinance 13 of 1978.

Summary: This Ordinance deals with the expropriation of land for public purposes. It replaces the Expropriation Ordinance 32 of 1967, but makes no reference to the *Expropriation Act 63 of 1975*.

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 (which was repealed by the National Transport Services Holding Company Act 28 of 1998 with effect from 1 April 1999).

It is affected by the Powers of the SWA Water and Electric Corporation Act 14 of 1980, 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.

The application of the Ordinance is also affected by section 13 of the Airports Company Act 25 of 1998 (which came into force on 5 February, GN 19/1999, GG 2045).

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

Summary: This Act provides for the designation of certain areas for the promotion of population density and farming activities. It was brought into operation on 1 January 1980 by AG 38/1979.

Amendments: The Act is amended by AG 39/1979 and AG 30/1985.

Professional Land Surveyors', Technical Surveyors' and Survey Technicians' Act 32 of 1993.

Summary: This Act provides for the establishment of a Namibian Council for Professional Land Surveyors, Technical Surveyors and Survey Technicians, and sets forth its powers and functions. It also provides for the registration of professional land surveyors, apprentice land surveyors, technical surveyors, survey technicians and apprentice survey technicians, and regulates their qualifications and their professional conduct and practice. The Act came into force on 1 June 1994 (GN 85/1994, GG 863).

Amendments: Act 16/1995 inserts section 14A and amends section 15. Its primary purpose is to provide for the authorisation of professional land surveyors, technical surveyors and survey technicians in the public service.

Regulations: Regulations are contained in GN 216/1998 (GG 1945).

The Institute of Land Surveyors is recognised as an approved society in GN 264/1998 (GG 1982).

A tariff of fees is published in GN 287/1999 (GG 2253), as amended by GN 66/2001 (GG 2512) and GN 190/2001 (GG 2615). This is replaced by GN 134/2002 (GG 2778), replaced in turn by GN 249/2004 (GG 3323), and then by GN 231/2010 (GG 4128).

Appointments: The Council is announced in GN 62/1996 (GG 1273), which is

repeated in GN 74/1996 (GG 1284). Members of the Council are also announced in GN 36/1999 (GG 2054) and GN 68/2002 (GG 2734).

Land Survey Act 33 of 1993.

Summary: This Act regulates the survey of land. It replaces the *Land Survey Act 9 of 1927* and came into force on 1 June 1994 (GN 84/1994, GG 863).

Regulations: Regulations made under the previous legislation survive in terms of section 46(3). Such regulations are contained in RSA GN R.1814 of 1962. Not all the amendments to these regulations are listed here. Just prior to independence, the regulations were amended by AG GN 68/1989 and AG GN 24/1990.

Since independence, the regulations have been amended by GN 50/1993 (GG 636) and GN 270/1996 (GG 1425). New regulations pertaining to the manner in which land surveys shall be conducted are contained in GN 58/2002 (GG 2723). Official co-ordinated values to be used by land surveyors are contained in GN 107/2008 (GG 4044).

A scale of fees is published in GN 286/1999 (GG 2253), as amended by GN 134/2002 (GG 2778). Both of these are replaced by GN 249/2004 (GG 3323).

Agricultural (Commercial) Land Reform Act 6 of 1995.

Summary: This Act 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 3 March 1995. The remainder of the Act, with the exception of Parts II, III, IV and V, came into force on 6 December 1995 (GN 230/1995, GG 1214). These remaining sections came into force on 17 October 1996 (GN 271/1996, GG 1426).

Amendments: Act 16/2000 amends sections 1, 4, and 12, and inserts a new Part establishing a Land Acquisition and Development Fund and a new section 37A.

Act 2/2001 amends section 1, substitutes section 13B, 18 and certain headings, inserts section 75A, amends section 76 and inserts sections 76A, 76B and 79A. Both of these amending acts came into force on 29 December 2001 (GN 257-258/2001, GG 2678).

Act 13/2002 makes substantial amendments to the Act. It came into force on 1 March 2003 (GN 26/2003, GG 2925).

Act 14/2003 amends sections 1, 14, 19, 20, and 78.

Act 19/2003 amends sections 18 and 76. It came into operation on 1 April 2004 (GN 56/2004, GG 3181).

Regulations: Bodies and associations are designated to appoint members to the Land Reform Commission in GN 98/1995 (GG 1090).

The Rules of the Lands Tribunal are contained in GN 76/1996 (GG 1289).

Regulations relating to the acquisition of land by foreign nationals are contained in GN 257/1996 (GG 1411).

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).

Land Valuation and Taxation Regulations are contained in GN 259/2001 (GG 2678), as amended by GN 128/2004 (GG 3214). In terms of GN 22/2002 (GG 2696), a general valuation of agricultural land in Namibia was made during the three months following 15 February 2002. These regulations were repealed and replaced by GN 120/2007 (GG 3870). GN143/2007 (GG 3887) determined that a general valuation in respect of regulation 3(1)(a) and 3(3) would take place between 1 and 31 August 2007. Notification of the completion and certification of the main valuation role is contained in GN 38/2009 (GG 4225).

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).

Farming units offered for allotment are periodically announced in the *Government Gazette* but have not been listed here.

Cases: *Müller v Schweiger* 2005 NR 98 (HC); *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).

Articles:

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/projects/lead/Pdf/oneday.pdf.

Dr Christina Treeger, *Legal analysis of farmland expropriation in Namibia*, Namibia Institute for Democracy, 2004, available at www.nid.org.na/pdf/publications/no01_04.pdf

Legal Assistance Centre, *Our Land We Farm: An analysis of the Namibian Commercial Agricultural Land Reform Process*, 2005, available at www.lac.org.na/projects/lead/Pdf/landwefarm.pdf

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/projects/lead/Pdf/exprorep.pdf

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/projects/lead/Pdf/kessl.pdf

Wolfgang Werner and Willem Odendaal, *Livelihoods after Land Reform*, Legal Assistance Centre, 2010, available at www.lac.org.na/projects/lead/Pdf/livelihoods_report_a.pdf and www.lac.org.na/projects/lead/Pdf/livelihoods_report_b.pdf.

Town and Regional Planners Act 9 of 1996.

Summary: This Act establishes a Namibian Council for Town and Regional Planners and provides for the registration and training of town and regional planners. It came into force on 20 July 1998 (GN 170/1998, GG 1909).

Amendments: Act 32/1998 (which is deemed to have come into operation on 20 July 1998) amends section 3.

Regulations: Regulations are contained in GN 126/2001 (GG 2561), as amended by GN 149/2007 (GG 3896) and GN 82/2010 (GG 4473). Minimum fees and related guidelines are set forth in GN 62/2009 (GG 4237), as amended by GN 240/2006 (GG 4391).

Appointments: Appointments to the Namibian Council for Town and Regional Planners are contained in GN 33/2000 (GG 2266), with effect from 2 November 1999.

Communal Land Reform Act 5 of 2002.

Summary: This Act 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 came into operation on 1 March 2003 (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) (GG 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.

Regulations: Regulations are contained in GN 37/2003 (GG 2926), as amended by GN 120/2003 (GG 2994). These regulations repeal those contained in RSA Proclamation R. 188 of 11 July 1969.

Designation of areas for leasehold: Areas are designated for leasehold for agricultural purposes as follows:

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)

Caprivi Communal Land Board - GN 126/2007 (GG 3878)

Ohangwena Communal Land Board - GN 128/2007 (GG 3878).

Note that there are two Government Gazettes numbered 3878 and dated 16 July 2007. The correct version states at the top: "This *Gazette* replaces *Government Gazette* No. 3878 of 16 July 2007."

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 was extended to 15 February 2012 by GN 18/2009 (GG 4210).

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 15 February 2012 by GN 19/2009 (GG 4210).

Establishment of Communal Land Boards: Twelve communal land boards are established by GN 203/2003 (GG 3060).

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).

Articles:

Wolfgang Werner, *Protection for Women in Namibia's Communal Land Reform Act: Is it Working?*, Legal Assistance Centre, 2006

Clever Mapaure, "Jurisprudential aspects of proclaiming towns in communal areas in Namibia", *Namibia Law Journal*, Volume 1, Issue 2, 2009, available at www.namibialawjournal.org

Legal Assistance Centre, *Guide to the Communal Land Reform Act 5 of 2002*, second edition, 2009, previous edition available at www.lac.org.na/lead/Pdf/commland.pdf

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

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Sam Amoo, "Towards comprehensive land tenure systems and land reform in Namibia", *South African Journal on Human Rights*, Vol 17, Part 1, 2001.

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

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/projects/lead/Pdf/aplaceweanttocallourown.pdf.

See also *Land Tenure Act 32 of 1966* (**AGRICULTURE**).

See also *South West Africa Native Affairs Administration Act 56 of 1954*, Reservation of State Land for Natives Ordinance 35 of 1967 (reservation of land for “natives”) and *Namaland Consolidation and Administration Act 79 of 1972* (reservation of land for Namas) (**‘BLACKS’**).

See also Vagrancy Proclamation 25 of 1920 (trespass) (**CRIMINAL LAW AND PROCEDURE**).

See also **DEEDS**.

See also *Soil Conservation Act 76 of 1969* and *Mountain Catchment Areas Act 63 of 1970* (**ENVIRONMENT**).

See also **ESTATE AGENTS**.

See also **HOUSING**.

See also Namibia Qualifications Authority Act 29 of 1996 (re: occupational standards for surveyors) (**LABOUR**).

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 **REHOBOTH GEBIET**.

LANDLORD AND TENANT

Formalities in Respect of Leases of Land Act 18 of 1969, as amended in South Africa prior to independence.

Summary: This Act concerns formalities in leases of land.

Applicability to SWA: Section 2 states “This Act and any amendment thereof shall apply also in the territory of South West Africa.”

Rents Ordinance 13 of 1977.

Summary: This Ordinance regulates the letting and hiring of non-commercial immovable property.

Amendments: The Ordinance is amended by Ord. 4/1980 and by the Married Persons Equality Act 1 of 1996 (which substitutes section 1).

See also **HOUSING**.

LAW

Crown Liabilities Act 1 of 1910.

Summary: This act concerns state liability.

Applicability to SWA: This Act was extended to South West Africa by section 1(1)(b) of the Railway Management Proclamation 20 of 1920. 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. 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)).”

Administration of Justice Proclamation 21 of 1919.

Summary: This Proclamation 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, Proc. 52/1921, Proc. 56/1921, Proc. 16/1930, Proc. 4/1933, Ord. 31/1935, Proc. 4/1936, Ord. 37/1939, Ord. 29/1960, Ord. 31/1960, Ord. 34/1963, Ord. 13/1966, the SA *Supreme Court Act 59 of 1959*, the RSA *Admission of Advocates Act 74 of 1964*, and the Legal Practitioners Act 15 of 1995.

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 sets forth rules of interpretation for statutes.

Amendments: The Proclamation was amended by Proc. 11/1926, Ord. 4/1955 and Ord. 19/1961. It was extended to the Rehoboth Gebiet by Proc. 28/1923.

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)). The meaning of 12(3)(c) read together with the definition of ‘law’ is addressed in *Medical Association of Namibia Ltd & Another*

v Minister of Health and Social Services & Others, Case No A 199/2009 (judgment dated 28 June 2010, as yet unreported).

Justices of the Peace and Commissioners of Oaths Act 16 of 1963,

as amended in South Africa to November 1979.

Summary: This Act covers the appointment, powers and duties of justices of the peace and commissioners of oaths.

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, as amended), dated 12 November 1979. None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Regulations: Regulations governing oaths and affirmations are contained in RSA GN R.1258/1972. Regulations regarding holders of office who are commissioners of oath are contained in RSA GN R.1257/1972 (as amended by RSA GN R.56/1975), AG GN 128/1982 and GN 100/2000 (GG 2312) (regional councillors to be Commissioners of Oaths).

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).

Law Reform and Development Commission Act 29 of 1991.

Summary: This Act establishes a Law Reform and Development Commission. It came into force on 15 July 1992 (Proc. 21/1992, GG 439).

Amendments: Act 4/1995 amends sections 3, 5, 8 and 12. Act 2/2004 amends sections 3, 4, 5, 6, 8 and 12. It came into operation on 15 July 2004 (GN 147/2004, GG 3239).

MISCELLANEOUS

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

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SK Amoo, *An introduction to Namibian law: Materials and cases*, Windhoek: Macmillan Education Namibia, 2009 (reviewed by Steve Gray in *Namibia Law Journal*, Volume 1 Issue 2, 2009, available at www.namibialawjournal.org).

INTERNATIONAL LAW

Hague Convention on Abolishing the Requirement of Legalisation of Foreign Public Documents, 1961

accession: 25 April 2000

entry into force in respect of Namibia: 30 January 2001

(source: Hague Conference: <http://www.hcch.net/>)

Cases: *S v Koch* 2006 (2) NR 513 (SC).

Note: This is the only Hague Convention under the Hague Conference on Private International Law to which Namibia is a party. Namibia is not a member of the Hague Conference.

(source: Hague Conference: <http://www.hcch.net/>)

SADC Protocol on Legal Affairs, 2000

(entered into force within SADC on 1 September 2006) (source: SADC)

signature: 7 August 2000 (source: SADC)

ratification: 2 October 2001 (source: SADC; Ministry of Foreign Affairs)

SADC Protocol Against Corruption, 2001

(entered into force within SADC on 6 July 2005) (source: SADC)

signature: 14 August 2001 (source: SADC)

ratification approved by Parliament: 27 April 2004 (source: Parliament)

ratification: 23 June 2005 (source: SADC)

SADC Protocol on Extradition, 2002

(entered into force within SADC on 1 September 2006) (source: SADC)

signature: 3 October 2002 (source: SADC)

ratification approved by Parliament: 7 November 2006 (source: Parliament)

ratification: 1 February 2007 (source: SADC)

SADC Protocol on Mutual Legal Assistance in Criminal Matters, 2002

(entered into force within SADC on 2 March 2004) (source: SADC)

signature: 3 October 2002 (source: SADC)

ratification approved by Parliament: 7 November 2006 (source: Parliament)

ratification: 1 February 2007 (source: SADC)

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**.

LEGAL PRACTITIONERS

Legal Aid Act 29 of 1990.

Summary: This Act provides for the granting of legal aid in civil and criminal matters to persons whose means are inadequate to enable them to engage legal practitioners to assist and represent them. It came into force on 7 October 1991 (Proc. 23/1991, GG 272).

Amendments: Act 17/2000 amends sections 1, 3, 6, 8, 10, 13, 15, and 20 and inserts section 24A.

Regulations: Specified offences in terms of the Act are listed in GN 106/1991 (GG 273). Regulations are contained in GN 107/1991 (GG 273).

Cases:

Mwilima & Others v Government of the Republic of Namibia & Others 2001 NR 307 (HC), *Government of the Republic of Namibia & Others v Mwilima & all other accused in the Caprivi treason trial* 2002 NR 235 (SC)

S v Monday 2002 NR 167 (HC)

S v Tembwe 2005 NR 409 (HC)

S v Kasanga 2006 (1) NR 348 (HC)

JCL Civils Namibia (Pty) Ltd v Steenkamp 2007 (1) NR 1 (HC)

S v Luboya & Another 2007 (1) NR 96 (HC) (application of Article 18 of Constitution to application for legal aid)

Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (1) NR 290 (SC) (applicability to artificial persons discussed in *dicta* at 300-301)

Legal Practitioners Act 15 of 1995.

Summary: This Act governs the legal profession and legal practitioners, who were formerly known as attorneys and advocates. It establishes a Board for Legal Education, a Law Society of Namibia and a Legal Practitioners' Fidelity Fund. The Act came into operation on 7 September 1995 (GN 150/1995, GG 1148). It replaces the RSA *Admission of Advocates Act 74 of 1964*, the Legal Practitioners' Fidelity Fund Ordinance 28 of 1967, the RSA *Attorneys' Act 53 of 1979*, the Legal Practitioners' Fidelity Fund Act 22 of 1990 and the Admission of Advocates Act 19 of 1991.

Amendments: Act 4/1997 amends sections 11, 21, 54, 67, 72, and 87 and substitutes section 22.

Act 6/1999 temporarily suspends sections 79(1), (2) and (3) relating to the conferment of Senior Counsel status, until such time as the Minister of Justice reinstates them by notice in the *Gazette*. However, Act 6/1999 is repealed by Act 22/2002 (which was not yet in force as of 30 June 2003).

Act 10/2002 amends sections 5 and 18. Act 22/2002, which came into force on 1 November 2005 (GN 139/2005, GG 3529), amends sections 1, 21, 32, 52 and 72,

substitutes section 45 and repeals section 79.

Regulations: Regulations relating to the fee for a certificate of enrolment as a legal practitioner are contained in GN 201/1995 (GG 1183).

Regulations relating to candidate legal practitioners are contained in GN 228/1995 (GG 1207), as amended by GN 58/1997 (GG 1528), GN 67/1997 (GG 1537) and GN 8/1999 (GG 2025).

Rules governing the Disciplinary Committee are set forth in GN 54/1996 (GG 1270).

Regulations relating to the fidelity fund are contained in GN 136/1993 (GG 741). These regulations were issued in terms of the Legal Practitioners' Fidelity Fund Act 22 of 1990 but survive under the new Act on terms of section 94(4).

Rules of the Law Society of Namibia are set forth in General Notice 340/2002 (GG 2848). General Notice 251/2004 (GG 3313) amends Rule 24. General Notice 385/2007 (GG 3948) amends Rules 1, 6, 9, 13, 19, 20, 21, 22 and 24 and inserts Rule 20A. General Notice 308/2008 (GG 4120) amends Rule 21.

Various Government Gazettes have listed degrees which are recognised in Namibia for the purpose of the practice of law. These have not been recorded here.

Appointments: The Board for Legal Education is announced in GN 184/1995 (GG 1165) and GN 15/1996 (GG 1241).

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on legal practitioners and on the Law Society.

Cases:

Vaatz v Law Society of Namibia 1990 NR 332 (HC) (dealing with *Attorneys Act 53 of 1979*)

Vaatz v Law Society of Namibia 1991 (4) SA 382 (Nm) (dealing with Law Society Rule 95.1.3 promulgated in terms of *Attorneys Act 53 of 1979*).

Hailemo v Security Force Services (LC 5/95), reported as 1996 NR 99 (LC) (section 21)

Vaatz v Law Society of Namibia & Others 1996 NR 272 (HC) (dealing with Law Society Rule 114 promulgated in terms of *Attorneys Act 53 of 1979*).

Compania Romana De Pescuit (SA) v Rosteve Fishing 2002 NR 297 (HC) (section 21)

Miller & Paschke v The Law Society of Namibia NLLP 2002 (2) 328 NHC (application of section 4 to non-Namibians married to Namibian citizens and domiciled in Namibia)

Ekanjo-Imalwa v The Law Society of Namibia & Another; The Law Society of Namibia & Another v The Attorney-General of the Republic of Namibia & Others 2003 NR 123 (HC) (amending Act 10/2002; sections 5(1)(cA) (ii) and 18(1)(b))

Law Society of Namibia v Kamwi & Another 2005 NR 91 (HC) (sections 4(1), 5, 41, 42(1)), 2009 (2) NR 569 (SC) (sections 21 and 22(1)); see also *Kamwi v Law Society of Namibia* 2007 (2) NR 400 (HC)

Afshani & Another v Vaatz 2007 (2) NR 381 (SC) (approach to costs since law no longer distinguishes between attorneys and advocates)

Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (1) NR 290 (SC) (section 21(1)(c)).

Articles: Clive L Kavendjii and Nico Horn, “The independence of the legal profession in Namibia” in Nico Horn & Anton Boesl, *The Independence of the Judiciary in Namibia*, Konrad Adenauer Stiftung, 2008, available at www.kas.de/proj/home/pub/8/2/year-2008/dokument_id-15058/index.html;

Fritz Nghiihililwa, “Adda K Angula & Others v The Board for Legal Education & Others, Case No. A 348/2009”, *Namibia Law Journal*, Volume 2, Issue 1, 2010, available at www.namibialawjournal.org.

NOTE:

The case of *Eimbeck v Inspector-General of the Namibian Police & Another* 1995 NR 13 (HC) refers to the **Government Attorney Proclamation R.161 of 3 September 1982**. This Proclamation was issued in terms of section 38 of the *South West Africa Constitution Act 39 of 1968*, which was repealed by Article 147 of the Namibian Constitution. The Proclamation converts the Windhoek branch of the Office of the State Attorney in Pretoria into the Government Attorney’s Office for the Territory of South West Africa. The cited case states that this Proclamation is “still in force”, but it does not appear to have any ongoing effect in independent Namibia. Regulations were issued in terms of this proclamation in AG GN 61/1984. These regulations, which concern amounts payable upon failure to complete articles in the Office of the Government Attorney, may continue to be relevant.

See also **COURTS**.

See also Namibia Qualifications Authority Act 29 of 1996 (re: occupational and curriculum standards) (**LABOUR**).

See also **LAW**.

LIBRARIES

Namibia Library and Information Service Act 4 of 2000.

Summary: This Act covers the Namibia Library and Information Service and its constituent libraries, the National Library and the Namibia Library and Information Council. It came into operation on 30 April 2001 (GN 69/2001, GG 2519). The Act replaces the Libraries Ordinance 4 of 1981 (Legislative Assembly of the Whites), which previously replaced the South West Africa Library Service Ordinance 15 of 1968.

Regulations: Regulations are contained in GN 70/2001 (GG 2519). The National Library is identified in GN 71/2001 (GG 2519). Places of legal deposit are identified in GN 72/2001 (GG 2519).

See also **ARCHIVES**.

MAINTENANCE

Reciprocal Enforcement of Maintenance Orders Act 3 of 1995.

Summary: This Act provides for the reciprocal enforcement of maintenance orders between Namibia and other countries designated by the Minister of Justice. It replaces the South African *Reciprocal Enforcement of Maintenance Orders Act 80 of 1963*.

Amendments: Sections 1, 5, 6, 7, 8, and 9 are amended by the Maintenance Act 9 of 2003.

Regulations: Rules and regulations made under the previous Act survive in terms of section 13 of the new Act. Rules issued under the previous Act are contained in RSA GN R.98 of 22 January 1965.

Section 13 of the Act provides that any country designated under the *Reciprocal Enforcement of Maintenance Orders Act 80 of 1963* will be deemed to be a designated country for the purposes of the Act. South Africa was named as a designated country in GN 124/1993 (GG 727), effective 10 September 1993.

Maintenance Act 9 of 2003.

Summary: This Act concerns the payment of maintenance, the holding of maintenance enquiries, and enforcement of maintenance orders. It replaces the South African *Support of Dependants (Natives) Proclamation of 1936* and the South African *Maintenance Act 23 of 1963*. It came into operation on 17 November 2003 (GN 232/2003, GG 3093).

Regulations: Regulations are contained in GN 233/2003 (GG 3093).

Cases: *S v Gawaseb* 2007 (2) NR 600 (HC) (sentence under section 39(1); section 33(1)).

See also *Main NO v Van Tonder NO & Another* 2006 (1) NR 389 (HC), which discusses the Act in dicta at 397E-G.

Cases decided under the repealed *Maintenance Act 23 of 1963*:

S v Koyoko 1991 NR 369 (HC) (section 5(4))

S v Shivute & Several Other Cases 1991 NR 433 (HC) (sections 11(1) and (2))

S v Afrikaner 1991 NR 109 (HC) (section 11(1))

S v Exabuja 1992 NR 196 (HC) (section 11(3))

S v De Koe 1993 NR 359 (HC) (section 11(3))

S v Geiseb 1994 NR 175 (HC) (section 11(3))

Tsauseb v Geingos 1995 NR 107 (HC)

Van Zyl v Fourie 1997 NR 85 (HC) (section 4(1)(b))

Jantjies v Jantjies & Another 2001 NR 26 (HC) (principle of set-off not applicable to maintenance order).

SELECTED CASES

Main NO v Van Tonder NO & Another 2006 (1) NR 389 (HC) (dealing with maintenance from a deceased estate and extending common law to provide for support from estate of parent to major child in need)

S v Gawaseb 2007 (2) NR 600 (HC) (quotes with approval at 602I-603B the following statement from a South African case: “Systemic failures to enforce maintenance orders have a negative impact on the rule of law. The courts are there to ensure that the rights of all are protected. The judiciary must endeavour to secure for vulnerable children and disempowered women their small but life sustaining legal entitlements. If court orders are habitually evaded and defied with relative impunity the justice system is discredited and the constitutional promise of human dignity and equality is seriously compromised for those dependent on the law. It is a function of the State not only to provide a good legal framework but to put in place systems that will enable these frameworks to operate effectively. Our maintenance courts and the laws that they implement are important mechanisms to give effect to the rights of children protected by s 28 of the Constitution. Failure to ensure their effective operation amounts to a failure to protect children against those who take advantage of the weaknesses of the system.”)

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Legal Assistance Centre, *Maintenance: A Study of the Operation of Namibia’s Maintenance Courts*, 1995

Law Reform and Development Commission, *Report on Maintenance* (LRDC 5), 1997

Legal Assistance Centre, *Guide to the Maintenance Act 9 of 2003*, 2005, available at www.lac.org.na/grap/Pdf/guidmaint.pdf (languages: English, Afrikaans, Oshiwambo, Otjiherero, Khoekhoegowab, Rukwangali).

See also regulations on financial assistance issued under the *Children’s Act 33 of 1960* (**CHILDREN**).

MARINE AND FRESHWATER RESOURCES

National Fishing Corporation of Namibia Act 28 of 1991.

Summary: This Act provides for the formation of the National Fishing Corporation of Namibia Limited, a company with the object of exploiting fish and other marine resources, and promoting the establishment, development and efficiency of other businesses engaged in the fishing industry.

Application: The application of the Act is affected by the State-owned Enterprises Governance Act 2 of 2006.

Marine Resources Act 27 of 2000.

Summary: This Act provides for the conservation of the marine ecosystem; for the responsible utilisation, conservation, protection and promotion of marine resources on a sustainable basis; and for the control of marine resources for these purposes. It replaces the Sea Fisheries Act 29 of 1992, which in turn replaced the *Sea Fisheries Act 58 of 1973*. It also replaces the *Sea Birds and Seals Protection Act 46 of 1973*, and the Fishing Boat and Factory Owners' Committee Ordinance 16 of 1968. The Act came into force on 1 August 2001 (GN 152/2001, GG 2591).

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 13, 16, and 17, and deletes section 15.

Regulations: Regulations made under previous legislation remain in force, in terms of section 64(2) of the Act. The following regulations were made in terms of the Sea Fisheries Act 29 of 1992 -

- GN 3/1990 (GG 10)
- GN 48/1992 (GG 399)
- GN 63/1992 (GG 417)
- GN 92/1992 (GG 449)
- GN 123/1992 (GN 478)
- GN 158/1992 (GG 527)
- GN 1/1993 (GG 566)
- GN 2/1994 (GG 777)
- GN 204/1994 (GG 962)
- GN 88/1995 (GG 1090)
- GN 153/1995 (GG 1151)
- GN 26/1996 (GG 1255)
- GN 79/1996 (GG 1291)
- GN 14/1997 (GG 1500)
- GN 64/1997 (GG 1537)
- GN 157/1997 (GG 1622)
- GN 9/1997 (GG 1785).

Initial regulations under the new Act were contained in GN 153/2001 (GG 2591). These regulations repealed the regulations in RSA GN 566 of 4 January 1993 (issued in terms of the South African *Sea Fisheries Act 58 of 1973*). A new set of regulations is contained in GN 241/2001 (GG 2657), which repeals GN 153/2001.

Additional Vessel Monitoring Regulations are contained in GN 65/2005 (GG 3446).

Regulations relating to the licensing of foreign flag vessels for the purpose of harvesting Namibia's marine resources are contained in GN 147/2006 (GG 3696).

These regulations refer to "conservation and management measures published by Government Notice No. 126 of 30 August 2006". This appears to be an error. GN 126/2006 is dated 1 September 2006 and contains Otjiwarongo Amendment Scheme No. 8. The reference was probably intended to be to the conservation and management measures published by GN 148/2006 of 8 September 2006 (GG 3696).

Conservation and management measures in terms of section 37(2) are published in GN 148/2006 (GG 3696).

These regulations refer to "Article VIII of the International Convention for the Conservation of Atlantic Tunas, a copy of which is set out in the Regulations promulgated under Government Notice No. 127 of 30 August 2006". This appears to be an error. It should cite GN 147/2006, dated 8 September 2006 (GG 3696).

The northern limit of Namibian waters was determined under the Sea Fisheries Act 29 of 1992 in Proc. 47/1992 (GG 557). A fishing harbour is declared under the Sea Fisheries Act 29 of 1992 in GN 46/1994 (GG 832).

Fees and levies on marine resources in terms of the new Act are contained in GN 80/2002 (GG 2746), GN 134/2004 (GG 3227), GN 175/2003 (GG 3034), GN 9/2007 (GG 3788), GN 274/2008 (GG 4174) and GN 154/2009 (GG 4310).

An agreement between Namibia and Mozambique on co-operation in the fisheries sector, in terms of section 35(1) of the Act, is announced in Proclamation 2/2003 (GG 2910).

The Namibian Islands Marine Reserve was declared in GN 17/2009 (GG 4210).

Total allowable catches for various types of fish are set periodically in terms of the relevant acts and have not been recorded here.

Cases: The following are post-independence cases concerning the 1973 South African *Sea Fisheries Act 58 of 1973*-

S v Curras 1991 NR 208 (HC)

Pineiro & Others v Minister of Justice & Others 1991 NR 283 (HC)

Slabber v Blanco & Others 1991 NR 404 (HC)

S v Pineiro & Others 1991 NR 424 (HC); 1993 NR 424 (HC) (concurring judgement)

S v Redondo 1992 NR 133 (SC)

S v Carracelas & Others (1) 1992 NR 322 (HC)

S v Carracelas & Others (2) 1992 NR 329 (HC)

S v Carracelas & Others (3) 1992 NR 336 (HC)

Banco Exterior De Espana SA & Another v Government of the Republic of Namibia & Another 1996 NR 1 (HC)

S v Martinez 1993 NR 1 (HC)

S v Pineiro & Others (1) 1993 NR 24 (HC)

S v Pineiro & Others (2) 1993 NR 49 (HC)

Freiremar SA v The Prosecutor-General of Namibia & Another 1996 NR 18 (HC) (holding that part of the proviso to section 17(1) was unconstitutional)

S v Pineiro & Others 1999 NR 13 (HC).

Aquaculture Act 18 of 2002.

Summary: This Act regulates and controls aquaculture activities and provides for the sustainable development of aquaculture resources. It came into force on 3 December 2003 (GN 245/2003, GG 3104).

Regulations: Regulations related to licensing are contained in GN 246/2003 (GG 3104). Regulations related to the import and export of aquatic organisms and aquaculture products are contained in GN 70/2010 (GG 4453).

Inland Fisheries Resources Act 1 of 2003.

Summary: This Act provides for the conservation and protection of aquatic ecosystems and the sustainable development of inland fisheries resources. It came into force on 6 June 2003 (GN 117/2003, GG 2992).

