

NAMLEX
INDEX TO THE LAWS OF NAMIBIA

LEGAL ASSISTANCE CENTRE
December 2018 update

INFORMATION CURRENT TO 7 December 2018

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PO Box 604

Windhoek

4 Marien Ngouabi

Windhoek

tel: (061) 223356

fax: (061) 234953

e-mail:

info@lac.org.na

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UPDATES

The current issue of NAMLEX includes the following:

- laws and regulations through [Government Gazette 6789](#)
- cases in the Namibian Law Reports through [2016 \(4\)](#)
- multilateral treaties signed, ratified or acceded to as of [23 November 2017](#).

Note that any text in **red** contains a **cross-reference**. If you press “Ctrl” while clicking on this text, this will take you to the linked item in the NAMLEX document. This enables you to jump from the Index or the List of Statutes at the front of the document to the category or the entry which is referenced.

If the text is **red** with underlining, it contains a **hyperlink**. If you press “Ctrl” while clicking on this text *on a device with internet access*, this will take you to the linked item online. This enables you to see the actual *Gazette* which is the source of the information described in the NAMLEX entry.

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 NAMLEX users who become aware of any mistake or omission to alert us to this, so that an appropriate correction or addition can be included in future updates.

Please note that information on multilateral treaties has been moved to the NAMLEX APPENDIX, which is a companion document to NAMLEX.

ACKNOWLEDGEMENTS

The goal of this publication is to make the law more accessible to the public. Its starting point was the *Index to the Laws of Namibia* published by the NAMLAW Project under the direction of the late Advocate Anton Lubowski.

The Legal Assistance Centre has produced updates in 1999, 2000, 2001, 2003, 2004, 2010, 2015, 2017 and 2018. The initial index and the 1999 and 2000 updates were compiled by Dianne Hubbard, with the assistance of Clinton Light and Kapena Laura Tjihero. The 2001 update was compiled by Dianne Hubbard, with assistance from Leigh-Anne Agnew, Heather Sherdahl and Susan Taylor. The 2003 update was prepared by Dianne Hubbard, with assistance from Evelyn Zimba and Naomi Kisting. The 2004 update was prepared by Dianne Hubbard, with assistance from Hilary Blain. The 2010 update was prepared by Dianne Hubbard, with assistance from Romy Noeske, Elizabeth Fisher, Tessa Harris, Jessica Sun, Laila Hassan and Thom Wood. The 2015 update was prepared by Dianne Hubbard, with assistance from Rachel Coomer, Yolande Engelbrecht, Grace Kapere, Romy Noeske, Joy Sworn, Michael Hazel, Tyler Holmes, Stefanie Braun, Julia Ward, Chelsea Brake, Laura Halonen, Felix Lüth and Sam Forsyth. The 2017 update was prepared by Dianne Hubbard, with assistance from Romy Noeske, Kaity Cooper, Aneesha Lewis, Klaus Striwe, Perri Caplan, Anél van der Vyver, Samm Niingungo and Cecil Jossop. The 2018 updates were prepared by Dianne Hubbard, with assistance from Anél van der Vyver, Samm Niingungo and Perri Caplan.

We would also like to thank the Ministry of Justice for giving us access to its library to check citations, and the Ministry of International Relations and Cooperation (previously the Ministry of Foreign Affairs) for assistance with queries on international law.

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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 come into force are shown in boldface type; laws which are not yet in force are in ordinary typeface.

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 law 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 law is included where it is not simply a reference to the principal legislation (eg where the Agricultural Bank Act is amended by the Posts and Telecommunications Companies Establishment Act).

Application of law: This section reports instances where some other law has affected the application of the statute, or restricted or exempted its application in some context.

Regulations / Rules / Notices: These parts of the entry list regulations, rules and other subsidiary notices. *These listings are not comprehensive.* However, for the period since independence, all regulations and most subsidiary rules and notices have been included.

Appointments: For most statutes, recent appointments made in terms of the statute are listed. However, *these listings are not comprehensive in every case.*

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 unreported cases and a few significant cases dating from before independence. Generally *not* included are unreported cases available only 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.

Commentary: The commentary sections include selected books and articles which discuss the statute in question, as well as relevant educational materials. Most of the items listed are Namibian publications. Unpublished theses are not listed. This feature was introduced 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, such as information on relevant international law. In some instances, information on cases, commentary, international law or other issues relevant to an entire topic appear at the end of the category in question, below all of the individual entries in that category.

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
- closures of roads or erfs
- communications licences and tariffs (Communications Regulatory Authority of Namibia)
- determinations by Namibia Competition Commission
- town planning schemes
- township establishment and boundaries
- farming units offered for allotment
- hunting seasons
- name changes
- petrol prices
- 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
- sanction lists, freezing orders and arms embargos (terrorism)
- tenders
- total allowable catches (fish).

See individual entries for further exclusions.

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.

There are two groups of South African *Government Gazettes*: those issued before 31 May 1961 by the Union of South Africa (abbreviated as “SA GG”), and those issued after 31 May 1961 by the Republic of South Africa (abbreviated as “RSA GG”). The change came about as a result of the Republic of South Africa Constitution Act 32 of 1961, which transformed South Africa into a Republic with effect from 31 May 1961 and served as South Africa’s constitution until it was replaced by the Republic of South Africa Constitution Act, 1983. The differing designations are necessary because the numbering of the South African *Government Gazettes* recommenced with number 1 after 31 May 1961 when South Africa became a Republic.

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 Union of South Africa

SWA South West Africa or South West Africa/Namibia

NAMLEX INDEX

The categories used in NAMLEX are listed in the index in boldface type. Other topics indicate the relevant NAMLEX category for that topic in brackets. Press *Ctrl+Click* on the boldface topics to jump to the listings for that category.

A

Abortion (see MEDICINE)

Accommodation establishments (see TOURISM)

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Aeroplanes and airports (see AVIATION)

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LIST OF STATUTES

All statutes marked with an asterisk (*) had not yet come into force at the time of the most recent update. The applicability of the statute marked with two asterisks (**) is questionable. See the individual entry for that statute for more details.

The statutes marked with three asterisks (***) have been repealed, but with some of their provisions remaining operable as if they had not been repealed.

South African statutes are indicated in italics.

Press Ctrl+Click on the statute name to jump to the entry for that statute.

#NAMIBIAN CONSTITUTION (CONSTITUTION)

#Namibian Constitution First Amendment Act 34 of 1998 (CONSTITUTION)

#Namibian Constitution Second Amendment Act 7 of 2010 (CONSTITUTION)

#Namibian Constitution Third Amendment Act 8 of 2014 (CONSTITUTION)

Abattoir Industry Act 54 of 1976 (AGRICULTURE)

Abattoirs Restriction Proclamation 8 of 1944 (AGRICULTURE)

Abortion and Sterilization Act 2 of 1975 (MEDICINE)

Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971 (ALCOHOL, DRUGS AND TOBACCO)

**Access to Biological and Genetic Resources and Associated Traditional Knowledge Act 2 of 2017 (ENVIRONMENT)*

Accommodation Establishments and Tourism Ordinance 20 of 1973 (TOURISM)

**Accreditation Board of Namibia Act 8 of 2005 (WEIGHTS, MEASURES AND STANDARDS)*

Administration Employees Pension Ordinance 19 of 1959 (PENSIONS)

****Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941 (INHERITANCE)*

Administration of Estates Act 66 of 1965 (INHERITANCE)

Administration of Justice Proclamation 21 of 1919 (LAW)

Admiralty Court Act, 1840 (ADMIRALTY LAW)

Admiralty Court Act, 1861 (ADMIRALTY LAW)

Admiralty Jurisdiction Regulation Act 5 of 1972 (ADMIRALTY LAW)

Advertising on Roads and Ribbon Development Ordinance 30 of 1960 (ROADS AND ROAD TRANSPORTATION)

Aerodrome Ordinance 12 of 1963 (AVIATION)

Affirmative Action (Employment) Act 29 of 1998 (LABOUR)

Age of Majority Act 57 of 1972 (CHILDREN)

Aged Persons Act 81 of 1967 (SOCIAL WELFARE)

Agricultural (Commercial) Land Reform Act 6 of 1995 (LAND AND HOUSING)

Agricultural Bank of Namibia Act 5 of 2003 (AGRICULTURE)

Agricultural Land Act 5 of 1981 (Rehoboth) (LAND AND HOUSING)

Agricultural Produce Export Ordinance 13 of 1928 (AGRICULTURE)

Agronomic Industry Act 20 of 1992 (AGRICULTURE)

Air Services Act 51 of 1949 (AVIATION)

Airports Company Act 25 of 1998 (AVIATION)

Aliens Act 1 of 1937, sections 1, 9 and 14 (CIVIL REGISTRATION)

Allied Health Professions Act 7 of 2004 (HEALTH PROFESSIONS)

Amendment of Execution (Mortgaged Properties) Proclamation 6 of 1933 (LAND AND HOUSING)

Amnesty Proclamation, AG. 13 of 1989 (CRIMINAL LAW AND PROCEDURE)

Amortization Fund Repeal Act 7 of 1992 (REVENUE)

Anatomical Donations and Post-Mortem Examinations Ordinance 12 of 1977 (MEDICINE)

Animal Health Act 1 of 2011 (ANIMALS)

Animals Protection Act 71 of 1962 (ANIMALS)

Anti-Corruption Act 8 of 2003 (CRIMINAL LAW AND PROCEDURE)

Application of Laws to the Eastern Caprivi Zipfel Act 10 of 1999 (CONSTITUTION)

Apportionment of Damages Act 34 of 1956 (DAMAGES)

Aquaculture Act 18 of 2002 (MARINE AND FRESHWATER RESOURCES)

Arbitration Act 42 of 1965 (ARBITRATION)

Architects' and Quantity Surveyors' Act 13 of 1979 (LAND AND HOUSING PROFESSIONS)

Archives Act 12 of 1992 (ARCHIVES)
Arms and Ammunition Act 7 of 1996 (ARMS AND AMMUNITION)
Assessment of Damages Act 9 of 1969 (DAMAGES)
Assignment of Powers Act 4 of 1990 (CONSTITUTION)
Assistance Fund of South West Africa Repeal Act 13 of 1992 (FINANCE AND DEVELOPMENT)
Atmospheric Pollution Prevention Ordinance 11 of 1976 (ENVIRONMENT)
Atomic Energy and Radiation Protection Act 5 of 2005 (ENVIRONMENT)

Bank of Namibia Act 15 of 1997 (FINANCIAL INSTITUTIONS)
Banking Institutions Act 2 of 1998 (FINANCIAL INSTITUTIONS)
Bills of Exchange Act 22 of 2003 (NEGOTIABLE INSTRUMENTS)
Biosafety Act 7 of 2006 (ENVIRONMENT)
Births, Marriages and Deaths Registration Act 81 of 1963 (CIVIL REGISTRATION)
Black Affairs Act 55 of 1959 ('BLACKS')
Black Authorities' Service Pensions Act 6 of 1971 (PENSIONS)
Black Reserves (South West Africa) Act 44 of 1945 ('BLACKS')
Blind Persons Act 26 of 1968 (SOCIAL WELFARE)
Bonemeal and Superphosphates Control Proclamation 37 of 1944 (AGRICULTURE)
Boxing and Wrestling Control Act 11 of 1980 (SPORTS)
Brewers & Distillers Licences Duty Proclamation 3 of 1924 (ALCOHOL, DRUGS AND TOBACCO)
Building Societies Act 2 of 1986 (FINANCIAL INSTITUTIONS)
Burial Place Ordinance 27 of 1966 (BIRTHS AND DEATHS)
Business and Intellectual Property Authority Act 8 of 2016 (BUSINESS)

Canned Fruit Export Marketing Act 100 of 1967 (AGRICULTURE)
Caprivi Zipfel Affairs Proclamation 27 of 1930 ('BLACKS')
Carriage by Air Act 17 of 1946 (AVIATION)
Casinos and Gambling Houses Act 32 of 1994 (GAMBLING)
Cattle Improvement Consolidation Ordinance 14 of 1941 (AGRICULTURE)
Census of Dwellings Proclamation 24 of 1945 (CENSUS AND STATISTICS)
***Child Care and Protection Act 3 of 2015 (CHILDREN)**
Children's Act 33 of 1960 (CHILDREN)
Children's Status Act 6 of 2006 (CHILDREN)
Civil Aviation Act 6 of 2016 (AVIATION)
Civil Defence Act 39 of 1966 (DISASTERS)
Civil Proceedings Evidence Act 25 of 1965 (EVIDENCE)
Close Corporations Act 26 of 1988 (BUSINESS)
Cold Storage Works and Abattoirs Proclamation 50 of 1921 (AGRICULTURE)
Colonial Courts of Admiralty Act, 1890 (ADMIRALTY LAW)
Combating of Domestic Violence Act 4 of 2003 (DOMESTIC VIOLENCE)
Combating of Immoral Practices Act 21 of 1980 (CRIMINAL LAW AND PROCEDURE)
Combating of Rape Act 8 of 2000 (CRIMINAL LAW AND PROCEDURE)
***Combating of Trafficking in Persons Act 1 of 2018 (CRIMINAL LAW AND PROCEDURE)**
Commissions Act 8 of 1947 (COMMISSIONS)
Commissions' Powers Ordinance 6 of 1927 (COMMISSIONS)
Commonwealth Relations (Temporary Provision) Act 41 of 1961 (INTERNATIONAL ISSUES)
Communal Land Reform Act 5 of 2002 (LAND AND HOUSING)
Communications Act 8 of 2009 (MEDIA AND COMMUNICATION)
Community Courts Act 10 of 2003 (COURTS)
Companies Act 28 of 2004 (BUSINESS)
Competition Act 2 of 2003 (TRADE AND INDUSTRY)
Computer Evidence Act 32 of 1985 (EVIDENCE)
Concessions from Natives Proclamation 8 of 1915 ('BLACKS')
Conferment of National Honours Act 11 of 2012 (CONSTITUTION)
Conferment of Status of Founding Father of the Namibian Nation Act 16 of 2005 (PRESIDENT)
Consent to Operations on Native Minors Proclamation 37 of 1943 (MEDICINE)
Control of Sites (Churches, Schools and Missions) Proclamation 31 of 1932 (LAND AND HOUSING)

Control of the Importation and Exportation of Dairy Products and Dairy Product Substitutes Act 5 of 1986 (AGRICULTURE)
Controlled Wildlife Products and Trade Act 9 of 2008 (TRADE AND INDUSTRY)
Conventional Penalties Act 15 of 1962 (CONTRACTS)
Co-operatives Act 23 of 1996 (CO-OPERATIVES)
Copyright and Neighbouring Rights Protection Act 6 of 1994 (INTELLECTUAL PROPERTY)
Correctional Service Act 9 of 2012 (CORRECTIONAL FACILITIES)
Council for Health and Social Services Professions Repeal Act 3 of 2004 (HEALTH PROFESSIONS)
Council of Traditional Leaders Act 13 of 1997 (CUSTOMARY LAW)
Credit Agreements Act 75 of 1980 (PURCHASE AND SALE)
Crematorium Ordinance 6 of 1971 (BIRTHS AND DEATHS)
Criminal Law Amendment Act 8 of 1953 (CRIMINAL LAW AND PROCEDURE)
**Criminal Procedure Act 25 of 2004 (CRIMINAL LAW AND PROCEDURE)*
Criminal Procedure Act 51 of 1977 (CRIMINAL LAW AND PROCEDURE)
Criminal Procedure Ordinance 34 of 1963 (CRIMINAL LAW AND PROCEDURE), sections 300(3) and 370
Crown Land Disposal Proclamation 13 of 1920 (LAND AND HOUSING)
Crown Lands (Trespass) Proclamation 7 of 1919 (LAND AND HOUSING)
Crown Liabilities Act 1 of 1910 (LAW)
Cultural Institutions Act 29 of 1969 (CULTURE AND CULTURAL INSTITUTIONS)
Cultural Promotion Ordinance 9 of 1980 (CULTURE AND CULTURAL INSTITUTIONS)
Currency and Exchanges Act 9 of 1933 (CURRENCY)
Customs and Excise Act 20 of 1998 (CUSTOMS AND EXCISE)

Dairy Industry Act 30 of 1961 (AGRICULTURE)
Decentralisation Enabling Act 33 of 2000 (REGIONAL AND LOCAL GOVERNMENT)
**Deeds Registries Act 14 of 2015 (DEEDS)*
Deeds Registries Act 47 of 1937 (DEEDS)
Defence Act 1 of 2002 (DEFENCE)
Delegation of Powers Ordinance 24 of 1973 (LAW)
Demonstrations in or near Court Buildings Prohibition Act 71 of 1982 (PUBLIC GATHERINGS)
Demutualisation Levy Act 9 of 2002 (INSURANCE)
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 ISSUES)
Disaster Risk Management Act 10 of 2012 (DISASTERS)
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 5 of 2014 (ELECTIONS)
Electricity Act 4 of 2007 (ELECTRICITY)
Employees' Compensation Act 30 of 1941 (LABOUR)
Employment Services Act 8 of 2011 (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 (LAND AND HOUSING PROFESSIONS)
Exchequer and Audit Amendment Proclamation, AG 35 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 Levy Act 2 of 2016 (IMPORT AND EXPORT)
Export Processing Zones Act 9 of 1995 (TRADE AND INDUSTRY)
Expropriation Ordinance 13 of 1978 (LAND AND HOUSING)
Extradition Act 11 of 1996 (CRIMINAL LAW AND PROCEDURE)
Ex-Volunteers Assistance Proclamation 2 of 1945 (PENSIONS)

Fencing Proclamation 57 of 1921 (LAND AND HOUSING)
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, section 9 (FINANCE AND DEVELOPMENT)
Financial Institutions (Investment of Funds) Act 39 of 1984 (FINANCIAL INSTITUTIONS)
Financial Intelligence Act 13 of 2012 (FINANCIAL INSTITUTIONS)
Flexible Land Tenure Act 4 of 2012 (LAND AND HOUSING)
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)
Further Administration of Justice Proclamation 38 of 1920 (COURTS)

Gambling Act 51 of 1965 (GAMBLING)
Game Products Trust Fund Act 7 of 1997 (ENVIRONMENT)
General Law Amendment Act 101 of 1969, section 29 (EVIDENCE)
General Law Amendment Ordinance 12 of 1956, section 4 (ARMS AND AMMUNITION)
General Law Amendment Ordinance 12 of 1956, section 5 (INHERITANCE)
General Law Amendment Ordinance 12 of 1956, sections 6-8 (CRIMINAL LAW AND PROCEDURE)
General Law Amendment Ordinance 13 of 1962, section 7 (BIRTHS 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 ISSUES)
Geoscience Professions Act 3 of 2012 (SCIENCE AND SCIENTIFIC RESEARCH)
Government Attorney Proclamation, R.161 of 1982 (LEGAL PRACTITIONERS)
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)
Hospitals and Charitable Institutions Ordinance 16 of 1930 (HOSPITALS)
Hospitals and Health Facilities Act 36 of 1994 (HOSPITALS)
Housing Levy Ordinance 18 of 1976 (LAND AND HOUSING)

Identification Act 21 of 1996 (CIVIL REGISTRATION)
Immigration Control Act 7 of 1993 (CITIZENSHIP AND IMMIGRATION)
Immovable Property (Removal or Modification of Restrictions) Act 94 of 1965 (LAND AND HOUSING)
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 (MEDIA AND COMMUNICATION)
Indemnity Proclamation 8 of 1923 (PUBLIC SERVICE)

Industrial Development Act 22 of 1940 (TRADE AND INDUSTRY)
Industrial Property Act 1 of 2012 (INTELLECTUAL PROPERTY)
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 (INHERITANCE)
Intimidation Proclamation, AG 24 of 1989 (CRIMINAL LAW AND PROCEDURE)

Judges' Pensions Act 13 of 2011 (PENSIONS)
Judges' Remuneration Act 18 of 1990 (JUDGES)
Judicial Service Commission Act 18 of 1995 (JUDGES)
Judiciary Act 11 of 2015 (JUDGES)
Justices of the Peace and Commissioners of Oaths Act 16 of 1963 (LAW)

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 AND HOUSING)
Land Tenure Act 32 of 1966 (LAND AND HOUSING)
Land Titles Proclamation 2 of 1921 (LAND AND HOUSING)
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 (GAMBLING)
Limitation 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)
Long-term Insurance Act 5 of 1998 (INSURANCE)
Lord's Day Observance Proclamation 54 of 1921 (SUNDAYS AND PUBLIC HOLIDAYS)
****Lotteries Act 13 of 2017 (GAMBLING)***
****Lotteries Act 15 of 2002 (GAMBLING)***

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)
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 and Dental Act 10 of 2004 (HEALTH PROFESSIONS)

Medical Scheme for Members of the National Assembly, Judges and Other Office Bearers Act 23 of 1990 (MEDICAL AID)

Medicines and Related Substances Control Act 13 of 2003 (MEDICINE)

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)

Microlending Act 7 of 2018 (FINANCIAL INSTITUTIONS)

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 Accident Fund Act 10 of 2007 (ROADS AND ROAD TRANSPORTATION)

Motor Vehicle Theft Act 12 of 1999 (CRIMINAL LAW AND PROCEDURE)

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 Film Commission Act 6 of 2000 (MEDIA AND COMMUNICATION)**

Namibia Financial Institutions Supervisory Authority Act 3 of 2001 (FINANCIAL INSTITUTIONS)

Namibia Industrial Development Agency Act 16 of 2016 (TRADE AND INDUSTRY)

***Namibia Institute of Pathology Act 15 of 1999 (MEDICINE)**

Namibia Institute of Public Administration and Management Act 10 of 2010 (EDUCATION)

Namibia Investment Promotion Act 9 of 2016 (TRADE AND INDUSTRY)

Namibia Library and Information Service Act 4 of 2000 (LIBRARIES)

Namibia National Reinsurance Corporation Act 22 of 1998 (INSURANCE)

Namibia Nursing Association Act 28 of 1993 (HEALTH PROFESSIONS)

Namibia Press Agency Act 3 of 1992 (MEDIA AND COMMUNICATION)

Namibia Qualifications Authority Act 29 of 1996 (EDUCATION)

Namibia Red Cross Act 16 of 1991 (SOCIAL WELFARE)

Namibia Refugees (Recognition and Control) Act 2 of 1999 (CITIZENSHIP AND IMMIGRATION)

***Namibia Revenue Agency Act 12 of 2017 (REVENUE)**

Namibia Special Risks Insurance Association Act 5 of 2017 (INSURANCE)

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 University of Science and Technology Act 7 of 2015 (EDUCATION)

Namibia Water Corporation Act 12 of 1997 (WATER)

Namibia Wildlife Resorts Company Act 3 of 1998 (TOURISM)

Namibian Broadcasting Act 9 of 1991 (MEDIA AND COMMUNICATION)

Namibian Citizenship (Second) Special Conferment Act 6 of 2015 (CITIZENSHIP AND IMMIGRATION)

Namibian Citizenship Act 14 of 1990 (CITIZENSHIP AND IMMIGRATION)

Namibian Citizenship Special Conferment Act 14 of 1991 (CITIZENSHIP AND IMMIGRATION)

Namibian College of Open Learning Act 1 of 1997 (EDUCATION)

Namibian Ports Authority Act 2 of 1994 (SHIPPING)

Namibian Time Act 9 of 2017 (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 Health Act 2 of 2015 (HOSPITALS)
National Heritage Act 27 of 2004 (NATIONAL HERITAGE)
National Housing Development Act 28 of 2000 (LAND AND HOUSING)
National Housing Enterprise Act 5 of 1993 (LAND AND HOUSING)
National Pensions Act 10 of 1992 (PENSIONS)
National Planning Commission Act 2 of 2013 (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, sections 17-18, 23-27 ('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 (MEDIA AND COMMUNICATION)
Newspaper and Imprint Registration Act 63 of 1971 (MEDIA AND COMMUNICATION)
Nursing Act 8 of 2004 (HEALTH PROFESSIONS)

Okavango Native Territory Affairs Proclamation 32 of 1937 ('BLACKS')
Ombudsman Act 7 of 1990 (CONSTITUTION)
One-Stop Border Posts Control Act 8 of 2017 (CITIZENSHIP AND IMMIGRATION)
Ordinance for Prevention and Combating of Alcoholism and Anti-Social Conduct 11 of 1965 (HEALTH)
Ovamboland Affairs Proclamation 27 of 1929 ('BLACKS')

Participation Bonds Act 55 of 1981 (DEBTORS AND CREDITORS)
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 of 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 (HEALTH 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 (INHERITANCE)
Post Office Service Act 66 of 1974 (PUBLIC SERVICE)
Posts and Telecommunications Act 19 of 1992 (MEDIA AND COMMUNICATION)
Posts and Telecommunications Companies Establishment Act 17 of 1992 (MEDIA AND COMMUNICATION)
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 Remuneration and Other Benefits Act 15 of 2012 (PRESIDENT)
Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981 (ENVIRONMENT)
Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014 (TERRORISM)
Prevention of Counterfeiting of Currency Act 16 of 1965, sections 1-4 and 12 (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)
Procedure and Evidence Proclamation 8 of 1938, section 7 (EVIDENCE)
Professional Land Surveyors', Technical Surveyors' and Survey Technicians' Act 32 of 1993 (LAND AND HOUSING PROFESSIONS)
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 AND HOUSING)
Promotion of the Economic Development of National States Act 46 of 1968 ('BLACKS')
 *Property Valuers Profession Act 7 of 2012 (LAND AND HOUSING PROFESSIONS)
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 and Environmental Health Act 1 of 2015 (HEALTH)
Public Enterprises Governance Act 2 of 2006 (BUSINESS)
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 Private Partnership Act 4 of 2017 (BUSINESS)
Public Procurement Act 15 of 2015 (TENDERS)
Public Service Act 13 of 1995 (PUBLIC SERVICE)
Public Service Commission Act 2 of 1990 (PUBLIC SERVICE)
Publications Act 42 of 1974 (MEDIA AND COMMUNICATION)

Racial Discrimination Prohibition Act 26 of 1991 (CRIMINAL LAW AND PROCEDURE)
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)
Reciprocal Enforcement of Maintenance Orders Act 3 of 1995 (MAINTENANCE)
Reciprocal Service of Civil Process Act 27 of 1994 (COURTS)
Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 (ARBITRATION)
Recognition of Certain Marriages Act 18 of 1991 (MARRIAGE AND DIVORCE)
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 AND HOUSING)
Rents Ordinance 13 of 1977 (LANDLORD AND TENANT)
Research, Science and Technology Act 23 of 2004 (SCIENCE AND SCIENTIFIC RESEARCH)
Reservation of State Land for Natives Ordinance 35 of 1967 ('BLACKS')
Riotous Assemblies Act 17 of 1956, sections 16-18 and 19A-21 (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 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)

Sea-shore Ordinance 37 of 1958 (SEA AND SEASHORE)
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 (LAND AND 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 AND HOUSING)
Social Pensions Ordinance 2 of 1965 (SOCIAL WELFARE)
Social Security Act 34 of 1994 (SOCIAL SECURITY)
Social Work and Psychology Act 6 of 2004 (HEALTH PROFESSIONS)
Soil Conservation Act 76 of 1969 (ENVIRONMENT)
South Africa Medical Research Council Act 19 of 1969 (MEDICINE)
South West Africa Affairs Act 25 of 1969 (CONSTITUTION)
South West African Meat Industry Ordinance 39 of 1955 (AGRICULTURE)
Special Advisors and Regional Governors Appointment Act 6 of 1990 (CONSTITUTION)
Sperrgebiet-Delimitation Proclamation 11 of 1920 (MINING AND MINERALS)
Squatters Proclamation, AG 21 of 1985 (LAND AND HOUSING)
Stamp Duties Act 15 of 1993 (REVENUE)
Standards Act 18 of 2005 (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)
Statistics Act 9 of 2011 (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 AND HOUSING)
Sugar Act 28 of 1936 (TRADE AND INDUSTRY)
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)
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 AND HOUSING PROFESSIONS)
Town Planning Ordinance 18 of 1954 (LAND AND HOUSING)
Townships and Division of Land Ordinance 11 of 1963 (LAND AND HOUSING)
Trade Metrology Act 77 of 1973 (WEIGHTS, MEASURES AND STANDARDS)
Trade Practices Act 76 of 1976 (TRADE AND INDUSTRY)
Trades and Occupational Licences Repeal Act 10 of 1995 (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 (CORRECTIONAL FACILITIES)
Travelling Privileges Ordinance 14 of 1980 (PUBLIC SERVICE)
Treaty of Peace and South West Africa Mandate Act 49 of 1919 (INTERNATIONAL ISSUES)
Trespass of Animals Ordinance 16 of 1939 (ANIMALS)
Trespass of Donkeys Proclamation 18 of 1941 (ANIMALS)
Trespass Ordinance 3 of 1962 (LAND AND HOUSING)

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)

***Urban and Regional Planning Act 5 of 2018 (LAND AND HOUSING)**

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 Veterinary Para-Professions Act 1 of 2013 (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 11 of 2013 (WATER)**

***Water Resources Management Act 24 of 2004 (WATER)**

Weeds Ordinance 19 of 1957 (AGRICULTURE)

***Whistleblower Protection Act 10 of 2017 (CRIMINAL LAW AND PROCEDURE)**

Wills Act 7 of 1953 (INHERITANCE)

Witchcraft Suppression Proclamation 27 of 1933 (CRIMINAL LAW AND PROCEDURE)

***Witness Protection Act 11 of 2017 (CRIMINAL LAW AND PROCEDURE)**

Wreck and Salvage Act 5 of 2004 (SHIPPING)

NAMLEX APPENDIX – INTERNATIONAL LAW

This list includes all **binding** multi-lateral international agreements **signed, ratified or acceded to** by Namibia. Individual agreements are cross-referenced in the Namlex entries, but detailed information on specific agreements is contained in the **Namlex Appendix on International Law**.

Some non-binding agreements are referenced in Namlex entries for information, but the references to non-binding instruments are not comprehensive. **Only binding and potentially-binding international agreements are included in the list below and in the individual entries in this Namlex Appendix on International Law.**

Treaties which have been ratified or acceded to by Namibia but have not yet satisfied the conditions for coming into force internationally are indicated with an **asterisk (*)**. These will become binding on Namibia as soon as they come into force internationally.

Treaties which have been signed by Namibia but not yet ratified or acceded to by Namibia are indicated with a **double asterisk (**)**. These are not binding on Namibia, regardless of whether or not they are in force internationally. They are listed here because signature of an international agreement generally indicates an intention to become a party to the agreement at some future point.

Treaties which were entered into prior to Namibian independence that appear to continue to be binding on Namibia are indicated by a **cross (†)**.

*** treaties signed and ratified by Namibia, which have not yet satisfied the conditions for coming into force internationally**
**** treaties signed by Namibia but not yet ratified or acceded to by Namibia**
† treaties which were entered into prior to Namibian independence but appear to continue to be binding on Namibia

African, Caribbean and Pacific (ACP) - European Union (EU) Partnership Agreement, Cotonou (Cotonou Agreement), 2000

Amendment to the Partnership Agreement, Luxembourg, 2005

Amendment to the Partnership Agreement, Ouagadougou, 2010

African Charter on Democracy, Elections and Governance, 2007

African Charter on Human and Peoples' Rights (Banjul Charter), 1981

****Protocol to the African Charter on Human and Peoples' Rights on the establishment of the African Court on Human and Peoples' Rights, 1998**

Protocol to the African Charter for Human and Peoples' Rights on the Rights of Women in Africa, 2003

African Charter on Statistics, 2009

African Charter on the Rights and Welfare of the Child (ACRWC or Children's Charter), 1990

***African Charter on the Values and Principles of Decentralisation, Local Government and Local Development, 2014**

African Charter on Values and Principles of Public Service and Administration, 2011

African Civil Aviation Commission Constitution, 1969 and Revised Constitution of the African Civil Aviation Commission, 2009

****African Convention on the Conservation of Nature and Natural Resources (Revised Version), 2003**

African Maritime Transport Charter, 1993

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

African Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA), 1990

****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 Union Non-Aggression and Common Defence Pact, 2005**

African Youth Charter, 2006

****Agreement among the Governments of the Democratic Republic of Congo, the Republic of Namibia and the Republic of Zambia on the Establishment of the Walvis Bay-Ndola-Lubumbashi Development Corridor (WBNLDC), 2010**

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), 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 (ORASECOM), 2000

Agreement Establishing the African Development Bank, 1963, as amended in 1979, 1992, 1997, 1998 and 2001

Agreement Establishing the International Fund for Agricultural Development, 1976

Agreement Establishing the Nordic-Southern African Development Community Fund and the Nordic-Southern African Development Community Agency (NORSAD), 1990

†Agreement Establishing the World Trade Organization (WTO) (the Marrakesh Agreement), 1994
Marrakesh Final Act, 1994
Marrakesh Declaration, 1994
†General Agreement on Tariffs and Trade, 1994
†General Agreement on Tariffs and Trade, 1947
Understanding on the Interpretation of Article II:1(b) of GATT, 1994 – other duties and charges
Understanding on the Interpretation of Article XVII of GATT, 1994 – state trading enterprises
Understanding on Balance-of-Payments Provisions of GATT, 1994
Understanding on the Interpretation of Article XXIV of GATT, 1994 – regional trade agreements
Understanding in Respect of Waivers of Obligations under GATT, 1994
Understanding on the Interpretation of Article XXVIII of GATT, 1994 – concession withdrawal
Marrakesh Protocol to GATT, 1994
Agreement on Agriculture, 1994
Agreement on Sanitary and Phytosanitary Measures (SPS), 1994
Agreement on Technical Barriers to Trade (TBT), 1994
Agreement on Trade Related Aspects of Investment Measures (TRIMs), 1994
Agreement on the Implementation of Article VI of GATT, 1994 – anti-dumping, 1994
Agreement on Implementation of Article VII of GATT, 1994 – customs valuation methods, 1994
Agreement on Preshipment Inspection (PSI), 1994
Agreement on Rules of Origin, 1994
Agreement on Import Licensing Procedures, 1994
Agreement on Subsidies and Countervailing Measures, 1994
Safeguards Agreement, 1994
General Agreement on Trade in Services (GATS), 1994
Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994
Understanding on Rules and Procedures Governing the Settlement of Disputes, 1994
Trade Policy Review Mechanism, 1994

Agreement for a ceasefire in the Democratic Republic of the Congo (Lusaka Ceasefire Agreement), 1999

Agreement for the Establishment of the Africa Institute for the Environmentally Sound Management of Hazardous and Other Wastes, 2004

Agreement for the Establishment of the African Export-Import Bank (Afreximbank), 1993

Agreement for the Establishment of the African Rehabilitation Institute (ARI), 1981

Agreement for the Establishment of the Intergovernmental Organization for Marketing Information and Cooperation Services for Fishery Products in Africa (INFOPÊCHE), 1991

Agreement for the Establishment of the Southern African Centre for Ivory Marketing (SACIM), 1991

Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2009

Agreement on the Establishment of the Zambezi Watercourse Commission (ZAMCOM), 2004

Agreement relating to the International Telecommunications Satellite Organisation (INTELSAT), 1971
Amendment of Article XVII(f) of the Agreement relating to the International Telecommunications Satellite Organization (INTELSAT), 1995
Amendments of the Agreement relating to the International Telecommunications Satellite Organization (INTELSAT), 2000

***Agreement to Establish the South Centre, 1994*

Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993

Agricultural Agreement between the Southern African Customs Union (SACU) States and Iceland, 2006

Agricultural Agreement between the Southern African Customs Union (SACU) States and Norway, 2006

Agricultural Agreement between the Southern African Customs Union (SACU) States and Switzerland, 2006

****Arms Trade Treaty (ATT), 2013**

Articles of Agreement of the International Bank for Reconstruction and Development (IBRD), 1944

Articles of Agreement of the International Finance Corporation (IFC), 1955

Articles of Agreement of the International Monetary Fund (IMF), 1944

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989

****Beijing Treaty on Audiovisual Performances, 2012**

Benguela Current Convention, 2013

†*Berne Convention for the Protection of Literary and Artistic Works, 1886, as revised at Berlin (1908)*

†*Berne Convention for the Protection of Literary and Artistic Works, 1886, as revised in 1971 and amended in 1979*

Charter Establishing the Centre for Coordination of Agricultural Research and Development (CCARDESA), 2010

Charter of Fundamental Social Rights in SADC, 2003

Charter of the Regional Tourism Organisation of Southern Africa (RETOSA), 1997

Charter of the United Nations (UN), 1945

***Comprehensive Nuclear-Test-Ban Treaty, 1996**

Constitution and Convention of the International Telecommunication Union (ITU), 1992

†*Constitution of the Food and Agriculture Organization of the United Nations (FAO), 1945*

†*Constitution of the International Labour Organization (ILO), 1919, as amended*

**Instrument of Amendment of the ILO Constitution, 1986 (not yet binding)*

Instrument of Amendment of the ILO Constitution, 1997

Constitution of the International Organization for Migration (IOM), 1953 as amended in 1987 and 1998

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

†*Constitution of the United Nations Industrial Development Organization (UNIDO), 1979*

Constitution of the Universal Postal Union (UPU), 1964

†*Constitution of the World Health Organization (WHO), 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

****Protocol on Amendments to the Constitutive Act of the African Union, 2003**

****Protocol on the Court of Justice of the African Union, 2003**

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

Convention against Transnational Organized Crime (Palermo Convention), 2000

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

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 Multilateral Investment Guarantee Agency (MIGA), 1985

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

Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region and Protocol (Abidjan Convention), 1981

Additional Protocol to the Abidjan Convention concerning Cooperation in the Protection and Development of Marine and Coastal Environment from Land-based Sources and Activities in the Western, Central and Southern African Region, 2012

- Convention for the Safeguarding of the Intangible Cultural Heritage, 2003**
- Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Hijacking Convention), 1970**
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Sabotage Convention), 1971**
 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 1988
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988**
 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988
- Convention for the Unification of Certain Rules relating to International Carriage by Air (Montreal Convention), 1999**
- Convention of the African Energy Commission, 2001**
- Convention of the Pan-African Postal Union (PAPU), 1980**
- Convention of the World Meteorological Organization (WMO), 1947**
- Convention on Biological Diversity (Biodiversity Convention), 1992**
 Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Montreal, 2000
 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, 2010
- **Convention on Cluster Munitions, 2008**
- Convention on International Civil Aviation (Chicago Convention), 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 83bis), Montreal, 1980
 Protocol relating to an Amendment to the Convention (Article 3bis), Montreal, 1984
 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
 *Protocol on the Authentic Quinquelingual 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
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973**
 Amendment to Article XI of the Convention, Bonn 1979
- Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention), 1963**
- Convention on Privileges and Immunities of the United Nations, 1946**
- Convention on Psychotropic Substances, 1971**
- Convention on Rights of Persons with Disabilities, 2006**
 Optional Protocol to Convention on Rights of Persons with Disabilities, 2006
- 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 (CEDAW), 1979**
 Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, 1999
- Convention on the International Maritime Organization (IMO), 1948**
 Amendments to Articles 17 and 18 of the Convention on the International Maritime Organization, 1964
 Amendment to article 28 of the Convention on the International Maritime Organization, 1965
 Amendments to Articles 10, 16, 17, 18, 20, 28, 31 and 32 of the Convention on the International Maritime Organization, 1974
 Amendments to the title and substantive provisions of the Convention on the International Maritime Organization, 1977
 Amendments to the Convention on the International Maritime Organization relating to the institutionalization of the Committee on Technical Co-operation in the Convention, 1977

- Amendments to Articles 17, 18, 20 and 51 of the Convention on the International Maritime Organization, 1979*
- Amendments to the Convention on the International Maritime Organization (institutionalization of the Facilitation Committee), 1991*
- Amendments to Articles 16, 17 and 19(b) of the Convention on the International Maritime Organization, 1993*
- Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs), as amended***
- Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997***
- Convention on the Physical Protection of Nuclear Material and Nuclear Facilities, 1980***
- Amendment to the Convention on the Physical Protection of Nuclear Material (renaming the convention as Convention on the Physical Protection of Nuclear Material and Nuclear Facilities), 2005*
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973***
- 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 (Ottawa Treaty), 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 Rights of the Child, 1989***
- Amendment to Article 43(2) of the Convention on the Rights of the Child adopted by the Conference of the States Parties, 1995*
- 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*
- **Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), 1965***
- Convention on Wetlands of International Importance, especially as Waterfowl Habitat (Ramsar Convention), 1971***
- Protocol to amend the Convention on Wetlands of International Importance especially Waterfowl Habitat, 1982*
- Amendments to Article 6 and 7 of the Convention on Wetlands of International Importance especially Waterfowl Habitat, 1987*
- Convention relating to International Exhibitions (Paris Convention), 1928, as revised in 1972 and amended in 1982 and 1988***
- Convention relating to the Status of Refugees, 1951***
- Protocol relating to the Status of Refugees (New York Protocol), 1967*
- Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part***
- Free Trade Agreement between the European Free Trade Association (EFTA) and the Southern African Customs Union (SACU), 2006***
- General Convention on the Privileges and Immunities of the Organisation of African Unity (OAU), 1965***
- †***Geneva Convention for the Amelioration of Condition of Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 1949***
- †***Geneva Convention for the Amelioration of Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 1949***
- †***Geneva Convention on Road Traffic, 1949***
- †***Geneva Convention relative to Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 1949***
- †***Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention), 1949***
- Note: The Geneva Protocols are separate treaties that build upon all four Geneva Conventions and so are listed as separate entries: †***Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977*** and †***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.*
- Hague Agreement concerning the International Registration of Industrial Designs (Hague System), 1925, as governed by the 1999 Geneva Act*
- Hague Convention on Abolishing the Requirement of Legalisation of Foreign Public Documents (Apostille Convention), 1961*
- Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993*
- ILO Convention 29 concerning Forced or Compulsory Labour, 1930*
Protocol of 2014 to the Forced Labour Convention, 1930
- ILO Convention 87 concerning Freedom of Association and the Right to Organise, 1948*
- ILO Convention 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949*
- ILO Convention 100 concerning Equal Remuneration, 1951*
- ILO Convention 105 concerning the Abolition of Forced Labour, 1957*
- ILO Convention 111 concerning Discrimination in Respect of Employment and Occupation, 1958*
- ILO Convention 138 concerning Minimum Age for Admission to Employment, 1973*
- ILO Convention 144 concerning Tripartite Consultations to Promote the Implementation of International Labour Standards, 1976*
- ILO Convention 150 concerning Labour Administration: Role, Functions and Organisation, 1978*
- ILO Convention 158 concerning Termination of Employment at the Initiative of the Employer, 1982*
- ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999*
- Note: In Namlex, the numbers of the respective ILO Conventions have been placed at the front of their respective names to make searches for each of these conventions easier. Technically, the numbers appear at the end. For example, what is listed here as “ILO Convention 29 concerning Forced or Compulsory Labour, 1930” is in fact “ILO Convention concerning Forced or Compulsory Labour (No. 29), 1930”. The titles in the entries in the Namlex Appendix are the ones which are technically correct.
- International Agreement for the Creation of an International Office for dealing with Contagious Diseases of Animals (Arrangement international pour la création, à Paris, d'un Office international des epizooties), 1925*
- International Convention against Doping in Sport, 2005*
- International Convention against the Taking of Hostages, 1979*
- International Convention for the Conservation of Atlantic Tunas (ICCAT), 1966, as amended*
Paris Protocol, 1984
Madrid Protocol, 1992
- International Convention for the Prevention of Pollution from Ships (MARPOL), 1973, as modified by the Protocol of 1978*
Annex I Regulations for the Prevention of Pollution by Oil, as amended
Annex II Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk, as amended
Optional Annex III Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form, as amended
Optional Annex V Prevention of Pollution by Garbage from Ships, as amended
- International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended*
Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974, as amended
- International Convention for the Suppression of Acts of Nuclear Terrorism, 2005*
- International Convention for the Suppression of Terrorist Bombings, 1997*
- International Convention for the Suppression of the Financing of Terrorism, 1999*
- International Convention for the Unification of Certain Rules relating to the Arrest of Sea-Going Ships, 1952*
- International Convention on Load Lines, 1966, as amended*
Protocol of 1988 relating to the International Convention on Load Lines, 1966, as amended
- International Convention on Maritime Search and Rescue, 1979, as amended*
- International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990*
- International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995*

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended

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

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

International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention), 1973, as amended in 1999

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

International Convention on Tonnage Measurement of Ships, 1969, as amended

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

International Covenant on Civil and Political Rights (ICCPR), 1966
Optional Protocol to the International Covenant on Civil and Political Rights, 1966
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 (ICESCR), 1966

International Plant Protection Convention, 1951, as amended

International Telecommunication Regulations, 1988
***Final Acts of the World Conference on International Telecommunications (WCIT-12), Dubai 2012*

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

Lusaka Agreement on the Creation of the African Regional Industrial Property Organization (ARIPO), 1976 and as amended in 1982, 1996 and 2004
Harare Protocol on Patents and Industrial Designs within the Framework of the African Regional Industrial Property Organization, 1982 as amended in 1987, 1994, 1997, 1998, 1999, 2001, 2003, 2006 and 2013
Banjul Protocol on Marks within the Framework of the African Regional Industrial Property Organization, 1993 as amended in 1997, 1998, 1999, 2003, 2004 and 2013
Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore within the Framework of the African Regional Intellectual Property Organization, 2010

Madrid Agreement concerning the International Registration of Marks (Madrid System), 1891, as revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Nice (1957) and Stockholm (1967), and as amended in 1979
Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989, as amended in 2006 and 2007

***Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, 2013*

Minamata Convention on Mercury, 2013

***OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969*

OAU Convention on the Prevention and Combating of Terrorism, 1999

Paris Agreement, 2015

Paris Convention for the Protection of Industrial Property, 1883, as revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Lisbon (1958) and Stockholm (1967), and as amended in 1979

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

Preferential Trade Agreement Between the Common Market of the South (MERCOSUR) and the Southern African Customs Union (SACU), 2009

†*Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977*

†*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 of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended
Protocol of 1992 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), 1971 (1992 Fund Convention), as amended

†*Radio Regulations as adopted by the World Administrative Radio Conference, 1979*

- Final Acts of the World Administrative Radio Conference for the Mobile Services (MOB-83), Geneva 1983*
- Final Acts Adopted by the First Session of the World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of Space Services Utilizing It (ORB-85), Geneva 1985*
- Final Acts of the World Administrative Radio Conference for the Planning of the HF Bands Allocated to the Broadcasting Service (HFBC-87), Geneva 1987*
- Final Acts of the World Administrative Radio Conference for the Mobile Services (MOB-87), Geneva 1987*
- Final Acts Adopted by the Second Session of the World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of Space Services Utilizing It (ORB-88), Geneva 1988*
- Final Acts of the World Administrative Radio Conference for dealing with Frequency Allocations in Certain Parts of the Spectrum (WARC-92), Malaga-Torremolinos 1992*
- **Radio Regulations as adopted by the World Radiocommunication Conference (WRC-95), 1995**
- **Final Acts of the World Radiocommunication Conference (WRC-97), Geneva 1997*
- **Final Acts of the World Radiocommunication Conference (WRC-2000), Istanbul 2000*
- **Final Acts of the World Radiocommunication Conference (WRC-2007), Geneva 2007*
- **Final Acts of the World Radiocommunication Conference (WRC-12), Geneva 2012*
- **Regional Agreement GE06, adopted by RRC-06, relating to the planning of the digital terrestrial broadcasting service in Region 1 in the frequency bands 174-230 MHz and 470-862 MHz, 2006**
- **Revised African Maritime Transport Charter, 2010** (which will supersede the African Maritime Transport Charter, 1993 when it comes into force)
- Revised Constitution of the African Civil Aviation Commission (AFCAC), 2009**
- Rome Statute of the International Criminal Court, 1998**
- 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, with Annexes as amended**
- SADC Mutual Defence Pact, 2003**
- SADC Protocol Against Corruption, 2001**
- *Agreement Amending the SADC Protocol on Corruption, 2016*
- 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 Employment and Labour, 2014**
- SADC Protocol on Energy, 1996**
- **SADC Protocol on Environmental Management for Sustainable Development, 2014**
- SADC Protocol on Extradition, 2002**
- SADC Protocol on Finance and Investment, 2006**
- *Agreement Amending Annex I (Co-operation on investment) of the Protocol on Finance and Investment, 2016*
- 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**
- Agreement amending the Protocol on Politics, 2009*
- *SADC Protocol on Science, Technology and Innovation, 2008**
- SADC Protocol on Shared Watercourse Systems, 1995**
- Note:** This Protocol has been repealed and replaced by the **SADC Revised Protocol on Shared Watercourses, 2000**, for the SADC member states that are parties to the Revised Protocol. The 1995 Protocol remains in force between Namibia and SADC states that are a party to it but not to the Revised Protocol.
- SADC Protocol on the Control of Firearms, Ammunition and other Related Materials in the Southern African Development Community Region, 2001**

SADC Protocol on the Development of Tourism, 1998
 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
 SADC Agreement Amending the Protocol on the Tribunal, 2002
 SADC Agreement Amending the Protocol on the Tribunal, 2007
 SADC Agreement Amending Article 6 of the Protocol on Tribunal, 2008

****SADC Protocol on the Tribunal, 2014**

SADC Protocol on Trade, 1996
 Amendment Protocol on Trade, 2000
 Agreement Amending Article 20 of the Protocol on Trade, 2008

****SADC Protocol on Trade in Services, 2012**

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
 Protocol Amending the Single Convention on Narcotic Drugs, 1972

South African Customs Union Agreement (SACU), 2002
 Amendments to the SACU Agreement, 2002, to institutionalise the SACU Summit, 2013
 Annex E to the SACU Agreement on Mutual Administrative Assistance, 2011

†Statute of the International Atomic Energy Agency (IAEA), 1956, as amended

Statute of the International Court of Justice (see Charter of the United Nations (UN), 1945)

Statute of the International Renewable Energy Agency (IRENA), 2009

Statutes of the International Centre for Genetic Engineering and Biotechnology (ICGEB), 1983
 Protocol to the Statutes of the International Centre for Genetic Engineering and Biotechnology on the Seat of the Centre, 2007

Statutes of the International Institute for Democracy and Electoral Assistance (International IDEA), 2006, as amended

Statutes of the World Tourism Organization (UNWTO), 1970
 Amendment to Article 38 of the Statutes of the World Tourism Organization, 1979

Stockholm Convention on Persistent Organic Pollutants, 2001, with Annexes as amended in 2009, 2011, 2013 and 2015

Trade, Investment, and Development Cooperative Agreement between SACU and the United States of America (TIDCA), 2008

Treaty Establishing the African Economic Community (AEC), 1991
 Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament, 2001

Treaty of the Southern African Development Community (SADC), 1992
 Agreement Amending the Treaty, 2001
 Agreement Amending Article 22 of the Treaty, 2007
 Agreement Amending the Treaty, 2008
 Agreement Amending the Treaty, 2009 – DES
 Agreement Amending the Treaty 2009 – ORGAN

Treaty on the Establishment of the Kavango Zambezi Transfrontier Conservation Area (KAZA TFCA), 2011

Treaty on the Non-Proliferation of Nuclear Weapons, 1968

****Tripartite Free Trade Agreement (TFTA), 2015**

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 (UNCLOS), 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
 United Nations 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 (Fish Stocks Agreement), 1995

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

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

Kyoto Protocol to the UN Framework Convention on Climate Change, 1997

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 Second Meeting of the Parties on 29 June 1990

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

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, at the Eleventh Meeting of the Parties on 3 December 1999

Vienna Convention on Consular Relations, 1963

Vienna Convention on Diplomatic Relations, 1961

WHO Framework Convention on Tobacco Control (WHO FCTC), 2003

*****WIPO Copyright Treaty (WCT), 1996***

*****WIPO Performances and Phonograms Treaty (WPPT), 1996***

World Heritage Convention, 1972

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 originally defined “Union” to include “the territory of South West Africa”; after amendment by *Act 30 of 1962*, section 1 defined “Republic” to include “the territory of South West Africa”. Section 33 states “This Act shall apply also to the territory of South West Africa”. Although section 33 did not make amendments to the Act in South Africa automatically applicable to South West Africa, they appear to have applied to South West Africa by virtue of the definitions of “Union” and “Republic” in section 1. This assumption is supported by the fact that the first post-independence amendments to this Act, made by *Act 10 of 1994 (GG 922)*, cite previous amendments by *Act 47 of 1956*, *Act 30 of 1962*, *Act 68 of 1965*, *Act 53 of 1975*, *Act 80 of 1971* and *Act 9 of 1988*. However, it should be noted that three amending acts – *Act 30 of 1962*, *Act 68 of 1965*, and *Act 53 of 1975* – were made expressly applicable to South West Africa, while none of the other South African amending Acts contained any such language.

Transfer of administration to SWA: This Act was administered by the Minister of Finance. Acts administered by the Minister of Finance in the Department of Inland Revenue were transferred to South West Africa by the Executive Powers (Inland Revenue) Transfer Proclamation, AG 18 of 1978, but this Act fell under the Department of Finance at the time, as indicated by government notices pertaining to the appointment of members of the Public Accountants' and Auditors' Board and the rules of that Board issued during the 1970s. See, for example, Government Notice 2085/1977 ([RSA GG 5767](#)), Government Notice 2809/1979 ([RSA GG 6776](#)) and Government Notice 625/1976 ([RSA GG 5080](#)). There was no transfer proclamation for laws administered by the Minister of Finance in the Department of Finance.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Public Accountants' and Auditors' Amendment Act 47 of 1956* ([SA GG 5703](#))
- *Public Accountants' and Auditors' Amendment Act 64 of 1957* ([SA GG 5901](#))
- *Public Accountants' and Auditors' Amendment Act 30 of 1962* ([RSA GG 205](#))
- *Public Accountants' and Auditors' Amendment Act 68 of 1965* ([RSA GG 1128](#))
- *Transvaal and Natal Societies of Chartered Accountants Act 66 of 1968* ([RSA GG 2116](#))
- *General Law Amendment Act 80 of 1971* ([RSA GG 3197](#))
- *Public Accountants' and Auditors' Amendment Act 53 of 1975* ([RSA GG 4753](#))
- *Public Accountants' and Auditors' Amendment Act 91 of 1979* ([RSA GG 6540](#))
- *Public Accountants' and Auditors' Amendment Act 42 of 1982* ([RSA GG 8102](#))
- *Public Accountants' and Auditors' Amendment Act 12 of 1983* ([RSA GG 8594](#))
- *Public Accountants' and Auditors' Amendment Act 48 of 1984* ([RSA GG 9161](#))
- *Public Accountants' and Auditors' Amendment Act 51 of 1985* ([RSA GG 9734](#))
- *Public Accountants' and Auditors' Amendment Act 45 of 1986* ([RSA GG 10219](#))
- *Public Accountants' and Auditors' Amendment Act 9 of 1988* ([RSA GG 11186](#))

- *Accountants' and Auditors' and Financial Institutions Amendment Act 92 of 1988* ([RSA GG 11414](#))
- *Public Accountants' and Auditors' Amendment Act 3 of 1990* ([RSA GG 12332](#)).

Act 10/1994 ([GG 922](#)) amends sections 1, 3, 4, 5, 6, 12 and 29, and substitutes certain expressions.

Act 10/2013 ([GG 5334](#)) amends section 5.

Regulations: There is no provision authorising the promulgation of regulations in terms of this Act.

Appointments: Appointments to the Public Accountants' and Auditors' Board are announced in GN 226/1995 ([GG 1204](#)), GN 3/2000 ([GG 2259](#)), GN 118/2001 ([GG 2552](#)) and GN 266/2012 ([GG 5069](#)), GN 150/2013 ([GG 5223](#)) and GN 232/2017 ([GG 6397](#)).

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)), which places certain duties on the Public Accountants' and Auditors' Board.

ADMIRALTY LAW

Admiralty Court Act, 1840 (3 & 4 Vict c 65).

Summary: This Act ([3 & 4 Vict c 65](#)) concerns the jurisdiction of the High Court of Admiralty of England.

Applicability to SWA: This Act applied to South West Africa by virtue of section 2(2) of the *Colonial Courts of Admiralty Act, 1890*. (See the entry for that Act below.)

Cases:

Freiremar SA v The Prosecutor-General of Namibia & Another 1996 NR 18 (HC)

Namibia Ports Authority v M V 'Rybak Leningrada' 1996 NR 355 (HC)

International Underwater Sampling Ltd & Another v MEP Systems Pte Ltd 2010 (2) NR 468 (HC).

Admiralty Court Act, 1861 (24 & 25 Vict. c. 10).

Summary: This Act ([24 & 25 Vict. c. 10](#)) concerns the jurisdiction of the High Court of Admiralty of England.

Applicability to SWA: This Act applied to South West Africa by virtue of section 2(2) of the *Colonial Courts of Admiralty Act, 1890*. (See the entry for that Act below.)

Cases:

Freiremar SA v The Prosecutor-General of Namibia & Another 1996 NR 18 (HC)

Namibia Ports Authority v M V 'Rybak Leningrada' 1996 NR 355 (HC)

International Underwater Sampling Ltd & Another v MEP Systems Pte Ltd 2010 (2) NR 468 (HC).

Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict c 57), as applied in the Cape of Good Hope as of 1 January 1920.

Summary: This Act ([53 & 54 Vict c 57](#)) concerns the admiralty jurisdiction of the courts. Section 2(2) of the Act states that “The jurisdiction of a Colonial Court of Admiralty shall, subject to the provisions of this Act, be over the like places, persons, matters, and things, as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that Court to international law and the comity of nations.” It thus applies two statutes from English admiralty law – the Admiralty Court Act 1840 and the Admiralty Court Act 1861.

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) and *International Underwater Sampling Ltd & Another v MEP Systems Pte Ltd* 2010 (2) NR 468 (HC), 2011 (1) NR 81 (SC).

In South Africa, the Colonial Courts of Admiralty Act, 1890 was repealed in so far as

it relates to prizes by the *Prize Jurisdiction Act 3 of 1968* ([RSA GG 2000](#)). This Act was made applicable to SWA by section 6, which 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 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.” However, Act 3 of 1968 never came into force in respect of South Africa or South West Africa.

The Colonial Courts of Admiralty Act, 1980 was repealed “in so far as it applies in relation to the Republic, except in so far as it relates to prize matters”, by the *Admiralty Jurisdiction Regulation Act 105 of 1983* – which was not made applicable to South West Africa.

Section 2(2) of the Colonial Courts of Admiralty Act, 1890 makes the **Admiralty Court Act, 1840**, and the **Admiralty Court Act, 1861** applicable to Namibia.

See *Trivett & Co, (Pty) Ltd & Others v WM Brandt's Sons & Co Ltd & Others* 1975 (3) SA 423 (A) (quoted in the shaded box below). See also *The Shipping Corporation of India Ltd v Evdomon Corporation & Another* 1994 (1) SA 550 (A) at 559H-560C:

“The next question is whether a South African Court of admiralty did have such jurisdiction prior to 1 November 1983. The jurisdiction of such a Court was governed by the Colonial Courts of Admiralty Act, 1890, a statute of the British Parliament. In terms of s 2(2) of this Act the jurisdiction of a colonial court of admiralty was stated to be ‘...over the like places, persons, matters, and things, as the admiralty jurisdiction of the High Court of England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty [might] exercise such jurisdiction in like manner and to as full an extent as the High Court in England...’. **It has been authoritatively held that the effect of s 2(2) was that the jurisdiction of a Court of admiralty was governed by the admiralty jurisdiction of the English High Court as it existed in 1890. The sources of such jurisdiction included English statutes passed before 1890, notably the Admiralty Court Act, 1840, and the Admiralty Court Act, 1861, but not subsequent legislation.** (*Beaver Marine (Pty) Ltd v Wuest* 1978 (4) SA 263 (A) at 274C-D; *Malilang and Others v MV Houda Pearl* 1986 (2) SA 714 (A) at 722J-723B at 722J-723B. The suggestion in Joubert (ed) *The Law of South Africa* vol 25 para 114 note 8 that the true date was 1 July 1891 is, in my view, incorrect. According to *The Yuri Maru, The Woron* [1927] AC 906 (PC) at 915, the critical time was ‘when the Act passed’, which was 25 July 1890; and it does not seem to me that this is affected by the provision in s 16 that generally the Act was to come into force on 1 July 1891.) Furthermore, the proceedings in a Court of admiralty were regulated by the rules in force in 1890 under the Vice-Admiralty Courts Act, 1863 (see *Tharros Shipping Corporation SA v Owner of the Ship ‘Golden Ocean’* 1972 (4) SA 316 (N) at 319A).”

Rules: The 1890 Act repealed the Vice-Admiralty Courts Act 1863, but provided that **the rules made under the Vice-Admiralty Courts Act 1863**, made under that Act would continue to apply in any British possession until revoked or varied (see section 16(3)):

See *MV “Jute Express” v Owners of the Cargo Lately Laden on Board the MV “Jute Express”* 1992 (3) SA 9 (A) at 19: “... in South African admiralty practice from the last century until the passing of the Act, the action was commenced by the issue of summons: see Rule 5 of the Rules made in terms of the English Vice-Admiralty Courts Act 1863 (in force in this country by virtue of the Colonial Courts of Admiralty Act 1890).”

See *Namibia Ports Authority v M V 'Rybak Leningrada'* 1996 NR 355 (HC) at 358F-G: "There is no issue between the parties that the Rules relied upon in this application are made under the 1840 and 1861 Acts named the Vice Admiralty Rules."

See *Bourgwells Ltd (Owners of MFV Ofelia) v Shepalov & Others* 1998 NR 307 (HC) at 311E-F: "...the Admiralty Proceedings Rules of South Africa do not apply in Namibia. The Rules for the Vice-Admiralty Courts in Her Majesty's Possessions Abroad, 1883, strange as it may seem, still apply."

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 Ltd & Another v MEP Systems Pty Ltd 2010 (2) NR 468 (HC); 2011 (1) NR 81 (SC) ("necessaries" in terms of section 5 of the Admiralty Court Act 1840, section 6 of the Admiralty Court Act 1861).

See also *Banco Exterior De Espana SA & Another v Government of the Republic of Namibia & Another* 1996 NR 1 (HC) and *Freiremar SA v The Prosecutor-General of Namibia & Another* 1996 NR 18 (HC) at 27H-28J for further discussion of admiralty law in Namibia.

Commentary: Hilton Staniland, "Theory versus policy in the reform of admiralty jurisdiction", 6 (4) *International Journal of Private Law* 418 (2013).

"As was correctly found by Levy J the South African Admiralty Jurisdiction Regulation Act, Act 105 of 1983 does not apply to Namibia. However, prior to Act 105 of 1983 Admiralty Jurisdiction was exercised by South African Courts by virtue of the provisions of s 2 of the Colonial Courts of Admiralty Act 1890. (See in this regard *Trivett & Co (Pty) Ltd and Others v Wm Brandt's Sons & Co Ltd and Others* 1975 (3) SA 423 (A).) The provisions of the Colonial Courts of Admiralty Act 1890 was therefore part of the statute law of the Cape of Good Hope when by s 1(1) of Proc 21 of 1919 the law as existing and applied in that province was introduced into the then South-West Africa. (See further *R v Goseb* 1956 (2) SA 696 (SWA). *S v Redondo* 1992 NR 133 (SC) also 1993 (2) SA 528 (NmS) and *The Law of Shipping and Carriage in South Africa*, 3rd ed by B Bamford, p 4 footnote 27.) In cases such as *Tittel v The Master of The High Court* 1921 SWA 58 and *Krueger v Hoge* 1954 (4) SA 248 (SWA) it was decided that statutes which applied in the Cape as at 1 January 1920 also apply in South-West Africa by virtue of the provisions of Proc 21 of 1919. This was again reaffirmed in the *Redondo* case supra at 150 (NR) and 539I-540B (SA). **Admiralty law as applied by the Colonial Courts of Admiralty Act, 1890, is therefore part of the Namibian law.**"

Freiremar SA v The Prosecutor-General of Namibia & Another 1996 NR 18 (HC) at 27H-28D (emphasis added)

"On 10 July 1974 the Natal Provincial Division, purporting to sit as a Colonial Court of Admiralty in terms of sec. 2 (1) of the Colonial Courts of Admiralty Act, 1890 (53 and 54 Vict. C. 27), granted, at the instance of the first respondent, an order, with costs against certain of the defendants, appointing a commissioner for the examination of such claims against the proceeds of the sale of the ship, Waikiwi Pioneer, sold by order of Court, as may be lodged with him, and for the determination of their nature and the amounts thereof, to enable the Court to decide their proper order of preference.

The application for the order was resisted on the ground that the Republic of South Africa having ceased to be a "British possession" within the meaning of that expression in sec. 2 (1) of the Colonial Courts of Admiralty Act, 1890, the several Provincial and Local Divisions of the Supreme Court of South Africa were no longer Colonial Courts of Admiralty with the

jurisdiction conferred upon such Courts by the said Act, and that the order prayed for could, therefore, not properly be made by the Natal Provincial Division sitting as a Colonial Court of Admiralty under the Act of 1890. The Court *a quo* held, however, that the Colonial Courts of Admiralty Act, 1890, was a law in force in the Union of South Africa immediately prior to the commencement of the Republic of South Africa Constitution Act, 32 of 1961, and that sec. 107 of the latter Act accordingly provided for its continuation in relation to the Republic until repealed or amended by competent authority. The appellants now appeal to this Court against the order of the Court *a quo*.

Sec. 2 (1) of the Colonial Courts of Admiralty Act, 1890, provides as follows:

“(1) Every Court of law in a British possession, which is for the time being declared in pursuance of this Act to be a Court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a Court of Admiralty, with the jurisdiction in this Act mentioned, and may for the purpose of that jurisdiction exercise all the powers which it possesses for the purpose of its other civil jurisdiction, and such Court in reference to the jurisdiction conferred by this Act is in this Act referred to as a Colonial Court of Admiralty. Where in a British possession the Governor is the sole judicial authority, the expression ‘Court of law’ for the purposes of this section includes such Governor.”

The expression “British possession” is by sec. 18 (2) of the Interpretation Act, 1889 (52 and 53 Vict. C. 63) defined as:

“Any part of Her Majesty’s Dominions exclusive of the British Islands, and of British India, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession.”

The expression “unlimited civil jurisdiction” is defined by sec. 15 of the Colonial Courts of Admiralty Act, 1890, as -

“civil jurisdiction unlimited as to the value of the subject-matter at issue, or as to the amount that may be claimed or recovered”.

No Court of law in South Africa has, in terms of sec. 2 (1) as read with sec. 3 (a) of the Colonial Courts of Admiralty Act, 1890, been declared to be a Colonial Court of Admiralty, but the several Divisions of the Supreme Court in South Africa became Colonial Courts of Admiralty by virtue of their having unlimited civil jurisdiction in a British possession as envisaged by the said sec. 2 (1). (*Tharros Shipping Corporation S.A. v Owner of the Ship “Golden Ocean”*, 1972 (4) SA 316 (N) at pp. 318-319).

The jurisdiction of Colonial Courts of Admiralty are prescribed as follows by sec. 2 (2) of the Colonial Courts of Admiralty Act, 1890:

“The jurisdiction of a Colonial Court of Admiralty shall, subject to the provisions of this Act, be over the like places, persons, matters, and things, as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that Court to international law and the comity of nations.”

It is clear that the four British Colonies which in 1910 became the Union of South Africa in terms of sec. 4 of the South Africa Act, 1909 (9 Edward VII, C. 9) were British possessions within the meaning of that expression in sec. 2 (1) of the Colonial Courts of Admiralty Act, 1890, and that every court of law which in those Colonies had unlimited civil jurisdiction, became, in terms of that section, a Colonial Court of Admiralty with the jurisdiction conferred by the 1890 Act.

The Union of South Africa was clearly also a British possession within the meaning of that expression in sec. 2 (1) of the 1890 Act and it is, therefore, also clear that the several Divisions of the Supreme Court of the Union of South Africa also became Colonial Courts of Admiralty

in terms of the said sec. 2 (1), for they were Courts of law which had unlimited civil jurisdiction in a British possession.

The jurisdiction exercised by them as Courts of Admiralty in the Union of South Africa being prescribed by the Act of 1890, that Act accordingly applied in the Union. It was accordingly not necessary to provide for its continuation in the Union of South Africa by sec. 135 of South Africa Act, 1909, and it probably never was the intention to do so. Sec. 135 was concerned more with the continuation of existing Colonial laws in the respective Provinces of the Union, and not with the 1890 Act which, by reason of the definition of British possession, was applicable to the whole of the Union as a single British possession.

The application in the Union of South Africa of the Colonial Courts of Admiralty Act, 1890, was recognised by sec. 6 of the Statute of Westminster, 1931 (22 Geo. 5 C. 5), as read with sec. 3 of the Status of the Union Act, 69 of 1934, and by the proviso to sec. 106 of the South Africa Act, 1909, and it was common cause that immediately prior to the commencement of the Republic of South Africa Constitution Act, 32 of 1961, the 1890 Act was in force in the Union of South Africa.

Act 32 of 1961, however, introduced important constitutional changes in South Africa which in terms of that Act became a republic and accordingly ceased to be a British possession. **For its contention that the Colonial Courts of Admiralty Act, 1890, nevertheless continued to be in force in the Republic of South Africa, the respondent relied mainly upon sec. 107 of Act 32 of 1961 which reads as follows:**

“Subject to the provisions of this Act, all laws which were in force in any part of the Union of South Africa, or in any territory in respect of which Parliament is competent to legislate, immediately prior to the commencement of this Act, shall continue in force until repealed or amended by the competent authority.”

These are words of wide import no doubt employed to ensure the continuation in the Republic of all laws in force in the Union of South Africa immediately prior to the coming into existence of the Republic, except those expressly repealed by the Act, until such time as they are repealed or amended by the authorities competent to do so under the Act.

This would accord with the general policy of the Act of 1961 as it appears clearly from the provisions of, inter alia, secs. 24, 80, 94 and 112, namely, that, except for the fact that the Union of South Africa became a Republic in terms of the Act and therefore ceased to be a British possession, and that the Crown, or the Queen or the Governor-General was replaced by the State President, everything was to continue as before, including all statutory institutions which operated in the Union of South Africa. In terms of sec. 24 (2), for instance, the Senate and the House of Assembly, as constituted for the Parliament of the Union of South Africa, and in existence immediately prior to the coming into existence of the Republic, were deemed to have been duly constituted for the Parliament of the Republic, and any person elected or nominated as a member of the Senate or House of Assembly, and holding office immediately prior to the coming into existence of the Republic, was deemed to have been duly elected or nominated to the Senate or House of Assembly established by Act 32 of 1961. See also secs. 24 (4), 24 (5) and 24 (6) which provide, inter alia, for the disposal by the Parliament of the Republic of matters partly dealt with by the Union Parliament.

Having regard to these considerations, there can be no doubt that the Colonial Courts of Admiralty Act, 1890, which was a law in force in the Union of South Africa immediately prior to the coming into existence of the Republic, was intended by the Legislature to be included within the ambit of sec. 107 of Act 32 of 1961. The argument on behalf of the appellants that, because by Act 32 of 1961 the Union of South Africa ceased to be a British possession, the words “subject to the provisions of this Act” in sec. 107 have the effect of excluding from its ambit laws which were in force in the Union of South Africa by virtue of the fact that it was a British possession, cannot be sustained. It was precisely by reason of the constitutional changes brought about by Act 32 of 1961 that the enactment of sec. 107 thereof became necessary, and it would be strange indeed if the constitutional change of the Union of South Africa from a British possession to a republic was to have the effect of rendering sec. 107 inoperative in

relation to a law which was in force in the Union of South Africa by virtue of its having been a British possession.

The more difficult question is whether, even if the Colonial Courts of Admiralty Act, 1890, continues in force in the Republic by reason of the provisions of sec. 107 of Act 32 of 1961, that Act can operate to confer upon Courts of law in the Republic the status and jurisdiction of Colonial Courts of Admiralty. It is clear that sec. 2 (1) of the 1890 Act in terms confers such status and jurisdiction only upon Courts of law in a British possession, and counsel for the respondent was constrained to concede that, unless that section of the Act as extended to the Republic by sec. 107 of Act 32 of 1961 is construed to refer to Courts of law in the Republic, it cannot be read as conferring upon such Courts the status and jurisdiction of Colonial Courts of Admiralty.

The Colonial Courts of Admiralty are the successors to the Vice-Admiralty Courts which were abolished by sec. 17 of the Colonial Courts of Admiralty Act, 1890, but subject to the provisions of that Act. The Vice-Admiralty Courts exercised the judicial functions of the Lord High Admiral by whom they were established in the United Kingdom and its dependencies. (*Crooks & Co. v Agricultural Co-operative Union Ltd.*, 1922 AD 423). The jurisdiction exercised by the Vice-Admiralty Courts was commonly that of the High Court of Admiralty (*The Yuri Maru: The Woron*, 1927 A.C. 906 at p. 912), which exercised concurrent jurisdiction with Vice-Admiralty Courts abroad (*The Peerless*, (1860) 30 Lush. 167 E.R. 16). All Admiralty Courts administer English Admiralty law. (*Currie v McKnight*, 1897 A.C. 97 at p. 101, and *Crooks & Co.*'s case, *supra* at pp. 429-430, 432 et seq.).

Having regard to these features and to the origin and historical development in general of Admiralty Courts as sketched in the judgments in *Crooks & Co.*'s case, *supra*, and the cases cited therein, it seems clear that Colonial Courts of Admiralty were by their very nature primarily intended to operate only in British possessions. The existence of such Courts administering English Admiralty law in a foreign country, such as the Republic of South Africa, would therefore be an anachronism; an anachronism which, however, seems to be perpetuated, in part, by the Admiralty Jurisdiction Regulation Act, 5 of 1972, of the Republic of South Africa. That Act which, we are informed, has not yet come into operation, provides for the repeal of the Colonial Courts of Admiralty Act, 1890, in so far as it applies in relation to the Republic. Sec. 1 of the Act provides that:

“The powers and jurisdiction of the courts of admiralty of the Republic referred to in the Colonial Courts of Admiralty Act, 1890 (53 and 54 Victoria, C. 27) of the United Kingdom shall, as from the commencement of this Act, and notwithstanding the repeal of that Act by this Act, vest in the provincial and local divisions of the Supreme Court of South Africa.”

It follows from this, I think, that the powers and jurisdiction thus conferred upon the several Divisions of the Supreme Court will still have to be determined by reference to the Act of 1890.

In enquiring whether the Colonial Courts of Admiralty Act, 1890, applies in relation to the Republic, no regard can be had to the assumption made by Parliament in Act 5 of 1972 that it does, for, if the assumption is erroneous in law, it cannot alter the law (*Ex parte Swirsky*, 1930 T.P.D. 370 at p. 372), and, in enquiring whether the assumption is correct, the assumption itself cannot be of any assistance.

It obviously never was the intention of the British Parliament, in enacting the Colonial Courts of Admiralty Act, 1890, that the status and jurisdiction of Colonial Courts of Admiralty be conferred on Courts of law in any country other than a British possession, and it is indeed difficult, if not impossible, to apply some of the provisions of the 1890 Act, such as secs. 8 and 9, in relation to any country which is not a British possession. We are, however, not here concerned with the intention of the Parliament at Westminster in enacting the 1890 Act, but with the intention of the Parliament of the Union of South Africa in extending to the Republic the provisions of the 1890 Act by sec. 107 of Act 32 of 1961, for since South Africa ceased to be a British possession and became a Republic it is by the will of the Union Parliament, and not of the British Parliament, that the 1890 Act applies in relation to the Republic.

The 1890 Act would have ceased to apply in relation to South Africa when the Union became a Republic and ceased to be a British possession. What then was the intention of the Union Parliament in providing by sec. 107 of Act 32 of 1961 for the continuation in the Republic also of the 1890 Act?

In seeking an answer to this question, the general policy of Act 32 of 1961 cannot be overlooked. As already indicated that **policy was that, subject to the specific exceptions mentioned, everything was to continue exactly as before, and that all statutory institutions which operated in the Union of South Africa immediately prior to the commencement of the Act, were to continue to operate in the Republic. If that was the intention of the Union Parliament it would be going against that intention to hold that Parliament did not intend to provide for the continued functioning in the Republic of Courts of Admiralty under the provisions of the Colonial Courts of Admiralty Act, 1890.** If Parliament did not, in extending to the Republic the provisions of the Colonial Courts of Admiralty Act, 1890, contemplate the continued functioning in the Republic of Admiralty Courts under the provisions of that Act, and if the words “every court of law in a British possession” in sec. 2 (1) of that Act are to be given their literal meaning, the extension of the Act to the Republic would be meaningless and a nullity. In *Salmon v Duncombe*, (1886) 11 App. Cas. 627 at p. 634, Lord HOBHOUSE, in the Privy Council, said:

“It is, however, a very serious matter to hold that when the main object of a statute is clear, it shall be reduced to a nullity by the draftman’s unskillfulness or ignorance of law. It may be necessary for a Court of Justice to come to such a conclusion, but their Lordships hold that nothing can justify it except necessity or the absolute intractability of the language used.”

If sec. 3 of the Act 32 of 1961, which provides for the construction of pre-Republican laws, had included a provision that any reference in any law in force in the Union of South Africa immediately prior to the commencement of Act 32 of 1961 to a “British possession” shall be construed as a reference to the Republic, the matter would have been clear. It would, however, be a serious matter to hold that the extension to the Republic of the Colonial Courts of Admiralty Act, 1890, by sec. 107 of Act 32 of 1961 should be reduced to a nullity where, though the intention of the Legislature is clear, the necessity for such a provision as aforesaid was overlooked. (Cf. also *R. v Vasey*, (1905) 2 K.B. 748, and *R. v Ettridge*, (1909) 2 K.B. 24). The necessity sometimes to modify or vary the words of a statute to give effect to the clear intention of the Legislature was referred to by DE VILLIERS, J.A., in *Principal Immigration Officer v Hawabu and Another*, 1936 AD 26 at p. 31, where the learned Judge of Appeal said:

“It is true that, even where the words of an Act are capable of one meaning only, there is an exceptional class of extreme cases in which courts of law have felt themselves compelled to ‘modify’ or ‘cut down’ or ‘vary’ the words used by the Legislature. In a sense this might be called amputation rather than interpretation. This process has been applied to statutory enactments in a few cases, such as *Storm & Co. v Durban Municipality*, 1925 AD 49 at p. 55; *Brown v Brown*, 1921 AD 484; *R. v Venter*, 1907 T.S. 910.”

In *Venter’s case*, supra, INNES, C.J., stated the principle thus -

“that when to give the plain words of the statute their ordinary meaning would lead to an absurdity so glaring that it could never have been contemplated by the Legislature, or where it would lead to a result contrary to the intention of the Legislature, as shown by the context or by such other considerations as the Court is justified to take into account, the Court may depart from the ordinary effect of the words to the extent necessary to remove the absurdity and to give effect to the true intention of the Legislature”.

Applying these principles to the case before us, **it seems to me that we are bound to construe the words “every court of law in a British possession” in sec. 2 (1) of the Colonial Courts of Admiralty Act, 1890, in its application in relation to the Republic, as a reference to “every court of law in the Republic”. That being so, sec. 2 (1) of the Colonial Courts of Admiralty Act, 1890, as extended to the Republic by sec. 107 of Act 32 of 1961, does operate to confer upon the several Divisions of the Supreme Court of South Africa the status and jurisdiction of Colonial Courts of Admiralty.**

For these reasons the appeal fails and is dismissed with costs, including the costs of two counsel, such costs to be paid by the appellants jointly and severally, the one paying the others to be absolved.”

Trivett & Co, (Pty) Ltd & Others v WM Brandt's Sons & Co Ltd & Others
1975 (3) SA 423 (A) (emphasis added)

Admiralty Jurisdiction Regulation Act 5 of 1972, as amended in South Africa to November 1979.

Summary: This Act ([RSA GG 3406](#)) requires the High Court, when sitting as a court of admiralty, to refer to the law of England. **Note that it was never brought into force in respect of either South Africa or SWA.**

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.” Section 6 states “This Act shall be called the Admiralty Jurisdiction Regulation Act, 1972, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.” No such Proclamation was issued, meaning that the Act was never in force in South West Africa or in independent Namibia.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended. The Act was repealed in its entirety in South Africa by the *Admiralty Jurisdiction Regulation Act 105 of 1983* ([RSA GG 8891](#)), which was not made applicable to SWA.

In terms of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, a reference to the Republic is to be construed as a reference to the territory of South West Africa. However, section 3(1)(r) of the transfer proclamation excluded sections 1 and 2 of this Act from the operation of section 3(1) of the General Proclamation. Thus, in those sections, prior to Namibian independence, “Republic” retained the meaning of the Republic of South Africa while in sections 3 and 4, “Republic” was to be construed as referring to South-West Africa.

Cases:

Euromarine International of Mauren v The Ship Berg & Others 1984 (4) SA 647 (N) at 665E

Freiremar SA v The Prosecutor-General of Namibia & Another 1996 NR 18 (HC) at 28.

See also **SHIPPING**.

AGRICULTURE

Cold Storage Works and Abattoirs Proclamation 50 of 1921.

Summary: This Proclamation ([OG 74](#)) 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 ([OG 101](#)) (which repeals section 5), and Ord. 13/1928 ([OG 283](#)) (which repeals section 4).

Regulations: No regulations under this Proclamation could be located.

Agricultural Produce Export Ordinance 13 of 1928.

Summary: This Ordinance ([OG 283](#)) regulates the export of agricultural produce and meat. It was brought into force on 1 April 1929 by Proc. 4/1929 ([OG 309](#)) and extended to the Rehoboth Gebiet by the Rehoboth *Gebiet* (Extension of Laws Proclamation 12 of 1930 ([OG 365](#))).

Regulations: Pre-independence regulations have not been researched.

Notices: Subsidiary notices relating to butter are contained in Proc 35/1929, as amended by Proc. 3/1930 and Proc. 61/1931 ([OG 441](#)). It is not clear if these have any ongoing relevance.

Karakul Sheep Farming Industry Protection Proclamation 31 of 1930.

Summary: This Proclamation ([OG 388](#)) governs the export of Karakul sheep capable of breeding.

Amendments: The Proclamation is amended by Ord. 11/1938 ([OG 748](#)), Proc. 24/1951 ([OG 1600](#)) and Ord. 25/1952 ([OG 1690](#)).

It was extended to the Rehoboth Gebiet by Proc. 30/1963 ([OG 2474](#)).

Regulations: This Proclamation contains no authorisation for regulations.

Tobacco Growers Protection Ordinance 2 of 1933.

Summary: This Ordinance ([OG 515](#)) regulates the importation and sale of tobacco used for farming purposes.

Amendments: The Ordinance is amended by Ord. 7/1933 ([OG 529](#)).

Karakul Pelt Export Duty Proclamation 34 of 1939.

Summary: This Proclamation ([OG 801](#)) regulates the export of karakul pelts. It seems

to have been superseded by the Karakul Pelts and Wool Act 14 of 1982.

Amendments: The Proclamation is amended by Ord. 5/1941 ([OG 897](#)), Ord. 7/1943 ([OG 1055](#)), Ord. 7/1953 ([OG 1755](#)), Ord. 13/1957 ([OG 2072](#)) and Ord. 9/1965 ([OG 2614](#)).

Regulations: Pre-independence regulations have not been researched.

Cattle Improvement Consolidation Ordinance 14 of 1941.

Summary: This Ordinance ([OG 898](#)) makes provision for the establishment and regulation of “cattle improvement areas”.

Amendments: The Ordinance is amended by Proc. 14/1941 ([OG 905](#)).

Regulations: Pre-independence regulations have not been researched.

Abattoirs Restriction Proclamation 8 of 1944.

Summary: This Proclamation ([OG 1097](#)) places restrictions on the types of animals which can be slaughtered in abattoirs.

Regulations: The Proclamation does not include authorisation for regulations.

Bonemeal and Superphosphates Control Proclamation 37 of 1944.

Summary: This Proclamation ([OG 1147](#)) 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 and Agricultural Remedies Act 36 of 1947*.

Amendments: The Proclamation is amended by Proc. 33/1947 ([OG 1322](#)).

Regulations: The Proclamation does not include authorisation for regulations.

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

Summary: This Act ([SA GG 3834](#)) governs the registration, importation, sale and use of the items listed in the title. It was originally called the *Fertilizers, Farm Feeds, Seeds and Remedies Act 36 of 1947*. However, the name was changed several times by various amendments to the Act. The Act repeals the *Fertilizers, Farm Foods, Seeds and Pest Remedies Act 21 of 1917*. The RSA *Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Amendment Act 17 of 1972* (RSA GG 3459), which made this Act applicable to South West Africa, also repealed the SWA Fertilisers, Farm Foods, Seeds and Pest Remedies Ordinance 15 of 1930.

Applicability to SWA: Section 1, as added in 1972, defines “Republic” to include “the territory of South West Africa”. Section 24, as inserted in 1972, 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 regulations) 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.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Fertilizers, Farm Feeds, Seeds and Remedies Amendment Act 48 of 1950* ([SA GG 4422](#))
- *Seeds Act 28 of 1961* ([SA GG 6673](#))
- *Fertilizers, Farm Feeds and Remedies Amendment Act 60 of 1970* ([RSA GG 2845](#))
- *Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Amendment Act 17 of 1972* ([RSA GG 3459](#))
- *Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Amendment Act 24 of 1977* ([RSA GG 5461](#))

Section 15 of this amending Act, which amends section 16 of Act 36 of 1947, was brought into force in South Africa on 3 October 1980 by RSA Proc. R.189/1980 ([RSA GG 7243](#)). This date is after the date of transfer of Act 36 of 1947. Therefore, in terms of section 3(4) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, section 15 of the amending Act was not thereby brought into force in South West Africa because the proclamation in question did not contain an express statement that it was issued with the consent of the Administrator-General and applies also in the territory.

The Act was amended by the *Animal Slaughter, Meat and Animal Products Hygiene Amendment Act 13 of 1975* ([RSA GG 4632](#)). However, this Act was never brought into force in South Africa or South West Africa. The portions of the amending Act relevant to Act 36 of 1947 (section 16 and the Schedule to Act 13 of 1975) were repealed by the *Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Amendment Act 4 of 1980* ([RSA GG 6907](#)), but this repeal was not effective in respect of South West

Africa because it occurred after the date of transfer and was not made expressly applicable to South West Africa.

After Namibian independence, the Medicines and Related Substances Control Act 13 of 2003 ([GG 3051](#)) amended sections 1, 3, 7, 15, 23, and 26, deleted section 7(2)(b) and amended the short title of the Act – but these amendments were all repealed by the Medicines and Related Substances Control Amendment Act 13 of 2003 ([GG 3051](#)). These amendments would have removed “stock remedies” from the Act’s coverage. However, section 47 of Act 13 of 2003 was amended by the Namibian Medicines and Related Substances Control Amendment Act 8 of 2007 ([GG 3968](#)), brought into force on 1 August 2008 by GN 187/2008 ([GG 4091](#)). The amended section states in relevant part that “all amendments to the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947), contained in the Schedule are repealed”. Thus, it appears that the amendments to Act 36 of 1947 by Act 13 of 2003 are no longer applicable.

Regulations: Pre-independence regulations which appear to remain in force are listed below. Note that section 23 of the Act, which gives the Minister power to make regulations, was excluded from transfer by section 3(1)(g) of the transfer proclamation. Thus, regulations which came into force after the date of transfer were applicable to SWA.

Note also that there are no savings clauses for regulations made under the laws repealed by this Act or by the *Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Amendment Act 17 of 1972* which applied it to SWA.

Regulations on returns to be rendered by manufacturers of fertilizers are contained in SA GN 1522/1951 (SA GG 4636). No amendments or repeals in respect of these regulations have been located.

Regulations on returns by manufacturers and importers of farm feeds and prohibitions in connection with farm feeds of animal origin are contained in SA GN 1229/1955 (SA GG 5491), as amended by SA GG 643/1956 (SA GG 5662), which substitutes Schedule 1.

Regulations on the registration and sale of agricultural remedies are contained in SA GN 1243/1951 (SA GG 4614). No amendments or repeals in respect of these regulations have been located.

Regulations relating to the registration and sale of stock remedies are contained in RSA GN R. 857/1971 (RSA GG 3121), as amended by RSA GN R.1012/1971 (RSA GG 3153), RSA GN R.2296/1977 (RSA GG 5800) (which repeals regulation 10), RSA GN R.1679/1978 (RSA GG 6133), RSA GN R.2042/1980 (RSA GG 7243) and RSA GN R.1449/1983 (RSA GG 8783).

Regulations relating to the registration, importation, manufacture, movement and sale of farm feeds and the registration of sterilizing plants are contained in RSA GN R.987/1973 (RSA GG 3927), as amended by RSA GN R.1373/1973 (RSA GG 3994), RSA GN R.1996/1974 (RSA GG 4478) (which erroneously cites RSA GN R.897/1973 as being the original regulations), RSA GN R.254/1976 (RSA GG 4984), RSA GN R.2296/1977 (RSA GG 5800), and RSA GN R.1679/1978 (RSA GG 6133). RSA GN R.2296/1977, which contains a provision repealing regulation 3 of these regulations, was repealed by RSA GN R.1449/1983 (RSA GG 8783). These regulations were *repealed except insofar as they relate to sterilizing plants* by the regulations relating to farm feeds contained in RSA GN R.1359/1980 (RSA GG 7105). These 1980

regulations post-dated the relevant date of transfer, but, in addition to the exemption from transfer of the Minister's power to make regulations (as noted above), regulation 27 of these 1980 regulations states: "These regulations are made with the consent of the Administrator-General for the Territory of South West Africa and shall also apply in the Territory."

Regulations relating to the registration and sale of fertilizers are contained in GN R.799/1977 (RSA GG 5552), as corrected by RSA GN R.1371/1977 (RSA GG 5680), and as amended by RSA GN R.2296/1977 (RSA GG 5800) (which repeals regulation 6), RSA GN R. 775/1978 (RSA GG 5996), RSA GN R.473/1980 (RSA GG 6880), RSA GN R.2042/1980 (RSA GG 7243) and RSA GN R.1449/1983 (RSA GG 8783). (RSA GN R.473/1980 erroneously refers to the original regulations as being contained in RSA GN R.779 of 20 May 1977.)

Regulations relating to farm feeds are contained in GN R.1359/1980 (RSA GG 7105). These 1980 regulations post-dated the relevant date of transfer, but regulation 27 states: "These regulations are made with the consent of the Administrator-General for the Territory of South West Africa and shall also apply in the Territory." These regulations are amended by RSA GN R.1420/1981 (RSA GG 7655) and RSA GN R.1449/1983 (RSA GG 8783).

Regulations relating to agricultural remedies are contained in RSA GN R.2561/1981 (RSA GG 7934). Regulation 24 states that these regulations "(a) shall come into operation on 2 January 1982; and (b) shall apply in the territory of South West Africa and are, in so far as they thus apply, made with the consent of the Administrator-General of that territory". These regulations are amended by RSA GN R.1449/1983 (RSA GG 8783).

Regulations relating to the registration of fertilizers, farm feeds, agricultural remedies, stock remedies, sterilising plants and pest control operators, appeals and imports are contained in RSA GN R.1449/1983 (RSA GG 8783). These regulations make no specific reference to South West Africa. They are amended by RSA GN R.96/1984 (RSA GG 9035), RSA GN R.2055/1984 (RSA GG 9419) and RSA GN R.1053/1988 (RSA GG 11326).

Post-independence regulations concerning the **registration of fertilizers, farm feeds, sterilizing plants and agricultural remedies** are contained in GN 112/2007 ([GG 3863](#)), which repeals GN 202/2001 ([GG 2624](#)) and replaces GN 58/2007 ([GG 3812](#)) – which had previously repealed GN 202/2001. None of the post-independence regulations repeal any pre-independence regulations.

Repealed regulations: The following list of *repeals* of pre-independence regulations may be helpful, although it is not comprehensive.

- **Regulations on returns by manufacturers and importers of farm feeds and prohibition in connection with farm feeds of animal origin** were published in SA GN 630/1949 (SA GG 4137), but *repealed* by GN 1229/1955 (SA GG 5491).
- **Regulations in connection with the registration and sale of fertilizers** were published in RSA GN R.2105/1971 (RSA GG 3314) but *repealed* by RSA GN R.799/1977 (RSA GG 5552).
- **Regulations pertaining to the registration, importation, manufacture, movement and sale of agricultural remedies** were published in RSA GN R.538/1974 (RSA GG 4241) but *repealed* by RSA GN R.2561/1981 (RSA GG 7934).
- **Regulations relating to appeals against decisions of the Registrar** were published in RSA GN R.2296/1977 (RSA GG 5800) but *repealed* by RSA GN R.1449/1983 (RSA GG 8783).

- **Regulations relating to the importation of fertilizers, farm feeds, agricultural remedies and stock remedies** were published in RSA GN R.2042/1980 (RSA GG 7243) but *repealed* by RSA GN R.1449/1983 (RSA GG 8783).
- **Regulations relating to pest control operators** were published in RSA GN R.663/1983 (RSA GG 8617) but *repealed* by RSA GN R.1449/1983 (RSA GG 8783).

Notices: Some pre-independence notices made prior to the date of transfer appear to remain in force.

SA Proc. 204/1950 (SA GG 4435) confers upon the Secretary for Agriculture the power to prohibit by notice in the *Gazette* the acquisition, disposal or use of any Group I fertilizer, as defined in SA GN 1156/1948 (SA GG 3977).

SA GN 1156/1948 (SA GG 3977) contained regulations on the registration and sale of fertilizers, which were repealed and replaced by regulations in SA GN 2099/1955 (SA GG 5564), repealed and replaced in turn by regulations in RSA GN R.1541/1963 (RSA GG 622), repealed and replaced in turn by regulations in RSA GN R.2105/1971 (RSA GG 3314), repealed and replaced in turn by regulations in RSA GN R.799/1977 (RSA GG 5552).

SA Proc. 122/1952 (SA GG 4860) confers upon the Secretary for Agriculture the power to prohibit by notice in the *Gazette* the acquisition, disposal or use of farm feeds except on such conditions as he may determine.

Section 7*bis*, added to the Act in 1950, gave the Minister power to prohibit by notice in the *Gazette* the acquisition, disposal, sale or use of certain fertilizers, farm feeds, agricultural remedies and stock remedies. A notice was issued pursuant to section 7*bis* of the Act in SA GN 1886/1950 (SA GG 4435), but the controls on fertilizer were lifted with respect to all fertilizers *other than bonemeal* by SA GG 2392/1953 (SA GG 5172). A notice was issued pursuant to section 7*bis* of the Act in RSA GN R.1933/1970 (RSA GG 2916) prohibiting the acquisition, disposal or use of certain farm feeds without a permit. (This notice was repealed in respect of South Africa after the date of transfer by RSA GN R.472/1980 (RSA GG 6880).)

After independence, 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](#)).

Application of law: Certain farm feeds are excluded from the operation of the Act by SA Proc. 218/1948 (SA GG 4016).

Certain remedies are excluded from the operation of the Act by SA Proc. 109/1948 (SA GG 3977), as amended by SA GN 111/1951 (SA GG 4614).

Certain fertilizers are excluded from the operation of the Act by RSA GN R.1651/1977 (SA GG 5721).

Exclusions issued after the date of transfer would presumably not have applied to SWA and so are not listed here.

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 ([GG 3051](#)) 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, with Annexes as amended.

South West African Meat Industry Ordinance 39 of 1955.

Summary: This Ordinance ([OG 1959](#)) provides for the control of the meat industry and establishes the South West Africa Meat Corporation. Although technically still in force, it appears to have been superseded in some respects by the Meat Trade Control Ordinance 20 of 1962 ([OG 2409](#)), which was replaced by the Meat Industry Act 12 of 1981 ([OG 4506](#)).

Amendments: Section 39 is repealed by Ord. 7/1958 ([OG 2141](#)). See also the Financial Affairs Ordinance 8 of 1982 (*Official Gazette 23 of the Representative Authority of the Whites*), which repeals section 36 in respect of Whites.

Regulations: No search was made for regulations in terms of this Ordinance given that it appears to be obsolete.

Weeds Ordinance 19 of 1957.

Summary: This Ordinance ([OG 2087](#)) provides for the eradication of plants which are identified as “weeds” by proclamation in the *Gazette*.

Regulations: Pre-independence regulations have not been researched.

Dried Peas Control Ordinance 35 of 1957.

Summary: This Ordinance ([OG 2092](#)) regulates the supply, sale and possession of dried peas with respect to “natives”.

Regulations: No search was made for regulations in terms of this Ordinance given that it is clearly obsolete.

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

Summary: This Act ([SA GG 6673](#)) 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*. The Act repeals the RSA Dairy Industry Act 63 of 1957.

Applicability to SWA: The Act was applied to SWA only in so far as it relates to margarine, as a result of amendments made to the Act by the *Dairy Industry Amendment Act 7 of 1976* ([RSA GG 5015](#)), brought into force on 1 July 1976 by RSA Proc. R.103/1976 ([RSA GG 5161](#)). Section 1 as amended defines “Republic” as including the territory “in relation to margarine”, and the “territory” is defined as “the territory of South West Africa, including the Eastern Caprivi Zipfel”. Section 35A, inserted by Act 7 of 1976, 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 two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Dairy Industry Amendment Act 37 of 1983* ([RSA GG 8662](#)) and the *Transfer of Powers and Duties of the State President Act 97 of 1986* ([RSA GG 10438](#)) – which were not made expressly applicable to South West Africa.

The Act was repealed in South Africa, after Namibian independence, by the *Agricultural Product Standards Act 119 of 1990* ([RSA GG 12641](#)), gazetted on 13 July 1990.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Proclamation R.21 of 1961* ([RSA GG 36](#)), under the authority of section 28(1) of the Act
- *Proclamation R.293 of 1964* ([RSA GG 943](#)), under the authority of section 28(1) of the Act
- *Dairy Industry Amendment Act 34 of 1965* ([RSA GG 1079](#))
- *Dairy Industry Amendment Act 1 of 1969* ([RSA GG 2287](#))
- *Marketing Amendment Act 52 of 1969* ([RSA GG 2384](#))
- *Proclamation R.158 of 1970* ([RSA GG 2733](#)), under the authority of section 28(1) of the Act
- *Dairy Industry Amendment Act 96 of 1971* ([RSA GG 3212](#))
- *Proclamation R.194 of 1971* ([RSA GG 3238](#)), under the authority of section 28(1) of the Act
- *Dairy Industry Laws Amendment Act 32 of 1972* ([RSA GG 3492](#))
- *Dairy Industry Amendment Act 7 of 1976* ([RSA GG 5015](#)).

The Importation of Margarine Amendment Proclamation, AG 32/1978 ([OG 3754](#)), 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 the Dairy Industry Amendment Act 6 of 1997 ([GG 1685](#)).

Regulations: Regulations made in terms of the repealed RSA *Dairy Industry Act 63 of 1957* survive pursuant to section 35 of this Act provided that they “are not inconsistent with the provisions of this Act”. However, no such regulations appear to remain in force.¹

There is one set of pre-independence regulations relating specifically to margarine made under this Act. Margarine and margarine factories would also appear to fall under the general regulations on registration, inspection and sampling, noting that the definition of “dairy produce” in section 1 of the Act includes margarine.

¹ *Juta's Index to the South African Government and Provincial Gazettes* (formerly “The Windex”), 1920-1989 at 352-353.

Regulations relating to the structure, sanitation, drainage, ventilation, lighting and equipment of, the accommodation in, and the equipment, instruments, appliances and utensils to be used on premises registered in terms of the Dairy Industry Act, 1961 are contained in RSA GN R.2061/1964 (RSA GG 973), and include provision on margarine factories. These regulations were not amended in South Africa prior to the date of transfer. They were amended in South Africa after the date of transfer by RSA GN R.1254/1989 (RSA GG 11954) which was not made specifically applicable to SWA.

Regulations providing for the manner of registration, and renewal of registration, of premises under the Dairy Industry Act, 1961 are contained in RSA GN R.2062/1964 (RSA GG 973), as corrected by RSA GN R.328/1965 (RSA GG 1056) and as amended by RSA GN R.176/1971 (RSA GG 2991). They were amended in South Africa after the date of transfer by RSA GN R.1256/1989 (RSA GG 11954) which was not made specifically applicable to SWA.

Regulations prescribing the form of an inspector's order or: prohibition under the Dairy Industry Act, 1961 are contained in RSA GN R.2063/1964 (RSA GG 973). No amendments were located.

Regulations relating to the taking of samples of dairy produce for the purpose of analysis or examination under the Dairy Industry Act, 1961 are contained in RSA GN R.2070/1964 (RSA GG 973), as amended by RSA GN R.176/1971 (RSA GG 2991).

Regulations relating to the manufacture, composition, packing and marking of margarine are contained in RSA GN R.1716/1977 (RSA GG 5725, dated 2 September 1977, which was prior to the date of transfer). These regulations repeal those published in RSA GN R.1495/1971 (RSA GG 3238), as amended by RSA GN R.2186/1972 (RSA GG 3718), RSA GN R.2100/1973 (RSA GG 4074) and RSA GN R.1132/1976 (RSA GG 5194). The 1977 regulations were amended in South Africa only after the date of the transfer proclamation (20 December 1977), by RSA GN R. 2121/1985 (RSA GG 9935), which was corrected by RSA GN R. 2850/1985 (RSA GG 10048); this amendment is not made explicitly applicable to SWA. These regulations were repealed in South Africa by RSA GN 562/1990 (RSA GG 12341), dated 16 March 1990 – which was after the date of transfer and would not have been effective in SWA. No repeal in respect of SWA has been located, so these regulations appear to remain in force.

Regulations providing for the manner of registration, and renewal of registration, of premises under the Dairy Industry Act, 1961 (in respect of premises under section 3, which covers margarine) were contained in RSA GN R.2080/1964 (RSA GG 973). However, this notice was cancelled by GN. R.100/1965 (RSA GG 1011), which explained that they were inadvertently published. RSA GN R.2080/1964 was also subsequently repealed by RSA GN R.1254/1989 (RSA GG 11954), which was not made specifically applicable to SWA.

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

Summary: This Act ([RSA GG 1778](#)) provides for the control and promotion of the marketing of canned fruit on export markets. It was brought into force in both South

Africa and South West Africa on 16 February 1968 by RSA Proc. R. 22 of 1968 ([RSA GG 1982](#)), read together with section 11 of the Act. It repeals the *Canned Fruit and Vegetables Export Control Act 66 of 1956* ([SA GG 5715](#)).

Note: This Act repeals the *Canned Fruit and Vegetables Export Control Act 66 of 1956* ([SA GG 5715](#)), which applied to South West Africa by virtue of the definition of “the Union” in section 1, which included “the territory of South-West Africa”, and by virtue of section 7, which stated: “This Act shall apply also in the territory of South-West Africa.” Act 66 of 1956 was amended by the *Canned Fruit and Vegetables Export Control Amendment Act 83 of 1957* ([SA GG 5908](#)), the *Canned Fruit and Vegetables Export Control Amendment Act 28 of 1958* ([SA GG 6109](#)) and the *Canned Fruit and Vegetables Export Control Amendment Act 69 of 1959* ([SA GG 6259](#)); Act 69 of 1959 expressly made all three amending Acts applicable to South West Africa. The three amending Acts do not seem to have been repealed in South West Africa or Namibia; thus, they remain in force, but they have no independent relevance given the repeal of the principal Act which they amended.

Applicability to SWA: Section 11 of the Act originally stated: “This Act 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 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.”

Section 11 (as substituted by *Act 48 of 1971*, [RSA GG 3135](#), which was brought into force on 2 August 1971 by Proc. R.168 of 1971, [RSA GG 3221](#)), 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**. The only amendment to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Canned Fruit Export Marketing Amendment Act 15 of 1981* ([RSA GG 7436](#)) – was not made expressly applicable to SWA. The Act and its amendments were repealed in South Africa by the *Marketing Amendment Act 79 of 1987* ([RSA GG 10956](#)), which was not made expressly applicable to SWA.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Canned Fruit Export Marketing Amendment Act 48 of 1971* ([RSA GG 3135](#))
- *Finance Act 111 of 1977* ([RSA GG 5663](#)).

Regulations: There is no savings clause regarding regulations made under the repealed Act. Regulations on meetings of the South African Canned Fruit Export Board were made in terms of this Act in South Africa prior to independence and prior to the date of transfer, and are contained in RSA GN R.1336/1971 ([RSA GG 3224](#)), which withdraws RSA GN R.660/1968 (RSA GG 2053).

Notices: Certain canned products are declared to be canned fruit for the purposes of the Act in RSA GN R.2230/1971 ([RSA GG 3327](#)), which withdraws RSA GN R. 819/1968 (RSA GG 2072).

A notice on export licences for canned fruit, which covered both RSA and SWA, was issued in terms of section 8 of the Act in RSA GN 723/1978 ([RSA GG 5981](#)) (dated 14

April 1978, just before the date of transfer). This notice is amended in South Africa by RSA GN R.1384/1980 ([RSA GG 7112](#)), which postdates the date of transfer but makes specific mention of SWA (without discussing its applicability to SWA explicitly).

This notice withdraws RSA GN R.1846/1975 (RSA GG 4856), which withdrew RSA GN R.1933/1971 (RSA GG 3296), which in turn withdrew RSA GN R.818/1968 (GG 2072).

Note: Canned fruit is also covered by other laws listed under AGRICULTURE.

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

Summary: This Act ([RSA GG 2107](#)) 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. It repeals the *Marketing Act 26 of 1937* and its amendments.

Applicability to SWA: Section 99 of the original Act stated “The provisions of this Act, in so far as they relate to karakul pelts, shall also apply in the territory of South-West Africa.” Section 99(1), as amended 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.” In definitions inserted by *Act 78 of 1971*, “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 published under the Act in Proclamation R.172 of 1968 ([RSA GG 2112](#)), and the Wool Scheme published under the Act in Proc. R.155 of 1972 ([RSA GG 3585](#)) were excluded from the operation of section 3(1) of the General Proclamation, meaning that they were not transferred to SWA. However, the Executive Powers (Agricultural Economics and Marketing) Transfer Proclamation (AG 18/1977) was amended by the Karakul Scheme Amendment Proclamation AG 41 of 1978 ([OG 3771](#)), to remove the references to the Karakul Scheme from this exemption with effect from 1 July 1978.

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* ([RSA GG 10956](#)) 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 following pre-independence South African amendments were applicable to SWA –

- *Marketing Amendment Act 52 of 1969* ([RSA GG 2384](#))
- *Marketing Amendment Act 69 of 1970* ([RSA GG 2864](#))
- *Marketing Amendment Act 78 of 1971* ([RSA GG 3189](#))
- *Marketing Amendment Act 68 of 1972* ([RSA GG 3558](#))
- *Marketing Amendment Act 31 of 1973* ([RSA GG 3860](#))
- *Marketing Amendment Act 73 of 1974* ([RSA GG 4501](#))
- *Marketing Amendment Act 38 of 1975* ([RSA GG 4701](#))
- *Marketing Amendment Act 50 of 1976* ([RSA GG 5075](#))
- *Marketing Amendment Act 109 of 1977* ([RSA GG 5661](#))

This Act came into force on its date of publication (20 July 1977), with the exception of section 10 of the amending Act (which amended section 28 of the Act), which came into force on 1 July 1978, after the date of transfer to South West Africa and so was not applicable to South West Africa.

Schedule 1 of the Act was amended in South Africa after the date of transfer by RSA Proc. 119/1986 (RSA GG 10279), RSA GN 1177/1987 (RSA GG 10753), RSA GN 2579/1987 (RSA GG 11037) and RSA GN 119/1989 (RSA GG 1673) – but none of these amendments were made explicitly applicable to SWA.

The Meat Industry Act 12 of 1981 ([OG 4506](#)) repealed the Act insofar as it relates to controlled products, which it defines as being “livestock, meat or meat products”.

The Karakul Pelts and Wool Act 14 of 1982 ([OG 4707](#)) repealed the Act insofar as it relates to karakul pelts or wool.

The Marketing Amendment Act 19 of 1980 ([OG 4293](#)) amends section 46D.

Regulations: Section 100(2) of the Act includes a savings provision in respect of regulations issued under the repealed *Marketing Act 26 of 1937* and its amendments. Pre-independence regulations have not been researched

The **import of vegetable oil** is governed by AG 31/1979 ([OG 4031](#)) (as amended by AG 20/1986 ([OG 5182](#))), which is issued under the authority of the principal Act).

See also AG GN 112/1980 ([OG 4160](#)), read together with the Marketing Amendment Act 19 of 1980 ([OG 4293](#)) (re: levies and regulations); section 2 of Act 19 of 1980 states: “The general levy imposed by Government Notice AG. 112 of 1980 and the directions, regulations and determinations made thereby, shall be deemed to have been so imposed and made with effect from 17 July 1980.”

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

Summary: This Act ([RSA GG 5077](#)) 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**. None of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Abattoir Industry Amendment Act 69 of 1982* ([RSA GG 8214](#)), the *Abattoir Industry Amendment Act 32 of 1984* ([RSA GG 9169](#)) and the *Transfer of Powers and Duties of the State President Act 97 of 1986* ([RSA GG 10438](#)) – were made expressly applicable to SWA.

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) should be construed as a reference to the Administrator-General.

Regulations: General regulations are contained in RSA GN R.93/1977 ([RSA GG 5387](#)), as amended by RSA GN R.625/1977 ([RSA GG 5516](#)) and RSA GN R.1122/1977 ([RSA GG 5607](#)). Unless there was a repeal in SWA which has not been located, these regulations remain in force in Namibia.

These regulations were substituted *after the date of transfer* in South Africa by RSA GN R.2555/1977 ([RSA GG 5835](#)), dated 23 December 1977, meaning that this substitution did not apply to SWA.

Application of law: RSA Proclamation R.15/1977 ([RSA GG 5387](#)) declares South West Africa to be a proclaimed area for purposes of the Act.

RSA Proclamation R.624/1977 ([RSA GG 5516](#)) determines, in terms of section 35 read with section 43(b), that Chapter I of the said Act does not apply to abattoirs where not more than eight units are slaughtered per month.

RSA Proclamation R. 63/1977 ([RSA GG 5486](#)) also limits the application of the Act, in terms of section 42 of the Act. (In South Africa, this notice was amended after the date of transfer by RSA GN R.70/1980 ([RSA GG 6928](#)), which makes no mention of SWA.)

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

Summary: This Act ([RSA GG 5462](#)) provides for the development and promotion of the livestock industry and regulates breeding. There is some question as to whether it is in force in Namibia. The 1993 judgement of *S v Lofty-Eaton & Others (1)* 1993 NR 370 (HC) (dated 1 November 1993) 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. However, the Act was amended in independent Namibia in 1993, and the Ministry continues to issue subsidiary notices under the Act as if it were in force.

Applicability to SWA: Prior to the 1993 amendments to the Act, section 1 of the Act defined “Republic” to include “the territory”, which was defined as “the territory of South West Africa”. Section 35 stated “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 South African *Government Gazette*.

Portions of the Act were brought into force in South Africa as of 1 May 1979 by RSA Proc. R.80/1979 ([RSA GG 6416](#)):

I hereby declare that all the provisions of the said Act except –

- (a) the definitions of “Stud Book Association” and “livestock breeders’ society” in section 1;
- (b) section 9(3)(b) in so far as it relates to other animals than those of which the pedigree and performance records have been evaluated in terms of a scheme, irrespective of whether the scheme concerned was established under the said Act or not;
- (c) sections 18, 19, 20, 21, 22, 23, 30(1)(q), (r) and (s), 34(1)(k) and 36;
- (d) sections 30(1)(i) in so far as it relates to section 30(1)(q), (r) and (s); and
- (e) section 37 in so far as it relates to (i) the Registration of Pedigree Livestock Act, 1957 (Act 28 of 1957); (ii) the Registration of Pedigree, Livestock Amendment Act, 1962 (Act 27 of 1962); and (iii) the Registration of Pedigree Livestock Amendment Act, 1967 (Act 1 of 1967):

shall come into operation on 1 May 1979.

The State President 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 part 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 either RSA or SWA before it was brought into force and so did not fall under section 3(4) of the General Proclamation. 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), 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* ([RSA GG 9168](#)) – 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.)

After independence, the Act was substantially amended by Act 25/1993 ([GG 753](#)), 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.

The nature 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).

Amendments: As noted above, in South Africa, the Act was amended after the relevant date of transfer, and prior to Namibian independence, by the *Livestock Improvement Amendment Act 31 of 1984* ([RSA GG 9168](#)) – which was not made expressly applicable to SWA. This amending Act was to be brought into force by Proclamation of the State President. It was brought into force in part as of 29 June 1984 by RSA Proc. R.107/1984 ([RSA GG 9277](#)):

Under the powers vested in me by section 23 of the Livestock Improvement Amendment Act, 1984 (Act 31 of 1984), I hereby declare that the provisions of sections 1, 3, 15, 16, 17, 18, 19, 20(h), (i), (j) and (k), 21 and 22(h) of the said Act shall come into operation on the date of publication hereof.

The remainder of the amending Act was brought into force as of 1 July 1986 by RSA Proc. R.104/1986 ([RSA GG 10288](#)):

By virtue of the powers vested in me by section 23 of the Livestock Improvement Amendment Act, 1984 (Act 31 of 1984), I hereby declare that the provisions of sections 2, 4 to 14, 20(a) to (g) and 22(a) to (g) and (i) of the said Act shall come into operation on 1 July 1986.

There is no indication that the amendments made in South Africa in terms of this amending Act were made applicable to SWA.

After Namibian independence, the Act was substantially amended by Act 25/1993 ([GG 753](#)).

Regulations: In South Africa, regulations relating to the artificial insemination and ino-vulation of animals and the import and export of animals, semen, ova and eggs were promulgated in RSA GN R.851/1979 ([RSA GG 6416](#)), effective as of 1 May 1979. These regulations *post-date* the relevant date of transfer, coming into force at the same time as the Act came into force in part in South Africa, *but they have been amended in independent Namibia*. Prior to independence, these regulations were amended in South Africa by RSA GN R.1753/1979 (RSA GG 6620), RSA GN R.580/1981 (RSA GG 7494), RSA GN R.516/1982 (RSA GG 8111), RSA GN R.568/1983 (RSA GG 8604) and RSA GN R.1109/1985 (RSA GG 9744). After independence, they were amended by GN 60/1993 ([GG 653](#)). The status of this regulation set in Namibia, like the status of the Act, is unclear.

In South Africa, this set of regulations was repealed and replaced, prior to the date of Namibian independence, by RSA GN R.1181/1986 (RSA GG 10288). Like the 1979 regulations, the 1986 regulations were issued in terms of section 34(1) of the Act

(which was not excluded from transfer) and make no reference to SWA. Prior to Namibian independence, the 1986 regulations were corrected by RSA GN R.1441/1986 (RSA GG 10341), amended by RSA GN R.1245/1987 (RSA GG 10759), corrected by RSA GN R.1305/1987 (RSA GG 10779) and RSA GN R.1536/1987 (RSA GG 10827), and amended by RSA GN R.1602/1989 (RSA GG 12024) and by RSA GN R.2506/1989 (RSA GG 12181). However, it would seem that these regulations were not applicable to SWA because of the effect of the relevant transfer proclamation – which is reinforced by the fact that the previous set of regulations is the one which has been amended in Namibia since independence.

Notices: See AG GN 61/1979 ([OG 3991](#)), concerning kinds and breeds of animals to which the Act applies.

The following have been declared to be breeds of animals in Namibia (with capitalisation reproduced as it appears in the respective Government Notices):

dorper breed-GN 238/2009 ([GG 4391](#)).
Gellaper breed-GN 63/2010 ([GG 4451](#)).
indigenous goat breed-GN 220/2010 ([GG 4574](#))
nguni breed-GN 2/2011 ([GG 4645](#))
Damara Sheep breed-GN 68/2011 ([GG 4725](#))
Meatmaster Breed-GN 59/2014 ([GG 5455](#))
Draughtmaster Breed-GN 104/2015 ([GG 5760](#))
Veldmaster Breed-GN 105/2015 ([GG 5760](#))
Pinto Horse-GN 38/2017 ([GG 6254](#))
Boerboel Breed-GN 83/2017 ([GG 6285](#)).

The karakoel breed was renamed swakara breed by GN 202/2011 ([GG 4823](#)).

Notices have been issued under this Act in 2005 (GN 61/2005, [GG 3439](#)), 2006 (GN 172/2006, [GG 3721](#)), 2010 (GN 144/2010, [GG 4530](#)) and 2011 (GN 171-172/2011, [GG 4792](#); GN 192/2011, [GG 4808](#)), issuing certificates of incorporation to livestock breeders' societies.

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 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 **[OG 35]**, 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. **[With respect, this contention appears to be incorrect. Section 3(1)(h) of the transfer proclamation excluded section 38 from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the reference to the State President in section 38 was not to be construed as referring to the Administrator-General.]**

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 ([OG 4506](#)) 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 repeals the Meat Trade Control Ordinance 20 of 1962 ([OG 2409](#)). The Act was brought into force by AG 30/1981 ([OG 4553](#)), and applied to Rehoboth by the Meat Industry in Rehoboth Act 5 of 1986 (Rehoboth) (Official Gazette 152 of Rehoboth, dated 10 April 1987).

Amendments: Prior to independence, the Act was amended by Act 3/1987 ([OG 5349](#)).

Act 21/1992 ([GG 466](#)), which was brought into force 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 ([GG 3698](#)) which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends sections 4 and 8, and deletes sections 5, 7(1) and 15.

Regulations: Regulations made in terms of the Meat Trade Control Ordinance 20 of 1962, which was repealed by this Act, survive pursuant to section 26(2) of this Act. However, pre-independence regulations have not been comprehensively researched.

General regulations made under this Act are contained in AG GN 153/1981 ([OG 4554](#)) as amended by GN 110/1992 ([GG 468](#)), GN 126/1992 ([GG 482](#)) and GN 4/2013 ([GG 5119](#)).

Notices: A notice of certain record-keeping requirements and prohibitions relating to livestock is contained in General Notice 8/1982 ([OG 4613](#)), as amended by General Notice 90/1982.

AG GN 20/1983 ([OG 4735](#)) prohibited the import and export of certain controlled products, but was withdrawn by GN 129/2004 ([GG 3214](#)).

A notice concerning record-keeping in respect of controlled products and livestock is contained in General Notice 3/1993 ([GG 567](#)).

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](#)).

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

Levies are periodically set in terms of the Act but have not been recorded here.

Cases: *Matador Enterprises (Pty) Ltd v Minister of Trade and Industry & Others* 2015 (2) NR 477 (HC) (discusses *in dicta* the relationship between this Act and the more generalised Import and Export Control Act 30 of 1994).

Notes: See the related Swameat Corporation Ordinance 2 of 1986 (*Official Gazette 75 of the Representative Authority of the Whites*), which has since been repealed by the Meat Corporation of Namibia Act 1 of 2001 ([GG 2522](#)).

Karakul Pelts and Wool Act 14 of 1982.

Summary: This Act ([OG 4707](#)) establishes a Karakul Board and regulates classification, sale, marketing, packing, and the import and export of karakul pelts and wool. It was brought into force by AG 30/1982 ([OG 4709](#)).

Amendments: This Act is amended by Act 15/1986 ([OG 5237](#)) and Act 22/1986 ([OG 5277](#)). The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends sections 4 and 8, and deletes sections 5, 7(1) and 16.

Regulations: Pre-independence regulations have not been researched.

Notices: 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 ([OG 5195](#)) controls the import and export of dairy products and dairy product substitutes.

Regulations: Pre-independence regulations have not been researched.

Cases: *Matador Enterprises (Pty) Ltd v Minister of Trade and Industry & Others* 2015 (2) NR 477 (HC) (Act 5 of 1986 not impliedly repealed by Import and Export Control Act 30 of 1994 because of its specialised nature, and should be the basis for controlling the import of dairy products rather than the more general 1994 legislation).

Prevention of Undesirable Residue in Meat Act 21 of 1991.

Summary: This Act ([GG 322](#)) 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 was brought into force on 28 November 1994 by Proc. 29/1994 ([GG 975](#)).

Amendments: Act 11/1994 ([GG 923](#)) amends sections 1 and 2. This amending Act is deemed to have come into operation on the date of commencement of the principal Act.

Regulations: Pre-independence regulations have not been researched. Post-independence regulations are contained in GN 219/1994 ([GG 975](#)).

Notices: Prohibited substances are listed in GN 220/1994 ([GG 975](#)), as amended by and supplemented by GN 58/2011 ([GG 4711](#)).

Agronomic Industry Act 20 of 1992.

Summary: This Act ([GG 465](#)) establishes the Namibian Agronomic Board and sets forth its powers and functions. It repeals the Agronomic Industry Proclamation, AG 11/1985. The Act was brought into force on 5 October 1992 by Proc. 33/1992 ([GG 496](#)).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 1, 4, 5, 7 and 8 and deletes section 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, the Act establishes the “Namibian Agronomic Board”.

Regulations: Regulations made under the repealed Proclamation survive under section 25(2) of this Act, but none have been located as yet.

In terms of the current Act, regulations relating to the grading and classification of **maize** are contained in GN 71/1994 ([GG 854](#))

Regulations relating to the composition and quality of **pearl millet (mahangu)** products are contained in GN 97/2016 ([GG 6015](#)).

Notices: Notices and other actions under the repealed Proclamation survive under the new Act. The pre-independence notices are not comprehensively recorded here, but one which was referred to in post-independence case law is GN 58/1986 (OG 5186).

Standards for maize products in terms of section 19(1) of the Act are contained in GN 72/1994 ([GG 854](#)).

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 levies currently in force are contained in GN 147/2002 ([GG](#)

[2802](#)), GN 116/2003 ([GG 2990](#)) and GN 111/2008 ([GG 4047](#)).

Paragraph 3 of the Schedule to GN 147/2002 is amended by GN 125/2012 ([GG 4947](#)). The entire Schedule to GN 147/2002 is substituted by GN 268/2014 ([GG 5645](#)), which repeals GN 125/2012.

GN 116/2003 is amended by GN 36/2015 ([GG 5681](#)).

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

Appointments: The appointment of agents to assist the Namibian Agronomic Board with certain specified functions is announced in General Notice 247/2014 ([GG 5523](#)).

Cases: *Matador Enterprises (Pty) Ltd t/a National Cold Storage v Chairman of the Namibian Agronomic Board* 2010 (1) NR 212 (HC).

Stock Brands Act 24 of 1995.

Summary: This Act ([GG 1227](#)) consolidates and amends the laws relating to the branding of stock. It was brought into force on 9 April 1999 by GN 57/1999 ([GG 2078](#)). It repealed the Native Stock Brands Proclamation 15 of 1923 and the Stock Brands Ordinance 8 of 1931.

Amendments: Act 7/2001 ([GG 2569](#)) inserts sections 20A and 21A and amends section 22.

Regulations: There is no savings provision in respect of any regulations or notices which might have been made under the repealed laws.

Regulations made under this Act are contained in GN 73/2004 ([GG 3187](#)), which repeals the regulations in GN 58/1999 ([GG 2078](#)). Regulation 7 is amended by GN 39/2007 ([GG 3799](#)), GN 239/2009 ([GG 4391](#)) and GN 145/2015 ([GG 5783](#)).

Notices: GN 72/2004 ([GG 3187](#)) declares sheep and goats to be stock in terms of section 2.

Meat Corporation of Namibia Act 1 of 2001.

Summary: This Act ([GG 2522](#)) establishes the Meat Corporation of Namibia (“Meatco”) to establish and manage abattoirs and other meat factories. This law repeals the Swameat Corporation Ordinance 2 of 1986 (*Official Gazette 75 of the Representative Authority of the Whites*). It was brought into force on 3 May 2001 by GN 80/2001 ([GG 2521](#)).

Amendments: Act 21/2004 ([GG 3353](#)) amends sections 5 and 9 and inserts section 30A. The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 1, 5, 7, 9 and 12, and substitutes section 8.

Regulations: Regulations made under the repealed Ordinance survive under section

33(2) of this Act, but none have been located.

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

Agricultural Bank of Namibia Act 5 of 2003.

Summary: This Act ([GG 3003](#)) provides for the Agricultural Bank of Namibia (Agribank). It repeals the *Agricultural Bank Act 13 of 1944*. It was brought into force on 15 November 2003 by GN 225/2003 ([GG 3092](#)).

Amendments: Act 22/2004 ([GG 3355](#)) amends sections 7, 8, 16, 22 and 29 and substitutes section 10. The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, substitutes section 7, and amends sections 8, 10, 11, 16 and 17.

Regulations: Notices made under the repealed law survive pursuant to section 30(4) of this Act, which states: “Any notice made under a provision of a law repealed by this Act is deemed to have been made under a corresponding provision of this Act.” This savings clause does not seem to apply to regulations – and even if it did, it would have no effect since the current Act does not make any provision for regulations to be issued.

Notices: Notices made under the repealed law survive pursuant to section 30(4) of this Act (quoted above). Certain activities are declared to be “activities related to agriculture” as defined in section 1 of the Act in GN 109/2006 ([GG 3672](#)).

Appointments: The re-appointment of board members is announced in GN 191/2012 ([GG 5005](#)). No previous appointments could be located in the *Government Gazettes*.

Note that GN 191/2012 ([GG 5005](#)) erroneously refers to the Act as the “Agribank Act”.

Application of law: Structures established under this Act are affected by directives issued in terms of the State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, on remuneration for chief executive officers and senior managers of state-owned enterprises and annual fees and sitting allowances for board members.

The Financial Intelligence Act 13 of 2012 ([GG 5096](#)) places certain duties on the Agricultural Bank of Namibia.

Cases:

The following case concerns this Act –

Witvlei Meat (Pty) Ltd v Agricultural Bank of Namibia 2014 (2) NR 464 (SC)

The following case concerns 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* ([GG 329](#)), which amended the previous *Agricultural Bank Act 13 of 1944* and repealed the *Agricultural Credit Act 28 of 1966*).

Commentary:

- Sidney Haring & 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
- Legal Assistance Centre, *Our Land We Farm: An analysis of the Namibian Commercial Agricultural Land Reform Process*, 2005, Legal Assistance Centre, available at www.lac.org.na
- Sidney L Haring & 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
- Wolfgang Werner & Willem Odendaal, *Livelihoods after Land Reform*, Legal Assistance Centre, 2010, available at www.lac.org.na.

Related international agreements:

Agreement Establishing the International Fund for Agricultural Development, 1976.

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

Agricultural Agreement between the Southern African Customs Union (SACU) States and Iceland, 2006

Agricultural Agreement between the Southern African Customs Union (SACU) States and Norway, 2006

Agricultural Agreement between the Southern African Customs Union (SACU) States and Switzerland, 2006

Charter Establishing the Centre for Coordination of Agricultural Research and Development (CCARDESA), 2010

†Constitution of the Food and Agriculture Organization of the United Nations (FAO), 1945

International Agreement for the Creation of an International Office for dealing with Contagious Diseases of Animals (Arrangement international pour la création, à Paris, d’un Office international des epizooties), 1925

International Plant Protection Convention, 1951, as amended

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

Statutes of the International Centre for Genetic Engineering and Biotechnology (ICGEB), 1983

Protocol to the Statutes of the International Centre for Genetic Engineering and Biotechnology on the Seat of the Centre, 2007

See also **ANIMALS**.

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

See also **ENVIRONMENT**.

See also Labour Act 11 of 2007 (collective agreements setting minimum wages for agricultural

industry) (**LABOUR**).

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

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

See also *Sugar Act 28 of 1936* (**TRADE AND INDUSTRY**).

ALCOHOL, DRUGS AND TOBACCO

Brewers & Distillers Licences Duty Proclamation 3 of 1924.

Summary: This Proclamation ([OG 127](#)) provides for the payment of licence duties by brewers of beer and distillers of wine, brandy and spirits. It was extended to the Rehoboth Gebiet by Proc. 12/1930 ([OG 365](#)).

Amendments: This Proclamation is amended by Ord. 9/1935 ([OG 613](#)), Ord. 14/1937 ([OG 716](#)), Ord. 1/1938 ([OG 744](#)) and Ord. 47/1952 ([OG 1732](#)). The Liquor Act of 1998 ([GG 1843](#)), which was brought into force on 22 December 2001 by GN 250/2001 ([GG 2670](#)), amends sections 1, 2, 3 and *3bis*.

Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 3118](#)), which came into force on 6 December 1971 by virtue of RSA Proc. R.265/1971 ([RSA GG 3321](#)), 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.” RSA Proc. R.266/1971 ([RSA GG 3321](#)) also makes specific reference to issues pertaining to applicability to the territory of South-West Africa.

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. A race-based assignment of the administration of the Act was made by RSA Proc. R.266/1971 ([RSA GG 3321](#)), with administration being divided between the Minister of Bantu Administration and Development (for “Bantus” in South Africa or “natives” in SWA), the Minister of Indian Affairs (for “Indians”), the Minister of Coloured Affairs (for “Coloured persons”) and the Minister of Social Welfare and Pensions (for all other persons).

The administration of this Act was partially transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977) dated **28 September 1977**, as amended. 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 General 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: The following pre-independence South African amendments were applicable to SWA –

- *RSA Proclamation R.32 of 1972* ([RSA GG 3390](#))
- *RSA Proclamation R.263 of 1972* ([RSA GG 3682](#))
- *RSA Proclamation R.155 of 1973* ([RSA GG 3957](#))
- *Abuse of Dependence-producing Substances and Rehabilitation Centres Amendment Act 80 of 1973* ([RSA GG 3971](#))
- *Medical, Dental and Supplementary Health Service Professions Act 56 of 1974* ([RSA GG 4445](#)), which was brought into force by RSA Proc. R.52/1975 ([RSA GG 4594](#))
- *RSA Proclamation 243 of 1975* ([RSA GG 4883](#))
- *RSA Proclamation 25 of 1976* ([RSA GG 4988](#))
- *RSA Proclamation R.141 of 1976* ([RSA GG 5237](#))
- *RSA Proclamation 239 of 1976* ([RSA GG 5328](#))
- *Abuse of Dependence-producing Substances and Rehabilitation Centres Amendment Act 14 of 1977* ([RSA GG 5446](#))
- *Criminal Procedure Act 51 of 1977* ([RSA GG 5532](#))
- *RSA Proclamation 277 of 1977* ([RSA GG 5789](#)).

Certain terminology in the Act was amended by Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

The Act was also amended prior to independence by Act 25/1987 ([OG 5462](#)).

Regulations: Pre-independence regulations are contained in RSA GN R.2166/1971 ([RSA GG 3323](#)), promulgated by the Minister of Social Welfare and Pensions in respect of White persons, effective from 3 December 1971. These regulations are made explicitly applicable to SWA. (They withdraw RSA GN R.479/1964, as amended by RSA GN R.1629/1967, RSA GN R.1736/1967, RSA GN R.3299/1969, and SWA GN 182/1965.) These regulations were amended in South Africa by RSA GN R.1812/1977 ([RSA GG 5733](#)), which was published prior to the relevant date of transfer, on 9 September 1977 and came into force on 1 October 1977, which was also prior to the relevant date of transfer (30 November 1977).

These regulations were further amended in South Africa after the date of transfer by RSA GN R. 584/1984 ([RSA GG 9124](#)). This amendment was not made explicitly applicable to SWA.

Additional regulations are contained in RSA Proc. R.1003/1973 ([RSA GG 3927](#)), promulgated by the Minister of Bantu Administration and Education acting on behalf of the Minister of Bantu Administration and Development in respect of Bantu, with effect from 15 June 1973. These regulations are also explicitly applicable to SWA.

There are no post-independence regulations under this Act.

Rules: Rules relating to the proceedings of the National Advisory Board on Rehabilitation Matters are contained in RSA GN 1261/1972 ([RSA GG 3617](#)).

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 Johny & 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 Iipumbu 2009 (2) NR 546 (HC)
S v Paulo & Another (Attorney-General as amicus curiae) 2013 (2) NR 366 (SC).

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:

Single Convention on Narcotic Drugs, 1961

Convention on Psychotropic Substances, 1971

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

Liquor Act 6 of 1998.

Summary: This Act ([GG 1843](#)) consolidates and amends the laws relating to the sale and supply of liquor. It was brought into force on 22 December 2001 by GN 250/2001 ([GG 2670](#)). It repeals 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* ([SA GG 5908](#))

Note: Although the Liquor Act 6 of 1998 ([GG 1843](#)) states that it repeals Chapter V of the *Railways and Harbours Control and Management Consolidation Act 70 of 1957* ([SA GG 5908](#)), research by the authors of Namlex indicates that this Act was not actually in force in Namibia at that stage. Act 70 of 1957 was repealed in South Africa by the *South African Transport Services Act 65 of 1981* ([RSA GG 7786](#)), which was made expressly applicable to SWA (see section 78). (*Act 65 of 1981* was subsequently repealed in respect of South West Africa by the National Transport Corporation Act 21 of 1987 ([OG 5439](#).) 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.

- section 22, *General Law Amendment Act 102 of 1967* ([RSA GG 1771](#))
- *Supply and Sale of Liquor to Native in South West Africa Proclamation* (RSA Proc. R.231/1967, [RSA GG 1826](#)), which were regulations issued in terms of section 22(4) and 22(5) of the *General Law Amendment Act 102 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 Proc. 205/1968, [RSA GG 2133](#)), which were regulations issued in terms of section 22(5) of the *General Law Amendment Act 102 of 1967*

- Liquor Ordinance 2 of 1969
- *Arrangement appertaining to the sale and supply of liquor in Walvis Bay* (RSA Proc. R.21/1984, [RSA GG 9096](#)), which made the *Liquor Act 87 of 1977* and “any regulation made thereunder” applicable in Walvis Bay, rather than the Liquor Ordinance 2 of 1969 of SWA, pursuant to section 38 of the South-West Africa Constitution Act 39 of 1968;
- section 5, National Transport Corporation Act 21 of 1987 ([OG 5439](#)) (which was in the interim repealed by the National Transport Services Holding Company Act 28 of 1998 ([GG 1961](#)), 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 251/2001 ([GG 2670](#)) and substituted by GN 104/2006 ([GG 3665](#)) which contains requirements for shebeens. Act 5/2009 ([GG 4307](#)) substitutes the expression “Chief Magistrate” for “Chief of Lower Courts” wherever it appears.

The Child Care and Protection Act 3 of 2015 ([GG 5744](#)), which is not yet in force, substitutes section 56, repeals paragraphs 70(h) and 71(1)(s) and amends section 72.

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

- Kaffir Beer (Rural Areas) Control Ordinance 36 of 1957
- Chapter V, *Railways and Harbours Control and Management Consolidation Act 70 of 1957* ([SA GG 5908](#)) – no authorisation for regulations
- section 22, *General Law Amendment Act 102 of 1967* – two sets of race-based regulations made applicable to SWA in terms of that section were repealed by this Act; no others have been located
- Liquor Ordinance 2 of 1969
- *Arrangement appertaining to the sale and supply of liquor in Walvis Bay* (RSA Proc. R.21/1984, [RSA GG 9096](#)), which made any regulation issued in terms of the *Liquor Act 87 of 1977* applicable in Walvis Bay; these regulations have not been researched since they appear to have been superseded by this Act and its regulations which have national application in independent Namibia;
- section 5, National Transport Corporation Act 21 of 1987 ([OG 5439](#)) – refers to regulations authorised by section 52 of Act 21 of 1987, regarding the supply of refreshments and intoxicating liquor by the Corporation in or on its vehicles, trains, aircraft, vessels or premises.

Regulations under the new Act are contained in GN 142/2001 ([GG 2575](#)), as amended by GN 105/2006 ([GG 3665](#)) and GN 18/2015 ([GG 5668](#)) (which substitutes Regulation 75). These regulations came into force on the same date as the Act.

The Government Notice which issues these regulations purports to repeal GN 49/1969 and all the amendments thereof. However, SWA GN 49/1969 ([OG 2981](#)) contained no regulations. It was the Government Notice which promulgated the Liquor Ordinance 2 of 1969. That Ordinance and its amendments were repealed by section 86(1) of the Liquor Act 6 of 1998 ([GG 1843](#)).

Appointments: Members of 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](#)), GN 62/2010 ([GG 4451](#)), GN 238/2010 ([GG 4595](#)), GN 175/2011 ([GG 4792](#)), GN 271/2012 ([GG 5069](#)), GN 182/2013 ([GG 5241](#)), GN 23/2014 ([GG 5425](#)), GN 78/2015 ([GG 5738](#)) and GN 112/2018 ([GG 6614](#)).

Cases: The following cases pertain to the Liquor Act 6 of 1998 –

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

Orangerivierwynkelders Koöperatief Bpk & Another v Professional Support Service CC & Others 2011 (1) NR 184 (HC) (sections 18-19 discussed at 189B-191B; special costs order denied to respondents who were acting in breach of sections 2 and 49)

S v Shitana & Another 2012 (1) NR 363 (HC) (charge under section 71(1)(n) requires evidence that the liquor sold satisfies the definition of “liquor” in section 1).

The following cases pertain to the Liquor Ordinance 2 of 1969 which was 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).

Commentary: Legal Assistance Centre, *Alcohol and Youths: Suggestions for Law Reform, Monograph 4*, Legal Assistance Centre, 2009, available at www.lac.org.na.

Tobacco Products Control Act 1 of 2010.

Summary: This Act ([GG 4458](#)) 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. The Act was brought into force on 1 April 2014 by GN 34/2014 ([GG 5430](#)).

Regulations: Proposed regulations were published in GN 209/2011 ([GG 4831](#)).

Regulations were published in GN 35/2014 ([GG 5430](#)). Certain of these regulations had a delayed commencement, in terms of Regulation 17. Regulations 2, 3, 4, 10 and 12 came into force in the case of wholesalers of tobacco products, on a date 12 months from the date of commencement of the Act, and in the case of retailers of tobacco products, on a date 18 months from the date of commencement of the Act. Regulations 5, 6, 7, 8, 9 and 15 came into force on a date three months from the date of commencement of the Act.

Related international agreement:

WHO Framework Convention on Tobacco Control (WHO FCTC), 2003.

INTERNATIONAL LAW

Convention on Psychotropic Substances, 1971

Single Convention on Narcotic Drugs, 1961

United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
WHO Framework Convention on Tobacco Control (WHO FCTC), 2003
SADC Protocol on Combating Illicit Drug Trafficking in the Southern African Region, 1996

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**).

ANIMALS

Performing Animals Protection Act 24 of 1935, as amended in South Africa to November 1979.

Summary: This Act ([SA GG 2271](#)) regulates the exhibition and training of performing animals.

Applicability to SWA: Section 11A inserted by *Act 7 of 1972*, 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”. The administration of the Act was assigned to the Minister of Justice by SA GN 1426/1935 ([SA GG 2299](#)). Therefore, the administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979.

There were two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Animals Protection Amendment Act 54 of 1983* ([RSA GG 8691](#)) and the *Animals Protection Amendment Act 20 of 1985* ([RSA GG 9653](#)) – neither of which was made expressly applicable to SWA.

The *Protection of Animals Amendment Act 7 of 1991* ([RSA GG 13112](#)) was assented to by the State President on 15 March 1991 and gazetted on 28 March 1991; there were two different proclamations bringing different portions of it into force, but both took effect after the date of Namibian independence. In any event, this amending Act was not made expressly applicable to SWA.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *General Law Amendment Act 62 of 1955* ([SA GG 5512](#))
- *Animals Protection Amendment Act 7 of 1972* ([RSA GG 3414](#)).

Regulations: Prior to the date of transfer, regulations contained in RSA GN R.1914/1972 ([RSA GG 3686](#)) were issued pursuant to section 2(d) of the Act.

These regulations repealed the regulations contained in RSA GN R.1205/1961 ([RSA GG 136](#)), which in turn repealed the regulations contained in SA GN 432/1956 ([SA GG 5648](#)).

There are no post-independence regulations under this Act.

Cases: In South Africa, sections 2 and 3 of the Act were declared unconstitutional in *NSPCA v Minister of Agriculture, Forestry and Fisheries & Others* 2013 (5) SA 571 (CC), to the extent that they require a magistrate to decide applications for, and issue, animal training and exhibition licences.

Commentary: David Bilchitz, “What was left unsaid : the unconstitutionality of the Performing Animals Protection Act in *NSPCA v Minister of Agriculture, Forestry and Fisheries*”, 30 (1) *South African Journal on Human Rights* 2014.

Trespass of Animals Ordinance 16 of 1939.

Summary: The Ordinance ([OG 796](#)) regulates trespass by animals, provides for the recovery of fees and damages and establishes pounds.

Amendments: This Ordinance is amended by Proc. 21/1943 ([OG 1065](#)) and Ord. 9/1944 ([OG 1115](#)).

Regulations: Pre-independence regulations have not been researched. There are no post-independence regulations under this Act.

Trespass of Donkeys Proclamation 18 of 1941.

Summary: This Proclamation ([OG 909](#)) regulates trespass by donkeys.

Regulations: The Proclamation does not provide for regulations.

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

Summary: This Act ([RSA GG 271](#)) is concerned with the prevention of cruelty to animals.

Applicability to SWA: Section 10A which was inserted by the *Animals Protection Amendment Act 7 of 1972*, states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.” The act thus became applicable to SWA when Act 7 of 1972 was brought into force on 1 January 1973 by RSA Proc R.275/1972 ([RSA GG 3686](#)).

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979, as amended. None of the amendments to the Act in South Africa after that date – the *Animals Protection Amendment Act 54 of 1983* (RSA GG 8691), the *Animals Protection Amendment Act 20 of 1985* (RSA GG 9653) or the *Animals Protection Second Amendment Act 84 of 1985* (RSA GG 9821) – were made expressly applicable to SWA.

The *Protection of Animals Amendment Act 7 of 1991* (RSA GG 13112) was assented to by the State President on 15 March 1991 and gazetted on 28 March 1991; there were two different proclamations bringing different portions of it into force, but both took effect after the date of Namibian independence. In any event, this amending Act was not made expressly applicable to SWA. It repealed section 10A which made the Act applicable to SWA, in the version of the Act in force in South Africa.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Animals Protection Amendment Act 7 of 1972* ([RSA GG 3414](#))
- *General Law Amendment Act 102 of 1972* ([RSA GG 3610](#)).

Regulations: The only pre-independence regulations issued under the Act in South Africa were made after the date of transfer and were not made explicitly applicable to SWA.

The regulations which post-dated the date of transfer related to the seizure of animals

by an officer of a society for the prevention of cruelty to animals, and were issued in RSA GN R.468/1986 (RSA GG 10121), as corrected by RSA GN R.654/1986 (RSA GG 10185).

No SWA regulations prior to independence could be located.

No post-independence regulations have been issued under this Act.

Notice: RSA GN R.1246/1972 ([RSA GG 3612](#)), issued in terms of section 2(3) of the Act, prohibits the killing of dogs with the intention of using their skin, meat or any other body part for commercial purposes.

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

Municipal Dog Tax Ordinance 13 of 1967.

Summary: The Ordinance ([OG 2798](#)) provides for the control and taxation of the keeping of dogs within municipal areas. It came into force on 1 April 1968 (section 19).

Amendments: Ord. 41/1967 ([OG 2837](#)) amends sections 1, 4, 15 and 19 and substitutes section 2.

Ord. 12/1973 ([OG 3335](#)) substitutes the term “Executive Committee” for the word “Administrator” throughout, amends section 1 and substitutes section 16.

Ord. 8/1978 ([OG 3783](#)) substitutes sections 3 and 14, amends sections 4 and 15. This amendment was initially brought into force by GN 305/1978 ([OG 3882](#)). However, this notice was repealed by the Postponement of the Commencement of the Municipal Dog Tax Amendment Ordinance, 1978, Ordinance 1/1979 ([OG 3906](#)), which amended section 5 of Ord. 8/1978 to provide that it would come into force on 1 January 1980. Section 5 of Ord. 8/1978 was further amended by the Municipal Dog Tax Amendment Ordinance 2/1980 ([OG 4104](#)) to provide that it would come into force on 1 January 1981.

Ord. 15/1980 ([OG 4165](#)) substitutes section 3 and amends section 15.

AG 19/1983 ([OG 4842](#)) amends section 6.

The Dog Tax Ordinance, 1927, Repeal Act 14 of 1987 ([OG 5411](#)) repeals section 17.

Act 30/1987 ([OG 5478](#)) amends sections 6, 14 and 15.

The Local Authorities Act 23 of 1992 ([GG 470](#)), which was brought into force on 31 August 1992 (GN 118/1992, [GG 472](#)), repeals section 18.

Application of law: AG 8/1986 ([OG 5168](#)) applies sections 1-15 to all peri-urban areas to which they were not already applicable, with effect from 1 January 1986.

Regulations: **Regulations for the Control of Dogs in Municipal Areas** are contained in GN 131/1968 (OG 2921), as amended by GN 108/1973 ([OG 3335](#)), GN 33/1978 (OG 3705), GN 108/1988 (OG 5556), GN 119/1988 (OG 5569) and GN 159/1992 ([GG 527](#)).

Regulations on Municipal Dog Tax (Maximum Amount) are contained in GN 145/1980 (OG 4243). These regulations are amended by AG GN 7/1985 ([OG 4992](#)), GN 36/1986 (OG 5175) and GN 60/1987 ([OG 5348](#)).

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](#). The correct version states at the top: “*This gazette replaces Government Gazette No. 4077 of 3 July 2008.*”

Animal Health Act 1 of 2011.

Summary: This Act ([GG 4694](#)) provides for the prevention, detection and control of animal diseases and the maintenance and improvement of animal health. It repeals the *Animal Diseases and Parasites Act 13 of 1956*. It was brought into force on 30 April 2013 by GN 100/2013 ([GG 5183](#)).

Regulations: Regulations made under the repealed legislation survive pursuant to section 37(2) of this Act.

The Animal Diseases and Parasites Ordinance 14 of 1958, was repealed by the Animal Diseases and Parasites Ordinance 34 of 1959 ([OG 2199](#)), which was then repealed by the *Animal Diseases and Parasites Amendment Act 9 of 1973*, which was subsequently repealed by the Animal Health Act 1 of 2011.