Regulations: Regulations are contained in GN 118/2003 (GG 2992), as amended by GN 12/2004 (GG 3141) and by GN 80/2006 (GG 3639), which contains regulations about fish size limits.

GN 11/2004 (GG 3141) designates the officer stipulated in column 1 of the Schedule to the Act, of the regional council listed in column 2, to perform functions mentioned in column 3 of that Schedule.

COMMISSIONS

Commission of Inquiry into the Procedures and Practices Applied in the Allocation and Utilisation of Existing Fishing Rights (Proc. 18/1991, GG 258).

See also GN 103/1991 (GG 258).

INTERNATIONAL LAW

United Nations Convention on the Law of the Sea, 1982

signature: 10 December 1982

ratification: 18 April 1983; effective date: 16 November 1994

(represented by the United Nations Council for Namibia as stipulated in Article 305, paragraph 1 (b), of the Convention) (source: <http://sedac.ciesin.org/>)

Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994

signature: 29 July 1994

accession by means of the simplified procedure set out in articles 4 (3)(c) and 5: 16 Nov 1994

effective date: 28 July 1996 (source: <http://sedac.ciesin.org/>)

Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995 (came into force internationally on 11 December 2003)

signature: 19 April 1996

ratification: 8 April 1998 (Proc. 10/1998, GG 1862)

Cases: *S v Curras* 1991 NR 208 (HC); *Pineiro & Others v Minister of Justice & Others* 1991 NR 283 (HC); *S v Carracelas & Others (2)* 1992 NR 329 (HC); *S v Martinez* 1993 NR 1 (HC); *S v Pineiro & Others (1)* 1993 NR 24 (HC).

Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977

(not yet in force internationally)

Namibia reportedly signed in 2007, but no ratification is recorded.

(sources: "Protocol 'given the nod' ", *The Namibian*, 29 October 2007; International Maritime Organisation, www.imo.org)

International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995

(not yet in force internationally)

deposit: 18 December 2008 (source: International Maritime Organization, www.imo.org)

Protocol on the Privileges and Immunities of the International Seabed Authority, 1998

(came into force internationally on 31 May 2003)

signature: 24 September 1999

(not ratified by Namibia as of 20 January 2005 according to the International Seabed Authority)

Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean, 2001

ratification: 15 November 2001 (source: www.fao.org)

Convention on the Conservation of Antarctic Marine Living Resources, 1980

accession: 29 January 2000

(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri/>.)

SADC Protocol on Fisheries, 2001

(entered into force within SADC on 8 August 2003) (source: SADC)

signature: 14 August 2001 (source: SADC)

ratification: 21 June 2002 (source: SADC; Ministry of Foreign Affairs)

See also **ENVIRONMENT**.

See also **SEA AND SEASHORE**.

MARRIAGE AND DIVORCE

Divorce Laws Amendment Ordinance 18 of 1935.

Summary: This Ordinance amends the common law by setting forth additional grounds for divorce.

Matrimonial Causes Jurisdiction Act 22 of 1939, as amended in South Africa to November 1979.

Summary: This Act concerns jurisdiction over divorce proceedings.

Applicability to SWA: Section *7bis* of the Act defines “Republic” to include the territory of South West Africa. Section *7ter* states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section 38(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968).”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979.

Section 3(1)(c) of the transfer proclamation excluded the reference to the “Republic” in the Act from the operation of section 3(1) of the General Proclamation, meaning that “Republic” retained the meaning given to it in the definition section of the Act (South Africa and SWA).

The Act was repealed in South Africa in July 1979 by the *Divorce Act 70 of 1979*, shortly *before* it was transferred to SWA in November 1979. The repealing Act was not made expressly applicable to SWA, but should have repealed the Act in respect of SWA. However, the principal Act was specifically mentioned in the subsequent transfer proclamation. Therefore, it apparently remained in force in SWA.

Amendments: Section 1 on jurisdiction is amended by the Married Persons Equality Act 1 of 1996.

Matrimonial Causes Jurisdiction Act 35 of 1945, as amended in South Africa to November 1979.

Summary: This Act extends court jurisdiction in divorce matters.

Applicability to SWA: The text of the Act refers to the Supreme Court of South Africa (“including the High Court of South West Africa”) and to certain decrees and orders “to be recognised in the Union and in South West Africa”.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979. There were no amendments to the Act in South Africa prior to Namibian independence.

Matrimonial Affairs Ordinance 25 of 1955.

Summary: This Ordinance places certain limitations on the marital power of the husband in a civil marriage, in a manner similar to the RSA *Matrimonial Affairs Act 7 of 1953*.

Amendments: The Ordinance is amended by Ord. 9/1967 and by the Married Persons Equality Act 1 of 1996 (which repeals sections 1, 2 and 3 and amends section 4).

Marriage Act 25 of 1961, as amended in South Africa to March 1978.

Summary: This Act governs the solemnisation of civil marriages.

Applicability to SWA: Section 39A 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 (Interior) Transfer Proclamation (AG 17/1978), dated 30 March 1978.

Section 3(2) of the transfer proclamation excluded references to the “Republic” in the Act from the operation of section 3(1)(c) of the General Proclamation.

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Amendments: AG 8/1977 amends sections 2 and 3 of the Act and inserts section 5*bis*. The Marriages, Births and Deaths Amendment Act 5 of 1987 makes substantial amendments to the Act. The Married Persons Equality Act 1 of 1996 amends sections 1 and 26 and substitutes certain expressions.

Cases: *Ex parte Groebler & Another* 2004 NR 105 (HC) (procedure regarding consent to marriage of child under age 18).

Recognition of Certain Marriages Act 18 of 1991.

Summary: This Act provides for the recognition of marriages contracted in terms of the SWAPO Family Act, 1977, and for the adoption of children in terms of this Act.

Dissolution of Marriages on Presumption of Death Act 31 of 1993.

Summary: This Act provides for the dissolution of marriages of persons presumed to be dead.

Married Persons Equality Act 1 of 1996.

Summary: This Act abolishes the marital power which previously applied to civil marriages and amends the law on matrimonial property in civil marriages in community of property. It also amends the common law on the domicile of married women and minor children, and on the guardianship of minor children. The Act came into force on 15 July 1996 (GN 154/1996, GG 1340).

Amendments: The Banking Institutions Act 2 of 1998 repeals section 26. The Companies Act 28 of 2004 repeals sections 31 and 32.

Application of Act: Act 2/1996 contains amendments to the *Deeds Registries Act 47 of 1937* which are consequential to the Married Persons Equality Act. See also Act 8/1996, which makes similar consequential amendments to *Registration of Deeds in Rehoboth Act 93 of 1976*.

Cases:

Myburgh v Commercial Bank of Namibia 1999 NR 287 (HC); 2000 NR 255 (SC) (abolition of marital power prior to promulgation of Married Persons Equality Act)

S v Gariseb 2001 NR 62 (HC) (abolition of marital power makes it possible for husband to be charged with theft of wife's property in marriage in community of property)

Stipp & Another v Shade Centre & Others 2007 (2) NR 627 (SC) (necessary allegations for application in respect of section 7(1)(j) read together with section 7(6)).

Articles: Law Reform and Development Commission, Aspects of Family Law: The Abolition of Marital Power and Equalization of Rights between Spouses (LRDC 1), 1994; Legal Assistance Centre, *Guide to the Married Persons Equality Act*, 2001 (languages: English, Afrikaans, Oshindonga, Otjiherero, Khoekhoegowab, Silozi, Rukwangali).

SELECTED CASES

Myburgh v Commercial Bank of Namibia 2000 NR 255 (SC) (marital power)

Mofuka v Mofuka 2001 NR 318 (HC); 2003 NR 1(SC) (marital property regime)

Hamutenya v Hamutenya 2005 NR 76 (HC) (application for amendment of divorce order not allowed while applicant in contempt of existing order)

Nakashololo v Nakashololo 2007 (1) NR 27 (HC) (marital property regime)

Matthews v Ipinge 2007 (1) NR 110 (HC) (civil action for adultery)

Vahekeni v Vahekeni 2008 (1) NR 125 (SC) (role of court in restitution of conjugal rights, with particular reference to protecting best interests of children)

DM v SM 2008 (2) NR 704 (HC) (custody dispute resolved in favour of father)

Valindi v Valindi & Another 2009 (2) NR 504 (HC) (divorce case which addresses section 17(6) of Native Administration Proclamation 15 of 1928, condonation of adultery by plaintiff and adultery and malicious desertion as grounds for divorce).

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H Becker and M Hinz, *Marriage and Customary Law in Namibia. Namibia Papers Working Document No. 30*. Windhoek: Centre for Applied Social Sciences, 1995

H Becker, *'In our tradition we are very Christian': Gender, marriage and customary law in northern Namibia*. Windhoek: Centre for Applied Social Sciences, 1997.

Legal Assistance Centre, *Proposals for Law Reform on the Recognition of Customary Marriages*, 1999, available at www.lac.org.na/projects/grap/Pdf/customary.pdf

Legal Assistance Centre, *Proposals for Divorce Law Reform in Namibia*, 2000, available at www.lac.org.na/projects/grap/Pdf/divlawref.pdf

Law Reform and Development Commission, *Report on Uniform Consequences of Common Law Marriages (Repeal of Section 17(6) of Native Administration Proclamation, 1928 (Proclamation 15 of 1928)* (LRDC 11), 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

Law Reform and Development Commission, *Report on Divorce* (LRDC 13), 2004

Legal Assistance Centre, *Marital Property in Civil and Customary Marriages: Proposals for Law Reform*, 2005, available at www.lac.org.na/projects/grap/Pdf/marriageprop.pdf

Law Reform and Development Commission, *Review of the Marriage Act (Act No 25 of 1961), Discussion Paper No 1, Project No 18*, 2009.

INTERNATIONAL LAW

Convention on the Elimination of All Forms of Discrimination against Women, 1979
accession: 23 November 1992

Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women

effective date: 22 December 2000 (This is the date on which the Optional Protocol came into force internationally after being ratified by the first 10 countries, one of which is Namibia. The Namibian Parliament approved the Optional Protocol on 17 May 2000.)

Namibia has NOT agreed to the following amendment, which is not yet in force internationally:

* *Amendment to article 20, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination Against Women, 1995.*

Cases: *Müller v President of the Republic of Namibia & Another* 1999 NR 190 (SC) at 205E-F.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003

(entered into force within the AU on 25 November 2005)

signature: 9 December 2003 (source: www.africa-union.org)

ratification approved by Parliament: 8 July 2004 (source: Parliament)

deposit: 26 August 2004 (source: www.africa-union.org)

Reservation: Namibia will not be bound by Article 6(d) until it has enacted legislation regarding the recording and registration of customary marriages. (source: Ministry of Foreign Affairs)

SADC Protocol on Gender and Development, 2008

(not yet in force within SADC as of 23 June 2010) (source: SADC)

signature: 17 August 2008 (source: SADC)

ratification approved by Parliament: 7 October 2009 (source: Parliament)

SADC list of ratifications dated 23 June 2010 does not show ratification by Namibia

See also *Births, Marriages and Deaths Registration Act 81 of 1963 (BIRTHS, MARRIAGES AND DEATHS)*.

See also Native Administration Proclamation 15 of 1928 (re: marriages between blacks) (**‘BLACKS’**).

See also Combating of Domestic Violence Act 4 of 2003 (**DOMESTIC VIOLENCE**).

See also Communal Land Reform Act 5 of 2002 (re: rights of spouses in respect of communal land) (**LAND**).

MEDICAL AID

Medical Aid Scheme for Members of the National Assembly, Judges and Other Office Bearers Act 23 of 1990.

Summary: This Act extends membership of the medical aid scheme established for the public service under the Public Service Act 2 of 1980 to members and former members of the National Assembly, judges and former judges of the Supreme Court and the High Court, certain other office-bearers and other persons, and to their surviving spouses.

Regulations: Certain officials are named as office-bearers for purposes of the Act from time to time, but these designations have not been recorded here.

Medical Aid Funds Act 23 of 1995.

Summary: This Act regulates medical aid funds and establishes the Namibian Association of Medical Aid Funds. It replaces the *Medical Schemes Act 72 of 1967*. Part III came into operation on 1 February 1996 (GN 25/1996, GG 1255). The remainder of the Act came into force on 11 February 1997 (GN 11/1997, GG 1496). This Act replaces the *Medical Schemes Act 72 of 1967*.

Amendments: The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 amends section 1 and substitutes section 3.

Regulations: Regulations are contained in GN 12/1997 (GG 1496).

The particulars of registered funds are listed in GN 280/1998 (GG 2001) and GN 64/1999 (GG 2083). See also GN 86/2000 (GG 2304) and GN 45/2001 (GG 2495) (name changes of registered fund).

General Notice 19/2007 (GG 3788) declares it an undesirable practice for medical aid funds to use certain game shows and other competitions as forms of advertisement.

See also Hospitals and Health Facilities Act 36 of 1994 (re: tariffs for state patients) (**HOSPITALS**).

See also *Employees Compensation Act 30 of 1941* (tariff of fees for medical aid) (**LABOUR**).

See also the Presidential Emoluments and Pensions Act 17 of 1990 and Former Presidents' Pension and Other Benefits Act 18 of 2004 (re: medical aid benefits for President and former Presidents) (**PRESIDENT**).

See also Social Security Act 34 of 1994 (re: Maternity Leave, Sick Leave and Death Benefit Fund; National Medical Benefit Fund) (**SOCIAL SECURITY**).

MEDICINE AND MEDICAL PROFESSIONS

Consent to Operations on Native Minors Proclamation 37 of 1943.

Summary: This Ordinance empowers magistrates to give consent for operations on “native minors” if the parent or guardian is not readily available or if a delay to obtain consent might be dangerous.

Medical, Dental and Pharmacy Act 13 of 1928, as amended in South Africa to December 1977.

Summary: The remaining provisions of this Act deal with the regulation of vaccines, clinical thermometers and other diagnostic instruments, and the withdrawal and use of human blood.

Applicability to SWA: Section 99(1) of the original Act states “The Governor-General may, by proclamation in the Gazette, extend this Act, with such modifications of an administrative character as he may deem necessary to the mandated territory of South West Africa, and thereafter and subject to any modifications as aforesaid, that territory shall, for all purposes of this Act, be deemed to be a province of the Union.” The Act was modified and extended to SWA by SA Proclamation 3 of 1929.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Health) Transfer Proclamation (AG 14/1977), dated 1 December 1977. The Act was not amended in South Africa after that date and prior to Namibian independence.

Amendments: This Act was extended to the Rehoboth Gebiet by the Rehoboth Gebiet Medical, Dental and Pharmacy Proclamation 27 of 1955.

South Africa Medical Research Council Act 19 of 1969, as amended in South Africa to December 1977.

Summary: This Act establishes a South African Medical Research Council to promote research in the medical sciences.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 25 states “This Act, and any amendment thereof, shall also apply in the territory of South West Africa.”

Transfer of administration to SWA: The administration of the Act was probably transferred to SWA by the Executive Powers (Health) Transfer Proclamation (AG 14/1977), dated 1 December 1977. However, it may have been excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation “those provisions of any law ... which provide for or relate to the institution, constitution or control of ... 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”.

There was only one amending act in South Africa after the date of transfer -- the *South Africa Medical Research Council Amendment Act 47 of 1982* – which is not expressly applicable to SWA. If the administration of the Act was in fact transferred to SWA, then this amending act would not have applied to SWA.

Abuse of Dependence-Producing Substances and Rehabilitation

Centres Act 41 of 1971, as amended in South Africa prior to Namibian independence.

Summary: This Act restricts dealings in dependence-producing drugs and establishes rehabilitation centres for treatment of people with drug problems.

Applicability to SWA: Section 1 defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”. Section 64 states “This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: Section 53 of this Act states that the State President may assign the administration of all or part of the Act to one or more South African Ministers.

The administration of this Act was partially transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977, as amended), dated 28 September 1977. This transfer proclamation applies to matters which were administered by the South African Minister of Bantu Administration and Development, and the South African Minister of Coloured, Rehoboth and Nama Relations. Section 3(2)(e) of the transfer proclamation excluded sections 12 and 50(1) of the Act from the operation of section 3(1) of the transfer proclamation.

The administration of this Act was further transferred to SWA by the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated 30 November 1977, and the Executive Powers (Health) Transfer Proclamation (AG 14/1977), dated 1 December 1977.

Both of these Transfer Proclamations excluded sections 12 and 50(1) of the Act, and the reference to the “Government of the Republic” in section 50(2) of the Act, from the operation of section 3(1) of the General Proclamation.

None of the amendments to the Act in South Africa after the date of the earliest transfer proclamation were made expressly applicable to SWA.

Amendments: Act 25/1987 amends the Act. There are a number of RSA Proclamations which amend the Schedule to the Act prior to the date of transfer. These have not been recorded here.

Cases:

S v Cachimbembo 1990 NR 290 (HC)

S v Mariu 1991 NR 149 (HC)

S v Kuvare 1992 NR 7 (HC)

S v Kharigub & Another 1992 NR 27 (HC)

S v Van Wyk 1992 NR 267 (HC)

S v Johnny & Another 1992 NR 296 (HC)

S v Maniping/S v Thwala 1994 NR 69 (HC)

S v Mteleni 1995 NR 127 (HC)

S v Mlambo 1997 NR 221 (HC)
S v Begley 2000 NR 112(HC)
S v Sibonyoni 2001 NR 22 (HC)
S v Rooi 2007 (1) NR 282 (HC)
S v Sehako 2009 (1) NR 61 (HC)
S v Lipumbu 2009 (2) NR 546 (HC).

Commissions: The National Drug Control Commission was established by Cabinet decision in 1999, to advise the government on drug policy and on the implementation of international conventions on drugs. Members of this Commission are announced in GN 202/2003 (GG 3060).

Related international agreements:

Convention on Psychotropic Substances, 1971 (accession: 31 March 1998).

Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972 (accession: 31 March 1998).

Note: The UN Treaty Data Base lists two other drug-related treaties to which “South West Africa (Namibia)” is party by means of territorial application. However, this may no longer apply to independent Namibia.

* *Final Act of the United Nations Opium Conference held at United Nations Headquarters, New York, from 11 May to 18 June 1953; Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, 1953* (territorial application as of 9 March 1960, with effect from 8 March 1963)

* *Protocol bringing under international control drugs outside the scope of the Convention of 13 July 1931 for limiting the manufacturing and regulating the distribution of narcotic drugs, as amended by the Protocol signed at Lake Success on 11 December 1946. Signed at Paris on 19 November 1948* (territorial application as of 5 October 1954, with effect from 4 November 1954)

SADC Protocol on Combating Illicit Drug Trafficking in the Southern African Region, 1996

(entered into force within SADC on 20 March 1999) (source: SADC)

signature: 24 August 1996 (source: SADC)

ratification: 18 August 1998 (source: SADC; Ministry of Foreign Affairs)

Abortion and Sterilization Act 2 of 1975, as amended in South Africa to December 1977.

Summary: This Act regulates abortion and sterilization. Abortion is legal only in cases of severe mental or physical risk to the woman concerned, cases where there is a serious risk that the child will suffer a severe physical or mental handicap, and cases where the child was conceived as a result of rape or incest.

Applicability to SWA: Section 11 states that “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 (Health) Transfer Proclamation (AG 14/1977), dated 1 December 1977. None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Cases: *S v Haimbodi* 1993 NR 129 (HC); *S v Alweendo* 1993 NR 177 (HC); *S v Iyambo* 2007 (2) NR 842 (HC) (lenient sentence appropriate where very young foetus is involved).

Anatomical Donations and Post-Mortem Examinations Ordinance 12 of 1977.

Summary: This Ordinance covers the donation of human bodies and tissue (including flesh, organs, bones and body fluids) for therapeutic and scientific purposes. It also regulates post-mortems.

Amendments: This Ordinance is affected by the Health Act 21 of 1988, which made it applicable to all of SWA.

Namibia Institute of Pathology Act 15 of 1999.

Summary: This Act establishes the Namibia Institute of Pathology Limited and sets forth its duties and functions. Medical laboratory functions of the Ministry of Health and Social Services will be transferred to the Institute on a date determined by the Minister. The Act will come into force on a date determined by the Minister.

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 11, 12, 13, 15, 16 and 22.

Regulations: The date for the transfer of medical laboratory functions from the Ministry of Health and Social Services to the Namibia Institute of Pathology Limited is set as 1 December 2000 (GN 283/2000, GG 2444).

Appointments: The Board of Directors is announced in GN 125/2000 (GG 2340), GN 140/2005 (GG 3529) and GN 206/2009 (GG 4357).

Medicines and Related Substances Control Act 13 of 2003.

Summary: This Act provides for the establishment of a Namibia Medicines Regulatory Council, for the registration of medicines intended for human and animal use, and for the control of medicines and scheduled substances. It replaces the *Medicines and Related Substances Control Act 101 of 1965*. The Act came into force on 25 July 2008 (GN 177/2008, GG 4088).

Pursuant to section 46(2), the schedules of the *Medicines and Related Substances Act 101 of 1965* continue to apply until the Minister publishes a notice in the Gazette in terms of section 29(1). Pursuant to section 46(1A), the Medicines Control Council established under the previous legislation is to serve the functions of the new Namibia Medicines Regulatory Council until such time as the Minister appoints the new Council.

Amendments: Act 8/2007 (which came into force on 1 August 2008 by virtue of GN 187/2008, GG 4091) amends the Act substantially.

Regulations: Notices, regulations, authorisations, orders, approvals, certificates made and other things done under the previous legislation survive, by virtue of section 47(2) as amended. These include the following:

There are a number of RSA Government Notices which amend the Schedules to this Act. These have not been recorded here. GN 42/1980 amends Schedules 1-9. GN 216/2006 (GG 3746) amends Schedule 2.

The disposal of certain undesirable medicines is covered by GN 154/1999 (GG 2155).

GN 105/2002 (GG 2759) determines medicines and classes of medicines subject to registration.

GN 104/2002 (GG 2759) relates to inspection of the Medicines Register.

Proposed regulations under the current Act were issued in GN 241/2004 (GG 3317). Extensive regulations pertaining to medicines and related substances were subsequently issued in GN 178/2008 (GG 4088), which repeals the pre-independence regulations. However, these regulations were ruled to be invalid in *Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others*, Case No A 199/2009 (judgment dated 28 June 2010, as yet unreported).

Certain medicines are exempted from the operation of certain regulations for a specified time period in GN 272/2008 (GG 4174). GN 180/2008 (GG 4088) concerns the classification of certain medicines and other substances as scheduled substances.

Registrations and cancellations: Registrations and cancellations under the previous Act are as follows:

GN 64/2001 (GG 2512) relates to the continued registration of medicines registered prior to independence.

Certain medicines are registered in GN 202/1995 (GG 1183), GN 4/1997 (GG 1480), GN 144/1997 (GG 1603), GN 210/1998 (GG 1942), GN 254/1998 (GG 1972), GN 66/1999 (GG 2083), GN 105/2002 (GG 2759), GN 240/2004 (GG 3317), General Notice 39/2005 (GG 3391), GN 131/2005 (GG 3511), GN 182/2005 (GG 3556), GN 159/2006 (GG 3704), GN 193/2006 (GG 3735), GN 138/2007 (GG 3887), GN 211/2007 (GG 3937) (which withdraws GN 138/2007), GN 220/2007 (GG 3945), GN 15/2008 (GG 3983) and GN 90/2008 (GG 4032).

The registration of certain medicines is cancelled in GN 26/2006 (GG 3584), GN 203/2006 (GG 3746) and GN 137/2007 (GG 3887).

Certain medicines are registered under the current Act in GN 196/2008 (GG 4103), GN 210/2009 (GG 4367), GN 50/2010 (GG 4444) and GN 128/2010 (GG 4505). The registration of certain medicines is cancelled in terms of the current Act in GN 51/2010 (GG 4444).

Exemptions: Exemptions from the application of section 29 of the Act are contained in GN 179/2008 (GG 4088). Exemptions from certain regulations are contained in GN 49/2010 (GG 4444). Exemptions from section 18(1) of the Act are contained in GN 85/2010 (GG 4473).

Appointments: The Namibia Medicines Regulatory Council is announced in GN 209/2009 (GG 4367).

Cases: *Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others*, Case No A 199/2009 (judgment dated 28 June 2010, as yet unreported) finds the proposed regulations published in GN 241/2004 (GG 3317) and the regulations published in GN 178/2008 (GG 4088) to be unlawful and *ultra vires*, and affects the application of section 31(3) and suspends the application of 46(3) until such time as valid new regulations are in place.

Council for Health and Social Services Professions Repeal Act 3 of 2004.

Summary: This Act repeals the Council for Health and Social Services Professions Act 29 of 1993, and provides for the transfer of moneys standing to that Council's credit. It came into operation on 10 January 2005 (GN 6/2005, GG 3369).

Social Work and Psychology Act 6 of 2004.

Summary: This Act provides for the establishment and constitution of a professional council for social workers and psychologists. It also regulates the social work and psychology professions. It repeals the Allied Health Services Professions Act 20 of 1993 insofar as it relates to these professions and the whole of the Social and Social Auxiliary Workers Professions Act 22 of 1993. It was brought into operation on 1 October 2004 by GN 211/2004 (GG 3291).

Regulations: In terms of section 62(2), any regulation, rule, notice, authorization or order made under any one of the pieces of legislation repealed by the Act remains in force insofar as it is not inconsistent with the Act. Regulations made under the repealed laws which still survive include the following-

Regulations relating to improper conduct or misconduct by clinical psychologists are contained in GN 219/2001 (GG 2637). Qualifications for registration with the board are contained in GN 36/2002 (GG 2704).

Regulations issued under the current Act are as follows:

Psychologists: Regulations relating to psychologists are contained in GN 32-33/2007 (GG 3795); GN 32/2007 withdraws GN 36/2002 (1 March 2002), and GN 33/2007 withdraws the rules and regulations published in RSA GN R.2330 of 3 December 1976, GN R.821 of 13 May 1977, and GN R.1859-1861 of 16 September 1977. Regulations relating to the scope of practice of clinical psychologists and educational psychologists are contained in GN 30/2009 (GG 4218). Regulations relating to the scope of practice of psychological counsellors are contained in GN 31/2009 (GG 4218).

Social workers: Regulations relating to social workers are contained in GN 34/2007 (GG 3795).

Registration fees: Fees payable to the Council are contained in General Notice 68/2007 (GG 3804).

Appeals: Regulations relating to appeals and the conducting of appeals by the Appeal Committee of the Council are contained in GN 66/2009 (GG 4245).

General: Regulations relating to the registration of students of social work and psychology are contained in GN 32/2009 (GG 4218).

Regulations concerning allowances payable to members of the Council are contained in GN 151/2008 (GG 4068).

Regulations relating to continuing professional development are contained in GN 91/2010 (GG 4482).

Appointments and elections: Regulations relating to the first election of members to the Social Work and Psychology Council are contained in GN 142/2004 (GG 3691) and GN 26/2007 (GG 3795).

Both GN 142/2006 (GG 3691) and GN 26/2007 (GG 3795) withdraw "Government Notices 215 and 229 of 20 October 2004". However, there were no Government Notices with these numbers gazetted on that date.

GN 142/2006 (GG 3691) is concerned with regulations relating to the first election of the members of the Social Work and Psychology Council of Namibia. GN 27/2007 (GG 3795) is concerned with regulations relating to the first election of the members of the Allied Health Professions Council of Namibia.

GN 215/2004 (GG 3291) was gazetted on 1 October 2004 and is concerned with the commencement of the Medical and Dental Act 2004. GN 229/2004 (GG 3302) was gazetted on 21 October 2004 and is concerned with the final deregistration of companies. It is unlikely that the regulations intended to withdraw either of these provisions.

It is possible that GN 215/1999 (GG 2214) was intended for repeal, instead of GN 215/2004 (GG 3291). This is because GN 215/1999 is concerned with regulations relating to the election of members to the Clinical Psychology Board under the Allied Health Services Professions Act 1993. This is relevant to the subject matter of GN 142/2006 (GG 3691) and GN 27/2007 (GG 3795). For the same reason it is likely that GN 229/1999 (GG 2214) was intended for repeal, since it is concerned with regulations relating to the election of members to the Social and Social Auxiliary Workers' Board under the Social and Social Auxiliary Workers' Professions Act 1993.

However, since there are no government notices which match both the indicated numbers and dates given, the withdrawals are presumably legally ineffective.

The first Social Work and Psychology Council is announced in GN 62/2008 (GG 4008), replacing the Interim Council established by GN 217/2004 (GG 3293).

Note: There are some regulations made under the repealed laws which still survive. We have identified the following but they appear to have no ongoing relevance.

Clinical Psychology Board-GN 146/1994 (GG 910), GN 38/1995 (GG 1029), GN 353/1999 (GG 2242), GN 88/2000 (GG 2304). This board is no longer operational in practice.

Regulations relating to the election of members to the Social and Social Auxiliary Workers' Board are contained in GN 229/1999 (GG 2214). As explained above, it appears that GN 142/2006 intended to withdraw this notice.

Allied Health Professions Act 7 of 2004.

Summary: This Act provides for the establishment of a professional council for allied health service professions. It also defines and provides for the registration, training and qualifications of members of such professions, and prohibits unregistered persons from practising such professions. This Act repeals all remaining portions of the Allied Health Professions Act 20 of 1993. It was brought into operation on 1 October 2004 by GN 212/2004 (GG 3291).

Application of Act: The Act is made applicable to orthopaedic technologists and orthopaedic technicians by GN 157/2005 (GG 3535), to several health professions by GN 100/2005 (GG 3661) to medical orthotists and prosthetists by GN 2/2007 (GG 3771), to ultrasound radiography; and nuclear medicine radiography by GN 147/2009 (GG 4302) and to emergency care technicians by GN 12/2010 (GG 4419).

Regulations: In terms of section 62(2), any regulation, rule, notice, authorization or order made under the legislation repealed by the Act remains in force insofar as it is not inconsistent with the Act. Regulations made under previous laws which may be of continued relevance include the following:

Homeopaths: Fees which registered homeopaths may charge for their services are contained in GN 55/1998 (GG 1817), General Notice 43/2001 (GG 2489), General Notice 93/2003 (GG 2985) and General Notice 82/2004 (GG 3189).

Joint Complimentary Health Professions: Regulations relating to Joint Complimentary Health Professions are contained in GN 72/2003 (GG 2946), which determines annual fees payable to the Joint Complimentary Health Professions Board.

Physiotherapists: Fees which registered physiotherapists may charge for their services are contained in GN 57/1998 (GG 1819), which replaces GN 41/1997 (GG 1507), and General Notice 44/2001 (GG 2489).

Regulations made under this Act are as follows:

Biokineticists: Minimum requirements for registration as a biokineticist are contained in GN 105/2007 (GG 3853), and other regulations relating to biokineticists are contained in GN 106/2007 (GG 3853). Regulations relating to the scope of practice of biokineticists are contained in GN 45/2010 (GG 4443).

Chiropractors: Regulations relating to the minimum requirements of study for registration as a chiropractor are contained in GN 121/2010 (GG 4502). Regulations relating to additional examinations that may be conducted by the Council in respect of chiropractors are contained in GN 120/2010 (GG 4502). Additional regulations pertaining to chiropractors are contained in GN 123/2010 (GG 4502).

Clinical biochemists: Regulations relating to the minimum requirements of study for registration as a clinical biochemist are contained in GN 125/2010 (GG 4503). Regulations on the scope of practice of clinical biochemists are

contained in GN 124/2010 (GG 4503). Additional regulations pertaining to clinical biochemists are contained in GN 126/2010 (GG 4503).

Dental technicians: Regulations relating to the minimum requirements of study for registration as a dental technician are contained in GN 18/2010 (GG 4426). Regulations relating to additional examinations that may be conducted by the Council in respect of dental technicians are contained in GN 19/2010 (GG 4426). Regulations relating to the registration of dental technicians are contained in GN 20/2010 (GG 4426).

Dieticians: Minimum requirements of study for registration as a dietician are contained in GN 67/2009 (GG 4245). Regulations relating to additional examinations that may be conducted by the Council in respect of dieticians are contained in GN 68/2009 (GG 4245). Additional regulations pertaining to dieticians are contained in GN 69/2009 (GG 4245).

Medical laboratory technicians: Regulations relating to medical laboratory technicians are contained in GN 28-29/2007 (GG 3795).

Medical rehabilitation workers: Regulations relating to the minimum requirements of study for registration as a medical rehabilitation worker are contained in GN 152/2008 (GG 4068). Regulations relating to the registration of medical rehabilitation workers are contained in GN 153/2008 (GG 4068).

Medical technologists: Regulations relating to medical technologists are contained in GN 35-36/2007 (GG 3795), which withdraw RSA GN R.2304-2305 of 3 December 1976.

Occupational therapists: Regulations relating to the minimum requirements of study for registration as an occupational therapist are contained in GN 7/2010 (GG 4411). Regulations relating to the registration of occupational therapists are contained in GN 11/2010 (GG 4419).

Ocularists: Regulations relating to the minimum requirements of study for registration as an ocularist are contained in GN 149/2008 (GG 4068). Regulations relating to the registration of ocularists are contained in GN 154/2008 (GG 4068).

Optometrists: Regulations relating to the minimum requirements of study for registration as an optometrist are contained in GN 173/2009 (GG 4332). Regulations relating to the registration of optometrists are contained in GN 174/2009 (GG 4332). Additional examinations which may be conducted by the Council in respect of optometrists are addressed in GN 175/2009 (GG 4332).

Physiotherapists: Regulations relating to physiotherapists are contained in GN 30-31/2007 (GG 3795); GN 31/2007 withdraws certain regulations published in GN 49/1997 and “regulation No. 224 of 7 November 2005”.

The reference in GN 31/2007 to “regulation No. 224 of 7 November 2005” must be wrong. There was no Government Gazette published on that date. GN 224/2005 (GG 3498) was published on 15 September 2005 and is concerned with charges and fees regarding the control of outdoor advertising in Walvis Bay. It is therefore unclear which regulation was intended to be withdrawn.

Additional examinations which may be conducted by the Council in respect of physiotherapists are addressed in GN 148/2009 (GG 4302). Regulations on the scope of practice of physiotherapists are contained in GN 122/2010 (GG 4502).

Radiographers: Minimum requirements of study for registration as a diagnostic radiographer, a nuclear medicine radiographer, a therapeutic radiographer, an ultrasound radiographer and a radiography assistant are contained in GN 47/2010 (GG 4443). Regulations relating to the registration of radiographers are contained in GN 48/2010 (GG 4443).

General: Professional Conduct Rules are contained in General Notice 387/2007 (GG 3951).

Continuing professional development is addressed in GN 46/2010 (GG 4443).

Regulations relating to appeals and the conducting of appeals by the Appeal Committee of the Council are contained in GN 161/2009 (GG 4313).

Fees payable to the Council are contained in General Notice 358/2006 (GG 3743).

Regulations concerning allowances payable to members of the Council are contained in GN 148/2008 (GG 4068).

Appointments and elections: Regulations relating to the first election of the members of the Allied Health Professions Council of Namibia are contained in GN 143/2006 (GG 3692) and GN 27/2007 (GG 3795). Further regulations relating to the first election of the members of the Allied Health Professions Council of Namibia are contained in GN 172/2007 (GG 3861). The first Allied Health Professions Council is announced in GN 61/2008 (GG 4008).

Regulations relating to the election of members to various individual boards are contained in GN 215/1999 (GG 2214), GN 217/1999 (GG 2214), GN 218/1999 (GG 2214), GN 219/1999 (GG 2214), GN 220/1999 (GG 2214), GN 222/1999 (GG 2214), GN 224/1999 (GG 2214), GN 225/1999 (GG 2214), GN 227/1999 (GG 2214), GN 228/1999 (GG 2214), GN 230/1999 (GG 2214), GN 185/2000 (GG 2385), GN 143/2006 (GG 3692), GN 146/2006 (GG 3695) and GN 27/2007 (GG 3795).

The notices pertaining to elections of members to various individual boards which clearly remain in force are therefore GN 215/1999 (GG 2214) relating to the Clinical Psychology Board, GN 230/1999 (GG 2214) relating to the Traditional Healers Board and GN 146/2006 (GG 3695) relating to the Medical and Dental Council. We have not ascertained which of these individual boards remain operational in practice, aside from obtaining information that the Clinical Psychology Board is no longer in place.

Nursing Act 8 of 2004.

Summary: This Act provides for the establishment of a professional council for the nursing and midwifery or accoucheury professions. It also defines and provides for the registration, enrolment, training and qualifications of members of such professions, and prohibits unregistered persons from practising such professions. This

Act repeals the Nursing Professions Act 30 of 1993. It was brought into operation on 1 October 2004 by GN 213/2004 (GG 3291).

Regulations: In terms of section 65(2), any regulation, rule, notice, authorization, or order made under the legislation repealed by the Act remains in force insofar as it is not inconsistent with the Act:

Registration and enrolment: Regulations relating to registration and enrolment are contained in GN 11/1999 (GG 2040) (which repeals a long list of regulations promulgated in RSA Government Notices); Part II of GN 11/1999 is repealed by GN 250/2008 (GG 4140).

Scope of practice: Regulations relating to the scope of practice are contained in GN 13/1999 (GG 2040).

Misconduct: Rules concerning misconduct are contained in GN 10/1999 (GG 2040) (which repeals RSA GN R.1648, R.1649 and R.1650 of 14 September 1973).

Complaints Regulations relating to the lodging of complaints and the conducting of enquiries are contained in GN 12/1999 (GG 2040) (which repeals RSA GN R.373 of 13 March 1970, RSA GN R.1737 of 29 September 1972 and RSA GN R.1707 of 27 September 1974).

Courses of study: Regulations relating to courses of study which have not been repealed are contained in the following:

*Advanced University Diploma in Operating Room Nursing Science - GN 14/1999 (GG 2040) (which repeals RSA GN R.44 of 9 January 1970).

*Diploma in Ophthalmological Nursing - GN 15/1999 (GG 2040) (which repeals RSA GN R.83 of 16 January 1970, RSA GN R.265 of 14 February 1975 and RSA GN R.1578 of 12 August 1977).

*Advanced University Diploma in Health Promotion, Clinical Diagnosis and Treatment - GN 17/1999 (GG 2042)

*Diploma in Midwifery for Registration as a Midwife - GN 67/1999 (GG 2083)

*Diploma in Nursing (General) - GN 55/1999 (GG 2077) (which repeals RSA GN R. 879 of 2 May 1975, RSA GN R. 2316 of 5 December 1975 and RSA GN R. 1570 of 12 August 1977)

*Advanced University Diploma in Nursing Education - GN 194/2000 (GG 2392)

*Nurse and Midwife. – GN 195/2000 (GG 2392)

*Advanced University Diploma in Critical Care Nursing – GN 196/2000 (GG 2392) (which repeals RSA GN R.85 of 16 January 1970).

Uniforms, badges, etc: Regulations relating to uniforms, badges and other distinguishing devices for nurses are contained in GN 56/1999 (GG 2077), as amended (under the current Act) by GN 116/2009 (GG 4264).

Regulations issued under this Act are as follows;

Registration as nurse, midwife or accoucher specialist: Regulations relating to the minimum requirements for study as registration as a nurse or midwife are contained in GN 143/2008 (GG 4068). Regulations relating to

the registration of nurses, midwives and accoucher specialities are contained in GN 250/2008 (GG 4140), which repeals Part II of GN 11/1999 (GG 2040).

Fees which registered persons must pay annually to the Nursing Council of Namibia are contained in General Notice 357/2006 (GG 3743), as amended by General Notice 18/2007 (GG 3788). (Previous fees were contained in GN 56/1998 (GG 1818) and GN 178/2000 (GG 2374), as amended by GN 73/2001 (GG 2520).)

Dermatology: Regulations relating to a diploma course in dermatology are contained in GN 142/2008 (GG 4068).

Midwives: Regulations concerning the conditions of practice of midwives are contained in GN 177/2000 (GG 4332).

Appeals: Regulations relating to appeals and the conducting of appeals by the Appeal Committee of the Nursing Council are contained in GN 117/2009 (GG 4264).

General: Regulations concerning allowances payable to members of the Council are contained in GN 146/2008 (GG 4068). Regulations concerning additional examinations by the Council are contained in GN 149/2009 (GG 4302).

Appointments and elections: Regulations relating to the first election of the members of the Nursing Council of Namibia are contained in GN 145/2006 (GG 3694) and GN 23/2007 (GG 3795). Both of these withdraw GN 223/1999 (relating to the previous Nursing Board). Further regulations relating to the first election of the members of the Nursing Council of Namibia are contained in GN 171/2007 (GG 3861).

The first Nursing Council is announced in GN 60/2008 (GG 4008), replacing the Interim Council established by GN 219/2004 (GG 3293).

Pharmacy Act 9 of 2004.

Summary: This Act provides for the establishment of a professional council for the pharmacy profession. It also defines and provides for the registration, training and qualifications of members of pharmacists, pharmacist interns, pharmacy students, pharmacists' assistants and pharmaceutical technicians, and prohibits unregistered persons from practising in the pharmacy profession. It repeals the Pharmacy Profession Act 23 of 1993. It was brought into operation on 1 October 2004 by GN 214/2004 (GG 3291).

Regulations: In terms of section 72(2), any regulation, rule, notice, authorization or order made under the legislation repealed by the Act remains in force insofar as it is not inconsistent with the Act:

Misconduct: Rules in respect of misconduct are contained in GN 299/1996 (GG 1444).

Regulations made under this Act are as follows:

Registration: Minimum requirements of study for registration as a pharmacist are contained in GN 221/2007 (GG 3945). Regulations relating to the registration of pharmacists and pharmacist interns and the qualifications for specialities are contained in GN 51/2008 (GG 4000), which repeals the regulations in RSA GN R.1417 of 1 August 1975.

Fees payable to the Council are set by General Notice 67/2007 (GG 3804), as amended by General Notice 174/2008 (GG 4068).

Ownership of pharmacies by private hospitals: Regulations relating to the ownership of pharmacies by private hospitals are contained in GN 198/2008 (GG 4103).

General: Regulations concerning allowances payable to members of the Council are contained in GN 147/2008 (GG 4068). Regulations relating to continuing professional development are contained in GN 90/2010 (GG 4482).

Appointments and elections: Regulations relating to the first election of the members of the Pharmacy Council of Namibia are contained in GN 144/2006 (GG 3693) and GN 24/2007 (GG 3795). Both of these withdraw GN 226/1999, relating to the previous body. Further regulations relating to the first election of the members of the Pharmacy Council of Namibia are contained in GN 170/2007 (GG 3861). Members of the first Pharmacy Council are announced in GN 270/2008 (GG 4166).

Medical and Dental Act 10 of 2004.

Summary: This Act provides for the establishment of a professional council for the medical and dental professions. It also defines and provides for the registration, training and qualifications of members of these professions, and prohibits unregistered persons from practising such professions. It repeals the Medical and Dental Professions Act 21 of 1993, and the Allied Health Services Professions Act 20 of 1993 insofar as it relates to the professions regulated by this Act. It was brought into operation on 1 October 2004 by GN 215/2004 (GG 3291).

GN 215/2004 was arguably withdrawn by GN 142/2006 (GG 3691) and again by GN 26/2007 (GG 3795). However this appears to be an error. GN 142/2006 (GG 3691) and GN 26/2007 (GG 3795), both of which contain regulations relating to the first election of the Social Work and Psychology Council, withdraw "Government Notices Nos. 215 and 229 of 20 October 2004". However, there were no Government Notices with these numbers gazetted on that date. GN 215/2004, which deals with the commencement of this Act, was gazetted on 1 October 2004 (GG 3291), and GN 229/2004, which deals with the final deregistration of companies, was gazetted on 21 October 2004. It is unlikely that the regulations intended to withdraw either of these notices.

It is possible that GN 215/1999 (GG 2214) was intended for repeal, instead of GN 215/2004. This is because GN 215/1999 is concerned with regulations relating to the election of members to the Clinical Psychology Board under the Allied Health Services Professions Act 20 of 1993 (now repealed). This is relevant to the subject matter of GN 142/2006 (GN 3691) and GN 27/2007 (GG 3795). For the same reason it is likely that GN 229/1999 (GG 2214) was intended for repeal, since it is concerned with regulations relating to the election of members to the Social and Social Auxiliary Workers' Board under the Social and Social Auxiliary Workers' Professions Act 22 of 1993.

Since there are no government notices which match both the indicated numbers and dates given, the withdrawal is presumably legally ineffective.

Regulations: In terms of section 65(2), any regulation, rule, notice, authorization, or order made under any one of the pieces of legislation repealed by the Act remains in force insofar as it is not inconsistent with the Act. Regulations made under the repealed laws which continue to survive include the following-

Registration: Regulations relating to fees payable to the Medical Board are contained in GN 230/2003 (GG 3092), which technically remains in force although it appears to have no continued relevance.

Students: Regulations relating to the registration of medical students and their curricula are contained in GN 237/2000 (GG 2415) (which repeals RSA GN R.2269 and R.22170 of 3 December 1976).

Misconduct: Rules relating to misconduct in respect of the dental profession are contained in GN 151/2001 (GG 2590), which repeals the rules in RSA GN R.2278 of 3 December 1976 as amended by GN 218/2001 (GG 2637), insofar as they relate to the dental profession.

Rules relating to misconduct in respect of the medical profession are contained in GN 197/2002 (GG 2851) as amended by GN 87/2004 (GG 3198), which repeals the rules in RSA GN R.2278 of 3 December 1976 insofar as they relate to medical practitioners.

Regulations regarding the procedures at disciplinary hearings by the Dental Board are contained in GN 222/2003 (GG 3085).

Complaints: Regulations relating to complaints and disciplinary inquiries by the Medical Board are contained in GN 31/2001 (GG 2489) (which repeals RSA GN R.2268 of 3 December 1976).

Appeals: Regulations relating to Appeals and the Conducting of Appeals by the Appeal Committee of the Medical and Dental Council are contained in GN 41/2009 (GG 4232).

Fees: Fees which may be charged by registered dentists are contained in General Notice 302/2003 (GG 3085) which repeals General Notice 381/2002 (GG 2880).

The regulations below were promulgated under the 2004 Act-

Dental professions: Regulations on conditions applicable to practice as a dentist, dentist specialist or oral hygienist are contained in GN 80/2005 (GG 3460).

Regulations relating to the qualifications for registration of dentists, minimum curriculum requirements for the study of dentistry and professional examinations for dentists are contained in GN 51/2006 (GG 3595). Regulations relating to the registration of dentists are contained in GN 155/2008 (GN 4068), which repeals certain South African regulations insofar as they apply to dentists: RSA GN No R. 2269, 2273, 2274, 2275, 2276, 2277 and 2278 of 3 December 1976 and R.1829 of 16 September 1977.

Oral hygienists: Regulations relating to the minimum requirements of study for registration as an oral hygienist are contained in GN 144/2008 (GG 4068). Regulations relating to the registration of oral hygienists are contained in GN 145/2008 (GG 4068). Regulations related to the scope of practice of oral hygiene are contained in GN 197/2008 (GG 4103).

Medical practitioners: Regulations concerning the registration of medical practitioners and specialities are contained in GN 71/2010 (GG 4455). Regulations concerning the qualifications of registered medical practitioners are contained in GN 177/2009 (GG 4332).

Registration fees: Fees payable to the Council are contained in General Notice 8/2007 (GG 3771), which withdraws GN 223/2003.

Registration of medical interns: Regulations relating to the registration of medical interns are contained in GN 8/2007 (GG 3783). These regulations withdraw regulations 15-18 and 20 published in GN 238/1999.

Conditions of practice: Regulations concerning the conditions of practice of registered persons other than those in dental professions are contained in GN 176/2009 (GG 4332).

General: Regulations concerning allowances payable to members of the Council are contained in GN 150/2008 (GG 4068).

Regulations concerning additional examinations which may be conducted by the Council are contained in GN 259/2008 (GG 4150).

Regulations relating to continuing professional development are contained in GN 92/2010 (GG 4482).

Appointments and elections: Regulations relating to the first election of the Medical and Dental Council of Namibia are contained in GN 146/2006 (GG 3695) and GN 25/2007 (GG 3795). Both of these withdraw GN 216/1999, 220/1999 and 221/1999, relating to previous bodies. The first Medical and Dental Council is announced in GN 59/2008 (GG 4008), replacing the Interim Council established by GN 220/2004 (GG 3293).

See also Veterinary and Para-Veterinary Professions Proclamation 14 of 1984 (**ANIMALS**).

See also **HEALTH**.

See also **HOSPITALS**.

See also Namibia Qualifications Authority Act 29 of 1996 (re: occupational standards) (**LABOUR**).

See also **MEDICAL AID**.

See also **SOCIAL WELFARE**.

MENTAL HEALTH AND MENTAL DISORDERS

Mental Health Act 18 of 1973, as amended in South Africa prior to Namibian independence.

Summary: This Act provides for the detention and treatment of the mentally ill.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 78 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 (Health) Transfer Proclamation (AG 14/1977), dated 1 December 1977. None of the amendments to the Act in South Africa after that date were made expressly applicable to SWA.

Amendments: The Criminal Procedure Act 25 of 2004, which is not yet in force, amends section 1 and substitutes sections 17 and 29 and certain expressions.

Appointments: A Psychiatry Board in respect of Windhoek Central Hospital is announced in GN 198/2001 (GG 2624).

METEOROLOGY

INTERNATIONAL LAW

Convention of the World Meteorological Organisation, 1947

accession: 16 November 1993 (source: Ministry of Foreign Affairs)

effective date in respect of Namibia: 8 March 1991 (source: <http://sedac.ciesin.org/>)

SADC Protocol on Transport, Communications and Meteorology, 1996

(entered into force within SADC on 6 July 1998) (source: SADC)

signature: 24 August 1996 (source: SADC)

ratification: 19 September 1997 (source: SADC; Ministry of Foreign Affairs)

See Proc. 24/1997 (GG 1723).

MINING AND MINERALS

Sperrgebiet-Delimitation Proclamation 11 of 1920.

Summary: This Proclamation defines the area known as the “Sperrgebiet”.

Amendments: The Proclamation is amended by Proc. 35/1922.

The acquisition of shares in Rössing Uranium Limited and the appointment of a director, AG 31 of 1985.

Summary: This Proclamation authorises the purchase of shares in Rössing Uranium Limited by the government.

Petroleum (Exploration and Production) Act 2 of 1991.

Summary: This Act provides for the reconnaissance, exploration, production, disposal and control of petroleum. It came into force on 30 September 1992 in terms of Act 27/1992.

Amendments: The Act is amended by Act 27/1992 (section 72), Act 33/1992 (sections 4, 16 and 78), Act 2/1993 (section 14) and Act 24/1998 (which came into force on 1 April 1999 – GN 44/1999, GG 2075) (sections 30, 38, 41, 46, 62, 67 and insertion of a new Part XA).

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

Minerals (Prospecting and Mining) Act 33 of 1992.

Summary: This Act provides for the reconnaissance, prospecting, mining, disposal and control of minerals in Namibia. It came into force on 1 April 1994 (GN 41/1994, GG 828).

Amendments: Act 8/2008 amends section 114.

Regulations: Fees are determined in GN 42/1994 (GG 828).

Land is reserved from prospecting and mining operations in GN 86/1994 (GG 863), GN 215/1994 (GG 971), GN 53/1996 (GG 1270), GN 307/1996 (GG 1454), GN 225/1997 (GG 1730), GN 152/1998 (GG 1901), GN 92/1999 (GG 2109), GN 107/1999 (GG 2128), GN 252/2000 (GG 2426), GN 156/2003 (GG 3019) (which is withdrawn by GN 68/2005, GG 3456) and GN 41/2007 (GG 3803).

A reservation of land previously enacted under the Mines, Works and Minerals Ordinance 20 of 1968 is cancelled by GN 284/1996 (GG 1435).

The abandonment and forfeiture of mining areas under the Mines, Works and Minerals Ordinance 20 of 1968 is addressed in GN 138/1991 (GG 320), GN 139/1991 (GG 320), GN 161/1992 (GG 527) and GN 144/1993 (GG 750).

Certain semi-precious stones are declared to be high value minerals in terms of section 1(3)(b) of the Act 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).

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).

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on persons in the business of trading minerals.

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)

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

Thloro 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) (contravention of section 74); *S v Auala (No 2)* 2008 (1) NR 240 (HC) (sentencing for this offence)

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))

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).

Minerals Development Fund of Namibia Act 19 of 1996.

Summary: This Act 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, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 6, 8 and 16.

Diamond Act 13 of 1999.

Summary: This Act 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. This Act, which came into force on 1 April 2000 (GN 83/2000, GG 2300), replaces the Diamond Industry Protection Proclamation 17 of 1939.

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 1, 4, 6 and 7, and substitutes section 9.

Regulations: Regulations are contained in GN 84/2000 (GG 2300), as amended by GN 104/2003 (GG 2984). Restricted diamond areas are declared in GN 97/2000 (GG 2306).

Cases: The following cases pertain to this Act-

S v Auala (No 1) 2008 (1) NR 223 (HC) (contravention of section 30(1)).

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).

Articles: 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.namibialawjournal.org (discussing case arising under Diamond Industry Protection Proclamation 17 of 1939).

SELECTED ARTICLES

Legal Assistance Centre/Stanford Law School, *Striking a Better Balance; An Investigation of Mining Practices in Namibia's Protected Areas*, 2009, available at www.lac.org.na/projects/lead/Pdf/StrikingaBetterBalance.pdf.

INTERNATIONAL LAW

SADC Protocol on Mining, 1997

(entered into force within SADC on 10 February 2000) (source: SADC)

signature: 8 September 1997 (source: SADC)

ratification: 22 December 1998 (source: SADC; Ministry of Foreign Affairs)

Statute of African Diamonds Producers Association, 2006

formed on 4 November 2006

ratification by Parliament, 25 April 2007 (source: Parliament)

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

See also **LABOUR**.

NATIONAL HERITAGE

War Graves Control and Maintenance Ordinance 2 of 1927.

Summary: This Ordinance provides for the control and maintenance of war graves.

Amendments: The Ordinance is amended by Proc. 17/1928. It was extended to the Rehoboth Gebiet by Proc. 12/1930.

Regulations: GN 191/1960 concerns the Graves Commission.

National Heritage Act 27 of 2004

Summary: This Act provides for the preservation and registration of places and objects of national significance. It establishes a National Heritage Council and a National Heritage Register. The Act replaces the *National Monuments Act 28 of 1969* inherited from South Africa. It came into force on 1 September 2005 (GN 105/2005, GG 3490).

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 1, 4 and 7, deletes section 6 and substitutes section 18.

Regulations: Regulations, appointments and declarations made under the *National Monuments Act 28 of 1969* survive under the new law. Regulations are promulgated under the new law in GN 106/2005 (GG 3490). These regulations do not replace or repeal any regulations which may have been made in terms of the previous South African Act (and which have not been recorded here).

Declarations of national monuments and other protected areas: Heroes Acre is designated as a national monument (under the previous Act) in GN 144/2002 (GG 2801).

Grave No 171 (the Mass Grave) in the Old Location Cemetery and Omugulugwombashe are designated as national monuments in GN 118/2006 (GG 3679).

An area in and around Swakopmund is designated a conservation area by General Notice 260/2006 (GG 3688), and the demolition of any building situated for 50 years or more in this area is prohibited by GN 79/2008 (GG 4022).

Betholdt Himumuine Primary School is declared to be a heritage place in General Notice 298/2006 (GG 3714). Dorslandtrekker is declared to be a heritage place in General Notice 299/2006 (GG 3714).

Twylfontein is declared to be a conservation area in General Notice 20/2007 (GG 3788).

Appointments: Councils are appointed under the previous Act in GN 76/1991 (GG 232), GN 318/1996 (GG 1462), GN 270/2000 (GG 2444) and GN 20/2003 (GG 2915). Councils are appointed under this Act in GN 82/2009 (GG 4260).

INTERNATIONAL LAW

Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO), 1945

Namibia has been a member state of this organisation since 2 November 1978.

(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>.)

Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972

accession: 6 April 2000 (source: www.epi.freedom.org/whtrty.htm)

World Heritage Convention, 1975

accession: 6 April 2000 (source: www.unesco.org/whc)

UNESCO Convention on the Protection of the Underwater Cultural Heritage, 2001

(entered into force internationally on 2 January 2009)

ratification by Parliament: 11 March 2010 (source: Parliament)

ratification not registered with UNESCO as of June 2010 (source: UNESCO, www.unesco.org)

Convention for the Safeguarding of the Intangible Cultural Heritage, 2003

(entered into force internationally on 20 April 2006)

ratification approved by Parliament: 7 November 2006

deposit: 19 September 2007; effective date: 19 December 2007

(source: UNESCO, www.unesco.org)

Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005

(entered into force internationally on 18 March 2007)

deposit: 29 November 2006 (source: UNESCO, www.unesco.org)

See also **CULTURE AND CULTURAL INSTITUTIONS.**

NEGOTIABLE INSTRUMENTS

Bills of Exchange Act 22 of 2003.

Summary: This Act regulates bills of exchange, cheques, and promissory notes. It repeals the *Bills of Exchange Act 34 of 1964* and part of the *Suretyship Amendment Act 57 of 1971*. It came into operation on 15 May 2004 (GN 110/2004, GG 3207).

Cases: *Atlantic Meat Market (Pty) Ltd v Standard Bank of Namibia Ltd* 2005 NR 140 (HC) involves cessation of a claim arising under section 22 of the *Bills of Exchange Act 34 of 1964*.

PENSIONS

Teachers' Pensions Proclamation 39 of 1931.

Summary: This Proclamation governs pensions from the SWA Teachers' Pension Fund.

Amendments: The Proclamation is amended by-

Proc. 33/1936
Proc. 33/1937
Proc. 15/1938
Proc. 5/1942
Proc. 3/1943
Proc. 18/1943
Proc. 18/1944
Proc. 1/1945
Proc. 30/1945
Proc. 40/1945
Proc. 19/1946
Proc. 16/1947
Ord. 8/1951
Ord. 8/1953
Ord. 5/1954
Ord. 34/1957
Ord. 21/1959
Ord. 26/1959
Ord. 20/1960
Ord. 17/1962
Ord. 27/1963
Ord. 21/1969.

Railways and Harbours Pensions Amendment Act 26 of 1941, as amended in South Africa prior to Namibian independence.

Summary: This Act concerns benefits for employees of the Railway Administration upon retirement and for the dependants of deceased employees.

Applicability to SWA: Section 8A 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 relevant Transfer Proclamation is the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978. However, the Act was excluded from transfer by section 3(2)(a) of the General Proclamation, which exempted "those provisions of any law ... which provide for or relate to ... pension rights and privileges or any other conditions of service of any person who is, or is engaged for employment, in the service of the State or the Government of the Republic or any of its departments in terms of that law or any other law".

Ex-Volunteers Assistance Proclamation 2 of 1945.

Summary: This Proclamation covers grants and loans to persons who rendered certain military services.

Amendments: The Proclamation is amended by Proc. 14/1945, Proc. 19/1945, Proc. 25/1946, Proc. 4/1949, Proc. 23/1948 and Proc. 20/1949.

Railways and Harbours Special Pensions Act 36 of 1955, as amended in South Africa prior to Namibian independence.

Summary: This Act provides for the recalculation of benefits payable to certain former members of the various Railways and Harbours pension funds or their dependants. (It applies only to persons who died or retired before October 1953.)

Applicability to SWA: Section 8 states “This Act shall apply to the Territory of South West Africa”. The only amendments to the Act in South Africa prior to Namibian independence -- the *Railways and Harbours Pensions Amendment Act 22 of 1956* and the *Railways and Harbours Act Amendment Act 34 of 1957* -- are both expressly applicable to SWA.

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978. However, the Act was excluded from transfer by section 3(2)(a) of the General Proclamation, which exempted “those provisions of any law ... which provide for or relate to ... pension rights and privileges or any other conditions of service of any person who is, or is engaged for employment, in the service of the State or the Government of the Republic or any of its departments in terms of that law or any other law”.

Pension Funds Act 24 of 1956, as amended in South Africa prior to Namibian independence.

Summary: This Act regulates pension funds.

Amendments: The Short-term Insurance Act 4 of 1998 repeals section 39 insofar as it relates to short-term insurance. The Long-term Insurance Act 5 of 1998 repeals the remainder of section 39. The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 amends section 1, substitutes section 3 and repeals section 3A. The Maintenance Act 9 of 2003 amends section 37.

Applicability to SWA: Section 1 defines “Union” to include “the Territory”, which is defined as “the Territory of South West Africa”. Section 40 states “This Act shall apply also in the Territory.” Although section 40 did not make amendments to the Act in South Africa automatically applicable to SWA, they appear to have applied to SWA by virtue of the definition of “Union” in section 1. (Act 9/1994 supports this assumption by referring to previous amendments made by Act 103 of 1979, Act 86 of 1984 and Act 53 of 1989).

Amendments: Act 4/1994 amends section 36 to allow the imposition of limits on the amount of funds which may be invested outside Namibia.

Regulations: Regulations are contained in RSA GN R.98 of 1962, as amended by-
RSA GN R.2144/1984
RSA GN R.1790/1985
RSA GN R.1037/1986
RSA GN R. 232/1987
RSA GN R.1452/1989
GN 103/1994 (GG 870)
GN 143/1994 (GG 899)
GN 56/1995 (GG 1044)
GN 108/1995 (GG 1095)
GN 30/2008 (GG 3985).

Appointments: A Registrar and Deputy Registrar of Pensions Funds are appointed in General Notice 29/1991 (GG 174).

Cases: *Old Mutual Life Assurance Co Namibia Ltd v Old Mutual Namibia Staff Pension Fund & Another* 2006 (1) NR 211 (HC) (section 37D).

Administration Employees Pension Ordinance 19 of 1959.

Summary: This Ordinance provides for pensions and benefits for certain employees of the administration of South West Africa.

Amendments: This Proclamation is amended by Ord. 18/1960 and Ord. 23/1962. See also the Regulation of Membership of the Union Widows' Pension Fund Ordinance 15 of 1960, which provides for male contributors of the Administration Employees Pension Fund to be members of the Union Widows Pension Fund.