Section 36(2) of the Animal Diseases and Parasites Ordinance 34 of 1959 preserves the regulations issued under the repealed Animal Diseases and Parasites Ordinance 14 of 1958. It states: “Any proclamation, regulation, order and notice issued, made or given under any law repealed by subsection (1) and in force at the commencement of this Ordinance, shall remain in force until withdrawn under this Ordinance, and any other thing done or action taken under any provision of a law so repealed, shall be deemed to have been taken or done under the corresponding provision of this Ordinance.”

The *Animal Diseases and Parasites Amendment Act 9 of 1973* inserted section 35A into the *Animal Diseases and Parasites Act 13 of 1956*, which made that Act applicable to SWA. Section 6(1) of the *Animal Diseases and Parasites Amendment Act 9 of 1973* repeals the SWA Animal Diseases and Parasites Ordinance 34 of 1959 (and the Animal Diseases and Parasites Amendment Ordinance 14 of 1967), and section 6(2) states: “Anything done under a provision of any law repealed by subsection (1), shall be deemed to have been done under the corresponding provision of the principal Act.”

However, pre-independence regulations have not been fully researched. The following regulations have been made since independence.

Animal Identification Regulations are contained in GN 29/2009 ([GG 4217](#)), as amended by GN 201/2009 ([GG 4350](#)) (Regs 3 and 16) and GN 5/2011 ([GG 4645](#)) (Regs 16, 31, new Reg 31A). These regulations and their amendments were repealed and replaced with new Animal Identification Regulations by GN 307/2017 ([GG 6476](#)) but, as explained below, the repealed regulations continue to have some ongoing relevance.

Animal Health Regulations are contained in GN 144/2013 ([GG 5218](#)), as amended by GN 306/2016 ([GG 6209](#)) (which substitutes Schedule 2).

These regulations replace the Animal Diseases and Parasites Standing Regulations in RSA GN 1531/1963 (RSA GG 620) promulgated under the *Animal Diseases and*

Parasites Act 13 of 1956, as amended by RSA GN R. 428/1965, RSA GN R.1688/1965, RSA R.957/1966, RSA GN R.702/1968, RSA GN R.1116/1968, RSA GN R.55/1969, RSA GN R.947/1969, RSA GN R.1924/1974, RSA GN R.1389/1975, RSA GN R.2028/1979, RSA GN R.1684/1980, AG 90/1982, AG 179/1982, GN 22/1986, GN 155/1987 and GN 114/1995. (The repealed regulations were made in substitution of the regulations contained in the Schedule to Government Notice 1684 of 16 October 1959.)

New **Animal Identification Regulations** are contained in GN 307/2017 ([GG 6476](#)). These regulations repeal the previous Animal Identification Regulations contained in GN 29/2009 ([GG 4217](#)), as amended. However, it should be noted that regulation 8(2) of the 2017 regulations states:

Despite the repeal [of the] Animal Identification Regulations published under Government Notice No. 29 of 5 March 2009 by these regulations, the obligation[s] imposed on the owner of -

- (a) cattle by regulation 16(5);
- (b) sheep and goats by regulation 17(4); and
- (c) pigs by regulation 18(4),

of the repealed regulations to identify cattle, sheep, goats and pigs continue to have effect.

Thus, the repealed 2009 Animal Identification Regulations continue to have some ongoing relevance.

Notices: Restricted materials in terms of section 1(2)(d) are declared in GN 177/2013 ([GG 5239](#)), which replaces GN AG 88/1982.

Protected areas for the purposes of preventing foot and mouth disease, corridor disease and bovine tuberculosis, and the classes of animals and animal products restricted from those protected areas, are declared in terms of section 20 in GN 178/2013 ([GG 5239](#)).

Animal vaccines are declared to be animal products in terms of section 1(2)(b) in GN 179/2013 ([GG 5239](#)).

Notifiable diseases in respect of particular classes of animals are declared in terms of section 1(2)(e) in GN 180/2013 ([GG 5239](#)).

A quarantine area is declared in GN 154/2015 ([GG 5788](#)), because of the presence of Foot and Mouth Disease.

A protected area is declared in GN 155/2015 ([GG 5788](#)), for preventing the spread of Foot and Mouth Disease.

Emergency restrictions prohibiting importation or entry into Namibia of live poultry, poultry products, birds, ostriches and ostrich products from South Africa and Belgium are published in GN 201/2017 ([GG 6376](#)), in response to the outbreak of Highly Pathogenic Avian Influenza (HPAI) H5N8 in poultry.

Cases: The case of *S v Lofty-Eaton & Others (1)* 1993 NR 370 (HC) was decided under the previous Act.

Veterinary and Veterinary Para-Professions Act 1 of 2013.

Summary: This Act ([GG 5139](#)) establishes the Namibian Veterinary Council and regulates the qualifications and registration of persons practising veterinary professions and para-professions. It repeals the Veterinary and Para-Veterinary Professions

Proclamation 14 of 1984 ([OG 4915](#)). It was brought into force on 27 February 2014 by GN 16/2014 ([GG 5415](#)).

It should be noted that this law was first promulgated in GN 318/2012 as the Veterinary and Veterinary Para-Professions Act 16 of 2012 in [GG 5115](#). However, GN 318/2012 was withdrawn by GN 32/2013 ([GG 5143](#)) on 1 March 2013. The texts of the Act in the two Gazettes are identical aside from the Act number and year. The Act was initially published in error before being signed by the President; it states at the top “(Signed by the President on ?? December 2012)”. It was signed by the President on 1 February 2013 and then re-published as Act 1 of 2013.

Regulations: In terms of section 75(2), regulations, notice, rules, appointments and other acts done under the previous law remain valid unless inconsistent with the new Act or explicitly set aside or repealed. However, the regulations issued under the current Act have repealed all of the surviving regulations made under the previous law.

Regulations relating to Veterinary and Veterinary Para-Professions issued in terms of the current Act are contained in GN 17/2014 ([GG 5415](#)). These regulations are amended by GN 249/2015 ([GG 5865](#)), which amends Table 1. (This Table, which appears at the end of the regulations, relates to regulation 18(1), but it is not an amendment of “section 18(1)” of the regulations as the Government Notice erroneously states.) The regulations are also amended by GN 269/2016 ([GG 6171](#)), which substitutes Table 3. GN 54/2018 ([GG 6554](#)) again substitutes Table 3 of the regulations.

GN 218/2017 ([GG 6384](#)) substitutes the enacting formula contained in GN 17/2014 so as to repeal the surviving regulations made under the previous Act with effect from 27 February 2014. (The previous regulations were contained in AG GN 76/1985 ([OG 5042](#)), as amended by GN 96/1997 ([GG 1557](#)), GN 133/2002 ([GG 2776](#)) and GN 57/2008 ([GG 4005](#)).)

Rules: Rules relating to the practice of veterinary and veterinary para-professions are contained in GN 93/2016 ([GG 6005](#)).

Appointments: The results of elections to the Veterinary Council under the previous Act 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](#)), General Notice 380/2002 ([GG 2867](#)) and General Notice 443/2012 ([GG 5094](#)).

Appointments to the Namibian Veterinary Council are announced in GN 147/2014 ([GG 5559](#)), which also confirms the appointment of a Registrar, and in General Notice 313/2017 ([GG 6384](#)).

See also **AGRICULTURE**.

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

See also **MARINE AND FRESHWATER RESOURCES**.

See also Controlled Wildlife Products and Trade Act 9 of 2008 (**TRADE AND INDUSTRY**).

APPROPRIATIONS

This section lists only the appropriation acts passed since independence.

Appropriation Act 11 of 1990 ([GG 55](#)).

Additional Appropriation Act 1 of 1991 ([GG 168](#)).

Appropriation Act 11 of 1991([GG 227](#)).

Additional Appropriation Act 2 of 1992 ([GG 379](#)).

Appropriation Act 16 of 1992 ([GG 445](#)).

Additional Appropriation Act 1 of 1993 ([GG 615](#)).

Appropriation Act 8 of 1993 ([GG 691](#)).

Additional Appropriation Act 5 of 1994 ([GG 833](#)).

Appropriation Act 7 of 1994 ([GG 866](#)).

Additional Appropriation Act 8 of 1995 ([GG 1054](#)).

Appropriation Act 11 of 1995 ([GG 1086](#)).

Additional Appropriation Act 28 of 1995 ([GG 1233](#)).

Appropriation Act 4 of 1996 ([GG 1328](#)).

Additional Appropriation Act 25 of 1996 ([GG 1472](#)).

Appropriation Act 2 of 1997 ([GG 1582](#)).

Additional Appropriation Act 16 of 1997 ([GG 1763](#)).

Appropriation Act 16 of 1998 ([GG 1893](#)).

Additional Appropriation Act 35 of 1998 ([GG 2021](#)).

Appropriation Act 9 of 1999 ([GG 2137](#)).

Additional Appropriation Act 5 of 2000 ([GG 2321](#)).

Appropriation Act 13 of 2000 ([GG 2375](#)).

Additional Appropriation Act 23 of 2000 ([GG 2454](#)).

Appropriation Act 9 of 2001 ([GG 2572](#)).

Additional Appropriation Act 14 of 2001 ([GG 2671](#)).

Appropriation Act 2 of 2002 ([GG 2767](#)).

Additional Appropriation Act 16 of 2002 ([GG 2886](#)).

Appropriation Act 6 of 2003 ([GG 3004](#)).

Additional Appropriation Act 17 of 2003 ([GG 3114](#)).

Appropriation Act 1 of 2004 ([GG 3224](#)).

Additional Appropriation Act 2 of 2005 ([GG 3425](#)).

Appropriation Act 7 of 2005 ([GG 3477](#)).

Appropriation Act 1 of 2006 ([GG 3645](#)).

Additional Appropriation Act 3 of 2006 ([GG 3758](#)).

Appropriation Act 1 of 2007 ([GG 3868](#)).

Appropriation Act 3 of 2008 ([GG 4067](#)).

Appropriation Act 4 of 2009 ([GG 4280](#)).

Appropriation Act 9 of 2010 ([GG 4515](#)).

Appropriation Act 4 of 2011 ([GG 4733](#)).

Appropriation Act 5 of 2012 ([GG 4968](#)).

Appropriation Act 5 of 2013 ([GG 5207](#)).

Appropriation Act 3 of 2014 ([GG 5459](#)).

Appropriation Act 4 of 2015 ([GG 5762](#)), as amended by the Appropriation Amendment Act 10 of 2015 ([GG 5895](#))

Appropriation Act 7 of 2016 ([GG 6050](#)), as amended by the Appropriation Amendment Act 15 of 2016 ([GG 6199](#))
Note that Appropriation Act 1 of 2016 was promulgated by GN 94/2016 ([GG 6006](#)), but this notice was withdrawn by GN 139/2016 ([GG 6049](#)).

Appropriation Act 1 of 2017 ([GG 6330](#)), as amended by the Appropriation Amendment Act 15 of 2017 ([GG 6502](#))

Appropriation Act 4 of 2018 ([GG 6623](#)).

ARBITRATION

Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977.

Summary: This Act ([RSA GG 5504](#)) provides for the recognition and enforcement of foreign arbitral awards.

Applicability to SWA: Although the Act does not contain a specific provision making it applicable to SWA, “court” was defined in section 1 of the original Act as “....a court of a provincial division or local division of the Supreme Court of South Africa”. At the relevant time, the South African *Supreme Court Act 59 of 1959* defined “provincial division” to include “the Eastern Cape division and the Southwest Africa division”. Furthermore, the First Schedule to the *Supreme Court Act 59 of 1959* contained a description of the various provincial and local divisions of the Supreme Court of South Africa and their areas of jurisdiction which, at the time, included a description of the “South-West Africa Division of the Supreme Court of South Africa”.

Transfer of administration to SWA: Although this Act makes no reference to any minister, because of its subject matter it probably fell under the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated 12 November 1979 ([OG 4038](#)). In any event, there were no amendments to the Act in South Africa prior to Namibian independence.

In 1981 the “South-West Africa Division of the Supreme Court of South Africa” was converted into the “Supreme Court of South-West Africa” by the RSA *Supreme Court of South West Africa Proclamation 222 of 1981* ([RSA GG 7909](#)), brought into force by RSA Proc. 260/1981 ([RSA GG 7973](#)). In terms of the transitional provisions contained in section 38(2) of the RSA *Supreme Court of South West Africa Proclamation 222 of 1981*, the reference to the “provincial or local division of the Supreme Court of South Africa” in the definition of “court” in section 1 of the Act would be construed as a reference to the Supreme Court of South West Africa:

- (2) Unless it would in any particular case be obviously inappropriate -
 - (a) any reference in any law other than the Supreme Court Act, 1959 (Act 59 of 1959), or in any document; or
 - (i) to the South-West Africa division of the Supreme Court of South Africa; or
 - (ii) to any division of the said Supreme Court, which immediately prior to the commencement of this Proclamation included a reference to the said South-West Africa division;
 - (iii) to the High Court of South-West Africa, shall be construed as a reference or as including a reference, as the case may be, to the Supreme Court;
 - (b) any reference to the said Supreme Court Act or any provision thereof, in any law which applies in or in respect of the territory shall, in so far as it so applies, be construed as a reference or including a reference, as the case may be, to this Proclamation or any provision thereof corresponding to such first-mentioned provision.

The Supreme Court Act 15 of 1990 ([GG 84](#)) repealed the RSA *South West Africa Proclamation 222 of 1981* in so far as it applied to Namibia. In terms of the transitional provisions contained in section 40 of the High Court Act 16 of 1990 ([GG 85](#)) any reference in any other law to the Supreme Court of South West Africa, including a reference to that court as construed in accordance with the provisions of section 38(2)

of the RSA *Supreme Court of South West Africa Proclamation 222 of 1981*, is required to be construed as a reference to the High Court of Namibia. Thus, the definition of "court" in the Act should now be construed as a reference to the High Court of Namibia.

Regulations: The Act makes no provision for regulations.

Commentary: Steven Finizio, Danielle Morris & Katherine Drage, "Enforcing arbitral awards in Sub-Saharan Africa-Part 1", Wilmer Cutler Pickering Hale and Dorr LLP, 7 July 2015, available at

www.wilmerhale.com/uploadedFiles/Shared_Content/Editorial/Publications/Documents/enforcing-arbitral-awards-in-sub-saharan-africa-part-1-lexispslarbitration.pdf.

(See also Part 2 of this discussion at

www.wilmerhale.com/uploadedFiles/Shared_Content/Editorial/Publications/Documents/enforcing-arbitral-awards-in-sub-saharan-africa-part-2-lexispslarbitration.pdf.)

Related international agreements: The *Convention on the Recognition and Enforcement of Foreign Arbitral Awards, (New York Convention), 1958*, which entered into force internationally on 7 June 1959, is relevant. However, Namibia is not a party to this Convention.

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

Summary: This Act ([RSA GG 1084](#)) provides for the settlement of disputes by arbitration tribunals. It replaced the Arbitration Proclamation 3 of 1926 in South West Africa.

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.

Regulations: The Act makes no provision for regulations.

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))

Kasuto v Joubert & Another 2011(2) NR 399 (HC) (section 1, definition of "arbitration agreement")

Da Cunha Do Rego v Beerwinkel t/a JC Builders 2012 (2) NR 769 (SC) (application of sections 15(2) and 31)

Westcoast Fishing Properties v Gendev Fish Processors & Another 2016 (4) NR 1191 (SC) (nature of private arbitration; fairness and prejudice).

See also **LABOUR**.

ARCHIVES

Archives Act 12 of 1992.

Summary: This Act ([GG 421](#)) deals with the custody, care and control of archives. It repeals the *Archives Act 4 of 1987*.

Regulations: Section 17(2) of the Archives Act 12 of 1992 states: “Anything done in terms of a provision of the Act repealed by subsection (1) and which could have been done under a corresponding provision of this Act shall be deemed to have been done under the provision of this Act.” However, since the current Act makes no provision for regulations, this savings clause does not apply to regulations made under the repealed Act.

See also **LIBRARIES**.

ARMS AND AMMUNITION

General Law Amendment Ordinance 12 of 1956, section 4.

Summary: Section 4 of this Ordinance ([OG 2018](#)) makes the possession and sale of dangerous weapons a criminal offence. (Section 5 of this Ordinance is discussed under WILLS, and sections 6-8 are discussed under CRIMINAL LAW AND PROCEDURE.)

Amendments: Section 4 was repealed in respect of Rehoboth by the Dangerous Weapons Act (Rehoboth) Act 5 of 1980 of Rehoboth (*Rehoboth Official Gazette* 34 of 24 July 1981).

General Law Amendment Ordinance 13 of 1962, section 8.

Summary: Section 8 of this Ordinance ([OG 2409](#)) makes pointing a firearm, air gun or air pistol a criminal offence.

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

Summary: This Act ([RSA GG 738](#)) 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 would probably have been 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), dated 12 November 1979, as amended.

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.

Regulations: The Act makes no provision for regulations.

Arms and Ammunition Act 7 of 1996.

Summary: This Act ([GG 1338](#)) regulates the possession, sale, manufacture, import and export of arms and ammunition. It was brought into force on 1 April 1998 by GN 66/1998 ([GG 1830](#)), replacing the *Arms and Ammunition Act 75 of 1969*.

Amendments: The Combating of Domestic Violence Act 4 of 2003 ([GG 3002](#)), which was brought into force on 17 November 2003 (GN 234/2003, [GG 3094](#)), amends Schedule 1. The General Law Amendment Act 14 of 2005 ([GG 3565](#)) amends section 1 of the Act.

Regulations: Section 45(2) contains a savings clause, stating that “anything done under a provision of a law repealed by subsection (1) which could have been done under a corresponding provision of this Act, shall be deemed to have been done under such corresponding provision of this Act”.

Regulations are made in terms of the current Act in GN 67/1998 ([GG 1830](#)).

These regulations 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 R.2216 of 31 October 1980.

Notices: Periodic notices about the surrender of arms, ammunitions or armaments have been issued but are not recorded here.

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)

S v Titus 2011 (1) NR 109 (HC) (peremptory nature of section 10(6)-(7))

S v Nengongo 2012 (2) NR 553 (HC) (“safe” in respect of offence of failure to safeguard firearm under section 38(1)(j), read with section 3(8) and regulation 26; “place of safety” in section 38(1)(j); appropriate sentence)

S v Sakaria 2013 (2) NR 347 (HC) (period of unfitness imposed under section 10 altered to run from date of release from prison in the course of an appeal against sentence)

S v Malumo & Others (In re Ndala) 2014 (3) NR 690 (the question of whether the Arms and Ammunition Act is applicable to the Eastern Caprivi Zipfel was put forward, but the Court ruled that the issue can be raised only after the conclusion of the trial in terms of s. 319 of the Criminal Procedure Act 51 of 1977)

S v Katema 2014 (3) NR 831 (HC) (minimum sentence in s. 29 applied despite having been struck down as unconstitutional in previous case 14 years previously; sentence substituted)

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).

Commentary:

Bernhard Tjatjara, “*Guns Don’t Kill People, People Kill People: Observation in respect of the Arms and Ammunitions [sic] Act 7 of 1996*”, *Namibia Law Journal*, Volume 8, Issue 1, 2016 (comparison of criteria for obtaining a firearm licence in Namibia and other SADC countries)

Bernhard Tjatjara & Dunia P Zongwe, “Taking the Gun into the Law’s Hands: Observations in respect of the Arms and Ammunitions Act 7 of 1996”, *UNAM Law Review*, Volume 3, Issue 1, 2016, available at <http://unamlawreview.info> (comparison of criteria for obtaining a firearm licence in Namibia and other SADC countries).

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

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

African Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA), 1990

***African Union Non-Aggression and Common Defence Pact, 2005*

***Arms Trade Treaty (ATT), 2013*

**Comprehensive Nuclear-Test-Ban Treaty, 1996*

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

***Convention on Cluster Munitions, 2008*

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

International Convention for the Suppression of Acts of Nuclear Terrorism, 2005

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

SADC Declaration Towards a Southern Africa Free of Anti-Personnel Landmines, 1997 (not legally-binding)

SADC Declaration concerning Firearms, Ammunition and other related materials, 2001 (not legally-binding).

Treaty on the Non-Proliferation of Nuclear Weapons, 1968

See also **EXPLOSIVES**.

AVIATION

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

Summary: This Act ([SA GG 3649](#)) gives effect to the Warsaw Convention that governs international air travel. It was brought into force in respect of both South Africa and South West Africa on 22 March 1955 by SA Proc. No. 65 of 1955 ([SA GG 5434](#)).

Applicability to SWA: Section 1 originally stated “In this Act, ‘Union’ includes the Mandated Territory of South-West Africa and the port and settlement of Walvis Bay.” It was amended by Act 5 of 1964 to remove the reference to Union and to define “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. There were only two amendments 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* ([RSA GG 6529](#)) and the *Transfer of Powers and Duties of the State President Act 97 of 1986* ([RSA GG 10438](#)) (section 7) – neither of which was made expressly applicable to SWA.

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.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Carriage by Air Amendment Act 5 of 1964* ([RSA GG 728](#))
- *RSA Proclamation R. 294 of 1967* ([RSA GG 1892](#))
applies the Hague Protocol to “the Republic” from 17 December 1974
- *RSA Proclamation R. 93 of 1974* ([RSA GG 4276](#))
applies the Guadalajara Convention to “the Republic” from 4 April 1974

Act 14/1992 ([GG 430](#)) 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: Regulations are authorised by section 8 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

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

Related international agreements: The schedule to the Act, as amended, contains the *Warsaw Convention* as amended and supplemented by the Hague Protocol and the

Guadalajara Convention. However, Namibia has ratified the *Convention for the Unification of Certain Rules relating to International Carriage by Air (Montreal Convention), 1999* which supersedes the *Warsaw Convention* system. This ratification took place on 27 September 2001, according to the international depositary, the International Civil Aviation Organization (ICAO), and became binding on Namibia on 4 November 2003. Article 55 of the Montreal Convention, on the Relationship with other Warsaw Convention instruments) provides:

This Convention shall prevail over any rules which apply to international carriage by air:

1. between States Parties to this Convention by virtue of those States commonly being Party to –
 - (a) the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention);
 - (b) the Protocol to amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929, done at The Hague on 28 September 1955 (hereinafter called The Hague Protocol);
 - (c) the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules relating to International Carriage by Air Performed by a Person other than the Contracting Carrier, signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention);
 - (d) the Protocol to amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 as amended by the Protocol done at The Hague on 28 September 1955, signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);
 - (e) Additional Protocol Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by both The Hague Protocol and the Guatemala City Protocol, signed at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or
2. within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraphs (a) to (e) above.

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

Summary: This Act ([SA GG 4201](#)) 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. 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* ([RSA GG 10438](#)) – which was not made expressly applicable to SWA.

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 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”.

Amendments: The following pre-independence South African amendment was applicable to SWA –

- *Air Services Amendment Act 6 of 1964* ([RSA GG 728](#)).

Act 51 of 1959 was also amended by the *Air Services Amendment Act 43 of 1973* ([RSA GG 3906](#)). However, *Act 43 of 1973* was never brought into force in respect of South Africa or South West Africa. Therefore, the amendments contained in it are not incorporated here. *Act 43 of 1973* was repealed in South Africa by the *Repeal of Laws Act 94 of 1981* ([RSA GG 7855](#)), which came into force on its date of publication: 28 October 1981. However, this repeal, which took place after the date of transfer, was not effective in respect of South West Africa.

Act 6/1991 ([GG 216](#)) 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 ([GG 447](#)) amends section 11.

Act 31/1998 ([GG 1991](#)) amends sections 4, 9 and 11 and repeals section 10.

The Road Traffic and Transport Act 22 of 1999 ([GG 2251](#)) amends section 1.

Regulations: Pre-independence regulations have not been comprehensively researched.

Civil Air Services Regulations are contained in RSA GN R.449/1964 (RSA GG 752), as amended by the following:

- RSA GN R.1799/1967 (RSA GG 1799)
- GN 224/1995 ([GG 1204](#))
- 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](#)).

Aerodrome Ordinance 12 of 1963.

Summary: This Ordinance ([OG 2487](#)) 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 179/1986 ([OG 5254](#)).

Regulations: Regulations are authorised by section 6(1) of the Ordinance. Pre-independence regulations have not been researched.

Airports Company Act 25 of 1998.

Summary: This Act ([GG 1958](#)) provides for the incorporation of a company to undertake the operation, management and control of certain aerodromes in Namibia. The Act came into force on 1 November 1998 (GN 261/1998, [GG 1981](#)). However, by virtue of section 19(2) of the Act, sections 5-13 and sections 15-18 came into force on 5 February 1999, in terms of GN 19/1999 ([GG 2045](#)), on the date of transfer to the Company of the aerodromes listed in the Schedule set by the Minister in terms of section 14(1). (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 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends sections 1-11 and 14.

Regulations: Regulations are authorised by section 5(5), but none have yet been promulgated.

Notices: 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)

Fire Tech Systems CC v Namibia Airports Co Ltd & Others 2016 (3) NR 802 (HC) (overview of establishment of company under Act in introduction to case concerning tender by Namibia Airports Company)

Anhui Foreign Economic Construction (Group) Corp Ltd v Minister of Works and Transport & Others 2016 (4) NR 1087 (HC) (section 9(1)(b); relationship between section 5(2)(a) of the Airports Company Act 28 of 1998 and section 7(1)(a) of the Tender Board Act 16 of 1996).

Civil Aviation Act 6 of 2016.

Summary: This Act ([GG 6047](#)) consolidates the laws relating to civil aviation and civil aviation offences. It establishes the Namibia Civil Aviation Authority, the Air Navigation Services in that Authority and provides for a civil aviation regulatory and control framework. It implements several international aviation agreements applicable to Namibia. It also establishes the Directorate of Aircraft Accident and Incident Investigations and provides for the establishment of Namibia Register of Aircraft and the Civil Aviation Registry. It repeals the *Aviation Act 74 of 1962* and the *Civil Aviation Offences Act 10 of 1972*. It was brought into force with effect from 1 November 2016 by GN 260/2016 ([GG 6164](#)).

Regulations: Regulations made in term of the repealed Acts survive in terms of section 236(2) of the Act. Pre-independence regulations have not been comprehensively researched. However, it appears that these regulations made in terms of the *Aviation Act 74 of 1962* remain in force:

State Airport Regulations are contained in RSA GN R.1974/1963 (RSA GG 674), as amended by-

RSA GN R.397/1964 (RSA GG 748)
RSA GN R.2027/1965 (RSA GG 1319)
RSA GN R.943/1967 (RSA GG 1773)
RSA GN R.1031/1970 (RSA GG 2740)
RSA GN R.2233/1970 (RSA GG 2944)
RSA GN R.331/1973 (RSA GG 3799)
RSA GN R.1258/1973 (RSA GG 3983)
RSA GN R.1564/1973 (RSA GG 4017)
RSA GN R.1677/1973 (RSA GG 4023)
RSA GN R.2443/1973 (RSA GG 4124)
RSA GN R.774/1975 (RSA GG 4674)
RSA GN R.142/1976 (RSA GG 4976)
RSA GN R.1472/1976 (RSA GG 5260)
RSA GN R.2512/1976 (RSA GG 5366)
RSA GN R.2633/1977 (RSA GG 5846)
RSA GN R.441/1978 (RSA GG 5915)
RSA GN 12 of 15 January 1988 (OG 5487)
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.141/1976 (RSA GG 4975), as amended by-

RSA GN R.1283/1976 (RSA GG 5234)
RSA GN R.2380/1977 (RSA GG 5804)
GN 225/1995 ([GG 1204](#))
GN 60/1998 ([GG 1825](#))
GN 1/2001 ([GG 2467](#)).

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 (RSA GG 3773).

Namibian Civil Aviation Regulations, 2001 are published in GN 1/2001 ([GG 2467](#)). These regulations came into force on 2 March 2001. They are amended by GN 57/2006 ([GG 3615](#)), GN 201/2006 ([GG 3741](#)), GN 80/2017 ([GG 6281](#)), GN 201/2018 ([GG 6696](#)) and GN 293/2018 ([GG 6763](#)). These regulations 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 ([OG 5487](#)) and GN 62/1998 ([GG 1825](#))).

The Civil Aviation Security Regulations, contained in GN 181/1996 ([GG 1348](#)) and made in terms of the *Civil Aviation Offences Act 10 of 1972*, initially remained in force, but were repealed by GN 293/2018 ([GG 6763](#)).

Technical standards: Standards made in term of the repealed Acts survive in terms of section 236(2) of the Act. The following technical standards were issued in terms of Regulation 11.03.5 of the Namibian Civil Aviation Regulations, 2001:

NAM-CATS-CCL	GN 120/2002 (GG 2773)
Cabin Crew Licensing (came into force on 1 September 2002)	
NAM-CAT-DO	GN 50/2003 (GG 2939)
Design organisations for products and appliances	
NAM-CATS-MORG	GN 51/2003 (GG 2939)
Manufacturing Organisations	
NAM-CATS-ARM	GN 52/2003 (GG 2939)
Registration and marking	
NAM-CATS-OPS 98	GN 53/2003 (GG 2939)
Operation of powered paragliders	
NAM-CATS-MR	GN 54/2003 (GG 2940)
Medical certification	
NAM-CATS-OPS 100	GN 55/2003 (GG 2941)
Operation of gyroplanes	
NAM-CATS-OPS 102	GN 56/2003 (GG 2941)
Operation of free balloons and airships	
NAM-CATS-AMO	GN 57/2003 (GG 2941)
Aircraft maintenance organisations	
NAM-CATS-AH	GN 58/2003 (GG 2941)
Licensing and operation of aerodromes and heliports	
	as amended by GN 181/2016 (GG 6096), which brought the standards into force on 1 August 2016
NAM-CAT-OPS 133	GN 59/2003 (GG 2944)
Helicopter external-load operations	
NAM-CAT-OPS 105	GN 60/2003 (GG 2944)
Operation of parachutes	
NAM-CAT-OPS 106	GN 61/2003 (GG 2944)
Operation of hang gliders	
NAM-CAT-OPS 104	GN 62/2003 (GG 2944)
Operation of gliders	
NAM-CATS-ARO	GN 63/2003 (GG 2944)
Aviation recreation organisations	
NAM-CATS-AIRS	GN 64/2003 (GG 2944)
Aeronautical information services	
NAM-CAT-DG	GN 65/2003 (GG 2944)
Conveyance of dangerous goods	
NAM-CAT-OPS 103	GN 66/2003 (GG 2944)
Operation of microlight aeroplanes	

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) as amended by GN 190/2016 (GG 6096) which brought the standards into force on 1 August 2016
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) as amended by GN 70/2015 (GG 6273)
NAM-CATS-OPS 135 Air Transport Operations – Small Aeroplanes	GN 187/2003 (GG 3047) as amended by GN 183/2016 (GG 6096) which brought the standards into force on 1 August 2016, and as amended by GN 72/2015 (GG 6273) Note that the table of contents of GG 6273 gives the wrong number for these standards.
NAM-CATS-OPS 121 Air Transport Operations – Large Aeroplanes	GN 257/2003 (GG 3112) as amended by GN 185/2016 (GG 6096), which brought the standards into force on 1 August 2016, and as amended by GN 71/2015 (GG 6273) Note that the table of contents of GG 6273 gives the wrong number for these standards.
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) as amended by GN 184/2016 (GG 6096) which brought the standards into force on 1 August 2016
NAM-CAT-OPS 136 Air Transport Operations – Free Balloons	GN 182/2016 (GG 6096) which brought the standards into force on 1 August 2016
NAM-CATS-FCL 65 Air Traffic Services Licencing - Proficiency in Languages used for Radiotelephony Communications	GN 186/2016 (GG 6096) which brought the standards into force on 1 August 2016
NAM-CATS-FCL 63	GN 187/2016 (GG 6096)

Flight Crew Licencing - Proficiency in Languages used for Radiotelephony Communications	which brought the standards into force on 1 August 2016
NAM-CATS-FCL 61 Air Transport Operations – Designation of Examiners	GN 188/2016 (GG 6096) which brought the standards into force on 1 August 2016
NAM-CATS-FCL 61 Flight Crew Licencing – Proficiency in Languages used for Radiotelephony Communications	GN 189/2016 (GG 6096) which brought the standards into force on 1 August 2016

Notices: GN 296/2018 ([GG 6767](#)) identifies aviation participants and the dates on which such participants must have aviation security programmes in place.

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](#)).

Appointments: Members and alternate members of the Board Of Namibia Civil Aviation Authority are announced in GN 261/2016 ([GG 6164](#)).

Relevant international law: Several international treaties are annexed to the Act:

Schedule 1: “Convention on International Civil Aviation, signed at Chicago, on 7 December 1944 (Chicago Convention)”. Note that the version of the Convention in the Schedule does not accurately reflect the amendments which have been agreed to, and not agreed to, by Namibia.

Convention on International Civil Aviation (Chicago Convention), 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 83bis), Montreal, 1980

Protocol relating to an Amendment to the Convention (Article 3bis), Montreal, 1984

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

**Protocol on the Authentic Quinquelingual 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*

Note: See the entry for this Convention in the **Namlex Appendix** for a discussion of the differences between the international approach to the subsidiary documents issued in terms of the Convention and the approach embodied in the definition of this Convention in section 1 of the Act.

Schedule 2: “International Air Services Transit Agreement signed in Chicago on 7 December 1944”.

Note that while this Convention may be part of Namibia’s domestic law, Namibia is not a party to the Agreement in terms of international law.

Schedule 3: “Convention on Offences and Certain Other Acts Committed on Board Aircraft, Signed at Tokyo, on 14 September 1963 (Tokyo Convention)”

Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention), 1963

Schedule 4: “Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague, on 16 December 1970 (the Hague Convention 1970)”

Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Hijacking Convention), 1970

Schedule 5: “Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal, on 23 September 1971 (Montreal Convention 1971)”

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Sabotage Convention), 1971

Note that this Convention is generally referred to as the “Sabotage Convention”, whereas the “Montreal Convention” usually refers to the “Convention for the Unification of Certain Rules relating to International Carriage by Air (Montreal Convention), 1999”. Note also that the Protocol amending this Convention is presented separately in Schedule 6.

Schedule 6: “1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation done at Montreal on 23 September 1971”

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 1988.

Other aviation treaties that Namibia is party to and which have entered into force internationally, but have *not* been annexed to the Civil Aviation Act include:

- *Convention for the Unification of Certain Rules relating to International Carriage by Air (Montreal Convention), 1999*
- *Revised Constitution of the African Civil Aviation Commission (AFCAC), 2009.*

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

African Civil Aviation Commission Constitution, 1969 and Revised Constitution of the African Civil Aviation Commission, 2009

Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Hijacking Convention), 1970

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Sabotage Convention), 1971

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 1988

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

Convention on International Civil Aviation (Chicago Convention), 1944

Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention), 1963

See also Public Enterprises Governance Act 2 of 2006 (**BUSINESS**), which affects the Namibia Airports Company and Air Namibia (Pty) Ltd.

BIRTHS AND DEATHS

General Law Amendment Ordinance 13 of 1962, section 7.

Summary: Section 7 of this Ordinance ([OG 2409](#)) makes concealment of the birth of a child a criminal offence.

Burial Place Ordinance 27 of 1966.

Summary: This Ordinance ([OG 2728](#)) prohibits the desecration or disturbance of graves and regulates exhumation.

Crematorium Ordinance 6 of 1971.

Summary: This Ordinance ([OG 3182](#)) provides for the establishment, maintenance, management, use and control of crematoria.

Regulations: Regulations Relating to Crematoria and the Cremation of Human Remains are contained in GN 331/1975 ([OG 3503](#)), as amended by GN 139/1978 (OG 552).

See also **CIVIL REGISTRATION**.

See also **NATIONAL HERITAGE** (grave sites).

‘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 ([OG 1](#)) 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 ([OG 131](#)) requires that separate Native Reserve Trust Funds be set up for each native reserve established pursuant to the Native Administration Proclamation 11 of 1922 ([OG 82](#), 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 ([OG 284](#)), Proc. 21/1936 ([OG 677](#)), Proc. 6/1939 ([OG 776](#)), Ord. 11/1954 ([OG 1846](#)), RSA Proc. 62/1963 ([RSA GG 470](#)), RSA Proc. 228/1969 ([RSA GG 2510](#)) and RSA Proc. 84/1977 ([RSA GG 5537](#)).

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 ([OG 205](#)) provides for the recovery of the costs of fencing native reserves from the reserves’ inhabitants.

Native Administration Proclamation 15 of 1928, sections 17-18 and 23-27.

Summary: The surviving portions of this Proclamation ([OG 284](#)) (sections 17, 18, 23, 24, 25, 26 and 27 and any regulations made in terms of those sections) deal primarily with marriage and succession in respect 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 165/1929) ([OG 350](#)). 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 67/1954) ([OG 1818](#)).

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 ([RSA GG 4164](#)).

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 ([OG 722](#)), Proc. 24/1941 ([OG 915](#)), Proc. 35/1943 ([OG 1080](#)), Ord. 11/1954 ([OG 1846](#)), Ord. 4/1955 ([OG 1899](#)), RSA Proc. 360/1968 ([RSA GG 2227](#)), RSA Proc. 41/1973 ([RSA GG 3872](#)), AG 46/1978 ([OG 3779](#)), Act 27/1985 ([OG 5147](#)), Damara Community and Regional Authorities and Paramount Chief and Headman Ordinance 2 of 1986 of the Damara Legislative Assembly (published in [OG 5355](#)), AG 14/1989 ([OG 5726](#)) and Act 23/1992 ([GG 470](#)).

The Traditional Authorities Act 17 of 1995 ([GG 1158](#)) 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 ([GG 3566](#)) repeals portions of section 18, but provides that “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”.

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 70/1954 ([OG 1818](#)). These regulations were subsequently extended to the whole of South West Africa *with the exception of* Owambo, Kavango and Caprivi by RSA Proc. R.192/1974 ([RSA GG 4164](#)).

The Police Zone is defined in the First Schedule to the Prohibited Areas Proclamation 26 of 1928 ([OG 296](#)), as amended by GN 105/1933 ([OG 522](#)), GN 83/1938 ([OG 752](#)), GN 126/1938 ([OG 760](#)), GN 375/1947 ([OG 1331](#)), GN 216/1950 ([OG 1542](#)), GN 255/1950 ([OG 1554](#)), GN 2/1953 ([OG 1736](#)), GN 198/1954 ([OG 1854](#)), GN 38/1959 ([OG 2182](#)) and GN 3/1961 ([OG 2289](#)), substituted by GN 222/1961 ([OG 2334](#)) and amended by GN 165/1962 ([OG 2425](#)).

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 ([OG 82](#)), which was repealed in its entirety by the Local Authorities Act 23 of 1992 ([GG 470](#)), 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))

EN v SN 2014 (4) NR 1193 (HC) (section 17(6))

Meroro v Minister of Lands, Resettlement and Rehabilitation & Others 2015 (2) NR 526 (SC)(discusses section 18(9) and related regulations).

Commentary:

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, available at www.namiblii.org

Legal Assistance Centre, *Marital Property in Civil and Customary Marriages: Proposals for Law Reform*, 2005, Legal Assistance Centre, available at www.lac.org.na

Legal Assistance Centre, *Customary Laws on Inheritance in Namibia: Issues and questions for consideration in developing new legislation*, 2005, available at www.lac.org.na.

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 ([GG 3566](#)) 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 Vermonstregtelike 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 ([OG 345](#)) 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 ([OG 382](#)), Proc. 34/1940 ([OG 871](#)), Proc. 38/1940 ([OG 873](#)), Proc. 15/1941 ([OG 907](#)), Proc. 20/1941 ([OG 911](#)), Proc. 2/1948 ([OG 1339](#)), Proc. 52/1950 ([OG 1552](#)) and RSA Proc. R.1/1976 ([RSA GG 4946](#)).

Caprivi Zipfel Affairs Proclamation 27 of 1930.

Summary: This Proclamation ([OG 383](#)) 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 ([OG 728](#)) 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 ([OG 873](#)), Proc. 26/1948 ([OG 1367](#)) and Proc. 53/1950 ([OG 1552](#)).

Native Trust Funds Proclamation 23 of 1939.

Summary: This Proclamation ([OG 792](#)) 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 ([OG 131](#)), 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 ([SA GG 3514](#)), originally called the “Native Reserves (South-West Africa) Act”, authorises the dis-establishment of one area reserved for Black occupation, in exchange for the establishment of another. There were no amendments to the Act in South Africa prior to Namibian independence.

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 ([SA GG 6253](#)), originally named the “Native Affairs 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 of 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 of 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), dated 28 September 1977, as amended.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Black Laws Amendment Act 63 of 1966* (originally called the “Bantu Laws Amendment Act”) ([RSA GG 1585](#))
- *Third Black Laws Amendment Act 49 of 1970* (originally called the “Third Bantu Laws Amendment Act”) ([RSA GG 2820](#)).

Reservation of State Land for Natives Ordinance 35 of 1967.

Summary: This Ordinance ([OG 2837](#)) 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 ([OG 2983](#)), Ord. 19/1971 ([OG 3198](#)), Ord. 16/1974 ([OG 3442](#)), Ord. 5/1975([OG 3472](#)), Ord. 6/1977 ([OG 3605](#)) and Ord. 5/1978 ([OG 3736](#)).

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

Summary: This Act ([RSA GG 2100](#)) was intended to assist the “native nations” in South West Africa to “develop in an orderly manner to self-governing nations and independence”. It set aside areas for “native nations” in Damaraland, Hereroland, Kaokoland, Kavango, Eastern Caprivi, Owambo and any other area gazetted for this purpose in terms of the Act. The Act may remain in force in technical terms in some areas.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Second Black Laws Amendment Act 27 of 1970* (originally called the “Second Bantu Laws Amendment Act”) ([RSA GG 2665](#))
- *Black Laws Amendment Act 23 of 1972* (originally called the “Bantu Laws Amendment Act”) ([RSA GG 3447](#))
- *Development of Self-Government for Native Nations in South-West Africa Amendment Act 20 of 1973* ([RSA GG 3845](#))
- *Black Laws Amendment Act 70 of 1974* (originally called the “Bantu Laws Amendment Act”) ([RSA GG 4486](#))

- *Second Black Laws Amendment Act 71 of 1974* (originally called the “Second Bantu Laws Amendment Act”) ([RSA GG 4487](#))
- *Black Laws Amendment Act 9 of 1975* (originally called the “Bantu Laws Amendment Act”) ([RSA GG 4628](#))
- *Exchequer and Audit Act 66 of 1975* ([RSA GG 4794](#))
- *Black Laws Amendment Act 4 of 1976* (originally called the “Bantu Laws Amendment Act”) ([RSA GG 5012](#)).

Section 52 of the Representative Authorities Proclamation, AG 8/1980 ([OG 4401](#)) (amended by AG 4/1981 and repealed by the Namibian Constitution) 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 ([RSA GG 2054](#)), originally called the “Promotion of the Economic Development of Bantu Homelands 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) dated 28 September 1977, as amended. 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.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Black Laws Amendment Act 70 of 1974* (originally called the “Bantu Laws Amendment Act”) ([RSA GG 4486](#))
- *Black Laws Amendment Act 4 of 1976* (originally called the “Bantu Laws Amendment Act”) ([RSA GG 5012](#))
- *Promotion of the Economic Development of National States Amendment Act 80 of 1977* (originally called the “Promotion of the Economic Development of Bantu Homelands Amendment Act”) ([RSA GG 5595](#))
- *Black Laws Amendment Act 12 of 1978* (originally called the “Bantu Laws Amendment Act”) ([RSA GG 5916](#))
- *Laws on Co-operation and Development Amendment Act 3 of 1980* ([RSA GG 6906](#))
- *Finance Act 21 of 1980* ([RSA GG 6915](#))
- *Laws on Co-operation and Development Amendment Act 102 of 1983* ([RSA GG 8868](#))
- *Laws on Co-operation and Development Amendment Act 83 of 1984* ([RSA GG 9310](#))

- *Laws on Development Aid Second Amendment Act 105 of 1986* ([RSA GG 10451](#))
- *Development Aid Laws Amendment Act 53 of 1988* ([RSA GG 11323](#)).

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

Summary: This Act ([RSA GG 3578](#)) 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) dated 28 September 1977, as amended. There were no amendments to the Act in South Africa prior to Namibian independence.

Amendments: There were no amendments to the Act in South Africa prior to Namibian independence. AG 39/1978 ([OG 3770](#)) amends this Act by adding specified areas of land to Namaland. Act 15/1979 ([OG 4036](#)) amends section 1, section 2 and Schedule 1. The Representative Authority of the Namas Proclamation (AG 35/1980) ([OG 4207](#)) (which was repealed by the Namibian Constitution) repeals section 3, amends 6 and affects the application of Schedule 1. AG 71/1980 ([OG 4186](#)) amends section 2 and Schedule 1. Act 4/1986 ([OG 5194](#)) also amends section 2 and Schedule 1.

See also Dried Peas Control Ordinance 35 of 1957 (**AGRICULTURE**).

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 AND HOUSING**).

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

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

BUSINESS

Close Corporations Act 26 of 1988.

Summary: This Act ([OG 5658](#)) provides for the establishment of close corporations. It was brought into force on 1 March 1994 by Proc. 9/1994 ([GG 820](#)).

Amendments: The Act is substantially amended by Act 8/1994 ([GG 891](#)), which came into force on 1 March 1994, *except for* sections 5, 14 and 30 of the amending Act which came into force on 25 July 1994 (section 31 of Act 8/1994). The Married Persons Equality Act 1 of 1996 ([GG 1316](#)) deletes section 32(2).

The Act is also amended by the Business and Intellectual Property Authority Act 8 of 2016 ([GG 6105](#)), which was brought into force with effect from 16 January 2017 by GN 293/2016 ([GG 6197](#)).

Regulations: Regulations are contained in GN 43/1994 ([GG 829](#)). Regulation 17(1) is amended by GN 83/1994 ([GG 863](#)), GN 97/2006 ([GG 3658](#)) and GN 294/2012 ([GG 5094](#)), and substituted by GN 20/2015 ([GG 5668](#)) (which withdraws GN 294/2012).

Notices: GN 96/2006 ([GG 3658](#)), as amended by GN 295/2012 ([GG 5094](#)), identifies professions whose members are qualified to perform the duties of an accounting officer. GN 19/2015 ([GG 5668](#)) identifies professions whose members are qualified to perform the duties of an accounting officer; it withdraws GN 295/2012 but makes no mention of GN 96/2006.

A public notice containing a helpful explanatory note on the registration of close corporations was published in General Notice 67/2011 ([GG 4679](#)).

Notices on the registration and deregistration of specific close corporations are not recorded here.

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

Related laws: The Companies Amendment Act 3 of 1989 amended the *Companies Act 61 of 1973* to provide for the conversion of close corporations into companies and vice versa; this amending Act was repealed by the Companies Act 28 of 2004.

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), 2012 (1) NR (SC) (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)
Oberholster v Wolfaardt & Others 2010 (1) NR 293 (HC) (discussion of remedies under the Act which could have been utilised by respondents to resolve dispute brought to Court on another basis)
Marot & Others v Cotterell 2012 (1) NR 365 (HC) (purchase of shares in a close corporation does not give the members rights of occupation of immovable property owned by the close corporation by virtue of their membership but rather by agreement); confirmed in *Marot & Others v Cotterell* 2014 (2) NR 340 (SC)
Okorusu Flurospar (Pty) Ltd v Tanaka Trading CC & Another 2016 (2) NR 486 (HC) (section 64)
Wyss & Another v Hungamo & Others 2016 (4) NR 1054 (HC) (section 35 upheld against constitutional challenge)
Hiskia v Body Corporate of Urban Space (HC-MD-CIV-MOT-GEN 2017/00143) [2018] NAHCMD 279 (31 August 2018) (section 25).

Companies Act 28 of 2004.

Summary: This Act ([GG 3362](#)) 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 ([GG 1316](#)). It was brought into force on 1 November 2010 by GN 172/2010 ([GG 4536](#)).

Amendments: Act 9/2007 ([GG 3969](#)), which was brought into force simultaneously with the Act on 1 November 2010 by GN 237/2010 ([GG 4595](#)), amends section 82.

The Act is also amended by the Business and Intellectual Property Authority Act 8 of 2016 ([GG 6105](#)), which was brought into force with effect from 16 January 2017 by GN 293/2016 ([GG 6197](#)).

Regulations: Pre-independence regulations have not been comprehensively researched.

Regulations pertaining to the winding-up and judicial management of companies made in terms of section 15 of the previous *Companies Act 61 of 1973* remain in force in terms of section 450 of this Act. These regulations are contained in RSA GN R.2490/1973 (RSA GG 4128).

Companies Administrative Regulations, 2010 are contained in GN 173/2010 ([GG 4536](#)), as amended by GN 207/2016 ([GG 6113](#)), which amends Annexure 3 by substituting Form CM 23, and by GN 310/2017 ([GG 6482](#)), which amends Regulation 40.

Notices: A public notice containing a helpful explanatory note on the new legal regime was published in General Notice 67/2011 ([GG 4679](#)).

A Companies Registration Office was declared in GN 60/2014 ([GG 5455](#)).

Notices on the registration, deregistration and dissolution of specific companies are not recorded here.

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

Cases: The following cases were decided under the current Act –

- Klein v Caremed Pharmaceuticals (Pty) Ltd* 2015 (4) NR 1016 (HC) (section 349(f) read with 350(1)(c))
- Executive Properties CC & Another v Oshakati Tower (Pty) Ltd & Others* 2013 (1) NR 157 (SC) (non-compliance with section 228 and its consequences)
- Laicatti Trading Capital Inc & Others v Greencoal (Namibia) Pty (Ltd) & Another* 2016 (2) NR 363 (HC) (section 349(h) and section 349(f) read with 350(1)(c)).

The following post-independence cases were decided under the previous *Companies Act 61 of 1973* –

- 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 Sociada 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); *Executive Properties CC & Another v Oshakati Tower (Pty) Ltd & Others* 2013 (1) NR 157 (SC)(section 228)
- Kaese v Schacht & Another* 2010 (1) NR 199 (SC) (sections 266 and 286)

Weatherly International Plc v Bruni and McLaren NNO & Another 2014 (1) NR 273 (SC) (section 311)
Offshore Development Co (Pty) Ltd v First National Bank of Namibia Ltd 2014 (4) NR 1198 (HC) (powers of chief executive officer).

Commentary:

Eliaser Ilithilwa Nekwaya, “Defences against personal liability to diligent company directors in Namibia; Does it offer adequate protection?”, *Namibia Law Journal*, Volume 5, Issue 1, 2013 (discussing section 256)

Chisom Okafor, “The Revival of Small and Medium Enterprises in Namibia through an Effective Insolvency Law Regime” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017.

Public Enterprises Governance Act 2 of 2006.

Summary: This Act ([GG 3698](#)), which was originally named the State-owned Enterprises Governance Act 2 of 2006, 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 was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)). It was re-named by Act 8/2015 ([GG 5835](#)).

Amendments: Act 5/2008 ([GG 4146](#)) 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 force at the same time as the principal Act, while the remainder of the amendments came into force 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 ([GG 4378](#)), which is brought into force in relevant part on 18 May 2011 (GN 64/2011, [GG 4714](#)). Schedule 1 is substituted by GN 142/2013 ([GG 5213](#)), GN 43/2016 ([GG 5965](#)) and GN 222/2018 ([GG 6708](#)), pursuant to section 47 of the Act.

The Act is substantially amended by Act 8/2015 ([GG 5835](#)), which changes the name of the Act from the State-owned Enterprises Governance Act to the Public Enterprises Governance Act. This amending Act amends “Schedule 2 to the principal Act and other laws” – presumably including those laws which were previously amended by Schedule 2 – to reflect the name change.

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).

Regulations: Regulations are authorised by section 43 of the Act, but none have yet been promulgated.

Notices: Directives in relation to **remuneration for CEOs and Senior Managers and annual fees and sitting allowances for Board members** are contained in GN 174/2010 ([GG 4538](#)), as amended by GN 141/2013 ([GG 5213](#)), GN 261/2014 ([GG 5644](#)) and GN 69/2018 ([GG 6572](#)). Table 1 of that Notice is substituted by GN

134/2011 ([GG 4767](#)) and GN 141/2013 ([GG 5213](#)). Tables 2 and 3 of that Notice are substituted by GN 261/2014 ([GG 5644](#)). Tables 1, 2 and 3 are all substituted by GN 69/2018 ([GG 6572](#)).

GN 69/2018 ([GG 6572](#)) also sets a moratorium on any adjustment to the salaries and benefits of Chief Executive Officers, Senior Management Staff and Board Members of public enterprises beyond the inflation adjustments specified in that notice, pending public enterprise reform in Namibia.

A memorandum of agreement between the Namibian Competition Commission and NAMFISA, made pursuant to section 67(3) of the Competition Act 2 of 2003, is published in General Notice 270/2014 ([GG 5527](#)).

Exemptions: The Namibia Financial Institutions Supervisory Authority (NAMFISA) and the National Fishing Corporation of Namibia Limited (FISHCOR) are exempted from certain provisions of the Act by GN 151/2011 ([GG 4787](#)).

Note that [GG 4787](#) erroneously uses the acronym FISCHOR.

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](#)). GN 131/2010 ([GG 4514](#)) announces the appointment of members of the Board of the Communications Regulatory Authority of Namibia.

Cases:

Road Fund Administration v Government of the Republic of Namibia & Others 2012 (1) NR 28 (HC) (court takes *prima facie* view that Government and Cabinet are not entitled to interfere with executive decisions taken by board of parastatal)

Transworld Cargo (Pty) Ltd v Air Namibia (Pty) Ltd 2014 (4) NR 932 (SC) (commercial decision of state-owned enterprise made in the ordinary course of business not administrative action subject to administrative review)

Namibia Training Authority v Nangolo-Rukoro & Another 2016 (4) NR 992 (LC) (section 22(3)).

Commentary:

Frederico Links & Ellison Tjirera, “Nothing to Disclose: Critiquing Namibia’s passive approach to conflict of interest”, Institute for Public Policy Research, 2011, available at www.ippr.org.na

Frederico Links & Malakia Haimbodi, “Governing Challenges in the SOE Sector”, Institute for Public Policy Research, 2011, available at www.ippr.org.na.

Dennis U Zaire, “Accountability (or the absence thereof) in the Namibian public sector: A look at legislation and policies in place”, *Namibia Law Journal*, Volume 6, Issue 1, 2014.

May Weylandt, “SOE Governance in Namibia: Will a Hybrid System Work?”, Institute for Public Policy Research, 2016, available at www.ippr.org.na

Business and Intellectual Property Authority Act 8 of 2016.

Summary: This Act ([GG 6105](#)) establishes a Business and Intellectual Property Authority (BIPA), governed by a Board, which centralises the registration of business and intellectual property (industrial property and copyright) under the Close Corporations Act 26 of 1988, the Companies Act 28 of 2004, the Copyright and

Neighbouring Rights Protection Act 6 of 1994 and the Industrial Property Act 1 of 2012. The Registrar of Business and Industrial Property, who is the CEO of BIPA, replaces the Registrar of Companies and the Registrar of Close Corporations as well as the Registrar of Industrial Property. It was brought into force with effect from 16 January 2017 by GN 293/2016 ([GG 6197](#)).

GG 6105 was replaced with a corrected copy, which has the same date. The replacement copy corrects a mistake in the Contents section on page 1 where the Act number was wrongly stated as 7 instead of 8. This second version of GG 6105 was then replaced with a third version, because of further unspecified errors on page 1. The correct *Gazette* is not otherwise indicated.

Regulations: Regulations are authorised by section 30 of the Act, but none have yet been promulgated.

Notices: General Notice 640/2018 ([GG 6767](#)) announces the location and operating hours of the Registration Office of BIPA.

Appointments: Board members are announced in GN 252/2017 ([GG 6426](#)).

Commentary: Cislé S Jacobs, “The Intellectual Property Regime in Namibia: An Overview of the Legal, Institutional and Policy Framework” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017.

Public Private Partnership Act 4 of 2017.

Summary: This Act ([GG 6357](#)) provides a legal framework for public private partnership projects and establishes the Public Private Partnership Committee. It was brought into force on 1 December 2018 by GN 335/2018 ([GG 6785](#)).

Regulations: Regulations and guidelines are authorised by section 40 of the Act, but none have yet been promulgated.

Notices: GN 336/2018 ([GG 6785](#)) provides a form for the disclosure of business and financial interests by nominees for membership on the Public Private Partnership Committee, in terms of section 8(2) of the Act.

Appointments: GN 336/2018 ([GG 6785](#)) announces the appointment of the Chairperson and members of the Public Private Partnership Committee.

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. 21/2003, [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](#)).

INTERNATIONAL LAW

SADC Declaration on Productivity, 1999 (not legally-binding)

***Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), 1965*

See also **FINANCE AND DEVELOPMENT**.

See also Financial Intelligence Act 13 of 2012 (duties of Registrar of Companies and Close Corporations to combat money-laundering and the financing of terrorism and proliferation) (**FINANCIAL INSTITUTIONS**).

See also **INTELLECTUAL PROPERTY**.

See also **LABOUR**.

See also Posts and Telecommunications Companies Establishment Act 17 of 1992 (**MEDIA AND COMMUNICATION**).

See also **TRADE AND INDUSTRY**.

CENSUS AND STATISTICS

Census of Dwellings Proclamation 24 of 1945.

Summary: This Proclamation ([OG 1196](#)) makes provision for the taking of a census of dwellings.

Statistics Act 9 of 2011.

Summary: This Act ([GG 4777](#)) establishes the Namibia Statistics Agency and provides for the development of the National Statistics System. The Namibia Statistics Agency is charged with organising a population and housing census every ten years, amongst its many other duties. The Act also establishes the National Spatial Data Infrastructure and the Committee for Spatial Data. It repeals the *Statistics Act 66 of 1976*. The Act was brought into force on 16 April 2012 by GN 103/2012 ([GG 4929](#)).

Regulations and notices: Regulations and notices made under the previous law survive under the current Act, pursuant to section 60(3) which states: “Unless otherwise provided in this Act, anything done under a law repealed by section 59 and which could have been done under a corresponding provision of this Act is deemed to have been done under that corresponding provision.” Regulations are authorised under section 58 of the current Act.

Regulations and notices issued under the *Statistics Act 66 of 1976* are contained in -

RSA GN 1133/1976
RSA GN 1138/1976
RSA GN 1437/1976
RSA GN 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](#)) (regulations for 1991 census)
GN 54/1999 ([GG 2076](#)) (child economic activities)
GN 167/2001 ([GG 2547](#)) (dates for 2001 census)
GN 168/2001 ([GG 2597](#)) (regulations 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 114/2010 ([GG 4495](#)) (dwellings and other building structures)
GN 146/2011 ([GG 4776](#)), as extended by GN 177/2011 ([GG 4796](#)) (dates for 2011 census)
GN 147/2011 ([GG 4776](#)) (regulations for 2011 census).

Note that many of these have no ongoing effect.

Notices: A **Namibia Statistics Policy** is published in General Notice 18/2015 ([GG 5654](#)).

A **Code of Practice** regarding professional and ethical standards applicable to statistics producers is published in General Notice 19/2015 ([GG 5655](#)).

A **Data Collection, Processing and Dissemination Policy and Practice** is published in General Notice 20/2015 ([GG 5656](#)).

A **Data Quality Assessment Framework** setting out standards which will be used for the designation of statistics as “official” statistics is published in General Notice 21/2015 ([GG 5657](#)).

A **National Spatial Data Infrastructure (NSDI) Policy** is published in General Notice 103/2015 ([GG 5684](#)). A notice on the manner and specification for the capturing of spatial data, including any application for exemption from such manner or specification, is contained in General Notice 404/2016 ([GG 6143](#)).

A **Metadata Standard on the Manner for the Capturing and Publishing of Metadata for Spatial Data and Services in Namibia** is published in General Notice 405/2016 ([GG 6144](#)).

A **Data Quality Standard for the Purchase, Capture, Collection, Production and Dissemination of Geospatial Data in Namibia** is published in General Notice 406/2016 ([GG 6145](#)).

Appointments: Appointments to the Board of the Statistics Agency are announced in GN 174/2011 ([GG 4792](#)) and GN 148/2014 ([GG 5559](#)).

COMMENTARY

Frederico Links, Ndeshi Fikameni and Michael Hasheela, “Access Denied: access to Information in Namibia”, Institute for Public Policy Research, 2017, available at www.ippr.org.na.

Karen Mohan, “Sunlight is the Best Disinfectant: Why Namibia Needs Access to Information”, Institute for Public Policy Research, 2012, available at www.ippr.org.na

Henry Maina, “Disclosure vs Secrecy: What is the right balance?”, Institute for Public Policy Research, 2012, available at www.ippr.org.na

M Dimba, “Access to Information as a Tool for Socio-economic Justice”, Institute for Public Policy Research, 2012, available at www.ippr.org.na

Karen Mohan, “Access to Information: The Media and the ICT Sector”, Institute for Public Policy Research, 2012, available at www.ippr.org.na

Robin Sherbourne, “Access to Information and the Namibian Economy”, Institute for Public Policy Research, 2012, available at www.ippr.org.na.

INTERNATIONAL LAW
African Charter on Statistics, 2009

CHILDREN

Children's Act 33 of 1960, as amended in South Africa to 1977.

Summary: This Act ([SA GG 6417](#)) regulates adoption of children; provides for the appointment of Commissioners of Child Welfare and for the establishment of Children's Courts; deals with the protection of children from neglect, abuse and exploitation; and provides for certain institutions for children and juveniles. It repeals the Children's Ordinance 31 of 1961 ([OG 2328](#)), which had replaced the Adoption of Children Ordinance 10 of 1927. The Act is repealed, along with its amendments, by the Child Care and Protection Act 3 of 2015 ([GG 5744](#)), which has not yet been brought into force.

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

As amended, section 1 defined "Republic" to include "the territory", which is defined as "the territory of South West Africa". The added section 93A states "This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel." (Act 74/1973 also made a number of other amendments, the purpose of which was to provide continuity with the repealed Children's Ordinance 31 of 1961.)

RSA Proc. 263/1976 ([RSA GG 5360](#)) which also came into force on 1 January 1977 and explicitly stated that it was applicable to SWA, assigned the general administration of the Act to the Minister of Social Welfare and Pensions, with certain exceptions stipulated in respect of different racial groups.

Transfer of administration to SWA: Because responsibility for administering the Act rested with different South African ministries, different transfer proclamations may have 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 ([OG 3651](#)). 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 ([OG 3675](#)).

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.

Alternatively, the Executive Powers (Social Welfare and Pensions) Transfer Proclamation, AG. 11 of 1977, dated 30 November 1977, may have applied because the general administration of the Act fell under the Minister of Social Welfare and Pensions.

There were two amendments to the Act in South Africa after the date of the various transfers and prior to Namibian independence – the *Children's Amendment Act 15 of 1977* (which was brought into force by RSA Proc. R.170/1979, effective 1 September 1979) and the *Special Courts for Blacks Abolition Act 34 of 1986* – neither of which was made expressly applicable to SWA.

Amendments: The South African amendments to the Act prior to the *Children's Amendment Act 15 of 1977* (which was brought into force by RSA Proc. R.170/1979, effective 1 September 1979) were applicable to SWA by virtue of section 93A of the amended Act. This includes the *Criminal Procedure Act 51 of 1977*, which was brought into force in South Africa and South West Africa on 22 July 1977 by RSA Proc. R.148 of 1977 ([RSA GG 5654](#)).

Act 7/1981 of Rehoboth made the *Children's Amendment Act 15 of 1977* (which was not applicable to other parts of SWA) applicable to Rehoboth.

Section 104 is repealed by the Prisons Act 17 of 1998 ([GG 1894](#)) (which is repealed in turn by the Correctional Service Act 9 of 2012).

Regulations: Pre-independence regulations have not been researched, as this Act and its regulations are expected to soon be replaced by the Child Care and Protection Act 3 of 2015 and new regulations promulgated under that Act.

Administration of Act: Administration of the Act is assigned to the Minister responsible for child welfare by Proc. 6/2012 ([GG 4891](#)), pursuant to the Assignment of Powers Act 4 of 1990.

Cases:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State, 1991 NR 178 (SC) (references to whipping and corporal punishment in sections 32 and 92(1) unconstitutional)

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)

See also *NS v RH* 2011 (2) NR 486 (HC) at 526E-529B, which discusses in *dicta* the impact of *Detmold* in the absence of Namibia's accession to the Hague Convention on Inter-Country Adoption and the subsidiarity principle in Art 21(b) of the UN Convention on the Rights of the Child incorporated into Namibian law by virtue of Art 144 of the Namibian Constitution.

Commentary: Oliver C Ruppel & Pombili L Shipila, "Adoption: Statutory and customary law aspects from a Namibian perspective" in Oliver C Ruppel (ed),

Children's Rights in Namibia, Konrad Adenauer Stiftung, 2009, available at www.kas.de.

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

Summary: This Act ([RSA GG 3533](#)) sets the age of majority at twenty-one and provides for other related matters. It is repealed by the Child Care and Protection Act 3 of 2015 ([GG 5744](#)), which has not yet been brought into force.

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

Regulations: The Act makes no provision for regulations.

Commentary: R Coomer & D Hubbard, “A major decision: Considering the age of majority in Namibia” in Oliver C Ruppel (ed), *Children's Rights in Namibia*, Konrad Adenauer Stiftung, 2009, available at www.kas.de.

Children's Status Act 6 of 2006.

Summary: This Act ([GG 3761](#)) 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 was brought into force on 3 November 2008 by GN 266/2008 ([GG 4154](#)). It is repealed by the Child Care and Protection Act 3 of 2015 ([GG 5744](#)), which has not yet been brought into force.

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

Cases:

Frans v Paschke & Others 2007 (2) NR 520 (HC) implicitly extended the applicability of section 16 on the inheritance rights of children born outside marriage, through section 26(2), by finding the common law rule that children born outside marriage may not inherit intestate from their fathers unconstitutional with effect from 21 March 1990. (See *Paschke v Frans* 2015 (3) NR 668 (SC) which held that the date of *litis contestation* is the relevant date for determination of the quantum of unjust enrichment resulting from the constitutional ruling.)

NS v PS 2010 (2) NR 418 (HC) makes a passing mention of the Act, noting that section 5(1) allows for variation of a High Court custody order in the children's court “if circumstances have changed”.

S v S 2011 (1) NR 144 (HC) suggests that the common-law concept of putative marriage should fall into disuse since the main purpose of the concept is to mitigate harshness to any children involved, now that “the Children's Status Act essentially puts children born out of wedlock on the same legal footing with children born in wedlock” (at 148B-C).

- Jordaan v Jordaan* (A 317/2012) [2012] NAHCMD 106 (11 December 2012), deals with an *ex parte* application for interim custody under the Act which was found to be outside the Act's criteria for such an order.
- FN v SM* 2012 (2) NR 709 (HC) overturned a decision not to confirm an interim protection order in terms of the Combating of Domestic Violence Act 4 of 2003, and issued a final protection order giving interim custody to the mother and access to the father; the Court made this final protection order for a duration of 12 months, to allow time for a custody proceeding under the Children's Status Act.
- LNL v LJJ* (I 2406/2013) [2014] NAHCMD 309 (17 October 2014) involved a dispute about the paternity of one child in divorce proceedings, on the basis that the wife had affairs. The High Court said that the Children's Status Act reiterates the common law presumption that a child born in wedlock is the child of the father married to the mother. It "assists a father of a child born in marriage only to this extent: If the mother refuses to subject a child to a paternity test, there is a presumption that she is seeking to conceal the truth concerning the parentage of that person". The Court held that the husband cannot demand paternity tests when he has not produced any evidence which contradicts the presumption that children born inside marriage are the children of the spouses.
- JM & Another v SM* 2016 (1) NR 27 (HC) concerned a request for an interim variation of a divorce order on custody, pending the outcome of a custody application under the Children's Status Act. It is not clear why the parties utilised two different forums. The case found that the High Court has very broad discretion to consider any relevant information.
- Kriel v Kantak* (A 268-2015) [2015] NAHCMD 242 (7 October 2015) involved a High Court application for interim custody of a child launched only three court days after a custody application was made in the children's court under the Children's Status Act. The High Court refused to entertain the case on the grounds that this would be usurping the lower court's function. It noted that if the lower court is not acting, the appropriate remedy is mandamus.

Commentary:

- Felicity !Owoses-/Goagoses, "Custody and guardianship of children" in Oliver C Ruppel (ed), *Children's Rights in Namibia*, Konrad Adenauer Stiftung, 2009, available at www.kas.de
- Tousy Namiseb, "The Children's Status Act, 2006 (No. 6 of 2006)", *Namibia Law Journal*, Volume 1, Issue 2, 2009, available at www.kas.de
- Julia Sloth-Nielsen, Lorenzo Wakefield & Nkatha Murungi, "Does the differential criterion for vesting parental rights and responsibilities of unmarried parents violate international law? A legislative and social study of three African countries", 55(2) *Journal of African Law* 203, 2011.

***Child Care and Protection Act 3 of 2015.**

Summary: This Act ([GG 5744](#)) gives effect to the rights of children as contained in the Namibian Constitution and international agreements binding on Namibia. It sets out principles relating to the best interests of children. It reduces the age majority from 21 to 18, while providing that parental consent to marry is still required up to age 21. It establishes a National Advisory Council on Children, a Children's Advocate in the Office of the Ombudsman and a Children's Fund to finance cross-cutting issues. It covers the appointment and designation of social workers, social auxiliary workers, community child care workers and probation officers, and provides for the designation of private social workers and child protection organisations for certain purposes. It also provides for

children's courts and for the registration of residential child care facilities, places of care and shelters.

It provides procedures for determining the parentage of a child. It also provides for the allocation of parental responsibilities and rights in respect of children born outside marriage and children of divorced parents. It provides mechanisms for custody and guardianship of children on the death of the person having custody or guardianship. (These parts of the Act closely resemble the provisions of the Children's Status Act 6 of 2006, which was repealed and re-enacted as part of this Act to bring all related procedures in the children's court under one legislative umbrella.)

The Act covers parenting plans between persons with parental responsibilities and provides for agreements in respect of the kinship care of children.

It authorises prevention and early intervention services in relation to children and provides measures relating to children in need of protective services. It redefines foster care. It provides for the issuing of contribution orders. It covers both domestic and inter-country adoption of children, and paves the way for Namibia to adopt several key Hague Conventions on children.

It provides measure to combat the trafficking of children as well as measures to assist child victims of trafficking. It provides for additional measures for the protection of children, including issues pertaining to certain forms of child labour and measures to combat baby-dumping. It requires certain persons to be in possession of police clearance certificates to ensure that they are not unfit to work with children.

It provides for grants payable in respect of certain children and creates some new offences relating to children.

It repeals the *Children's Act 33 of 1960*, the *Age of Majority Act 57 of 1972*, and the Children's Status Act 6 of 2006 and amends several other laws.

The Act will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Amendments: The Act is amended by the Combating of Trafficking in Persons Act 1 of 2018 ([GG 6562](#)), which has not yet been brought into force.

Regulations: Section 258 contains a savings provision for regulations made in terms of the repealed laws.

Notices: Section 258 contains a savings provision for notices and other actions done in terms of the repealed laws.

Cases:

The following cases pertain to the *Children's Status Act 6 of 2006* –

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

NS v PS 2010 (2) NR 418 (HC) makes a passing mention of the Act, noting that section 5(1) allows for variation of a High Court custody order in the children's court "if circumstances have changed".

S v S 2011 (1) NR 144 (HC) suggests that the common-law concept of putative marriage

should fall into disuse since the main purpose of the concept is to mitigate harshness to any children involved, now that “the Children’s Status Act essentially puts children born out of wedlock on the same legal footing with children born in wedlock” (at 148B-C).

Jordaan v Jordaan (A 317/2012) [2012] NAHCMD 106 (11 December 2012), deals with an *ex parte* application for interim custody under the Act which was found to be outside the Act’s criteria for such an order.

FN v SM 2012 (2) NR 709 (HC) overturned a decision not to confirm an interim protection order in terms of the Combating of Domestic Violence Act 4 of 2003, and issued a final protection order giving interim custody to the mother and access to the father; the Court made this final protection order for a duration of 12 months, to allow time for a custody proceeding under the Children’s Status Act.

LNL v L JL (I 2406/2013) [2014] NAHCMD 309 (17 October 2014) involved a dispute about the paternity of one child in divorce proceedings, on the basis that the wife had affairs. The High Court said that the Children’s Status Act reiterates the common law presumption that a child born in wedlock is the child of the father married to the mother. It “assists a father of a child born in marriage only to this extent: If the mother refuses to subject a child to a paternity test, there is a presumption that she is seeking to conceal the truth concerning the parentage of that person”. The Court held that the husband cannot demand paternity tests when he has not produced any evidence which contradicts the presumption that children born inside marriage are the children of the spouses.

JM & Another v SM 2016 (1) NR 27 (HC) concerned a request for an interim variation of a divorce order on custody, pending the outcome of a custody application under the Children’s Status Act. It is not clear why the parties utilised two different forums. The case found that the High Court has very broad discretion to consider any relevant information.

Kriel v Kantak (A 268-2015) [2015] NAHCMD 242 (7 October 2015) involved a High Court application for interim custody of a child launched only three court days after a custody application was made in the children’s court under the Children’s Status Act. The High Court refused to entertain the case on the grounds that this would be usurping the lower court’s function. It noted that if the lower court is not acting, the appropriate remedy is mandamus.

The following cases pertain to the *Children’s Act 33 of 1960* –

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State, 1991 NR 178 (SC) (references to whipping and corporal punishment in sections 32 and 92(1) unconstitutional)

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)

See also *NS v RH* 2011 (2) NR 486 (HC) at 526E-529B, which discusses in *dicta* the impact of *Detmold* in the absence of Namibia’s accession to the Hague Convention on Inter-Country Adoption and the subsidiarity principle in Art 21(b) of the UN Convention on the Rights of the Child incorporated into Namibian law by virtue of Art 144 of the Namibian Constitution.

Relevant international law: The following international agreements to which Namibia is party are appended to the Act –

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

Convention on the Rights of the Child, 1989

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

This Protocol is issued under the *Convention against Transnational Organized Crime (Palermo Convention), 2000*.

Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption, 1993

The following international agreements to which Namibia is not yet party are appended to the Act –

Hague Convention on the Civil Aspects of International Child Abduction

Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children

Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

Commentary:

Oliver C Ruppel & Pombili L Shipila, “Adoption: Statutory and customary law aspects from a Namibian perspective” in Oliver C Ruppel (ed), *Children’s Rights in Namibia*, Konrad Adenauer Stiftung, 2009, available at www.kas.de

R Coomer & D Hubbard, “A major decision: Considering the age of majority in Namibia” in Oliver C Ruppel (ed), *Children’s Rights in Namibia*, Konrad Adenauer Stiftung, 2009, available at www.kas.de

Felicity !Owoses-/Goagoses, “Custody and guardianship of children” in Oliver C Ruppel (ed), *Children’s Rights in Namibia*, Konrad Adenauer Stiftung, 2009, available at www.kas.de

Tousy Namiseb, “The Children’s Status Act, 2006 (No. 6 of 2006)”, *Namibia Law Journal*, Volume 1, Issue 2, 2009, available at www.kas.de

Julia Sloth-Nielsen, Lorenzo Wakefield & Nkatha Murungi, “Does the differential criterion for vesting parental rights and responsibilities of unmarried parents violate international law? A legislative and social study of three African countries”, 55(2) *Journal of African Law* 203, 2011.

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)

S v Koyoka 1991 NR 369 (HC) (no mutual duty of support arising in a situation where one person cared for another person when he was a child, but there was no blood relationship and no legal adoption)

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

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

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; see also Kajjata Kanguuehi, “*S v Teek*: A critical review and analysis”, *Namibia Law Journal*, Volume 1, Issue 2, 2009, available at www.kas.de)

EH v D 2012 (2) NR 451 (HC) (best interests of child considered in custody dispute; considerations of urgency when children’s rights involved, in contrast to commercial or kindred matters)

- Vivier NO & Another v Minister of Basic Education, Sport & Culture* 2012 (2) NR 613 (SC) (extensive discussion of credibility evidence of single child witness with limited cognitive abilities)
- JT v AE* 2013 (1) NR 1 (SC) (access by father to child born outside marriage considered in terms of common law with reference to Namibian Constitution and Convention on the Rights of the Child)
- Ex Parte Chingufo: In re Semente v Chingufo* 2013 (2) NR 328 (HC) (patient's right to refuse treatment if sufficient mental capacity present, but requisite capacity missing in the case at hand), overturned on appeal in *ES v AC* 2015 (4) NR 921 (SC) (patient autonomy as a basic human right, notwithstanding children's right to be cared for by their parents; partial dissent would have found that child's right to prevent parent from abandoning child through an unnecessary death would have justified blood transfusion against parent's religious wishes); see also Nico Horn, "Ex Parte Chingufo. In re E Semente; E Semente v Chingufo: Another unfortunate victory for formalist law", *Namibia Law Journal*, Volume 5, Issue 1, 2013 and Carmen C Visser, Medical treatment vis-à-vis patient's rights", *Namibia Law Journal*, Volume 8, Issue 1, 2016
- JS & Another v Chairperson of the Internal Disciplinary Panel of the Windhoek International School & Others* 2015 (2) NR 352 (SC) (consideration of child's right to legal representation in a school disciplinary hearing)
- Tjingaete v Lakay NO & Others* 2015 (2) NR 431 (HC) (claim of adoption under customary law not accepted for purposes of intestate succession because of lack of proof of the customary law in question and because the Intestate Succession Ordinance recognises only formal adoptions under the relevant legislation).

Cases on infanticide:

- Akwenye v S* [2011] NAHC 106 (8 April 2011)
- S v Uupindi* [2007] NAHC 31 (20 April 2007)
- S v Kaulinge* [2007] NAHC 30 (19 April 2007)
- S v Muzanima* [2006] NAHC 15 (25 April 2006)
- S v Shaningwa* 2006 (2) NR 552 (HC)
- S v Glaco* 1993 NR 141 (HC).

COMMENTARY

- G Naldi, "Supreme Court of Namibia declares Corporal Punishment Unconstitutional", 3 *African Journal of International and Comparative Law* 785 (1991)
- D LeBeau & G Spence, *Towards the elimination of the worst forms of child labour in Namibia*, University of Namibia, 2004
- Dr Elizabeth M Terry, *Elimination of Child Labour in Namibia: A discussion document on what is known, existing policy and programmes and possible gaps*, Ministry of Labour and Social Welfare, 2007
- Legal Assistance Centre, *Baby-dumping and Infanticide, Monograph 1*, 2008, available at www.lac.org.na
- Oliver C Ruppel (ed), *Children's Rights in Namibia*, Konrad Adenauer Stiftung, 2009, available at www.kas.de (reviewed by Norman Tjombe in *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.kas.de)
- FX 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.kas.de
- Legal Assistance Centre, *Corporal Punishment: National and International Perspectives*, 2010, available at www.lac.org.na
- Legal Assistance Centre, *Stepfamilies in Namibia: A Study of the Situation of Stepparents and Stepchildren and Recommendations for Law Reform*, 2011, available at www.lac.org.na.

INTERNATIONAL LAW

Convention on the Rights of the Child, 1989

African Charter on the Rights and Welfare of the Child (ACRWC or Children's Charter), 1990

Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993

ILO Convention 138 concerning Minimum Age for Admission to Employment, 1973

ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999

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

Cases on international law: *NS v RH* 2011 (2) NR 486 (HC) at 526E-529B, which discusses in *dicta* the subsidiarity principle in Art 21(b) of the UN Convention on the Rights of the Child incorporated into Namibian law by virtue of Art 144 of the Namibian Constitution; *JT v AE* 2013 (1) NR 1 (SC) (best interests standard applied in case concerning father's access to child born outside marriage); *S v Gomaseb* 2014 (1) NR 269 (HC) (sentence imposed on 15-year-old offender upheld; Art 37(b) of the Convention on the Rights of the Child applied).

See also *Births, Marriages, and Deaths Registration Act 81 of 1963* (**CIVIL REGISTRATION**).

See also Combating of Immoral Practices Act 21 of 1980 (sexual offences against children under age 16) and Combating of Rape Act 8 of 2000 (rape of children) (**CRIMINAL LAW AND PROCEDURE**).

See also *Criminal Procedure Act 51 of 1977* (testimony by children and juvenile offenders) (**CRIMINAL LAW AND PROCEDURE**).

See also Prevention of Organised Crime Act 29 of 2004 (provisions on trafficking relevant to child trafficking) (**CRIMINAL LAW AND PROCEDURE**).

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

See also **EDUCATION**.

See also Intestate Succession Ordinance 12 of 1946 (intestate succession of children) (**INHERITANCE**).

See also Labour Act 11 of 2007 (provisions on child labour) (**LABOUR**).

See also Maintenance Act 9 of 2003 (child maintenance) (**MAINTENANCE**).

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

See also **YOUTH**.

CHURCHES

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

Summary: This Ordinance ([OG 2153](#)) 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 ([SA GG 6670](#)) 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).”

Amendments: Prior to Namibian independence, the Act was amended by The Apostolic Faith Mission of South Africa (Private) Amendment Act 4 of 1970 ([RSA GG 2645](#)), which inserted section 8A.

SELECTED CASES

Petrus v Roman Catholic Archdiocese 2011 (2) NR 637 (SC)

New African Methodist Episcopal Church in the Republic of Namibia & Another v Kooper & Others 2015 (3) NR 705 (HC)

Nowases & Others v Evangelical Lutheran Church in the Republic of Namibia (ELCRN) & Others 2016 (4) NR 985 (HC).

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

CITIZENSHIP AND IMMIGRATION

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

Summary: This Act ([RSA GG 5509](#), also published in [OG 1920](#)) 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 of the original Act stated “This Act shall apply also in the territory of South-West Africa.” Section 10, as amended by *Act 69 of 1962*, stated “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.” These provisions were repealed after Namibian independence.

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: The following pre-independence South African amendments applied to SWA –

- *Commonwealth Relations Act 69 of 1962* ([RSA GG 264](#))
- *Residence in the Republic Regulation Act 23 of 1964* ([RSA GG 746](#))
- *Border Control Act 61 of 1967* ([RSA GG 1745](#))
- *Admission of Persons to and Departure from the Republic Regulation Amendment Act 38 of 1969* ([RSA GG 2370](#))
- *Departure from the Union Regulation Amendment Act 7 of 1979* ([RSA GG 6340](#))
- *Aliens and Immigration Laws Amendment Act 49 of 1984* ([RSA GG 9182](#))
- *Transfer of Powers and Duties of the State President Act 97 of 1986* ([RSA GG 10438](#)).

Act 4/1993 ([GG 686](#)), 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: Pre-independence regulations have not been researched. Post-independence regulations are contained in GN 136/1994 ([GG 895](#)), as amended by GN 243/2013 ([GG 5284](#)) (which substitutes Regulation 2 and adds Annexure B).

Cases:

S v Lofty-Eaton & Others (1) 1993 NR 370 (HC)

S v Malumo & Others (In re Ndala) 2014(3) NR 690 (the question of whether this Act is applicable to the Eastern Caprivi Zipfel was put forward, but the Court ruled that the issue can be raised only after the conclusion of the trial in terms of s. 319 of the Criminal Procedure Act 51 of 1977).

Namibian Citizenship Act 14 of 1990.

Summary: This Act ([GG 65](#)) regulates the acquisition and loss of Namibian citizenship in accordance with Article 4 of the Constitution. It repeals the *South African Citizenship Act 44 of 1949* and the *Residence of Certain Persons in South West Africa Regulation Act 33 of 1985*). It was brought into force with effect from 15 September 1990 by Proc. 13/1990 ([GG 72](#)).

Amendments: The Immigration Control Act 7 ([GG 690](#)) of 1993, which was brought into force on 29 July 1994 (GN 133/1994, [GG 895](#)), amends section 29.

Regulations: There is no savings clause for regulations made in terms of the repealed laws. Regulations made in terms of the current Act are contained in GN 14/1991 ([GG 154](#)), as amended by GN 135/2018 ([GG 6647](#)) (concerning fees payable for citizenship certificates and renunciation of Namibian citizenship).

Cases:

Alberts v Government of Namibia & Another 1993 NR 85 (HC) (holding that the Constitution does not allow Parliament to enact legislation depriving a Namibian citizen by birth of his or her citizenship by reason of having served in the armed forces of another country; that the Act does not purport to do this; and that the Constitution may not be effectively altered by a policy decision)

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)

Le Roux v Minister of Home Affairs and Immigration & Others 2011 (2) NR 606 (HC) (endorsing and applying the *Thloro* holding that section 26 interpreted in light of the Namibian Constitution does not apply to Namibian citizens by birth)

Berker v Minister of Home Affairs and Immigration & Others 2012 (1) NR 354 (HC) (refers to court order made by agreement between parties confirming that application of section 26 is unconstitutional insofar as it is applied to deprive Namibians by birth or descent of their Namibian citizenship; special costs awarded against respondents, because applicant's Namibian passport was unlawfully confiscated by immigration official on grounds that she also held a German passport and because she was "treated as foreigner in her own country").

Commentary:

Faith Chipepera & Katharina G Ruppel-Schlichting, "Namibia: Children's right to citizenship" in Oliver C Ruppel (ed), *Children's Rights in Namibia*, Konrad Adenauer Stiftung, 2009, available at www.kas.de

Kaity Cooper & Dianne Hubbard, "By the Skin of its Teeth: How Namibia narrowly avoided a Constitutional crisis", Citizenship Rights in Africa Initiative blog post, 7 February 2017, <http://citizenshiprightsfrica.org/by-the-skin-of-its-teeth-how-namibia-narrowly-avoided-a-constitutional-crisis/>

Namibian Citizenship Special Conferment Act 14 of 1991.

Summary: This Act ([GG 311](#)) makes provision for the conferment of Namibian citizenship upon certain descendants of persons who left Namibia because of persecution by the colonial government.

Regulations: The Act makes no provision for regulations.

Immigration Control Act 7 of 1993.

Summary: This Act ([GG 690](#)) 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 repeals the *Aliens Control Act 30 of 1963*, *Aliens Registration Act 26 of 1939*, *Residence in the Republic Regulation Act 23 of 1964* and *Admission of Persons to Namibia Regulation Act 59 of 1972*, as well as most of the *Aliens Act 1 of 1937*. It was brought into force on 29 July 1994 by GN 133/1994 ([GG 895](#)).

Regulations: Regulations made in terms of the repealed legislation survive in terms of section 60(3) of this Act, but pre-independence regulations have not been researched.

Immigration regulations made in terms of the current Act are contained in GN 134/1994 ([GG 895](#)). The portions of the regulations relating to fees for various visas and permits are amended by GN 82/2008 ([GG 4029](#)). Regulation 13 on “Contagious infections or viruses or diseases” and Regulation 24 on visa fees were substituted by GN 133/2010 ([GG 4514](#)), which also amended Annexure I of the regulations by deleting item 10. Regulation 13 is amended to add ebola to the list of prescribed diseases by GN 145/2014 ([GG 5556](#)), but this amendment ignores the substitution of Regulation 13 by GN 133/2010 and does not make sense in respect of the substituted regulation.

The Government Notice which issues these regulations repeals the regulations published in RSA GN R.337/1964, RSA GN R.289/1964, RSA GN R.1711/1967, RSA GN R.82/1969, RSA GN R.3933/1969, RSA GN R.878/1970 and RSA GN R.1350/1972.

These regulations are also amended by GN 138/2018 ([GG 6647](#)) (substitution of Regulation 24 on fees, substitution of Annexure H, and amendment of Annexure I).

Note that there is some overlap and contradiction between regulation 24 and regulation 29 as a result of this amendment.

Notices: Maximum amounts in terms of section 11(2)(a) are set in GN 135/1994 ([GG 895](#)).

Cases: The following cases concern 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) (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))
- S v Mbele* 2011 (1) NR 357 (HC) (section 29(1)(a))
- Berker v Minister of Home Affairs and Immigration & Others* 2012 (1) NR 354 (HC) (refers to court order made by agreement between parties confirming that application of limits of entry into, and residence in, Namibia in Part V of Act to Namibian citizens is unlawful)
- S v Okuani* 2014 (1) NR 16 (HC) (formulation of criminal charge under section 12 of Act)
- Fernandes v Minister of Home Affairs and Immigration & Another* 2015 (3) NR 805 (HC) (section 27(2)(b); administrative body bound by reasons for decisions given to applicant at the relevant time, and must provide facts on which decision is based if such are not generally well known)
- Namrights Inc v Nicodemus & Others* 2016 (2) NR 596 (LC) (applicability of sections 24 and 27 to person with refugee status)
- S v Munuma & Others* 2016 (4) NR 954 (SC) (inapplicability of sections 7 and 9 to persons involuntarily deported back to Namibia).

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).*

Namibia Refugees (Recognition and Control) Act 2 of 1999.

Summary: This Act ([GG 2065](#)) 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 was brought into force on 22 September 2000 by GN 234/2000 ([GG 2412](#)).

Regulations: Namibia Refugees (Recognition and Control) Regulations are contained in GN 236/2000 ([GG 2412](#)).

Notices: 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 relating to the Status of Refugees (New York Protocol), 1967*. See also *SADC Declaration on Refugee Protection within Southern Africa, 1998* (not legally-binding).

Cases: *S v Isaac* 2004 NR 122 (HC); *Namrights Inc v Nicodemus & Others* 2016 (2) NR 596 (LC) (section 18; UN Convention Relating to the Status of Refugees, Articles 2 and 26).

Namibian Citizenship (Second) Special Conferment Act 6 of 2015.

Summary: This Act ([GG 5775](#)) makes provision for the conferment of Namibian citizenship upon certain descendants of persons who left Namibia because of persecution by the colonial government. It contains provisions similar to those in the Namibian Citizenship Special Conferment Act 14 of 1991 ([GG 311](#)). However, the time period covered by the 1991 Act has expired; the 2015 Act covers an additional time period.

Regulations: Regulations are authorised by section 5 of the Act, but none have yet been promulgated.

One-Stop Border Posts Control Act 8 of 2017.

Summary: This Act ([GG 6423](#)) provides for the conclusion of agreements between Namibia and adjoining countries on the establishment and implementation of one-stop border posts which are jointly managed.

Regulations: Section 9 of the Act authorises regulations, but none have yet been issued.

SELECTED CASES

MW v Minister of Home Affairs 2014 (4) NR 1108 (HC), reversed on appeal 2016 (3) NR 707

(SC) (meaning of ordinary residence in Art 4(1)(d) of Namibian Constitution).

INTERNATIONAL LAW

*****African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 2009***

Convention relating to the Status of Refugees, 1951

Convention against Transnational Organized Crime (Palermo Convention), 2000

OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969

*****SADC Protocol on the Facilitation of Movement of Persons, 2005***

Cases on international laws: *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.

CIVIL REGISTRATION

Aliens Act 1 of 1937, sections 1, 9 and 14, as amended in South Africa to February 1978.

Summary: This Act ([SA GG 2409](#)) originally governed the presence of anyone who is not a South African citizen in South Africa and South West Africa. The Immigration Control Act 7 of 1993 repealed most of this Act (sections 2-8*ter* and 10-13*bis*), along with most of its amending Acts. The only surviving sections are section 1 (definitions, as amended by various Acts), section 9 (change of name, as amended by section 12 of Proc. 15/1989) and section 14 (short title). The only substantive provision remaining in force, section 9, deals with name changes. (This is why the Act now appears in the category on “CIVIL REGISTRATION” rather than “CITIZENSHIP AND IMMIGRATION”.)

Applicability to SWA: The definition of “Union” in section 1 included “the territory of South West Africa”. Section 13*bis*, prior to its repeal by the Immigration Control Act 7 of 1993, stated “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. However the reference to “sections 8(1) and 12(1) of the Aliens Act” in section 3 of the transfer proclamation was subsequently substituted by section 51 of the Aliens and Immigration Laws Amendment Proclamation (AG 15/1989) ([OG 5728](#)) to read “section 12(1)(b) of the Aliens Act”.

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: None of the South African amendments to the original Act which were applicable to South West Africa are relevant now that the only surviving substantive section of the Act is section 9. (Section 1 is still in force, but none of the surviving definitions appear in section 9.)

The Aliens and Immigration Laws Amendment Proclamation, AG 15/1989 ([OG 5728](#)) amends section 9.

The amendments made to the Act by the Namibian Citizenship Act 14 of 1990 ([GG 65](#)) are not relevant to the sole surviving substantive section.

The Immigration Control Act 7 of 1993 ([GG 690](#)) repealed sections 2-8ter and 10-13bis of the primary Act.

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. As noted above, the only surviving sections are sections 1, 9 and 14.

Regulations: Regulations pertaining to name changes are contained in GN 759/1937 (OG 720), as amended by the following:

- SA GN 1030/1938 (SA GG 2540)
- SA GN 2134/1943 (SA GG 3272).

Application of law: The First Law Amendment (Abolition of Discriminatory or Restrictive Laws for the Purposes of Free and Fair Election) Proclamation (AG 14/1989) ([OG 5726](#)) affected how the definition of “alien” was to be construed, but this is of no relevance to the surviving portions of the Act.

Cases:

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”, 117 (3) *South African Law Journal* 464 (2000); analysis revised by *Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another* 2012 (2) NR 566 (SC))

According to *Müller*, the references to the Administrator-General in section 9 should be construed as references to the President after independence in terms of Article 140(5) of the Namibian Constitution. However, according to the subsequent case of *Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another*, this interpretation should be based on Art 140(4) instead of Art 140(5).

Following on the *Müller* case, the United Nations Human Rights Committee which oversees the International Covenant on Civil and Political Rights ruled in 2002 that the different procedures for men and women with respect to the assumption of a spouse’s surname upon marriage constituted unfair sex discrimination in terms of the International Covenant and gave the Namibian government 90 days to report on what has been done to rectify that problem. United Nations Human Rights Committee, *Communication No. 919/2000*, CCPR/C/74/D/919/2000, 28 June 2002. However, subsection (1) has not been amended accordingly.

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

Summary: This Act ([RSA GG 550](#)) governs the registration of births, marriages and deaths. It repeals the *Births, Marriages and Deaths Registration Act 17 of 1923*.

Applicability to SWA: This Act was initially brought into force in South West Africa by Ord. 27/1965 ([OG 2636](#)) with effect from the date of publication of that Ordinance (21 June 1965), subject to certain rules of construction contained in Ord 27/1965. Ord

27/1965 was repealed and replaced by the *Births, Marriages and Deaths Registration Amendment Act 58 of 1970* (RSA), which was brought into force on 1 February 1972, making the Act, with the exception of sections 7A and 42(4), applicable to South West Africa through the insertion of section 51A into the Act.

Section 1, as substituted by *Act 58 of 1970*, defines “Republic” to include “the territory of South West Africa”. Section 51A, inserted by *Act 58 of 1970*, 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* ([RSA GG 8094](#)) and the *Marriages, Births and Deaths Amendment Act 41 of 1986* ([RSA GG 10211](#)) – neither of which was made expressly applicable to SWA.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Births, Marriages and Deaths Registration Amendment Act 17 of 1967* ([RSA GG 1670](#))
- *Births, Marriages and Deaths Registration Amendment Act 18 of 1968* ([RSA GG 2023](#))
- *Births, Marriages and Deaths Registration Amendment Act 58 of 1970* ([RSA GG 2843](#))
- *Births, Marriages and Deaths Registration Amendment Act 51 of 1974* ([RSA GG 4440](#)).

The Act was also amended by section 1 of the Native Laws Amendment Proclamation AG. 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

Certain terms are to be construed in accordance with section 1 of the References to Plural Relations and Development Act 10 of 1979 ([OG 4023](#)) (which does not technically make any amendments to the Act).

The Marriages, Births and Deaths Amendment Act 5 of 1987 ([OG 5356](#)) makes substantial amendments to this Act.

Repealed regulations: Regulations are contained in SA GN 1181/1934 (SA GG 2218; re-published in OG 579). These regulations were originally made in terms of section 34 and 48 of the Births, Marriages and Deaths Registration Act 17 of 1923, which was repealed by the Births, Marriages and Deaths Registration Act 81 of 1963. Pursuant to

section 51(2) of the Births, Marriages and Deaths Registration Act 81 of 1963, the General Regulations are deemed to have been made under that Act. These regulations are amended by GN 873/1937 (OG 721), GN 1329/1955 (OG 1934), GN 718/1956 (OG 2017) and GN 415/1960 (OG 2257). However, these regulations do not appear to be in force in Namibia.

There was a chain of regulations which replaced the regulations contained in SA GN 1181/1934. They were first substituted by regulations published in RSA GN R.86/1964 (RSA GG 703).

These 1964 regulations were in turn substituted (along with the amendments contained in RSA GN R.819/1967, RSA GG 1766) by regulations contained in RSA GN R.1737/1971 (RSA GG 3272) in so far as the substituted regulations “are applicable to a person who is not a Bantu”.

The 1964 regulations, as amended and read with RSA GN R.1737/1971 (RSA GG 3272), were then withdrawn by RSA GN R.2385/1975 (RSA GG 4936). However, these 1975 regulations applied only “in relation to persons who are Bantu as defined in the Population Registration Act, 1950 (Act 30 of 1950), or who are natives (excluding Namas) as defined in section 25 of the Native Administration Proclamation, 1928 (South-West Africa Proclamation 15 of 1928).”

Thus, the regulations which applied to Namibia were the regulations published in RSA GN R.1737/1971 (RSA GG 3272) (for “non-Bantus”), and the regulations published in RSA GN R.2385/1975 (RSA GG 4936) (for “Bantus and natives excluding Namas”) – both of which were promulgated prior to the date of transfer of the Act to SWA. (It is possible that the 1964 regulations, as amended prior to the date of transfer, remained in force in respect of Namas – but if so, they would have no practical relevance in post-independence Namibia.)

In South Africa, the regulations contained in RSA GN R.1737/1971, as amended, were substituted by the regulations contained in RSA GN R.2206/1986 (RSA GG 10499) – which were made after the date of transfer and which were thus not applicable to SWA.

“The regulations published under Government Notice R.1737 of 1 October 1971 [RSA GG 3272], as amended by Government Notices R. 922 of 27 May 1977, R.290 of 15 February 1980, R. 6 of 2 January 1981 and R.2005 of 25 September 1981, and the regulations published under Government Notice R.2385 of 19 December 1975 [RSA GG 4936], as amended by Government Notices R. 850 of 16 April 1981 and R. 2422 of 6 November 1981, are hereby withdrawn.”

In Namibia, subsequent regulations were made under this Act in GN 214/1987 ([OG 5480](#)), which repealed RSA GN R.1737/1971 and RSA GN R.2385/1975.

Regulations: Regulations made under the law repealed by this Act survive pursuant to section 51(2) of the Act. However, aside from the repealed regulations discussed above, the pre-independence regulations have not been comprehensively researched.

Regulations made under this Act are contained in GN 214/1987 ([OG 5480](#)). These regulations are amended by GN 128/2001 ([GG 2564](#)), GN 214/2013 ([GG 5264](#)) and GN 137/2018 ([GG 6647](#)).

Notices: Forms and certificates made pursuant to Regulation 2 of the regulations contained in GN 214/1987 ([OG 5480](#)) were announced in GN 27/2014 ([GG 5425](#)), but

this notice was withdrawn by GN 49/2014 ([GG 5439](#)) and replaced by GN 52/2014 ([GG 5444](#)). GN 52/2014 is amended by GN 173/2016 ([GG 6088](#)).

GN 52/2014 ([GG 5444](#)) prescribes forms in terms of regulation 2(a)(iii), which it erroneously refers to as regulation 2(iii). GN 172/2016 erroneously states that it is amending the regulations contained in GN 214/1987. It also erroneously states that GN 27/2014 ([GG 5425](#)) amended these regulations, and makes no reference to the fact that GN 27/2014 was withdrawn and replaced by GN 52/2014.

Identification Act 21 of 1996.

Summary: This Act ([GG 1447](#)) provides for a population register and for the issue of identity documents. It repeals the *Identity Documents in South West Africa Act 37 of 1970* and the Identification of Persons Act 2 of 1979. The Act was brought into force on 18 May 2001 by GN 95/2001 ([GG 2533](#)).

Regulations: Identification Regulations are contained in GN 96/2001 ([GG 2533](#)), as amended by GN 136/2018 ([GG 6647](#)) (substitution of Regulation 7(1), concerning fees for duplicate IDs).

Note: 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*.

SELECTED CASES

MW v Minister of Home Affairs 2014 (4) NR 1108 (HC), overruled on appeal 2016 (3) NR 707 (SC) (meaning of ordinary residence in Art 4(1)(d) of Namibian Constitution).

See also **BIRTHS AND DEATHS**.

See also **MARRIAGE AND DIVORCE**.

‘COLOURED PERSONS’

See Concessions from Natives Proclamation 8 of 1915 (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 (reservation of land for the use of “aboriginal natives, coloured persons and Asiatics”) (**LAND AND HOUSING**).

See *Railways and Harbours Pensions for Non-Whites Act 43 of 1974* (**PENSIONS**).

COMMISSIONS

Commissions' Powers Ordinance 6 of 1927.

Summary: This Ordinance ([OG 234](#)) 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([OG 3521](#)).

Commissions Act 8 of 1947, as amended in South Africa prior to Namibian independence.

Summary: This Act ([SA GG 3800](#)) 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. R.149/1980* ([RSA GG 7199](#)), as of 29 August 1980. Section 6A(1), as inserted by this Proclamation, states “This Act shall apply also in the Territory of South West Africa, including the Eastern Caprivi Zipfel.” As the Act applied to South West Africa, the Administrator-General was empowered to appoint commissions in addition to the Governor-General (section 6A(2)).

Transfer of administration to SWA: The Administrator-General acquired authority to administer this Act in South West Africa by virtue of *RSA Proc. R.149/1980* ([RSA GG 7199](#)). This did not qualify as a “transfer proclamation” in terms of the General Proclamation, which defines “transfer proclamation in section 1 as “a proclamation by the Administrator-General by which the administration of the affairs of the territory in relation to any matter is transferred from a Minister of the Republic to the Administrator-General” (emphasis added). Therefore, the General Proclamation was not applicable to this Act. In any event, there were no amendments to the Act in South Africa after the date of *RSA Proc. R.149/1980* and prior to Namibian independence.

Amendments: The following pre-independence South African amendments were applicable to SWA:

- *General Law Amendment Act 80 of 1964* ([RSA GG 829](#))
- *General Law Amendment Act 102 of 1967* ([RSA GG 1771](#))
- *Commissions Amendment Proclamation, RSA Proc. R.149 of 1980* ([RSA GG 7199](#)).

Regulations: Regulations relating to the Commission of Inquiry into Health Services in South West Africa are contained in AG 26/1981(OG 4542). They have no ongoing relevance.

Commissions: The following Commissions were established in terms of the Act by the SWA administration:

- Commission of Inquiry into Health Services (AG Proc.19/1981) ([OG 4509](#));
Commission appointed in AG GN 113/1981)
- Commission of Inquiry into Public Holidays (AG Proc. 32/1981) ([OG 4562](#))
- Commission of Inquiry into Alleged Irregularities and Misapplication of Property in Representative Authorities in, and the Central Authority

- of, South West Africa (AG Proc. 29/1982) ([OG 4705](#)).
- Commission of Inquiry into Security Legislation in South West Africa (AG Proc. 18/1983) ([OG 4836](#)).
- Commission of Inquiry into the Meat Industry in South West Africa (AG Proc. 1/1984) ([OG 4857](#)).
- Commission of Inquiry into Labour Matters in South West Africa (AG Proc. 32/1987) ([OG 5432](#)).

During the election campaign which was part of the implementation of UN Resolution 435, AG Proc. 11/1989 (OG 5718) 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 14/1995 ([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. 21/2003, [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](#))

Commission of Inquiry into Activities, Affairs, Management and Operations of Ministry of Health and Social Service (Proc. 20/2012, [GG 5013](#)).

Application of law: Persons who give statements or evidence to commissions may be eligible for protection under the Witness Protection Act 11 of 2017 ([GG 6451](#)), which is not yet in force.

CONSTITUTION

The pre-independence laws, while still technically in force, are primarily of historical interest.

The Namibian Constitution is not legislation in the same way as the other laws listed here, but is rather the Supreme Law of independent Namibia.

South West Africa Affairs Act 25 of 1969, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 2331](#)) 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: The law applies to SWA by virtue of its subject matter. Section 24 states “This Act shall apply also in the Eastern Caprivi Zipfel.”

Amendments: The following pre-independence South African amendment was applicable to SWA –

- *Finance Act 102 of 1969* ([RSA GG 2465](#)).

The Customs and Excise Act 20 of 1998 ([GG 1900](#)), which was brought into force on 1 August 1998 (GN 186/1998, [GG 1918](#)), repeals section 6.

The application of this Act was affected by the subsequent SWA Transfer Proclamations, which transferred administration of certain matters back to South West Africa.

NAMIBIAN CONSTITUTION.

Summary: The Namibian Constitution ([GG 2](#)) is the fundamental law of independent Namibia. All other laws are subject to it. It was adopted by elected representatives of the Namibian people after Namibia’s first democratic elections. It was published and came into force on the date of Independence: 21 March 1990 (Article 130 of the Namibian Constitution).

Amendments: Article 132 of the Namibian Constitution sets out the procedures for its amendment. It has been amended by the following –

- Namibian Constitution First Amendment Act 34 of 1998 ([GG 2014](#))
- Namibian Constitution Second Amendment Act 7 of 2010 ([GG 4480](#))
- Namibian Constitution Third Amendment Act 8 of 2014 ([GG 5589](#)).

Because of their importance, these amending Acts all have separate entries in this section.

Cases: Cases involving the Constitution are numerous and are not listed here. Where other legislation has been tested against the Constitution, those cases are listed under the entries for the statute in question. A few selected cases are cited at the end of this section.

Commentary: For commentary on constitutional issues, see the list at the end of this section.

National Coat of Arms of the Republic of Namibia Act 1 of 1990.

Summary: This Act ([GG 4](#)) 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 ([GG 29](#)) 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.

Notices: 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](#)), Proc. 8/2005 ([GG 3456](#)) and Proc. 6/2012 ([GG 4891](#)). (See also GN 28/2002, [GG 2704](#).)

Special Advisers and Regional Governors Appointment Act 6 of 1990.

Summary: This Act ([GG 31](#)) provides for the appointment of persons by the President as special advisers and regional governors. It also sets forth the powers, duties and functions of such appointees. (The Act was initially known as the Special Advisers and Regional Representatives Appointment Act 6 of 1990. It originally provided for the appointment of persons as regional representatives, but this portion of the Act was repealed in 1992. The name of the Act was changed by Act 15/2010 ([GG 4617](#)), which inserted a section on the appointment of regional governors.)

Amendments: Section 2 of the Act was repealed by the Regional Councils Act 22 of 1992 ([GG 469](#)), as of 30 November 1992.

Act 15/2010 ([GG 4617](#)) inserts a new section 2 to provide for regional governors, and substitutes section 3 (the short title).

Appointments: Regional representatives are appointed in Proc. 14/1990 ([GG 75](#)).

The appointment of Regional Governors is announced in Proc. 1/2011 ([GG 4645](#)), Proc. 18/2013 ([GG 5188](#)) and Proc. 8/2018 ([GG 6527](#)).

Regional governors were appointed in 2015, but these appointments were not gazetted. See "President announces governors", *The Namibian*, 10 April 2015 (listing the names of each governor).

Note that GG 6527 was initially numbered incorrectly as GG 6528. A corrected version was subsequently issued.

The following Special Advisers have been appointed (in chronological order):

- Special Adviser: National Security – Proc. 7/1994 ([GG 813](#))
- Special Adviser: State Security – Proc. 8/1995 ([GG 1071](#))
- Special Adviser to the Minister of Health and Social Services – Proc. 8/1995 ([GG 1071](#))
- Special Adviser to the Minister of Health and Social Services: Inspection of Hospitals and Health Facilities – Proc. 8/1995 ([GG 1071](#))
- Special Advisers to the President on political and economic matters – Proc. 32/1997 ([GG 1759](#))
- Special Adviser (Commercial Law) to the Attorney-General – appointment renewed in Proc. 40/2004 ([GG 3253](#))
The original appointment could not be located.
- Special Adviser to the Minister of Labour and Social Welfare – Proc. 3/2005 ([GG 3433](#))
Note that the original GG 3433 was replaced by another GG 3343 with the same date; the correct version states at the top: “*This Gazette replaces Gazette No. 3433 of 18 May 2005.*”
- Special Adviser to the Minister of Veterans Affairs – Proc. 5/2007 ([GG 3785](#))
- Special Adviser (Commercial Lawyer) to the Minister of Justice – Proc. 13/2007 ([GG 3900](#))
- Special Adviser (labour matters) to the Minister of Labour and Social Welfare – Proc. 14/2008 ([GG 4022](#))
- Special Adviser to the Director-General of the National Planning Commission – Proc. 2/2009 ([GG 4197](#))
- Special Adviser to the President on Political Matters – Proc. 21/2009 ([GG 4391](#))
- Special Adviser to the Minister of Veterans’ Affairs – Proc. 21/2009 ([GG 4391](#))
- Special Adviser to the Minister of Health and Social Services – Proc. 9/2010 ([GG 4468](#))
- Special Adviser to the Prime Minister – Proc. 8/2011 ([GG 4757](#))
- Special Adviser to the Minister of Regional and Local Government, Housing and Rural Development – Proc. 8/2011 ([GG 4757](#))
- Special Adviser to the Minister of Youth, National Service, Sport and Culture – Proc. 8/2011 ([GG 4757](#))
- Special Advisers to the Governors of each of the 13 regions – Proc. 10/2011 ([GG 4757](#))
- Special Adviser to the Minister of Justice – Proc. 13/2012 ([GG 4958](#))
- Special Adviser to the Minister of Home Affairs and Immigration – Proc. 15/2012 ([GG 4996](#))
- Special Adviser to the Minister of Finance – Proc. 11/2013 ([GG 5160](#))
- Special Adviser to the Minister of Lands and Resettlement – Proc. 19/2013 ([GG 5188](#))
- Special Adviser to the Minister of Regional and Local Government, Housing and Rural Development – Proc. 19/2013 ([GG 5188](#))
- Special Adviser to the Minister of Health and Social Services – Proc. 26/2013 ([GG 5264](#))
- Special Advisor to the Regional Governor of the Kharas Region – Proc. 36/2015 ([GG 5869](#))
- Special Advisor on Social and Political Issues to the Regional Governor of the Hardap Region – Proc 36/2015 ([GG 5869](#))
- Special Advisor on Social and Political Issues to the Regional Governor of the Kunene Region – Proc 36/2015 ([GG 5869](#))

- Special Advisor on Social and Political Issues to the Regional Governor of the Kunene Region [a second such adviser] – Proc 36/2015 ([GG 5869](#))
 - Special Advisor to the Regional Governor of the Khomas Region – Proc. 36/2015 ([GG 5869](#))
 - Special Advisor to the Regional Governor of the Otjozondjupa Region – Proc. 36/2015 ([GG 5869](#))
 - Special Advisor to the President: Policy Implementation and Monitoring – Proc. 36/2015 ([GG 5869](#))
 - Special Advisor to the President: Press Secretary – Proc. 36/2015 ([GG 5869](#))
 - Special Advisor to the President: Youth Affairs and Enterprise Development – Proc. 36/2015 ([GG 5869](#))
 - Special Advisor to the President: Community Coordination and Liaison – Proc. 36/2015 ([GG 5869](#))
 - Special Advisor to the President: Economic Affairs – Proc 36/2015 ([GG 5869](#))
 - Special Advisor to the President: Private Sector Interface and Constitutional Affairs – Proc. 36/2015 ([GG 5869](#))
 - Special Advisors to the Minister of International Relations and Cooperation and the Minister of Urban and Rural Development – Proc. 7/2017 ([GG 6333](#))
 - Special Advisor to the Governor of the Ohangwena Region – Proc. 8/2017 ([GG 6333](#))
 - Special Advisors to the Minister of Defence and the Prime Minister – Proc. 7/2018 ([GG 6527](#))
- Note that GG 6527 was initially numbered incorrectly as GG 6528. A corrected version was subsequently issued.
- Special Advisors to the Governors of Hardap and ||Karas Regions – Proc. 17/2018 ([GG 6767](#)).

Note that some Gazettes refer to Special “Advisors” rather than “Advisers”. The Act uses the spelling “Advisers”.

NOTE: Section 1 of the Act authorises the appointment by the President of Special Advisers “to the President, the Cabinet or any Minister designated by the President”, stating that this may be done “from time to time by proclamation in the *Gazette*”.

However, not all of the appointments of Special Advisers seem to have been gazetted. For example, a tender advertisement in [GG 1519](#) refers to equipment for a Special Adviser to the Minister of Justice, although no such appointment had been gazetted by that date. Proc. 14/2000 in [GG 2434](#) refer respectively to a Special Adviser to the Ministry of Justice and a Special Adviser to the Attorney-General (in connection with pension fund coverage), but these appointments were not previously gazetted. The same is true with respect to the Special Advisers referred to in Proc. 17/2001 in [GG 2607](#) and Proc. 33 of 2004 in [GG 3198](#) (in connection with pension fund coverage). As another example, [GG 4725](#) refers to the appointment of a Special Adviser on Social and Political Issues for the Erongo Region (in discussing a vacancy), which is not gazetted (although this position may fall outside the parameters of the Act altogether).

The apparent failure to announce all appointments under the Act in the *Gazette* as section 1 requires also appears to raise a Constitutional issue. Article 32(3)(i) of the Namibian Constitution discusses the President’s powers of appointment, including some specific offices as well as covering the appointment of “any other person or persons who are required by any other provision of this Constitution or any other law to be appointed by the President”. Article 32(8) states that all such appointments “shall be announced by the President by Proclamation in the *Gazette*”.

Commentary: Nangula Shejavali, “Regional Governors: The Good, The Bad and The Ugly; Do the Benefits of Appointment by the President Outweigh the Loss of Democratic Representation?”, Institute for Public Policy Research, 2015, available at www.ippr.org.na.

Ombudsman Act 7 of 1990.

Summary: This Act ([GG 32](#)) 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).

Regulations: The Act makes no provision for regulations.

Commentary:

John Walters, “The protection and promotion of human rights in Namibia: The constitutional mandate of the Ombudsman” in N Horn & A Bösl (eds), *Human Rights and the Rule of Law in Namibia*, Macmillan Namibia, 2008, available at www.kas.de

Katharina G Ruppel-Schlichting, “The independence of the Ombudsman in Namibia” in Nico Horn & Anton Bösl, *The Independence of the Judiciary in Namibia*, Konrad Adenauer Stiftung, 2008, available at www.kas.de

OC Ruppel & KG Ruppel-Schlichting, “Between formal and informal justice? The mandate of the Ombudsman in Namibia” in MO Hinz (ed) in cooperation with C Mapaure, *In search of justice and peace: Traditional and informal justice systems in Africa*, Windhoek: Namibia Scientific Society, 2010.

John C Mubangizi, “The South African Public Protector, the Ugandan Inspector-General of Government and the Namibian Ombudsman: a comparative review of their roles in good governance and human rights protection” 45 (3) *The Comparative and International Law Journal of Southern Africa* 304 (2012).

National Anthem of the Republic of Namibia Act 20 of 1991.

Summary: This Act ([GG 321](#)) 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 ([GG 805](#)) 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 was brought into force on 1 March 1994 by 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 ([GG 1884](#)) 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 ([GG 470](#)). The Road Traffic and Transport Act 22 of 1999 ([GG 2251](#))

repeals Clause 2 of Part IV of the Schedule.

Regulations: The Act makes no provision for regulations.

Cases: *Gauseib 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.

Powers, Privileges and Immunities of Parliament Act 17 of 1996.

Summary: This Act ([GG 1382](#)) 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.

Regulations: The Act makes no provision for regulations.

Commentary:

Frederico Links & Ellison Tjirera, “Nothing to Disclose: Critiquing Namibia’s passive approach to conflict of interest”, Institute for Public Policy Research, 2011, available at www.ippr.org.na

Ellison Tjirera, “Asset Disclosure in Namibia: The Need for Reform and Enforcement”, Institute for Public Policy Research, 2012, available at www.ippr.org.na.

Namibian Constitution First Amendment Act 34 of 1998.

Summary: This Act ([GG 2014](#)) amends Article 134 of the Namibian Constitution to provide that the first President of Namibia may hold office for three terms. It came into force on its date of publication: 24 December 1998.

Application of Laws to the Eastern Caprivi Zipfel Act 10 of 1999.

Summary: This Act ([GG 2139](#)) is necessary because section 38(5) of the South-West Africa Constitution Act 39 of 1968 (which was repealed by Article 147 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*.

Security Commission Act 18 of 2001.

Summary: This Act ([GG 2676](#)) 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 (now the Commissioner General of Correctional Services). The Act gives the Commission additional powers relating to internal security. The Act was brought into force on 2 May 2002 by GN 65/2002 ([GG 2734](#)).

Regulations: The Act makes no provision for regulations.

Appointments: Members of the Security Commission were appointed in terms of the Constitution by Proc. 18/1992 and Proc. 20/2010 ([GG 4595](#)).

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).

Related laws: The Security Commission is given certain responsibilities under the Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014.

Public Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005.

Summary: This Act ([GG 3426](#)) 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 was brought into force on 3 August 2005 by Proc. 9/2005 ([GG 3473](#)).

Regulations: Regulations by the President are authorised by section 11 of the Act, but none have yet been promulgated.

Notices: Section 8 of the Act authorises proclamations by the President determining remuneration and benefits, and section 1 authorises proclamations by the President declaring any person to be a public office-bearer. The Proclamations listed below were issued pursuant to these provisions.

Persons who hold certain offices are declared to be officer-bearers for the purposes of this Act in Proc. 6/2008 ([GG 3983](#)), and in Proc. 29/2015 and Proc. 30/2015 (both in [GG 5838](#)). Certain such declarations are withdrawn by Proc. 16/2013 ([GG 5188](#)).

Percentage increases in the remuneration of certain office-bearers are specified in terms of section 8 in Proc. 1/2009 ([GG 4192](#)), Proc. 6/2010 ([GG 4440](#)), Proc. 5/2013 ([GG 5134](#)), Proc. 19/2014 ([GG 5554](#)) – which also re-aligns the salaries of various office-bearers with specified GRN Levels and Paterson Grades – and Proc. 2/2016 ([GG 5997](#)). (No underlying statements of remuneration or housing benefits were located.)

Percentage increases in housing benefits are specified in terms of section 8 in Proc. 22/2013 ([GG 5241](#)). (No underlying statements of remuneration or housing benefits were located.)

The remuneration of the Vice-President is determined pursuant to section 8 in Proc. 32/2015 ([GG 5838](#)), set at 10 per cent above the remuneration payable to the Prime Minister. (No underlying statements of remuneration or housing benefits were located.)

The remuneration and benefits of certain public office-bearers are set out pursuant to section 8 in Proc. 4/2017 ([GG 6259](#)), which also sets the remuneration of the President and the Vice-President and the pension of the first former President and former President pursuant to Article 32(8) of the Namibian Constitution.

Namibian Constitution Second Amendment Act 7 of 2010.

Summary: This Act ([GG 4480](#)) 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 Service”;
- 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.

This amending Act came into force on the date of its publication: 7 May 2010, with the exception of the amendments to Articles 70 and 109 (concerning terms of office) which came into effect at the end of the term of office of the members of the National Council in office at the time of its passage.

Conferment of National Honours Act 11 of 2012.

Summary: This Act ([GG 5071](#)) establishes a National Honours Advisory Committee to advise the President in exercising his or her discretion to confer honours on Namibian citizens, residents or friends, during the recipient’s lifetime or posthumously, as contemplated in Article 32(3)(h) of the Constitution. It also covers the revocation of honours, but provides that the honour of a State Funeral or interment at National Heroes Acre may not be revoked after the event in question has taken place. The Act was brought into force on 15 July 2013 by GN 181/2013 ([GG 5241](#)).

Regulations: Conferment of National Honours Regulations are contained in GN 336/2013 ([GG 5375](#)).

Conferment of National Honours: Proclamations conferring national honours are issued in terms of the Constitution. These are listed at below, in this section.

National Planning Commission Act 2 of 2013.

Summary: This Act ([GG 5178](#)) provides for the membership, powers, functions and personnel of the National Planning Commission referred to in Article 129(1) of the Constitution. It repeals the National Planning Commission Act 15 of 1994 ([GG 929](#)), and provides that all references to the 1994 Act in any law must be construed as a reference to this Act.

Regulations and notices: Anything done under the previous law which could have been done under this Act survives. However, no regulations appear to have been issued under the previous statute.

Appointments: Appointments done under the previous law which could have been done under this Act survive. Appointments under this Act are announced in Proc. 14/2017 ([GG 6374](#)).

Namibian Constitution Third Amendment Act 8 of 2014.

Summary: This Act ([GG 5589](#)) does the following-

- creates the post of Vice-President, provides for the Presidency and provides a hierarchy of succession;
- provides a procedure for run-offs for the post of President;
- creates a Parliamentary Service Commission and provides that Parliamentary staff need not be members of the public service;
- increases the size of the National Assembly, in respect of both members selected through the party list system and Presidential appointees;
- amends the quorum requirements for the National Assembly;
- increases the size of the National Council and provides for a Secretary of the National Council;
- alters the review powers of the National Council in relation to bills on taxes and appropriations;
- amends the quorum requirements for the National Council;
- makes the Judiciary an independent organ of the state in terms of both finance and administration;
- provides for a Deputy-Chief Justice and Deputy Judges-President;
- provides for the Magistrates Commission and other lower court commissions;
- provides for a tribunal to investigate misconduct of judicial officers, a tribunal to investigate misconduct of the Prosecutor-General and a tribunal to investigate misconduct of the Ombudsman;
- changes the composition of the Judicial Service Commission;
- changes the title of the Director and Deputy Director of the Anti-Corruption Commission to Director-General and Deputy Director-General respectively;
- inserts an Article on the Electoral Commission of Namibia and an Article creating the Boundaries Delimitation and Demarcation Commission to substitute for the Delimitation Commission;
- provides for Regional Governors and their powers and functions;
- clarifies the advisory functions of the Public Service Commission;
- establishes the Intelligence Service, provides for the Head of the Intelligence Service and outlines his or her functions, provides for the Presidential appointment of this Head and makes this Head a member of the Security Commission;
- introduces terminology referring to the Minister responsible for finance;
- provides for multiple Deputy-Governors of the Central Bank and amend the functions of the Central Bank;
- provides for the National Planning Commission within the Presidency
- substitutes Schedule 2;
- amends Schedule 4 to provide for the resolution of ties by lot.

The Act came into force on the date of its publication: 13 October 2014, with the following exceptions:

- Sections 1, 2(a), (b) and (d), 4(a) and (b), 5, 6, 7, 8, 9, 41 and 43 came into force after the expiry of the term of office of the President in office at the time the Act was passed;
- Sections 4(d), 10, 12 and 44 came into force after the expiry of the term of office of the members of the National Assembly in office at the time the Act was passed;
- Sections 14 and 18 came into force after the expiry of the term of office of the members of the National Council in office at the time the Act was passed.

CONSTITUTIONAL APPOINTMENTS AND ACTIONS

(in chronological order)=President of the Republic of Namibia, Proc. 2/1990 ([GG 8](#))
 First Chief of the Defence Force, Proc. 7/1990 ([GG 45](#))
 First Inspector-General of Police and First Commissioner of Prisons, Proc. 8/1990 ([GG 46](#))
 Acting Ombudsman, Proc. 10/1990 ([GG 52](#))
 First Delimitation Commission and the Duties thereof, Proc. 12/1990 ([GG 69](#))
 Prosecutor-General, Proc. 31/1991 ([GG 304](#))
 Ombudsman, Proc. 16/1992 ([GG 415](#))
 Members of the Security Commission, Proc. 18/1992 ([GG 432](#))
 Deputy Ombudsman, Proc. 7/1993 ([GG 582](#)) and Proc. 8/1993 ([GG 597](#))
 Minister, Proc. 4/1994 ([GG 791](#))
 Deputy Ministers, Proc. 22/1994 ([GG 913](#))
 Various officials, Proc. 8/1995 ([GG 1071](#))
 Delimitation Commission, Proc. 9/1995 ([GG 1089](#))
 Ombudsman, Proc. 7/1996 ([GG 1468](#))
 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, 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](#))
 Deputy Ministers, Proc. 5/2011 ([GG 4669](#))
 Chief of Defence Force, Proc. 16/2012 ([GG 4996](#))

Delimitation Commission, Proc. 1/2013 ([GG 5119](#))
Prime Minister, Ministers and Deputy Ministers, Proc. 3/2013 ([GG 5126](#))
Minister and Deputy Minister, Proc. 7/2013 ([GG 5143](#))
Chief of Defence Force, Proc. 1/2014 ([GG 5387](#))
Commissioner-General of Correctional Service, Proc. 4/2014 ([GG 5407](#))
Establishment of Ministries and Appointment of Ministers, Deputy-Ministers and other Office Bearers, Proc. 34/2015 ([GG 5869](#))
Note that there are two Proclamations numbered as Proclamation 34 of 2015, in GG 5853 and GG 5869.
Establishment and Dissolution of Ministries, Appointment of Ministers, Deputy-Ministers and Other Office Bearers, Proc. 18/2017 ([GG 6387](#)) (which withdraws Proc. 34/2015)
Vice-President, Ministers, Deputy Ministers, Attorney-General, Director-General of the National Planning Commission, Proc. 13/2018 ([GG 6645](#)).

Appointments of judges and acting judges are listed under **JUDGES**. Appointments of members of the Judicial Service Commission are listed under the Judicial Service Commission Act 18 of 1995 (**JUDGES**). See also appointments made in terms of the Special Advisors and Regional Governors Appointment Act 6 of 1990 (**CONSTITUTION**), Electoral Act 5 of 2014 (**ELECTIONS**) and Bank of Namibia Act 15 of 1997 (**FINANCIAL INSTITUTIONS**).

SELECTED CASES

Cases on constitutional challenges to legislation:

Lameck & Another v President of the Republic of Namibia & Others 2012 (1) NR 255 (HC) at para 58 (importance of identifying impugned provisions precisely and substantiating attack on them), reiterated in *Shalli v Attorney-General & Another* 2013 (3) 613 (HC) at para 6
S v Paulo & Another (Attorney-General as amicus curiae) 2013 (2) NR 366 (SC) at paras 14-18 (undesirable to raise attack on Constitutional validity of legislation for first time on appeal).

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)
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)
S v Zembukura (2) 2003 NR 200 (HC)
Lameck & Another v President of the Republic of Namibia & Others 2012 (1) NR 255 (HC).

Cases on separation of powers in statutory regimes:

Mostert v The Minister of Justice 2002 NR 76 (HC); 2003 NR 11 (SC)
Alexander v Minister of Justice & Others 2009 (2) NR 712 (HC) (appealed on other grounds in 2010 (1) NR 328 (SC))
Minister of Justice v Magistrates' Commission & Another 2012 (2) NR 743 (SC).

Cases on transitional provisions in article 140:

These cases are particularly relevant to the interpretation of statutes inherited from South Africa or the South West African Administration.
S v Tcoeb 1999 NR 24 (SC)
Müller & Another v President of the Republic of Namibia & Another 1999 NR 190 (SC)
Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another 2012 (2) NR 566 (SC).

HONOURS SYSTEM

Proclamation 2 of 1995 ([GG 1048](#)) establishes an honours system for Namibia consisting of order and medals, in terms of Article 32(3)(h) of the Namibian Constitution.

CONFERMENT OF NATIONAL HERO STATUS

(in terms of Article 32 of the Namibian Constitution)

The late David Moses Merero, Proc. 5/2004 ([GG 3138](#))

The late Maxton Joseph Mutongolume, 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](#)).

The late Mr Peter Tsheehama, Proc. 18/2010 ([GG 4578](#))

The late Mr John Otto Nankudhu, Proc. 7/2011 ([GG 4746](#))

The late Reverend Bartholomeus Karuaera, Proc. 31/2013 ([GG 5307](#))

The late Comrade Frederick Mwala Matongo, Proc. 34/2013 ([GG 5335](#))

The late Comrade Eneas Peter Nanyemba “Ndilimani”, Proc. 16/2014 ([GG 5545](#))

The late Comrade Putuse Leonora Deywili-Appolus “Meekulu”, Proc. 16/2014 ([GG 5545](#))

The late Comrade Linekela Hailundu Kalenga, Proc. 16/2014 ([GG 5545](#))

The late Comrade Walde Homateni Timoteus Kalwenja, Proc. 16/2014 ([GG 5545](#))

The late Comrade Isak Ndeshitiwa Shikongo “Pondo”, Proc. 16/2014 ([GG 5545](#))

The late Comrade Natalia Ndahambelesa Shikangala Mavulu, Proc. 16/2014 ([GG 5545](#))

The late Comrade Augustus Hafeni Sakaria Nghaamwa “McNamara”, Proc. 16/2014 ([GG 5545](#))

The late Comrade Lameck Ithete “Kagwaanduka”, Proc. 17/2014 ([GG 5548](#))

The late Comrade Simon Hafeni “Mzee” Kaukungwa, Proc. 27/2014 ([GG 5567](#))

The late Comrade Simeon Linekela “Kambo” Shixungileni, Proc. 34/2014 ([GG 5590](#))

The late Gerson Hitjevi Veii, Proc. 2/2015 ([GG 5674](#))

The late Hidipo Livius Hamutenya, Proc. 8/2016 ([GG 6147](#))

The late Andimba Toivo ya Toivo, Proc. 11/2017 ([GG 6338](#))

The late Dr. Theo-Ben Gurirab, Proc. 14/2018 ([GG 6654](#)).

CONFERMENT OF OTHER HONOURS

(in terms of Article 32 of the Namibian Constitution)

The late Honourable Chief Munyuku Nguvauva II, Paramount Chief of the Mbanderu community and Deputy Chairperson of the Council of Traditional Leaders, Proc. 10/2008 ([GG 4005](#))

The late Meekulu Mpingana-Helvi Kondombolo, Proc. 40/2008 ([GG 4177](#))

The late Dr Abraham Iyambo, Proc. 4/2013 ([GG 5129](#))

The late Comrade Nelson Rolihlahla Mandela, former President of the Republic of South Africa, Proc. 35/2013 ([GG 5361](#))

The late Honourable Chief Kuaima Riruako, Proc. 11/2014 ([GG 5492](#))

The late Comrade Aaron Mushimba, Proc. 26/2014 ([GG 5567](#))

The late Fidel Alejandro Castro Ruz, Proc. 11/2016 ([GG 6189](#))

The late Reverend Junias Vaino Kaapanda, Proc. 12/2016 ([GG 6205](#))

The late Honourable Nangolo Leonard Mukwiilongo, Proc. 6/2017 ([GG 6323](#))

The late retired Brigadier-General Erasmus Kayambu Amupolo, Proc. 15/2017 ([GG 6382](#))

The late Angelika Kazetjindire Muharukua, Proc. 24/2017 ([GG 6446](#))
The late Rosalia Annette Ndilinasho Nghidinwa, Proc. 2/2018 ([GG 6516](#))
The late Isak Ashinkono “Nangata” Shoome, Proc. 3/2018 ([GG 6516](#))
The late Nora Schimming-Chase, Proc. 9/2018 ([GG 6547](#))
The late Comrade Auguste Mukwahepo “Immanuel”, Proc. 11/2018 ([GG 6520](#))
The late Reverend Hosea Nampala, Proc. 16/2018 ([GG 6722](#)).

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Paul C Szasz, “Creating the Namibian Constitution”, 27 (3) *Verfassung und Recht in Übersee* 346, 1994
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HISTORICAL NOTE

There have been two declarations of a state of emergency under Article 26(1) of the Constitution.

1) The Declaration of State of Emergency: Caprivi, Proclamation 23 of 1999 ([GG 2156](#)) declared a state of emergency in the Caprivi Region effective as of 2 August 1999, and Emergency Regulations were promulgated in Proc. 24/1999 ([GG 2157](#)). 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](#)). The declaration and the regulations were both revoked on 26 August 1999 by Proc. 27/1999 ([GG 2176](#)). 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 by GN 160/1999 ([GG 2163](#)). The case of *Mazila v Minister of Home Affairs* 2000 NR 224 (HC) discussed the applicability of the Emergency Regulations to areas outside the Caprivi Region.

2) The Declaration of State of Emergency: National Disaster (Drought) Proclamation 5 of 2016 ([GG 6056](#)) declared a state of emergency in all regions of Namibia on account of the persisting national disaster of drought. This became effective on the date of publication of the Proclamation, 28 June 2016.

See also **CORRECTIONAL FACILITIES**.

See also Anti-Corruption Act 8 of 2003 (**CRIMINAL LAW AND PROCEDURE**).

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 **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, as amended in South Africa to November 1979.

Summary: This Act ([RSA GG 202](#)) 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.” This wording does not seem to make South African amendments to the Act automatically applicable to South West Africa. However, 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* ([RSA GG 1771](#)), and it is made expressly applicable to South West Africa by section 18(2) of that Act.

Transfer of administration to SWA: Although this Act makes no reference to any minister, by virtue of its subject matter it probably fell under the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979, as amended. (Note that it is one of the laws listed in the South African *Justice Laws Rationalisation Act 18 of 1996* ([RSA GG 17129](#))). In any event, there were no amendments to the Act in South Africa after the date of transfer and prior to Namibian independence.

Amendments: As indicated above, the following pre-independence South African amendment was applicable to SWA –

- *General Law Amendment Act 102 of 1967* ([RSA GG 1771](#)).

Regulations: The Act makes no provision for regulations.

Cases: *Barotti Furniture (Pty) Ltd v Moodley* 1996 NR 295 (HC).

CO-OPERATIVES

Co-operatives Act 23 of 1996.

Summary: This Act ([GG 1467](#)) regulates the formation, registration and winding-up of co-operatives. It repeals the Co-operative Societies Ordinance 15 of 1946.

Regulations: Regulations made in terms of the previous Co-operatives Societies Ordinance 15 of 1946 survive pursuant to section 110(2) of this Act, which states: “Anything done under a provision of the repealed Ordinance which may be done under a provision of this Act shall be deemed to have been done under the last-mentioned provision.” Pre-independence regulations have not been researched.

Regulations are authorised by section 107 of the current Act, but none have yet been promulgated.

Notices: 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.

Commentary: Division of Cooperative Development, Ministry of Agriculture, Water and Rural Development, *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*, undated.

CORRECTIONAL FACILITIES

Transfer of Convicted Offenders Act 9 of 2005.

Summary: This Act ([GG 3495](#)) makes provision for the mutual transfer of sentenced offenders between Namibia and foreign States. It was brought into force on 28 July 2006 by GN 116/2006 ([GG 3674](#)).

Amendments: The Act is amended with respect to the use of various terms by the Correctional Service Act 9 of 2012 ([GG 5008](#)), which was brought into force on 1 January 2014 by GN 330/2013 ([GG 5365](#)).

Regulations: Regulations are contained in GN 117/2006 ([GG 3674](#)).

Notices: GN 309/2012 ([GG 5109](#)) announces the ratification of an agreement on the transfer of sentenced offenders between Zambia and Namibia, in terms of section 20(3) of the Act. (The text of the agreement is not included in the notice.)

According to the Ministry of Safety and Security, the National Assembly ratified this bilateral agreement on 9 October 2012 and notified Zambia of the ratification on 23 January 2013. On 11 November 2015, Namibia received notification from Zambia that they had fulfilled their domestic procedures in respect of the agreement. The agreement then entered into force on 12 December 2015 (in terms of Article 20(1) of the Agreement).

Correctional Service Act 9 of 2012.

Summary: This Act ([GG 5008](#)) provides for the establishment of the Namibian Correctional Service and correctional facilities (previously known as prisons). It also covers health care services and hygiene for incarcerated offenders, discipline and rehabilitation programmes for incarcerated offenders, and rules for searches and seizures in correctional facilities. It establishes the National Release Board and provides for parole, remission and pardons. The Act repeals the Prisons Act 17 of 1998 ([GG 1894](#)), which was brought into force on 24 August 1998 by GN 206/1998, ([GG 1927](#)). This Act was brought into force on 1 January 2014 by GN 330/2013 ([GG 5365](#)).

The Prisons Act 17 of 1998 replaced the *Prisons Act 8 of 1959*. Because there is a chain of savings clauses which stretch back to that Act, it may be relevant to note its applicability to SWA. Section 96 of the *Prisons Act 8 of 1959* stated: “The State President may, by proclamation in the Gazette and subject to such conditions, modifications, exceptions and additions as he may specify in such proclamation, apply the provisions of this Act and of any amendments thereof to the territory of South West Africa including 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 and also that portion of the said territory known as the ‘Eastern Caprivi Zipfel’ referred to in section 38 of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968), and he may in the like manner amend or repeal any such proclamation”. The Act was initially applied to South West Africa by *SA Proclamation 271 of 1959*, which was subsequently replaced by *RSA Proclamation R.130 of 1969*, as amended by *RSA Proclamation R.211 of 1977*. These Proclamations made several amendments to the Act as it applied to SWA. Although these South African proclamations functioned in some respects as transfer proclamations, the administration of this Act was also

transferred to SWA by the Executive Powers (Prisons) Transfer Proclamation (AG 6/1977, as amended), dated 13 October 1977. This transfer proclamation predates the General Proclamation regarding transfers (AG 7/1977, as amended).

Regulations: Anything done under any provision of any law repealed by this Act which could be done under a provision of this Act is deemed to have been done under this Act in terms of section 134(3) – including the issue of regulations.

Regulations made under laws repealed by the *Prisons Act 8 of 1959* survived pursuant to section 95(b) of that Act.

Regulations under the *Prisons Act 8 of 1959* appeared to have survived pursuant to the general wording of section 127(2) of the Prisons Act 17 of 1998, which states:

“(2) Anything done under any provision of any law repealed by subsection (1) and which could be done under a provision of this Act shall be deemed to have been done under the last-mentioned provision.”

However, according to the Namibian Supreme Court in *Kamahere & Others v Government of the Republic of Namibia & Others* 2016 (4) NR 919 (SC) at para [38], there was “no savings provision in respect of the regulations promulgated under the 1959 Act or orders issued under reg 148 [of those regulations] in s 127 of the 1998 Act”. The Court does not discuss the reasoning behind this interpretation, other than to state:

“When the minister made regulations under s 124 of the 1998 Act on 8 November 2001 [referring to the regulations contained in GN 266/ 2001 ([GG 2643](#)), as amended by GN 34/2009 ([GG 4223](#)) and GN 134/2009 ([GG 4272](#))], those regulations did not repeal the regulations made under the 1959 Act, further demonstrating that those regulations had been repealed by s 127 of the 1998 Act.”

Regulations made under the Prisons Act 17 of 1998 survived pursuant to section 134(3) of the Correctional Service Act 9 of 2012, but have subsequently been repealed.

Namibian Correctional Service Regulations, made under the current Act, are contained in GN 331/2013 ([GG 5365](#)). These regulations repeal the regulations contained in GN 266/ 2001 ([GG 2643](#)), as amended by GN 34/2009 ([GG 4223](#)) and GN 134/2009 ([GG 4272](#)).

Establishment of prisons: Several new prisons were established under the Prisons Act 17 of 1998 by GN 201/1998 ([GG 1927](#)), and the Katima Mulilo police cells were declared to be a prison under that Act by GN 160/1999 ([GG 2163](#)).

Presidential pardons: Under the Prisons Act 17 of 1998, pardons were issued to certain categories of prisoners in Proc. 15/1993 ([GG 642](#)), Proc. 11/1994 ([GG 836](#)), Proc. 3/1995 ([GG 1051](#)), Proc. 4/1997 ([GG 1533](#)), Proc. 1/2000 ([GG 2306](#)), Proc. 12/2003 ([GG 2956](#)), Proc. 1/2005 ([GG 3397](#)), Proc. 4/2006 ([GG 3626](#)), Proc. 6/2009 ([GG 4230](#)), Proc. 14/2010 ([GG 4552](#)) and Proc. 28/2013 ([GG 5270](#)). Notices listing the names of the persons covered by some of these pardons have not been listed here.

Cases: The following cases relate to this Act –

Lomboleni & 10 Other Appeal Cases v The State & Others 2016 (1) NR 22 (NLD) (discussion of official duties in section 3(3) in context of inability of prisons to account for whereabouts of prisoners seeking to prosecute appeals)

Katjivena & Others v Prime Minister of the Republic of Namibia & Others 2016 (3) NR 903 (HC) (section 133(3))

Kamahere & Others v Government of the Republic of Namibia & Others 2016 (4) NR 919 (SC) (effect of successive repeals of previous legislation on regulations and orders issued under previous Acts, in respect of eligibility for parole in respect of life imprisonment; section 117 and Regulation 281 of the Namibian Correctional Service Regulations, 2013 apply to persons sentenced under the Prisons Act 17 of 1998, but not under the *Prisons Act 8 of 1959*; persons sentenced under the *Prisons Act 8 of 1959* continue to be governed by the right to parole acquired under that Act).

The following cases relate to the Prisons Act 17 of 1998, which was repealed by this 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))
Alugodhi v Minister for Safety and Security & Others and Eight Similar Cases 2015 (4) NR 1021 (HC) (relationship between section 86 and section 280 of *Criminal Procedure Act 51 of 1977*, with reference to similar provisions of the previous *Prisons Act 8 of 1959* (section 32) and the current Act (section 99))
Katjivena & Others v Prime Minister of the Republic of Namibia & Others 2016 (3) NR 903 (HC) (interpretation of 2010 directive of Prime Minister on organisational structure)
Kamahere & Others v Government of the Republic of Namibia & Others 2016 (4) NR 919 (SC) (section 126; absence of provision for parole in respect of life imprisonment; section 117 and Regulation 281 of the Namibian Correctional Service Regulations, 2013 apply to persons sentenced under the Prisons Act 17 of 1998).

The following cases relate to the *Prisons Act 8 of 1959*, which was repealed by the Prisons Act 17 of 1998 –

- 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) (discussed in L Gaum, “The use of mechanical restraints by correctional services in South Africa and Namibia: *Namunjepo v Commanding officer, Windhoek Prison* 6 BCLR 671 (NmS) (2000)”, *African Human Rights Law Journal*, Volume 2, Issue 1, 2002)
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)
Kamahere & Others v Government of the Republic of Namibia & Others 2016 (4) NR 919 (SC) (section 90; Prison Order 43.7.4.7 issued under

Regulation 148 of the Prison Regulations, 1965 contained in GN R.2080 of 31 December 1965; persons sentenced under the *Prisons Act 8 of 1959* continue to be governed by the right to parole acquired under that Act).

Commentary:

- SH Bukurura & JW Nyoka, “The Namibian Prison Service and the Constitution: Lessons and experiences, 1990-2000”, 34(1) *De Jure* 96 (2001)
- SH Bukurura, “Prison Overcrowding in Namibia: The Problem and Suggested Solutions”, 16 (1) *Acta Criminologica* 82 (2003)
- “*Prisons In Namibia: Report of The Special Rapporteur on Prisons And Conditions of Detention in Africa, adopted by the African Commission on Human and Peoples’ Rights at the 33rd Ordinary Session, 15-29 May 2003*”, available from www.achpr.org/states/namibia/missions/prisons-2001/
- SK Amoo & Davy Y Kambinda, “Community service orders as part of judicial discretion in the criminal justice system”, *Namibia Law Journal*, Volume 3, Issue 2, 2011
- Clever Mapaure & Raphael T Hamunyela, “Once jailed, wait for fuzzy mercy: A critical legal analysis of the blurred prison and parole laws of Namibia”, *Namibia Law Journal*, Volume 4, Issue 2, 2012
- Chuks Okpaluba, “State liability for acts and omissions of police and prison officers: recent developments in Namibia” 46 (2) *The Comparative and International Law Journal of Southern Africa* 184 (2013)
- Law Reform and Development Commission, *Discussion Paper on the Possible Statutory Interventions to Curb the Alarming Spate of Domestic Violence, Murder and Gender Based Violence*, LRDC 33, 2014 (parole)
- Obonye Jonas & Tshepiso Ndzingo-Makhamisa, “Anti-retroviral drugs for foreign inmates in Botswana: *Tapela & Anor v Attorney-General & Others*”, *Namibia Law Journal*, Volume 6, Issue 2, 2014.

Conditions in police cells: The Correctional Service Act defines “correctional facility” to include, for certain purposes, every place used as a police cell or lock-up. *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:

- Adv JR Walters, “Follow-up Report on Conditions Prevailing at Police Cells in Namibia”, Office of the Ombudsman, 2008, available at www.ombudsman.org.na
- “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
- Oliver C Ruppel and Angelique L Groenewald, “Conditions of Police Cells in Namibia, Human Rights and Documentation Centre”, University of Namibia, undated, available at www.unam.na and www.kas.de.

APPOINTMENTS

- Appointment of First Commissioner of Prisons, Proc. 19/1990
- Appointment of Commissioner of Prisons, Proc. 34/1997 ([GG 1765](#))
- Commissioner-General of Correctional Service, Proc. 4/2014 ([GG 5407](#)).

COMMENTARY

Legal Assistance Centre / University of Wyoming College of Law, *Struggle to Survive: A Report on HIV/AIDS and Prisoners' Rights in Namibia*, 2008, available at www.lac.org.na

Legal Assistance Centre, *Understanding Prisoners' Rights*, undated pamphlet, available at www.lac.org.na.

See also Security Commission Act 18 of 2001 (**CONSTITUTION**).

See also **DISASTERS** (involvement of uniformed forces in disaster situations).

COURTS

Further Administration of Justice Proclamation 38 of 1920.

Summary: This Proclamation ([OG 35](#)) provides for the procedure of circuit courts of the High Court. All that remains in force of this Proclamation are sections 1, 7, 11 and 13-15.

Amendments: The SA *Supreme Court Act 59 of 1959* ([SA GG 6253](#)) repeals sections 2-6, 8, 9 and 12. Proc. 30/1935 ([OG 649](#)) amends sections 3 and 11 and repeals section 10. The RSA *Civil Proceedings Evidence Act 25 of 1965* ([RSA GG 1066](#)) amends section 11.

Regulations: Section 13 of the Proclamation authorises regulations “as to the method of transport of the Judge of the High Court of South-West Africa and the scales of transport, travelling and subsistence allowances when he is travelling on duty or is absent on duty from his place of residence”. Pre-independence regulations have not been researched, as they would now be obsolete.