Social Pensions Ordinance 2 of 1965.

Summary: This Ordinance consolidates the laws relating to social pensions. The remaining portions of the Ordinance appear to be superseded by the National Pensions Act 10 of 1992.

Amendments: The Ordinance is repealed in part by the *RSA Aged Persons Amendment Act 14 of 1971* and the *RSA Blind Persons Amendment Act 16 of 1971*.

Members of Statutory Bodies Pension Act 94 of 1969, as amended in South Africa prior to Namibian independence.

Summary: This Act establishes a pension scheme for employees of statutory bodies.

Applicability to SWA: Section 7 states "This Act and any amendment thereof shall, so far as is necessary for the effective application thereof, apply also in the territory." Section 1 defines "territory" as "the territory of South West Africa, including that part of the said territory known as the Eastern Caprivi Zipfel and referred to in section 38(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968)".

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated 30 November 1977. However, section 3(c) of the Transfer

Proclamation provided that section 3(1) of the General Proclamation shall not apply to “the provisions of any law relating to any pension or provident fund or scheme which is administered by the Minister of Social Welfare and Pensions or is otherwise controlled by him ...”. Therefore, the administration of the Act was not transferred to SWA.

Black Authorities Service Pensions Act 6 of 1971, as amended in South Africa prior to Namibian independence.

Summary: This Act provides for the establishment and control of a pension fund for the employees of certain “black authorities”.

Applicability to SWA: Section 1 defines the authorities covered by the Act to include “any executive council, tribal authority, community authority or regional authority referred to in the Development of Self-Government for Native Nations in South West Africa Act, 1968 (Act No. 54 of 1968)”. Section 1 defines “the territory as “the territory of South West Africa,” and section 8 states “This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel.”

Transfer of administration of SWA: The relevant transfer proclamation is the Executive Powers Transfer Proclamation (AG 3/1977, as amended), dated 28 September 1977. However, section 3(1)(e) exempts from transfer “those provisions of any law providing for or relating to... pension rights and privileges of any person who is, or is engaged, in the service of the state...”. Thus, the administration of the Act was not transferred to SWA.

Railways and Harbours Pensions Act 35 of 1971, as amended in South Africa prior to Namibian independence.

Summary: This Act deals with pensions and other retirement benefits for employees of the Administration of Railways and Harbours.

Applicability to SWA: Section 21 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 relevant Transfer Proclamation is the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978. However, the Act was excluded from transfer by section 3(2)(a) of the General Proclamation, which exempted “those provisions of any law ... which provide for or relate to ... pension rights and privileges or any other conditions of service of any person who is, or is engaged for employment, in the service of the State or the Government of the Republic or any of its departments in terms of that law or any other law”.

Amendments: The Act is amended by Act 5/1984.

Parliamentary Service and Administrators’ Pensions Act 81 of 1971, as amended in South Africa prior to Namibian independence.

Summary: This Act covers pensions for members of parliament, administrators, certain members of the diplomatic service and commissioners-general.

Applicability to SWA: Section 25 states “This Act and any amendment thereof which may be made from time to time, shall, in so far as is necessary for the effective application thereof, apply also in the territory”, which is defined as SWA.

Transfer of administration to SWA: The relevant Transfer Proclamation is not clear from the face of the Act, as it is administered by “a person who is or was appointed as Minister in terms of section 20 of the Constitution Act or a provision of any law repealed by that Act”. However, the administration of laws relating to pensions was generally not transferred to SWA. (See section 3(1)(g) of AG 3/1977 and section 3(2)(a) of the General Proclamation, AG 7/1977.)

Government Service Pension Act 57 of 1973, with one South African amendment.

Summary: This Act provides for pensions and other financial benefits for certain persons employed by the South African Government, the Administration of South West Africa, and provincial administrations.

Applicability to SWA: Section 1 defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”. Section 19 states “This Act shall apply also in the territory, including the Eastern Caprivi Zipfel.” The wording of section 19 did not make amendments to the Act automatically applicable to SWA, but they may be applicable by virtue of the definition of “Republic” in section 1. However, since one of the several amendments to the Act was made expressly applicable to SWA, it would appear that the other South African amending acts do not apply to SWA.

Transfer of administration to SWA: The relevant transfer proclamation is the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated 30 November 1977. However, section 3(c) of the transfer proclamation provided that section 3(1) of the General Proclamation shall not apply to “the provisions of any law relating to any pension or provident fund or scheme which is administered by the Minister of Social Welfare and Pensions or is otherwise controlled by him ...”. Therefore, the administration of the Act was not transferred to SWA.

Amendments: Only one South African amending act -- the *Pensions Laws Amendment Act 83 of 1976* -- is expressly applicable to SWA.

Railways and Harbours Pensions for Non-Whites Act 43 of 1974, as amended in South Africa prior to Namibian independence.

Summary: This Act provides for pensions and other retirement benefits to non-white employees of the Administration of Railways and Harbours.

Applicability to SWA: Section 18 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 relevant transfer proclamation is the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978. However, the Act was excluded from transfer by section 3(2)(a) of the General Proclamation, which exempted “those provisions of any law ... which provide for or relate to ... pension rights and privileges or any other conditions of service of any person who is, or is engaged for employment, in the service of the State or the Government of the Republic or any of its departments in terms of that law or any other law”.

Second Pension Laws Amendment Act 77 of 1974, section 16.

Summary: This section deals with pensions of local authority employees who become employees of government.

Applicability to SWA: Section 16(6) states “This section shall also apply to the territory of South West Africa, including the Eastern Caprivi Zipfel”.

Military Pensions Act 84 of 1976, as amended in South Africa prior to Namibian independence.

Summary: This Act provides benefits and medical treatment in regard to disablement caused or exacerbated by military service under the Defence Act. It also consolidates other war pensions.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 25 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 relevant transfer proclamation is the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated 30 November 1977. However, section 3(c) of the transfer proclamation provided that section 3(1) of the General Proclamation shall not apply to “the provisions of any law relating to any pension or provident fund or scheme which is administered by the Minister of Social Welfare and Pensions or is otherwise controlled by him ...”. Therefore, the administration of the Act was not transferred to SWA.

Pensions Laws Amendment Act 83 of 1976, sections 1-5 and 8.

Summary: Sections 1-4 amend other laws. Section 5 relates to persons entitled to pensions or benefits as employees of Simonstown Naval Base. Section 8 contains presumptions and definitions for purposes of laws relating to social pensions.

Applicability to SWA: Section 10 states that the listed sections “shall also apply in the territory of South West Africa, including the Eastern Caprivi Zipfel”.

Temporary Employees Pension Fund Act 75 of 1979, as amended in South Africa prior to Namibian independence.

Summary: This Act provides pensions and other benefits to certain temporary employees and their dependants.

Applicability to SWA: Section 9A (added by RSA Proclamation R.217 of 1979) states “This Act and any amendment thereof shall apply also in the Territory of South West Africa, including the Eastern Caprivi Zipfel.” This section also provides special definitions for “revenue” and “Government” in regard to South West Africa.

Transfer of administration to SWA: The relevant transfer proclamation is the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated 30 November 1977. However, section 3(c) of the transfer proclamation provided that section 3(1) of the General Proclamation shall not apply to “the provisions of any law relating to any pension or provident fund or scheme which is administered by the Minister of Social Welfare and Pensions or is otherwise controlled by him ...”. Therefore, the administration of the Act was not transferred to SWA.

Pension Matters of Government Institutions Proclamation, AG 56 of 1989.

Summary: This Proclamation deals with issues related to the termination of the Statutory Institutions Pensions Fund established in terms of Statutory Institutions Pensions Act 3 of 1980, which was repealed in its entirety by AG 6/1989.

Amendments: Act 5/1990 repeals section 3 and amends section 4, so as to remove the right of persons to invest their accrued pension benefits in retirement annuity funds of life insurance companies.

Application: Section 10(4)(c) of the Namibia Wildlife Resorts Company Act 3 of 1998 deals with the application of the Government Institutions Pension Fund to employees of that company.

Pension Gratuities to Former Members of the National Assembly and of Legislative and Executive Authorities Proclamation, AG 8 of 1990.

Summary: This Proclamation, issued on the eve of independence, provided for pension gratuities to persons entitled to annuities or payments upon vacation of office in terms of the Members of the National Assembly and of Legislative and Executive Authorities Pensions Act 11 of 1981 (since repealed). It also exempted the gratuities from the Income Tax Act 24 of 1981. It has no ongoing application.

Judges Pensions Act 28 of 1990.

Summary: This Act provides for the payment of pensions and gratuities to judges who retire or are removed from office, and for the payment of pensions to the widows or widowers of such judges. It came into operation on 20 November 1995 (GN 220/1995, GG 1197).

National Pensions Act 10 of 1992.

Summary: This Act provides for national pensions to be paid to aged, blind and disabled persons. It came into force on 1 October 1994 (Proc. 25/1994).

Regulations: All national pensions were equalised at N\$135/month by GN 201/1994 (GG 962).

Members of Parliament and Other Office-Bearers Pension Fund Act 20 of 1999.

Summary: This Act establishes a pension fund for Members of Parliament and other office-bearers. It came into operation on 4 January 2000 (GN 284/1999, GG 2253), replacing the Members of Parliament and other Office-Bearers Pensions Act 21 of 1990 which was repealed with effect from the same date (GN 285/1999, GG 2253).

Regulations: The pension fund established under this Act was registered in terms of the *Pension Fund Act 24 of 1956*. The rules approved by the Registrar of Pension Funds and the announcement of the registration are contained in GN 269/2000 (GG 2443).

Certain officials are named as office-bearers for purposes of the Act from time to time, but these designations have not been recorded here.

See also Presidential Emoluments and Pensions Act 17 of 1990 and Former Presidents' Pension and Other Benefits Act 18 of 2004 (**PRESIDENT**).

See also Social Security Act 34 of 1994 (re: National Pension Fund) (**SOCIAL SECURITY**).

See also Veterans Act 2 of 2008 (**SOCIAL WELFARE**).

POLICE

Police Act 19 of 1990.

Summary: This Act provides for the establishment, organisation, administration, and powers and duties of the Namibian Police Force. It prescribes procedures to protect the internal security of Namibia and to maintain law and order. It also regulates the appointment, promotion, discipline and discharge of members of the Namibian Police Force. It replaces the *Police Act 7 of 1958*.

Amendments: The Act is substantially amended by Act 3/1999. Particularly notable is the amendment of section 14, which substantially broadens police powers of search and seizure.

Section 4 of the Act is amended by Act 5/2001 (regarding standards for physical and mental fitness).

The General Law Amendment Act 14 of 2005 amends section 1 of the Act.

Regulations: Regulations are contained in GN 16/1991 (GG 159) and GN 167/1994 (GG 919), as amended by GN 143/1996 (GG 1332), GN 246/1998 (GG 1965), GN 166/2001 (GG 2593) and GN 55/2002 (GG 2718).

Regulations for Municipal Police Services are contained in GN 184/2002 (GG 2833), as amended by GN 253/2003 (GG 3108) and GN 197/2004 (GG 3270). Regulations for the Windhoek Municipal Police Service are contained in General Notice 296/2004 (GG 3335).

Regulations relating to the award of decorations and medals to members of the Namibian Police Force are contained in GN 201/2002 (GG 2862), which is replaced by GN 124/2003 (GG 2997).

Cases: Regulation 58(32) was declared unconstitutional in the Supreme Court case of *Kauesa v Minister of Home Affairs* 1995 NR 175 (SC), which overturned the High Court judgement *Kauesa v Minister of Home Affairs* 1994 NR 102 (HC).

The following cases also concern the Act-

S v Shivute & Several Other Cases 1991 NR 433 (HC) at 439

S v Boois; S v Thomas 1991 NR 455 (HC)

S v Eigowab 1994 NR 192 (HC) (section 35(2)(a))

Eimbeck v Inspector-General of the Namibian Police & Another 1995 NR 13 (HC)(section 24(1))

S v Kandume 1997 NR 79 (HC) (sections 35(1) and 35(2)(a))

S v Diergaardt 2000 NR 78 (HC) (section 35(1))

Dresselhaus Transport CC v Government of the Republic of Namibia 2003 NR 54 (HC)(section 13); 2005 NR 214 (SC)

Viljoen & Another v Inspector-General of the Namibian Police 2004 NR 225 (HC) (section 1(1) and regulations on transfers)

Sheehama v Inspector-General, Namibian Police 2006 (1) NR 106 (HC) (section 23(3); also discusses sections 18 and 24).

Immanuel v Minister of Home Affairs & Another 2006 (2) NR 687 (HC) (section 8 enquiry)

S v Malumo & Others 2007 (2) NR 198 (HC) (effect of "Judges' Rules",

which are administrative directives to be observed by police)
Minister of Home Affairs v Majiedt & Others 2007 (2) NR 475 (SC)
(prescription period in section 39(1) not unconstitutional)
S v Afrikaner 2007 (2) NR 584 (HC) (definition of assault in section 35, as
amended by Act 3/1999).

The following are post-independence cases concerning the previous *Police Act 7 of 1958*-

Minister of Police v Haunawa 1991 NR 28 (SC)
Simon v Administrator-General, South West Africa 1991 NR 151 (HC).

Articles: See the entry for the Prisons Act 17 of 1998 (**PRISONS**) for articles on conditions in police cells.

APPOINTMENTS

Appointment of First Inspector-General of Police, Proc. 8/1990 (GG 46).
Appointment of Inspector-General of Police, Proc. 35/1997 (GG 1765).
Appointment of Inspector-General of Police, Proc. 7/2005 (GG 3450).

See also Security Commission Act 18 of 2001 (**CONSTITUTION**).

PRESCRIPTION

Prescription Act 68 of 1969, as amended in South Africa to November 1979.

Summary: This Act governs prescription (time limits on instituting legal proceedings). It replaced the Prescription Proclamation 13 of 1943. (According to *O'Linn v Minister of Agriculture, Water and Forestry & Others* 2008 (2) NR 792 (HC) at 797F-G, the South African *Prescription Act 18 of 1943* was never applicable to Namibia or South West Africa.)

Applicability to SWA: Section 21 state “This Act and any amendment thereof which may be made from time to time, shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section 38(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968).”

Transfer proclamation: Although this Act makes no reference to any minister, it probably fell under the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979. There was one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Prescription Amendment Act 11 of 1984* – which was not made expressly applicable to SWA.

Amendments: The Married Persons Equality Act 1 of 1996 amends section 3.

Cases:

H Charney & Co (Pty) Ltd v Segall & Matheson Properties 1995 NR 148 (HC)
(sections 11(d) and 12(1))

Seaflower Whitefish Corporation v Namibia Ports Authority 1998 NR 316 (HC)
(section 12(1) and (3))

Seaflower Whitefish Corporation Ltd v Namibian Ports Authority 2000 NR 57 (HC)
(sections 11 and 12)

Bank Windhoek Ltd v Kessler 2001 NR 234 (HC) (section 13(1)(b))

Andreas v La Cock & Another 2006 (2) NR 472 (HC) (section 11)

Karuaihe-Martin v Telecom Namibia NLLP 2002 (2) 267 NLC (section 15)

South Bakels (Pty) Ltd & Another v Quality Products & Another 2008 (2) NR 419
(HC)

O'Linn v Minister of Agriculture, Water and Forestry & Others 2008 (2) NR 792
(HC) (sections 6 and 19); *Minister of Agriculture, Water and Forestry v O'Linn* 2008 (2) NR 792 (SC).

Limitations of Legal Proceedings (Provincial and Local Authorities)

Act 94 of 1970, as amended in South Africa to November 1979.

Summary: This Act prescribes time limits for legal proceedings in respect of certain debts against provincial administrations, local authorities and the Administration of the territory of South West Africa.

Applicability to SWA: Section 1 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Transfer proclamation: Although this Act makes no reference to any minister, it probably fell under the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979. There were no amendments to the Act in South Africa after the date of transfer.

Amendments: The Limitation of Legal Proceedings Act 25 of 1985 amends section 1.

Section 95(1) of the Local Authorities Act 23 of 1992 repeals section 9, insofar as it relates to Ord. 13/1963 (ie municipalities).

PRESIDENT

Presidential Emoluments and Pensions Act 17 of 1990.

Summary: This Act covers the salary and allowances payable to the President; medical aid benefits for the president, former Presidents and their surviving spouses; and the payment of pensions to former Presidents and their surviving spouses.

Amendments: This Act is amended by the Former Presidents' Pension and Other Benefits Act 18 of 2004.

Former Presidents' Pension and Other Benefits Act 18 of 2004.

Summary: This Act provides for the payment of tax-free pensions and other benefits to former Presidents of Namibia and their families.

Conferment of Status of Founding Father of the Namibian Nation Act 16 of 2005

Summary: This National Act confers the status of Founding Father of the Namibian Nation on the first President of the Republic of Namibia, His Excellency Dr Sam Nujoma.

See also Assignment of Powers Act 4 of 1990 (**CONSTITUTION**).

See also Namibian Constitution First Amendment Act 34 of 1998 (**CONSTITUTION**) (amending Article 134 of the Namibian Constitution to provide that the first President of Namibia may hold office for three terms).

PRISONS

Prisons Act 17 of 1998.

Summary: This Act provides for the establishment of the Namibia Prisons Service and replaces the *Prisons Act 8 of 1959*. It came into force on 15 August 1998 (GN 206/1998, GG 1927).

Amendments: Act 5/1999 (which will come into force on a date determined by the Minister) corrects certain references in sections 28 and 83.

The Transfer of Convicted Offenders Act deletes sections 120-121.

The General Law Amendment Act 14 of 2005 amends sections 1 and 112.

Act 2/2010 substitutes the First Schedule to the Act. and inserts section 7A to empower the Minister to amend the First Schedule in future by notice in the *Government Gazette*.

Regulations: Regulations made in terms of the previous Act survive in terms of section 127. GN 67/1987 amends the regulations promulgated under the previous Act (which have not been recorded here).

A new set of regulations pertaining to prison service personnel and the treatment of prisoners is contained in GN 226/2001 (GG 2643), as amended by GN 34/2009 (GG 4223) and GN 134/2009 (GG 4274).

Several new prisons are established by GN 201/1998 (GG 1927). The Katima Mulilo police cells are declared to be a prison by GN 160/1999 (GG 2163).

Presidential pardons: Pardons are issued to certain categories of prisoners in Proclamation 15/1993 (GG 642), Proclamation 11/1994 (GG 836), Proclamation 3/1995 (GG 1051) and Proclamation 4/1997 (GG 1533).

The names of prisoners covered by the Presidential pardon contained in Proc. 1/2000 (GG 2306) issued in honour of the tenth anniversary of the independence of Namibia are listed in GN 183/2000 (GG 2379).

The names of prisoners covered by the Presidential pardon contained in Proc. 12/2003 (GG 2956) issued in honour of the thirteenth anniversary of the independence of Namibia are listed in GN 145/2003 (GG 3012).

The names of prisoners covered by the Presidential pardon contained in Proc. 1/2005 (GG 3397) issued in honour of the fifteenth anniversary of the independence of Namibia are listed in GN 103/2005 (GG 3483).

Certain categories of prisoners are given a Presidential pardon in Proc. 4/2006 (GG 3626) in honour of the sixteenth anniversary of the independence of Namibia, but no Government Notice could be located listing the names of prisoners who fell within these categories.

The names of prisoners covered by the Presidential pardon contained in Proc. 6/2009 (GG 4230) issued in honour of the nineteenth anniversary of the independence of

Namibia are listed in GN 191/2009 (GG 4343).

Cases: The following cases relate to the previous *Prisons Act 8 of 1959- Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State* 1991 NR 178 (SC) (sections 36, 37, 48(1), 54(2), 56(3) and Regulation 100 of the Prison Regulations)
S v Haruseb 1991 NR 155 (HC) (section 48(1)(a))
S v Mbahapa 1991 NR 274 (HC) (section 48(1)(a))
S v Vihajo & Others 1993 NR 233 (HC) (section 48(1)(a))
S v Matsuis 1993 NR 234 (HC) (section 48(1)(a))
S v Matthias 1993 NR 420 (HC) (section 48(1)(a))
Namunjepo & Others v Commanding Officer, Windhoek Prison & Another 1999 NR 271 (SC) (section 80 and Regulation 102)
S v Linyando 1999 NR 300 (HC) (section 48(2) read together with section 32(2))
Amakali v Minister of Prisons and Correctional Services 2000 NR 221 (HC) (section 48)

The following cases relate to the present Act –

S v Babiep 1999 NR 170 (HC) (meaning of “prison”, section 54, section 75(1))
S v Njuluwa 2000 NR 97 (HC) (held that it would derogate from the statutory powers conferred by sections 92, 95-98 if judicial officers were allowed to order that convicted persons may not be paroled)
Kennedy & Others v Minister of Prisons and Correctional Services 2008 (2) NR 631 (HC) (legal duty of care of members of Namibian Prison Services; discussion at 654G-I of reasonable force under section 30(1)).

Conditions in police cells: It appears that the Prisons Act is the governing legislation for police cells where awaiting-trial prisoners are held. *McNab & Others v Minister of Home Affairs & Others* 2007 (2) NR 531 (HC) at 548C-ff found that conditions in the holding cells in which the plaintiffs were detained were inhuman and degrading and therefore a violation of the constitutional right to human dignity. See also *Report of the Standing Committee on Foreign Affairs, Defence And Security on Visits to Police Stations, Police Cells, Prisons, Border Posts and Military Installations*, National Assembly, 2006; Adv JR Walters, *Special Report on Conditions Prevailing at Police Cells throughout Namibia*, Windhoek: Office of the Ombudsman, 2006; Adv JR Walters, *Follow-up Report on Conditions Prevailing at Police Cells in Namibia*, Windhoek: Office of the Ombudsman, 2008, available at www.ombudsman.org.na; Oliver C Ruppel and Angelique L Groenewald, *Conditions of Police Cells in Namibia*, Windhoek: Human Rights and Documentation Centre, University of Namibia, undated, available at www.unam.na.

Transfer of Convicted Offenders Act 9 of 2005.

Summary: This Act makes provisions for the mutual transfer of sentenced offenders between Namibia and foreign States. It came into force on 28 July 2006 (GN 116/2006 (GG 3674)).

Regulations: Regulations are contained in GN 117/2006 (GG 3674).

APPOINTMENTS

Appointment of First Commissioner of Prisons, Proc. 19/1990.

Appointment of Commissioner of Prisons, Proc. 34/1997 (GG 1765).

See also Security Commission Act 18 of 2001 (**CONSTITUTION**).

PUBLIC GATHERINGS

Demonstrations in or near Court Buildings Prohibition Act 71 of 1982.

Summary: This Act prohibits demonstrations and gatherings within a five-hundred-metre radius of a building containing a courtroom, except on weekends and public holidays.

Applicability to SWA: The Security Matters Proclamation (AG 29/1985) made this Act applicable to South West Africa, with minor amendments.

Public Gatherings Proclamation, AG 23 of 1989.

Summary: This Proclamation requires advance notice to the police of all public gatherings and prohibits the carrying of weapons (*other than* concealed pistols or revolvers). It also gives the police powers to place conditions on gatherings and to disperse riots.

Regulations: See General Notice 143/1992 (GG 503), which refers to the Proclamation in connection with guidelines for the holding of elections.

Articles: Law Reform and Development Commission, *Report on Public Gatherings* (LRDC 14).

See also *Criminal Law Amendment Act 8 of 1953* (re: offences committed in the course of protests) (**CRIMINAL LAW AND PROCEDURE**).

See also Labour Act 11 of 2007 (section 76(2) re: picketing) (**LABOUR**).

PUBLIC SERVICE

Indemnity Proclamation of 1923.

Summary: This Proclamation indemnifies members of the public service for acts committed after 15 May 1922 and prior to the date on which this Proclamation took effect.

Travelling Privileges Ordinance 14 of 1980.

Summary: This Ordinance authorises the Executive Committee to determine travelling privileges for public servants.

Public Service Commission Act 2 of 1990.

Summary: This Act provides for the establishment of a Public Service Commission in accordance with Chapter 13 of the Namibian Constitution.

Amendments: This Act is amended by the Public Service Act 13 of 1995.

Public Service Act 13 of 1995.

Summary: This Act, which replaces the Public Service Act 2 of 1980, governs employment in the public service. It came into force on 1 November 1995 (GN 210/1995, GG 1185).

Amendments: Schedule 2 to the Act is amended by Proclamation 3/1997 (GG 1500), which changes “Ministry of Labour and Human Resources Development” to “Ministry of Labour”.

Schedule 3 is amended by the Namibia Central Intelligence Service Act 10 of 1997, which changes “Namibia Security Intelligence Agency” to “Namibia Central Intelligence Service”.

Act 33/1998, which came into force on 2 August 1999 (GG 152/1999, GG 2155), amends section 3 and Schedule 3 to designate the Electoral Commission as an agency in terms of the Act.

Schedule 1 is amended by Proc. 19/1999, which substitutes the expression “Secretary to the President” for the term “Deputy Secretary to the President”.

Schedule 2 is substituted in its entirety by Proc. 9/2000 (GG 2366).

Schedules 1 and 3 are amended by Proc. 4/2001 (GG 2501).

Schedule 3 to the Act is amended by the Anti-Corruption Act 8 of 2003 which inserts the expression “Anti-Corruption Commission” into the first column and the expression “Director: Anti-Corruption Commission” into the second column.

Schedules 1 and 2 are amended by Proc. 5/2005 (GG 3436), as part of a substantial reorganisation of ministries.

Schedule 2 is substituted in its entirety by Proc. 10/2009 (GG 4331).

Regulations: Regulations promulgated under the previous Act survive under the new Act in terms of section 37(1).

Regulations are contained in AG GN 28 of 1 April 1981, amended by GN 90 of 15 May 1986, GN 14 of 16 January 1989, GN 1/1995 (GG 1006), GN 211/1995 (GG 1187) and GN 179/2001 (GG 2607).

Application of Act: Section 35 of the Namibia Central Intelligence Service Act 10 of 1997 affects the application of this Act to the administration of the Service and to its staff members.

Section 10 of the Namibia Wildlife Resorts Company Act 3 of 1998 deals with transfers of members of the public service to employment with the company established by the Act, and the status of existing public service employees who elect not to enter employment with the new company.

Cases:

Mwellie v Minister of Works, Transport and Communication & Another 1995 (9) BCLR 1118 (NmH) (constitutionality of prescription period)

Du Toit v The Office of the Prime Minister 1996 NR 52 (LC) (Public Service Staff Code)

Kruger v Office of the Prime Minister & Another 1996 NR 321 (LC) (Public Service Staff Code)

Njathi v Permanent Secretary, Ministry of Home Affairs 1998 NR 167 (LC) (section 24(5))

Public Service Union of Namibia & Another v Prime Minister of Namibia & Others 2000 NR 82 (HC) (sections 5(1) and 19(a)).

Mostert v Minister of Justice 2002 NR 76 (HC); 2003 NR 11 (SC)(section 23(2) not applicable to magistrates)

Minister of Works Transport and Communication v Namupembe 2003 NR 90 (LC)(sections 13, 15, 31 and 33)

Tjivikua v The Minister of Works, Transport and Communication 2005 NR 403 (LC) (sections 24(5) and 26)

Elio & Another v Permanent Secretary of Education & Another 2008 (2) NR 532 (LC) (rules pertaining to Recruitment for the Public Service of Namibia in PSSR issued on 20 November 2002 and 17 February 2002)

Permanent Secretary of the Ministry of Finance & Others v Ward 2009 (1) NR 314 (SC) (section 34; rules and regulations pertaining to Public Service Employees' Medical Aid Scheme)

HN & Others v Government of the Republic of Namibia 2009 (2) NR 752 (HC) (section 33; GN 211/1995).

MISCELLANEOUS

“Administrative Directives: Certain Guidelines for Government Ministers and Public Servants” are contained in GN 171/1992 (GG 529), GN 182/1992 (GG 550), GN 16/1993 (GG 583) and GN 34/1993 (GG 609).

An administrative directive regarding effective communication was issued to all government ministers and public servants on 23 July 1996. (GN 194/1996, GG 1362).

See also **CONSTITUTION**.

See also Anti-Corruption Act 8 of 2003 (prohibiting bribes to public officials) (**CRIMINAL LAW AND PROCEDURE**).

See also **JUDGES**.

See also **LABOUR**.

See also laws on pensions for government employees (**PENSIONS**).

See also **PRESIDENT**.

PURCHASE AND SALE

Formalities in Respect of Contracts of Sale of Land Act 71 of 1969, as amended in South Africa to April 1978.

Summary: This Act sets forth the necessary formalities in contracts for the sale of land or certain interests in land.

Applicability to SWA: Section 3 of the Act states “This Act and any amendment thereof shall apply also in the territory of South West Africa.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978. There were no amendments to the Act in South Africa prior to its repeal. The Act was replaced in South Africa by the *Alienation of Land Act 68 of 1981*, which was not made applicable to SWA.

Cases: *Mack v Uni-Signal (Pty) Ltd* 1993 NR 304 (HC).

Sale of Land on Instalments Act 72 of 1971, as amended in South Africa to April 1978.

Summary: This Act regulates the purchase and sale of residential land, where payments are to be made in instalments over a period of at least one year.

Applicability to SWA: Section 19 of the Act 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 (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978.

Section 3(2)(b) of the transfer proclamation stated that the reference to the “Minister” in section 2(b)(i) of the Act should be construed as including a reference to the Administrator-General (rather than being construed as the Administrator-General only).

The only amendment to the Act in South Africa after the date of transfer -- the *Sale of Land on Instalment Amendment Act 74 of 1978* -- was not made expressly applicable to SWA.

Like the *Formalities in Respect of Contracts of Sale of Land Act 71 of 1969*, this Act was replaced in South Africa by the *Alienation of Land Act 68 of 1981*, which was not made applicable to SWA.

Amendments: Section 4 of the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978) amends section 2 of the Act.

Credit Agreements Act 75 of 1980, as amended in South Africa to May 1981.

Summary: This Act replaced the *Hire-Purchase Act 36 of 1942*. It regulates transactions where movable goods are purchased or leased on credit. It also applies to services rendered on credit.

Applicability to SWA: Section 1 of the Credit Agreements Proclamation (AG 17/1981) states “Subject to the provisions of this Proclamation, the Credit Agreements Act, 1980 (hereinafter referred to as the Act), shall apply to the territory of South West Africa.”

Transfer of administration to SWA: Section 4 of the Credit Agreements Proclamation (AG 17/1981) makes certain amendments to the Act which had the effect of transferring the administration of the Act to SWA. There were two amendments to the Act in South Africa after the date of AG 17/1981 and prior to Namibian independence, neither of which was made expressly applicable to SWA.

Amendments: The Credit Agreements Proclamation (AG 17/1981) amends section 1 and section 30 of the Act. AG GN 67/1981 affects the application of the Act.

Regulations: Regulations are contained in AG GN 68/1981, GN 1/1986 and GN 177/1992 (GG 536).

Cases: *Courtney-Clarke v Bassingthwaighe* 1990 NR 89 (HC).

See also **ESTATE AGENTS**.

See also **LAND**.

RAILWAYS

Rating of Railway Property Act 25 of 1959, with some South African amendments.

Summary: This Act defines the power of local authorities with regard to the imposition of rates upon state-owned property being used by the South African Railways and Harbours Administration.

Applicability to SWA: Section 6 states “This Act shall apply to the Territory of South West Africa.” This wording does not make amendments to the Act in South Africa automatically applicable to SWA. However, all *except* one of the amendments to the Act in South Africa prior to Namibian independence -- the *Financial Relations Act 65 of 1976* -- contain provisions making them expressly applicable to SWA.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978. There were two amendments in South Africa after that date and prior to Namibian independence -- the *Railways and Harbours Acts Amendment Act 67 of 1980* and the *South Africa Transport Services Act 65 of 1981* -- both of which were made expressly applicable to SWA. The *Rating of State Property Act 79 of 1984* repealed the Act only “in so far as it applies in the Republic”.

Amendments: The Natives (Urban Areas) Amendment Act 12 of 1980 affects the application of this Act.

Railways and Harbours Finances and Accounts Act 48 of 1977, as amended in South Africa to March 1978.

Summary: This Act regulates the finances of the SAR and Harbours. Section 17 of the Act came into operation on 1 January 1977, and the remainder of the Act on 1 April 1977.

Applicability to SWA: Section 28 states that “This Act and any amendment thereto is also applicable 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 (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978.

There were several amending acts in South Africa after the date of transfer. The following were made expressly applicable to SWA:

Railways and Harbours Acts Amendment Act 80 of 1979

Railways and Harbours Acts Amendment Act 67 of 1980

Railways and Harbours Acts Amendment Act 29 of 1981

South African Transport Services Amendment Act 6 of 1982

The Act was repealed in South Africa by *Act 17 of 1983*, which was not made expressly applicable to SWA.

Note

The Liquor Act 6 of 1998 states that it repeals Chapter V of the *Railways and Harbours Control and Management Consolidation Act 70 of 1957*. However, research by the authors of this index indicates that this Act was not actually in force in Namibia. Act 70 of 1957 was repealed in South Africa by the South African Transport Services Act 65 of 1981, which was made expressly applicable to SWA by virtue of section 78. (Act 65 of 1981 was subsequently repealed in respect of South West Africa by National Transport Corporation Act 21 of 1987.) Thus, it is our theory that even if the *Railways and Harbours Control and Management Consolidation Act 70 of 1957* had already been transferred to SWA in terms of a Transfer Proclamation, the repealing Act would have repealed it in respect of SWA because it was explicitly made applicable to SWA.

COMMISSIONS

Commission of Enquiry into the Activities, Management and Operations of Transnamib Holdings Limited (Proc. 3/2001, GG 2499).

See also GN 51/2001 (GG 2499).

See also laws on pensions paid to railway employees (**PENSIONS**).

See also **TRANSPORTATION**.

REGIONAL AND LOCAL GOVERNMENT

Publication of Local Regulations Proclamation 4 of 1917.

Summary: This Proclamation provides that local regulations issued by competent authorities shall be deemed to be “promulgated” if sufficient copies are exhibited in public.

Fire Brigade Services Ordinance 10 of 1978.

Summary: This Ordinance provides for the establishment of fire brigades by local authorities. It is replaced by the Local Authorities Fire Brigade Services Act 5 of 2006, which had not come into force as of 30 June 2010.

Amendments: This Ordinance is amended by Act 18/1988. Section 18 is repealed by Act 23/1992.

Boundaries of Regions and Local Authorities Proclamation 6 of 1992.

Summary: In accordance with Article 137(4) of the Constitution and with the recommendations of the First Delimitation Commission (established in terms of Proclamation 12/1990), this Presidential Proclamation establishes the boundaries of regions and local authorities as referred to in Chapter 12 of the Constitution.

Amendments: This Proclamation is amended by Proc. 20/1992 (spelling of “Otjozondjupa”) and Act 22/1992 (“Liambezi” becomes “Caprivi”).

The boundaries of the constituencies within the regions are set forth in Proc. 25/1992 (GG 473), which is amended by Proc. 42/1992 (GG 506) (substitutes description of boundaries of Rehoboth West Urban Constituency).

Regional Councils Act 22 of 1992.

Summary: This Act provides for the establishment of regional councils in respect of regions determined in accordance with Article 103 of the Constitution and sets forth the rights, powers, duties and functions of such councils. It also provides for the election of National Council members by regional councils.

The Act commenced on 31 August 1992 (GN 117/1992, GG 472), *except for* section 45(1) which came into operation on the date for regional elections fixed in terms of Article 137(6) of the Constitution. This date was set as 30 November-3 December in Proc. 39/1992 (GG 502).

Amendments: Act 17/1997 amends sections 5 and 21 and inserts section 18A. Act 30/2000 (which came into force on 5 March 2001 in terms of GN 35/2001, GG 2492) amends sections 1, 17, 19A (previously erroneously numbered as section 18A), 20, 28, and 32 and inserts sections 24a, 24B, 24C, 44A and 44B. Act 12/2002 (which came into force on 15 February 2003 in terms of GN 18/2003, GG 2915) amends sections 1 and 24, substitutes section 23, and repeals section 24A, 24B, and 24C.

Regulations: Commercialisation Regulations are contained in GN 41/2001 (GG 2492). Joint Business Venture Regulations are contained in GN 42/2001 (GG 2492). Tender Board Regulations are contained in GN 43/2001 (GG 2492).

A Code of Conduct for members of Regional Councils is contained in GN 174/2004 (GG 3255).

Standing rules in connection with meetings of Regional Councils and committees established by Regional Councils, are contained in GN 175/2004 (GG 3255).

Remuneration, allowances and benefits for members of Regional Councils are contained in Proc. 35/2008 (GG 4129).

Appointments: The First Delimitation Commission was appointed before this Act was passed in Proc. 12/1990, in terms of the Constitution. Delimitation Commissions are appointed in terms of section 5 of the Act by Proc. 9/1998 (GG 1855) and Proc. 6/2002 (GG 2855).

Designation of regions: Prior to the enactment of this law, the boundaries of regions and local authorities were established in the Boundaries of Regions and Local Authorities Proclamation 6 of 1992, as amended by Proc. 20/1992, Act 22/1992 and Proc. 15/1998 (GG 1940).

The boundaries of the constituencies within the regions are set forth in Proc. 25/1992 (GG 473), which is amended by Proc. 42/1992 (GG 506) (substitutes description of boundaries of Rehoboth West Urban Constituency), Proc. 16/1998 (GG 1940) (re-divides constituencies in all regions other than Karas) and Proc. 35/1999 (GG 2233) (affecting two constituencies in the Oshikoto Region).

The boundaries of Omaheke and Khomas Regions are changed by Proclamation 7/2003 (GG 2942), which also re-divides constituencies in a number of regions.

Designations of settlement areas have not been recorded here.

Local Authorities Act 23 of 1992.

Summary: This Act provides for the determination of local authorities and the establishment of local authority councils. It also sets forth the powers, duties and functions of such councils. This Act came into force on 31 August 1992 (GN 118/1992, GG 472). It replaces the Municipal Ordinance 13 of 1963.

Amendments: The Registration of Deeds in Rehoboth Amendment Act 35 of 1994 amends section 78.

Act 3/1997 substitutes sections 5 and 6 to provide that the second local government elections shall be held on a party list system and defer the delimitation of local authorities into wards until after the second elections. It also increases the maximum size of municipal councils from 12 to 15, and strengthens the affirmative action provisions for women in respect of the second local elections.

Act 14/1997 amends section 8 of the Act in connection with the postponement of Namibia's second local authority elections.

Act 24/2000, which came into operation on 15 February 2001 (GN 29/2001, GG 2486), amends the Act substantially.

Act 17/2002 (which came into operation on 15 February 2003 in terms of GN 19/2003, GG 2915) amends the Act substantially. Amongst other things, it eliminates provisions for a ward system and extends the period for the third general elections for members of local authority councils.

The Electoral Amendment Act 7 of 2003, which came into operation on 8 July 2003 (GN 146/2003, GG 3014), substitutes the definition of 'party list' in section 1 of the Act.

Act 27/2003 substitutes the dates for elections for members of local authority councils in section 8 of the Act.

Act 14/2004, which came into operation on 27 November 2004 (GN 254/2004, GG 3330), amends sections 1, 30 and 94C of the Act.

The Electoral Amendment Act 4 of 2006 (GG 3759) amends section 1 of the Act.

Act 1/2009 (GG 4258) amends section 8 on the dates for elections of local authority councils.

The Government Notices which establish new local authorities (listed below) substitute the Schedules to the Act accordingly.

Regulations: Model Pound Regulations are contained in GN 191/1994 (GG 945). Model Electricity Supply Regulations are contained in GN 71/1996 (GG 1283), as amended by General Notice 130/2003 (GG 3019). Model Water Supply Regulations are contained in GN 72/1996 (GG 1283). Model Sewerage and Drainage Regulations are contained in GN 99/1996 (GG 1311).

Model Regulations for the Control of Dogs in Local Authority Areas are contained in GN 166/2008 (GG 4077). These regulations repeal a number of regulations made under the Municipal Dog Tax Ordinance 13 of 1967. (Note that there is a corrected version of GG 4077.)

Tender Board Regulations are contained in GN 30/2001 (GG 2486).

Commercialisation Regulations are contained in GN 39/2001 (GG 2492), as amended by GN 113/2007 (GG 3864).

Joint Business Venture Regulations are contained in GN 40/2001 (GG 2492), which is replaced by GN 114/2007 (GG 3864).

Regulations issued by individual local authorities are not recorded here.

Designation of local authorities: Prior to the enactment of this law, the boundaries of regions and local authorities were established in the Boundaries of Regions and Local Authorities Proclamation 6 of 1992, as amended by Proc. 20/1992 and Act 22/1992.

Areas of local authorities are also set forth in Proc. 26/1992 (GG 479) (the incorporation of Brakwater into the Municipality of Windhoek, under the previous

Municipal Ordinance 13 of 1963), Proc. 27/1992 (GG 479) (proclaiming four additional villages) and Proc. 28/1992 (GG 479) (proclaiming four additional towns).

Walvis Bay is established as a municipality in Proc. 16/1994 (GG 873), as amended by Proc. 18/1994 (GG 893). Proc. 15/1994 (GG 873) ends the application of the Walvis Bay Municipal Ordinance 26 of 1978 in Walvis Bay, effective 16 August 1994. The Walvis Bay and Off-Shore Islands Amendment Act 14 of 1998 provides for the retrospective application of certain provisions of the Local Authorities Act in Walvis Bay. The boundaries of the Municipality of Walvis Bay are altered by Proc. 17/1999 (GG 2088). (The history of the Walvis Bay municipal area is set forth in *Walvis Bay Municipality & Another v Occupiers of the Caravan Sites at Long Beach Caravan Park, Walvis Bay* 2007 (2) NR 643 (SC) at 647I-648C.)

Eenhana and Outapi are proclaimed as towns in Proc. 14/1997 (GG 1673), as amended by Proc. 18/1997 (GG 1698), Proc. 26/1997 (GG 1738) and Proc. 31/1997 (GG 1749).

Five villages are deproclaimed in Proc. 22/1993 (Aris, Kappsfarm, Omitara, Summerdown and Wlotzkasbaken). Five more villages are deproclaimed in Proc. 1/1996 (GG 1241) (Ariamsvlei, Grünau, Kalkfeld, Noordoewer and Warmbad). The village of Aus is deproclaimed in Proc. 6/1996 (GG 1454).

Proc. 13/1997 (GG 1639) changes the designation of Hentiesbaai from a town to a municipality.

Helao Nafidi is proclaimed as a town in GN 194/2003 (GG 3054), which is amended by GN 11/2005 (GG 3379).

The demarcation of wards within local authorities is contained in GN 92/1996 (GG 1300).

Proclamation 22/1997 (GG 1714) increases the number of members of the Swakopmund Municipal Council from 7 to 10, and increases the number of members of the Windhoek Municipal Council from 10 to 15. This Proclamation also amends Schedule I of the Act. Schedule 2 of the Act, which deals with the number of members on town councils, is substituted by GN 194/2003 (GG 3054).

The members of the Rehoboth Town Council are removed from office by GN 68/2001 (GG 2516), which transfers their powers to the Minister of Regional and Local Government and Housing and specifies a date for the election of a new council.

Okahao is established as a town by GN 233/2004 (GG 3313). Oshikuku is established as a village by GN 234/2004 (GG 3313). Ruacana is established as a village by GN 70/2005 (GN 3456). Nkurenkuru is established as a town by GN 155/2006 (GG 3699). Omithiya is established as a town by GN 4/2008 (GN 3974).

The boundaries of Tsumeb are altered by Proc. 17/1993 (GG 668) and GN 49/2010 (GG 4440). The boundaries of Luderitz are altered by GN 250/2003 (GG 3108). The boundaries of Opuwo are altered by GN 233/2009 (GG 4386). The boundaries of Usakos are altered by GN 65/2010 (GG 4451).

Appointments: The First Delimitation Commission was appointed before this Act was passed in Proc. 12/1990, in terms of the Constitution. A Delimitation Commission was appointed in terms of section 5 of the Act by Proc. 9/1995 (GG 1089) and by Proc. 6/2002 (GG 2855).

Cases:

Kruger v The Council of the Municipality of Windhoek & Another NLLP 1998 (1) 157 NLC refers to section 239 of the predecessor to this act, the Municipal Ordinance 13 of 1963.

The Council of the Municipality of Windhoek & Another v Kruger NLLP 1998 (1) 161 NLC discusses the exercise of the power to litigate by a local authority established in terms of the Act.

S v Negongo 1992 NR 352 (HC) (Regulation 48 of the Street and Traffic Regulations of the Municipality of Windhoek).

Municipality of Walvis Bay v Du Preez 1999 NR 106 (LC) (section 27 of the Act; also sections 47 and 61 of the *Walvis Bay Municipal Ordinance 26 of 1978* repealed by Proc. 15/1994).

Council of the Municipality of Windhoek v Petersen & Others 1998 NR 8 (HC) discusses the powers of local authorities to regulate trade by hawkers and pedlars (specifically Regulation 15(3) of the *Hawker and Pedlar Regulations of the Municipality of Windhoek*, in relation to Article 21(2) of the Constitution and section 94(3) of the Act).

Hailulu v Council 2002 NR 305 (LC) (section 27(3))

RBH Construction & Another v Windhoek Municipal Council & Another 2002 NR 443 (HC) (Tender Board Regulations)

Cronje v Municipality Council of Mariental NLLP 2004 (4) 129 NSC (interpretation of section 27, as amended in 2000, and transition from the Municipal Ordinance 13 of 1963)

The Municipality of Walvis Bay v The Occupiers of the Caravan Sites at the Long Beach Caravan Park Walvis Bay Republic of Namibia 2005 NR 207 (HC) (a municipal council has legal personality to sue and be sued, but not a municipality); *Walvis Bay Municipality & Another v Occupiers of the Caravan Sites at Long Beach Caravan Park, Walvis Bay* 2007 (2) NR 643 (SC) (dealing with the *Walvis Bay Municipal Ordinance 26 of 1978* which applied to the municipality prior to its reintegration into Namibia).

Grobelaar & Another v Council of the Municipality of Walvis Bay & Others 2007(1) NR 259 (HC) (sections 50 and 63(2))

Council of the Municipality of Windhoek v Bruni NO & Others 2009 (1) NR 151 (HC) (powers and duties of Council and requirement of ratification, citing sections 27(5), 30, 31, 31A, 63 and 93(1))

Erongo Regional Council v Wlotzkasbaken Home Owners Association 2009 (1) NR 252 (SC) (discussion of history of Wlotzkasbaken)

Seagull's Cry CC v Council of the Municipality of Swakopmund & Others 2009 (2) NR 769 (HC) (sections 6(3), 11(1) and 14(2)).

Articles: Dianne Hubbard & Kaveri Kavari, *Affirmative Action for Women in Local Government in Namibia*, Legal Assistance Centre, 1993; Legal Assistance Centre, *Affirmative Action for Women in Local Government in Namibia: The 1998 Local Government Elections*, 1998; Clever Mapaure, "Jurisprudential aspects of proclaiming towns in communal areas in Namibia", *Namibia Law Journal*, Volume 1, Issue 2, 2009, available at www.namibialawjournal.org.

Trust Fund for Regional Development and Equity Provisions Act 22 of 2000.

Summary: This Act establishes a Trust Fund to be used for financial and technical assistance to the development of regions and local authorities, and assistance with the

implementation of decentralisation programmes. It came into force on 5 March 2001 (GN 38/2001, GG 2492).

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 5 and substitutes section 11.

Appointments: The Board of Trustees is announced in GN 189/2001 (GG 2615).

Decentralisation Enabling Act 33 of 2000.

Summary: This Act provides for and regulates the decentralisation of central government functions to regional and local authorities. It came into force on 5 March 2001 (GN 34/2001, GG 2492).

Regulations: Certain functions are delegated to regional councils in GN 173/2007 (GG 3907) and GN 83-84/2009 (GG 4260).

Local Authorities Fire Brigade Services Act 5 of 2006.

Summary: This Act provides for the establishment, maintenance, utilisation, co-ordination and standardisation of fire brigade services by local authorities, replacing the Fire Brigade Services Ordinance 10 of 1978. It will come into force on a date determined by the Minister.

Regulations: Services established and regulations made under the previous law survive to the extent that they are consistent with this Act. No regulations under the previous Ordinance were recorded here.

Proposed regulations are published in GN 55/2007 (GG 3806).

See also Electoral Act 24 of 1992 (which covers regional and local elections) (**ELECTIONS**).

See also Public Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005 (**CONSTITUTION**) (on remuneration, benefits and conditions of service of members of Regional Councils).

See also Members of Parliament and other Office-Bearers Pension Fund Act 20 of 1999 (**PENSIONS**) (on pensions for members of Regional Councils).

REHOBOTH GEBIET

See *Registration of Deeds in Rehoboth Act 93 of 1976* (**DEEDS**).

See Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941 (**ESTATES**).

See Rehoboth Gebiet Income Tax Proclamation 92 of 1961 (**INCOME TAX**).

See generally *Rehoboth Bastergemeente v Government of the Republic of Namibia & Others* 1996 NR 238 (SC).

REPEALS OF DISCRIMINATORY LEGISLATION

These Proclamations do not stand independently. They repealed a number of legal provisions in preparation for Namibia's first "free and fair elections" held in terms of United Nations Resolution 435. They are included here as a matter of historical interest.

First Law Amendment (Abolition of Discriminatory or Restrictive Laws for purposes of Free and Fair Election) Proclamation, AG 14 of 1989.

Summary: This Proclamation repealed a number of legal provisions in preparation for the elections held in terms of UN Resolution 435.

Amendments: The Proclamation is amended by the Namibian Citizenship Act 14 of 1990 and by the Immigration Control Act 7 of 1993.

Second Law Amendment (Abolition of Discriminatory or Restrictive Laws for purposes of Free and Fair Election) Proclamation, AG 25 of 1989.

Summary: This Proclamation repealed a number of legal provisions in preparation for the elections held in terms of UN Resolution 435.

Amendments: The Proclamation is amended by the Police Act 19 of 1990 and by the Namibia Central Intelligence Service Act 10 of 1997.

REVENUE

Brewers & Distillers Licences Duty Proclamation 3 of 1924.

Summary: This Proclamation provides for the payment of licence duties by brewers of beer and distillers of wine brandy and spirits.

Amendments: This Proclamation is amended by Ord. 9/1935, Ord. 14/1937, Ord. 1/1938 and Ord. 47/1952. It was extended to the Rehoboth Gebiet by Proc. 12/1930. The Liquor Act 6 of 1998 amends sections 1, 2, 3 and *3bis*.

Licensing of Totalisators Ordinance 5 of 1938.

Summary: This Ordinance provides for the licensing of “the instrument, machine or contrivance commonly known as a totalisator”.

Amendments: The Ordinance is amended by Ord. 32/1952 and Ord. 13/1953.

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on totalisator agency boards and persons operating totalisator betting services.

Petroleum (Taxation) Act 3 of 1991.

Summary: This Act provides for the levying and collection of a petroleum income tax and additional profits tax in respect of certain income received or accrued in connection with petroleum exploration, development or production operations.

Amendments: The Act is amended by Act 27/1992 (section 25) and Act 24/1998 (which came into force on 1 April 1999 – GN 44/1999, GG 2075) (sections 1, 6, 8, 9, 10, 14, 16, 19, 21, 22 and insertion of a new Part IIIA) .

Amortization Fund Repeal Act 7 of 1992.

Summary: This Act repeals the Amortization Fund of South West Africa Act 11 of 1987 and provides that all moneys in the Amortization Fund be transferred to the State Revenue Fund. It has no other ongoing effect.

Moratorium on the Payment of Stamp Duty or Transfer Duty in Respect of Rationalisation Schemes Act 13 of 1993.

Summary: This Act provides that certain acquisitions of marketable securities or property or the transfer of certain rights or obligations under mortgage bonds under a scheme for the rationalization of a group of companies shall be exempt from stamp duty and transfer duty. It also provides for the assessment of companies in any such group for income tax purposes in certain circumstances. It came into force on 1 September 1993 (GN 97/1993, GG 707).

Amendments: Act 26/1994 amends sections 1 and 2.

Transfer Duty Act 14 of 1993.

Summary: This Act consolidates and amends the laws relating to transfer duty. It came into force on 1 September 1993 (GN 96/1993, GG 707).

Amendments: Export Processing Zones are exempted from transfer duties by section 5 of the Export Processing Zones Act 9 of 1995. Act 20/2003 amends sections 2 and 9 of the Act (GN 262/2003, GG 3119). Act 3/2010 amends section 2; this amendment came into operation one month after the date of its publication in the *Government Gazette*, which made it effective from 29 May 2010. Act 8/2010 amends section 2 and came into force on the date of promulgation (1 June 2010).

Cases: *Permanent Secretary of Finance & Another v Shelfco Fifty-One (Pty) Ltd* 2007 (2) NR 774 (SC)

Stamp Duties Act 15 of 1993.

Summary: This Act consolidates and amends the laws relating to stamp duties, replacing the *Stamp Duties Act 77 of 1968*. It came into force on 1 September 1993 (GN 98/1993, GG 707).

Amendments: Act 30/1992 amends Schedule 1 and repeals sections 35, 36 and 37. Act 12/1994 amends section 5 and Schedule 1.

Export Processing Zones are exempted from stamp duties by section 5 of the Export Processing Zones Act 9 of 1995.

Regulations: Regulations and notices made under the previous act survive in terms of section 36(2). Since independence, regulations and notices have been issued in GN 12/1990 (new issue of stamps) and GN 13/1990 (regulations concerning the demonetization and withdrawal of stamps).

Value-Added Tax Act 10 of 2000.

Summary: This Act replaces sales tax with VAT. It repeals the Sales Tax Act 5 of 1992 and the Additional Sales Levy Act 11 of 1993. It came into force on 27 November 2000 (GN 220/2000, GG 2402).

Amendments: Act 34/2000 amends the Act and the Schedules to the Act substantially. It is deemed to have come into operation on the date of the commencement of the primary Act. (See section 34 of Act 34/2000.)

The primary Act is also substantially amended by Act 6/2002, which came into operation on 1 November 2002. (See section 15 of Act 6/2002.)

Act 12/2004 amends the Act and the Schedules to the Act substantially. This amending act came into operation on 1 October 2004, except for sections 1 and 2 which are deemed to have come into operation on 1 October 2002, section 4 which is

deemed to have come into operation on 28 November 2002, and section 10 to the extent that it relates to subparagraph (o) of paragraph 2 of Schedule V, which is deemed to have come into operation on 1 April 2004.

Act 2/2007, which came into force on 1 August 2007 (with the exception of the amendments to section 18, which are deemed to have commenced on 27 November 2000) amends sections 1, 18, 19, 27 and Schedule IV, and inserts section 46A.

Act 4/2008 (GG 4084) amends Schedule III.

See also General Notice 279/2002 (GG 2823) with respect to the application of some of these amendments to Telecom Namibia.

Act 4/2010 amends sections 3, 7, 8, 18, 46A, Schedule III and Schedule IV; these amendments came into operation one month after the date of their publication in the *Government Gazette*, which makes them effective from 30 May 2010.

Regulations: Tariff changes pertaining to Schedule II are contained in GN 54/2002 (GG 2717).

Cases: *Commissioner of Inland Revenue v Namsof Fishing Enterprises (Pty) Ltd* 2008 (1) NR 89 (SC).

See also **CUSTOMS AND EXCISE**.

See also **FINANCE AND DEVELOPMENT**.

See also **INCOME TAX**.

See also Petroleum Products and Energy Act 13 of 1990 (re: fuel levies) (**FUEL AND ENERGY**).

See also **REGIONAL AND LOCAL GOVERNMENT**.

See also *Rating of Railway Property Act 25 of 1959* (**RAILWAYS**).

ROADS AND ROAD TRANSPORTATION

Advertising on Roads and Ribbon Development Ordinance 30 of 1960.

Summary: This Ordinance regulates the display of advertisements near public roads, the erection of structures near certain proclaimed roads, access to land from such roads and drive-in cinemas.

Amendments: The Ordinance is amended by Ord. 3/1967, Ord. 11/1972 and Act 5/1982.

Regulations: The functions assigned to the Minister by this Act have been assigned to the Roads Authority established by the Roads Authority Act 17 of 1999 (GN 169/2000, GG 2374).

Road Traffic Ordinance 30 of 1967.

Summary: This Ordinance governs road traffic comprehensively. It is replaced by the Road Traffic and Transport Act 22 of 1999. However, section 113(1) of the 1999 Act states that certain provisions of the Road Traffic Ordinance 30 of 1967 remain in force insofar as they relate to public driving permits until a date specified by the Minister of Works, Transportation and Communication.

Amendments: The Ordinance is amended by Ord. 19/1968, Ord. 25/1969, Ord. 18/1970, Ord. 18/1971, Ord. 16/1972, Ord. 4/1973, Ord. 19/1973, Ord. 3/1974, Ord. 11/1974, Ord. 19/1975, Ord. 10/1976, Ord. 13/1976, Ord. 2/1978, Ord. 4/1979, Ord. 17/1980, Act 8/1981, AG 22/1983, Act 4/1983 (Rehoboth), Act 17/1985, Act 30/1985, Act 28/1986, Act 22/1987, Act 2/1988, Act 19/1988, Act 1/1994 (Walvis Bay), Act 25/1995, Act 20/1996, Act 27/1996, Act 18/1997 (which establishes a new registration and licensing system and was brought into force by GN 7/1998, GG 1781), Act 19/1997 (fees and penalties) and Act 4/1999 (alcohol breath tests and fees).

Regulations: Regulations made under this Act survive in terms of the law which replaced it, and are listed in the entry for the Road Traffic and Transport Act 22 of 1999.

Cases: Cases decided under this Act are now listed under the entry for the Road Traffic and Transport Act 22 of 1999.

Roads Ordinance 17 of 1972.

Summary: This Ordinance consolidates the laws relating to roads.

Amendments: The Ordinance is amended by-

- Ord. 16/1973
- Ord. 22/1973
- Ord. 10/1974
- Ord. 18/1975

Ord. 6/1980
Act 5/1982
AG 21/1984
Act 13/1986
Act 3/1993 (which is brought into operation by GN 42/1993 and amends section 40)
RSA Limitation on Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970 (which repeals section 60(1))
Walvis Bay and Off-shore Islands Act 1 of 1994.

Regulations: See Schedule II of Proc. 67 of 1958, which has been amended since independence by GN 158/1994 (GG 917).

Certain functions assigned to the Minister and the Permanent Secretary by this Act have been assigned to the Roads Authority established by the Roads Authority Act 17 of 1999 (GN 171/2000, GG 2374).

Appointments: Roads Boards for areas outside local authorities are established by Proclamation 4/1995, which came into force on 1 October 1995 (GG 1063).

Cases: *Wirtz v Orford & Another* 2005 NR 175 (SC) (section 64(8)).

National Road Safety Act 9 of 1972, as amended in South Africa prior to Namibian independence.

Summary: This Act establishes the National Road Safety Council and includes provisions intended to promote road safety.

Applicability to SWA: Section 1 defines “Republic” to include “any territory in respect of which Parliament is competent to legislate”. Section 29 states “This Act and any amendment thereof shall also apply in every territory in respect of which Parliament is competent to legislate.”

Transfer of administration to SWA: The relevant transfer proclamation is the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978. However, this Act is excluded from the operation of section 3(1) of the General Proclamation by section 3(1)(f), meaning that the administration of the Act not transferred to SWA.

Road Transportation Act 74 of 1977, as amended in South Africa to March 1978.

Summary: This Act regulates certain forms of road transportation. It is replaced by the Road Traffic and Transport Act 22 of 1999. However, section 112 of the 1999 Act was not in force as of 31 October 2001, insofar as it relates to the repeal of the *Road Transportation Act 74 of 1977* and its amendments, as these laws relate to passenger transport (GN 52/2001, GG 2503).

Applicability to SWA: Section 46 states “The provisions of this Act and any amendment thereof shall apply also in the Territory, including the Eastern Caprivi Zipfel.” Section 1 defines “Administration”, “local authority”, “province”, “Republic” and “Territory” accordingly.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978.

Section 3(1)(i) of the transfer proclamation excluded the reference to the “Republic” in the Act from the operation of section 3(1) of the General Proclamation, meaning that “Republic” retained the meaning given to it in the definition section of the Act (South Africa and SWA).

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Amendments: The Roads Transportation Proclamation (AG 31/1978) makes this Act applicable to Owamboland (where the Owambo Legislative Council had previously exercised authority over road transportation).

The Public Road Carrier Permits Proclamation (AG 55/1978) extends the validity of certain permits issued pursuant to the Act.

Act 29/1980, which is brought into operation by AG 15/1981, makes substantial amendments to the Act to abolish the power to set aside different transportation facilities for different population groups.

Act 18/1981, Act 16/1982 (which is brought into operation by AG 23/1983), and AG 33/1985 (which is brought into operation by AG 60/1989) amend the Act substantially. AG 61/1989 (which is brought into operation by AG 69/1989) also amends the Act.

Section 59 of the National Transport Corporation Act 21 of 1987 (which was repealed by the National Transport Services Holding Company Act 28 of 1998 with effect from 1 April 1999) amends section 1.

Act 8/1988 amends section 21. Act 20/1988 amends section 2 and AG 33/1985. AG 61/1989 (which is brought into operation by AG 69/1989) amends the Act substantially.

The Air Services Amendment Act 6 of 1991 amends sections 1 and 2A. Section 4 of the Cross-Border Road Transportation Act 18 of 1996 exempts cross-border road transportation covered by that Act from the provisions of this Act.

Regulations: Regulations made under this Act survive in terms of the law which replaced it, and are listed in the entry for the Road Traffic and Transport Act 22 of 1999.

Cases: Cases decided under this Act are now listed under the entry for the Road Traffic and Transport Act 22 of 1999.

Motor Vehicle Theft Act 12 of 1999.

Summary: This Act covers the theft of motor vehicles and motor vehicle parts. It came into operation on 1 April 2000 (GN 81/2000, GG 2294).