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, as amended by *Act 17 of 1970*, defines “territory” as “the territory of South West Africa”, and “province” and “Republic” are both defined to include the territory. Section 115A, inserted by *Act 17 of 1970*, 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), dated 12 November 1979, as amended. None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

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).

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Magistrates’ Courts Amendment Act 40 of 1952* ([SA GG 4873](#))
- *Magistrates’ Courts Amendment Act 14 of 1954* ([SA GG 5254](#))
- *General Law Amendment Act 62 of 1955* ([SA GG 5512](#))
- *General Law Amendment Act 50 of 1956* ([SA GG 5703](#))
- *General Law Amendment Act 68 of 1957* ([SA GG 5894](#))
- *Criminal Law Amendment Act 16 of 1959* ([SA GG 6195](#))
- *Criminal Law Further Amendment Act 75 of 1959* ([SA GG 6262](#))
- *General Law Further Amendment Act 93 of 1962* ([RSA GG 284](#))
- *Magistrates’ Courts Amendment Act 19 of 1963* ([RSA GG 456](#))
- *General Law Amendment Act 37 of 1963* ([RSA GG 488](#))

- *General Law Further Amendment Act 93 of 1963* ([RSA GG 555](#))
- *Bantu Laws Amendment Act 42 of 1964* ([RSA GG 801](#))
read together with section 16(1) of the Native Laws Amendment Act 46 of 1962 ([RSA GG 240](#))
- *General Law Amendment Act 80 of 1964* ([RSA GG 829](#))
- *Magistrates' Courts Amendment Act 48 of 1965* ([RSA GG 1102](#))
- *Magistrates' Courts Amendment Act 8 of 1967* ([RSA GG 1664](#))
- *General Law Amendment Act 70 of 1968* ([RSA GG 2106](#))
- *Establishment of the Northern Cape Division of the Supreme Court of South Africa Act 15 of 1969* ([RSA GG 2315](#))
- *Magistrates' Courts Amendment Act 17 of 1969* ([RSA GG 2317](#))
- *General Law Amendment Act 101 of 1969* ([RSA GG 2464](#))
- *General Law Amendment Act 17 of 1970* ([RSA GG 2655](#))
- *Magistrates' Courts Amendment Act 53 of 1970* ([RSA GG 2826](#))
- *General Law Amendment Act 80 of 1971* ([RSA GG 3197](#))
- *General Law Amendment Act 102 of 1972* ([RSA GG 3610](#))
- *General Law Amendment Act 29 of 1974* ([RSA GG 4220](#))
- *Second General Law Amendment Act 94 of 1974* ([RSA GG 4510](#))
- *Magistrate's Courts Amendment Act 63 of 1976* ([RSA GG 5120](#))
- *Criminal Procedure Act 51 of 1977* ([RSA GG 5532](#))
- *Lower Courts Amendment Act 91 of 1977* ([RSA GG 5621](#)).

The Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends certain terminology.

Act 14/1981 ([OG 4565](#)), which is brought into force by AG Proc. 33/1981 ([GG 4577](#)), amends section 92.

Act 11/1985 ([OG 5108](#)) amends the Act substantially.

The Appeals Amendment Act 29 of 1985 ([OG 5149](#)), which is brought into force by AG 19/1986 ([OG 5182](#)), amends sections 1 and 83.

Act 9/1990 ([GG 43](#)) 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 Attorneys Amendment Act 17 of 1991 ([GG 314](#)) substituted section 21, with effect from 29 September 1989; this amending Act was repealed in its entirety by the Legal Practitioners Act 15 of 1995.

The Married Persons Equality Act 1 of 1996 ([GG 1316](#)) amends section 5 and deletes section 111(4).

Act 9/1997 ([GG 1696](#)), which was brought into force on 3 November 1997 by 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 ([GG 2058](#)) 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 ([GG 2996](#)) (the relevant portion of which was brought into force on 30 June 2003 by 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 Act makes no provision for regulations. However, section 22 of Act 17 of 1970 (which made this Act applicable to SWA) repealed section 3 of the South-West Africa Affairs Act, 1922 (Act No. 24 of 1922) “in so far as it relates to the attendance of witnesses in any civil action in any magistrate’s court in the territory of South-West Africa”, and the SWA Magistrates’ Courts Ordinance 29 of 1963. Section 22(3) included a savings clause: “Any regulation, rule, notice, approval, authority, return, certificate, document or appointment made, issued or given, and any other act done under any provision of any law repealed by this Act, shall be deemed to have been made, issued, given or done under the corresponding provision of the principal Act.” However, pre-independence regulations under these repealed laws which might have been thus saved have not been researched and are probably now obsolete.

Rules: 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 58/1989 (15 August 1989) (OG 5774)
- AG GN 86/1989 (15 October 1989) (OG 5822)
- 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)
GN 294/2018 ([GG 6765](#)) (Annexure 2-Tables A, B, C, D and E).

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 10 November 1978 to the Rehoboth Gebiet.

Notices:

GN 22/1994 ([GG 799](#)) creates district divisions, appoints places for holding courts within each division and specifies the seat of the magistracy for each division. It is amended by GN 21/1999 ([GG 2046](#)), GN 176/2000 ([GG 2374](#)), GN 93/2002 ([GG 2755](#)) and GN 82/2018 ([GG 6586](#)).

GN 23/1994 ([GG 799](#)) re-defines the local limits of districts and establishes their names, establishes a court for each district, appoints places for the holding of a court for each district, and specifies the seat of magistracy where there is more than one court in the district. It is amended by GN 122/1997 ([GG 1585](#)), GN 22/1999 ([GG 2046](#)), GN 177/2000 ([GG 2374](#)), GN 94/2002 ([GG 2755](#)) and GN 61/2014 ([GG 5455](#)).

GN 61/2014 ([GG 5455](#)) states that GN 23/1994 was also amended by GN 26/1994 ([GG 803](#)) and GN 21/1999 ([GG 2046](#)), but this is incorrect. GN 61/2014 also fails to list the amendment made by GN 94/2002.

GN 249/1997 ([GG 1741](#)) makes no amendments to previous Government Notices, but appoints Hochfeld, within the district of Okahandja, as a place for the holding of a court for that district and prescribes the local limits of the district of Okahandja as the local limits within which that court exercises jurisdiction. (Consequential amendments to GN 22/1994 ([GG 799](#)) are made by GN 21/1999 ([GG 2046](#)).)

GN 92/2002 ([GG 2755](#)) appoints Ngoma within the district of Katima Mulilo and the district division Rundu, as a place for the holding of a court for that district and district division, and prescribes the local limits within which that court exercises jurisdiction. (Consequential amendments to GN 22/1994 ([GN 799](#)) are made by GN 93/2002 ([GG 2755](#)).)

Officers competent to perform service of process in terms of section 15(4) are designated in AG GN 84/1989.

A **Code of Conduct for Magistrates** is contained in GN 190/2010 ([GG 4551](#)).

Note: Note that *S v Coetzee* 2011 (1) NR 359 (HC) emphasises that a record of criminal proceedings in the magistrates’ court must be prepared in accordance with Chap XIII of the **Codified Instructions: Clerk of the Criminal Court** issued by the Permanent Secretary for Justice (Permanent Secretary’s Administrative Circular dated 12 May 2008 re: “Amendment of Codified Jurisdictions Justice Code: Clerk of Criminal Court”, updated 19 March 2008).

Appointments: Members of the Magistrates Commission are announced in General Notice 169/2003 ([GG 3020](#)) and GN 189/2012 ([GG 5005](#)).

Cases:

section 1:

Alexander v Minister of Justice & Others 2009 (2) NR 712 (HC) (“judicial officer” and “Chief: Lower Courts”); appealed on other grounds in 2010 (1) NR 328 (SC)

section 9:

S v Kauma 1992 NR 17 (HC)

Mostert v The Minister of Justice 2002 NR 76 (HC); 2003 NR 11 (SC) (declaring section 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 sections 65F, 65G, 65H and 65L and parts of sections 65A, 65K and 65J concerning imprisonment for civil debt)

section 66:

Vermaak & Another v Messenger of the Court of Swakopmund & Another 2005 NR 14 (HC)

Hiskia v Body Corporate of Urban Space (HC-MD-CIV-MOT-GEN 2017/00143) [2018] NAHCMD 279 (31 August 2018) (section 66(1)(a) is unconstitutional insofar as it permits the sale in execution of immovable property without judicial oversight, but remains in force until 31 August 2019 to give Parliament opportunity to correct its defects)

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) (the reference to whipping is unconstitutional)

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 9:

Hiskia v Body Corporate of Urban Space (HC-MD-CIV-MOT-GEN 2017/00143) [2018] NAHCMD 279 (31 August 2018)(Rule 9(3)(e))

Rule 12:

Hiskia v Body Corporate of Urban Space (HC-MD-CIV-MOT-GEN 2017/00143) [2018] NAHCMD 279 (31 August 2018) (Rule 12(1)(a) declared invalid on constitutional grounds)

Rule 17:

Olivier v Kaizemi 2005 NR 290 (HC)

Tsabo v Gobabis Municipality NLLP 2003 (4) 25 NLC

Rule 22:

Leweis v Sampoio 2000 NR 186 (SC)

Rule 36:

Standard Bank of Namibia Ltd v Potgieter & Another 2000 NR 120 (HC) (Rule 36(d))

Hiskia v Body Corporate of Urban Space (HC-MD-CIV-MOT-GEN 2017/00143) [2018] NAHCMD 279 (31 August 2018) (Rule 36 declared unconstitutional but remains in force until 31 August 2019 to give Rules Board opportunity to correct the defect)

Rule 43:

Vermaak & Another v Messenger of the Court of Swakopmund & Another 2005 NR 14 (HC)

Hiskia v Body Corporate of Urban Space (HC-MD-CIV-MOT-GEN 2017/00143) [2018] NAHCMD 279 (31 August 2018) (Rule 43 declared unconstitutional but remains in force until 31 August 2019 to give Rules Board opportunity to correct the defect)

Rule 49:

Leweis 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; reversed 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)

S v Andima 2010 (2) NR 639 (HC)

S v Kavari 2011(2) NR 403 (HC)

S v Beyer 2014 (4) NR 1041 (HC)

S v Ameb 2014 (4) NR 1134 (HC)

S v Kapure 2015 (20 NR 394 (HC)

S v PV 2016 (1) NR 77 (HC) (“clearly and specifically”)

Rule 67(3):

S v Tases 2003 NR 103 (HC).

Commentary: Francois X Bangamwabo & 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.kas.de.

Vexatious Proceedings Act 3 of 1956.

Summary: This Act ([SA GG 5632](#)) 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. The wording of section 3 did not make South African amendments automatically applicable to South West Africa. However, in any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Transfer proclamation: Although this Act makes no reference to any minister, by virtue of its subject matter it probably fell under the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated 12 November 1979. Regardless of whether or not there was a transfer of administration, the wording of the Act did not make South African amendments automatically applicable to South West Africa – and, in any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Regulations: The Act makes no provision for regulations.

Cases: *Namibia Financial Institutions Supervisory Authority v Christian & Another* 2011 (2) NR 537 (HC).

General Law Amendment Ordinance 22 of 1958, sections 1-2.

Summary: Section 1 of this Ordinance ([OG 2152](#)) 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 ([OG 2409](#)), to change the relevant age to 18. Section 2(2) is deleted by the Magistrate’s Courts Ordinance 29 of 1963 ([OG 2499](#)).

Supreme Court Act 15 of 1990.

Summary: This Act ([GG 84](#)) provides for the jurisdiction of the Supreme Court of Namibia in accordance with Article 79 of the Namibian Constitution. It repeals the *Supreme Court Act 59 of 1959*, the *Supreme Court of South West Africa Proclamation 222 of 1981* and sections 3, 4 and 5 of the Appeals Amendment Act 29 of 1985 ([OG 5149](#)).

Amendments: The Judicial Service Commission Act 18 of 1995 ([GG 1195](#)) amends section 9. The Appeal Laws Amendment Act 10 of 2001 ([GG 2585](#)) amends section 14. Act 4/2002 ([GG 2771](#)) amends section 8.

Regulations: The Act makes no provision for regulations, and there is no clause saving any regulations which may have been made under the repealed Act.

Rules: The **Rules of the Supreme Court** are contained in GN 249/2017 ([GG 6425](#)), which withdraws GN 221/2017 ([GG 6392](#)). GN 249/2017 provides that the new rules come into operation on 15 November 2017. (GN 221/2017 had repealed the previous rules contained in GN 56/1990 ([GG 86](#)), as amended by GN 80/2003 ([GG 2949](#)) and GN 119/2003 ([GG 2994](#)).)

Rules relating to Presidential Election Challenges are contained in GN 118/2015 ([GG 5761](#)).

Cases:

generally:

S v Arubertus 2011 (1) NR 157 (SC) (appeal by right of High Court's dismissal of application for condonation of late filing of appeal in criminal case, due to "lacuna in law", resulting in an "undesirable state of affairs where appeals against the dismissal of application for condonation have to be considered by this court without the benefit of the filter system provided for by the petition procedure intended to weed out unmeritorious appeals")

section 6:

S v Strowitzki 2003 NR 145 (SC) (sections 6 and 16(1))

section 7:

Wirtz v Orford & Another 2005 NR 175 (SC), approved in *Dresselhaus Transport CC v Government of the Republic of Namibia* 2005 NR 214 (SC) at 252D

section 13:

Wirtz v Orford & Another 2005 NR 175 (SC), approved in *Dresselhaus Transport CC v Government of the Republic of Namibia* 2005 NR 214 (SC) at 252D

section 14:

S v Koch 2006 (2) NR 513 (SC) (section 14(1))

M Pupkewitz & Sons (Pty) Ltd t/a Pupkewitz Megabuilt v Kurz 2008 (2) NR 775 (SC)

S v Malumo & Others 2010 (2) NR 595 (SC)

//Ae//Gams Data (Pty) Ltd & Others v St Sebata Municipal Solutions (Pty) Ltd & Others 2011 (1) NR 247 (HC) (section 14(1))

S v Masake & Others 2012 (1) NR 1 (SC)

see *Shetu Trading CC v Chair, Tender Board of Namibia & Others* 2012 (1) NR 162 (SC) (addressing the meaning of the phrase "judgment or

order” in section 18 of the High Court Act 16 of 1990, which is relevant to the meaning of the same phrase in this section)

section 15:

Schroeder & Another v Solomon & 48 Others 2011 (1) NR 20 (SC)
Attorney-General of Namibia v Minister of Justice & Others 2013 (3) NR 806 (SC)

section 16:

S v Bushebi 1998 NR 239 (SC)
S v Strowitzki 2003 NR 145 (SC) (section 16(1))
Christian v Metropolitan Life Namibia Retirement Annuity Fund & Others 2008 (2) NR 753 (SC)
Schroeder & Another v Solomon & 48 Others 2009 (1) NR 1 (SC), 2011 (1) NR 20 (SC)
S v Malumo & Others 2010 (2) NR 595 (SC)
Namib Plains Farming CC v Valencia Uranium (Pty) Ltd & Others 2011 (2) NR 469 (SC)
S v Masake & Others 2012 (1) NR 1 (SC)
Makapuli & Another v Swabou Investment (Pty) Ltd & Another 2013 (1) NR 238 (SC)
Standard Bank of Namibia Ltd v Atlantic Meat Market 2014 (4) NR 1158 (SC)

section 17:

Schroeder & Another v Solomon & 48 Others 2011 (1) NR 20 (SC)
Kamwi v Law Society of Namibia 2011 (1) NR 196 (SC)
Teek v President of the Republic of Namibia & Others 2015 (1) NR 58 (SC)

section 19:

Gonschorek & Others v Asmus & Another 2008 (1) NR 262 (SC) (section 19(a))

section 20:

S v Malumo & Others 2010 (2) NR 595 (SC).

Cases on Supreme Court Rules (2017) in GN 249/2017 ([GG 6425](#)):

Not yet recorded.

Cases on Supreme Court Rules (1990) in GN 56/1990 ([GG 86](#)):

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)
Petrus v Roman Catholic Archdiocese 2011 (2) NR 637 (SC) (general disregard for court rules)
Kleynhans v Chairperson for the Council of the Municipality of Walvis Bay & Others 2013 (4) NR (SC) (condonation for breach of multiple rules of court refused; lackadaisical inattention to rules criticised, holding that such disregard for rules could not be condoned regardless of prospects of success on the merits of the case)
Shilongo v Church Council of the Evangelical Lutheran Church in the Republic of Namibia 2014 (1) NR 166 (SC) (concern about use of condonation applications; applications for condonation “not there for the asking or a mere formality”; unnecessary to deal with prospects for success on merits in view of absence of application for reinstatement of lapsed appeal coupled with “flagrant non-compliance with the rules of court”)

Namib Contract Haulage (Pty) Ltd v Oshakati Garage CC 2014 (1) NR 174 (SC) (failure to observe the rules of court, particularly rules 5(1) and 8(1) “has become a menace”)

Arangies t/a Auto Tech v Quick Build 2014 (1) NR 187 (SC) (“There are times... where this court has held that it will not consider the prospects of success in determining the application because the non-compliance with the rules has been ‘glaring’, ‘flagrant’ and ‘inexplicable’.” at para 5, citing *Beukes & Another v SWABOU & Others* [2010] NASC 14 (5 November 2010) at para 20 and *Petrus v Roman Catholic Archdiocese* 2011 (2) NR 637 (SC) at para 10)

Worku v Equity Aviation Services (Namibia) (Pty) Ltd (in Liquidation) & Others 2014 (1) NR 234 (SC) (court should be understanding of difficulties faced by lay litigants, but non-compliance with rules by lay litigant cannot be condoned where it would render proceedings unfair or unduly prolonged; Registrar should not enrol case for hearing if appeal is deemed to be withdrawn, unless there is a proper application for condonation and reinstatement and record is in proper order)

Black Range Mining (Pty) Ltd v Minister of Mines & Energy & Others NNO 2014 (2) NR 320 (SC) (conflating Namibian court rules with those of other jurisdictions)

Katjaimo v Katjaimo & Others 2015 (2) NR 340 (SC) (instructing counsel awarded to pay costs out of his own pocket because of “negligence and remissness” which cannot be attributed to the litigant; general caution about compliance with rules of court at paras 34-35:

Sufficient warning has been given by this court that the non-compliance with its rules is hampering the work of the court. The rules of this court, regrettably, are often more honoured in the breach than in the observance. That is intolerable. The excuse that a practitioner did not understand the rules can no longer be allowed to pass without greater scrutiny. The time is fast approaching when this court will shut the door to a litigant for the unreasonable non-observance of the rules by his or her legal practitioner. After all, such a litigant may not be without recourse as he or she would in appropriate instances be able to institute a damages claim against the errant legal practitioner for their negligence under the Aquilian action.... We hope that the cautionary observations made in this judgment will be taken seriously by all legal practitioners who practise in the Supreme Court. A legal practitioner has a duty to read the decided cases that emanate from the courts (both reported and unreported) and not simply grope around in the dark as seems to have become the norm for some legal practitioners, if judged by the explanations offered under oath in support of the condonation applications that come before the court.)

Balzer v Vries 2015 (2) NR 547 (SC) (condonation in respect of non-compliance with rules 8(3) and 5(5) refused; at para 33: “appellant has acted with defiance with regard to an order of the High Court and has frustrated the due process of law and thus undermined the rule of law upon which the Constitution is premised”)

Rule 3:

M Pupkewitz & Sons (Pty) Ltd t/a Pupkewitz Megabuilt v Kurz 2008 (2) NR 775 (SC)

Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC) (application of Rule 3(6) versus Rule 8 on security for costs)

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)

Vahekeni v Vahekeni 2008 (1) NR 125 (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)
Ondjava Construction CC & Others v Haw Retailers t/a Ark Trading 2010 (1) NR 286 (SC)
Strauss & Another v Laubuscagne 2012 (2) 460 (SC)
Cargo Dynamics Pharmaceuticals (Pty) Ltd v Minister of Health and Social Services & Another 2013 (2) NR 552 (SC)
Shilongo v Church Council of the Evangelical Lutheran Church in the Republic of Namibia 2014 (1) NR 166 (SC)
Namib Contract Haulage (Pty) Ltd v Oshakati Garage CC 2014 (1) NR 174 (SC)
Arangies t/a Auto Tech v Quick Build 2014 (1) NR 187 (SC)
Worku v Equity Aviation Services (Namibia) (Pty) Ltd (in Liquidation)& Others 2014 (1) NR 234 (SC)
Chairperson, Council of the Municipality of Windhoek, & Others v Roland & Others 2014 (1) NR 247 (SC)
Weatherly International Plc v Bruni and McLaren NNO & Another 2014 (1) NR 273 (SC)
Nghikofa v Classic Engines CC 2013 (3) 659 (HC); see also *Nghikofa v Classic Engines CC* 2014 (2) NR 314 (SC)
Black Range Mining (Pty) Ltd v Minister of Mines & Energy & Others NNO 2014 (2) NR 320 (SC)
Fish Orange Mining Consortium (Pty) Ltd v !Gooseb & Others 2014 (2) NR 385 (SC)
Factcrown Ltd v Namibia Broadcasting Corporation 2014 (2) NR 447 (SC)
Namibia Wildlife Resorts Ltd v Government Institutions Pension Fund & Others 2015 (1) NR 88 (SC)
Katjaimo v Katjaimo & Others 2015 (2) NR 340 (SC)
Disciplinary Committee for Legal Practitioners v Murorua & Another 2016 (2) NR 374 (SC) (condonation refused for Disciplinary Committee's non-compliance with Rule 5(1))

Rule 8:

Kamwi v Duvenhage & Another 2008 (2) NR 656 (SC)
Ondjava Construction CC & Others v Haw Retailers t/a Ark Trading 2010 (1) NR 286 (SC) (Rule 8(2)-(3) must be read subject to section 18(5) of the High Court Act 16 of 1990)
Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another 2012 (2) NR 566 (SC) (meaning of "government" in rule 8(5))
Executive Properties CC & Another v Oshakati Tower (Pty) Ltd & Others 2013 (1) NR 157 (SC) (condonation of non-compliance with Rule 8(3))
Shilongo v Church Council of the Evangelical Lutheran Church in the Republic of Namibia 2014 (1) NR 166 (SC)
Worku v Equity Aviation Services (Namibia) (Pty) Ltd (in Liquidation)& Others 2014 (1) NR 234 (SC)
Fish Orange Mining Consortium (Pty) Ltd v !Gooseb & Others 2014 (2) NR 385 (SC)
Witvlei Meat (Pty) Ltd v Agricultural Bank of Namibia 2014 (2) NR 464 (SC)
Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC) (application of Rule 8 versus Rule 3(6) on security for costs)
Makando v Disciplinary Committee for Legal Practitioners 2016 (4) NR 1127 (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)

Petrus v Roman Catholic Archdiocese 2011 (2) NR 637 (SC) (general disregard for court rules as factor in condonation)

Rally for Democracy and Progress & Others v Electoral Commission & Others 2013 (2) NR 390 (HC).

Commentary: Raymond Heathcote, “Section 16 of the Supreme Court Act”, *Namibia Law Journal*, Volume 1, Issue 1, 2009, available at www.kas.de (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 ([GG 85](#)) 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 ([GG 1141](#)) amends section 3. The Judicial Service Commission Act 18 of 1995 ([GG 1195](#)) also amends section 3. The International Co-operation in Criminal Matters Act 9 of 2000 ([GG 2327](#)) amends section 29. The Appeal Laws Amendment Act 10 of 2001 ([GG 2585](#)) amends sections 16 and 18. Act 3/2002 ([GG 2770](#)) amends section 8. Act 14/2011 ([GG 4863](#)) inserts sections 2A and 4A and substitutes section 4, to provide for the creation of local divisions of the High Court. Act 12/2013 ([GG 5384](#)), which was brought into force on 4 February 2014 by GN 10/2014 ([GG 5397](#)), amends section 39.

Note: *Goseb & Others v Minister of Regional and Local Government and Housing & Others* 2011 (1) NR 224 (HC) erroneously states in para 10 at 227C that the Appeals Law Amendment Act 10 of 2001 “substituted s 2 of the High Court Act 16 of 1990”. The provision quoted by the High Court is actually section 18(2), which was substituted by the amending Act in question.

Note that there are two versions of GG 2327. The correct one states at the top: “*This Gazette replaces previous Gazette No. 2327.*”

Regulations: The Act makes no provision for regulations, and there is no clause saving any regulations which may have been made under the repealed Act.

Rules: Section 40(1) of this Act states:” Any appointment or rules made or tariff prescribed in respect of allowances to witnesses, or deemed to have been made or prescribed, and any security given or anything done in connection with or by virtue of any such appointment under the Supreme Court of South West Africa Proclamation, 1981, shall be deemed to have been made, prescribed or done under the corresponding provisions of this Act.” This refers to the *Supreme Court of South West Africa Proclamation 222 of 1981* which was repealed by the Supreme Court Act 15 of 1990. However, pre-independence rules have not been researched.

Rules of the High Court are contained in GN 4/2014 ([GG 5392](#)), effective from 16 April 2014. These rules are amended by the addition of rules on administrative breaks and recesses in GN 118/2014 ([GG 5526](#)), with effect from 1 January 2015. They are further amended by GN 227/2014 ([GG 5608](#)), which repeals Rule 78.

The 2014 Rules repeal GN 59/1990 ([GG 90](#)), GN 60/1990 (erroneously referred to as GN 60/1999), GN 187/1992 ([GG 549](#)), GN 148/1993 ([GG 757](#)), GN 81/1996 ([GG 1293](#)), GN 221/1997 ([GG 1727](#)), GN 69/1998 ([GG 1829](#)), GN 189/2000 ([GG 2386](#)), GN 221/2002 ([GG 2879](#)), GN 141/2006 ([GG 3690](#)), GN 6/ 2008 ([GG 3983](#)), GN 253/2010 ([GG 4614](#)) and GN 57/2011 ([GG 4709](#)).

Previous rules of the High Court were 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](#)), GN 6/2008 ([GG 3983](#)), GN 253/2010 ([GG 4614](#)) and GN 57/2011 ([GG 4709](#)) (which contains numbering errors corrected by GN 67/2011 ([GG 4725](#))).

GN 182/1996 and GN 67/2011 were not repealed by GN 4/2014, although this appears to have been an oversight since they have no relevance after the repeal of the previous High Court rules which they amended.

Rules for High Court proceedings in terms of Chapters 5-6 of the Prevention of Organised Crime Act 29 of 2004 are issued in terms of that Act, in GN 79/2009 ([GG 4254](#)).

Notices: Practice Directions are issued in terms of the 2014 Rules of the High Court in GN 47/2014 ([GG 5461](#)), which repeals all previous High Court Practice Directions and their amendments. They are amended by GN 10/2017 ([GG 6227](#)), which is deemed to have come into operation on 1 January 2017.

Sittings of the court and court terms are addressed in GN 60/1990 ([GG 90](#)), GN 189/2000 ([GG 2386](#)) and GN 221/2002 ([GG 2879](#)) – but these were all repealed by GN 4/2014 (although GN 4/2014 erroneously refers to GN 60/1999 instead of GN 60/1990).

A local division of the High Court, to be known as the Northern Local Division, is established by Proc. 5/2012 ([GG 4891](#)). The seat and area of jurisdiction of this division are set forth in GN 70/2012 ([GG 4391](#)), which makes reference to the Magisterial District Division: Oshakati in GN 22/1994 ([GG 799](#)).

Cases:

section 2:

Van As & Another v Prosecutor-General 2000 NR 271 (HC) (section 2 read together with section 16)

Onesmus v Minister of Labour & Another 2010 (1) NR 187 (HC) (section 2 read together with section 16; relationship to section 18(1) of Labour Act 6 of 1992)

section 4:

National Union of Namibian Workers v Naholo 2006 (2) NR 659 (HC)

section 13:

Wirtz v Orford & Another 2005 NR 175 (SC)

Prosecutor-General v Uuyuni 2014 (1) NR 105 (HC), reversed on appeal
Prosecutor-General v Uuyuni 2015 (3) NR 886 (SC) (held on appeal that an *ex parte* proceeding in respect of a preservation of property order under section 51 of the Prevention of Organised Crime Act 29 of

2004 is not in conflict with section 13 of the High Court Act)

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)
- Onesmus v Minister of Labour & Another* 2010 (1) NR 187 (HC) (section 2 read together with section 16; relationship to section 18(1) of Labour Act 6 of 1992)
- Daniel v Attorney-General & Others; Peter v Attorney-General & Others* 2011 (1) NR 336 (HC)
- DM v SM* 2014 (4) NR 1074 (HC) (exercise of discretion to grant declaratory order under section 16(d))
- International University of Management v Torbitt & Others* 2015 (3) NR 698 (LC) (application of section 16(d))
- New African Methodist Episcopal Church in the Republic of Namibia & Another v Kooper & Others* 2015 (3) NR 705 (HC) (relevant to application of section 16(d), although this section is not explicitly cited)

section 18:

- S v Stowitzki* 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)
- Ondjava Construction CC & Others v Haw Retailers t/a Ark Trading* 2010 (1) NR 286 (SC)
- Government of Namibia v Africa Personnel Services* 2010 (2) NR 537 (HC) (meaning of “interlocutory order”)
- Knouwds NO (in his capacity as provisional liquidator of Avid Investment Corporation (Pty) Ltd) v Josea & Another* 2010 (2) NR 754 (SC)

Minister of Mines and Energy & Another v Black Range Mining (Pty) Ltd 2011 (1) NR 31 (SC)

//Ae//Gams Data (Pty) Ltd & Others v St Sebata Municipal Solutions (Pty) Ltd & Others 2011 (1) NR 247 (HC)

Shetu Trading CC v Chair, Tender Board of Namibia & Others 2012 (1) NR 162 (SC)

Bobo v Ohorongo Cement (Pty) Ltd 2015 (1) NR 40 (LC) (leave to appeal Labour Court decision required under this section when Court refused condonation in appeal against arbitration award in terms of Labour Act 11 of 2007 after considering merits of case in that context)

Balzer v Vries 2015 (2) NR 547 (SC) (section 18(3))

Namibia Financial Institutions Union (Nafinu) v Nedbank Namibia Ltd & Another 2015 (4) NR 1161 (SC) (leave required under section 18(3) to appeal order of Labour Court under section 117(1)(e) of Labour Act 11 of 2007)

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)

S v Shiputa 2013 (3) NR 800 (NLD)

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))

Katjivikua v The Magistrate: Magisterial District of Gobabis & Another 2012 (1) NR 150 (HC)

section 24:

Namibia Bunker Services (Pty) Ltd v ETS Katanga Futur & Another 2015 (2) NR 461 (HC)

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 general duties under section 30(1))

sections 30-31:

Esterhuizen v Chief Registrar of the High Court and Supreme Court & Others 2011(1) NR 125 (HC) (contractual appointment of acting deputy-sheriff and power to suspend)

section 36(c):

Southern Engineering & Another v Council of the Municipality of Windhoek 2011 (2) NR 385 (SC)

generally:

Myburgh Transport v Botha t/a SA Truck Bodies 1991 NR 170 (SC) (principles applicable to postponements)

Aussenkehr Farms (Pty) Ltd & Another v Minister of Mines and Energy & Another 2005 NR 21 (SC) (test for distinguishing interlocutory versus final orders)

S v Myburgh 2008 (2) NR 592 (SC) (High Court as only "competent court" for purposes of Article 25 of Constitution)

Government of Namibia v Africa Personnel Services 2010 (2) NR 537 (HC) (inherent jurisdiction of High Court to alter own interlocutory order)
S v Malumo & Others (In re Ndala) 2014(3) NR 690 (the question of whether the High Court Act is applicable to the Eastern Caprivi Zipfel was put forward, but the Court ruled that the issue can be raised only after the conclusion of the trial in terms of s. 319 of the Criminal Procedure Act 51 of 1977)
Makando v Disciplinary Committee for Legal Practitioners 2016 (4) NR 1127 (SC) (application of test for distinguishing interlocutory versus final orders)

judicial case management:

Aussenkehr Farms (Pty) Ltd v Namibia Development Corporation 2012 (2) NR 671 (SC) (abuse of process; purposes and objectives of judicial case management)
Markus v Telecom Namibia 2014 (3) NR 658 (HC) (finality of orders made in judicial case management)
Nedbank Namibia Ltd v Tile and Sanitary Ware CC & Others 2015 (1) NR 240 (HC) (judicial case management and interlocutory proceedings which may delay final determination of case)
Katzao v Trustco Group International (Pty) Ltd & Another 2015 (2) NR 402 (HC) (objectives reiterated as context for application of court rules)
Mingeli v Oshakati Premier Electric (Pty) Ltd 2015 (3) NR 688 (HC) (effects of judicial case management discussed at para 16)
Mukata v Appolus 2015 (3) NR 695 (HC) (failure to raise issue of non-compliance with rule 32(9)-(10) in 2014 High Court Rules at judicial case management conference results in denial of order for costs to successful applicant).

Cases on High Court Rules (2014) in GN 4/2014 ([GG 5392](#)), which came into effect on 16 April 2014:

generally:

Tjipangandjara v Namibia Water Corporation (Pty) Ltd 2015 (4) NR 1116 (LC) (at para 4: “Practitioners should move along with the latest developments and should avoid clinging on to the repealed rules, notwithstanding how used they were to them... Especial care and attention should therefore be taken to ensure the proper citation of the rules in terms of which relief is sought in the papers. I shall, for present purposes, however, overlook the citation of the wrong rule and pay regard to the correct rule. The court may not always adopt this position as the new rules would be expected to have taken root in the minds of all practitioners in this jurisdiction by now.”)
Blaauw’s Transport (Pty) Ltd v Auto Truck & Coach CC & Another 2016 (1) NR 132 (HC) (principles guiding the granting of condonation applications)

Rule 1:

Inspector General of the Namibian Police & Another v Dausab-Tjueza 2015 (3) NR 720 (HC) (Rule 1(2)-(3) as guide to interpretation of new High Court Rules)
Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others 2016 (3) NR 747 (SC) (Rule 1(3) as guide to interpretation of other rules)

Rule 5:

Maletzky v The President of the Republic of Namibia & Others 2016 (2) NR 420 (HC) (Rule 5 does not amend the common law right to freedom of contract and to pursue a cessation but is a procedural mechanism aimed

at promoting the just and expeditious business of the court; Rule 5(4) is not unconstitutional discrimination as it applies to all persons and is intended to protect the public from charlatans who masquerade as legal practitioners)

Rule 8:

Moolman & Another v Jeandre Development CC 2016 (2) NR 322 (SC) (compliance with Rule 8(3); “The overall purpose of the subrule had been unequivocally served. The rules of this court are to be understood conceptually and contextually. What [the legal practitioner] suggests should have occurred is plainly pointless. This point taking can only be described as an exercise in sterile formalism which is to be deprecated. It is an attempt in vain to elevate form over substance and serves only to result in the incurrence of unnecessary costs and wastage of the time of this court.”)

Rule 15:

Futeni Collection (Pty) Ltd v De Duine (Pty) Ltd 2015 (3) NR 829 (HC)

Rule 28:

South African Poultry Association & Others v Ministry of Trade & Industry & Others 2015 (1) NR 260 (HC)

Telecom Namibia Ltd v Communications Regulatory Authority of Namibia & Others 2015 (3) NR 747 (HC) (Rule 28 applies to discovery generally; relation of new High Court Rule 28 to old High Court Rule 35(12) and distinction between old Rule 35(1) and new Rule 28(1))

Laicatti Trading Capital Inc & Others NNO v Greencoal (Namibia) (Pty) Ltd & Another 2015 (4) NR 1194 (HC) (Rule 28(1), read with Rule 70(3), subject to Rule 66(1)(b))

Donatus v Ministry of Health and Social Welfare 2016 (2) NR 532 (HC)

Rule 32:

South African Poultry Association & Others v Ministry of Trade & Industry & Others 2015 (1) NR 260 (HC) (Rule 32(9)-(11))

Mukata v Appolus 2015 (3) NR 695 (HC) (Rule 32(9)-(10))

Telecom Namibia Ltd v Communications Regulatory Authority of Namibia & Others 2015 (3) NR 747 (HC) (Rule 32(9)-(10))

Blaauw's Transport (Pty) Ltd v Auto Truck & Coach CC & Another 2016 (1) NR 132 (HC) (Rule 32(9)-(10))

CV v JV 2016 (1) NR 214 (HC) (Rule 32(9)-(10) applies to interlocutory matters under Rule 61 and must be complied with)

Kondjeni Nkandi Architects & Another v Namibian Airports Company Ltd 2016 (1) NR 223 (HC)

KJ v CJ 2016 (4) NR 1204 (HC) (rule 32(9)-(10))

Rule 40:

Auto Tech Truck and Coach CC v Fanny's Motor Repairs and Investment CC & Another 2015 (4) NR 1190 (HC) (application for leave to join third party refused)

Rule 42:

Fire Tech Systems CC v Namibia Airports Co Ltd & Others 2016 (3) NR 802 (HC)

Rule 44(1)(a):

Labuschagne v Scania Finance Southern Africa (Pty) Ltd & Others 2015 (4) NR 1153 (SC)

Rule 45:

Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others 2016 (3) NR 747 (SC) (Rule 45(5))

Hayley Fay t/a Hayley Fay Properties v Uptown Property Investment CC & Others 2016 (3) NR 893 (HC) (Rule 45(7))

- Skorpion Mining Co (Pty) Ltd v Road Fund Administration* 2016 (3) NR 864 (HC) (Rule 45(9))
- Rule 52:
Skorpion Mining Co (Pty) Ltd v Road Fund Administration 2016 (3) NR 864 (HC)
- Rule 53:
Donatus v Ministry of Health and Social Welfare 2016 (2) NR 532 (HC)
- Rule 55:
Schütz v Pirker & Another 2015 (1) NR 231 (HC)
- Rule 56:
Schütz v Pirker & Another 2015 (1) NR 231 (HC)
- Rule 57:
Hayley Fay t/a Hayley Fay Properties v Uptown Property Investment CC & Others 2016 (3) NR 893 (HC)
- Rule 59:
Martucci & Others v Colcellini & Another 2016 (3) NR 658 (HC)
Martucci & Others v Mountain View Game Lodge (Pty) Ltd 2016 (3) NR 658 (HC)
- Rule 60(11):
Mukata v Appolus 2015 (3) NR 695 (HC)
- Rule 61:
CV v JV 2016 (1) NR 214 (Rule 32(9)-(10) applies to interlocutory matters under Rule 61 and must be complied with; elements of Rule 61 application)
- Rule 65:
Schütz v Pirker & Another 2015 (1) NR 231 (HC)
Inspector General of the Namibian Police & Another v Dausab-Tjueza 2015 (3) NR 720 (HC) (Rules 65 and 76 compared; review of administrative decision should be brought in terms of rule 76)
- Rule 66(1)(b):
Laicatti Trading Capital Inc & Others NNO v Greencoal (Namibia) (Pty) Ltd & Another 2015 (4) NR 1194 (HC) (Rule 28(1), read with Rule 70(3), subject to Rule 66(1)(b))
- Rule 66(1)(c):
Municipal Council of Gobabis v Smith t/a Bertie Smith Contractor Services 2015 (1) NR 299 (HC)
- Rule 70:
South African Poultry Association & Others v Ministry of Trade & Industry & Others 2015 (1) NR 260 (HC) (Rule 70(3))
Telecom Namibia Ltd v Communications Regulatory Authority of Namibia & Others 2015 (3) NR 747 (HC) (relation of new High Court Rule 70(3) to old High Court Rule 35(13); Rule 70(3) applies Rule 28 to discovery in motion proceedings but only where exceptional circumstances exist and where the requirements of rule 28(1) are satisfied)
Laicatti Trading Capital Inc & Others NNO v Greencoal (Namibia) (Pty) Ltd & Another 2015 (4) NR 1194 (HC) (Rule 28(1), read with Rule 70(3), subject to Rule 66(1)(b))
Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others (HC-MD-CIV-MOT-GEN-2018/00227) NAHCMD 294 (20 September 2018) (Rule 70(4))
- Rule 73:
Premier Construction CC v Chairperson of the Tender Committee of the Namibia Power Corp Board of Directors 2014 (4) NR 1002 (HC) (Rule 73(3))

Maletzky & Others v Electoral Commission & Others 2015 (2) NR 571 (HC) (Rule 73(3))

Tjipangandjara v Namibia Water Corporation (Pty) Ltd 2015 (4) NR 1116 (LC) (Rule 73(4))

Usakos Town Council v Jantze & Others 2016 (1) NR 240 (HC) (Rule 73(4))

Nowases & Others v Evangelical Lutheran Church in the Republic of Namibia ELCRN & Others 2016 (4) NR 985 (HC) (Rule 73(4))

China Harbour Engineering Co LTD v Erongo Quarry and Civil Works (Pty) Ltd & Another 2016 (4) NR 1078 (HC) (claim of spoliation is inherently urgent)

Rule 76:

South African Poultry Association & Others v Ministry of Trade & Industry & Others 2015 (1) NR 260 (HC)

Inspector General of the Namibian Police & Another v Dausab-Tjieuza 2015 (3) NR 720 (HC) (Rules 65 and 76 compared; review of administrative decision should be brought in terms of rule 76)

Fire Tech Systems CC v Namibia Airports Co Ltd & Others 2016 (3) NR 802 (HC)

Rules 92-93 (witness statement):

Josea v Ahrens & Another 2015 (4) NR 1200 (HC) (exposition of intent of new rules on witness statements and suggested format for such statements)

Rule 103(1)(a):

PH v SH 2015 (2) NR 519 (HC)

Inspector General of the Namibian Police & Another v Dausab-Tjieuza 2015 (3) NR 720 (HC) (consideration of meaning of “absence of any party”)

Rule 108:

Futeni Collection (Pty) Ltd v De Duine (Pty) Ltd 2015 (3) NR 829 (HC) (Rule 108(1)-(2))

Standard Bank Namibia Ltd v Shipila (First National Bank Namibia Ltd & Others intervening; the Ombudsman as amicus curiae) 2016 (2) NR 476 (HC)

Rule 138:

Telecom Namibia Ltd v Communications Regulatory Authority of Namibia & Others 2015 (3) NR 747 (HC) (Rule 138 to be read intertextually with Rule 3(6) and Rule 70(3)).

Cases on previous High Court Rules (1990) in GN 59/1990 (GG 90):

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 Meredien 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)

Windhoek Truck and Bakkie CC v Greensquare Investments 106 CC 2011 (1) NR 150 (HC) (wilful disregard for rules undermines administration of justice and may attract exemplary costs order)

Telecom Namibia Ltd v Nangolo & Others (LC 33/2009) [2012] NALC 15 (28 May 2012) (explication of general legal principles applicable to applications for condonation; confirmed on appeal in *Telecom Namibia Ltd v Nangolo & Others* 2015 (2) NR 510 (SC))

S v Sakaria 2013 (2) NR 347 (HC) (rule of practice preventing appellant seeking to reduce criminal sentence on appeal from withdrawing such appeal upon receipt of notice of court's *meru moto* intention to increase sentence)

Martin v Diroyal Motors Namibia (Pty) Ltd t/a Novel Ford & Others 2013 (2) NR 463 (HC) (court's common law discretion in respect of joinder)

S v Ashimbanga 2014 (1) NR 242 (HC) (layperson's failure to set out grounds of criminal appeal properly should be approached with leniency where state is not materially prejudiced in its ability to present opposing argument)

HKL v MML 2016 (2) NR 518 (SC ("...an application for condonation is to be in good faith. An untruthful statement used to explain a delay wholly negates that requirement"; "Almost every rule setting out the steps to be taken to prosecute an appeal had been violated. The cumulative effect of these multiple non-compliances renders them so 'glaring', 'inexplicable' and 'flagrant', particularly when compounded by the resort to dishonesty in order to buttress a weak explanation, that this court will not consider the prospects of success in determining those applications."))

Rule 2(2):

Witvlei Meat (Pty) Ltd v Agricultural Bank of Namibia & Another 2014 (1) NR 22 (HC)

Rule 3:

Rally for Democracy and Progress & Others v Electoral Commission of Namibia & Others 2010 (2) NR 487 (SC)

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)

RH v NS 2014(3) NR (HC) (Rule 4(1)(b))

Namibia Bunker Services (Pty) Ltd v ETS Katanga Futur & Another 2015 (2) NR 461 (HC) (Rule 4(5)(c))

Rule 5(4)(a):

Standard Bank Namibia Ltd & Others v Maletzky & Others 2015 (3) NR 753 (SC) (rule does not require board resolution to be lodged with power of attorney signed by authorised official employed by company in question)

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)

Standard Bank Namibia Ltd & Others v Maletzky & Others 2015 (3) NR 753 (SC)

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 792 (HC)

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(8):

Namibia Bunker Services (Pty) Ltd v ETS Katanga Futur & Another 2015 (2) NR 461 (HC) (also references related para 27(3)(c) of consolidated practice directives issued on 2 March 2009)

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)

Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others 2011 (1) NR 272 (HC) (read with practice direction 26 issued on 2 March 2009)

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)

La Rochelle (Pty) Ltd & Others v Nathaniel-Koch & Others 2010 (1) NR 260 (HC) (interpretation of Rule 6(12) in previous proceedings before the Court in the same case)

Labour Supply Chain Namibia (Pty) Ltd v Awaseb 2010 (1) NR 322 (HC)

Government of Namibia v Africa Personnel Services 2010 (2) NR 537 (HC)

Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others 2011 (1) NR 272 (HC) (read with Practice Direction 26 issued on 2 March 2009)

Mweb Namibia (Pty) Ltd v Telecom Namibia Ltd & Others 2012 (1) NR 331 (HC) (read with Consolidated Practice Directions No E/8)

Jack's Trading CC v Minister of Finance & Another 2013 (2) NR 480 (HC)

Witvlei Meat (Pty) Ltd v Agricultural Bank of Namibia & Another 2014 (1) NR 22 (HC)

New Era Investment (Pty) Ltd v Roads Authority 2014 (2) NR 596 (HC)

Standard Bank of Namibia Ltd v Atlantic Meat Market 2014 (4) NR 1158 (SC)

Independence Catering (Pty) Ltd & Others v Minister of Defence & Others 2014 (4) NR 1085 (HC)

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)
EH v D 2012 (2) NR 451 (HC) (considerations of urgency when children's rights involved, in contrast to commercial or kindred matters)
- Rule 7:
Namib Contract Haulage (Pty) Ltd v Oshakati Garage CC 2014 (1) NR 174 (SC)
- 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)
Independence Catering (Pty) Ltd & Others v Minister of Defence & Others 2014 (4) NR 1085 (HC) (Rule 10(1))
Standard Bank Namibia Ltd & Others v Maletzky & Others 2015 (3) NR 753 (SC)
- Rule 11:
Kandjii v Awaseb & Others 2014 (4) NR 1103 (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)
Kahuure & Another in re Nguvauva v Minister of Regional and Local Government and Housing and Rural Development & Others 2013 (4) NR 932 (SC)
- 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:
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")
Independence Catering (Pty) Ltd & Others v Minister of Defence & Others 2014 (4) NR 1085 (HC) (Rule 16(5))
- Rule 17(2)(b):
Veldman & Another v Bester 2011 (2) NR 581 (HC)

Rule 18:

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)
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)
Hepute & Others v Minister of Mines and Energy & Another 2008 (2) NR 399 (SC)
Minister of Mines and Energy & Another v Black Range Mining (Pty) Ltd 2011 (1) NR 31 (SC)
Namib Plains Farming CC v Valencia Uranium (Pty) Ltd & Others 2011 (2) NR 469 (SC)
Hangula v Motor Vehicle Accident Fund 2013 (2) NR 358 (HC)
China Henan International Cooperation (Pty) Ltd v De Klerk & Another 2014 (2) NR 517 (HC)
Namene v Khomas Regional Council 2016 (3) NR 701 (SC) (Rule 18(6))

Rule 19(1):

PH v SH 2015 (2) NR 519 (HC)

Rule 20(2):

Namibia Beverages v Amupolo 1999 NR 303 (HC)

Rule 21(2)(a):

Kaese v Schacht & Another 2010 (1) NR 199 (SC) (read together with Rule 22(3), requires that further particulars must be expressly denied or expressly not admitted)

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)
Kaese v Schacht & Another 2010 (1) NR 199 (SC) (read together with Rule 21(2)(a), requires that further particulars must be expressly denied or expressly not admitted)

Rule 23:

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)
Bronkhorst v De Villiers; Van Zyl v De Villiers 2012 (1) NR 137 (HC)
Roads Contractor Co Ltd v Lemur Investments No 26 CC & Others 2013 (4) NR 954 (HC)
Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others 2014 (2) NR 425 (HC)

Rule 25(1):

Gunchab Farming CC & Another v Barnard & Another 2015 (2) NR 587 (HC)

Rule 26:

Council of the Municipality of Windhoek v MW Coetzee t/a MW Coetzee Builders 1999 NR 129 (HC)
Bronkhorst v De Villiers; Van Zyl v De Villiers 2012 (1) NR 137 (HC)
Gunchab Farming CC & Another v Barnard & Another 2015 (2) NR 587 (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 NLLP 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)
Namibia Development Corporation v Aussenkehr Farms (Pty) Ltd 2010 (2) NR 703 (HC) (conflict between Rule 27 and Rule 30 discussed)

Rule 28:

South Bakels (Pty) Ltd & Another v Quality Products & Another 2008 (2) NR 419 (HC)

Phincon Enterprises (Pty) Ltd v Dos Santos 2012 (1) NR 352 (HC)

Rule 28:

Rothe v Asmus & Another 1996 NR 406 (HC)
Meyer v Deputy Sheriff, Windhoek & Others 1999 NR 146 (HC)
Commercial Bank of Namibia v Grobler 2002 NR 24 (HC)
Andreas v La Cock & Another 2006 (2) NR 472 (HC)
Namibia Development Corporation v Aussenkehr Farms (Pty) Ltd 2010 (2) NR 703 (HC) at 724A-E
HP v FP 2014 (3) NR 701 (HC)

Rule 30:

Ark Trading v Meredien Financial Services Namibian (Pty) Ltd 1999 NR 230 (HC)

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 t/a Ark Trading 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)

Namibia Development Corporation v Aussenkehr Farms (Pty) Ltd 2010 (2) NR 703 (HC); *Aussenkehr Farms (Pty) Ltd v Namibia Development Corporation* 2012 (2) NR 671 (SC)

Goseb & Others v Minister of Regional and Local Government and Housing & Others 2011 (1) NR 224 (HC) (Full Bench resolves conflicting precedent by ruling that it is not a prerequisite for an applicant to give notice in terms of rule 30(5) before bringing a rule 30(1) application)

//Ae//Gams Data (Pty) Ltd & Others v St Sebata Municipal Solutions (Pty) Ltd & Others 2011 (1) NR 247 (HC)

Veldman & Another v Bester 2011 (2) NR 581 (HC)

Maletsky v Gaseb & Another 2014 (3) NR 645 (HC)

Maletsky v Minister of Justice & Others 2014 (4) NR 956 (HC)

PH v SH 2015 (2) NR 519 (HC)

Gunchab Farming CC & Another v Barnard & Another 2015 (2) NR 587 (HC)

Standard Bank Namibia Ltd & Others v Maletzky & Others 2015 (3) NR 753

(SC)

Rule 31(2):

Grüttemeyer NO v General Diagnostic Imaging 1991 NR 441 (HC)
Adriaans v McNamara 1993 NR 188 (HC)
Xoagub v Shipena 1993 NR 215 (HC)
Hipandulwa v Kamupunya 1993 NR 254 (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)
Maia v Total Namibia 1998 NR 303 (HC)
Yam Diamond Recovery (Pty) Ltd in re Hofmeister v Basson & Others / Hofmeister v Basson & Others 1999 NR 206 (HC)
Mhungu v Commercial Bank of Namibia Ltd NLLP 2002 (2) 299 HC
Namcon CC v Tula's Plumbing CC 2005 NR 39 (HC)
China State Construction Engineering Corporation v Pro Joinery CC 2007 (2) NR (HC)
Minister of Home Affairs, Minister Ekandjo v Van der Berg 2008 (2) NR 548 (SC)
Hange & Others v Orman 2014 (4) NR 971 (HC)

Rule 32:

Commercial Bank of Namibia Ltd v Trans Continental Trading (Namibia) & Others 1991 NR 135 (HC)
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)
Kelnic Construction (Pty) Ltd v Cadilu Fishing (Pty) Ltd 1998 NR 198 (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)
Mbambus v Motor Vehicle Accident Fund 2011 (1) NR 238 (HC)
Di Savino v Nedbank Namibia Ltd 2012 (2) NR 507 (SC)
Amunyela v Arovin Property Developers (Pty) Ltd 2012 (2) NR 757 (HC)
Brandt t/a Chris Brandt Attorneys v Windhoek Truck & Bakkie CC & Others 2013 (1) 295 (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)
Arangies t/a Auto Tech v Quick Build 2014 (1) NR 187 (SC) (discussion of Rule 33(4) in context of consideration of prospects of success on merits in condonation application)
Mbambus v Motor Vehicle Accident Fund 2015(3) NR 605 (SC)
Paschke v Frans 2015 (3) NR 668 (SC)

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 37:

De Waal v De Waal 2011 (2) NR 645

Hubner v Krieger 2012 (1) NR 191 (HC)

De Beers Marine Namibia (Pty) Ltd v Lange NO & Others 2014 (2) NR 437 (HC)

Scania Finance SA (Pty) Ltd v Aggressive Transport CC & Another 2014 (2) NR 489 (HC)

Katzao v Trustco Group International (Pty) Ltd & Another 2015 (2) NR 402 (HC)

Rule 38(2):

Gabrielsen v Crown Security CC 2011 (1) NR 121 (HC) (appeal on issue of vicarious liability dismissed in *Crown Security CC v Gabrielsen* 2015 (4) NR 907 (SC))

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 41:

De Beers Marine Namibia (Pty) Ltd v Lange NO & Others 2014 (2) NR 437 (HC) (section 85(2))

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)

Handl v Handl 2008 (2) NR 489 (SC)

RH v NS 2010 (2) NR 584 (HC)

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 Namibia (Pty) Ltd 2009 (1) NR 40 (HC), 2012 (1) NR (SC)

Jack's Trading CC v Minister of Finance & Another (Ohorongo Cement (Pty) Ltd Intervening) 2013 (2) NR 491 (HC)

Strauss & Another v Witt & Another 2014 (1) NR 213 (HC)

China Henan International Cooperation (Pty) Ltd v De Klerk & Another 2014 (2) NR 517 (HC)

Kamwi v Standard Bank Namibia Ltd & Others 2015 (3) NR 678 (SC)

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)
Bank Windhoek Ltd v Kusch 2003 NR 67 (HC)

Rule 46:

Mbutu v Esterhuizen NO & Others 2012 (1) NR 177 (HC)
Katjuanjo v Willemse & Others 2013 (3) NR 850 (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)
Oehl NO v Nolte & Others 2013 (3) NR 643 (HC)
Schütz v Pirker & Another 2015 (1) NR 231 (HC)

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:

Telecom Namibia & Another v Mwellie 1996 NR 289 (HC)
Maia v Total Namibia 1998 NR 303 (HC)
Louw v Chairperson of the District Labour Court, Windhoek & Others 2001 NR 197 (HC) (Rule 49(13) declared unconstitutional)
Deputy Sheriff for Caprivi Region v Mboosi 2005 NR 172 (HC)
Vaatz: In re Schweiger v Gamikaub (Pty) Ltd 2006 (1) NR 161 (HC)
Witvlei Meat (Pty) Ltd v Agricultural Bank of Namibia & Another 2014 (1) NR 22 (HC) (powers of court after granting judgment under Rule 49(11))

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)
Krüger v Transnamib Ltd (Air Namibia) & Others 1996 NR 168 (SC)
S v Gawanab 1997 NR 61 (HC)
Disposable Medical Products v Tender Board of Namibia 1997 NR 129 (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 Kahuure & 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)
Waterberg Big Game Hunting Lodge Otjahewita (Pty) Ltd v Minister of Environment 2010 (1) NR 1 (SC) (judicial debate on when the Court is entitled to substitute its own judgment for that of the official in question during a review proceeding)
Kleynhans v Chairperson for the Council of the Municipality of Walvis Bay & Others 2011 (2) NR 437 (HC); appeal struck from roll in *Kleynhans v*

- Chairperson for the Council of the Municipality of Walvis Bay & Others* 2013 (4) NR (SC)
- Erf Sixty-Six, Vogelstrand (Pty) Ltd v Council of the Municipality of Swakopmund & Others* 2012 (1) NR 393 (HC) (cost implications of failure to inform respondent of intention to withdraw Rule 53 review application)
- Mobile Telecommunications Ltd v Namibia Communications Commission & Others* 2012 (2) NR 421 (HC) (costs implications of dilatory conduct in respect of Rule 53)
- New Era Investment (Pty) Ltd v Roads Authority* 2014 (2) NR 596 (HC)
- Rule 54:
Pietersen-Diergaardt v Fischer 2008 (1) NR 307 (HC) (condonation of breaches of this rule)
- Rule 56:
Katzao v Trustco Group International (Pty) Ltd & Another 2015 (2) NR 402 (HC)
- Rule 58:
Katuematima v Tjaveandja & Others 1996 NR 339 (HC)
Deputy-Sheriff of Tsumeb v Koch & Another 2011 (1) NR 202 (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)
La Rochelle (Pty) Ltd & Others v Nathaniel-Koch & Others 2010 (1) NR 260 (HC)
Namibia Bunker Services (Pty) Ltd v ETS Katanga Futur & Another 2015 (2) NR 461 (HC) (Rule 63(4))
- 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 tariff of fees prescribed by Sixth Schedule in GN 141/2006)
Hollard Insurance Company of Namibia Ltd v De Neyschen t/a Gecko Guest House 2014 (3) NR 860 (HC)
- Fourth Schedule:
Mbutu v Esterhuizen NO & Others 2012 (1) NR 177 (HC) (Item 5(c)(xiv))
- 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)
- Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd* 2007 (2) NR 592 (HC) (meaning of “costs” in a costs order and issue of what costs can be awarded to a lay litigant)
- Christian v Metropolitan Life Namibia Retirement Annuity Fund & Others* 2008 (2) NR 753 (SC) (Practice Directives 1/2002 and 1/2007; whether Practice Directives generally binding on lay litigants discussed in *dicta* at 771)
- Hailulu v Anti-Corruption Commission* 2011 (1) NR 363 (HC) (punitive costs in respect of postponement; responsibility of litigant for remiss conduct of litigant’s legal practitioner)
- Kleynhans v Chairperson for the Council of the Municipality of Walvis Bay & Others* 2011 (2) NR 437 (HC) (Consolidated Practice Directives 2009: Practice Directive 37); appeal struck from roll in *Kleynhans v Chairperson for the Council of the Municipality of Walvis Bay & Others* 2013 (4) NR (SC)
- Westcoast Fishing Properties v Gendev Fish Processors Ltd & Another* 2013 (4) NR 1036 (HC) (Consolidated Practice Directives 2009: Practice Directive 37) (discussed in JD Kennedy Kariseb, “*Westcoast Fishing Properties v Gendev Fish Processors Ltd & Another* – A tenet of ‘judicial nationalism’?”, *UNAM Law Review*, volume 2, issue 2, 2015, available at <http://unamlawreview.info> and JD Kennedy Kariseb, “*Westcoast Fishing Properties v Gendev Fish Processors Ltd & Another*”, *Namibia Law Journal*, Volume 8, Issue 1, 2016)
- Maletsky v Minister of Justice & Others* 2014 (4) NR 956 (HC) (duty of lay litigants to comply with Practice Directives)
- Kamwi v Standard Bank Namibia Ltd & Others* 2015 (3) NR 678 (SC) (meaning of “disbursements” in costs award in favour of lay litigant)
- Mingeli v Oshakati Premier Electric (Pty) Ltd* 2015 (3) NR 688 (HC) (guidelines for transfer of cases from one division to another in terms of Practice Directive 47).

Reciprocal Service of Civil Process Act 27 of 1994.

Summary: This Act ([GG 977](#)) provides for the reciprocal service of process in civil matters in Namibian and in designated countries.

Regulations: The Act makes no provision for regulations.

Notices: 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 ([GG 978](#)) provides that civil judgements granted in designated countries may be enforced in magistrates’ courts in Namibia. It repeals the *Reciprocal Enforcement of Civil Judgements Act 9 of 1966*.

Amendments: The International Co-operation in Criminal Matters Act 9 of 2000 ([GG 2327](#)) amends section 1.

Note that there are two versions of GG 2327. The correct one states at the top: “*This Gazette replaces previous Gazette No. 2327.*”

Regulations: The Act makes no provision for regulations, and there is no clause saving any regulations which may have been made under the repealed Act.

Notices: 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 ([GG 3044](#)) 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 was brought into force on 17 November 2003 by GN 236/2003 ([GG 3095](#)).

Regulations: Regulations are contained in GN 237/2003 ([GG 3095](#)), as amended by GN 280/2018 ([GG 6753](#)).

Notices: The period for application for recognition as community court is set as 17 November 2003-31 March 2004 in GN 238/2003 ([GG 3095](#)), extended to 31 December 2004 by GN 52/2004 ([GG 3176](#)) and further extended to 31 March 2013 by GN 237/2012 ([GG 5038](#)).

Establishment of community courts: Community courts are established in-
Bondelswartz-GN 86/2009 ([GG 4262](#)), as amended by GN 234/2013 ([GG 5272](#)) and GN 160/2015 ([GG 5795](#))

Note that the name of the court is misspelt in the list of contents of GG 4262.

Hai-/oms-GN 87/2009 ([GG 4262](#))

Vita-Thom Royal House-GN 88/2009 ([GG 4262](#)), as amended by GN 114/2012 ([GG 4941](#)), GN 30/2015 ([GG 5681](#)) and GN 228/2015 ([GG 5848](#))

King Morwe II-GN 89/2009 ([GG 4262](#))

Gciriku-GN 90/2009 ([GG 4262](#)), as amended by GN 206/2013 ([GG 5256](#))

Note that the title of GN 206/2009 and the Schedule correctly state that it amends GN 90/2009, but the text incorrectly states that it amends “Government Notice. 60 of 20 May 2009”. (GN 60/2009 was issued on 1 April 2009 and is a moratorium on import of large predators and alien species of wild animals issued under the Nature Conservation Ordinance, 1975.)

/Gobanin-GN 91/2009 ([GG 4262](#))

Kai-/Khauben-GN 92/2009 ([GG 4262](#)), as amended by GN 315/2018 ([GG 6784](#))

Kambazembi-GN 93/2009 ([GG 4262](#)), as amended by GN 265/2014 ([GG 5644](#)), which is amended by GN 227/2015 ([GG 5848](#)) (which erroneously states at one place that it is amending GN 95/2009)

/Khomanin Hagos-GN 94/2009 ([GG 4262](#)), as amended by GN 260/2012 ([GG 5061](#)) and GN 189/2014 ([GG 5580](#))

Mafwe-GN 95/2009 ([GG 4262](#)), as amended by GN 208/2013 ([GG 5256](#)), GN

- 236/2015 ([GG 5853](#)), GN 313/2018 ([GG 6784](#)) and GN 314/2018 ([GG 6784](#))
- Maharero-GN 96/2009 ([GG 4262](#)), as amended by GN 108/2014 ([GG 5523](#)), GN 264/2014 ([GG 5644](#)) and GN 311/2017 ([GG 6482](#))
- Masubia-GN 97/2009 ([GG 4262](#)), as amended by GN 274/2013 ([GG 5316](#)), GN 188/2014 ([GG 5580](#)), GN 31/2015 ([GG 5681](#)) and GN 20/2017 ([GG 6238](#)); GN 274/2013 is amended by GN 117/2017 ([GG 6309](#)), GN 313/2017 ([GG 6482](#)) and GN 198/2018 ([GG 6694](#))
- Mbukushu-GN 98/2009 ([GG 4262](#))
 Note that the name of the court is misspelt in the list of contents of [GG 4262](#).
- Ondonga-GN 99/2009 ([GG 4262](#)), replaced by GN 56/2010 ([GG 4450](#)), which is amended by GN 77/2013 ([GG 5161](#)), which is amended by GN 161/2014 ([GG 5559](#)). GN 56/2010 is also amended by GN 162/2014 ([GG 5559](#)).
 Note that the name of the court is misspelt in the list of contents of [GG 4262](#) and [GG 5161](#).
- Ongandjera-GN 100/2009 ([GG 4262](#)), replaced by GN 55/2010 ([GG 4450](#)), which is amended by GN 148/2013 ([GG 5221](#)), which is amended by GN 26/2014 ([GG 5425](#)).
- Oukwanyama-GN 101/2009 ([GG 4262](#)), replaced by GN 57/2010 ([GG 4450](#)), which is amended by GN 258/2012 ([GG 5061](#)), which is amended by GN 237/2014 ([GG 5613](#))
 GN 237/2014 ([GG 5613](#)) contains an amendment in respect of assessors-designate and judges of a community court, but it is not clear what is being amended. The heading of GN 237/2014 states that it amends “Government Notice No. 101 of 20 May 2009 relating to the recognition of the Oukwayama [sic] Customary Court”. However, GN 101/2009 was withdrawn by GN 57/2010 ([GG 4450](#)). The text of GN 237/2014 states that it amends “Government Notice. 95 of 20 May 2009 as set out in the Schedule”; GN 95/2009 pertains to the Mafwe Community Court. The Schedule of GN 237/2014 states that it amends “Government Notice No. 285 of 15 October 2012”; however, this appears to be a typographical error and was probably meant to refer to GN 258/2012, issued on 15 October 2012, which relates to the Oukwanyama Community Court. It would appear that the amendment in GN 237/2014 was intended to apply to the Oukwanyama Community Court.
- Uukwambi-GN 102/2009 ([GG 4262](#)), replaced by GN 59/2010 ([GG 4450](#))
- Mayeyi-GN 103/2009 ([GG 4262](#)), as amended by GN 262/2012 ([GG 5061](#))
- !Khobesen-GN 104/2009 ([GG 4262](#))
- Linyanti-GN 105/2009 ([GG 4262](#)), as amended by GN 261/2012 ([GG 5061](#)) and by GN 255/2018 ([GG 6724](#))
 Note that the list of contents for GG 6724 and the heading of GN 255/2018 both erroneously state that GN 255/2018 amends GN 56/2010, but the text of GN 255/2018 correctly states that it amends GN 105/2009.
- Fransfontein-GN 106/2009 ([GG 4262](#)), as amended by GN 140/2018 ([GG 6649](#))
- Mbunza-GN 107/2009 ([GG 4262](#)), as amended by GN 146/2013 ([GG 5221](#))
- Shambyu-GN 108/2009 ([GG 4262](#)), as amended by GN 97/2013 ([GG 5175](#)) and GN 207/2013 ([GG 5256](#))
 The title and the Schedule of GN 97/2013 state that it amends GN 108/2009 relating to the Shambyu Customary Court, but the introductory text indicates that it amends GN 60/2009. The cited publication date of 20 May 2009 matches GN 108/2009. (GN 60/2009 is a moratorium on import of large predators and alien

- species of wild animals issued under the Nature Conservation Ordinance, 1975.)
- Ombalantu-GN 109/2009 ([GG 4262](#)), replaced by GN 54/2010 ([GG 4450](#)), which is amended by GN 101/2011 ([GG 4750](#))
 Note that the list of contents for GG 4750 erroneously states that GN 101/2011 amends GN 54/2011, but the text of GN 101/2011 correctly states that it amends GN 54/2010.
- Uukwaluudhi-GN 110/2009 ([GG 4262](#)), as amended by GN 290/2012 ([GG 5094](#)) and GN 147/2013 ([GG 5221](#))
- Otjikaoko-GN 111/2009 ([GG 4262](#)), as amended by GN 96/2011 ([GG 4747](#)), GN 234/2015 ([GG 5853](#)) (which is amended by GN 86/2018 ([GG 6595](#))), and by GN 312/2017 ([GG 6482](#)).
 GN 312/2017 erroneously states that it is amending GN 96/2011. This was clearly intended to refer to GN 111/2009.
- Okalongo-GN 112/2009 ([GG 4262](#))
- Bakgalagadi-GN 113/2009 ([GG 4262](#)), as amended by GN 186/2014 ([GG 5580](#))
- /Gaio-Daman-GN 114/2009 ([GG 4262](#)), replaced by GN 52/2010 ([GG 4450](#)); see also GN 259/2016 ([GG 6164](#)) (which erroneously states that it is amending GN 114/2010; it applies to the /Gaio-Daman Customary Court, but the import is unclear)
- Ombadja-GN 53/2010 ([GG 4450](#)), as amended by GN 259/2012 ([GG 5061](#)), which is amended by GN 91/2017 ([GG 6285](#)), and by GN 254/2018 ([GG 6724](#))
 Note that GN 254/2018 indicates that GN 53/2010 was previously amended by GN 259/2012 and by GN 91/2017, but GN 91/2017 actually amended the amending notice, GN 259/2012.
- Uukolonkadhi-GN 58/2010 ([GG 4450](#)), as amended by GN 113/2012 ([GG 4941](#)) (which states that it is amending GN 59/2010, but must have intended to refer to GN 58/2012 which concerns the Uukolonkadhi Community Court), which is amended by GN 229/2015 ([GG 5848](#))
- Tsoaxudaman-GN 60/2010 ([GG 4450](#)), as amended by GN 76/2013 ([GG 5161](#))
- Zeraua-GN 61/2010 ([GG 4450](#)), as amended by GN 7/2014 ([GG 5397](#))
- /Haramüb-GN 59/2011 ([GG 4712](#))
- !Oe#Gân-GN 60/2011 ([GG 4712](#)), as amended by GN 78/2013 ([GG 5161](#)), GN 275/2013 ([GG 5316](#)) and GN 187/2014 ([GG 5580](#))
 Note that the name of the court is misspelt in the list of contents of [GG 4712](#), and throughout [GG 5316](#) and [GG 5580](#).
- /Aman-GN 102/2011 ([GG 4750](#)), as amended by GN 146/2012 ([GG 4966](#))
- ≠Aodaman-GN 103/2011 ([GG 4750](#)), as amended by GN 64/2013 ([GG 5150](#)) and by GN 235/2015 ([GG 5853](#))
- Kakuru-Kouye-GN 79/2013 ([GG 5161](#)), as amended by GN 8/2014 ([GG 5397](#))
- Ukwangali-GN 98/2013 ([GG 5175](#)), as amended by GN 16/2018 ([GG 6524](#))
 Note that the name of the community court is “Ukwangali” in GN 98/2013 and “Uukwangali” in GN 16/2018.
- !Xoo-GN 145/2013 ([GG 5221](#)), as amended by GN 116/2017 ([GG 6309](#))
- !Kung-GN 173/2015 ([GG 5806](#))
- Dâure-Daman-GN 230/2015 ([GG 5848](#))
- Ovambanderu-GN 281/2015 ([GG 5892](#)).

These notices also designate areas of jurisdiction and appoint assessors and justices.

Cases:

Muteka v Leopold (CR4-2016) [2015] NAHCNLD 63 (29 July 2016) (review of appeal proceedings in magistrate’s court in terms of section 27(1)(a) of Act; appeal

proceedings set aside because of failure of magistrate's court to appoint two assessors as required by the Act)
LM v JM & Others 2016 (2) NR 603 (HC) (enforcement of order of community court).

Commentary:

N Horn, "Criminal or Civil Procedure? The Possibility of a Plea of *Autrefois* in the Namibian Community Courts Act" in Manfred O Hinz & Helgard K Patemann (eds), *The Shade of New Leaves: Governance in Traditional Authority – A Southern African Perspective*, Windhoek: Centre for Applied Social Studies, 2006

N Horn, "Community Courts In Namibia: Life or Death For Customary Law?", MO Hinz, *In Search of Justice and Peace: Traditional and Informal Justice Systems in Africa*, Windhoek: Namibia Scientific Society, 2009.

Commentary on the South African Traditional Courts Bill:

Jennifer Williams & Judith Klusener, "The Traditional Courts Bill: a woman's perspective", 29 (2) *South African Journal on Human Rights* 2013

Thuto Thipe & Mbongiseni Buthelezi, "Democracy in action: the demise of the Traditional Courts Bill and its implications: discourse and debate", 30 (1) *South African Journal on Human Rights* 2014.

Magistrates Act 3 of 2003.

Summary: This Act ([GG 2996](#)) provides for the establishment of a Magistrates Commission and establishes a magistracy outside the Public Service. Part II of the Act was brought into force on 20 June 2003, and the remainder of the Act was brought into force on 30 June 2003. (Both dates were announced in GN 125/2003 ([GG 3001](#)).

Amendments: Act 23/2003 ([GG 3122](#)) 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".

Act 2/2014 ([GG 5431](#)) amends sections 1, 4, 5, 6, 7, 10, 12, 19, 20, 21, 25, 26 and 27 substitutes sections 11, 13, 14, 16, 24 and 28, and inserts section 5A and Schedule 1.

Regulations: Regulations regarding Magistrates, which came into force on 30 June 2003, are contained in GN 130/2003 ([GG 3007](#)), as amended by GN 200/2015 ([GG 5828](#)) (which inserted Part VA on misconduct).

Notices: The remuneration of magistrates is increased in GN 44/2009 ([GG 4236](#)), GN 297/2012 ([GG 5094](#)), GN 236/2014 ([GG 5613](#)), GN 96/2016 ([GG 6008](#)) and GN 202/2017 ([GG 6377](#)).

Certain degrees or equivalent qualifications in law are recognised as being satisfactory qualifications for appointment of a person as a magistrate in GN 166/2015 ([GG 5795](#)).

Appointments: The members of the Magistrates Commission are announced in GN 153/2009 ([GG 4310](#)), GN 54/2011 ([GG 4701](#)), GN 165/2015 ([GG 5795](#)) and GN 151/2018 ([GG 6660](#)).

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); appealed on other grounds in 2010 (1) NR 328 (SC)

Alexander v Minister of Justice & Others 2010 (1) NR 328 (SC) at para 19 (Minister's designation of magistrate to conduct extradition enquiry under Extradition Act 11 of 1996 does not interfere with independence of magistrates under this Act)

Minister of Justice v Magistrates' Commission & Another 2012 (2) NR 743 (SC) (role of Minister of Justice and Magistrates' Commission in respect of disciplinary proceedings under sections 3, 13(1), 21(3)(a) and 26(17)(ii), in light of constitutional principle of separation of powers)

Le Roux v Minister of Justice & Others 2015 (1) NR 131 (HC) (review versus appeal of dismissal of magistrate; sections 21 and 26 of Act)

Ndeitunga v Kavaongelwa 2016(3) NR 622 (HC) (discussion of provisions on misconduct).

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 CASES

National Housing Enterprise v Beukes & Others 2015 (2) NR 577 (SC) (superior court may in exceptional circumstances intervene in uncompleted proceedings before a lower court to prevent or obviate a grave injustice, but only where the matter is before the superior court in an appeal or review application; inherent jurisdiction of a superior court is limited to matters which are before that court and not matters which are before a lower court).

COMMENTARY

- Law Reform and Development Commission, *Report on Small Claims Courts*, LRDC 6, 1997, available at www.namiblii.org
- Nico Horn & Anton Bösl (eds), *Human Rights and the Rule of Law in Namibia*, Macmillan Education, 2008, available at www.kas.de
- Nico Horn & Anton Bösl, *The Independence of the Judiciary in Namibia*, Konrad Adenauer Stiftung, 2008, available at www.kas.de
- Dennis U Zaire & Holger Haibach, “The Midgard Process”, *Namibia Law Journal*, Volume 4, Issue 1, 2012
- Legal Assistance Centre, *Access to Justice in Namibia: Proposals for Improving Public Access to Courts*, 2012, available at www.lac.org.na
- Access to Justice as a Human Right*, Paper No 1
- Locus standi: Standing to Bring a Legal Action*, Paper No 2
- Costs and Contingency Fees*, Paper No 3
- Amicus Curiae Participation*, Paper No 4
- Nico Horn, “S v Hoabeb: A Dummy’s Guide on How to Avoid Justice in Namibia for Ten Years”, *Namibia Law Journal*, Volume 5, Issue 1, 2013
- Diane R Hazel, “Litigating with class: Considering a potential framework for class actions in Namibia”, *Namibia Law Journal*, Volume 6, Issue 1, 2014.
- Jaime Smit, “Every story has three versions – yours, mine and the truth: The admissibility of polygraph tests in court”, *Namibia Law Journal*, Volume 6, Issue 2, 2014
- Law Reform and Development Commission, *Locus Standi Discussion Paper*, LRDC 27, 2014, available at www.namiblii.org
- Sam Amoo, “The relevance of comparative jurisprudence in the Namibian legal system” in Nico Horn & Manfred O Hinz, eds, *Beyond a Quarter Century of Constitutional Democracy: Process and Progress in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2017
- Nico Horn, “Transformative Constitutionalism: A Post-Modern Approach to Constitutional Adjudication in Namibia” in Nico Horn & Manfred O Hinz, eds, *Beyond a Quarter Century of Constitutional Democracy: Process and Progress in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2017
- Nico Horn, *Interpreting the Interpreters (The Namibian Constitution in the Courts)*, Konrad Adenauer Stiftung, 2017
- Wilhelmina N Shakela, “Transforming the Judiciary: The Adoption of e-Justice in Namibia” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017.

INTERNATIONAL LAW

Statute of the International Court of Justice (see Charter of the United Nations (UN), 1945)

SADC Protocol on the Tribunal and the Rules of Procedure thereof, 2000

SADC Agreement Amending the Protocol on the Tribunal, 2002

SADC Agreement Amending the Protocol on the Tribunal, 2007

SADC Agreement Amending Article 6 of the Protocol on Tribunal, 2008

****SADC Protocol on the Tribunal, 2014**

Commentary on SADC Tribunal:

Oliver C Ruppel & Francois X Bangamwabo, “The SADC Tribunal: a legal analysis of its mandate and role in regional integration” in Anton Bösl & Trudi Hartzenberg (eds), *Monitoring Regional Integration in Southern Africa Yearbook 2008*, Konrad Adenauer Stiftung, available at www.kas.de

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.kas.de

- PN Ndlovu, “Campbell v Republic of Zimbabwe: A moment of truth for the SADC Tribunal”, *SADC Law Journal*, Volume 1, 2011, available at www.sadclawjournal.org
- W Scholtz, “Review of the role, functions and terms of reference of the SADC Tribunal”, *SADC Law Journal*, Volume 1, 2011, available at www.sadclawjournal.org
- A Afadameh-Adeyemi, “Barry Gondo & 8 Others v The Republic of Zimbabwe, SADC (T) 05/2008”, *SADC Law Journal*, Volume 1, 2011, available at www.sadclawjournal.org
- O Adeleke, “Revisiting locus standi and the grounds for jurisdiction of the SADC Tribunal in United Republic of Tanzania v Cimexpan (Mauritius) Ltd, Cimexpan (Zanzibar) Ltd & Ajaye Jogoo, SADC (T) 01/2009”, *SADC Law Journal*, Volume 1, 2011, available at www.sadclawjournal.org
- Gerhard Erasmus, “What future now for the SADC Tribunal? A plea for a constructive response to regional needs”, *Namibia Law Journal*, Volume 4, Issue 2, 2012
- Lukas Knott, “How to Reboot the SADC Tribunal: A European Perspective”, *SADC Law Journal*, Volume 2 (2), 2012, available at www.sadclawjournal.org
- Dennis U Zaire & Kathrin Schneider, “The SADC Tribunal: Exclusive access?”, *Namibia Law Journal*, Volume 5, Issue 1, 2013.

See also **ADMIRALTY LAW**.

See also *Criminal Procedure Act 51 of 1977* and *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* (execution of judgements in respect of immovable property) (**LAND AND HOUSING**).

See also **LAW**.

See also **LEGAL PRACTITIONERS**.

CRIMINAL LAW AND PROCEDURE

Vagrancy Proclamation 25 of 1920.

Summary: This Proclamation ([OG 33](#)) is directed at suppressing trespass, idleness and vagrancy.

Amendments: The Proclamation is amended by Proc. 32/1927 ([OG 255](#)) and Ord. 3/1962 ([OG 2390](#)), which repeals sections 4-7. It was extended to the Rehoboth Gebiet by Proc. 7/1939 ([OG 776](#)).

Police Offences Proclamation 27 of 1920.

Summary: This Proclamation ([OG 33](#)) criminalises a miscellany of activities, primarily nuisances such as littering and swearing.

Amendments: This Proclamation is amended by Ord. 3/1962 ([OG 2390](#)), Ord. 15/1962 ([OG 2409](#)), Act 21/1980 ([OG 4310](#)) and the RSA *Prohibition of Disguises Act 16 of 1969* ([RSA GG 2316](#)). It was modified and applied to the Rehoboth Gebiet by Proc. 5/1937 ([OG 702](#)).

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)); *S v Nangaku & Another* 2014 (2) NR 369 (HC) (competent sentence for contravention of section 9(1)).

Finance and Audit Ordinance 1 of 1926, section 24D.

Summary: Only section 24D of this Ordinance ([OG 208](#)) 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. The section in question was inserted by Ord. 42 of 1952, where it was originally numbered 24*bis*. It was amended and renumbered as 24D by Ord. 28/1969 ([OG 3011](#)).

The Ordinance was extended to the Rehoboth Gebiet by Proc. 12/1930 ([OG 365](#)).

Amendments: The State Finance Act 1 of 1982 ([OG 4610](#)) (which was repealed by the State Finance Act 31 of 1991 ([GG 333](#))) repeals all of the Ordinance *except* sections 24D and 26A. The Tender Board of Namibia Act 16 of 1996 ([GG 1380](#)) repeals section 26A, leaving only section 24D in force.

Section 24D was inserted by Ord. 42/1952 ([OG 1732](#)), where it was originally numbered 24*bis*. It was amended and renumbered as 24D by Ord. 28/1969 ([OG 3011](#)).

Witchcraft Suppression Proclamation 27 of 1933.

Summary: This Proclamation ([OG 538](#)) attempts to suppress witchcraft by criminalising various activities.

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

12/1936 ([OG 668](#)).

Cases: The reference to whipping in section 1 is invalidated by *Ex Parte Attorney-General, Namibia: Re: Corporal Punishment by Organs of the State* 1991 NR 178 (SC), even though this Proclamation is not specifically mentioned. That case made the following order: “It is declared that the imposition of any sentence by any judicial or quasi-judicial authority, authorising or directing any corporal punishment upon any person is unlawful and in conflict with Article 8 of the Namibian Constitution.”

Price Control Admissions of Guilt Proclamation 40 of 1944.

Summary: This Proclamation ([OG 1154](#)) 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 ([OG 1846](#)) and Ord. 17/1958 ([OG 2152](#)).

Criminal Law Amendment Act 8 of 1953, as amended in South Africa to November 1979.

Summary: This Act ([SA GG 5018](#); also published in [OG 1750](#)) 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, or at least that section of it, applied to South West Africa by providing special instructions for the removal of “undesirable inhabitants” from the Territory of South West Africa. However, the status of the remainder of the Act in SWA is uncertain.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979, as amended. 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) ([OG 5758](#)) 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) (references to whipping in sections 1 and 2 unconstitutional).

General Law Amendment Ordinance 12 of 1956, sections 6-8.

Summary: Sections 6-8 of this Ordinance ([OG 2018](#)) deal with stolen goods. (Section 4 of this Ordinance is discussed under ARMS AND AMMUNITION, and section 5 is discussed under INHERITANCE.)

Amendments: This portion of the Act is amended by Ord. 36/1965 ([OG 2642](#)).

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)

S v Silas 2013 (3) NR 760 (HC) (correct formulation of charge)

Gomes v Prosecutor-General [2013] NAHCMD 240 (struck down the phrase “*proof of which shall be on such first-mentioned person*” in section 7(1), but was reversed on appeal in *Prosecutor-General of the Republic of Namibia v Gomes & Others* 2015 (4) NR 1035 (SC), with the effect that section 7(1) remains as it stands in the Ordinance).

Riotous Assemblies Act 17 of 1956, sections 16-18 and 19A-21, as amended in South Africa to November 1979.

Summary: Most of this Act ([SA GG 5651](#)) was repealed in respect of South West Africa. The remaining sections address power to regulate the transportation of explosives and the criminal offences of incitement to public violence, conspiracy, attempted crimes, and inducement to commit crimes.

Applicability to SWA: Section 19A, inserted by Act 79 of 1976, with effect from 16 June 1976, states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

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

After the date of transfer, much of the Act was repealed by the *Intimidation Act 72 of 1982*, which was made applicable to SWA by virtue of the Security Matters Proclamation, AG 29 of 1985 ([OG 5059](#)). Other portions of the Act were repealed in South Africa by the *Internal Security Act 74 of 1982* ([RSA GG 8232](#)), 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*.

In support of this interpretation, see *Mweuhanga v Administrator-General of South West Africa & Others* 1990 (2) SA 776 (A):

On appeal before us Mr. Gauntlett, for the appellant, accepted the Court’s finding that section 29 of the General Law Amendment Act [101 of 1969] applied in South West Africa, but that the Internal Security Act [74 of 1982] did not. I agree with this. Section 29(3) of the General Law Amendment Act specifically provides that the provisions of section 29 and any amendment thereof apply also in the territory of South West Africa. No corresponding provision is found in the Internal Security Act. And it is noteworthy that sub-sections 66(1) and (2) of the Internal Security Act correspond almost word for

word with sub-sections 29(1) and (2) of the General Law Amendment Act (as substituted by section 25 of the General Law Amendment Act, no. 102 of 1972) save that the latter contain a reference to South West Africa whereas the former do not. The meaning and effect of this reference will be considered later, but its absence from section 66 of the Internal Security Act is a further indication that the latter act was not intended to apply in South West Africa.

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. Thus, in the remainder of the Act, “Republic” continued to refer only to South Africa even after the transfer.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Unlawful Organisations Act 34 of 1960* ([SA GG 6413](#))
- *General Law Amendment Act 39 of 1961* ([SA GG 6692](#))
- *General Law Amendment Act 76 of 1962* ([RSA GG 273](#))
- *Riotous Assemblies Amendment Act 30 of 1974* ([RSA GG 3221](#)).

However, the first three of these four amending Acts applied only to sections of the Act that have since been repealed. The Act was further amended and made applicable to SWA by the *Internal Security Amendment Act 79 of 1976* ([RSA GG 5159](#)).

The Riotous Assemblies Amendment Proclamation (AG 10/1977) ([OG 3665](#)) repeals sections 4 and 19 and amends sections 1, 2, 3 and 7 (all now repealed).

After the date of transfer, the Act was amended by the *Intimidation Act 72 of 1982*, which was made applicable to SWA by virtue of the Security Matters Proclamation, AG 29 of 1985 ([OG 5059](#)) and which repealed sections 10-15.

The First Law Amendment (Abolition of Discriminatory or Restrictive Laws for the Purposes of Free and Fair Election) Proclamation (AG 14/1989) ([OG 5726](#)) repeals sections 2, 6 and 7(1)(a), amends section 4 (which had already been repealed by AG 10/1977) ([OG 3665](#)), and amends sections 5 and 7(1)(b) (both now repealed).

The Public Gatherings Proclamation (AG 23/1989) ([OG 5756](#)) 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 ([OG 2409](#)) sets forth the criminal offences of attempt, conspiracy and inducing another to commit an offence.

Criminal Procedure Ordinance 34 of 1963, sections 300(3) and 370.

Summary: Only sections 300(3) and 370 of this Ordinance ([OG 2504](#)) are still in force. Section 300(3) concerns the criminal offence of perjury. Section 370 deals with peace bonds. (These sections are the South West African counterparts of sections 319(3) and

384 of the *Criminal Procedure Act 56 of 1955* which applied to South Africa.) The other sections of the Ordinance have been repealed by the *Criminal Procedure Act 51 of 1977*.

Cases: *S v Somses* 1999 NR 296 (HC) (section 300(3)); *S. v Gariseb* 2002 NR 112 (HC) (section 300(3)).

Prohibition of Disguises Act 16 of 1969, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 2316](#)) 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 ([RSA GG 5532](#)) governs procedure in criminal proceedings. It is repealed by the Criminal Procedure Act 25 of 2004, which has not yet been brought into force – and there is speculation that the 2004 Act may be replaced by a new version rather than being brought into force. It was brought into force in both South Africa and South West Africa on 22 July 1977 by RSA Proc. No. R.148 of 1977 ([RSA GG 5654](#)). It was applied to Rehoboth insofar as it relates to matters which fell under the Legislative Authority of Rehoboth by the Criminal Procedure Act 3 of 1982 (Rehoboth) (Official Gazette 70 of Rehoboth, dated 11 March 1983).

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. None of the amendments to the Act in South Africa prior to Namibian independence were made expressly applicable to SWA, but they were probably applicable by virtue of the definition of “Republic” in section 1 of the Act where they were made prior to the date of transfer.

This would mean that the South African *Criminal Procedure Matters Amendment Act 79 of 1978* (which was published and came into force on 2 June 1978 and amends section 185), and *Criminal Procedure Amendment Act 56 of 1979* (which was published and came into force on 1 June 1979 and amends sections 50, 60, 75, 119, 121, 123, 124, 144, 170, 212, 217, 296, 300, 307 and Schedule 3, and inserts section 115A, Chapter 19A and section 219A) were applicable to SWA. Note that the South West African Criminal Procedure Matters Act 31 of 1985 refers to previous amendments by

the *Criminal Procedure Amendment Act 56 of 1979*, lending further support to this conclusion.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979, as amended. Both of the amending Acts cited above came into force before this date.

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.

Section 1(2) of AG Proc. 24 of 1983 ([OG 4854](#)), which amends the transfer proclamation, states: “In the application of the provisions of the Executive Powers Transfer (General Provisions) Proclamation, 1977 (Proclamation AG. 7 of 1977) (hereinafter referred to as the General Proclamation), in respect of section 3 of the Criminal Procedure Act, 1977 (Act 51 of 1977), this proclamation shall be deemed to be a transfer proclamation as defined in section 1 of the General Proclamation, and the reference in section 5 of the General Proclamation to a law referred to in section 2 of that Proclamation, shall be construed as a reference to section 3 of the said Criminal Procedure Act, 1977.”

Section 2 of AG Proc. 24 of 1983 ([OG 4854](#)) states: “In the application of the provisions of the Criminal Procedure Act, 1977 (Act 51 of 1977), section 3 thereof shall be deemed to be amended by the substitution for the words “public service”, wherever they occur, of the expression “government service mentioned in section 2 of the Government Service Act, 1980 (Act 2 of 1980).”

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

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Criminal Procedure Matters Amendment Act 79 of 1978* ([RSA GG 6041](#))
- *Criminal Procedure Amendment Act 56 of 1979* ([RSA GG 6476](#))

The Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978, amends certain terminology.

The Criminal Procedure Amendment Act 15 of 1981 ([OG 4566](#)), which is brought into force by AG 31/1981 ([OG 4577](#)), amends sections 114 and 116.

The Appeals Amendment Act 29 of 1985 ([OG 5149](#)), which is brought into force by AG 19/1986 ([OG 5182](#)), amends sections 315-319 and 323.

The Criminal Procedure Matters Act 31 of 1985 ([OG 5151](#)), amends the Act substantially (affecting 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 ([GG 215](#)) amends several provisions relating to bail (sections 59, 60, 61, 68, 72, 307 and Schedule 2).

The Criminal Procedure Amendment Act 26 of 1993 ([GG 755](#)) 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 ([GG 2326](#)), which was brought into force on 15 June 2000 (GN 140/2000, [GG 2348](#)), amends sections 1, 62, 153, 154 and 227 of the Act, and inserts sections 60A, 211A and 227A.

The International Co-operation in Criminal Matters Act 9 of 2000 ([GG 2327](#)), brought into force on 15 September 2001 (GN 185/2001, [GG 2614](#)), amends section 171 and substitutes sections 172 and 173.

Note that there are two versions of GG 2327. The correct one states at the top: “*This Gazette replaces previous Gazette No. 2327.*”

The Appeal Laws Amendment Act 10 of 2001 ([GG 2585](#)) substitutes section 315 and

amends section 316.

The Combating of Domestic Violence Act 4 of 2003 ([GG 3002](#)), which was brought into force on 17 November 2003 (GN 234/2003, [GG 3094](#)), amends sections 60A, 62 and 153.

The Maintenance Act 9 of 2003 ([GG 3043](#)), which was brought into force on 17 November 2003 by GN 232/2003 ([GG 3093](#)), amends section 195.

The Criminal Procedure Amendment Act 24 of 2003 ([GG 3123](#)) inserts sections 158A and 216A and amends sections 164, 166 and 212 (dealing with vulnerable witnesses and related matters).

The Criminal Procedure Amendment Act 13 of 2010 ([GG 4554](#)) amends sections 55-57, 72, 74 112, 170 and Schedule 2, substitutes section 185 and 338, and inserts section 57A.

The Act is amended with respect to the use of various terms and cross-references by the Correctional Service Act 9 of 2012 ([GG 5008](#)), which was brought into force on 1 January 2014 by GN 330/2013 ([GG 5365](#)).

Note: *S v Malumo & Others* 2010 (1) NR 35 (HC) states the following at para 2 in respect of section 217(1)(a): “[NB: Para (a) has been substituted by s 11 of the Criminal Procedure Amendment Act 86 of 1996, a provision which will be put into operation by proclamation.]” However, there was no such amending Act in Namibia. It appears that the quoted provision erroneously refers to the South African version of the Criminal Procedure Act, as there is a Criminal Procedure Amendment Act 86 of 1996 in South Africa which substitutes section 217(1)(a) in the South African Criminal Procedure Act 51 of 1977.

The Child Care and Protection Act 3 of 2015 ([GG 5744](#)), which is not yet in force, amends section 1 (to add a definition of “probation officer”), repeals sections 292, 293 and 294 and removes the words “or a whipping” from section 290(2).

The Witness Protection Act 11 of 2017 ([GG 6451](#)), which is not yet in force, amends section 158A and repeals section 185.

Note that Article 141(2) of the Namibian Constitution provides: “Any reference to the Attorney-General in legislation in force immediately prior to the date of Independence shall be deemed to be a reference to the Prosecutor-General, who shall exercise his or her functions in accordance with this Constitution.”

Notices: 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 referred to in section 11 of the *Road Transportation Act 74 of 1977* (now replaced by the Road Traffic and Transport Act 22 of 1999 except insofar as it relates to passenger transport) are declared to be peace officers in terms of certain offences relating to road transportation in GN 219/1996 ([GG 1395](#)) and in GN 92/2001 ([GG 2530](#)).

Traffic officers appointed under section 11(1)(d) of the Road Traffic and Transport Act 22 of 1999 are declared to be peace officers in respect of certain offences in GN 206/2008 ([GG 4113](#)), as amended by GN 243/2014 ([GG 5624](#)).

Fisheries inspectors designated in terms of section 4 of the Marine Resources Act 27 of 2000 and inspectors designated under section 23 of the Inland Fisheries Resources Act 1 of 2003 are declared to be peace officers in respect of certain offences in GN 38/2014 ([GG 5438](#)).

Note that *S v Coetzee* 2011 (1) NR 359 (HC) emphasises that a record of criminal proceedings in the magistrates' court must be prepared in accordance with Chap XIII of the Codified Instructions: Clerk of the Criminal Court" issued by the Permanent Secretary for Justice (Permanent Secretary's Administrative Circular dated 12 May 2008 re: 'Amendment of Codified Jurisdictions Justice Code: Clerk of Criminal Court', updated 19 March 2008).

Application of law: The Police Amendment Proclamation (AG 21/1983) affects the application of section 20.

The Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979, as amended by AG 24/1983, affects the application of section 3.

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)
S v Fourie 2014 (4) NR 966 (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 34:

S v Roux 2014 (3) NR 816 (HC)

section 35:

Banco Exterior De Espana SA & Another v Government of the Republic of Namibia & Another 1996 NR 1 (HC)
S v Litombo 2010 (2) NR 473 (HC)
S v Candimba & Others 2013 (1) NR 70 (HC)
S v Roux 2014 (3) NR 816 (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)
S v Gomeb & Others 2015 (4) NR 1100 (HC) (no order to draw blood samples where this would serve no purpose)

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)
- S v Ashimbanga* 2014 (1) NR 242 (HC) (law on arrest discussed in connection with charge of escape from lawful custody)
- Sheefeni v Council of the Municipality of Windhoek* 2015 (4) NR 1170 (HC)
- 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)
- Tjipepa v Minister of Safety and Security & Others* 2015 (4) NR 1133 (HC) (section 40(1)(b))
- 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)
- Gabriel v Minister of Safety and Security* 2010 (2) NR 648 (HC) (lawfulness or unlawfulness of original arrest is irrelevant to detention under section 50(1))
- Minister of Safety and Security v Kabotana* 2014 (2) NR 305 (SC) (right to be brought before court within 48 hours of arrest in terms of art 11(3) of constitution and section 50 of the Act)
- Tjipepa v Minister of Safety and Security & Others* 2015 (4) NR 1133 (HC)
- 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) (discussed in Nico Horn, “S v Acheson and Kleynhans: The First Test for Constitutionalism in Namibia”, *UNAM Students Law Review*, Volume 1, No 1, 2013, available at www.unamlawreview.com)
- 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 Branco* 2002 (1) SACR 531 (W)
- S v Swartbooi* 2003 NR 143 (HC)
- S v Yugin & Others* 2005 NR 196 (HC)
- S v Dauseb* 2011 (1) NR 232 (HC) (placing onus on applicant to prove that he or she should be released on bail is not unconstitutional)
- S v Bayer* 2014 (2) NR 414 (HC)
- S v Moussa* 2015 (3) NR 800 (HC) (bail granted after accused in custody awaiting trial for seven years; long period of pre-trial incarceration)

violates constitutional rights in article 12(1); additional period in custody should have been treated as a “new fact” in most recent bail application)

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)
S v Valombola 2014 (4) NR 945 (HC)
S v Miguel & Others 2016 (3) NR 732 (HC) (meaning of “offence relating to the coinage”)

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)
S v Valombola 2014 (4) NR 945 (HC)
S v Miguel & Others 2016 (3) NR 732 (HC) (section 65(4))

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)
S v Narib/S v Nyambali 2010 (1) NR 273 (HC) (noting that section 77(6) has been amended in South Africa by *RSA General Law Third Amendment Act 129 of 1993*, but that there is no similar amendment in Namibia)

section 78:

S v Shivute 1991 NR 123 (HC)
S v Samuel 1994 NR 51 (HC)

- S v Mika* 2010 (2) NR 611 (HC)
- sections 77-78:
- S v Mika* 2010 (2) NR 611 (HC)
- S v Munyama* 2011 (1) NR 53 (HC) (discussed in *dicta* at 58C-F)
- S v Malumo & 111 Others in re: Kamwanga* 2012 (1) NR 104 (HC)
- S v Tashiya* 2013 (3) 637 (HC)
- S v Ndengu* 2014 (1) NR 42 (HC) (correct procedure for enquiry into mental capacity)
- section 79:
- S v Hansen* 1994 NR 5 (HC)
- S v Amamub* 2000 NR 207 (HC)
- S v Mika* 2010 (2) NR 611 (HC)
- S v Malumo & 111 Others in re: Kamwanga* 2012 (1) NR 104 (HC)
- S v Ndengu* 2014 (1) NR 42 (HC) (correct procedure for enquiry into mental capacity)
- S v Uirab* 2016 (2) NR 543 (where accused faces serious charge which could result in a lengthy custodial sentence, court should exercise its discretion to require assessment of accused's mental state by two psychiatrists, as provided for in section 79(1)(b))
- S v Thomas & Another* 2016 (4) NR 1154 (HC) (report of clinical psychologist inadmissible under section 79; application of section 79)
- section 83:
- S v Seibeb & Another; S v Eixab* 1997 NR 254 (HC)
- S v Gaseb & Others* 2000 NR 139 (SC)
- 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)
- S v PV* 2016 (1) NR 77 (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)
- S v Conradie & Another* 2016 (2) NR 438 (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)
- S v Nghixulifa & Others* 2016 (2) NR 356 (HC)
- section 88:
- S v Nakare* 1992 NR 99 (HC)
- S v Petrus* 1993 NR 215 (HC)
- section 94:
- S v Libongani* 2015 (2) NR 555 (SC) (formulation of charge sheet when section 94 applies)
- 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)
- S v Conradie & Another* 2016 (2) NR 438 (HC)
- S v Munuma & Others* 2016 (4) NR 954 (SC) (section 106(1)(f))

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 Kaearua* 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)
- S v Litombo* 2010 (2) NR 473 (HC)
- S v Undari* 2010 (2) NR 695 (HC)
- S v Taseb & Others* 2011 (1) NR 326 (HC)
- S v Mbele* 2011 (1) NR 357 (HC)
- S v Onesmus; S v Amuloto; S v Mweshipange* 2011(2) NR 461 (HC)
(on problems arising from amendment of section 112 by Act 13/2010)
- S v Kondo* 2012 (2) NR 415 (HLD)
- S v Tjipetekera* 2013 (2) NR 587 (HC)

- S v Silas* 2013 (3) NR 760 (HC)
- S v Kauaria* 2014 (1) NR 163 (HC)
- S v Pieters* 2014 (3) NR 825 (HC)
- S v Boois & Others* 2016 (2) NR 347 (HC)
- S v Gases* 2016 (4) NR 980 (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)
 - S v Hoabeb* 2013 (1) NR 222 (HC) (discussed in Nico Horn, *S v Hoabeb: A Dummy's Guide on How to Avoid Justice in Namibia for Ten Years*", *Namibia Law Journal*, Volume 5, Issue 1, 2013)
 - S v Maasdorp* 2015 (4) NR 1109 (HC) (in a case involving multiple counts, where accused pleaded guilty to some counts, no sentences should be imposed before conclusion of trial as section 113 can be invoked only prior to sentence)
 - S v Boois & Others* 2016 (2) NR 347 (HC)
 - S v Gases* 2016 (4) NR 980 (HC)
- section 114:
 - S v Kauleefelwa* 2006 (1) NR 102 (HC)
 - S v Undari* 2010 (2) NR 695 (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)
 - S v Tjipetekera* 2013 (2) NR 587 (HC)
 - S v Ananias* 2014 (3) NR 665 (HC)
- section 116:
 - S v Scott & Others* 2009 (1) NR 58 (HC)
- section 118:
 - S v Wellington* 1990 NR 20 (HC)
 - S v Tashiya* 2013 (3) 637 (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:
S v Khumalo 1991 NR 166 (SC)
S v Malumo (In re Kamwi) 2014 (3) NR 771 (HC) Z(s. 160 read with s. 159)
- 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)
S v FM 2016 (3) NR (NLD) (application of amended section 164 to young child discussed in context of assessing prospects of success of appeal for purposes of application for condonation)
- 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)
S v Babinu 2016 (3) NR 619 (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)

- S v Paulo & Another (Attorney-General as amicus curiae)* 2013 (2) NR 366 (SC)
- S v Goabab & Another* 2013 (3) 603 (SC)
- S v Malumo & Others* 2013 (3) NR 868 (HC)
- S v Ananias* 2014 (3) NR 665 (HC)
- section 175:
- S v Khoeinmab* 1991 NR 99 (HC)
- S v Kamati* 1991 NR 116 (HC)
- S v Paulus & Another* 2010 (2) NR 534 (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)
- S v Ndengu* 2014 (1) NR 42 (HC)
- 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 203:
- S v Malumo & 111 Others (2)* 2012 (1) NR 244 (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)
- S v Shipanga & Another* 2015 (1) NR 141 (SC)
- 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)
- S v HN* 2010 (2) NR 429 (HC) (section 212 (7A)(a) applied)
- S v Andima* 2010 (2) NR 639 (HC) (section 212 (7A)(a) does not affect state's burden of proof of medical issue in absence of a section 220 admission)
- S v Eiseb* 2014 (3) NR 834 (SC)
- 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)
S v Malumo & Others 2010 (1) NR 35 (HC)
S v Malumo & 111 Others 2013 (1) NR 152 (HC) (attempt to circumvent)
S v Shipanga & Another 2015 (1) NR 141 (SC)
- 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)
S v Malumo & Others 2010 (1) NR (HC) (“The presumption in s 217(1)(b)(ii) of Act 51 of 1977 has been declared unconstitutional on the basis that it subverts the very essence of the right to a fair trial and the incidents of that right articulated in art 12(1)(a), (d) and (f) of the Constitution of Namibia.... Section 219A of Act 51 of 1977 contains a similarly worded presumption (the constitutionality of which has not yet been tested). It has been accepted by the State that the presumption contained in s 219A(1)(b) would not withstand the test of constitutionality and would follow the same route as the presumption contained in s 217(1)(b)(ii) of Act 51 of 1977.” At para 19)
S v Kapia & Others 2015 (4) NR 1094 (HC) (section 219A(1))
- section 220:
S v Kahumbe 1995 NR 77 (HC)
S v Boois 2004 NR 74 (HC)
S v Andima 2010 (2) NR 639 (HC)
- section 221:
S v De Villiers 1992 NR 363 (HC)
S v Ningisa & Others 2013 (2) HC 504 (SC)
- 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 235(1):
S v Malumo & 111 Others (2) 2012 (1) NR 244 (HC)
- section 245:
S v Mwambazi 1990 NR 353 (HC)

- S v Van Rooyen* 1993 NR 235 (HC)
Attorney-General of Namibia v Minister of Justice & Others 2013 (3) NR 806 (SC) (section 245 declared to be in violation of right to fair trial in Art 12(1)(d) of Constitution)
- 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 Johnny & 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) and 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))
Alugodhi v Minister for Safety and Security & Others and Eight Similar Cases 2015 (4) NR 1021 (HC) (relationship to section 86 of the repealed Prisons Act 17 of 1998, and similar provisions of the previous *Prisons Act 8 of 1959* (section 32) and the current Correctional Service Act 9 of 2012 (section 99))
- 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)
S v Tjikuvira 2015 (4) NR 1105 (HC) (meaning of “court” in section 287(2), and effect of provision where convicted person cannot afford fine)
- 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)
S v Tjikuvira 2015 (4) NR 1105 (HC)(section 290(2))

- 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 Oupietji; 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)
S v Sakaria 2013 (2) NR 347 (HC)
S v Shiputa 2013 (3) NR 800 (NLD)
- 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)

S v Undari 2010 (2) NR 695 (HC) (section 309(2))

S v Nakale 2011 (2) NR 599 (SC) (section 309(2))

S v Shiputa 2013 (3) NR 800 (NLD) (application of section 304 to appeals by virtue of section 309, and discussion of useful South African improvements to section 309 procedure)

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)

S v Nel 2015 (4) NR 1057 (HC) (court's decision not to order forfeiture of certain items under section 89(1)(d) of Nature Conservation Ordinance 4 of 1975 constitutes a decision made in favour of an accused under section 310)

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) (conviction and sentence set aside in *S v Munuma & Others* 2013 (4) NR 1156 (SC) on grounds that trial judge should have recused himself)

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); see also *S v Ningisa & Others* 2013 (2) HC 504 (SC) at paras 4-6

S v Masake & Others 2012 (1) NR 1 (SC)

section 316A:

S v Strowitzki 1994 NR 265 (HC)

S v Malumo & Others 2010 (2) NR 595 (SC) (dicta)

S v LK 2016 (1) NR 90 (SC) (disagrees with dicta in *S v Malumo & Others* 2010 (2) NR 595 (SC); meaning of "including" in section 316A(1))

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)

S v Malumo & Others 2013 (3) NR 868 (HC)

section 319:

S v Khumalo 1991 NR 166 (SC)

S v Pineiro & Others 1999 NR 13 (HC)

S v Malumo & Others (In re Ndala) 2014(3) NR 690

- 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 332:
S v Nkeuene 2010 (1) NR 301 (HC)
Attorney-General of Namibia v Minister of Justice & Others 2013 (3) NR 806 (SC) (section 332(5) declared to be in violation of Constitution insofar as “a servant of a corporate body is in terms of s 332(5) deemed to be guilty of an offence committed for which the corporate body is or was liable to be prosecuted, unless he or she proves on a balance of probabilities that he or she did not take part in the commission of the offence and could not have prevented it, on the grounds that they impermissibly infringe an accused’s right under art 12(1)(d) of the Constitution to be presumed innocent until proven guilty according to law and thus also an accused’s right to a fair trial in terms of art 12(1)(a) of the Constitution”)
- 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 Auala* 2010 (1) NR 175 (SC) (lower court’s approach to sentencing confirmed on appeal)

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)
S v Visagie 2010 (1) NR 271 (HC) (undesirability of taking counts together for purpose of sentence; appropriate sentence for *crimen injuria*)
S v Mushishi 2010 (2) NR 559 (HC) (context of domestic violence as an aggravating factor in sentencing)
S v K 2011 (1) NR 1 (HC) (a guilty plea is not necessarily an indication of remorse)
S v Munyama 2011 (1) NR 53 (HC) (general approach to sentencing and use of expert evidence on appropriate sentence)
S v Sakaria 2013 (2) NR 347 (HC) (sentence under-emphasised interests of society)
S v Ningisa & Others 2013 (2) HC 504 (SC) at paras 90-98
S v Guruseb 2013 (3) 630 (HC) (conditions of suspension of sentence must have material connection to nature and circumstances of offence)
S v Tjikotoke 2014 (1) NR 38 (HC) (taking counts together for purposes of sentencing should be done only in exceptional circumstances)
S v Ashimbanga 2014 (1) NR 242 (HC) (appropriate sentence for escape from lawful custody)
S v Jackson & Others 2014 (3) NR 637 (HC) (judicial discretion to consider previous conviction which is more than 10 years old; partially concurrent sentences for two crimes arising from same incident)
S v Kido 2014 (3) NR 697 (HC) (concurrent sentences not appropriate for crimes that occurred three hours apart, thereby evidencing separate intentions)
S v Shipanga & Another 2015 (1) NR 141 (SC) (heavy sentences upheld in brutal murder, kidnapping and robbery of foreign tourists)
S v Gariseb 2016 (3) NR 613 (SC) (murder case; whether or not *dolus eventualis* should be treated as a mitigating circumstance depends on the circumstances of the case)
Gaingob v The State [2018] NASC (6 February 2018) (“informal life sentences” which leave no realistic prospect of release are unconstitutional as cruel, degrading and inhuman or degrading punishment and a violation of the right to human dignity in Art 8; at para 74: “[A]n effective sentence of more than 37 and a half years would mean that such offender is worse off than those sentenced to life imprisonment. Such lengthy sentences would not be appropriate and are to be discouraged. Depending upon their length and the circumstances of an offender, they may also infringe an offender’s right to dignity under Art 8.”)

For a critique of this judgment, see Dunia Zongwe & Bernhard Tjatjara. “Strange Maths Behind the Ruling of Very Long Sentences”, *The Namibian*, 20 November 2018.

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)
- S v K* 2011 (1) NR 1 (HC) (youthful offenders cannot hide behind their youthfulness when they commit a serious crime)
- S v Gomaseb* 2014 (1) NR 269 (HC) (sentence imposed on 15-year-old offender upheld; Convention on the Rights of the Child applied).
- S v Jackson & Others* 2014 (3) NR 637 (HC) (youthful offender was a mature person, and so his youthfulness need not play a major role in sentencing)
- S v Tjikuvira* 2015 (4) NR 1105 (HC) (need to enquire into accused's financial circumstances before imposing fine)
- 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)
- S v Nhinda* 2013 (4) NR 909 (NLD) (a working procedure should be established to require that medical reports submitted into evidence should be typed)
- S v BM* 2013 (4) NR 967 (HC) (discrepancy between witness statement made to police and evidence in court affects credibility of witness only where discrepancy is material and where court is satisfied that witness statement correctly reflects what witness said at that time)
- S v Munuma & Others* 2013 (4) NR 1156 (SC) (recusal in criminal trial)
- S v Ameb* 2014 (4) NR 1134 (HC) (approach in criminal appeal re: witness credibility)
- S v Unengu* 2015 (3) NR 777 (HC) (treatment of single witness evidence; treatment of discrepancies between witness statements to police and testimony in court)
- S v Maasdorp* 2015 (4) NR 1109 (HC) (in case involving multiple charges, after guilty plea on some charges, no sentence may be imposed before conclusion of trial as court must have regard to all circumstances of case to determine suitable sentences)
- S v Hangué* 2016 (1) NR 258 (SC) (detailed discussion of defence of temporary non-pathological criminal incapacity due to voluntary intoxication).

Commentary:

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

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- 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.kas.de
- 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.kas.de
- Jamil D Mujuzi, “Sentencing Children to Life Imprisonment and/or to Be Detained at the President’s Pleasure in Eastern and Southern Africa”, 6(2) *The International Journal of Punishment and Sentencing* (2011)
- SK Amoo & Davy Y Kambinda, “Community service orders as part of judicial discretion in the criminal justice system”, *Namibia Law Journal*, Volume 3, Issue 2, 2011
- Frederico Links & Clement Daniels, “Protected Disclosure: Informing the Whistleblowing Debate in Namibia”, Institute for Public Policy Research, 2012, available at www.ippr.org.na (Criminal Procedure Amendment Act 13 of 2010).
- Nico Horn, “S v Acheson and Kleynhans: The First Test for Constitutionalism in Namibia”, *UNAM Students Law Review*, Volume 1, No 1, 2013, available at www.unamlawreview.com (background to amendment of section 61 re: bail)
- SS Terblanche, “Sentencing in Namibia: the main changes since independence”, 26(1) *South African Journal of Criminal Justice* 21 (2013)
- Clever Mapaire, Ndjodi Ndeunyema, Pilisano Masake, Festus Weyulu and Loide Shaparara, *The Law of Pre-Trial Criminal Procedure in Namibia*, Windhoek: UNAM Press, 2014
- Law Reform and Development Commission, Discussion Paper on the Possible Statutory Interventions to Curb the Alarming Spate of Domestic Violence, Murder and Gender Based Violence, LRDC 33, 2014 (bail, sentencing, witness protection).
- Graham Hopwood, “Encouraging the Reporting of Corruption: Principles of Whistleblower Protection”, Institute for Public Policy Research, 2016, available at www.ippr.org.na
- Jamil D Mujuzi, “The admissibility in Namibia of evidence obtained through human rights violations”, 16(2) *African Human Rights Law Journal* 2016, available at www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1996-20962016000200006
- See Ministry of Justice, “Directorate: Public Prosecution – Understanding Bail” (brochure), undated.
- See the entry for the Correctional Service Act 9 of 2012 (CORRECTIONAL FACILITIES) for articles on conditions in prisons and police cells.

Combating of Immoral Practices Act 21 of 1980.

Summary: This Act ([OG 4310](#)) covers the keeping of brothels, various acts related to prostitution, and various other sexual offences.

Amendments: The Married Persons Equality Act 1 of 1996 ([GG 1316](#)), which was brought into force on 15 July 1996 by GN 154/1996 ([GG 1340](#)), amends section 2.

Act 7/2000 ([GG 2325](#)), which was brought into force on 15 June 2000 by GN 141/2000 ([GG 2348](#)), amends sections 1 and 14 (sexual offences with youths).

Section 16 is substituted by the Child Care and Protection Act 3 of 2015 ([GG 5744](#)), which has not yet been brought into force.

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 the definition of “brothel” in section 1, and sections 2, 10 and 12 considered; portions of definition of “brothel” struck down, along with the entirety of subsections 2(2), 12(1) and 12(2))

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; discussed in Kaijata Kanguethi, “*S v Teek: A critical review and analysis*”, *Namibia Law Journal*, Volume 1, Issue 2, 2009, available at www.kas.de).

Commentary:

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 in detailed and summary versions at www.lac.org.na

Legal Assistance Centre, “*Whose Body Is It?*”: *Commercial Sex Work and the Law in Namibia*, 2002, available at www.lac.org.na.

Protection of Fundamental Rights Act 16 of 1988.

Summary: This Act ([OG 5586](#)) provides for the protection of certain fundamental rights.

Amendments: AG 14/1989 ([OG 5726](#)) 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 sections 2(1) and 2(3) invalid in terms of the pre-independence Bill of Fundamental Rights); section 2 was subsequently repealed.

Amnesty Proclamation, AG 13 of 1989.

Summary: This Proclamation ([OG 5725](#)) 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 ([OG 5865](#)) and AG GN 16/1990 ([OG 5894](#)).

Intimidation Proclamation, AG 24 of 1989.

Summary: This Proclamation ([OG 5757](#)) makes it an offence to intimidate any other

person. It repealed the *Intimidation Act 72 of 1982*.

Notices: 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 ([GG 63](#)) consolidates and amends the laws relating to the theft of stock and produce.

Amendments: Act 4/1991 ([GG 201](#)) amends sections 6, 7, 9 and 14. It also inserts section 12A and repeals section 13.

Act 19/1993 ([GG 703](#)), 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 ([GG 3351](#)) 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 ([GG 3565](#)) amends section 1 of the said Act.

Regulations: Regulations are contained in GN 113/1991 ([GG 282](#)).

Notices: 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 not 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)
- S v Undari* 2010 (2) NR 695 (HC) (importance of establishing value of stock for purposes of section 14)
- Daniel v Attorney-General & Others; Peter v Attorney-General & Others* 2011 (1) NR 330 (HC) (portions of section 14 found unconstitutional; section 14(1)(a)(ii): strike words "for a period not less than twenty years"; section 14(1)(b): strike words "for a period not less than thirty years"; reference to "subsection (1)(a) and (b)" in section 14(2) is read down to mean "subsection (1)(a)(i)"); confirmed on appeal in *Prosecutor-General v Daniel & Others* 2017 (3) NR 837 (SC)
- S v Huseb* 2012 (1) NR 130 (HC) (the common-law rule that the execution of a judgment is suspended pending an appeal is not applicable to declaration of constitutional invalidity of legislation, meaning that the declarations of constitutional invalidity in the *Daniels* case were of full force and effect while that the holding of that case in respect of section 14(1)(b) was on appeal)
- S v Lwishi* 2012 (1) NR 325 (HC) (effect of *Daniel* holding on sentencing options and on the application of section 15A; in the absence of a mandatory minimum sentence, first offender sentenced to 10 years imprisonment)
- S v Merero & Another* 2013 (1) NR 25 (HC) (lack of evidence to support conviction of one accused on crime of stock theft in contravention of section 11(1)(a) because magistrate did not act to supplement inadequate cross-examination by prosecutor)
- S v Silas* 2013 (3) NR 760 (HC) (correct formulation of charge)
- S v Tjiveze* 2013 (4) NR 949 (HC) (principles to apply in respect of sentencing in light of decision in *Daniel v Attorney-General & Others; Peter v Attorney-General & Others* 2011 (1) NR 330 (HC), which was subsequently confirmed on appeal in *Prosecutor-General v Daniel & Others*) (SA 15/2011) [2017] NASC 31 (28 July 2017)
- Tjipepa v Minister of Safety and Security & Others* 2015 (4) NR 1133 (HC) (sections 2 and 9(1))
- S v Haufiku & Others* 2016 (1) NR 120 (HC) (High Court ruling in the *Daniels* case which struck down of the minimum sentences in section 14 (1)(a) and (b) emphasised that the decision does not suggest that the crime of stock theft is not a serious offence; the wholly-suspended sentence imposed by the trial court in this case for theft of a cow valued at N\$8000 is thus unjustified; sentence of 6 years' imprisonment substituted).

Commentary: Felicity !Owoses-/Goagos, "Reading down words in a statute, the courts' role, and the place of Parliament: The approach of the Namibian courts", *Namibia Law Journal*, Volume 4, Issue 1, 2012.

Racial Discrimination Prohibition Act 26 of 1991.

Summary: This Act ([GG 328](#)) 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 ([GG 1843](#)), which was brought into force on 22 December 2001 (GN 250/2001, [GG 2670](#)), repeals section 20. Act 26/1998 amends section 11, 14 and 17. The Affirmative Action (Employment) Act 29 of 1998 ([GG 1962](#)), which was brought into force in relevant part on 18 November 1998 (GN 278/1998, [GG 1996](#)), 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.

Commentary:

Nico Horn, "Freedom of expression and hate speech in Namibia", *Namibia Law Journal*, Volume 1, Issue 1, 2009, available at www.kas.de

A Nation Divided: Why do Racism and Other Forms of Discrimination still Persist after Twenty-seven Years of Namibian Independence, Office of the Ombudsman, 2017.

Related international agreements:

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

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

Extradition Act 11 of 1996.

Summary: This Act ([GG 1358](#)) provides for the extradition of persons accused or convicted of certain offences committed within the jurisdiction of certain countries. It was brought into force on 1 August 1996 by GN 199/1996 ([GG 1370](#)), replacing the *Extradition Act 67 of 1962* ([RSA GG 264](#)).

Notices: 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](#)), Proc. 10/2006 ([GG 3711](#)) and Proc. 21/2010 ([GG 4606](#)).

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), 2010 (1) NR 328 (SC) (striking down section 21 of the Act as unconstitutional)

Ayoub v Minister of Justice & Others 2013 (2) NR 301 (SC).

Related international agreements:
SADC Protocol on Extradition, 2002.

Motor Vehicle Theft Act 12 of 1999.

Summary: This Act ([GG 2150](#)) covers the theft of motor vehicles and motor vehicle parts. It was brought into force on 1 April 2000 by 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 17/2004 ([GG 3349](#)) amends sections 1, 2, 6, 8, 9, 13, 15 and 23. The General Law Amendment Act 14 of 2005 ([GG 3565](#)) 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)

S v Kambindu 2016 (4) NR 1104 (HC) (sentencing under section 15).

Combating of Rape Act 8 of 2000.

Summary: This Act ([GG 2326](#)) 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 was brought into force on 15 June 2000 by 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 the 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))

S v Awaseb & Two Others, High Court, Case No. CA 46/2003 (unreported) (offence of attempted rape is a competent verdict on a charge of rape under the 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); guidelines on explanations which must be given to unrepresented accused in respect of sentencing under the Act)

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 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)
- S v Swartz* NAHCMD CC 08/2010 (18 November 2011) (rape of 4-year-old by 16-year-old by means of insertion of finger in vagina; sentence of 8 years, 4 years suspended)
- S v Hengari* 2010 (2) NR 412 (HC) (offence of attempted rape is a competent verdict on a charge of rape under the Act, by virtue of section 18 of *Riotous Assemblies Act 17 of 1956*, and the sentence should be the same as those provided by section 3 for the completed crime of rape)
- S v K* 2011 (1) NR 1 (HC) (rape of 3½-month old baby: “one of the youngest if not the youngest victim ever of rape in this country”; discussion of interests of society in respect of sentencing of 17-year-old offender)
- S v BM* 2013 (4) NR 967 (HC) (traditional healer’s practice of smearing herbs into genitals of complainants and then having sexual intercourse with them constitutes misrepresentation under section 2(1)(h) and is not a “sound medical practice” for purposes of the exception to the

- definition of “sexual act” in section 1)
- S v Ilonga* 2014 (1) 53 (NLD) (no substantial and compelling circumstances found for purposes of minimum sentence in respect of rape of 8-year-old by 21-year-old; notes that not all youthful offenders are immature, and that not all rural and uneducated offenders are unsophisticated; court also considers lasting impact on complainant)
- S v Gomaseb* 2014 (1) NR 269 (HC) (upholds sentence imposed on 15-year-old offender for rape of 5-year-old by means of insertion of finger in vagina (6 years, 3 years suspended); Convention on the Rights of the Child applied)
- S v Ndakolo* 2014 (2) NR (NLD) (sentence of 17 years imprisonment for rape of 9-year-old boy by 19-year-old confirmed; punitive, retributive and deterrent aspects of sentence outweigh personal circumstances of accused; “It is a realistic fact that the imposition of substantial custodial sentences is not the ultimate panacea for this scourge. That does not detract from the fact that the courts should play their role as part of the collective effort to eradicate this violence from society” (at para 12))
- S v SS* 2014 (2) NR 399 (HC) (various procedural issues in rape trial, including explanation to unrepresented accused, formulation of charges, missing rape kit, treatment of evidence of single witness and testimony regarding J88 form)
- S v Ameb* 2014 (4) NR 1134 (HC) (conviction upheld in absence of medical evidence of rape)
- S v Kambatuku* 2014 (4) NR 1134 (HC) (conviction in rape case set aside because accused not afforded effective opportunity to exercise right to legal representation; one reason cited for ruling is seriousness of crime of rape)
- S v Kapure* 2015 (2) NR 394 (HC) (rape of an 81-year-old woman by a 29-year-old man; court’s failure to comply strictly with the *Guirab* guidelines not sufficiently serious to warrant overturning of 17-year sentence imposed for rape)
- S v Libongani* 2015 (2) NR 555 (SC) (21-year-old convicted of raping 10-year-old; charge sheet could not support conviction on rape on more than one occasion; magistrate’s finding of substantial and compelling circumstances unjustified, and aggravating circumstances were not considered; 12-year-sentence substituted with sentence of 17 years)
- S v Unengu* 2015 (3) NR 777 (HC) (treatment of single witness evidence; treatment of discrepancies between witness statements to police and testimony in court)
- S v Gomeb & Others* 2015 (4) NR 1100 (HC) (problems with chain of evidence in rape case)
- S v PV* 2016 (1) NR 77 (HC) (discussion of absence of free will/consent as a coercive circumstance under section 2(2))
- S v LK* 2016 (1) NR 90 (SC) (sentencing for rape of 7-year-old by 20-year-old by insertion of finger in vagina; substantial and compelling circumstances need not be exceptional, but sentence imposed must be weighed against benchmark of original minimum sentence and against fact that legislature particularly extended strong protection to persons vulnerable because of their youth; court upholds departure from minimum sentence of 15 years but substitutes heavier sentence (9 years, 4 years suspended) than that imposed by trial court (7 years, 4 years suspended))
- S v JB* 2016 (1) NR 114 (SC) (sentencing for rape of daughter (age not stated) by her father; time spent in custody awaiting trial cannot constitute

substantial and compelling circumstance; minimum sentence of 15 years imposed on appeal).

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); 2012 (2) NR 613 (SC).

Commentary:

- LLE du Toit, FJ de Jager, A Paizes, A St Q Steen & SE van der Merwe (eds), *Commentary on the Criminal Procedure Act*, Cape Town: Juta Law, 1987 and associated bi-annual *Criminal Justice Review* (both discussed in Nico Horn, “LLE du Toit, FJ de Jager, A Paizes, A St Q Steen & SE van der Merwe, eds, *Commentary on the Criminal Procedure Act*, Cape Town: Juta Law, 1987, Loose-leaf format, 1,700 pages, ISBN 9780702119620”, *Namibia Law Journal*, Volume 5, Issue 1, 2013)
- A Kruger, *Hiemstra’s Criminal Procedure*, Durban: Lexis Nexis, 2008 (discussed in Nico Horn, *Namibia Law Journal*, Volume 2, Issue 1, 2010)
- 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 (ed), *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 (ed), *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, available at www.namiblii.org
- Legal Assistance Centre, *Guide to the Combating of Rape Act*, 2001, available at www.lac.org.na (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
- Legal Assistance Centre, *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act*, 2006, available in detailed and summary versions at www.lac.org.na
- Legal Assistance Centre, *Withdrawn: A Study of Rape Case Withdrawals*, 2009, available at www.lac.org.na
- Allison De Smet & Dianne Hubbard, “Substantial and Compelling Circumstances” in *Rape Cases*, Legal Assistance Centre, 2009, available at www.lac.org.na

Laila Hassan, "Sentencing under the Combating of Rape Act, 2000: The misapplication of judicial discretion", *Namibia Law Journal*, Volume 3, Issue 1, 2011, available at www.kas.de
Law Reform and Development Commission, *Further Report on the Law Pertaining to Rape*, LRDC 18, 2012.

International Co-operation in Criminal Matters Act 9 of 2000.

Summary: This Act ([GG 2327](#)) 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 was brought into force on 15 September 2001 by GN 185/2001 ([GG 2614](#)).

Note that there are two versions of GG 2327. The correct one states at the top: "*This Gazette replaces previous Gazette No. 2327.*"

Amendments: This Act is substantially amended by the Prevention of Organized Crime Act 29 of 2004 ([GG 3363](#)), which was brought into force on 5 May 2009 (GN 77/2009, [GG 4254](#)). 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 by the addition of several other countries by GN 167/2006 ([GG 3714](#)).

Regulations: Regulations for International Co-operation in Criminal Matters are contained in GN 186/2001 ([GG 2614](#)).

Anti-Corruption Act 8 of 2003.

Summary: This Act ([GG 3037](#)) 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 was brought into force on 15 April 2005 by GN 37/2005 ([GG 3411](#)).

Amendments: The Act is amended by Act 10/2016 ([GG 6156](#)), which substitutes sections 11 and 12 and substitutes "Director-General" for "Director" and "Deputy Director-General" for "Deputy Director" throughout. (This necessitates a corresponding amendment to Schedule 3 of the Public Service Act 13 of 1995. See section 54(2) of this Act, as amended.)

Notices: Investigating officers of the Anti-Corruption Commission, already appointed and to be appointed, are appointed as justices of the peace for all magisterial districts in terms of the *Justices of the Peace and Commissioners of Oaths Act 16 of 1963* by GN 33/2012 ([GG 4883](#)).

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))
Prosecutor-General v Lameck & Others 2010 (1) NR 156 (HC) (discussion of search warrant procedure)

S v Paulus 2011 (2) NR 649 (HC) (offence created by section 35(1) requires *mens rea* in form of *dolus*)

Lameck & Another v President of the Republic of Namibia & Others 2012 (1) NR 255

(HC) (striking down the definition of “corruptly” in section 32 as being unconstitutionally vague, leaving the term as used in other sections of the Act to be interpreted by the courts; but finding the definition of “gratification” in section 32 to be wide but not unduly vague).

Simataa v Magistrate of Windhoek & Others 2012 (2) NR 658 (HC) (sections 18, 22, 43)

S v Goabab & Another 2013 (3) 603 (SC) (following on striking down of definition of “corruptly” in section 32 on Constitutional grounds, encourages judicial development and finds that term “corruption” at its lowest threshold in the context of the public service includes “abuse of a public office or position (including the powers and resources associated with it) for personal gain” and that synonyms of “corruptly” include “immorally, wickedly, dissolutely and dishonestly”)

Hailulu v Director of the Anti-Corruption Commission & Others 2014 (1) NR 62 (HC) (sections 18, 43(1) and 28); confirmed on appeal in *Hailulu v Director, Anti-Corruption Commission & Others* 2016 (1) NR 1110 (SC) (section 18 and relationship between Commission and Prosecutor-General).

at para 65: “The fact that appellant has not succeeded in this appeal should not obscure the fact that it is a cause for grave concern that the Commission was found by the High Court to have advanced the cause of the Union and its members in effecting the arrest of appellant. Such conduct is deplorable and appellant is entitled to feel aggrieved by it. The Commission is established as an independent and impartial institution to prevent and punish corruption. It is an institution of national importance pursuing a goal that is central to the wellbeing of Namibia’s democracy. Its conduct must be beyond reproach. The achievement of the Commission’s goal will be imperilled if its reputation is tarnished as it has been in this case by its unlawful conduct. Appellant may of course choose to pursue civil remedies against the Commission. Such remedies, however, even if successful, will not repair the Commission’s reputation. Its reputation will only be repaired if the Commission by its conduct and the conduct of its officials demonstrates unwaveringly that it must and will always act in a manner that is independent, impartial and lawful.”

Commentary:

“Say no way to corruption: Be patriotic!”, Anti-Corruption Commission (undated public education material on the law), available at www.accnamibia.org

Ellison Tjirera & Graham Hopwood, “The ACC in Action: What Does the Track Record Say?”, Institute for Public Policy Research, 2011, available at www.ippr.org.na

Frederico Links & Clement Daniels, “Towards a National Integrity System: Assessing the appropriateness and effectiveness of anti-corruption and related legislation in Namibia”, Institute for Public Policy Research, 2011, available at www.ippr.org.na

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

Graham Hopwood, “Encouraging the Reporting of Corruption: Principles Of Whistleblower Protection”, Institute for Public Policy Research, 2016, available at www.ippr.org.na

Max Weylandt, “The Namibian Anti-Corruption Strategy 2016-2019: An Overview and Analysis”, Institute for Public Policy Research, 2017, available at www.ippr.org.na

Max Weylandt, “The Crime of Illicit Enrichment in Namibia: New Opportunities for Enforcement?”, *Briefing Paper*, Institute for Public Policy Research, June 2017, available at www.ippr.org.na.

***Criminal Procedure Act 25 of 2004.**

Summary: This Act ([GG 3358](#)) governs procedure in criminal proceedings. It repeals all that remains of the Criminal Procedure Ordinance 1963 (sections 300(3) and 370) and the *Criminal Procedure Act 51 of 1977*. It will be brought into force on a date set by the Minister by notice in the *Government Gazette*. However, it should be noted that there is speculation that this Act will not be brought into force, but will rather be replaced with a substituted version.

Regulations: All regulations, rules, notices and other actions made in terms of the *Criminal Procedure Act 51 of 1977* survive under this Act.

Commentary:

“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

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.kas.de

JN Horn & PJ Schwikkard (eds), *Commentary on the Criminal Procedure Act of 2004*, Windhoek: Orumbonde Press, 2007

Law Reform and Development Commission, *The Criminal Procedure Act, 2004 (Act No. 25 of 2004) and Statutory Time Limit for the Rendering of Judgments Workshop*, LRDC 24, 2012.

Prevention of Organised Crime Act 29 of 2004.

Summary: This Act ([GG 3363](#)), often abbreviated as POCA, 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 also substantially amends the International Co-operation in Criminal Matters Act 9 of 2000 ([GG 2327](#)). It was brought into force on 5 May 2009 by GN 77/2009 ([GG 4254](#)).

Amendments: Act 10/2008 ([GG 4191](#)) amends section 1, 11, 77 and 100, and substitutes sections 9 and 10.

The Whistleblower Protection Act 10 of 2017 ([GG 6450](#)), which has not yet been brought into force, amends section 76.

The Act is also amended by Combating of Trafficking in Persons Act 1 of 2018 ([GG 6562](#)), which has not yet been brought into force.

Regulations: Regulations are contained in GN 78/2009 ([GG 4254](#)).

Rules: Rules for High Court proceedings in terms of Chapters 5-6 of the Act are contained in GN 79/2009 ([GG 4254](#)).

Appointments: An accounting officer for the Criminal Assets Recovery Fund is designated in GN 111/2012 ([GG 4941](#)).

Application of law: Persons who give statements or evidence in proceedings under

this Act may be eligible for protection under the Witness Protection Act 11 of 2017 ([GG 6451](#)), which is not yet in force.

Related laws: See the Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014 (TERRORISM) and the Financial Intelligence Act 13 of 2012 (FINANCIAL INSTITUTIONS).

Cases:

Prosecutor-General v Lameck & Others 2009 (2) NR 738 (HC); *Prosecutor-General v Lameck & Others* 2010 (1) NR 156 (HC) (test for confirming provisional preservation order issued under section 51(2))

Ex Parte Prosecutor-General In Re: Application for a Preservation Order in Terms of S 51 of the Prevention of Organised Crime Act 29 of 2004 2012 (1) NR 146 (HC) (no legal representation by unadmitted legal practitioners in section 51 applications)

Lameck & Another v President of the Republic of Namibia & Others 2012 (1) NR 255 (HC) (upholding constitutionality of various provisions of the Act)

Pinto v First National Bank of Namibia Ltd & Another 2013 (1) NR 175 (HC) (effect of POCA on relationship between banker and client)

Shalli v Attorney-General & Another 2013 (3) 613 (HC) (civil forfeiture scheme in Chapter 6 upheld against challenges on three Constitutional grounds)

Prosecutor-General v Kanime 2013 (4) NR 1046 (HC) (application of test for confirming provisional preservation order issued under section 51(2))

Prosecutor-General v Uuyuni 2014 (1) NR 105 (HC), reversed on appeal in *Prosecutor-General v Uuyuni* 2015 (3) NR 886 (SC) (sections 51 and 98; held on appeal that an *ex parte, in camera* proceeding in respect of a preservation of property order is not unconstitutional in terms of Art 12(1), nor in conflict with section 13 of the High Court Act)

Mwashekele v Prosecutor-General 2015 (2) NR 564 (HC) (sections 52 and 60).

S v Lukas (CC 15/2013) [2015] NAHCMD 124 (2 June 2015) (conviction for trafficking in persons under section 15 of Act read with section 1).

Commentary:

Frederico Links & Clement Daniels, "Towards a National Integrity System: Assessing the appropriateness and effectiveness of anti-corruption and related legislation in Namibia", Institute for Public Policy Research, 2011, available at www.ippr.org.na.

Max Weylandt, "The Crime of Illicit Enrichment in Namibia: New Opportunities for Enforcement?", *Briefing Paper*, Institute for Public Policy Research, June 2017, available at www.ippr.org.na.

***Whistleblower Protection Act 10 of 2017.**

Summary: This Act ([GG 6450](#)) is aimed at the protection of persons who report information to officials on improper conduct, which includes amongst other things: criminal activities; violation of the fundamental rights and freedoms protected by the Namibian Constitution; failure to comply with any law; waste, misappropriation or mismanagement of resources which affects the public interest; environmental degradation; endangerment of the health and safety of an individual or community; or the deliberate concealment of such matters. The Act establishes a Whistleblower Protection Office to investigate whistleblower disclosures and complaints of detrimental action taken against the whistleblower or someone related to or associated with the whistleblower. It also provides for a Whistleblower Protection Review

Tribunal which reviews decisions of the Whistleblower Protection Office and is empowered to make determinations on whether detrimental action has been taken against a whistleblower and if so, to provide appropriate remedies. The Act will come into force on a date set by the Minister in the *Government Gazette*.

Regulations: Regulations are authorised by section 78 of the Act, but none have been issued as yet.

Commentary:

Frederico Links & Clement Daniels, “Protected Disclosure: Informing the Whistleblowing Debate in Namibia”, Institute for Public Policy Research, 2012, available at www.ippr.org.na (Criminal Procedure Amendment Act 13 of 2010)

Graham Hopwood, “Encouraging the Reporting of Corruption: Principles of Whistleblower Protection”, Institute for Public Policy Research, 2016, available at www.ippr.org.na

“Comment - Whistleblower Protection Bill” (submission to Parliament), Institute for Public Policy Research, 22 February 2017, available at www.ippr.org.na

“The (Draft) Whistleblower Protection Bill of 2017: A Detailed Summary”, Deloitte Namibia, May 2017, available at <https://www2.deloitte.com/na/en/pages/risk/articles/namibia-whistleblower-protection-act-2017.html>.

***Witness Protection Act 11 of 2017.**

Summary: This Act ([GG 6451](#)) provides for protection measures for witnesses, and persons related to or associated with them, who face potential risk or intimidation because the witness has given evidence or a statement in connection with any of a range of legal proceedings; is a victim of a specified crime; has acted as a whistleblower; or is otherwise in need of protection. The Act also creates a Witness Protection Unit, a Witness Protection Advisory Committee and a Witness Protection Review Tribunal to establish, administer and review issues relating to the Witness Protection Programme.

Regulations: Regulations are authorised by section 80 of the Act, but none have yet been issued. Section 80 also authorises the issue of directives and staff rules, but does not require that these be gazetted.

***Combating of Trafficking in Persons Act 1 of 2018.**

Summary: This Act ([GG 6562](#)) criminalises trafficking in persons and related acts, and provides for measures to protect and assist trafficking victims. It gives effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The Act will be brought into force on a date set by the Minister by notice in the *Government Gazette*. When it comes into force, it will amend the Child Care and Protection Act 3 of 2015 (which is not yet in force) and the Prevention of Organised Crime Act 29 of 2004.

Note: See also Prevention of Organised Crime Act 29 of 2004.

Commentary: “The Combating of Trafficking in Persons Bill”, Institute for Public Policy Research, January 2018, available at www.ippr.org.na.

Relevant international law:

African Charter on the Rights and Welfare of the Child (ACRWC or Children's Charter), 1990

Convention against Transnational Organized Crime (Palermo Convention), 2000

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

Convention on the Rights of the Child, 1989

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

ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999

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:

Proc. 15/1993 ([GG 642](#))

Proc. 11/1994 ([GG 836](#))

Proc. 3/1995 ([GG 1051](#))

Proc. 4/1997 ([GG 1533](#))

Proc. 1/2000 ([GG 2306](#))

Proc. 12/2003 ([GG 2956](#))

Proc. 1/2005 ([GG 3397](#))

Proc. 4/2006 ([GG 3626](#))

Proc. 6/2009 ([GG 4230](#))

Proc. 14/2010 ([GG 4552](#)).

SELECTED CASES

S v Paulo & Another (Attorney-General as amicus curiae) 2013 (2) NR 366 (SC) (procedure for challenging constitutionality of legislation in a criminal case)

COMMENTARY

CS Kahanovitz, "The Namibian Bill of Rights: its implications for the promotion of procedural and substantive justice in criminal cases", Part 1, *Legal Forum*, Volume 2, Issue 4, 1990 and Part 2, *Legal Forum*, Volume 3, Issue 1, 1991

Lynita Conradie, *Law for All, Volume 2: Criminal Law*, Windhoek: Namibia Institute for Democracy / Out of Africa Publishers, 2001

Legal Assistance Centre, *Baby-dumping and Infanticide, Monograph 1*, 2008, available at www.lac.org.na

Legal Assistance Centre, *Stalking: Proposed New Legislation for Namibia, Monograph 3*, 2008, available at www.lac.org.na

Law Reform and Development Commission, *Report on Adjustment of Fines*, LRDC 17, 2010, available at www.namiblii.org.

INTERNATIONAL LAW

African Union Convention on Preventing and Combating Corruption, 2003
Convention against Transnational Organized Crime (Palermo Convention), 2000
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973
International Convention against the Taking of Hostages, 1979
International Convention for the Suppression of Acts of Nuclear Terrorism, 2005
International Convention for the Suppression of Terrorist Bombings, 1997
International Convention for the Suppression of the Financing of Terrorism, 1999
Rome Statute of the International Criminal Court, 1998
SADC Protocol Against Corruption, 2001
 *Agreement Amending the SADC Protocol on Corruption, 2016
SADC Protocol on Extradition, 2002
SADC Protocol on Mutual Legal Assistance in Criminal Matters, 2002
United Nations Convention Against Corruption, 2003

Commentary on relevant international law:

Sabine Höhn, “International justice and reconciliation in Namibia: the ICC submission and public memory”, 109 (436) *African Affairs* 471 (2010).

Graham Hopwood, “Namibia and the UN Convention Against Corruption (UNCAC): A gap analysis on Namibia’s compliance with UNCAC”, completed by the Institute for Public Policy Research and published by the Anti-Corruption Commission and UNDP, 2014, available at www.ippr.org.na

“Asset Declarations in Parliament: Too Little, Too Late?”, Institute for Public Policy Research, October 2015, available at www.ippr.org.na (UN Convention on Corruption)

Frederico Links, “Namibia and the UN Convention against Corruption”, Institute for Public Policy Research, 2016, available at www.ippr.org.na

Max Weylandt, “Asset Declarations in Namibia”, Institute for Public Policy Research, 2016, available at www.ippr.org.na (UN Convention on Corruption)

Max Weylandt, “The Namibian Anti-Corruption Strategy 2016-2019: An Overview and Analysis”, Institute for Public Policy Research, 2017, available at www.ippr.org.na (UN Convention on Corruption).

See also **ALCOHOL, DRUGS AND TOBACCO**.

See also **ARMS AND AMMUNITION**.

See also Civil Aviation Offences Act 10 of 1972 (**AVIATION**).

See also General Law Amendment Ordinance 13 of 1962, section 7 (offence of concealment of birth) (**BIRTHS AND DEATHS**).

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 **EVIDENCE**.

See also Financial Intelligence Act 13 of 2012 on the combating of money-laundering and the financing of terrorism and proliferation (**FINANCIAL INSTITUTIONS**).

See also **GAMBLING**.

See also Trespass Ordinance 3 of 1962 (**LAND AND HOUSING**).

See also Abortion and Sterilization Act 2 of 1975 (**MEDICINE**).

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) (**ROADS AND ROAD TRANSPORTATION**).

See also **TERRORISM**.

CULTURE AND CULTURAL INSTITUTIONS

Cultural Institutions Act 29 of 1969, as amended in South Africa to January 1978.

Summary: This Act ([RSA GG 2344](#)) 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. There were two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Cultural and Education Laws Amendment Act 11 of 1981* ([RSA GG 4524](#)) and the *Education and Culture Laws Amendment Act 28 of 1983* ([RSA GG 8628](#)) – neither of which was made expressly applicable to SWA.

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.

Amendments: The following pre-independence South African amendment was applicable to SWA –

- *Cultural Institutions Amendment Act 93 of 1974* ([RSA GG 4524](#)).

Regulations: Regulations are authorised by section 15 of the Act, and section 17 includes a savings clause that applies to regulations issued under laws repealed by this Act. However, pre-independence regulations have not been researched.

Cultural Promotion Ordinance 9 of 1980.

Summary: This Ordinance ([OG 4159](#)) provides for the promotion of culture in relation to the “white population group”.

Amendments: This Ordinance was amended by the Libraries Ordinance 4 of 1981 ([Official Gazette 2 of the Representative Authority of the Whites](#)), which has since been repealed.

Regulations: Regulations are authorised by the Ordinance, but have not been researched given that this Ordinance is clearly obsolete in independent Namibia.

Notices: Permanent committees are established in GN 28/1981 ([OG 4456](#)).

National Art Gallery of Namibia Act 14 of 2000.

Summary: This Act ([GG 2376](#)) establishes the National Art Gallery of Namibia and provides for its objects. It was brought into force on 10 September 2001 by GN 177/2001 ([GG 2603](#)).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 1, substitutes section 5 and deletes section 7.

Regulations: Regulations are authorised by section 23 of the Act, but none have yet been promulgated.

Notices: 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 ([GG 3424](#)) establishes the National Arts Fund and a Council to control and manage the Fund. It is not yet in force.

Regulations: Regulations are authorised by section 20 of the Act, but none have yet been promulgated.

INTERNATIONAL LAW

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

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

Convention for the Safeguarding of the Intangible Cultural Heritage, 2003

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

SADC Protocol on Culture, Information and Sport, 2001

UNESCO Convention on the Protection of the Underwater Cultural Heritage, 2001

World Heritage Convention, 1972

See also **CUSTOMARY LAW**.