It should be noted that section 25 of the Act refers to sections 36 and 37 of the *General Law Amendment Act 62 of 1955*. However, this *General Law Amendment Act* is not applicable to Namibia. It appears that the reference should cite sections 6 and 7 of the *General Law Amendment Ordinance 12 of 1956*.

Amendments: Act 15/2004 amends sections 1, 2, 6, 8, 9, 13, 15 and 23. The *General Law Amendment Act 14 of 2005* amends section 1 of the Act.

Cases: *Standard Bank of Namibia Ltd, Stannic Division v Able Trading (Pty) Ltd & Another* 2003 NR 183 (HC) (discussion in *dicta*); *S v Kaevarua* 2004 NR 144 (HC) (essential elements of offence and formulation of charge under section 2); *S v Amalovu & Another* 2005 NR 438 (HC) (sentencing under section 15).

Roads Contractor Company Act 14 of 1999.

Summary: This Act provides for the incorporation of a company to undertake roads construction and maintenance previously carried out by the Department of Transport. It came into force on 25 October 1999 (GN 236/1999, GG 2220), with the exception of sections 5-9 and 11, which will come into force on the date when state road construction and maintenance services are transferred to the company.

Amendments: Act 11/2002 amends sections 1 and 4, to extend the object of the company to include construction works as well as roads. The *State-owned Enterprises Governance Act 2 of 2006*, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 1-10.

Regulations: GN 7/2002 (GG 2679) sets 1 April 2000 as the effective date of transfer of title, rights and interest in immovable property described in the Schedule to the *Roads Contractor Company Ltd*. GN 194/2002 (GG 2845) sets 1 April 2000 as the effective date of transfer for other listed immovable property. GN 24/2003 (GG 2922) sets 1 April 2000 as the date for the transfer of certain specified liabilities and obligations of the State to the *Roads Contractor Company Ltd*. GN 25/2003 (GG 2922) similarly sets 1 April 2000 as the date for the transfer of certain specified movable assets. GN 92/2004 (GG 3198) and GN 202/2006 (GG 3746) both set 1 April 2000 as the date of transfer of title, rights, and interests in certain immovable property to the *Roads Contractor Company Ltd*. GN 122/2007 (GG 3877) sets 12 December 2006 as the date of transfer of title, rights, and interests in certain immovable property to the *Roads Contractor Company Ltd*.

Roads Authority Act 17 of 1999.

Summary: This Act establishes a Roads Authority to manage the national road network of Namibia. It came into force on 25 October 1999 (GN 235/1999, GG 2220), with the exception of sections 15(1)(a) and 16, which came into force on 1 April 2000 (GN 90/2000, GG 2303).

Amendments: Act 20/2004 amends sections 6 and 7, which deal with the term of office of directors of the board and the minister's power to remove a director from office. The *State-owned Enterprises Governance Act 2 of 2006*, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 4, 9, 11 and 14, and deletes section 6.

Regulations: The date set for the transfer of assets, liabilities, rights and obligations of the State to the Roads Authority in terms of section 27(1) of the Act is set as 1 April 2000 (GN 91/2000, GG 2303).

The functions given to the Minister under the Advertising on Roads and ribbon Development Ordinance 30 of 1960 are assigned to the Roads Authority by GN 169/2000 (GG 2374).

Certain functions given to the Minister and the Permanent Secretary by the Roads Ordinance 17 of 1972 are assigned to the Roads Authority by GN 171/2000 (GG 2374).

Appointments: Directors of the Board of the Roads Authority are announced in GN 76/2000 (GG 2287), GN 97/2003 (GG 2974), GN 9/2005 (GG 3374) and GN 21/2006 (GG 3584). Appointments to fill vacancies are announced in GN 102/2001 (GG 2544). Notification of the re-appointment of a person as a member of the board of directors is announced in 251/2003 (GG 3108).

Commissions: The appointment of a Commission of Inquiry into the activities, affairs, management and operation of the Roads Authority is announced in Proc. 21/2003 (GG 3031) and GN 172/2003 (GG 3031). An amendment of the Appointment of the Commission of Inquiry by the addition of regulation 17 was announced in Proc. 1/2004 (GG 3127). An extension of the period for submission of final report of this Commission of Inquiry is announced in GN 1/2004 (GG 3127).

Road Fund Administration Act 18 of 1999.

Summary: This Act establishes a Road Fund Administration to manage a road user charging system. It came into force on 25 October 1999 (GN 234/1999, GG 2220), with the exception of sections 15(1)(b) and 16, which came into force on 1 April 2000 (GN 92/2000, GG 2305).

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 4, 9, 11 and 14, and deletes section 6.

Regulations: Registration and annual licence fees are contained in GN 94/2000 (GG 2305), which is replaced by GN 134/2000 (GG 2340), as amended by GN 91/2001 (GG 2531), GN 71/2002 (GG 2734), GN 76/2003 (GG 2946), GN 66/2004 (GG 3181) and GN 70/2005 (GG 3410).

Entry fees for foreign vehicles are set forth in GN 263/2000 (GG 2438), as amended by GN 114/2001 (GG 2544), GN 70/2002 (GG 2734), GN 198/2002 (GG 2855), GN 90/2003 (GG 2956), GN 65/2004 (GG 3181) and GN 69/2005 (GG 3410). The power to collect these entry fees is delegated to Africon Namibia / Architech Joint Venture in GN 264/2000 (GG 2438).

Road user charges, including entry fees for foreign vehicles and registration and annual licence fees, are set in General Notice 70/2007 (GG 3816), which is amended by General Notice 29/2009 (GG 4220) and General Notice 68/2010 (GG 4438).

A levy on petrol and diesel is set forth in GN 95/2000 (GG 2305), which is replaced by GN 183/2001 (GG 2608), as amended by GN 18/2002 (GG 2688), GN 17/2003 (GG 2909) and GN 264/2005 (GG 3535).

Local authorities which are eligible for funding under the Act are listed in GN 262/2000 (GN 2438).

Road Traffic and Transport Act 22 of 1999.

Summary: This Act establishes a Transportation Commission of Namibia and regulates traffic on public roads, the licensing of drivers, the registration and licensing of vehicles and cross-border road transportation. The Act came into force on 6 April 2001, with the following exceptions: Section 23 does not come into effect, and section 112 does not come into effect insofar as it relates to the repeal of the *Road Transportation Act 74 of 1977* and its amendments, as these laws relate to passenger transport (GN 52/2001, GG 2503).

The Act replaces the Road Traffic Ordinance 30 of 1967, the *Road Transportation Act 74 of 1977* and the Cross-Border Road Transportation Act 18 of 1996. However, in terms of section 113(1) of the Act, certain provisions of the Road Traffic Ordinance 30 of 1967 remain in force insofar as they relate to public driving permits until a date specified by the Minister of Works, Transportation and Communication.

The Act curiously repeals section 59 of the National Transport Corporation Act 21 of 1987 insofar as it relates to Act 44 of 1977 in the Second Schedule. However, Act 21 of 1987 was previously repealed in its entirety by the National Transport Services Holding Company Act 28 of 1998 with effect from 1 April 1999.

Amendments: Act 6/2008 (promulgated by GN 280/2008, GG 4179) amends sections 11, 37, 40 and 87, and withdraws a previous Act 6/2008 (promulgated by GN 257/2008, GG 4147).

Appointments: Members of the Transportation Commission are announced in GN 142/2004 (GG 3237).

Regulations: In terms of section 113(3), any regulation made under any one of the pieces of legislation repealed by the Act remains in force insofar as it is not inconsistent with the Act. Regulations made under the repealed laws include the following-

Road Traffic Ordinance 30 of 1967

Regulations are contained in GN 95/1967, as amended by GN 88/1968, GN 97/1969, GN 123/1969, GN 130/1970, GN 176/1971, GN 51/1972, GN 56/1972, GN 58/1972, GN 90/1972, GN 144/1972, GN 158/1972, GN 159/1972, GN 42/1973, GN 124/1973, GN 164/1973, GN 30/1974, GN 31/1974, GN 135/1974, GN 238/1974, GN 1/1975, GN 68/1975, GN 87/1975, GN 175/1975, GN 214/1975, GN 272/1975, GN 310/1975, GN 341/1975, GN 214/1976, GN 400/1976, GN 61/1977, GN 376/1977, GN 404/1977, GN 215/1978, GN 280/1978, GN 38/1979, GN 41/1979, AG GN 131/1981, AG GN 137/1981, AG GN 141/1981, AG GN 8/1982, AG GN 9/1982, AG GN 151/1982, AG GN 152/1982, AG GN 123/1983, AG GN 133/1983, AG GN 2/1984, AG GN 56/1984, AG GN 60/1984, GN 78/1985, GN 47/1990 (GG 68), GN 95/1992 (GG 449), GN 96/1992

(GG 449), GN 48/1993 (GG 635), GN 102/1993 (GG 708), Act 1/1994, GN 190/1996 (GG 1356), GN 42/1997 (GG 1512), GN 20/1998 (GG 1801) (registration and licensing), GN 305/1998 (GG 2017), GN 2/2000 (GG 2259), GN 144/2000 (GG 2350) and GN 2/2001 (GG 2468).

Registration marks for motor vehicles are assigned in GN 57/1990, as amended by GN 229/1998 (GG 1951). Registration marks for government vehicles are assigned in GN 23/2001 (GG 2481).

Registering authorities for the District of Windhoek are appointed in GN 15/1998 (GG 1796), which amends RSA GN No. 147 of 1972, and is amended by GN 170/2000 (GG 2374) (which appoints the Roads Authority established by the Roads Authority Act 17 of 1999 as the registering authority for the District of Windhoek with effect from 1 April 2000). This is altered by GN 32/2001 (GG 2490), which repeals GN 170/2000 as well as paragraph (a)(ii) of GN 15/1998.

The Namibia Traffic Information System contemplated in section 55A(1) of the Ordinance is made applicable to the Windhoek Registering Authority Area by GN 16/1998 (GG 1796).

Registering authorities for other areas are appointed in GN 230/1998 (GG 1951), GN 75/1999 (GG 2092), GN 138/1999 (GG 2146), GN 193/1999 (GG 2192) and GN 281/1999 (GG 2248). The Namibia Traffic Information System is applied to certain areas outside Windhoek by GN 228/1998 (GG 1951), GN 76/1999 (GG 2092), GN 137/1999 (GG 2146) and GN 193/1999 (GG 2192).

Proposed regulations on the transportation of dangerous goods by road are published for comment in General Notice 17/1998 (GG 1781).

The applicability of NaTIS to motor vehicles owned by the state is addressed in GN 145/2000, GN 147/2000 and GN 148/2000 (all contained in GG 2350). The payment of fees for motor vehicles of government, regional councils and local authorities is addressed in GN 146/2000 (GG 2350).

Road Transportation Act 74 of 1977

Only post-independence regulations have been recorded in respect of this Act. AG GN 99/1989 and GN 72/1993 (GG 677) amend the pre-independence regulations promulgated under the Act. GN 90/1992 withdraws AG GN 101/1989.

Cross-Border Road Transportation Act 18 of 1996

The Southern African Customs Union Memorandum of Understanding on Road Transportation Regulations, 1998 is published in GN 33/1998 (GG 1803), and amended by GN 43/1998 (GG 1810).

A large set of proposed road traffic and transport regulations is published for comment in GN 268/2000 (GG 2441).

Extensive regulations are contained in GN 53/2001 (GG 2503). These regulations came into force on 6 April 2001, *with the following exceptions:*

Chapter 3, Parts 3 and 5

Chapter 4

Chapter 5, Parts 1 and 2
Chapter 6, Parts 2 and 4
Regulation 235.

Part 1 of Chapter 4 and Part 1 of Chapter 5 came into effect on 1 November 2001 (GN222/2001, GG 2641). Part 2 of Chapter 4 came into force on 2 September 2002 (GN 161/2002, GG 2815). The remainder of the regulations exempted from GN 53/2001 do not appear to have been brought into force.

The regulations are amended by:

GN 97/2001 (GG 2533)
GN 103/2002 (GG 2759)
GN 161/ 2002 (GG 2815)
GN 163/2002 (GG 2815)
GN 205/2004 (GG 3287)
GN 206/2004 (GG 3287), which was withdrawn by GN 45/2005
GN 32/2005 (GG 3402)
GN 45/2005 (GG 3422)
GN 183/2005 (GG 3560)
GN 188/2006 (GG 3732)
GN 104/2007 (GG 3851)
GN 172/2007 (GG 3907)
GN 2/2008 (GG 3972)
GN 73/2008 (GG 4022)
GN 290/2008 (GG 4186)
GN 81/2010 (GG 4473).

Certain officers employed by the Roads Authority established in terms of the Roads Authority Act 17 of 1999 are authorised as road transport inspectors and traffic officers in terms of section 11(6) of the Act by GN 103/2001 (GG 2544).

GN 207 and 208/2006 (GG 3746) appoint the Roads Authority established under the Roads Authority Act 17 of 1999 to operate a vehicle testing station and a driving testing centre in Windhoek, with effect from 6 November 2006. GN 209/2006 (GG 3746) concerns the appointment of authorised officers by the Roads Authority as vehicle examiners, driving examiners and licence inspectors.

GN 43/2005 (GG 3419) sets 31 August 2005 as the relevant date in respect of section 40(5) of the Act, when driving licences not replaced in accordance with section 40(2) cease to be valid.

GN 44/2005 (GG 3419) sets 30 September 2005 as the date on which all persons travelling on pedal cycles on a public road must wear protective helmets in terms of Regulation 226(3).

A Bilateral Road Transport Agreement between Namibia and Zimbabwe is published in Proc. 7/2000 (GG 2359), and regulations relating to this agreement are contained in GN 156/2000 (GG 2359).

Exemptions from certain regulations made in terms of the Act are contained in GN 122/2006 (GG 3679), GN 72/2007 (GG 3365), GN 32/2003 (GG 2925), GN 252/2003 (GG 3108), and GN 2/2005 (GG 3365).

GN 122/2006 (GG 3679) gives exemptions under Section 105.

GN 100/2003 (GG 2978) concerns breath testing for alcohol concentrations.

An agreement between the Minister of Works, Transport and Communication and the Roads Authority on functions delegated by the Ministry to the Roads Authority is published in GN 163/2005 (GG 3546).

The powers of the Namibian Police to perform certain functions in terms of the Act (such as testing for learners' permits, driving licences, and vehicle roadworthiness) have been withdrawn in respect of specific locations from time to time, but these notices are not recorded here. Also not recorded are dates for registration as driving and vehicle testing centres in specific locations, and appointments of the Roads Authority to operate driving testing centres and vehicle testing centres in specific locations.

An aircraft investigation vehicle is determined to be an emergency service vehicle in terms of section 1 of the Act in GN 195/2009 (GG 4350).

Cases: The following cases concern this Act-

- Ojo v Government of the Republic of Namibia & Another* 2005 NR 118 (HC)(sections 1, 74, 75, 77 and reg 341)
- Dresselhaus Transport CC v The Government of the Republic of Namibia* 2005 NR 214 (SC)
- S v Jansen* 2006 (1) NR 337 (HC) (elements of proof under section 82)
- S v Garoeb* 2006 (2) NR 500 (HC) (components of charge sheet and questioning of accused in respect of offence under section 82)
- S v Kaffer* 2006 (2) NR 577 (HC) (sections 80(1), 106(6)(b) and 51(1)(b))
- S v Blaauw's Transport (Pty) Ltd & Another* 2006 (2) NR 587 (HC) (section 87; regulations 254, 259 and 267)
- S v Shindi* 2007 (1) NR 160 (HC) (section 80(1); erroneous conviction under repealed legislation set aside).

The following cases concern previous legislation replaced by this Act-

Road Traffic Ordinance 30 of 1967

- S v Van der Merwe* 1991 NR 199 (HC) (section 146)
- S v Davids* 1991 NR 255 (HC) (sections 138(1) and 140(1)(a))
- S v Shivute & Several Other Cases* 1991 NR 433 (HC) at 440 (section 140)
- S v Danoka* 1992 NR 189 (HC) (section 138)
- S v Moffat* 1992 NR 193 (HC) (section 140)
- S v Kayumba* 1993 NR 354 (HC) (sections 135 and 150)
- S v Amuntenya* 1993 NR 417 (HC) (section 138(1))
- S v Diergaardt* 1993 NR 421 (HC) (sections 71 and 146)
- S v Mostert* 1994 NR 83 (HC)(section 140(1)(a))
- S v David* 1994 NR 179 (HC) (section 140(3))
- S v Cloete* 1994 NR 190 (HC) (section 140(1)(a))
- S v Eigowab* 1994 NR 192 (HC) (section 140(1)(a))
- S v Mostert/S v de Koker* 1995 NR 131 (HC)(sections 138(1) and 135(1)(a))
- S v Muhenje* 1995 NR 133 (HC) (sections 56(1) and 138(1))
- S v Arebeb* 1997 NR 1 (HC) (sections 56(1), 135, 138(1) and 146)
- S v Joseph* 1997 NR 108 (HC) (section 138(1) creating two separate offences)
- S v Tjingaveta* 1997 NR 197 (HC) (section 101(3))
- S v Amutenya* 1998 NR 204 (HC) (section 138(1))
- S v Nekongo* 2001 NR96 (HC) (section 138(1)(a) and 140(1)).
- S v Gillmore* 2002 NR 92 (HC) (section 138(1))

Gerson Hoveka t/a Hovy Namibia Tour and Safari v FGI Namibia 2002 NR 146 (HC).

Regulations issued under the Road Traffic Ordinance 30 of 1967

Standard Bank of Namibia Ltd, Stannic Division v Able Trading (Pty) Ltd & Another 2003 NR 183 (HC)

Road Transportation Act 74 of 1977

Kersten t/a Witvlei Transport v National Transport Commission & Another 1991 NR 234 (HC)
S v Khoza 1992 NR 158 (HC).

Motor Vehicle Accidents Fund Act 10 of 2007.

Summary: This Act provides for a Motor Vehicle Accidents Fund for the payment of assistance and benefits to persons injured in motor vehicle accidents and their dependents. It replaces the Motor Vehicle Accidents Fund Act 4 of 2001, which in turn replaced the Motor Vehicle Accidents Act 30 of 1990. It came into force on 2 May 2008 (GN 103/2008, GG 4040).

Claims arising before the commencement of the new law are to be dealt with under the repealed law, in terms of section 36. The assets and liabilities of the previous fund are transferred to the new Fund.

Regulations: There is no savings clause pertaining to regulations made under the previous law, and in any event the regulations made under the previous Act were repealed by GN 104/2008 (GG 4040).

Regulations under the new Act are contained in GN 104/2008 (GG 4040).

Cases: The following cases were decided under the Motor Vehicle Accidents Act 30 of 1990--

Van Rensberg & Another v Russer 1990 NR 45 (HC) (dealing with previous legislation)

Beukes v Mutual and Federal Insurance 1990 NR 105 (HC) (dealing with previous legislation)

Pack & Others v Mutual & Federal Insurance Company Limited 1996 NR 264 (HC).

See also *Oosthuizen v Motor Vehicle Accident Fund of Namibia* 2005 NR 128 (HC) for a discussion of a necessary witness in a claim arising under that Act.

The following case pertains to the Motor Vehicle Accidents Fund Act 4 of 2001-
Bock v Motor Vehicle Accident Fund of Namibia 2008 (2) NR 722 (HC).

INTERNATIONAL LAW

Convention on Road Traffic, 1949

succession: 13 October 1993

SACU Memorandum of Understanding on Road Transportation

accession: 2 February 1998 (Proc. 6/1998, GG 1803)

Note: SADC memoranda of understanding are non-binding.

Memorandum of Understanding between the Governments of the Republics of Botswana, Namibia and South Africa on the Development and Management of the Trans-Kalahari Corridor, 2003

signature: 3 November 2003

ratification: 21 February 2007

published in GN 193/2007 (GG 3927)

Note: Memoranda of understanding are not generally legally binding.

Bilateral Road Transport Agreement (Namibia and Zimbabwe)

ratification: 17 February 2000 (Proc. 7/2000, GG 2359)

Note: This index does not generally list bilateral agreements, but includes this one since it was gazetted in Namibia.

See also **TRANSPORTATION**.

SCIENTIFIC RESEARCH

Scientific Research Council Act 46 of 1988, as amended in South Africa prior to Namibian independence.

Summary: This Act concerns the Council of Scientific and Industrial Research. It came into force on 1 June 1988.

The Act replaced the *Scientific Research Council Act 32 of 1962*, which applied to SWA by virtue of section 19 and was repealed by the *Scientific Research Council Act 82 of 1984*, which was made expressly applicable to SWA and which provided for the continued existence of the Council of Scientific and Industrial Research. This latter Act was repealed by the *Scientific Research Council Act 46 of 1988*.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 21 states “This Act and any amendment thereof shall apply also in the territory of South West Africa.” There were no amendments to the Act in South Africa prior to Namibian independence.

Research, Science and Technology Act 23 of 2004.

Summary: This Act provides for the promotion, coordination and development of research, science and technology. It establishes the National Commission on Research, Science and Technology and the National Research, Science and Technology Fund. The Act replaces the *Scientific Research Council Act 46 of 1988*. It will come into force on a date announced by the Minister.

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), substitutes section 6 and deletes section 8.

INTERNATIONAL LAW

SADC Protocol on Science, Technology and Innovation, 2008

(not yet in force within SADC as of 23 June 2010) (source: SADC)

ratification approved by Parliament: 7 October 2009 (source: Parliament)

SADC list of ratifications dated 23 June 2010 does not show ratification by Namibia

SEA AND SEASHORE

Sea Shore Ordinance 37 of 1958.

Summary: This Ordinance provides for the determination of the position of the high-water mark.

Amendments: The application of the Ordinance with respect to Walvis Bay is affected by Proclamation 144 of 1982 (GG 8344).

Territorial Sea and Exclusive Economic Zone of Namibia Act 3 of 1990.

Summary: This Act determines and defines the territorial sea, internal waters, exclusive economic zone and continental shelf of Namibia. It was brought into operation on 10 July 1990 by Proc. 6/1990 (GG 44).

Amendments: Act 30/1991 amends sections 4 and 6, inserts section 3A and substitutes the long title in order to establish a contiguous zone in which Namibia shall have the right to prevent the contravention of certain laws and to further provide for matters relating to the continental shelf. Act 29/1992 amends the Schedule.

Cases:

Pineiro & Others v Minister of Justice & Others 1991 NR 283 (HC)
S v Carracelas & Others (1) 1992 NR 322 (HC)
S v Carracelas & Others (2) 1992 NR 329 (HC)
S v Carracelas & Others (3) 1992 NR 336 (HC)
S v Martinez 1993 NR 1 (HC)
S v Pineiro & Others 1993 NR 24 (HC).

INTERNATIONAL LAW

United Nations Convention on the Law of the Sea, 1982

signature: 10 December 1982; ratification: 18 April 1983 (represented by the United Nations Council for Namibia as stipulated in Article 305, paragraph 1 (b), of the Convention)

Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994

signature: 29 July 1994; accession by means of the simplified procedure set out in articles 4 (3)(c) and 5: 16 Nov 1994

Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995 (came into force internationally on 11 December 2003)

signature: 19 April 1996

ratification: 8 April 1998 (Proc. 10/1998, GG 1862)

Cases: *S v Curras* 1991 NR 208 (HC); *Pineiro & Others v Minister of Justice & Others* 1991 NR 283 (HC); *S v Carracelas & Others (2)* 1992 NR 329 (HC); *S v Martinez* 1993 NR 1

(HC); *S v Pineiro & Others* (1) 1993 NR 24 (HC).

See also *Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981* (ENVIRONMENT).

See also **MARINE AND FRESHWATER RESOURCES.**

SECURITY OFFICERS

Security Enterprises and Security Officers Act 19 of 1998.

Summary: This Act establishes a Security Enterprises and Security Officer Regulation Board and provides for the registration of security enterprises. It also provides for the establishment of a fidelity guarantee fund. The Act came into force on 1 August 1998 (GN 181/1998, GG 1917).

Amendments: Act 21/2002 amends section 1, 5, 9 and 38.

The General Law Amendment Act 14 of 2005 amends section 1. It also amends section 2 of amending Act 21/2002 (which affects section 5 of the principal Act) , and substitutes section 5 of amending Act 21/2002 to bring that amending Act into effect as of 1 September 2004.

The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 1, 5, 9 and 13.

Appointments: Members of the Security Enterprises and Security Officers Regulations Board are appointed in GN 283/1999 (GG 2253) and GN 201/2004 (GG 3276).

See also minimum wage for security industry under Labour Act 11 of 2007 (**LABOUR**).

SHIPPING

Merchant Shipping Act 57 of 1951, as amended in South Africa prior to Namibian independence.

Summary: This Act controls merchant shipping.

Applicability to SWA: Section 3(1) states “This Act and any amendment thereof shall apply to the Territory of South West Africa and the port and settlement of Walvis Bay, and the said territory shall for the purposes of this Act be deemed to form part of the Republic.” The Act expressly states that it does not affect the competency of the Legislative Assembly of South West Africa to make ordinances dealing with sealing, sea fisheries, and the licensing of sealing and fishing vessels.

RSA Proclamation R.107 of 1977 and RSA Proclamation R.71 of 1984 affect the application of this Act.

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978. However, section 3(1)(c) of the transfer proclamation excluded this Act from the operation of section 3(1) of the General Proclamation, meaning that the administration of the Act was not transferred to SWA.

Amendments: Act 7/1991 amends the Act substantially to make it consistent with an independent Namibia (affecting sections 2, 3, 10, 11, 64, 135, 152, 161, 180, 267, 292, 298, 355, 356, 356*bis* and substituting certain words, and repealing sections 14 and 251).

The Namibian Ports Authority Act 2 of 1994 amends the definition of “port” in section 2.

The Wreck and Salvage Act 5 of 2004 amends sections 134, 135, and 345 and repeals sections 234, 258, 293-306 inclusive, 330, and 331.

Regulations: Record Book Regulations are contained in RSA GN R.2080 of 14 October 1977, as amended by GN 80/1998 (GG 1837).

The ratification of international conventions is addressed in RSA Proc. R.71 of 1982.

Ports of registry for the registration of ships are identified in GN 77/1990 (GG 112) and GN 24/1994 (GG 801).

The measurement of tonnage is addressed in GN 22/1991 (GG 162) and GN 109/1991 (GG 276).

Merchant Shipping (Radio Installations) Regulations are contained in GN 105/2010 (GG 4486).

Merchant Shipping Fees Regulations are contained in GN 39/2009 (GG 4227), which repeal GN 80/1998 (GG 1837). (Note that GN 80/1998 repealed a number of previous regulations and amended the Record Book Regulations contained in RSA GN R.2080 of 14 October 1977.)

Examination Regulations for Certificates of Competence as Marine Motormen and Fishermen are contained in GN 180/2004 (GG 3261).

Manning of Ships Regulations are contained in GN 240/2003 (GG 3097)..

Certificates of Qualifications Regulations are contained in GN 41/2004 (GG 3164), as amended by GN 185/2007 (GG 3919).

Construction and Equipment Regulations for fishing vessels are contained in GN 61/2002 (GG 2729), which replaces the regulations contained in RSA GN 79 of 19 January 1968 insofar as they apply to fishing vessels.

Cases: *Bourgwells Ltd (Owners of MFV Ofelia) v Shepalov & Others* 1999 NR 410 (HC) (sections 135 and 172).

Marine Traffic Act 2 of 1981, as amended in South Africa prior to Namibian independence.

Summary: This Act regulates marine traffic comprehensively.

Applicability to SWA: RSA Proclamation 93/1985 (issued in terms of the *SWA Constitution Act 39 of 1968*) makes the Act “and all amendments thereof” applicable to SWA from 7 June 1985.

Amendments: The Act was amended by RSA Act 5/1983, which applied to SWA by virtue of RSA Proclamation 93/1985.

Act 15/1991 amended sections 1, 5, 9, and 14 and substituted certain words and expressions and the long title of the Act, to make it consistent with an independent Namibia.

The Namibian Ports Authority Act 2 of 1994 amends the definition of “harbour” in section 1.

Namibian Ports Authority Act 2 of 1994.

Summary: This Act provides for the establishment of the Namibian Ports Authority to undertake the management of ports and lighthouses in Namibia. The Act -- with the exceptions of paragraphs 4, 5, 6, 7, 8 and 9 of Schedule 2 -- came into force on 1 March 1994. The excepted provisions -- all of which deal with amendments to the National Transport Corporation Act 21 of 1987 (which was repealed by the National Transport Services Holding Company Act 28 of 1998 with effect from 1 April 1999) - came into force on 1 April 1995 (GN 58/1995, GG 1044).

Amendments: The Act is amended by Act 12/2000 (sections 4, 5, 6, 9, 14, 23A, plus provisions relating to a Performance Agreement, and to the transfer of the Walvis Bay Port to the Namibia Ports Authority), which came into force on 8 November 2001 with the exception of sections 1, 2, 3 and 4 of the amending act. These sections of the amending act came into force on 2 May 2002. (See GN 221/2001, GG 2641 and GN 66/2002, GG 2734.) The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 4, 6, 7 and 9 and substitutes section 16.

Regulations: The date determined under section 11(1)(b) for transfer of management and control of the Lüderitz port and the Diaz Point lighthouse to the Namibian Ports Authority is 1 April 1995 (GN 58/1995, GG 1044). See also GN 131/1998 (GG 1885) on this topic.

Regulations are contained in GN 117/2001 (GG 2549), which replaces RSA GN R.562 of 26 March 1982 (as amended).

Tariffs prescribed by the Namibian Ports Authority from time to time have not been recorded here.

Appointments: The most recent appointment to the Board of Directors is in GN 8/2005 (GG 3374).

Cases: *Seaflower Whitefish Corporation v Namibia Ports Authority* 1998 NR 316 (HC) and *Seaflower Whitefish Corporation Ltd v Namibian Ports Authority* 2000 NR 57 (HC) (application of wharfage rates in Harbour Tariff (Lüderitz)).

Wreck and Salvage Act 5 of 2004.

Summary: This Act provides for the salvage of ships, aircraft and persons in danger at sea, and for the protection of the marine environment. It also amends or repeals certain sections of the *Merchant Shipping Act 57 of 1951*. It came into operation on 1 November 2004 (GN 232/2004, GN 3313).

INTERNATIONAL LAW

International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (“Hague Rules”), 1924 and Protocols of 1968 and 1979

accession approved by Parliament: 6 November 2007 (source: Parliament)

deposit not registered with Comité Maritime International as of 2009

(source: www.comitemaritime.org)

Convention on the International Maritime Organization, 1948

accession: 27 October 1994

(source: UN Treaty Database, <http://untreaty.un.org>)

On 27 October 1994, the UN also received instruments of acceptance in respect of Namibia for the following

- * 1964 amendments to articles 17 and 18
- * 1965 amendment to article 28 of the Convention
- * 1974 amendments to articles 10, 16, 17, 18, 20, 28, 31 and 32 of the Convention
- * 1975 amendments to the title and substantive provisions of the Convention
- * 1977 amendments to the Convention relating to the institutionalisation of the Committee on technical co-operation in the Convention
- * 1979 amendments to articles 17, 18, 20 and 51 of the Convention

Namibia subsequently accepted the following:

- * 1991 amendments to the IMO Convention relating to the institutionalisation of the Facilitation Committee in the Convention (not yet in force internationally as of 31 March 2003) (acceptance: 28 November 2000)

- * 1993 amendments to articles 16, 17 and 19 (b) of the Convention on the International Maritime Organization (which entered into force internationally on 7 November 2002) (acceptance: 10 September 2001).