See also State Repudiation (Cultura 2000) Act 32 of 1991 (**FINANCE AND DEVELOPMENT**).

See also **NATIONAL HERITAGE**.

See also Financial Intelligence Act 13 of 2012 (duties of persons or entities trading in art) (**FINANCIAL INSTITUTIONS**).

CURRENCY

Silver Coin (Control of Importation) Proclamation 26 of 1932.

Summary: This Proclamation ([OG 489](#)) controls the importation of silver coins.

Amendments: The Proclamation is amended by Proc. 33/1932 ([OG 493](#)).

Payment of Bank Notes Proclamation 3 of 1933.

Summary: This Proclamation ([OG 498](#)) provides that the holder of a bank note shall not be entitled to be paid in gold. It is probably obsolete since it applies to bank notes issued under the Banks Proclamation, 1930 (Proclamation No. 29 of 1930), which is no longer in force.

Currency and Exchanges Act 9 of 1933, section 9, in part, as amended in South Africa prior to Namibian independence.

Summary: This Act ([SA GG 2098](#)) regulates legal tender, currency, exchange and banking. The only section applicable to Namibia is section 9 which authorises the making of regulations on these matters.

Applicability to SWA: Section 9 of the Act was made applicable to SWA by the addition of subsection 9(6) by *Act 36 of 1950* ([SA GG 4413](#)), with effect from 23 June 1950, which states that “the provisions of this section shall apply also to the Territory of South-West Africa”. The wording of this provision did not seem to make South African amendments to section 9 automatically applicable to SWA after section 9 was applied to SWA in 1950.

Transfer of administration to SWA: The administration of the Act does not appear to have been transferred to South West Africa. No Minister is mentioned in the Act. In any event, since the wording of section 9(6) does not make amendments to the Act automatically applicable to South West Africa, the issue of transfer would not affect the content of the Act.

Amendments: Prior to and contemporaneous with section 9 being applied to SWA, it was amended in South Africa by the following –

- *Finance Act 27 of 1940* ([SA GG 2762](#))
- *Finance Act 43 of 1941* ([SA GG 2911](#))
- *Finance Act 36 of 1950* ([SA GG 4413](#)).

Regulations: Pre-independence regulations have not been comprehensively researched. However, the following pre-independence regulations remain in force and have been amended since independence.

Exchange Control Regulations are contained in RSA GN R.1111/1961 (RSA GG 123, republished in OG 2355), as amended by-
RSA GN R.872/1966 (RSA GG 1458)
RSA GN R.1647/1966 (RSA GG 1570)
RSA GN R.650/1968 (RSA GG 2048)

RSA GN R.355/1976 (RSA GG 4996)
RSA GN R.357/1981 (RSA GG 7415)
RSA Proc R.157/1985 (RSA GG 9926)
RSA GN R.2868/1985 (RSA GG 10054)
RSA GN R.957/1987 (RSA GG 10730)
RSA GN R.1416/1987 (RSA GG 10803)
RSA GN R.224/1988 (RSA GG 11140)
RSA GN R.881/1988 (RSA GG 11287)
RSA GN R.1472/1988 (RSA GG 11434)
GN 111/1995 ([GG 1095](#))
GN 135/2004 ([GG 3232](#))
GN 126/2011 ([GG 4767](#)).

Note that some additional exchange control regulations are contained in RSA GN R.2868/1985 (RSA GG 10054), which also repeals Regulation 4A of the Exchange Control Regulations contained in RSA GN R.1112/1961.

Rules: Orders and Rules made under the **Exchange Control Regulations** are contained in RSA GN R.1112/1961 (RSA GG 123, are published in OG 2355). Pre-independence amendments to these orders and rules have not been researched. They have been amended since independence by -

GN 4/1990 ([GG 24](#))
GN 20/1990 ([GG 49](#))
GN 49/1990 ([GG 76](#))
GN 52/1991 ([GG 196](#))
GN 218/1996 ([GG 1387](#))
GN 19/2005 ([GG 3386](#))
General Notice 251/2007 ([GG 3900](#))
General Notice 254/2009 ([GG 4364](#))
GN 251/2007 ([GG 3900](#))
GN 254/2009 ([GG 4364](#))
General Notice 335/2010 ([GG 4632](#))
General Notice 443/2013 ([GG 5344](#))
General Notice 95/2014 ([GG 5454](#))
General Notice 558/2015 ([GG 5892](#))
General Notice 361/2016 ([GG 6118](#))
General Notice 75/2018 ([GG 6538](#)).

Notices: Authorised dealers in foreign exchange are appointed in General Notice 335/2010 ([GG 4632](#)), General Notice 443/2013 ([GG 5344](#)), General Notice 95/2014 ([GG 5454](#)), General Notice 558/2015 ([GG 5892](#)), General Notice 361/2016 ([GG 6118](#)) and General Notice 75/2018 ([GG 6538](#)).

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)).

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)
S v Mfuka 2013 (4) NR 965 (HC) (Exchange Control Regulations).

Prevention of Counterfeiting of Currency Act 16 of 1965, sections 1-4 and 12, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 1060](#)) sets forth various offences relating to counterfeiting.

Applicability to SWA: Section 11 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.)

Transfer of administration to SWA: It is not clear what transfer proclamation, if any, applied to this Act. However, the sections applicable to South West Africa were not amended in South Africa prior to Namibian independence.

Regulations: The portions of this Act in force in Namibia make no provision for regulations.

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)).

Relevant international law: South Africa became a party to the International Convention for the Suppression of Counterfeiting Currency on 28 August 1967, after the termination of its mandate over South West Africa in 1966. South Africa was not a predecessor state to Namibia, but an illegal occupying power as from that date, thus making it impossible for it to bind Namibia. The UN Institute for Namibia made a few exceptions to this approach for “general conventions of a humanitarian character”, on the basis of the 1971 advisory opinion of the International Court of Justice 1971 – but this Convention was not amongst them. There is, in any case, no indication that South Africa made any attempt to expressly extend the treaty to South West Africa (ie, no declaration and no note under “territorial application”). Accordingly, Namibia does not appear to be a party to the International Convention for the Suppression of Counterfeiting Currency.

NOTES AND COINS

(issued in terms of the Bank of Namibia Act 8 of 1990 ([GG 42](#))
Proclamation 19/1993 ([GG 682](#)) (repealed by Act 11/2004)
General Notice 339/1996 ([GG 1452](#))
General Notice 8/2000 ([GG 2258](#))
General Notice 108/2012 ([GG 4936](#)).

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](#))
General Notice 7/2000 ([GG 2258](#))
General Notice 166/2010 ([GG 4520](#)).

See also Bank of Namibia Act 15 of 1997 (**FINANCIAL INSTITUTIONS**).

CUSTOMARY LAW

Council of Traditional Leaders Act 13 of 1997.

Summary: This Act ([GG 1706](#)) establishes the Council of Traditional Leaders referred to in Article 102(5) of the Namibian Constitution. It requires that any draft legislation pertaining to communal land must be laid before the Council before it is introduced in the National Assembly. It was brought into force on 31 March 1998 by GN 64/1998 ([GG 1828](#)).

Amendments: Act 31/2000 ([GG 2462](#)) amends sections 1, 3 and 14, and substitutes section 12.

Regulations: The Act makes no provision for regulations.

Appointments: Appointments of members of the Council are announced in GN 150/2009 ([GG 4305](#)), GN 171/2014 ([GG 5564](#)) and GN 188/2017 ([GG 6373](#)). The table of chiefs, senior traditional councillors, traditional councillors and community members contained in GN 171/2014 ([GG 5564](#)) is amended by GN 188/2017 ([GG 6373](#)).

Traditional Authorities Act 25 of 2000.

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

Note that there are two versions of GG 2456. The correct one states at the top:
“*This Gazette replace [sic] Gazette No. 2456 of 22 December 2000.*”

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

Regulations concerning remuneration (made under the previous law) are contained in GN 246/1997 ([GG 1741](#)).

Regulations made under the new law are contained in GN 94/2001 ([GG 2532](#)).

Designations of traditional authorities and their office-bearers: Traditional authorities and designations of their office-bearers under the previous law survive under this Act, in terms of section 20. **Designations of traditional authorities and traditional leaders recognised in terms of section 6(2) of the previous Act** are contained in GN 65/1998 ([GG 1828](#)), as corrected by GN 98/1998 ([GG 1855](#)) and as amended by GN 99/1998 ([GG 1855](#)), GN 307/1998 ([GG 2020](#)), GN 113/1999 ([GG 2130](#)) and , GN 61/2001 ([GG 2513](#)). The traditional authorities established under the previous law were as follows (in the order that appear in the amended Government Notice):

1. **Kavango Traditional Authorities**
 - 1.1 Mbunza Traditional Authority
 - 1.2 Sambyu Traditional Authority
 - 1.3 Gciiuku Traditional Authority

- 1.4 Kwangali Traditional Authority
- 1.5 Mbukushu/Hambukushu Traditional Authority

2. Ovambo Traditional Authorities

- 2.1 Ondonga Traditional Authority
- 2.2 Uukwaluudhi Traditional Authority
- 2.3 Ongandjera Traditional Authority
- 2.4 Uukwambi Traditional Authority
- 2.5 Ombalantu Traditional Authority
- 2.6 Uukolonkadhi Traditional Authority
- 2.7 Oukwanyama Traditional Authority

3. Caprivi Traditional Authorities

- 3.1 Masubia Traditional Authority
- 3.2 Mafwe Traditional Authority
- 3.4 Mayeyi Traditional Authority

4. Damara Traditional Authorities

- 4.1 Damara Royal House Traditional Authority

5. Nama Traditional Authorities

- 5.1 Witbooi Traditional Authority
- 5.2 Bondelswart Traditional Authority
- 5.3 Soromaas Traditional Authority
- 5.4 Vaalgras Traditional Authority
- 5.5 Topnaar Traditional Authority
- 5.6 Blouwes Traditional Authority
- 5.7 Afrikaner Traditional Authority
- 5.8 Swartbooi Traditional Authority
- 5.9 Kai-/Kaun Traditional Authority

6. Tswana/Kalahari Traditional Authorities

- 6.1 Batswana Ba Namibia Traditional Authority
- 6.2 Bakgalagadi Traditional Authority

7. Mbanderu Traditional Authority

- 7.1 Mbanderu Traditional Authority

8. Herero Traditional Authorities

- 8.1 Kambazembi Royal House Traditional Authority
- 8.2 Zeraua Traditional Authority
- 8.3 Otjikaoko Traditional Authority
- 8.4 Vita Royal House Traditional Authority

9. San Traditional Authorities

- 9.1 !Kung Traditional Authority
- 9.2 Ju//hoan Traditional Authority

The following designated, or recognised the removal of, persons as **chiefs or heads of traditional communities in terms of the current Act:**

Proc. 2/2002 ([GG 2733](#))

Proc. 3/2002 ([GG 2733](#))

Proc. 60/2004 ([GG 3344](#))

Proc. 61/2004 ([GG 3344](#)), withdrawn by Proc. 13/2017 ([GG 6373](#))

Note that the original [GG 3344](#) was replaced by a subsequent corrected version.

Proc. 9/2006 ([GG 3688](#))

Note that the original [GG 3688](#) was replaced by a subsequent corrected version. The corrected version states at the top: “*This Gazette replace* [sic]

Gazette No. 3688 of 1 September 2006".

Proc. 12/2008 ([GG 4018](#))
Proc. 26/2008 ([GG 4090](#))
Proc. 9/2009 ([GG 4320](#))
Proc. 5/2010 ([GG 4423](#))
Proc. 16/2011 ([GG 4834](#))
Proc. 21/2013 ([GG 5235](#))
Proc. 23/2013 ([GG 5255](#))
Proc. 3/2015 ([GG 5681](#))
Proc. 27/2015 ([GG 5818](#))
Proc. 41/2015 ([GG 5914](#))
Proc. 4/2016 ([GG 6048](#))
Proc. 5/2016 ([GG 6072](#))
Proc. 10/2016 ([GG 6188](#)), withdrawn by Proc. 1/2017 ([GG 6217](#)) and
withdrawn again by Proc. 15/2018 ([GG 6680](#))
Proc. 1/2017 ([GG 6217](#))
Proc. 13/2017 ([GG 6373](#))
Proc. 16/2017 ([GG 6384](#))
Proc. 12/2018 ([GG 6627](#))
Proc. 15/2018 ([GG 6680](#)).

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

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

Note that this Government Notice erroneously states that GN 87/2006 ([GG 3648](#)) amends GN 65/1998. It names senior traditional councillors and traditional councillors, but does not amend GN 65/1998. This mistake is repeated in subsequent notices.

GN 115/2009 ([GG 4263](#))
GN 205/2009 ([GG 4355](#))
GN 43/2010 ([GG 4441](#))
GN 110/2010 ([GG 4490](#))
GN 242/2010 ([GG 4596](#))
GN 33/2011 ([GG 4671](#))
GN 149/2011 ([GG 4783](#))
GN 199/2011 ([GG 4816](#))
GN 86/2012 ([GG 4912](#))
GN 133/2012 ([GG 4952](#))
GN 185/2012 ([GG 5000](#))
GN 283/2012 ([GG 5079](#))
GN 96/2013 ([GG 5174](#))
GN 195/2013 ([GG 5249](#))
GN 317/2013 ([GG 5349](#))
GN 335/2013 ([GG 5373](#))
GN 71/2014 ([GG 5467](#))
GN 119/2014 ([GG 5528](#))
GN 32/2015 ([GG 5681](#))
GN 97/2015 ([GG 5757](#))
GN 171/2015 ([GG 5803](#))
GN 271/2015 ([GG 5878](#))
GN 1/2016 ([GG 5927](#))
GN 138/2016 ([GG 6948](#))

GN 268/2016 ([GG 6166](#))
GN 6/2017 ([GG 6222](#))
GN 147/2017 ([GG 6329](#))
GN 169/2017 ([GG 6356](#))
GN 280/2017 ([GG 6445](#))
GN 35/2018 ([GG 6528](#))
GN 129/2018 ([GG 6637](#))
GN 223/2018 ([GG 6709](#))
GN 304/2018 ([GG 6778](#)).

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

GN 130/2004 ([GG 3218](#))
GN 267/2004 ([GG 3344](#))

Note that the original [GG 3344](#) was replaced by a subsequent corrected version.

GN 87/2006 ([GG 3648](#)).

The current list of traditional authorities (from amended GN 65/1998) is as follows, in the order that they appear in the amended Government Notice:

1. Kavango Traditional Authorities

- 1.1 Mbunza Traditional Authority
- 1.2 Sambyu Traditional Authority
- 1.3 Gciriku Traditional Authority
- 1.4 Kwangali Traditional Authority
- 1.5 Mbukushu/Hambakushu Traditional Authority

2. Ovambo Traditional Authorities

- 2.1 Ondonga Traditional Authority
- 2.2 Uukwaludhi Traditional Authority
- 2.3 Ongandjera Traditional Authority
- 2.4 Uukwambi Traditional Authority
- 2.5 Ombalantu Traditional Authority
- 2.6 Uukolonkhadi Traditional Authority
- 2.7 Oukwanyama Traditional Authority
- 2.8 Ombadja Traditional Authority

3. Caprivi Traditional Authorities

- 3.1 Masubia Traditional Authority
- 3.2 Mafwe Traditional Authority
- 3.3 Mayeyi Traditional Authority
- 3.4 Mashi Traditional Authority

4. Damara Traditional Authorities

- 4.1 /Gobanin Traditional Authority
- 4.2 !Oe-≠An Traditional Authority
- 4.3 /Khomein Traditional Authority
- 4.4 /Gai-o-Daman Traditional Authority
- 4.5 Tsoaxudaman Traditional Authority
- 4.6 ≠Aodaman Traditional Authority
- 4.7 Dâure Daman Traditional Authority

5. Nama Traditional Authorities

- 5.1 Witbooi Traditional Authorities
- 5.2 Bondelswarts Traditional Authority
- 5.3 /Ui-≠Gantes Traditional Authority
- 5.4 Vaalgras Traditional Authority

- 5.5 Topnaar Traditional Authority
- 5.6 Blowes Traditional Authority
- 5.7 Afrikaner Traditional Authority
- 5.8 Swartbooi Traditional Authority
- 5.9 Kai-//Kaun Traditional Authority
- 5.10 Simon Kooper Traditional Authority
- 5.11 /Hai - /Khaua Traditional Authority

6. Tswana/Kalahari Traditional Authorities

- 6.1 Batswana Namibia Traditional Authority
- 6.2 Bakgalagadi Traditional Authority

7. Mbanderu Traditional Authority

- 7.1 Mbanderu Traditional Authority

8. Herero Traditional Authorities

- 8.1 Kambazembi Royal House Traditional Authority
- 8.2 Zeraua Traditional Authority
- 8.3 Otjikako Traditional Authority
- 8.4 Vita Royal House Traditional Authority
- 8.5 Maharero Royal House Traditional Authority
- 8.6 Kakurukouje Traditional Authority

9. San Traditional Authorities

- 9.1 !Kung Traditional Authority
- 9.2 Ju/'hoan Traditional Authority
- 9.3 Hai-//om Traditional Authority.

Cases:

- Mbanderu Traditional Authority & Another v Kahuure & Others* 2008 (1) NR 55 (SC)
- Adcock v Mbambo* (A 87/2010) [2012] NAHCMD 35 (24 October 2012) (jurisdiction of traditional court in terms of section 3 read together with section 1: definitions of “member” and “traditional community”)
- Kahuure & Another in re Nguvauva v Minister of Regional and Local Government and Housing and Rural Development & Others* 2013 (4) NR 932 (SC) (discusses procedure for designation of Chief of Ovambanderu Traditional Community)
- Nguvauva v Minister of Regional and Local Government and Housing and Rural Development & Others* 2015 (1) NR 220 (HC) (section 5)
- Hikumwah & Others v Nelumbu & Others* 2015 (4) NR 955 (HC) (traditional authority as administrative body in terms of Act).

Commentary:

- Heike Becker, “‘New Things After Independence’: Gender and Traditional Authorities in Postcolonial Namibia”, 32 (1) *Journal of Southern African Studies* 29 (2006)
- Manfred O Hinz, “Traditional governance and African customary law: Comparative observations from a Namibian perspective” in N Horn & A Bösl (eds), *Human Rights and the Rule of Law in Namibia*, Macmillan Namibia, 2008, available at www.kas.de
- Law Reform and Development Commission, *Working Paper on Issues related to the Traditional Authorities in the Ovawambo Communities*, LRDC 22, 2012, available at www.namiblii.org
- Manfred O Hinz, “The Traditional Authorities Act and the ‘mushrooming’ of traditional authorities”, *Namibia Law Journal*, Volume 8, Issue 1, 2016.

COMMISSIONS

Commission of Inquiry into Matters relating to Chiefs, Headmen and other Traditional and Tribal Leaders and Authorities (Proc. 3/1991, [GG 176](#))

See also GN 32/1991 ([GG 175](#)).

SELECTED CASES

Kaputuaza & Another v Executive Committee of the Administration for the Hereros & Others 1984 (4) SA 295 (SWA)

Moraliswani v Mamili, Supreme Court of SWA, 12 June 1985 (unreported judgement).

Ndisiro v Mbanderu Community Authority & Others, 1986 (2) SA 532 (SWA).

Pack v Muundjua & Others / Tjipetekera v Muundjua & Others, 1989 (3) SA 556 (SWA).

Kakujaha v Tribal Court of Okahitua, Supreme Court of South West Africa, 20 March 1989 (unreported judgement).

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

S v Sipula 1994 NR 41 (HC).

S v Haulondjamba 1993 NR 103 (HC).

Makono v Nguvauva 2003 NR 138 (HC) (widow inheritance)

LM v JM & Others 2016 (2) NR 603 (HC) (in respect of constitutional challenge to customary law, need to tender evidence to establish customary law and to establish unconstitutionality).

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MO Hinz (assisted by S Joas), *Developing Customary Law: Self-Styled Laws of Namibian Communities*, CASS Paper No 31, Windhoek, Centre for Applied Social Studies, 1995
Law Reform and Development Commission, *The Ascertainment of Customary Law and the Methodological Aspects of Research into Customary Law: Proceedings of Workshop*, LRDC 2, 1995

TW Bennett, *Customary Law and the Constitution*, Law Reform and Development Commission, LRDC 3, 1996

MO Hinz, "Family law in Namibia: The challenge of customary and constitutional law" in J Eeklelaar & TN Hlapo (eds), *The changing family: Family forms and family law*, Oxford: Hart, 1998

Legal Assistance Centre, *Proposals for Law Reform on the Recognition of Customary Marriages*, 1999

Christiaan Keulder, "Traditional Leaders" in C Keulder (ed), *State, Society and Democracy: A Reader in Namibian Politics*, Konrad Adenauer Stiftung, 2000, reprinted 2010, available at www.kas.de

MO Hinz (assisted by S Joas), *Customary law in Namibia: Development and Perspective*, CASS Paper No 50, eighth edition, 2003, Windhoek, Centre for Applied Social Studies, 2003

D LeBeau, et al, *Women's Property and Inheritance Rights in Namibia*. Windhoek: Gender Training and Research Programme and University of Namibia, 2004

Law Reform and Development Commission, *Report on Customary Law Marriages*, LRDC 12, 2004, available at www.namiblii.org

H Becker, "'New Things after Independence': Gender and Traditional Authorities in Postcolonial Namibia", *Journal of Southern African Studies*, 32 (1): 29-48, 2006

MO Hinz & JW Kwenani, "Ascertainment of Customary Law" in Manfred O Hinz and Helgard K Patemann (eds), *The Shade of New Leaves: Governance in Traditional Authority – A Southern African Perspective*, Windhoek: Centre for Applied Social Studies, 2006.

- OC Ruppel (ed), *Women and custom in Namibia: Cultural practice versus gender equality?*, Konrad Adenauer Stiftung, 2008, available at www.kas.de (reviewed by Chuma Himonga in *Namibia Law Journal*, Volume 1, Issue 1, 2009, available at www.kas.de).
- Manfred O Hinz, “Phase 1 of the Namibian Ascertainment of Customary Law Project to be completed soon”, *Namibia Law Journal*, Volume 1, Issue 2, 2009, available at www.kas.de
- OC Ruppel, “Women’s rights and customary law in Namibia” 3(2) *Journal of African and International Law* 259 (2010).
- Manfred O Hinz (ed), assisted by Ndateelela E Namwoonde, *Customary Law Ascertained, Volume 1: The Customary Law of the Owambo, Kavango and Caprivi Communities of Namibia*, Windhoek: Namibia Scientific Society in association with the Human Rights and Documentation Centre, Faculty of Law, University of Namibia, 2010 (reviewed by Nico Horn in *Namibia Law Journal*, Volume 3, Issue 1, 2011, available at www.kas.de)
- Manfred O Hinz (ed), assisted by Alexander Gairiseb, *Customary Law Ascertained, Volume 2: The Customary Law of the Bakgalagari, Batswana and Damara Communities of Namibia*, Windhoek: UNAM Press, 2013
- Manfred O Hinz (ed), assisted by Alexander Gairiseb, *Customary Law Ascertained, Volume 3: The Customary Law of the Nama, Ovaherero and Ovambanderu, and San Communities of Namibia*, Windhoek: UNAM Press, 2015 (available at http://sandbox.unam.edu.na/bitstream/handle/11070/1821/Hinz_Customary_2015.pdf?sequence=1)
- Manfred O Hinz, “The ascertainment of customary law: What is *ascertainment of customary law* and what is it for? The experience of the Customary Law Ascertainment Project in Namibia”, 2 (7) *Oñati Socio-legal Series* 85, 2012, available at <http://opo.iisj.net/index.php/osls/article/view/181/67>
- Manfred O Hinz, “The ascertainment of Namibian customary law completed: What has been done and what lies ahead” in Nico Horn & Manfred O Hinz, eds, *Beyond a Quarter Century of Constitutional Democracy: Process and Progress in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2017.

See also Community Courts Act 10 of 2003 (**COURTS**).

See also Native Administration Proclamation 15 of 1928 (**‘BLACKS’**).

See also Communal Land Reform Act 5 of 2002 (**LAND AND HOUSING**).

CUSTOMS AND EXCISE

Customs and Excise Act 20 of 1998.

Summary: This Act ([GG 1900](#)) repeals the *Customs and Excise Act 91 of 1964* (RSA GG 866), which replaced the *Customs Act 55 of 1955* and the *Excise Act 62 of 1956*. This Act was brought into force on 1 August 1998 by GN 186/1998 ([GG 1918](#)).

Amendments: The Act is substantially amended by Act 17/2016 ([GG 6203](#)), which was brought into force on 31 March 2017 by GN 74/2017 ([GG 6277](#)).

Schedule 1 is amended by GN 208/1998 ([GG 1943](#)), GN 209/1998 ([GG 1943](#)), GN 71/1999 ([GG 2092](#)), GN 93/2000 ([GG 2305](#)), GN 187/2000 ([GG 2386](#)) (which also implements Article 6 of the Customs Union Agreement, 1969), GN 116/2001 ([GG 2548](#)) (which deals with the SADC Protocol on Trade and has only been brought into force in part), GN 13/2002 ([GG 2688](#)), GN 61/2004 ([GG 3181](#)) (as amended by GN 145/2004 ([GG 3237](#))), GN 115/2004 ([GG 3207](#)), GN 116/2004 ([GG 3207](#)), GN 146/2007 ([GG 3896](#)), GN 213/2013 ([GG 5264](#)), GN 246/2013 ([GG 5286](#)), GN 307/2013 ([GG 5344](#)), GN 198/2014 ([GG 5590](#)), GN 213/2013 ([GG 5264](#)), GN 198/2014 ([GG 5590](#)) and GN 66/2015 ([GG 5724](#)), GN 100/2016 ([GG 6019](#)), GN 101/2016 ([GG 6019](#)), GN 219/2016 ([GG 6125](#)), GN 230/2016 ([GG 6132](#)), GN 300/2016 ([GG 6198](#)), GN 93/2017 ([GG 6289](#)), GN 302/2017 ([GG 6472](#)) GN 77/2018 ([GG 6574](#)) and GN 156/2018 ([GG 6666](#)).

GN 213/2013 ([GG 5264](#)) temporarily withdraws a levy imposed by GN 61/2004 ([GG 3181](#)), and GN 198/2014 ([GG 5590](#)) re-instates it.

Schedule 1 was also amended by GN 14/2002 ([GG 2688](#)). However, this Government Notice was to be brought into force by notice in the *Gazette* and no such notice has been located.

Schedule 1 was also amended by GN 61/2007 ([GG 3817](#)), which relates to the implementation of the Customs Union Agreement 2002, but GN 61/2007 was withdrawn by GN 97/2008 ([GG 4038](#)).

GN 307/2013 cites GN 147/2007 as a previous amendment, but this should be GN 146/2007.

Schedule 5 is amended by GN 93/2000 ([GG 2305](#)).

Regulations: Regulations made under the *Customs Act 55 of 1955* survived in terms of section 121(2) of the *Customs and Excise Act 91 of 1964*. Regulations under the *Customs and Excise Act 91 of 1964* remain in force in terms of section 131(2) of the present Act. However, pre-independence regulations have not been researched.

Regulations concerning Export Processing Zones are contained in GN 87/1996 ([GG 1298](#)).

Rules: 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](#)).

Notices: 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](#)).

Notification of taxation proposals for additional duties in respect of the importation of Portland cement is contained in GN 208 /2012 ([GG 2015](#)), but this notice appears to be invalid.

A previous notification of taxation proposals for additional duties in respect of the importation of Portland cement was issued by the Minister, but this notice was declared invalid by *Jack's Trading CC v Minister of Finance & Another* 2013 (2) NR 480 (HC) on the grounds that it was not properly issued in accordance with section 65 of the Act, because it was not promulgated before being tabled in the National Assembly.

In an interlocutory application by Jack's Trading CC to give effect to the Court order issued in this case while an appeal against that judgment by the Ministry of Finance was pending, an intervening party (Ohorongo Cement) sought rescission of the judgment. This application for rescission was considered in *Jack's Trading CC v Minister of Finance & Another (Ohorongo Cement (Pty) Ltd Intervening)* 2013 (2) NR 491 (HC), where the Court discussed additional factual information about the Notice submitted to the Court by the Minister of Finance.

According to the second case (2013 (2) NR 491 (HC)), the Minister signed a notice dated 27 July 2012 on the proposed cement duties and forwarded it to the Directorate Legal Drafting for promulgation in the *Government Gazette*. The legal drafters advised the Minister that the effective date in the notice should have been 18 April 2012, which was the date when the taxation proposal was tabled in the National Assembly. The Notice was amended by the Directorate Legal Drafting and promulgated in the *Government Gazette* on 15 August 2012, with a commencement date of 18 April 2012.

The second notice was dated 18 July 2012, which the Court found odd since the Minister stated in an affidavit that the advice on the need to amend the first notice came only after this notice was signed on 27 July 2012 and delivered to the legal drafters for promulgation.

The notice which was attacked in the case *Jack's Trading CC v Minister of Finance & Another* 2013 (2) NR 480 (HC) was the first one, which was signed by the Minister but never promulgated. However, even though judgment was reserved in this case on 15 August 2012 and delivered on 31 August 2012, the Court was never informed of the second notice, which was published in the *Gazette* on 15 August 2012. Nevertheless, the application for rescission was denied on the grounds that there was no error in the court's judgment on the basis of the facts placed before it at the time (*Jack's Trading CC v Minister of Finance & Another (Ohorongo Cement (Pty) Ltd Intervening)* 2013 (2) NR 491 (HC)).

It should be noted that the reasoning applied by the Court to the first notice would be equally applicable to the second notice which was actually promulgated, since it was also promulgated *after* being tabled in the National Assembly instead of *prior to* such tabling as section 65 of the Act requires; "the wording of s 65 construed as a whole requires that the promulgation of the notice is to precede the tabling of the proposal" (2013 (2) NR 480 (HC) at para 28).

It should also be noted that the second case (2013 (2) NR 491 (HC) at para 12) states that the second notice appeared in the *Government Gazette* of 15 August 2012 as Government Notice 298 of 2012. Government Notice 298 of 2012 in fact appeared on 14 December 2012 and was the promulgation of the Prevention and Combating of Terrorist Activities Act 12 of 2012. However, the relevant notice on Portland cement appears as Government Notice 208 of 2012 in *Government Gazette* 5015 dated 15 August 2012.

An environmental duty on certain goods and on carbon dioxide (CO²) emissions of specified vehicles is imposed by GN 100/2016 ([GG 6019](#)).

Application of law: The Financial Intelligence Act 13 of 2012 ([GG 5096](#)) gives certain powers to customs and excise officers.

The administration of this Act is affected by the Namibia Revenue Agency Act 12 of 2017 ([GG 6486](#)).

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))

Konga Clearing Agencies CC v Minister of Finance 2011 (2) NR 623 (absence of *locus standi* of clearing agent, with reference to sections 108-110)

Jack's Trading CC v Minister of Finance & Another 2013 (2) NR 480 (HC), *Jack's Trading CC v Minister of Finance & Another (Ohorongo Cement (Pty) Ltd Intervening)* 2013 (2) NR 491 (HC) (section 65)

Woker Freight Services (Pty) Ltd v Commissioner for Customs and Excise & Others 2015 (1) NR 206 (HC) (sections 18(2), 41(6) and 73)

Woker Freight Services (Pty) Ltd v Commissioner for Customs and Excise & Others 2016 (2) NR 450 (SC) (sections 1 (“importer” and “exporter”), 17, 18 and 110).

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Oliver C Ruppel, “SACU 100: Reflections on the world’s oldest customs union”, *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.kas.de

See also the yearbooks entitled *Monitoring Regional Integration in Southern Africa*, Windhoek: Trade Law Centre for Southern Africa/ Konrad Adenauer Stiftung, annual editions from 2005 available at www.tralac.org/category/tralac-books.

INTERNATIONAL LAW

*****Agreement among the Governments of the Democratic Republic of Congo, the Republic of Namibia and the Republic of Zambia on the Establishment of the Walvis Bay-Ndola-Lubumbashi Development Corridor (WBNLDC), 2010***

Convention Establishing a Customs Co-operation Council, 1950

International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention), 1973, as amended 1999

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

Free Trade Agreement between the European Free Trade Association (EFTA) and the Southern African Customs Union (SACU), 2006

See also **IMPORT AND EXPORT.**

DAMAGES

Apportionment of Damages Act 34 of 1956, as amended in South Africa to November 1979.

Summary: This Act ([SA GG 5689](#)) apportions damages in cases of contributory negligence or joint or several liability.

Applicability to SWA: Section 6 originally stated “This Act shall apply also in the territory of South-West Africa.” After amendment by *Act 58 of 1971*, 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), dated 12 November 1979, as amended. (Note that it is one of the laws listed in the South African *Justice Laws Rationalisation Act 18 of 1996* ([RSA GG 17129](#)).) There was only one South African amending act after the date of transfer – the *Matrimonial Property Act 88 of 1984* ([RSA GG 9322](#)) – which was not made expressly applicable to SWA.

Amendments: Assuming that the justice transfer proclamation was indeed applicable, the only SA amendment which applied to South West Africa was the *Apportionment of Damages Amendment Act 58 of 1971* ([RSA GG 3150](#)).

Application: Section 37 of the Motor Vehicle Accident Fund Act 10 of 2007 ([GG 3970](#)) 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 ([RSA GG 2305](#)) amends the law regarding assessment of damages for loss of support as a result of a person’s death.

Transfer proclamation: Although this Act makes no reference to any minister, by virtue of its subject matter it probably fell under the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979, as amended. In any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Application: Section 37 of the Motor Vehicle Accident 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 ([OG 63](#)) 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 ([OG 2636](#)).

Payment of Loans Proclamation 28 of 1933.

Summary: This Proclamation ([OG 538](#)) 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 ([RSA GG 2119](#)) provides for the limitation and disclosure of finance charges on loan and credit transactions and sets maximum rates of interest for loans. It was originally called the “*Limitation and Disclosure of Finance Charges Act*”, but the name was changed to “*Usury Act*” by the *Limitation and Disclosure of Finance Charges Amendment Act 42 of 1986*.

Applicability to SWA: Section 1, as amended by *Act 62 of 1974*, defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”. Section 19(1), which was in the original Act, 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.”

Transfer of administration to SWA: This Act was administered by the Minister of Finance. Acts administered by the Minister of Finance in the Department of Inland Revenue were transferred to South West Africa by the Executive Powers (Inland Revenue) Transfer Proclamation, AG 18 of 1978, but this Act fell under the Department of Finance, as indicated by various government notices issued under the Act. See, for example, Government Notice R.2019/1974 ([RSA GG 4475](#)) and Government Notice R. 2457/1982 ([RSA GG 8446](#)). There was no transfer proclamation for laws administered by the Minister of Finance in the Department of Finance.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Limitation and Disclosure of Finance Charges Amendment Act 76 of 1970* ([RSA GG 2873](#))
- *Limitation and Disclosure of Finance Charges Amendment Act 62 of 1974* ([RSA GG 4457](#))
- *Limitation and Disclosure of Finance Charges Amendment Act 90 of 1980* ([RSA GG 7143](#))

- *Limitation and Disclosure of Finance Charges Amendment Act 42 of 1986* ([RSA GG 10216](#))
- *Usury Amendment Act 62 of 1987* ([RSA GG 10929](#))
- *Usury Amendment Act 100 of 1988* ([RSA GG 11528](#))
- *Usury Amendment Act 91 of 1989* ([RSA GG 11943](#)).

The Act was also amended in South Africa by the *Usury Amendment Act 67 of 1990* ([RSA GG 12566](#)), but this amendment came into force only on 29 June 1990 (its date of publication), which was after the date of Namibian independence.

After independence, section 15(e) of the Act was repealed by Act 1/2000 ([GG 2269](#)).

The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 ([GG 2529](#)) amends section 1.

Act 6/2018 ([GG 6663](#)), which was brought into force on 15 October 2018 by GN 260/2018 ([GG 6736](#)), amends section 1 and inserts section 2C.

Act 6/2018 states that it amends section 2 by the insertion of section 2C, but section 2C appears to be intended for insertion as an independent section; the Act already contains independent sections 2A and 2B.

Regulations: Regulations are authorised by section 16 of the Act, but pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Notices on finance charges: Maximum annual finance charge rates are announced in government notices from time to time, with each one withdrawing or repealing the previous one. See, since independence, 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](#)), General Notice 196/2004 ([GG 3266](#)) and General Notice 572/2018 ([GG 6736](#)).

Maximum finance charge rates for microlending transactions are determined in General Notice 571/2018 ([GG 6736](#)).

Notices on exemptions: 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](#)). However, GN 189/2004 was repealed by GN 262/2018 ([GG 6736](#)) when the Microlending Act 7 of 2018 came into force.

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 ([RSA GG 3149](#)) 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 have made amendments to the Act in South Africa automatically applicable to SWA, but there were in any event no amendments to the Act in South Africa prior to Namibian independence.

Transfer of administration to SWA: The administration of the Act does not appear to have been transferred to South West Africa. In any event, the issue of transfer is not relevant to the content of the Act since there were no amendments to the Act in South Africa prior to Namibian independence.

Amendments: The Bills of Exchange Act 22 of 2003 ([GG 3121](#)) repeals the reference to the Bills of Exchange Act 34 of 1964 in the Schedule to the Act.

Regulations: The Act makes no provision for regulations.

Prescribed Rate of Interest Act 55 of 1975, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 4755](#)) 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.”

Transfer of administration to SWA: It is not clear whether the administration of this Act was transferred to SWA. Section 1(2) of the Act gives the Minister of Justice power to prescribe rates of interest, suggesting that the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979, as amended, may have been applicable. In any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Regulations: The Act makes no provision for regulations.

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.”

Transfer of administration to SWA: This Act post-dated the transfer proclamations.

Amendments: The following pre-independence South African amendment was applicable to SWA –

- *Financial Institutions Amendment Act 51 of 1988* ([RSA GG 11313](#)).

Regulations: The Act makes no provision for regulations.

See also **FINANCIAL INSTITUTIONS**.

DEEDS

Deeds Registries Act 47 of 1937, as amended in South Africa to November 1979.

Summary: This Act ([SA GG 2443](#)) regulates the registration of deeds. It replaced the Deeds Registry Proclamation 37 of 1939 in SWA.

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 South West Africa by the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated 12 November 1979. Section 3(1)(b) of that Proclamation as originally enacted excluded section 2, section 103(2) and the references to the Republic in the Act from the operation of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977 (the “General Proclamation”). Section 2(a)(i) of the original transfer proclamation provided that the references to the Government of the Republic in sections 3(1)(c) and (l) and in section 99 of the Act were to be construed as *including* a reference to the Administrator-General.

The Executive Powers (Justice) Transfer Amendment Proclamation, AG 32 of 1985 ([OG 5060](#)) – which was deemed to have come into force on 1 June 1984 and which amended both the Executive Powers (Justice) Transfer Proclamation and the *Deeds Registries Act 47 of 1937* – states in section 1(2): “In the application of the provisions of the Executive Powers Transfer (General Provisions) Proclamation, 1977 (Proclamation AG. 7 of 1977) (hereinafter referred to as the General Proclamation) in respect of sections 2, 9, 45, 45*bis*, 48 and 102 of the Deeds Registries Act, 1937 (Act 47 of 1937), this Proclamation shall be deemed to be a transfer proclamation as defined in section 1 of the General Proclamation, and the reference in section 5 of the General Proclamation to a law referred to in section 2 of that Proclamation, shall be construed as a reference to sections 2, 9, 45, 45*bis*, 48 and 102 of the said Deeds Registries Act, 1937”. All of the sections of the *Deeds Registries Act 47 of 1937* cited in AG 32 of 1985 were amended by that Proclamation.

Section 3(1)(b) of the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, as amended by AG 32 of 1985, 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 – meaning that prior to independence these terms retained the meaning given to them in section 102 of the Act (both South Africa and South West Africa). Section 2(a)(i) of the transfer proclamation as amended continued to provide that the references to the Government of the Republic in sections 3(1)(c) and (l) and in section 99 of the Act were to be construed as *including* a reference to the Administrator-General.

Section 2, which provides for the appointment of registrars, was initially excluded from the operation of section 3(1) of the General Proclamation, but this exclusion was removed by AG 32 of 1985, which also substituted section 2 in its entirety. The provisions of the Act relating to the Deeds Registry Regulation Board were initially 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, section 9 of the Act – which pertains to this Board – was explicitly transferred to South West Africa by AG 32 of 1985, which also amended the provisions of section 9 on the constitution of the Board. The purpose of citing other specific sections of the Act in AG 32 of 1985, after the administration of the Act as a whole had already been transferred to South West Africa, is not clear.

None of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Deeds Registries Amendment Act 44 of 1980* ([RSA GG 6991](#)), the *Deeds Registries Amendment Act 27 of 1982* ([RSA GG 8079](#)), the *Deeds Registries Amendment Act 62 of 1984* ([RSA GG 9241](#)), the *Matrimonial Property Act 88 of 1984* ([RSA GG 9322](#)), the *Black Communities Development Amendment Act 74 of 1986* ([RSA GG 10333](#)), the *Deeds Registries Amendment Act 75 of 1987* ([RSA GG 10952](#)), the *Marriage and Matrimonial Property Law Amendment Act 3 of 1988* ([RSA GG 11171](#)) and the *Deeds Registries Amendment Act 24 of 1989* ([RSA GG 11777](#)) – were applicable to South West Africa because none were made expressly so applicable.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Deeds Registries Amendment Act 15 of 1953* ([SA GG 5120](#))
- *Matrimonial Affairs Act 37 of 1953* ([SA GG 5170](#))
- *General Law Amendment Act 50 of 1956* ([SA GG 5703](#))
- *Deeds Registries Amendment Act 43 of 1957* ([SA GG 5887](#))
- *Deeds Registries Amendment Act 43 of 1962* ([RSA GG 236](#))
- *General Law Amendment Act 80 of 1964* ([RSA GG 829](#))
- *Deeds Registries Amendment Act 87 of 1965* ([RSA GG 1163](#))
- *Mining Titles Registration Act 16 of 1967* ([RSA GG 1670](#))
- *Deeds Registries Amendment Act 61 of 1969* ([RSA GG 2412](#))
- *Deeds Registries Amendment Act 3 of 1972* ([RSA GG 3404](#))
- *Land Survey Amendment Act 71 of 1972* ([RSA GG 3561](#))
- *General Law Amendment Act 62 of 1973* ([RSA GG 3947](#))
- *General Law Amendment Act 29 of 1974* ([RSA GG 4220](#))
- *General Law Amendment Act 57 of 1975* ([RSA GG 4760](#))
- *Expropriation Act 63 of 1975* ([RSA GG 4780](#))
- *Registration of Deeds in Rehoboth Act 93 of 1976* ([RSA GG 5183](#))
- *Deeds Registries Amendment Act 41 of 1977* ([RSA GG 5505](#))
- *Deeds Registries Amendment Act 92 of 1978* ([RSA GG 6074](#)).

The Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends certain terminology.

The Executive Powers (Justice) Transfer Amendment Proclamation, AG 32/1985 ([OG 5060](#)), amends sections 2, 9, 45, 45bis, 48 and 102 of the Act.

Act 26/1985 ([OG 5146](#)), which is brought into force by AG 21/1986 ([OG 5184](#)), makes substantial amendments to the Act.

Act 2/1996 ([GG 1323](#)), 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 ([GG 1465](#)) amends sections 17 and 45^{ter} of the Act, as well as the short title of the Deeds Registries Amendment Act 2 of 1996 (which initially gave itself the short title of the “Deeds Registries Amendment Act, 1995” instead of the “Deeds Registries Amendment Act, 1996”).

Regulations: Pre-independence regulations have not been researched. However, a comprehensive new set of regulations was promulgated in GN 180/1996 ([GG 1343](#)), as corrected by GN 193/1996 ([GG 1361](#)) and by GN 312/1996 ([GG 1457](#)) and amended by GN 36/2004 ([GG 3155](#)), GN 77/2007 ([GG 3824](#)) (Annexure I) and GN 137/2009 ([GG 4278](#)) (Regulation 8). The Government Notice which issues the 1996 regulations repeals the regulations published in RSA GN 225/1964, RSA GN 207/1967, RSA GN R.437/1973, RSA GN R.2578/1978, RSA GN R.127/1979, AG 110/1982, AG 48/1983 and AG 48/1986.

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)

Grobler v Commercial Bank of Namibia Ltd 2010 (1) NR 313 (SC) (discusses section 16, as amended by the *RSA General Law Amendment Act 80 of 1964*)

Trustco Insurance Ltd t/a Legal Shield Namibia & Another v Deeds Registries Regulation Board & Others 2010 (2) NR 565 (HC), 2011 (2) NR 726 (SC) (regulations setting tariff of fees not *ultra vires* section 10(1)(c) of Act and not in violation of Art 21(1)(j) or Art 18 of Constitution).

Registration of Deeds in Rehoboth Act 93 of 1976, as amended in South Africa to September 1977.

Summary: This Act ([RSA GG 5183](#)) 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), 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: Act 8/1981 of the Kaptein's Council and Legislative Council of Rehoboth (*Official Gazette of Rehoboth* No. 55, dated 7 April 1982) amends section 10 by inserting subsection (3)*bis*.

Act 35/1994 ([GG 995](#)) amends sections 1, 13, 48, 49 and 52.

Act 8/1996 ([GG 1352](#)), 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 10*bis* (endorsement of deeds forming part of joint estate of marriage).

Regulations: Pre-independence regulations have not been comprehensively researched. However, regulations are contained in RSA GN R.2372/1976 (RSA GG 5347), as amended by AG GN 28/1978 (OG 3785) 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).

*Deeds Registries Act 14 of 2015.

Summary: This Act ([GG 5913](#)) regulates the registration of deeds. It repeals the *Deeds Registries Act 47 of 1937* and the *Registration of Deeds in Rehoboth Act 93 of 1976*. It will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Regulations: Regulations issued under the repealed Acts survive in terms of section 95(11). Pre-independence regulations issued under the repealed Acts have not been comprehensively researched. However, regulations were issued under the *Deeds Registries Act 47 of 1937* in GN 180/1996 ([GG 1343](#)), as corrected by GN 193/1996 ([GG 1361](#)) and by GN 312/1996 ([GG 1457](#)) and amended by GN 36/2004 ([GG 3155](#)), GN 77/2007 ([GG 3824](#)) (Annexure I) and GN 137/2009 ([GG 4278](#)) (Regulation 8). Regulations were also issued under the *Registration of Deeds in Rehoboth Act 93 of 1976* 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:

These cases concern the *Deeds Registries Act 47 of 1937* –

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)

Grobler v Commercial Bank of Namibia Ltd 2010 (1) NR 313 (SC) (discusses section 16, as amended by the *RSA General Law Amendment Act 80 of 1964*)

Trustco Insurance Ltd t/a Legal Shield Namibia & Another v Deeds Registries Regulation Board & Others 2010 (2) NR 565 (HC), 2011 (2) NR 726 (SC) (regulations setting tariff of fees not *ultra vires* section 10(1)(c) of Act and not in violation of Art 21(1)(j) or Art 18 of Constitution).

These cases concern the *Registration of Deeds in Rehoboth Act 93 of 1976* –

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).

See also **LAND AND HOUSING**.

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**).

DEFENCE

Moratorium Act 25 of 1963.

Summary: This Act ([RSA GG 468](#)) provides for moratoriums on contractual debts, prescription of civil legal remedies and similar matters for persons fulfilling their military service requirements. It repeals the *Moratorium Act 53 of 1962*. It has no practical effect in Namibia as it applies only to persons conscripted into military service.

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.

Transfer of administration to SWA: The administration of the Act does not appear to have been transferred to South West Africa.

Protection of Information Act 84 of 1982.

Summary: This Act ([RSA GG 8248](#)) 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) ([OG 5059](#)) makes the Act applicable to SWA, with some amendments.

Transfer of administration to SWA: The Security Matters Proclamation (AG 29/1985) ([OG 5059](#)) meets the definition of a “transfer proclamation” in section 1 of the Transfer (General Provisions) Proclamation, AG 7 of 1977 – “a proclamation *by the Administrator-General* by which the administration of the affairs of the territory in relation to any matter is transferred from a Minister of the Republic to the Administrator-General” (emphasis added). There were no amendments to the Act in South Africa prior to Namibian independence.

Amendments: The Security Matters Proclamation (AG 29/1985) ([OG 5059](#)) makes some amendments to the Act.

Section 45 of the National Intelligence Act 19 of 1987 ([OG 5423](#)) amends section 1 of the Act (definition of “security matter”). Act 19 of 1987 is repealed by the Namibia Central Intelligence Service Act 10 of 1997 ([GG 1699](#)), which also amends section 1 of this Act (definition of “security matter”).

Regulations: The Act makes no provision for regulations.

Namibia Central Intelligence Service Act 10 of 1997.

Summary: This Act ([GG 1699](#)) repeals 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 was brought into force on 5 June 1998 by Proc. 12/1998 ([GG 1876](#)).

Regulations: Regulations are contained in GN 118/1998 ([GG 1876](#)).

Notices: 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 ([GG 2749](#)) repeals the *Defence Act 44 of 1957*, which replaced the *South Africa Defence Act 13 of 1912*. The Namibian Defence Force established under the previous Act continues to exist under the new Act. The Act was brought into force on 15 July 2002 by GN 109/2002 ([GG 2765](#)).

Amendments: Schedule 1 is amended by the Correctional Service Act 9 of 2012 ([GG 5008](#)), which was brought into force on 1 January 2014 by GN 330/2013 ([GG 5365](#)).

Regulations: Regulations made under the previous Act remained in force in terms of section 94 of this Act. The *Defence Act 44 of 1957* similarly provided that regulations made under the *South Africa Defence Act 13 of 1912* remained in force pursuant to section 152(2) of the *Defence Act 44 of 1957*. However, pre-independence regulations have not been researched.

Regulations relating to the performance of police duties by members of the Defence Force were made under the *Defence Act 44 of 1957* in GN 234/1994 ([GG 993](#)), as amended by GN 241/1994 ([GG 1002](#)), which was later repealed by GN 189/2010 ([GG 4547](#)). These regulations have not been repealed, but they applied only to the 1994 election.

It should be noted that there were two Government Notices numbered 241 in 1994.

A long list of regulations made in terms of the *Defence Act 44 of 1957* are repealed and replaced by the **General Regulations** relating to the Namibian Defence Force in GN 189/2010 ([GG 4547](#)). The 2010 regulations repeal the regulations contained in GN 138/2005 ([GG 3525](#)), which in turn repealed the pre-independence regulations promulgated under RSA Government Notices R.274 of 26 February 1971 and R.2213 of 10 December 1971, as amended.

Rules: Rules relating to the Military Discipline Code are contained in GN 223/2008 ([GG 4114](#)).

Notices: GN 193/1995 ([GG 1179](#)) and GN 46/1999 ([GG 2075](#)) designate certain areas for training purposes.

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

Keya v Chief of the Defence Force & Others 2013 (3) NR 770 (SC) (unreasonable delay in instituting review proceedings in respect of decision taken under section 23(2))

Independence Catering (Pty) Ltd & Others v Minister of Defence & Others 2014 (4) NR 1085 (HC) (section 14(1)).

APPOINTMENTS

Appointment of First Chief of Defence Force, Proc. 7/1990.
 Chief of Defence Force, Proc. 16/2012 ([GG 4996](#))
 Chief of Defence Force, Proc. 1/ 2014 ([GG 5387](#)).

INTERNATIONAL LAW

The next four conventions are often referred to as the “Geneva Conventions”.

- †*Geneva Convention for the Amelioration of Condition of Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 1949*
- †*Geneva Convention for the Amelioration of Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 1949*
- †*Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention), 1949*
- †*Geneva Convention relative to Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 1949*

These two Protocols supplement the “Geneva Conventions”.

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

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

Rome Statute of the International Criminal Court, 1998

SADC Protocol on Politics, Defence and Security Co-operation, 2001

SADC Mutual Defence Pact, 2003

See also Security Commission Act 18 of 2001 (**CONSTITUTION**).

See also **DISASTERS** (civil defence and involvement of uniformed forces in disaster situations).

See also National Supplies Procurement Act 89 of 1970 (**TRADE AND INDUSTRY**).

DISASTERS

Civil Defence Act 39 of 1966, as amended in South Africa to 1977.

Summary: This Act ([RSA GG 1567](#)) 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* ([RSA GG 5555](#)).

Applicability to SWA: Section 19 originally stated “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).”

However, section 19 was substituted by Act 69/1967, to give the State President of South Africa authority to make the Act and its amendments applicable to SWA. Section 19(1) 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 *mutatis mutandis* applicable 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 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 Administrator of the said territory.”

The Act was then again made applicable to South West Africa by RSA Proc. 205/1969 ([RSA GG 2495](#)), subject to certain interpretations and conditions specified in the Proclamation. This Proclamation stated:

“Under the powers vested in me by section 19 of the Civil Defence Act, 1966 (Act 39 of 1966), I hereby declare that, subject to the provisions of the Schedule to this Proclamation, all the provisions of the said Act shall apply *mutatis mutandis* 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 39 of 1968)], 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 28 of 1923 of the Administrator of the said territory, with effect from the first day of April 1969.”

[words in square brackets appear in the *Gazette* along with the square brackets].

The *Civil Protection Act 67 of 1977* ([RSA GG 5555](#)), which repealed the statute in South Africa, was not made applicable to South West Africa.

Amendments: There were no amendments to the Act in South Africa prior to the amendment to section 19 (regarding the method of applicability to SWA) by the *Civil Defence Amendment Act 69 of 1967* ([RSA GG 1754](#)).

After the amendment to section 19, the Act was amended in South Africa prior to Namibian independence by the *Defence Amendment Act 85 of 1967* (RSA GG 1776), the *Civil Defence Amendment Act 5 of 1969* (RSA GG 2301) and the *Defence Further Amendment Act 83 of 1974* ([RSA GG 4508](#)). However, section 19 as amended made amendments to the Act in South Africa applicable to South West Africa only if they

were declared to be so applicable by proclamation, and no such proclamations could be located.

The Defence Act 1 of 2002 ([GG 2749](#)) repeals sections 20, 21 and 22.

Regulations: Regulations are authorised by section 18 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Disaster Risk Management Act 10 of 2012.

Summary: This Act ([GG 5029](#)) establishes institutions for disaster risk management in Namibia, as well as a National Disaster Fund. It provides for an integrated and coordinated approach to disaster management which includes prevention, mitigation measures, emergency preparedness, disaster response and post-disaster recovery. It also covers the involvement of Namibia's uniformed forces in disaster situations, and repeals the Civil Defence Proclamation, AG. 54 of 1978 and the Civil Defence Ordinance 3 of 1979. However, anything done under the repealed laws which could have been done under a corresponding provision of this Act is deemed to have been so done. The Act was brought into force on 31 December 2013 by GN 348/2013 ([GG 5380](#)).

Regulations: Regulations, rules and codes of conduct made under the repealed laws remain valid until explicitly repealed, in terms of section 59(2). However, pre-independence regulations have not been researched.

Regulations made under this Act are contained in GG 349/2013 ([GG 5380](#)). These regulations do not repeal any of those made under previous legislation.

Appointments: The members of the National Disaster Risk Management Committee are announced in GN 149/2016 ([GG 6062](#)), with retroactive effect from 22 October 2015.

Relevant international law: There are no current international treaties regarding natural disasters. However, guidelines for model national laws on natural disasters have been developed by the International Federation of Red Cross/Red Crescent Societies with support from the UN. Information on these guidelines is available at www.atha.se/thematic-areas/international-disaster-response-law.

See also Local Authorities Fire Brigade Services Act 5 of 2006 (**REGIONAL AND LOCAL GOVERNMENT**).

DISABILITIES

National Disability Council Act 26 of 2004.

Summary: This Act ([GG 3360](#)) 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 was brought into force on 30 October 2009 by GN 211/2009 ([GG 4371](#)).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 5 and 7.

Regulations: Regulations are authorised by section 23 of the Act, but none have yet been promulgated.

SELECTED CASES

Visser v Minister of Finance & Others (I 3178/2007) [2014] NAHCMD 321 (29 October 2014) (Constitutional challenge to MVA scheme on grounds of discrimination on the basis of disability; disability not “social status” for purposes of Art 10(2) of Namibian Constitution) (discussed in Y Dauseb and K Pinkosky, “*Visser v Minister of Finance: A Missed Opportunity to Clarify the Equality Provision within a Namibian Disability Rights Paradigm*” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017).

COMMENTARY

South African Journal of Human Rights, Volume 30, Issue 2, 2014 (special issue on disability).

INTERNATIONAL LAW

Agreement for the Establishment of the African Rehabilitation Institute (ARI), 1981

Convention on Rights of Persons with Disabilities, 2006

****Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, 2013**

See also Child Care and Protection Act 3 of 2015 (grants for children with disabilities) (**CHILDREN**).

See also *Employees' Compensation Act 30 of 1941*, Affirmative Action (Employment) Act 29 of 1998 and Labour Act 11 of 2007 (section 5) (**LABOUR**).

See also **MENTAL HEALTH AND MENTAL DISORDERS**.

See also National Pensions Act 10 of 1992 (pensions for blind persons and persons with other disabilities) (**PENSIONS**).

See also **SOCIAL WELFARE**.

DOMESTIC VIOLENCE

Combating of Domestic Violence Act 4 of 2003.

Summary: This Act ([GG 3002](#)) 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 was brought into force on 17 November 2003 by GN 234/2003 ([GG 3094](#)).

The initial [GG 3002](#), dated 24 June 2003, contained an inaccurate version of the law which failed to incorporate the amendments made on the floor of the National Assembly. The correct Gazette bears the same number and date but contains a notation at the top stating "This Gazette replaces Gazette No. 3002 of 24 June 2003".

Amendments: The Second Schedule is amended by the Criminal Procedure Act 25 of 2004 ([GG 3358](#)), which is not yet in force.

Section 14 is amended by the Child Care and Protection Act 3 of 2015 ([GG 5744](#)), 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)

LS v MB 2010 (2) NR 655 (HC) (applicants must show reasons why an application for a protection order should be heard on an *ex parte* basis; High Court as upper guardian of minor children has inherent jurisdiction to stay interim protection order relating to minor child pending return date)

Katjivikua v The Magistrate: Magisterial District of Gobabis & Another 2012 (1) NR 150 (HC) (interim protection order reviewable under inherent powers of High Court and section 20 of High Court Act 16 of 1990 and set aside on basis of procedural irregularities)

FN v SM 2012 (2) NR 709 (HC) (excessive violence applied to children for the purpose of discipline found to constitute domestic violence and justified final protection order and re-assessment of abusive parent's custody of children; duty of clerk of court to notify Ministry of Gender Equality and Child Welfare of protection orders involving children)

S v EZ 2014 (1) NR 18 (HC) (failure to pay maintenance is a form of economic abuse; a factor to consider in sentencing under the Maintenance Act 9 of 2003).

Commentary:

Dianne Hubbard & Daina Wise, *Domestic Violence: Proposals For Law Reform*, Windhoek: Legal Assistance Centre, 1998

Law Reform and Development Commission, *Report on Domestic Violence*, LRDC 10, 2000

Legal Assistance Centre, *Guide to the Combating of Domestic Violence Act*, 2005, available at www.lac.org.na (languages: English, Afrikaans, Oshiwambo, Otjiherero, Khoekhoegowab)

Legal Assistance Centre, *Seeking Safety: Domestic Violence in Namibia and the Combating of Domestic Violence Act 4 of 2003*, 2012, available in detailed and summary versions at www.lac.org.na.

SELECTED CASES

S v Bohitile 2007 (1) NR 137 (HC) (context of domestic violence as an aggravating factor in sentencing)

S v Kanguro 2011 (2) NR 616 (HC) (effect of diminished capacity on sentence in case of one-year-old child killed by mother who had longstanding history of epilepsy and attempted suicide at the same time).

Cases on infanticide:

Akwenye v S Case No: CA 117/2010 (unreported); [2011] NAHC 106 (8 April 2011)

S v Uupindi Case No: CC 15/2007 (unreported); [2007] NAHC 31 (20 April 2007)

S v Kaulinge Case No: CC 14/2007 (unreported); [2007] NAHC 30 (19 April 2007)

S v Muzanima Case No: CC 12/2006 (unreported); [2006] NAHC 15 (25 April 2006)

S v Shaningwa 2006 (2) NR 552

S v Glaco 1993 NR 141

COMMENTARY

Dianne Hubbard & Daina Wise, *Domestic Violence: Proposals for Law Reform*, Legal Assistance Centre, 1998, summary prepared in 2000 available at www.lac.org.na

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, 2000

Legal Assistance Centre, *Guide to the Combating of Domestic Violence Act*, 2005, available at www.lac.org.na (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

Legal Assistance Centre, *Baby-dumping and Infanticide, Monograph 1*, 2008, available at www.lac.org.na

Legal Assistance Centre, *Stalking: Proposed New Legislation for Namibia, Monograph 3*, 2008, available at www.lac.org.na

Legal Assistance Centre, *Seeking Safety: Domestic Violence in Namibia and the Combating of Domestic Violence Act 4 of 2003*, 2012, available in detailed and summary versions at www.lac.org.na.

EDUCATION

National Education Act 30 of 1980.

Summary: The remaining portions of this Act ([OG 4358](#)) relate only to agricultural colleges providing tertiary education. The Act was brought into force on 1 April 1981 by AG 6/1981 ([OG 4430](#)).

Amendments: The Act is amended by AG 39/1984 ([OG 4983](#)), which repeals sections 13-24, deletes section 25(6) and amends other sections by the substitution of expressions. (AG 39/1980 was repealed by the Public Service Act 13 of 1995 ([GG 1121](#))).

The Act is also amended by Act 12/1988 ([OG 5579](#)).

The Act is repealed by the Education Act 16 of 2001 ([GG 2673](#)), brought into force on 28 October 2002 (GN 186/2002, [GG 2841](#)) in so far as it applies to schools and education other than tertiary education. This repeal is amended by the Higher Education Act 26 of 2003 to be effective except in so far as the Act “applies to teachers’ education colleges and agricultural colleges providing tertiary education”.

The Act is repealed by the Teachers’ Education Colleges Act 25 of 2003 ([GG 3124](#), brought into force on 1 April 2005 by GN 18/2005, [GG 3386](#)) insofar as it applies to teachers’ education colleges.

Thus, it remains in force only insofar as it applies to agricultural colleges providing tertiary education.

Regulations: Pre-independence regulations have not been researched.

University of Namibia Act 18 of 1992.

Summary: This Act ([GG 460](#)) establishes the University of Namibia and provides for the administration and control of its affairs. It repeals the Academy Act 9 of 1985, which in turn replaced the Academy for Tertiary Education Act 13 of 1980. This Act was brought into force on 31 August 1992 by GN 109/1992 ([GG 462](#)).

Amendments: Sections 26-28 are amended by the Polytechnic of Namibia Act 33 of 1994 (contained in [GG 991](#)) and brought into force on 15 December 1994 by GN 241/1994, [GG 1000](#)) and repealed by the Namibia University of Science and Technology Act 7 of 2015 ([GG 5827](#)), brought into force on 16 November 2015 by GN 254/2015 ([GG 5876](#)).

*****National Vocational Training Act 18 of 1994**, repealed but with some provisions remaining operable.

Summary: This Act ([GG 933](#)) regulated the training of apprentices and vocational trainees; established a Vocational Training Board and trade advisory committees; provided for the establishment of vocational standards and training schemes and the designation of trades; provided for the establishment of a National Trade Testing and

Certification Centre; provided for the training and certification of apprentices and the registration of vocational training centres; and established a Vocational Training Fund. Parts I-VII and IX-XI were brought into force on 1 September 1996 and Part VIII on 1 January 1997 by GN 233/1996 ([GG 1399](#)). The Act repealed the Apprenticeship Ordinance 12 of 1938 ([OG 748](#)) and its amendments, and RSA Proclamation R.69/1975 ([RSA GG 4614](#)) relating to the establishment of the Labour Promotion Fund, as amended by the SWA Labour Promotion Fund Amendment Act 10 of 1981 ([OG 4502](#)).

This Act is **repealed in its entirety** by the Vocational Education and Training Act 1 of 2008 ([GG 4042](#)), which was brought into force on 2 June 2008 by 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 remains in force as if this Act had not been repealed, until a date determined by the Minister by notice in the *Government Gazette*. No such notices had been issued as of 31 December 2013.

Section 49(13) of Act 1 of 2008 provides that the National Trade Testing and Certification Centre established under section 30 of this Act continues to exist and to perform its functions as if this Act had not been repealed, until a date determined by the Minister by notice in the *Government Gazette*, except that the Board of the Namibia Training Authority established by Act 1 of 2008 must perform the functions of the Vocational Training Board in respect of the National Trade Testing and Certification Centre until that date.

Amendments: Act 10/1996 ([GG 1357](#)) amends sections 1, 5, 14, 29 and 54.

Regulations: Regulations made under any of the laws repealed by the Act remain in force, pursuant to section 53(2) of the Act, which is no longer in force. Pre-independence regulations have not been researched. Post-independence regulations made in terms of this Act are contained in GN 234/1996 ([GG 1399](#)). The provision authorising these regulations is no longer in force. However, regulations under this Act survive in terms of the Vocational Education and Training Act 1 of 2008. See the entry for that Act below.

Notices: Certain vocational standards are approved in terms of section 13(3) of this Act in GN 9/1997 ([GG 1489](#)) and GN 190/2000 ([GG 2387](#)).

Savings: Any trade designated in terms of the provisions of a law repealed by this Act is deemed to be a trade designated in terms of the provisions of this Act, pursuant to the savings clause in section 53(3) of this Act. *Note that the pre-independence designations and amendments to designations listed here may not be comprehensive.*

Trades are designated in RSA GN R.2473/1973 ([RSA GG 4125](#)) (issued in terms of the Apprenticeship Ordinance 12 of 1938), as amended by GN R.2193/1974 ([RSA GG 4512](#)), GN R.2136/1976 ([RSA GG 5332](#)), GN R.1926/1977 ([RSA GG 5746](#)), GN 19/1986 ([OG 5162](#)), GN 196/1988 ([OG 5644](#)), GN 197/1988 ([OG 5644](#)), GN 35/1989 ([OG 5684](#)) and AG GN 27/1990 ([OG 5917](#)) and as further amended in terms of section 14(1)(b) of this Act by GN 10/1997 ([GG 1489](#)). Additional trades are designated in terms of the the Apprenticeship Ordinance 12 of 1938 by GN 20/1986 ([OG 5162](#)), which also sets conditions for apprenticeships in these trades.

An additional trade is designated in GN 192/2000 ([GG 2387](#)), which is issued in terms of section 14(1)(a) of this Act.

Namibia Qualifications Authority Act 29 of 1996.

Summary: This Act ([GG 1476](#)) establishes a Namibia Qualifications 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 was brought 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, by Proc. 11/1998 ([GG 1861](#)).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 5, 6, 10 and 11.

The Vocational Education and Training Act 1 of 2008 ([GG 4042](#)), which was brought into force on 2 June 2008 by GN 126/2008 ([GG 4053](#)), amends sections 5 and 15.

Regulations: Regulations for the accreditation of persons, institutions or organisations are contained in GN 124/2006 ([GG 3684](#)).

Regulations setting up the National Qualifications Framework for Namibia are contained in GN 125/2006 ([GG 3685](#)).

Regulations relating to the evaluation of qualifications are contained in GN 182/2007 ([GG 3914](#)).

Notices: National Professional Standards for teachers are approved pursuant to section 3(c) in General Notice 356/2006 ([GG 3739](#)).

Specific qualifications and unit standards are registered from time to time pursuant to the National Qualifications Framework but have not been recorded here.

Accreditations of specific courses and expansions of scope pertaining to specific institutions are published from time to time but have not been recorded here.

Namibian College of Open Learning Act 1 of 1997.

Summary: This Act ([GG 1570](#)) establishes the Namibian College of Open Learning (NAMCOL) which aims to broaden access to education by providing alternatives to school-based education. It was brought into force on 25 September 1997 by Proc. 15/1997 ([GG 1682](#)).

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 7, 8, 14 and 20.

Regulations: Regulations are authorised by section 24 of the Act, but none have yet been promulgated.

Notices: 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 ([GG 2457](#)) establishes a fund to facilitate study and research by students at approved institutions of higher education. It was brought into force on 15 May 2002 by GN 72/2002 ([GG 2738](#)).

Amendments: Act 7/2014 ([GG 5588](#)), which is not yet in force, amends section 1, 3, 6, 7, 9, 12, 13 and 15, substitutes section 2, 10, 17 and 20, inserts sections 1A, 18A, 18B, 18C and 18D and deletes certain words throughout. The amending Act will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Regulations: Regulations are contained in GN 246/2001 ([GG 2664](#)).

Appointments: Members of the Board of the Namibia Students Financial Assistance Fund are announced in GN 317/2018 ([GG 6784](#)).

Education Act 16 of 2001.

Summary: This Act ([GG 2673](#)) 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 (which repealed the previous Education Proclamation 16 of 1926)
- *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 was brought into force on 28 October 2002 by GN 186/2002 ([GG 2841](#)). However, in terms of section 84(2) of the Act, sections 77(1)(g), (h) and (i) (certain offences) came into force 12 months after this date.

Amendments: The Higher Education Act 26 of 2003 ([GG 3125](#)), brought into force on 1 March 2005 by GN 17/2005 ([GG 3386](#)), amends column 3 of the Schedule to the Act. Act 14/2017 ([GG 6501](#)) amends sections 25, 38, 39, 59 and 80 to remove the requirement for compulsory contributions to school development funds and to provide for free pre-primary, primary, secondary and special education tuition and examination, amongst other things.

Regulations: Regulations made under the laws repealed by this Act survive in terms of section 81(5) of this Act. However, pre-independence regulations have not been researched.

Post-independence regulations are contained in GN 187/2002 ([GG 2841](#)), as amended by GN 15/2004 ([GG 3144](#)) – which contains a Code of Conduct for the Teaching Service. GN 187/2002 repealed the Regulations made under the National Education Act 30 of 1980), published in GN AG 73/1982 ([OG 4631](#)), GN AG 74/1982 ([OG 4631](#)) and GN 215/1987 ([OG 5482](#)).

Notices: 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](#)).

Certain institutions are registered as private higher education institutions in GN 116/2016 ([GG 6024](#)), which is amended by GN 176/2018 ([GG 6680](#)).

Rules relating to the minimum requirements and minimum standards for National Examinations for Junior Secondary Certificate (Grade 10) and National Senior Secondary Certificate (Grade 12) are contained in GN 143/2016 ([GG 6053](#)).

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)

Dixon v Government of the Republic of Namibia (Ministry of Education) & Another 2011(1) NR 111 (HC) (section 79)

S v Van Zyl & Others 2016 (4) NR 1000 (HC) (section 56: "...in addition to being applicable to public schools the provisions of s 56(1) are also applicable to private schools"; "The effect of s 56 is that no amount of consent either from the parents or from the learner himself can nullify or invalidate the prohibition contained in s 56(1).").

Teachers' Education Colleges Act 25 of 2003.

Summary: This Act ([GG 3124](#)) 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 was brought into force on 1 April 2005 by GN 18/2005 ([GG 3386](#)).

Regulations: Regulations are authorised by section 44 of the Act, but none have yet been promulgated. Regulations pertaining to teachers' education colleges issued under the National Education Act 30 of 1980, if any, could survive in terms of section 45(3) of this Act, but this has not been researched.

Higher Education Act 26 of 2003.

Summary: This Act ([GG 3125](#)) 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 was brought into force on 1 March 2005 by GN 17/2005 ([GG 3386](#)).

Amendments: Sections 1 and 7 are amended by the Vocational Education and Training Act 1 of 2008 ([GG 4042](#)), which was brought into force on 2 June 2008 (GN 126/2008, [GG 4053](#)).

Regulations: Regulations pertaining to higher education issued under the National Education Act 30 of 1980, if any, could survive in terms of section 47(2) of this Act, but this has not been researched.

Regulations for the registration of private higher education institutions are contained in GN 160/2009 ([GG 4312](#)).

Notices: Notices of the registration of individual private higher education institutions have not been recorded here.

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 ([GG 4042](#)) 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 repeals the National Vocational Training Act 18 of 1994, which in turn repealed the Apprenticeship Ordinance 12 of 1938 ([OG 748](#)) and its amendments, and RSA Proclamation R.69/1975 ([RSA GG 4614](#)) relating to the establishment of the Labour Promotion Fund, as amended by the SWA Labour Promotion Fund Amendment Act 10 of 1981 (OG 4502). This Act was brought into force on 2 June 2008 by GN 126/2008 ([GG 4053](#)).

Section 49(12) provides that sections 17-28 inclusive of the National Vocational Training Act 18 of 1994 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 made or surviving under the previous law survive in terms of section 49. Pre-independence regulations have not been researched.

Post-independence regulations made under the previous law which remain in force are as follows:

Regulations under the National Vocational Training Act, 1994, are contained in GN 234/1996 ([GG 1399](#)).

Regulations made under the current Act are as follows:

Regulations for Registration of Vocational Education and Training Providers are contained in GN 300/2012 ([GG 5099](#)).

Regulations relating to Use of Vocational and Training Levies for Funding Vocational Education and Training Programmes and Projects and for Providing Technical and Financial Assistance are contained in GN 5/2014 ([GG 5395](#)).

Notices: Notices, registrations and other directives made under the previous law survive in terms of section 49. These include the following:

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: Any trade designated in terms of the provisions of a law repealed by this Act is deemed to be a trade designated in terms of the provisions of this Act, pursuant to the savings clause in section 53(3) of this Act. *Note that the pre-independence designations and amendments to designations listed here may not be comprehensive.*

Trades are designated in RSA GN R.2473/1973 ([RSA GG 4125](#)) (issued in terms of the Apprenticeship Ordinance 12 of 1938), as amended by GN R.2193/1974 ([RSA GG 4512](#)), GN R.2136/1976 ([RSA GG 5332](#)), GN R.1926/1977 ([RSA GG 5746](#)), GN 19/1986 ([OG 5162](#)), GN 196/1988 ([OG 5644](#)), GN 197/1988 ([OG 5644](#)), GN 35/1989 ([OG 5684](#)) and AG GN 27/1990 ([OG 5917](#)) and as further amended in terms of section 14(1)(b) of this Act by GN 10/1997 ([GG 1489](#)). Additional trades are designated in terms of the the Apprenticeship Ordinance 12 of 1938 by GN 20/1986 ([OG 5162](#)), which also sets conditions for apprenticeships in these trades.

An additional trade is designated in GN 192/2000 ([GG 2387](#)), which is issued in terms of section 14(1)(a) of this Act.

In terms of the current law, an intention to impose a **vocational education and training levy on employers** was announced in GN 84/2013 ([GG 5171](#)). This levy was imposed by GN 6/2014 ([GG 5395](#)), which is amended by GN 248/2016 ([GG 6149](#)) (amendments to Paragraph 4) and by GN 290/2018 ([GG 6760](#)) (amendments to Paragraph 4, addition of Annexure C and some global changes of wording).

Registrations of individual vocational training institutions are announced in General Notice 178/2015 ([GG 5738](#)).

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*.

Cases: *Namibia Training Authority v Nangolo-Rukoro & Another* 2016 (4) NR 992 (LC) (section 23(a)).

Namibia Institute of Public Administration and Management Act 10 of 2010.

Summary: This Act ([GG 4521](#)) establishes the Namibia Institute of Public Administration and Management (NIPAM) and its Governing Council. It was brought into force on 1 October 2010 by GN 218/2010 ([GG 4574](#)).

Regulations: Regulations are authorised by section 42 of the Act, but none have yet been promulgated.

Commentary: Dennis U Zaire, “Accountability (or the absence thereof) in the Namibian public sector: A look at legislation and policies in place”, *Namibia Law Journal*, Volume 6, Issue 1, 2014.

Namibia University of Science and Technology Act 7 of 2015.

Summary: This Act ([GG 5827](#)) transforms the Polytechnic of Namibia into the Namibia University of Science and Technology (NUST). It repeals the Polytechnic of Namibia Act 33 of 1994 ([GG 991](#)). It was brought into force on 16 November 2015 by GN 254/2015 ([GG 5876](#)).

Regulations: There is no savings clause in respect of regulations made under the repealed Act.

Notices: In terms of section 7(2)(c)(iv) of the Act, GN 67/2016 ([GG 5990](#)) designates certain institutions, associations and bodies as representing the interests of key industries or sectors in the Namibian economy.

Commentary: Law Reform and Development Commission, *Discussion Paper on the Transformation of the Polytechnic of Namibia into the Namibia University of Science and Technology*, LRDC 30, 2014.

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](#)).

COMMENTARY

P Wainaina and L Katjita, “The provision of compulsory free primary education in Namibia (1990-2000): The juggling act” in M Hinz, S Amoo and D Van Wyk (eds), *The Constitution at Work: Ten Years of Namibian Nationhood*, Windhoek: UNAM Publishers, 2000

Sacky Shanghala, “Analysis of legislation, governance and management of education in Namibia”, *Namibia Law Journal*, Volume 3, Issue 2, 2011

Linea PK Nuugwedha, “Enforceability of the constitutionally entrenched right to compulsory free primary education”, *Namibia Law Journal*, Volume 3, Issue 2, 2011.

INTERNATIONAL LAW

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

SADC Protocol on Education and Training, 1997

See also **ARCHIVES**.

See also Namibia Qualifications Authority Act 29 of 1996 (curriculum standards and training programmes for achieving occupational standards) (**EDUCATION**).

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

See also **LIBRARIES**.

See also Research, Science and Technology Act 23 of 2004 (which has a broad definition of research) (**SCIENCE AND SCIENTIFIC RESEARCH**).

ELECTIONS

Electoral Act 5 of 2014.

Summary: This Act ([GG 5583](#)) 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, for the funding of political parties and for the conduct of elections and referenda. It also establishes electoral tribunals and an Electoral Court. It repeals the Electoral Act 24 of 1992 ([GG 471](#)). The Act, with the exception of section 97(3) and (4) (which require verifiable paper trials for voting machines), was brought into force on 17 October 2014 by GN 208/2014 ([GG 5593](#)).

Regulations: Section 208(b) provides that “any notice, regulation, authorisation, order or certificate issued, made or granted or any other thing done” in terms of any law repealed or amended by the Act, “except in so far as may be otherwise required by this Act, is deemed to have been issued, made, granted or done under the corresponding provision of this Act”. The following regulations made under the previous Electoral Act 24 of 1992 are still in force:

Regulations relating to Use of Voting Machines at Elections are contained in GN 117/2014 ([GG 5524](#)), as amended by GN 209/2014 ([GG 5593](#)).

In terms of the 2014 Act:

Regulations relating to Registration of Voters, Political Parties or Organisations are contained in GN 71/2015 ([GG 5735](#)), which repeals regulations on this topic made under the previous Act.

Regulations relating to Nomination of Candidates for Elections are contained in GN 223/2015 ([GG 5847](#)), which repeals the regulations 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 relating to Authorisation Voting and Announcement of Results of Elections are contained in GN 252/2015 ([GG 5873](#)), which repeals the regulations contained in GN 152/1992 ([GG 518](#)), as amended by GN 205/1994 ([GG 965](#)).

Rules: Rules, Codes of Conduct and guidelines made under the previous Electoral Act 24 of 1992 which remain in force pursuant to section 208(b) of the current Act are as follows:

Guidelines for political parties are published in General Notice 143/1992 ([GG 503](#)).

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](#)).

Those issued in terms of the 2014 Act are as follows:

Rules for the Electoral Court are contained in GN 228/2014 ([GG 5608](#)).

Rules for the Electoral Tribunal are contained in GN 191/2018 ([GG 6684](#)).

A **Code of Conduct for Election Agents and Counting Agents** is published in GN 69/2015 ([GG 5729](#)).

See also **Rules of the Supreme Court relating to Presidential Election Challenges**, issued in terms of section 37 of the Supreme Court Act 15 of 1990, read with section 172(3) of the Electoral Act 5 of 2014, in GN 118/2015 ([GG 5761](#)).

Notices: Notices made under the previous Electoral Act 24 of 1992 which remain in force pursuant to section 208(b) of the current Act are as follows:

GN 172/1992 ([GG 530](#)) states that the **Directorate of Elections** will resort under the Office of the Prime Minister.

It was announced in GN 116/2014 ([GG 5524](#)), pursuant to section 79B of the 1992 Act, that the Electoral Commission has adopted voting by way of voting machines for all Presidential, National Assembly, regional council and local authority area elections.

A notice announcing that the Namibia Economic Freedom Fighters applied for registration as a political party appears in GN 144/2014 ([GG 5555](#)).

Notices issued in terms of the 2014 Act are as follows:

The **formula for funding of political parties represented in Parliament**, the percentage of unspent money that may be retained by political parties at the end of each financial year and ancillary matters are set out in GN 89/2015 ([GG 5750](#)), which is effective from 1 April 2015.

GN 272/2015 ([GG 5879](#)) contains a notice of an intended change in the **symbol of the political party Rally for Democracy and Progress (RDP)**.

GN 319/2017 ([GG 6487](#)) contains notice of an intended **change of name, abbreviated name and symbol for the political party DTA of Namibia**. The proposed new name is **Popular Democratic Movement (PDM)**.

Appointments: Persons in office who were appointed under the previous Act remain in office under the new Act. All appointments under both the previous Act and this Act are listed here for historical interest:

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](#)), Proc. 28/2008 ([GG 4093](#)) and Proc. 29/2013 ([GG 5274](#)).

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](#)), Proc. 16/2007 ([GG 3928](#)), Proc. 14/2011 ([GG 4787](#)), Proc. 8/2013 ([GG 5143](#)) and Proc. 7/2016 ([GG 6125](#)).

Members of the Selection Committee are appointed in GN 109/2000 ([GG 2313](#)), GN 229/2001 ([GG 2647](#)), GN 64/2005 ([GG 3440](#)), GN 165/2006 ([GG 3714](#)), GN 55/2011 ([GG 4702](#)) and GN 134/2012 ([GG 4954](#)).

The appointment of coordinators and assistant coordinators is announced in GN 217/2010 ([GG 4571](#)).

Magistrates are designated for purposes of section 19(1) of the Electoral Act 24 of 1992 in GN 56/2014 ([GG 5449](#)), which withdraws GN 260/1998 ([GG 1976](#)).

The appointment of a Chief Electoral and Referenda Officer is announced in GN 142/2018 ([GG 6649](#)).

Cases: The following cases were decided under the Electoral Act 24 of 1992:

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), 2010 (2) NR 487 (SC), 2013 (2) NR 390 (HC) and 2013 (3) NR 664 (SC)

Republican Party of Namibia & Another v Electoral Commission of Namibia & Others 2010 (1) NR 73 (HC)

Maletzky & Others v Electoral Commission & Others 2015 (2) NR 571 (HC) (section 209(2) and GN 208/2014; empowering a member of executive branch to decide when portions of an Act comes into force is not an unconstitutional violation of the separation of powers; evidence placed before court in respect of electronic voting machines in motion proceeding insufficient to support allegation of violation of constitutional right to vote; other claims put forward fall within jurisdiction of Electoral Court rather than High Court).

Related international agreements:

African Charter on Democracy, Elections and Governance, 2007

Statutes of the International Institute for Democracy and Electoral Assistance (International IDEA), 2006, as amended

See also 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.

Commentary:

Joram K Rukambe, "Electoral Reform in Namibia: Challenges and Constraints", 2(1) *Journal of African Elections* 141, 2003.

"Media and Elections – A Question of Access", Institute for Public Policy Research, 2009, available at www.ippr.org.na

- Transparency International, “Promoting Transparency and Accountability of Political Finance in the SADC Region: Comparative analysis and findings from Mozambique, Namibia, South Africa, Zambia and Zimbabwe”, 2010, available at www.ippr.org.na
- G. Töttemeyer, “Namibia’s Constitution, Democracy and the election process” in N Horn, A Bösl & A du Pisani (eds), *Constitutional Democracy in Namibia: A Critical Analysis after Two Decades*, Konrad Adenauer Stiftung, 2010, available at www.kas.de
- Nico Horn, “Rally for Democracy and Progress & Seventeen Others v Electoral Commission of Namibia & Nine Others, unreported judgment of the Supreme Court of Namibia”, *Namibia Law Journal*, Volume 3, Issue 1, 2011 available at www.kas.de
- Nico Horn, “Rally for Democracy and Progress & Others v The Electoral Commission of Namibia & Others – A victory for the positivist approach”, *Namibia Law Journal*, Volume 3, Issue 2, 2011
- Nico Horn, “Becoming Fred Rodell: Predicting the result of the Second Supreme Court Appeal on the 2009 Election”, *Namibia Law Journal*, Volume 4, Issue 2, 2012
- G K H Töttemeyer, *Revision and Reform of the Namibian Electoral Act, (Act No. 24 of 1991)*, LRDC 19, Law Reform and Development Commission, 2012, available at www.namiblii.org
- Gerhard Töttemeyer, “Revision and Reform of an Electoral Act in a Democratic Environment: The Namibian Case”, 12 (3) *Journal of African Elections* 170, 2013
- “Reforming Namibia’s Electoral Law”, Institute for Public Policy Research, 2013, available at www.ippr.org.na
- “Electronic Voting Machines”, Institute for Public Policy Research, 2013, available at www.ippr.org.na
- “Ready for 50/50?”, Institute for Public Policy Research, 2013, available at www.ippr.org.na
- “The Good and the Bad of Tendered Ballots”, Institute for Public Policy Research, 2013, available at www.ippr.org.na.
- “Celebrating 25 Years of Democratic Elections 1989-2014”, newspaper supplement, [www2.hss.de/fileadmin/namibia/downloads/CELEBRATING 25 YEARS F A6 EZ.pdf](http://www2.hss.de/fileadmin/namibia/downloads/CELEBRATING_25_YEARS_F A6_EZ.pdf)
- Law Reform and Development Commission, *Report on the Revision and Reform of the Namibian Electoral Framework*, LRDC 31, 2014
- Amanda Clayton, “Namibia at a Crossroads: 50/50 and the Way Forward”, Institute for Public Policy Research, 2014, available at www.ippr.org.na.
- Nangula Shejvali , “A Thorn in the Flesh for Gender Equality”, Institute for Public Policy Research, 2015, available at www.ippr.org.na.
- Max Weylandt, “Parliament Perspective – Party Funding”, Institute for Public Policy Research, 2016, available at www.ippr.org.na
- Herbert Weiland, “Elections in Namibia: Lynchpins and catalysts for democratic development?” in Nico Horn & Manfred O Hinz, eds, *Beyond a Quarter Century of Constitutional Democracy: Process and Progress in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2017
- Ndjodi NL Ndeunyema, “The constitutionalisation of the Electoral Commission of Namibia, the appointment of Commissioners, and the erosion of constitutional democracy” in Nico Horn & Manfred O Hinz, eds, *Beyond a Quarter Century of Constitutional Democracy: Process and Progress in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2017.

As a matter of historical interest, the amendments to the Electoral Act 24 of 1992, which has been replaced by the Electoral Act 5 of 2014, were as follows:

Electoral Act 24 of 1992 ([GG 471](#))

The Act was substantially amended by **Act 23/1994 ([GG 957](#))**.

The definition of “party list” was amended by section 3 of the **Local Authorities Amendment Act 3 of 1997 ([GG 1584](#))**, to conform with the amendment of the Local Authorities Act 23 of 1992 ([GG 470](#)) 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 ([GG 1984](#)), amended sections 1, 3, 5, 9, 11, 20, 21, 25, 26, 62, 68, 74, 76 and 93 and substitutes certain expressions. **Act 11/1999 ([GG 2141](#))** amended Act 30/1998. Act 30/1998 came into force, in terms of section 16 of Act 30/1998 as amended by section 5 of Act 11/1999, on 13 July 1999 (the date of publication of Act 11/1999 in [GG 2141](#)), with the exception of sections 10 and 11 of Act 30/1998 which were deemed by section 16 of Act 30/1998, as amended by section 5 of Act 11/1999, to have come into operation on 1 October 1998.

Act 19/1999 ([GG 2237](#)) amended sections 28A, 51, 87, 87A, 88 and 89 of the Act.

Act 20/2002 ([GG 2890](#)) amended section 15 (pertaining to the period for the second general registration of voters) and is deemed to have come into force on 23 October 2002.

Act 7/2003 ([GG 3013](#)), which was brought into force on 8 July 2003 by GN 146/2003 ([GG 3014](#)), made substantial amendments.

Act 4/2006 ([GG 3759](#)) amended sections 49 and 69 of the Act.

The Act was substantially amended by **Act 7/2009 ([GG 4322](#))**, which came into force on the date of publication (14 August 2009), with the exception of new section 79B (concerning voting machines) which was brought into force on 14 March 2014 by GN 24/2014 ([GG 5425](#)).

Act 11/2010 ([GG 4542](#)) amended section 7 of the Act to extend the term of office of certain members of the Electoral Commission. It applied only to those members whose term of office was set to expire on 31 July 2010, extending their tenure until 30 June 2011.

Act 8/2012 ([GG 4983](#)) inserted section 28B to provide for the use of a digital voter registration system.

Act 9/ 2013 ([GG 5277](#)) amended section 15 to extend the deadline for the third general registration of voters.

Several of the amending Acts were discussed in *Rally for Democracy and Progress & Others v Electoral Commission & Others* 2013 (2) NR 390 (HC) at para 202-ff.

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

polling dates local elections: Proc. 38/1992 ([GG 502](#))

polling dates regional elections: Proc. 39/1992 ([GG 502](#))

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 authority councils: GN 185/1992 ([GG 547](#))

New local authority, 1994 (Walvis Bay)

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.

list of political parties and candidates: GN 144/1994 ([GG 905](#))

results: GN 157/1994 ([GG 915](#))

Local election, 1993 (Aroab)

The first local government election was postponed in respect of Aroab, being held only in February 1993 (Proc. 48/1992, [GG 558](#)). According to the Director of Elections, this postponement was necessary because the election officer for Aroab was injured in a car accident. Kapena L Tjihero, Doufi Namalambo and Dianne Hubbard, *Affirmative Action for Women in Local Government in Namibia: The 1998 Local Government Elections*, Legal Assistance Centre, 1998, footnote 56 (www.lac.org.na).

candidates: GN 9/1993 ([GG 572](#))

results: GN 27/1993 ([GG 601](#))

Regional by-elections, 1993-1994

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](#)).

General election, 1994 (President and National Assembly)

polling dates: Proc. 27/1994 ([GG 956](#))

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 ([h](#))

results-National Assembly: GN 243/1994 ([GG 1003](#))

Regional by-elections, 1995-1997

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](#)).

Second local authority elections, 1998

polling dates: Proc. 17/1997 ([GG 1698](#)), revoked by Proc. 25/1997 ([GG 1733](#)); Proc. 29/1997 ([GG 1748](#))

lists of political parties and candidates: GN 6/1998 ([GG 1788](#))

results: GN 35/1998 ([GG 1805](#))

Second regional elections, 1999

polling date: 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](#))

General election, 1999 (President and National Assembly)

polling dates: Proc. 29/1999 ([GG 2199](#))

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](#))

Local authority election, 2001

The members of the Rehoboth Town Council were removed from office by GN 68/2001 ([GG 2516](#)), pursuant to section 92 of the Local Authorities Act 23 of 1992; their powers were transferred to the Minister of Regional and Local Government and Housing and a date set for the election of a new council.

Rehoboth:

candidates: GN 140/2001 ([GG 2574](#))

results: GN 187/2001 ([GG 2615](#))

Regional by-elections, 1999-2004

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 published
results: not published
Windhoek West Constituency, Khomas Region
candidates: GN 198/2003 ([GG 3058](#))
results: GN 228/2003 ([GG 3092](#))
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](#))

The following regional by-elections were all held on 14 May 2004, on the same date as the General Elections for local authorities. However, the results were not published together with the local authority results and no separate publication of results for these by-elections has been located.

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

Third local authority elections, 2004

polling date: Proc. 18/2004 ([GG 3173](#)); GN 99/2004 ([GG 3201](#))
lists of political parties and candidates: GN 100/2004 ([GG 3202](#))
results: GN 190/2004 ([GG 3268](#))

General election, 2004 (President and National Assembly)

polling dates President: Proc. 43/2004 ([GG 3280](#))
polling dates National Assembly: Proc. 44/2004 ([GG 3280](#))
list of candidates for President: GN 237/2004 ([GG 3316](#))
party lists for National Assembly: GN 238/2004 ([GG 3316](#))
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 elections, 2004

polling date: Proc. 47/2004 ([GG 3292](#))
list of candidates: GN 252/2004 ([GG 3329](#))
results: GN 5/2005 ([GG 3366](#))

New local authorities, 2005 (Oshikuku, Okahao and Ruacana)

Oshikuku was established as a local authority by GN 234/2004 ([GG 3313](#)).

Okahao was established as a local authority by GN 233/2004 ([GG 3313](#)).

Ruacana was established as a local authority by GN 70/2005 ([GN 3456](#)).

list of political parties and candidates: GN 159/2005 ([GG 3540](#))

results: GN 50/2006 ([GG 3592](#)).

New local authority, 2007 (Nkurenkuru)

Nkurenkuru was established as a local authority by GN 155/2006 ([GG 3699](#)).

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)

Omuthiya was established as a local authority by GN 4/2008 ([GG 3974](#)).

list of candidates: GN 226/2008 ([GG 4118](#)), which withdraws GN 42/2008

results: GN 89/2008 ([GG 4013](#)); GN 251/2008 ([GG 4141](#))

Regional by-elections, 2007-2010

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 published

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](#)).

General election, 2009 (President and National Assembly)

polling dates 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](#))

list of candidates for President: GN 222/2009 ([GG 4375](#))

party lists for National Assembly: GN 224/2009 ([GG 4375](#))

results-President: GN 246/2009 ([GG 4397](#))

results-National Assembly: GN 247/2009 ([GG 4397](#))

Fourth local authority and regional elections, 2010

polling date: Proc. 16/2010 ([GG 4571](#))

lists of political parties and candidates (local authority councils): GN 245/2010 ([GG 4597](#))

lists of candidates (regional councils): GN 246/2010 ([GG 4597](#))

results-regional councils: GN 267/2010 ([GG 4627](#))

results-local authority councils: GN 268/2010 ([GG 4627](#))

New local authority, 2012 (Oranjemund)

Oranjemund was established as a local authority by GN 130/2011 ([GG 4767](#)).

list of political parties and candidates: GN 72/2012 ([GG 4892](#)), as amended by GN 83/2012 ([GG 4902](#))

results: GN 99/2012 ([GG 4926](#))

Regional by-elections, 2012-2015

Sibbinda Constituency, Caprivi Region

candidates: GN 226/2012 ([GG 5026](#))

results: GN 246/2012 ([GG 5048](#))

Tsumkwe Constituency, Otjozondjupa Region

candidates: GN 263/2012 ([GG 5066](#))

results: GN 287/2012 ([GG 5088](#))

Grootfontein Constituency, Otjozondjupa Region

candidates: GN 121/2013 ([GG 5189](#))

results: GN 163/2013 ([GG 5224](#))

Ohangwena Constituency, Ohangwena Region

candidates: GN 99/2014 ([GG 5512](#))

results: GN 169/2014 ([GG 5562](#))

Endola Constituency, Ohangwena Region

candidates: GN 218/2014 ([GG 5600](#))

results: GN 246/2014 ([GG 5626](#))

Windhoek-West Constituency, Khomas Region

candidates: GN 221/2014 ([GG 5600](#))

results: GN 247/2014 ([GG 5626](#))

Swakopmund Constituency, Erongo Region

candidates: GN 70/2015 ([GG 5730](#))

results: GN 120/2015 ([GG 5764](#))

Onyaanya Constituency, Oshikoto Region

candidate/result: GN 122/2015 ([GG 5764](#))

Otjiwarongo Constituency, Otjozondjupa Region

candidates: GN 121/2015 ([GG 5764](#))

results: GN 184/2015 ([GG 5808](#))

Otavi Constituency, Otjozondjupa Region

candidates/results: GN 207/2015 ([GG 5830](#))

New local authority, 2014 (Bukalo)

Bukalo was established as a local authority by GN 225/2013 ([GN 5264](#)).

list of political parties and candidates: GN 123/2014 ([GG 5532](#))

results: GN 170/2014 ([GG 5562](#))

New local authority, 2014 (Otjinene)

Otjinene was established as a local authority by GN 6/2011 ([GG 4649](#)).

list of political parties and candidates: GN 133/2014 ([GG 5538](#))

results: GN 175/2014 ([GG 5573](#))

General election, 2014 (President and National Assembly)

polling date President and National Assembly: Proc. 31/2014 ([GG 5587](#))

polling date for persons voting abroad: GN 193/2014 ([GG 5587](#))

polling date for persons on board vessels: GN 194/2014 ([GG 5587](#))

list of candidates for President: GN 230/2014 ([GG 5609](#))

registered political parties and party lists for National Assembly: GN 232/2014 ([GG 5609](#)), as amended by GN 239/2014 ([GG 5617](#))

results-President: GN 259/2014 ([GG 5641](#))

results-National Assembly: GN 260/2014 ([GG 5641](#))

Fifth regional and local authority elections, 2015

polling date: Proc. 33/2015 ([GG 5846](#))

lists of political parties and candidates (local authority councils): GN 274/2015 ([GG 5880](#))

lists of candidates (regional councils): GN 275/2015 ([GG 5880](#))

results-regional councils: GN 317/2015 ([GG 5916](#))
results-local authority councils: GN 318/2015 ([GG 5916](#))

Regional by-elections, 2015-2020

Eengodi Constituency, Oshikoto Region
results: GN 296/2017 ([GG 6471](#))

Ncuncuni Constituency, Kavango-West Region
candidates: GN 44/2018 ([GG 6544](#))
results: GN 91/2018 ([GG 6600](#)).

INTERNATIONAL LAW

African Charter on Democracy, Elections and Governance, 2007
Statutes of the International Institute for Democracy and Electoral Assistance (International IDEA), 2006, as amended

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 ([OG 4225](#)) 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”.)

Regulations: The Act makes no provision for regulations.

Application of law: Namibia Power Corporation (Pty) Ltd was deemed to be a company registered in terms of Chapter IV of the *Companies Act 61 of 1973* (which has since been replaced by the Companies Act 28 of 2004) by Proc. 7/1998 ([GG 1849](#)).

The application of the Act is also affected by the State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006.

Electricity Act 4 of 2007.

Summary: This Act ([GG 3922](#)) provides for the establishment and functions of the Electricity Control Board. It repeals the Electricity Act 2 of 2000 ([GG 2270](#)), which in turn replaced the Electric Power Proclamation 4 of 1922. The Act was brought into force on 15 November 2007 by GN 201/2007 ([GG 3933](#)).

Regulations: Regulations made in terms of the previous Act survive by virtue of section 46(3). The Electricity Regulations: Administrative contained in GN 168/2000 ([GG 2371](#)) continued to operate initially, but were repealed by GN 13/2011 ([GG 4652](#)).

The **Electricity Regulations: Administrative** made in terms of this Act are contained in GN 13/2011 ([GG 4652](#)).

Rules and codes: The Namibian Electricity Safety Code is contained in GN 200/2011 ([GG 4821](#)), as amended by GN 234/2012 ([GG 5033](#)).

Economic Rules are contained in General Notice 46/2016 ([GG 5949](#)).

Technical Rules are contained in General Notice 47/2016 ([GG 5950](#)).

Net Metering Rules are contained in General Notice 471/2016 ([GG 6173](#)).

A Distribution Grid Code is contained in General Notice 560/2018 ([GG 6730](#)).

A Transmission Grid Code is contained in General Notice 561/2018 ([GG 6731](#)).

Notices: A levy on electricity supplied by NamPower is imposed by GN 118/2018 ([GG 6626](#)). The levies issued previously in terms of this Act and its predecessor have all been repealed.

ENGINEERING

Engineering Profession Act 18 of 1986.

Summary: This Act ([OG 5244](#)) regulates the engineering profession. It was brought into force by AG 1/1987 ([OG 5313](#)) and AG 5/1989 ([OG 5687](#)). It repeals the *Professional Engineers' Act 81 of 1968*.

Amendments: Act 25/1991 ([GG 327](#)) 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. General Notice 563/2015 ([GG 5903](#)) substitutes Part A and Part B of Schedule II.

Regulations: Regulations made in terms of the *Professional Engineers' Act 81 of 1968*, survive under this Act pursuant to section 29(2) of this Act. Pre-independence regulations have not been comprehensively researched.

Regulations concerning registration and annual registration fees are contained in GN 161/1987 ([OG 5434](#)), as amended by General Notice 192/1989 ([OG 5861](#)), GN 71/1998 ([GG 1829](#)), General Notice 336/1999 ([GG 2229](#)) as amended by General Notice 365/1999 ([GG 2248](#)), General Notice 117/2002 ([GG 2759](#)) and General Notice 87/2003 ([GG 2974](#)).

Regulations on the tariff of consulting fees are contained in GN 24/1993 ([GG 593](#)), as amended by 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](#)), GN 42/2010 ([GG 4440](#)), GN 206/2012 ([GG 5014](#)) and GN 239/2013 ([GG 5274](#)).

Rules: Council rules are contained in GN 91/1988 ([OG 5550](#)).

Notices: The recognition of Engineers' Institutes is addressed in GN 159/1987 ([OG 5434](#)).

Remuneration and allowances payable to Council members are addressed in GN 160/1987 ([OG 5434](#)).

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.

Notices of intended amendments of tariffs of consulting fees have not been recorded.

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](#)), GN 186/2007 ([GG 3919](#)), GN 240/2012 ([GG 5038](#)) and GN 318/2013 ([GG 5351](#)).

Cases: *Fischer Seelenbinder Associates CC v Steelforce CC* 2010 (2) NR 684 (HC).

See also Namibia Qualifications Authority Act 29 of 1996 (occupational standards)
(EDUCATION).

ENVIRONMENT

Soil Conservation Act 76 of 1969, as amended in South Africa to March 1978.

Summary: This Act ([RSA GG 2437](#)) 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. It repeals the *Soil Conservation Act 45 of 1946*. The *Second Soil Conservation Amendment Act 38 of 1971* ([RSA GG 3108](#)), which amended this Act to make it applicable to South West Africa, provided for some additional repeals in respect of South West Africa: the Soil Conservation Ordinance 28 of 1952, the Soil Conservation Amendment Ordinance 20 of 1954 and the Soil Conservation Validation Ordinance 11 of 1961.

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.

In South Africa, the *Forest Act 122 of 1984* ([RSA GG 9380](#)), brought into force on 27 March 1986 by RSA Proc. R.44/1986 ([RSA GG 10158](#)), repealed Part VII of the Act and the *Conservation of Agricultural Resources Act 43 of 1983* ([RSA GG 8673](#)), brought into force on 1 June 1984 by RSA Proc. R.74/1984 ([RSA GG 9238](#)), repealed the remainder. Neither of these Acts was made expressly applicable to South West Africa.

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.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Soil Conservation Amendment Act 4 of 1971* ([RSA GG 3020](#))
- *Second Soil Conservation Amendment Act 38 of 1971* ([RSA GG 3108](#))
- *Soil Conservation Amendment Act 11 of 1973* ([RSA GG 3820](#))
- *Soil Conservation Amendment Act 21 of 1974* ([RSA GG 4212](#))
- *Expropriation Act 63 of 1975* ([RSA GG 4780](#))
- *Soil Conservation Amendment Act 22 of 1977* ([RSA GG 5459](#)).

Certain terminology is amended by the Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

Section 13 is amended by the Forest Act 12 of 2001 ([GG 2667](#)).

Regulations: Pre-independence regulations have not been researched. There does not appear to be a savings clause for regulations issued under the laws repealed by this act or by the *Second Soil Conservation Amendment Act 38 of 1971* ([RSA GG 3108](#)). However, section 4 of Act 38 of 1971, which effects the repeals of the SWA legislation

contains a proviso which states that “any provision of any law so repealed shall, notwithstanding the repeal of such law, continue to apply in respect of any matter in connection with which anything has been done under any law aforesaid or in respect of anything incidental to any such matter or which may be necessary to be done in connection with any such matter, as if such law had not been so repealed”.

No regulations have been issued under the Act since independence.

See the regulations promulgated under the Communal Land Reform Act 5 of 2002 ([GG 2787](#)); regulations 31 and 32 deal with the prevention of soil erosion and the protection of pastoral resources.

Application of law: Regulations 31 and 32 issued under the Communal Land Reform Act 5 of 2002 in GN 37/2003 ([GG 2926](#)) refer to the application of this Act in respect of communal areas.

Mountain Catchment Areas Act 63 of 1970.

Summary: This Act ([RSA GG 2858](#)) 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 amendments were made specifically applicable to SWA. (The Act was amended in South Africa by the *Expropriation Act 63 of 1975* ([RSA GG 4780](#)), which was brought into force on 1 January 1977 by *RSA Proc. 273/1976* ([RSA GG 5363](#)), and by the *Mountain Catchment Areas Amendment Act 41 of 1976* ([RSA GG 5068](#)), which came into force on its date of publication: 7 April 1976.)

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. There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Mountain Catchment Areas Amendment Act 76 of 1981* ([RSA GG 7800](#)) – which was not made expressly applicable to SWA.

Amendments: Certain terms in the Act were amended by the Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

There have been no amendments to the Act since independence.

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

Hazardous Substances Ordinance 14 of 1974.

Summary: This Ordinance ([OG 3415](#)) provides for the control of toxic substances. It covers manufacture, sale, use, disposal and dumping as well as import and export. The Health Act 21 of 1988 ([OG 5651](#)) extended this Ordinance to all of SWA.

Amendments: The Ordinance is amended by the Atomic Energy and Radiation Protection Act 5 of 2005 ([GG 3429](#)), which was brought into force in relevant part on 18 November 2011 by GN 220/2011 ([GG 4835](#)).

Regulations: Regulations are authorised by section 27 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Nature Conservation Ordinance 4 of 1975.

Summary: This Ordinance ([OG 3469](#)) 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. It repeals the Nature Conservation Ordinance 31 of 1967.

Amendments: The Ordinance is amended by Ord. 4/1977 ([OG 3603](#)), Ord. 16/1980 ([OG 4166](#)), Act 27/1986 ([OG 5294](#)), Act 6/1988 ([OG 5538](#)), Act 17/1988 ([OG 5591](#)), Act 31/1990 ([GG 133](#)) (sections 20 and 26), and Act 5/1996 ([GG 1333](#)) (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 ([GG 2962](#)), which was brought into force on 6 June 2003 by GN 117/2003 ([GG 2992](#)) (sections 18, 65-71 and 84).

Schedule 3 is amended by GN 115/1978 ([OG 3741](#)), GN 75/1987 ([OG 5364](#)), Act 31/1990 ([GG 133](#)) and GN 18/2016 ([GG 5936](#)).

Government Notice 18 of 2016 (GG 5936) states that it is amending Schedule 3. However, it states that it is adding “African Wild Dog (Lycaon)” to the list of animals in subparagraph (i). There is no subparagraph (i) in Schedule 3, raising a question as to whether this amendment was perhaps intended to apply to subparagraph (i) of Schedule 4.

Note that there are two versions of GG 5936. The corrected version is not marked as having been corrected in any way. None of the changes affect the amendments to Schedule 3.

Schedule 4 is amended by GN 117/1976 ([OG 3535](#)), GN 75/1987 ([OG 5364](#)), Government Notice 90/1988 ([OG 5547](#)) and GN 131/1996 ([GG 1320](#)).

Government Notice 18 of 2016 (GG 5936) states that it is amending Schedule 3. However, it states that it is adding “African Wild Dog (Lycaon)” to the list of animals in subparagraph (i). There is no subparagraph (i) in Schedule 3, raising a question as to whether this amendment was perhaps intended to apply to subparagraph (i) of Schedule 4.

Note that there are two versions of GG 5936. The corrected version is not marked as having been corrected in any way. None of the changes would affect the amendments which appears to have been meant for Schedule 4.

Schedule 5 is amended by GN 117/1976 ([OG 3535](#)).

Schedule 6 is amended by Government Notice AG 77/1985 ([OG 5045](#)).

Act 3/2017 ([GG 6344](#)) amends sections 1, 17, 26, 27, 38 and 49, and substitutes section 87. These amendments, amongst other things, increase the penalties for certain wildlife crimes.

Application of law: The application of the Ordinance was affected by the Provision for Control of the Import, Export and Possession of and Trading in Controlled Game Products Proclamation, AG 42/1980 ([OG 4238](#)) – which has since been repealed by the Controlled Wildlife Products and Trade Act 9 of 2008 ([GG 4190](#)).

Regulations: Regulations made under the Nature Conservation Ordinance 31 of 1967 survive pursuant to section 90(2) of this Ordinance.

Hunting regulations for the year 1968 are contained in GN 60/1968 (OG 2881). Hunting regulations for the year 1969 are contained in GN 59/1969 (OG 2994). Both sets of regulations were originally made in terms of section 4 of the Nature Conservation Ordinance 31 of 1967, and are now clearly obsolete.

Regulations made under this Ordinance are 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
AG GN 36/1985 (Reg 122)	OG 5019
GN 3/1985 (Reg 31)	OG 5064
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 304/1996 (WITHDRAWN BY GN 83/1997)	GG 1446
GN 83/1997 (Regs 147, 148, Chapter XVIIIB on Conservancies and Wildlife Councils; withdraws GN 304/1996,	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 & additional Schedules) [GG 4416](#)
 GN 9/2010 is amended by GN 19/2016 [GG 5936](#)
 Note that there are two versions of GG 5936. The corrected version is not marked as having been corrected in any way. All of the changes affect Schedule G – Record Sheet. As a quick method of verification, the *corrected* version of this form contains the heading “MEASUREMENTS AND PHOTOGRAPHS” above the line drawing of the predator; the *incorrect* version of this form contains the heading “MEASUREMENTS & PHOTOGRAPHS” at this spot. There are several other differences between the forms in the two *Gazettes*.
- GN 210/2012 (Regs 1 and 36 re: Dorob National Park) [GG 5015](#)
 The original regulations are erroneously cited in GN 210/2012 as being GN 240/**1975** instead of GN 240/**1976**. GN 210/2012 also erroneously lists GN 101/1985 as being “AG GN 101/1985”. GN 210/2012 also lists GN 304/1996 as an amendment to the regulations, but note that it was withdrawn by GN 83/1997 (which GN 210/2012 fails to list).
- GN 85/2017 (new Reg 9A: plastic bags in game parks/nature reserves) [GG 6285](#)
- GN 94/2018 (regs 107-108A) [GG 6605](#)
 This Notice erroneously lists GN 86/2017 amongst the previous amendments to the regulations; the correct reference is GN 85/2017. It also erroneously lists GN 85/2012 as an amendment to the regulations contained in GN 240/1976; these regulations are in fact a separate set of regulations concerning large carnivores. They are listed separately below.

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 85/2012 ([GG 4911](#)) contains **additional regulations for large carnivores** (lions, cheetahs, leopards, spotted hyenas, brown hyenas and wild dogs) in captivity.

Notices: GN 203/1973 ([OG 3356](#)) (which is amended by GN 132/1996, [GG 1320](#)) declares certain animals as problem animals.

GN 246/1977 ([OG 3638](#)) contains prohibitions on the export of processed or tanned leopard & cheetah skins.

GN 60/2009 ([GG 4236](#)) placed a moratorium on permits for the importation of large predators and alien species of wild animals into Namibia. However, this blanket prohibition was found to be outside the authority of the Act in *Erindi Ranch (Pty) Ltd v Government of the Republic of Namibia & Others* 2012 (1) NR 185 (HC) and is thus invalid.

Most of the other Government Notices issued in terms of the Ordinance deal with specific private game parks, conservancies, hunting seasons, honorary nature conservators or boundaries of public game parks and nature reserves. 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 a mechanism to redress their wrongful exclusion)
Waterberg Big Game Hunting Lodge Otjahewita (Pty) Ltd v Minister of Environment 2010 (1) NR 1 (SC) (delegation of powers under the Act after certain expressions in the principal Act were substituted by Act 5/1996, with specific reference to decisions on permit applications made under section 49(1) of the Act)
S v Nel 2015 (4) NR 1057 (HC) (section 89(1)(d), in context of ruling on leave to appeal lower court's refusal to order forfeiture of certain items).

Commentary:

- MO Hinz, *Without chiefs there would be no game: Customary law and nature conservation*, Windhoek: Out of Africa, 2003
MO Hinz, "Traditional governance and communal conservancies", *Namibia Law Journal*, Volume 3, Issue 2, 2011
Sidney L Haring & Willem Odendaal, "*God stopped making land!*": *Land Rights, Conflict and Law in Namibia's Caprivi Region*, Legal Assistance Centre, 2012, available at www.lac.org.na
Prisca Anyolo, "Conservancies in Namibia: Tools for sustainable development" in MO Hinz, OC Ruppel & C Mapaire (eds), *Knowledge lives in the lake: Case studies in environmental and customary law from Southern Africa*, Windhoek: Namibia Scientific Society, 2012.

Atmospheric Pollution Prevention Ordinance 11 of 1976.

Summary: This Ordinance ([OG 3555](#)) provides for the prevention of air pollution.

Amendments: This Ordinance is affected by the Health Act 21 of 1988 ([OG 5651](#)), which made it applicable to all of SWA.

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

Notices: 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 ([OG 3571](#)).

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 ([RSA GG 7427](#)) 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 in the event of an oil spill.

Applicability to SWA: *RSA Proc. 93/1985* ([RSA GG 9974](#)) 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 ([GG 326](#)) 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 ([GG 810](#)) amends section 21 of the Act.

Regulations: Regulations are authorised by section 28 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Game Products Trust Fund Act 7 of 1997.

Summary: This Act ([GG 1686](#)) 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 was brought into force on 1 September 1998 by GN 196/1998 ([GG 1927](#)).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 5, 6, 7 and 10.

Regulations: The Act makes no provision for regulations.

Forest Act 12 of 2001.

Summary: This Act ([GG 2667](#)) 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 repeals the Preservation of Bees and Honey Proclamation 1 of 1923, the Preservation of Trees and Forests Ordinance 37 of 1952 and the *Forest*

Act 72 of 1968. It was brought into force on 15 August 2002 by GN 138/2002 ([GG 2793](#)).

Amendments: Act 13/2005 ([GG 3564](#)) extends the composition of the Forestry Council, making amendments to sections 1, 2 and 4.

Regulations: There is no savings clause for regulations issued under the laws repealed by the Act.

Forest Regulations are contained in GN 170/2015 ([GG 5801](#)).

Notices: Areas declared as community forests under section 15(3) are published from time to time but have not been recorded here.

Commentary:

Ute Dieckmann & Theodor Muduva, *Namibia's Black Gold?: Charcoal Production, Practices and Implications*, Legal Assistance Centre, 2010, available at www.lac.org.na

C Mapaire, "Trees at the Crossroads: Internal conflict of laws in the ownership of forests in the Kavango Region" in MO Hinz, OC Ruppel & C Mapaire (eds), *Knowledge lives in the lake: Case studies in environmental and customary law from Southern Africa*, Windhoek: Namibia Scientific Society, 2012.

Environmental Investment Fund of Namibia Act 13 of 2001.

Summary: This Act ([GG 2669](#)) establishes an Environmental Investment Fund of Namibia to be used to support sustainable environmental and natural resource management. It was brought into force retroactively in 2013, with effect from 1 May 2005 (GN 266/2013, [GG 5314](#)).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 7, 9, 14 and 21 and deletes section 8.

Regulations: Regulations are authorised by section 26 of the Act, but none have yet been promulgated.

Atomic Energy and Radiation Protection Act 5 of 2005.

Summary: This Act ([GG 3429](#)) 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. Section 44 of the Act, which deals with the administration of the Act, was brought into force on 16 May 2005 (GN 50/2005, [GG 3429](#)). The Act as a whole was brought into force on 18 November 2011 (GN 220/2011, [GG 4835](#)).

Administration: The administration of the Act is assigned to the Ministry of Health and Social Services by Proc. 19/2008 ([GG 4066](#)).

Regulations: Radiation Protection and Waste Disposal Regulations are contained in

GN 221/2011 ([GG 4835](#)).

Related international agreements:

†*Statute of the International Atomic Energy Agency (IAEA), 1956, as amended.*

Biosafety Act 7 of 2006.

Summary: This Act ([GG 3763](#)) regulates genetically modified organisms and specified products derived from genetically modified organisms, and establishes a Biosafety Council. It was brought into force with effect from 1 November 2016 by GN 232/2016 ([GG 6135](#)).

Regulations: Biosafety Regulations are contained in GN 210/2016 ([GG 6116](#)). These regulations were brought into force with effect from 1 November 2016 by GN 232/2016 ([GG 6135](#)).

Notices: Certain items are designated as genetically modified organism products (GMO products) in terms of section 1(2) of the Act in GN 259/2018 ([GG 6729](#)).

Commentary: Elize Shakalela, “Subsistence Farmers Rights versus Genetically Modified Seeds: Focusing on Developing Countries”, *UNAM Law Review*, Volume 3, Issue 1, 2016, available at <http://unamlawreview.info>.

Environmental Management Act 7 of 2007.

Summary: This Act ([GG 3966](#)) 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. The Act was brought into force on 6 February 2012 by GN 28/2012 ([GG 4878](#)).

Regulations: Environmental Impact Assessment Regulations are contained in GN 30/2012 ([GG 4878](#)).

Notices: A list of activities that may not be undertaken without an Environmental Clearance Certificate is contained in GN 29/2012 ([GG 4878](#)) and GN 34/2016 ([GG 5962](#)).

A notice listing organs of state which are exercising functions that may affect the environment, issued in terms of section 24(1) of the Act for the purpose of Part VI of the Act, is contained in GN 249/2016 ([GG 6149](#)).

A notice listing waste disposal sites is contained in GN 282/2018 ([GG 6753](#)).

Appointments: Members of the Sustainable Development Advisory Council are announced in GN 310/2012 ([GG 5109](#)).

Commentary:

Ministry of Environment and Tourism, *Guide to the Environmental Management Act No 7 of 2007*, 2008

B Walmsley & K Tshipala, *Handbook on Environmental Assessment Legislation in the SADC Region*, Windhoek: Southern African Institute for Environmental Assessment, 2010.

Plant Quarantine Act 7 of 2008.

Summary: This Act ([GG 4149](#)) 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 Locust Suppression Proclamation 34 of 1923, the Agricultural Pests Ordinance 11 of 1927 and the *Agricultural Pests Act 3 of 1973*. This Act was brought into force on 1 July 2012 by GN 157/2012 ([GG 4975](#)).

Regulations: Section 23(2) states that anything done under the repealed *Agricultural Pests Act 3 of 1973* “which could have been done under a corresponding provision of this Act is deemed to have been done under that provision”. This would appear to include regulations. Pre-independence regulations have not been comprehensively researched. However, the following post-independence regulations made under the *Agricultural Pests Act 3 of 1973* would appear to survive:

Regulations relating to importation permits and the lodging of appeals are contained in GN 57/2007 ([GG 3812](#)).

In terms of the current Act, regulations relating to import and export permits, examination of imported plants, diseases or insects and appeals are contained in GN 158/2012 ([GG 4975](#)). (These regulations do not repeal the regulations issued under the repealed *Agricultural Pests Act 3 of 1973* in GN 57/2007 ([GG 3812](#)), but it appears as though there is overlap in subject matter.)

***Access to Biological and Genetic Resources and Associated Traditional Knowledge Act 2 of 2017.**

Summary: This Act ([GG 6343](#)) regulates access to biological or genetic resources and associated traditional knowledge, and provide a mechanism for a fair and equitable benefit sharing in respect of these resources. It also establishes an Office of Biological and Genetic Resources and Associated Traditional Knowledge. It will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Regulations: Regulations are authorised by section 23 of the Act, but none have yet been promulgated.

Relevant international law: The Act refers to the “Nagoya Protocol”, which is the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, 2010* to the *Convention on Biological Diversity (Biodiversity Convention), 1992*.

COMMENTARY

Ministry of Environment and Tourism, *Toolbox for the Establishment of Communal Area Conservancies*, 1996

- Andrew Corbett & 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
- J Glazewski, NK Kanguuehi, M Figueira, “Legal approaches to protecting biodiversity in Namibia” in P Barnard (ed), *Biological diversity in Namibia: A country study*, Windhoek: Namibian National Biodiversity Task Force, 1998
- Andrew Corbett & 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
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INTERNATIONAL LAW

Global:

Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989

Compensation for Oil Pollution Damage, 1971, as replaced by the 1992 Protocol

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

Convention on Biological Diversity (Biodiversity Convention), 1992

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973

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

Convention on Wetlands of International Importance, especially as Waterfowl Habitat (Ramsar Convention), 1971

International Convention for the Prevention of Pollution from Ships (MARPOL), 1973, as modified by the Protocol of 1978

Annex I Regulations for the Prevention of Pollution by Oil, as amended

Annex II Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk, as amended

Optional Annex III Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form, as amended

Optional Annex V Prevention of Pollution by Garbage from Ships, as amended

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

International Plant Protection Convention, 1951, as amended

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

Minamata Convention on Mercury, 2013

Paris Agreement, 2015

Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended

Protocol of 1992 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), 1971 (1992 Fund Convention), as amended

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

Statutes of the International Centre for Genetic Engineering and Biotechnology (ICGEB), 1983

Protocol to the Statutes of the International Centre for Genetic Engineering and Biotechnology on the Seat of the Centre, 2007

Stockholm Convention on Persistent Organic Pollutants, 2001, with Annexes as amended in 2009, 2011, 2013 and 2015

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

Vienna Convention for the Protection of the Ozone Layer, 1985

World Heritage Convention, 1972

Regional:

****African Convention on the Conservation of Nature and Natural Resources (Revised Version), 2003**

Agreement for the Establishment of the Africa Institute for the Environmentally Sound Management of Hazardous and Other Wastes Agreement, 2004

Agreement for the Establishment of the Southern African Centre for Ivory Marketing (SACIM), 1991

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), 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 (ORASECOM), 2000

Agreement on the Establishment of the Zambezi Watercourse Commission (ZAMCOM), 2004

Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region and Protocol (Abidjan Convention), 1981

Additional Protocol to the Abidjan Convention concerning Cooperation in the Protection and Development of Marine and Coastal Environment from Land-based Sources and Activities in the Western, Central and Southern African Region, 2012

****SADC Protocol on Environmental Management for Sustainable Development, 2014**

SADC Protocol on Forestry, 2002

SADC Protocol on Shared Watercourse Systems, 1995

Note: This Protocol has been repealed and replaced by the SADC Revised Protocol on Shared Watercourses, 2000, for the SADC member states that are parties to the Revised Protocol. The 1995 Protocol remains in force between Namibia and SADC states that are a party to it but not to the Revised Protocol.

SADC Revised Protocol on Shared Watercourses, 2000

SADC Protocol on Wildlife Conservation and Law Enforcement, 1999

Treaty on the Establishment of the Kavango Zambezi Transfrontier Conservation Area (KAZA TFCA), 2011

See also **AGRICULTURE**.

See also **ANIMALS**.

See also Namibia Wildlife Resorts Company Act 3 of 1998 (**TOURISM**).

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 AND HOUSING**.

See also **MARINE AND FRESHWATER RESOURCES**.

See also **MINING AND MINERALS**.

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

See also **SEA AND SEASHORE**.

See also Foreign Investments Act 27 of 1990 and Controlled Wildlife Products and Trade Act 9 of 2008 (**TRADE AND INDUSTRY**).

See also **WATER**.

EVIDENCE

Procedure and Evidence Proclamation 8 of 1938, section 7.

Summary: Most of this Proclamation ([OG 747](#)) 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 General Laws Amendment Ordinance 11/1954 ([OG 1846](#)) (amending section 6 which was subsequently repealed), the SA Supreme Court Act 59 of 1959 (which repeals section 4), the RSA Civil Proceedings Evidence Act 25 of 1965 ([RSA GG 1066](#)) (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 ([RSA GG 1066](#)) 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), dated 12 November 1979, as amended. There were two amendments 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* and the *Law of Evidence Amendment Act 45 of 1988* – neither of which was made expressly applicable to SWA.

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).

Amendments: An item in the Schedule to the Act is repealed by the *Criminal Procedure Act 51 of 1977* ([RSA GG 5532](#)).

Regulations: The Act makes no provision for regulations.

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).

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 of this Act ([RSA GG 2464](#)) 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.”

Transfer to SWA: It is not clear how this Act was administered, and thus we have not ascertained what, if any, transfer proclamation applied. However, the case of *Mweuhanga v Administrator-General of South West Africa & Others* 1990 (2) SA 776 (A) at 784C-785E considered who is empowered to act in respect of South West Africa for purposes of this provision:

This then brings me to South West Africa. In the section South West Africa is grouped together with the provincial administrations, and this is hardly surprising. Whatever the constitutional differences may have been between the provinces and South West Africa, they had, at all relevant times, one feature in common which is of decisive importance for present purposes. This feature is that their administrations were divided ones. Certain governmental functions were performed in the provinces and South West Africa by the central Government in the course of governing the country as a whole (including South West Africa) whereas others were performed by the local administrations (see eg the South West Africa Constitution Act 39 of 1968 and, in particular, ss 22 and 38). There was therefore a need for the head of the administration of South West Africa (at that stage the Administrator) to be granted the same rights in respect of his administration as were granted to the heads of the provincial administrations and the Government departments. The fact that, in s 29, South West Africa is included without comment with the provincial administrations suggests that this indeed was what was intended. However, Mr Gauntlett points out that there is a difference in the wording. Whereas the Act speaks of ‘a provincial administration’ it refers to the ‘territory of South-West Africa’. A territory, he contends, cannot be responsible for governmental actions, and therefore the section must mean something different in reference to South West Africa from what it does in reference to the provincial administrations.

Now, of course, a possible explanation for this wording is simply that the draftsman did not repeat the word ‘administration’ with respect to South West Africa: in other words, that he meant ‘in the case of a provincial administration or the administration of the territory of South West Africa’. Elliptical expressions of this sort are, as we know, quite common. This possibility gains added force if one considers possible alternative meanings of the reference to South West Africa. In his written heads of argument Mr Gauntlett contended that

‘(w)here as a matter of territorial jurisdiction South West Africa is “concerned”, its Administrator is the relevant authority’.

This contention raises the question: when is South West Africa concerned as a matter of territorial jurisdiction? It can hardly be suggested, and was not in fact suggested, that this happens whenever the performance of a governmental action affects the territory or its inhabitants, since this would cover a large part of the central Government’s activities. At one stage Mr Gauntlett suggested that the test was whether the proceedings in which privilege was claimed were conducted in South West Africa. This would, however, mean that governmental actions of the administration of South West Africa could not be protected from disclosure before a tribunal in any other part of the country, and Mr Gauntlett later accepted that the place where the privilege is claimed, could not be decisive. In the result the appellant’s argument did not attribute any clear meaning to the expression ‘in the case of ... the territory of South West Africa’, and a great deal of extensive interpretation would be required to ascribe a

sensible meaning to it which would afford the Administrator of South West Africa greater powers than his counterparts in the provinces. **I conclude, therefore, that there was no intention to distinguish between the various provinces on the one hand, and South West Africa on the other, and that the power of an Administrator of any of these territories to invoke the privilege was limited to matters falling under the authority of his administration.** As I have indicated, this result is achieved by simply reading the word ‘administration’ as also being implied in respect of South West Africa. **In the present matter the affidavit signed by the Minister of Defence clearly related to a matter falling under the Department of Defence and not under the administration of South West Africa. The Minister of Defence was, accordingly, the proper person to make this affidavit.**

This case holds that the statute empowered the Administrator-General *and* any other Minister to act in terms of section 29 with respect to a power falling under their administration – thus implying that there was no single authority which ‘administered’ the provision in question. In any event, the issue of transfer is not relevant to the content of section 29 since there were no amendments to that section in South Africa between the earliest possible date of transfer and the repeal of the section in South Africa.

Section 29 was repealed in South Africa by the *Internal Security Act 74 of 1982* ([RSA GG 8232](#)), which was not applicable to SWA. It was held in *Mweuhanga v Administrator-General of South West Africa & Others* 1990 (2) SA 776 (A) at 780H-781G that this repeal was not effective in respect of SWA:

“I now turn to the merits of the appeal. It will be recalled that the affidavit by the Minister of Defence which was filed in the interlocutory application purported to be based on both s 66 of the Internal Security Act of 1982 and s 29 of the General Law Amendment Act of 1969. As appears from the judgment of the Court a quo, the appellant contended in that Court that neither of these Acts applied in South West Africa. **The Court held that the Internal Security Act did not apply in South West Africa but that s 29 of the General Law Amendment Act was in force there, although the latter section had, insofar as the Republic of South Africa was concerned, been repealed by s 73 of the Internal Security Act [...]**

On appeal before us Mr Gauntlett, for the appellant, accepted the Court’s finding that s 29 of the General Law Amendment Act applied in South West Africa, but that the Internal Security Act did not. **I agree with this. Section 29(3) of the General Law Amendment Act specifically provides that the provisions of s 29 and any amendment thereof apply also in the territory of South West Africa. No corresponding provision is found in the Internal Security Act.** And it is noteworthy that s 66(1) and (2) of the Internal Security Act corresponds almost word for word with s 29(1) and (2) of the General Law Amendment Act (as substituted by s 25 of the General Law Amendment Act 102 of 1972) save that the latter contains a reference to South West Africa whereas the former does not. [...] [I]ts absence from s 66 of the Internal Security Act is a further indication that the latter Act was not intended to apply in South West Africa.”

Amendments: The *General Law Amendment Act 102 of 1972* ([RSA GG 3610](#)) substitutes subsections (1) and (2) of section 29.

Second General Law Amendment Act 94 of 1974, section 2.

Summary: Section 2 of this Act ([RSA GG 4510](#)) 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. No legal authority for the application of the Act to South West Africa has been

located, but section 2 of the Act was ‘substituted’ in post-independence Namibia (effective 15 September 2001), which would seem to make it part of Namibian law now even if it was not previously.

Amendments: The International Co-operation in Criminal Matters Act 9 of 2000 ([GG 2327](#)) substitutes section 2.

Note that there are two versions of GG 2327. The correct one states at the top: “*This Gazette replaces previous Gazette No. 2327.*”

Computer Evidence Act 32 of 1985.

Summary: This Act ([OG 5152](#)) provides for the admissibility of computer evidence in civil proceedings. It was brought into force on 1 August 1987 by AG 25/1987 ([OG 5379](#)).

Regulations: The Act makes no provision for regulations.

Cases: *S v Ningisa & Others* 2013 (2) HC 504 (SC) (Act applicable only to civil proceedings, as it explicitly states, and not relevant to criminal proceedings); *Rally for Democracy and Progress & Others v Electoral Commission & Others* 2013 (2) NR 390 (HC).

Commentary: PH Masake & P Balhao, “A Need to Reform the Computer Evidence Act 32 of 1985: A Letter to the Law Reform and Development Commission of Namibia”, *UNAM Law Review*, Volume 1, Issue 2, 2013, available at <http://unamlawreview.info>.

Foreign Courts Evidence Act 2 of 1995.

Summary: This Act ([GG 1033](#)) provides for the obtaining of evidence of persons in Namibia by courts outside Namibia. It repeals the South African *Foreign Courts Evidence Act 80 of 1962*.

Amendments: The International Co-operation in Criminal Matters Act 9 of 2000 ([GG 2327](#)), brought into force on 15 September 2001 (GN 185/2001, [GG 2614](#)), amends sections 2, 4 and 7.

Note that there are two versions of GG 2327. The correct one states at the top: “*This Gazette replaces previous Gazette No. 2327.*”

Note that section 10 of the Act gives the Minister of Justice the power to amend the Schedules to the Act by notice in the *Gazette*.

Regulations: The Act provides that anything done under the repealed *Foreign Courts Evidence Act 80 of 1962* which could have been done under a provision of this Act will be deemed to have been done under this Act. However, this Act makes no provision for regulations, so no regulations made under the repealed Act could survive.

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).

COMMENTARY

Alet Greeff, “Does Namibia’s Constitution provide an enforceable and pursuable environmental right?”, *Namibia Law Journal*, Volume 4, Issue 1, 2012.

See also Combating of Rape Act 8 of 2000 (evidence in rape cases) and Witness Protection Act 11 of 2017 (**CRIMINAL LAW AND PROCEDURE**).

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, which was inserted by *Act 74 of 1972*, 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.

In South Africa, the *Application of Certain Laws in Namibia Abolition Act 56 of 1991* removed the references to SWA from the Act as it applies in South Africa.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Explosives Amendment Act 79 of 1962* ([RSA GG 280](#))
- *Explosives Amendment Act 21 of 1963* ([RSA GG 456](#))
- *Mines and Works and Explosives Amendment Act 46 of 1964* ([RSA GG 807](#))
- *Explosives Amendment Act 20 of 1965* ([RSA GG 1066](#))
- *Explosives Amendment Act 12 of 1967* ([RSA GG 1665](#))
- *Explosives Amendment Act 74 of 1972* ([RSA GG 3573](#))
- *Explosives Amendment Act 35 of 1975* ([RSA GG 4698](#))
- *Explosives Amendment Act 101 of 1977* ([RSA GG 5638](#)).

Act 16/1986 ([OG 5238](#)) amends the Act substantially.

The Police Act 19 of 1990 ([GG 113](#)) amends the definition of “Minister” in section 1.
Note that the original *Gazette* was replaced by another GG 113 with the same date; the correct version states at the top: “*This Government Gazette replaces Government Gazette No. 113 of 3 December 1990.*”

Regulations: Pre-independence regulations have not been comprehensively researched. However, regulations are contained in RSA Government Notice R.1604/1972 (RSA GG 3648), as amended by –
RSA GN R.2371/1973 (RSA GG 4103)
RSA GN R.155/1977 (RSA GG 5395)
RSA GN R.2153/ 1977 (RSA GG 5779)
RSA GN R.2135/1979 (RSA GG 6665)
RSA GN R.2292/1979 (RSA GG 6706)

AG GN 49/1989 ([OG 5761](#))
GN 51/2002 ([GG 2717](#)).

Notices: RSA GN R.1603/1972 lists authorised explosives.

Cases: *S v Haimo* 1993 NR 301 (HC).

INTERNATIONAL LAW

**Comprehensive Nuclear-Test-Ban Treaty, 1996*

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 (Ottawa Treaty), 1997

International Convention for the Suppression of Acts of Nuclear Terrorism, 2005

See also **ARMS AND AMMUNITION**.

See also *Riotous Assemblies Act 17 of 1956* (power to regulate transport of explosives) (**CRIMINAL LAW AND PROCEDURE**).

FINANCE AND DEVELOPMENT

Finance and Financial Adjustments Acts Consolidation Act 11 of 1977, section 9, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 5443](#)) consolidates a number of previous laws dealing with a variety of financial matters. Only section 9 was made applicable to SWA. It deals with the exemption of “Bantu governments, assemblies, councils and authorities” from the payment of duties, fees and other taxes, and has no relevance in independent Namibia.

Applicability to SWA: The Act was not generally applicable to South West Africa. The only portion of the Act made applicable to South West Africa was section 9, which was made explicitly so applicable by section 9(2) which states “This section and any amendment thereof shall apply also in territory of South West Africa, including the Eastern Caprivi Zipfel.” Section 9 was not amended in South Africa prior to Namibian independence.

Several other sections of the Act concerned specific financial transactions relevant to South West Africa, but they were not made applicable to South West Africa as laws and have no ongoing relevance.

- Section 5 requires the Administration of South West Africa to pay a contribution toward certain pensions.
- Section 21 concerns the continued applicability to SWA of certain regulations with financial implications under laws which have since been repealed.
- 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.

Amendments: Certain terms in the Act were amended by the Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

Exchequer and Audit Amendment Proclamation, AG 35 of 1979, sections 32-36.

Summary: The sections of this Proclamation ([OG 4042](#)) which remain in force (sections 32-36) amend the *Exchequer and Audit Proclamation, RSA Proclamation 85 of 1979* (of which nothing remains in force) and the Executive Powers (Posts and Telecommunications) Transfer Proclamation, AG 12 of 1978.

Amendments: Sections 1-15, 25 and 27 were repealed by the State Finance Act 1 of 1982 ([OG 4610](#)), which has since been replaced by the State Finance Act 31 of 1991

([GG 333](#)). Sections 16-24, 26, 28-31, 37 and 38 were repealed by the Posts and Telecommunications Companies Establishment Act 17 of 1992 ([GG 447](#)).

Development Fund of South West Africa/Namibia Act 29 of 1987.

Summary: This Act ([OG 5477](#)) 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 ([GG 333](#)) 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 repeals the State Finance Act 1 of 1982 ([OG 4610](#)).

Amendments: The Act is amended by the Public Service Act 13 of 1995 ([GG 1121](#)), brought into force on 1 November 1995 by GN 210/1995 ([GG 1185](#)).

Regulations: Section 38(2) is a savings clause which states: "Anything done under a provision of a law repealed by subsection (1), and which could have been done under a corresponding provision of this Act, shall be deemed to have been done under the provision of this Act." However, since this Act makes no provision for regulations, any regulations made under the repealed laws would not survive.

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 ([GG 334](#)) provides for the repudiation of certain actions taken under laws in force prior to independence, pursuant to Article 140(3) of the Constitution. It was brought into force on 12 March 1992 by Proc. 5/1992 ([GG 366](#)).

Regulations: The Act makes no provision for regulations.

Notices: 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), 1993 NR 328 (SC).

Assistance Fund of South West Africa Repeal Act 13 of 1992.

Summary: This Act ([GG 429](#)) 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.

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 was brought into force on 15 May 2003, with the exception of sections 21 and 22, by GN 99/2003 ([GG 2978](#)). Section 21 of the Act was brought into force on 14 July 2005 by GN 76/2005 ([GG 3459](#)). Section 22, which repeals the Namibia Development Corporation Act 18 of 1993, was never brought into force and was subsequently repealed by the Namibia Industrial Development Agency Act 16 of 2016 (GG 6202), which was brought into force in relevant part on 15 November 2018 by GN 295/2018 ([GG 6767](#)), and which also repeals the Namibia Development Corporation Act 18 of 1993.

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 9 and 13.

The Namibia Industrial Development Agency Act 16 of 2016 ([GG 6202](#)), which was brought into force in relevant part on 15 November 2018 by GN 295/2018 ([GG 6767](#)), repeals section 22 (which was never brought into force).

Regulations: Regulations are authorised by section 19 of the Act, but none have yet been promulgated.

Notices: 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.

Application of law: The Financial Intelligence Act 13 of 2012 ([GG 5096](#)) places certain duties on the Development Bank of Namibia.

Appointments: Appointments to the Board of the Development Bank of Namibia are announced in GN 177/2018 ([GG 6680](#)).

INTERNATIONAL LAW

Agreement Establishing the African Development Bank, 1963

Agreement Establishing the International Fund for Agricultural Development, 1976

Agreement Establishing the Nordic-Southern African Development Community Fund and the Nordic-Southern African Development Community Agency (NORSAD), 1990

Agreement for the Establishment of the African Export-Import Bank (Afreximbank), 1993

***Agreement to Establish the South Centre, 1994*

Articles of Agreement of the International Monetary Fund (IMF), 1944

Articles of Agreement of the International Bank for Reconstruction and Development (IBRD), 1944

†Constitution of the United Nations Industrial Development Organization (UNIDO), 1979
Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part, 2016 (published in Proc. 2/2017, [GG 6237](#))

SADC Protocol on Finance and Investment, 2006

**Agreement Amending Annex I (Co-operation on investment) of the Protocol on Finance and Investment, 2016*

Treaty Establishing the African Economic Community (AEC), 1991

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 Lotteries Act 15 of 2002 (**GAMBLING**).

See also National Housing Enterprise Act 5 of 1993 and National Housing Development Act 28 of 2000 (**LAND AND HOUSING**).

See also Trust Fund for Regional Development and Equity Provisions Act 22 of 2000 (**REGIONAL AND LOCAL GOVERNMENT**).

See also **REVENUE**.

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

Inspection of Financial Institutions Act 38 of 1984, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 9155](#)) provides for inspection of the affairs of insurers, pension fund organisations, friendly societies, medical schemes and unit trust schemes. It repeals the *Inspection of Financial Institutions Act 68 of 1962*, as amended.

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 ([OG 5189](#)) repeals the portions of this Act relating to building societies.

The following pre-independence South African amendments were applicable to SWA–

- *Building Societies Act 82 of 1986* ([RSA GG 10401](#)) (brought into force on 29 August 1986 by RSA Proc. R.152/1986 ([RSA GG 10406](#)); note that the amendments made by this Act are irrelevant since the Act was already repealed insofar as it relates to building societies by Act 2 of 1986, and furthermore, the portions of the Act amended by Act 82 of 1986 were repealed by Act 6 of 1987)
- *Financial Institutions Amendment Act 6 of 1987* ([RSA GG 10645](#))
- *Financial Institutions Amendment Act 51 of 1988* ([RSA GG 11313](#))
- *Trust Property Control Act 57 of 1988* ([RSA GG 11357](#))
- *Accountants’ and Auditors’ and Financial Institutions Amendment Act 92 of 1988* ([RSA GG 11414](#))
- *Financial Institutions Second Amendment Act 54 of 1989* ([RSA GG 11893](#))

The Banking Institutions Act 2 of 1998 ([GG 1808](#)) repeals section 11(1).

The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 ([GG 2529](#)) amends sections 1 and 2.

Act 6/2011 ([GG 4753](#)) amends section 6.

Regulations: Section 11(2) is a savings clause which states: “Anything done or deemed to have been done under any provision of a law repealed or amended by subsection (1) and which could be done under a provision of this Act, is deemed to have been done under the last-mentioned provision.” However, since this Act makes no provision for regulations, any regulations made under the repealed Act would not survive.

Cases: *Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others* 2014 (2) NR 425 (HC); overturned on appeal 2016 (3) NR 747 (SC).

Financial Institutions (Investment of Funds) Act 39 of 1984, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 9156](#)) governs the administration of funds and trust property by financial institutions. It repeals the *Financial Institutions (Investment of Funds) Act 56 of 1964*, as amended.

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.”

Amendments: The following pre-independence South African amendments were applicable to SWA:

- *Financial Institutions Amendment Act 6 of 1987* ([RSA GG 10645](#))
- *Financial Institutions Amendment Act 51 of 1988* ([RSA GG 11313](#)).

The Act was amended in South Africa by section 38 of the *Financial Markets Control Act 55 of 1989* ([RSA GG 11894](#)). This amending Act, which amended the definitions of “financial institution” and “registrar”, was gazetted prior to Namibian independence, on 26 May 1989 – but it was brought into force in relevant part on 10 August 1990, by RSA Proc. 133/1990 ([RSA GG 12690](#)), after the date of Namibian independence. (That Proclamation brought sections 2, 3 and 18 of *Act 55 of 1989* into force with effect from 7 August 1989, prior to Namibian independence, but the amendments to *Act 39 of 1984* were effected by section 38.) Therefore, the amendments made by *Act 55 of 1989* were not applicable to South West Africa.

Regulations: Section 11(2) is a savings clause which states: “Anything done or deemed to have been done under any provision of a law repealed by subsection (1) and which could be done under a provision of this Act is deemed to have been done under the last-mentioned provision.” However, since this Act makes no provision for regulations, any regulations made under the repealed Act would not survive.

Cases:

Chief Executive Officer of Namibia Financial Institutions Supervisory Authority v Legal Shield Namibia Ltd 2005 NR 151 (HC)

Chief Executive Officer of Namibia Financial Institutions Supervisory Authority & Another v FIS Life Assurance Co Ltd & Others 2013 (2) NR 532 (HC)(section 6(1)).

Building Societies Act 2 of 1986.

Summary: This Act ([OG 5189](#)) regulates the registration, management and dissolution of building societies. It repeals the Building Societies Act 24 of 1965.

Amendments: Prior to independence, this Act was amended by Act 15/1987 ([OG 5413](#)).

Act 25/1990 ([GG 124](#)) amends sections 1, 2 and 49 and substitutes certain words and expressions.

Act 8/1992 ([GG 392](#)) 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 ([GG 967](#)) substitutes the title of Chapter VII and adds a new section 52A.

The Married Persons Equality Act 1 of 1996 ([GG 1316](#)), which was brought into force on 15 July 1996 by GN 154/1996 ([GG 1340](#)), substitutes section 62.

Regulations: Regulations are authorised by section 78 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Application of law: 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 ([GG 1761](#)) 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 was brought into force, with the exception of section 35, on 16 February 1998 by GN 11/1998 ([GG 1794](#)). Section 35 was brought into force on 1 June 1998 by GN 117/1998 ([GG 1872](#)). It repeals the Bank of Namibia Act 8 of 1990 ([GG 42](#)).

Amendments: Act 11/2004 ([GG 3277](#)) amends sections 1, 4, 5, 8, 9, 26, 35, 46 and 56, inserts sections 3A and 3B, substitutes sections 17 and 54. (Act 11/2004 also repeals the Determination of the Monetary Units and Symbols of the Currency of Namibia Proclamation, 1993 (Proclamation No. 19 of 1993).)

Savings: Section 60(2) of this Act states: “Anything done in terms of a provision of the Act repealed by subsection (1) and which may or is required to be done in terms of that Act, shall be deemed to have been done in terms of the corresponding provision of this Act.”

Regulations: The savings clause would apply to regulations, which are authorised by section 59 of this Act, but no regulations under the repealed Act have been located.

Credit Bureau Regulations issued in terms of this Act are contained in GN 103/2014 ([GG 5518](#)), as amended by GN 177/2014 ([GG 5579](#)).

Notices: Certain bodies are designated for the purposes of the **definition of “liquid assets”** in section 1 of the previous Act in GN 125/1993 ([GG 732](#)).

Monetary units and symbols are set forth in Proc. 19/1993 ([GG 682](#)), General Notice 339/1996 ([GG 1452](#)), General Notice 8/2000 ([GG 2258](#)) (enhanced N\$50 and N\$100 banknotes), General Notice 108/2012 ([GG 4936](#)) (a new series of banknotes with enhanced security features) and General Notice 394/2015 ([GG 5811](#)) (modified N\$10 and N\$20 banknotes). However, Proclamation 19/1993 was 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](#)), General Notice 7/2000 ([GG 2258](#)) and General Notice 166/2010 ([GG 4520](#)).

A **Directive on the Minimum Reserve Requirement** issued pursuant to section 35 of the Act is contained in General Notice 101/2005 ([GG 3449](#)).

See also **directives issued under the Payment System Management Act 18 of 2003** ([GG 3115](#)).

A memorandum of agreement between the Namibian Competition Commission and the Bank of Namibia, made pursuant to section 67 of the Competition Act 2 of 2003, is published in General Notice 41/2012 ([GG 4888](#)).

Application of law: The application of the previous Act was affected by GN 61/1990 ([GG 91](#)), which deals with building societies.

Appointments: Appointments to the Board are announced in Proc. 11/1990, Proc. 6/1993, Proc. 4/2002 ([GG 2746](#)), Proc. 6/2007 ([GG 3785](#)), Proc. 16/2008 ([GG 4039](#)), Proc. 39/2008 ([GG 4156](#)), Proc. 4/2012 ([GG 4875](#)), Proc. 22/2012 ([GG 5038](#)), Proc. 20/2013 ([GG 5211](#)) and Proc. 9/2017 ([GG 6333](#)).

Appointments of governors are announced in Proc. 4/1993 ([GG 581](#)), Proc. 3/1994 ([GG 791](#)), Proc. 10/2010 ([GG 4468](#)), Proc. 11/2012 ([GG 4941](#)) and Proc. 10/2017 ([GG 6333](#)). Appointments of deputy governors are announced in Proc. 5/1993 ([GG 581](#)), Proc. 11/2012 ([GG 4941](#)) and Proc. 10/2017 ([GG 6333](#)).

Related laws: The Financial Intelligence Act 13 of 2012 ([GG 5096](#)) also 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)
S v Candimba & Others 2013 (1) NR 70 (HC) (Exchange Control Regulations, regulation 3).

Banking Institutions Act 2 of 1998.

Summary: This Act ([GG 1808](#)) consolidates and amends the laws relating to banking institutions. It repeals the *Banks Act 23 of 1965*. The Act was brought into force on 1 April 1998 by GN 63/1998 ([GG 1827](#)).

Amendments: Act 14/2010 ([GG 4598](#)) makes extensive amendments to the Act.

GN 34/2011 ([GG 4679](#)) amends section 2 to remove the Post Office Savings Bank from the list of exemptions in section 2(2), under the authority of section 2(3) of the Act; the effect is to make the Act applicable to the Post Office Savings Bank from 1 April 2011.

Regulations: Regulations made in terms of the previous *Banks Act 23 of 1965* survive in terms of section 74(2) of this Act. Pre-independence regulations have not been comprehensively researched. However, regulations made under the previous Act are contained in RSA GN R.2747/1986 (RSA GG 10564), as amended after independence by GN 75/1998 ([GG 1831](#)).

Regulations pertaining to fees made under this Act are contained in GN 234/2009 ([GG 4386](#)), as amended by GN 323/2017 ([GG 6490](#)). (Previous regulations on fees were contained in GN 75/1998 ([GG 1831](#))).

Regulations relating to restrictions on loan-to-value ratios are contained in GN 229/2016 ([GG 6130](#)).

Determinations: A number of “Banking Institutions Determinations” have been issued in terms of the Act:

Determination on the Appointment, Duties and Responsibilities
of Directors, Principal Officers, and Executive Officers
of Banking Institutions and Controlling Companies (BID-1)

General Notice 21/2017 ([GG 6221](#)),
which replaced General Notice 119/1998 ([GG 1899](#))
(Note that GG 6220 contains a different General Notice numbered GN 21/2017)

Asset Classification, Suspension of
Interest and Provisioning (BID-2)

General Notice 278/2003 ([GG 3078](#)),
which replaced General Notice 120/1998 ([GG 1899](#))

BID-3 (General Notice 120/1998, [GG 1899](#)), was replaced by the Financial Intelligence Act 3 of 2007 and associated regulations. (See GN 71/2009, [GG 4256](#).) The Financial Intelligence Act 3 of 2007 was subsequently replaced by the Financial Intelligence Act 13 of 2012.

Limits on Exposures to Single Borrowers (BID-4)

General Notice 290/2009 ([GG 4373](#)),
which replaced General Notice 279/2003 ([GG 3078](#)),
which replaced General Notice 122/1998 ([GG 1899](#))

Measurement and Calculation of Capital Charges
for Credit Risk, Operational Risk and Market Risk (BID-5)

General Notice 291/2009 ([GG 4373](#)),
which replaced General Notice 280/2003 ([GG 3078](#)),
which replaced General Notice 123/1998 ([GG 1899](#))

Measurement and Calculation of Capital Charges
for Credit Risk, Operational Risk and Market Risk
for Domestic Systemically Important Banks (BID-5A)

General Notice 496/2018 ([GG 6686](#))

Minimum Liquid Assets (BID-6)

General Notice 441/2014 ([GG 5634](#)),
which replaced General Notice 292/2009 ([GG 4373](#)),
which replaced General Notice 198/2007 ([GG 3879](#)),
which replaced General Notice 281/2003 ([GG 3078](#)),
which replaced General Notice 90/1999 ([GG 2105](#))

Minimum Local Assets (BID-7)

General Notice 199/2007 ([GG 3879](#)),
which replaced General Notice 125/1998 ([GG 1899](#))

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 407/2017 ([GG 6437](#)),
which replaced General Notice 427/2012 ([GG 5089](#)),

which replaced General Notice 280/1999 ([GG 2190](#))

No record of BID-11

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](#))

BID-16 has been repealed.

BID-16 was initially contained in General Notice 283/2003 ([GG 3078](#)). It was repealed by General Notice 80/2010 ([GG 4447](#)) with effect from 10 March 2010. Note that there are two versions of this *Government Gazette*. The correct citation for the repeal is General Notice 80/2010 and not General Notice 86/2010 as stated in the erroneous *Government Gazette* which was replaced by the correct one. (General Notice 86/2010 is the Establishment of the township Omuti: Municipality of Okahandja in [GG 4451](#).)

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](#))

Branches of Foreign Banking Institutions (BID-22)

General Notice 450/2012 ([GG 5102](#)),
which replaced General Notice 169/2012 ([GG 4988](#)),

No record of BID-23

Consolidated Supervision (BID-24)

General Notice 107/2012 ([GG 4933](#))

Imposition of Administrative Fines (BID-25)

General Notice 284/2013 ([GG 5244](#))

Priority of Claims in the event of winding-up
of a Banking Institution or Controlling Company (BID-26)

General Notice 158/2017 ([GG 6332](#))

Application for Registration
as a Controlling Company (BID-27)

General Notice 442/2014 ([GG 5635](#))

No record of BID-28 or BID-29.

Information Security (BID-30)

General Notice 425/2017 ([GG 6448](#)).

See also General Notice 100/2009 ([GG 4284](#)) for a declaration of conduct which constitutes “receiving of funds from the public” under section 1(d) for the purpose of ascertaining if a person is conducting banking business.

Specific authorisations to conduct banking business are not listed here.

Related law: Note that the Financial Intelligence Act 13 of 2012 ([GG 5096](#)) places certain additional duties on persons who carry on “banking business” or are “receiving funds from the public”, as defined in section 1 of the Act.

Cases: The following case concerns section 30 of the previous legislation, the *Banks Act 23 of 1965* –

Grobler v Commercial Bank of Namibia Ltd 2010 (1) NR 313 (SC).

Commentary: Frederico Links & Clement Daniels, “Towards a National Integrity System: Assessing the appropriateness and effectiveness of anti-corruption and related legislation in Namibia”, Institute for Public Policy Research, 2011, available at www.ippr.org.na

Namibia Financial Institutions Supervisory Authority Act 3 of 2001.

Summary: This Act ([GG 2529](#)) establishes an authority to exercise supervision over the business of financial institutions and services, often referred to by its acronym NAMFISA. The Act was brought into force on 14 May 2001 by GN 85/2001 ([GG 2528](#)).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 5, 10, 13, 14 and 16, substitutes section 7 and deletes section 12.

Regulations: Appeal Regulations are contained in GN 160/2006 ([GG 3705](#)).

Notices: 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](#)).

Provisions pertaining to levies on financial institutions were initially contained in GN 82/2002 ([GG 2746](#)) as amended by GN 154/2002 ([GG 2804](#)). However, this notice was replaced by GN 78/2003 ([GG 2947](#)), as amended by GN 64/2004 ([GG 3181](#)), GN 160/2004 ([GG 3254](#)), GN 161/2004 ([GG 3254](#)) and GN 24/2011 ([GG 4666](#)). GN 78/2003 is replaced in turn by GN 265/2017 ([GG 6438](#)) with effect from 1 November 2017.

GN 265//2017 ([GG 6438](#)) withdraws GN 78/2003 ([GG 2947](#)) and GN 64/2004 ([GG 3181](#)), but makes no mention of GN 160/2004 ([GG 3254](#)), GN 161/2004 ([GG 3254](#)) or GN 24/2011 ([GG 4666](#)). Note that GN 160/2004 and GN 161/2004 in [GG 3254](#) are identical.

A notice on cessation of over-the-counter payments to NAMFISA was issued in GN 331/2012 ([GG 5041](#)), requiring that all future payments of fees be made via direct deposit or electronic funds transfers.

Notices pertaining to specific financial agents, brokers and institutions have not been recorded here.

Appointments: Members of the Board are announced in GN 124/2001 ([GG 2552](#)), GN 78/2005 ([GG 3460](#)), GN 119/2009 ([GG 4270](#)), GN 282/2010 ([GG 4637](#)), GN 181/2010 (GG 4544), and GN 212/2017 ([GG 6384](#)).

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)), which places certain duties on the Namibia Financial Institutions Supervisory Authority and on some of the financial institutions and businesses it regulates.

Cases: *Open Learning Group Namibia Finance CC v Permanent Secretary, Ministry of Finance & Others* 2006 (1) NR 275 (HC); *Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others* 2014 (2) NR 425 (HC); overturned on appeal 2016 (3) NR 747 (SC).

Payment System Management Act 18 of 2003.

Summary: This Act ([GG 3115](#)) provides for the management, administration, operation, regulation, oversight and supervision of payment, clearing and settlement systems in Namibia. It was brought into force on 15 May 2004 by GN 111/2004 ([GG 3207](#)).

Amendments: Act 6/2010 ([GG 4479](#)) amends sections 1 and 2, inserts sections 16A and 16B and substitutes section 17.

Regulations: The Act makes no provision for regulations.

Directives: The following “Payment System Directive” has been issued in terms of the Act –

Conduct within the National Payment System in Namibia (PSDIR-1)
General Notice 183/2007 ([GG 3872](#))

Determinations: A number of “Payment System Determinations” have been issued in terms of the Act –

Issuing of a payment instrument (PSD-1)
General Notice 184/2007 ([GG 3872](#))

Reduction of the Item Limit for Domestic Cheque Payments within the Namibian National Payment System (PSD-2)

Note: This Determination is referred to variously in GG 6492 as “Reduction of the Item limit for Domestic Cheque Payments within the Namibian National Payment

System” (text of General Notice), “Reduction of the Item Limit for Cheque Payments within the Namibian National Payment System” (title of determination) and “Reduction of the domestic cheque item limit to N\$ 100,000” (“Short title”).

General Notice 504/2017 ([GG 6492](#)), which repeals General Notice 4/2016 ([GG 5940](#)), as corrected by General Notice 57/2016 ([GG 5962](#)), which in turn repealed General Notice 255/2009 ([GG 4364](#))

Issuing of Electronic Money in Namibia (PSD-3)

General Notice 667/2018 ([GG 6768](#)), which repeals General Notice 66/2012 ([GG 4909](#))

Conduct of card transactions (PSD-4)

General Notice 448/2012 ([GG 5098](#))

Standards for a Basic Bank Account and Cash Deposit Fees (PSD-5)

General Notice 159/2014 ([GG 5485](#)) and General Notice 295/2014 ([GG 5544](#)) both purport to repeal and replace General Notice 130/2013 ([GG 5187](#)) with effect from 31 March 2015. General Notice 295/2014 makes no reference to General Notice 159/2014, but it repeats General Notice 159/2014 with only minor changes to punctuation, etc.

Criteria for Authorisation of Participants in the Clearing and Settlement Systems (PSD-6)

General Notice 103/2013 ([GG 5164](#))

Efficiency of the National Payment System (PSD-7)

General Notice 472/2013 ([GG 5355](#))

Exemptions: Every “payment instrument issuer” is exempted from the application of section 7(1) by GN 136/2013 ([GG 5211](#)); a “payment instrument issuer” is defined as a person who issues a payment instrument registered in terms of section 5(1)(a) of the Act, and who complies with the Determination on Issuing Electronic Money [PSD-3] published in General Notice 66/2012 ([GG 4909](#)).

Service providers registered as contemplated in section 3(6) of the Act are exempted from compliance with section 7(1) of the Act by GN 14/2018 ([GG 6524](#)).

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)).

Financial Intelligence Act 13 of 2012.

Summary: This Act ([GG 5096](#)) establishes the Financial Intelligence Centre and the Anti-Money Laundering and Combating of the Financing of Terrorism and Proliferation Council, to address suspicious financial activities and transactions which may relate to money laundering, or terrorism or proliferation. It also places certain duties on persons and institutions identified as accountable and reporting institutions, supervisory and regulatory bodies, the Registrar of Companies and Close Corporations and the Master of the High Court. It repeals the Financial Intelligence Act 3 of 2007 ([GG 3880](#)). The Act was brought into force on 21 December 2012 (GN 304/2012, [GG 5104](#)).

Amendments: The Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014 ([GG 5490](#)), which was brought into force on 1 July 2014 by GN 80/2014 ([GG 5497](#)), amends the long title and sections 1,9, 35, 37 and 50 and substitutes certain expressions.

Proposed amendments to Schedule 1 of the Act were published, after consultation with the Anti-Money Laundering and Combating the Financing of Terrorism Council and the Financial Intelligence Centre, in GN 66/2018 ([GG 6568](#)) and in GN 85/2018 ([GG 6595](#)).

Regulations: Regulations made under the repealed Act survive in terms of this legislation. Regulations under the previous Act were contained in GN 74/2009 ([GG 4253](#)). However, all the regulations made under the previous Act and their amendments are repealed by the **Financial Intelligence Regulations** issued under the current law and contained in GN 3/2015 ([GG 5658](#)).

Determinations: Determinations made under the repealed Act survive in terms of this legislation.

A Determination on the Period within Which an Accountable Institution May Not Proceed with the Carrying Out of a Transaction (FICD 1) is contained in General Notice 68/2009 ([GG 4256](#)).

A Determination on the Period for Establishment of Identity of Existing Clients by Accountable Institutions (FICD 2) is contained in General Notice 69/2009 ([GG 4256](#)). An exemption for certain accountable institutions made in terms of FICD 2 is extended by GN 159/2012 ([GG 4977](#)).

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) is contained in General Notice 70/2009 ([GG 4256](#)).

The following determinations are made in terms of this Act, with each, after being corrected, coming into force on 1 March 2017:

Determination No. 01 of 2016: The period within which the Master of the High Court must obtain and keep up-to-date prescribed information in respect of the founder, each trustee, each income beneficiary and each beneficial owner of all registered testamentary and inter vivos trusts. General Notice 62/2017 ([GG 6253](#)), as corrected by General Notice 226/2018 ([GG 6622](#)).

The correction notice states that it substitutes the words “effective date 19 July 2016” and the words “the date of issue” with the words “date of publication”. However, the words “effective date 19 July 2016” do not appear in the original General Notice.

Determination No. 02 of 2016: The period within which the Registrar of Companies and Close Corporations collects information in respect of each member, director, shareholder and beneficial owner of companies and close corporations registered before the Financial Intelligence Act 13 of 2012 came into force, General Notice 63/2017 ([GG 6253](#)), as corrected by General Notice 227/2018 ([GG 6622](#)).

Determination No. 03 of 2016: The amount of cash and value of a bearer negotiable instrument to be declared at the point of entry into or departure from

Namibia, General Notice 63/2017 ([GG 6253](#)), as corrected by General Notice 228/2018 ([GG 6622](#)).

Notices: Exemptions, notices, circulars or guidances made under the repealed Act survive in terms of this legislation.

An exemption order in terms of section 51 of the previous Act is contained in GN 75-76/2009 ([GG 4253](#)).

An exemption order in terms of section 51, applicable to all accountable institutions in respect of e-money accounts, is contained in GN 160/2012 ([GG 4977](#)).

Cases: *Pinto v First National Bank of Namibia Ltd & Another* 2013 (1) NR 175 (HC) (dealing with the preceding Financial Intelligence Act 3 of 2007).

Related laws: See the Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014 (TERRORISM) and the Prevention of Organised Crime Act 29 of 2004 (CRIMINAL LAW AND PROCEDURE).

Commentary: Frederico Links & Clement Daniels, “Towards a National Integrity System: Assessing the appropriateness and effectiveness of anti-corruption and related legislation in Namibia”, Institute for Public Policy Research, 2011, available at www.ippr.org.na (on the Financial Intelligence Act 3 of 2007).

Microlending Act 7 of 2018.

Summary: This Act ([GG 6664](#)) regulates the microlending business in Namibia, to promote responsible borrowing and lending. It was brought into force on 15 October 2018 by GN 261/2018 ([GG 6736](#)).

Regulations: Regulations relating to the maximum penalty interest chargeable by microlenders in the event of default by borrowers are contained in GN 263/2018 ([GG 6736](#)).

Standards: Microlending Standard ML.S.1 is issued in General Notice 598/2018 ([GG 6745](#)).

Microlending Standards ML.S.2, ML.S.3, ML.S.4 and ML.S.5 are issued in General Notice 599/2018 ([GG 6745](#)).

COMMENTARY

Athalia Wallace-McNab & Dunia P Zongwe, “Collateral in Namibia: A plea for Umbrella Regulation” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017

Iyaloo Hamulungu, “Online Robberies and Privacy Rights: An Appraisal of the Namibia Banking Sector and its Vulnerability to Cybercrimes” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017.

INTERNATIONAL LAW

Agreement Establishing the African Development Bank, 1963, as amended in 1979, 1992, 1997, 1998 and 2001

Agreement Establishing the International Fund for Agricultural Development, 1976.

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 (**MEDIA AND COMMUNICATION**).

FUEL AND ENERGY

Petroleum Products and Energy Act 13 of 1990.

Summary: This Act ([GG 64](#)) 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. It repeals the *Petroleum Products Act 120 of 1977* and the Levy on Fuel Proclamation AG. 16 of 1984.

Amendments: Act 29/1994 ([GG 979](#)) amends sections 2, 14, 15 and 21.

Act 3/2000 ([GG 2289](#)), which was brought into force on 3 July 2000 by GN 154/2000 ([GG 2357](#)), amends sections 1, 6, 8 and 21 and inserts section 2A and 4A.

Act 16/2003 ([GG 3113](#)), which was brought into force on 17 March 2005 by 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: Section 23(2) is a savings clause which states:” A regulation made, notice given or any other act done under any provision of the Act or Proclamation referred to in subsection (1), and which is in force at the repeal of that Act and Proclamation by this section, shall, notwithstanding such repeal, remain in force after the commencement of this Act in so far as it deals with any matter in respect of which the Minister may make regulations or give any notice or perform any act under this Act, until it is repealed, replaced, amended or withdrawn under any provision of this Act.”

Pre-independence regulations have not been comprehensively researched. However, GN 38/1993 ([GG 617](#)) repeals the regulations made under the repealed Act in RSA GN R.1614 of 19 July 1985, without promulgating any new regulations.

Regulations relating to the purchase, sale, supply, acquisition, possession, disposal, storage, transportation, recovery and re-refinement of used mineral oil are contained in GN 48/1991 ([GG 183](#)), which is replaced by GN 112/1991 ([GG 281](#)).

Petroleum Products Regulations are 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 (already repealed by GN 38/1993, as noted above), R.2298 of 11 October 1985 and R.1100 of 2 June 1986. GN 155/2000 is amended by GN 202/2002 ([GG 2866](#)) and GN 122/2016 ([GG 6036](#)).

GN 122/2016 states that these regulations were amended by GN 3/2001. This is incorrect. GN 3/2001 ([GG 2468](#)) was an extension of a time period issued under regulation 64(3)(a) and has no relevance beyond 2001.

GN 122/2016 also states that these regulations were amended by GN 75/2003, dated 23 July 2003. This is incorrect. GN 75/2003 ([GG 2946](#)) is actually dated 1 April 2003. It was an application of certain specifications and standards under regulation 44 which was withdrawn by GN 166/2007 ([GG 3900](#)).

Regulations for arbitration procedures are contained in GN 93/2003 ([GG 2970](#)).

Regulations on funding of approved agencies are contained in GN 230/2004 ([GG 3307](#)), which is withdrawn by GN 30/2005 ([GG 3397](#)), which publishes new regulations on the same topic. However, GN 247/2013 ([GG 5287](#)) purports to amend the regulations in GN 230/2004, leaving the correct text of these regulations uncertain.

Regulations relating to the reselling price of petrol and petrol products are issued frequently, with each one revoking or replacing the previous one. These have not been recorded here.

Notices: Pursuant to regulation 44 of the Petroleum Products Regulations promulgated by GN 155/2000, GN 166/2007 ([GG 3900](#)) and GN 149/2013 ([GG 5222](#)) apply certain **codes of practice and specifications and standards**. (Previous codes, specifications and standards were contained in GN 21/2002 ([GG 2696](#)) and GN 75/2003 ([GG 2946](#)).)

There is some confusion here. GN 166/2007 ([GG 3900](#)) withdraws GN 75/2003. However, GN 149/2013 ([GG 5222](#)) purports to repeal the same GN 75/2003. It appears that GN 149/2013 ([GG 5222](#)) may have intended to repeal GN 166/2007.

Pursuant to sections 2 and 2A of the Act, certain **specifications and standards of petroleum products and storage** are contained in GN 543/2016 ([GG 5984](#)).

A **levy on electricity supplied by NamPower as a transmission licensee** is imposed in terms of section 19(1) of the Act by a series of Government Notices, each of which replaces the previous one: GN 296/2012 ([GG 5094](#)), with the particulars referred to in section 19(3) of the Act set out in the Schedule; GN 93/2014 ([GG 5509](#)); GN 225/2014 ([GG 5606](#)); GN 145/2016 ([GG 6059](#)) and GN 331/2017 ([GG 6494](#)).

Levies imposed on gasoil diesel and unleaded petrol are issued from time to time, with each one revoking or replacing the previous one. These have not been recorded here.

Cases:

BP Namibia (Pty) Ltd v Southline Retail Centre CC 2009 (1) NR 268 (HC) (Note: The Act is mistakenly referred to in the headnote as the Petroleum Products Act 120 of 1977.)

Southline Retail Centre CC v BP Namibia (Pty) Ltd 2011 (2) NR 562 (HC) (section 4A and Regs 29 and 30 of the Petroleum Products Regulations in relation to whether or not Minister has a direct legal interest in proceedings between wholesaler and operator and section 4A(1)(e) on promotion of security of tenure).

INTERNATIONAL LAW

African Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA), 1990

Convention of the African Energy Commission, 2001

SADC Protocol on Energy, 1996

†Statute of the International Atomic Energy Agency (IAEA), 1956, as amended

Statute of the International Renewable Energy Agency (IRENA), 2009

See also Public Enterprises Governance Act 2 of 2006 (**BUSINESS**), 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**).

GAMBLING

Licensing of Totalisators Ordinance 5 of 1938.

Summary: This Ordinance ([OG 748](#)) provides for the licensing of “the instrument, machine or contrivance commonly known as a totalisator”.

Amendments: The Ordinance is amended by Ord. 32/1952 ([OG 1691](#)) and Ord. 13/1953 ([OG 1771](#)).

Regulations: The Act makes no provision for regulations.

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

Gambling Act 51 of 1965.

Summary: This Act ([RSA GG 1108](#)) prohibits lotteries, sports pools and games of chance. It repeals the SWA Lotteries Ordinance 13 of 1937. It also repeals a number of other laws, including the *Prohibition of Sports Pools Act 38 of 1949* and section 38 of the *General Law Amendment Act 62 of 1955* (relating to prosecutions in connection with gambling houses).

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. Despite not being applicable to South West Africa and thus not applicable to Namibia, section 13 was repealed by Act 17 of 1992.)

Transfer of administration to SWA: The administration of this Act was transferred to SWA by Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979, as amended. The only amendment to the Act in South Africa after this date and prior to Namibian independence – the *Gambling Amendment Act 39 of 1988* ([RSA GG 11238](#)) – was not made expressly applicable to SWA.

Amendments: Prior to the date of transfer the Act was amended in South Africa by *General Law Amendment Act 70 of 1968* ([RSA GG 2106](#)).

The Posts and Telecommunications Companies Establishment Act 17 of 1992 ([GG 447](#)) repeals section 13.

Application of law: The application of the Act is affected by the Casinos and Gambling Houses Act 32 of 1994 (GAMBLING) and the Lotteries Act 15 of 2002 (GAMBLING). See also the Licensing of Totalisators Ordinance 5 of 1938 (GAMBLING).

Regulations: The Act makes no provision for regulations, and there is no savings clause pertaining to regulations which may have been issued under any of the repealed laws.

Casinos and Gambling Houses Act 32 of 1994.

Summary: This Act ([GG 983](#)) makes provision for the licensing, supervision and control of casinos and gambling houses and provides for the establishment of a Casino Board. It was brought into force on 2 December 1994 by GN 230/1994 ([GG 984](#)).

Amendments: Act 12/1995 ([GG 1118](#)) amends sections 1, 10, 14, 15, 18, 22, 41, 44, 45 and 54 and inserts section 51A. Act 28/1996 ([GG 1475](#)) inserts section 21A, which suspends the granting of gambling house licences until a date fixed by notice in the *Government Gazette*.

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)), which places certain duties on casinos and gambling houses and on the Casino Board.

Regulations: Regulations are contained in GN 231/1994 ([GG 984](#)), as amended by GN 84/1995 ([GG 1084](#)), GN 136/1995 ([GG 1124](#)), GN 121/1996 ([GG 1317](#)), GN 76/2010 ([GG 4460](#)) and GN 95/2017 ([GG 6295](#)).

Related laws: See *Gambling Act 51 of 1965* (GAMBLING) and Licensing of Totalisators Ordinance 5 of 1938 (GAMBLING).

***Lotteries Act 15 of 2002.**

Summary: This Act ([GG 2885](#)) 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 be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Regulations: Regulations are authorised by section 36 of the Act, but none have yet been promulgated.

Related laws: See *Gambling Act 51 of 1965* (GAMBLING).

Commentary: Max Weylandt, “The State Lottery comes to Namibia”, *Perspectives on Parliament*, Issue No. 6, Institute for Public Policy Research, June 2017, available at www.ippr.org.na (on the new law on lotteries which will replace this Act).

***Lotteries Act 13 of 2017.**

Summary: This Act ([GG 6500](#)) establishes a Lotteries Board for the promotion and conduct of the National Lottery, and provides for the administration of the National Lottery and sports pool by this Board. It also provides for and regulates other lotteries and promotional competitions. Proceeds from the State Lottery are paid into a State Lottery Trust Fund, which is to be used for funding –

- charitable expenditures;
- arts, culture, sport, national heritage and conservation;
- youth empowerment, psycho-social disorders, science and innovation; and
- national emergencies such as droughts and floods.

This Act repeals the Lotteries Act 15 of 2002 ([GG 2885](#)), which was never brought into force. This Act will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Regulations: Regulations are authorised by section 85 of the Act, but none have yet been promulgated.

Related laws: See *Gambling Act 51 of 1965* (GAMBLING).

Commentary: Max Weylandt, “The State Lottery comes to Namibia”, *Perspectives on Parliament*, Issue No. 6, Institute for Public Policy Research, June 2017, available at www.ippr.org.na.

HEALTH

Venereal Diseases Prevention Proclamation 5 of 1919.

Summary: This Proclamation ([OG 24](#)) 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 SWA Proclamation 36 of 1920.

Summary: This Act ([SA GG 979](#)) makes provision for the prevention and control of infectious diseases, venereal diseases and epidemics. It also regulates sanitation, food and public water supplies. It will be repealed by the Public and Environmental Health Act 1 of 2015 when that Act comes into force.

Applicability to SWA: The Act was made applicable to South West Africa by the SWA Public Health Proclamation 36 of 1920 ([OG 37](#)) 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 so applicable. The Health Act 21 of 1988 ([OG 5651](#)) extended the application of the Act to all parts of SWA.

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* ([RSA GG 5558](#)). The relevant section of this repealing act came into force on 1 September 1977 (RSA Proc. R.175/1977, [RSA GG 5716](#)), prior to the probable date of transfer. However, this Act was not made expressly applicable to SWA and would not have applied automatically.

Amendments: SWA Proclamation 36 of 1920 ([OG 37](#)) amends the Act as it applies to SWA. (Proc. 28/1923 ([OG 118](#)) makes SWA Proclamation 36 of 1920 applicable to the Rehoboth Gebiet.)

Ord. 7/1932 ([OG 476](#)) amends section 36 of the Act.

Proc. 16/1936 ([OG 676](#)) amends section 71.

Proc. 20/1938 ([OG 761](#)) amends section 86 and inserts sections *26bis* and *34bis*.

Ord. 50/1957 ([OG 2094](#)) amends section 50 and section 51.

Ord. 35/1958 ([OG 2153](#)) amends sections 5, 115, and 159, and inserts sections 8, *8bis*, *8ter*, *17bis*, *91bis*, *92bis*, *96bis* and *124bis*.

Ord. 10/1964 ([OG 2565](#)) amends section 16.

Ord. 2/1971 ([OG 3147](#)) amends section 130.

Regulations: Pre-independence regulations have not been researched.

Ordinance for Prevention and Combating of Alcoholism and Anti-Social Conduct 11 of 1965.

Summary: This Ordinance ([OG 2614](#)) 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. It was brought into force on 1 September 1965 by Proc. 78/1965 ([OG 2674](#)).

Amendments: Section 63(1) of the *Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971* states:

Subject to the provisions of subsections (2) and (3), the Retreats and Rehabilitation Centres Act, 1963 (Act No. 86 of 1963), is, except in so far as it is necessary for the administration thereof by the Minister of Coloured Affairs in terms of Proclamation No. 57 of 1964, and the Ordinance for the Prevention and Combating of Alcoholism and Anti-social Conduct, 1965 (Ordinance No. 11 of 1965), of the territory, hereby repealed.

Although the wording may seem at first glance to be somewhat ambiguous, this provision is understood to mean that Act 86 of 1963 is repealed – except insofar as that Act is relevant to the administration of the other two laws cited (Proc. 57 of 1964 and Ord. 11 of 1965). This interpretation is supported by the use of the verb “is...repealed” – which indicates that the provision refers to only a single repealed law – and by the placement of commas in the provision. Thus, it appears that Act 41 of 1973 does *not* repeal this Ordinance as has been assumed in some sources.

Regulations: Pre-independence regulations have not been researched.

International Health Regulations Act 28 of 1974, as amended to December 1977.

Summary: This Act ([RSA GG 4219](#)) applies the International Health Regulations adopted by the World Health Assembly in 1969 to South Africa.

On 25 May 1951 WHO Member States adopted the *International Sanitary Regulations – World Health Organisation Regulations No. 2*, which entered into force internationally on 01 October 1952 (Source: UNTC). In accordance with Article 106 – 110 of the ISR the Regulations entered into force in the Union of South Africa (including the territory of South West Africa) upon acceptance on the same date 01 October 1952 (Source: UNTC).

The International Sanitary Regulations were replaced by and renamed the *International Health Regulations* in 1969. The 1969 Regulations were subject to minor modifications in 1973 and 1981.

The International Health Regulations were replaced in turn by the *International Health Regulations, 2005*, which entered into force internationally on 15 June 2007 (source: WHO). Namibia is bound by these 2005 Regulations from that date in accordance with Articles 21(a) and 22 of the WHO Constitution.

According to Article 58 of these regulations, headed “*International sanitary agreements and regulations*”, the 2005 Regulations replace *inter alia* the International

Sanitary Regulations, 1951 and the Additional Regulations of 1955, 1956, 1960, 1963 and 1965, as well as the International Health Regulations of 1969 and the amendments of 1973 and 1981.

However, this South African statute, which is still in force in Namibia, incorporates the earlier 1969 version of the International Health Regulations directly into Namibian domestic law.

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* ([RSA GG 10438](#)) – which was not made expressly applicable to SWA.

Amendments: The regulations in this law are amended by RSA Proc. R.139/1975 ([RSA GG 4741](#)).

Regulations: Pre-independence regulations have not been comprehensively researched.

Supplementary regulations are contained in RSA GN R.2001/1975 ([RSA GG 4878](#)), and amended by RSA GN R.2069/1978 ([RSA GG 6188](#)) and RSA GN R.790/1980 ([RSA GG 6954](#)). The 1975 and 1980 Notices specifically mention that they are being effected with the consent of the Administrator-General for the Territory of South-West Africa and that they also apply in the Territory.

Notices: Designations of approved ports and airports are contained in RSA Proc 241/1975 ([RSA GG 4877](#)).

Foodstuffs, Cosmetics and Disinfectants Ordinance 18 of 1979.

Summary: This Ordinance ([OG 4011](#)) controls the sale, manufacture and import of foodstuffs, cosmetics and disinfectants. It repeals the Food, Drugs and Disinfectants Ordinance 36 of 1952.

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 ([OG 5651](#)).

Regulations: Pre-independence regulations have not been comprehensively researched. Regulations relating to the standards of food, drugs and disinfectants are contained in GN 195/1968 ([OG 2949](#)); they were amended after independence by GN 123/1994 ([GG 883](#)). These regulations were originally made in terms of sections 13 and 42 of the Food, Drugs and Disinfectants Ordinance 36 of 1952, and survive pursuant to section 28(2) of this Ordinance.

Notices: 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 ([GG 3051](#)) to certain substances approved under this Act.

***Public and Environmental Health Act 1 of 2015.**

Summary: This Act ([GG 5740](#)) provides a framework for a structured uniform public and environmental health system in Namibia. It covers notification, prevention and control of diseases and sexually-transmitted infections; maternal, ante-natal and neonatal care; water and food supplies; infant nutrition; waste management; health nuisances; public and environmental health planning and reporting. It repeals the *Public Health Act 36 of 1919* ([SA GG 979](#)), the SWA Public Health Proclamation 36 of 1920 ([OG 37](#)) (which made the *Public Health Act 36 of 1919* applicable to South West Africa as well as amending it) and some of its other amendments. The Act does not amend any other laws, but section 91 states: “If any other law is in conflict or inconsistent with this Act, this Act prevails.” The Act will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Regarding the *Public Health Act 36 of 1919*, the amending Acts repealed are Ord. 50/1957 ([OG 2094](#)), Ord. 35/1958 ([OG 2153](#)), and Ord. 2/1971 ([OG 3147](#)). The amendments made by Ord. 7/1932 ([OG 476](#)), Proc. 16/1936 ([OG 676](#)), Proc. 20/1938 ([OG 761](#)) and Ord. 10/1964 ([OG 2565](#)) are not repealed.

Savings: Section 94 provides that anything done under a law repealed by this Act which could have been done under a corresponding provision of this Act will be deemed to have been done under this Act.

Regulations: The savings clause could include regulations, as regulations on a variety of topics are authorised by this Act. However, pre-independence regulations have not been researched.

Notices: Pre-independence notices which could survive in terms of the savings clause have not been researched.

SELECTED CASES

LM & Others v Government of the Republic of Namibia 2012 (2) NR 527 (HC).

COMMENTARY

Chantal J Badul & Ann Strode, “LM and Others v Government of the Republic of Namibia: the first sub-Saharan African case dealing with coerced sterilisations of HIV-positive women – Quo vadis?: recent developments”, 13 (1) *African Human Rights Law Journal* 214 (2013).

COMMISSIONS

Commission of Inquiry into Health Services (AG 19/1981)

Commission of Inquiry into Activities, Affairs, Management and Operations of Ministry of Health and Social Service (Proc. 20/2012, [GG 5013](#)).

INTERNATIONAL LAW

Constitution of the World Health Organization (WHO), 1946

International Convention against Doping in Sport, 2005
International Health Regulations, 2005
Minamata Convention on Mercury, 2013
SADC Protocol on Health, 1999
WHO Framework Convention on Tobacco Control, 2003

See also **DISABILITIES**.

See also Atomic Energy and Radiation Protection Act 5 of 2005 (**ENVIRONMENT**).

See also **HEALTH PROFESSIONS**.

See also **HOSPITALS**.

See also **LABOUR** (health and safety at workplaces).

See also **MEDICINE**.

See also **MENTAL HEALTH AND MENTAL DISORDERS**.

HEALTH PROFESSIONS

Namibia Nursing Association Act 28 of 1993.

Summary: This Act ([GG 762](#)) establishes a nursing association for Namibia and defines its powers. It repeals the Nursing Association of South West Africa Act 14 of 1979 ([OG 4035](#)).

Regulations: Pursuant to section 13(2) of this Act, any regulations or rules made under the repealed Act survive if they are not inconsistent with the provisions of this Act. Pre-independence regulations have not been researched.

Council for Health and Social Services Professions Repeal Act 3 of 2004.

Summary: This Act ([GG 3241](#)) repeals the Council for Health and Social Services Professions Act 29 of 1993 ([GG 763](#)), and provides for the transfer of moneys standing to that Council's credit. It was brought into force on 10 January 2005 by GN 6/2005 ([GG 3369](#)).

Social Work and Psychology Act 6 of 2004.

Summary: This Act ([GG 3246](#)) 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 ([GG 710](#)) insofar as it relates to these professions and the whole of the Social and Social Auxiliary Workers Professions Act 22 of 1993 ([GG 712](#)). It was brought into force on 1 October 2004 by GN 211/2004 ([GG 3291](#)).

Amendments: Act 12/2018 ([GG 6705](#)) amends the Act to make provision for the appointment of members of the Social Work and Psychology Council.

Savings: In terms of section 62(2), any regulation, rule, notice, authorization or order made under any one of the pieces of legislation repealed by this Act remains in force insofar as it is not inconsistent with this Act. The Social Auxiliary Workers Professions Act 22 of 1993 repealed by this Act contained a savings clause in section 52 which stated: "Any notice, regulation, rule, authorization, order or approval issued, made or granted or any appointment or any other thing done in terms of a provision of the National Welfare Act, 1965, prior to the amendment of that Act by the National Welfare Amendment Act, 1993, and which may or is required to be issued, made, granted or done under this Act, shall be deemed to have been issued, made, granted or done under the corresponding or allied provision of this Act."

Regulations and rules: Pre-independence regulations have not been researched. Post-independence regulations and rules made under the repealed laws which were not explicitly repealed include the following –

- Rules relating to acts or omissions constituting improper conduct or misconduct in respect of which the Clinical Psychology Board may conduct inquiries and take disciplinary steps, contained in GN 219/2001 ([GG 2637](#)).

- Qualifications for registration with the Clinical Psychology Board, contained in GN 36/2002 ([GG 2704](#))
- Clinical Psychology Board – GN 146/1994 ([GG 910](#)), GN 38/1995 ([GG 1029](#)), GN 353/1999 ([GG 2242](#)), GN 88/2000 ([GG 2304](#)).
- 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.
- 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 below, it appears that GN 142/2006 intended to withdraw this notice.)

However, section 4(1) of this Act states: “The Council is for all purposes the successor to the former Social and Social Auxiliary Workers' Board and the former Clinical Psychology Board.” This presumably makes the regulations in question inconsistent with the current Act.

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](#)). Regulations relating to additional examinations in respect of various categories of psychologists are contained in GN 50/2011 ([GG 4699](#)). Regulations relating to the scope of practice of specialist psychologists are contained in GN 58/2014 ([GG 5453](#)). Regulations relating to minimum requirements of study for psychologists are contained in GN 25/2015 ([GG 5680](#)), which withdraws GN 32/2007 ([GG 3795](#)).

Social workers: Regulations on additional examinations that may be conducted in respect of social workers and social auxiliary workers are contained in GN 230/2010 ([GG 4581](#)). Regulations on the scope of practice of social workers, social auxiliary workers and students are contained in GN 14/2011 ([GG 4656](#)). Regulations relating to the minimum requirements for registration as a social worker are contained in GN 118/2016 ([GG 6030](#)), which replaces GN 34/2007 ([GG 3795](#)). Regulations relating to the registration of social workers, specialities and additional qualifications, the maintaining of registers of social workers and the restoration of a name to a register are contained in GN 119/2016 ([GG 6030](#)).

Social auxiliary workers: Regulations relating to the minimum requirements for registration as a social auxiliary worker are contained in GN 133/2018 ([GG 6644](#)).

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](#)).

Impaired persons: Regulations relating to Impaired Registered Persons are contained in GN 301/2013 ([GG 5340](#)).

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 294/2015 ([GG 5899](#)), which withdraws GN 151/2008 ([GG 4068](#)).

Regulations relating to continuing professional development are contained in GN 91/2010 ([GG 4482](#)).

Regulations on the maximum fine that may be imposed by the Council or the Professional Conduct Committee are contained in GN 19/2018 ([GG 6527](#)), which repeals GN 157/2014 ([GG 5559](#)).

Note that GG 6527 was initially numbered incorrectly as GG 6528. A corrected version was subsequently issued.

Regulations relating to the investigation of alleged unprofessional conduct by registered persons and professional conduct inquiries are contained in GN 138/2015 ([GG 5778](#)).

Fees: Fees payable to the Council are contained in General Notice 498/2017 ([GG 6489](#)), which repeals General Notice 353/2013 ([GG 5281](#)), which in turn withdraws both General Notice 68/2007 ([GG 3804](#)) and General Notice 310/2010 ([GG 4600](#)).

Appointments and elections: Regulations relating to the first election of members to the Social Work and Psychology Council are contained in GN 142/2006 ([GG 3691](#)).

GN 26/2007 ([GG 3795](#)) states in the heading that it contains “regulations”, but it is in fact an invitation for nominations for social workers and psychologists eligible as candidates for election.

GN 142/2006 ([GG 3691](#)) and GN 26/2007 ([GG 3795](#)), which pertain to the first election of the Social Work and Psychology Council, both 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 ([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](#)). The terms of office of certain Council members were extended by GN 223/2012 ([GG 5023](#)),

GN 68/2013 ([GG 5060](#)), GN 255/2013 ([GG 5303](#)), GN 31/2014 ([GG 5425](#)), GN 150/2014 ([GG 5559](#)), GN 193/2015 ([GG 5818](#)) and GN 220/2016 ([GG 6125](#)). The terms of office of certain members was extended by GN 59/2017 ([GG 6263](#)).

Subsequent to amendments to the Act to provide for the appointment of Council members, appointments are announced in GN 298/2018 ([GG 6770](#)).

Allied Health Professions Act 7 of 2004.

Summary: This Act ([GG 3247](#)) 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 Services Professions Act 20 of 1993 ([GG 710](#)) which repealed the *Chiropractors Act 6 of 1971* and the *Homeopaths, Naturopaths, Osteopaths and Herbalists Act 52 of 1974*. This Act was brought into force on 1 October 2004 by GN 212/2004 ([GG 3291](#)).

Amendments: Act 8/2018 ([GG 6701](#)) amends the Act to make provision for the appointment of members of the Allied Health Professions Council.

Application of law: The Act has been made applicable to the following professions:

orthopaedic technologists and orthopaedic technicians – GN 157/2005 ([GG 3535](#))

several health professions – GN 100/2006 ([GG 3661](#))

Medical Technologists (Blood Transfusion Technology); Medical Technologists (Chemical Pathology); Medical Technologists (Clinical Pathology); Medical Technologists (Cytogenetics); Medical Technologists (Cytotechnology); Medical Technologists (Forensic Pathology); Medical Technologists (Haematology); Medical Technologists (Histopathological Technique); Medical Technologists (Immunology); Medical Technologists (Microbiology); Medical Technologists (Pharmacology); Medical Technologists (Virology); Blood Transfusion Technicians; Chemical Pathology Technicians; Haematology Technicians; Histopathology Technicians; Microbiology Technicians; Cytotechnicians; Clinical Pathology Technicians

medical orthotists and prosthetists – GN 2/2007 ([GG 3771](#))

ultrasound radiography and nuclear medicine radiography – GN 147/2009 ([GG 4302](#))

emergency care technicians – GN 12/2010 ([GG 4419](#))

art therapy, music therapy, dance movement therapy and drama therapy – GN 254/2012 ([GG 5060](#))

medical laboratory scientists – GN 87/2013 ([GG 5173](#))

traditional Chinese medicine practitioners – GN 101/2013 ([GG 5183](#))

acupuncturists – GN 102/2013 ([GG 5183](#))

dental technologists – GN 103/2013 ([GG 5183](#))

sonographers and sonography technicians – GN 124/2014 ([GG 5533](#))

phlebotomy technicians – GN 117/2015 ([GG 5760](#))

Unani Tibb Practitioner – GN 209/2015 ([GG 5831](#))

Combat Medic – GN 279/2015 ([GG 5892](#))

emergency practitioner assistants – GN 119/2018 ([GG 6627](#)).

Savings: 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. The Allied Health Services Professions Act 20 of 1993 contained a similar savings clause in section 50(2) which refers to any notice, regulation, rule, authorization or order under the legislation repealed by that Act, or under the *Medical, Dental and Supplementary Health Service Professions Act 56 of 1974* or the Health Service Professions Proclamation AG. 70 of 1989, which could have been done in terms of the 1993 Act.

Regulations: Pre-independence regulations have not been researched. Post-independence regulations and notices 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](#)).

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](#)).

Traditional healers: Regulations were made under the Allied Health Services Professions Act 20 of 1993 on election to the Traditional Healers Board, in GN 230/1999 ([GG 2214](#)). These regulations are not inconsistent with the current Act as traditional healers do not fall under the Allied Health Professions Council. However, they appear to be obsolete as that Board is no longer in existence.

Other allied health professions: Other regulations made under previous laws relating to various individual boards were as follows:

- GN 217/1999 ([GG 2214](#)) – Dental Technology Board
- GN 218/1999 ([GG 2214](#)) – Health Inspectors Board
- GN 219/1999 ([GG 2214](#)) – Homoeopathic Board
- GN 222/1999 ([GG 2214](#)) – Medical Technology Board
- GN 224/1999 ([GG 2214](#)) – Occupational Therapy Board
- GN 225/1999 ([GG 2214](#)) – Optometric Board
- GN 227/1999 ([GG 2214](#)) – Physiotherapy Board
- GN 228/1999 ([GG 2214](#)) – Radiography Board
- GN 185/2000 ([GG 2385](#)) – Optometric Board
- GN 72/2003 ([GG 2946](#)) – Joint Complimentary Health Professions Board

However, section 4(1) of Act 7 of 2004 states:

“The Council is for all purposes the successor of the former Dental Technology Board, the former Health Inspectors Board, the former Homoeopathic Board, the former Medical Technology Board, the former Occupational Therapy Board, the former Optometry Board, the former Physiotherapy Board, the former Radiography Board, the former Joint Allied Health Professions Board, and the former Joint Complementary Health Professions Board.”

This statement presumably makes the regulations relating to the former boards inconsistent with the new Act, meaning that they fail to survive on that basis.

Regulations made under the current Act are as follows:

Acupuncturists: Minimum requirements of study for registration are contained in GN 324/2013 ([GG 5360](#)). Regulations relating to the

registration of these professionals are contained in GN 325/2013 ([GG 5360](#)).

Arts therapists: Regulations on minimum requirements of study for registration, registration and scope of practice are contained in GN 92/2017 ([GG 6287](#)).

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](#)). Regulations on the scope of practice of chiropractors are contained in GN 229/2010 ([GG 4581](#)).

Clinical technologists: Regulations relating to the minimum requirements of study for registration as a clinical technologist are contained in GN 274/2010 ([GG 4633](#)). Regulations on registration and additional qualifications are contained in GN 275/2010 ([GG 4633](#)).

Combat medics: Regulations relating to minimum requirements of study and registration as a combat medic are contained in GN 36/2017 ([GG 6249](#)).

Dental technicians: Regulations relating to the minimum requirements of study for registration as a dental technician are contained in GN 30/2017 ([GG 6249](#)), which repeals GN 18/2010 ([GG 4426](#)). Regulations relating to 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](#)).

Dental technologist: Regulations relating to the minimum requirements of study for registration as a dental technologist are contained in GN 31/2017 ([GG 6249](#)).

Dental therapists: Regulations relating to the minimum requirements of study for registration, registration and the scope of practice of dental therapists are contained in GN 138/2014 ([GG 5550](#)).

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](#)).

Emergency care practitioners and paramedics: Regulations relating to the minimum requirements of study for registration as an emergency care practitioner (basic) are contained in GN 136/2011 ([GG 4768](#)). Regulations relating to registration as an emergency care practitioner (basic) are contained in GN 139/2011 ([GG 4768](#)).

Regulations relating to the minimum requirements of study for registration as an emergency care practitioner (intermediate) are contained in GN 137/2011 ([GG 4768](#)). Regulations relating to registration as an emergency care practitioner (intermediate) are contained in GN 140/2011 ([GG 4768](#)).

Regulations relating to the minimum requirements of study for registration as a paramedic (advanced life support) are contained in GN 138/2011 ([GG 4768](#)). Regulations relating to registration as a paramedic (advanced life support), and registration of additional qualifications, are contained in GN 141/2011 ([GG 4768](#)).

Regulations relating to additional examinations that may be conducted by the Council in respect of these professions are contained in GN 135/2011 ([GG 4768](#)). Regulations relating to the scope of practice for emergency care professions are contained in GN 196/2018 ([GG 6690](#)).

Emergency care technicians: Regulations relating to the minimum requirements of study for registration as an emergency care technician are contained in GN 244/2018 ([GG 6716](#)).

Environmental health practitioners and assistants: Minimum requirements of study for registration as an environmental health practitioner are contained in GN 88/2014 ([GG 5501](#)), which repeals the regulations published in RSA Government Notice R.2308 of 3 December 1976. Regulations relating to the scope of practice of environmental health practitioners are contained in GN 160/2014 ([GG 5559](#)). Regulations relating to the registration of environmental health practitioners and environmental health practitioner interns are contained in GN 139/2014 ([GG 5553](#)). Regulations on additional examinations to be conducted by the Council in respect of environmental health practitioners are contained in GN 143/2014 ([GG 5553](#)).

Minimum requirements of study for registration as an environmental health practitioner assistant are contained in GN 140/2014 ([GG 5553](#)). Regulations relating to the registration of environmental health practitioner assistants are contained in GN 141/2014 ([GG 5553](#)). Regulations relating to the scope of practice of environmental health practitioner assistants are contained in GN 142/2014 ([GG 5553](#)).

Hearing aid acousticians: Regulations relating to minimum requirements of study, interns, additional qualifications and registers are contained in GN 277/2015 ([GG 5884](#)).

Homeopaths: Minimum requirements of study for registration as a homeopath are contained in GN 74/2011 ([GG 4730](#)). Regulations relating to the registration of homeopaths and homeopathy interns, and additional qualifications in this field, are contained in GN 75/2011 ([GG 4730](#)). Regulations relating to the scope of practice of homeopaths are contained in GN 211/2015 ([GG 5831](#)).

Medical laboratory technicians and scientists: Regulations relating to medical laboratory technicians are contained in GN 28/2007 and 29/2007 ([GG 3795](#)). Regulations relating to the minimum requirements of study for registration as medical laboratory scientist are contained in GN 295/2015 ([GG](#)

[5899](#)). Regulations relating to the registration of medical laboratory scientists and additional qualifications are contained in GN 296/2015 ([GG 5899](#)).

Medical rehabilitation workers: 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](#)). GN 35/2007 withdraws RSA GN R.2305 of 3 December 1976, and GN 36/2007 withdraws RSA GN R. 2304 of 3 December 1976. Regulations on the scope of practice of medical technologists are contained in GN 87/2012 ([GG 4913](#)).

Naturopaths: Minimum requirements of study for registration as a naturopath are contained in GN 73/2011 ([GG 4730](#)). Regulations relating to the registration of naturopaths and naturopathy interns, and additional qualifications in this field, are contained in GN 76/2011 ([GG 4730](#)). Regulations relating to the scope of practice of a naturopath are contained in GN 90/2014 ([GG 5503](#)).

Nutritionists: Regulations relating to the scope of practice of a nutritionist are contained in GN 208/2016 ([GG 6114](#)). Regulations relating to minimum requirements of study for registration as nutritionist are contained in GN 184/2017 ([GG 6367](#)).

Occupational therapists: 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, occupational therapy interns, specialities and additional qualifications are contained in GN 72/2014 ([GG 5477](#)), which replaced the regulations in GN 11/2010 ([GG 4419](#)). Regulations on additional examinations for conditionally-registered occupational therapists are contained in GN 156/2010 ([GG 4530](#)).

Ocularists: 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: 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](#)). Regulations on the scope of practice of optometrists are contained in GN 104/2011 ([GG 4752](#)).

Opticians: Minimum requirements of study for registration as a dispensing optician are contained in GN 276/2010 ([GG 4633](#)). Additional regulations are contained in GN 277/2010 ([GG 4633](#)). Regulations on the scope of practice of dispensing opticians are contained in GN 105/2011 ([GG 4752](#)).

Orthoptists: Regulations relating to the minimum requirements of study for registration as an orthoptist are contained in GN 106/2011 ([GG 4752](#)). Regulations relating to the registration and additional qualifications of orthoptists are contained in GN 107/2011 ([GG 4752](#)).

Osteopath: Regulations relating to the scope of practice of an osteopath are contained in GN 89/2014 ([GG 5502](#)). Minimum requirements of study and registration of osteopaths are covered in GN 172/2014 ([GG 5569](#)).

Phlebotomy technicians: Regulations relating to minimum requirements of study and registration as a phlebotomy technician are contained in GN 37/2017 ([GG 6249](#)).

Physiotherapists: Regulations relating to physiotherapists are contained in GN 30/2007 and 31/2007 ([GG 3795](#)); GN 31/2007 withdraws certain regulations published in GN 49/1997 ([GG 1526](#)) 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. The regulations published in GN 49/1997 do not contain a regulation numbered 224. It is therefore unclear which regulation was intended to be withdrawn.

GN 228/2010 ([GG 4581](#)) repeals GN 30/2007.

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](#)). Regulations relating to the minimum requirements of study for registration as a physiotherapist are contained in GN 228/2010 ([GG 4581](#)).

Phytotherapists: Minimum requirements of study for registration as a phytotherapist are contained in GN 72/2011 ([GG 4730](#)). Regulations relating to the registration of phytotherapists and interns, and additional qualifications in this field, are contained in GN 77/2011 ([GG 4730](#)). Regulations relating to the scope of practice of phytotherapists are contained in GN 212/2015 ([GG 5831](#)).

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](#)).

Speech therapists and audiologists: Regulations relating to registration of these professionals and registration of additional qualifications are contained in GN 142/2011 ([GG 4768](#)). Minimum requirements of study for registration are contained in GN 143/2011 ([GG 4768](#)).

Therapeutic aromatherapists: Minimum requirements of study for registration are contained in GN 291/2013 ([GG 5332](#)). Regulations relating to the registration of these professionals are contained in GN 292/2013 ([GG 5332](#)). Regulations on the scope of practice of therapeutic aromatherapists are contained in GN 293/2013 ([GG 5331](#)).

Therapeutic masseurs: Minimum requirements of study for registration are contained in GN 288/2013 ([GG 5331](#)). Regulations relating to the registration of these professionals are contained in GN 289/2013 ([GG 5331](#)). Regulations

on the scope of practice of therapeutic masseurs are contained in GN 290/2013 ([GG 5331](#)).

Therapeutic reflexologists: Minimum requirements of study for registration are contained in GN 294/2013 ([GG 5333](#)). Regulations relating to the registration of these professionals are contained in GN 295/2013 ([GG 5333](#)). Regulations on the scope of practice of therapeutic reflexologists are contained in GN 296/2013 ([GG 5333](#)).

Impaired persons: Regulations relating to Impaired Registered Persons are contained in GN 302/2013 ([GG 5341](#)).

General: Regulations concerning allowances payable to members of the Council are contained in GN 292/2015 ([GG 5899](#)), which withdraws GN 148/2008 ([GG 4068](#)).

Regulations relating to appeals and the conducting of appeals by the Appeal Committee of the Council are contained in GN 161/2009 ([GG 4313](#)).

Regulations on continuing professional development are contained in GN 46/2010 ([GG 4443](#)).

Regulations governing the return to practice after a period of not practising are contained in GN 273/2010 ([GG 4633](#)).

Regulations on the maximum fine that may be imposed by the Council or the Professional Conduct Committee are contained in GN 60/2018 ([GG 6564](#)), which repeals GN 20/2018 ([GG 6527](#)), which in turn repealed GN 158/2014 ([GG 5559](#)).

Note that GG 6527 was initially numbered incorrectly as GG 6528. A corrected version was subsequently issued.

Regulations relating to the investigation of alleged unprofessional conduct by registered persons and professional conduct inquiries are contained in GN 40/2015 ([GG 5690](#)).

Regulations relating to the registration of students are contained in GN 81/2017 ([GG 6282](#)).

Regulations on the conditions subject to which registered persons may conduct professional practices are contained in GN 197/2018 ([GG 6694](#)).

Rules: Professional Conduct Rules are contained in General Notice 387/2007 ([GG 3951](#)).

Fees: Fees payable to the Council are contained in General Notice 499/2017 ([GG 6489](#)), which repeals General Notice 350/2013 ([GG 5281](#)), which in turn withdraws both General Notice 358/2006 ([OG 3743](#)) and General Notice 306/2010 ([GG 4600](#)).

Note that General Notice 499/2017 ([GG 6489](#)) is numbered correctly in the Contents of GG 6489, but misnumbered as General Notice 479 in the text of that *Government Gazette*.

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](#)). The terms of office of certain Council members were extended by GN 224/2012 ([GG 5023](#)), GN 69/2013 ([GG 5060](#)) GN 258/2013 ([GG 5303](#)), GN 32/2014 ([GG 5425](#)), GN 154/2014 ([GG 5559](#)), GN 192/2015 ([GG 5818](#)) and GN 221/2016 ([GG 6125](#)). The terms of office of certain members was extended by GN 60/2017 ([GG 6263](#)).

Subsequent to amendments to the Act to provide for the appointment of Council members, appointments are announced in GN 301/2018 ([GG 6770](#)).

Nursing Act 8 of 2004.

Summary: This Act ([GG 3249](#)) provides for the establishment of a professional council for the nursing and midwifery or accoucheury professions. (An accoucheur is a male midwife.) 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 ([GG 764](#)), which repealed the *Nursing Act 50 of 1978*. This Act was brought into force on 1 October 2004 by GN 213/2004 ([GG 3291](#)).

Amendments: Act 10/2018 ([GG 6703](#)) amends the Act to make provision for the appointment of members of the Nursing Council.

Savings: In terms of section 65(2), any regulation, rule, notice, authorization, or order made under the legislation repealed by this Act remains in force insofar as it is not inconsistent with this Act. The Nursing Professions Act 30 of 1993 contained a similar savings clause in section 54(2).

Regulations: Pre-independence regulations have not been researched. The following post-independence regulations survive from the previous 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](#)).

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).

Impaired persons: Regulations relating to Impaired Registered Persons are contained in GN 300/2013 ([GG 5339](#)).

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 accoucheur specialist: Regulations relating to the minimum requirements for study as registration as a nurse or midwife are contained in GN 143/2008 ([GG 4068](#)) which repeals GN 193/2000 ([GG 2392](#)). Regulations relating to approval of minimum requirements for education and training leading to bachelor's degree in nursing and midwifery science for registration as a nurse and midwife or accoucheur are contained in GN 182/2017 ([GG 6361](#)). Regulations relating to the registration of nurses, midwives and accoucheur specialities are contained in GN 220/2017 ([GG 6390](#)), replacing GN 250/2008 ([GG 4140](#)) which had in turn repealed Part II of GN 11/1999 ([GG 2040](#)).

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 178/2009 ([GG 4332](#)) which repeals the regulations published in RSA GN R. 954 of 28 June 1963, RSA GN R. 1886 of 18 October 1974 and RSA GN R. 1784 of 19 September 1975.

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](#)).

Continuing professional development: Regulations relating to the continuing professional development of persons registered or enrolled under the Act are contained in GN 15/2011 ([GG 4656](#)).

Scope of practice: Regulations relating to the scope of practice are contained in GN 206/2014 ([GG 5591](#)), which withdraws GN 13/1999 ([GG 2040](#)).

General: Regulations concerning allowances payable to members of the Council are contained in GN 291/2015 ([GG 5899](#)), which withdraws GN 146/2008 ([GG 4068](#)). Regulations concerning additional examinations by the

Council are contained in GN 149/2009 ([GG 4302](#)). Regulations on the maximum fine that may be imposed by the Council or the Professional Conduct Committee are contained in GN 21/2018 ([GG 6527](#)), which repeals GN 156/2014 ([GG 5559](#)).

Note that GG 6527 was initially numbered incorrectly as GG 6528. A corrected version was subsequently issued.

Rules: 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).

Fees: Fees payable to the Nursing Council of Namibia are contained in General Notice 500/2017 ([GG 6489](#)), which repeals General Notice 351/2013 ([GG 5281](#)), which in turn withdraws both General Notice 357/2006 ([OG 3743](#)) and General Notice 308/2010 ([GG 4600](#)).

Note: General Notice 18/2007 ([GG 3788](#)) amends General Notice 357/2006 ([GG 3743](#)), but was not withdrawn along with the principal notice by General Notice 351/2013 ([GG 5281](#)); however, it has no independent effect or relevance.

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](#)). The terms of office of certain Council members were extended by GN 221/2012 ([GG 5023](#)), GN 71/2013 ([GG 5060](#)), GN 259/2013 ([GG 5303](#)), GN 30/2014 ([GG 5425](#)), GN 152/2014 ([GG 5559](#)), GN 191/2015 ([GG 5818](#)) and GN 222/2016 ([GG 6125](#)). The terms of office of certain members was extended by GN 57/2017 ([GG 6263](#)).

Subsequent to amendments to the Act to provide for the appointment of Council members, appointments are announced in GN 299/2018 ([GG 6770](#)).

Pharmacy Act 9 of 2004.

Summary: This Act ([GG 3250](#)) 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 ([GG 713](#)), which repealed in turn the *Pharmacy Act 53 of 1974*. This Act was brought into force on 1 October 2004 by GN 214/2004 ([GG 3291](#)).

Amendments: Act 11/2018 ([GG 6704](#)) amends the Act to make provision for the appointment of members of the Pharmacy Council.

Savings: Section 72(2) of this Act states: "Except as otherwise provided in section 71, any notice, regulation, rule, authorisation or order issued, made or granted, or any removal from the register, appointment or any other act done, or regarded to have been issued, made, granted, or done under or in terms of a provision of the laws repealed by subsection (1) must be regarded as having been issued, made, granted, or done under the corresponding provision of this Act and continues to have force and effect -

- (a) except if it is inconsistent with this Act; or
- (b) until it is set aside or repealed.”

The Pharmacy Profession Act 23 of 1993 contains a similar saving clause in section 57(2).

Regulations: Pre-independence regulations have not been researched.

Regulations made under the Pharmacy Profession Act 23 of 1993 are as follows –

Regulations relating to **fees** are contained in GN 120/1996 ([GG 1312](#)), as amended by GN 106/2003 (GG 2985).

Regulations relating to the **election of members to the Pharmacy Board** are contained in GN 226/1999 ([GG 2214](#)).

Regulations made under this Act are as follows –

Study, registration and scope of practice: Minimum requirements of study for registration as a pharmacist are contained in GN 221/2007 ([GG 3945](#)). Minimum requirements of study for registration as a pharmaceutical technician are contained in GN 18/2017 ([GG 6230](#)). 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.1417/1975 (RSA GG 4806). Additional examinations are covered by regulations contained in GN 278/2010 ([GG 4633](#)). Regulations relating to the scope of practice of a pharmacist, pharmaceutical technician, pharmacist intern, pharmacy student, pharmacist’s assistant and pharmacist’s assistant student are contained in GN 294/2017 ([GG 6470](#)).

Impaired persons: Regulations relating to Impaired Registered Persons are contained in GN 303/2013 ([GG 5342](#)).

Ownership of pharmacies by private hospitals: Regulations relating to the ownership of pharmacies by private hospitals were initially contained in GN 198/2008 ([GG 4103](#)), which was repealed and replaced by GN 101/2014 ([GG 5515](#)).

General: Regulations concerning allowances payable to members of the Council are contained in GN 290/2015 ([GG 5899](#)), which withdraws GN 147/2008 ([GG 4068](#)).

Regulations relating to continuing professional development are contained in GN 90/2010 ([GG 4482](#)).

Regulations governing the return to practice after a period of not practising are contained in GN 279/2010 ([GG 4633](#)).

Regulations on appeals are contained in GN 280/2010 ([GG 4633](#)).

Regulations on the maximum fine that may be imposed by the Council or the Professional Conduct Committee are contained in GN 61/2018 ([GG 6564](#)), which repeals GN 22/2018 ([GG 6527](#)), which in turn repealed GN 159/2014 ([GG 5559](#)).

Note that GG 6527 was initially numbered incorrectly as GG 6528. A corrected version was subsequently issued.

Regulations relating to the investigation of alleged unprofessional conduct by registered persons and professional conduct inquiries are contained in GN 289/2015 ([GG 5898](#)), as amended by GN 237/2016 ([GG 6135](#)).

GN 237/2016 amends the enabling formula contained in GN 289/2015, rather than amending the regulations themselves. GN 289/2015 initially stated that the regulations were made under section 66(5) of the Pharmacy Act 9 of 2004. The enabling formula is substituted by GN 237/2016, to state that that the regulations were made under section 66(1)(s) of the Pharmacy Act 9 of 2004.

Rules: The following rules were issued under the previous Act –

Rules in respect of misconduct, are contained in GN 299/1996 ([GG 1444](#)). (Note that section 72(3) of this Act states: “For the purposes of subsection (2) [the savings clause], any rules referred to in that subsection relating to improper conduct or misconduct must be construed as a reference to rules relating to unprofessional conduct.”

The following rules were made under this Act –

Rules relating to the qualification and registration of a pharmacist’s assistant are contained in General Notice 426/2017 ([GG 6456](#)), which repeals GN 263/2014 ([GG 5644](#)), which withdraws the rules published in General Notice 4/2013 ([GG 5119](#)).

Fees: Fees payable to the Council are set by –

- General Notice 309/2010 ([GG 4600](#))
- General Notice 386/2012 ([GG 5069](#))
- General Notice 497/2017 ([GG 6489](#)), which repeals General Notice 352/2013 ([GG 5281](#)), which in turn withdraws General Notice 67/2007 ([GG 3804](#)) as amended by General Notice 174/2008 ([GG 4068](#)).

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](#)). The terms of office of certain Council members were extended by GN 225/2012 ([GG 5023](#)), GN 70/2013 ([GG 5060](#)), GN 257/2013 ([GG 5303](#)), GN 28/2014 ([GG 5425](#)), GN 153/2014 ([GG 5559](#)), GN 190/2015 ([GG 5818](#)) and GN 223/2016 ([GG 6125](#)). The terms of office of certain members was extended by GN 56/2017 ([GG 6263](#)).

Subsequent to amendments to the Act to provide for the appointment of Council members, appointments are announced in GN 300/2018 ([GG 6770](#)).

Medical and Dental Act 10 of 2004.

Summary: This Act ([GG 3251](#)) 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. This Act was brought into force on 1 October 2004 by GN 215/2004 ([GG 3291](#)).

This Act repeals the Medical and Dental Professions Act 21 of 1993 ([GG 711](#)), and the Allied Health Services Professions Act 20 of 1993 ([GG 710](#)) insofar as it relates to the professions regulated by this Act.

The Medical and Dental Professions Act 21 of 1993 repealed the *Medical, Dental and Supplementary Health Service Professions Act 56 of 1974* and the Health Service Professions Proclamation, AG 70 of 1989.

The *Medical, Dental and Supplementary Health Service Professions Act 56 of 1974* ([RSA GG 4445](#)), which applied to SWA and which was brought into force by RSA Proc. R.52/1975 ([RSA GG 4594](#)), repealed the *Medical, Dental and Pharmacy Act 13 of 1928* (and its amending acts) with the exception of sections 83 and 83*bis*. Sections 83 and 83*bis* of that Act were repealed in South Africa by the *Health Act 63 of 1977* ([RSA GG 5558](#)). The relevant section of this repealing act came into force on 1 September 1977 (RSA Proc. R.175/1977, RSA GG 5716), prior to the relevant date of transfer. Therefore, Act 63 of 1977 (although not made generally applicable to SWA) would appear to have repealed the remaining sections of Act 13 of 1928 in SWA by virtue of the wording of section 99 of Act 13 of 1928, which provided that the “mandated territory of South West Africa” was to be deemed to be a province of South Africa for all purposes of the Act (except for the purposes of (b) paragraph (b) of the proviso section 2(4), which concerned representation on the council established by the Act). The transfer date in respect of health-related laws was 1 December 1977, meaning that repeals of regulations in SA prior to that date applied to SWA.

GN 215/2004, which brought the Act into force, 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 pertain 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 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 withdrawal, 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 ([GG 3691](#)) and GN 27/2007 ([GG 3795](#)). For the same reason it is likely that GN 229/1999 ([GG 2214](#)), instead of GN 229/2004, 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.

Amendments: Act 9/2018 ([GG 6702](#)) amends the Act to make provision for the appointment of members of the Medical and Dental Council.

Savings: Section 65(2) of this Act states:

Unless otherwise provided in this Act, any notice, regulation, rule, authorisation or order issued, made or granted, or any removal from the register or appointment made, or any other act done, or regarded to have been so issued, made, granted or done in terms of a provision of any of the laws repealed by subsection (1), must be regarded as having been issued, made, granted or done in terms of the corresponding provision of this Act, and continues to have force and effect -

- (a) unless it is inconsistent with this Act; or
- (b) until such time as it is set aside or repealed.

The Medical and Dental Professions Act 21 of 1993 ([GG 711](#)) contained a savings clause in section 56(2), the *Health Act 63 of 1977* ([RSA GG 5558](#)) (which repealed two provisions of the *Medical, Dental and Pharmacy Act 13 of 1928* authorising regulations) contained a savings clause in section 63(2), and the *Medical, Dental and Supplementary Health Service Professions Act 56 of 1974* ([RSA GG 4445](#)) contained a savings clause in section 64(2).

Regulations: Pre-independence regulations have not been comprehensively researched. However, amongst the regulations which may survive are the following, which were issued in terms of the *Medical, Dental and Pharmacy Act 13 of 1928*:

Blood Transfusion Regulations, 1962, RSA GN R.1950/1962 (RSA GG 385, republished in OG 2440A), made in terms of section 83*bis* (in substitution for the regulations in SA GN R.699 of 20 May 1960) and amended by RSA GN R.66/1969 (RSA GG 2265, republished in OG 2966) and by AG GN 31/1979 (OG 3952).

Therapeutic Substances Regulations, RSA GN R.740/1966 (RSA GG 1445), made in terms of section 83 (in substitution for the regulations regarding therapeutic substances published in SA GN 1131 of 9 August 1935 as amended), as amended by GN R.739/1971 (RSA GG 3090).

Post-independence regulations made under the Medical and Dental Professions Act 21 of 1993 repealed by this Act which appear to survive include the following:

Misconduct: 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).

Regulations regarding the procedures at disciplinary hearings by the Dental Board are contained in GN 222/2003 ([GG 3085](#)).

Section 65(3) of this Act states: “For the purposes of subsection (2) [the savings clause], the rules referred to in that subsection relating to improper conduct or misconduct must be construed as a reference to rules relating to unprofessional conduct made in terms of this Act.”

The regulations below were promulgated under the current 2004 Act –

Biomedical engineers: Regulations relating to the minimum requirements of study, registration, and scope of practice in respect of biomedical engineers are contained in GN 277/2018 ([GG 6744](#)).

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](#)).

Clinical officers and clinical officer interns: Minimum requirements of study for registration and registration of clinical officers and clinical officer interns are contained in GN 24/2015 ([GG 5680](#)).

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](#)), as amended by GN 33/2017 ([GG 6249](#)). Regulations relating to the registration of dental interns are contained in GN 121/2016 ([GG 6031](#)). Regulations relating to the registration of dental students are contained in GN 32/2017 ([GG 6249](#)). Regulations relating to the scope of practice of dentists are contained in GN 34/2017 ([GG 6249](#)).

Note that GN 155/2008 ([GN 4068](#)) 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.

Medical biological scientists and interns: Regulations relating to the minimum requirements of study for registration as a medical biological scientist are contained in GN 49/2011 ([GG 4699](#)). Regulations relating to the registration and additional qualifications of medical biological scientists and medical biological scientist interns are contained in GN 48/2011 ([GG 4699](#)).

Medical students: Regulations relating to the registration of medical students, the maintaining of a register of medical students and the restoration of a name to a register the registration of medical students are contained in GN 120/2016 ([GG 6031](#)), which withdraws GN 237/2000 ([GG 2415](#)) (which in turn repealed RSA GN R.2269 and R.2270 of 3 December 1976).

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 ([GG 2222](#)).

Medical practitioners: Regulations concerning the minimum requirements of study for registration as a medical practitioner are contained in GN 277/2017 ([GG 6442](#)), which repeals GN 177/2009 ([GG 4332](#)). Regulations concerning the registration of medical practitioners and specialities are contained in GN 278/2017 ([GG 6442](#)), which repeals GN 71/2010 ([GG 4455](#)), which in turn repealed all of the regulations contained in GN 238/1999 ([GG 2222](#)). Regulations relating to the scope of practice of medical practitioners are contained in GN 35/2017 ([GG 6249](#)).

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](#)), as amended by GN 210/2015 ([GG 5831](#)).

General: Regulations concerning allowances payable to members of the

Council are contained in GN 293/2015 ([GG 5899](#)), which withdraws 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 appeals and the conducting of appeals by the Appeal Committee of the Medical and Dental Council are contained in GN 41/2009 ([GG 4232](#)).

Regulations concerning the conditions of practice of registered persons other than those in dental professions are contained in GN 176/2009 ([GG 4332](#)).

Regulations relating to continuing professional development are contained in GN 92/2010 ([GG 4482](#)).

Regulations relating to impaired registered persons are contained in GN 299/2013 ([GG 5338](#)).

Regulations on the maximum fine that may be imposed by the Council or the Professional Conduct Committee are contained in GN 62/2018 ([GG 6564](#)), which repeals GN 23/2018 ([GG 6527](#)), which in turn repealed GN 155/2014 ([GG 5559](#)).

Note that GG 6527 was initially numbered incorrectly as GG 6528. A corrected version was subsequently issued.

Regulations relating to conditions under which registered persons may conduct practices relating to their professions are contained in GN 61/2017 ([GG 6263](#)).

Regulations relating to the practical training of medical students and dental students are contained in GN 279/2017 ([GG 6444](#)).

Registration fees: Fees payable to the Medical and Dental Council of Namibia are set in General Notice 501/2017 ([GG 6489](#)), which repealed and replaced General Notice 285/2013 ([GG 5252](#)).

Prior to the enactment of this law, fees payable to the Council were contained in GN 223/2003 ([GG 3086](#)); annual fees were determined in terms of those regulations in GN 230/2003 ([GG 3092](#)). The regulations on fees in GN 223/2003 were withdrawn by General Notice 8/2007 ([GG 3771](#)), which was amended by General Notice 307/2010 ([GG 4600](#)). Both of these General Notices were withdrawn and replaced by General Notice 285/2013 ([GG 5252](#)).

Rules: In terms of section 65(2), any 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. Rules made under the repealed laws which continue to survive include the following –

Rules relating to misconduct in respect of the dental profession are contained in GN 151/2001 ([GG 2590](#)), as amended by GN 218/2001 ([GG 2637](#)), which repeals the rules in RSA GN R.2278 of 3 December 1976 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.

Fees: A tariff of 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](#)).

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](#)). The terms of office of certain Council members were extended by GN 222/2012 ([GG 5023](#)), GN 72/2013 ([GG 5060](#)), GN 256/2013 ([GG 5303](#)), GN 29/2014 ([GG 5425](#)), GN 151/2014 ([GG 5559](#)) GN 189/2015 ([GG 5818](#)) and GN 224/2016 ([GG 6125](#)). The terms of office of certain members was extended by GN 58/2017 ([GG 6263](#)).

Subsequent to amendments to the Act to provide for the appointment of Council members, appointments are announced in GN 297/2018 ([GG 6770](#)).

See also Veterinary and Veterinary Para-Professions Act 1 of 2013 (**ANIMALS**).

See also **HEALTH**.

See also **HOSPITALS**.

See also Namibia Qualifications Authority Act 29 of 1996 (occupational standards) (**EDUCATION**).

See also **MEDICAL AID**.

See also **MEDICINE**.

See also **MENTAL HEALTH AND MENTAL DISORDERS**.

HOSPITALS

Hospitals and Charitable Institutions Ordinance 16 of 1930.

Summary: This Ordinance ([OG 377](#)) 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 ([OG 541](#)), Ord. 10/1938 ([OG 748](#)), Ord. 5/1944 ([OG 1115](#)), Ord. 22/1953 ([OG 1774](#)), Ord. 24/1955 ([OG 1927](#)), Ord. 11/1960 ([OG 2254](#)) and Ord. 14/1969 ([OG 2991](#)).

Regulations: Pre-independence regulations have not been researched.

State Hospitals Ordinance 17 of 1966.

Summary: This Ordinance ([OG 2727](#)) 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. This Ordinance repealed the State Hospitals Ordinance 49 of 1957.

Amendments: This Ordinance (with the exception of the transitional provisions) is repealed by the Hospitals Ordinance 14 of 1972 ([OG 3265](#)), which was repealed in turn by the Hospitals and Health Facilities Act 36 of 1994.

Regulations: Regulations made under the State Hospitals Ordinance 49 of 1957, which was repealed by this Ordinance, survived in terms of section 41(4) of this Ordinance. The savings clauses in the laws which followed this Ordinance are discussed below.

Hospitals and Health Facilities Act 36 of 1994.

Summary: This Act ([GG 996](#)) consolidates and amends the laws relating to state and private hospitals and health facilities (which are broadly defined to include clinics, pharmacies, laboratories etc). It repeals the Hospitals Ordinance 14 of 1972 ([OG 3265](#)) and was brought into force on 15 February 1995 by GN 25/1995 ([GG 1028](#)). Most of this Act is repealed by the National Health Act 2 of 2015 ([GG 5742](#)), which is not yet in force. Once it does come into force, the only remaining provisions of this Act will be:

- section 1 (definitions)
- Part VI (private hospitals)
- Part VII (private health facilities)
- section 33(1)(c)-(d)
- section 38(1)(b), (k) and (l)
- section 39(2)(b).

Act 2 of 2015 ([GG 5742](#)) repeals section 40, which contains the short title of this Act; it is not clear what the title of this Act should now be.

Amendments: Act 1/1998 ([GG 1804](#)) amends sections 1, 2, 4, 5, 18, 19, 23, 24, 27, 31, 38 and 39 of the Act. Portions of this amending Act – sections 1, 2, 3, 4, 5, 6, 11, 12 and 13 – are repealed by the National Health Act 2 of 2015 ([GG 5742](#)), which is not

yet in force.

The National Health Act 2 of 2015 ([GG 5742](#)), which is not yet in force, repeals Part II, Part III, Part IV, Part V and sections 33(1)(a)-(b) and (2), 34, 35, 36, 37, 38(1)(a), (c), (d), (e), (f), (g), (h), (i), (j), (m), (n) and (2), 39(1) and (2)(a) and (c) and 40 of the Act.

Regulations: Regulations made under the State Hospitals Ordinance 49 of 1957, which was repealed by the State Hospitals Ordinance 17 of 1966 ([OG 2727](#)), survived in terms of section 41(4) of that Ordinance.

Regulations made under the State Hospitals Ordinance 17 of 1966, which (with the exception of the transitional provisions) was repealed by the Hospitals Ordinance 14 of 1972 ([OG 3265](#)), survived in terms of section 43(3) of that Ordinance.

Regulations under the Hospitals Ordinance 14 of 1972, which was repealed by this Act survive in terms of section 39(2)(c) of this Act.

However, the pre-independence regulations have not been researched. The following regulations were made in terms of this 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, contained in GN 73/2010 ([GG 4459](#)). (These regulations repeal previous regulations made under the Hospitals Ordinance 14 of 1972, contained in GN 43/1993 ([GG 621](#)), as amended by GN 199/1995 ([GG 1183](#)) and GN 12/2001 ([GG 2468](#)). The regulations in GN 43/1993 ([GG 621](#)) repealed the regulations contained in “Government Notices 215 of 1973, 43 and 81 of 1974, 57 of 1976, 181 and 199 of 1977, 144 of 1988 and 4 of 1991”.)

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).

***National Health Act 2 of 2015.**

Summary: This Act ([GG 5742](#)) consolidates the laws relating to state hospitals and state health services and regulates the conduct of such hospitals and services. It provides for state hospital committees by the health practitioners and staff at the hospital in question. It covers access to treatment and fees, and establishes a Special Fund for Treatment of State Patients to provide financial assistance for such special treatment. It also establishes regional and district health boards and offices, and provides for the authorisation of research at state hospital and grants for such research. The Act repeals most of the Hospitals and Health Facilities Act 36 of 1994 ([GG 996](#)) and most of its sole amending Act 1/1998 ([GG 1804](#)). (The Hospitals and Health Facilities Act 36 of 1994 replaced the Hospitals Ordinance 14 of 1972 ([OG 3265](#)).) Section 67(2)(b) of the Act provides a savings provision for actions taken under the repealed laws. The Act will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Regulations: Regulations made under the State Hospitals Ordinance 49 of 1957, which was repealed by the State Hospitals Ordinance 17 of 1966 ([OG 2727](#)), survived in terms of section 41(4) of that Ordinance.

Regulations made under the State Hospitals Ordinance 17 of 1966, which (with the exception of the transitional provisions) was repealed by the Hospitals Ordinance 14 of 1972 ([OG 3265](#)), survived in terms of section 43(3) of that Ordinance.

Regulations under the Hospitals Ordinance 14 of 1972, which was repealed by the Hospitals and Health Facilities Act 36 of 1994 ([GG 996](#)), survived in terms of section 39(2)(c) of that Act.

Regulations under the Hospitals and Health Facilities Act 36 of 1994, which was substantially repealed by this Act ([GG 5742](#)), survive in terms of section 67(2)(b) of this Act.

However, pre-independence regulations have not been researched.

The following regulations were made after independence under the Hospitals and Health Facilities Act 36 of 1994 –

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](#)).

COMMENTARY

Michaela Figuiera, “AIDS, the Namibian constitution and human rights: an overview”, 9(1) *South African Journal on Human Rights* 30 (1993).

See also **HEALTH**.

See also **HEALTH PROFESSIONS**.

See also **MEDICAL AID**.

See also **MEDICINE**.

See also **MENTAL HEALTH AND MENTAL DISORDERS**.

HUMAN RIGHTS

COMMENTARY

F Nghiishililwa, “The Constitutional Prohibition on Torture” in M Hinz, S Amoo and D Van Wyk (eds), *The Constitution at Work: Ten Years of Namibian Nationhood*, Windhoek: UNAM Publishers, 2000

Nico Horn & Anton Bösl (eds), *Human Rights and the Rule of Law in Namibia*. Windhoek: Macmillan Education, 2008, available at www.kas.de

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*, Konrad Adenauer Stiftung, 2009, available at www.kas.de

A Bösl & J Diescho (eds), *Human Rights in Africa: Legal Perspectives on their protection and promotion*, Windhoek: Macmillan Education, 2009

Law Reform and Development Commission, Report on the Domestication of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, LRDC 34, 2017, available at www.namiblii.org.

INTERNATIONAL LAW

Note: The topic of human rights is a very broad one. The international treaties listed here are core human rights documents which cover a range of issues. International treaties covering more specific topics have been listed under those topics.

UNITED NATIONS

The **United Nations** (UN) was established on 24 October 1945. Today, nearly every nation in the world belongs to the UN. The Republic of Namibia joined the UN on 23 April 1990. Admission to the UN includes the acceptance of the *Charter of the United Nation*, which sets out basic principles of international relations. According to the Charter, the UN has four purposes: (1) to maintain international peace and security; (2) to develop friendly relations among nations; (3) to cooperate in solving international problems and in promoting respect for human rights for all “without distinction as to race, sex, language, or religion”; and (4) to be a centre for harmonizing the actions of nations.

All UN Member States are represented in the **General Assembly**. Each Member State has one vote. Decisions on “important matters,” such as international peace and security, admitting new members, the UN budget and the budget for peacekeeping, are decided by two-thirds majority. Other matters are decided by simple majority. There is usually an effort to reach decisions through consensus, rather than by taking a formal vote.

Primary responsibility for maintaining international peace and security rests with the **Security Council**. Under the Charter, all Member States are obligated to carry out the Security Council’s decisions. The Security Council has 15 members. Five of these – China, France, the Russian Federation, the United Kingdom and the United States – are permanent members. The other 10 are elected by the General Assembly for two-year terms. Decisions of the Security Council require nine votes.

According to Art 93 of the Charter of the United Nations, all members of the UN are automatically parties to the *Statute of the International Court of Justice* annexed to the Charter of the United Nations. The International Court of Justice is the main judicial organ of the UN. It consists of 15 judges elected by the UN General Assembly and the UN Security Council. The Court decides disputes between countries. Participation by States in a court proceeding is

voluntary, but if a State agrees to participate, it is obliged to comply with the Court's decision. The Court also provides advisory opinions to the General Assembly and the Security Council upon request.

The UN General Assembly adopted the *Universal Declaration of Human Rights* on 10 December 1948. This document has been referred to as an "international bill of rights". Although it is not a binding international treaty, many commentators have argued that provisions of this document have become part of customary international law which is binding on all states. Some of the provisions of the Namibian Constitution are modelled on language in the Universal Declaration. At the 1993 Vienna Conference on Human Rights, representatives of 171 nations, including Namibia, affirmed by consensus their "commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights".

Namibia has ratified several of the core international human rights treaties developed under the auspices of the UN, as reflected in the list below.

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

Charter of the United Nations (UN), 1945 (which includes the Statute of the International Court of Justice as an integral part)

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

International Covenant on Civil and Political Rights (ICCPR), 1966

Optional Protocol to the International Covenant on Civil and Political Rights, 1966

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 (ICESCR), 1966

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

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

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, 1999

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

Convention on the Rights of the Child, 1989

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

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*

Convention on Rights of Persons with Disabilities, 2006

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

African Charter on Human and Peoples' Rights (Banjul Charter), 1981

***Protocol to the African Charter on Human and Peoples' Rights on the establishment
of the African Court on Human and Peoples' Rights, 1998*

*Protocol to the African Charter for Human and Peoples' Rights on the Rights of Women
in Africa, 2003*

***African Charter on the Rights and Welfare of the Child (ACRWC or Children's Charter),
1990***

SADC Protocol on Gender and Development, 2008

See also **INTERNATIONAL ISSUES.**

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 ([SA GG 5908](#), also published in [OG 2100](#)) 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 originally stated “This Act shall apply also in the Territory.” Section 12 (as amended by *Act 88 of 1962*) 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. Thus, amendments to the Act in South Africa continued to apply to South West Africa by virtue of the wording of section 12.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Export Credit Re-insurance Amendment Act 66 of 1961* ([RSA GG 31](#))
- *Export Credit Re-insurance Amendment Act 88 of 1962* ([RSA GG 284](#))
- *Export Credit Re-insurance Amendment Act 75 of 1971* ([RSA GG 3186](#))
- *Export Credit Re-insurance Amendment Act 81 of 1981* ([RSA GG 7841](#))
- *Transfer of Powers and Duties of the State President Act 97 of 1986* ([RSA GG 10438](#))
- *Export Credit and Foreign Investments Re-insurance Amendment Act 27 of 1988* ([RSA GG 11217](#)).

Regulations: Regulations are authorised by section 11 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Notices: RSA Proc. 84/1989 ([RSA GG 11919](#)) concerns the application of the Act to transactions between persons in the Republic of South Africa and UNTAG.

Importation of Cement Ordinance 24 of 1963.

Summary: This Ordinance ([OG 2493](#)) 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 ([GG 980](#)) provides for import and export control. It repeals the *Import and Export Control Act 45 of 1963*.

Regulations: Section 6(2) of this Act states: “Anything done, or deemed to have been done, under the provisions of the said Act, shall be deemed to have been done under the corresponding provisions of this Act.” However, since this Act makes no provision for regulations, any regulations made under the repealed Act could not survive.

Notices: 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 281/2010 ([GG 4636](#)), which withdraws GN 80/2004 ([GG 3193](#)).

The import of certain motor vehicles is prohibited by GN 257/2004 ([GG 3334](#)), as amended by GN 252/2013 ([GG 5293](#)), and by GN 253/2013 ([GG 5293](#)).

The import of certain poultry products is restricted by GN 81/2013 ([GG 5167](#)), as amended by GN 321/2013 ([GG 5351](#)) (which is amended by GN 79/2015 ([GG 5738](#))).

Prohibitions pertaining to the export of sheep and goat skins are contained in GN 244/2013 ([GG 5285](#)).

Prohibitions pertaining to the import of certain dairy products are contained in GN 245/2013 ([GG 5285](#)). However, this Government Notice was set aside by *Matador Enterprises (Pty) Ltd v Minister of Trade and Industry & Others* 2015 (2) NR 477 (HC).

Cases:

Matador Enterprises (Pty) Ltd v Minister of Trade and Industry & Others 2015 (2) NR 477 (HC) (decision-making process under sections 2 and 3, and relationship to Control of the Importation and Exportation of Dairy Products and Dairy Product Substitutes Act 5 of 1986)

South African Poultry Association & Others v Ministry of Trade & Industry & Others 2015 (1) NR 260 (HC) (review application seeking to set aside GN 81/2013 as being *ultra vires* the Act; this case is an interlocutory judgment dealing with discovery in respect of the underlying matter); the underlying application was dismissed in *South African Poultry Association & 5 Others v The Minister of Trade and Industry & 3 Others* (A 326/2015) [2016] NAHCMD 199 (8 July 2016) on the basis that an unreasonable time had elapsed before the application had been launched.

Related international agreements:

†*Agreement Establishing the World Trade Organization (WTO) (the Marrakesh Agreement), 1994 (and its associated agreements)*

SADC Protocol on Trade, 1996

Amendment Protocol on Trade, 2000

Agreement Amending Article 20 of the Protocol on Trade, 2008

South African Customs Union Agreement (SACU), 2002

Treaty of the Southern African Development Community (SADC), 1992 (as amended)

Vienna Convention for the Protection of the Ozone Layer, 1985.

Export Levy Act 2 of 2016.

Summary: This Act ([GG 6042](#)) provides for an export levy on certain goods, to encourage further processing of resources within Namibia, amongst other things. It was brought into force on 1 June 2017 by GN 132/2017 ([GG 6320](#)).

Application of law: The administration of this Act is affected by the Namibia Revenue Agency Act 12 of 2017 ([GG 6486](#)).

Regulations: Regulations are authorised by section 24 of the Act, but none have yet been promulgated.

See also **CUSTOMS AND EXCISE**.

See also:

- * Cold Storage Works and Abattoirs Proclamation 50 of 1921 (export of meat)
 - * 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)
 - * *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).**

- * Liquor Act 6 of 1998 (import and export of methylated spirits and yeast)
 - * Tobacco Products Control Act 1 of 2010 (import of tobacco products)
- (ALCOHOL, DRUGS AND TOBACCO).**

- * Animal Health Act 1 of 2011 (the Animal Health Regulations cover the import and export of animals and the import of vaccines)
- (ANIMALS).**

- * *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).**

* 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 (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 Wildlife Products and Trade Act 9 of 2008 (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 ([OG 2194](#)) ratifies a double taxation treaty between South Africa and South West Africa.

Amendments: The Ordinance is amended by Ord. 4/1970 ([OG 3060](#)) and Ord. 7/1973 ([OG 3329](#)).

Rehoboth Gebiet Income Tax Proclamation 92 of 1961.

Summary: This Proclamation ([OG 2362](#)) has been superseded by the Income Tax Act 24 of 1981.

Income Tax Act 24 of 1981.

Summary: This Act ([OG 4580](#)) covers income tax comprehensively, repealing a number of South African and South West African enactments on income tax, including the Income Tax Ordinance 5 of 1974 ([OG 3404](#)). It was made applicable to the Rehoboth Gebiet by Act 5/1982 ([OG 4618](#)).

Amendments: This Act was amended prior to independence by Act 12/1982 ([OG 4656](#)), AG 10/1985 ([OG 5016](#)), Act 13/1985 ([OG 5115](#)), Act 11/1986 ([OG 5234](#)), Act 8/1987 ([OG 5400](#)), Act 1/1989 ([OG 5675](#)) and AG 25/1989 ([OG 5758](#)).

It has been amended since independence by the Acts listed. Note that many of these Acts incorporate complex provisions on when various amendments come into force, with some providing different commencement dates for different provisions and/or for different categories of taxpayers. These commencement dates are not recorded here.

Act 3/1991 ([GG 179](#)) (re: petroleum)

Act 8/1991 ([GG 222](#)) (re: housing benefits)

Act 12/1991 ([GG 229](#)) (re: married women)

Act 33/1991 ([GG 335](#)) (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 ([GG 487](#)) (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 ([GG 693](#)) (various amendments)

Act 17/1994 ([GG 932](#)) (various amendments)

Act 22/1995 ([GG 1225](#)) (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 ([GG 1375](#)) (various amendments)

Act 5/1997 ([GG 1680](#)) (various amendments)

Act 13/1998 ([GG 1882](#)) (increase in rate of income tax)

Act 7/1999 ([GG 2135](#)) (new tax rates)

Act 21/1999 ([GG 2240](#)) (various amendments)
Appeal Laws Amendment Act 10 of 2001([GG 2585](#)) (section 76)
Act 7/2002 ([GG 2820](#)) (various amendments)
Act 11/2003 ([GG 3049](#)) (amendment to Schedule 4 – rates of normal tax).
Act 4/2005 ([GG 3428](#)) (various amendments)
Act 5/2007 ([GG 3964](#)) (various amendments; see GN 118/2009 ([GG 4270](#)) regarding commencement dates)
Act 5/2010 ([GG 4475](#)) (various amendments)
Act 3/2011 ([GG 4732](#)) (various amendments)
However, GN 79/2011 ([GG 4732](#)) which published this amending Act was withdrawn by GN 150/2011 ([GG 4787](#)).
Act 7/2011 ([GG 4755](#)) (adds a definition of “retirement annuity fund” to section 1)
Act 15/2011 ([GG 4864](#)) (various amendments)
Act 4/2013 ([GG 5206](#)) (amends Schedule 4 to alter tax rates and thresholds)
Act 13/2015 ([GG 5912](#)) (amends definition of “gross income”, provides for withholding tax on interest paid to non-residents, amends the withholding tax rate on certain fees paid to non-residents, provides a definition of “Namibia”, amends the royalty rate and provides for the allocation of tax payments and collection of tax)
Act 4/2016 ([GG 6044](#)) (amends section 35A).

Application of law: The application of the Act was affected by AG Proc. 14/1982 (OG 4648), which was “abolished” (“afgeskaf”) by AG Proc. 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 ([GG 1069](#)).

The application of the Act is also addressed in the Demutualisation Levy Act 9 of 2002 ([GG 2827](#)).

The administration of this Act is affected by the Namibia Revenue Agency Act 12 of 2017 ([GG 6486](#)).

Regulations: Pre-independence regulations have not been researched.

Regulations regarding the standard value of livestock are contained in GN 50/1995 ([GG 1037](#)), which replaced GN 1/1994 ([GG 772](#)), which in turn repealed AG GN 47/1982.

Notices: A special court for hearing income tax appeals is constituted in GN 320/1996 ([GG 1462](#)), replacing the court constituted in AG 31/1981 ([OG 5477](#)). Additional special courts for hearing income tax appeals are constituted in GN 222-223/1997 ([GG 1730](#)), GN 158/2000 ([GG 2361](#)), GN 88-90/2004 ([GG 3198](#)), GN 145-146/2010 ([GG 4530](#)), GN 190/2011 ([GG 4804](#)) and GN 321/2017 ([GG 6490](#)).

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](#)).

Appointments: Legal practitioners are appointed to serve on the panel in terms of section 73A(4) in GN 108/2006 ([GG 3672](#)), GN 112/2013 ([GG 4941](#)) and GN 162/2018 ([GG 6666](#)).

Cases:

Esselmann v Secretary of Finance 1990 NR 250 (SC) (concerning previous Income Tax Ordinance 5 of 1974)

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) (para 3(1) of Schedule 4)

Fouche v Minister of Finance (Receiver of Revenue) 2012 (1) NR 109 (SC) (Special Court For Income Tax Appeals) (section 15(1)(f))

Du Preez v Minister of Finance 2012 (2) NR 643 (SC) (sections 71 and 73; sections 56(1A) and 79(1); section 66; section 79(4) prior to amendment in 2009 by Act 5/2007).

Merlus Seafood Processors (Pty) Ltd v Minister of Finance 2013 (1) NR 42 (HC); (“manufacturer” in section 5A); overturned on appeal *Minister of Finance v Merlus Seafood Processors (Pty) Ltd* 2016 (4) NR 1042 (SC) (proper approach to challenging Minister’s decision on “manufacturer” under sections 1 and 5A)

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](#) (which also contains “Proclamation 2/1999”) and one in [GG 2032](#). [GG 2033](#) contains Proclamation 4/1999, suggesting that the Proclamation in [GG 2032](#), which is the one referenced here, *should have been numbered as Proc. 3/1999* to be in sequence with the others. (To add more confusion, the Proclamation in question 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](#))

Commentary: Loammi Wolf, “Namibian taxation procedure in the light of just administrative action”, *Namibia Law Journal*, Volume 4, Issue 1, 2012.

INHERITANCE

Political Ordinance of 1 April 1580, articles 19-29.

Summary: This Ordinance unified the law of intestate succession in the provinces of North Holland and South Holland so that the whole of the Netherlands was governed by the “Skependomserefrege” (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 *Octrooi of 10 January 1661* clarify and amend the 1580 Ordinance.

Applicability to SWA: The *Octrooi of 10 January 1661* clarified that both the Ordinance and the 1594 Interpretation applied to the Cape Colony. (The *Octrooi* applied the Political Ordinance to the “Indies”, which at the time included the Cape Colony.) They were subsequently made applicable to SWA by the SWA Administration of Justice Proclamation 21 of 1919, as interpreted by *Tittel v The Master of The High Court* 1921 SWA 58.

Cases: *Frans v Paschke & Others* 2007 (2) NR 520 (HC) (citing the *Political Ordinance of 1580*, the *Interpretation of 13 May 1594* and the *Octrooi 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 & Others* 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.

Octrooi 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.

“By virtue of the Administration of Justice Proclamation, 21 of 1919, the Roman-Dutch common law applied in the Province of the Cape of Good Hope became the common law of Namibia. Mr Schickerling correctly points out that the common law on intestate succession was based upon the old Political Ordinance of 1580 and the Interpretation Ordinance of 1594, as modified by the Octrooi of 1661, all passed in the Netherlands and imported to the Cape Colony. The system was based upon consanguinity (blood relationships). The unfairness of intestate succession under the common law upon a spouse was ameliorated in South Africa by the Succession Act, 1934 by conferring rights of intestate succession upon a surviving spouse. Similar legislation was enacted in Namibia some 12 years later when the Intestate Succession Ordinance, 1946 was passed. The Ordinance amended the common law of intestate succession by providing that the surviving spouse of a deceased is declared to be an intestate heir of the deceased’s spouse according to certain rules set out in that ordinance which essentially provide for a surviving spouse to succeed to the extent of a child’s share or a certain amount whichever was the greater. The amount in question was subsequently increased in amendments to the Ordinance in 1963 and again in 1982.”

Tjingaete v Lakay NO & Others 2015 (2) NR 431 (HC) at para 34 (footnotes omitted), citing Corbett, Hahlo, Hofmeyr *The Law of Succession in South Africa* (2nd ed) at 565.

*****Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941**, repealed but with some continued relevance.

Summary: This Proclamation ([OG 920](#)) (which was amended by the Administration of Estates Amendment Act 4 of 1981 (Rehoboth) (*Official Gazette*) previously regulated the administration of estates in Rehoboth. The Estates and Succession Amendment Act 15 of 2005 ([GG 3566](#)) 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”. Therefore, Schedule 2 of the repealed Act continues to be of relevance. (The repealing Act also provides that the repeal does not affect the validity of a will which would have been valid in terms of the Proclamation had it not been repealed.)

Amendments: The Proclamation was amended by the Administration of Estates Amendment Act 4 of 1981 (Rehoboth) (*Official Gazette 37 of Rehoboth*, dated 23 December 1983). It was repealed by the Estates and Succession Amendment Act 15 of 2005 ([GG 3566](#)), with the caveat described above.

Regulations: The Act made no provision for regulations.

Intestate Succession Ordinance 12 of 1946.

Summary: This Ordinance ([OG 1259](#)) sets forth rules for intestate inheritance by surviving spouses and other relatives.

Amendments: The Ordinance is amended by Ord. 6/1963 ([OG 2460](#)) and Act 15/1982 ([OG 4721](#)), both of which simply substitute the amounts referred to in section 1. (The amounts which are currently applicable are all set at R50 000.)

Regulations: The Act makes no provision for regulations.

Cases: Legislative history discussed in *Tjingaete v Lakay NO & Others* 2015 (2) NR 431 (HC), as well as section 1(2).

Wills Act 7 of 1953, as amended in South Africa to November 1979.

Summary: This Act ([SA GG 5018](#)) covers the execution of wills.

Applicability to SWA: In the original Act, section 8 stated: “This Act shall apply also in the Territory of South-West Africa.” Section 8 was substituted, with retrospective effect, by the *General Law Amendment Act 80 of 1964* ([RSA GG 829](#)) to make all amendments to the Act automatically applicable to South West Africa. As substituted, 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), dated 12 November 1979, as amended. There were no amendments to the Act in South Africa after that date and prior to Namibian independence.

Amendments: The following pre-independence amendments in South Africa were applicable to SWA –

- *Wills Amendment Act 48 of 1958* ([SA GG 6122](#)) (The wording of section 8 in the original Act did not make amendments to the Act automatically applicable to South West Africa, but this amendment was made expressly applicable to South West Africa by its own terms; see section 2 of the amending Act.)
- *General Law Amendment Act 80 of 1964* ([RSA GG 829](#)) (amends section 8 of the Act with retrospective effect to make all amendments to the Act automatically applicable to South West Africa)
- *Wills Amendment Act 41 of 1965* ([RSA GG 1084](#)).

The definitions of “Court” and “Master” are substituted by the Walvis Bay and Off-shore Islands Act 1 of 1994 ([GG 805](#)).

Regulations: The Act makes no provision for regulations.

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)

Vermeulen & Another v Vermeulen & Others 2012 (1) NR 286 (HC) (burden of showing invalidity on grounds of mental incompetency to make a will under section 4 lies with the persons challenging the will; test for testamentary capacity); reversed on appeal in *Vermeulen & Others v Vermeulen & Another* 2014 (2) NR 528 (SC) (test for lack of testamentary capacity; re-evaluation of factual evidence in light of standard of proof of testamentary capacity and appropriate degree of caution)

Afrikaner v The Master of the High Court of Namibia & Others 2013 (4) NR 1129 (HC)
(noncompliance with section 2(1)(a)(v) cannot be condoned; rectification after death of testator is impermissible).

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).

Commentary:

Namibia Institute for Democracy, *Wills, Testaments and Estates*, 2001

Legal Assistance Centre, *Training Manual for Trainers on Will Writing and Inheritance in Namibia*, 2004, available at www.lac.org.na (languages: English, Afrikaans, Oshiwambo, Otjiherero, Khoekhoegowab, Silozi, Rukwangali)

Legal Assistance Centre, *Wills and Inheritance*, undated pamphlet, available at www.lac.org.na.

General Law Amendment Ordinance 12 of 1956, section 5.

Summary: Section 5 of this Ordinance ([OG 2018](#)) deals with the power of the High Court in certain situations where an unborn person will be entitled to an interest in immovable property in terms of a will. (Section 4 of this Ordinance is discussed under ARMS AND AMMUNITION. Sections 6-7 of this Ordinance are discussed under CRIMINAL LAW AND PROCEDURE)

Amendments: This portion of the Ordinance is amended by Ord. 36/1965 ([OG 2642](#)).

Administration of Estates Act 66 of 1965, as amended in South Africa to November 1979.

Summary: This Act ([RSA GG 1128](#)) governs the liquidation and distribution of the estates of deceased persons.

Applicability to SWA: Section 1, as amended by *Act 54 of 1970*, defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”. Section 108A, inserted by *Act 54 of 1970*, 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”. (The Proclamation referred to was the Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941 ([OG 920](#)), which was repealed by the Estates and Succession Amendment Act 15 of 2005 ([GG 3566](#)); Act 15 of 2005 provides that the administration of all estates in future falls under this 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. None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Section 3(1)(o) of the Transfer Proclamation as originally enacted excluded sections 2, 88, 91, 92, 93, 97 and 103(1)(b) from the operation of section 3(1) of the General

Proclamation, and excluded all the references 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). Section 3(1)(o) of the Transfer Proclamation, as amended by the SWA Administration of Estates Amendment Act 2 of 1987, no longer listed any specific sections, but continued to exclude all the references to the Republic in the Act from section 3(1) of the General Proclamation.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *General Law Amendment Act 102 of 1967* ([RSA GG 1171](#))
- *Establishment of the Northern Cape Division of the Supreme Court of South Africa Act 15 of 1969* ([RSA GG 2315](#))
- *Administration of Estates Amendment Act 54 of 1970* ([RSA GG 2827](#))
- *Administration of Estates Amendment Act 79 of 1971* ([RSA GG 3196](#))
- *General Law Amendment Act 57 of 1975* ([RSA GG 4760](#))
- *Administration of Estates Amendment Act 15 of 1978* ([RSA GG 5919](#))
- *Divorce Act 70 of 1979* ([RSA GG 6506](#)).

The Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends certain terminology. Act 17/1981 ([OG 4568](#)) amends sections 18, 29 and 34 of the Act. Act 6/1986 ([OG 5196](#)) and Act 2/1987 ([OG 5338](#)) both make substantial amendments to the Act.

The Married Persons Equality Act 1 of 1996 ([GG 1316](#)) repeals section 17, amends section 72 and substitutes section 85.

Act 15/2001 ([GG 2672](#)), which was brought into force on 1 July 2002 by 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 ([GG 3566](#)) repeals the Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941 and portions of section 18 of the Native Administration Proclamation 15 of 1928. It makes this 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). Act 15 of 2005 also provides transitional provisions in section 3 in respect of estates already being administered in terms of the repealed laws where the liquidation and distribution was not yet complete; the general rule is that those estates will continue to be administered under the repealed laws, but any person with an interest in an estate has the option to request that the estate be administered in terms of this Act. Act 15 of 2005 also inserts section 4A, which authorises the Minister to assign functions of the Master to magistrates.

The Child Care and Protection Act 3 of 2015 ([GG 5744](#)), which is not yet in force, amends section 72.

Regulations: Pre-independence regulations have not been comprehensively researched.

Regulations are contained in RSA GN 473/1972 (RSA GG 3425), as amended by the following:

- RSA GN 817/1977 (RSA GG 5542)
- RSA GN 1209/ 1980 (RSA GG 7068)
- GN 107/1985 (OG 5128)

- GN 56/1993 ([GG 645](#))
- GN 33/1999 ([GG 2051](#)).

Regulations determining the amounts set in terms of various sections of the Act are contained in GN 108/2002 ([GG 2760](#)).

Section 18 of the Native Administration Proclamation 15 of 1928 ([OG 284](#)), as amended by Act 27/1985 (OG 5147): This section previously governed the administration of the estates of “natives” in some parts of Namibia. Section 18(3) and (9) were 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 were 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, sections 18(3) and 18(9) on succession applied in Owambo, Kavango and Caprivi (with effect from 1950), while the whole of section 18 on succession applied to the remainder of Namibia (with effect from 1974). The Estates and Succession Amendment Act 15 of 2005 ([GG 3566](#)) repeals section 18(1), (2), (9) and (10), but provides that 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”.

Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941: This Proclamation ([OG 920](#)) (which was amended by the Administration of Estates Amendment Act 4 of 1981 (Rehoboth) (*Official Gazette 37 of Rehoboth*, dated 23 December 1983) previously regulated the administration of estates in Rehoboth. The Estates and Succession Amendment Act 15 of 2005 ([GG 3566](#)) 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”. Therefore, Schedule 2 of the repealed Act continues to be of relevance.

Notices: GN 43/2006 ([GG 3591](#)), issued in terms of section 4A of the Act, assigns certain powers of the Master of the High Court to magistrates in respect of intestate estates.

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)

Kanguatjivi & Others v Shivoro Business and Estate Consultancy & Others 2013 (1) NR 271 (HC) (section 35(4) directory and not peremptory, meaning that substantial compliance suffices)

Tjingaete v Lakay NO & Others 2015 (2) NR 431 (HC) (section 18(3))

First National Bank of Namibia Ltd v SSS Motor Spares CC & Another 2015 (4) NR 1112 (HC) (provisions of Act do not preclude creditor from instituting action against deceased estate for payment of money owed, arising in context of unopposed summary judgment)

Kamuhanga NO v Master of the High Court & Others 2016 (1) NR 141 (SC) (review of decisions under section 35(10); section 47)

Wyss & Another v Hungamo & Others 2016 (4) NR 1054 (HC) (section 11).

Commentary: Law Reform and Development Commission, *Report on Succession and Estates*, LRDC 20, 2012, available at www.namiblii.org.

COMMENTARY

- D LeBeau, et al, *Women's Property and Inheritance Rights in Namibia*, Windhoek: Gender Training and Research Programme and University of Namibia, 2004
- Legal Assistance Centre, *Marital Property in Civil and Customary Marriages: Proposals for Law Reform*, 2005, available at www.lac.org.na
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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
- 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
- Thomas Widlock, "Good or bad, my heritage: customary legal practices and the liberal constitution of post-colonial States", 31 (1-2) *Anthropology Southern Africa* 13 (2008) (issues relating to reform of customary inheritance laws)
- Law Reform and Development Commission, *Report on Succession and Estates*, LRDC 20, 2012, available at www.namiblii.org
- Law Reform and Development Commission, *Working Paper on Issues related to Family Law Workshop: Swakopmund Family Law Workshop*, LRDC 23, 2012, available at www.namiblii.org.

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 Communal Land Reform Act 5 of 2002 (rights of surviving spouses in respect of communal land) (**LAND AND HOUSING**).

See also Financial Intelligence Act 13 of 2012 (duties in respect of testamentary trusts) (**FINANCIAL INSTITUTIONS**).

INQUESTS

Inquests Act 6 of 1993.

Summary: This Act ([GG 688](#)) provides for the holding of inquests in cases of deaths or alleged deaths apparently occurring otherwise than from natural causes. It repeals the South African *Inquests Act 58 of 1959*. It was brought into force on 1 January 1994 by GN 156/1993 ([GG 756](#)).

Amendments: The International Co-operation in Criminal Matters Act 9 of 2000 ([GG 2327](#)) amends section 17.

Note that there are two versions of GG 2327. The correct one states at the top: “*This Gazette replaces previous Gazette No. 2327.*”

Application of law: Persons who give statements or evidence in inquest proceedings may be eligible for protection under the Witness Protection Act 11 of 2017 ([GG 6451](#)), which is not yet in force.

Regulations: Section 27(2) states: “Anything done under a law repealed by subsection (1) and which could have been done under a corresponding provision of this Act shall be deemed to have been done under that corresponding provision.” Pre-independence regulations which might accordingly survive have not been researched.

Regulations are authorised by section 25 of this Act, but none have yet been promulgated.

Cases:

Wucher v Retief & Another 1998 NR 21 (HC)

S v Smith 1999 NR 182 (HC)

In re Outjo Inquest 30 of 2012; In re Outjo Inquest 480 of 2012 2013 (2) NR 477 (HC)

In re Rundu Inquest: Venda 2015 (4) NR 1178 (HC).

INSOLVENCY

Insolvency Act 24 of 1936, as amended in South Africa to November 1979.

Summary: This Act ([RSA GG 2365](#)) 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), dated 12 November 1979, as amended. The only South African amendment made applicable to SWA after the date of transfer was the *Insolvency Amendment Act 78 of 1980*, which was applied to SWA by Act 18/1980 ([OG 4292](#)).

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 this word 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).

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Finance Act 17 of 1938* ([SA GG 2572](#))
- *Income Tax Act 25 of 1940* ([SA GG 2764](#))
- *Income Tax Act 31 of 1941* ([SA GG 2906](#))
- *Hire-Purchase Act 36 of 1942* ([SA GG 3050](#))
- *Insolvency Law Amendment Act 16 of 1943* ([SA GG 3180](#))
- *Insurance Act 27 of 1943* ([SA GG 3191](#))
- *Merchant Shipping Act 57 of 1951* ([SA GG 4684](#))
- *General Law Amendment Act 32 of 1952* ([SA GG 4856](#))
- *General Law Amendment Act 62 of 1955* ([SA GG 5512](#))
- *General Law Amendment Act 50 of 1956* ([SA GG 5703](#))
- *SA Proclamation 229 of 1956* ([SA GG 5757](#))
- *Farmers’ Assistance Amendment Act 16 of 1960* ([SA GG 6402](#))
- *Finance Act 64 of 1960* ([SA GG 6462](#))
- *SA Proclamation R.210 of 1960* ([SA GG 6479](#))
- *Income Tax Act 80 of 1961* ([RSA GG 37](#))
- *RSA Proclamation R.159 of 1961* ([RSA GG 136](#))
- *Income Tax Amendment Act 6 of 1963* ([RSA GG 438](#))
- *Insolvency Amendment Act 99 of 1965* ([RSA GG 1171](#))
- *RSA Proclamation R.155 of 1971* ([RSA GG 3179](#))
- *Insolvency Amendment Act 6 of 1972* ([RSA GG 3407](#))
- *Income Tax Act 90 of 1972* ([RSA GG 3593](#))
- *RSA Proclamation R.282 of 1972* ([RSA GG 3695](#))

- *RSA Proclamation R.87 of 1973* ([RSA GG 3826](#))
- *General Law Amendment Act 62 of 1973* ([RSA GG 3947](#))
- *General Law Amendment Act 29 of 1974* ([RSA GG 4220](#))
- *Income Tax Act 85 of 1974* ([RSA GG 4516](#))
- *Sales Tax Act 103 of 1978* ([RSA GG 6085](#))
- *Insolvency Amendment Act 78 of 1980* ([RSA GG 7083](#))

Section 50 of the Sales Tax Proclamation (AG 40/1978) ([OG 3774](#)) amends section 99 of this Act regarding the payment of sales tax from a sequestrated estate.

Act 18/1980 ([OG 4292](#)) makes the *Insolvency Amendment Act 78 of 1980* applicable to South West Africa.

Act 14/1985 ([OG 5114](#)) amends the Act substantially.

AG 17/1986 ([OG 5179](#)) 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 be brought into force on a date set by the Minister of Justice, amends the Act substantially.

Regulations: Pre-independence regulations have not been researched.

Fees: 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)

Southern Engineering & Another v Council of the Municipality of Windhoek 2011 (2) NR 385 (SC)

Municipal Council of Windhoek v Awaseb 2013 (1) NR 233 (HC) (section 8).

Commentary:

Law Reform and Development Commission, *Discussion Paper on Issues Relating to the Insolvency Act, 1936 (Act No. 24 of 1936)*, LRDC 32, 2015

Victoria Weyulu, "A Critical Review of Namibian Insolvency Law" in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017

Chisom Okafor, "The Revival of Small and Medium Enterprises in Namibia through an Effective Insolvency Law Regime" in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017.

INSURANCE

War Damage Insurance and Compensation Act 85 of 1976.

Summary: This Act ([RSA GG 5175](#)) 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.” Although amendments in South Africa would have thus been automatically applicable to South West Africa, there were no amendments to the Act in South Africa prior to Namibian independence.

Transfer of administration to SWA: The administration of the Act does not appear to have been transferred to South West Africa. In any event, since there were amendments to the Act in South Africa prior to Namibian independence, the issue of transfer does not affect the content of the Act.

Regulations: Regulations are authorised by section 11 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Short-term Insurance Act 4 of 1998.

Summary: This Act ([GG 1832](#)) regulates the short-term insurance business in Namibia. It was brought into force on 1 July 1998 by 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 ([GG 2521](#)) amends section 1 and substitutes section 4.

Act 13/2016 ([GG 6183](#)) amends sections 1 and 54 and substitutes section 10.

Application of law: See the notices issued under the Namibia National Reinsurance Corporation Act 22 of 1998.

Regulations: Regulations made in terms of previous legislation survive in terms of section 72 of the current Act. Pre-independence regulations have not been researched.

Regulations made under the current Act are contained in GN 143/1998 ([GG 1887](#)), as amended by GN 194/2018 ([GG 6688](#)). These regulations repeal a large number of regulations made in terms of the previous Act insofar as they relate to short-term insurance.

Notices: A declaration in terms of section 25(3) is contained in GN 10/2003 ([GG 2909](#)).

GN 15/2015 ([GG 5668](#)), which revokes 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.

General Notice 220/2014 ([GG 5510](#)) emphasises the fact that section 60 of the Act prohibits the conditional sale of insurance products by insurance entities together with banking institutions, furniture stores, motor dealers and micro-lenders. The Notice explains:

“Conditional selling is when a transaction is completed if certain conditions are met as agreed by one or both parties. In this instance the condition is that, the insurance policy is taken out with only a certain insurer and the consumer does not have freedom of choice with whom to take out an insurance policy... NAMFISA hereby notifies the public that, should an insurance entity or any institution not allow any person to freely choose his/her own insurer from the beginning of the insurance related transaction such an institution should be reported to the Registrar of short-term insurance...”

Notices relating to specific insurers have not been recorded.

Appointments: Appointments to the Short-term Insurance Advisory Committee are announced in GN 155/2018 ([GG 6666](#)).

Cases: *Chief Executive Officer of Namibia Financial Institutions Supervisory Authority v Legal Shields Namibia Ltd* 2005 NR 151 (HC).

Commentary: Clever Mapaire, “Materiality and (non)-disclosure in Namibian Insurance Law: Revisiting old principles in the context of new juristic positions”, *UNAM Law Review*, Volume 1, Issue 2, 2013, available at <http://unamlawreview.info>.

Long-term Insurance Act 5 of 1998.

Summary: This Act ([GG 1834](#)) regulates the long-term insurance business in Namibia. It was brought into force on 1 July 1998 by 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 ([GG 2529](#)) amends section 1 and substitutes section 4. Act 2/2011 ([GG 4731](#)) amends section 72.

Act 12/2016 ([GG 6182](#)) amends sections 1 and 56 and substitutes section 10.

Application of law: See the notices issued under the Namibia National Reinsurance Corporation Act 22 of 1998.

Regulations: Regulations made in terms of previous legislation survive in terms of section 73 of the current Act. Pre-independence regulations have not been researched

Regulations made under the current Act are contained in GN 145/1998 ([GG 1888](#)), as amended by GN 47/2000 ([GG 2274](#)), GN 143/2001 ([GG 2579](#)), GN 31/2008 ([GG 3985](#)), GN 126/2013 ([GG 5205](#)), GN 350/2003 ([GG 5383](#)) and GN 195/2018 ([GG 6688](#)). However, note that GN 350/2003 withdraws GN 126/2013 with effect from its publication date, as if it never existed. 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.

Notices: 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](#)).

General Notice 220/2014 ([GG 5510](#)) emphasises the fact that section 62 of the Act prohibits the conditional sale of insurance products by insurance entities together with banking institutions, furniture stores, motor dealers and micro-lenders. The Notice explains:

“Conditional selling is when a transaction is completed if certain conditions are met as agreed by one or both parties. In this instance the condition is that, the insurance policy is taken out with only a certain insurer and the consumer does not have freedom of choice with whom to take out an insurance policy... NAMFISA hereby notifies the public that, should an insurance entity or any institution not allow any person to freely choose his/her own insurer from the beginning of the insurance related transaction such an institution should be reported to the Registrar of short-term insurance...”

GN 16/2015 ([GG 5668](#)) determines the percentage of value of each reinsurance contract to be ceded by every registered insurer and registered reinsurer to the Namibia National Reinsurance Corporation in respect of all classes of reinsurance business specified in section 13(1) of the Act.

Notices relating to specific insurers have not been recorded.

Appointments: Appointments to the Long-term Insurance Advisory Committee are announced in GN 155/2018 ([GG 6666](#)).

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*.

Commentary: Clever Mapaure, “Materiality and (non)-disclosure in Namibian Insurance Law: Revisiting old principles in the context of new juristic positions”, *UNAM Law Review*, Volume 1, Issue 2, 2013, available at <http://unamlawreview.info>.

Namibia National Reinsurance Corporation Act 22 of 1998.

Summary: This Act ([GG 1949](#)) provides for the establishment of the Namibia National Reinsurance Corporation (known as “NamibRe”) to carry on reinsurance business in Namibia. It was brought into force on 1 July 1999 by GN 108/1999 ([GG 2129](#)).

Certain provisions of the Act have been challenged on constitutional grounds in two pending High Court cases: HC-MD-ACT-CIV-OTH-2017/04493 and HC-MD-CIV-MOT-REV-2018/00127. **The application and implementation of these “impugned provisions” of the Act have been stayed pending the determination of the cases**

challenging them, by *Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others* (HC-MD-CIV-MOT-GEN-2018/00227) NAHCMD 294 (20 September 2018). (This case does not indicate precisely which provisions of the Act are affected.)

Application of law: The application of this Act is affected by the State-Owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006.

Regulations: Regulations relating to short-term and long-term reinsurance business are contained in GN 332/2017 ([GG 6496](#)), which repeals the regulations contained in GN 155/1999 ([GG 2160](#)).

The 2017 regulations were to come into force 180 days from their date of publication on 29 December 2017 (regulation 12), noting that “day” is defined to mean any day other than a Saturday, Sunday or public holiday (regulation 1). This means that these regulations were to come into force on 19 September 2018. However, the repeal of the 1999 regulations is contained in the text of the Government Notice and not in the regulations contained in the Schedule to the Government Notice. Thus, the repeal would appear to be effective from the date of publication of the Government Notice on 29 December 2017.

Note that the application of the 2017 regulations is stayed pending the outcome of two court cases challenging their constitutionality, by *Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others* (HC-MD-CIV-MOT-GEN-2018/00227) NAHCMD 294 (20 September 2018).

Notices: In terms of section 39(5), the percentage of value of reinsurance contracts to be ceded by every registered insurer and reinsurer is set by GN 333/2017 ([GG 6496](#)), which comes into force 180 days after its publication in the *Government Gazette* on 29 December 2017. The percentage of value of each short-term insurance contract to be ceded in reinsurance to the Corporation by every registered insurer and reinsurer is set by GN 334/2017 ([GG 6496](#)), which also comes into force 180 days after its publication in the *Government Gazette* on 29 December 2017. The percentage of value of each long-term insurance contract to be ceded in reinsurance to the Corporation by every registered insurer and reinsurer is set by GN 335/2017 ([GG 6496](#)), which also comes into force 180 days after its publication in the *Government Gazette* on 29 December 2017.

In terms of section 39(8), certain classes of registered insurers and registered reinsurers carrying on specified classes of business are exempted from the obligation to cede reinsurance to the Corporation by GN 336/2017 ([GG 6496](#)), which also comes into force 180 days after its publication in the *Government Gazette* on 29 December 2017.

In terms of section 43(2), the rates of commission payable to registered short-term insurers and reinsurers is set by GN 337/2017 ([GG 6496](#)), which also comes into force 180 days after its publication in the *Government Gazette* on 29 December 2017. The rates of commission payable to registered long-term insurers and reinsurers is set by GN 338/2017 ([GG 6496](#)), which also comes into force 180 days after its publication in the *Government Gazette* on 29 December 2017.

Note that the application of Government Notices 333-338/2017 ([GG 6496](#)) is stayed pending the outcome of two court cases challenging their constitutionality, by *Minister of Finance & Another v Hollard Insurance Company of Namibia Limited*

& Others (HC-MD-CIV-MOT-GEN-2018/00227) NAHCMD 294 (20 September 2018).

In terms of section 39(5), the percentage of value of reinsurance contracts to be ceded was initially set by GN 109/1999 ([GG 2129](#)), which was subsequently replaced by GN 3/2003 ([GG 2893](#)) (which revoked with retrospective effect GN 109/1999, as amended by GN 266/2000). GN 3/2003 was revoked and replaced by GN 123/2007 ([GG 3877](#)), with respect to reinsurance businesses specified in Schedule 1 of the Short-Term Insurance Act 4 of 1998. GN 213/2007 was replaced by GN 15/2015 ([GN 5668](#)). The percentage of value of reinsurance contracts to be ceded was set by GN 16/2015 ([GN 5668](#)), with respect to reinsurance businesses specified in the Long-Term Insurance Act 5 of 1998. GN 15/2015 and GN 16/2015 were both revoked and replaced by GN 266/2016 ([GG 6165](#)), as amended by GN 291/2016 ([GG 6194](#)) (which changed the effective date of GN 266/2016 to 3 January 2017). However, GN 266/2016 was withdrawn by GN 25/2017 ([GG 6238](#)).

In terms of section 39(2), classes of insurance business and percentage of value of policies to be ceded was initially set by GN 110/1999 ([GG 2129](#)), which was revoked with retrospective effect 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 was initially set by GN 111/1999 ([GG 2129](#)), which was subsequently replaced in its entirety by GN 46/2000 ([GG 2274](#)). GN 46/2000 was replaced by GN 124/2007 ([GG 3877](#)), which was replaced in turn by GN 267/2016 ([GG 6165](#)) with effect from 1 January 2017. However, GN 267/2016 was withdrawn by GN 25/2017 ([GG 6238](#)).

The effective date for the three initial notices in terms of the Act (GN 109-111/1999) 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. GN 2/2003 ([GG 2893](#)) was revoked by GN 124/2007 ([GG 3877](#)), which came into effect 60 days after its publication on 16 July 2007.

The upshot is that none of the pre-2017 notices listed here appear to remain in force in 2017, aside from the portions of GN 3/2003 ([GG 2893](#)) which were not revoked by GN 123/2007 ([GG 3877](#)) (ie, its application to any insurer or reinsurer other than those classes of reinsurance businesses specified in Schedule 1 of the Short-Term Insurance Act 4 of 1998). The 2017 notices do not repeal any remaining portions of GN 3/2003, although they may supersede it when they come into force.

The following description of the recent history these notices comes from *Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others* (HC-MD-CIV-MOT-GEN-2018/00227) NAHCMD 294 (20 September 2018) (footnotes omitted):

“[15] It is not disputed that the Minister is empowered by the Act to make regulations and to issue notices with a view to giving effect to the objects of the Act. In exercise of that power, the Minister, in November and December 2016, caused certain notices to be issued and gazetted, namely notices numbers 266, 267 and 291. These notices dealt with the compulsory cession of insurance contracts and reinsurance business and related matters. A challenge to the issuance of these notices was mounted by the respondents, who brought an application for review before this court, in which they seek to have the said notices set aside. [*Hollard Insurance Company of Namibia*”

Ltd & Others v Minister of Finance & Another HC-MD-CIV-MOT-REV-2018/00127]

[16] The Minister, in view of the challenge, decided to withdraw the said notices and opted to engage in a public consultation process on the issue. In this regard, interested parties were required to make representations in writing.”

Appointments: Members of the Board are announced in GN 112/1999 ([GG 2129](#)), GN 190/2002 ([GG 2845](#)), GN 17/2006 ([GG 3577](#)), GN 49/2017 ([GG 6262](#)) and GN 90/2018 ([GG 6595](#)).

Cases:

Namibia Insurance Association v Government of Namibia 2001 NR 1 (HC)

Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others (HC-MD-CIV-MOT-GEN-2018/00227) NAHCMD 294 (20 September 2018) (certain provisions of the Act, the 2017 regulations and GN 333-338/2017 stayed pending the outcome of constitutional challenges).

Demutualisation Levy Act 9 of 2002.

Summary: This Act ([GG 2827](#)) provides for a levy on the free reserves of mutual insurers in respect of their demutualisation.

Regulations: The Act makes no provision for regulations.

Namibia Special Risks Insurance Association Act 5 of 2017.

Summary: This Act ([GG 6420](#)) converts the Namibia Special Risks Insurance Association (NASRIA) established by the Second Finance Act 27 of 1987 ([OG 5470](#)) into a public company with a share capital, and determines what insurance business it may underwrite. The Act, which was brought into force on 1 August 2018 by GN 154/2018 ([GG 6666](#)), repeals the Second Finance Act 27 of 1987.

Application of law: The application of the Act is affected by the Public Enterprises Governance Act 2 of 2006, which is referred to in several sections of this Act.

Regulations: Section 38 of the Act authorises regulations, but none have yet been issued. Section 42(2) of the Act contains a savings clause for anything done in terms of the repealed Act which could have been done under this Act. However, the repealed Act did not authorise the issue of regulations.

See also *Export Credit and Foreign Investments Re-insurance Act 78 of 1957* (**IMPORT AND EXPORT**).

INTELLECTUAL PROPERTY

Note: According to the World Intellectual Property Organisation (WIPO), **intellectual property** refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. Intellectual property is divided into two categories: (1) **industrial property**, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and (2) **copyright**, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs.

Merchandise Marks Act 17 of 1941, as amended in South Africa to April 1978.

Summary: This Act ([SA GG 2893](#)) 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. The only South African amendment to the Act after the date of transfer and prior to Namibian independence – the *Merchandise Marks Amendment Act 54 of 1987* ([RSA GG 10921](#)) – was not made expressly applicable to SWA.

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).

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Merchandise Marks Amendment Act 3 of 1946* ([SA GG 3622](#))
- *Merchandise Marks Amendment Act 26 of 1951* ([SA GG 4601](#))
- *Merchandise Marks Amendment Act 39 of 1952* ([SA GG 4885](#))
- *Merchandise Marks Amendment Act 47 of 1954* ([SA GG 5302](#))
- *Merchandise Marks Amendment Act 55 of 1967* ([RSA GG 1732](#)).

Sections 8 and 9 of the Act were suspended until further notice by SA Government Notice 1321/1941 ([SA GG 2944](#)), which was withdrawn by SA Government Notice 451/1946 ([SA GG 3612](#)). However, these sections were again suspended until further notice by SA Government Notice 1682/1946 ([SA GG 3687](#)). No notice lifting this suspension has been located.

Regulations: Pre-independence regulations have not been researched.

Heraldry Act 18 of 1962, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 202](#)) 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.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Heraldry Amendment Act 54 of 1969* ([RSA GG 2401](#))
- *Heraldry Amendment Act 63 of 1980* ([RSA GG 7017](#))
- *Heraldry Amendment Act 22 of 1982* ([RSA GG 8071](#))
- *Education and Heraldry Laws Amendment Act 6 of 1984* ([RSA GG 9082](#)).

Regulations: Pre-independence regulations have not been researched.

Copyright and Neighbouring Rights Protection Act 6 of 1994.

Summary: This Act ([GG 845](#)) provides for the protection of copyrights and performers’ rights. It repeals the *Copyright Act 63 of 1965* ([RSA GG 1128](#)). The Act was brought into force on 15 March 1996 by GN 64/1996 ([GG 1273](#)).

Regulations: Regulations made under the repealed legislation survive in terms of section 68(2) of the Act. Pre-independence regulations have not been researched.

Regulations in terms of the current Act are issued in GN 32/1996 ([GG 1257](#)) which repeals some pre-independence regulations (RSA GN R.407/1966, RSA GN R.408/1966, RSA GN R.414/1966, R.415/1966 and R.1289/1972).

Amendments: The Act is amended by the Business and Intellectual Property Authority Act 8 of 2016 ([GG 6105](#)), which was brought into force with effect from 16 January 2017 by GN 293/2016 ([GG 6197](#)).

Related international agreements: 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).

Commentary: Enynna S Nwauche, “The public interest in Namibian copyright law”, *Namibia Law Journal*, Volume 1, Issue 1, 2009, available at www.kas.de.

Industrial Property Act 1 of 2012.

Summary: This Act ([GG 4907](#)) provides for the registration and protection of patents, utility model certificates, industrial designs, trade marks, collective marks, certification marks and trade names. It also establishes an Industrial Property Office, a Registrar of Industrial Property, industrial property agents and an Industrial Property Tribunal. It repeals the *Patents, Designs, Trade Marks and Copyright Act 9 of 1916* ([SA GG 727](#)), the Patents and Designs Proclamation 17 of 1923 ([OG 112](#)) (which it erroneously refers to as the “Patents, Designs and Trade Marks Proclamation”) and the *Trade Marks in South West Africa Act 48 of 1973* ([RSA GG 3913](#)). It was brought into force with effect from 1 August 2018 by Government Notice 113/2018 ([GG 6616](#)).

Amendments: The Act is amended by the Business and Intellectual Property Authority Act 8 of 2016 ([GG 6105](#)), which was brought into force with effect from 16 January 2017 by GN 293/2016 ([GG 6197](#)).

Regulations: There is no savings provisions regarding regulations issued under the repealed laws.

Industrial Property Regulations issued in terms of this Act are contained in GN 114/2018 ([GG 6616](#)).

GN 114/2018 ([GG 6616](#)) repeals the following regulations, which were issued in terms of the *RSA Trade Marks Act in South West Africa 48 of 1973* ([RSA GG 3913](#)): SA RSA GN R.2498/1973 ([RSA GG 4109](#)), as corrected by RSA GN R.87/1974 ([RSA GG 4141](#)) and as amended by AG GN 40/1989 ([OG 5750](#)) and GN 13/2001 ([GG 2470](#)). This repeal was not really necessary since the Act contains no savings clause in respect of regulations issued under the statutes it repeals. (See section 140 of the Act).

Cases: The following cases concern the predecessors to this Act –

Ex Parte Hendrik Krekel (unreported judgement, SWA Supreme Court, 1983/11/11) and *Gemfarm Investments v Trans Hex Group* 2009 (2) NR 477 (HC) (concerning the repealed *Patents, Designs, Trade Marks and Copyright Act 9 of 1916*)

Gemfarm Investments v Trans Hex Group 2009 (2) NR 477 (HC) (concerning the repealed Patents and Designs Proclamation 17 of 1923)

Sparletta (Pty) Ltd v Namibia Breweries Ltd 1991 NR 384 (HC) (concerning the repealed *Trade Marks in South West Africa Act 48 of 1973*)

Elisenheim Property Development Co (Pty) Ltd v Guest Farm Elisenheim & Another 2013 (4) NR 1085 (HC) (concerning the repealed *Trade Marks in South West Africa Act 48 of 1973*).

Commentary: P M Balhao, “Patentable Subject Matter in Namibia: A Comparative Analysis of the Requirements for Patentability” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017 (comparison with South Africa’s *Patents Act 57 of 1978*).

Note on relevant international law: The Act refers to the following international bodies and agreements (see sections 1, 12, 29, 37, 57, 63, 76, 85, 92, 126-129, 131, 198, 234) –

WIPO agreements:

Note: The World Intellectual Property Organization (WIPO) was established by the *Convention Establishing the World Intellectual Property Organization (WIPO Convention), 1967, as amended in 1979*. Namibia is a party to this Convention, which is not mentioned in the Act.

Paris Convention for the Protection of Industrial Property, 1883, as revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Lisbon (1958) and Stockholm (1967), and as amended in 1979 (referred to as the “Paris Convention”)

Madrid Agreement concerning the International Registration of Marks (Madrid System), 1891, as revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Nice (1957) and Stockholm (1967), and as amended in 1979 (referred to as the “Madrid Agreement”)

Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989, as amended in 2006 and 2007 (referred to as the “Madrid Protocol”)

Hague Agreement concerning the International Registration of Industrial Designs (Hague System), 1925, as governed by the 1999 Geneva Act (referred to as the “Hague Agreement”; see Part 11)

Note: The Hague Agreement consists of three separate Acts which are currently in force: the 1934 London Act, the 1960 Hague Act and the 1999 Geneva Act. States can join the 1960 Hague Act, the 1999 Geneva Act, or both – or in the past, the 1934 London Act, which was frozen on 1 January 2010, although the renewal of existing designations under the 1934 Act and the recording in the International Register of any change affecting such designations will continue to be possible up to the maximum duration of protection under the 1934 Act (15 years). If a state accepts only one Act, then applicants for industrial design protection from that state can use the Hague system to obtain protection for their designs only in other states which are parties to the same Act. Namibia has joined only the **1999 Geneva Act** (source: WIPO).

Patent Cooperation Treaty (PCT), 1970, as amended in 1979, and as modified in 1984 and 2001 (referred to as the “Patent Cooperation Treaty” in section 37 and as the “Patent Co-operation Treaty” in section 12 and Part 13)

Locarno Agreement Establishing an International Classification for Industrial Designs (to which Namibia was not yet a party as of September 2017) (source: WIPO)

Nice Agreement concerning the International Classification of Goods and Services (to which Namibia was not yet a party as of September 2017) (source: WIPO)

WTO agreements:

Agreement Establishing the World Trade Organization (WTO) (the Marrakesh Agreement), 1994 (see references to “WTO”)

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994 (referred to as “TRIPS”)

ARIPO agreements:

Lusaka Agreement on the Creation of the African Regional Industrial Property Organization (ARIPO), 1976 and as amended in 1982, 1996 and 2004 (see references to “ARIPO”)

Harare Protocol on Patents and Industrial Designs within the Framework of the African Regional Industrial Property Organization, 1982 as amended in 1987, 1994, 1997, 1998, 1999, 2001, 2003, 2006 and 2013 (referred to as the “Harare Protocol”)

Banjul Protocol on Marks within the Framework of the African Regional Industrial Property Organization, 1993 as amended in 1997, 1998, 1999, 2003, 2004 and 2013 (referred to as the “Banjul Protocol”)

See the list of relevant international agreements below for more information.

SELECTED CASES

Mega Power Centre CC t/a Talisman Plant and Tool Hire v Talisman Franchise Operations (Pty) Ltd & Others [2013] NAHCMD 156 (A 171/2013; 7 June 2013); *Mega Power Centre CC t/a Talisman Plant and Tool Hire v Talisman Franchise Operations (Pty) Ltd & Others* 2015 (2) NR 315 (SC); *Mega Power Centre CC t/a Talisman Plant and Tool Hire v Talisman Franchise Operations (Pty) Ltd & Others* 2016 (4) NR 1174 (HC) (common-law delict of “passing off”).

COMMENTARY

S Amoo and S Haring, “Intellectual Property under the Namibian Constitution” in N Horn, A Bösl & A du Pisani (eds), *Constitutional Democracy in Namibia: A Critical Analysis after Two Decades*, Konrad Adenauer Stiftung, 2010, available at www.kas.de

Cislé S Jacobs, “The Intellectual Property Regime in Namibia: An Overview of the Legal, Institutional and Policy Framework” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017

P M Balhao, “Patentable Subject Matter in Namibia: A Comparative Analysis of the Requirements for Patentability” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017.

INTERNATIONAL LAW

Agreements administered by the World Trade Organisation (WTO):

†*Agreement Establishing the World Trade Organization (WTO) (the Marrakesh Agreement), 1994*

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994

Agreements administered by the World Intellectual Property Organization (WIPO):

***Beijing Treaty on Audiovisual Performances, 2012*

†*Berne Convention for the Protection of Literary and Artistic Works, 1886, as revised at Berlin (1908)*

†*Berne Convention for the Protection of Literary and Artistic Works, 1886, as revised in 1971 and amended in 1979*

Hague Agreement concerning the International Registration of Industrial Designs (Hague System), 1925, as governed by the 1999 Geneva Act

Madrid Agreement concerning the International Registration of Marks (Madrid System), 1891, as revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Nice (1957) and Stockholm (1967), and as amended in 1979

***Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, 2013*

Paris Convention for the Protection of Industrial Property, 1883, as revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Lisbon (1958) and Stockholm (1967), and as amended in 1979

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

***WIPO Copyright Treaty (WCT), 1996*

***WIPO Performances and Phonograms Treaty (WPPT), 1996*

Agreements administered by the African Regional Industrial Property Organization (ARIPO):
Lusaka Agreement on the Creation of the African Regional Industrial Property Organization (ARIPO), 1976 and as amended in 1982, 1996 and 2004

Harare Protocol on Patents and Industrial Designs within the Framework of the African Regional Industrial Property Organization, 1982 as amended 1987, 1994, 1997, 1998, 1999, 2001, 2003, 2006, 2013

Banjul Protocol on Marks within the Framework of the African Regional Industrial Property Organization, 1993 as amended 1997, 1998, 1999, 2003, 2004, 2013

**Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore within the Framework of the African Regional Intellectual Property Organization, 2010*

See also Business and Intellectual Property Authority Act 8 of 2016 (**BUSINESS**).

INTERNATIONAL ISSUES

Treaty of Peace and South West Africa Mandate Act 49 of 1919.

Summary: This Act ([SA GG 1000](#)) 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* ([SA GG 1167](#)) until such time as it is repealed. It was repealed in South Africa by section 36 of *General Law Amendment Act 108 of 1993* ([RSA GG 14976](#)).

Applicability to SWA: The Act was historically relevant to SWA by virtue of its subject matter, but was perhaps not a part of the laws in force in SWA. It refers to the power of the Governor-General of South Africa to make laws for South West Africa.

Diplomatic Privileges Act 71 of 1951, as amended in South Africa prior to Namibian independence.

Summary: This Act ([SA GG 4668](#)) covers diplomatic immunity, rights and privileges.

Applicability to SWA: The Act was made applicable to South West Africa by the RSA State President Proclamation 63 of 5 May 1989 ([RSA GG 11861](#)). Section 2 of that Proclamation states “The Act, as amended by Part II of this Schedule, shall apply in the Territory.” The Proclamation does not make any reference to the amendments made to the original Act in South Africa, but references in the Proclamation to text which is to be substituted indicates that the Proclamation referred to Act 71 of 1951 as amended in South Africa prior to 1989. The wording of the Proclamation does not appear to make future amendments to the Act automatically applicable to South West Africa.

Transfer of administration to SWA: The Administrator-General acquired authority to administer this Act in South West Africa by virtue of *RSA Proc. 63 of 1989*. This did not qualify as a “transfer proclamation” in terms of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, which defines “transfer proclamation” in section 1 as “a proclamation by the Administrator-General by which the administration of the affairs of the territory in relation to any matter is transferred from a Minister of the Republic to the Administrator-General” (emphasis added). Therefore, the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, was not applicable to this Act. The Act was repealed in South Africa prior to Namibian independence by the *Diplomatic Immunities and Privileges Act 74 of 1989* ([RSA GG 11928](#)). This repeal was not expressly applicable to South West Africa and does not seem to have applied by virtue of the wording of *RSA Proc. 63 of 1989*; furthermore it does not repeal *RSA Proc. 63 of 1989*. Thus, *Act 71 of 1951* appears to have remained in force in South West Africa.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Commonwealth Relations Act 69 of 1962* ([RSA GG 264](#))
- *Diplomatic Privileges Amendment Act 61 of 1978* ([RSA GG 6016](#))
- *Diplomatic Privileges Amendment Act 39 of 1985* ([RSA GG 9790](#))
- *Restoration of South African Citizenship Act 73 of 1986* ([RSA GG 10327](#))

- *Transfer of Powers and Duties of the State President Act 97 of 1986* ([RSA GG 10438](#)).

The *Diplomatic Privileges Proclamation 63 of 1989* ([RSA GG 11861](#)) amends the Act as it applied to SWA.

Regulations: The Act makes no provision for regulations.

Related international agreements:

Convention on Privileges and Immunities of the United Nations, 1946

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973

General Convention on the Privileges and Immunities of the Organisation of African Unity (OAU), 1965

SADC Protocol on Immunities and Privileges, 1992

Vienna Convention on Diplomatic Relations, 1961

Vienna Convention on Consular Relations, 1963.

Commonwealth Relations (Temporary Provision) Act 41 of 1961.

Summary: This Act ([SA GG 6700](#)) 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. (After South Africa became a Republic in 1961, it intentionally allowed its membership in the British Commonwealth to lapse to avoid a rejection upon reapplication – but rejoined the Commonwealth after its democratic elections in 1994. Namibia became a member of Commonwealth at independence.)

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).” this wording does not seem to make amendments to the Act automatically applicable to SWA, but there were no amendments to the Act in South Africa prior to Namibian independence.

Geneva Conventions Act 15 of 2003.

Summary: This Act ([GG 3109](#)) gives effect to certain conventions concluded at Geneva on 12 August 1949 and to the protocols to those conventions. It was brought into force on 1 October 2004 by GN 207/2004 ([GG 3290](#)). The conventions are –

- *Geneva Convention for the Amelioration of Condition of Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 1949*
- *Geneva Convention for the Amelioration of Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 1949*
- *Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention), 1949*
- *Geneva Convention relative to Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 1949.*

Regulations: Regulations are authorised by section 9 of the Act, but none have yet been promulgated.

RELATED MATTERS

Proc. 7/1997 ([GG 1605](#)) announces the signing and ratification of the Fourth ACP-EU Convention of Lomé (which has since expired).

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 (which has since expired).

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.

CASES CITING ARTICLE 144

(Note that some other cases cite international law applicable to Namibia without explicit reference to art 144 as the basis for their applicability. Those cases are not listed here.)