International Convention for the Unification of Certain Rules relating to the arrest of Sea-Going Ships, 1952

accession: 13 June 2001 (source: Parliament)

International Convention on Load Lines, 1966

accession approved by Parliament: 13 June 2001 (source: Parliament)

deposit: 22 February 2002; effective date: 22 May 2002 (source: International Maritime Organization, www.imo.org)

1988 Protocol (adoption of tacit amendment procedure)

accession: 22 February 2002; effective date: 22 May 2002

(source: International Maritime Organisation, www.imo.org)

International Convention on Tonnage Measurement of Ships, 1969

accession: 27 November 2000; effective date: 27 February 2001

(source: International Maritime Organization, www.imo.org)

International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended by the 1973 Protocol

accession approved by Parliament: 6 March 2002 (source: Parliament)

deposit: 12 March 2004; effective date: 10 June 2004

(source: International Maritime Organization, www.imo.org)

International Convention on Civil Liability for Oil Pollution Damage, 1969, as replaced by the 1992 Protocol, as amended in 2000

accession approved by Parliament: 9 October 2001 (source: Parliament)

deposit: 18 December 2002; effective date: 18 December 2003

(source: International Maritime Organisation, www.imo.org)

Compensation for Oil Pollution Damage, 1971, as replaced by the 1992 Protocol

accession approved by Parliament: 9 October 2001 (source: Parliament)

deposit: 18 December 2002; defective date: 18 December 2003

(source: International Maritime Organisation, www.imo.org)

Convention on the International Regulations for Preventing Collisions at Sea, 1972 (as amended)

accession: 27 November 2000 (source: International Maritime Organization, www.imo.org)

International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto

accession approved by Parliament: 9 October 2001 (source: Parliament)

deposit: 18 December 2002; effective date: 18 March 2003

(source: International Maritime Organisation, www.imo.org)

Note: Namibia has also acceded to Annexes I/II (Prevention of Pollution by Oil/Control of Pollution by Noxious Liquid Substances), III (Prevention of Pollution by Harmful Substances in Packaged Form) and V (Prevention of Pollution by Garbage from Ships), but has NOT acceded to Annex IV (Prevention of Pollution by Sewage from Ships) or the 1997 Protocol adding Annex VI (Prevention of Air Pollution from Ships). (source: International Maritime Organisation, www.imo.org)

International Convention for the Safety of Life at Sea, 1974 (as amended)

accession: 27 November 2000; effective date: 27 February 2001

(source: International Maritime Organization, www.imo.org)

Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974, as amended

accession: 27 November 2000; effective date: 27 February 2001
(source: International Maritime Organization, www.imo.org)

Namibia is NOT a party to the following protocol:

* *Protocol of 1988 relating to the Harmonized System of Surveys and Certification*

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978

accession approved by Parliament: 28 February 2002 (source: Parliament)
deposit: 24 January 2005; effective date: 24 April 2005
(source: International Maritime Organization, www.imo.org)

International Convention on Maritime Search and Rescue, 1979

accession approved by Parliament: 23 October 2002 (source: Parliament)
deposit: 12 March 2004; effective date: 11 April 2004
(source: International Maritime Organization, www.imo.org)

International Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988

accession approved by Parliament: 22 April 2003
deposit: 10 July 2004; effective date: 18 October 2004
(source: International Maritime Organization, www.imo.org)

Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988

deposit: 7 September 2005; effective date: 6 December 2005
(source: International Maritime Organization, www.imo.org)

International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990

accession approved by Parliament: 21 September 2006 (source: Parliament)
deposit: 18 June 2007; effective date: 18 September 2007
(source: International Maritime Organisation, www.imo.org)

Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977

(not yet in force internationally)

Namibia reportedly signed in 2007, but no ratification is recorded.

(sources: "Protocol 'given the nod' ", *The Namibian*, 29 October 2007; International Maritime Organisation, www.imo.org)

International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995

(not yet in force internationally)

deposit: 18 December 2008 (source: International Maritime Organization, www.imo.org)

Multilateral Agreement between Governments of Angola, Comoros, Madagascar, Mozambique, Namibia, and South Africa on Coordination of Maritime Search and Rescue Services, 2007

ratification approved by Parliament: 27 June 2007 (source: Parliament)

See also **SEA AND SEASHORE**.

See also *Admiralty Jurisdiction Regulation Act 5 of 1972* and *Colonial Courts of Admiralty Act 1890* (**COURTS**).

SOCIAL SECURITY

Social Security Act 34 of 1994.

Summary: This Act establishes a Social Security Commission as well as the following funds: a Maternity Leave, Sick Leave and Death Benefit Fund; a National Medical Benefit Fund, a National Pension Fund and a Development Fund. The Act -- *with the exception of Parts VI (National Medical Benefit Fund) and VII (National Pension Fund)* -- came into force on 15 January 1995 (GN 7/1995, GG 1006).

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 4, 5 and 12. The Labour Act 11 of 2007 amends the definition of “employee” in section 1.

Appointments: The members of the Social Security Commission are announced in GN 133/1995 (GG 1119), GN 38/2003 (GG 2927) and GN 5/2009 (GG 4192). A Chairperson is announced in GN 234/1998 (GG 1952), GN 38/2003 (GG 2927) and GN 5/2009 (GG 4192).

Regulations: Regulations are contained in GN 198/1995 (GN 1181), as amended by GN 31/1996 (GG 1258), GN 80/1996 (GG 1291), GN 244/1977 (GG 1741), GN 235/1998 (GG 1952), GN 101/2001 (GG 2544), GN 227/2003 (GG 3092), GN 53/2008 (GG 4002) and GN 49/2009 (GG 4236).

Cases: See *Engelbrecht & Others v Hennes* 2007 (1) NR 236 (LC) (deductions made from commissions in respect of social security payments are an indication of an employment relationship).

COMMISSIONS

Commission of Inquiry into the Activities, Affairs, Management and Operation of the Social Security Commission (Proc.7/2002, GG 2857).

See also GN 200/2002 (GG 2857), GN 81/2003 (GG 2956).

See also **LABOUR**.

SOCIAL WELFARE

Friendly Societies Act 25 of 1956, as amended in South Africa prior to Namibian independence.

Summary: This Act regulates friendly societies, which are associations of persons established to provide relief to children, the aged, the sick, widows and so forth.

Applicability to SWA: Section 1 defines “Union” to include “the Territory”, which is defined as “the Territory of South West Africa”. “Court” and “Gazette” are defined accordingly. Section 52 states “This Act shall apply also in the Territory.” Although the wording of section 52 did not make amendments to the Act automatically applicable to South West Africa, they may be applicable by virtue of the definition of “Union”,

Transfer of administration to SWA: This Act was administered by the Minister of Finance. Thus, there appears to be no applicable transfer proclamation.

Amendments: The Short-term Insurance Act 4 of 1998 repeals section 50 insofar as it relates to short-term insurance. The Long-term Insurance Act 5 of 1998 repeals the remainder of section 50. The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 amends section 1, substitutes section 4 and repeals section 4A.

Appointments: A Registrar and Deputy Registrar of Friendly Societies are appointed in General Notice 27/1991 (GG 174).

National Welfare Act 79 of 1965, as amended in South Africa to November 1977.

Summary: This Act establishes a National Welfare Board of Namibia and provides for the registration and control of certain welfare organisations.

Applicability to SWA: Section 1 defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”. Section 43A states “This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated 30 November 1977. None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

In South Africa, the portions of the Act relating to the National Welfare Board and to welfare organisations were repealed by the *National Welfare Act 100 of 1978*. The portions of the Act relating to social workers were repealed by the *Social and Associated Workers Act 110 of 1978*. The remainder of the Act was repealed by the *Pension Laws Amendment Act 81 of 1982*. None of the repealing acts were made expressly applicable to SWA.

Amendments: Act 12/1979 amends this Act substantially to provide for a National Welfare Board of South West Africa.

The Act is also substantially amended to make it consistent with an independent Namibia by Act 9/1993, which came into operation on 1 July 1994 (GN 117/1994, GG 875). This amending act amends sections 1-8, 10, 11, 14, 18, 19, 21, 25 38, 39, 42; repeals sections 33-37, 40 and 43A; and substitutes certain expressions and the long title. Act 20/1994 amends section 1 and repeals section 38, which formerly required that only registered welfare workers could be appointed as professional welfare officers in the public service.

Regulations: Regulations are contained in RSA GN R.1363/1973, RSA GN R.2138/1974 and RSA GN R.105/1976.

Namibia Red Cross Act 16 of 1991.

Summary: This Act recognises the Namibia Red Cross Society as the only Red Cross society in Namibia, and prohibits the unauthorised use of the name or emblem of the Red Cross or Red Crescent.

Veterans Act 2 of 2008.

Summary: This Act (promulgated by GN 115/2008 (GG 4051)) provides for the establishment of a Veterans Fund for the provision of assistance to veterans and their dependants, and projects for the benefit of veterans. It also provides for the integration of the pension benefits of veterans. It establishes a Veterans Board and Veterans Appeal Board. It repeals the War Veterans Subvention Act 16 of 1999.

Part IV of the Act came into operation on 23 June 2008 (GN 156/2008, GG 4072). The remainder of the Act, except for section 37, came into force on 8 July 2008 (GN 167/2008, GG 4080). Section 37, which deals with the pension integration scheme for veterans, will come into force on a date set by the Minister.

Regulations: Regulations made under the repealed Act survive under this Act. The repealed Act replaced the unrepealed portions of the *War Veterans' Pensions Act 25 of 1968*, which applied only to coloured persons resident outside the territory of South West Africa; regulations made under that Act also appear to survive.

Regulations on the registration and benefits of veterans and their dependants are contained in GN 168/2008 (GG 4080).

See also Social Work and Psychology Act 6 of 2004 (**MEDICINE AND MEDICAL PROFESSIONS**).

See also **PENSIONS**.

See also Social Security Act 34 of 1994 (**SOCIAL SECURITY**).

See also National Youth Service Act 6 of 2005 (**YOUTH**).

SPORTS

Namibia Sports Act 12 of 2003.

Summary: This Act establishes a National Sports Commission and a Sports Development Fund. It replaces the Namibia Sports Act 7 of 1995. The Act came into force on 2 December 2003 (GN 243/2003, GG 3103).

Regulations: Regulations are contained in GN 244/2003 (GG 3103).

INTERNATIONAL LAW

International Convention against Doping In Sport, 2005

(entered into force internationally on 1 February 2007)

ratification by Parliament: 21 September 2006 (source: Parliament)

deposit: 29 November 2006 (source: UNESCO, www.unesco.org)

STOCKS AND SECURITIES

Unit Trusts Control Act 54 of 1981, as amended in South Africa prior to Namibian independence.

Summary: This Act regulates trust schemes relating to securities and prohibits similar schemes relating to other assets.

Applicability to SWA: Section 45 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Amendments: The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 amends section 1, substitutes section 2 and repeals section 2A.

Appointments: A Registrar and Deputy Registrar of Unit Trust Companies are appointed in General Notice 31/1991 (GG 174).

Stock Exchanges Control Act 1 of 1985, as amended in South Africa prior to Namibian independence.

Summary: This Act regulates stock exchanges, stock-brokers and loans made against securities.

Applicability to SWA: Section 1 defines “Republic” to include “the Territory”, which is defined as “the territory of South West Africa”. Section 52 states “The provisions of this Act and any amendment thereof, whenever made, shall apply also in the Territory, including the Eastern Caprivi Zipfel.”

Amendments: Act 26/1992 amends sections 1, 3, 7, 8, 10, 14, 19, 21, 34, and 43, and repeals section 52, to make the Act consistent with an independent Namibia and to facilitate the establishment of a Namibian Stock Exchange. Act 29/2000 amends sections 3, 7, 8, 9, 10, 11, 12, 15, 33 and 39, repeals section 13 and inserts section 45A. The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 amends section 1, substitutes section 2 and repeals section 2A.

Regulations: The Namibian Stock Exchange Rules are contained in GN 151/1995 (GG 1147), as amended by GN 145/1997 (GG 1603), GN 81/1999 (GG 2098), GN 12/2002 (GG 2688) and General Notice 203/2002 (GG 2796). Notices of application for approval of amendment of the rules are contained in GN 12/2002 (GG 2688), General Notice 203/2002 (GG 2796) and General Notice 251/2005 (GG 3518).

Appointments: A Registrar and Deputy Registrar of Stock Exchanges are appointed in General Notice 30/1991 (GG 174).

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on members of stock exchanges licensed under the Act and on the Namibia Stock Exchange.

SUCCESSION

Political Ordinance of 1 April 1580, articles 19-29.

Summary: This Ordinance unified the law of intestate succession of in the provinces of North Holland and South Holland so that the whole of the Netherlands was governed by the “Skependomserfreg” (Southern Provinces System) principle of *per stirpes* inheritance. See a translation and summary of this law in English below.

Amendment and interpretation: The *Interpretation of 13 May 1594* and *Oktrooi of 10 January 1661* clarify and amend the 1580 Ordinance.

Applicability to SWA: The *Oktrooi of 10 January 1661* clarified that both the Ordinance and the 1594 Interpretation applied to the Cape Colony. (The Oktrooi applied the Political Ordinance to the “Indies”, which at the time included the Cape Colony.) They were subsequently made applicable to SWA by the *Administration of Justice Proclamation (SWA) 21 of 1919*, as interpreted by *Tittel v The Master of The High Court* 1921 SWA 58.

Cases: *Frans v Paschke* 2007 (2) NR 520 (HC) (citing the *Political Ordinance of 1580*, the *Interpretation of 13 May 1594* and the *Oktrooi of 1661*, explaining their historical background and the route by which they became applicable to SWA (at paragraphs 9-14, and finding the rule that children born outside marriage may not inherit intestate from their fathers to be unconstitutional).

**Translation and summaries from
Howard, *The Administration of Estates, 1908*
See *Frans v Paschke* 2007 (2) NR 520 (HC), footnotes 10-11**

Political Ordinance of 1 April 1580, articles 19-29

Art 19: Regarding inheritances, the States are hereby withdrawing and repealing all written rights, customs and laws applicable in the States and countries of Holland and Friesland concerned with intestate deaths or where a person dies without a last will. These regulations concern all movable and immovable properties. From now on only these new Articles that follow will be applicable.

Art. 20: Firstly, children and other direct descendants *ad infinitum* succeed by representation or *per stirpes*.

Art. 21: If both parents of the intestate be alive, they succeed absolutely upon failure of children and descendants of remoter degree.

Art 22: If one or both of the parents be dead, the succession must go absolutely to the intestate's brothers and sisters and their children and grandchildren *per stirpes* or by representation.

Art. 23: Half-brothers and half-sisters, their children and grand-children, and other collateral relations who were related to the intestate through one parent only, take with the "half-hand" and according to the degree of consanguinity in which they stood related to him.

Art. 24: Failing all descendants, father, mother, brothers and sisters and their children and grandchildren, the uncles and aunts, and their children, take *per stirpes*.

Art. 25: But, however, if grandfather and grandmother on the one side be both alive, they succeed, as regards property derived from that side, in preference to the uncles and aunts and their children

descended from these grandparents of the intestate; but these grandparents do not oust the intestate's brothers and sisters as regards such property.

Art 26: In the case of own parents or other ascendants when the bed has been severed and one alone survives, the latter does not participate in the succession.

Art. 27: "The estate of the deceased shall go to his next of kin on the father's and mother's side, and be divided into two equal parts, without any distinction being made whether the deceased inherited more from his father than from his mother, or vice versa." Now, the context clearly shows that this section was intended to apply to the case in which the deceased died without either descendants or parents him surviving. In such a case the general rule is laid down that the succession shall be *per lineas*, one-half of the estate going to the next of kin on the paternal side, and the other half to the next of kin on the maternal side.

Art. 28: "Representation shall not be admitted among collaterals, further than the grandchildren of brothers and sisters, and the children of uncles and aunts, inclusively, and all other collaterals, being the next of kin of the deceased, and in equal degrees, shall take per capita, to the exclusion of all who are in a more remote degree of consanguinity, the nearest excluding those more remote."

Art. 29: Children who have received from their parents any money or property given as a marriage gift or for the purpose of benefiting the children in business affair or otherwise in such matters, must collate or bring into the estate of their parents such money or property before sharing the estate with the other successors. the amount to be collated is the value of the donation at the time it was made, if the property had not had a valuation placed upon it; but if such was the case, the valuation must be followed in collating. The property must then be divided into equal parts, one half going to the surviving spouse, and the other half the heirs take: This will also take place in the first, second and third generations.. The foregoing rules regarding succession and collation rule when no contrary provisions exist by virtue of a "testament, antenuptial contract, deeds executed before the Orphan Chamber, or any other contracts;"

Interpretation of 13 May 1594

This Interpretation essayed to elucidate the difficult and doubtful points that arose in regard to the terms of the Political Ordinance: Half-brothers and half-sisters must succeed with the half-hand if both of the parents of the intestate predeceased him; that is, the full brothers and sisters or their children or grandchildren by representation must take one-half of the estate, whilst the other half they share equally with the half-brothers and half-sisters, or their children or grandchildren by representation, who are related to the intestate on the one side only. But if that parent alone is dead through whom the half-brothers and half-sisters have their claim upon the intestate, the other parent of the intestate being still living, they, or their children or grandchildren by representation, succeed with a full hand: not otherwise, however. The same applies to the case of other collaterals, in their various degrees, when related to the intestate on the one side only. [Compare, however, the rule stated below, regarding collaterals related through other ascendants.] Further descendants of brothers and sisters, in the fifth and remoter degrees, rank before grandparents and remoter ascendants, as also uncles and aunts, their children and grandchildren, and further descendants, and they succeed per capita, not per stirpes. If, on the one side, only one of the ascendants [as in Art 26, the application hereof to parents is nullified by the Charter of 1661] be alive, neither he, nor any persons, related to the intestate through the deceased spouse alone, will succeed to the intestate. The division of the intestate's estate *per lineas*, to the father's and the mother's side equally, occurs only when the parents are both dead. And the above rules must govern.

Oktrooi of 10 January 1661

In applying the above laws to the Indies, this Charter partially altered Art 26 of the Ordinance: When the marriage of the intestate's parents has been dissolved, and only one of them is living, he or she will succeed to the intestate along with the brothers and sisters, whether of the full or the half blood, or their children or grandchildren by representation. That is, the surviving parent takes one-half, and the brothers and sisters, or their children or grandchildren by representation, take the other half; but the half relations in order to succeed must be related to the intestate through his deceased parent. If there be neither brothers nor sisters alive, their children or grandchildren by representation will in like manner take one half, the parent taking the other. If there be neither, brothers, sisters, their children nor

grandchildren alive, the surviving parent of the intestate will succeed to the estate absolutely, and exclude all collaterals. Land, houses and other immovable property must follow the law and customs of the Provinces, Districts of places where it is situated.

Intestate Succession Ordinance 12 of 1946.

Summary: This Ordinance sets forth rules for intestate inheritance by surviving spouses and other relatives.

Amendments: The Ordinance is amended by Ord. 6/1963 and Act 15/1982, both of which simply substitute the amounts referred to in section 1. (The amounts which are currently applicable are all set at R50 000.)

Wills Act 7 of 1953, as amended in South Africa to November 1979.

Summary: This Act covers the execution of wills.

Applicability to SWA: Section 8 states “This Act and any amendment thereof which may be made from time to time shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951).” Section 1 defines “Court” and “Master” accordingly.

Transfer of administration to SWA: The administration of this Act is transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979. There were no amendments to the Act in South Africa after that date and prior to Namibian independence.

Amendments: The definitions of “Court” and “Master” are amended by the Walvis Bay and Off-shore Islands Act 1 of 1994.

Cases: *Lerf v Nieft NO & Others* 2004 NR 183 (HC) (lack of testamentary capacity); *Hoveka NO & Others v The Master & Another* 2006 (1) NR 147 (HC) (factual dispute about compliance with section 2(1)(a); costs); ; *Kalomo v Master of the High Court & Others* 2008 (2) NR 693 (SC) (valid German will of German citizen residing in Namibia at time of death covered by section 3bis).

The following cases deal with the interpretation and construction of wills: *Beukes & Others v Engelbrecht & Others* 2005 NR 305 (HC); *Kuhlmann & Others v The Master & Others* 2007 (2) NR 611 (HC).

Articles: Namibia Institute for Democracy, *Wills, Testaments and Estates*, 2001, available at www.nid.org.na/pdf/publications/will_testament.pdf; Legal Assistance Centre, *Training Manual for Trainers on Will Writing and Inheritance in Namibia*, 2004, available at www.lac.org.na/projects/alu/Pdf/willwriting.pdf (languages: English, Afrikaans, Oshiwambo, Otjiherero, Khoekhoegowab, Silozi, Rukwangali).

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- Legal Assistance Centre, *Inheritance Issues: Information and feedback from community consultations on inheritance law reforms*, 2005, available at www.lac.org.na/projects/grap/Pdf/inherit.pdf
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- R Gordon, ed, *The Meanings of Inheritance: Perspectives on Namibian Inheritance Practices*, Legal Assistance Centre, 2005, available at www.lac.org.na/projects/grap/Pdf/inheripersoectives.pdf.
- K Buschbeck, "Methodological Aspects of Research and Main Features of Inheritance Tradition" 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.

See also Native Administration Proclamation 15 of 1928 (**'BLACKS'**).

See also Children's Act 33 of 1960, section 74 (succession by adoptive children) and Children's Status Act 6 of 2006, section 16 (succession by children born outside marriage)(**CHILDREN**).

See also **ESTATES**.

See also Communal Land Reform Act 5 of 2002 (re: rights of surviving spouses in respect of communal land) (**LAND**).

SUNDAYS AND PUBLIC HOLIDAYS

Sunday Trading Proclamation 12 of 1919.

Summary: This proclamation regulates trading on Sunday, Christmas Day and Good Friday.

Lord's Day Observance Proclamation 54 of 1921.

Summary: This Proclamation regulates trade and entertainment on Sundays.

Public Holidays Act 26 of 1990.

Summary: This Act sets the following public holidays:

- New Year's Day (1 January)
- Good Friday
- Easter Monday
- Independence Day (21 March)
- Workers Day (1 May)
- Cassinga Day (4 May)
- Ascension Day
- Africa Day (25 May)
- Heroes Day (26 August)
- International Human Rights Day (10 December)
- Christmas Day (25 December)
- Family Day (26 December).

It also authorises the President to declare additional public holidays in any particular year by Proclamation.

Amendments: Act 16/2004 renames "International Human Rights Day" (10 December) as "Day of the Namibian Women and International Human Rights Day".

Regulations: Additional public holidays were declared in particular years in Proc. 4/1990, Proc. 5/1994, Proc. 30/1994, Proc. 13/1995, Proc. 16/1997, Proc. 20/1998, Proc. 30/1999 and Proc. 36/1999.

General Notice 250/2001 (GG 2610) proclaims 28 September as the Day of the Namibian Child, but this date is not a public holiday.

COMMISSIONS

Commission of Inquiry into Public Holidays (AG 32/1981).

TENDERS

Tender Board of Namibia Act 16 of 1996.

Summary: This Act regulates the procurement of goods and services by the government and establishes the Tender Board of Namibia. It came into force on 1 October 1996 (GN 236/1996, GG 1403).

Amendments: Section 21 is amended by the Namibia Central Intelligence Service Act 10 of 1997, which substitutes “Namibia Central Intelligence Service” for “Namibia Security Intelligence Agency”.

The Affirmative Action (Employment) Act 29 of 1998 amends section 15.

Regulations: Regulations are contained in GN 237/1996 (GG 1403), which repeals the regulations contained in GN 132/1970 and GN 33/1971.

The “Tender Board of Namibia Code of Procedure” is contained in GN 191/1997 (GG 1692).

General Notice 160/1992 (GG 551) contains “Tender Board of Namibia: Preferences” and addresses issues such as local content.

Directives: Administrative Directive 1/2006 relating to over-expenditure is contained in GN 56/2006 (GG 3611). It calls attention to section 17 of the Act as an important tool of financial discipline.

Cases: *Clear Channel Independent Advertising Namibia (Pty) Ltd & Another v Transnamib Holdings Ltd & Others* 2006 (1) NR 121 (HC) (brief discussion of allegations concerning applicability of Act to Transnamib); *Disposable Medical Products v Tender Board of Namibia* 1997 NR 129 (HC) (General Notice 160/1992, Regulation 8(3)(c), Regulation 8(5)); *Serenity Manufacturers v Minister of Health and Social Services & Another* 2007 (2) NR 756 (SC) (Regulation 7).

Skeleton Coast Safaris v Namibia Tender Board & Others 1993 NR 288 (HC) and *Kerry McNamara Architects Inc. v Ministry of Works, Transport and Communication & Others* 2000 NR 1 (HC) were decided in terms of the previous Tender Board Regulations, promulgated under section 26A of the Finance and Audit Ordinance 1 of 1926.

TOURISM

Accommodation Establishments and Tourism Ordinance 20 of 1973.

Summary: This Ordinance consolidates the laws on accommodation establishments and tourism and provides for the establishment of recreation areas.

Amendments: The Ordinance was amended by Ord. 25/1973, Ord. 17/1974, Ord. 12/1975, Ord. 5/1977, Ord. 14/1977, Ord. 4/1978, Ord. 11/1978 and Ord. 14/1979. It was extended to the Rehoboth Gebiet by AG 56/1978, and applied to the Eastern Caprivi Zipfel by GN 4/2000 (GG 2259). The Namibia Tourism Board Act 21 of 2000 repeals sections 2-47A and section 56(1)(b)-(l). (The Namibia Tourism Board Act also repeals Ord. 12/1975, Ord. 14/1977, Ord. 4/1978, Ord. 11/1978 and Ord. 14/1979.)

Regulations: Regulations are contained in GN 75/1974 (18 April 1994), as amended by the following:

GN 119/1974 (1 July 1974)

GN 130/1975 (2 June 1975)

GN 315/1977 (15 September 1977)

GN 24/2000 (GG 2264) (Regulations 1 and 3, Schedules II, III, IV, XIIA, XIIB, XIIC, XVIII A, XVIII B and XVIII C)

GN 89/2000 (GG 2304) (Regulation 1 and Schedules II and IV).

Namibia Tourism Board Act 21 of 2000.

Summary: This Act establishes the Namibia Tourism Board and provides for its functions. It also provides for the registration and grading of accommodation establishments, and the regulations of sectors of the tourism industry. The Act came into force on 15 May 2001 (GN 87/2001, GG 2531).

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends sections 4, 7, 8 and 11, and substitutes section 13.

Appointments: Members of the Namibia Tourism Board are announced in GN 88/2001 (GG 2531).

Regulations: GN 135/2004 (GG 3235) contains a declaration of business sectors relating to the tourism industry to be regulated. It came into effect on 1 February 2005. Regulations relating to the registration of regulated businesses are contained in GN 138/2004 (GG 3235).

Regulations relating to the registration of accommodation establishments are contained in GN 139/2004 (GG 3235). Regulations relating to levies payable by accommodation establishments are contained in GN 137/2004 (GG 3235).

INTERNATIONAL LAW

Charter of the Regional Tourism Organisation of Southern Africa (RETOSA), 1997

This Charter enters into force upon signature by member states, without ratification.
(entered into force within SADC on 8 September 1997) (source: SADC)
signature: 8 September 1997 (source: SADC; Ministry of Foreign Affairs)

SADC Protocol on the Development of Tourism, 1998
(entered into force within SADC on 26 November 2002) (source: SADC)
signature: 14 September 1998 (source: SADC)
ratification: 13 June 2000 (source: SADC; Ministry of Foreign Affairs)

Agreement amending the Protocol on the Development of Tourism, 2009
(entered into force within SADC on 8 September 2009)
signature: 8 September 2009
no ratification appears to be needed

TRADE AND INDUSTRY

Industrial Development Act 22 of 1940, as amended in South Africa prior to Namibian independence.

Summary: This Act establishes the Industrial Development Corporation of South Africa to promote new industries and develop existing ones. As the Act applied to SWA only by virtue of its definition of “Republic”, its continued applicability since independence is questionable.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Amendments and regulations to the Act in South Africa may have been made applicable to SWA by virtue of this definition, although there is no provision in the Act stating that they are automatically applicable to SWA.

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Industries) Transfer Proclamation (AG 5/1978), dated 30 January 1978. However, section 3(1)(a) of the Transfer Proclamation excluded this Act from the operation of section 3(1) of the General Proclamation, meaning that the administration of the Act was not transferred to SWA.

Price Control Act 25 of 1964, as amended in South Africa to April 1978.

Summary: This Act allows for state control of the prices of goods and services.

Applicability to SWA: Section 21 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section 3 of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951)) and in relation to all persons in the 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 that territory.” Section 1 defines “Gazette” accordingly.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1977), dated 28 April 1978. None of the amendments to the Act in South Africa after that date were made expressly applicable to SWA.

Regulations: The application of the Act is affected by a large number of Government Notices. Among the most recent ones are AG GN 51/1989, which amends the Schedule to AG GN 29/1985, and AG GN 59/1989, which repeals RSA GN 237 of 1974.

Maximum margarine prices are contained in GN 43/1990 (GG 60), GN 68/1991 (GG 220), GN 41/1992 (GG 390), GN 146/1992 (GG 512), GN 64/1993 (GG 662), 115/1994 (GG 870) and GN 209/1995 (GG 1183). However, GN 209/1995 is repealed by GN 57/1997 (GG 1528).

Deposits and refunds on returnable containers are addressed in GN 19/1992 (GG 359), GN 27/2003 (GG 2925), GN 130/2005 (GG 3507) and GN 237/2008 (GG 4136).

National Supplies Procurement Act 89 of 1970, as amended in South Africa prior to Namibian independence.

Summary: This Act empowers the Minister of Economic Affairs to acquire goods and services if he deems it necessary to the security of the Republic.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 19 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including that part of the said territory known as the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The relevant Transfer Proclamations are the Executive Powers (Industries) Transfer Proclamation (AG 5/1978), dated 30 January 1978, and the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978. Both of these transfer proclamations excluded this Act from the operation of Section 3(1) of the General Proclamation, meaning that the administration of the Act was not transferred to SWA.

Trade Practices Act 76 of 1976, as amended in South Africa to April 1978.

Summary: This Act regulates certain advertisements, restricts the use of trade coupons in connection with the sale of goods and services, and controls various other trade practices.

Applicability to SWA: Section 23 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 (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978. None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Controlled Game Products Proclamation 42 of 1980.

Summary: This Proclamation controls the import, export, possession of and trading in controlled game products. It is replaced by the Controlled Wildlife Products and Trade Act 2 of 2003, which had not come into force as of 30 June 2010.