Cultura 2000 v Govt of the Republic of Namibia 1992 NR 110 (HC), reversed in part by *Government of the Republic of Namibia v Cultura 2000 & Another 1993 NR 328 (SC)* (both judgments cite Art 144)

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)* (Art 144 cited only in High Court judgment)

Sikunda v Government of The Republic of Namibia (2) 2001 NR 86 (HC)

Government of the Republic of Namibia & Others v Mwilima & Others 2002 NR 235 (SC)

S v Mushwena & Others 2004 NR 35 (HC); *S v Mushwena & Others 2004 NR 276 (SC)*

S v Koch 2006 (2) NR 513 (SC)

Waterberg Big Game Hunting Lodge Otjahewita (Pty) Ltd v Minister of Environment & Tourism 2010 (1) NR 1 (SC)

Alexander v Minister of Justice 2010 (1) NR 328 (SC) (ICCPR cited to support substantive guarantee of liberty in Constitution)

NS v RH 2011 (2) NR 486 (HC) at 526E-529B, which discusses in *dicta* the subsidiarity principle in Art 21(b) of the UN Convention on the Rights of the Child incorporated into Namibian law by virtue of Art 144 of the Namibian Constitution

JT v AE 2013 (1) NR 1 (SC) (best interests standard applied in case concerning father’s access to child born outside marriage)

South African Poultry Association v Ministry of Trade & Industry 2015 (1) NR 260 (HC)
Matador Enterprises (Pty)Ltd v Minister of Trade and Industry & Others 2015 (2) NR 477 (HC).

COMMENTARY

PC Szasz, "Succession to treaties under the Namibian Constitution", *South African Yearbook of International Law*, Volume 15 (1989)

Gerhard Erasmus, "The Namibian Constitution and the Application of International Law" in D Van Wyk et al (eds), *Namibia Constitutional and International Issues*, University of Pretoria: VerLoren van Themaat Centre for Public Law Studies, 1991.

Legal Assistance Centre, *Gender & International Human Rights Law*, 2005, available at www.lac.org.na

FX Bangamwabo, "The implementation of international and regional human rights instruments in the Namibian legal framework" in N Horn & A Bösl (eds), *Human Rights and the Rule of Law in Namibia*, Macmillan Namibia, 2008, available at www.kas.de

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*, Konrad Adenauer Stiftung, 2009, available at www.kas.de

N Horn, "International human rights norms and standards: The development of Namibian case and statutory law" in N Horn & A Bösl (eds), *Human Rights and the Rule of Law in Namibia*, Macmillan Namibia, 2008, available at www.kas.de

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.kas.de

Dunia P Zongwe, "Equality has no mother but sisters: The preference for comparative law over international law in the equality jurisprudence in Namibia" in Magnus Killander (ed), *International Law and Domestic Human Rights Litigation in Africa*, Cape Town: Pretoria University Law Press, 2010

Francois-Xavier Bangamwabo, "The justiciability of socio-economic rights in Namibia: Legal challenges and opportunities", *Namibia Law Journal*, Volume 5, Issue 1, 2013.

See also *Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977* (**ARBITRATION**).

See *Reciprocal Service of Civil Process Act 27 of 1994* and *Enforcement of Foreign Civil Judgements Act 28 of 1994* (**COURTS**).

See also *One-Stop Border Posts Control Act 8 of 2017* (**CITIZENSHIP AND IMMIGRATION**).

See also *International Co-operation in Criminal Matters Act 9 of 2000* and *Prevention of Organised Crime Act 29 of 2004* (**CRIMINAL LAW AND PROCEDURE**).

See also *Reciprocal Enforcement of Maintenance Orders Act 3 of 1995* (**MAINTENANCE**).

See also *Namibia Red Cross Act 16 of 1991* (**SOCIAL WELFARE**).

See *Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014* (**TERRORISM**).

JUDGES

Judges' Remuneration Act 18 of 1990.

Summary: This Act ([GG 107](#)) covers remuneration, additional service benefits and motor vehicles for judges.

Amendments: Act 24/1994 ([GG 966](#)) amends sections 2 and 3.

Amendments to the Schedules appended to the Act are as follows:

- Proc. 12/1994 ([GG 848](#)) amends the First Schedule to the Act.
- Act 24/1994 ([GG 966](#)) repeals Proc. 12/1994, substitutes the First Schedule, adds a new Second Schedule, and makes the original Second Schedule into the Third Schedule (laws repealed by the principal Act).
- Proc. 2/1999 ([GG 2022](#)) amends the new Second Schedule.
- Proc. 14/2003 ([GG 2974](#)) substitutes the Second Schedule.
- Proc. 11/2007 ([GG 3869](#)) substitutes the Second Schedule.
- Proc. 10/2012 ([GG 4941](#)) substitutes the Second Schedule.
- Proc. 6/2014 ([GG 5451](#)) substitutes the Second Schedule.
- Proc. 5/2015 ([GG 5689](#)) substitutes the Second Schedule.
- Proc. 45/2015 ([GG 5914](#)) substitutes the Second Schedule.
- Proc. 10/2018 ([GG 6584](#)) substitutes the Second Schedule.

Regulations: Regulations relating to Conditions of Service of Judges are contained in Proc. 28/2015 ([GG 5834](#)). (This Proclamation repeals the regulations in GN 107/2003 ([GG 2986](#)), as amended by GN 33/2005 ([GG 3410](#)), Proc. 5/2014 ([GG 5451](#)) and Proc. 4/2015 ([GG 5689](#))).

Regulations were previously promulgated in GN 76/1990 ([GG 108](#)), as amended by GN 65/1994 ([GG 848](#)) and GN 1/1999 ([GG 2022](#)). GN 107/2003 repealed GN 76/1990 and GN 65/1994, but not GN 1/1999. However, GN 1/1999 would appear to have no relevance on its own despite remaining technically in force.

Judicial Service Commission Act 18 of 1995.

Summary: This Act ([GG 1195](#)) governs the operation of the Judicial Service Commission established by Article 85 of the Constitution. It was brought into force on 20 November 1995 by GN 220/1995 ([GG 1197](#)).

Appointments: See Proc. 1/1990 ([GG 1](#)), GN 96/2002 ([GG 2759](#)) and Proc. 7/2009 ([GG 4251](#)).

Regulations: The Judicial Service Commission issued regulations in terms of Article 85(3) of the Constitution in GN 60/2011 ([GG 4674](#)).

Cases: *S v Zemburuka (2)* 2003 NR 200 (HC).

Judiciary Act 11 of 2015.

Summary: This Act ([GG 5902](#)) provides for administrative and financial independence of the Office of the Judiciary. It was brought into force on 1 December

2015 by GN 313/2015 ([GG 5914](#)).

Regulations: Regulations are authorised by section 17 of the Act, but none have yet been promulgated.

APPOINTMENTS OF JUDGES AND ACTING JUDGES

Chief Justice, Judge President, Judge of High Court, Proc. 31/1991

Judges of High Court, Proc. 17/1992

Judge of High Court, Proc. 26/1994

Chief Justice of Supreme Court, Judge of High Court, and Acting Judge of High Court, 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 High Court, Judge President of High Court, Judge of Supreme Court, Proc. 22/2003 ([GG 3034](#))

Acting Judges of Supreme Court and High Court, Proc. 30/2003 ([GG 3092](#))

Acting Judge of High Court, Proc. 3/2004 ([GG 3128](#))

Acting Judges of High Court, Proc. 4/2004 ([GG 3133](#))

Acting Judges of High Court, Proc. 35/2004 ([GG 3207](#))

Acting Judges of High Court, Proc. 36/2004 ([GG 3207](#))

Acting Chief Justice of Supreme Court, Judges of High Court, Proc. 41/2004 ([GG 3259](#))

Acting Judges of High Court, Proc. 49/2004 ([GG 3304](#))

Acting Chief Justice of Supreme Court, Acting Judges of High Court, Proc. 55/2004 ([GG 3319](#))

Chief Justice of Supreme Court, Judge President of High Court, Proc. 56/2004 ([GG 3322](#))

Acting Judges of High Court, Proc. 58/2004 ([GG 3336](#))

Acting Judge of High Court, Proc. 59/2004 ([GG 3336](#))

Acting Judges of High Court, Proc. 2/2005 ([GG 3410](#))

Acting Judges of High Court, Proc. 16/2005 ([GG 3532](#))

Acting Judges of High Court and Judge of Supreme Court, Proc. 20/2005 ([GG 3562](#))

Acting Judges of High Court, Proc. 2/2006 ([GG 3603](#))

Acting Judges of High Court, Proc. 6/2006 ([GG 3632](#))

Acting Judge of High Court, Proc. 7/2006 ([GG 3647](#))

Acting Judge of High Court, Proc. 8/2006 ([GG 3679](#))

Acting Judges of High Court, Proc. 11/2006 ([GG 3715](#))

Judge of High Court, Proc. 14/2006 ([GG 3746](#))

Acting Judges of High Court, Proc. 9/2007 ([GG 3826](#))

Acting Judges of High Court, Proc. 12/2007 ([GG 3877](#))

Acting Judges of Supreme Court and High Court, Proc. 14/2007 ([GG 3912](#))

Acting Judge of High Court, Proc. 15/2007 ([GG 3928](#))

Acting Judge of High Court, Proc. 18/2007 ([GG 3928](#))

Acting Judges of High Court, Proc. 11/2008 ([GG 4005](#))

Acting Judge of High Court, Proc. 20/2008 ([GG 4066](#))

Judge of High Court, Proc. 21/2008 ([GG 4066](#))

Acting Judges of Supreme Court, Proc. 25/2008 ([GG 4085](#))

Acting Judge of High Court, Proc. 30/2008 ([GG 4101](#))

Acting Judges of High Court, Proc. 36/2008 ([GG 4129](#))

Acting Judges of Supreme Court, Proc. 37/2008 ([GG 4153](#))

Acting Judges of Supreme Court and High Court, Proc. 38/2008 ([GG 4156](#))

Acting Judges of Supreme Court and High Court, Proc. 4/2009 ([GG 4225](#))

Acting Judges of High Court, Proc. 8/2009 ([GG 4260](#))

Acting Judges of Supreme Court and High Court, Proc. 16/2009 ([GG 4371](#))

Acting Judges of High Court, Proc. 17/2009 ([GG 4371](#))

Judges of High Court, and Acting Judges of Supreme Court and High Court, Proc. 20/2009

([GG 4391](#))

Judges and Acting Judges of High Court and Supreme Court, Proc. 7/2010 ([GG 4440](#))
Acting Judge President, Proc. 11/2010 ([GG 4514](#))
Acting Judges of High Court, Proc. 12/2010 ([GG 4514](#))
Acting Judges of High Court, Proc. 15/2010 ([GG 4561](#))
Acting Judges of Supreme Court and High Court, Proc. 2/2011 ([GG 4640](#))
Acting Judges of High Court, Proc. 6/2011 ([GG 4688](#))
Acting Judges of High Court, Proc. 13/2011 ([GG 4787](#))
Ad Hoc Judge of Supreme Court, Acting Judges of High Court, Proc. 15/2011 ([GG 4792](#))
Acting Judge of High Court, Proc. 7/2012 ([GG 4891](#))
Acting Judge of High Court, Proc. 8/2012 ([GG 4915](#))
Judge of High Court, Proc. 9/2012 ([GG 4941](#))
Acting Judge of High Court, Proc. 12/2012 ([GG 4958](#))
Acting Judge of High Court, Proc. 21/2012 ([GG 5015](#))
Acting Judge of High Court, Proc. 27/2012 ([GG 5069](#))
Acting Judge of High Court, Proc. 28/2012 ([GG 5076](#))
Acting Judges of High Court, Ad Hoc Judges of Supreme Court, Proc. 2/2013 ([GG 5519](#))
Acting Judges of High Court, Proc. 6/2013 ([GG 5143](#))
Ad Hoc Judges of Supreme Court, Proc. 15/2013 ([GG 5188](#))
Acting Judges of High Court, Proc. 17/2013 ([GG 5188](#))
Judge of High Court, Proc. 30/2013 ([GG 5284](#))
Ad Hoc Judges of Supreme Court, Proc. 33/2013 ([GG 5328](#))
Acting Judge of High Court, Proc. 2/2014 ([GG 5397](#))
Ad Hoc Judges of Supreme Court, Proc. 3/2014 ([GG 5397](#))
Acting Judge of High Court, Proc. 29/2014 ([GG 5567](#))
Judge of High Court, Proc. 30/2014 ([GG 5567](#)).
Acting Judge of High Court, Proc. 1/2015 ([GG 5660](#))
Judge of Supreme Court and Acting Judges of Supreme Court and High Court, Proc. 10/2015
([GG 5711](#))
Acting Judge of High Court, Proc. 19/2015 ([GG 5751](#))
Acting Judges of High Court, Proc. 39/2015 ([GG 5892](#))
Ad Hoc Judges of Supreme Court, Proc. 40/2015 ([GG 5892](#))
Acting Judge of High Court, Proc. 42/2015 ([GG 5914](#))
Deputy Judge-President of High Court, Proc. 43/2015 ([GG 5914](#))
Judge of High Court, Proc. 44/2015 ([GG 5914](#))
Judge of High Court, Proc. 46/2015 ([GG 5914](#))
Acting Judge of High Court, Proc. 1/2016 ([GG 5986](#))
Judge of Supreme Court, Proc. 3/2016 ([GG 6024](#))
Acting Judges of High Court, Proc. 6/2016 ([GG 6164](#))
Acting Judges of High Court, Proc. 3/2017 ([GG 6238](#))
Acting Judges of High Court, Proc. 5/2017 ([GG 6285](#))
Acting Judge of High Court, Proc. 12/2017 ([GG 6346](#))
Acting Judges of High Court, Proc. 23/2017 ([GG 6426](#))
Acting Judge of High Court, Proc. 25/2017 ([GG 6482](#)).

COMMENTARY

Peter Von Doepp, “Politics and Judicial Decision Making in Namibia: Separate or Connected Realms?”, Institute for Public Policy Research, 2006, available at www.ippr.org.na (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 (reviewed by Yvonne Dauseb in *Namibia Law Journal*, Volume 1, Issue 1, 2009, available at www.kas.de)

Ndjodi ML Ndeunyema, “Terminological Conundrums: how to refer to Judges of the Supreme Court of Namibia and related abbreviations”, *UNAM Law Review*, Volume 1, Issue 2, 2013, available at <http://unamlawreview.info>.

See also **COURTS**.

See also Medical Scheme for Members of the National Assembly, Judges and Other Office Bearers Act 23 of 1990 (**MEDICAL AID**).

See also Judges’ Pensions Act 13 of 2011 (**PENSIONS**).

LABOUR

Shop Hours and Shop Assistants Ordinance 15 of 1939.

Summary: This Ordinance ([OG 796](#)) governs shop hours and certain working conditions of shop assistants. It seems to have been superseded by labour legislation enacted in independent Namibia – currently the Labour Act 11 of 2007.

Amendments: This Ordinance is amended by Ord. 4/1940 ([OG 840](#)), Proc. 34/1950 ([OG 1530](#)), Proc. 50/1950 ([OG 1552](#)), Ord. 10/1952 ([OG 1687](#)), Ord. 5/1957 ([OG 2072](#)), Ord. 39/1957 ([OG 2092](#)), Ord. 4/1959 ([OG 2185](#)) and Act 12/1986 ([OG 5221](#)).

Regulations: Pre-independence regulations have not been researched.

Employees’ Compensation Act 30 of 1941, as amended in South Africa prior to Namibian independence.

Summary: This Act (SA GG 2909) 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 ([OG 3680](#)). 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: The following pre-independence South African amendments were applicable to SWA –

- *Workmen’s Compensation Amendment Act 27 of 1945* ([SA GG 3504](#))
- *Finance Act 48 of 1947* ([SA GG 3830](#))
- *Workmen’s Compensation Amendment Act 36 of 1949* ([SA GG 4182](#))
- *Workmen’s Compensation Amendment Act 5 of 1951* ([SA GG 4563](#))
- *SA Proclamation 147 of 1951* ([SA GG 4644](#))
- *SA Proclamation 63 of 1952* ([SA GG 4817](#))

- *Workmen's Compensation Amendment Act 51 of 1956* ([SA GG 5703](#))
- *SA Proclamation 170 of 1959* ([SA GG 6274](#))
- *Railways and Harbours Superannuation Fund Act 39 of 1960* ([SA GG 6431](#))
- *Workmen's Compensation Amendment Act 7 of 1961* ([SA GG 6649](#))
- *RSA Proclamation R.90 of 1962* ([RSA GG 229](#))
- *Workmen's Compensation Amendment Act 21 of 1964* ([RSA GG 746](#))
- *Bantu Laws Amendment Act 42 of 1964* ([RSA GG 801](#))
- *Workmen's Compensation Amendment Act 58 of 1967* ([RSA GG 1732](#))
- *Pension Laws Amendment Act 98 of 1969* ([RSA GG 2463](#))
- *Workmen's Compensation Amendment Act 9 of 1970* ([RSA GG 2647](#))
- *Second Black Laws Amendment Act 27 of 1970* ([RSA GG 2665](#))
- *Workmen's Compensation Amendment Act 60 of 1971* ([RSA GG 3156](#))
- *Insolvency Amendment Act 6 of 1972* ([RSA GG 3407](#))
- *RSA Proclamation R.98 of 1973* ([RSA GG 3856](#))
- *Workmen's Compensation Amendment Act 11 of 1974* ([RSA GG 4194](#))
- *Workmen's Compensation Amendment Act 28 of 1977* ([RSA GG 5465](#))
- *Workmen's Compensation Amendment Act 8 of 1979* ([RSA GG 6341](#))
- *RSA Proclamation 233 of 1979* ([RSA GG 6689](#))
- *Workmen's Compensation Amendment Act 24 of 1981* ([RSA GG 7453](#))
- *Workmen's Compensation Amendment Act 29 of 1984* ([RSA GG 9127](#))
- *Transfer of Powers and Duties of the State President Act 97 of 1986* ([RSA GG 10438](#))
- *Workmen's Compensation Amendment Act 35 of 1987* ([RSA GG 10888](#))
- *Workmen's Compensation Amendment Proclamation 45 of 1990* ([RSA GG 12328](#)), which makes substantial amendments to the Act in preparation for Namibian independence.

The Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends certain terminology.

Act 9/1982 ([OG 4652](#)) makes minor amendments to section 70 of the Act.

Act 5 of 1995 ([GG 1038](#)), which was brought into force on 1 March 1995 by 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 ([OG 4358](#)), which is brought into force by AG 6/1981 ([OG 4430](#)), provided 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 ([GG 2673](#)) except insofar as it applies to tertiary education, and by the Teachers' Education Colleges Act 25 of 2003 ([GG 3124](#)) insofar as it applies to teachers' education colleges.

Regulations: Pre-independence regulations have not been comprehensively researched.

Regulations are contained in RSA GN R.581/1961 (RSA GG 73), as amended by –
 RSA GN R.1580/1964 (RSA GG 922)
 RSA GN R.1474/1967 (RSA GG 1851)
 RSA GN R.1480/1970 (RSA GG 2808)
 RSA GN R.143/1972 (RSA GG 3380)

RSA GN R.1354/1975 (RSA GG 4790)
RSA GN R.837/1977 (RSA GG 4790)
RSA GN R.908/1980 (RSA GG 6969)
RSA GN R.1802/1981 (RSA GG 7741)
RSA GN R.1551/1983 (RSA GG 8814)
RSA GN R.2187/1984 (RSA GG 9449)
RSA GN R.223/1988 (RSA GG 11140)
RSA GN R.1134/1989 (RSA GG 11909)
RSA Proc. 45/1990 (RSA GG 12328)
GN 47/2004 ([GG 3169](#))
GN 95/2012 ([GG 4919](#))
GN 251/2013 ([GG 5291](#)).

Note: GN 251/2013 refers to a previous amendment of the regulations by Government Notice 4919 of 2 April 2012. This appears to refer to Government Notice 95 of 2 April 2012, which was published in GG 4919.

Notices: RSA GN 1291/1989 ([RSA GG 11960](#)) varied certain amounts and percentages for the purposes of sections 38(1)(a), 38(4), 39(1)(a), 39(1)(c), 39(2), 40(1)(a), 40(2), 43bis(1) and 43bis(2) with effect from 1 July 1989. Proc. 45 of 1990 provides as follows in section 46(d): “In the application of the Act in the territory...paragraph 1(d) of Government Notice 1291 of 23 June 1989 shall, notwithstanding the provisions of section 43bis, be deemed not to be applicable in respect of any monthly pension which was payable by the State, including a Representative Authority as defined in section 1 of Representative Authorities Proclamation, 1980 (Proclamation AG. 8 of 1980), in terms of section 39 or 40 of the Act immediately before 1 July 1989 in connection with the disablement or death of a workman in the service of a department established under section 3(1) of the Government Service Act, 1980 (Act 2 of 1980).”

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](#)). This amount is set at N\$76 000 with effect from 1 March 2012 (GN 66/2012, [GG 4891](#)), and at N\$81 300 with effect from 1 March 2013 (GN 250/2012, [GG 5291](#)).

The amounts of compensation for temporary, partial, total and permanent disablement and death are increased in GN 46/2004 ([GG 3169](#)), which is replaced by GN 96/2012 ([GG 4919](#)).

Tariffs of fees published in terms of the Act from time to time have not been recorded here. Notices of unclaimed payments are also not recorded here.

Cases: *Social Security Commission & Another v Coetzee* 2016 (2) NR 529 (SC) (section 54: timeframes and section 108: delegation; discussion of overall framework of Act in paras 9-24).

Natives Minimum Wage Proclamation 1 of 1944.

Summary: This Proclamation ([OG 1088](#)), which is obviously obsolete, provides for the payment of minimum wages to “natives”.

Amendments: This Proclamation is amended by Proc. 5/1944 ([OG 1092](#)).

Development Brigade Corporation Act 32 of 1992.

Summary: This Act ([GG 563](#)) 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 was brought into force on 1 February 1993 by GN 15/1993 ([GG 580](#)).

Regulations: The Act makes no provision for regulations.

Notices: 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](#)) and in GN 171/2017 ([GG 6358](#)), which withdraws GN 113/1994.

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](#)).

Affirmative Action (Employment) Act 29 of 1998.

Summary: This Act ([GG 1962](#)) 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 was brought into force, with the exception of section 2, sections 19-43 and sections 45-48, on 18 November 1998 by GN 278/1998 ([GG 1996](#)). The remaining sections were all brought into force on 6 August 1999 by GN 156/1999 ([GG 2161](#)).

Amendments: Act 6/2007 ([GG 3965](#)) amends sections 1, 10, 23, 24, 30, 44, 45 and 47. The Labour Act 11 of 2007 ([GG 3971](#)) amends section 45.

Regulations: Regulations are contained in GN 159/1999 ([GG 2161](#)).

Notices: A “relevant employer” for the purposes of the Act was initially 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 was replaced by GN 95/2006 ([GG 3658](#)), which defines “relevant employer” as an employer which employs 25 or more employees.

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.

Appointments: The appointment of members to the Employment Equity Commission is announced in GN 184/2018 ([GG 6680](#)).

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

See also *S v Nkeuene* 2010 (1) NR 301 (HC) (conviction on charge of failing to comply with section 27(2)(a) set aside on basis that servant of corporate body was not authorised to plead guilty on behalf of the body).

Commentary:

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

Daniel Motinga & Tjivingurura Mbuende, "Progress on Affirmative Action and Employment Equity: Still a Man's World!", Institute for Public Policy Research, 2003, available at www.ippr.org.na.

Related international agreements:

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

SADC Protocol on Gender and Development, 2008.

Labour Act 11 of 2007.

Summary: This Act ([GG 3971](#)) 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 ([GG 388](#)) and the Labour Act 15 of 2004 ([GG 3339](#)), 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 were brought into force on 30 November 2005 by GN 162/2005 ([GG 3545](#)). Section 118 and item 13(1) of Schedule 1 were brought into force on 27 January 2006 by GN 20/2006 ([GG 3582](#)).

All of the Act other than section 128 (prohibiting labour hire) was brought into force on 1 November 2008 by GN 260/2008 ([GG 4151](#)). Section 128 of the Act was brought into force on 1 March 2009 by GN 1/2009 ([GG 4192](#)).

Regulations, notices, declarations, registrations, collective agreements and exemptions from collective agreements made under the 1992 Act generally remain in force.

The Labour Act 6 of 1992, which was repealed by this Act, repealed the Factories, Machinery and Building Work Ordinance 34 of 1952, the Wage and Industrial Conciliation Ordinance 35 of 1952, the Occupational Diseases in Mines and Works Act 78 of 1973 and the Conditions of Employment Act 12 of 1986 as well as a number of ethnic- and race-based laws relating to employment.

Amendments: Act 2/2012 ([GG 4925](#)) amends sections 1, 5, 82, 83, 89 and 128 and inserts sections 128A, 128B and 128C; these amendments relate to the issue of "labour hire". This amending Act was brought into force from 1 August 2012 by GN 136/2012

([GG 4958](#)) – but GN 136/2012 was withdrawn by GN 192/2012 ([GG 5005](#)) on 1 August 2012. GN 193/2012 ([GG 5005](#)) provides that amending Act 2/2012 will come into force on 1 August 2012 – *except for* the provisions in section 10 in so far as they relate to section 26(2)(a)(ii)-(iii) of the Employment Services Act 8 of 2011.

The Whistleblower Protection Act 10 of 2017 ([GG 6450](#)), which has not yet been brought into force, amends section 84.

Application of law: 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 ([GG 1069](#)) (as amended by Act 6/1996 ([GG 1337](#))).

Section 35 of the Namibia Central Intelligence Service Act 10 of 1997 ([GG 1699](#)) 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 ([GG 1703](#)) 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.

Regulations: Regulations made in terms of Acts repealed by the Labour Act 6 of 1992 survived in terms of section 116(2) of that Act, and continue to survive pursuant to section 142 of the current Act (read together with paragraph 2 of Schedule 1). However, pre-independence regulations have not been researched.

Regulations made in terms of the Labour Act 6 of 1992, which survive pursuant to section 142 of this Act are as follows –

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](#)). (See also the Namibian Electricity Safety Code contained in GN 200/2011 ([GG 4821](#)), which is to be read in conjunction with these regulations.)

Regulations made under this Act are as follows:

General regulations are contained in GN 261/2008 ([GG 4151](#)), which replaces GN 174/1992 and GN 175/1992.

Regulations relating to domestic workers are contained in GN 257/2017 ([GG 6428](#)), which repeals GN 257/2014 ([GG 5638](#)). They require employers of domestic workers to submit a form annually to the Permanent Secretary of the labour ministry or to the Labour Office containing certain particulars about domestic workers.

These regulations are supplemented by a **Wage Order** setting a minimum wage and supplementary minimum conditions of employment for domestic workers, in GN 258/2017 ([GG 6428](#)), which repeals GN 258/2014 ([GG 5638](#)) (which was amended by GN 53/2016 ([GG 5978](#))).

General Notice 639/2018 ([GG 6767](#)) increased the minimum wage with effect from 1 October 2018, pursuant to the provisions of the Wage Order, which provides for an increase by 1% plus a percentage equal to the average of the increases in the inflation rates in respect of certain specified categories of goods and services published by the Namibia Statistics Agency for the 12 months preceding 1 October 2018. The minimum wage from 1 October 2018 is N\$1564.39/month, N\$361.29/week, N\$72.25/day or N\$9.03/hour, and N\$45.15/day for part-time domestic workers who work five hours or less on any day other than a Sunday or public holiday. The Wage Order's rates for minimum overtime pay and minimum pay for work on Sundays and public holidays were similarly increased by General Notice 639/2018.

The Wage Order also contains rules about transport allowances, accompanying employers on holiday, food and accommodation, health and safety, uniforms, trade union access and a written contract of employment. These rules remain unchanged.

Rules: Rules made by the Labour Courts' Rules Board in terms of the previous Act and surviving pursuant to section 14(4) of the current Act are as follows –

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.

Rules made under the current Act are as follows:

Rules relating to the conduct of conciliation and arbitration before the Labour Commissioner are contained in GN 262/2008 ([GG 4151](#)), as amended by GN 69/2016 ([GG 5990](#)), which substitutes Annexure 1.

Labour Court Rules are contained in GN 279/2008 ([GG 4175](#)), which replaced GN 63/1994 ([GG 841](#)). The new rules became effective on 15 January 2009. Rules 6 and 14 are amended and Rule 22 is substituted by GN 92/2011 ([GG 4743](#)).

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](#)).

Notices: Notices made under the previous Act which remain in force include the following (omitting those with no ongoing effect) –

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.

Guidelines and instructions pertaining to HIV/AIDS in employment were issued in GN 78/1998 ([GG 1835](#)), but these do not appear to remain in effect.

Other notices regarding specific topics are listed below.

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
Note that the Table of Contents on the front page of [GG 3482](#) does not accurately reflect the content of this Government Gazette.
- 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
- GN 2/2006 ([GG 3573](#)): work in Okorusu Fluorspar (Pty) Ltd – Metallurgical Plants

- GN 83/2006 ([GG 3647](#)): work performed in Namdeb Diamond Corporation (Pty) Ltd – Marine Dredging Treatment Plant
- GN 3/2007 ([GG 3771](#)): work performed in Langer Heinrich Uranium (Pty) Ltd
- GN 135/2007 ([GG 3887](#)): NAMPOST Ltd
- GN 171/2008 ([GG 4085](#)): work in Reptile Uranium (Pty) Ltd
- GN 172/2008 ([GG 4085](#)): work in PowerCom (Pty) Ltd-Customer Care Centre.

Continuous operations: The following are work is declared to be continuous operations in terms of section 15 of the 2007 Act:

- GN 196/2009 ([GG 4350](#)): 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
- GN 231/2010 ([GG 4584](#)): Major Drilling Namibia (Pty) Ltd
- GN 232/2010 ([GG 4584](#)): Namdeb Diamond Corporation (Pty) Ltd (Security Station)
- GN 240/2010 ([GG 4595](#)): Oceano Traders CC
- GN 241/2010 ([GG 4595](#)): Protea Spar
- GN 127/2011 ([GG 4767](#)): Namdeb Diamond Corporation (Pty) Ltd (wet in field screening plant team, dry in field screening plant team and mining pumping team)
- GN 127/2011 ([GG 4767](#)): Namdeb Diamond Corporation (Pty) Ltd (inshore project)
- GN 173/2011 ([GG 4792](#)): Telecom Namibia (Network Operating Centre)
- GN 16/2012 ([GG 4875](#)): Namibia Mills (Pty) Ltd
- GN 17/2012 ([GG 4875](#)): Areva Resources Namibia (Pty) Ltd
- GN 18/2012 ([GG 4875](#)): Standard Bank of Namibia (Customer Contact Centre)
- GN 19/2012 ([GG 4875](#)): Luderitz Town Council (sewerage plant operation)
- GN 137/2012 ([GG 4958](#)): Energy for Future, from 1 December 2011 until 30 November 2013
- GN 138/2012 ([GG 4958](#)): Namdeb Diamond Corporation (Pty) Ltd (Southern Coastal Mining Teams), subject to certain conditions, from 1 December 2011 until 30 November 2013
- GN 252/2012 ([GG 5060](#)): Namdeb Diamond Corporation (Pty) Ltd
- GN 253/2012 ([GG 5060](#)): GPT-Transnamib Concrete Sleeper (Pty) Limited
- GN 85/2013 ([GG 5173](#)): Cato Fishing (Pty) Limited (on behalf of Rainbow Trawling (Pty) Limited, Overberg Fishing Company (Pty) Limited and Ekikimbo Trawling (Pty) Limited)
- GN 86/2013 ([GG 5173](#)): Feedmaster (Pty) Limited
- GN 113/2013 ([GG 5188](#)): B&E International (Namibia) (Pty) Ltd
- GN 114/2013 ([GG 5188](#)): Hangana Seafood (Pty) Ltd
- GN 133/2013 ([GG 5211](#)): Purity Manganese (Pty) Ltd
- GN 134/2013 ([GG 5211](#)): Kaap Agri Namibia
- GN 135/2013 ([GG 5211](#)): Erongo Marine Enterprises (Pty) Ltd.
- GN 4/2015 ([GG 5660](#)): Namibia Airports Company Limited, Hosea Kutako International Airport, from 01 November 2014 until 30 November 2016
- GN 5/2015 ([GG 5660](#)): Africa Huaxia Mining (Pty) Limited, from 01 January 2015 until 01 January 2017
- GN 6/2015 ([GG 5660](#)): Swakop Uranium (certain specified operations), from 15 October 2014 to 15 September 2016
- GN 17/2015 ([GG 5668](#)): Biosolidsolutions Namibia, from 1 January 2015 to 31 December 2016

- GN 90/2015 ([GG 5751](#)): Nexus Civils (Pty) Ltd, construction of Namalubi-Isise-Luhonono (Schuckmannsburg) Road, subject to certain conditions, from 1 June 2015 until 30 April 2016
- GN 225/2015 ([GG 5848](#)): Basil Read Mining Namibia (Pty) Ltd //Tschudi Copper Project, from 1 October 2015 to 31 September 2016
- GN 56/2016 ([GG 5986](#)): B2Gold Namibia (Pty) Ltd, subject to certain conditions, from 1 April 2016 until 31 May 2018
- GN 57/2016 ([GG 5986](#)): production teams of Southern Coastal Mining Production of Namdeb (Pty) Limited, subject to certain conditions, from 1 April 2016 until 30 November 2017
- GN 103/2016 ([GG 6024](#)): Namibia Ports Authority, subject to certain conditions, from 1 September 2015 until 30 September 2018
- GN 168/2016 ([GG 6086](#)): B2Gold Namibia (Pty) Ltd, subject to certain conditions, from 1 August 2016 until 31 May 2018
- GN 175/2016 ([GG 6094](#)): operations of immigration officers, as defined in section 1 of the Immigration Control Act 7 of 1993, of the Ministry of Home Affairs and Immigration, from 1 April 2016 until 31 March 2019
- GN 176/2016 ([GG 6094](#)): BC Stone Products Namibia (Pty) Ltd, from 1 May 2016 until 30 April 2018
- GN 247/2016 ([GG 6149](#)): Swakop Uranium, from 16 September 2016 to 16 September 2019
- GN 133/2017 ([GG 6320](#)): Erongo Red Call Centre and Control Centre, subject to certain conditions, from 1 April 2017 to 31 March 2019
- GN 226/2017 ([GG 6397](#)): Rosh Pinah Zinc Corporation (Pty) Ltd, from 10 July 2017 to 9 July 2020
- GN 227/2017 ([GG 6397](#)): Basil Read Mining Namibia (Pty) Ltd, from 22 May 2017 to 21 May 2020
- GN 253/2017 ([GG 6426](#)): Africa Huaxia Mining Namibia (Pty) Ltd, from 11 April 2017 to 10 April 2020
- GN 298/2017 ([GG 6472](#)): Nedbank Namibia Limited (IT operations), from 29 June 2017 to 28 June 2020
- GN 13/2018 ([GG 6524](#)): Basil Read Mining Namibia (Pty) Ltd // Tschudi Copper Project, from 4 October 2017 to 31 September 2020
- GN 70/2018 ([GG 6573](#)): Namdeb (Southern Coastal Mines production teams), subject to certain conditions, from 1 December 2017 until 31 December 2020
- GN 120/2018 ([GG 6627](#)): Debmarine Namibia (Pty) Ltd sea-going mining operations, from 26 January 2018 to 25 January 2021
- GN 121/2018 ([GG 6627](#)): Namibia Tantalite Investment (Pty) Ltd, from 17 May 2018 to 16 May 2021
- GN 179/2018 ([GG 6680](#)): Standard Bank Namibia Ltd's Customer Contact Centre and Information Technology Department, from 25 June 2018 to 24 June 2021
- GN 180/2018 ([GG 6680](#)): Road Fund Administration, from 1 July 2018 to 30 June 2021
- GN 181/2018 ([GG 6680](#)): Dust-A-Side Namibia (Pty) Ltd, from 1 July 2018 to 30 June 2021
- GN 182/2018 ([GG 6680](#)): B2Gold Namibia (Pty) Ltd, from 1 June 2018 to 31 May 2021
- GN 183/2018 ([GG 6680](#)): Intertek Testing Services Namibia (Pty) Ltd at Tschudi Mine, from 1 July 2018 to 30 June 2021.

Essential services: Certain services are designated as essential services in terms of section 77(4) of the Act in

- GN 314/2012 ([GG 5109](#)), repealed by GN 115/2017 ([GG 6309](#)),
- GN 94/2014 ([GG 5510](#))
- GN 115/2017 ([GG 6309](#))
- GN 178/2018 ([GG 6680](#)).

Variations: Certain provisions of Chapter 3 of the Act (sections 8, 18, 20, 21, 22 and 28) are varied in respect of **employers and employees in the tourism and hospitality industry** by GN 17/2011 ([GG 4660](#)).

Certain provisions of Chapter 3 of the Act (sections 16, 17, 18 and 20) are varied in respect of **fishers** (defined as persons “employed or engaged in any capacity or carrying out an occupation on board a fishing vessel, including persons working on board paid on the basis of as share of the catch but excluding pilots, naval personnel, shore-based persons carrying out work aboard a fishing vessel and fisheries observers”) by GN 250/2016 ([GG 6149](#)).

Registered collective agreements: Registered collective agreements have been declared binding on three industries –

Construction industry: GN 298/1996 ([GG 1444](#)) contains the initial agreement between the Metal and Allied Namibian Workers Union and the Construction Industries Federation of Namibia (dealing with minimum wages, minimum protective clothing, minimum productivity levels, performance standards, living away allowance, safety, and stop order facilities) which is binding on the entire industry, with the exception of employers and employees engaged in any “labour-based project”.

This agreement, as well as each subsequent collective agreement, remains in force until its listed expiry date or until replaced by a subsequent agreement. The successive collective agreements use the term “amend”, indicating that each amends the previous collective agreement. However, since each collective agreement is only in force until there is a new collective agreement, the term “replaced” is a clearer reflection of what actually transpired; each new collective agreement replaces the one that came before it.

The next collective agreement between these two parties (dealing with the same topics as the initial agreement, with the addition of service allowance and shop steward training) was published in GN 272/1997 ([GG 1752](#)). It was extended by GN 300/1998 ([GG 2010](#)) and then replaced by the subsequent agreement published in GN 135/1999 ([GG 2144](#)). The applicability of this agreement was extended indefinitely, until a new agreement was reached, by GN 85/2000 ([GG 2301](#)).

The collective agreement in GN 135/1999 was replaced by GN 123/2000 ([GG 2340](#)), which was replaced by GN 217/01 ([GG 2637](#)), which was replaced by GN 39/2003 ([GG 2927](#)), which was replaced by GN 24/2005 ([GG 3392](#)), which was replaced by GN 224/2008 ([GG 4115](#)), which was replaced by GN 129/2009 ([GG 4271](#)).

The next collective agreement, GN 154/2012 ([GG 4970](#)), in addition to the usual clauses, adds fair practice and pension fund and sets specific dates for minimum wages (1 June 2011 to 31 May 2012, and from 1 June 2012 until a new agreement is reached). This method is repeated in the subsequent collective agreements.

The following collective agreement, GN 334/2013 ([GG 5372](#)), sets minimum wages for various construction employees applicable from 15 September 2013 until 31 May 2014 and from 1 June 2014 until a new agreement is reached. It also removes the application exception for those employees engaged in “labour-based projects”, applying the collective agreement to all employers and employees in the construction industry.

The following collective agreement, GN 319/2015 ([GG 5917](#)), sets minimum wages applicable from 31 December 2015 until 30 December 2016, and from 31 December 2016 until a new agreement is promulgated.

The current collective agreement, dated 15 November 2017, is extended to the entire construction industry (and set forth in full) in GN 65/2018 ([GG 6567](#)). It sets minimum wages, amongst other things, and amends the collective agreement contained in GN 319/2015 ([GG 5917](#)).

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.

No further minimum wage increases have been gazetted for this sector, but it was reported in 2013 that the Agricultural Employers Association (AEA) has recommended as a guide that the minimum wage for entry-level farmworkers should be N\$3,44 per hour, which at full employment is N\$670 per month, as well as a food allowance at N\$345 per month, with housing and sanitation requirements being unchanged. The official rate has reportedly remained unchanged due to the absence of meetings of the Namibia Agricultural Labour Forum – which is composed of the Agricultural Employers' Association, the Namibia National Farmers' Union and the Namibia Farm Workers' Union – for the past few years. (“New minimum wage for farmworkers”, *The Namibian*, 25 June 2013)

It was reported in 2014 that the Agricultural Employers Association, Namibia National Farmers Union and Namibia Workers Union signed an agreement making the lowest minimum wage N\$3,70/hour, or N\$888/month. The agreement also reportedly states that if an employee is required to live on the place of their employment or on any property of their employer, that worker must receive an additional N\$400 food allowance per month. (See “New minimum wage for farm workers”, *The Namibian*, 17 June 2014.)

A request to extend a collective agreement to the agricultural industry, and an invitation to submit objections to such extension, is published in GN 104/2014 ([GG 5522](#)).

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](#)).

A registered collective agreement concluded by the Security Association of Namibia

(SAN), the Namibia Transport and Allied Workers Union (NATAU), the Namibia Security Guards and Watchman's Union (NASGWU) and the Namibia Independent Security Union (NISU), which is declared binding on the entire industry, is contained in GN 229/2012 ([GG 5031](#)). This agreement increases the previous minimum wage for entry-level security guards to N\$5.00/hour with a N\$4.00 shift bonus. It also details the uniforms which employers must provide to employees.

A registered collective agreement concluded by the Security Association of Namibia (SAN), the Namibia Transport and Allied Workers Union (NATAU), the Namibia Security Guards and Watchman's Union (NASGWU) and the Namibia Independent Security Union (NISU), which is declared binding on the entire industry, is contained in GN 248/2014 ([GG 5628](#)). This agreement increases the previous minimum wage for entry-level security guards to N\$5.30/hour and provides for other wage adjustments. It also contains rules about the provision of uniforms.

A collective agreement concluded by the Security Association of Namibia, the Namibian Transport and Allied Workers Union, the Namibia Independent Security Union and the Namibia Security Guards and Watchmen's Union, dated 15 December 2016, is extended to all employers and employees in the Security Industry by GN 242/2017 ([GG 6414](#)). It sets the minimum wage for entry-level security officers at N\$8.75 per hour as of 1 January 2017 and provides for other wage adjustments. It also contains rules about the provision of uniforms.

Fuel industry: No minimum wage has been gazetted, but a 2014 news report stated that agreement was reached between the Namibia Fuel and Allied Workers Union (NAFAWU), the Metal and Allied Workers Union (MANWU), the Namibia Wholesalers and Retail Workers Union (NWRWU), the Namibia Food and Allied Workers Union and the Association of Service Station Owners (ASSO) for a N\$7.20/hour minimum wage for a basic minimum salary of N\$1 404 per month. According to the news report, the agreement covers petrol attendants, cashiers and shop attendants at service stations. The minimum amount does not include payment for Sundays, public holidays or overtime. It was expected to be implemented on 1 January 2015, and to be renegotiated after two years. The plan was to extend the agreement to the entire industry. ("Minimum wage for Namibia's fuel sector", *Namibian Sun*, 29 September 2014)

A request to extend a collective agreement to the Fuel Retail Industry, and an invitation to submit objections to such extension, is published in GN 309/2015 ([GG 5910](#)).

Wages Commission: A Wages Commission was convened for the purpose of investigating the terms and conditions of employment of **domestic workers** by GN 135/2012 ([GG 4956](#)), which sets forth its terms of reference. The date for submission of this Commission's report, originally 15 February 2013, was extended to 15 April 2013 by GN 308/2012 ([GG 5109](#)) and to 30 May 2013 by GN 112/2013 ([GG 5188](#)).

A Wages Commission was again convened for the purpose of investigating the terms and conditions of employment of **domestic workers** by GN 28/2017 ([GG 6245](#)), which sets forth its terms of reference. The deadline for submission of this Commission's report is 23 March 2017.

Cases: The following cases were decided after the **Labour Act 11 of 2007** became the operative law –

General

arbitration proceedings (generally):

Novanam Ltd v Absalom & Others 2014 (4) NR 1009 (LC) (recusal of arbitrator)

Life Office of Namibia Ltd (Namlife) v Amakali & Another 2014 (4) NR 1119 (LC) (basis for appeal of arbitrator's award)

Primedia Outdoor Namibia (Pty) Ltd v Kauluma 2015 (1) NR 283 (LC) (Labour Court Rules and Conciliation and Arbitration Rules must be read together; at para 25: "perhaps consideration should in future be given to creating greater harmony between the different sets of rules, or by co-ordinating matters so that both sets of rules do not regulate the same matters")

City of Windhoek v Katuuu & Others 2016 (2) NR 529 (LC) (arbitrator finding "unfair labour practices" under section 50(1) should indicate which paragraph of that section is relevant; arbitration is not competent in respect of disputes of interest)

Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC) (approach to overtime claims in arbitration proceeding)

Hangana Seafood (Pty) Ltd v Viringa 2016 (2) NR 582 (LC) (approach to finding of procedurally and substantively unfair dismissal in arbitration proceedings)

Negonga & Another v Secretary to Cabinet & Others 2016 (3) NR 670 (HC) (criteria for interfering with arbitrator's award on appeal)

condonation:

Telecom Namibia Ltd v Nangolo & Others (LC 33/2009) [2012] NALC 15 (28 May 2012) (explication of general legal principles applicable to applications for condonation; confirmed on appeal in *Telecom Namibia Ltd v Nangolo & Others* 2015 (2) NR 510 (SC))

constructive dismissal:

Labour Supply Chain v Hambata 2012 (1) NR 313 (LC) (burden of proving constructive dismissal lies with employee)

Kvekatora v Transnamib Holdings Ltd & Another 2012 (2) NR 443 (LC)

contract of employment:

Namrights Inc v Nicodemus & Others 2016 (2) NR 596 (LC) (contract of employment is *void ab initio* and cannot be basis for any benefits where concluded with refugee in absence of work permit or exemption from work permit requirements)

prescription:

Namibia Development Corporation v Mwandangi & Others 2013 (3) NR 737 (LC) (*Prescription Act 68 of 1969* applies to labour-related claims arising under this Act).

sexual harassment:

Life Office of Namibia Ltd (Namlife) v Amakali & Another 2014 (4) NR 1119 (LC) (*dicta* at paras 61-62: "Sexual harassment is after all a serious matter. The legislature has provided for sexual harassment in the workplace in ch 2 of the Act, where special remedies are also provided for discrimination in an employment setting. This is a clear indication of the seriousness with which sexual harassment at the workplace is viewed by the legislature and rightly so. Being subjected to unwanted and unwarranted conduct of a sexual nature not only creates a barrier to equality in employment as is stressed in s 2 of the Act, but it also violates an employee's constitutional right to dignity and of the person. The seriousness of sexual harassment in employment is reinforced by the fact that the failure on the part of an employer to prevent it may even attract delictual liability.")

team misconduct:

Novanam Ltd v Absalom & Others 2014 (4) NR 1009 (LC)

unfair labour practice:

Wilderness Air Namibia v Janse van Rensburg 2012 (2) NR 764 (LC); *Janse*

van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC)

unfair dismissal:

Africa Personnel Services (Pty) Ltd v Shipunda & Others 2012 (2) NR 718 (LC) (arbitrators' finding of unfair dismissal overturned)

House and Home (a trading division of Shoprite (Pty) Ltd) v Majiedt & Another 2013 (2) NR 333 (LC) (court overturns factual conclusion of arbitrator on grounds that no arbitrator could reasonably have found dismissal unfair; procedural defects can be overlooked if there is substantial fairness)

Hangana Seafood (Pty) Ltd v Viringa 2016 (2) NR 582 (LC)

Labour Act 11 of 2007

section 1:

Swart v Tube-O-Flex Namibia (Pty) Ltd & Another 2016 (3) NR 849 (SC) (definition of "employee")

section 9:

Vox Orion (Pty) Ltd t/a Vox Orion v Prinsloo 2014 (1) NR 202 (LC)

Namibia Training Authority v Nangolo-Rukoro & Another 2016 (4) NR 992 (LC) (section 9(3))

section 10:

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC)

sections 11-12:

Methealth Namibia Administrators (Pty) Ltd v Matuzee & Others 2015 (3) NR 870 (LC)

Chapter 8, Part B (conciliation) and Part C (arbitration):

Purity Manganese (Pty) Ltd v Katzao & Others 2012 (1) NR 233 (LC) (differences between statutory schemes for conciliation and arbitration discussed at length)

section 33:

House and Home (a trading division of Shoprite (Pty) Ltd) v Majiedt & Another 2013 (2) NR 333 (LC)

Management Science for Health v Kandungure & Another 2013 (3) NR 632 (LC) (minimum requirements of fair disciplinary hearing set forth at para 5)

Benz Building Suppliers v Stephanus & Others 2014 (1) NR 283 (LC)

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC)

Namibia Custom Smelters (Pty) Ltd v Mupetami & Another 2015 (3) NR 859 (LC) (section 33(1)(a))

Tow-In Specialist CC v Urinavi 2016 (3) NR 829 (LC)

section 34:

Namibia Wildlife Resorts Ltd v Government Institutions Pension Fund & Others 2015 (1) NR 88 (SC)

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC)

section 35:

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC) (amount prescribed in section 35(3) is a minimum and does not preclude court from ordering a higher amount of severance pay)

section 37:

Vox Orion (Pty) Ltd t/a Vox Orion v Prinsloo 2014 (1) NR 202 (LC)

section 49:

Kandukira v Shinguadja & Another 2013 (4) NR 903 (LC) (section 41(1)(d), read with sections 51(1) and 121(1)(a), includes an unfair labour practice between a trade union and its members, which can be referred to a Labour Commissioner as a dispute)

- section 51:
Haimbili & Another v Transnamib Holdings Ltd & Others 2013 (1) NR 201 (LC)
- section 65:
Africa Personnel Services (Pty) Ltd v Shipunda & Others 2012 (2) NR 718 (LC) (application of section discussed in light of Constitutional right of assembly and its limitations)
- section 79:
Meatco v Namibian Food and Allied Workers Union & Others 2013 (3) NR 777 (LC)
Tjipangandjara v Namibia Water Corporation (Pty) Ltd 2015 (4) NR 1116 (LC)
- section 82(9)(c):
Purity Manganese (Pty) Ltd v Katzao & Others 2012 (1) NR 233 (LC) (no constitutional bar to service of notice of conciliation or arbitration by a Labour Commissioner or an official who conducts conciliation or arbitration proceedings)
- section 85:
Roads Contractor Company v Nambahu & Others 2011 (2) NR 707 (LC) (section 85(6): includes guidelines for arbitration to satisfy constitutional right to fair hearing)
 Note that the case erroneously refers to the statute as the “Labour Court Act”.
- section 86:
Nedbank Ltd v Louw 2011 (1) NR 217 (LC) (section 86(2))
Paulo v Shoprite Namibia (Pty) Ltd & Others 2013 (1) NR 78 (LC) (section 86(15): interpretation of term “re-instatement”)
National Housing Enterprise v Hinda-Mbazira & Others 2013 (1) NR 19 (LC) ((section 86(2); six-month time period for referral of a dispute involving a dismissal in section 86(2)(a) begins to run when the dispute has crystallised, after exhaustion of internal remedies, and not from the date of the dismissal, finding that this section must be read intertextually with sections 82(7), (8) and (9)); interpretation confirmed on appeal in *National Housing Enterprise v Hinda-Mbazira* 2014 (4) NR 1046 (SC)
Classic Engines CC v Nghikofa 2013 (3) 659 (HC) (not applicable to an action for damages for breach of an employment contract, since conciliator and arbitrator have no power to award damages); see also *Nghikofa v Classic Engines CC* 2014 (2) NR 314 (SC) (section 86(2) of Act does not require that breach of contract claim be referred to Labour Commissioner, discussed in course of considering prospects of success on merits in condonation application)
Namibia Development Corporation v Mwandangi & Others 2013 (3) NR 737 (LC) (section 86(2)(c) is peremptory and allows for no power of amelioration)
Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC) (section 86(7))
National Housing Enterprise v Hinda-Mbazira 2014 (4) NR 1046 (SC) (section 86(16)(a))
Life Office of Namibia Ltd (Namlife) v Amakali & Another 2014 (4) NR 1119 (LC) (section 86(18): consequence of non-compliance when arbitration award delivered after 30-day time limit)
Shaama v Roux 2015 (1) NR 24 (LC) (application of section 86(2))
Purity Manganese (Pty) Ltd v Katjivena & Others 2015 (2) NR 418 (LC) (various provisions of section 86 considered, including section 86(7))

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC) (section 86(15))
International University of Management v Torbitt & Others 2015 (3) NR 698
(LC) (interpretation of “must” in section 86(18))
Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC)
(section 86(18))
Negonga & Another v Secretary to Cabinet & Others 2016 (3) NR 670 (HC)
Tow-In Specialist CC v Urinavi 2016 (3) NR 829 (LC)(section 86(16))

section 87:

National Housing Enterprise v Hinda-Mbazira 2014 (4) NR 1046 (SC)
(section 87(1)(b): Labour Court not required to make an arbitration
award an order of court)

section 89:

Samcor Diamond Mining Ltd v Hercules 2010 (1) NR 304 (HC) (service of
arbitration award and noting of appeal in terms of sections 89(2) and
129, read together with section 89(18))

Shoprite Namibia (Pty) Ltd v Paulo & Another 2010 (2) NR 475 (LC) (appeal
against arbitration award); *Paulo v Shoprite Namibia (Pty) Ltd &
Others* 2013 (1) NR 78 (LC) (where arbitrator’s award adverse to
employer is suspended pending appeal under section 89(6)-(8),
employer has no obligation to remunerate employee unless employee
has invoked section 89(9)(b)(ii)).

Nedbank Ltd v Louw 2011 (1) NR 217 (LC)

Telecom Namibia Ltd v Nangolo & Others (LC 33/2009) [2012] NALC 15 (28
May 2012) (section 89(2); confirmed on appeal in *Telecom Namibia
Ltd v Nangolo & Others* 2015 (2) NR 510 (SC))

House and Home (a trading division of Shoprite (Pty) Ltd v Majiedt & Others
2013 (2) NR 333 (LC) (section 89(1)(a): question of law v question of
fact)

Purity Manganese (Pty) Ltd v Shikongo NO & Others 2013 (2) NR 473 (LC)
(section must be read in conjunction with Arts 12 and 18 of
Constitution)

Lungameni & Others v Hagen & Another 2014 (2) NR 352 (LC)

Puma Chemicals v Labour Commissioner & Another 2014 (2) NR 355 (LC)
(agreeing with *Lungameni & Others v Hagen & Another* 2014 (2) NR
352 (LC))

Kamwi v Namibia National Veterans Association 2014 (2) NR 504 (LC)

Namibia Dairies (Pty) Ltd v Alfeus & Another 2014 (4) NR 1115 (LC)

Atlantic Chicken Co (Pty) Ltd v Mwandingi & Another 2014 (4) NR 915 (SC)
(gross irregularities by arbitrator)

*Strauss v Namibia Institute of Mining & Technology, Arandis Campus &
Others* 2014 (3) NR 782 (LC) (gross irregularity by arbitrator)

Walvis Bay Municipal Council v Kangumu 2014 (4) NR 978 (LC) (appeal
against award of arbitrator can be made on *any* question of law, and is
not limited to questions of law raised by party in conciliation and
subsequent arbitration)

National Housing Enterprise v Hinda-Mbazira 2014 (4) NR 1046 (SC)
(determination of dispute in terms of s. 89(10)(a), overturning referral
of dispute back to arbitrator in *National Housing Enterprise v Hinda-
Mbazira & Others* 2013 (1) NR 19 (LC))

Shaama v Roux 2015 (1) NR 24 (LC) (appeal v review of arbitrator’s decision;
questions of law versus questions of fact under section 89(1) and
defects in arbitration proceedings under section 89(4))

Bobo v Ohorongo Cement (Pty) Ltd 2015 (1) NR 40 (LC) (leave to appeal
Labour Court decision required under section 18(2)(c) of High Court)

- Act 16 of 1990 when Court refused condonation in appeal against arbitration award in terms of this section of the Labour Act)
- Novanam Ltd v Rinquest* 2015 (2) NR 447 (LC) (section 89(1)(a): question of law v question of fact)
- Methealth Namibia Administrators (Pty) Ltd v Matuzee & Others* 2015 (3) NR 870 (LC) (section 89(1)(a): question of law)
- Swartbooi & Another v Mbengela NO & Others* 2016 (1) NR 158 (SC) (review of arbitration proceedings confined to defects set forth in s. 89(5); Art 18 of the Namibian Constitution does not apply to arbitration tribunals)
- Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd* 2016 (2) NR 554 (SC) (ambit of question of law in section 89(1)(a); overrules *Paulo v Shoprite Namibia (Pty) Ltd & Others* 2013 (1) NR 78 (LC) on interpretation of “question of law *alone*” in section 89(1)(a))
- Swart v Tube-O-Flex Namibia (Pty) Ltd & Another* 2016 (3) NR 849 (SC) (section 89(1)(a); application of test from *Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd* 2016 (2) NR 554 (SC))
- section 91:
- Labour Supply Chain v Hambata* 2012 (1) NR 313 (LC) (parties may agree to private arbitration only after a dispute has arisen if this is not covered in a collective agreement)
- section 117(1):
- Van Rensburg v Sefofane Air Charters* 2010 (2) NR 554 (LC) (jurisdiction to intervene in disciplinary proceedings should miscarriage of justice otherwise occur)
- Haimbili & Another v Transnamib Holdings Ltd & Others* 2013 (1) NR 201 (LC) (interpretation of section 117(1)(e))
- Kamati v Namibia Rights and Responsibilities Inc* 2013 (2) NR 452 (LC) (Labour Court jurisdiction under section 117(1))
- Meatco v Namibian Food and Allied Workers Union & Others* 2013 (3) NR 777 (LC) (anomaly of section 117(1)(d) discussed; section 117(1)(e) interpreted)
- National Housing Enterprise v Beukes & Others* 2015 (2) NR 577 (SC)
- Namibia Financial Institutions Union (Nafinu) v Nedbank Namibia Ltd & Another* 2015 (4) NR 1161 (SC) (urgent relief under section 117(1)(e) is temporary in nature and not a final order)
- Usakos Town Council v Jantze & Others* 2016 (1) NR 240 (HC) (High Court sitting as such does not have jurisdiction under section 117(1)(i) which confers exclusive jurisdiction on the Labour Court; enforcement of arbitration award encompassed within reference to “any labour matter”)
- section 118:
- Namibia Seaman and Allied Workers Union v Tunacor Group Ltd* 2012 (1) NR 126 (LC)
- Purity Manganese (Pty) Ltd v Katzao & Others* 2012 (1) NR 233 (LC)
- Namibia Estate Agents Board v Like & Another NO* 2015 (1) NR 112 (LC);
TM-S v Namibia Estate Agents Board & Another 2016 (4) NR 1030 (SC)
- section 119(3):
- National Housing Enterprise v Beukes & Others* 2015 (2) NR 577 (SC)
- section 128:
- 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); see also *Government of Namibia v Africa Personnel Services* 2010 (2) NR 537 (HC) (interlocutory order staying implementation of section 128 pending appeal) (court’s

approach discussed in Felicity !Owoses-/Goagoses, “Reading down words in a statute, the courts’ role, and the place of Parliament: The approach of the Namibian courts”, *Namibia Law Journal*, Volume 4, Issue 1, 2012)

Africa Labour Services (Pty) Ltd v The Minister of Labour and Social Welfare & Another 2013 (4) NR 1175 (HC) (upholding constitutionality of section 128 as substituted by Act 2 of 2012)

section 128A:

Kamwi v Namibia National Veterans Association 2014 (2) NR 504 (LC)

Swart v Tube-O-Flex Namibia (Pty) Ltd & Another 2016 (3) NR 849 (SC)

section 129:

Samcor Diamond Mining Ltd v Hercules 2010 (1) NR 304 (HC) (service of arbitration award and noting of appeal in terms of sections 89(2) and 129, read together with section 89(18))

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC)

section 134:

Namibia Estate Agents Board v Like & Another NO 2015 (1) NR 112 (LC);
TM-S v Namibia Estate Agents Board & Another 2016 (4) NR 1030 (SC).

The following cases concern the **Labour Court Rules 2008** in GN 279/2008 –

Rule 6(24):

Dr Matti Kimberg Practice v Mwafufya-Shikongo NO & Others 2014 (3) NR 799 (LC)

Rule 6(26):

Van Rensburg v Sefofane Air Charters 2010 (2) NR 554 (LC)

Rule 10:

Namibia Development Corporation v Mwandangi & Others 2013 (3) NR 737 (LC) (discussed *obiter* as being possibly *ultra vires*)

Rule 14:

Shaama v Roux 2015 (1) NR 24 (LC)

Rule 15:

First National Bank Namibia Ltd v Van der Westhuizen & Another 2012 (1) NR 195 (LC)

Lungameni & Others v Hagen & Another 2014 (2) NR 352 (LC)

Puma Chemicals v Labour Commissioner & Another 2014 (2) NR 355 (LC) (agreeing with *Lungameni & Others v Hagen & Another* 2014 (2) NR 352 (LC))

Rule 17:

Municipal Council of Windhoek v Esau 2010 (2) NR 414 (LC)

Africa Personnel Services (Pty) Ltd v Shipunda & Others 2012 (2) NR 718 (LC) (Rule 17(23) takes precedence over Practice Directives, which apply only where there is no specific rule covering the matter which is at variance with the Practice Directives; Rule 17(25) requires application for condonation even if parties have agreed to extension of time, but should be re-examined in light of fact that duty to provide record lies with adjudicator and not with appellant)

Benz Building Suppliers v Stephanus & Others 2014 (1) NR 283 (LC)

Namibia Dairies (Pty) Ltd v Alfeus & Another 2014 (4) NR 1115 (LC)

Primedia Outdoor Namibia (Pty) Ltd v Kauluma 2015 (1) NR 283 (LC)

Rule 18:

Usakos Town Council v Jantze & Others 2016 (1) NR 240 (HC) (Rule 18(1)).

The following cases concern the **Rules relating to the conduct of conciliation and arbitration before the Labour Commissioner** in GN 262/2008 –

Rule 5:

Purity Manganese (Pty) Ltd v Katjivena & Others 2015 (2) NR 418 (LC)
(meaning of term “must”)

Methealth Namibia Administrators (Pty) Ltd v Matuzee & Others 2015 (3) NR 870 (LC)

Simana v Agribank of Namibia 2016 (4) NR 913 (SC)

Rule 13:

Novanam Ltd v Absalom & Others 2014 (4) NR 1009 (LC)

Rule 14(2):

Purity Manganese (Pty) Ltd v Katjivena & Others 2015 (2) NR 418 (LC)

Rule 18:

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC)

Rule 23:

Standard Bank Namibia v Grace 2011 (1) NR 321 (LC)

Namibia Dairies (Pty) Ltd v Alfeus & Another 2014 (4) NR 1115 (LC)

Primedia Outdoor Namibia (Pty) Ltd v Kauluma 2015 (1) NR 283 (LC)

Rule 27:

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC)

Rule 29:

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC)

Rule 34:

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC)

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);

Kröger v Transnamib Limited (Air Namibia) & Others 1996 NR 168 (SC) (Note: The spellings of *Kröger/Kröger* 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)
Overberg Fishing (Pty) Ltd v Docompo 2012 (1) NR 285 (LC) (termination of fixed term contract by effluxion of time)

fair trial and specificity of complaint:
National Housing Enterprises v Beukes & Others 2011 (2) NR 609 (LC)

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”) (see Lameck Mukondomi, “Dispute of right vis-à-vis dispute of interest: An analysis of *Smit v Standard Bank of Namibia*”, *UNAM Law Review*, Volume 2, Issue 1, 2014, available at <http://unamlawreview.info>)

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 Ackermans (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)

Old Mutual Life Assurance Company (Namibia) Ltd v Symington 2010 (1) NR 239 (SC) (“remuneration”)

Hugo v Council of Municipality of Grootfontein 2015 (1) NR 73 (SC) (“dispute of interests” versus “dispute of rights”)

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 15(1):

Onesmus v Minister of Labour & Another 2010 (1) NR 187 (HC) (status of Labour Court as lower court)

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)

Onesmus v Minister of Labour & Another 2010 (1) NR 187 (HC) (possibility of proceeding under section 18(1) does not oust jurisdiction of High Court under Art 18 of Constitution)

National Housing Enterprises v Beukes & Others 2011 (2) NR 609 (LC) (costs orders)

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 2004 (4) NLLP 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)

Onesmus v Minister of Labour & Another 2010 (1) NR 187 (HC) (amendment of section 21(1) by Act 10/2001 does not affect status of Labour Court as lower court)

Namibia Breweries Ltd v Kaeka & Another 2011 (1) NR 16 (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 Company 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 37(b):
- Old Mutual Life Assurance Company (Namibia) Ltd v Symington* 2010 (1) NR 239 (SC)
- 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 Ackermans (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)

Peace Trust v Beukes 2010 (1) NR 134 (HC) (both procedural requirements and existence of valid and fair reasons for dismissal considered)
Rosh Pinah Zinc Corporation v Muronga 2013 (2) NR 595 (LC) (applied to dismissal on grounds of incapacity; acceptable for employer to offer to accommodate employee in new position at lower remuneration as alternative)

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)
Pinks Family Outfitters (Pty) Ltd t/a Woolworths v Hendricks 2010 (2) NR 616 (LC) (application of section 46(1)(a)(iii))

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)

National Housing Enterprises v Beukes & Others 2011 (2) NR 609 (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 (now repealed), and the **District Labour Court Rules** contained in GN 138/1993 (such courts no longer being in existence) –

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(24):

Shoprите Namibia (Pty) Ltd v Paulo & Another 2010 (2) NR 475 (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 16:
Namibia Breweries Ltd v Kaeka & Another 2011 (1) NR 16 (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(1):
Namibia Breweries Ltd v Kaeka & Another 2011 (1) NR 16 (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 Ackermans (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 the spirit of rule 10 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)
Woermann Brock & Co (Pty) Ltd v Shaanika & Others 2011 (1) NR 98 (LC) (procedure relating to joint complaint)
- Rule 18:
Namibia Beverages v Hoäes 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)
Namibia Breweries Ltd v Kaeka & Another 2011 (1) NR 16 (LC)

Rule 22:

Transnamib Holdings Ltd v Carstens 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 discusses **ILO Convention 158**, which Namibia is *not* party to –
Namibia Development Corporation v Visagie NLLP 1998 (1) 166 NLC (Article 13).

Commentary:

Dr JWF van Rooyen, *Namibian Labour Lexicon, Volume 1, Essential Expressions*, 2003
Dr JWF van Rooyen, *Namibian Labour Lexicon, Volume 2 (Revised Edition), The Labour Act, 2007 A-Z*, 2011, available at www.kas.de
Law Society of Namibia, *Labour Law: An overview of the relevant provisions of the Labour Act, Act 11 of 2007*, undated pamphlet, available at www.lac.org.na
Herbert Jauch, *ILO Fact Boxes: Namibia's Labour Act, No 11 of 2007*, undated, South Africa: ILSSA Project, International Labour Office (ILO), available from the Labour Resource and Research Institute (LaRRI) at <http://larri-namibia.org/>
Colin Fenwick, "Labour law reform in Namibia: Transplant or implant?" in T Lindsey (ed), *Law Reform in Developing and Transitional States*, Oxon, UK: Routledge Studies in Development Economics, 2007
Herbert Jauch and John Nakuta, *Understanding Namibia's Labour Law: A Guide to the Labour Act (No 11 of 2007)*, Windhoek: Labour Resource and Research Institute (LaRRI), 2008, available at <http://larri-namibia.org>
Legal Assistance Centre, *Gender and the Labour Act 11 of 2007*, 2009, available at www.lac.org.na
Dr JWF van Rooyen, *Namibian Labour Lexicon, Volume 2 (revised edition), The Labour Act, 2007 A to Z: A Guide to the Understanding and Application of the Labour Act, 2007 (Act No. 11 of 2007)*, 2011, available at www.kas.de
Collins Parker, *Labour Law in Namibia*, Windhoek: University of Namibia Press, 2012
Frederico Links & Clement Daniels, "Protected Disclosure: Informing the Whistleblowing Debate in Namibia", Institute for Public Policy Research, 2012, available at www.ippr.org.na
Jaco Boltman, "Conciliation and arbitration proceedings: Separating the different

dispute resolution mechanisms – A critical analysis of case law”, *Namibia Law Journal*, Volume 6, Issue 2, 2014

Graham Hopwood, “Encouraging the Reporting of Corruption: Principles Of Whistleblower Protection”, Institute for Public Policy Research, 2016, available at www.ippr.org.na.

Commentary on labour hire in Namibia:

F Nghiishililwa, “Labour hire in Namibia: Constitutional Right or modern slavery?” in N Horn, A Bösl & A du Pisani (eds), *Constitutional Democracy in Namibia: A Critical Analysis after Two Decades*, Konrad Adenauer Stiftung, 2010, available at www.kas.de

Herbert Jauch & Ntwala Mwilima, *Labour Hire in Namibia: Current Practices and Effects*, Labour Resource and Research Institute (LaRRI) for the Ministry of Labour and Social Welfare, 2006, available at <http://larri-namibia.org>

Nico Horn & 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.kas.de

Fritz Nghiishililwa, “The banning of labour hire in Namibia: How realistic is it?”, *Namibia Law Journal*, Volume 1, Issue 2, 2009, available at www.kas.de

A Botes, “The History of Labour Hire in Namibia: A Lesson for South Africa”, [2013] *Potchefstroom Electronic Law Journal* 16, available at www.saflii.org.

Commentary on child labour in Namibia:

D LeBeau & G Spence, *Towards the elimination of the worst forms of child labour in Namibia*, University of Namibia, 2004

Dr Elizabeth M Terry, *Elimination of Child Labour in Namibia: A discussion document on what is known, existing policy and programmes and possible gaps*, Ministry of Labour and Social Welfare, 2007

Dr Elizabeth M Terry, *Child trafficking linked to child labour and commercial sexual exploitation of children in Namibia: A child labour-related rapid assessment study*, Windhoek: Ministry of Labour/ILO, 2007

Children’s engagement in the production of charcoal in Namibia: A child labour-related rapid assessment study, Windhoek: Ministry of Labour and Social Welfare, 2007

Clever Mapaure, “Child labour: A universal problem from a Namibian perspective” in Oliver C Ruppel (ed), *Children’s Rights in Namibia*, Konrad Adenauer Stiftung, 2009, available at www.kas.de

FX 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.kas.de

In-depth study on child labour in the agricultural sector in Namibia: A study of Oshikoto, Ohangwena, Caprivi and Kavango, Windhoek: Labour Resource and Research Institute (LaRRI), 2011.

Commentary on specific labour sectors:

Cons Karamata, *Farm Workers in Namibia: Living and Working Conditions*, Labour Resource and Research Institute (LaRRI), 2006, available at <http://larri-namibia.org>

Hilma Shindondola-Mote, *The plights of Namibia’s domestic workers*, Labour Resource and Research Institute, 2008, available at <http://larri-namibia.org>

Herbert Jauch, Ntwala Mwilima, Hilma Shindondola-Mote, *Service Station Workers in Namibia*, Labour Resource and Research Institute (LaRRI), 2008, available at <http://larri-namibia.org>

- “Minimum Wages for Farm Workers in Namibia”, Labour Resource and Research Institute (LaRRI) for the Namibia Farmworkers Union (NAFWU), 2008, available at <http://larri-namibia.org>
- Hilma Shindondola-Mote, *Uranium mining in Namibia: The mystery behind ‘low level radiation’*, Labour Resource and Research Institute, 2009, available at <http://larri-namibia.org>
- Ute Dieckmann & Theodor Muduva, *Namibia’s Black Gold?: Charcoal Production, Practices and Implications*, Legal Assistance Centre, 2010, available at www.lac.org.na.

Employment Services Act 8 of 2011.

Summary: This Act ([GG 4764](#)) establishes a National Employment Service aimed at achieving full employment in Namibia. The Service consists of an Employment Services Board which plays an advisory role, and an Employment Services Bureau which registers job vacancies and job-seekers, amongst other functions. The Act also requires designated employers to report vacancies and new positions and to provide information about the composition and training of their workforces. It also provides for the licencing of private employment agencies and for the appointment of employment officers to enforce the Act. Portions of the Act were brought into force on 1 September 2012 by GN 194/2012 ([GG 5005](#)): Part 1, Part 4 (except section 26(2)) and Part 5. Part 3 of the Act was brought into force on 15 September 2015 by GN 201/2015 ([GG 5829](#))

Note that the short title in section 35(1) of the Act (as promulgated in *Government Gazette*) is the “Employment Services Act”. However, the headings and contents section in the *Gazette* refer to it as the “Employment Service Act” (with “Service” being singular instead of plural).

Amendments: Act 2/ 2012 ([GG 4925](#)) amends sections 1, 24 and 26, in relation to “labour hire”. This amending Act was brought into force as of 1 August 2012 by GN 136/2012 ([GG 4958](#)) – but GN 136/2012 ([GG 4958](#)) was withdrawn by GN 192/2012 ([GG 5005](#)) on 1 August 2012, while GN 193/2012 ([GG 5005](#)) provides that amending Act 2/2012 will come into force on 1 August 2012, *except for* the provisions in section 10 insofar as they relate to section 26(2)(a)(ii)-(iii) of the Employment Service Act.

Regulations: Employment Service Regulations are contained in GN 62/2013 ([GG 5147](#)).

A separate set of regulations regarding employment services is published in GN 42/2015 ([GG 5702](#)).

Notices: Designations of employers and institutions under section 15(2) of the Act are contained in GN 202/2015 ([GG 5829](#)) (each employer employing 25 or more employees is identified as a designated employer).

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 14/1995 ([GG 1020](#)), as amended by GN 55/1995 ([GG 1044](#)).

INTERNATIONAL LAW

Charter of Fundamental Social Rights in SADC, 2003
†*Constitution of the International Labour Organization (ILO), 1919, as amended*
ILO Convention 29 concerning Forced or Compulsory Labour, 1930
Protocol of 2014 to the Forced Labour Convention, 1930
ILO Convention 87 concerning Freedom of Association and the Right to Organise, 1948
ILO Convention 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949
ILO Convention 105 concerning the Abolition of Forced Labour, 1957
ILO Convention 100 concerning Equal Remuneration, 1951
ILO Convention 111 concerning Discrimination in Respect of Employment and Occupation, 1958
ILO Convention 138 concerning Minimum Age for Admission to Employment, 1973
ILO Convention 144 concerning Tripartite Consultations to Promote the Implementation of International Labour Standards, 1976
ILO Convention 150 concerning Labour Administration: Role, Functions and Organisation, 1978
ILO Convention 158 concerning Termination of Employment at the Initiative of the Employer, 1982
ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999.
**SADC Protocol on Employment and Labour, 2014
**SADC Protocol on the Facilitation of Movement of Persons, 2005

See also Whistleblower Protection Act 10 of 2017 (**CRIMINAL LAW AND PROCEDURE**).

See also National Vocational Training Act 20 of 1994 (**EDUCATION**).

See also Atomic Energy and Radiation Protection Act 5 of 2005 (**ENVIRONMENT**).

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 (conditions of service of employees of the posts and telecommunications companies) (**MEDIA AND COMMUNICATION**).

See also **PUBLIC SERVICE**.

See also Social Security Act 34 of 1994 (**SOCIAL SECURITY**).

See also Export Processing Zones Act 9 of 1995 (**TRADE AND INDUSTRY**).

LAND AND HOUSING

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

Crown Lands (Trespass) Proclamation 7 of 1919.

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

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

Crown Land Disposal Proclamation 13 of 1920.

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

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

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

Land Titles Proclamation 2 of 1921.

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

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

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

Fencing Proclamation 57 of 1921.

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

dividing fences between adjoining properties.

Amendments: This Proclamation is amended by Proc. 13/1923 ([OG 110](#)) , Proc. 18/1925 ([OG 177](#)), Proc. 28/1925 ([OG 180](#)), Ord. 4/1928 ([OG 279](#)), Proc. 22/1935 ([OG 639](#)), Proc. 14/1950 ([OG 1495](#)), Proc. 48/1950 ([OG 1548](#)), Ord. 44/1952 ([OG 1732](#)), Ord. 21/1955 ([OG 1925](#)), Ord. 6/1958 ([OG 2141](#)), Ord. 14/1958 ([OG 2150](#)), Ord. 34/1959 ([OG 2199](#)), Ord. 23/1963([OG 2493](#)) and Ord. 26/1965 ([OG 2636](#)).

It must be read together with Ord. 4/1928 ([OG 279](#)), which concerns contributions towards the costs of dividing fences. It must also be read together with Ord. 6/1957 ([OG 2072](#)) (as amended by Ord. 28/1959 ([OG 2199](#))), which concerns jackal-proof fencing.

Regulations: The Proclamation makes no provision for regulations.

Small Settlements Commonages Subdivision Proclamation 13 of 1926.

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

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

Summary: This Proclamation ([OG 491](#)) empowers the Administrator to set aside portions of land designated as “reserves for natives or Coloured persons” as sites for churches, schools or missions.

Regulations: Pre-independence regulations have not been researched, given that this Proclamation appears to be obsolete.

Amendment of Execution (Mortgaged Properties) Proclamation 6 of 1933.

Summary: This Proclamation ([OG 502](#)) supplements the law relating to the execution of judgements in respect of immovable property, in order to provide assistance to mortgage debtors by providing for suspension periods “in view of the prevailing financial depression”. There is, however, no time limit on its application.

Town Planning Ordinance 18 of 1954.

Summary: This Ordinance ([OG 1846](#)) makes provision for town planning schemes. It was brought into force by Proc. 66/1960 ([OG 2276](#)). The Ordinance and its amendments are repealed by the Urban and Regional Planning Act 5 of 2018 ([GG 6631](#)), which has not yet been brought into force.

Amendments: The Ordinance is amended by Ord. 13/1968 ([OG 2890](#)), Ord. 13/1970 ([OG 3094](#)), Ord. 11/1973 ([OG 3334](#)), Ord. 23/1973 ([OG 3364](#)), Ord. 10/1977 ([OG 3630](#)) and Ord. 5/1979 ([OG 3926](#)).

It is also substantially amended by Act 27/1993 ([GG 761](#)), which makes it consistent with an independent Namibia. It is further amended by Act 15/2000 ([GG 2377](#)) (sections 2, 4, 47).

Application of law: The application of the Ordinance in Export Processing Zones is affected by section 5(e) of the Export Processing Zones Act 9 of 1995 ([GG 1069](#)).

Regulations: Regulations are authorised by section 49 of the Act. Pre-independence regulations have not been researched.

Regulations pertaining to fees are contained in GN 11/2008 ([GG 3983](#)).

Cases: The following cases concern the Ordinance –

Grobbelaar & Another v Walvis Bay Municipality & Another 1997 NR 259 (HC)

Municipal Council of Windhoek v Claudia Properties CC & Another 2015 (1) NR 248 (HC).

The following cases concern the Windhoek Town Planning Scheme prepared in terms of the Ordinance –

Ohlthaver & List Finance & Trading Corporation Ltd & Others v Minister of Regional and Local Government and Housing & Others 1996 NR 213 (SC)

Roland & Others v Chairperson of the Council of the Municipality of Windhoek & Others 2013 (1) NR 12 (HC) (to avoid anomalies, court reading proviso to Regulation 29B(1)(c) of Windhoek Building Regulations, which defines “ground storey” and so assists application of clause 21(3) of Windhoek Town Planning Scheme, to read “any adjoining pavement” instead of “the adjoining pavement”); upheld on appeal on different reasoning in *Chairperson, Council of the Municipality of Windhoek, & Others v Roland & Others* 2014 (1) NR 247 (SC) (clause 21 of Windhoek Town Planning Scheme; clause 21(3) required council to approve building plans of more than two storeys in a residential area after considering stipulated criteria, which did not take place; High Court erred in relying on Regulation 29B(1)(c) of Windhoek Building Regulations to govern meaning of clause 21(3); Reg 29B(6) of Windhoek Building Regulations not relevant)

Municipal Council of Windhoek v Claudia Properties CC & Another 2015 (1) NR 248 (HC).

The following case concerns the Swakopmund Town Planning Amendment Scheme No 12 prepared in terms of the Ordinance –

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

Trespass Ordinance 3 of 1962.

Summary: This Ordinance ([OG 2390](#)) prohibits entry or presence upon land or in buildings without permission of the owner or lawful occupier.

Amendments: The Ordinance is amended by Act 20/1985 ([OG 5140](#)).

Regulations: The Ordinance makes no provision for regulations.

Cases: *S v Mynhardt*; *S v Kuinab* 1991 NR 336 (HC); *S v Williams* 2007 (2) NR 399 (HC).

Townships and Division of Land Ordinance 11 of 1963.

Summary: This Ordinance ([OG 2487](#)) relates to the establishment of townships. The Ordinance and its amendments are repealed by the Urban and Regional Planning Act 5 of 2018 ([GG 6631](#)), which has not yet been brought into force.

Act 5 of 1998 neglects to repeal the Townships and Division of Land Amendment Act 21 of 1998 ([GG 1948](#)) or Government Notice 63 of 1999 ([GG 2083](#)), both of which amend the Townships and Division of Land Ordinance 11 of 1963, but these amendments would have no ongoing effect on their own.

Amendments: The Ordinance is amended by Ord. 36/1967 ([OG 2837](#)), Ord. 7/1969 ([OG 2983](#)), Ord. 2/1970 ([OG 3058](#)), Ord. 10/1973 ([OG 3333](#)), Ord. 17/1975 ([OG 3495](#)), Ord. 9/1977 ([OG 3629](#)), Act 3/1985 ([OG 5092](#)), Act 28/1992 ([GG 490](#)) (which is brought into force by GN 142/1992, [GG 511](#)), Act 21/1998 ([GG 1948](#)) and Act 11/2000 ([GG 2360](#)).

The schedule to the Ordinance is amended by GN 63/1999 ([GG 2083](#)).

Application of law: The application of the Ordinance in Export Processing Zones is affected by section 5(e) of the Export Processing Zones Act 9 of 1995 ([GG 1069](#)).

Regulations: Regulations are authorised by section 36 of the Act. Pre-independence regulations have not been researched.

Regulations pertaining to fees are contained in GN 10/2008 ([GG 3983](#)).

Notices: 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.

Summary: This Act ([RSA GG 1171](#)) concerns restrictions imposed on land by wills and similar instruments. It repeals the SWA Removal or Modification of Restrictions on Immovable Property Proclamation 16 of 1948.

Applicability to SWA: Section 10 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including that portion of the said territory known as the Eastern Caprivi Zipfel and referred to in sub-section 3 of section *three* of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and also in relation to all immovable property in that portion of the said territory known as the ‘Rehoboth Gebiet’ and defined in the First Schedule to Proclamation No. 28 of 1923 of the Administration of the said territory.” Although amendments to the Act in South Africa would have been automatically applicable to SWA, there were no amendments to the Act in South Africa prior to Namibian independence.

Transfer of administration to SWA: Since the Act does not indicate what Minister administered the Act, it is not clear which transfer proclamation, if any, was applicable. However, the date of transfer is not relevant to the content of the statute, as there were no amendments to the law in South Africa prior to Namibian independence.

Regulations: The Act makes no provision for regulations.

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

Summary: This Act ([RSA GG 1554](#)) establishes a Land Tenure Board and provides for the acquisition and development of land in connection with farming purposes.

Applicability to SWA: Section 10A, which was added by RSA Act 67 of 1970, states “This Act and any amendments thereof which may be made from time to time, with the exception of section 5, shall apply also in the territory”, which is defined as “the territory of South West Africa”. (Section 5 concerns the disposal of state land which is not required for or suitable for farming purposes in terms of the *State Land Disposal Act 48 of 1961*.)

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Credit and Land Tenure) Transfer Proclamation (AG 13/1977), dated 18 November 1977. There were no amendments to the Act in South Africa after the date of transfer. The Act was repealed in South Africa by the *Second Community Development Amendment Act 68 of 1982* ([RSA GG 8206](#)), which was not made expressly applicable to SWA.

Section 3(2) of the General Proclamation excluded from transfer the provisions of any transferred law which “provide for or relate to the institution, constitution or control of any juristic person or any board or other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”. This would appear to exclude from transfer the provisions of this Act relating to the Land Tenure Board.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Land Tenure Amendment Act 67 of 1970* ([RSA GG 2862](#))
- *Land Tenure Amendment Act 16 of 1972* ([RSA GG 3458](#))
- *Expropriation Act 63 of 1975* ([RSA GG 4780](#)).

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

Subdivision of Agricultural Land Act 70 of 1970, as amended in South Africa to March 1978.

Summary: This Act controls the subdivision of agricultural land. Generally, subdivision is prohibited unless the Minister of Agriculture has given his consent.

Applicability to SWA: Section 14 states “This Act and any amendment thereof shall apply also in the territory of South West Africa”. Section 1 defines “agricultural land”, “executive committee” and “scheme” accordingly.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Technical Services) Transfer Proclamation (AG 11/1978), dated 2 March 1978. None of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Subdivision of Agricultural Land Amendment Act 12 of 1979* ([RSA GG 6345](#)), the *Subdivision of Agricultural Land Amendment Act 18 of 1981* ([RSA GG 7447](#)) and the *Subdivision of Agricultural Land Amendment Act 33 of 1984* ([RSA GG 9170](#)) – were made expressly applicable to SWA.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Subdivision of Agricultural Land Amendment Act 55 of 1972* ([RSA GG 3531](#))
- *Subdivision of Agricultural Land Amendment Act 19 of 1974* ([RSA GG 4210](#))
- *Subdivision of Agricultural Land Amendment Act 18 of 1977* ([RSA GG 5450](#)).

Certain terminology is amended by the Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

The Act and two of its amending Acts (the *Subdivision of Agricultural Land Amendment Act 55 of 1972* and the *Subdivision of Agricultural Land Amendment Act 19 of 1974*) were repealed in respect of Rehoboth by the Agricultural Land Act 5 of 1981 (Rehoboth) ([Official Gazette 37 of Rehoboth](#)), brought into force on 1 September 1981 by an unnumbered notice (*Official Gazette 41 of Rehoboth*, dated 23 September 1981), which provides a substituted law on the topic in respect of Rehoboth.

Note that this Gazette appears to have been misnumbered as *Official Gazette 38 of Rehoboth*; it bears a handwritten notation altering it to *Official Gazette 37 of Rehoboth*.

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

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

Removal of Restrictions Ordinance 15 of 1975.

Summary: This Ordinance ([OG 3492](#)) provides for the alteration, suspension or removal of restrictions on the usages of land. The Ordinance is repealed by the Urban and Regional Planning Act 5 of 2018 ([GG 6631](#)), which has not yet been brought into force.

Regulations: The Ordinance makes no provision for regulations.

Housing Levy Ordinance 18 of 1976.

Summary: This Ordinance ([OG 3580](#)) 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.

Expropriation Ordinance 13 of 1978.

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

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

Amendments: This Ordinance is amended by the National Transport Corporation Act 21 of 1987 ([OG 5439](#)) (which was repealed by the National Transport Services Holding Company Act 28 of 1998 ([GG 1961](#)) with effect from 1 April 1999).

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

Application: The Ordinance is referenced by the Powers of the SWA Water and Electric Corporation Act 14 of 1980 ([OG 4225](#)), which makes sections 5-18 of the Ordinance applicable to expropriations by the Corporation.

The application of the Ordinance in Export Processing Zones is affected by section 5(e) of the Export Processing Zones Act 9 of 1995 ([GG 1069](#)), and referenced in and section 16 of that Act.

Section 13 of the Airports Company Act 25 of 1998 ([GG 1958](#)), which was brought into force on 5 February by GN 19/1999 ([GG 2045](#)), affects the application of the Ordinance with respect to that Act.

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

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

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

Regulations: The Act makes no provision for regulations.

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

Agricultural Land Act 5 of 1981 (Rehoboth).

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

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

Regulations: Section 22(2) states: “Anything done under any provision of any law repealed by subsection (1) which is not contrary to or inconsistent with any provision of this Act, shall be deemed to have been done under the corresponding provision of this Act.” Section 20 of this Act provides for regulations. However, pre-independence regulations have not been researched, under this Act or the repealed Act.

Squatters Proclamation, AG 21 of 1985.

Summary: This Proclamation ([OG 5047](#)) provides for the removal of persons unlawfully present on land or in buildings, and for the demolition of structures which are unlawfully erected.

Sections 1, 5, 8, 14, 15, 16 and 17 of the Proclamation came into force on the date of publication (30 May 1985) by virtue of section 16 of the Proclamation. Sections 2, 3, 4, 6, 7, 9, 10 and 13 came into force in the territory of South West Africa on 15 November 1986, by virtue of section 16 of the Proclamation read together with AG 28/1986 ([OG 5273](#)).

Sections 11 and 12 of the Proclamation do not appear to have come into force

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

Cases: *Shaanika & Others v Windhoek City Police & Others* 2011 (1) NR 64 (HC), reversed on appeal in 2013 (4) NR 1106 (SC) (declaring sections 4(1) and (3) of the Proclamation unconstitutional, on the grounds that they violate Art 12 of the Constitution on the right of access to courts).

Land Survey Act 33 of 1993.

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

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

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

- RSA GN R.1395/1964 (RSA GG 897)
- RSA GN R.533/1967 (RSA GG 1716)
- RSA GN R.1033/1969 (RSA GG 2439)
- RSA GN R.1126/1969 (RSA GG 2469)
- RSA GN R.2008/1970 (RSA GG 2931)
- RSA GN R.959/1972 (RSA GG 3545)
- RSA GN R.1804/1972 (RSA GG 3677)
- RSA GN R.2320/1974 (RSA GG 4540)
- RSA GN R.844 of 1977 (RSA GG 5549)
- GN 247/1986 (OG 5302)
- GN 34/1988 (OG 5503)
- AG GN 68/1989 (OG 5799)

AG GN 24/1990 (OG 5914)
GN 50/1993 ([GG 636](#))
GN 270/1996 ([GG 1425](#)).

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

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

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

A scale of fees is published in GN 286/1999 ([GG 2253](#)) as amended by GN 17/2016 ([GG 5935](#)) (which substitutes the Schedule).

Agricultural (Commercial) Land Reform Act 6 of 1995.

Summary: This Act ([GG 1040](#)) provides for the acquisition of agricultural land by the Namibian government for the purposes of land reform, and for its redistribution to Namibian citizens “who do not own or otherwise have the use of agricultural land or adequate agricultural land, and foremost to those Namibian citizens who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices”. It also establishes a Land Reform Advisory Commission and a Lands Tribunal.

Part VI (Restriction on Acquisition of Agricultural Land by Foreign Nationals) came into force on the date of publication, 3 March 1995 (section 81(3) of the Act). The remainder of the Act, with the exception of Parts II, III, IV and V, was brought into force on 6 December 1995 by GN 230/1995 ([GG 1214](#)). All the remaining sections were brought into force on 17 October 1996 by GN 271/1996 ([GG 1426](#)).

Amendments: Act 16/2000 ([GG 2378](#)) amends sections 1, 4, and 12, and inserts a new Part establishing a Land Acquisition and Development Fund and a new section 37A. It was brought into force on 29 December 2001 (GN 258/2001, [GG 2678](#)).

Act 2/2001 ([GG 2523](#)) amends section 1, substitutes section 13B, section 18 and certain headings, inserts section 75A, amends section 76 and inserts sections 76A, 76B and 79A. It was brought into force on 29 December 2001 (GN 257/2001, [GG 2678](#)). (Note that the short title of this amending Act is amended by Act 13/2002.)

Act 13/2002 ([GG 2875](#)) makes substantial amendments to the Act. It was brought into force on 1 March 2003 by GN 26/2003 ([GG 2925](#)).

Act 14/2003 ([GG 3096](#)) amends sections 1, 14, 19, 20, and 78.

Act 19/2003 ([GG 3116](#)) amends sections 18 and 76. It was brought into force on 1 April 2004 by GN 56/2004 ([GG 3181](#)).

Act 8/2013 ([GG 5210](#)) amends section 9.

Act 1/2014 ([GG 5428](#)) amends section 1, 17, 20 and 62, and substitutes section 9.

Regulations: Several sets of regulations have been issued under the Act -

Regulations relating to the acquisition of land by foreign nationals are contained in GN 257/1996 ([GG 1411](#))

GN 120/2014 ([GG 5530](#)) purports to amend the Regulations relating to the Acquisition of Land by Foreign Nationals contained in GN 257/1996, but this seems to be an error. The Regulations relating to the Acquisition of Land by Foreign Nationals contained in GN 257/1996 contain only one form, which has no number. GN 120/2014 inserts a Form 1A and a Form 4 after Form 3. The General Regulations in GN 272/196 contain a Form 1 and a Form 2, but no Form 3. Thus, the numbers of the forms in GN 120/2014 do not fit correctly with either of these sets of regulations. However, the forms in GN 120/2014 appear to concern sale and wavier in general rather than being relevant only to foreigner nationals.

There are other errors in GN 120/2014. It states “In these regulations “the Regulations” means the regulations in relation to Acquisition of Agricultural Land by foreign nationals, published under Government Notice No. 257 of 19 September 1996 as amended by Government Notice Nos. 272 of 17 October 1996, 243 of 15 December 2001, 259 of 29 December 2001, 128 of 1 June 2004, 181 of 15 December 2005, 120 of 3 July 2007, 143 of 1 August 2007, and 241 of 6 September 2013.” This statement is incorrect. Regulations relating to the Acquisition of Agricultural Land by Foreign Nationals were published in GN 257/1996, but all of the other Government Notices referred to concern other sets of regulations issued under the Act – with the exception of GN 143/2007, which is not a regulation but a notice issued under regulation 3 of the Land Valuation and Taxation Regulations concerning the dates for a general valuation of agricultural land.

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

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

Regulations on Procedure to Sublease Portion of Farming Unit are contained in GN 241/2013 ([GG 5279](#)).

Regulations relating to the exemption of certain agricultural land from section 17 of the Act are contained in GN 233/2014 ([GG 5613](#)).

Regulations on criteria to be used for expropriation of agricultural land are contained in GN 209/2016 ([GG 6115](#)).

Rules: The **Rules of the Lands Tribunal** are contained in GN 76/1996 ([GG 1289](#)).

Notices: Bodies and associations are designated to appoint members to the Land Reform Commission in GN 98/1995 ([GG 1090](#)).

A *pro forma* lease agreement for farming units in terms of section 37 of the Act is contained in GN 50/1999 ([GG 2075](#)) which is withdrawn by GN 179/2009 ([GG 4337](#)).

Certain land is excluded from the definition of “agricultural land” by GN 248/2009 ([GG 4403](#)), GN 161/2012 ([GG 4978](#)), GN 228/2013 ([GG 5264](#)) and GN 123/2016 ([GG 6037](#)).

Certain agricultural land is excluded from the land tax imposed in terms of section 76 of the Act by GN 68/2015 ([GG 5728](#)).

Documents which must accompany an offer to sell agricultural land to the State are prescribed in GN 227/2016 ([GG 6125](#)).

Associations or bodies involved in agricultural affairs are designated in terms of section 4(1)(e) of the Act in GN 234/2016 ([GG 6135](#)).

Farming units offered for allotment are periodically announced in the *Government Gazette* but have not been listed here. Rates of land tax have also been omitted.

Notices concerning the rates of land tax payable by owners of agricultural land, specific valuations, valuation rolls and the sittings of specific valuation courts have not been recorded here.

Cases:

Müller v Schweiger 2005 NR 98 (HC) (summary of key provisions of Act; contract contravening section 58(1)(b) *void ab initio*); *Schweiger v Müller* 2013 (1) NR 87 (SC) (finding of illegality of contract confirmed on appeal)

Schacht v Schweiger & Another 2005 NR 130 (HC) (*obiter* discussion of section 58(1))

Bahlsen v Nederloff & Another 2006 (2) NR 416 (HC) (sections 1, 58 and 59)

Kessl v Ministry of Lands Resettlement & Others, and Two Similar Cases 2008 (1) NR 167 (HC) (detailed discussion of Act’s requirements for expropriation and constitutionality of expropriation procedure; includes guidelines on correct procedure for expropriation under the Act)

Marot & Others v Cotterell 2012 (1) NR 365 (HC) (purchase of shares in a close corporation does not give the members rights of occupation of immovable property by virtue of their membership but rather by agreement, and is thus *void ab initio* because of non-compliance with section 58(1)(b)); confirmed in *Marot & Others v Cotterell* 2014 (2) NR 340 (SC) (which also notes that a foreign national may not occupy or possess agricultural land for the prohibited periods without ministerial consent in terms of section 58(1)(b), no matter how the right of occupation or possession was acquired; section 58 is not contrary to art 16 of the Namibian Constitution; an indefinite period of time violates the specified time periods in section 58(1)(b)(ii)).

Strauss & Another v Laubuscagne 2012 (2) 460 (SC) (meaning of “alienate” in section 1; contractual agreement *in fraudem legis* because simulated to circumvent Act)

Meroro v Minister of Lands, Resettlement and Rehabilitation & Others 2015 (2) NR 526 (SC) (section 53; assignment under section 53(1) must take place in terms of the applicable law of succession)

Gunchab Farming CC & Another v Barnard & Another 2015 (2) NR 587 (HC) (section 17 before and after amendment by Act 13/2002)

Locke v Van der Merwe & Others 2016 (1) NR 1 (SC) (effect of section 17(2) as amended by Act 13/2002; meaning of “until” in that provision)

Von Wiedts v Minister of Lands and Resettlement & Another 2016 (2) NR 500 (HC) (constitutionality of Act 13/2002 cannot be challenged as a collateral issue in the course of enforcement procedures)

Buchholz NO & Another v Ewert & Others 2016 (2) NR 511 (HC) (interpretation and application of section 17(1))

Wyss & Another v Hungamo & Others 2016 (4) NR 1054 (HC) (section 58(1)(b); effect of section 62(1)(a) prior to its repeal).

Commentary:

- Sam K Amoo, “Land Tenure and Land Reform in Namibia”, 3 (1) *Review of Southern African Studies* 1 (1999)
- Sam K Amoo, “Towards comprehensive land tenure systems and land reform in Namibia”, 17 (1) *South African Journal on Human Rights* 87 (2001)
- Sidney 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
- Bertus de Villiers, *Land Reform – Issues and Challenges: A comparative overview of experiences in Zimbabwe, Namibia, South Africa and Australia*, Johannesburg: Konrad Adenauer Foundation, 2003, available at www.kas.de
- Dr Christina Treeger, *Legal analysis of farmland expropriation in Namibia*, Namibia Institute for Democracy, 2004, available at www.kas.de
- Legal Assistance Centre, *Our Land We Farm: An analysis of the Namibian Commercial Agricultural Land Reform Process*, 2005, available at www.lac.org.na
- Willem Odendaal, *Confiscation or Compensation?: An analysis of the Namibian Commercial Agricultural Land Reform Process*, Legal Assistance Centre, 2005, available at www.lac.org.na
- Sidney L 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
- Sidney L Harring and Willem Odendaal, *Kessl: A new Jurisprudence for Land Reform in Namibia?*, Legal Assistance Centre, 2008, available at www.lac.org.na
- Phanuel Kaapama, “Commercial land reforms in postcolonial Namibia: What happened to liberation struggle rhetoric?” in H Melber (ed), *Transitions in Namibia: What Changes for Whom?*, Uppsala: Nordiska Afrikainstitutet, 2007
- Cornelia Glintz, “The High Court of Namibia: Günther Kessl v Ministry of Lands and Resettlement and 2 others: case no. 27/2006 and 266/2006, a test case for the Namibian land reform programme”, 42 (2) *Verfassung und Recht in Übersee* 263 (2009)
- Wolfgang Werner and Willem Odendaal, *Livelihoods after Land Reform*, Legal Assistance Centre, 2010, available at www.lac.org.na.

National Housing Enterprise Act 5 of 1993.

Summary: This Act ([GG 687](#)) provides for the continued existence of a corporation to provide for the housing needs of the inhabitants of Namibia, changes its name from the “National Building and Investment Corporation” to the “National Housing Enterprise” and sets forth its powers, duties and functions. It repeals the National Building and Investment Corporation of South West Africa Proclamation (AG 60/1978).

Amendments: Act 32/2000 ([GG 2463](#)), which was brought into force on 5 March 2001 by GN 37/2001 ([GG 2492](#)), amends sections 1, 4, 5, 6, 8, 9, 10, 14, 15, 18, 20, 22, 23 and 26.

The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 5, 6, 8 and 10.

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

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

National Housing Development Act 28 of 2000.

Summary: This Act ([GG 2459](#)) establishes a National Housing Advisory Committee to advise on housing programmes, and provides for Housing Revolving Funds to be established by regional and local authorities to be used for low-cost housing. It further provides for the establishment of Decentralised Build Together Committees for each region, to deal with applications for assistance from the Housing Revolving Funds. The Act repeals the Native Housing Levy and Contributions Ordinance 22 of 1961 and the Housing Ordinance of the Administration of Coloureds 4 of 1983. The Act was brought into force on 5 March 2001 by GN 36/2001 ([GG 2492](#)).

Regulations: Regulations were contained in GN 44/2001 ([GG 2492](#)), but these were revoked by GN 57/2001 ([GG 2507](#)).

Appointments: The National Housing Advisory Committee is announced in GN 188/2001 ([GG 2615](#)). Committee members are appointed in GN 155/2003 ([GG 3019](#)), GN 258/2004 ([GG 3334](#)), GN 110/2006 ([GG 3672](#)), GN 34/2008 ([GG 3991](#)), GN 238/2013 ([GG 5274](#)) and GN 224/2018 ([GG 6710](#)). Alternate committee members are appointed in GN 24/2009 ([GG 4216](#)).

Communal Land Reform Act 5 of 2002.

Summary: This Act ([GG 2787](#)) provides for the allocation of rights in respect of communal land. It establishes Communal Land Boards and provides for the rights and powers of traditional leaders and Communal Land Boards in relation to communal land. The Act was brought into force on 1 March 2003 by GN 33/2003 ([GG 2926](#)). This is also the relevant date in respect of section 18 (on fencing), and section 28(2) and (3) (the date which begins the three-year period for application for recognition of existing customary land rights and fences). See GN 34-36/2003 ([GG 2926](#)).

The Act repeals the *Development Trust and Land Act 18 of 1936*, the *South West Africa Native Affairs Administration Act 56 of 1954* and the *Administration of the South African Bantu Trust in South West Africa Proclamation, AG 19 of 1978*.

Amendments: Act 11/2005 ([GG 3550](#)) amends section 1 and Schedule 1 of the Act. Its effect is to add and amend certain definitions, to incorporate certain portions of unalienated State land into existing communal land areas and to replace an incorrect reference in the description of the Damaraland Communal Land Area.

Proc. 9/2013 ([GG 5150](#)) and Proc. 27/2013 ([GG 5264](#)) amend Schedule 1 of the Act.

Act 13/2013 ([GG 5385](#)), which was brought into force on 1 December 2016 by GN 286/2016 ([GG 6188](#)), amends sections 1, 23, 28, 31, 44 and inserts section 17B and Part 3.

Note that GN 286/2016 is correctly numbered in the Contents section of GG 6188, but the actual Government Notice is misnumbered as GN 287/2016.

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

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

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

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

Designation of areas for leasehold: Areas are designated for leasehold for agricultural purposes as follows:

Caprivi Communal Land Board – GN 126/2007 ([GG 3878](#))

Note that there are two *Government Gazettes* numbered as GG 3878 and dated 16 July 2007. The correct version states at the top: “This *Gazette* replaces *Government Gazette* No. 3878 of 16 July 2007.”

Kavango Communal Land Board – GN 98/2005 ([GG 3479](#)), GN 61/2006 ([GG 3620](#)), GN 125/2007 ([GG 3878](#)), GN 127/2007 ([GG 3878](#)) and GN 129/2007 ([GG 3878](#))

Note that there are two *Government Gazettes* numbered as GG 3878 and dated 16 July 2007. The correct version states at the top: “This *Gazette* replaces *Government Gazette* No. 3878 of 16 July 2007.”

Kavango East Communal Land Board – GN 37/2014 ([GG 5433](#)), GN 208/2017 ([GG 6384](#))

Ohangwena Communal Land Board – GN 128/2007 ([GG 3878](#)).

Note that there are two *Government Gazettes* numbered as GG 3878 and dated 16 July 2007. The correct version states at the top: “This *Gazette* replaces *Government Gazette* No. 3878 of 16 July 2007.”

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

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

Recognition of existing land rights: GN 44/2006 ([GG 3591](#)) requires all persons issued with a right to occupy communal land (*other than* a right under customary law) to apply for recognition of that right and the grant of a leasehold, and for authorisation to retain any existing fences, within three years of the date of publication of the notice (15 February 2006); the effective date for applying for the recognition of existing rights was extended to the end of February 2012 by GN 18/2009 ([GG 4210](#)) and then to the end of February 2014 by GN 104/2012 ([GG 4929](#)).

In terms of section 28 of the Act, GN 45/2006 ([GG 3591](#)) similarly requires all persons with existing customary land rights to apply for the recognition and registration of such rights and for authorisation to retain any existing fences, within three years of the date of publication of the notice (15 February 2006); the effective date was extended to the

end of February 2012 by GN 19/2009 ([GG 4210](#)), then to the end of February 2014 by GN 140/2012 ([GG 4958](#)) and then extended indefinitely by GN 19/2014 ([GG 5416](#)).

GN 19/2014 states: “Under subsection (3) of section 28 of the Communal Land Reform Act, 2002 (Act No. 5 of 2002), I, further extend the period within which an application may be made for recognition of existing customary land rights in terms of subsection (2) of that section, as notified by Government Notice No. 140 of 1 June 2012, with effect from 1 March 2014 until further notice.”

Establishment of Communal Land Boards: Twelve communal land boards are established by GN 203/2003 ([GG 3060](#)), which is replaced by GN 18/2014 ([GG 5416](#)) to take into account the split of the Kavango Region into two new regions (Kavango East and Kavango West) and the renaming of two regions (Caprivi to Zambezi and Karas to //Karas).

Cases:

Shingenge v Hamunyela 2004 NR 1 (HC) (whilst not dealing with the statute, this case is relevant to communal land; it concerns an *actio rei vindictio* in respect of fencing material used in a fence erected on communal land)

Uvhungu-Vhungu Farm Development CC v Minister of Agriculture, Water and Forestry 2009 (1) NR 89 (HC) (whilst not dealing with the statute, this case is relevant to communal land; it concerns a successful application for *mandament van spolie* by a party occupying communal land in terms of an agreement with government)

Hikumwah & Others v Nelumbu & Others 2015 (4) NR 955 (HC) (brief discussion of appointment in terms of section 4(1) and removals in terms of section 6(3) at paras 158-162, but issue had become moot and was therefore not decided by court)

Mashahu & Others v Katima Mulilo Town Council & Others 2016 (2) NR 586 (HC) (person claiming customary land right must identify category of right under section 21; impact of establishment of local authority under section 15(2); section 28).

Commentary:

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

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

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

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

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

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

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

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

- Sidney L Harring & Willem Odendaal, “*God stopped making land!*”: *Land Rights, Conflict and Law in Namibia’s Caprivi Region*, Windhoek: Legal Assistance Centre, 2012, available at www.lac.org.na
- Wolfgang Werner, “*What has happened has happened*”: *The Complexity of Fencing in Namibia’s Communal Areas*, Windhoek: Legal Assistance Centre, 2012, available at www.lac.org.na.
- Wolfgang Werner, “Tenure reform in Namibia’s communal areas”, 18 *Journal of Namibian Studies* 67 (2015).

Sectional Titles Act 2 of 2009.

Summary: This Act ([GG 4259](#)) provides for the division of buildings into sections and common property, and the acquisition of separate ownership in sections coupled with joint ownership in common property. It repeals the *Sectional Titles Act 66 of 1971*. It was brought into force on 15 December 2014 by GN 252/2014 ([GG 5633](#)).

Regulations: Regulations made under the previous Act survived pursuant to section 61(11) of this Act, but GN 223/2014 ([GG 5604](#)) repealed all the regulations made under the previous Act and their amendments (if any).

Regulations issued under this Act are contained in GN 223/2014 ([GG 5604](#)).

Rules: Rules for sectional titles are contained in GN 224/2014 ([GG 5604](#)).

Cases: The following case deals with the *Sectional Titles Act 66 of 1971 – Trustco Insurance Ltd t/a Legal Shield Namibia & Another v Deeds Registries Regulation Board & Others* 2010 (2) NR 565 (HC), 2011 (2) NR 726 (SC) (regulations setting tariff of fees under section 40 of Act not in violation of Art 21(1)(j) or Art 18 of Constitution).

Flexible Land Tenure Act 4 of 2012.

Summary: This Act ([GG 4963](#)) creates new forms of land title designed to be simpler and cheaper to administer than existing forms of land title, and creates mechanisms for the registration of these new forms of title, which include “starter title” and “land hold title”. The Act was brought into force on 31 May 2018 by GN 100/2018 ([GG 6607](#)).

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

Notices: GN 102/2018 ([GG 6607](#)) establishes a Land Rights Office in Windhoek, to serve the whole of Namibia, pursuant to section 4 of the Act.

Commentary:

Søren Fauerholm Christensen, Wolfgang Werner and Pia Dahl Højgaard, “Innovative Land Surveying and Land Registration in Namibia”, Working Paper 93 of the Development Planning Unit, University College London, 1999, available at www.wholesem.ac.uk/bartlett/dpu/publications/latest/publications/dpu-working-papers/WP93.pdf

Søren Fauerholm Christensen, “The Flexible Land Tenure System – The Namibian solution: Bringing the informal settlers under the register”, Expert Group Meeting on secure land tenure: new legal frameworks and tools, UN-Gigiri in

- Nairobi, Kenya, 10-12 November 2004, available at www.fig.net/resources/proceedings/2004/nairobi_2004_comm7/papers/ts_02_2_christensen.pdf
- Søren Fauerholm Christensen, “The Flexible Land Tenure System – The Namibian solution: Bringing the informal settlers under the register” [abbreviated version of 2004 conference paper], GIM International, 2005, available at www.gim-international.com/content/article/flexible-land-tenure-in-namibia?output=pdf
- A Place We Want to Call Our Own: A study on land tenure policy and securing housing rights in Namibia*, Legal Assistance Centre, 2005
- Charl-Thom Bayer, “Namibia-The Failure of Institutions”, *The Namibian*, 3 April 2012, www.namibian.com.na/index.php?id=93641&page=archive-read
- Dr Kennedy Gastorn, “Effectiveness of flexible land tenure in unplanned urban areas in the SADC region: a case study of Tanzania and experiences from Zambia and Namibia”, *SADC Law Journal* 2013 (1) (available from Juta)
- Willem Odendaal, “The Flexible Land Tenure System Experience in Namibia: an affordable, secure and sustainable solution for low-income households?”, paper for World Bank Conference on Land and Poverty, Washington, DC, 24-27 March 2014 (available from Legal Assistance Centre)
- Åse Christensen, “The new Flexible Land Tenure Act: an update”, Document No. 2/2015, Integrated Land Management Institute (ILMI), Namibia University of Science and Technology (NUST), October 2015, available at <http://ilmi.nust.na/sites/default/files/ILMI-CHRISTENSEN-The-new-flexible-land-tenure-act-An-update.pdf>
- Elke Matthaei and Prisca Mandimika, “The Flexible Land Tenure System in Namibia: Integrating Urban Land Rights into the National Land Reform Programme”, Annual World Bank Conference on Land and Poverty, Washington, DC, 2015
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***Urban and Regional Planning Act 5 of 2018.**

Summary: This Act ([GG 6631](#)) consolidates the laws relating to urban and regional planning, and provides a legal framework for spatial planning. It establishes the Urban and Regional Planning Board, which replaces the Namibia Planning Advisory Board (NAMPAB) and the Townships Board. It also covers urban zoning and subdivision, as well as structure plans and the establishment of new townships. It repeals the Town Planning Ordinance 18 of 1954, the Townships and Division of Land Ordinance 11 of 1963 and the Removal of Restrictions Ordinance 15 of 1975. The Act will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

The Act neglects to repeal the Townships and Division of Land Amendment Act 21 of 1998 ([GG 1948](#)) or Government Notice 63 of 1999 ([GG 2083](#)), both of which amend the Townships and Division of Land Ordinance 11 of 1963, but these amendments would have no ongoing effect on their own.

Regulations: The Act contains a savings clause. Section 132(2) of the Act provides that, unless otherwise provided in the Act, any regulation issued under any of the repealed laws must be regarded as having been issued in terms of the corresponding provision of this Act:

Regulations pertaining to fees were issued under the Town Planning Ordinance 18 of 1954 in GN 11/2008 ([GG 3983](#)). Pre-independence regulations issued under that Ordinance have not been researched.

Regulations pertaining to fees were issued under the Townships and Division of Land Ordinance 11 of 1963 in GN 10/2008 ([GG 3983](#)). Pre-independence regulations issued under that Ordinance have not been researched.

The Removal of Restrictions Ordinance 15 of 1975 made no provision for regulations.

Notices: Section 132(2) of the Act provides that, unless otherwise provided in the Act, any notice, rule, authorisation, appointment or other act done under any of the repealed laws must be regarded as having been done in terms of the corresponding provision of this Act.

Notices relating to specific townships issued under the Townships and Division of Land Ordinance 11 of 1963 have not been recorded.

Cases: The following cases concern the **Town Planning Ordinance 18 of 1954** –
Grobbelaar & Another v Walvis Bay Municipality & Another 1997 NR 259 (HC)
Municipal Council of Windhoek v Claudia Properties CC & Another 2015 (1) NR 248 (HC).

The following cases concern the **Windhoek Town Planning Scheme** prepared in terms of the Town Planning Ordinance 18 of 1954, and which remains in place in terms of section 133(1) of the Act –

Ohlthaver & List Finance & Trading Corporation Ltd & Others v Minister of Regional and Local Government and Housing & Others 1996 NR 213 (SC)

Roland & Others v Chairperson of the Council of the Municipality of Windhoek & Others 2013 (1) NR 12 (HC) (to avoid anomalies, court reading proviso to Regulation 29B(1)(c) of Windhoek Building Regulations, which defines “ground storey” and so assists application of clause 21(3) of Windhoek Town Planning Scheme, to read “any adjoining pavement” instead of “the adjoining pavement”); upheld on appeal on different reasoning in *Chairperson, Council of the Municipality of Windhoek, & Others v Roland & Others* 2014 (1) NR 247 (SC) (clause 21 of Windhoek Town Planning Scheme; clause 21(3) required council to approve building plans of more than two storeys in a residential area after considering stipulated criteria, which did not take place; High Court erred in relying on Regulation 29B(1)(c) of Windhoek Building Regulations to govern meaning of clause 21(3); Reg 29B(6) of Windhoek Building Regulations not relevant)

Municipal Council of Windhoek v Claudia Properties CC & Another 2015 (1) NR 248 (HC).

The following case concerns the **Swakopmund Town Planning Amendment Scheme No 12** prepared in terms of the Town Planning Ordinance 18 of 1954, and which

remains in place in terms of section 133(1) of the Act –

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

The following case concerns the **Townships and Division of Land Ordinance 11 of 1963** –

Erongo Regional Council v Wlotzkasbaken Home Owners Association 2009 (1) NR 252 (SC) (discussion of township development process applied to Wlotzkasbaken).

COMMENTARY

Sidney L Harring, “The Constitution of Namibia and the ‘rights and freedoms’ guaranteed communal land holders: resolving the inconsistency between article 16, article 100, and schedule 5”, 12 (3) *South African Journal on Human Rights* 467 (1996)

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

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

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

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

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

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

Els Sweeney-Bindels, “Housing Policy and Delivery in Namibia”, Institute for Public Policy Research, 2011, available at www.ippr.org.na

Felicity !Owoses-/Goagoses, *Planning Law in Namibia*, Cape Town: Juta & Co, 2013 (reviewed by Johannes D K Kariseb in *UNAM Law Review*, Volume 2, Issue 1, 2014, available at <http://unamlawreview.info>)

Samuel K Amoo, *Property Law in Namibia*, Pretoria: Pretoria University Law Press, 2014, available at www.pulp.up.ac.za/pdf/2014_01/2014_01.pdf (reviewed by JD Kennedy Kariseb in *Namibia Law Journal*, Volume 8, Issue 1, 2016)

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Harald Sippel, “Land matters in Namibia: The issue of land and the Constitution” in Nico Horn & Manfred O Hinz, eds, *Beyond a Quarter Century of Constitutional Democracy: Process and Progress in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2017

Ellison Tjirera & Christian Harris, “Apparition(s) of the Past: Instantiations of Planning Law in Namibia” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017

Joe Lewis, “Law Reform for Improved Delivery of Land to the Urban Poor” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017

Dietrich Rimmert and Pauline Ndhlovu. "Housing in Namibia: Rights, Challenges and Opportunities", Institute for Public Policy Research, 2018, available at www.ippr.org.na.

See also 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 Namibia Qualifications Authority Act 29 of 1996 (occupational standards for surveyors) (**EDUCATION**).

See also **LANDLORD AND TENANT**.

See also *Formalities in Respect of Contracts of Sale of Land Act 71 of 1969* and *Sale of Land on Instalments Act 72 of 1971* (**PURCHASE AND SALE**).

See also Transfer Duty Act 14 of 1993 (**REVENUE**).

LAND AND HOUSING PROFESSIONS

Estate Agents Act 112 of 1976, as amended in South Africa to April 1978.

Summary: This Act ([RSA GG 5221](#)) 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”. It was amended in SWA by Act 28 of 1987 to state that the Act applied to SWA, but not the amendments: “This Act shall 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 (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978. There were no amendments to the Act in South Africa prior to the date of transfer. (The *Estate Agents Amendment Act 60 of 1978* came into force on the date of its publication, 17 May 1978, shortly after the date of transfer.) None of the six amendments to the Act in South Africa after the date of transfer and prior to Namibian independence were made expressly applicable to SWA. (This was confirmed by the 1987 amendment referred to above.)

Amendments: Act 28/1987 ([OG 5476](#)), which is brought into force on 1 April 1988 by AG 5/1988 ([OG 5514](#)), amends the Act substantially.

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)), which places certain duties on estate agents and on the Estate Agents Board.

Regulations: Act 28/1987 ([OG 5476](#)) states: “The regulations published under section 33 of the principal Act in the *Government Gazette* of the Republic of South Africa which were of force and effect in the Republic immediately before the commencement of this Act shall, subject to the provisions of subsection (2), apply in the territory of South West Africa as if it were made by the Cabinet under the said section 33 and published in the *Official Gazette* on the date of commencement of this Act.” This amending Act also contains rules about how certain terms in the South African regulations are to be construed, and amends “the regulations published by Government Notice R.1409 in *Government Gazette* 8783 of 1 July 1983”.

Pre-independence regulations have not been comprehensively researched. The ones listed below have been amended since independence.

Regulations relating to Trust Account of an Estate Agent and Investment of Trust Moneys are contained in RSA Government Notice R.1472 of 1977 (RSA GG 5694), as amended by RSA Government Notice R.604/1979 (RSA GG 6364), RSA Government Notice R.2499/1981 (RSA GG 7913) and GN 221/2015 ([GG 5845](#)) (which states that it amends the regulations in RSA Government Notice R.604/1979). Act 28/1987 ([OG 5476](#)) contains some rules of construction which apply to these regulations.

Regulations relating to the Standard of Training of Estate Agents are contained in RSA GN R.1409/ 1983 (RSA GG 8783), as amended by Act 28/1987 ([OG 5476](#)), GN 221/1996 ([GG 1395](#)) and GN 220/2015 ([GG 5845](#)). Act 28/1987 ([OG 5476](#)) also contains some rules of construction which apply to these regulations.

Regulations relating to Issue of Fidelity Fund and Registration Certificates are contained in RSA GN R.1798 of 1986 (RSA GG 10403), AG GN 97/1989 ([OG 5844](#)), GN 222/1996 ([GG 1395](#)) and GN 222/2015 ([GG 5845](#)). These Regulations are also affected by a correction notice contained in RSA Government Notice R.2106 of 1986 (RSA GG 10476), but the correction affects only the Afrikaans text. Act 28/1987 ([OG 5476](#)) contains some rules of construction which apply to these regulations.

Rules: The most recent Code of Conduct published under this Act is contained in GN 16/1996 ([GG 1242](#)).

Architects' and Quantity Surveyors' Act 13 of 1979.

Summary: This Act ([OG 4029](#)) 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 force, with the exception of section 13(1)(b), on 1 January 1980 by AG 36/1979 ([OG 4057](#)). Section 13(1)(b) was brought into force on 2 May 1983 by AG Proc. 10/1983 ([OG 4773](#)).

Amendments: Act 11/1992 ([GG 420](#)) 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: Regulations are authorised by section 18 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Fees: 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 105/2013 ([GG 5183](#)) provides for a 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: Previous minimum hourly fees were set in GN 232/2009 ([GG 4386](#)), GN 197/2006 ([GG 3738](#)), GN 145/2005 ([GG 3529](#)), GN 156/2002 ([GG 2810](#)) and GN 237/1997 ([GG 1741](#)) as corrected by GN 94/1992 ([GG 449](#)).

Exemptions: 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](#)).

Exemptions of listed persons from registration, pursuant to section 23(1) read with section 11, were originally contained in GN 87/2017 ([GG 6285](#)), but this notice was

repealed by GN 297/2017 ([GG 6472](#)).

Appointments: Members of the Namibian Council for Architects and Quantity Surveyors are 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](#)), GN 207/2009 ([GG 4357](#)), GN 141/2010 ([GG 4523](#)) and GN 217/2016 ([GG 6125](#)).

Cases: *Kondjeni Nkandi Architects & Another v Namibian Airports Company Ltd* 2016 (1) NR 223 (HC).

Professional Land Surveyors', Technical Surveyors' and Survey Technicians' Act 32 of 1993.

Summary: This Act ([GG 769](#)) 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 repeals the Land Surveyors' Ordinance 10 of 1963 and the Land Surveyors' Registration Act 14 of 1950. It was brought into force on 1 June 1994 by GN 85/1994 ([GG 863](#)).

Amendments: Act 16/1995 ([GG 1155](#)) 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](#)).

Notices: The Institute of Land Surveyors is recognised as an approved society in GN 264/1998 ([GG 1982](#)).

Fees: Tariffs of fees are published from time to time, with the new tariffs replacing the previous ones. The current tariffs (with related regulations) are contained in GN 196/2015 ([GG 5820](#)).

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](#)).

Town and Regional Planners Act 9 of 1996.

Summary: This Act ([GG 1354](#)) establishes a Namibian Council for Town and Regional Planners and provides for the registration and training of town and regional planners. It was brought into force on 20 July 1998 by GN 170/1998 ([GG 1909](#)).

Amendments: Act 32/1998 ([GG 1994](#)) (which is deemed to have come into force 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](#)), GN 82/2010 ([GG 4473](#)) and GN 1/2014 ([GG 5389](#)) (all of which amend Annexure A).

Fees: Minimum fees and related guidelines are set forth in GN 62/2009 ([GG 4237](#)), as amended by GN 240/2009 ([GG 4391](#)) and GN 86/2014 ([GG 5497](#)).

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.

***Property Valuers Profession Act 7 of 2012.**

Summary: This Act ([GG 4973](#)) establishes the Namibian Council for Property Valuers Profession and provides for the registration of professional valuers and related professionals and trainees. The Act will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Amendments: Act 2/2018 ([GG 6563](#)) amends several sections of the Act.

Regulations: Regulations are authorised by section 34 of the Act, but none have yet been promulgated.

Appointments: Appointments to the Namibian Council for Property Valuers Profession are announced in GN 304/2013 ([GG 5344](#)).

See also Namibia Qualifications Authority Act 29 of 1996 (occupational standards) (**EDUCATION**).

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 ([RSA GG 2318](#)) 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.” Although amendments to the Act in South Africa would have been automatically applicable to SWA, there were no amendments to the Act in South Africa prior to Namibian independence.

Transfer of administration to SWA: Since the Act does not indicate what Minister administered the Act, it is not clear which transfer proclamation, if any, was applicable. However, the date of transfer is not relevant to the content of the statute, as there were no amendments to the law in South Africa prior to Namibian independence.

Regulations: The Act makes no provision for regulations.

Rents Ordinance 13 of 1977.

Summary: This Ordinance ([OG 3634](#)) regulates the letting and hiring of non-commercial immovable property. It was brought into force with effect from 1 January 1978 by Proc. 1/1978 (OG 3685). It repeals the Rents Proclamation 4 of 1944, as amended.

Amendments: The Ordinance is amended by Ord. 4/1980 ([OG 4134](#)) and by the Married Persons Equality Act 1 of 1996 ([GG 1316](#)) (which substitutes section 1).

Regulations: Pre-independence regulations have not been comprehensively researched. Regulations promulgated under the repealed legislation survive pursuant to section 39(3) of this Ordinance, but at least some have been repealed.

Regulations are also authorised by section 38 of this Ordinance. Regulations issued pursuant to this Ordinance are contained in GN 10/1978 (OG 3685). These regulations came into operation with effect from 1 January 1978, and repealed the regulations contained in GN 3421 of 15 December 1975.

No post-independence regulations have been promulgated.

Appointments: GN 318/2018 ([GG 6784](#)) establishes Rent Boards for certain areas (Oshana Region, Kavango East Region, Erongo Region (Swakopmund), Erongo Region (Walvis Bay) and Khomas Region (City of Windhoek)), and announces the appointment of their members.

Cases: *Lida Marie CC v O’Portuga Restaurant CC* 2013 (3) NR 895 (HC) (application re notice to vacate in terms of section 31(1)(a), decided on basis of incorrect identity of tenant).

See also **LAND AND HOUSING**.

LAW

Crown Liabilities Act 1 of 1910.

Summary: This Act ([SA GG 72](#)) concerns state liability.

Applicability to SWA: This Act was extended to South West Africa by section 1(1)(b) of the Railway Management Proclamation 70 of 1920 ([OG 46](#)). That section states “(1) The control and management of the Railways and Harbours within the Protectorate of South West Africa and of all subsidiary undertakings connected therewith hitherto controlled and managed by the Railways and Harbours Administration of the Union of South Africa (hereinafter called the Railway Administration) shall continue to be vested in and to be exercised by the Railway Administration, and for that purpose... (b) the following acts of the Union Parliament together with any regulations now or hereafter existing thereunder shall, *mutatis mutandis* and so far as capable of application, have force and effect within the Protectorate”. One of the laws listed in paragraph (b) is the Crown Liabilities Act 1 of 1910, along with several other laws since repealed.

According to *Mwandingi v Minister of Defence* 1990 NR 363 (HC) at 377C-D (approved of on appeal in *Minister of Defence v Mwandingi* 1993 NR 63 (SC) at 77C-F), “the Crown Liabilities Act 1 of 1910 was extended by the Railway Management Proclamation 20 of 1920 to the territory [this is an error; the correct citation for this Proclamation is Proclamation 70 of 1920]. It is true that it was so extended for purposes of that proclamation, but the act applied in its entirety and it seems to me, once it was extended, it was accepted by our courts as also binding on all other, at that stage, departments (see *Hwedhanga v Cabinet for the Territory of South West Africa* 1988 (2) SA 746 (SWA); *Binga v Cabinet for South West Africa & Others* 1988 (3) SA 155 (A)).”

The Act was repealed in South Africa by the State Liability Act 20 of 1957 ([SA GG 5850](#)), which was not made expressly applicable to South West Africa.

Regulations: The Act makes no provision for regulations.

Administration of Justice Proclamation 21 of 1919.

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

Amendments: The Proclamation is amended by Proc. 45/1920 ([OG 41](#)), Proc. 52/1921 ([OG 75](#)), Proc. 56/1921 ([OG 76](#)), Proc. 16/1930 ([OG 375](#)), Proc. 4/1933 ([OG 500](#)), Proc. 31/1935 ([OG 650](#)), Proc. 4/1936 ([OG 657](#)), Deeds Registries Proclamation 37/1939 ([OG 807](#)), Ord. 6/1955 ([OG 1899](#)), Ord. 31/1960 ([OG 2254](#)), Ord. 34/1963 ([OG 2504](#)), Ord. 13/1966 ([OG 2721](#)), the SA *Supreme Court Act 59 of 1959*, the *Admission of Advocates Act 74 of 1964* ([RSA GG 839](#)), the *Civil Proceedings Evidence Act 25 of 1965* ([RSA GG 1066](#)), and the Legal Practitioners Act 15 of 1995 ([GG 1141](#)).

Application of law: See section 5 of the Rehoboth Affairs Proclamation 1 of 1937 ([OG 696](#)) regarding jurisdiction over certain civil suits in the Rehoboth Gebiet.

Regulations: The Act makes no provision for regulations.

Cases: *Tittel v Master of the High Court* 1921 SWA 58 and *Collisons v Kruger & Others* 1923 SWA 74 are significant early cases interpreting this Proclamation.

See also –

R v Goseb 1956 (2) SA 696 (SWA)

Binga v Administrator-General, South West Africa & Others 1984 (3) SA 949 (SWA)

S v Redondo 1992 NR 133 (SC).

Interpretation of Laws Proclamation 37 of 1920.

Summary: This Proclamation ([OG 35](#)) sets forth rules of interpretation for statutes. It is the Namibian equivalent of the South African *Interpretation Act 33 of 1957*.

Amendments: The Proclamation was amended by Proc. 11/1926 ([OG 205](#)), Ord. 4/1955 ([OG 1899](#)) and Ord. 19/1961 ([OG 2320](#)). It was extended to the Rehoboth Gebiet by Proc. 28/1923 ([OG 118](#)).

Regulations: The Act makes no provision for regulations.

Cases:

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

Gemfarm Investments v Trans Hex Group 2009 (2) NR 477 (HC) (section 11(1)).

Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others 2010 (2) NR 660 (HC), overruled by *Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another* 2012 (2) NR 566 (SC) (addressing the meaning of section 12(3)(c) read together with the definition of “law” at paras 64-69)

Kamahere & Others v Government of the Republic of Namibia & Others 2016 (4) NR 919 (SC) (section 11(2)(c); reference to section 2 in concurring judgment).

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

Summary: This Act covers the appointment, powers and duties of justices of the peace and commissioners of oaths. It repeals the Justices of the Peace and Oaths Act 16 of 1914. The *Justices of the Peace and Commissioners of Oaths Amendment Act 55 of 1970*, which made the Act applicable to SWA, repealed the SWA Commissioners of Oaths Proclamation 24 of 1928.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 11A states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979, as amended. None of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Justices of the Peace*

and Commissioners of Oaths Amendment Act 110 of 1984 ([RSA GG 9360](#)), the Justices of the Peace and Commissioners of Oaths Amendment Act 36 of 1986 ([RSA GG 10198](#)) and the Transfer of Powers and Duties of the State President Act 97 of 1986 ([RSA GG 10438](#)) – were made expressly applicable to SWA.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *General Law Amendment Act 80 of 1964* ([RSA GG 829](#))
- *Justices of the Peace and Commissioners of Oaths Amendment Act 8 of 1965* ([RSA GG 1054](#))
- *Justices of the Peace and Commissioners of Oaths Amendment Act 21 of 1967* ([RSA GG 1677](#))
- *Justices of the Peace and Commissioners of Oaths Amendment Act 55 of 1970* ([RSA GG 2828](#))
- *Parliamentary Service Act 33 of 1974* ([RSA GG 4374](#))
- *Second Bantu Laws Amendment Act 102 of 1978* ([RSA GG 6095](#))

Terminology in the Act was amended by the Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

Regulations: Section 11(4) states: “Anything done under any provision of a law repealed by sub-section (1), shall be deemed to have been done under the corresponding provision of this Act, if any.”

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

Notices: Notices regarding holders of office who are commissioners of oath are contained in RSA GN R.1257/1972 ([RSA GG 3619](#)) as amended by RSA GN R.56/1975 (RSA GG 4558), and in AG GN 128/1982 ([OG 4672](#)) and GN 100/2000 ([GG 2312](#)) (regional councillors to be Commissioners of Oaths).

Investigating officers of the Anti-Corruption Commission established by the Anti-Corruption Act 8 of 2003, already appointed and to be appointed, are appointed as justices of the peace for all magisterial districts by GN 33/2012 ([GG 4883](#)).

Certain inspectors for the Communication Regulatory Authority of Namibia are appointed as Ex-officio Commissioners of Oaths, with effect from 15 February 2016, by GN 48/2016 ([GG 5971](#)).

Cases:

De Roeck v Campbell & Others (1) 1990 NR 28 (HC)

Gonschorek & Others v Asmus & Another 2008 (1) NR 262 (SC) (regulations in RSA GN R.1258/1972)

Namibia Financial Institutions Supervisory Authority v Christian & Another 2011 (2) NR 537 (HC) at 553F-554A (Reg 7).

Delegation of Powers Ordinance 24 of 1973.

Summary: This Ordinance ([OG 3365](#)) addresses delegations of power by the “Executive Committee of the Whites”. It would presumably now cover delegations by the Namibian authority corresponding to this Executive Committee, in terms of Art

140(4)-(5) of the Namibian Constitution; in terms of the transitional provisions in Art 140 of the Namibian Constitution, the reference to “Executive Committee” in the Ordinance is now construed as the relevant Minister responsible for administration of a particular law.

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

Regulations: The Act makes no provision for regulations.

Cases: The Ordinance is discussed in *Waterberg Big Game Hunting Lodge Otjahewita (Pty) Ltd v Minister of Environment* 2010 (1) NR 1 (SC):

“The only statutory provision for delegations of authority referred to by counsel for respondent, was a general authority to delegate powers of the Executive Committee of the pre-independence period as contained in ss 2-6 of the Delegation of Powers Ordinance 24 of 1973 as amended by s 1 of Ord 20 of 1975. It must be noted that s 6(2) of Ord 24 of 1973 as amended contains a typical savings clause by providing:

‘Any power, authority or function delegated to any person in terms of the Ordinance repealed by s (1) shall be deemed to have been delegated to such person in terms of this Ordinance.’

...I have considered arts 140 and 141 of the Namibian Constitution, which may be regarded as serving the purpose of a savings clause dealing with the law in force at the date of Namibian independence on 21 March 1990. The said Ord 24 of 1973 as amended was never expressly repealed or amended by Act of Parliament or declared unconstitutional by a competent court and consequently remained in force in terms of art 140(1) of the Namibian Constitution.”

Law Reform and Development Commission Act 29 of 1991.

Summary: This Act ([GG 331](#)) establishes a Law Reform and Development Commission. It was brought into force on 15 July 1992 by Proc. 21/1992 ([GG 439](#)).

Amendments: Act 4/1995 ([GG 1036](#)) amends sections 3, 5, 8 and 12. Act 2/2004 ([GG 3238](#)) amends sections 3, 6, and 8 and substitutes sections 4, 5 and 12. It was brought into force on 15 July 2004 by GN 147/2004 ([GG 3239](#)).

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

Appointments: The appointment of a Chairperson is announced in Proc. 12/2011 ([GG 4767](#)). No previous announcements could be located, although there were several previous Chairpersons. (See, for example, GN 21/1997 ([GG 1712](#)), which refers to Mr U D Nujoma as a full-time Chairperson.) A Chairperson is announced in Proc. 34/2015 ([GG 5869](#)).

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

Note: Article 32(3)(i) of the Namibian Constitution discusses the President’s powers of appointment, including some specific offices as well as covering the appointment of “any other person or persons who are required by any other provision of this Constitution or any other law to be appointed by the President”. Article 32(8) states that all such appointments “shall be announced by the President by Proclamation in the Gazette”.

Commentary: Yvonne Dauseb, “The Law Reform and Development Commission: Its Role and Place in a Continuously Changing Society” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017.

MISCELLANEOUS

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

COMMENTARY

- Legal Assistance Centre, *How Laws Are Made*, 1996, available at www.lac.org.na
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- Felicity !Owoses-/Goagoses, “Reading down words in a statute, the courts’ role, and the place of Parliament: The approach of the Namibian courts”, *Namibia Law Journal*, Volume 4, Issue 1, 2012
- Dianne Hubbard, “Infusions of the Constitution into the Common Law” in Nico Horn & Manfred O Hinz, eds, *Beyond a Quarter Century of Constitutional Democracy: Process and Progress in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2017.
- Ministry of Justice, “The Law Making Process” (brochure), undated.

INTERNATIONAL LAW

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

See Ministry of Justice, “Issuing of Apostilles by the Ministry of Justice” (brochure), undated.

See also GN 104/2018 ([GG 6614](#)) on fees for the issue of apostilles.

SADC Protocol on Legal Affairs, 2000

SADC Protocol Against Corruption, 2001

**Agreement Amending the SADC Protocol on Corruption, 2016*

SADC Protocol on Extradition, 2002

SADC Protocol on Mutual Legal Assistance in Criminal Matters, 2002

See also **COURTS**.

See also *Criminal Law and Procedure Act 51 of 1977 (CRIMINAL LAW AND*

PROCEDURE).

See also **CUSTOMARY LAW.**

See also **DAMAGES.**

See also **EVIDENCE.**

See also **JUDGES.**

See also **LEGAL PRACTITIONERS.**

See also **PRESCRIPTION.**

LEGAL PRACTITIONERS

Government Attorney Proclamation R.161 of 1982.

Summary: This Proclamation ([RSA GG 8367](#)), which appears to have replaced the *State Attorney Act 56 of 1957* in SWA, concerns the functions of the Government Attorney. It 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. It was brought into force on 1 April 1984 by RSA Proc. 52 /1984 ([RSA GG 9162](#)).

Applicability to SWA: The Proclamation applies to SWA because it was issued in terms of section 38 of the *South-West Africa Constitution Act 39 of 1968*, which gave the State President of South Africa certain powers to make laws for SWA. It appears to replace the *State Attorney Act 56 of 1957* in SWA.

The *State Attorney Act 56 of 1957* ([SA GG 5894](#)) – as amended by the *General Law Further Amendment Act 93 of 1962* ([RSA GG 284](#)) and the *State Attorney Amendment Act 7 of 1966* ([RSA GG 1380](#)) – was made applicable to SWA by section 6 of *Act 7 of 1966* which states: “The principal 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-Africa 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 Administrator of the said territory.” Section 7 of *Act 7 of 1966* provided: “In the principal Act, unless the context otherwise indicates, “Republic” also includes the territory of South-West Africa.” These two sections were independent provisions of *Act 7 of 1966* rather than amendments to *Act 56 of 1957*. (Section 9 of *Act 7 of 1966* also repealed the State Attorney Proclamation, 1921 (Proclamation 46 of 1921), and the State Attorney Proclamation, 1921 Amendment Ordinance, 1963 (Ordinance 17 of 1963) in respect of SWA.) *Act 7 of 1966* was brought into force on 3 January 1967 by RSA Proc. R.376/1966 ([RSA GG 1626](#)). After the *State Attorney Act 56 of 1957* and its amendments became applicable to SWA, *Act 56 of 1957* was further amended by the *State Attorney Amendment Act 45 of 1980* ([RSA GG 6992](#)), which was deemed to have come into force on 13 September 1979 (section 2 of the amending Act).

Sections 6 and 7 of *Act 7 of 1966* were both repealed by the *Government Attorney Proclamation, R.161 of 1982*, which converted 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. (This Proclamation states in section 13 that sections 11-14, which amend some provisions of the *State Attorney Act 56 of 1957*, repeal sections 6 and 7 of the *State Attorney Amendment Act 7 of 1966*, and provide transitional provisions, “shall apply also in the Republic of South Africa”.)

Some of these amendments refer to South West Africa, but without making *Act 56 of 1957* applicable to SWA; they seem rather to have given the South African State Attorney's Office authority to act on behalf of the SWA administration or the government of Rehoboth, if arrangements were made with that administration or government. Section 3(2) of the *State Attorney Act 56 of 1957*, as substituted by *Act 7 of 1966* and amended by *Proclamation R.161 of 1982*, states:

There may also be performed at the State Attorney's office or at any of its branches like functions for or on behalf of the administration of any province, any department established under the laws relating to the government service of the Territory of South-West Africa, the government of Rehoboth and the South African Railways and

Harbours Administration, subject to such terms and conditions as may be arranged between the Minister of Justice and the administration, department or government concerned.

Section 3(3) of the *State Attorney Act 56 of 1957*, as substituted by *Act 93 of 1962* and amended by *Proclamation R.161 of 1982*, states:

Unless the Minister of Justice otherwise directs, there may also be performed at the State Attorney's office or at any of its branches like functions in or in connection with any matter in which the Government or such an administration, department or government as aforesaid, though not a party, is interested or concerned in, or in connection with any matter where, in the opinion of the State Attorney or of any person acting under his authority, it is in the public interest that such functions be performed at the said office or at one of its branches.

Section 8 of *Act 7 of 1966*, provided that any references in any law to the State Attorney for the territory of South-West Africa should be construed as references to the State Attorney in *Act 56 of 1957*. Section 12 of *Proclamation R.161 of 1982* appears to follow on section 8 of *Act 7 of 1966* (which was not repealed), by providing that references in any law to the Windhoek branch of the State Attorney shall be construed as references to the Government Attorney's office. Thus, *Proclamation R.161 of 1982* appears to have replaced the *State Attorney Act 56 of 1957* in SWA – an understanding which is supported by the fact that *Proclamation R.161 of 1982* duplicates much of *Act 56 of 1957*.

Transfer of administration to SWA: This Proclamation post-dated the SWA transfer proclamations.

The relevant transfer proclamation for the *State Attorney Act 56 of 1957* which preceded it was the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979, as amended. However, section 3(1)(g) of this transfer proclamation excluded the *State Attorney Act 56 of 1957* from the provisions of section 3(1) of the General Proclamation, meaning that the administration of this Act was not transferred to SWA. Therefore, the amendments made to that Act in South Africa after the date of the transfer proclamation continued to be automatically applicable to SWA – until the legal provision which made that Act applicable to SWA was repealed by the *Government Attorney Proclamation, R.161 of 1982* with effect from 1 April 1984.

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

Cases: The case of *Eimbeck v Inspector-General of the Namibian Police & Another* 1995 NR 13 (HC) refers at page 18 to the *Government Attorney Proclamation R.161 of 1982*:

The Government Attorney acted in terms of his functions in pursuance of s 4 of the Government Attorney Proclamation No R161 of 1982, which came into force on 1 April 1984 and which is still in force.

The *State Attorney Act 56 of 1957* and the *Government Attorney Proclamation R.161 of 1982* are discussed in para 28 of *Minister of Health and Social Services v Medical Association of Namibia* 2012 (2) NR 566 (SC):

Prior to independence, the State Attorney at Windhoek was a branch office of the office of the State Attorney, Pretoria, in terms of the *State Attorney Act 56 of 1957*. (Section 3(2) of *Act 56 of 1957*.) However, by State President's proclamation R161 of 1982, the Windhoek branch office was converted into the Government Attorney's office for the Territory of South West Africa. It did not repeal *Act 56 of 1957* but amended certain

words to bring it in line with the proclamation. Section 4 of the proclamation sets out the functions of the Government Attorney which, in general, are the same as set out in s 3 of Act 56 of 1957.

This case also discusses the role of the Government Attorney.

See also *Maletzky v The President of the Republic of Namibia & Others* 2016 (2) NR 420 (HC) (holding that it is not improper for the Government Attorney to represent a judicial officer in the employ of the State; section 4(b)(ii) of the Proclamation).

Legal Aid Act 29 of 1990.

Summary: This Act ([GG 131](#)) 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 repeals the *Legal Aid Act 22 of 1969*. It was brought into force on 7 October 1991 by Proc. 23/1991 ([GG 272](#)).

Amendments: Act 17/2000 ([GG 2421](#)) amends sections 1, 3, 6, 8, 10, 13, 15, and 20 and inserts section 24A.

Regulations: There is no savings clause for regulations issued under the repealed Act.

Regulations issued under this Act are contained in GN 303/2018 ([GG 6774](#)), which repeals the regulations in GN 107/1991 ([GG 273](#)).

Notices: Specified offences in terms of the Act are listed in GN 106/1991 ([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).

Commentary:

Brigit Rudd, Dianne Hubbard and Yolande Engelbrecht, "Trapped In Marriage? Divorce Law and Legal Aid", *The Namibian*, 8 November 2013

Ministry of Justice, "Requirements for Legal Aid Applications" (brochure), undated.

Legal Practitioners Act 15 of 1995.

Summary: This Act ([GG 1141](#)) 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 was brought into force on 7 September 1995 by GN 150/1995 ([GG 1148](#)). It repeals 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* and the Legal Practitioners' Fidelity Fund Act 22 of 1990 ([GG 117](#)).

Amendments: Act 4/1997 ([GG 1586](#)) amends sections 11, 21, 54, 67, 72, and 87 and substitutes section 22.

Act 6/1999 ([GG 2126](#)) 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 was repealed by Act 22/2002 ([GG 2892](#)), which was brought into force on 1 November 2005 by GN 139/2005 ([GG 3529](#)).

Act 10/2002 ([GG 2849](#)) amends sections 5 and 18.

Act 22/2002 ([GG 2892](#)), which was brought into force on 1 November 2005 by GN 139/2005 ([GG 3529](#)), amends sections 1, 21, 32, 52 and 72, substitutes section 45 and repeals section 79.

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012, which places certain duties on legal practitioners and on the Law Society.

A decision of the Namibian Competition Commission on an application by the Law Society for exemption in respect of professional rules is contained in General Notice 564/2015 ([GG 5906](#)).

Savings: Section 94(4) states: "Anything made or prescribed, including regulations or rules, or done under the provisions of any law repealed by subsection (1), and having the force of law immediately before the commencement of this Act shall, insofar as they are not inconsistent with any of the provisions of this Act, continue to be in force, until altered or revoked by the competent authority under the provisions of this Act."

Regulations: Pre-independence regulations which might survive pursuant to the savings clause have not been comprehensively researched.

Regulations relating to the **fidelity fund** are contained in GN 136/1993 ([GG 741](#)). These regulations were issued in terms of the previous Legal Practitioners' Fidelity Fund Act 22 of 1990, but survive under the new Act in terms of section 94(4). (This position is confirmed in *Van der Merwe v Director of the Law Society of Namibia & Others* 2013 (1) NR 98 at para 26, but the case erroneously refers to GN 135/1993 instead of GN 136/1993.)

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](#)). GN 8/2011 ([GG 4649](#)) substitutes Annexure 6 to these regulations.

Rules: Rules governing the Disciplinary Committee are set forth in GN 54/1996 ([GG 1270](#)).

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. General Notice 376/2017 ([GG 6410](#)) amends Rules 21 and 23 and Annexure A.

Fees: Regulations relating to the fee for a certificate of enrolment as a legal practitioner

are contained in GN 201/1995 ([GG 1183](#)).

Notices: Various *Government Gazettes* have prescribed 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](#)).

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)

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) (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) and *Kamwi v Law Society of Namibia* 2011 (1) NR 196 (SC)

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))

Worku v Equity Aviation (Pty) Ltd 2010 (2) NR 621 (SC) (although not dealing with Act specifically, includes general discussion of attorney-client relationship with reference to authority to settle at 6630E-ff)

Disciplinary Committee for Legal Practitioners v Murorua & Another 2012 (2) NR 481 (HC) (construction and application of sections 32-33; 12 month suspension from practice – wholly suspended for 3 years – imposed for unprofessional, dishonourable or unworthy conduct; dissenting judge would have found wilful misleading of court and struck respondent from roll of legal practitioners); appeal dismissed on basis of late filing in *Disciplinary Committee for Legal Practitioners v Murorua & Another* 2016 (2) NR 374 (SC) (discussion of mandate of Disciplinary Committee in course of discussion of the Committee's non-compliance with Rules of the High Court)

Van der Merwe v Director of the Law Society of Namibia & Others 2013 (1) NR 98 (HC) (requirements for issue of Fidelity Fund Certificate under section 68)

S v Hoabeb 2013 (1) NR 222 (HC) (example of contravention of section 21(1)(c)) (discussed in Nico Horn, *S v Hoabeb: A Dummy's Guide on How to Avoid Justice in Namibia for Ten Years*”, *Namibia Law Journal*, Volume 5, Issue 1, 2013)

Witvlei Meat (Pty) Ltd v Disciplinary Committee for Legal Practitioners & Others 2013 (1) NR 245 (HC) (section 35), confirmed on appeal in *Witvlei Meat (Pty) Ltd & Others v Disciplinary Committee for Legal Practitioners & Others* 2014 (1)

NR 217 (SC) (meaning of appeal in section 35(3); principles relating to legal practitioner's duties of loyalty and confidentiality)

Maletzky v Zaaluka 2013 (3) NR 649 (HC) (cessation of claim as a ruse to circumvent prohibition in section 3 on practicing law without being admitted as a legal practitioner, in violation of section 21); see also *Maletzky v Zaaruka, Maletzkey v Hope Village* [2013] NAHCMD 343 (19 November 2013))

De Beers Marine Namibia (Pty) Ltd v Lange NO & Others 2014 (2) NR 437 (HC) (section 85(2))

Maletsy v Gaseb & Another 2014 (3) NR 645 (HC) (section 21)

S v Conradie 2015 (3) NR 863 (HC) (although not dealing with the Act specifically, grant of postponement in criminal case based on constitutional right to legal representative of choice)

Makando v Disciplinary Committee for Legal Practitioners 2016 (4) NR 1127 (SC) (section 35: Disciplinary Committee is an administrative body in terms of Art 18 of Namibian Constitution, but section 35 procedure does not violate that Article; issue considered in context of prospects of success in condonation application).

This case includes criticism of the Disciplinary Committee at para 23: "Once again this court must chide the Disciplinary Committee for its failure to comply with the time limits stipulated in the rules of this court. It is not acceptable for an institution charged with the responsibility of regulating the conduct of legal practitioners itself to fail to observe the rules." It also includes similar criticism of the Law Society of Namibia at para 27).

Commentary:

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

Fritz Nghiishililwa, "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.kas.de.

COMMENTARY

New Perimeter, *Namibia-Access to Justice: Paralegal Manual*, 2012, available at www.lac.org.na.

See also **COURTS**.

See also Namibia Qualifications Authority Act 29 of 1996 (occupational and curriculum standards) (**EDUCATION**).

See also **LAW**.

LIBRARIES

Namibia Library and Information Service Act 4 of 2000.

Summary: This Act ([GG 2290](#)) covers the Namibia Library and Information Service and its constituent libraries, the National Library and the Namibia Library and Information Council. It was brought into force on 30 April 2001 by GN 69/2001 ([GG 2519](#)). The Act repeals the Libraries Ordinance 4 of 1981 (*[Official Gazette 2 of the Representative Authority of the Whites](#)*), which previously repealed the South West Africa Library Service Ordinance 15 of 1968.

Regulations: There is no savings clause for regulations promulgated under the repealed laws.

Regulations issued in terms of this Act are contained in GN 70/2001 ([GG 2519](#)).

Notices: 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 ([GG 1035](#)) provides for the reciprocal enforcement of maintenance orders between Namibia and other countries designated by the Minister of Justice. It repeals 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 ([GG 3043](#)), which was brought into force on 17 November 2003 (GN 232/2003, [GG 3093](#)).

Savings: Section 13(2) states that anything done “under any provision of the Reciprocal Enforcement of Maintenance Orders Act, 1963, or deemed to have been so registered or confirmed or done, shall be deemed to have been registered or confirmed or done under the corresponding provision of this Act.”

Regulations: This Act makes no provision for regulations, which means that the savings clause does not apply with respect to regulations.

Rules: Rules issued under the previous Act are contained in RSA GN R.98/1965 (22 January 1965).

Designations: 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.

Although South Africa is the only country that was designated under the 1963 Act by an independent Namibian government, some of the designations made prior to Namibian independence by the State President of South Africa were applicable to “South West Africa” and thus survive in independent Namibia.

The *Reciprocal Enforcement of Maintenance Orders Act 80 of 1963* was an Act of the South African Parliament that was made applicable to the “territory of South West Africa” by the Reciprocal Enforcement of Maintenance Orders Amendment Act 40 of 1970, with effect from 1 March 1971.

The 1963 Act was administered by the Minister of Justice of South Africa, thus, its administration was transferred to South West Africa by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979. Section 3(1)(k) of this Proclamation explicitly excluded the Reciprocal Enforcement of Maintenance Orders Act 80 of 1963 from the provisions of section 3(1) of the General Proclamation – meaning that the functions of the Minister were not transferred. Nevertheless, as of 1979, section 2 of the 1963 Act empowered the State President to issue Proclamations designating countries to which the Act was applicable. This power was not affected by the exclusion from section 3(1) of the General Proclamation, but was governed by section 3(4) of the General Proclamation which states that any proclamation issued by the State President after the commencement of any transfer proclamation under a law which at the time of such commencement applied to both South Africa and the territory of South West Africa and which is published in the *Government Gazette* of the Republic “shall, notwithstanding the provisions of (1), apply in the territory if such proclamation

... 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 ...”. None of the Proclamations issued by the State President under the 1963 Act after the date of transfer, or the notices publishing them, make any explicit reference to the territory or the Administrator-General, and thus were not applicable to the “territory of South West Africa”.

The South African Transfer of Powers and Duties of the State President Act 97 of 1986 amended section 2 of the 1963 Act so that the power to designate countries under the Act was in future to be exercised by means of a notice issued by the Minister of Justice rather than by a Proclamation of the State President. The effect of this change would have been that any subsequent notices issued by the Minister of Justice in this regard would have been applicable to the Territory of South West Africa by virtue of the exclusion of the 1963 Act from section 3(1) of the General Proclamation. However, we have not located any such notices between 1986 and Namibian independence on 21 March 1990.

The result is that the only designations applicable to “South West Africa” were those which were made prior to the date of transfer in 1979.

The countries in question are as follows (excluding the South African “homelands” which existed as semi-autonomous political units under apartheid but are now part of a unitary South Africa, as declarations in respect of these “homelands” are of no ongoing relevance):

- North-West Territories, Canada (Proclamation No. R. 160 of 1970 of 19 June 1970)
- State of California, USA (Proclamation No. R. 1 of 1971 of 8 January 1971)
- Province of Alberta, Canada (Proclamation No. R. 175 of 1971 of 13 August 1971)
- United Kingdom (Proclamation No. R. 9 of 1976).

Several secondary sources list RSA Government Notice 68 of 1968 as designating Germany under the Act. However, it has not been possible to locate this Government Notice, and it seems impossible that it could have been a valid designation under the Act because in 1968 such a designation could only have been made by means of a Proclamation of the State President. Therefore, Germany is not included in the list of designated countries.

Upon Namibia’s independence, the powers given to the South African Minister of Justice under the 1963 Act were vested in the Minister of Justice of Namibia by virtue of the transitional provisions contained in Article 140 of the Namibia Constitution. However, as noted above, the only country designated under the 1963 Act since independence is South Africa.

Maintenance Act 9 of 2003.

Summary: This Act ([GG 3043](#)) concerns the payment of maintenance, the holding of maintenance enquiries, and enforcement of maintenance orders. It repeals the South African *Support of Dependants (Natives) Proclamation of 1936* and the South African *Maintenance Act 23 of 1963*. It was brought into force on 17 November 2003 by GN 232/2003 ([GG 3093](#)).

Savings: Section 50(5) states: “Notwithstanding the repeal of the Maintenance Act,

1963 (Act No. 23 of 1963) by subsection (1) the rules which were made under that Act and were in force immediately before the commencement of this Act and which are not inconsistent with this Act, continue in force until repealed, withdrawn or amended by regulations made under section 49.” Pre-independence rules and regulations have not been researched.

Regulations: The savings clause appears to apply to rules but not regulations made in terms of the repealed Maintenance Act 23 of 1963.

Regulations made under this Act are contained in GN 233/2003 ([GG 3093](#)).

Cases: Cases decided under the present Act –

S v Gawaseb 2007 (2) NR 600 (HC) (sentence under section 39(1); section 33(1))

S v Kalundu 2013 (2) NR 387 (HC) (section 33; order of court in respect of voluntary payments towards arrears while criminal case pending)

S v EZ 2014 (1) NR 18 (HC) (sentence for failure to pay maintenance not to be treated lightly, and correct approach to periodical imprisonment for this offence)

See also *Main NO v Van Tonder NO & Another* 2006 (1) NR 389 (HC), which discusses the Act in dicta at 397E-G

S v Kapitango & Others 2016 (4) NR 976 (NLD) (appeal procedure under section 47).

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))

Tsaoseb 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.”)

COMMENTARY

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 (languages: English, Afrikaans, Oshiwambo, Otjiherero, Khoekhoegowab, Rukwangali)

Legal Assistance Centre, *Maintenance Matters: An Assessment of the Operation of Namibia's Maintenance Act 9 of 2003*, 2013, available at www.lac.org.na.

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 ([GG 330](#)) 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 of law: The application of the Act is affected by the State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006.

Regulations: The Act makes no provision for regulations.

Marine Resources Act 27 of 2000.

Summary: This Act ([GG 2458](#)) 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 repeals the Sea Fisheries Act 29 of 1992 ([GG 492](#)), which in turn replaced the *Sea Fisheries Act 58 of 1973*. It also repeals the *Sea Birds and Seals Protection Act 46 of 1973*, and the Fishing Boat and Factory Owners' Committee Ordinance 16 of 1968. The Act was brought into force on 1 August 2001 by GN 152/2001 ([GG 2591](#)).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 13, 16, and 17, and deletes section 15.

Act 9/2015 ([GG 5837](#)) amends sections 1, 3, 32, 38 and 39 and inserts section 39A.

Regulations: Regulations made under previous legislation remain in force, in terms of section 64(2) of the Act. Pre-independence regulations have not been comprehensively researched.

Previous regulations contained in RSA GN 1912/1973 (RSA GG 4049), made in terms of the *Sea Fisheries Act 58 of 1973*, were amended after independence by 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) and GN 158/1992 ([GG 527](#)). These regulations were then repealed and replaced by regulations made under the Sea Fisheries Act 29 of 1992 in GN 1/1993 ([GG 566](#)), as amended by 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](#)) and GN 9/1998 ([GG 1785](#)). These regulations appear to have been repealed by regulations issued under this Act, although there is an error in the relevant repealing regulation in GN 153/2001 ([GG 2591](#)).

GN 153/2001 ([GG 2591](#)) states that it repeals the "regulations promulgated by Government Notice No. 566 of 4 January 1993". There is no such

Government Notice. However, the repeal probably intended to refer to **Government Notice No. 1** of 4 January 1993, which was published in *Government Gazette 566*.

Regulations made under the current Act are as follows:

Regulations relating to the Exploitation of Marine Resources are contained in GN 241/2001 ([GG 2657](#)), as amended by GN 63/2015 ([GG 5721](#)), GN 55/2016 ([GG 5985](#)) and GN 93/2018 ([GG 6601](#)). These regulations repeal the ones on the same topic initially contained in GN 153/2001 ([GG 2591](#)).

GN 92/2018 ([GG 6601](#)) announces a period for applications for rights to harvest certain marine resources in terms of these regulations, along with criteria for granting rights to harvest these resources. Both the time period and the criteria were amended by GN 150/2018 ([GG 6657](#)).

Vessel Monitoring Regulations are contained in GN 65/2005 ([GG 3446](#)), as amended by GN 2/2014 ([GG 5391](#)).

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 ([GG 3688](#)). No *Government Gazette* was published on 30 August 2006. The reference was probably intended to be to the conservation and management measures published by Government Notice 148 of 8 September 2006 ([GG 3696](#)).

Regulations relating to Namibian Islands' Marine Protected Area are contained in GN 316/2012 ([GG 5111](#)).

Regulations relating to Inspection of Register are contained in GN 238/2015 ([GG 5853](#)).

Regulations to Reduce Incidental By-catch of Seabirds in the Hake Demersal Trawl Vessels are contained in GN 269/2015 ([GG 5877](#)).

Regulations to Reduce Incidental By-catch of Seabirds in the Hake Demersal Longline Vessels (07) are contained in GN 270/2015 ([GG 5877](#)), as amended by GN 68/2016 ([GG 5990](#)).

Notices: In terms of section 37(2) of the Act, conservation and management measures adopted under Article VIII of the International Convention for the Conservation of Atlantic Tunas are published in GN 148/2006 ([GG 3696](#)).

These measures 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. A copy of the International Convention for the Conservation of Atlantic Tunas appears in Annexure D to 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](#)).

The Namibian Islands Marine Reserve was declared in GN 17/2009 ([GG 4210](#)).

GN 2/2013 ([GG 5119](#)) requires persons harvesting marine resources under a right, an exploratory right or a fisheries agreement to carry aboard a fishing vessel a specified number of fisheries observers, depending on the type and size of vessel.

A Designation Agreement between the Ministry of Fisheries and Marine Resources and the National Fishing Corporation of Namibia Limited is published in GN 74/2016 ([GG 5996](#)). A Co-operation Agreement and a Designation Agreement between the Ministry of Fisheries and Marine Resources and the National Fishing Corporation of Namibia Limited are published in GN 99/2016 ([GG 6017](#)), which withdraws GN 74/2016, and is amended by GN 113/2017 ([GG 6307](#)) (by the addition of Addendum No. 1 to the Co-operation Agreement as set out in the Schedule).

GN 92/2018 ([GG 6601](#)) announces a period for applications for rights to harvest certain marine resources, along with criteria for granting rights to harvest these resources. Both the time period and the criteria were amended by GN 150/2018 ([GG 6657](#)).

Total allowable catches: Total allowable catches for various types of fish are set periodically in terms of the relevant law and have not been recorded here.

Fees and levies: Fees and levies on certain marine resources have been issued in terms of this Act, each of which replaces its predecessor – with the most recent one in this series contained in GN 158/2017 ([GG 6342](#)).

Fees and levies on other marine resources have been issued in another series of notices, each of which replaces its predecessor – with the most recent one in this series contained in GN 159/2017 ([GG 6342](#)).

Levies for the benefit of the Fisheries Observer Fund are imposed in another series of notices, each of which replaces its predecessor – with the most recent one in this series contained in GN 146/2014 ([GG 5559](#)).

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).

International agreements: 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 Proc. 2/2003 ([GG 2910](#)).

An agreement providing for the implementation of a 1990 General Agreement on Economic, Scientific, Technical and Cultural Co-operation between Namibia and Mozambique in respect of fisheries and aquaculture is announced in Proc. 21/2015 ([GG 5784](#)).

An agreement between Namibia and Angola on co-operation in fisheries and aquaculture is published in Proc. 22/2015 ([GG 5785](#)).

Commentary: Law Reform and Development Commission, *Urgent and Targetted Report on Fisheries*, LRDC 21, 2012, available at www.namiblii.org.

Aquaculture Act 18 of 2002.

Summary: This Act ([GG 2888](#)) regulates and controls aquaculture activities and provides for the sustainable development of aquaculture resources. It was brought into force on 3 December 2003 by 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 ([GG 2962](#)) provides for the conservation and protection of aquatic ecosystems and the sustainable development of inland fisheries resources. It was brought into force on 6 June 2003 by 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](#)).

Notices: Fisheries reserves are declared in GN 276/2015 ([GG 5883](#)), GN 298/2015 ([GG 5903](#)), GN 270/2016 ([GG 6172](#)), GN 297/2016 ([GG 6197](#)) and GN 298/2016 ([GG 6197](#)).

GN 296/2016 ([GG 6197](#)), issued under section 22(3) of the Act, prohibits the use of monofilament nets in inland waters of Namibia and the issue of licences for the use of such nets as a regulated fishing gear.

Designations: 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

Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2009

***Benguela Current Convention, 2013*

Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region and Protocol (Abidjan Convention), 1981

Additional Protocol to the Abidjan Convention concerning Cooperation in the Protection and Development of Marine and Coastal Environment from Land-based Sources and Activities in the Western, Central and Southern African Region, 2012

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

International Convention for the Conservation of Atlantic Tunas (ICCAT), 1966, as amended

International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995

SADC Protocol on Fisheries, 2001

†United Nations Convention on the Law of the Sea (UNCLOS), 1982

See also **ENVIRONMENT**.

See also **SEA AND SEASHORE**.

MARRIAGE AND DIVORCE

Divorce Laws Amendment Ordinance 18 of 1935.

Summary: This Ordinance ([OG 643](#)) amends the common law by setting forth additional grounds for divorce.

Regulations: The Act makes no provision for regulations.

Matrimonial Causes Jurisdiction Act 22 of 1939, as amended in South Africa to November 1979.

Summary: This Act ([SA GG 2635](#)) 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*, as inserted by *Act 17 of 1943*, originally stated “This Act shall apply to the Mandated Territory of South-West Africa and the port and settlement of Walvis Bay, and for the purpose of such application the High Court of South-West Africa shall be deemed to be a provincial division of the Supreme Court of South Africa.” As substituted by *Act 70 of 1968* with retroactive effect from 18 October 1953, 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).” Section *7ter* (as amended) 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), dated 12 November 1979, as amended.

The Act was repealed in South Africa with effect from 1 July 1979 by the *Divorce Act 70 of 1979* ([RSA GG 6505](#)), 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 by virtue of section *7ter* of Act 22 of 1939. However, the principal Act was specifically mentioned in the subsequent SWA transfer proclamation. Therefore, it apparently remained in force in SWA – and it has been amended in independent Namibia, and applied in practice by the High Court in several post-Independence cases.

Note that the *Matrimonial Causes Jurisdiction Act 35 of 1945*, which once applied to SWA by virtue of the references in the text of the Act 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”, was also repealed by the *Divorce Act 70 of 1979*, shortly *before* the relevant SWA transfer proclamation was issued in November 1979. There have been no further references to this Act in SWA or in independent Namibia, meaning that there is no reason to think that the repeal in question was not effective for both SWA and SA.

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 section 7*bis* of the Act (South Africa and SWA).

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Matrimonial Causes Jurisdiction Amendment Act 17 of 1943* ([SA GG 3180](#))
- *Matrimonial Affairs Act 37 of 1953* ([SA GG 5170](#))
- *General Law Amendment Act 70 of 1968* ([RSA GG 2106](#)).

Section 1 on jurisdiction is amended by the Married Persons Equality Act 1 of 1996 ([GG 1316](#)).

Regulations: The Act makes no provision for regulations.

Cases: *SS v YS* 2013 (1) NR 32 (HC) (jurisdiction under sections 1 and 5); *ZS v ES* 2014 (3) NR 713 (HC).

Matrimonial Affairs Ordinance 25 of 1955.

Summary: Only sections 4-6 remain in force. The surviving portions of this Ordinance ([OG 1927](#)) deal with the Court’s power to make an order of sole guardianship for a minor child in cases of divorce or separation of married parents and that guardian’s power to name a guardian in a will, and with spousal maintenance in divorce cases.

Amendments: The Ordinance is amended by Ord. 9/1967 ([OG 2777](#)) and by the Married Persons Equality Act 1 of 1996 ([GG 1316](#)), which repeals sections 1, 2 and 3 and amends section 4.

Regulations: The Act makes no provision for regulations.

Cases:

NS v PS 2010 (2) NR 418 (HC) (issues to be considered in respect of maintenance)

DK v DK 2010 (2) NR 761 (HC) (section 5, which authorises the court to order a guilty spouse to maintain an innocent spouse, does not prevent a court from ordering an innocent spouse to pay maintenance to a guilty spouse who is in need of it)

S v S 2011 (1) NR 212 (HC) (the issue of guilt still remains an issue to be determined in respect of maintenance for the innocent spouse, with guilt already having been determined in the case at hand; in absence of proof of maintenance needs, a nominal amount of maintenance awarded to reserve innocent party’s right of entitlement to maintenance should circumstances change)

AP v PP 2014 (3) NR 671 (no spousal maintenance justified for defendant where plaintiff has agreed to pay more than a fair share of child maintenance costs).

Marriage Act 25 of 1961, as amended in South Africa to March 1978.

Summary: This Act ([SA GG 6670](#)) 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: The following pre-independence South African amendments were applicable to SWA:

- *Marriage Amendment Act 11 of 1964* ([RSA GG 734](#))
- *Bantu Laws Amendment 42 of 1964* ([RSA GG 801](#))
- *Marriage Amendment Act 19 of 1968* ([RSA GG 2023](#))
- *Marriage Amendment Act 51 of 1970* ([RSA GG 2822](#))
- *Marriage Amendment Act 26 of 1972* ([RSA GG 3464](#))
- *Marriage Amendment Act 12 of 1973* ([RSA GG 3831](#)).

In South West Africa –

- the Marriage Amendment Proclamation, AG 8 of 1977 ([OG 3666](#)) amends sections 2 and 3 of the Act and inserts section 5*bis*;
- the Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), substitutes certain expressions; and
- the Marriages, Births and Deaths Amendment Act 5 of 1987 ([OG 5356](#)) makes substantial amendments to the Act.

The Married Persons Equality Act 1 of 1996 ([GG 1316](#)) amends sections 1 and 26 and substitutes “Minister” for “Cabinet”.

The Child Care and Protection Act 3 of 2015 ([GG 5744](#)), which is not yet in force, substitutes section 24.

Regulations: Pre-independence regulations have not been comprehensively researched. However, some pre-independence regulations on marriage officers are contained in GN 213/1987 ([OG 5480](#)).

Cases: *Ex parte Groebler & Another* 2004 NR 105 (HC) (procedure regarding consent to marriage of child under age 18); *Gurirab v Minister of Home Affairs and Immigration & Another* 2016 (1) NR 37 (HC) (review of decision to revoke licence of marriage officer in terms of section 9 of the Act; review cannot be undertaken until potential remedies under section 9(2) have been exhausted).

Recognition of Certain Marriages Act 18 of 1991.

Summary: This Act ([GG 315](#)) 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.

Regulations: The Act makes no provision for regulations.

Cases: *Amadhila v Amadhila* (I.77/96) [1996] NAHC 34 (8 November 1996): “With

the exception of the rights and obligations of the spouses in relation to the matrimonial property (both during the subsistence of the marriage and on dissolution thereof), the status of all marriages contracted outside Namibia prior to the date of independence in accordance with the provisions of the Family Act, is in all respects the same as those marriages contracted in terms of the Marriages Act, 1961. It follows that, notwithstanding the wide ranging grounds for dissolution of a marriage provided for in articles 55 to 63 of the Family Act (some of them rather progressive but alien to our common law), the grounds on which one or both partners in such a marital relationship can sue for divorce are the same as those applicable to common law marriages.”

Dissolution of Marriages on Presumption of Death Act 31 of 1993.

Summary: This Act ([GG 768](#)) provides for the dissolution of marriages of persons presumed to be dead.

Regulations: The Act makes no provision for regulations.

Married Persons Equality Act 1 of 1996.

Summary: This Act ([GG 1316](#)) 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 was brought into force on 15 July 1996 by GN 154/1996 ([GG 1340](#)).

Amendments: The Banking Institutions Act 2 of 1998 ([GG 1808](#)), brought into force on 1 April 1998 (GN 63/1998, [GG 1827](#)), repeals section 26. The Defence Act 1 of 2002 ([GG 2749](#)), which was brought into force on 15 July 2002 by GN 109/2002 ([GG 2765](#)), repeals section 22. The Companies Act 28 of 2004 ([GG 3362](#)), brought into force on 1 November 2010 by GN 172/2010 ([GG 4536](#)), repeals sections 31 and 32.

Application of law: Act 2/1996 ([GG 1323](#)) contains amendments to the *Deeds Registries Act 47 of 1937* which are consequential to the Married Persons Equality Act. See also Act 8/1996 ([GG 1352](#)), which makes similar consequential amendments to *Registration of Deeds in Rehoboth Act 93 of 1976*.

Regulations: The Act makes no provision for regulations.

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))

Intamba v Tjapaka [2015] NAHCMD 218 (16 September 2015) (what constitutes evidence of consent / lack of spousal consent to enter into a sales agreement)

Commentary:

Law Reform and Development Commission, *Aspects of Family Law: The Abolition of*

Marital Power and Equalization of Rights between Spouses, LRDC 1, 1994, available at www.namiblii.org
Legal Assistance Centre, *Guide to the Married Persons Equality Act*, 2001, available at www.lac.org.na in English and Afrikaans.

SELECTED CASES

Myburgh v Commercial Bank of Namibia 2000 NR 255 (SC) (marital power)
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)
S v S 2011 (1) NR 144 (HC) (questions the continued relevance of the concept of putative marriage since the Children's Status Act essentially puts children born out of wedlock on the same legal footing as the children born in wedlock).

Cases on grounds for divorce:

Valindi v Valindi & Another 2009 (2) NR 504 (HC) (divorce case which addresses condonation of adultery by plaintiff and adultery and malicious desertion as grounds for divorce)
NS v RH 2011 (2) NR 486 (HC) (defences to adultery; condonation of adultery)
HV v SV (2) 2014 (3) NR 842 (HC) (condonation of adultery in context of domestic violence; criticism of fault-based grounds for divorce and call for urgent law reform)
S v S (I 61/2015) [2015] NAHCNLD 30 (8 July 2015) (no order for restitution of conjugal rights granted because of past domestic violence)
ZS v ES 2014 (3) NR 713 (HC) (constructive desertion can be present even where the plaintiff has not left the common home).

Cases on marital property / forfeiture of benefits

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)
Valindi v Valindi & Another 2009 (2) NR 504 (HC) (divorce case which addresses section 17(6) of Native Administration Proclamation 15 of 1928)
NS v RH 2011 (2) NR 486 (HC) (effective date for division of joint estate, dissipation of joint assets and appointment of liquidator to calculate value of estate, taking into account dissipated assets, and to effect division of estate; advantages of mediation in family matters)
C v C; L v L 2012 (1) NR 37 (HC) (general principles to be applied regarding forfeiture of benefits upon divorce from marriage in community of property, discussing general, quantified and specific forfeiture orders)
S v S 2013 (1) NR 114 (SC) (no basis for argument that forfeiture of benefits implicates Art 16 of Constitution)
Mieze v Mieze [2013] NAHCMD 181 (28 June 2013) (a lease for a resettlement farm is part of the joint estate of a couple married in community of property, even if the lease is in the name of one spouse only)
HP v FP 2014 (3) NR 701 (HC) (parties are entitled to amend or vary the terms of a settlement agreement which has been made an order of court, without a formal application to court to have further terms of their agreement recorded in a court order)
ZS v ES 2014 (3) NR 713 (HC) (choice of law rules on marital property; even where there is an antenuptial contract, depending on its terms, the domiciliary law of the husband at the time of the marriage may or may not apply; where such domiciliary law applies, a court must have regard to changes in the law of the husband's matrimonial domicile, subject to public policy; whether the redistribution rules of section 7(3) of South Africa's Divorce Act 70 of 1979 can be characterised as relating to the patrimonial consequences of the marriage is a question of fact which must be proved by expert evidence or agreed between the parties; existence of universal partnership between

married couple).

Cases on custody:

DM v SM 2008 (2) NR 704 (HC) (custody dispute resolved in favour of father) (see also *DM v SM* 2014 (4) NR 1074 (HC))

NS v PS 2010 (2) NR 418 (HC) (custody of 7-year-old and 10-year-old boys awarded to father, after discussion of gender-neutral role of parenting).

A v A 2011 (1) NR 70 (HC) (joint custody of minor children upon divorce should be awarded only in exceptional circumstances)

NS v RH 2011 (2) NR 486 (HC) (factors to consider in determining best interest of minor child for purposes of awarding custody in situation involving relocation of parents to different countries, including discussions of gender dimensions of this issue; advantages of mediation in family matters)

T v T [2013] NAHCMD 377 (13 December 2013) (notes that joint custody is sometimes awarded in Namibia; disagrees with statement in *A v A* 2011 (1) NR 70 (HC) that joint custody is appropriate only when children are mature enough to decide this issue for themselves; “It often happens that parents divorce on amicable terms. They might be ideal candidates for joint custody even if the children are still too young to indicate any preferences.”).

Civil actions for adultery:

Matthews v Ipinge 2007 (1) NR 110 (HC)

Burger v Burger & Another [2012] NAHCMD 15 (10 October 2012)

Jaspert v Siepker [2013] NAHCMD 267

Van Wyk v Van Wyk & Another [2013] NAHCMD 125

Useb v Gawaseb [2014] NAHCMD 283 (1 October 2014)

JS v LC & Another 2016 (4) NR 939 (SC) (delict of adultery no longer sustainable in Namibian law)

Van Straten v Bekker (I 6056-2014) [2016] NAHCMD 243 (25 August 2016) (delict of adultery no longer sustainable in Namibian law)

For a discussion of the two cases ruling that that the delict of adultery is no longer sustainable in Namibian law, see Dianne Hubbard, “Infusions of the Constitution into the Common Law” in Nico Horn & Manfred O Hinz, eds, *Beyond a Quarter Century of Constitutional Democracy: Process and Progress in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2017.

Restitution:

HV v SV (1) 2014 (3) NR 808 (HC) (order for the restitution of conjugal rights: it is the deserter spouse and not the deserted spouse who bears the onus of showing that an offer to return is genuine; change of heart by the deserter and a commitment to reform are crucial elements of *bona fides*).

Judicial statements on Namibia’s antiquated divorce law:

HV v SV (2) 2014 (3) NR 842 (HC) at para 8: “There is, to the best of my knowledge, not a single modern constitutional democracy where the fault-based principle of divorce has not been abandoned in favour of ‘irretrievable breakdown’ or some other more flexible criteria such as the parties having lived apart for a certain period of time. The state of our law is such that even if a court is satisfied that a marriage between two people has no hope of ever being salvaged, the court must keep them together as long as one spouse wants to remain married.... under our law, love is an irrelevant consideration when it comes to whether or not a deserted spouse who does not want to continue with a marriage, should be granted her wish. A more fertile ground for violence in the family is hardly imaginable!”

ZS v ES 2014 (3) NR 713 (HC) at para 44: “Although it is already the second decade of the twenty-first century, Namibia is, in this area of the law [divorce and matrimonial

property], still hobbling along in antiquity. It has remained stuck in the distant past instead of joining ‘the worldwide shift to irretrievable marriage breakdown as the main or only ground of divorce’ (Hahlo supra 5 ed at 331) or some similar approach which more accurately reflects the reality of the modern marriage. I agree with the learned author’s view that ‘the guilt principle has long been little more than a polite fiction’ in many, if not most, of the divorce cases that serve before this court. In spite of many calls for reform, the current state of affairs continues, forcing this court to continue to apply laws which, I am convinced, do not reflect the values and aspirations of the Namibian people who have embraced a progressive Constitution based on modern democratic principles.”

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INTERNATIONAL LAW

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979*
- Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2003*
- SADC Protocol on Gender and Development, 2008*

See also Native Administration Proclamation 15 of 1928 (marriages between blacks)

(‘BLACKS’).

See also *Aliens Act 1 of 1937* (name changes upon marriage); *Births, Marriages and Deaths Registration Act 81 of 1963* (registration of marriages); and *Identification Act 21 of 1996* (population register which includes record of marriages and divorces) (**CIVIL REGISTRATION**).

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

See also *Communal Land Reform Act 5 of 2002* (rights of spouses in respect of communal land) (**LAND AND HOUSING**).

MEDIA AND COMMUNICATION

This section now combines the laws previously indexed under BROADCASTING, CENSORSHIP, FILMS, POSTS AND TELECOMMUNICATIONS and PRESS AND PRINTING, to reflect the increasing integration of these modes of communication and their legal regulation.

Newspaper and Imprint Registration Act 63 of 1971, as amended in South Africa to March 1978.

Summary: This Act ([RSA GG 3159](#)) 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. 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* ([RSA GG 8280](#)) – was not made expressly applicable to SWA. (There were no South African amendments to the Act prior to the date of transfer.)

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).

Regulations: Regulations are authorised by section 13 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

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

Summary: This Act ([RSA GG 1689](#)) makes it an offence to possess indecent or obscene photographic matter. Although still technically on Namibia's law books, it has no force, because the High Court of Namibia declared section 2(1) of the Act unconstitutional and found that the remainder of the Act was not severable. Therefore, this law is effectively defunct.

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), dated

12 November 1979, as amended. 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: The following pre-independence South African amendments were applicable to SWA –

- *General Law Amendment Act 101 of 1969* ([RSA GG 2464](#))
- *Publications Act 42 of 1974* ([RSA GG 4426](#)).

Act 4/1985 ([OG 5093](#)) amends the Act to extend the meaning of “cinematograph film”.

Regulations: Regulations have not been researched given the inoperable status of the Act in Namibia.

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) declared unconstitutional; remainder of Act not severable from the unconstitutional section).

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

Summary: This Act ([RSA GG 4426](#)) 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) ([OG 3776](#)). However, this Proclamation did not seem to function as a transfer proclamation. Under section 2 of AG 43/1978, 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 following pre-independence South African amendments were applicable to SWA –

- *Publications Amendment Act 79 of 1977* ([RSA GG 5594](#))
- *Publications Amendment Act 109 of 1978* ([RSA GG 6101](#))
- *Publications Amendment Act 44 of 1979* ([RSA GG 6433](#))
- *Divorce Act 70 of 1979* ([RSA GG 6506](#))

- *Registration of Newspapers Amendment Act 98 of 1982*, section 3(b) ([RSA GG 8280](#)), brought into force on 1 May 1983 by RSA Proc. 64/1983 ([RSA GG 8688](#))
- *Publications Amendment Act 60 of 1986* ([RSA GG 10306](#)).

The First Law Amendment (Abolition of Discriminatory or Restrictive Laws for the Purposes of Free and Fair Election) Proclamation (AG 14/1989) ([OG 5726](#)) amends the definition of “undesirable” in section 48 of the Act.

The Customs and Excise Act 20 of 1998 ([GG 1900](#)), brought into force on 1 August 1998 (GN 186/1998, [GG 1918](#)), repeals section 49.

Application of law: The Publications Proclamation (AG 43/1978) ([OG 3776](#)) supplements the Act, without actually amending it, to give the Administrator-General the power to overrule the Publications Appeal Board or any of the other committees or persons referred to in the Act.

Regulations: Regulations are authorised by section 44 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Commentary: Law Reform and Development Commission, *Report on Publications*, LRDC 16, 2010.

Namibian Broadcasting Act 9 of 1991.

Summary: This Act ([GG 223](#)) provides for the establishment of a broadcasting corporation for Namibia and sets forth its objectives, powers, duties and functions. It repeals the *Broadcasting Act 73 of 1976*.

Amendments: Sections 1 and 6 are amended by section 1 of the General Law Amendment Act 18 of 2000 ([GG 2422](#)), which was brought into force on 2 February 2001 by GN 25/2001 ([GG 2483](#)). The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends sections 6, 8 and 13. The Schedule to the Act is amended by the Communications Act 8 of 2009 ([GG 4378](#)), brought into force in relevant part on 18 May 2011 by GN 64/2011 ([GG 4714](#)).

Regulations: Regulations made under the repealed Act survive pursuant to section 34(2)(c)(ii) of this Act. However, pre-independence regulations have not been researched.

Regulations regarding television licences are contained in GN 118/1993 ([GG 726](#)). License fees are increased to N\$132 by General Notice 245/1995 ([GG 1128](#)), which does not technically amend the regulations. Regulation 6 and the Annexure on television licence fees are substituted by General Notice 95/1999 ([GG 2113](#)), which also raises the standard television licence fee from N\$132 to N\$180. General Notice 245/1995 states that it is amending the Annexure, but it appears to substitute the Annexure in its entirety.) The Annexure is again substituted in its entirety by Government Notice 220/2001 ([GG 2637](#)), which is substituted in turn by GN 235/2004 ([GG 3313](#)).

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)

Factcrown Ltd v Namibia Broadcasting Corporation 2014 (2) NR 447 (SC) (position of Namibian Broadcasting Organisation as parastatal and powers of CEO and board discussed in appeal against grant of absolution of the instance).

New Era Publication Corporation Act 1 of 1992.

Summary: This Act ([GG 377](#)) 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 ([GG 2422](#)), which is deemed by GN 25/2001 to have come into force on 29 November 2000 ([GG 2483](#)). The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends sections 5, 6 and 10.

Regulations: The Act makes no provision for regulations.

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 ([GG 382](#)) establishes a news agency for Namibia (commonly known by its acronym NAMPA) 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 ([GG 2422](#)), which is deemed to have come into force on 29 November 2000 (GN 25/2001, [GG 2483](#)).

Act 13/2004 ([GG 3283](#)) amends sections 4, 5, 6, 11, and 14.

The State-owned Enterprises Governance Act 2 of 2006, which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends sections 6, 7, 11 and 13.

Application of law: The application of the Act is affected by the State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006.

Regulations: The Act makes no provision for regulations.

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](#)).

Posts and Telecommunications Companies Establishment Act 17 of 1992.

Summary: This Act ([GG 447](#)) 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 was brought into force on 31 July 1992 by virtue of GN 88/1992 ([GG 446](#)).

Amendments: The Customs and Excise Act 20 of 1998 ([GG 1900](#)), which was brought into force on 1 August 1998 by GN 186/1998 ([GG 1918](#)), repeals the amendments to the Customs and Excise Act 91 of 1964 set forth in the Schedule to this Act.

Act 20/2000 ([GG 2425](#)) amends section 2 of the Act with respect to the number of company directors, but the amendment actually re-iterates the original Act – and it was in any event never brought into force.

The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 2.

The Schedule to the Act is amended by the Communications Act 8 of 2009 ([GG 4378](#)), brought into force in relevant part on 18 May 2011 (GN 64/2011, [GG 4714](#)).

Regulations: The Act makes no provision for regulations.

Notices: 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.

Cases: Purpose of Telecom discussed in *Mweb Namibia (Pty) Ltd v Telecom Namibia Ltd & Others* 2011 (2) NR 670 (SC).

Posts and Telecommunications Act 19 of 1992.

Summary: This Act ([GG 464](#)) 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 Namibia Limited, replacing the *Post Office Act 44 of 1958*. 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 ([GG 1223](#)) adds section 18A, which enables Namibian Post Ltd. to prescribe and levy service fees.

The Communications Act 8 of 2009 ([GG 4378](#)), brought into force in relevant part on 18 May 2011 by GN 64/2011 ([GG 4714](#)), repeals Chapters II and IV and section 45.

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)), which places certain duties on Namibia Post Limited. The Financial Intelligence Act 13 of 2012 ([GG 5096](#)) also gives certain powers to officers of the post office.

Savings: Section 54 of the Act states: “Notwithstanding the repeal of the Post Office Act, 1958 by section 10 of the Posts and Telecommunications Establishment Act, 1992 [which seems to refer to the Posts and Telecommunications Companies Establishment Act 17 of 1992] any regulation made or anything done under any provision of the Post Office Act, 1958 or any contract concluded in connection with the postal enterprise or the telecommunications enterprise, as defined in section 1 of the Posts and Telecommunications Establishment Act, 1992 [which seems to refer to the Posts and Telecommunications Companies Establishment Act 17 of 1992], shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been made by the postal company or the telecommunications company, as the case may be, under the corresponding provision of this Act.”

Regulations: Pre-independence regulations have not been researched.

After independence, **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” which were “promulgated under Government Notice No. 16 of 14th February 1961, as amended”.

Notices: GN 34/2011 ([GG 4679](#)) removes the Post Office Savings Bank from the coverage of section 2(2) of the Banking Institutions Act 2 of 1998 with effect from 1 April 2011.

Fees and tariffs: Tariffs set in terms of the Act are set and amended periodically and have not been recorded here. Notices setting service fees in respect of Post Office Savings Bank transactions have not been recorded here.

Cases: *Mweb Namibia (Pty) Ltd v Telecom Namibia Ltd & Others* 2011 (2) NR 670 (SC) (constitutionality of section 2(2) upheld); *Municipal Council of Windhoek v Telecom Namibia Ltd* 2015 (3) NR 629 (SC) (interpretation of section 24, which is now repealed; constitutionality of section 24 upheld).

***Namibia Film Commission Act 6 of 2000.**

Summary: This Act ([GG 2322](#)) 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. The Act will be brought into force on a date set by the minister responsible for information and broadcasting by notice in the *Government Gazette*.

Amendments: Act 11/2001([GG 2620](#)) amends sections 1 and 5.

Regulations: Regulations are authorised by section 28 of the Act, but none have yet been promulgated.

Appointments: Members of the Namibia Film Commission are appointed in GN 220/2002 ([GG 2879](#)) and GN 69/2003 ([GG 2946](#)).

Communications Act 8 of 2009.

Summary: This Act ([GG 4378](#)) provides for the regulation of telecommunications services and networks, broadcasting, postal services and the use and allocation of the radio spectrum. It establishes an independent Communications Regulatory Authority of Namibia (CRAN) 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 some sections of the Posts and Telecommunications Act 19 of 1992.

It was brought into force, with the exception of Parts 4 and 6 of Chapter V (universal service and interception of telecommunications) and Chapter IX (establishment and incorporation of .na domain name association), on 18 May 2011 by GN 64/2011 ([GG 4714](#)). Part 4 of Chapter V (universal service) was brought into force on 1 December 2016 by GN 285/2016 ([GG 6188](#)).

Note that GN 285/2016 is correctly numbered in the Contents section of GG 6188, but the actual Government Notice is misnumbered as GN 286/2016.

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 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006.

Regulations: Pursuant to section 135(1), any regulation or notice issued under a repealed law survives if it could have been made under any provision of the Act. Pre-independence regulations have not been comprehensively researched.

The following regulations were made in terms of the **Radio Act 3 of 1952** –

Radio Regulations were issued in in RSA GN R.2862/1979 (RSA GG 6794), as amended prior to independence by AG GN 51/1982 (OG 4615) AG GN 153/1982 (OG 4703) and GN 122/ 1987 (OG 5407). They have been amended since independence by GN 71/1990 ([GG 102](#)), GN 76/1992 ([GG 427](#)), General Notice 286/1993 ([GG 760](#)), GN 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 the regulations and repeals GN 147/2001, GN 245/2001 and GN 6/2006 ([GG 3573](#)). The regulations are also amended by GN 6/2006 ([GG 3573](#)), GN 213/2007 ([GG 3942](#)) (as amended by General Notice 311/2012 in [GG 5037](#)) and General Notice 395/2011 ([GG 4839](#)). Chapter 5 of the regulations is repealed by General Notice 74/2013 ([GG 5148](#)).

Note that the regulations regarding the licence exempt spectrum in General Notice 395/2011 ([GG 4839](#)) amend the Radio Regulations contained in RSA GN R.2862 of 28 December 1979, insofar as they are inconsistent with the new regulations.

The regulations regarding administrative and licence fees for service licences in General Notice 311/2012 ([GG 5037](#)) amends the regulations in GN 213/2007 ([GG 3942](#)) (which amend these regulations) insofar as they are inconsistent with the new regulations.

The following regulations were made in terms of the **Namibian Communications Commission Act 4 of 1992** –

Regulations relating to **broadcasting licences** 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](#)).

Note that the regulations regarding administrative and licence fees for service licences in General Notice 311/2012 ([GG 5037](#)) amend the regulations in GN 212/2007 ([GG 3942](#)) and GN 108/2007 ([GG 3858](#)) insofar as they are inconsistent with the new regulations.

The following regulations have been made in terms of **this Act** –

- **Rule-making procedures** – General Notice 334/2010 ([GG 4630](#)).
- **Broadcasting and telecommunications service licence categories** – General Notice 124/2011 ([GG 4714](#)), as amended by General Notice 74/2013 ([GG 5148](#)) and General Notice 387/2015 ([GG 5805](#)).
- **Transitional procedures for holders of telecommunications and broadcasting service licences and spectrum use licences** – initially contained in General Notice 125/2011 ([GG 4714](#)), effective from the date the Act came into force, then replaced by General Notice 171/2011 ([GG 4737](#)), which applies retrospectively from the date the Act came into force.

Forms relating to the initial regulations were published in General Notice 130/2011 ([GG 4714](#)). They appear to continue to apply in respect of the replacement regulations on the same topic.

- **Submission of interconnection agreements and tariffs** – General Notice 126/2011 ([GG 4714](#)).

Note that the Table of Contents of [GG 6588](#) indicates that these regulations are withdrawn by General Notice 175/2018. This is an error. GN 175/2018 is actually a notice of the submission of some specific tariffs in terms of the regulations.

Guidelines relating to these regulations are contained in General Notice 455/2018 ([GG 6668](#)).

- **Licencing procedures for telecommunications and broadcasting service licences and spectrum use licences** – initially contained in General Notice 127/2011 ([GG 4714](#)), which is repealed by General Notice 170/2011 ([GG 4737](#)), repealed in turn by General Notice 272/2011 ([GG 4785](#)), as amended by General Notice 330/2013 ([GG 5269](#)) and General Notice 182/2016 ([GG 6035](#)). All of these successive sets of regulations state that they apply retrospectively from the date the Act came into force.

Forms **CRAN 1-11** which accompany these regulations are contained in the separate Regulations prescribing Forms for Applications, contained in General Notice 328/2013 ([GG 5269](#)), which repeals General Notice

131/2011 ([GG 4714](#)) and which is amended by General Notice 18/2016 ([GG 5947](#)). (Note that General Notice 328/2013 states that General Notice 272/2011 is amended by GN 74/2013 ([GG 5148](#)), but this is incorrect; GN 74/2013 amends the Regulations Setting Out Broadcasting and Telecommunications Service Licence Categories published in General Notice 124/2011.) Form **CRAN 15** is appended to these regulations by General Notice 182/2016 ([GG 6035](#)). (Forms **CRAN 12-14** are appended to the Regulations prescribing the National Numbering Plan for Use in the Provision of Telecommunications Services in the Republic of Namibia, Numbering Licence Fees and Procedures for Number Licences General Notice 97 of 2016 ([GG 5983](#)).

- **Licence exempt spectrum use** – General Notice 395/2011 ([GG 4839](#)). These regulations amend the Radio Regulations contained in RSA GN R.2862 of 28 December 1979 insofar as they are inconsistent with the new regulations.
See also General Notice 177/2018 ([GG 6588](#)) on the application of these regulations.
- **Confidential information and confidential communications with CRAN** – General Notice 307/2012 ([GG 5037](#)).
- **Licence conditions for telecommunications services licences** – General Notice 308/2012 ([GG 5037](#)).
- **Licence conditions for broadcasting service licences** – General Notice 309/2012 ([GG 5037](#)).
- **Hearings** – General Notice 310/2012 ([GG 5037](#)).
- **Administrative and licence fees for service licences** – General Notice 311/2012 ([GG 5037](#)), as amended by General Notice 331/2013 ([GG 5269](#)) and General Notice 181/2016 ([GG 6035](#)). These regulations amend the regulations in GN 212/2007 ([GG 3942](#)), GN 213/2007 ([GG 3942](#)) and GN 108/2007 ([GG 3858](#)) insofar as they are inconsistent with the new regulations.
Note that *Communications Regulatory Authority of Namibia v Telecom Namibia Ltd & Others* 2018 NASC (11 June 2018), struck item 6 of these regulations with effect from 11 June 2018, and held that this item, during its period of validity, may not be applied retrospectively to anything which occurred before the date on which the regulation came into force (13 September 2012).
- **Frequency channelling plan for digital terrestrial television** – General Notice 166/2013 ([GG 5201](#)).
- **Regulations prescribing forms for applications** – General Notice 328/2013 ([GG 5269](#)), as amended by General Notice 18/2016 ([GG 5947](#))
General Notice 328/2013 ([GG 5269](#)) repeals General Notice 131/2011 ([GG 4714](#)).
- **Licence conditions for class comprehensive multiplex and signal distribution licences** – General Notice 329/2013 ([GG 5269](#))
- **Licence conditions for spectrum use licences** – General Notice 469/2013 ([GG 5354](#))
- **Cost accounting procedures and reporting requirements** – General Notice 474/2013 ([GG 5357](#))
- **Minimum technical standards for set-top box decoders** – General Notice 475/2013 ([GG 5357](#))
- **Type approval and technical standards for telecommunications equipment** – General Notice 22/2015 ([GG 5659](#)). General Notice 265/2015 ([GG 5765](#)) states that it “amends the Regulations in respect of Type Approval and Technical Standards for Telecommunications Equipment published in General Notice No. 22 of 30 January 2015 by substituting the preamble thereof”. In fact, there is no Preamble. What is substituted is the text of the General Notice which promulgated the regulations. The substituted text contains transitional provisions which apply until 30 November 2015. General

Notice 269/2016 ([GG 6074](#)) similarly substitutes the text of the General Notice which promulgated the regulations to provide for a transitional period up to 31 October 2016.

See also General Notice 177/2018 ([GG 6588](#)) which contains a definition of “Telecommunications Equipment” for purposes of type approval. Schedule 1 of this notice lists equipment which will not require type approval from the date of publication of the notice (8 May 2018).

- **Quality of service standards applicable to service licensees** – General Notice 152/2015 ([GG 5713](#))
- **National numbering plan for use in the provision of telecommunications services in the Republic of Namibia, numbering licence fees and procedures for number licences equipment** – General Notice 97/2016 ([GG 5983](#)), as amended by General Notice 500/2018 ([GG 6692](#)) (number portability)

Note that another *Government Gazette* incorrectly numbered as GG 6692 was issued and subsequently withdrawn. The *Government Gazette* containing General Notice 500/2018 was issued at one stage as GG 6693, but this incorrectly-numbered version was withdrawn.

- **Frequency Channeling Plan for the spectrum bands 694-790 Mhz and 790-862 Mhz** – General Notice 424/2016 ([GG 6160](#))
- **Sharing of infrastructure** – General Notice 400/2016 ([GG 6141](#))
- **Fees for spectrum licences, certificates and examinations** – General Notice 155/2017 ([GG 6322](#))
- **Procedures for the adjudication of disputes** – General Notice 468/2017 ([GG 6466](#)), which repeals the Regulations regarding Consumer Complaints in General Notice 128/2011 ([GG 4714](#)), and the Regulations regarding Licensee Disputes in General Notice 148/2013 ([GG 5194](#)).

Forms were published pursuant to the repealed Regulations regarding Consumer Complaints in General Notice 129/2011 ([GG 4714](#)). The General Notice containing these forms has not been repealed or withdrawn, but they have no current relevance. The replacement regulations contained in General Notice 468/2017 ([GG 6466](#)) contain their own forms.

- **Provision of universal service by telecommunications service licensees** - General Notice 178/2018 ([GG 6589](#))
- **Fair competition in the telecommunications sector** - General Notice 179/2018 ([GG 6593](#)).

Although the regulations refer to “Form A hereto”, no such form is included in the *Government Gazette*.

Regulations setting out the Frequency Band Plan for Namibia were contained in General Notice 191/2013 ([GG 5214](#)), but these were replaced by a **Frequency Band Plan of Namibia** contained in General Notice 424/2016 ([GG 6160](#)) which does not take the form of regulations.

Proposed regulations, plans and policies, some of which contain useful background information, have been published under this Act as follows:

- broadcasting and telecommunications service licence categories-General Notice 14/2011 ([GG 4647](#))
- licensing procedures for broadcasting and telecommunications service licences and spectrum use licences-General Notice 15/2011 ([GG 4647](#)); General Notice 150/2013 ([GG 5194](#))
- submission of interconnection agreements and tariffs-General Notice 16/2011 ([GG 4647](#))
- transitional procedures for telecommunications and broadcasting service licences-General Notice 17/2011 ([GG 4647](#))
- consumer complaints-General Notice 18/2011 ([GG 4647](#))

- frequency band plan-General Notice 322/2011 ([GG 4807](#))
- broadcasting service licence conditions-General Notice 331/2011 ([GG 4814](#))
- application and licence fees for service licences-General Notice 394/2011 ([GG 4839](#))
- licence conditions for telecommunications services licences-General Notice 110/2012 ([GG 4938](#))
- hearings-General Notice 148/2012 ([GG 4962](#))
- confidential information and confidential communications with CRAN-General Notice 149/2012 ([GG 4962](#))
- frequency channelling plan for digital terrestrial television-General Notice 334/2012 ([GG 5044](#)); General Notice 410/2012 ([GG 5078](#))
The text of the second General Notice is the same as the previous one, but the Table of Frequency Allocations in Regulation 3 is different.
- licensee disputes-General Notice 432/2012 ([GG 5092](#))
- amendments to regulations on broadcasting and telecommunications service licence categories-General Notice 433/2012 ([GG 5092](#))
- amendments to regulations on administrative and licence fees for service licences-General Notice 110/2013 ([GG 5179](#))
- minimal technical standards for set-top box decoders-General Notice 111/2013 ([GG 5179](#))
- cost accounting procedures-General Notice 116/2013 ([GG 5180](#))
- licence conditions for class comprehensive multiplex and signal distribution service licences, multiplex licences and signal distribution service licences-General Notice 149/2013 ([GG 5194](#))
- forms for applications-General Notice 155/2013 ([GG 5197](#))
- licence conditions for spectrum use licences-General Notice 165/2013 ([GG 5201](#))
- telecommunications equipment requiring type approval-General Notice 192/2013 ([GG 5214](#))
- minimum quality of service standards applicable to service licences-General Notice 406/2013 ([GG 5313](#))
- amendments to the Regulations Regarding the Submission of Interconnection Agreements and Tariffs-General Notice 473/2013 ([GG 5356](#))
- national numbering plan for provision of telecommunications services-General Notice 46/2014 ([GG 5414](#))
- quality of service standards applicable to service licensees-General Notice 83/2014 ([GG 5443](#))
- national numbering plan for use in the provision of telecommunications services, numbering licence fees and procedures for number licences-General Notice 352/2014 ([GG 5571](#))
- amendments to the regulations on type, approval and technical standards for telecommunications equipment-General Notice 122/2015 ([GG 5692](#))
- amendments to the regulations setting out broadcasting and telecommunications service licence categories-General Notice 162/2015 ([GG 5725](#))
- universal service levy on telecommunications service providers-General Notice 235/2015 ([GG 5755](#))
- universal services levy by telecommunications service licensees-General Notice 236/2015 ([GG 5755](#))
- amendments to the regulations on administrative and licence fees for service licences-General Notice 384/2015 ([GG 5805](#))
- regulations regarding sharing of infrastructure-General Notice 446/2015 ([GG 5836](#))
- regulations regarding the provision of roaming services for telecommunications service licences-General Notice 453/2015 ([GG 5849](#)), withdrawn by General Notice 466/2017 ([GG 6464](#))
- amendment to the regulations regarding licensing procedures for telecommunications and broadcasting service licences and spectrum use licences-General Notice 19/2016 ([GG 5947](#))

- regulations prescribing the sharing of infrastructure-General Notice 177/2016 ([GG 6032](#))
- regulations setting out the spectrum band plan of Namibia-General Notice 179/2016 ([GG 6033](#))
- regulations regarding the frequency channeling plan for the spectrum band 694-790 MHz and 790-862 MHz-General Notice 213/2016 ([GG 6054](#))
- price caps for dominant operators for leased lines and all other pre-arranged connectivity-General Notice 267/2016 ([GG 6074](#))
- code of conduct for broadcasting service licensees-General Notice 343/2016 ([GG 6097](#))
- regulations setting out fees for spectrum licences, certificates and examinations-General Notice 393/2016 ([GG 6141](#))
- price cap regulations-General Notice 156/2017 ([GG 6322](#)), withdrawn by GN 18/2018 ([GG 6514](#))
- regulations regarding procedures for the adjudication of disputes-General Notice 157/2017 ([GG 6322](#))
- amendments to the regulations prescribing the national numbering plan-General Notice 250/2017 ([GG 6350](#))
- code of conduct for broadcasting service licensees-General Notice 251/2017 ([GG 6350](#))
- fair competition in the telecommunications sector-General Notice 467/2017 ([GG 6465](#))
- guidelines on the general interpretation and applicability of enforcement, hearings and penalty provisions-General Notice 471/2017 ([GG 6469](#))
- guidelines on the general interpretation and the applicability of section 53 and the regulations regarding the submission of interconnection agreements and tariffs-General Notice 487/2017 ([GG 6479](#))
- spectrum assignment strategy-General Notice 188/2018 ([GG 6596](#))
- broadcasting code-General Notice 192/2018 ([GG 6603](#))
- license categories and procedures for postal service licensees-General Notice 374/2018 ([GG 6651](#))
- proposed amendments to regulations on type approval and technical standards for telecommunications equipment-General Notice 603/2018 ([GG 6750](#))
- license categories and licensing procedures for postal service licensees-General Notice 672/2018 ([GG 6773](#))
- notice of intention to impose a moratorium on:the issue of of spectrum use licenses in the frequency band 87.5-108 MHz, for the provision of analogue FM radio broadcasting; and the issue of broadcasting service licenses for analogue FM radio services which entails the use of radio waves- General Notice 674/2018 ([GG 6777](#)).

Notices: Notices of general interest or applicability are as follows:

- **“Reasons Document”** explaining certain decisions made in respect of the various draft regulations: 1) Regulations Setting out Broadcasting and Telecommunications Service Licence Categories; 2) Regulations Regarding Transitional Procedures for Telecommunications and Broadcasting; Service Licences and Spectrum Use Licences; 3) Regulations Regarding the Submission of Interconnection Agreements and Tariffs; 4) Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences; and 5) Regulations Regarding Consumer Complaints – General Notice 123/2011 ([GG 4714](#)).
- Discussion document entitled **“Telecommunications Market Study and Dominance”**, published as a prelude to a public hearing on dominance in the telecommunications and broadcasting markets – General Notice 62/2012 ([GG 4905](#)).
- **Clarification on the 2012 High Court judgement, *Mobile Telecommunications Ltd (MTC) v Namibia Communications Commission*** [the

predecessor to CRAN], *Telecom Namibia Ltd & Powercom (Pty) Ltd t/a Leo* [2012 (2) NR 421 (HC)] – General Notice 335/2012 ([GG 5044](#)).

- **Universal Access and Service Policy for Information and Communications Technologies** – GN 82/2013 ([GG 5169](#))
- **Determination of dominant position in the telecommunications market in Namibia** (in terms of section 78) – General Notice 167/2013 ([GG 5201](#))
- **Digital Terrestrial Television Policy Guidelines** – GN 316/2013 ([GG 5346](#)).
- **Study to establish the feasibility of the usage of TV white space technologies for telecommunications services on a secondary basis in the 470 MHz to 694 MHz spectrum band allocated to broadcasting services** – a notice of intention to conduct a study of this topic, and the reasons and purpose for the proposed study was published in General Notice 150/2014 ([GG 5480](#)), and the study was published in General Notice 293/2014 ([GG 5535](#))
- **Report on the outcomes of the infrastructure sharing study** – General Notice 192/2014 ([GG 5505](#))
- **Reduction in fixed and mobile termination rates** – a notice of new rates, including the background to the decision to reduce these rates, is contained in General Notice 401/2016 ([GG 6141](#))
- **Frequency Channeling Plan for the Spectrum Bands 694-790 Mhz and 790-862 Mhz** – General Notice 423/2016 ([GG 6160](#))
- **Frequency Band Plan of Namibia** – General Notice 424/2016 ([GG 6160](#))
- **Guidelines on the general interpretation and applicability of enforcement, hearing and penalty provisions in the Act** - General Notice 191/2018 ([GG 6602](#))
- **Guidelines on the on the interpretation and application of section 53 of the Act and the Regulations Regarding the Submission of Interconnection Agreements and Tariffs** - General Notice 455/2018 ([GG 6668](#))
- **Broadcasting Code for Broadcasting Licensees** - General Notice 602/2018 ([GG 6750](#))
- **Spectrum Assignment Strategy** - General Notice 673/2018 ([GG 6776](#)).

Licences issued under the repealed laws had to be reviewed for compliance with this Act, but remained valid until so reviewed.

Notices pertaining to specific licences under the repealed laws and under this Act have not been recorded here.

Notices pertaining to specific licensees, applications, transfers, tariffs, etc have been omitted, as well as all notices dealing with administrative matters such as hearings.

A memorandum of agreement between the Namibian Competition Commission and the Communications Regulatory Authority of Namibia (CRAN), made pursuant to section 67 of the Competition Act 2 of 2003, is published in General Notice 17/2012 ([GG 4868](#)).

Appointments: GN 131/2010 ([GG 4514](#)) announces the appointment of members of the Board of the Communications Regulatory Authority of Namibia.

Certain inspectors for the Communication Regulatory Authority of Namibia are appointed as Ex-officio Commissioners of Oaths, with effect from 15 February 2016, in terms of the *Justices of the Peace and Commissioners of Oaths Act 16 of 1963*, by GN 48/2016 ([GG 5971](#)).

Cases:

Mobile Telecommunications Ltd v Namibia Communications Commission & Others

2012 (2) NR 421 (HC) (regulatory decision on tariffs which can be charged by mobile telephone operators generally upheld on review; certain portions of decision excised on grounds that they had not served before NCC)

Note: The court judgment refers to “*the decision taken by the NCC as published in Government Gazette 36 of 2011*”. There is no such *Government Gazette*. It appears that the case intended to refer to General Notice 56 of 2011 ([GG 4669](#)), which contains “Amendment of tariffs of mobile operators” (reporting a decision of the NCC taken on 9 February 2011). See discussion of case by CRAN in General Notice 335/2012 ([GG 5044](#)).

Municipal Council of Windhoek v Telecom Namibia Ltd 2015 (3) NR 629 (SC) (in interpreting and upholding constitutionality of section 24 of Posts and Telecommunications Act 19 of 1992, now repealed, Court notes at para 1 that section 60 of this Act is similar)

Communications Regulatory Authority of Namibia v Telecom Namibia Ltd & Others 2018 NASC (11 June 2018) (striking down section 23(2)(a) of the Act on constitutional grounds, with effect from 11 June 2018, as an uncircumscribed discretionary power; also striking down regulation 6 in the “Administrative and licence fees for service licences”, General Notice 311/2012 ([GG 5037](#)), which was made in terms of that provision, with effect from 11 June 2018; holding further that this regulation, during its period of validity, may not be applied retrospectively to anything which occurred before the date on which the regulation came into force (13 September 2012)).

COMMENTARY

SADC Media Law: A Handbook for Media Practitioners, Volume 1, A comparative overview of the laws and practice in Malawi, Namibia, South Africa and Zimbabwe, Johannesburg: Konrad Adenauer Foundation, 2003, available at www.kas.de
Daniel Motinga, “Liberalising the Telecommunications Sector in Namibia: Better Regulation is the Key”, Institute for Public Policy Research, 2003, available at www.ippr.org.na.

INTERNATIONAL LAW

Agreement relating to the International Telecommunications Satellite Organisation (INTELSAT), 1971

Constitution and Convention of the International Telecommunication Union (ITU), 1992

Constitution of the Universal Postal Union (UPU), 1964

Convention of the Pan-African Postal Union (PAPU), 1980

International Telecommunication Regulations, 1988

***Final Acts of the World Conference on International Telecommunications (WCIT-12), Dubai 2012*

†*Radio Regulations as adopted by the World Administrative Radio Conference, 1979*

Final Acts of the World Administrative Radio Conference for the Mobile Services (MOB-83), Geneva 1983

Final Acts Adopted by the First Session of the World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of Space Services Utilizing It (ORB-85), Geneva 1985

Final Acts of the World Administrative Radio Conference for the Planning of the HF Bands Allocated to the Broadcasting Service (HFBC-87), Geneva 1987

Final Acts of the World Administrative Radio Conference for the Mobile Services (MOB-87), Geneva 1987

Final Acts Adopted by the Second Session of the World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of Space Services Utilizing It (ORB-88), Geneva 1988

Final Acts of the World Administrative Radio Conference for dealing with Frequency Allocations in Certain Parts of the Spectrum (WARC-92), Malaga-Torremolinos 1992

****Radio Regulations as adopted by the World Radiocommunication Conference (WRC-95), 1995**

****Final Acts of the World Radiocommunication Conference (WRC-97), Geneva 1997**

****Final Acts of the World Radiocommunication Conference (WRC-2000), Istanbul 2000**

****Final Acts of the World Radiocommunication Conference (WRC-2007), Geneva 2007**

****Final Acts of the World Radiocommunication Conference (WRC-12), Geneva 2012**

****Regional Agreement GE06, adopted by RRC-06, relating to the planning of the digital terrestrial broadcasting service in Region 1 in the frequency bands 174-230 MHz and 470-862 MHz, 2006**

SADC Protocol on Transport, Communications and Meteorology, 1996

See also General Law Amendment Ordinance 22 of 1958, section 1 (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 (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 Racial Discrimination Prohibition Act 26 of 1991 (prohibits certain advertisements and language) (**CRIMINAL LAW AND PROCEDURE**).

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

See also Exchequer and Audit Amendment Proclamation, AG 35 of 1979 (Post Office Account) (**FINANCE AND DEVELOPMENT**).

MEDICAL AID

Medical Scheme for Members of the National Assembly, Judges and Other Office Bearers Act 23 of 1990.

Summary: This Act ([GG 118](#)) extends membership of the medical 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: The Act makes no provision for regulations.

Notices: 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 ([GG 1226](#)) regulates medical aid funds and establishes the Namibian Association of Medical Aid Funds. This Act repeals the *Medical Schemes Act 72 of 1967*. Part III was brought into force on 1 February 1996 by GN 25/1996 ([GG 1255](#)). The remainder of the Act was brought into force on 11 February 1997 by GN 11/1997 ([GG 1496](#)).

Amendments: The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 ([GG 2529](#)) amends section 1 and substitutes section 3. Act 11/2016 ([GG 6180](#)) amend section 1 and substitutes section 7 and 45.

Regulations: Section 46(2) provides that anything done under a repealed law “which could have been done under a corresponding provision of this Act” survives. However, pre-independence regulations have not been researched.

Regulations made under this Act are contained in GN 12/1997 ([GG 1496](#)), as amended by GN 193/2018 ([GG 6688](#)).

Notices: 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.

General Notice 363/2017 ([GG 6399](#)) declares certain rules on restrictions and exclusions in respect of third party claims to be undesirable practices for medical aid funds.

The particulars of individual registered funds are not recorded here.

See also Hospitals and Health Facilities Act 36 of 1994 (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 Act 17 of 1990 and Former Presidents' Pension and Other Benefits Act 18 of 2004 (medical aid benefits for President and former Presidents) (**PRESIDENT**).

See also Social Security Act 34 of 1994 (Maternity Leave, Sick Leave and Death Benefit Fund; National Medical Benefit Fund) (**SOCIAL SECURITY**).

MEDICINE

Consent to Operations on Native Minors Proclamation 37 of 1943.

Summary: This Ordinance ([OG 1080](#)) 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. This law is repealed by the Child Care and Protection Act 3 of 2015 ([GG 5744](#)), which has not yet come into force.

South Africa Medical Research Council Act 19 of 1969, as amended in South Africa to December 1977.

Summary: This Act ([RSA GG 2319](#)) 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* ([RSA GG 8106](#)) – 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.

Regulations: Regulations are authorised by section 23 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Abortion and Sterilization Act 2 of 1975, as amended in South Africa to December 1977.

Summary: This Act ([RSA GG 4608](#)) 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. Neither of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Abortion and Sterilization Amendment Act 38 of 1980* ([RSA GG 6985](#)) and the *Abortion and Sterilization Amendment Act 48 of 1982* ([RSA GG 8107](#)) – was made expressly applicable to SWA.

Amendments: The following pre-independence South African amendment was applicable to SWA –

- *Abortion and Sterilization Amendment Act 18 of 1976* ([RSA GG 5034](#)).

The Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends some of the terminology in the Act.

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

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).

Commentary: Charles Ngwena, “Access to safe abortion as a human right in the African region: lessons from emerging jurisprudence of UN treaty-monitoring bodies”, 29(2) *South African Journal on Human Rights* 2013.

Anatomical Donations and Post-Mortem Examinations Ordinance 12 of 1977.

Summary: This Ordinance ([OG 3633](#)) 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 ([OG 5651](#)), which made it applicable to all of SWA.

Regulations: Pre-independence regulations have not been researched.

***Namibia Institute of Pathology Act 15 of 1999.**

Summary: This Act ([GG 2210](#)) 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 be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006,

amends section 11, 12, 13, 15, 16 and 22.

Regulations: Regulations are authorised by section 34 of the Act, but none have yet been promulgated.

Notices: 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](#)). The term of office of one board member is extended in GN 203/2015 ([GG 5829](#)).

Medicines and Related Substances Control Act 13 of 2003.

Summary: This Act ([GG 3051](#)) 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 repeals the *Medicines and Related Substances Control Act 101 of 1965*. The Act was brought into force on 25 July 2008 by GN 177/2008 ([GG 4088](#)).

Amendments: Act 8/2007 ([GG 3968](#)) – which was brought into force on 1 August 2008 by GN 187/2008 ([GG 4091](#)) – amends the Act substantially.

Savings: 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). Note that the notice referred to has been published: GN 180/2008 ([GG 4088](#)), as amended and as subsequently replaced (see the section on “Notices” below).

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. A new Council was initially appointed in GN 209/2009 ([GG 4367](#)), which has been followed by subsequent appointments.

Notices, regulations, authorisations, orders, approvals, certificates made and other things done under the previous legislation survive, by virtue of section 47(2), as amended.

Regulations: Pre-independence regulations have not been comprehensively researched.

Proposed regulations under the current Act were published 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 contained in RSA GN R.352 of 21 February 1975, RSA GN R.1188 of 9 July 1976 and Namibian GN 47/2001). These regulations are amended by GN 28/2015 ([GG 5681](#)) (substitution of Regulation 4 and repeal of Annexure II) and by GN 316/2015 ([GG 5915](#)) (substitution of Annexure XXXVIII, with effect from 1 April 2016).

Note that GN 316/2015 refers to “Annexure XXXVIII of regulation 47 published in Government Notice 1 of 25 July 2008”. It should refer to Annexure XXXVIII of the

regulations published in Government Notice 178 of 25 July 2008.

These regulations were ruled invalid in *Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others*, 2010 (2) NR 660 (HC). Subsequently, *Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others* 2011 (1) NR 272 (HC) suspended the operation of sections 46(3) and (4) of the Act until such time as new regulations are made. However, these holdings were overruled by *Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another* 2012 (2) NR 566 (SC), which found the regulations to be generally valid, with the exception of regulation 34(3)(a), (c), (d) and (e) which was declared invalid as being *ultra vires* the powers of the Minister under the Act, and also found that it was not competent for the High Court to suspend the operation of section 46(3) of the Act.

Exemptions: Exemptions from the application of section 29 of the Act are contained in GN 179/2008 ([GG 4088](#)), as amended by GN 43/2015 ([GG 5703](#)).

Exemptions from section 18(1) of the Act are contained in GN 85/2010 ([GG 4473](#)) and GN 194/2011 ([GG 4808](#)).

Certain medicines are exempted from the operation of certain regulations, permanently or for a specified time period, in GN 272/2008 ([GG 4174](#)), GN 49/2010 ([GG 4444](#)), GN 84/2011 ([GG 4736](#)), GN 187/2012 ([GG 5003](#)), GN 22/2014 ([GG 5425](#)), GN 29/2015 ([GG 5681](#)), GN 76/2017 ([GG 6277](#)), GN 207/2017 ([GG 6384](#)) and GN 52/2018 ([GG 6552](#)).

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](#)), GN 128/2010 ([GG 4505](#)), GN 225-226/2010 ([GG 4577](#)), GN 39-40/2011 ([GG 4683](#)), GN 47/2011 ([GG 4695](#)), GN 71/2011 ([GG 4726](#)), GN 122/2011 ([GG 4761](#)), GN 197/2011 ([GG 4812](#)), GN 188/2012 ([GG 5003](#)), GN 244/2012 ([GG 5042](#)), GN 245/2012 ([GG 5042](#)), GN 30/2013 ([GG 5142](#)), GN 212/2013 ([GG 5263](#)), GN 211/2014 ([GG 5596](#)), GN 50/2018 ([GG 6551](#)) (veterinary medicines), GN 51/2018 ([GG 6552](#)), GN 63/2018 ([GG 6566](#)) (veterinary medicines), GN 64/2018 ([GG 6566](#)), GN 305/2018 ([GG 6779](#)) and GN 306/2018 ([GG 6779](#)) (veterinary medicines).

The registration of certain medicines is cancelled in terms of the current Act in GN

51/2010 ([GG 4444](#)), GN 89/2012 ([GG 4915](#)), GN 186/2012 ([GG 5003](#)) and GN 31/2013 ([GG 5142](#)), GN 210/2014 ([GG 5596](#)), GN 98/2015 ([GG 5758](#)), GN 37/2018 ([GG 6534](#)), GN 80/2018 ([GG 6580](#)), GN 307/2018 ([GG 6779](#)) and GN 308/2018 ([GG 6779](#)).

GN 111/2011 ([GG 4756](#)) determines classes of veterinary medicines which are subject to registration under the Act.

Health care practitioners are ordered to return certain cancelled medicines to the manufacturers, suppliers or importers of those medicines in terms of GN 90/2012 ([GG 4915](#)).

Notices: Notices under the previous Act which appear to survive include the following –

GN 154/1999 ([GG 2155](#)) is a notice requiring the return to the suppliers of certain undesirable medicines (those containing chlormezanone).

GN 105/2002 ([GG 2759](#)) is a notice concerning medicines and classes of medicines subject to registration.

GN 104/2002 ([GG 2759](#)) is a notice about inspection of the Medicines Register.

There are a number of RSA Government Notices which amended the Schedules to the previous Act. These have not been recorded here.

In terms of the current Act, GN 180/2008 ([GG 4088](#)), as amended by GN 163/2012 ([GG 4978](#)), GN 198/2013 ([GG 5255](#)), GN 190/2014 ([GG 5582](#)) and GN 53/2018 ([GG 6552](#)), classifies certain medicines and other substances as Schedule 0, Schedule 1, Schedule 2, Schedule 3, Schedule 4 or Schedule 5. It is published in terms of section 29(1) of the Act – and so replaces the Schedules of the *Medicines and Related Substances Act 101 of 1965* which survived in terms of section 47(2) of the Act.

GN 180/2008 ([GG 4088](#)) was repealed and replaced by GN 278/2018 ([GG 6749](#)), which classifies certain medicines and other substances as Schedule 0, Schedule 1, Schedule 2, Schedule 3, Schedule 4 or Schedule 5.

Appointments: Members of the Namibia Medicines Regulatory Council are announced in GN 209/2009 ([GG 4367](#)), GN 195/2010 ([GG 4561](#)), GN 162/2012 ([GG 4978](#)), GN 278/2012 ([GG 5076](#)), GN 277/2013 ([GG 5328](#)), GN 278/2013 ([GG 5328](#)), GN 337/2013 ([GG 5379](#)), GN 218/2016 ([GG 6125](#)), GN 4/2017 ([GG 6217](#)), GN 17/2008 ([GG 6527](#)) and GN 141/2018 ([GG 6649](#)).

Note that GG 6527 was initially numbered incorrectly as GG 6528. A corrected version was subsequently issued.

Cases:

Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others 2010 (2) NR 660 (HC) 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*; it also affects the application of section 31(3) and 34(1) and suspends the application of 46(3) until such time as valid new regulations are in place; *Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others* 2011 (1) NR 272 (HC) varies the order made in the previous case, but still

suspends the operation of sections 46(3) and (4) of the Act until such time as new regulations are made; and *Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another* 2012 (2) NR 566 (SC) finds the regulations to be generally valid – with the exception of regulation 34(3)(a), (c), (d) and (e) which are invalid as being *ultra vires* the powers of the Minister under the Act – and finding that it was not competent for the High Court to suspend the operation of section 46(3) of the Act

Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others 2015 (1) NR 1 (HC) (licensing scheme for dispensing of medicines under section 31(3) – read together with sections 29(7)(b), 29(9)(b), 29(13)(b) and 29(19)(b) – is not unconstitutional; the Namibia Medicines Regulatory Council is a tribunal as envisaged by Art 12(1)(a) of the Namibian Constitution).

SELECTED CASES

LM & Others v Government of the Republic of Namibia 2012 (2) NR 527 (HC) (unlawful sterilisations); upheld on appeal and remitted to High Court for determination of quantum of damages in *Government of the Republic of Namibia v LM & Others* 2015 (1) NR 175 (SC); see also Priti Patel, “How did we get here and where to now? The coerced sterilisation of HIV-positive women in Namibia”, *Agenda*, Issue 75, 2008

Ex Parte Chingufo: In re Semente v Chingufo 2013 (2) NR 328 (HC) (patient’s right to refuse treatment if sufficient mental capacity present, but requisite capacity missing in the case at hand), overturned on appeal in *ES v AC* 2015 (4) NR 921 (SC) (patient autonomy as a basic human right, notwithstanding children’s right to be cared for by their parents); see also Nico Horn, “*Ex Parte Chingufo. In re E Semente; E Semente v Chingufo*: Another unfortunate victory for formalist law”, *Namibia Law Journal*, Volume 5, Issue 1, 2013 and Carmen C Visser, “Medical treatment vis-à-vis patient’s rights”, *Namibia Law Journal*, Volume 8, Issue 1, 2016.

COMMENTARY

Clever Mapaure, “Melancholic medical law: Namibian medical practitioners may get away with homicide – The story of Mr H”, *Namibia Law Journal*, Volume 6, Issue 1, 2014.

See also Veterinary and Veterinary Para-Professions Act 1 of 2013 (**ANIMALS**).

See also **HEALTH**.

See also **HOSPITALS**.

See also Namibia Qualifications Authority Act 29 of 1996 (occupational standards) (**EDUCATION**).

See also **MEDICAL AID**.

See also **MENTAL HEALTH AND MENTAL DISORDERS**.

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 ([RSA GG 3837](#)) provides for the detention and treatment of the mentally ill. It repeals the *Mental Disorders Act 38 of 1916*, with the exception of sections 27 to 29bis inclusive. (The remaining provisions of the *Mental Disorders Act 38 of 1916* were repealed by the Criminal Procedure Act 51 of 1977 ([RSA GG 5532](#)).)

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 following pre-independence South African amendments were applicable to SWA –

- *Mental Health Amendment Act 48 of 1976* ([RSA GG 5074](#))
- *Health Laws Amendment Act 36 of 1977* ([RSA GG 5481](#)).

One definition is amended by the Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

The Criminal Procedure Act 25 of 2004 ([GG 3358](#)), which is not yet in force, amends section 1 and substitutes sections 17 and 29 and certain expressions.

Savings: Section 79(2) states: “Any regulation, application, report, enquiry, finding, request, return, direction, examination or appointment made, held or given or any medical certificate or other certificate, reception order or other order, summons, warrant or authority issued, made or given, or any condition imposed or any board established or any other act done under any provision of any law repealed by this Act and which was of force immediately prior to the commencement of this Act, shall be deemed to have been made, held, issued, given, imposed, established or done, as the case may be, under the corresponding provision of this Act.”

Regulations: Regulations are authorised by section 77 of this Act. Pre-independence regulations under this Act or surviving from the repealed Act have not been researched. No regulations have been promulgated since independence.

Appointments: A Psychiatry Board in respect of Windhoek Central Hospital is announced in GN 198/2001 ([GG 2624](#)). A Mental Health Hospital Board for Windhoek Central Hospital is announced in GN 14/2015 ([GG 5668](#)) and in GN 281/2018 ([GG 6753](#)).

Cases:

S v Narib/S v Nyambali 2010 (1) NR 273 (HC) (relation of sections 28-29 to section 77(6) of *Criminal Procedure Act 51 of 1977*)

Gawanas v Government of the Republic of Namibia 2012 (2) NR 401 (SC) (procedure for discharge of President's patient under section 29).

See also *Criminal Procedure Act 51 of 1977*, Chapter 13 (mental illness and criminal responsibility) (**CRIMINAL LAW AND PROCEDURE**).

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

METEOROLOGY

INTERNATIONAL LAW

Convention of the World Meteorological Organization (WMO), 1947

SADC Protocol on Transport, Communications and Meteorology, 1996

MINING AND MINERALS

Sperrgebiet-Delimitation Proclamation 11 of 1920.

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

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

The acquisition of shares in Rössing Uranium Limited and the appointment of a director, AG 31 of 1985.

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

Petroleum (Exploration and Production) Act 2 of 1991.

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

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

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

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

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

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

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

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

Minerals (Prospecting and Mining) Act 33 of 1992.

Summary: This Act ([GG 564](#)) provides for the reconnaissance, prospecting, mining, disposal and control of minerals in Namibia. It repeals the Dealing in Unwrought Precious Metals Proclamation 5 of 1938, the *Nuclear Installations Act (Licensing and Security Systems) 43 of 1963*, the *Atomic Energy Act 90 of 1967*, the Mines, Works and

Minerals Ordinance 20 of 1968, the *Mines Titles Registration Proclamation R.90 of 1969* and the Mineral Rights Proclamation AG 57 of 1978 (and their amendments). It was brought into force on 1 April 1994 by GN 41/1994 ([GG 828](#)).

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

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

Regulations: Regulations made under the repealed laws survive pursuant to section 139(2)(f) of this Act. Pre-independence regulations have not been researched.

Notices: 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](#)).

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

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

Notices pertaining to individual licence applications are not listed here.

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

Cases:

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

S v McDonald & Others 2000 NR 174 (HC)

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

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

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

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

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) (effect of section 90(1) re: ownership and control in connection with charge of theft), confirmed in *S v Auala* 2010 (1) NR 175 (SC)

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

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

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

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

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

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

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

Commentary: Michelle R Munyanduki, “Aligning the Mining Sector with Sustainable Development: A Focus on Uranium Mining at Rössing” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017 (rehabilitation).

Minerals Development Fund of Namibia Act 19 of 1996.

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

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 6, 8 and 16.

Regulations: The Act makes no provision for regulations.

Diamond Act 13 of 1999.

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

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 1, 4, 6 and 7, and substitutes section 9.

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

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

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

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

Cases: The following cases pertain to the present Act –

S v Auala (No 1) 2008 (1) NR 223 (HC) (contravention of section 74, including discussion of proof of ownership for purposes of proving theft in respect of this section); *S v Auala (No 2)* 2008 (1) NR 240 (HC) (sentencing for this offence); both confirmed in *S v Auala* 2010 (1) NR 175 (SC)

S v Sankwasa 2014 (3) NR 751 (HC) (contravention of section 74, including discussion of when suspect must be advised of right to legal representation, right to remain silent and right not to incriminate himself; legality of search of accused and propriety of admission of diamonds found into evidence).

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

S v Mbali 1990 NR 1 (HC)

S v Kramer & Others 1990 NR 49 (HC)

S v Strauss 1990 NR 71 (HC) (appropriate sentence for common-law crime of theft of diamonds)

S v Koekemoer & Another 1990 NR 116 (HC)

S v Eiseb & Another 1990 NR 142 (HC)

S v Da Costa & Another 1990 NR 149 (HC)

S v Campbell & Others 1990 NR 310 (HC)

S v Small 1990 NR 358 (HC)

S v De Beer 1990 NR 379 (HC)

S v Du Plessis & Another 1992 NR 74 (HC) (bail in a case where accused charged with theft of diamonds and contravention of section 28(a) of the Act)

S v Nassar 1994 NR 233 (HC)

S v Nangombe 1993 NR 178 (HC); 1994 NR 276 (SC)

S v van der Berg 1995 NR 23 (HC) (sections 28(b) and 35A)

S v de Bruyn 1999 NR 1 (HC) (lawful use of “entrapment” to gather evidence for offences in terms of section 28)

Minister of Home Affairs, Minister Ekandjo v Van der Berg 2008 (2) NR 548 (SC) (section 34ter).

Commentary:

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

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

COMMENTARY

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

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

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

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

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

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

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

INTERNATIONAL LAW

SADC Protocol on Mining, 1997

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

See also **LABOUR**.

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

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

NATIONAL HERITAGE

War Graves Control and Maintenance Ordinance 2 of 1927.

Summary: This Ordinance ([OG 232](#)) provides for the control and maintenance of war graves. The Ordinance was extended to the Rehoboth Gebiet by Proc. 12/1930 ([OG 365](#)).

Regulations: The Ordinance makes no provision for regulations.

Notices: Proc. 17/1928 ([OG 284](#)) vests control of war graves in SWA in the Administrator of SWA.

GN 191/1960 ([OG 2276](#)) concerns the Graves Commission.

National Heritage Act 27 of 2004.

Summary: This Act ([GG 3361](#)) 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 repeals the *National Monuments Act 28 of 1969*. It was brought into force on 1 September 2005 by GN 105/2005 ([GG 3490](#)).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 1, 4 and 7, deletes section 6 and substitutes section 18.

Regulations: Section 69(2) provides that any “regulation or by-law made and anything done” under the repealed law “which may be made or done under a provision of this Act” survives. Pre-independence regulations have not been researched.

Regulations are promulgated under this Act in GN 106/2005 ([GG 3490](#)).

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 General Notice 79/2008 ([GG 4022](#)).

Note that the original [GG 3688](#) was replaced by a subsequent corrected version. The corrected version states at the top: “*This Gazette replace [sic] Gazette No. 3688 of 1 September 2006*”.

Betholdt Himumuine Primary School is declared to be a heritage place by General Notice 298/2006 ([GG 3714](#)).

Dorslandtrekker is declared to be a heritage place by General Notice 299/2006 ([GG](#)

[3714](#)).

Twyfelfontein is declared to be a conservation area in General Notice 20/2007 ([GG 3788](#)).

A number of places and objects are designated as heritage places and heritage objects in GN 155/2011 ([GG 4787](#)) and in General Notice 393/2013 ([GG 5306](#)).

The Omandongo Mission was declared to be a heritage place by General Notice 273/2014 ([GG 5533](#)).

The Equestrian Statue Monument was removed as a national monument from the National Heritage Register by General Notice 274/2014 ([GG 5533](#)).

The King Ipumbu ya Tshilongo Memorial Site was declared to be a heritage place by General Notice 275/2014 ([GG 5533](#)).

Appointments: Council appointments under the previous Act were announced in GN 76/1991 ([GG 232](#)), GN 318/1996 ([GG 1462](#)), GN 270/2000 ([GG 2444](#)) and GN 20/2003 ([GG 2915](#)). Council appointments under this Act were announced in GN 82/2009 ([GG 4260](#)) and GN 94/2011 ([GG 4747](#)).

INTERNATIONAL LAW

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

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

Convention for the Safeguarding of the Intangible Cultural Heritage, 2003

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

UNESCO Convention on the Protection of the Underwater Cultural Heritage, 2001

World Heritage Convention, 1972

See also **CULTURE AND CULTURAL INSTITUTIONS**.

NEGOTIABLE INSTRUMENTS

Bills of Exchange Act 22 of 2003.

Summary: This Act ([GG 3121](#)) 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 was brought into force on 15 May 2004 by GN 110/2004 ([GG 3207](#)).

Savings: Section 98(a) provides that “anything done under any law repealed by this Act, and which could have been done under a corresponding provision of this Act, is deemed to have been done under that corresponding provision”.

Regulations: The Act makes no provision for regulations.

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 ([OG 435](#)) governs pensions from the SWA Teachers' Pension Fund.

Amendments: The Proclamation is amended by –

Proc. 33/1936 ([OG 687](#))
Proc. 33/1937 ([OG 731](#))
Proc. 15/1938 ([OG 749](#))
Proc. 5/1942 ([OG 939](#))
Proc. 3/1943 ([OG 1017](#))
Proc. 18/1943 ([OG 1063](#))
Proc. 18/1944 ([OG 1113](#))
Proc. 1/1945 ([OG 1158](#))
Proc. 30/1945 ([OG 1209](#))
Proc. 40/1945 ([OG 1222](#))
Proc. 19/1946 ([OG 1264](#))
Proc. 16/1947 ([OG 1312](#))
Ord. 8/1951 ([OG 1601](#))
Ord. 8/1953 ([OG 1755](#))
Ord. 5/1954 ([OG 1823](#))
Ord. 34/1957 ([OG 2092](#))
Ord. 21/1959 ([OG 2199](#))
Ord. 26/1959 ([OG 2199](#))
Ord. 20/1960 ([OG 2254](#))
Ord. 17/1962 ([OG 2409](#))
Ord. 27/1963 ([OG 2493](#))
Ord. 21/1969 ([OG 3008](#)).

Regulations: The Proclamation makes reference to regulations. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated

Railways and Harbours Pensions Amendment Act 26 of 1941, as amended in South Africa prior to Namibian independence.

Summary: This Act ([SA GG 2904](#)) 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”.

Amendments: The following pre-independence South African amendments applied to SWA –

- *Railways and Harbours Acts Amendment Act 23 of 1944* ([SA GG 3338](#))
- *Railways and Harbours Acts Amendment Act 44 of 1959* ([SA GG 6237](#))
- *Railways and Harbours Acts Amendment Act 62 of 1962* ([RSA GG 253](#))
- *Railways and Harbours Acts Amendment Act 6 of 1965* ([RSA GG 1050](#))
- *Second Railways and Harbours Acts Amendment Act 85 of 1971* ([RSA GG 3202](#))
- *Railways and Harbours Pensions Further Amendment Act 45 of 1974* ([RSA GG 4434](#))
- *Second Railways and Harbours Acts Amendment Act 89 of 1976* ([RSA GG 5179](#))
- *Railways and Harbours Acts Amendment Act 67 of 1980* ([RSA GG 7039](#))
- *Railways and Harbours Acts Amendment Act 29 of 1981* ([RSA GG 7475](#))
- *Second Railways and Harbours Acts Amendment Act 60 of 1981* ([RSA GG 7753](#))
- *South African Transport Services Amendment Act 6 of 1982* ([RSA GG 8039](#))
- *South African Transport Services Amendment Act 44 of 1985* ([RSA GG 9708](#)).

Regulations: Regulations are authorised by section 7 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Ex-Volunteers Assistance Proclamation 2 of 1945.

Summary: This Proclamation ([OG 1166](#)) covers grants and loans to persons who rendered certain military services.

Amendments: The Proclamation is amended by Proc. 14/1945 ([OG 1186](#)), Proc. 19/1945 ([OG 1192](#)), Proc. 25/1946 ([OG 1273](#)), Proc. 4/1949 ([OG 1438](#)), Proc. 23/1948 ([OG 1364](#)) and Proc. 20/1949 ([OG 1423](#)).

Regulations: The Proclamation makes no provision for regulations.

Railways and Harbours Special Pensions Act 36 of 1955, as amended in South Africa prior to Namibian independence.

Summary: This Act ([SA GG 5494](#), also published in [OG 1915](#)) 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”.

Amendments: The following pre-independence South African amendments applied to SWA –

- *Railways and Harbours Acts Amendment Act 34 of 1957* ([SA GG 5882](#)).

Regulations: The Act makes no provision for regulations.

Pension Funds Act 24 of 1956, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 5679](#)) regulates pension funds.

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).

Transfer of administration to SWA: This Act was administered by the Minister of Finance. Acts administered by the Minister of Finance in the Department of Inland Revenue were transferred to South West Africa by the Executive Powers (Inland Revenue) Transfer Proclamation, AG 18 of 1978, but this Act fell under the Department of Finance at the time, as indicated by government notices pertaining to the Registrar and Deputy Registrar of Friendly Societies issued during the 1970s. See, for example, Government Notice 1317/1970 ([RSA GG 2768](#)) and Government Notice 1640/1977 ([RSA GG 5715](#)). There was no transfer proclamation for laws administered by the Minister of Finance in the Department of Finance.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Finance Act 81 of 1957* ([SA GG 5907](#))
- *Finance Act 80 of 1959* ([SA GG 6255](#))
- *Inspection of Financial Institutions Act 68 of 1962* ([RSA GG 264](#))
- *Second Finance Act 58 of 1966* ([RSA GG 1577](#))
- *Financial Institutions Amendment Act 65 of 1968* ([RSA GG 2107](#))
- *Financial Institutions Amendment Act 80 of 1969* ([RSA GG 2446](#))
- *Financial Institutions Amendment Act 23 of 1970* ([RSA GG 2661](#))
- *Financial Institutions Amendment Act 91 of 1972* ([RSA GG 3594](#))
- *Financial Institutions Amendment Act 101 of 1976* ([RSA GG 5217](#))
- *Financial Institutions Amendment Act 94 of 1977* ([RSA GG 5624](#))
- *Financial Institutions Amendment Act 80 of 1978* ([RSA GG 6060](#))
- *Financial Institutions Amendment Act 103 of 1979* ([RSA GG 6568](#))
- *Financial Institutions Amendment Act 99 of 1980* ([RSA GG 7151](#))
- *Financial Institutions Amendment Act 82 of 1982* ([RSA GG 8240](#))
- *Corporation for Public Deposits Act 46 of 1984* ([RSA GG 9149](#))
- *Financial Institutions Amendment Act 86 of 1984* ([RSA GG 9313](#))

- *Financial Institutions Amendment Act 50 of 1986* ([RSA GG 10248](#))
- *Financial Institutions Amendment Act 51 of 1988* ([RSA GG 11313](#))
- *Financial Institutions Amendment Act 53 of 1989* ([RSA GG 11892](#))
- *Financial Institutions Second Amendment Act 54 of 1989* ([RSA GG 11893](#)).

Act 94 of 1969 was also amended in South Africa by the *Legal Succession to the South African Transport Services Act 9 of 1989* ([RSA GG 11743](#)). However, the portions of Act 9 of 1989 which amended Act 94 of 1969 came into force only after Namibian independence, on 1 April 1990, in terms of section 37(2) read with section 3(1) of Act 9 of 1989; the date referred to in section 3(1) was set by *RSA Government Notice 578/1990* ([RSA GG 12364](#)) as being 1 April 1990. Therefore these amendments were not applicable to South West Africa.

After Namibian independence, Act 4/1994 ([GG 812](#)) amends section 36 to allow the imposition of limits on the amount of funds which may be invested outside Namibia.

The Short-term Insurance Act 4 of 1998 ([GG 1832](#)) repeals section 39 insofar as it relates to short-term insurance.

The Long-term Insurance Act 5 of 1998 ([GG 1834](#)) repeals the remainder of section 39.

The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 ([GG 2529](#)) amends section 1, substitutes section 3 and repeals section 3A.

The Maintenance Act 9 of 2003 ([GG 3043](#)) amends section 37.

Act 5/2011 ([GG 4735](#)) amends sections 1, 19, 36 and 37.

Act 6/2014 ([GG 5584](#)) amends sections 19 and 37D.

Application of law: The application of the Act is affected by the Members of Parliament and other Office-bearers Pension Fund Act 20 of 1999 ([GG 2239](#)), in respect of the fund created by that Act.

The Government Institutions Pension Fund (GIPF) is exempted from section 19(4) of the Act, subject to specified limitations, by GN 91/2015 ([GG 5751](#)).

Regulations: Pre-independence regulations were contained in RSA GN R.98 of 1962 (RSA GG 162), as amended by –

- RSA GN R.2144/1984 (RSA GG 9437)
- RSA GN R.1790/1985 (RSA GG 9892)
- RSA GN R.1037/1986 (RSA GG 10249)
- RSA GN R. 232/1987 (RSA GG 10601)
- RSA GN R.1452/1989 (RSA GG 11992)
- 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](#))
- GN 127/2013 ([GG 5205](#))

Note that GN 350/2003 withdraws GN 127/2013 with effect from its publication date, as if it never existed.

- GN 351/2003 ([GG 5383](#))
- GN 38/2015 ([GG 5689](#)).

This Government Notice refers to a previous amendment made by GN 321 of 18 December 2013. This is in error. GN 321/2013 ([GG 5351](#)) was published on 29 November 2013 and concerns the import of poultry products into Namibia. The only *Government Gazette* published on 18 December 2013 ([GG 5365](#)) contains nothing relating to this Act. This erroneous reference was probably intended to refer to GN 351/2003 ([GG 5383](#)) published on 31 December 2013.

However, new **Pensions Funds Regulations** are contained GN 211/2018 ([GG 6697](#)), which repeals the regulations in RSA GN R.98 of 1962 (without mentioning their amendments).

Appointments: A Registrar and Deputy Registrar of Pension 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).

Commentary:

Florian Beukes, “Freedom of testation v section 37C of the Pension Funds Act, 1956 (No. 24 of 1956)”, *Namibia Law Journal*, Volume 4, Issue 1, 2012
Law Reform and Development Commission, *Government Institutions Pension Fund (GIPF) Legal Framework Discussion Paper*, LRDC 26, 2013, available at www.namiblii.org.

Administration Employees Pension Ordinance 19 of 1959.

Summary: This Ordinance ([OG 2199](#)) provides for pensions and benefits for certain employees of the administration of South West Africa.

Amendments: This Proclamation is amended by Ord. 18/1960 ([OG 2254](#)) and Ord. 23/1962 ([OG 2409](#)).

See also the Regulation of Membership of the Union Widows’ Pension Fund Ordinance 15 of 1960 ([OG 2254](#)), which provides for male contributors of the Administration Employees Pension Fund to be members of the Union Widows Pension Fund.

Regulations: Regulations are authorised by section 29 of the Ordinance. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated

Members of Statutory Bodies Pension Act 94 of 1969, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 2459](#)) 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.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Pension Laws Amendment Act 73 of 1973* ([RSA GG 3955](#))
- *Pension Laws Amendment Act 50 of 1975* ([RSA GG 4739](#))
- *Pension Laws Amendment Act 100 of 1979* ([RSA GG 6549](#))
- *Pension Laws Amendment Act 96 of 1983* ([RSA GG 8809](#)).

Act 94 of 1969 was also amended in South Africa by the *Legal Succession to the South African Transport Services Act 9 of 1989* ([RSA GG 11743](#)). However, the portions of Act 9 of 1989 which amended Act 94 of 1969 came into force only after Namibian independence, on 1 April 1990, in terms of section 37(2) read with section 3(1) of Act 9 of 1989; the date referred to in section 3(1) was set by *RSA Government Notice 578/1990* ([RSA GG 12364](#)) as being 1 April 1990. Therefore these amendments were not applicable to South West Africa.

Regulations: The Act makes no provision for regulations.

Black Authorities’ Service Pensions Act 6 of 1971, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 3022](#)) (originally called the “Bantu Authorities’ Service Pensions 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 included “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) dated 28 September 1977, as amended. 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.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Black Education Account Abolition Act 20 of 1972* (originally “Bantu Education Account Abolition Act”) ([RSA GG 3431](#))
- *Black Laws Amendment Act 23 of 1972* (originally “Bantu Laws Amendment Act”) ([RSA GG 3447](#))
- *Black Laws Amendment Act 4 of 1976* 1972 (originally “Bantu Laws

Amendment Act”) ([RSA GG 5012](#))

- *Black Laws Amendment Act 119 of 1977* ([RSA GG 5671](#)).

Regulations: Regulations are authorised by section 5 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Railways and Harbours Pensions Act 35 of 1971, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 3104](#)) 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 following pre-independence South African amendments were applicable to SWA –

- *Railways and Harbours Acts Amendment Act 33 of 1972* (RSA)
- *Railways and Harbours Acts Amendment Act 47 of 1973* ([RSA GG 3912](#))
- *Railways and Harbours Acts Amendment Act 44 of 1974* ([RSA GG 4433](#))
- *Railways and Harbours Acts Amendment Act 46 of 1975* ([RSA GG 4719](#))
- *Railways and Harbours Acts Amendment Act 8 of 1976* ([RSA GG 5016](#))
- *Railways and Harbours Acts Amendment Act 64 of 1978* ([RSA GG 6019](#))
- *Railways and Harbours Acts Amendment Act 80 of 1979* ([RSA GG 6528](#))
- *Railways and Harbours Acts Amendment Act 67 of 1980* ([RSA GG 7039](#))
- *Railways and Harbours Acts Amendment Act 29 of 1981* ([RSA GG 7475](#))
- *Second Railways and Harbours Acts Amendment Act 60 of 1981* ([RSA GG 7753](#))
- *South African Transport Services Amendment Act 6 of 1982* ([RSA GG 8039](#))
- *South African Transport Services Amendment Act 5 of 1984* ([RSA GG 9081](#))
- *South African Transport Services Amendment Act 44 of 1985* ([RSA GG 9708](#))
- *Finance Act 88 of 1988* ([RSA GG 11410](#))
- *Finance Act 80 of 1989* ([RSA GG 11935](#)).

Regulations: Regulations are authorised by section 4 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Government Service Pension Act 57 of 1973, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 3934](#)) 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 are probably applicable by virtue of the definition of “Republic” in section 1.

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* ([RSA GG 5173](#)) – was made expressly applicable to SWA. However, the other amendments to the Act in South Africa were probably applicable to SWA by virtue of the definition of Republic, making the following list of amendments applicable to SWA –

- *Pension Laws Amendment Act 15 of 1974* ([RSA GG 4198](#)) (repeals section 17(2)(i))
- *Pension Laws Amendment Act 83 of 1976* ([RSA GG 5173](#)) (amends sections 5 and 7)
- *Pension Laws Amendment Act 26 of 1977* ([RSA GG 5463](#))
- *General Pensions Act 29 of 1979* ([RSA GG 6390](#))
- *Pension Laws Amendment Act 97 of 1980* ([RSA GG 7150](#))
- *Pension Laws Amendment Act 106 of 1986* ([RSA GG 10452](#))
- *Pension Laws Amendment Act 89 of 1988* ([RSA GG 11411](#)).

Section 2 of the *Pension Laws Amendment Act 15 of 1974* ([RSA GG 4198](#)) is an independent provision which was made explicitly applicable to South West Africa.

Section 2(5) was substituted by the *Pension Laws Amendment Act 83 of 1976* ([RSA GG 5173](#)), with this amendment being explicitly applicable to SWA. (Section 2 was amended further in RSA by the *General Pensions Act 29 of 1979* ([RSA GG 6390](#)) which repealed all of section 2 except subsection (4) – but that amending law was *not* made explicitly applicable to SWA, nor was the Act itself applicable in any way to SWA, not even by a definition of Republic.) Section 2 of the *Pension Laws Amendment Act 15 of 1974*, as amended in SWA, reads as follows:

“Regulations relating to payment of compensation and rendering of medical treatment

2. (1) Notwithstanding anything to contrary any law contained, the Minister of Social Welfare and Pensions may, in consultation with the Minister of Finance, the Minister of Posts and Telecommunications and the Administrators, and after consultation with –

- (a) the Minister who is responsible for the Bureau;
- (b) the Minister of the Interior;
- (c) the Minister of Defence;
- (d) the Minister of Police; and
- (e) the Minister of Prisons,

make regulations which provide for the payment of compensation to or in respect of, or to a dependant of, any officer or employee who dies or is retired or as a result of injury or ill-health out of and in the course of his employment by the Government or by an administration of any province or of the territory South West Africa, and for the rendering of medical treatment (including surgical or hospital treatment, skilled nursing services and the supply and repair of any artificial part of the body or any device), to such officer or employee In respect of such injury or ill-health.

(2) Regulations referred to in subsection (1), except regulations which reduce compensation, may be made with retrospective effect and different regulations may be made in respect of different classes or categories of officers or employees.

(3) For the purposes of this section –

“employee” means any member of the Reserve Police Force established section 34(2) of the Police Act, 1958 (Act 7 of 1958), or any member of the Police Reserve established under 34A(1) of the Police Act, 1958, or any member of the Government Employees’ Provident Fund referred to in section 2(3) of the Government Service Pensions Act, 1965 (Act 62 of 1965), and includes any person who in terms of section 2 of the Simonstown Naval Base Employees’ Transfer Act, 1956 (Act No. 72 of 1956), became an employee referred to that section but does not include any employee to whom the provisions of the War Pensions Act, 1967 (Act No. 62 of 1967), apply in relation to the injury or ill-health referred to in subsection (1) of this section;

“officer” means any member of the Government Service Pension Fund established under section 3 of the Government Service Pension Act, 1973 (Act No. 57 of 1973), and includes a specified officer as defined in section 3(6) of the Pension Laws Amendment Act, 1973 (Act No. 73 of 1973), but does not include any officer to whom the provisions of the War Pensions Act, 1967, apply in relation to the injury or ill-health referred to in subsection (1) of this section.

(4) Any annuity, pension or benefit payable immediately before 1 July 1973 in terms of the regulations promulgated by Government Notice R.1929 of 8 December 1965, and any amendment thereof, shall be continued at the rates and subject to the conditions which were applicable immediately before the date of commencement of this section.

(5) Notwithstanding anything to the contrary in any law contained –

(a) any increase of a pension or other benefit effected under section 5(1)(bA) of the Government Service Pensions Act, 1965, or in terms of any regulation made under that Act on or after 1 July 1973, but before the date of commencement of this section, shall be deemed to be compensation in terms of the regulations promulgated under subsection (1);

(b) any military service as defined in section 1 of the Military Pensions Act, 1976, and rendered by an officer or employee, shall, for the purposes of this section and the regulations made thereunder, be deemed to have been service in the Government or in the administration of the province or of the territory of South West Africa in whose service he was during the time he rendered such military service;

(c) an officer or employee who renders military service or undergoes training within the meaning of the Defence Act, 1957 (Act No. 44 of 1957), shall, for the purposes of the Workmen’s Compensation Act, 1941 (Act No. 30 of 1941), be deemed to be a workman while rendering such military service or undergoing such training.

[subsection (5) substituted by the Pension Laws Amendment Act

83 of 1976 (RSA GG 5173)]

(6) This section shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

No repeal of this provision has been located, but it is not clear if it has any ongoing effect.

Regulations: Regulations are authorised by section 17 of the Act, as well as the independent supplementary provision on regulations discussed above. Pre-independence regulations under these laws have not been researched. No post-independence regulations have been promulgated.

Railways and Harbours Pensions for Non-Whites Act 43 of 1974, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 4432](#)) 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”.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Second Railways and Harbours Acts Amendment Act 89 of 1976* ([RSA GG 5179](#))
- *Railways and Harbours Acts Amendment Act 64 of 1978* ([RSA GG 6019](#))
- *Railways and Harbours Acts Amendment Act 67 of 1980* ([RSA GG 7039](#))
- *Railways and Harbours Acts Amendment Act 29 of 1981* ([RSA GG 7475](#))
- *Second Railways and Harbours Acts Amendment Act 60 of 1981* ([RSA GG 7753](#))
- *South African Transport Services Amendment Act 6 of 1982* ([RSA GG 8039](#))
- *South African Transport Services Amendment Act 13 of 1983* ([RSA GG 8595](#))
- *South African Transport Services Amendment Act 5 of 1984* ([RSA GG 9081](#))
- *South African Transport Services Amendment Act 44 of 1985* ([RSA GG 9708](#))
- *South African Transport Services Amendment Act 91 of 1987* ([RSA GG 10983](#))
- *Finance Act 88 of 1988* ([RSA GG 11410](#))
- *Finance Act 80 of 1989* ([RSA GG 11935](#)).

The Act was amended in South Africa by the *Legal Succession to the South African Transport Services Act 9 of 1989* ([RSA GG 11743](#)). However, the portions of this Act which amended *Act 43 of 1974* came into force only after Namibian independence, on 1 April 1990, in terms of section 37(2) read with section 3(1) of Act 9 of 1989; the date referred to in section 3(1) was set by *RSA Government Notice 578/1990* ([RSA GG 12364](#)) as being 1 April 1990. These amendments were thus not applicable to South West Africa.

Regulations: Regulations are authorised by section 3 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Military Pensions Act 84 of 1976, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 5174](#)) 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(b) of this Transfer Proclamation explicitly excluded this Act from section 3(1) of the General Proclamation. Therefore, the administration of the Act was not transferred to SWA.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Pension Laws Amendment Act 26 of 1977* ([RSA GG 5463](#))
- *General Pensions Act 29 of 1979* ([RSA GG 6390](#))
- *Pension Laws Amendment Act 100 of 1979* ([RSA GG 6549](#))
- *Pension Laws Amendment Act 97 of 1980* ([RSA GG 7150](#))
- *Pension Laws Amendment Act 81 of 1982* ([RSA GG 8239](#))
- *Pension Laws Amendment Act 96 of 1983* ([RSA GG 8809](#))
- *Pension Laws Amendment Act 123 of 1984* ([RSA GG 9381](#))
- *Pension Laws Amendment Act 106 of 1986* ([RSA GG 10452](#))
- *Pension Laws Amendment Act 88 of 1987* ([RSA GG 10980](#)).

Regulations: Pre-independence regulations have not been comprehensively researched. RSA regulations are contained in RSA GN R.1806/1976 (RSA GG 5304), which is deemed to have come into force on 30 June 1976 by section 15(2) of the *Pension Laws Amendment Act 26 of 1977* ([RSA GG 5463](#)); this section 15 was repealed by the *General Pensions Act 29 of 1979* ([RSA GG 6390](#)).

No post-independence regulations have been promulgated.

Pensions Laws Amendment Act 83 of 1976, sections 1-5 and 8.

Summary: Sections 1-4 of this Act ([RSA GG 5173](#)) amend other laws. Section 5 relates to the consolidation of pensions or benefits under the *Simonstown Naval Base Employees’ Transfer Act 72 of 1956* and allowances or bonuses under any other law. Section 8 contains presumptions and definitions for purposes of laws relating to social pensions.

Applicability to SWA: Section 10 states that sections 1, 2, 3, 4, 5 and 8 “shall also apply 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 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. In any event, the wording of section 10 did not make amendments made to the Act in South Africa prior to Namibian independence automatically applicable to South West Africa.

Section 8 of the Act was amended in South Africa prior to Namibian independence by the *Pension Laws Amendment Act 40 of 1978* ([RSA GG 5965](#)), which was not made independently applicable to SWA. The *General Pensions Act 29 of 1979* ([RSA GG 6390](#)), which was also not made independently applicable to SWA, repealed sections 1-4 and 8 – as well as section 10 of *Act 83 of 1976* which made the selected sections of the Act applicable to SWA. However, since these amendments were not independently applicable to SWA, the Act appeared to remain in force in SWA as it stood prior to these amendments.

Temporary Employees Pension Fund Act 75 of 1979, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 6518](#)) 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.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Pension Laws Amendment Act 106 of 1986* ([RSA GG 10452](#))
- *Pension Laws Amendment Act 89 of 1988* ([RSA GG 11411](#)).

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

Pension Matters of Government Institutions Proclamation, AG 56 of 1989.

Summary: This Proclamation ([OG 5831](#)) deals with issues related to the termination of the Statutory Institutions Pensions Fund established in terms of Statutory Institutions

Pensions Act 3 of 1980 ([OG 4117](#)), which was repealed in its entirety by this Proclamation.

Amendments: Act 5/1990 ([GG 30](#)) 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.

Regulations: The Proclamation makes no provision for regulations.

Pension Gratuities to Former Members of the National Assembly and of Legislative and Executive Authorities Proclamation, AG 8 of 1990.

Summary: This Proclamation ([OG 5918](#)), 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 ([OG 4505](#)) (since repealed by the Members of Parliament and other Office-bearers Pensions Act 21 of 1990 ([GG 116](#))). It also exempted the gratuities from the Income Tax Act 24 of 1981. It has no ongoing application.

Regulations: The Proclamation made no provision for regulations.

National Pensions Act 10 of 1992.

Summary: This Act ([GG 395](#)) provides for national pensions to be paid to aged, blind and disabled persons. It repeals the German War Veterans' Pensions Ordinance 3 of 1965 and the *Social Pensions Act 37 of 1973*. It was brought into force on 1 October 1994 by Proc. 25/1994 ([GG 942](#)).

Regulations: Regulations made under the repealed laws survive pursuant to section 17(2) of this Act, which states that "any regulation, made, or any act done under any provision of any law repealed by subsection (1), shall be deemed to have been made or done under the corresponding provisions of this Act: Provided that in the case of any regulation made in relation to any old age pension or veteran's pension, as the case may be, such regulation shall be deemed to have been made in relation to a basic state pension payable under this Act". Pre-independence regulations have not been comprehensively researched, although it appears that many of the surviving regulations are race-based and therefore inappropriate to independent Namibia. Section 16 of this Act authorises regulations, but none have yet been promulgated.

Notices: All national pensions were equalised at N\$135/month in terms of section 17(3) by GN 201/1994 ([GG 962](#)). Subsequent pension increases were not gazetted; section 16 of the Act authorises regulations on maximum pension amounts but does not require that such amounts be contained in regulations.

The old age pension was increased from N\$600/month to N\$1000/month in April 2015. (See "Old age pension to increase by N\$100 next year", *The Namibian*, 6 November 2015.) Disability pensions also increased from N\$600/month to N\$1000/month in April 2015. (See Verua Kavezeri, "Daily struggles of a maimed villager", *The Namibian*, 3 September 2015.) Both old age and disability pensions were increased to N\$1100/month effective 1 April 2016. (See "Increase in pensioner, disability grants",

New Era, 8 June 2016.) Both old age and disability pensions were again increased, to N\$1200/month, effective 1 April 2017. (This was reported in a press release of Ministry of Poverty Eradication and Social Welfare dated 14 July 2017; the increased amount was provided from August 2017, with a once-off extra amount to cover the increase for the period from April to August.) Both “pensions and grants” were again increased, to N\$1250/month, effective 1 April 2018. The increased amount was provided from August 2018, with a once-off extra amount to cover the increase for the period from April to August. (See Alwonda Izaaks “Govt increases pensions and grants by N\$50”, *The Namibian*, 3 July 2018.)

Members of Parliament and other Office-bearers Pension Fund Act 20 of 1999.

Summary: This Act ([GG 2239](#)) establishes a pension fund for Members of Parliament and other Office-bearers. It was brought into force on 4 January 2000 by GN 284/1999 ([GG 2253](#)), replacing the Members of Parliament and other Office-bearers Pensions Act 21 of 1990 ([GG 116](#)) which was repealed with effect from the same date (GN 285/1999, [GG 2253](#)).

Application of law: Note that the Judges’ Pensions Act 13 of 2011, provides for the transfer of judges’ pensions and gratuities from the State Revenue Fund to the Members of Parliament and other Office-bearers Pension Fund.

Regulations: The Act makes no provision for regulations.

Rules: 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](#)).

Notices: Certain specific officials are named as office-bearers for purposes of the Act from time to time, but these designations have not been recorded here.

Judges’ Pensions Act 13 of 2011.

Summary: This Act ([GG 4862](#)) repeals the Judges Pensions Act 28 of 1990 and provides for the transfer of judges’ pensions and gratuities from the State Revenue Fund to the Members of Parliament and other Office-bearers Pension Fund. (See Members of Parliament and other Office-bearers Pension Fund Act 20 of 1999.) The Act was brought into force on 30 March 2012 by GN 92/2012 ([GG 4915](#)), which was also set as the transfer date for the pension funds in terms of section 2 of the Act by GN 93/2012 ([GG 4915](#)).

It should be noted that section 7 of the Act provides that, if there is a dispute or doubt regarding entitlement to a pension under the repealed law on the transfer date, then the repealed Act will continue to apply as if this Act had not been passed, and the transfer date will become the date on which the dispute is settled or the doubt resolved.

Regulations: The Act makes no provision for regulations.

See also Presidential Emoluments Act 17 of 1990 and Former Presidents’ Pension and Other

Benefits Act 18 of 2004 (**PRESIDENT**).

See also Social Security Act 34 of 1994 (National Pension Fund) (**SOCIAL SECURITY**).

See also Veterans Act 2 of 2008 (**SOCIAL WELFARE**).

POLICE

Police Act 19 of 1990.

Summary: This Act ([GG 113](#)) 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 repeals the *Police Act 7 of 1958*.

Note that the original *Gazette* was replaced by another GG 113 with the same date; the correct version states at the top: “*This Government Gazette replaces Government Gazette No. 113 of 3 December 1990.*”

Amendments: The Act is substantially amended by Act 3/1999 ([GG 2072](#)). 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 ([GG 2566](#)) (regarding standards for physical and mental fitness).

The General Law Amendment Act 14 of 2005 ([GG 3565](#)) amends section 1 of the Act.

Regulations: Regulations made in terms of the repealed *Police Act 7 of 1958* survive pursuant to section 45(2) of the Police Act 19 of 1990. Pre-independence regulations have not been comprehensively researched.

Pre-independence regulations were contained in RSA GN R.203/1964 (RSA GG 719, republished in OG 2542), amended by GN 16/1991 ([GG 159](#)). However, GN 167/1994 ([GG 919](#)) repealed and replaced these regulations, *with the exception of* regulation 58(32). This regulation was declared unconstitutional by the Supreme Court case of *Kauesa v Minister of Home Affairs* 1995 NR 175 (SC).

The following regulations were made under this Act:

General regulations are contained in GN 167/1994 ([GG 919](#)), as amended by GN 143/1996 ([GG 1332](#)), GN 246/1998 ([GG 1965](#)), GN 166/2001 ([GG 2593](#)), GN 55/2002 ([GG 2718](#)), GN 252/2010 ([GG 4613](#)), GN 56/2011 ([GG 4708](#)), GN 298/2013 ([GG 5337](#)) and GN 238/2014 ([GG 5616](#)) (which withdraws GN 56/2011).

GN 238/2014 ([GG 5616](#)) refers to a previous amendment made by GN 201/2002 ([GG 2862](#)), but this is in fact a separate set of regulations which was replaced by GN 124/2003 ([GG 2997](#)). (See below.)

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 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](#)).

Municipal regulations: Windhoek Municipal Police Service Regulations issued by the Council of the Municipality of Windhoek are contained in General Notice 32/2013 ([GG](#)

5137), which replaced and replaced General Notice 296/2004 (GG 3335).

Note that General Notice 32/2013 states that it repeals *Government* Notice 296 of 1 December 2004 and not *General* Notice 296 of 1 December 2004.

Cases: The following cases concern this 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, GG 2072)

Ongombe Farmers Association v Tjiuro & Others 2011 (2) NR 630 (HC) (“civil proceedings” in section 39 do not include urgent interdictory relief)

Nakanyala v Inspector-General Namibia & Others 2012 (1) NR 200 (HC) (section 3A does not require exhaustion of internal remedies before seeking administrative review in court; section 23 on suspension and regulations on transfers)

S v Malumo & Others (In re Ndala) 2014(3) NR 690 (the question of whether this Act is applicable to the Eastern Caprivi Zipfel was put forward, but the Court ruled that the issue can be raised only after the conclusion of the trial in terms of s. 319 of the Criminal Procedure Act 51 of 1977).

The following cases concern the 2004 **Regulations for the Windhoek Municipal Police Service (now repealed)**:

Keramen v Council of The Municipality of Windhoek & Others 2014 (4) NR 992 (HC) (Regs 18-19; referral for disciplinary inquiry does not preclude fitness inquiry or constitute “double jeopardy” as the two inquiries have different purposes).

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).

Regulation 58(32), made under the previous Act, was declared unconstitutional in the Supreme Court case of *Kauesa v Minister of Home Affairs* 1995 NR 175 (SC), which reversed the High Court judgment *Kauesa v Minister of Home Affairs* 1994 NR 102 (HC).

Commentary:

Clinton Light, *Namibian Police Human Rights Manual*, Legal Assistance Centre, 1999, available at www.lac.org.na

Chuks Okpaluba, "State liability for acts and omissions of police and prison officers: recent developments in Namibia" 46 (2) *The Comparative and International Law Journal of Southern Africa* 184 (2013)

See the entry for the Correctional Service Act 9 of 2012 (CORRECTIONAL FACILITIES) for commentary 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**).

See also **DISASTERS** (involvement of uniformed forces in disaster situations).

PRESCRIPTION

Prescription Act 68 of 1969, as amended in South Africa to November 1979.

Summary: This Act ([RSA GG 2421](#)) 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 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 38(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968).”

Transfer to SWA: Although this Act makes no reference to any minister, it probably fell under the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979, as amended, by virtue of its subject matter. (Note that it is one of the laws listed in the South African *Justice Laws Rationalisation Act 18 of 1996* ([RSA GG 17129](#).) 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* ([RSA GG 9087](#)) – which was not made expressly applicable to SWA.

Amendments: The following pre-independence amendments in South Africa were applicable to SWA:

- *General Law Amendment Act 62 of 1973* ([RSA GG 3947](#))
- *General Law Amendment Act 57 of 1975* ([RSA GG 4760](#)).

Terminology in the Act was amended by the Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

The Married Persons Equality Act 1 of 1996 ([GG 1316](#)) amends section 3.

Regulations: The Act makes no provision for regulations.

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))

Section 12(3) was amended in South Africa prior to Namibian independence by the *Prescription Amendment Act 11 of 1984* ([RSA GG 9087](#)) which was not made expressly applicable to South West Africa. This amendment removed the phrase “which does not arise from contract” from section 12(3). This amendment does not appear to have been applicable to South West Africa, but it should be noted that this case assumes without discussion that section 12(3) reads with the amendment in question, stating at 322B-E: “The relevant section of the Prescription Act 68 of 1969, is s 12 and the relevant portions of that section are as follows:

‘(1) Subject to the provisions of ss (2) and (3), prescription shall commence to run as soon as the debt is due.

...

(3) A debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care.”

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)

Namibia Development Corporation v Aussenkehr Farms (Pty) Ltd 2010 (2) NR 703 (HC) at 731F-732H

Basfour 2482 (Pty) Ltd v Atlantic Meat Market (Pty) Ltd & Another 2011 (1) NR 164 (HC)

Merlus Seafood Processors (Pty) Ltd v Minister of Finance 2013 (1) NR 42 (HC)(section 10)

Wellman v Hollard Insurance Co of Namibia Ltd 2013 (2) NR 568 (HC) (application of section 12(3) to agent and principal; discussed in Clever Mapaire, “Materiality and (non)-disclosure in Namibian Insurance Law: Revisiting old principles in the context of new juristic positions”, *UNAM Law Review*, Volume 1, Issue 2, 2013, available at <http://unamlawreview.info>

Section 12(3) was amended in South Africa prior to Namibian independence by the *Prescription Amendment Act 11 of 1984 (RSA GG 9087)* which was not made expressly applicable to South West Africa. This amendment removed the phrase “which does not arise from contract” from section 12(3). This amendment does not appear to have been applicable to South West Africa, but it should be noted that the *Wellman* case applies section 12(3) to a contractual debt (see paragraph 78); thus, although the issue is not discussed, the case appears to assume that section 12(3) applies as amended by *Act 11 of 1984*.

Namibia Development Corporation v Mwandangi & Others 2013 (3) NR 737 (LC) (Act applies to labour-related claims arising under Labour Act 6 of 1992 or Labour Act 11 of 2007)

Ongopolo Mining Ltd v Uris Safari Lodge (Pty) Ltd & Others 2014 (1) NR 290 (HC) (section 10; meaning of “debt”)

Lisse v Minister of Health & Social Services 2015 (2) NR 381 (SC) (interruption of prescription by notice of motion in judicial review proceedings relating to the damages claim)

Municipal Council of Windhoek v Telecom Namibia Ltd 2015 (3) NR 629 (SC) (section 11(b): “the State” includes a local authority)

Shambo v Amukugo 2016 (1) NR 44 (HC) (interruption of running of prescription under sections 14 and 15)

Tjamuaha & Another v Master of the High Court & Others 2016 (1) NR 186 (HC) (vindicatory claim is not a “debt” for purposes of Act).

Hartzenberg v Standard Bank Namibia 2016 (2) NR 307 (SC) (an amendment to a claim which is proposed after the prescription period cannot be allowed where it claims new debts not arising from the same material facts relied upon in the original claim)

Okorusu Flurospar (Pty) Ltd v Tanaka Trading CC & Another 2016 (2) NR 486 (HC) (an amendment which does not introduce a new cause of action but merely expands on the initial plea may be made after the prescription period has run)

Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others 2016 (3) NR 747 (SC) (section 12(3)).

Commentary: C Mapaire, “A Comparative Discussion of the Approach to Characterisation in *Laconian Maritime Enterprises Ltd v Agromar Lineas Ltd* 1986 (3) SA 509 (D), *Laurens No v Von Hohne* 1993 (2) SA 104 (W) and *Society of Lloyds v Price; Society of Lloyds v Lee* 2005 (3) SA 548 (T)”, *UNAM Students Law Review*, Volume 1, No 1, 2013, available at www.unamlawreview.com.

Limitation of Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970, as amended in South Africa to November 1979.

Summary: This Act ([RSA GG 2902](#)) 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 7 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), dated 12 November 1979, as amended. There were no amendments to the Act in South Africa before or after the date of transfer.

Amendments: The Limitation of Legal Proceedings Act 25 of 1985 ([OG 5145](#)) amends section 1.

Section 95(1) of the Local Authorities Act 23 of 1992 ([GG 470](#)) repeals section 9, insofar as it related to the Municipal Ordinance 13 of 1963, which is repealed by Act 23 of 1992.

Regulations: The Act makes no provision for regulations.

Cases: *Sebatane & Another v Mutumba & Others* 2013 (1) NR 284 (HC) (section 2(1)(a) upheld against constitutional challenge).

PRESIDENT

Former Presidents' Pension and Other Benefits Act 18 of 2004.

Summary: This Act ([GG 3350](#)) provides for the payment of tax-free pensions and other benefits to former Presidents of Namibia and their families.

Amendments: The Act is amended by Act 14/2012 ([GG 5105](#)), which amends section 2 to increase the gratuity paid to former Presidents from a single gratuity to a gratuity in respect of each term of office, and substitutes item 3(a) of the Schedule with respect to residential accommodation. With an unusual degree of retrospectivity, the amending Act is deemed to have come into force on 18 December 2004.

Regulations: The Act makes no provision for regulations.

Conferral of Status of Founding Father of the Namibian Nation Act 16 of 2005.

Summary: This Act ([GG 3567](#)) confers the status of Founding Father of the Namibian Nation on the first President of the Republic of Namibia, His Excellency Dr Sam Nujoma.

Regulations: The Act makes no provision for regulations.

Presidential Remuneration and Other Benefits Act 5 of 2016.

Summary: This Act ([GG 6045](#)) covers the remuneration payable to the President, the allowance payable to the President's spouse, medical aid benefits for the President and his or her spouse and exemption of these amounts from income tax. The President's remuneration is set at 15% above the remuneration "payable at any given time" to the Vice President, and the Vice-President's remuneration is 15% above the remuneration "payable at any given time" to the Prime Minister under the Public Office-Bearers (Remuneration and Benefits) Act 3 of 2005.

This Act repeals the Presidential Remuneration and Other Benefits Act 15 of 2012 ([GG 5114](#)). The previous Act pre-dated the introduction of the Office of Vice-President by the Namibian Constitution Third Amendment Act 8 of 2014. It set the President's remuneration at 15% above the remuneration "currently payable" to the Prime Minister under the Public Office-Bearers (Remuneration and Benefits) Act 3 of 2005. (See also Proc. 32/2015 ([GG 5838](#)), which set the remuneration of the Vice-President at 10 per cent above the remuneration payable to the Prime Minister.)

The Presidential Remuneration and Other Benefits Act 15 of 2012 in turn replaced the Presidential Emoluments Act 17 of 1990 ([GG 100](#)) – which was originally the "Presidential Emoluments and Pension Act 17 of 1990" until the short title was amended by Act 18 of 2004.

Regulations: The Act makes no provision for regulations.

Notices: The remuneration of the President and the Vice-President and the pension of the first former President and former President are set out in Proc. 4/2017 ([GG 6259](#)), which makes reference to the authority of this Act.

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).

PUBLIC GATHERINGS

Demonstrations in or near Court Buildings Prohibition Act 71 of 1982.

Summary: This Act ([RSA GG 8221](#)) 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) ([OG 5059](#)) made this Act applicable to South West Africa, with minor amendments.

Transfer of administration to SWA: This Act post-dated the transfer proclamations.

Amendments: Note that a portion of section 4 was *not* applied to SWA by AG 29/1985 ([OG 5059](#)). AG 29/1985 also amends section 2.

Regulations: The Act makes no provision for regulations.

Public Gatherings Proclamation, AG 23 of 1989.

Summary: This Proclamation ([OG 5756](#)) 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. The Proclamation repeals portions of the Riotous Assemblies Act 17 of 1956.

Regulations: The Act makes no provision for regulations.

Notices: See General Notice 143/1992 ([GG 503](#)), which refers to the Proclamation in connection with guidelines for the holding of elections.

Commentary: Law Reform and Development Commission, *Report on Public Gatherings*, LRDC 14, 2006, available at www.namiblii.org.

See also *Criminal Law Amendment Act 8 of 1953* (offences committed in the course of protests) (**CRIMINAL LAW AND PROCEDURE**).

See also Labour Act 11 of 2007 (section 76(2) on picketing) (**LABOUR**).

PUBLIC SERVICE

Indemnity Proclamation 8 of 1923.

Summary: This Proclamation ([OG 103](#)) indemnifies members of the public service for acts committed after 15 May 1922 and prior to the date on which this Proclamation took effect.

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) which came into force on 1 April 1978, as amended. 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 ([GG 447](#)).

Regulations: Pre-Independence regulations have not been researched. There are no post-Independence regulations.

Travelling Privileges Ordinance 14 of 1980.

Summary: This Ordinance ([OG 4164](#)) authorises the Executive Committee to determine travelling privileges for public servants.

Public Service Commission Act 2 of 1990.

Summary: This Act ([GG 27](#)) 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 ([GG 1121](#)), brought into force on 1 November 1995 (GN 210/1995, [GG 1185](#)).

Regulations: The Act makes no provision for regulations.

Public Service Act 13 of 1995.

Summary: This Act ([GG 1121](#)) governs employment in the public service. It was brought into force on 1 November 1995 by GN 210/1995 ([GG 1185](#)). It repeals the

Public Service Act 2 of 1980, which was originally named the Government Service Act 2 of 1980. (Note that transitional provisions in section 37 of the Act provide for the continued application of sections 10(A) and 14 of the Public Service Act 2 of 1980 to permanent secretaries, regional councils and chief regional officers under certain circumstances.)

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 ([GG 1699](#)), which was brought into force on 5 June 1998 by Proc. 12/1998 ([GG 1876](#)) and changes “Namibia Security Intelligence Agency” to “Namibia Central Intelligence Service”.

Act 33/1998 ([GG 1995](#)), which was brought into force on 2 August 1999 by GN 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 ([GG 2088](#)), 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 ([GG 3037](#)) which was brought into force on 15 April 2005 by GN 37/2005 ([GG 3411](#)), as subsequently amended by Act 10/2016 ([GG 6156](#)). As amended, this Act inserts the expression “Anti-Corruption Commission” into the first column and the expression “Director-General: Anti-Corruption Commission” into the second column.

Schedules 1 and 2 are substituted 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](#)).

Act 6/2012 ([GG 4972](#)), which came into force on the date of publication (25 June 2012), amends section 27.

The definition of “member of the services” in section 1 is amended by the Correctional Service Act 9 of 2012 ([GG 5008](#)), which was brought into force on 1 January 2014 by GN 330/2013 ([GG 5365](#)).

Schedule 3 is amended by the Electoral Act 5 of 2014 ([GG 5583](#)), which was brought into force in relevant part on 17 October 2014 by GN 208/2014 ([GG 5593](#)) and substitutes “Electoral Commission of Namibia” for “Electoral Commission”, and “Chief Electoral Officer” for “Director of Elections”.

Schedules 1 and 2 are substituted in their entirety by Proc. 35/2015 ([GG 5869](#)).

Schedules 1, 2 and 3 are substituted in their entirety by Proc. 17/2017 ([GG 6387](#)).

Application of law: Section 10 of the Namibia Wildlife Resorts Company Act 3 of 1998 ([GG 1809](#)) 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.

Regulations: Regulations promulgated under the previous Act survive under the new Act in terms of section 37(1), which states “Anything done under the Public Service Act, 1980 (Act 2 of 1980), and which could have been done under a provision of this Act, shall be deemed to have been done under the corresponding provision of this Act.”

Pre-independence regulations have not been comprehensively researched.

Regulations issued under the previous Act are contained in AG GN 28/1981 (OG 4429), as amended by GN 90/1986 (OG 5210), AG GN 14/1989 (OG 5664) and GN 1/1995 ([GG 1006](#)).

Regulations are issued under the current Act in GN 211/1995 ([GG 1187](#)), as amended by GN 179/2001 ([GG 2607](#)) (amends Reg 12) and GN 233/2015 ([GG 5851](#)) (substitutes Reg 11). These regulations do not repeal any of the previous regulations.

Cases:

Mwellie v Minister of Works, Transport and Communication & Another 1995 (9) BCLR 1118 (NmH) (constitutionality of prescription period upheld)

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 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)

Onesmus v Permanent Secretary: Finance & Others 2010 (2) NR 460 (HC) (sections 5, 23(1) and 23(2)(a) and principles of administrative justice)

Dixon v Government of the Republic of Namibia (Ministry of Education) & Another 2011(1) NR 111 (HC) (section 33)

Gouws v Office of the Prime Minister 2011 (2) NR 433 (LC) (section 24(5)(a)(i))

Negonga & Another v Secretary to Cabinet & Others 2016 (3) NR 670 (HC) (transitional provisions in section 37(2))

Katjivena & Others v Prime Minister of the Republic of Namibia & Others 2016 (3) NR 903 (HC) (section 33).

Commentary:

- Frederico Links and Ellison Tjirera, “Nothing to Disclose: Critiquing Namibia’s passive approach to conflict of interest”, Institute for Public Policy Research, 2011, available at www.ippr.org.na
- Dennis U Zaire, “Accountability (or the absence thereof) in the Namibian public sector: A look at legislation and policies in place”, *Namibia Law Journal*, Volume 6, Issue 1, 2014
- Law Reform and Development Commission, *Government Institutions Pension Fund (GIPF) Legal Framework Discussion Paper*, LRDC 26, 2013, available at www.namiblii.org.

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](#)).

INTERNATIONAL LAW

African Charter on Values and Principles of Public Service and Administration, 2011

See also **CONSTITUTION**.

See also Anti-Corruption Act 8 of 2003 (prohibiting bribes to public officials) (**CRIMINAL LAW AND PROCEDURE**).

See also Namibia Institute of Public Administration and Management Act 10 of 2010 (**EDUCATION**).

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 ([RSA GG 2427](#)) 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 prior to its repeal in South Africa by the *Alienation of Land Act 68 of 1981* ([RSA GG 7789](#)), which was not made applicable to SWA.

Regulations: The Act makes no provision for regulations.

Cases: *Mack v Uni-Signal (Pty) Ltd* 1993 NR 304 (HC); *Hayley Fay t/a Hayley Fay Properties v Uptown Property Investment CC & Others* 2016 (3) NR 893 (HC) (section 2).

Sale of Land on Instalments Act 72 of 1971, as amended in South Africa to April 1978.

Summary: This Act ([RSA GG 3175](#)) 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* ([RSA GG 6049](#)) – 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* ([RSA GG 7789](#)), which was not made applicable to SWA.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Sale of Land on Instalments Amendment Act 72 of 1972* ([RSA GG 3571](#))
- *Sale of Land on Instalments Amendment Act 49 of 1975* ([RSA GG 4738](#))
- *Sale of Land on Instalments Amendment Act 25 of 1976* ([RSA GG 5041](#)).

Section 4 of the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978) ([OG 3743](#)) amends section 2 of the Act.

The Native Laws Amendment Proclamation (AG 3/1979) ([OG 3898](#)) amends certain terminology.

Regulations: The Act makes provision only for regulations which set the maximum rate of interest from time to time in respect of contracts governed by the Act. The regulations setting such rates have not been researched.

Credit Agreements Act 75 of 1980, as amended in South Africa to May 1981.

Summary: This Act ([RSA GG 7073](#)). It regulates transactions where movable goods are purchased or leased on credit. It also applies to services rendered on credit. It repeals the *Hire-Purchase Act 36 of 1942*.

Applicability to SWA: Section 30 of the Act, as substituted by the Credit Agreements Proclamation, AG 17 of 1981 ([OG 4472](#)), states “This Act shall be called the Credit Agreements Act, 1980, and shall come into operation on the date on which the Credit Agreements Proclamation, 1981, of the Administrator-General is published in the *Official Gazette*.” Section 1 of the Credit Agreements Proclamation, AG 17 of 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.” This wording did not make subsequent amendments to the Act automatically applicable to South West Africa.

Transfer of administration to SWA: Section 4 of the Credit Agreements Proclamation (AG 17/1981) made certain amendments to the Act which had the effect of transferring the administration of the Act to SWA. This satisfies the definition of a transfer proclamation in section 1 of the General Proclamation (“a proclamation by the Administrator-General by which the administration of the affairs of the territory in relation to any matter is transferred from a Minister of the Republic to the Administrator-General”). Furthermore, as noted above, the terms of the application of the Act to SWA do not make subsequent amendments to the Act automatically applicable to SWA. There were two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Credit Agreements Amendment Act 9 of 1985* ([RSA GG 9642](#)) and the *Credit Agreements Amendment Act 53 of 1987* ([RSA GG 10920](#)) – neither of which was made expressly applicable to SWA.

Amendments: The Credit Agreements Proclamation (AG 17/1981) ([OG 4472](#)) amends section 1 and section 30 of the Act.

Act 3/2016 ([GG 6043](#)) amends sections 1, 2 and 23.

Application of law: AG GN 67/1981 ([OG 4473](#)), which is replaced by GN 141/2016 ([GG 6052](#)), affects the application of the Act.

Regulations: Pre-independence regulations have not been comprehensively researched.

Regulations are contained in AG GN 68/1981 ([OG 4473](#)), as amended by GN 118/1984 (OG 4955), AG GN 47/1985 (OG 5035), GN 1/1986 ([OG 5158](#)), GN 177/1992 ([GG 536](#)), GN 142/2016 ([GG 6052](#)) and GN 97/2017 ([GG 6297](#)).

Cases: *Courtney-Clarke v Bassingthwaight* 1990 NR 89 (HC).

Commentary: HP Masake, “The Validity and Legal Implications of *Pactum Reservati Dominii* in Credit Agreements: A Namibian Perspective”, *UNAM Students Law Review*, Volume 1, Issue 1, 2013, available at www.unamlawreview.com.

See also **LAND AND HOUSING**.

See also **LAND AND HOUSING PROFESSIONS**.

RAILWAYS

The authors of this index have not yet been able to determine whether any pre-independence laws on railways remain in force. Further research will be conducted.

The Railway Management Proclamation 70 of 1920 ([OG 46](#)) states:

1. (1) The control and management of the Railways and Harbours within the Protectorate of South West Africa and of all subsidiary undertakings connected therewith hitherto controlled and managed by the Railways and Harbours Administration of the Union of South Africa (hereinafter called the Railway Administration) shall continue to be vested in and to be exercised by the Railway Administration, and for that purpose

- (a) the Railway Administration shall and may have and exercise within the Protectorate all and several the powers and authorities and be subject to all the liabilities and duties, which it has, may exercise, or is subject to in the Union of South Africa under and by virtue of the Railways and Harbours Control and Management Act 1916, of the Union Parliament, the regulations now or hereafter existing thereunder, and the Railways and Harbours Control and Management Act Amendment Act 1920, of the Union Parliament;
- (b) the following acts of the Union Parliament together with any regulations now or hereafter existing thereunder shall, mutatis mutandis and so far as capable of application, have force and effect within the Protectorate:-

The Railways and Harbours Regulation, Control and Management Act, 1916, with the exception of the following words as contained in paragraph (e) of section 3 of the said Act, viz:

“No railway for the conveyance of public traffic and no port or harbour or similar work shall be constructed or acquired without the sanction of Parliament, but the sanction of Parliament shall not be necessary for the construction of sidings or short branch lines to mines, stores, warehouses, or other works or premises if those sidings or branch lines are not intended for public traffic.”

and also with the exception of sections 59, 62 and 63 of the said Act.

The Railways and Harbours Regulation Control and Management Act Amendment Act 1920.

The Railway Board Act 1916.

The Railways and Harbours Service Act 1912.

The Railways and Harbours Strike and Service Amendment Act, 1914.

The Railways and Harbours Service Act Amendment and Further Provision Act 1917.

The Railways and Harbours Strike and Service Act Amendment Act 1920.

The Crown Liabilities Act, 1910.

- (c) all and several the provisions of the **Exchequer and Audit Act 1911**, of the Union Parliament, of the **Exchequer and Audit Act 1911 Amendment Act 1916**, of the Union Parliament and of **any other law or regulation applicable within the Union defining the powers and functions of the Controller and Auditor General and the keeping and presentation of Railways and Harbours Administration Accounts, and the receipt, custody and issue of moneys of the Railway and Harbours Administration** shall, mutatis mutandis and so far as capable of application, have force and effect within the Protectorate.

(2) Wherever in any Act or Regulation extended to the Protectorate by this Section the words “within the Union” or words to the like effect appear, there shall, in the application of the Act or regulation to the Protectorate, unless inconsistent with the context be read for those words the words “within the Protectorate” or words to the like effect.

(3) Anything whatever to the contrary and in particular any provision of an agreement dated at Berlin the 23rd November 1909, between the Imperial Governor of German South-West Africa and the Otavi Minen und Eisenbahn Gesellschaft, or of any amendment or modification thereof or addition thereto notwithstanding, the railway lines from Swakopmund to Tsumeb and from Otavi to Grootfontein shall be included in the railways referred to herein and shall be subject to the provisions of this Proclamation.

2. (1) For a period of twelve months from the date of this Proclamation the Railway Administration shall be entitled to occupy or retain possession of, and to use, all houses, buildings, premises, lands, rights in land, or water rights which, at the date of this Proclamation are temporarily held by it within the Protectorate for Railway and Harbour purposes or any purposes subsidiary thereto, and the title to which has not been acquired under and by virtue of the validation of any taking, expropriation or other acquisition thereof. During such period of twelve-months no action of ejection shall be capable of being brought against the Railway Administration in respect of any such occupation, possession or use.

(2) The owner of any property occupied, possessed or used by the Railway Administration in terms of this section shall, for the period of such occupation, possession or use, be entitled to the payment of a monthly rental therefor at a rate to be mutually agreed upon between the Railway Administration and himself and failing agreement, at a rate to be fixed by arbitration in accordance with any law of the Protectorate providing for the decision of disputes by arbitration or in the absence of any such provision, then in accordance with the provisions of the Expropriation of Lands and Arbitration Clauses Proclamation 1902, of the Transvaal Province.

3. No private railways shall be constructed within the Protectorate and no private railway, whether constructed before or after the date of this proclamation, shall be worked within the Protectorate without the written authority of the Governor-General first had and obtained.

4. (1) Proclamation No. 14 of 1919 and Martial Law Regulations Nos. 48, 51, 56, 79, 80, 81, 82, 83, 84, 88, and 91 shall be and are hereby repealed.

(2) All other laws repugnant to or inconsistent with any provisions of this Proclamation are to the extent of such repugnance or inconsistency hereby repealed.

5. Notwithstanding anything herein contained, all tariffs of rates and fares operating throughout the Railways and Harbours of the Protectorate and the subsidiary Services connected therewith at the date of this Proclamation shall continue until duly altered or amended.

6. This Proclamation may be cited for all purposes as the "Railway Management Proclamation, 1920".

GOD SAVE THE KING.

Given under my hand at Windhoek this
18th day of November, 1920.

GIJS. R. HOFMEYR
Administrator

Most of the laws contained in the list in this Proclamation have since been repealed.

- The *SA Railways and Harbours Regulation, Control and Management Act 22 of 1916* was repealed in South Africa by the *SA Railways and Harbours Control and Management (Consolidation) Act 70 of 1957* ([SA GG 5908](#)).
- The *Railways and Harbours Regulation Control and Management Act Amendment Act 32 of 1920* was repealed by the *SA Railways and Harbours Control and Management (Consolidation) Act 70 of 1957* ([SA GG 5908](#)).
- The *Railway Board Act 17 of 1916* was repealed by the *RSA Railway Board Act 73 of 1962*.
- The *Railways and Harbours. Strike and Service Act Amendment Act 34 of 1920* was repealed by the *RSA Railways and Harbours Pensions Act 35 of 1971* ([RSA GG 3104](#)), which was applicable to SWA and is apparently still in force in Namibia.

One exception is the **Crown Liabilities Act 1 of 1910**, which has not been repealed. According to *Mwandingi v Minister of Defence* 1990 NR 363 (HC) at 377C-D (approved of on appeal in *Minister of Defence v Mwandingi* 1993 NR 63 (SC) at 77C-F),

“the Crown Liabilities Act 1 of 1910 was extended by the Railway Management Proclamation 20 of 1920 to the territory [this is an error; the correct citation for this Proclamation is Proclamation 70 of 1920]. It is true that it was so extended for purposes of that proclamation, but the act applied in its entirety and it seems to me, once it was extended, it was accepted by our courts as also binding on all other, at that stage, departments (see *Hwedhanga v Cabinet for the Territory of South West Africa* 1988 (2) SA 746 (SWA); *Binga v Cabinet for South West Africa & Others* 1988 (3) SA 155 (A)).”

The Crown Liabilities Act 1 of 2010 is accordingly listed in the more general category of LAW.

There are three other laws in the list contained in the Railway Management Proclamation 70 of 1920 ([OG 46](#)) for which no repeals have been located:

- **Railways and Harbours Service Act 28 of 1912**
- **Railways and Harbours Service Act Amendment and Further Provision Act 7 of 1917**
- **Railways and Harbours Service Act Amendment and Further Provision Act 33 of 1917.**

These three laws may still be technically in force, but it is not clear if they have any ongoing effect.