Amendments: The Proclamation is amended by the Nature Conservation General Amendment Act 31 of 1990, to bring it into line with the legal situation after independence and to make provision for stiffer penalties for offences under the Proclamation.

See also Nature Conservation Ordinance 4 of 1975 re: export of game and game products.

Cases:

S v Machinga 1990 NR 157 (HC)

S v Tuzembeho 1993 NR 134 (HC)

S v Khumalo & Another 1994 NR 3 (HC).

Foreign Investments Act 27 of 1990.

Summary: This Act provides for the promotion of foreign investments in Namibia. It came into force on 7 July 1992 (Proc. 19/1992, GG 433).

Amendments: Act 24/1993 amends sections 3, 10 and 18. Export processing zones are exempted from the operation of the Act by section 9 of the Export Processing Zones Act 9 of 1995.

Regulations: Regulations are contained in GN 120/1992 (GG 477).

The minimum value of eligible investments under the Act in terms of section 5(1) is set at N\$2 million by GN 283/1996 (GG 1436), which repeals GN 121/1992.

Businesses and categories of businesses which can be adequately provided by Namibians are specified in terms of section 3(4) of the Act by GN 75/2010 (GG 4460).

Casinos and Gambling Houses Act 32 of 1994.

Summary: This Act makes provision for the licensing, supervision and control of casinos and gambling houses and provides for the establishment of a Casino Board. It came into force on 2 December 1994 (GN 230/1994, GG 983).

Amendments: Act 12/1995 amends sections 1, 10, 14, 15, 18, 22, 41, 44, 45 and 54 and inserts section 51A. Act 28/1996 inserts section 21A, which suspends the granting of gambling house licences until a date fixed by notice in the *Government Gazette*.

Regulations: Regulations are contained in GN 231/1994 (GG 983), as amended by GN 84/1995 (GG 1084), GN 136/1995 (GG 1124), GN 121/1996 (GG 1317) and GN 76/2010 (GG 4460).

Related laws: See *Gambling Act 51 of 1965* (CRIMINAL LAW AND PROCEDURE) and Licensing of Totalisators Ordinance 5 of 1938 (REVENUE).

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on casinos and gambling houses.

Export Processing Zones Act 9 of 1995.

Summary: This Act provides for the establishment, development and management of Export Processing Zones. It came into force on 10 October 1995 (GN 186/1995, GG 1174).

Amendments: Act 6/1996 amends section 8 of the Act to make the Labour Act 6 of 1992 applicable in Export Processing Zones, subject to certain modifications and

exceptions. The Electricity Act 4 of 2007, which came into force on 15 November 2007 (GN 201/2007, GG 3933), amends section 22.

Regulations: The Walvis Bay Export Processing Zone is described in GN 183/1997 (GG 1681), replacing GN 14/1996 (GG 1241) which in turn replaced GN 185/1995 (GG 1174).

Second Hand Goods Act 23 of 1998.

Summary: This Act regulates the business of dealers in second hand goods and scrap metal, auctioneers and pawnbrokers. It establishes record-keeping requirements aimed at detecting stolen goods. It came into force on 1 November 1999 (GN 211/1999, GG 2209).

Amendments: The General Law Amendment Act 14 of 2005 amends section 1 of the Act.

Regulations: Regulations are contained in GN 212/1999 (GG 2209).

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on dealers in second hand goods and auctioneers.

Competition Act 2 of 2003.

Summary: This Act safeguards and promotes competition in the Namibian market and establishes the Namibian Competition Commission. It came into force on 3 March 2008 (GN 54/2008, GG 4004). It replaces the *Regulation of Monopolistic Conditions Act 24 of 1955*.

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), substitutes section 5, deletes section 7, and amends section 13.

Regulations: Rules are contained in General Notice 41/2008 (GG 4004). The office address of the Namibian Competition Commission for the purposes of communications to the Commission is set out in General Notice 30/2010 (GG 4423).

Appointments: The appointment of the Namibian Competition Commission is announced in GN 93/2010 (GG 4483).

Related international agreements:

Declaration on Regional Cooperation in Competition and Consumer Policies, 2009

(entered into force: 8 September 2009) (source: SADC)

signature: 8 September 2009 (source: SADC)

no ratification appears to be needed

Controlled Wildlife Products and Trade Act 2 of 2003.

Summary: This Act implements the *Convention on International Trade in*

Endangered Species of Wild Fauna and Flora (CITES). It repeals the Controlled Game Products Proclamation 42 of 1980. It will come into force on a date set by the Minister.

Cases: The following cases concern the Controlled Game Products Proclamation 42 of 1980-

- S v Machinga* 1990 NR 157 (HC)
- S v Tuzembeho* 1993 NR 134 (HC)
- S v Khumalo & Another* 1994 NR 3 (HC).

INTERNATIONAL LAW

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973

accession: 18 December 1990; effective: 18 March 1991
(source: <http://www.cites.org/eng/parties/alphabet.shtml>.)

Amendment to Article XI of the Convention, Bonn (Germany), 22 June 1979 (entered into force on 13 April 1987)

accession: 18 December 1990, effective 18 March 1991
(source: <http://www.cites.org/eng/parties/bonn.shtml>)

Namibia has NOT agreed to the following amendment:

- * *Amendment to Article XXI of the Convention, Gaborone (Botswana), on 30 April 1983* (not yet in force internationally as of 20 January 2005).

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998

(entered into force internationally on 24 February 2004)

signature: 11 September 1998

deposit: 24 June 2005; effective date: 22 September 2005 (source: www.pic.int)

General Agreement on Tariffs and Trade, 1947 and GATT instruments Nos. 1, 4, 5, 6, 8, 9, 11, 13, 17 and 18

date of succession: 21 March 1990

Namibia became a party to the General Agreement on Tariffs and Trade and the following GATT instruments by means of succession, effective as of the date of independence. Multilateral instruments relating to the General Agreement on Tariffs and Trade (protocols, declarations, etc.) which were concluded after 1 February 1955 are deposited with the Director-General of the Contracting Parties to the General Agreement on Tariffs and Trade rather than with the Secretary-General of the United Nations and are not reflected in this list.

1. Protocol of Provisional Application of the General Agreement on Tariffs and Trade, signed at Geneva on 30 October 1947
4. Protocol modifying certain provisions of the General Agreement on Tariffs and Trade, signed at Havana on 24 March 1948
5. Special Protocol modifying article XIV of the General Agreement on Tariffs and Trade, signed at Havana on 24 March 1948
6. Special Protocol relating to article XXIV of the General Agreement on Tariffs and Trade, signed at Havana on 24 March 1948
8. Protocol modifying part I and article XXIX of the General Agreement on Tariffs and Trade, signed at Geneva on 14 September 1948
9. Protocol modifying part II and article XXVI of the General Agreement on Tariffs and Trade, signed at Geneva on 14 September 1948

11. Third Protocol of Rectifications to the General Agreement on Tariffs and Trade, signed at Annecy on 13 August 1949
13. Protocol modifying article XXVI of the General Agreement on Tariffs and Trade, signed at Annecy on 13 August 1949
17. Fourth Protocol of Rectifications to the General Agreement on Tariffs and Trade, signed at Geneva on 3 April 1950
18. Fifth Protocol of Rectifications to the General Agreement on Tariffs and Trade, signed at Torquay on 16 December 1950

Convention Establishing a Customs Co-operation Council, 1950

accession: 1 July 1992 (source: Ministry of Foreign Affairs)

Fourth ACP-EU Convention of Lomé

ratification: 15 October 1996 (Proc. 7/1997, GG 1605)

Protocol on the accession of three additional members of the European Union to the Fourth ACP-EU Convention of Lomé

ratification: 24 June 1997 (Proc. 7/1997, GG 1605)

African, Caribbean and Pacific (ACP) - European Union (EU) Partnership Agreement, Cotonou, 2000 (“COTONOU Agreement”)

(came into force internationally on 1 April 2003; to eventually replace all trade arrangements made under the Fourth ACP-EU Convention of Lomé)

signature: 23 June 2000

ratification approved by Parliament: 14 May 2002 (source: Parliament)

ratification: 7 June 2002 (source: ACP Secretariat, <http://www.acpsec.org/>)

Treaty Establishing the African Economic Community, 1991

signature: 3 June 1991 (source: Ministry of Foreign Affairs)

ratification: 28 June 1992 (source: Ministry of Foreign Affairs)

deposit: 1 July 1992 (source: Ministry of Foreign Affairs)

Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament, 2001

(came into force within the AU on 14 December 2003) (source: <http://www.africa-union.org>)

signature: 7 May 2001

ratification approved by Parliament: 9 July 2002 (source: Parliament)

deposit: 13 August 2002 (source: <http://www.africa-union.org>)

Common Market in East and Southern Africa (COMESA) Treaty, 1994

signature: 5 November 1993 (never ratified) (source: Ministry of Trade and Industry)

Note: Cabinet announced that Namibia would pull out of COMESA with effect from May 2004. (See *The Namibian*, 16 May 2003.)

Customs Union Agreement between South African Government, Botswana, Lesotho and Swaziland

accession: 6 July 1990 (source: Ministry of Foreign Affairs)

Agreement for the Establishment of Southern African Centre for Ivory Marketing (SACIM), 1991

in force in Namibia: 20 June 1991

(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri/>.)

Note: The name SACIM was changed to the Southern African Convention for Wildlife Management (SACWM) in 1996. (source: www.art.org.uk/newsletter/1996_09_expands.html)

SADC Protocol on Trade, 1996

(entered into force within SADC on 25 January 2000) (source: SADC)

signature: 24 August 1996 (source: SADC)

ratification: 22 December 1998 (source: SADC; Ministry of Foreign Affairs)

SADC Amendment Protocol on Trade, 2000

(entered into force within SADC on 7 August 2000) (source: SADC)

signature: 7 August 2000 (source: SADC)

ratification: 4 April 2001 (source: Ministry of Foreign Affairs)

date of implementation: 4 June 2001 (source: Ministry of Foreign Affairs)

SADC list of ratifications dated 23 June 2010 does not show ratification by Namibia

Agreement Amending Article 20 of the Protocol on Trade, 2008

(entered into force within SADC on 17 August 2008) (source: SADC)

signature: 17 August 2008

no ratification appears to be needed

Agreement Amending Annex VI to Protocol on Trade concerning settlement of disputes amongst member states 2007

(entered into force within SADC on 17 August 2007) (source: SADC)

signature: 17 August 2007 (source: SADC)

no ratification appears to be needed

Note: See GN 116/2001 (GG 2548), which relates to the implementation of the SADC Protocol on trade in Namibia.

Memorandum of Understanding between the Governments of the Republics of Botswana, Namibia and South Africa on the Development and Management of the Trans-Kalahari Corridor, 2003

signature: 3 November 2003

ratification: 21 February 2007

published in GN 193/2007 (GG 3927)

Note: Memoranda of understanding are not generally legally binding.

Free Trade Agreement between European Free Trade Association and Southern African Customs Union States, 2005

signature: 26 June 2006 (source: www.efta.int)

ratified by Parliament: 9 October 2007 (source: Parliament)

entered into force: 1 May 2008 (source: www.efta.int)

See also **AGRICULTURE**.

See also **ALCOHOL, DRUGS AND TOBACCO**.

See also **CUSTOMS AND EXCISE**.

See also **IMPORT AND EXPORT**.

See also Aquaculture Act 18 of 2002 (**MARINE AND FRESHWATER RESOURCES**).

See also **MINING AND MINERALS**.

See also as examples of municipal regulations on trading: Windhoek Municipality: Amendment of Street and Traffic Regulations (General Notice 27/1994, GG 797) (including rules regarding hawking by children), Walvis Bay Municipality: Regulations on informal trading (General Notice 291/1998, GG 2000), and Windhoek Municipality: Street Trading Regulations (General Notice 252/1999, GG 2179) (**REGIONAL AND LOCAL GOVERNMENT**).

See also **REVENUE**.

See also **TENDERS**.

See also **TOURISM**.

TRANSFER PROCLAMATIONS

These transfer proclamations and assignments of powers have affected the administration of laws in Namibia in the past. The transfer proclamations are particularly relevant in determining which South African amendments made prior to Namibian independence have become part of Namibian law. General transfer proclamations are listed here for convenience. Laws which functioned as transfer proclamations for individual pieces of legislation are listed only in the entry for the statute in question.

Executive Powers Transfer Proclamation (Bantu Administration and Development; Bantu Education; Coloured Rehoboth and Nama Relations; Water), AG 3 of 1977.

Amendments: AG 7/1977, AG 10/1978, RSA Proc. 101/1985

References: AG 29/1978

Executive Powers (Prisons) Transfer Proclamation, AG 6/1977.

Amendments: AG 10/1978, AG 20/1982

References: AG 49/1978

Repeals: Act 17/1998

Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977.

Amendments: AG 10/1978, AG 82/1978, AG 20/1982, RSA Proc. 101/1985

References: AG 17/1986

Executive Powers (Social Welfare and Pensions) Transfer Proclamation, AG 11 of 1977.

Executive Powers (Agricultural Credit and Land Tenure) Transfer Proclamation, AG 13 of 1977.

Executive Powers (Health) Transfer Proclamation, AG 14 of 1977.

Executive Powers (Statistics) Transfer Proclamation, AG 15 of 1977.

Executive Powers (Forestry) Transfer Proclamation, AG 16 of 1977.

Executive Powers (Labour) Transfer Proclamation, AG 17 of 1977.

Executive Powers (Agricultural Economics and Marketing) Transfer Proclamation, AG 18 of 1977.

Amendments: AG 41/1978

References: AG 66/1978, AG 67/1978

Executive Powers (National Education) Transfer Proclamation, AG 1 of 1978.

References: Act 5/1979

Executive Powers (Mines) Transfer Proclamation, AG 4 of 1978.

Executive Powers (Industries) Transfer Proclamation, AG 5 of 1978.

Executive Powers (Information) Transfer Proclamation, AG 7 of 1978.

Executive Powers Transfer (Community Development) Proclamation, AG 8 of 1978.

Executive Powers (Immigration) Transfer Proclamation, AG 9 of 1978.

Amendments: AG 15/1989

Executive Powers (Agricultural Technical Services) Transfer Proclamation, AG 11 of 1978.

Executive Powers (Post and Telecommunications) Transfer Proclamation, AG 12 of 1978.

Amendments: AG 35/1979

Executive Powers (Transport) Transfer Proclamation, AG 14 of 1978.

Executive Powers (Planning and the Environment) Transfer Proclamation, AG 15 of 1978.

Executive Powers (Public Works) Transfer Proclamation, AG 16 of 1978.

Executive Powers (Interior) Transfer Proclamation, AG 17 of 1978.

Amendments: AG 15/1989

Executive Powers (Inland Revenue) Transfer Proclamation, AG 18 of 1978.

References: AG 66/1978, Act 11/1979

Administration of the South African Bantu Trust in South West Africa Proclamation, AG 19 of 1978.

Executive Powers (Commerce) Transfer Proclamation, AG 28 of 1978.

Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979.

Amendments: AG 24/1983, Act 26/1985, AG 32/1985

References: AG 17/1986

Executive Powers (Police) Transfer Proclamation 169 of 1980.

ASSIGNMENTS OF POWERS

Assignment of the administration of certain provisions of law to the Minister of National Education and the Central Personnel Institution, GN 153/1986.

Assignment of the administration of certain provisions of law to the Minister of Agriculture, Water Affairs and Sea Fisheries, GN 166/1986.

Delegation of powers granted in terms of the Water Act, 1956 (Act 54 of 1956), and the regulations promulgated thereunder, to officials of the Department of Water Affairs, GN 167/1986.

Assignment of the administration of certain provisions of law of the Minister of Agriculture, Water Affairs and Sea Fisheries, GN 168/1986.

Assignment of the administration of certain provisions of law of the Minister of Finance and Governmental Affairs, GN 169/1986.

Assignment of the administration of certain provisions of law to the Minister of Transportation, GN 179/1986.

Assignment of the administration of certain provisions of law to the Minister of Justice, GN 55/1987.

Assignment of the administration of certain provisions of law to the Minister of Nature Conservation, Mining, Trade and Tourism, GN 95/1987.

Assignment of the administration of certain provisions of law to the Minister of Nature Conservation, Mining, Commerce and Tourism, GN 96/1987.

Assignment of the administration of certain provisions of law to the Minister of Local Authorities and Civic Affairs, GN 116/1987.

Assignment of the administration of certain provisions of law to the Chairman of the Cabinet, GN 164/1987.

Assignment of the administration of certain provisions of the Regulations under the National Education Act, 1980 (Act 30 of 1980): Pupils in Government Schools to the Minister of National Education and the Central Personnel Institution, GN 115/1988.

Assignment of the administration of certain provisions of law to the Minister of National Education and the Central Personnel Institution, GN 141/1988.

Assignment of the administration of certain provisions of law to the Minister of Finance, GN 155/1988.

Amendment of the assignment of the administration of certain provisions of law to the Minister of Local Authorities and Civic Affairs, GN 173/1988.

Assignment of the administration of certain provisions of law to the Minister of Justice, GN 194/1988.

TRANSPORTATION

Namibian Transport Advisory Board Act 23 of 1991.

Summary: This Act establishes the Namibian Transport Advisory Board and sets forth its composition and functions.

Amendments: Act 12/1998 amends sections 4 and 5.

National Transport Services Holding Company Act 28 of 1998.

Summary: This Act provides for the incorporation of a holding company to undertake transport services. It replaces the National Transport Corporation Act 21 of 1987. The Act came into force on 1 January 1999. However, sections 5-13 and 15-19 came into force only on the date of transfer of services to the holding company, which was 1 April 1999 (GN 51/1999, GG 2075).

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends sections 1-10, 14 and 17.

Regulations: Anything done under the National Transport Corporation Act 21 of 1987 which could have been done under a corresponding provision of the new Act remains valid.

Cases: The following cases concern this Act-

Clear Channel Independent Advertising Namibia (Pty) Ltd & Another v Transnamib Holdings Ltd & Others 2006 (1) NR 121 (HC) (section 14 (4)).

The following cases concern the previous National Transport Corporation Act 21 of 1987-

Krüger v Transnamib Ltd (Air Namibia) & Others 1996 NR 168 (SC) (section 48)

Poolman & Others v Transnamib Ltd 1997 NR 89 (HC); *Transnamib Ltd v Poolman & Others* 1999 NR 399 (SC) (section 48).

COMMISSIONS

Commission of Enquiry into the Activities, Management and Operations of Transnamib Holdings Limited (Proc. 3/2001, GG 2499).

See also GN 51/2001 (GG 2499).

Commission of Enquiry into the Activities, Management and Operations of Air Namibia (Pty) Ltd (Proc. 18/2001, GG 2616).

See also GN 194/2001 (GG 2616) and GN 230/2001 (GG 2647).

INTERNATIONAL LAW

Convention on the Physical Protection of Nuclear Material, 1980

accession approved by Parliament: 26 June 2002 (source: Parliament)

accession: 2 October 2002; effective date: 1 November 2002

(sources: Ministry of Foreign Affairs; www.iaea.or.at/worldatom/Documents/Legal/cppn_status.pdf)

SADC Protocol on Transport, Communications and Meteorology, 1996

(entered into force within SADC on 6 July 1998) (source: SADC)

signature: 24 August 1996 (source: SADC)

ratification: 19 September 1997 (source: SADC; Ministry of Foreign Affairs)

See Proc. 24/1997 (GG 1723).

See also **AVIATION**.

See also **RAILWAYS**.

See also **ROADS AND ROAD TRANSPORTATION**.

See also **SHIPPING**.

TRUSTS

Trust Moneys Protection Act 34 of 1934, as amended in South Africa to November 1979.

Summary: This Act protects trust moneys. It provides for the registration of trust deeds and, in some circumstances, requires security from trustees.

Applicability to SWA: Section 8A(1) states “Subject to the provisions of subsections (2) and (3), this Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.” Section (2) exempted certain trustees appointed prior to the Act from the provisions of the Act. Sub-section (3) specifies that the Magistrate of Rehoboth shall be considered the “Master” where a trustee is a member of the Rehoboth Baster community. (In other circumstances “Master” is defined as the Master of the Supreme Court of South Africa.)

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979. There were no amendments to the Act in South Africa after that date and prior to Namibian independence.

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on trusts and trustees.

WATER

Water Act 54 of 1956 , in part, as amended in South Africa to September 1977.

Summary: This Act concerns the control, use and conservation of water.

Applicability to SWA: Section 180(1) states “The State President may, by proclamation in the Gazette, apply any of or all the provisions of this Act to the territory of South West Africa or any portion thereof.” Section 180(2) applies sections 1-4 of the Act to South West Africa from the date of commencement of the Act. Section 180(3) and (4) give the State President the power to issue special water regulations for application in South West Africa, so long as such regulations are approved by both the Senate and the House of Assembly.

RSA Proclamation 151 of 1971 applies sections 5-7, 9A, 21-23, 26 (excluding paragraph (a)), 27, 28(1), 30, 34-43, 44(2), 45-51, 54-56, 57(1), 59(2), 61, 66, 67, 69, 70 (excluding paragraphs (d), (f), (g) and (h)), 139-152, 164*bis*, 164*ter*, 165, 166, 170 (excluding paragraphs (3) and (5)(c)) and 171 to SWA.

RSA Proclamation 281 of 1971 applies section 162 to SWA.

The *Water Amendment Act 22 of 1985* makes sections 9B, 30A(a) and 170(3) applicable to “the Territory of South West Africa”.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977, as amended), dated 28 September 1977. None of the amendments to the Act in South Africa after that date were made expressly applicable to SWA.

Amendments: Section 33 of the Public Service Act 2 of 1980 repeals section 3(2). However, AG 18/1980, which brings Act 2/1980 into operation, excludes section 33, and the reference to the Water Act in section 33 of Act 2/1980 is deleted altogether by the Water Amendment Act 4 of 1982. Act 4/1982 amends sections 1 and 3. Act 22/1985 amends several sections of the Act

Application of Act: Section 42 of the Namibia Water Corporation Act 12 of 1997 affects the applicability of this Act to the NamWater Corporation.

Regulations: RSA *Proclamation R.1277/1971* sets forth regulations for SWA pursuant to section 180(3) of the Act. RSA *Proclamation R.1278/1971* sets forth regulations for SWA pursuant to section 30(2) of the Act. Both of these sets of regulations are amended by section 8 of the SWA Water Amendment Act 22 of 1985.

Rates and charges are dealt with in General Notice 5/1978, AG GN 52/1979, AG GN 62/1980, AG GN 80/1981, AG GN 128/1984, GN 132/1986 and GN 10/1988.

AG GN 12/1980, GN 167/1987 and GN 50/2000 (GG 2280) concern the delegation of powers under the Act.

Water Research Act 34 of 1971, as amended in South Africa to October 1972.

Summary: This Act establishes a Water Research Commission to promote research into water affairs, as well as a Water Research Fund.

Applicability to SWA: Section 15 states “The State President may by proclamation in the Gazette declare any of or all the provisions of this Act and of any amendment thereof to be applicable in the territory of South West Africa (including the Eastern Caprivi Zipfel) or any portion thereof.” All of the provisions of the Act were made applicable to SWA by RSA Proc. 279/1972 as from 27 October 1972.

This Proclamation did not make future amendments to the Act in South Africa automatically applicable to SWA. There were five amending acts which came into force after 27 October 1972, none of which were made expressly applicable to SWA.

Transfer of administration to SWA: The administration of the Act appears to have been transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977, as amended), dated 28 September 1977.

Amendments: AG 29/1978 makes the *Water Research Amendment Act 106 of 1977* applicable to SWA as from 1 July 1978. This Act amends section 11, which deals with the levying of rates and charges.

Namibia Water Corporation Act 12 of 1997

Summary: This Act establishes “NamWater” and provides for its powers, duties and functions. It came into force on 20 November 1997 (GN 234/1997, GG 1732).

Amendments: Act 17/2001, which had not yet come into force as of 31 December 2004, amends sections 17, 18 and 19 and substitutes section 21. The Water Resources Management Act 24 of 2004 amends cross-references in the Act. The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends sections 17, 18, 19, 21, 22 and 28.

Regulations: The date for the transfer of bulk water supply functions from the Department of Water Affairs to the Namibia Water Corporation Ltd is determined to be 1 April 1998 in GN 169/1998 (GG 1909). Bulk water supply tariffs are set forth from time to time and have not been recorded here.

Appointments: Directors of the Board are announced in GN 248/1998 (GG 1965), GN 186/2000 (GG 2386) and GN 58/2004 (GG 3181).

Water Resources Management Act 24 of 2004 .

Summary: This Act concerns the management, development, protection, conservation and use of water resources. It establishes a Water Advisory Council, a Water Regulatory Board and a Water Tribunal. This Act replaces the *Water Act 54 of 1956*. It will come into force on a date set by the Minister.

See also *Mountain Catchment Areas Act 63 of 1970* (ENVIRONMENT).

WEIGHTS, MEASURES AND STANDARDS

Standards Act 33 of 1962, with some South African amendments to January 1978.

Summary: This Act concerns the standardisation of commodities and the manufacture of commodities, and the establishment of the South African Bureau of Standards. It is replaced by the Standards Act 18 of 2005, which had not yet come into force as of 30 June 2010.

Applicability to SWA: Section 29 states “This Act shall also apply in the Territory”, which is defined in section 1 as “the territory of South West Africa”. The wording of section 29 did not make amendments to the Act automatically applicable to South West Africa. However, Section 14*bis* of the Act was repealed by the *National Building Regulations and Building Standards Act 103 of 1977*, which was expressly applicable to SWA.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Industries) Transfer Proclamation (AG 5/1978), dated 30 January 1978.

Section 3(1)(d) of the transfer proclamation excluded section 3A, 11, 12 and 13 of the Act from the operation of section 3(1) of the General Proclamation.

Section 3(2)(a) of the transfer proclamation provided that the reference to the Minister of Economic Affairs in section 14 of the Act should be construed as a reference to the Administrator-General, while section 3(2)(b) of the Transfer Proclamation provided that the reference to the Minister of Economic Affairs in section 20(2)(a) of the Act should be construed as including a reference to the Administrator-General (rather than being construed as the Administrator-General only).

The only amendment to the Act in South Africa after the date of transfer -- the *Standards Amendment Act 85 of 1978* -- was not expressly applicable to SWA.

The Act was replaced in South Africa by the *Standards Act 30 of 1982*, which was not applicable to SWA.

Amendments: Section 3(3) of the Executive Powers (Industries) Transfer Proclamation (AG 5/1978) repeals section 20 of the Act.

Regulations: Standard Building Regulations are contained in RSA GN No. 1431 of 17 August 1973.

Cases: *Erf No 5 Langstrand No 1 CC & Another v Chairperson of the Municipal Council for Walvis Bay & Another* 2005 NR 72 (HC) (Standard Building Regulations).

Measuring Units and National Measuring Standards Act 76 of 1973,
as amended in South Africa to January 1978.

Summary: This Act converts measurement in South Africa to the metric system and designates national measuring standards. This Act is repealed by the Metrology Amendment Act 17 of 2005 (GG 3568), which had not yet come into force as of 30 June 2010

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 9 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 is transferred to SWA by the Executive Powers (Industries) Transfer Proclamation (AG 5/1978), dated 30 January 1978. The Act was not amended in South Africa prior to Namibian independence.

Trade Metrology Act 77 of 1973, as amended in South Africa to January 1978.

Summary: This Act regulates the use of weights and measures in trade.

Applicability to SWA: Section 45 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.” Section 1 defines “Republic” and “statutory body” accordingly.

Transfer of administration to SWA: The administration of this Act is transferred to SWA by the Executive Powers (Industries) Transfer Proclamation (AG 5/1978), dated 30 January 1978. There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence -- the *Trade Metrology Amendment Act 14 of 1984* -- which was not made expressly applicable to SWA.

Amendments: Act 14/1995 repeals sections 6 and 45, amends sections 1, 3, 8, 13, 18, 23, 24, 27 and 40, and substitutes sections 7 and 43 and certain terminology.

The Metrology Amendment Act 17 of 2005, which had not yet come into force as of 30 June 2010, makes substantial amendments to this Act.

Regulations: A tariff of fees is contained in GN 75/1993 (GG 681).

Cases: *S v Blaauw’s Transport (Pty) Ltd & Another* 2006 (2) NR 587 (HC).

Namibian Time Act 3 of 1994.

Summary: This Act provides for differentiations in the standard time of Namibia for the summer and winter periods. The time change will normally occur at 02h00 on the first Sunday in April (clocks are turned back one hour), and 02h00 on the first Sunday in September (clocks are turned forward one hour).

Accreditation Board of Namibia Act 8 of 2005.

Summary: This Act establishes the Accreditation Board of Namibia and provides for the accreditation of laboratories which providing testing and calibration, bodies which provide certain certification and inspection services and certifications of competence.

The Act will come into force on a date determined by the Minister.

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 6, 7, 8, 13 and 15, and substitutes section 9.

Standards Act 18 of 2005.

Summary: This Act provides for the promotion, regulation and maintenance of standardisation relating to the quality of commodities and establishes the Namibian Standards Institution and the Namibian Standards Council. This Act repeals the *Standards Act 33 of 1962*. It will come into force on a date set by the Minister.

Regulations: Regulations, notices, etc made under the previous law continue to apply, in terms of section 35. This includes the standard building regulations made in terms of section 14*bis* of the 1962 Act, in RSA GN No. 1431 of 17 August 1973. (The repealed Act was inherited by Namibia from South Africa at Independence, and the regulations promulgated in South Africa have not generally been recorded here.)

INTERNATIONAL LAW

Memorandum of Understanding on Co-operation in Standardization, Quality Assurance, Accreditation and Metrology in SADC, 1999

signed: 9 November 1999 (source: Ministry of Foreign Affairs)

Note: SADC memoranda of understanding are non-binding.

‘WHITES’

See Racial Discrimination Prohibition Act 26 of 1991 (**CRIMINAL LAW AND PROCEDURE**).

See Cultural Promotion Ordinance 9 of 1980 (re: promotion of culture for “white population group”) (**CULTURE AND CULTURAL INSTITUTIONS**).

YOUTH

National Youth Service Act 6 of 2005.

Summary: This Act establishes the National Youth Service and the Youth Service Fund. It defines “youth” as persons between the ages of 16 and 30. The Act came into force on 7 September 2005 (GN 11/2005, GG 3494).

Administration of Act: Proc. 1/2006 (GG 3582) assigns the administration of this Act to the Minister responsible for youth, national service, sport and culture.

National Youth Council Act 3 of 2009.

Summary: This Act establishes the National Youth Council and the Youth Development Fund intended to finance the activities of the Council and projects aimed at youth development. It also provides for youth forums at regional and constituency level, and for the registration of youth organizations and youth associations as affiliates to the Council. It defines “youth” as persons between the ages of 16 and 35. It will come into force on a date set by the Minister.

INTERNATIONAL LAW

African Youth Charter, 2006

(entered into force within the AU on 8 August 2009)

signature: 16 May 2008

ratification approved by Parliament: 13 March 2008 (source: Parliament); 17 July 2008 (source: www.africa-union.org)

deposit: 23 July 2008 (source: www.africa-union.org)

See also **CHILDREN**.