According to research by the late Klaus Dierks:

“The legal basis for the operation of the Namibian railways under South African control was the [South-West Africa Railways and Harbours] Act No. 20 of 1922 which provided that the railway and harbours in the then territory of ‘South-West Africa’ as they existed on the 10th of January 1920, should as from that date be transferred to and vested in the Governor-General of the (South African) Union and should be controlled, managed and worked by the Railway Administration of the Union as part of the South African railway system...

Under the pressure of the League of Nations the South African Government was obliged to amend the ‘South West Africa Railways and Harbours Act, 1922’ by Act No. 9 of 1930 where it was stipulated that Act 22 should be carried only ‘subject to the Mandate issued by the Council of the League of Nations in pursuance of Article 22 of the Treaty of Versailles’. This Amendment Act No. 9 of 1930 to Act 20 of 1922 is of great importance, although subsequently it was ignored by the South African authorities...

The former Interim’s Government of Namibia has transformed the Namibian railways and adjacent transport means into a state-owned corporation ‘National Transport Corporation’ which came into being on 1 July 1988. The name of the corporation was changed to ‘TransNamib Limited (TNL)’ with effect from 1 July 1989.”

Klaus Dierks “Namibia’s Railway System – Future Link To Africa”, Windhoek, 31 January 1997 (updated 12 December 2004), available at www.klausdierks.com/FrontpageMain.html (footnotes omitted)

The SA *Rating of Railway Property Act 25 of 1959* was applicable to SWA, but was repealed by the Municipal Amendment Act 18 of 1985 (OG 5111).

The RSA *Railways and Harbours Finances and Accounts Act 48 of 1977* was applicable to SWA, but was repealed in South Africa by the *South African Transport Services Finances and*

Accounts Act 17 of 1983 ([RSA GG 8599](#)), which was expressly applicable to SWA (see section 16) but was repealed by the National Transport Corporation Act 21 of 1987 ([OG 5439](#)).

Railways fell under the National Transport Corporation Act 21 of 1987 ([OG 5439](#)) at independence, which was replaced after independence by the National Transport Services Holding Company Act 28 of 1998 ([GG 1961](#)). This Act, which provides for the incorporation of a holding company to undertake transport services, is listed in Namlex under TRANSPORTATION.

Note

The Liquor Act 6 of 1998 ([GG 1843](#)) states that it repeals Chapter V of the *Railways and Harbours Control and Management Consolidation Act 70 of 1957* ([SA GG 5908](#)). 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* ([RSA GG 7786](#)), which was made expressly applicable to SWA (see section 78). (*Act 65 of 1981* was subsequently repealed in respect of South West Africa by the National Transport Corporation Act 21 of 1987 ([OG 5439](#))). 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

Regional Councils Act 22 of 1992.

Summary: This Act ([GG 469](#)) 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 was brought into force on 31 August 1992 by GN 117/1992 ([GG 472](#)), *except for* section 45(1) which came into force 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 1992 in Proc. 39/1992 ([GG 502](#)).

Amendments: Act 17/1997 ([GG 1764](#)) amends sections 5 and 21 and inserts section 18A (erroneously numbered as “(19A)”).

Act 30/2000 ([GG 2461](#)), which was brought into force on 5 March 2001 by GN 35/2001 ([GG 2492](#)), amends sections 1, 17, 18A (also correcting its erroneous numbering), 20, 28, and 32 and inserts sections 24A, 24B, 24C, 44A and 44B.

Act 12/2002 ([GG 2870](#)), which was brought into force on 15 February 2003 by GN 18/2003 ([GG 2915](#)), amends sections 1 and 24, substitutes section 23, and repeals section 24A, 24B, and 24C.

Act 12/2010 ([GG 4543](#)) amends sections 7 and 8 to reduce the term of office of regional councillors from six years to five years.

Act 16/2010 ([GG 4618](#)) amends sections 1, 11, 18 and 21 to delineate the functions of chairpersons of regional councils and regional governors.

Act 7/2017 ([GG 6422](#)) amends sections 1, 18, 23, 44 and 44A. Amongst other things, these amendments provide that a member of a Regional Council who is a member of the Council’s management committee is not eligible for election to the National Council, and that the appointment of the chief regional officer of a Regional Council is subject to the approval of the Minister.

Schedule 1 of the Act indicates the regions for which regional councils have been established. Schedule 2 indicates the number of council members for each of these regions. These Schedules are amended by Proc. 25/2013 ([GG 5261](#)) “so as to bring those Schedules in line with the changes effected by this Proclamation and previous Proclamations issued under section 5(3)”. Proc. 25/2013 is amended by Proc. 34/2015 ([GG 5853](#)) to substitute “//Kharas” for “!Karas”.

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

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](#)).

Rules: 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](#)).

Fees: 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 ([GG 69](#)), 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](#)).

Elections of members of the National Council: No gazette setting the date for the 1992 elections of members of the National Council has been located. The date of election of members of the National Council in 1998 was fixed by the President as 8 December 1998 by GN 291/1998 ([GG 2005](#)). The date of election of members of the National Council in 2004 was fixed as 7 December 2004 by GN 255/2004 ([GG 3334](#)). No gazette setting the date for the 2010 election of members of the National Council has been located.

Designation and boundaries of regions: Prior to the enactment of this law, the boundaries of **regions** were established in the Boundaries of Regions and Local Authorities Proclamation 6 of 1992 ([GG 368](#)).

The boundaries of many regions are defined with reference to land boundaries established by various pre-independence government notices, proclamations and AG proclamations. Some of the pre-independence government notices and proclamations were subsequently amended. However, Proclamation 6 of 1992 does not appear to adopt the amendments; it refers to boundaries established by pre-independence government notices and proclamations, but does not say “as amended”. Furthermore, some of the boundaries it adopts come from proclamations that it identifies as being repealed. This further supports the interpretation that Proclamation 6 of 1992 adopts the original boundaries described in the referenced government notices and proclamations, and not the boundaries as they were subsequently amended. Therefore, only post-independence changes which clearly affected regional boundaries in Namibia are recorded here.

Proc. 20/1992 ([GG 436](#)) amends the First Schedule of the Proclamation to correct the spelling of the Otjozondjupa Region.

Section 45(2) of Act 22/1992 ([GG 469](#)) amends the First Schedule of the Proclamation to re-name the Liambezi Region as Caprivi Region.

Proc. 15/1998 ([GG 1940](#)) amends the First Schedule to Proclamation 6 of 1992 to alter the boundaries of six regions (Kunene, Omusati, Oshana, Oshikoto, Okavango and Caprivi). It also renames the Okavango Region as the Kavango Region.

Proc. 7/2003 ([GG 2942](#)) amends the First Schedule to Proclamation 6 of 1992 to alter the boundaries of two regions (Omaheke and Khomas).

Proc. 25/2013 ([GG 5261](#)) amends the First Schedule to Proclamation 6 of 1992 to rename “Caprivi Region” as “Zambezi Region”, and “Karas Region” as “!Karas Region” and to divide “Kavango Region” into “Kavango East Region” and “Kavango West Region”.

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), Proc. 35/1999 ([GG 2233](#)) (affecting two constituencies in the Oshikoto Region), Proc. 7/2003 ([GG 2942](#)) (which affects constituencies in a number of regions), Proc. 11/2011 ([GG 4767](#)) (renaming “Soweto Constituency” in the Khomas Region as “John Pandeni Constituency”) and Proc. 25/2013 ([GG 5261](#)) (which substitutes names and/or boundaries of many constituencies pursuant to the report of the Fourth Delimitation Commission). As in the case of the regions, the boundaries of some constituencies are defined with reference to land boundaries established by various pre-independence government notices, proclamations and AG proclamations – but apparently without the intention to incorporate amendments to these documents which are not referenced. In fact, some of the constituency descriptions make reference to certain Government Notices as they stood before particular amendments.

Note: Proc. 25/2013 re-named several constituencies, amongst them the “Luderitz Constituency” in !Karas Region which was re-named “!Nami≠Nüs Constituency”. This was widely reported in the press as having changed the name of the local authority of Lüderitz to !Nami≠Nüs, but in fact the Proclamation was issued in terms of section 5(3) of the Regional Councils Act and does not purport to affect the names of any local authorities.

Designations of settlement areas and withdrawals of such designations have not been recorded here.

Commentary:

Christian Keulder & Deon van Zyl, “Delimiting Regional and Constituency Boundaries: Considering the Impact of Malapportionment, Population Size, Population Density, and Area Size”, Institute for Public Policy Research, 2002, available at www.ippr.org.na

Graham Hopwood, “Regional Councils and Decentralisation: At the Crossroads”, Namibia Institute for Democracy, 2005, available at www.kas.de

Graham Hopwood, “Regional development and decentralisation” in H Melber (ed), *Transitions in Namibia: What Changes for Whom?*, Uppsala: Nordiska Afrikainstitutet, 2007

Ellison Tjirera, Malakia Haimbodi & Graham Hopwood, “Risking Corruption: Regional and Local Governance in Namibia”, Institute for Public Policy Research, 2012, available at www.ippr.org.na

Delimitation underway”, Institute for Public Policy Research, 2013, available at www.ippr.org.na.

Local Authorities Act 23 of 1992.

Summary: This Act ([GG 470](#)) 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.

It repeals the Municipal Ordinance 13 of 1963, the Village Management Boards Ordinance 14 of 1963 and the Peri-Urban Development Board Ordinance 19 of 1970. It also repeals a number of other laws, including the Native Administration Proclamation 11 of 1922, the Local Loans Ordinance 7 of 1927, the Natives (Urban Areas) Proclamation 56 of 1951, the Housing Schemes Loans Ordinance 24 of 1952,

the Establishment of Local Government in Coloured Townships Ordinance 34 of 1965 and the Co-operation in relation to Housing Schemes Act 20 of 1982.

This Act was brought into force on 31 August 1992 by GN 118/1992 ([GG 472](#)), with the exception of section 94(5), which is deemed to have come into force retroactively on 1 April 2018 pursuant to section 96(1A) of the Act as inserted by Act 3/2018 ([GG 6578](#)).

Amendments: The Registration of Deeds in Rehoboth Amendment Act 35 of 1994 ([GG 995](#)) amends section 78.

Act 3/1997 ([GG 1584](#)) 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. These substitutions also increase the maximum size of municipal councils from 12 to 15, and strengthen the affirmative action provisions for women in respect of the second local elections.

Act 14/1997 ([GG 1743](#)) amends section 8 of the Act in connection with the postponement of Namibia's second local authority elections.

Act 24/2000 ([GG 2455](#)), which was brought into force on 15 February 2001 by GN 29/2001 ([GG 2486](#)), amends the Act substantially.

Act 17/2002 ([GG 2887](#)), which was brought into force on 15 February 2003 by 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 ([GG 3013](#)), which was brought into force on 8 July 2003 by GN 146/2003 ([GG 3014](#)), substitutes the definition of 'party list' in section 1 of the Act.

Act 27/2003 ([GG 3126](#)) substitutes the date for elections for members of local authority councils in section 8 of the Act.

Act 14/2004 ([GG 3330](#)), which was brought into force on 27 November 2004 by GN 254/2004 ([GG 3331](#)), amends sections 1 and 30 and inserts section 94C.

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 Water Resources Management Act 11 of 2013 ([GG 5367](#)), which has not yet been brought into force, amends section 30(1).

Act 3/2018 ([GG 6578](#)) amends the Act substantially.

Note that there are two versions of GG 6578.

The following Proclamations and Government Notices – which establish new local authorities, change the designations of local authorities or alter the size of local authority councils – amend or substitute the Schedules to the Act accordingly:

Schedule 1 is amended by Proc. 16/1994 ([GG 873](#)) and Proc. 18/1994 ([GG 893](#)), substituted by Proc. 13/1997 ([GG 1639](#)) and amended by Proc. 22 of

1997([GG 1714](#)).

Schedule 2 is substituted by Proc. 28/1992 ([GG 479](#)), Proc. 13/1997 ([GG 1639](#)), Proc. 14/1997 ([GG 1673](#)), GN 194/2003 ([GG 3054](#)), GN 233/2004 ([GG 3313](#)), GN 155/2006 ([GG 3699](#)), GN 4/2008 ([GG 3974](#)) and GN 130/2011 ([GG 4767](#)).

Schedule 3 is substituted by Proc. 27/1992 ([GG 479](#)), Proc. 22/1993 ([GG 718](#)), Proc. 1/1996 ([GG 1241](#)), Proc. 6/1996 ([GG 1454](#)), GN 234/2004 ([GG 3313](#)) and GN 70/2005 (GN 3456), amended by GN 193/2010 ([GG 4556](#)), and substituted by GN 6/2011 ([GG 4649](#)) and GN 225/2013 ([GG 5264](#)).

Regulations: Regulations made under repealed laws survive pursuant to section 95(5) of this Act, which states that anything done under a provision of a law repealed by the Act which could have been done under a corresponding provision of this Act survives. Pre-independence regulations have not been researched.

The following regulations were made in terms of this Act:

Model Pound Regulations are contained in GN 191/1994 ([GG 945](#)).

Model Electricity Supply Regulations are contained in GN 71/1996 ([GG 1283](#)).

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](#). The correct version states at the top: “*This gazette replaces Government Gazette No. 4077 of 3 July 2008.*”

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](#)).

Tender Board Regulations were originally contained in GN 30/2001 ([GG 2486](#)), which was subsequently replaced by General Notice 73/2011 ([GG 4685](#)).

Rules: A Code of Conduct for Members of Local Authority Councils is published in General Notice 139/2015 ([GG 5704](#)).

Standing Rules for meetings of Local Authority Councils are contained in General Notice 140/2015 ([GG 5705](#)).

Individual local authorities: Regulations, rules and tariffs issued by individual local authorities and notices concerning valuations in individual local authorities are not recorded here.

Designation and boundaries of local authorities: Prior to the enactment of this law, the boundaries of local authorities were established in the Boundaries of Regions and Local Authorities Proclamation 6 of 1992 ([GG 368](#)), as amended by Proc. 20/1992 ([GG 436](#)) and Act 22/1992 ([GG 469](#)). The local authorities covered were **Aranos, Ariamsvlei, Aris, Aroab, Aus, Bethanie, Gobabis, Gochas, Grootfontein, Grünau, Hentiesbaai, Kalkveld, Kalkrand, Kamanjab, Kappsfarm, Karasburg, Karibib, Keetmanshoop, Koes, Leonardville, Lüderitz, Maltahöhe, Mariental, Noordoewer, Okahandja, Okakarara, Omaruru, Omitara, Ondangwa, Ongwediva, Opuwo, Oshakati, Otavi, Otjiwarongo, Outjo, Rehoboth, Stampriet, Summerdown, Swakopmund, Tsumeb, Usakos, Warmbad, Windhoek, Witvlei and Wlotzkasbaken**. The boundaries of many local authorities were defined with reference to land boundaries established by various pre-independence government notices, proclamations and AG proclamations. Some of the pre-independence government notices and proclamations were subsequently amended. However, Proclamation 6 of 1992 does not appear to adopt the amendments; it refers to boundaries established by pre-independence government notices and proclamations, but does not say “as amended”. In fact, some of the local authority descriptions make reference to certain Government Notices as they stood before particular amendments. Furthermore, some of the boundaries referenced in Proclamation 6 of 1992 come from proclamations that it identifies as repealed. This further supports the interpretation that Proclamation 6 of 1992 adopts the original boundaries described in the referenced government notices and proclamations, and not the boundaries as they were subsequently amended. Therefore, only post-independence changes which clearly affected local authority boundaries in Namibia are recorded here.

The boundaries of **Windhoek** are extended by Proc. 26/1992 ([GG 479](#)) (the incorporation of Brakwater into the municipality under the previous Municipal Ordinance 13 of 1963) and altered further by GN 184/2011 ([GG 4801](#)). They were also altered by GN 305/2016 ([GG 6209](#)), but this notice was withdrawn by GN 52/2017 ([GG 6262](#)).

Four additional villages (**Berseba, Gibeon, Tses** and **Uis**) are proclaimed by Proc. 27/1992 ([GG 479](#)), which accordingly substitutes Schedule 3 of the Act.

Four additional towns (**Arandis, Katima Mulilo, Khorixas** and **Rundu**) are proclaimed in Proc. 28/1992 ([GG 479](#)), which accordingly substitutes Schedule 2 of the Act.

The boundaries of **Tsumeb** are altered by Proc. 17/1993 ([GG 668](#)), GN 39/2010 ([GG 4440](#)) and GN 115/2012 ([GG 4941](#)).

Note that GN 39/2010 is erroneously labelled as GN 49 on the list of contents in the relevant *Gazette*.

Five villages are deproclaimed in Proc. 22/1993 ([GG 718](#)) (**Aris, Kappsfarm, Omitara, Summerdown** and **Wlotzkasbaken**), which accordingly substitutes Schedule 3 of the Act.

Walvis Bay is established as a municipality in Proc. 16/1994 ([GG 873](#)), as amended by Proc. 18/1994 ([GG 893](#)) – which both accordingly substitute Schedule 1 of the Act. 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 ([GG 1884](#)) 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.

Five villages are deproclaimed in Proc. 1/1996 ([GG 1241](#)) (**Ariamsvlei, Grünau, Kalkfeld, Noordoewer and Warmbad**), which accordingly substitutes Schedule 3 of the Act.

The village of **Aus** is deproclaimed in Proc. 6/1996 ([GG 1454](#)), which accordingly substitutes Schedule 3 of the Act.

Eenhana and **Outapi** are proclaimed as towns in Proc. 14/1997 ([GG 1673](#)), which accordingly substitutes Schedule 2 of the Act. (Proc. 18/1997 ([GG 1698](#)), Proc. 26/1997 ([GG 1738](#)) and Proc. 31/1997 ([GG 1749](#)) amend the election date set for these towns in Proc. 14/1997.)

Helao Nafidi is proclaimed as a town in GN 194/2003 ([GG 3054](#)), which accordingly substitutes Schedule 2 of the Act. Its boundaries are amended by GN 11/2005 ([GG 3379](#)).

Okahao is established as a town by GN 233/2004 ([GG 3313](#)), which accordingly substitutes Schedule 2 of the Act. Its boundaries are amended by GN 170/2016 ([GG 6086](#)).

Oshikuku is established as a village by GN 234/2004 ([GG 3313](#)), which accordingly substitutes Schedule 3 of the Act.

Ruacana is established as a village by GN 70/2005 ([GN 3456](#)), which accordingly substitutes Schedule 3 of the Act. Its boundaries were altered by GN 176/2014 ([GG 5579](#)).

Nkurenkuru is established as a town by GN 155/2006 ([GG 3699](#)), which accordingly substitutes Schedule 2 of the Act.

Omuthiya is established as a town by GN 4/2008 ([GG 3974](#)), which accordingly substitutes Schedule 2 of the Act.

The boundaries of **Lüderitz** are altered by GN 250/2003 ([GG 3108](#)), GN 242/2013 ([GG 5284](#)) and GN 135/2014 ([GG 5547](#)).

The boundaries of **Opuwo** are altered by GN 233/2009 ([GG 4386](#)).

The boundaries of **Usakos** are altered by GN 65/2010 ([GG 4451](#)).

Uis is abolished as a local authority in GN 193/2010 ([GG 4556](#)), which amends Schedule 3 of the Act accordingly.

The boundaries of **Omaruru** are altered by GN 267/2012 ([GG 5069](#)), GN 129/2015 ([GG 5772](#)) and GN 1445/2015 ([GG 5783](#)).

Otjinene is proclaimed as a village in GN 6/2011 ([GG 4649](#)), which accordingly substitutes Schedule 3 of the Act.

Note that GN 6/2011 contains a confusing error of wording. It does not “substitute section 3(4)(c) of the Local Authorities Act, 1992, for Schedule 3 of that Act” as it states; instead, *pursuant to* section 3(4)(c) of the Act, it *substitutes Schedule 3* of the

Act.

The boundaries of **Okahandja** are altered by GN 114/2011 ([GG 4756](#)), GN 216/2011 ([GG 4834](#)), GN 127/2014 ([GG 5533](#)), GN 235/2014 ([GG 5613](#)), GN 126/2015 ([GG 5772](#)), GN 127/2015 ([GG 5772](#)), GN 128/2015 ([GG 5772](#)) and GN 224/2017 ([GG 6397](#)).

The boundaries of **Karibib** are altered by GN 115/2011 ([GG 4756](#)).

Oranjemund is established as a town by GN 130/2011 ([GG 4767](#)), which accordingly substitutes Schedule 2 of the Act.

The boundaries of **Otavi** are altered by GN 145/2011 ([GG 4774](#)). However, all previous legal references to the boundaries of Otavi were subsequently repealed and replaced by GN 248/2012 ([GG 5049](#)).

The boundaries of **Outjo** are altered by GN 217/2011 ([GG 4834](#)) and GN 35/2012 ([GG 4883](#)).

The boundaries of **Ongwediva** are altered by GN 238/2012 ([GG 5038](#)).

Bukalo is established as a village by GN 225/2013 ([GN 5264](#)), which accordingly substitutes Schedule 3 of the Act.

The boundaries of **Swakopmund** are extended by GN 202/2014 ([GG 5590](#)).

Divundu is established as a village by GN 54/2015 ([GG 5721](#)), which accordingly substitutes Schedule 3 of the Act.

Okongo is established as a village by GN 56/2015 ([GG 5721](#)), which accordingly substitutes Schedule 3 of the Act.

Oniipa is established as a town by GN 59/2015 ([GG 5721](#)), which accordingly substitutes Schedule 2 of the Act. GN 59/2015 is corrected by GN 102/2015 ([GG 5670](#)).

Tsandi is established as a village by GN 61/2015 ([GG 5721](#)), which accordingly substitutes Schedule 3 of the Act.

The boundaries of **Otjiwarongo** are altered by GN 130/2015 ([GG 5772](#)).

The boundaries of **Stampriet** are altered by GN 169/2016 ([GG 6086](#)).

Designation of local authorities as municipality, town or village: Proc. 13/1997 ([GG 1639](#)) changes the designation of **Hentiesbaai** from a town to a municipality and amends Schedules 1 and 2 of the Act accordingly. The designations of several local authorities (**Karibib, Karasburg, Usakos, Ruacana, Aranos, Oshikuku, Otavi**) are altered in GN 193/2010 ([GG 4556](#)), which designates all of these local authorities as towns and amends Schedules 1-3 of the Act accordingly.

Size of local authority councils: Proc. 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 1 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](#)).

Wards: A notice pertaining to inspection of a map of local authorities showing the demarcation of each local authority into wards by the Delimitation Commission is contained in GN 92/1996 ([GG 1300](#)). However, Act 17/2002 ([GG 2887](#)), which was brought into force on 15 February 2003 by GN 19/2003 ([GG 2915](#)), eliminates the provisions in the Act pertaining to a ward system.

Other: The members of the **Rehoboth Town Council** were removed from office by GN 68/2001 ([GG 2516](#)), pursuant to section 92 of the Local Authorities Act 23 of 1992. The powers of the Council were transferred to the Minister of Regional and Local Government and Housing and a date was set for the election of a new council. The members of the Omaruru Municipal Council were suspended by GN 326/2013 ([GG 5364](#)), pursuant to section 92, and the powers of the Council transferred to the Minister of Regional and Local Government and Housing.

Appointments: The First Delimitation Commission was appointed before this Act was passed in Proc. 12/1990 ([GG 69](#)), in terms of the Namibian 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:

S v Negongo 1992 NR 352 (HC) (Regulation 48 of the Street and Traffic Regulations of the Municipality of Windhoek)

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 Namibian Constitution and section 94(3) of the Act)

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)

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)

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))

Council of the Municipality of Keetmanshoop v Van Rooi & Others 2012 (2) NR 525 (HC) (section 27(1))

Oka Investments (Pty) Ltd v Chair of the Tender Board, City of Windhoek & Another 2013 (4) NR 916 (HC) (Tender Board Regulations: interpretation of regulations 6 and 27; cancellation of an agreement made in terms of those regulations is an commercial act and not a reviewable administrative act; note that the Tender Board Regulations are erroneously cited in the case as being contained in GN 73/2011 instead of General Notice 73/2011).

Luderitz Town Council v Shipepe 2013 (4) NR 1039 (LC) (section 27(1)(c)(ii)(bb))

Strauss & Another v Witt & Another 2014 (1) NR 213 (HC) (section 65)

Walvis Bay Municipal Council v Kangumu 2014 (4) NR 978 (LC) (a municipality has no legal personality and therefore cannot sue or be sued; it is the local authority council which has legal personality; section 1 read with sections 3(1), 6(1) and 6(3))

Kandetu v Karibib Town Council 2014 (4) NR 1097 (LC) (section 29(4)(a)-(b))

Hugo v Council of Municipality of Grootfontein 2015 (1) NR 73 (SC) (section 27)

Helao Nafidi Town Council v Shivolo 2016 (2) NR 401 (HC) (breach of fiduciary duty of CEO found to have violated Act and Tender Board Regulations).

Commentary:

Dianne Hubbard & Kaveri Kavari, *Affirmative Action for Women in Local Government in Namibia*, Legal Assistance Centre, 1993

Kapena L Tjihero, Doufi Namalambo & Dianne Hubbard, *Affirmative Action for Women in Local Government in Namibia: The 1998 Local Government Elections*, Legal Assistance Centre, 1998, available at www.lac.org.na

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

Ellison Tjirera, Malakia Haimbodi & Graham Hopwood, "Risking Corruption: Regional and Local Governance in Namibia", Institute for Public Policy Research, 2012, available at www.ippr.org.na

Max Weylandt, "The Local Authorities Amendment Bill: Time for a Pause and a Re-think", Institute for Public Policy Research, 2015, available at www.ippr.org.na

Marvin R Awarab, "Corporate Governance and Municipalities: Are the King III Principles Exportable to Local Government in Namibia?" in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017.

Trust Fund for Regional Development and Equity Provisions Act 22 of 2000.

Summary: This Act ([GG 2451](#)) 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 was brought into force on 5 March 2001 by GN 38/2001 ([GG 2492](#)).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 5 and substitutes section 11.

Regulations: The Act makes no provision for regulations.

Appointments: The Board of Trustees is announced in GN 189/2001 ([GG 2615](#)).

Decentralisation Enabling Act 33 of 2000.

Summary: This Act ([GG 2464](#)) provides for and regulates the decentralisation of central government functions to regional and local authorities. It was brought into force on 5 March 2001 by GN 34/2001 ([GG 2492](#)).

Regulations: The Act makes no provision for regulations.

Notices: Certain functions are delegated to regional councils in GN 173/2007 ([GG 3907](#)), GN 83-84/2009 ([GG 4260](#)), GN 11/2015 ([GG 5668](#)), GN 33/2016 ([GG 5961](#)), GN 83/2018 ([GG 6590](#)) and GN 134/2018 ([GG 6646](#)).

Commentary:

Graham Hopwood, *Regional Councils and Decentralisation: At the Crossroads*, Namibia Institute for Democracy, 2005

Graham Hopwood, "Regional development and decentralisation" in H Melber (ed), *Transitions in Namibia: What Changes for Whom?*, Uppsala: Nordiska Afrikainstitutet, 2007

Ellison Tjirera, Malakia Haimbodi & Graham Hopwood, "Risking Corruption: Regional and Local Governance in Namibia", Institute for Public Policy Research, 2012, available at www.ippr.org.na.

Local Authorities Fire Brigade Services Act 5 of 2006.

Summary: This Act ([GG 3760](#)) 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 was brought into force on 13 August 2010 by GN 175/2010 ([GG 4540](#)).

Regulations: Regulations made under the previous law survive to the extent that they are consistent with this Act. Pre-independence regulations have not been researched.

Model Fire Brigade Services Regulations are contained in GN 176/2010 ([GG 4540](#)). In terms of section 20 of the Act, these are applicable until a town council, village council or regional council makes its own regulations. Note that model regulations 13, 14, 15(6), 15(7), 15(8) and 18(3) come into force only after the expiry of a period of six months after the date of publication of the model regulations (13 August 2010).

Other regulations are contained in GN 177/2010 ([GG 4540](#)).

INTERNATIONAL LAW

****African Charter on the Values and Principles of Decentralisation, Local Government and***

Local Development, 2014

See also Electoral Act 5 of 2014 (regional and local elections) (**ELECTIONS**).

See also Public Office-Bearers (Remuneration and Benefits) Commission Act 3 of 2005 (remuneration, benefits and conditions of service of members of Regional Councils) (**CONSTITUTION**).

See also Members of Parliament and other Office-bearers Pension Fund Act 20 of 1999 (pensions for members of Regional Councils) (**PENSIONS**).

REHOBOTH GEBIET

See *Registration of Deeds in Rehoboth Act 93 of 1976* (**DEEDS**).

See Rehoboth Gebiet Income Tax Proclamation 92 of 1961 (**INCOME TAX**).

See Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941 (repealed, but still has some ongoing effect) (**INHERITANCE**)

See Agricultural Land Act 5 of 1981 (Rehoboth) (**LAND AND HOUSING**).

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 ([OG 5726](#)) 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 ([GG 65](#)) and by the Immigration Control Act 7 of 1993 ([GG 690](#)).

Second Law Amendment (Abolition of Discriminatory or Restrictive Laws for purposes of Free and Fair Election) Proclamation, AG 25 of 1989.

Summary: This Proclamation ([OG 5758](#)) 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 ([GG 113](#)) and by the Namibia Central Intelligence Service Act 10 of 1997 ([GG 1699](#)).

Note that the original *Gazette* was replaced by another GG113 with the same date; the correct version states at the top: "*This Government Gazette replaces Government Gazette No. 113 of 3 December 1990.*"

REVENUE

Petroleum (Taxation) Act 3 of 1991.

Summary: This Act ([GG 179](#)) 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. It came into force on 30 September 1992, in terms of section 25 as amended by the Petroleum Matters (Amendment and Validation) Act 27 of 1992 ([GG 489](#)).

Amendments: The Act is amended by the Petroleum Matters (Amendment and Validation) Act 27 of 1992 ([GG 489](#)) (section 25) and the Petroleum Laws Amendment Act 24 of 1998 ([GG 1954](#)), which was brought into force on 1 April 1999 by GN 44/1999 ([GG 2075](#)) (sections 1, 6, 8, 9, 10, 14, 16, 19, 21, 22 and insertion of a new Part IIIA).

Application of law: The administration of this Act is affected by the Namibia Revenue Agency Act 12 of 2017 ([GG 6486](#)).

Regulations: The Act makes no provision for regulations.

Amortization Fund Repeal Act 7 of 1992.

Summary: This Act ([GG 391](#)) 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 ([GG 696](#)) 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 was brought into force on 1 September 1993 by GN 97/1993 ([GG 707](#)).

Amendments: Act 26/1994 ([GG 968](#)), which is deemed to have come into force on 1 September 1993, amends sections 1 and 2.

Transfer Duty Act 14 of 1993.

Summary: This Act ([GG 697](#)) consolidates and amends the laws relating to transfer duty. It was brought into force on 1 September 1993 by GN 96/1993 ([GG 707](#)). It repeals the *Transfer Duty Act 40 of 1949*.

Amendments: Act 20/2003 ([GG 3119](#)) substitutes section 2 and amends section 9 of the Act; this amendment came into force on the first day of the month following the

month of its publication in the *Government Gazette*, which made it effective as of 1 January 2004.

Act 3/2010 ([GG 4472](#)) amends section 2; this amendment came into force one month after the date of its publication in the *Government Gazette*, which made it effective from 29 May 2010.

Act 8/2010 ([GG 4494](#)) amends section 2 and came into force on the date of promulgation (1 June 2010).

Act 6/2013 ([GG 5208](#)) amends section 2 and came into force on the first day of the month following the month of its publication in the *Government Gazette*, which made it effective as of 1 June 2013.

Application of law: Export Processing Zones are exempted from transfer duties by section 5 of the Export Processing Zones Act 9 of 1995 ([GG 1069](#)).

The administration of this Act is affected by the Namibia Revenue Agency Act 12 of 2017 ([GG 6486](#)).

Regulations: The Act makes no provision for regulations.

Cases: *Permanent Secretary of Finance & Another v Shelfco Fifty-One (Pty) Ltd* 2007 (2) NR 774 (SC); *Ellis & Others NNO v Noabeb* 2015(2) NR 325 (HC) (simulated transaction intended to evade transfer duty is *in fraudem legis* of the Act and therefore void).

Stamp Duties Act 15 of 1993.

Summary: This Act ([GG 698](#)) consolidates and amends the laws relating to stamp duties, replacing the *Stamp Duties Act 77 of 1968*. It was brought into force on 1 September 1993 by GN 98/1993 ([GG 707](#)).

Amendments: Act 12/1994 ([GG 924](#)) amends section 5 and Schedule 1, with retroactive effect from 1 September 1993.

Act 12/2011 ([GG 4861](#)) substitutes Item 16 in Schedule I. This amendment came into force on the first day of the month following its publication in the *Government Gazette*, making it effective from 1 January 2012. (See section 2 of Act 12/2011.)

Note that Act 12/2011 erroneously refers throughout to Schedule I. The principal Act does not contain a Schedule I.

Act 7/2013 ([GG 5209](#)) substitutes Item 16 in Schedule 1 and came into force on the first day of the month following the month of its publication in the *Government Gazette*, making it effective as of 1 June 2013.

Note that the heading of section 1 of the amending Act erroneously refers to Schedule I. The text of section 1 of the amending Act, however, correctly refers to Schedule 1. The principal Act does not contain a Schedule I.

Application of law: The administration of this Act is affected by the Namibia Revenue Agency Act 12 of 2017 ([GG 6486](#)).

Regulations: Regulations and notices made under the repealed Act survive in terms of section 36(2). Pre-independence regulations have not been researched.

Regulations are authorised by section 33 of this Act. No post-independence regulations have been promulgated.

Notices: Notices made under the repealed Act survive in terms of section 36(2). Since independence, a notice under the previous Act was issued in GN 12/1990 ([GG 33](#)) (new issue of stamps) and regulations concerning the demonetization and withdrawal of stamps were issued in GN 13/1990 ([GG 33](#)).

Exemptions: Export Processing Zones are exempted from stamp duties by section 5 of the Export Processing Zones Act 9 of 1995 ([GG 1069](#)).

Value-Added Tax Act 10 of 2000.

Summary: This Act ([GG 2337](#)) replaces sales tax with VAT. It repeals the Sales Tax Act 5 of 1992 ([GG 386](#)) and the Additional Sales Levy Act 11 of 1993 ([GG 694](#)). It was brought into force on 27 November 2000 by GN 220/2000 ([GG 2402](#)).

Amendments: Act 34/2000 ([GG 2465](#)) amends the Act and the Schedules to the Act substantially. It is deemed to have come into force on the date of commencement of the primary Act. (See section 34 of Act 34/2000.)

Tariff changes were made to Schedule II by GN 54/2002 ([GG 2717](#)), under the authority of paragraph 3 of that Schedule, but Schedule II was subsequently repealed by Act 6 of 2002.

The primary Act is substantially amended by Act 6/2002 ([GG 2818](#)), which came into force on 1 November 2002. (See section 15 of Act 6/2002, which provides that the amending Act shall come into force on the first day of the month following the month in which it is published in the *Gazette*.)

Act 12/2004 ([GG 3282](#)) amends the Act and the Schedules to the Act substantially. This amending act came into force on the first day of the month following the month of publication, which made it effective on 1 October 2004 – except for sections 1 and 2 which are deemed to have come into force on 1 October 2002, section 4 which is deemed to have come into force 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 force on 1 April 2004. (See section 11 of Act 12/2004 regarding commencement dates.)

Act 2/2007 ([GG 3874](#)) – which came into force the first day of the month following the month of publication, making it effective as of 1 August 2007 (with the exception of section 2, which is deemed to have commenced on 27 November 2000) – amends sections 1, 18, 19, 27 and Schedule IV, and inserts section 46A. (See section 7 of Act 2/2007 regarding commencement dates.)

Act 4/2008 ([GG 4084](#)) amends Schedule III. It came into force on the first day of the month following the month of publication, which made it effective on 1 August 2008. (See section 2 of Act 4/2008.)

Act 4/2010 ([GG 4474](#)) amends sections 3, 7, 8, 18, 46A, Schedule III and Schedule IV. It came into force on the first day of the month following the month of publication, which made it effective on 1 May 2010. (See section 8 of Act 4/2010.)

Act 11/2011 ([GG 4860](#)) amends sections 23, 28, Schedule III and Schedule IV. It came into force on the first day of the month following the month of publication, which made it effective on 1 January 2012. (See section 5 of Act 11/2011.)

Act 12/2015 ([GG 5911](#)) amends sections 14-17, 23, 61 and Schedule IV, and inserts sections 37A and 84A. It came into force on the first day of the month following the month of publication, which made it effective on 1 January 2016. (See section 5 of Act 11/2011.)

Application of law: See General Notice 279/2002 ([GG 2823](#)) with respect to the implementation by Telecom Namibia of the amendments to section 1 of this Act by Act 34 of 2000.

The administration of this Act is affected by the Namibia Revenue Agency Act 12 of 2017 ([GG 6486](#)).

Regulations: Regulations are authorised by section 84 of the Act, but none have yet been promulgated.

Notices: A special court for hearing value added tax appeals is constituted in GN 321/2017 ([GG 6490](#)).

Cases: *Commissioner of Inland Revenue v Namsov Fishing Enterprises (Pty) Ltd* 2008 (1) NR 89 (SC); *Moolman & Another v Jeandre Development CC* 2016 (2) NR 322 (SC) (discussion of meaning of “taxable supply”).

***Namibia Revenue Agency Act 12 of 2017.**

Summary: This Act ([GG 6486](#)) establishes the Namibia Revenue Agency and gives it authority over the administration of seven different revenue laws:

- Customs and Excise Act 20 of 1998
- Export Levy Act 2 of 2016
- Income Tax Act 24 of 1981
- Petroleum (Taxation) Act 3 of 1991
- Stamp Duties Act 15 of 1993
- Transfer Duty Act 14 of 1993
- Value-Added Tax Act 10 of 2000.

It will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

See also **CUSTOMS AND EXCISE**.

See also **FINANCE AND DEVELOPMENT**.

See also **IMPORT AND EXPORT**.

See also **INCOME TAX**.

See also Petroleum Products and Energy Act 13 of 1990 (fuel levies) (**FUEL AND ENERGY**).

See also **REGIONAL AND LOCAL GOVERNMENT.**

ROADS AND ROAD TRANSPORTATION

Advertising on Roads and Ribbon Development Ordinance 30 of 1960.

Summary: This Ordinance ([OG 2254](#)) 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. It is extended to Eastern Caprivi, Owambo, Kavango and Damaraland by Act 5/1982 ([OG 4618](#)).

Amendments: The Ordinance is amended by Ord. 3/1967 ([OG 2777](#)) and by the Entertainment Tax Abolition Ordinance 11 of 1972 ([OG 3260](#)).

Regulations: Regulations are authorised by section 12 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Notices: 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 ([GG 2215](#)) (GN 169/2000, [GG 2374](#)).

Roads Ordinance 17 of 1972.

Summary: This Ordinance ([OG 3268](#)) consolidates the laws relating to roads. It is applied to Eastern Caprivi, Owambo, Kavango and Damaraland, insofar as it was not already so applicable, by Act 5/1982 ([OG 4618](#)), with effect from 1 July 1980.

Amendments: The Ordinance is amended by-

Ord. 16/1973 ([OG 3340](#))

Ord. 22/1973 ([OG 3363](#))

Ord. 10/1974([OG 3411](#))

Ord. 18/1975([OG 3496](#))

Ord. 6/1980 ([OG 4136](#))

AG 21/1984 ([OG 4926](#))

Act 13/1986 ([OG 5235](#))

Act 3/1993 ([GG 620](#)).

Application of law: See Application of laws relating to Roads in Eastern Caprivi, Owambo, Kavango and Damaraland Act 5 of 1982 ([OG 4618](#)), which is deemed to have come into force on 1 July 1980 (section 5 of that Act). See also Walvis Bay and Off-shore Islands Act 1 of 1994 ([GG 805](#)), Schedule, Part IV, clause 3, which was brought into force on 1 March 1994 by Proc. 6/1994 ([GG 806](#)).

Regulations: Regulations are authorised by section 66 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Notices: 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 ([GG 2215](#)) in GN 171/2000, [GG 2374](#).

Notices relating to specific roads and road closures have not been recorded here.

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)); *Telecom Namibia Ltd v Regenstein (Pty) Ltd & Another* 2013 (1) NR 128 (HC) (section 48).

National Road Safety Act 9 of 1972, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 3415](#)) establishes the National Road Safety Council and includes provisions intended to promote road safety. It repeals the *South African Road Safety Council Act 1 of 1960*.

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 was not transferred to SWA.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *National Road Safety Amendment Act 46 of 1974* ([RSA GG 4435](#))
- *General Law Amendment Act 57 of 1975* ([RSA GG 4760](#))
- *National Road Safety Amendment Act 40 of 1976* ([RSA GG 5067](#))
- *National Road Safety Amendment Act 16 of 1980* ([RSA GG 6925](#))
- *National Road Safety Amendment Act 59 of 1981* ([RSA GG 7765](#))
- *Motor Vehicle Accidents Act 84 of 1986* ([RSA GG 10419](#))
- *Multilateral Motor Vehicle Accidents Fund Act 93 of 1989* ([RSA GG 11944](#)).

Regulations: There is no savings clause for regulations issue under the repealed Act. Regulations are authorised by section 27 of this Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

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 ([GG 2251](#)). However, section 112 of the 1999 Act is not yet in force, 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. See 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) ([OG 3749](#)) 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) ([OG 3807](#)) extends the validity of certain permits issued pursuant to the Act.

Act 29/1980 ([OG 4357](#)), which was brought into force by AG 15/1981 ([OG 4454](#)) and repealed by the Road Traffic and Transport Act 22 of 1999 ([GG 2251](#)), made substantial amendments to the Act to abolish the power to set aside different transportation facilities for different population groups.

Act 18/1981 ([OG 4570](#)), Act 16/1982 ([OG 4722](#)), which is brought into force by AG 23/1983 ([OG 4850](#)), and AG 33/1985 ([OG 5060](#)), which is brought into force by AG 60/1989 ([OG 5848](#)), amend the Act substantially. AG 61/1989 ([OG 5849](#)), which is brought into force by AG 69/1989 ([OG 5870](#)), also amends the Act.

Section 59 of the National Transport Corporation Act 21 of 1987 ([OG 5439](#)) (which was repealed by the National Transport Services Holding Company Act 28 of 1998 ([GG 1961](#)) with effect from 1 April 1999) amends section 1.

Act 8/1988 ([OG 5561](#)) amends section 21.

Act 20/1988 ([OG 5650](#)) amends section 2 and AG 33/1985 ([OG 5155](#)).

AG 61/1989 ([OG 5849](#)), which is brought into force by AG 69/1989 ([OG 5870](#)), amends the Act substantially.

The Air Services Amendment Act 6 of 1991 ([GG 216](#)) 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 ([GG 2251](#)).

Cases: Cases decided under this Act are now listed under the entry for the Road Traffic and Transport Act 22 of 1999.

Roads Contractor Company Act 14 of 1999.

Summary: This Act ([GG 2208](#)) provides for the incorporation of a company to undertake roads construction and maintenance previously carried out by the Department of Transport. It was brought into force on 25 October 1999 by GN 236/1999 ([GG 2220](#)), with the exception of sections 5-9 and 11, which came into force on the transfer date, which is the date set in terms of section 10(1) for “transfer to the Company, with effect from a date determined by the Minister by notice in the *Gazette*, such assets, liabilities, rights or obligations of the State which relate to or are connected with the construction and maintenance of roads by the Department of Transport of the Ministry responsible for Transport, as may, in the opinion of the Minister, be required by the Company for the effective achievement of its objects” (section 14 of Act 14 of 1999). This date was set as 1 April 2000 (GN 24/2003, [GG 2922](#)).

Amendments: Act 11/2002 ([GG 2868](#)) 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 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 1-10.

Regulations: The Act makes no provision for regulations.

Notices: GN 7/2002 ([GG 2679](#)) sets 1 April 2000 as the effective date of transfer of title, rights and interest in immoveable 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 immoveable 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. – including “the liabilities and obligations of the State, which relate to or are connected with the construction and maintenance of roads by the Department of Transport of the Ministry of Works, Transport and Communication, as are specified in Column 1 of the Schedule to this Notice, with the respective values specified in Column 2 thereof”.

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.

Appointments: Appointments of members of the Board of Directors of the Roads Contractor Company are announced in GN 80/2012 ([GG 4901](#)).

Roads Authority Act 17 of 1999.

Summary: This Act ([GG 2215](#)) establishes a Roads Authority to manage the national road network of Namibia. It was brought into force on 25 October 1999 by GN

235/1999 ([GG 2220](#)), with the exception of sections 15(1)(a) and 16, which was brought into force on 1 April 2000 by GN 90/2000 ([GG 2303](#)).

Amendments: Act 20/2004 ([GG 3352](#)) 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 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 4, 9, 11 and 14, and deletes section 6.

Regulations: Regulations are authorised by section 26 of the Act, but none have yet been promulgated.

Notices: 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: Appointments of members of the Board of Directors of the Roads Authority are announced in GN 76/2000 ([GG 2287](#)), GN 102/2001 ([GG 2544](#)), GN 97/2003 ([GG 2974](#)), GN 251/2003 ([GG 3108](#)), GN 9/2005 ([GG 3374](#)), GN 21/2006 ([GG 3584](#)) and GN 80/2012 ([GG 4901](#)).

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 ([GG 2217](#)) establishes a Road Fund Administration to manage a road user charging system. It was brought into force on 25 October 1999 by GN 234/1999 ([GG 2220](#)), with the exception of sections 15(1)(b) and 16, which was brought into force on 1 April 2000 by GN 92/2000 ([GG 2305](#)).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 4, 9, 11 and 14, and deletes section 6.

Regulations: Regulations are authorised by section 28 of the Act, but none have yet been promulgated.

Notices: Local authorities which are eligible for funding under the Act are listed in GN 262/2000 ([GN 2438](#)).

Fees and levies: Registration and annual licence fees are contained in GN 94/2000 ([GG 2305](#)).

This notice 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](#)), General Notice 70/2005 ([GG 3410](#)) and General Notice 88/2006 ([GG 3614](#)).

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](#)), General Notice 69/2005 ([GG 3410](#)) and General Notice 88/2006 ([GG 3614](#)).

Road user charges, including entry fees for foreign vehicles and registration and annual licence fees, are set in General Notice 126/2006 ([GG 3640](#)) – which repeals Government Notice 134/2000 ([GG 2340](#)), Government Notice 263/2000 ([GG 2438](#)) and General Notice 88/2006 ([GG 3614](#)).

Road user charges, including entry fees for foreign vehicles and registration and annual licence fees are again set in General Notice 70/2007 ([GG 3816](#)) – which repeals General Notice 126/2006 ([GG 3640](#)) – and which is amended by General Notice 29/2009 ([GG 4220](#)), General Notice 68/2010 ([GG 4438](#)), General Notice 61/2011 ([GG 4677](#)), General Notice 177/2015 ([GG 5733](#)), General Notice 168/2016 ([GG 6029](#)), General Notice 116/2017 ([GG 6293](#)) and General Notice 171/2018 ([GG 6585](#)).

Notes: (1) General Notice 29/2009 ([GG 4220](#)) states that it amends *Government Gazette* No. 3816 of 30 March 2007; it probably intended to state that it amends General Notice 70/2007 published in that *Gazette*.

(2) General Notice 68/2010 ([GG 4438](#)) states that it amends GN 4220 of 9 March 2009. This is an error. This was probably intended to be a reference to GN 29/2009, which is published in [GG 4438](#) of 9 March 2009. However, the amendment appears to apply to the underlying General Notice 70/2007, which is amended by GN 29/2009.

(3) Similarly, General Notice 61/2011 ([GG 4677](#)) states that it amends GN 4438 of 8 March 2010. This is an error. This was probably intended to be a reference to GN 68/2010, which is published in [GG 4438](#) of 8 March 2010. However, the amendment appears to apply to the underlying General Notice 70/2007, which is amended by GN 68/2010.

(4) General Notice 177/2015 ([GG 5733](#)) states that it is amending General Notice 61/2011, but the amendment appears to apply to the underlying General Notice 70/2007, which is amended by General Notice 61/2011.

(5) General Notice 168/2016 ([GG 6029](#)) states that it is amending General Notice 177/2015, but the amendment appears to apply to the underlying General Notice 70/2007, which is amended by General Notice 177/2015.

(6) General Notice 116/2017 ([GG 6293](#)) states that it is amending General Notice 168/2016, but the amendment appears to apply to the underlying General Notice 70/2007, which is amended by General Notice 168/2016.

(7) Note that General Notice 171/2018 ([GG 6585](#)) states that it is amending General Notice 70/ 2007, as previously amended by General Notices 29/2009, 68/2010, 61/2011 [although the year of this notice is omitted in General Notice 171/2018], 177/2015 [erroneously listed in General Notice 171/2018 as “117” instead of “177”], 168/2016 and 116/2017.

The power to collect these entry fees is delegated to Africon Namibia / Architech Joint Venture in GN 264/2000 ([GG 2438](#)).

A levy on petrol and diesel was originally set forth in GN 95/2000 ([GG 2305](#)), which is revoked by GN 183/2001 ([GG 2608](#)). GN 183/2001 is amended by GN 18/2002 ([GG 2688](#)), GN 17/2003 ([GG 2909](#)), General Notice 264/2005 ([GG 3535](#)), General Notice

176/2015 ([GG 5733](#)), General Notice 115/2017 ([GG 6293](#)) and General Notice 170/2018 ([GG 6585](#)).

Notes: (1) GN 18/2002 ([GG 2688](#)) refers in the index of the *Government Gazette* to the amendment of GN 138/2001, which is incorrect. The text of the Government Notice in the body of the *Gazette* correctly refers to GN 183/2001. (2) General Notice 176/2015 ([GG 5733](#)) states that it is amending GN 17/2003; it appears that it should have stated that it was amending GN 183/2001. Similarly, General Notice 115/2017 ([GG 6293](#)) states that it is amending General Notice 176/2015; it appears that it should have stated that it was amending GN 183/2001. See the text of General Notice 170/2018 ([GG 6585](#)), which states that it is amending GN 183/2001 and cites all of the previous notices listed here as being amendments to GN 183/2001.

Appointments: Members of the Road Fund Administration Board of Directors are announced in GN 104/2013 ([GG 5183](#)) and GN 231/2017 ([GG 6397](#)).

Cases:

Road Fund Administration v Government of the Republic of Namibia & Others 2012 (1) NR 28 (HC) (Court takes *prima facie* view that Government and Cabinet are not entitled to interfere with executive decisions taken by board of parastatal)

Skorpion Mining Co (Pty) Ltd v Road Fund Administration 2016 (3) NR 864 (HC) (Road Fund Administration as an administrative body bound by Art 18 of Namibian Constitution; section 2 of Act read together with GN 183/2001; suggestion that legislation and policy on refunds may require law reform to bring it in line with Art 18 of the Namibian Constitution).

Road Traffic and Transport Act 22 of 1999.

Summary: This Act ([GG 2251](#)) 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 did not come into effect at all.
- Section 112 did 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**. See GN 52/2001 ([GG 2503](#)).

The Act repeals the Road Traffic Ordinance 30 of 1967, the *Road Transportation Act 74 of 1977* and the Cross-Border Road Transportation Act 18 of 1996 ([GG 1384](#)).

However, although the Road Traffic Ordinance 30 of 1967 ([OG 2080](#)) was repealed by this Act, section 113(1)(a) of this Act, read together with Schedule 2, states that sections 78, 88, 89, 90, 91, 92, 93, 95, 96, 97(1) and 98 of Ordinance 30 of 1967 remain in force (with some amendments made by the Schedule) **insofar as they relate to public driving permits** “until the date fixed by the Minister under section 40(2) or such later date as may be determined by the Minister by notice in the *Gazette*”. According to section 40(2):

“With effect from a date to be fixed by the Minister by notice in the *Gazette*, but not later than the date contemplated in subsection (5), any holder of a driving licence referred to in subsection (1) [a licence authorising the driving of a motor vehicle which was issued under the repealed Ordinance] may apply to a driving testing centre for the replacement of such licence by a driving licence issued under this Act.”

Section 40(5) refers to the date determined by the Minister by notice in the *Gazette* as to when a driving licence issued under a previous law ceases to be valid if not replaced in accordance with subsection (2). GN 102/2002 ([GG 2759](#)) set 1 July 2002 as the date in terms of section 40(2) with effect from which any person who is the holder of a driving licence issued in Namibia in terms of the Road Traffic Ordinance 30 of 1967, and contained in an identity document issued by the South African Government, may apply for the replacement of such licence by a driving licence issued under Act 22 of 1999. GN 162/2002 ([GG 2815](#)) set additional dates for the exchange of various driving licences issued in terms of the Road Traffic Ordinance 30 of 1967, with those dates ranging from 2 September 2002 to 1 July 2005. GN 43/2005 ([GG 3419](#)) set 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. Thus, the provisions of Ordinance 30 of 1967 which temporarily remained in force are now extinguished.

The Act curiously repeals section 59 of the National Transport Corporation Act 21 of 1987 ([OG 5439](#)) 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 ([GG 1961](#)) 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](#)).

Savings: In terms of section 113(3), any “proclamation, regulation, notice, order, prohibition, authority, appointment, permission, information or document” made under any one of the pieces of legislation repealed by this Act remains in force insofar as it is not inconsistent with this Act.

Regulations and notices made under repealed laws: Pre-independence regulations and notices have not been comprehensively researched. Regulations and notices made under the repealed laws include the following-

Road Traffic Ordinance 30 of 1967

Regulations: Regulations are contained in GN 95/1967 (OG 2809), as amended by GN 88/1968 (OG 2902), GN 97/1969 (OG 3015), GN 123/1969 (OG 3028), GN 130/1970 (OG 3109), GN 176/1971 (OG 3223), GN 51/1972 (OG 3238), GN 56/1972 (OG 3243), GN 58/1972 (OG 3243), GN 90/1972 (OG 3256), GN 144/1972 (OG 3273), GN 158/1972 (OG 3278) (as amended by GN 376/1977, OG 3667), GN 159/1972(OG 3279), GN 42/1973 (OG 3308), GN 124/1973 (OG 3341), GN 164/1973 (OG 3350), GN 30/1974 (OG 3378), GN 31/1974 (OG 3378), GN 135/1974 (OG 3408), GN 238/1974 (OG 3440), GN 1/1975 (OG 3444), GN 68/1975 (OG 3454), GN 87/1975 (OG 3459), GN 175/1975 (OG 3474), GN 214/1975 (OG 3484), GN 272/1975 (OG 3491), GN 310/1975 (OG 3500), GN 341/1975 (OG 3508), GN 214/1976 (OG 3551), GN 400/1976 (OG 3585), GN 61/1977 (OG 3593), GN 404/1977 (OG 3673), GN 215/1978)OG 3818), GN 280/1978 (OG 3871), GN 38/1979 (OG 3909), GN 41/1979 (OG 3909), AG GN 131/1981 (OG 4529), AG GN 137/1981 (OG 4542), AG GN 141/1981 (OG 4546), AG GN 8/1982 (OG 4590), AG GN 9/1982 (OG 4590), AG GN 151/1982 (OG 4703), AG GN 152/1982 (OG 4703), AG GN 123/1983 (OG 4805), AG GN 133/1983 (OG 4812), AG GN 2/1984 (OG 4865), AG GN 56/1984 (OG 4891), AG GN 60/1984 (OG 4895), GN 78/1985 (5106), 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 ([GG 805](#)), GN 190/1996 ([GG 1356](#)), GN 42/1997 ([GG 1512](#)), GN

20/1998 ([GG 1801](#)), GN 305/1998 ([GG 2017](#)), GN 2/2000 ([GG 2259](#)), GN 144/2000 ([GG 2350](#)) and GN 2/2001 ([GG 2468](#)).

Proposed regulations on the transportation of dangerous goods by road are published for comment in General Notice 17/1998 ([GG 1781](#)).

Notices: Registration marks for motor vehicles are assigned in GN 57/1990 ([GG 89](#)), as amended by GN 229/1998 ([GG 1951](#)).

Registration marks for government vehicles are assigned in GN 76/2018 ([GG 6573](#)), which repealed GN 322/2017 ([GG 6490](#)), which in turn repealed GN 23/2001 ([GG 2481](#)).

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](#)).

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](#)).

Fees: 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

Regulations: Road Transport Regulations are contained in RSA GN R.2653 of 1977 (RSA GG 5843) as amended by AG GN 56/ 1978 (OG 3817), AG GN 50/1981 (OG 4455), AG GN 171/ 1983 (OG 4852) and AG GN 99/1989 (OG 5848).

GN 90/1992 ([GG 448](#)) withdraws AG GN 101/1989 (OG 5851), which prohibited consideration of permits for transportation of certain goods between certain places.

Cross-Border Road Transportation Act 18 of 1996 ([GG 1384](#))

Notices: 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](#)).

Regulations in terms of the current Act: Proposed road traffic and transport regulations are published for comment in GN 268/2000 ([GG 2441](#)). Proposed amendments to the 2001 regulations are published in GN 135/2005 ([GG 3520](#)).

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 was brought into force on 1 November 2001 by GN 222/2001 ([GG 2641](#)).

Part 2 of Chapter 4 was brought into force on 2 September 2002 by GN 161/2002 ([GG 2815](#)).

Part 2 of Chapter 5 was brought into force on 17 November 2007 by GN 172/2007 ([GG 3907](#)).

GN 86/2017 ([GG 6285](#)) states that it is bringing Part 3 of *Chapter 10* into force on 13 April 2017. However, this must have been intended to refer to Part 3 of *Chapter 3*, which is amended by the same Government Notice. Chapter 10 was not divided into parts and was already in force.

The remainder of the regulations exempted from GN 53/2001 (Part 5 of Chapter 3, Parts 2 and 4 of Chapter 6 and regulation 235) do not appear to have been brought into force.

The regulations are amended by:

- GN 97/2001 ([GG 2538](#))
- GN 103/2002 ([GG 2759](#))
- GN 163/2002 ([GG 2815](#))
- GN 205/2004 ([GG 3287](#))
- GN 206/2004 ([GG 3287](#))

These amendments were withdrawn by GN 45/2005 ([GG 3422](#)) without ever coming into force.

- 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](#))
- GN 156/2015 ([GG 5792](#))

GN 156/2015 states that the regulations were amended by GN 222/2001 ([GG 2641](#)) and GN 161/2002 ([GG 2815](#)). This is not correct; these two notices deal only with the commencement of various portions of the regulations.

GN 98/2016 ([GG 6016](#))

GN 98/2016 states that the regulations were amended by GN 222/2001 ([GG 2641](#)) and by GN 161/2002 ([GG 2815](#)). This is not correct; these two notices deal only with the commencement of various portions of the regulations.

GN 86/2017 ([GG 6285](#))

GN 86/2017 states that the regulations were amended by GN 222/2001 ([GG 2641](#)) and GN 161/2002 ([GG 2815](#)). This is not correct; these two notices deal only with the commencement of various portions of the regulations.

GN 130/2018 ([GG 6637](#))

GN 130/2018 states that the regulations were amended by GN 222/2001 ([GG 2641](#)) and GN 161/2002 ([GG 2815](#)). This is not correct; these two notices deal only with the commencement of various portions of the regulations. GN 130/2018 also states that the regulations were amended by GN 322/2017 ([GG 6490](#)). This is not correct; GN 322/2017 is a notice issued in terms of regulation 34(3).

Section 113(1)(b) of the Act refers to the Road Traffic Ordinance 30 of 1967 ([OG 2080](#)) and states that “the Minister may, under the power conferred by section 91 to make regulations, incorporate in any regulation so made *any of the repealed provisions of that Ordinance which relate to the registration and licensing of motor vehicles*, by mere reference to the provisions concerned, subject to such amendments or modifications as may be provided for in such regulation, and the provisions so incorporated shall, for the purposes of this Act, be deemed to be regulations made thereunder by virtue of the provisions of section 20”. To date, provisions from Ordinance 30 of 1967 seems to be re-iterated as needed rather than incorporated by mere reference (see, for example, [GG 2503](#)). However, should any of the provisions of Ordinance 30 of 1967 be incorporated by mere reference in future, the amendments to that Ordinance prior to its repeal may be of relevance:

Ord. 19/1968 ([OG 2895](#))
Ord. 25/1969 ([OG 3010](#))
Ord. 18/1970 ([OG 3099](#))
Ord. 18/ 1971 ([OG 3194](#))
Ord. 16/1972 ([OG 3267](#))
Ord. 4/1973 ([OG 3304](#))
Ord. 19/1973 ([OG 3345](#))
Ord. 3/1974 ([OG 3387](#))
Ord. 11/1974 ([OG 3412](#))
Ord. 19/1975 ([OG 3497](#))
Ord. 10/1976 ([OG 3546](#))
Ord. 13/1976 ([OG 3572](#))
Ord. 2/1978 ([OG 3733](#))
Ord. 4/1979 ([OG 3925](#))
Ord. 17/1980 ([OG 4167](#))
Act 8/1981 ([OG 4498](#))
AG 22/1983 ([OG 4844](#))
Act 4/1983 (Rehoboth) ([OG 70 of Rehoboth](#))
Act 17/1985 ([OG 5110](#))
Act 30/1985 ([OG 5150](#))
Act 28/1986 ([OG 5303](#))
Act 22/1987 ([OG 5457](#))
Act 2/1988 ([OG 5525](#))
Act 19/1988 ([OG 5649](#))
Act 1/1994 ([GG 805](#)) (Walvis Bay)
Act 25/1995 ([GG 1229](#))
Act 20/1996 ([GG 1431](#))
Act 27/1996 ([GG 1474](#))
Act 18/1997 ([GG 1766](#)) (which establishes a new registration and licensing system and was brought into force by GN 7/1998, [GG 1781](#))
Act 19/1997 ([GG 1767](#)) (fees and penalties)
Act 4/1999 ([GG 2095](#)) (alcohol breath tests and fees).

Notices in terms of the current Act: GN 102/2002 ([GG 2759](#)) fixed 1 July 2002 as the date in terms of section 40(2) with effect from which any person who is the holder of a driving licence which was issued in Namibia in terms of the Road Traffic Ordinance 30 of 1967 and which is contained in an identity document issued by the South African Government, may apply for the replacement of such licence by a driving licence issued under Act 22 of 1999. GN 162/2002 ([GG 2815](#)) set additional dates for the exchange of various driving licences issued in terms of the Road Traffic Ordinance 30 of 1967, with those dates ranging from 2 September 2002 to 1 July 2005. 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).

Certain officers employed by the Roads Authority established in terms of the Roads Authority Act 17 of 1999 ([GG 2215](#)) 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 209/2006 ([GG 3746](#)) concerns the appointment of authorised officers by the Roads Authority as vehicle examiners, driving examiners and licence inspectors.

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](#)).

Pursuant to section 105 of the Act, exemptions from certain regulations made in terms of the Act are contained in GN 1/2018 ([GG 6507](#)), as amended by GN 199/2018 ([GG 6694](#)).

GN 100/2003 ([GG 2978](#)) concerns devices to be used to test breath for alcohol concentrations. *S v Titus & Others* 2014 (1) NR 129 (HC) held that it did not meet the requirements of section 82(7) of the Act read together with section 94, confirming the decision in *S v Heathcote* (CA 24/2013) [2013] NAHCMD 195 (12 July 2013). GN 100/2003 was withdrawn and replaced by GN 280/2015 ([GG 5892](#)).

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](#)).

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](#)).

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 at driving and vehicle testing centres in specific locations; appointments or withdrawals of the Roads Authority, various local authorities or other agencies to act as registering authorities or to operate driving testing centres and vehicle testing centres in specific locations.

Appointments: Members of the Transportation Commission of Namibia are announced in GN 142/2004 ([GG 3237](#)), GN 107/2014 ([GG 5523](#)), GN 99/2015 ([GG 5760](#)) (which substitutes the Table in the Schedule of GN 107/2014) and GN 230/2017 ([GG 6397](#)).

Cases: The following cases concern the present 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; Regs 254, 259 and 267)
- S v Shindi* 2007 (1) NR 160 (HC) (section 80(1); erroneous conviction under repealed legislation set aside)
- S v Tjikotoke* 2014 (1) NR 38 (HC) (comprehensive sentencing under sections 31(1)(a), 84(b) and Reg 232(4), in light of prescribed penalty under section 106(7))
- S v Titus & Others* 2014 (1) NR 129 (HC) (GN 100/2003 concerning devices to be used to test breath for alcohol concentrations not compliant with section 82(7) read together with section 94, confirming the decision in *S v Heathcote* (CA 24/2013) [2013 NAHCMD 195 (12 July 2013); the Act is erroneously referred to as Act 22 of 1996 in the headnote to the case)
- Uvanga v Steenkamp & Others* 2016 (2) NR 465 (HC) (common-law concept of ownership contrasted with concepts of “owner” and “title-holder” in reg 15A of the Road Traffic Regulations in GN 95/1967, read with reg 382 in GN 53/2001 (“owner” must assume the duties of the “title-holder”)).

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 Amutenya* 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 NR 96 (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 Accident Fund Act 10 of 2007.

Summary: This Act ([GG 3970](#)) provides for a Motor Vehicle Accident Fund for the payment of assistance and benefits to persons injured in motor vehicle accidents and their dependents. It repeals the Motor Vehicle Accidents Fund Act 4 of 2001 ([GG 2547](#)), which in turn replaced the Motor Vehicle Accidents Act 30 of 1990 ([GG 132](#)). It was brought into force on 2 May 2008 by 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 in terms of the present Act –
Hangula v Motor Vehicle Accident Fund 2013 (2) NR 358 (HC) (section 32)

The following cases pertain to the Motor Vehicle Accidents Fund Act 4 of 2001 –
Bock v Motor Vehicle Accident Fund of Namibia 2008 (2) NR 722 (HC)
July v Motor Vehicle Accident Fund 2010 (1) NR 368 (HC) (section 10)
Mbambus v Motor Vehicle Accident Fund 2011 (1) NR 238 (HC) (section 10; applicator for summary judgment refused); *Mbambus v Motor Vehicle Accident Fund* 2013 (2) NR 458 (HC) (section 10(1) and (5)(b)), overturned on appeal in *Mbambus v Motor Vehicle Accident Fund* 2015(3) NR 605 (SC) (section 10; discussed)
Visser v Minister of Finance & Others (I 3178/2007) [2014] NAHCMD 321 (29 October 2014) (Constitutional challenge to section 10(2) and related regulations dismissed) (discussed in Y Dauseb and K Pinkosky, “*Visser v Minister of Finance: A Missed Opportunity to Clarify the Equality Provision within a Namibian Disability Rights Paradigm*” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017).

The following cases pertain to 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.

INTERNATIONAL LAW

†*Geneva Convention on Road Traffic, 1949*

OTHER INTERNATIONAL DOCUMENTS

SACU Memorandum of Understanding on Road Transportation (non-binding)

accession: 2 February 1998 (Proc. 6/1998, [GG 1803](#))

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 (non-binding)

signature: 3 November 2003

ratification: 21 February 2007 (published in GN 193/2007 ([GG 3927](#)))

Bilateral Road Transport Agreement (Namibia and Zimbabwe)

ratification: 17 February 2000 (published in 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 Motor Vehicle Theft Act 12 of 1999 (**CRIMINAL LAW AND PROCEDURE**).

See the Financial Intelligence Act 13 of 2012 (duties of persons and institutions carrying on the business of a motor vehicle dealership) (**FINANCIAL INSTITUTIONS**).

See also **TRANSPORTATION**.

SCIENCE AND SCIENTIFIC RESEARCH

Research, Science and Technology Act 23 of 2004.

Summary: This Act ([GG 3356](#)) 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 repeals the *Scientific Research Council Act 46 of 1988*. It was brought into force on 1 November 2011 by GN 201/2011 ([GG 4823](#)).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, substitutes section 6 and deletes section 8.

Regulations: Regulations are contained in GN 208/2011 ([GG 4828](#)), as amended by GN 66/2016 ([GG 5990](#)) to delete the expression “Namibian based researcher” throughout.

Geoscience Professions Act 3 of 2012.

Summary: This Act ([GG 4935](#)) establishes a Geosciences Council of Namibia and provides for training, qualifications and registration of geoscience professions, including regional geology; geophysics; hydrogeology; economic, exploration or mining geology; geochemistry; engineering geology; environmental geology; hydrocarbon geology; palaeontology; and geoscience education. “Geoscience” is defined as “all scientific disciplines researching the earth as a whole, including, but not restricted to, its origin, structure, composition, history and the natural processes that resulted in its present state”. The Act was brought into force by GN 228/2017 ([GG 6397](#)).

Regulations: Regulations relating to registration and other fees payable by geoscientists were contained in GN 102/2014 ([GG 5517](#)), which was withdrawn by GN 154/2017 ([GG 6333](#)). Replacement regulations on this topic are contained in GN 320/2017 ([GG 6488](#)).

Notices: A Code of Professional Conduct of Geoscience Professionals of Namibia is published by the Geoscience Professions Council in General Notice 496/2017 ([GG 6488](#)).

Appointments: Members of the Geoscience Council are announced in GN 229/2017 ([GG 6397](#)), with effect from 1 February 2017 to 31 January 2018.

INTERNATIONAL LAW

Charter Establishing the Centre for Coordination of Agricultural Research and Development (CCARDESA), 2010

**SADC Protocol on Science, Technology and Innovation, 2008*

SEA AND SEASHORE

Sea-shore Ordinance 37 of 1958.

Summary: This Ordinance ([OG 2153](#)) provides for the determination of the position of the high-water mark.

Amendments: The Ordinance is repealed in Walvis Bay by RSA Proclamation 149 of 1982 ([RSA GG 8344](#)).

Regulations: Regulations are authorised by section 3 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Territorial Sea and Exclusive Economic Zone of Namibia Act 3 of 1990.

Summary: This Act ([GG 28](#)) determines and defines the territorial sea, internal waters, exclusive economic zone and continental shelf of Namibia. It was brought into force on 10 July 1990 by Proc. 6/1990 ([GG 44](#)). It repeals the Territorial Waters of South West Africa Proclamation, AG 32 of 1979.

Amendments: Act 30/1991 ([GG 332](#)) 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.

The Sea Fisheries Act 29 of 1992 ([GG 493](#)), which was brought into force on 23 December 1992 (Proc. 46/1992, [GG 556](#)) and subsequently repealed by the Marine Resources Act 27 of 2000, repeals the items in the Schedule of Act 3 of 1990 relating to the Sea Fisheries Act 58 of 1973 (which is repealed by Act 29 of 1992).

Regulations: The Act makes no provision for regulations.

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 (UNCLOS), 1982*

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 ([GG 1896](#)) establishes a Security Enterprises and Security Officers Regulation Board and provides for the registration of security enterprises. It also provides for the establishment of a fidelity guarantee fund. The Act was brought into force on 1 August 1998 by GN 181/1998 ([GG 1917](#)).

Amendments: Act 21/2002 ([GG 2891](#)) amends section 1, 5, 9 and 38.

The General Law Amendment Act 14 of 2005 ([GG 3565](#)) 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 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 1, 5, 9 and 13.

Regulations: Regulations are authorised by section 38 of the Act, but none have yet been promulgated.

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 collective agreements containing minimum wages for the 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.

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 ([GG 217](#)) 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 ([GG 810](#)) amends the definition of “port” in section 2.

The Wreck and Salvage Act 5 of 2004 ([GG 3244](#)) amends sections 134, 135, and 345 and repeals sections 234, 258, 293-306, 330 and 331.

Regulations: Pre-independence regulations have not been comprehensively researched.

Record Book Regulations are contained in RSA GN R.2080 of 14 October 1977, as amended by GN 80/1998 ([GG 1837](#)).

Previous Examination Regulations for Certificates of Competence as Marine Motormen and Fishermen are repealed by GN 180/2004 ([GG 3261](#)).

Construction and Equipment Regulations for fishing vessels are contained in GN 61/2002 ([GG 2729](#)), which repeals the regulations contained in RSA GN 79 of 19 January 1968 insofar as they apply to fishing vessels.

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](#)).

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.)

Merchant Shipping (Radio Installations) Regulations are contained in GN 105/2010 ([GG 4486](#)).

Notices: 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](#)).

Cases: *Bourgwells Ltd (Owners of MFV Ofelia) v Shepalov & Others* 1999 NR 410 (HC) (sections 135 and 172).

Relevant international law: The Schedules to the Act reproduce the following international conventions applicable to Namibia, but without including all of the amendments and protocols which are applicable –

- ***International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended***
Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974, as amended
- ***Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs), as amended***
- ***International Convention on Load Lines, 1966, as amended***
Protocol of 1988 relating to the International Convention on Load Lines, 1966, as amended
- ***International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended***
- ***International Convention on Tonnage Measurement of Ships, 196, as amended.***

Marine Traffic Act 2 of 1981, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 7408](#)) regulates marine traffic comprehensively.

Applicability to SWA: *RSA Proclamation 93 of 1985* ([RSA GG 9774](#)), issued in terms of the *South-West Africa Constitution Act 39 of 1968*, makes the Act “and all amendments thereof” applicable to SWA from 7 June 1985. The only amendment to the Act in South Africa prior to Namibian independence was the *Marine Traffic Amendment Act 5 of 1983* ([RSA GG 8571](#)), which was applicable to SWA by virtue of *RSA Proc. 93 of 1985*.

Amendments: The following pre-independence South African amendment was applicable to SWA –

- *Marine Traffic Amendment Act 5 of 1983* ([RSA GG 8571](#)).

Act 15/1991 ([GG 312](#)) 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 ([GG 810](#)) amends the definition of “harbour” in section 1.

Regulations: Regulations are authorised by section 14 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Namibian Ports Authority Act 2 of 1994.

Summary: This Act ([GG 810](#)) provides for the establishment of the Namibian Ports Authority to undertake the management of ports and lighthouses in Namibia. The Act – with the exception 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 ([OG 5439](#)) (which was repealed by the National Transport Services Holding Company Act 28 of 1998 ([GG 1961](#)) with effect from 1 April 1999) – was brought into force on 1 April 1995 by GN 58/1995 ([GG 1044](#)).

Amendments: The National Transport Services Holding Company Act 28 of 1998 ([GG 1961](#)), brought into force in relevant part on 1 April 1999 (GN 51/1999, [GG 2075](#)), amends Schedule 2.

The Act is also amended by Act 12/2000 ([GG 2365](#)) (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 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 4, 6, 7 and 9 and substitutes section 16.

Regulations: Section 30 includes a savings clause, but pre-independence regulations have not been researched.

Regulations are contained in GN 117/2001 ([GG 2549](#)), which repeals RSA GN R.562 of 26 March 1982 (as amended).

Notices: 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.

The area defined in Schedule 1 of the Act is extended by GN 215/2011 ([GG 4834](#)).

Tariffs: Tariffs prescribed by the Namibian Ports Authority from time to time have not been recorded here.

Appointments: Appointments to the Board of Directors are announced in GN 8/2005 ([GG 3374](#)), GN 78/2012 ([GG 4901](#)) and GN 81/2012 ([GG 4901](#)).

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 ([GG 3244](#)) 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 was brought into force on 1 November 2004 by GN 232/2004 ([GN 3313](#)).

Regulations: Regulations are authorised by section 36 of the Act, but none have yet been promulgated.

INTERNATIONAL LAW

African Maritime Transport Charter, 1993

Compensation for Oil Pollution Damage, 1971, as replaced by the 1992 Protocol

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988

Convention on the International Maritime Organization (IMO), 1948

Amendments to Articles 17 and 18 of the Convention on the International Maritime Organization, 1964

Amendment to article 28 of the Convention on the International Maritime Organization, 1965

Amendments to Articles 10, 16, 17, 18, 20, 28, 31 and 32 of the Convention on the International Maritime Organization, 1974

Amendments to the title and substantive provisions of the Convention on the International Maritime Organization, 1977

Amendments to the Convention on the International Maritime Organization relating to the institutionalization of the Committee on Technical Co-operation in the Convention, 1977

Amendments to Articles 17, 18, 20 and 51 of the Convention on the International Maritime Organization, 1979

Amendments to the Convention on the International Maritime Organization (institutionalization of the Facilitation Committee), 1991

Amendments to Articles 16, 17 and 19(b) of the Convention on the International Maritime Organization, 1993

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

International Convention for the Prevention of Pollution from Ships (MARPOL), 1973, as modified by the Protocol of 1978

Annex I Regulations for the Prevention of Pollution by Oil, as amended

Annex II Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk, as amended

Optional Annex III Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form, as amended

Optional Annex V Prevention of Pollution by Garbage from Ships, as amended

International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended

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

International Convention on Load Lines, 1966, as amended

Protocol of 1988 relating to the International Convention on Load Lines, 1966, as amended

International Convention on Maritime Search and Rescue, 1979, as amended

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

International Convention on Tonnage Measurement of Ships, 1969, as amended
International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995
International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended
International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969
Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended
Protocol of 1992 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), 1971 (1992 Fund Convention), as amended
****Revised African Maritime Transport Charter, 2010** (which will supersede the *African Maritime Transport Charter, 1993* when it comes into force)

See also **ADMIRALTY LAW.**

See also **SEA AND SEASHORE.**

SOCIAL SECURITY

Social Security Act 34 of 1994.

Summary: This Act ([GG 992](#)) 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)* – was brought into force on 15 January 1995 by GN 7/1995 ([GG 1006](#)).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 4, 5 and 12.

The State-owned Enterprises Governance Act incorrectly refers to this Act as the “Social Security Commission Act” in Schedule 2.

The Labour Act 11 of 2007 ([GG 3971](#)), brought into force in relevant part on 1 November 2008 (GN 260/2008, [GG 4151](#)), amends the definition of “employee” in section 1.

Regulations: Regulations are contained in GN 198/1995 ([GN 1181](#)), as amended by

- GN 31/1996 ([GG 1258](#)) (amends Reg 2)
- GN 80/1996 ([GG 1291](#)) (amends Reg 2)
- GN 244/1997 ([GG 1741](#)) (amends Regs 9-10 and substitutes Form 7)
- GN 235/1998 ([GG 1952](#)) (substitutes Form 7 with a Social Security Card confirming registration as an employee)
- GN 101/2001 ([GG 2544](#)) (amends Reg 11 to increase the death benefit)
- GN 227/2003 ([GG 3092](#)) (amends Reg 11 to increase the death benefit)
- GN 53/2008 ([GG 4002](#)) (amends definition of “remuneration” and Regs 2, 3, 5; amends Reg 9 to make maternity benefits 100 per cent of remuneration up to a specified ceiling, and adjusts the ceiling; amends Reg 10 to adjust the percentage of sick leave benefits; and amends Reg 11 to increase the death benefit)
- GN 49/2009 ([GG 4236](#)) (substitutes “basic wage” for “remuneration”; amends Reg 9 to increase the ceiling for maternity benefits; amends Reg 10 to raise sick leave benefits; and amends Reg 11 to increase the death benefit)
- GN 147/2010 ([GG 4530](#)) (amends Reg 9 to increase the ceiling for maternity benefits; amends Reg 10 to raise the ceiling for sick leave benefits; and amends Reg 11 to increase the death benefit)

GN 147/2010 states that the regulations were previously amended by Government Notice 101 of 11 May 2001, but this is an error; there is no such Government Notice. This Government Notice also lists Government Notice 101 of 1 June 2001, which is correct.

GN 69/2011 ([GG 4725](#)) (amends Reg 9 to raise the ceiling for maternity leave benefits)

GN 129/2011 ([GG 4767](#)) (substitutes Reg 3(4), authorising fee as fixed by Commission for replacement social security card or registration certificate)

GN 129/2011 states that the regulations were previously amended by Government Notice 101 of 11 May 2001; the correct date for this Government Notice is 1 June 2001. GN 129/2011 lists GN 5 of 2

January 2009 as a previous amendment to these regulations, but this is an error as GN 5/2009 is actually an announcement of members of the Social Security Commission.

GN 97/2012 ([GG 4919](#)) (amends Reg 9 to raise the ceiling for maternity leave benefits to N\$10 500/month; amends Reg 10 to set sick leave benefits at 75% of basic wage up to ceiling of N\$7 875/month for first 12 months, and 65% of basic wage up to ceiling of N\$6 825/month thereafter; and amends Reg 11 to raise the death benefit to a single payment of N\$5 515)

This Government Notice states that the regulations were previously amended by Government Notice 101 of 11 May 2001, but this is an error; there is no such Government Notice. This Government Notice also lists Government Notice 101 of 1 June 2001, which is correct.

GN 301/2012 ([GG 5101](#)) (amends definition of “basic wage” in Reg 1)

GN 44/2016 ([GG 5967](#)), as corrected by GN 51/2016 ([GG 5971](#)) (amends maternity, sick leave and death benefits).

Social Security Development Fund Regulations are contained in GN 215/2010 ([GG 4565](#)), as substantially amended by GN 302/2012 ([GG 5101](#)).

Notices: Notices regarding unclaimed monies in terms of the maternity leave, sick leave and death benefits fund are not listed here.

Appointments: Members of the Social Security Commission are announced in GN 133/1995 ([GG 1119](#)), GN 38/2003 ([GG 2927](#)), GN 5/2009 ([GG 4192](#)), GN 237/2011 ([GG 4859](#)), GN 327/2013 ([GG 5364](#)), GN 267/2014 ([GG 5644](#)), GN 167/2016 ([GG 6086](#)), GN 251/2017 ([GG 6426](#)), GN 39/2018 ([GG 6538](#)) and GN 316/2018 ([GG 6784](#)).

Note: The wording of the appointments differs in these different Government Notices. Most of the notices refer to the appointment of members of the Social Security Commission, but two notices have different wordings: GN 167/2016 ([GG 6086](#)) (appointed as Commissioners) and GN 39/2018 ([GG 6538](#)) (appointed as board members).

A Chairperson is announced in GN 234/1998 ([GG 1952](#)), GN 38/2003 ([GG 2927](#)), GN 5/2009 ([GG 4192](#)) and GN 21/2015 ([GG 5853](#)).

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 are probably applicable by virtue of the definition of “Union”.

Transfer of administration to SWA: This Act was administered by the Minister of Finance. Acts administered by the Minister of Finance in the Department of Inland Revenue were transferred to South West Africa by the Executive Powers (Inland Revenue) Transfer Proclamation, AG 18 of 1978, but this Act fell under the Department of Finance at the time, as indicated by government notices pertaining to the Registrar and Deputy Registrar of Friendly Societies issued during the 1970s. See, for example, Government Notice 1317/1970 ([RSA GG 2768](#)) and Government Notice 1640/1977 ([RSA GG 5715](#)). There was no transfer proclamation for laws administered by the Minister of Finance in the Department of Finance.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Finance Act 81 of 1957* ([SA GG 5907](#))
- *Finance Act 80 of 1959* ([SA GG 6255](#))
- *Inspection of Financial Institutions Act 68 of 1962* ([RSA GG 264](#))
- *Friendly Societies Amendment Act 60 of 1963* ([RSA GG 540](#))
- *Friendly Societies Amendment Act 67 of 1965* ([RSA GG 1128](#))
- *Financial Institutions Amendment Act 65 of 1968* ([RSA GG 2107](#))
- *Financial Institutions Amendment Act 91 of 1972* ([RSA GG 3594](#))
- *Medical Schemes Amendment Act 43 of 1975* ([RSA GG 4721](#))
- *Financial Institutions Amendment Act 101 of 1976* ([RSA GG 5217](#))
- *Financial Institutions Amendment Act 103 of 1979* ([RSA GG 6568](#))
- *Financial Institutions Amendment Act 99 of 1980* ([RSA GG 7151](#))
- *Financial Institutions Amendment Act 86 of 1984* ([RSA GG 9313](#))
- *Financial Institutions Amendment Act 51 of 1988* ([RSA GG 11313](#))
- *Financial Institutions Amendment Act 53 of 1989* ([RSA GG 11892](#))
- *Financial Institutions Second Amendment Act 54 of 1989* ([RSA GG 11893](#)).

The Act was amended in South Africa by the *Friendly Societies Amendment Act 44 of 1988* ([RSA GG 11273](#)), but *Act 44 of 1988* was brought into force only after Namibian independence, on 1 July 1993 by RSA Proc. 54/1993 ([RSA GG 14931](#)). *Act 25 of 1956* was also amended in South Africa by the *Legal Succession to the South African Transport Services Act 9 of 1989* ([RSA GG 11743](#)). However, the portions of this Act which amended *Act 25 of 1956* came into force only after Namibian independence, on 1 April 1990, in terms of section 37(2) read with section 3(1) of Act 9 of 1989; the date referred to in section 3(1) was set by *RSA Government Notice 578/1990* ([RSA GG 12364](#)) as being 1 April 1990. These amendments were thus not applicable to South

West Africa.

The Short-term Insurance Act 4 of 1998 ([GG 1832](#)) repeals section 50 insofar as it relates to short-term insurance.

The Long-term Insurance Act 5 of 1998 ([GG 1834](#)) repeals the remainder of section 50.

The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 ([GG 2529](#)) amends section 1, substitutes section 4 and repeals section 4A.

Regulations: Regulations are authorised by section 47 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Appointments: A Registrar and Deputy Registrar of Friendly Societies are appointed in General Notice 27/1991 ([GG 174](#)).

Social Pensions Ordinance 2 of 1965.

Summary: This Ordinance ([OG 2614](#)) consolidates the laws relating to social pensions. It repeals the Old Age Pensions Ordinance 13 of 1942. 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* ([RSA GG 3062](#)) and the *RSA Blind Persons Amendment Act 16 of 1971* ([RSA GG 3064](#)).

Regulations: Regulations made in terms of the previous Old Age Pensions Ordinance 13 of 1942 survive pursuant to section 27(2) of this Ordinance. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

National Welfare Act 79 of 1965, as amended in South Africa to November 1977.

Summary: This Act ([RSA GG 1163](#)) 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, which was inserted by *Act 13 of 1971* and repealed by Act 9 of 1993, stated “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* ([RSA GG 6094](#)). The portions of the Act relating to social workers were repealed by the

Social and Associated Workers Act 110 of 1978 ([RSA GG 6102](#)). The remainder of the Act was repealed by the *Pension Laws Amendment Act 81 of 1982* ([RSA GG 8239](#)). None of the repealing acts were made expressly applicable to SWA.

Section 3(2) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, excluded from transfer the provisions of any transferred law “which provide for or relate to the institution, constitution or control of any juristic person or any board or other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”. This may have at some stage have excluded from transfer the provisions of this Act relating to the National Welfare Board, as well as possibly some commissions and committees established under this Act.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *General Law Amendment Act 102 of 1967* ([RSA GG 1771](#))
- *National Welfare Amendment Act 13 of 1971* ([RSA GG 3061](#))
- *National Welfare Amendment Act 44 of 1976* ([RSA GG 5070](#)).

Act 12/1979 ([OG 4028](#)) 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 ([GG 692](#)), which was brought into force on 1 July 1994 by 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 ([GG 935](#)) 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 authorised by section 42 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Aged Persons Act 81 of 1967, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 1771](#)) provides for the protection and welfare of certain aged and debilitated persons.

Applicability to SWA: Section 16 of the *Pension Laws Amendment Act 79 of 1968* ([RSA GG 2119](#), and also published in [OG 2915](#)), without amending the *Aged Persons Act 81 of 1967*, empowered the State President to make the provisions of the Act “*mutatis mutandis* applicable in the territory of South-West Africa, including the Eastern Caprivi Zipfel, in respect of natives, as defined in section 25 of the Native Administration Proclamation, 1928 (Proclamation No. 15 of 1928), of the said territory, in so far as those provisions relate to Bantu or Bantu persons”, subject to “such conditions, amendments or exceptions as may be specified in the proclamation”. It also empowered the State President to withdraw or amend any such proclamation. Section 16(4) stated:

“With effect from the date on which any Act referred to in subsection (1) becomes applicable in the said territory in terms of a proclamation issued under that subsection, the corresponding Act which under section 45(1) of the Pension Laws Amendment Act, 1965 (Act No. 102 of 1965), was declared to be applicable in the said territory, shall cease to be applicable therein: Provided that anything done in terms of the relevant corresponding Act and which could be done in terms of the relevant Act referred to in subsection (1) which becomes applicable in the territory on the said date, shall be deemed to have been done in terms of the last-mentioned Act.”

(The corresponding Act cited in section 45(1) of the *Pension Laws Amendment Act 102 of 1965* ([RSA GG 1171](#)) was the *Old Age Pensions Act 38 of 1962* ([RSA GG 231](#)).

Pursuant to this authority, RSA Proc. R.293/1968 ([RSA GG 2182](#)) provided that the provisions of the Act were brought into force on 1 October 1968 “in the Territory of South-West Africa, including the Eastern Caprivi Zipfel, in respect of Natives, as defined in section 25 of the Native Administration Proclamation, 1928 (Proclamation No. 15 of 1928), of the said Territory, in so far as those provisions relate to Bantu”.

The Act was brought into force generally in SWA only when the amendments made by *Act 14 of 1971* came into force on 1 January 1972. Section 21A (which was added by Act 14 of 1971) 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.” Section 1 (as inserted by Act 14 of 1971) also defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”.

The original Act also dealt with old age pensions, but this portion of the Act was repealed by section 21 of the *Social Pensions Act 37 of 1973* ([RSA GG 3866](#)), 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.

RSA Proc. No. R.283/1968 ([RSA GG 2176](#)) assigned the administration of the Act as follows:

- (a) to the Minister of Bantu Administration and Development, in so far as the said provisions refer to Bantu as defined in section 1 of the Aged Persons Act, 1967;
- (b) to the Minister of Coloured Affairs, in so far as the said provisions refer to Coloured persons as defined in section 1 of the Aged Persons Act, 1967;
- (c) to the Minister of Indian Affairs, in so far as the said provisions refer to Indians as defined in section 1 of the Aged Persons Act, 1967; and
- (d) to the Minister of the Interior in so far as the said provisions refer to Chinese as defined in section 1 of the Aged Persons Act, 1967.

RSA Proc. R. 270/1971 ([RSA GG 3327](#)) assigned the administration of the Act as follows:

- (a) to the Minister of Social Welfare and Pensions, in so far as the said provisions refer to White persons;
- (b) to the Minister of Bantu Administration and Development, in so far as the said provisions refer to Bantu;

- (c) to the Minister of Coloured Affairs, in so far as the said provisions refer to Coloured persons and Namas;
- (d) to the Minister of Rehoboth Affairs, in so far as the said provisions refer to Burghers;
- (e) to the Minister of Indian Affairs, in so far as the said provisions refer to Indians; and
- (f) to the Minister of the Interior, in so far as the said provisions refer to Chinese.

This 1971 Proclamation was repealed by RSA Proc. 219/1973 ([RSA GG 4030](#)).

The Department of “Bantu Administration and Development” must have become the “Department of Co-operation and Development” at some stage – as RSA Proc. No. R.283/1968 was amended by RSA Proc. R.154/1985 ([RSA GG 9917](#)) to substitute “Minister of Constitutional Development and Planning” for “Minister of Co-operation and Development” in paragraph (a).

Therefore it is not clear which transfer proclamation, if any, was applicable. However, the date of transfer is not relevant to the content of the statute, as there were no amendments to the law in South Africa after 1976 (the date of the earliest transfer proclamation) and before Namibian independence.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Pension Laws Amendment Act 98 of 1969* ([RSA GG 2463](#))
- *Second Pension Laws Amendment Act 86 of 1970* ([RSA GG 2896](#))
- *Aged Persons Amendment Act 14 of 1971* ([RSA GG 3062](#))
- *Pension Laws Amendment Act 97 of 1972* ([RSA GG 3605](#))
- *Social Pensions Act 37 of 1973* ([RSA GG 3866](#)), which was made expressly applicable to SWA and which repealed the Act “in so far as it relates to pension matters;
- *Aged Persons Amendment Act 46 of 1976* ([RSA GG 5072](#)).

Some terminology was also amended by the Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

There have been no amendments to the Act in Namibia since independence.

The original Act covered pensions for aged 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.

Regulations: Regulations are authorised by section 20 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated. Since the portions of the Act relating to pensions for aged persons have been repealed, any regulations on this topic would have no current relevance.

Blind Persons Act 26 of 1968, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 2032](#)) concerns the promotion of the welfare of blind persons.

Applicability to SWA: Section 16 of the Pension Laws Amendment Act 79 of 1968 ([RSA GG 2119](#), also published in [OG 2915](#)) – which came into force on 1 October 1968 (section 17(1) of Act 79 of 1968) – without amending the Blind Persons Act 26 of 1968, empowered the State President to make the provisions of the Act “*mutatis mutandis* applicable in the territory of South-West Africa, including the Eastern Caprivi Zipfel, in respect of natives, as defined in section 25 of the Native Administration Proclamation, 1928 (Proclamation No. 15 of 1928), of the said territory, in so far as those provisions relate to Bantu or Bantu persons”, subject to “such conditions, amendments or exceptions as may be specified in the proclamation”. It also empowered the State President to withdraw or amend any such proclamation. Section 16(4) stated: “With effect from the date on which any Act referred to in subsection (1) becomes applicable in the said territory in terms of a proclamation issued under that subsection, the corresponding Act which under section 45(1) of the Pension Laws Amendment Act, 1965 (Act No. 102 of 1965), was declared to be applicable in the said territory, shall cease to be applicable therein: Provided that anything done in terms of the relevant corresponding Act and which could be done in terms of the relevant Act referred to in subsection (1) which becomes applicable in the territory on the said date, shall be deemed to have been done in terms of the last-mentioned Act.”

(The corresponding Act cited in section 45(1) of the Pension Laws Amendment Act 102 of 1965 ([RSA GG 1171](#)) was the Blind Persons Act 39 of 1962.)

Pursuant to this authority, RSA Proc. R.293/1968 ([RSA GG 2182](#)) provided that the provisions of the Act were brought into force on 1 October 1968 “in the Territory of South-West Africa, including the Eastern Caprivi Zipfel, in respect of Natives, as defined in section 25 of the Native Administration Proclamation, 1928 (Proclamation No. 15 of 1928), of the said Territory, in so far as those provisions relate to Bantu”.

The Act was brought into force generally in SWA only when the amendments made by *Act 16 of 1971* came into force on 1 January 1972. Section 18A (inserted by *Act 16 of 1971*) 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.” Section 1 (as inserted by *Act 16 of 1971*) also defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”.

The original Act 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.

RSA Proc. R.285/1968 ([RSA GG 2176](#)) assigned the administration of the Act as follows:

- (a) to the Minister of Bantu Administration and Development, in so far as the said provisions refer to Bantu as defined in section 1 of the Blind Persons Act, 1968;
- (b) to the Minister of Coloured Affairs, in so far as the said provisions refer to Coloured persons as defined in section 1 of the Blind Persons Act, 1968;
- (c) to the Minister of Indian Affairs, in so far as the said provisions refer to Indians as defined in section 1 of the Blind Persons Act. 1968;

- (d) to the Minister of the Interior, in so far as the said provisions refer to Chinese as defined in section 1 of the Blind Persons Act. 1968.

RSA Proc. R. 273/1971 ([RSA GG 3327](#)) assigned the administration of the Act as follows:

- (a) to the Minister of Social Welfare and Pensions, in so far as the said provisions refer to White persons;
- (b) to the Minister of Bantu Administration and Development, in so far as the said provisions refer to Bantu;
- (c) to the Minister of Coloured Affairs, in so far as the said provisions refer to Coloured persons and Namas;
- (d) to the Minister of Rehoboth Affairs, in so far as the said provisions refer to Burghers;
- (e) to the Minister of Indian Affairs, in so far as the said provisions refer to Indians;
- (f) to the Minister of the Interior, in so far as the said provisions refer to Chinese; and
- (g) to the Minister of Labour, in so far as the said provisions refer to-
- (i) the making of contributions to a welfare organisation registered under the National Welfare Act, 1965 (Act 79 of 1965), towards the provision or maintenance by such organisation of workshops for the training or employment of members of the population groups, excluding Bantu and Natives, referred to in this Proclamation, and the remuneration of persons employed by such organisation for the purpose of conducting any such workshop; and
- (ii) the making of contributions towards the augmentation of the earnings of members of the population excluding Bantu and Natives, referred to in this 'on, who are employed in the aforementioned workshop.

This 1971 Proclamation was repealed by RSA Proc. 219/1973 ([RSA GG 4030](#)).

The Department of "Bantu Administration and Development" must have become the "Department of Co-operation and Development" at some stage – as RSA Proc. No. R.285/1968 was amended by RSA Proc. R.153/1985 ([RSA GG 9917](#)) to substitute "Minister of Constitutional Development and Planning" for "Minister of Co-operation and Development" in paragraph (a).

Therefore it is not clear from the face of the Act which transfer proclamation, if any, was applicable. However, the date of transfer is not relevant to the content of the statute, as there were no amendments to the law in South Africa after 1976 (the date of the earliest transfer proclamation) and before Namibian independence.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Second Pension Laws Amendment Act 86 of 1970* ([RSA GG 2896](#))
- *Blind Persons Amendment Act 16 of 1971* ([RSA GG 3064](#))
- *Pensions Laws Amendment Act 97 of 1972* ([RSA GG 3605](#))
- *Social Pensions Act 37 of 1973* ([RSA GG 3866](#)), which was made expressly applicable to SWA and which repealed the Act "in so far as it relates to pension matters".

Regulations: Regulations are authorised by section 17 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been

promulgated. Since the portions of the Act relating to pensions for blind persons have been repealed, any regulations on this topic would have no current relevance.

Namibia Red Cross Act 16 of 1991.

Summary: This Act ([GG 313](#)) 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.

Regulations: The Act makes no provision for regulations.

Veterans Act 2 of 2008.

Summary: This Act ([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 ([GG 2211](#)).

Part IV of the Act was brought into force on 23 June 2008 by GN 156/2008 ([GG 4072](#)). The remainder of the Act, except for section 37, was brought into force on 8 July 2008 by GN 167/2008 ([GG 4080](#)). Section 37, which deals with the pension integration scheme for veterans, will be brought into force on a date set by the Minister.

Amendments: Act 3/2013 ([GG 5185](#)) amends sections 1, 6, 15, 22, 30, 35, 36, 44 and 46; substitutes sections 27 and 37 and inserts section 37A. Amongst other things, it replaces the provisions on a pension scheme for veterans with a once-off gratuity and provides for tokens of appreciation in monetary or material form. It also changes the qualifications for registration as a veteran or a dependant of a veteran. The amending Act was originally to come into force on a date set by the Minister in the *Gazette*, but it was amended by the Act 5/2015 ([GG 5774](#)) to provide that it comes into force on its date of publication.

Regulations: Pre-independence regulations have not been comprehensively researched. Regulations made under the repealed Act survive under this Act, but no such regulations have been located. 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 made under this Act on the registration and benefits of veterans and their dependants are contained in GN 168/2008 ([GG 4080](#)). GN 134/2010 ([GG 4514](#)) substitutes regulation 25.

Regulations relating to appeals to the Veterans Appeal Board are contained in GN 45/2011 ([GG 4693](#)).

Notices: General Notice 271/2010 ([GG 2574](#)) recognises the National Liberation Veterans Association as the organisation representing veterans with effect from 1 September 2010, in terms of section 44(3) of the Act.

Appointments: Members of the Veterans Appeal Board are announced in GN 70/2011 ([GG 4725](#)).

COMMENTARY

Namibia Social Protection Floor Assessment, International Labour Office (ILO) & Oxford Policy Management (OPM), 2014

The Effectiveness of Child Welfare Grants in Namibia: Study Findings and Technical Notes, Windhoek: Ministry of Gender Equality and Child Welfare, 2010

Home Truths: Facing the Facts on Children, AIDS, and Poverty, Joint Learning Initiative on Children and HIV/AIDS, 2009

Making the Difference: The BIG in Namibia, Basic Income Grant Pilot Project Assessment Report, Basic Income Grant Coalition, 2009.

See also Child Care and Protection Act 3 of 2015 (child grants) (**CHILDREN**).

See also Social Work and Psychology Act 6 of 2004 (**HEALTH 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

Boxing and Wrestling Control Act 11 of 1980.

Summary: This Act ([OG 4221](#)) establishes boards of control for boxing and wrestling. It was brought into force in respect of boxing by AG Proc. 5/1981 [OG 4402](#)). It appears not to be in force in respect of wrestling.

Amendments: The Act is amended by Act 25/1980 ([OG 4353](#)) and by the Married Persons Equality Act 1 of 1996 ([GG 1316](#)) (which repeals section 13).

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

Notices: GN 153/1986 ([OG 5241](#)) assigned the administration of certain sections of the Act to the Minister of National Education and the Central Personnel Institution.

Namibia Sports Act 12 of 2003.

Summary: This Act ([GG 3050](#)) establishes the Namibia Sports Commission and a Sports Development Fund. It repeals the Namibia Sports Act 7 of 1995 ([GG 1041](#)). The Act was brought into force on 2 December 2003 by GN 243/2003 ([GG 3103](#)).

Regulations: Regulations are contained in GN 244/2003 ([GG 3103](#)).

INTERNATIONAL LAW

International Convention against Doping in Sport, 2005

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 following pre-independence South African amendments were applicable to SWA –

- *Inspection of Financial Institutions Act 38 of 1984* ([RSA GG 9155](#))
- *Financial Institutions Amendment Act 51 of 1988* ([RSA GG 11313](#)).

In South Africa, the *Financial Institutions Amendment Act 64 of 1990* ([RSA GG 12564](#)) amended section 38 (section 12 of Act 64 of 1990), with this amendment being deemed to have come into force on 6 July 1987 (section 18(2) of *Act 64 of 1990*). However, since Act 64 of 1990 was gazetted on 29 June 1990, after the date of Namibian independence, this retroactive amendment was not applicable to South West Africa.

The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 ([GG 2529](#)) amends section 1, substitutes section 2 and repeals section 2A.

Act 10/2011 ([GG 4847](#)) amends the Act substantially (sections 1, 3, 5A, 6, 7, 8, 9, 11, 20, 29, 37, 42, 44).

Act 14/2016 ([GG 6184](#)) amends sections 1 and 5.

Regulations: Pre-independence regulations have not been researched.

Regulations relating to unit trusts scheme capital requirements are contained in GN 256/2014 ([GG 5637](#)).

Notices: A determination of the securities and other assets that may be included in a unit portfolio of a unit trust scheme and minimum and maximum restrictions and conditions for such securities and other assets is contained in General Notice 443/2014 ([GG 5637](#)).

Other determinations relating to unit trust management companies are contained in General Notice 444/2014 ([GG 5637](#)).

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. It repeals the *Stock Exchanges Control Act 7 of 194*.

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 ([GG 488](#)) 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 ([GG 2460](#)) 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 ([GG 2529](#)) amends section 1, substitutes section 2 and repeals section 2A.

Application of law: The application of this law is affected the Financial Intelligence Act 13 of 2012 ([GG 5096](#)), which places certain duties on members of stock exchanges licensed under the Act and on the Namibia Stock Exchange.

Regulations: Regulations made under the repealed Act survive in terms of section 53(2) of this Act, but such regulations have not been researched.

Regulations are authorised by section 51 of this Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Rules: 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](#)), General Notice 203/2002 ([GG 2796](#)) and General Notice 251/2005 ([GG 3518](#)) and General Notice 113/2012 ([GG 4940](#)).

Notices: Notices of applications for approval of amendment of the rules are contained in GN 12/2002 ([GG 2688](#)), General Notice 203/2002 ([GG 2796](#)), General Notice 251/2005 ([GG 3518](#)) and General Notice 113/2012 ([GG 4940](#)).

The conditions which apply to a person who, as a regular feature of that person’s business, administers or holds in safe custody on behalf of any other person any investments in listed securities or any investments of which listed securities form a part, are contained in GN 31/2016 ([GG 5955](#)). These conditions are determined under section 4(1)(f) of the Act.

Appointments: A Registrar and Deputy Registrar of Stock Exchanges are appointed in General Notice 30/1991 ([GG 174](#)).

Cases: *Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others* 2014 (2) NR 425 (HC); overturned on appeal 2016 (3) NR 747 (SC).

SUNDAYS AND PUBLIC HOLIDAYS

Sunday Trading Proclamation 12 of 1919.

Summary: This proclamation ([OG 24](#)) regulates trading on Sunday, Christmas Day and Good Friday.

Lord's Day Observance Proclamation 54 of 1921.

Summary: This Proclamation ([OG 75](#)) regulates trade and entertainment on Sundays.

Public Holidays Act 26 of 1990.

Summary: This Act ([GG 125](#)), which came onto force on 1 February 1991 (section 4), 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 ([GG 3348](#)) renames "International Human Rights Day" (10 December) as "Day of the Namibian Women and International Human Rights Day".

Notices: 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, Proc. 36/1999, Proc. 35/2014 ([GG 5609](#)) and Proc. 38/2015 ([GG 5885](#)).

General Notice 250/2001 ([GG 2610](#)) proclaims 28 September as the Day of the Namibian Child, but this date is not made into a public holiday.

COMMISSIONS

Commission of Inquiry into Public Holidays (AG 32/1981).

TENDERS

Public Procurement Act 15 of 2015.

Summary: This Act ([GG 5922](#)) regulates the procurement of goods, works and services by public entities, and establishes the Procurement Policy Unit and the Central Procurement Board of Namibia. It repeals the Tender Board of Namibia Act 16 of 1996. It was brought into force with effect from 1 April 2017 by GN 46/2017 ([GG 6255](#)).

Regulations: Regulations issued under the repealed Act survive in terms of section 80(2), which states: “Subject to section 81 [on the treatment of tender contracts already concluded and tender advertisements already issued when the Act came into force], anything done under a provision of the law repealed by subsection (1) and which could have been done under a provision of this Act is deemed to have been done under the corresponding provision.”

Regulations issued under the repealed Act are contained in GN 237/1996 ([GG 1403](#)), as amended by GN 140/2013 ([GG 5212](#)).

Public Procurement Regulations promulgated under this Act are contained in GN 47/2017 ([GG 6255](#)), as amended by GN 129/2017 ([GG 6315](#)) (which amends regulation 1 and inserts Part 2A) and by GN 78/2018 ([GG 6576](#)). These regulations do not repeal any previous regulations.

Rules: Rules issued under the repealed Act survive in terms of section 80(2). The “Tender Board of Namibia Code of Procedure” is contained in GN 191/1997 ([GG 1692](#)), as amended by GN 180/2010 ([GG 4544](#)) which substitutes paragraph 23.

Note that GN 180/2010 contains an error in the name of the principal Act.

Notices: Notices issued under the repealed Act survive in terms of section 80(2). General Notice 160/1992 ([GG 551](#)) contains “Tender Board of Namibia: Preferences” and addresses issues such as local content.

Directives: Directives issued under the repealed Act survive in terms of section 80(2). Administrative Directive 1/2006 relating to over-expenditure is contained in GN 56/2006 ([GG 3611](#)).

Appointments: The Chairperson, Deputy Chairperson and members of the Central Procurement Board are announced in GN 152/2017 ([GG 6333](#)). A list of individuals from which to choose members of the Review Panel is announced in GN 200/2017 ([GG 6374](#)).

Cases: The following cases were decided in terms of the previous Tender Board of Namibia Act 16 of 1996 –

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)

- Minister of Education & Others v Free Namibia Caterers (Pty) Ltd* 2013 (4) NR 1061 (SC) (administrative review of decision of Tender Board; effect of failure to comply with section 16(1)(b)).
- CSC Neckertal Dam Joint Venture v Tender Board of Namibia & Others* 2014 (1) NR 135 (HC) (review of tender award; considers application of sections 15(1) and 19)
- United Africa Group (Pty) Ltd v Chairperson of the Tender Board of Namibia & Others* 2015 (2) NR 370 (SC) (s. 15(5)-(6) and regulation 7)
- Anhui Foreign Economic Construction (Group) Corp Ltd v Minister of Works and Transport & Others* 2016 (4) NR 1087 (HC) (relationship between section 7(1)(a) of the Tender Board Act 16 of 1996 and section 5(2)(a) of the Airports Company Act 28 of 1998).

The following cases were decided in terms of Tender Board Regulations promulgated under section 26A of the Finance and Audit Ordinance 1 of 1926 –

- Skeleton Coast Safaris v Namibia Tender Board & Others* 1993 NR 288 (HC)
- Kerry McNamara Architects Inc v Ministry of Works, Transport and Communication & Others* 2000 NR 1 (HC).

Commentary:

Frederico Links, “The Public Procurement Bill: A lot of good, some significant bad, but certainly not ugly”, Institute for Public Policy Research, *Democracy Report, Special Briefing Paper No. 9*, September 2015, available at [Special Briefing no 9.pdf](#)

Frederico Links, “Promoting Integrity: The New Public Procurement Framework”, Institute for Public Policy Research & Open Society Initiative for Southern Africa, *Briefing Paper*, August 2017.

COMMENTARY

- Frederico Links & Clement Daniels, “The Tender Board: Need for Root and Branch Reform”, Institute for Public Policy Research, 2011, available at www.ippr.org.na
- Malakia Haimbodi, “Public Procurement: Are There Lessons to be Learnt?”, Institute for Public Policy Research, 2011, available at www.ippr.org.na
- Ellison Tjirera, “Public Procurement in Namibia: The Role of Codes of Conduct in Reducing Corruption”, Institute for Public Policy Research, 2011, available at www.ippr.org.na
- Frederico Links & Malakia Haimbodi, “Building Integrity: Corruption and the Construction Industry”, Institute for Public Policy Research, 2011, available at www.ippr.org.na
- Ellison Tjirera, Malakia Haimbodi & Graham Hopwood, “Risking Corruption: Regional and Local Governance in Namibia”, Institute for Public Policy Research, 2012, available at www.ippr.org.na
- SK Amoo & S Dicken, “The Regulatory Framework for Public Procurement in Namibia” in Sue Arrowsmith & Geo Quinot (eds), *Public Procurement Regulation in Africa*, Cambridge: Cambridge University Press, 2012
- Anne Schmidt, “The need to reform the Namibian public procurement system: A comment on the Neckertal Dam saga,” *Namibia Law Journal*, Volume 6, Issue 1, 2014
- Anne Schmidt, “Public Procurement – A Constitutional Perspective” in Nico Horn & Manfred O Hinz, eds, *Beyond a Quarter Century of Constitutional Democracy: Process and Progress in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2017.

TERRORISM

Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014.

Summary: This Act ([GG 5490](#)) provides for various criminal offences connected with terrorism and proliferation activities, and measures to combat and prevent such activities and the funding of such activities. It also gives effect to international conventions, United Nations Security Council Resolutions, instruments and best practices on measures to combat terrorist and proliferation activities. Some of its provisions are to be implemented by the Security Commission established under Article 114 of the Namibian Constitution. It repeals the Prevention and Combating of Terrorist Activities Act 12 of 2012. The Act was brought into force on 1 July 2014 by GN 80/2014 ([GG 5497](#)).

Regulations: Section 64 provides that anything done under the repealed Prevention and Combating of Terrorist Activities Act 12 of 2012 that could be done under a corresponding provision of this Act is deemed to have been done under this Act. However, the only regulations issued under the 2014 Act have been repealed.

In terms of the current Act, **Regulations relating to the Implementation of Security Council Decisions** are contained in GN 163/2014 ([GG 5560](#)), which repeals GN 196/2013 ([GG 5250](#)).

Relevant international law: Section 1 of the Act defines “terrorist activity” to include any act which constitutes an offence within the scope of, and as defined in one of the following treaties -

- *Convention for the Suppression of Unlawful Seizure of Aircraft (1970)*
- *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971)*
- *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973)*
- *International Convention against the Taking of Hostages (1979)*
- *Convention on the Physical Protection of Nuclear Material (1980)*
Note that this convention is now known as the “Convention on the Physical Protection of Nuclear Material and Nuclear Facilities, 1980”, due to the Amendment to the Convention on the Physical Protection of Nuclear Material (renaming the convention as Convention on the Physical Protection of Nuclear Material and Nuclear Facilities), 2005, which Namibia has accepted.
- *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988)*
- *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005)*
- *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (2005)*
- *International Convention for the Suppression of Terrorist Bombings (1997)*
- *International Convention for the Suppression of the Financing of Terrorism (1999)*
- *International Convention for the Suppression of Acts of Nuclear Terrorism (2005)*

- *Convention on the Suppression of Unlawful Acts relating to International Civil Aviation (2010)* (not yet agreed to by Namibia nor in force internationally)
- *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (2010)* (not yet agreed to by Namibia nor in force internationally).

Notices: In terms of the previous Act (and surviving pursuant to section 654 of this Act), GN 276/2013 ([GG 5318](#)) publishes a United Nations list of persons and organisations, and persons associated with such persons and organisations, against whom Member States of the United Nations must take actions in order to combat or prevent any terrorist activity in terms of regulation 4(2)(c).

In terms of this Act, GN 172/2015 ([GG 5804](#)) issues an arms embargo preventing the direct or indirect supply, sale, brokering or transfer of all types of arms and related materials to designated persons, organisations or countries by Namibian citizens or residents of Namibia, Namibian citizens outside Namibia or by making use of Namibian flagged vessels or aircraft or aircraft registered in Namibia.

From time to time, sanction lists issued by the United Nations Security Council pursuant to various Security Council Resolutions are published and freezing orders relating to these lists issued. These are published frequently and have not been recorded here.

Commentary:

These articles discuss the repealed Act –

“Anti-Terrorism Act of 2012: When ‘urgency’ trumps proper Parliamentary debate”, Institute for Public Policy Research, 2013, available at www.ippr.org.na

Phillip Balhao, “Principle of legality: Assessing the definition of ‘Terrorist Activity’ with regards to the Combating and Prevention of Terrorist Activities Act No. 21 of 2012”, *UNAM Law Review*, Volume 2, Issue 1, 2014, available at <http://unamlawreview.info>.

This article discusses the current law –

Graham Hopwood, “Rushed and Ill-considered: Namibia’s Anti-Terrorism Law”, Institute for Public Policy Research, 2015, available at www.ippr.org.na.

INTERNATIONAL LAW

Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Hijacking Convention), 1970

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Sabotage Convention), 1971

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 1988

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988

Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention), 1963
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973
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 (Ottawa Treaty), 1997
International Convention against the Taking of Hostages, 1979
International Convention for the Suppression of Acts of Nuclear Terrorism, 2005
International Convention for the Suppression of Terrorist Bombings, 1997
International Convention for the Suppression of the Financing of Terrorism, 1999
OUA Convention on the Prevention and Combating of Terrorism, 1999
SADC Declaration on Terrorism, 2002 (not legally-binding).

See also Prevention of Organised Crime Act 29 of 2004 (**CRIMINAL LAW AND PROCEDURE**).

See also Financial Intelligence Act 13 of 2012 (**FINANCIAL INSTITUTIONS**).

TOURISM

Accommodation Establishments and Tourism Ordinance 20 of 1973.

Summary: This Ordinance ([OG 3348](#)) consolidates the laws on accommodation establishments and tourism and provides for the establishment of recreation areas. It was extended to the Rehoboth Gebiet by AG 56/1978, and applied to the Eastern Caprivi Zipfel by GN 4/2000 ([GG 2259](#)).

Amendments: The Ordinance is amended by Ord. 25/1973 ([OG 3366](#)), Ord. 17/1974 ([OG 3443](#)) and Ord. 5/1977 ([OG 3604](#)).

The Namibia Tourism Board Act 21 of 2000 ([GG 2437](#)) repeals sections 2-47A and section 56(1)(b)-(l).

The Ordinance was previously amended by Ord. 12/ 1975 ([OG 3481](#)), Ord. 14/ 1977 ([OG 3637](#)), Ord. 4/1978 ([OG 3735](#)), Ord. 11/1978 ([OG 3735](#)) and Ord. 14 of 1979 ([OG 3983](#)), but all of these amending Ordinances were repealed by the Namibia Tourism Board Act 21 of 2000 ([GG 2437](#)), which also repealed the affected sections of the Ordinance.

Regulations: Pre-independence regulations have not been comprehensively researched.

Regulations relating to accommodation establishments and tourism are contained in GN 75/1974 (OG 3391), as amended by the following:

- GN 119/1974 ([OG 3405](#))
- GN 130/1975 ([OG 3467](#))
- GN 315/1977 ([OG 3647](#))
- GN 24/2000 ([GG 2264](#))
- GN 89/2000 ([GG 2304](#)).

These regulations repeal the regulations published in Government Notice 188 of 2 December 1968, as amended.

Namibia Wildlife Resorts Company Act 3 of 1998.

Summary: This Act ([GG 1809](#)) 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 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends sections 4 and 5.

Regulations: The Act makes no provision for regulations.

Notices: 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.

Certain immovable property was transferred to the Namibia Wildlife Resorts Company as of 15 March 2011 by GN 30/2011 ([GG 4669](#)).

Cases: *Namibia Wildlife Resorts Ltd v Government Institutions Pension Fund & Others* 2015 (1) NR 88 (SC).

Namibia Tourism Board Act 21 of 2000.

Summary: This Act ([GG 2437](#)) 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 was brought into force on 15 May 2001 by GN 87/2001 ([GG 2531](#)).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends sections 4, 7, 8 and 11, and substitutes section 13.

Regulations: Regulations relating to levies payable by accommodation establishments are contained in GN 137/2004 ([GG 3235](#)), which states that these regulations come into effect on 1 November 2004.

Regulations relating to the registration of regulated businesses are contained in GN 138/2004 ([GG 3235](#)), which states that these regulations come into effect on 1 February 2005.

Regulations relating to the registration of accommodation establishments are contained in GN 139/2004 ([GG 3235](#)), which states that these regulations come into effect on 1 November 2004.

National Star Grading Regulations relating to Accommodation Establishments are contained in GN 204/2012 ([GG 5009](#)), which states that these regulations come into effect on 1 October 2013.

Notices: GN 136/2004 ([GG 3235](#)) contains a declaration of business sectors relating to the tourism industry to be regulated. It came into effect on 1 February 2005.

Appointments: Members of the Namibia Tourism Board are announced in GN 88/2001 ([GG 2531](#)).

INTERNATIONAL LAW

Charter of the Regional Tourism Organisation of Southern Africa (RETOSA), 1997

SADC Protocol on the Development of Tourism, 1998

Statutes of the World Tourism Organization (UNWTO), 1970

Amendment to Article 38 of the Statutes of the World Tourism Organization, 1979

TRADE AND INDUSTRY

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

Summary: This Act ([SA GG 2365](#)) provides for the control of the sugar industry and regulates sugar prices. It repeals the Sugar Prices Act 47 of 1926.

Applicability to SWA: Section 10(2), which was added by *Act 17 of 1955* ([SA GG 5465](#)), also published in [OG 1902](#)), 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”. There is no definition of “Union” or “Republic”.

This wording does not seem to make amendments to the Act automatically applicable to SWA. However, the amendments contained in Act 17 of 1955 are presumably 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* ([SA GG 6109](#)) – 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* ([RSA GG 5907](#)), which was brought into force on 27 April 1979 by Proc. R.81/1979 ([RSA GG 6419](#)). However, this repeal came into force in SA after the date of transfer to SWA.

Transfer of administration to SWA: The administration of the Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28 of 1978), dated 28 April 1978.

Amendments: The following pre-independence South African amendment was applicable to SWA –

- *Sugar Amendment Act 17 of 1955* ([SA GG 5465](#)).

Regulations: There is no savings clause for regulations issued under the repealed Act. Regulations are authorised by section 11 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Industrial Development Act 22 of 1940, as amended in South Africa prior to Namibian independence.

Summary: This Act ([SA GG 2764](#)) 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.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Industrial Development Amendment Act 27 of 1942* ([SA GG 3041](#))
- *Industrial Development Amendment Act 40 of 1951* ([SA GG 4627](#))
- *Industrial Development Amendment Act 67 of 1961* ([RSA GG 31](#))
- *Industrial Development Amendment Act 52 of 1964* ([RSA GG 815](#))
- *Industrial Development Amendment Act 89 of 1965* ([RSA GG 1163](#))
- *Industrial Development Amendment Act 45 of 1966* ([RSA GG 1576](#))
- *Finance Act 88 of 1972* ([RSA GG 3591](#))
- *Second General Law Amendment Act 94 of 1974* ([RSA GG 4510](#))
- *Industrial Development Amendment Act 47 of 1975* ([RSA GG 4730](#))
- *Finance Act 102 of 1976* ([RSA GG 5199](#))
- *Finance Act 21 of 1980* ([RSA GG 6915](#))
- *Industrial Development Amendment Act 96 of 1980* ([RSA GG 7149](#))
- *Industrial Development Amendment Act 53 of 1984* ([RSA GG 9186](#))
- *Transfer of Powers and Duties of the State President Act 97 of 1986* ([RSA GG 10438](#)).

Regulations: The Act makes no provision for regulations.

Price Control Act 25 of 1964, as amended in South Africa to April 1978.

Summary: This Act ([RSA GG 750](#)) allows for state control of the prices of goods and services.

Applicability to SWA: Section 21 of the original Act stated: “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 that territory.”

Section 21 was substituted by Act 80 of 1967, to make amendments to the Act also applicable to South West Africa. Section 21 as substituted 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 28/1978), dated 28 April 1978. There were two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Price Control Amendment Act 16 of 1984* ([RSA GG 9092](#)) and the *Coal Resources Act 60 of 1985* ([RSA GG 9773](#)) – neither of which was made expressly applicable to SWA.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Price Control Amendment Act 80 of 1967* ([RSA GG 1764](#))
- *Price Control Amendment Act 39 of 1976* ([RSA GG 5066](#)).

Regulations: The Act makes no provision for regulations.

Notices: The application of the Act is affected by a large number of Government Notices which have not been comprehensively recorded here.

Maximum margarine prices were contained in GN 72 of 15 April 1986, as amended by GN 43/1990 ([GG 60](#)), GN 68/1991 ([GG 220](#)) and GN 41/1992 ([GG 390](#)) and supplemented by GN 146/1992 ([GG 512](#)). GN 72/1986 is repealed by GN 64/1993 ([GG 662](#)), which is replaced by GN 115/1994 ([GG 870](#)), which is replaced in turn by GN 209/1995 ([GG 1183](#)), which is repealed by GN 57/1997 ([GG 1528](#)).

Deposits and refunds on returnable containers were addressed after independence by GN 96/91 (GG 249), as amended by GN 19/92 (GG 359), which was replaced by GN 27/2003 (GG 2925), which was replaced by GN 130/2005 (GG 3507), which was replaced by GN 237/2008 ([GG 4136](#)).

National Supplies Procurement Act 89 of 1970, as amended in South Africa prior to Namibian independence.

Summary: This Act ([RSA GG 2898](#)) 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.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Finance Act 63 of 1973* ([RSA GG 3948](#))
- *General Law Amendment Act 29 of 1974* ([RSA GG 4220](#))
- *National Supplies Procurement Amendment Act 89 of 1974* ([RSA GG 4520](#))
- *National Supplies Procurement Amendment Act 54 of 1975* ([RSA GG 4754](#))
- *National Supplies Procurement Amendment Act 70 of 1976* ([RSA GG 5129](#))
- *National Supplies Procurement Amendment Act 73 of 1979* ([RSA GG 6516](#))
- *Finance Act 21 of 1980* ([RSA GG 6915](#))
- *National Supplies Procurement Amendment Act 31 of 1982* ([RSA GG 8083](#))
- *National Supplies Procurement Amendment Act 25 of 1988* ([RSA GG 11215](#)).

The Act was also amended in South Africa by the *Legal Succession to the South African Transport Services Act 9 of 1989* ([RSA GG 11743](#)). However, the portions of Act 9 of 1989 which amended Act 89 of 1970 came into force only after Namibian independence, on 1 April 1990, in terms of section 37(2) read with section 3(1) of Act

9 of 1989; the date referred to in section 3(1) was set by *RSA Government Notice 578/1990* ([RSA GG 12364](#)) as being 1 April 1990. Therefore these amendments were not applicable to South West Africa.

Regulations: The Act makes no provision for regulations.

Trade Practices Act 76 of 1976, as amended in South Africa to April 1978.

Summary: This Act ([RSA GG 5150](#)) 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.” There were no amendments to the Act in South Africa prior to the date of transfer.

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. (The first amendment to the Act in South Africa, the *Trade Practices Amendment Act 78 of 1978*, came into force shortly after the date of transfer, on 9 June 1978.) None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Regulations: The Act makes no provision for regulations.

Foreign Investments Act 27 of 1990.

Summary: This Act ([GG 129](#)) provides for the promotion of foreign investments in Namibia. It was brought into force on 7 July 1992 by Proc. 19/1992 ([GG 433](#)). This Act and its amending Act (Act 24 of 1993) are both repealed by the Namibia Investment Promotion Act 9 of 2016 ([GG 6110](#)). However, that Act has not yet been brought into force.

Amendments: Act 24/1993 ([GG 752](#)) amends sections 3, 10 and 18.

Application of law: Export processing zones are exempted from the operation of the Act by section 9 of the Export Processing Zones Act 9 of 1995 ([GG 1069](#)).

Regulations: Regulations are contained in GN 120/1992 ([GG 477](#)).

Notices: 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 are prohibited to foreign investors because they can be adequately provided by Namibians are specified in terms of section 3(4) of the Act by GN 75/2010 ([GG 4460](#)). However, paragraph (a) of this notice was declared invalid on the grounds that it is beyond the authority conferred by the Act in *Namibian Competition Commission & Another v Wal-Mart Stores Incorporated* 2012 (1) NR 69 (SC).

Cases: *Namibian Competition Commission & Another v Wal-Mart Stores Incorporated* 2012 (1) NR 69 (SC).

Export Processing Zones Act 9 of 1995.

Summary: This Act ([GG 1069](#)) provides for the establishment, development and management of Export Processing Zones. It was brought into force on 10 October 1995 by GN 186/1995 ([GG 1174](#)).

Amendments: Act 6/1996 ([GG 1337](#)) amends section 8 of the Act, which makes the Labour Act 6 of 1992 ([GG 388](#)) applicable in Export Processing Zones, subject to certain modifications and exceptions.

The Electricity Act 4 of 2007 ([GG 3922](#)), which was brought into force on 15 November 2007 by GN 201/2007 ([GG 3933](#)), amends section 22.

The Namibia Industrial Development Agency Act 16 of 2016 ([GG 6202](#)), which was brought into force in relevant part on 15 November 2018 by GN 295/2018 ([GG 6767](#)), amends section 26, repeals section 27 and 28 and makes other consequential amendments.

Regulations: Regulations are authorised by section 24 of the Act, but none have yet been promulgated.

Notices: 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](#)).

Trades and Occupational Licences Repeal Act 10 of 1995.

Summary: This Act ([GG 1070](#)) repeals and amends a number of laws relating to trades and licencing. It has no independent provisions.

Second Hand Goods Act 23 of 1998.

Summary: This Act ([GG 1955](#)) 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 was brought into force on 1 November 1999 by GN 211/1999 ([GG 2209](#)).

Amendments: The General Law Amendment Act 14 of 2005 ([GG 3565](#)) amends section 1 of the Act.

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)), which places certain duties on dealers in second hand goods and auctioneers.

Regulations: Regulations are contained in GN 212/1999 ([GG 2209](#)).

Competition Act 2 of 2003.

Summary: This Act ([GG 2964](#)) safeguards and promotes competition in the Namibian

market and establishes the Namibian Competition Commission. It was brought into force on 3 March 2008 by GN 54/2008 ([GG 4004](#)). It repeals the *Regulation of Monopolistic Conditions Act 24 of 1955*.

Note that the Arrangement of Sections in this Act lists a Schedule, but the *Government Gazette* does not contain a Schedule, and there is no reference to a Schedule in the text of the Act.

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, substitutes section 5, deletes section 7, and amends section 13.

Application of law: The class of mergers excluded from Chapter 4 of the Act pursuant to section 43 is determined in GN 288/2012 ([GG 5090](#)), which is withdrawn and replaced by GN 307/2012 ([GG 5107](#)), which is in turn withdrawn and replaced by GN 307/2015 ([GG 5905](#)).

The threshold of annual turnover or asset value for the application of Part II of Chapter 3 of the Act is determined pursuant to section 24 in GN 289/2012 ([GG 5090](#)), which is withdrawn and replaced by GN 306/2012 ([GG 5107](#)).

Regulations: The Act makes no provision for regulations.

Rules: Rules are contained in General Notice 41/2008 ([GG 4004](#)). These rules were amended by GN 2/2017 ([GG 6213](#)), but GN 2/2017 was withdrawn and replaced by GN 63/2017 ([GG 6266](#)).

Note that both GN 2/2017 and GN 63/2017 erroneously state that the original rules are contained in *Government Notice 41/2008*. They actually appear in *General Notice 41/2008*.

Notices: 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](#)).

A memorandum of agreement between the Namibian Competition Commission and the Communications Regulatory Authority of Namibia (CRAN), made pursuant to section 67 of the Act, is published in General Notice 17/2012 ([GG 4868](#)).

A memorandum of agreement between the Namibian Competition Commission and the Bank of Namibia, made pursuant to section 67 of the Act, is published in General Notice 41/2012 ([GG 4888](#)).

A memorandum of agreement between the Namibian Competition Commission and NAMFISA, made pursuant to section 67(3) of the Competition Act 2 of 2003, is published in General Notice 270/2014 ([GG 5527](#)).

A Corporate Leniency Programme is established by General Notice 562/2018 ([GG 6732](#)).

Notices on referrals for investigation, reports of specific cases and determinations made by the Commission in respect of specific proposed mergers have not been included here.

Appointments: Appointments to the Namibian Competition Commission are announced in GN 93/2010 ([GG 4483](#)), GN 141/2015 ([GG 5783](#)) and GN 3/2017 ([GG 6217](#)).

Cases: *Namibian Competition Commission & Another v Wal-Mart Stores Incorporated* 2012 (1) NR 69 (SC) (section 49); *Namibian Association of Medical Aid Funds v Namibian Competition Commission* (A 348/2014) [2016] NAHCMD 80 (17 March 2016) (NAMAF benchmark tariffs for medical aid coverage violate Act).

Commentary:

Bernhard Tjatjara, “The Competition Act, 2003: Out with the old and in with the new – Part 1”, *Namibia Law Journal*, Volume 6, Issue 2, 2014

Diane R Hazel, “Competition in Context: The Limitations of using Competition Law as a Vehicle for Social Policy in the Developing World”, 37(2) *Houston Journal of International Law* 275 (2015), available at www.hjil.org/articles/hjil-37-2-hazel.pdf.

Related international agreements: *SADC Declaration on Regional Cooperation in Competition and Consumer Policies, 2009* (not legally-binding; issued in terms of Article 25 of the *SADC Protocol on Trade*).

Controlled Wildlife Products and Trade Act 9 of 2008.

Summary: This Act ([GG 4190](#)) 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 ([OG 4238](#)). It was brought into force on 15 February 2012 by GN 31/2012 ([GG 4883](#)).

Amendments: Schedule 3 of the Act is substituted by GN 94/2017 ([GG 6291](#)) pursuant to section 11 of the Act.

Act 6/2017 ([GG 6421](#)) amends sections 1, 4, 8 and 9 and Schedule 1 to increase the penalties for certain wildlife crimes and to address other crime-related matters.

Regulations: There is no savings clause for anything done in terms of the repealed Proclamation (which in any event, did not seem to provide for regulations).

Regulations relating to controlled wildlife products and trade are contained in GN 144/2011 ([GG 4773](#)).

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).

Note: See also Nature Conservation Ordinance 4 of 1975 re: export of game and game products.

Note on possible effect of discrepancies between Appendices in Act and CITES

The Appendices to CITES can be, and regularly are, amended by “the Conference of the Parties” under Articles XV and XVI of the Convention, and the amendments enter into force automatically for all parties.

However, section 11(1) of this Act states: “Whenever Appendices I, II or III is amended [sic], the Minister *must* by notice in the *Gazette* amend Schedule 3 accordingly.” (emphasis added). In addition, section 1(3)(c) of this Act states: “Any provision of this Act is construed with reference to the Convention and any provision of the Convention is deemed to be part of this Act and for that purpose... (c) *a species is deemed to be included in an Appendix only if it appears in the relevant column of Schedule 3* and also subject to such further qualifications as set out in the relevant entry or such further notes as may appear in that Schedule.” (emphasis added).

The problem is that the version of the Appendices which appeared in the Act for the first nine years appeared to be those that were in force in 2008, when the Act was promulgated; subsequent amendments to the Appendices were not accompanied by amendments to Schedule 3 by notice in the *Gazette*, as the Act requires, until 2017.

The version of the Appendices on the CITES website, <www.cites.org/eng/app/appendices.php>, is updated to include the latest amendments to the CITES Appendices in a convenient table format. It is advisable to consult this website for additional amendments.

In light of the sections of this Act quoted above, the question arises as to what the position would be where the Minister has not carried out the mandatory duty imposed by section 11(3) of the Act to ensure that international amendments to the Appendices are incorporated into Schedule 3.

In general, where it is clear from the language of the Act that the draftsman intended to include the text of a Convention in an Act, and got it wrong, courts will (or at least should) follow the text of the Convention. Anything else would thwart the intention of the lawmaker. But it does depend on the language of the particular Act.

The preamble to this Act states that its purpose is “To provide for the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora”. This is further emphasised by section 1(3), which provides that “Any provision of this Act is construed with reference to the Convention and any provision of the Convention is deemed to be part of this Act and for that purpose”.

However, there is a specific qualification as far as the different species in Schedule 3 are concerned: while there is a duty on the Minister to update this Schedule under Art 11, section 1(3)(c) provides specifically that “a species is deemed to be included in an Appendix only if it appears in the relevant column of Schedule 3 and also subject to such further qualifications as set out in the relevant entry or such further notes as may appear in that Schedule”.

So assume that a question arises before a Namibian court that turns on whether a species is listed in an Appendix to the Convention. It is, but in a later version not included in Schedule 3 to the Act. It seems possible that the court might follow the Schedule, and not the actual Appendix, because this law seems to be an example of the legislator intending to override or qualify the international obligation. However, there could be an ancillary action against the Minister to force him to amend the Schedule, or alternatively an action for damages if he has failed to do so and this has led to a loss (which is not an ideal remedy in the context of endangered species).

It seems unnecessary and unwise for the legislature to have required that portions of the Convention which are periodically updated be incorporated into Namibian domestic law in this way, rather than incorporating by reference the Appendices to CITES as updated from time to time.

Namibia Investment Promotion Act 9 of 2016.

Summary: This Act ([GG 6110](#)) provides for the promotion of foreign and domestic investment. It also provides for the reservation of certain economic sectors and business activities to certain categories of investors – the State; Namibians and entities which are majority-owned by Namibians; joint venture partnership between Namibian investors and foreign investors; and investors which meet certain requirements (such as employment of Namibians, skills transfer, etc). The Act also provides for dispute

resolution mechanisms involving investment. It repeals the Foreign Investment Act 27 of 1990, as amended; however, it provides that the Namibia Investment Centre established by Act 27 of 1990 will continue to exist as a department of the Ministry responsible for investment. The Act will be brought into force on a date set by the Minister in the *Government Gazette*.

Regulations: Regulations made under the repealed Foreign Investment Act 27 of 1990 survive pursuant to section 35(3) of this Act. Regulations made under the repealed Act are contained in GN 120/1992 ([GG 477](#)).

Regulations are authorised by section 30 of this Act, but none have yet been promulgated.

Commentary: Frederico Links, “The Namibian Investment Promotion Act Saga”, *insight* magazine, Nov/Dec 2016.

Namibia Industrial Development Agency Act 16 of 2016.

Summary: This Act ([GG 6202](#)) establishes the Namibia Industrial Development Agency (NIDA) and provides for its power and duties. The Agency replaces the Namibia Development Corporation and the Offshore Development Company. The Act repeals the Namibia Development Corporation Act 18 of 1993. The Act was brought into force, with the *exception* of sections 30, 32, 33 and 34, on 1 October 2018 by GN 253/2018 ([GG 6724](#)). These sections, which concern the transfer of assets to the Agency, and amendments and repeals of other laws, were all brought into force on 15 November 2018 by GN 295/2018 ([GG 6767](#)).

Regulations: The Act makes no provision for regulations.

Cases: The following case pertains to the repealed Namibia Development Corporation Act 18 of 1993 –

Namibia Development Corporation v Visagie NLLP 1998 (1) 166 NLC, appeal judgement in *Visagie v Namibia Development Corporation* 1999 NR 219 (HC) (section 29 and personnel regulations).

See also *Namibia Development Corporation v Aussenkehr Farms (Pty) Ltd* 2010 (2) NR 703 (HC).

COMMENTARY

Cons Karamata, *Review of Studies on Namibia’s International Trade Agreements*, Labour Resource and Research Institute (LaRRI), 2003, available at <http://larri-namibia.org>

Gerhard Erasmus, “Is the SADC trade regime a rules-based system?”, *SADC Law Journal*, Volume 1, 2011, available at www.sadclawjournal.org

Clement Ng’ong’ola, “Replication of WTO dispute settlement processes in SADC”, *SADC Law Journal*, Volume 1, 2011, available at www.sadclawjournal.org

Henry Kibet Mutai, “Regional trade integration strategies under SADC and the EAC: A comparative analysis”, *SADC Law Journal*, Volume 1, 2011, available at www.sadclawjournal.org.

INTERNATIONAL LAW

Global:

†*Agreement Establishing the World Trade Organization (WTO) (the Marrakesh Agreement), 1994*

***Arms Trade Treaty (ATT), 2013*

Convention Establishing a Customs Co-operation Council, 1950

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973

Convention relating to International Exhibitions (Paris Convention), 1928, as revised in 1972 and amended in 1982 and 1988

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

Regional:

African, Caribbean and Pacific (ACP) – European Union (EU) Partnership Agreement, Cotonou (Cotonou Agreement), 2000

Amendment to the Partnership Agreement, Luxembourg, 2005

Amendment to the Partnership Agreement, Ouagadougou, 2010

***Agreement among the Governments of the Democratic Republic of Congo, the Republic of Namibia and the Republic of Zambia on the Establishment of the Walvis Bay-Ndola-Lubumbashi Development Corridor (WBNLDC), 2010*

Agreement for the Establishment of the Intergovernmental Organization for Marketing Information and Cooperation Services for Fishery Products in Africa (INFOPÊCHE), 1991

Agreement for the Establishment of Southern African Centre for Ivory Marketing (SACIM), 1991

Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part, 2016 (published in Proc. 2/2017, [GG 6237](#))

Free Trade Agreement between the European Free Trade Association (EFTA) and the Southern African Customs Union (SACU), 2006

SADC Protocol on Trade, 1996

Amendment Protocol on Trade, 2000

Agreement Amending Article 20 of the Protocol on Trade, 2008

South African Customs Union Agreement (SACU), 2002

Treaty Establishing the African Economic Community (AEC), 1991

Trade, Investment, and Development Cooperative Agreement between SACU and the United States of America (TIDCA), 2008

***SADC Protocol on Trade in Services, 2012*

***Tripartite Free Trade Agreement (TFTA), 2015*

OTHER INTERNATIONAL DOCUMENTS

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 (published in GN 193/2007, [GG 3927](#))

Note: Memoranda of understanding are not generally legally binding.

See also **AGRICULTURE**.

See also **ALCOHOL, DRUGS AND TOBACCO**.

See also **BUSINESS**.

See also **CUSTOMS AND EXCISE**.

See also **FINANCE AND DEVELOPMENT**.

See also **GAMBLING**.

See also **IMPORT AND EXPORT**.

See also **INTELLECTUAL PROPERTY**.

See also Aquaculture Act 18 of 2002 (**MARINE AND FRESHWATER RESOURCES**).

See also **MINING AND MINERALS**.

See also **REVENUE**.

See also **TENDERS**.

See also **TOURISM**.

TRANSFER PROCLAMATIONS

These pre-independence transfer proclamations governed the transfer of the administration of certain laws from South Africa to “South West Africa”. The transfer proclamations are particularly relevant in determining which South African amendments made prior to Namibian independence have become part of Namibian law. This section lists general transfer proclamations which covered multiple transfers. Laws which functioned as transfer proclamations for individual pieces of legislation are listed only in the entry for the statute in question. Most of these transfer proclamations remain in force, although their function is only historical. This section also lists laws and notices relating to pre-independence assignments and delegations of powers, some of which determined which transfer proclamation applied.

Executive Powers Transfer Proclamation, AG 3 of 1977 ([OG 3651](#)).

Amendments: AG 7/1977 ([OG 3668](#)), AG 10/1978 ([OG 3712](#)), RSA Proc. 101/1985 ([RSA GG 9790](#)).

References: AG 29/1978 ([OG 3745](#)).

Executive Powers (Prisons) Transfer Proclamation, AG 6 of 1977 ([OG 3663](#)).

Amendments: AG 10/1978 ([OG 3712](#)), AG 20/1982 ([OG 4668](#))

References: Prisons Act Amendment Proclamation, AG 49 of 1978 ([OG 3787](#))

Repeal: repealed by Prisons Act 17 of 1998 ([GG 1894](#)).

Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977 ([OG 3668](#)).

Amendments: AG 10/1978 ([OG 3712](#)), AG 82/1978 ([OG 3873](#)), AG 20/1982 ([OG 4668](#)), RSA Proc. 101/1985 ([RSA GG 9790](#)).

References: Amendment of Tariff A in the Second Schedule to the Insolvency Act, 1936 (Act 24 of 1936), AG Proclamation 17/1986 ([OG 5179](#)).

Note: The *Official Gazette* containing this Proclamation is numbered as OG 3668. However, it is referred to as OG 3667 in the relevant Quarterly Return.

Executive Powers (Social Welfare and Pensions) Transfer Proclamation, AG 11 of 1977 ([OG 3675](#)).

Executive Powers (Agricultural Credit and Land Tenure) Transfer Proclamation, AG 13 of 1977 ([OG 3669](#)).

Executive Powers (Health) Transfer Proclamation, AG 14 of 1977 ([OG 3676](#)).

Executive Powers (Statistics) Transfer Proclamation, AG 15 of 1977 ([OG 3677](#)).

Executive Powers (Forestry) Transfer Proclamation, AG 16 of 1977 ([OG 3678](#)).

Executive Powers (Labour) Transfer Proclamation, AG 17 of 1977 ([OG 3680](#)).

Executive Powers (Agricultural Economics and Marketing) Transfer Proclamation, AG 18 of 1977 ([OG 3681](#)).

Amendments: Karakul Scheme Amendment Proclamation AG 41 of 1978 ([OG 3771](#)).

Executive Powers (National Education) Transfer Proclamation, AG 1 of 1978 ([OG 3687](#)).

References: Act 5/1979 ([OG 4013](#)).

Executive Powers (Mines) Transfer Proclamation, AG 4 of 1978 ([OG 3696](#)).

Executive Powers (Industries) Transfer Proclamation, AG 5 of 1978 ([OG 3697](#)).

Executive Powers (Information) Transfer Proclamation, AG 7 of 1978 ([OG 3702](#)).

Executive Powers Transfer (Community Development) Proclamation, AG 8 of 1978 ([OG 3703](#)).

Executive Powers (Immigration) Transfer Proclamation, AG 9 of 1978 ([OG 3704](#)).

Amendments: Aliens and Immigration Laws Amendment Proclamation, AG 15/1989 ([OG 5728](#)).

Executive Powers (Agricultural Technical Services) Transfer Proclamation, AG 11 of 1978 ([OG 3713](#)).

Executive Powers (Post and Telecommunications) Transfer Proclamation, AG 12 of 1978 ([OG 3714](#)).

Amendments: AG 35/1979 ([OG 4042](#))

Executive Powers (Transport) Transfer Proclamation, AG 14 of 1978 ([OG 3717](#)).

Executive Powers (Planning and the Environment) Transfer Proclamation, AG 15 of 1978 ([OG 3719](#)).

Executive Powers (Public Works) Transfer Proclamation, AG 16 of 1978 ([OG 3720](#)).

Executive Powers (Interior) Transfer Proclamation, AG 17 of 1978 ([OG 3721](#)).

Amendments: Aliens and Immigration Laws Amendment Proclamation, AG 15/1989 ([OG 5728](#)); Immigration Control Act 7 of 1993 ([GG 690](#)) (repeals section 4)

Executive Powers (Inland Revenue) Transfer Proclamation, AG 18 of 1978 ([OG 3722](#)).

References: Revenue Laws Amendment Proclamation, AG 66/1978 ([OG 3831](#)), Income Tax Amendment Proclamation, AG 67 of 1978 ([OG 3832](#)) (subsequently repealed by the Income Tax Act 24 of 1981); Rates of Normal Tax (Companies) Act 11 of 1979 ([OG 4026](#)) (subsequently repealed by the Income Tax Act 24 of 1981).

Administration of the South African Development Trust in South West Africa Proclamation, AG 19 of 1978 ([OG 3724](#)).

Amendments: AG 3 of 1979 ([OG 3898](#)).

Executive Powers (Commerce) Transfer Proclamation, AG 28 of 1978 ([OG 3743](#)).

Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979 ([OG 4038](#)).

Amendments: AG 24/1983 ([OG 4854](#)), Deeds Registries Amendment Act 26 of 1985 ([OG 5146](#)), AG 32/1985 ([OG 5060](#)), Administration of Estates Amendment Act 2 of 1987 ([OG 5338](#)).

References: AG 17/1986 ([OG 5179](#)).

Executive Powers (Police) Transfer Proclamation 169 of 1980 ([RSA GG 7207](#)).

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 ([OG 5241](#)).

Assignment of the administration of certain provisions of law to the Minister of Agriculture,

Water Affairs and Sea Fisheries, GN 166/1986 ([OG 5254](#)).

Delegation of powers granted in terms of the Water Act, 1956 (Act 54 of 1956 ([OG 2015](#))), and the regulations promulgated thereunder, to officials of the Department of Water Affairs, GN 167/1986 ([OG 5254](#)).

Assignment of the administration of certain provisions of law of the Minister of Agriculture, Water Affairs and Sea Fisheries, GN 168/1986 ([OG 5254](#)).

Assignment of the administration of certain provisions of law of the Minister of Finance and Governmental Affairs, GN 169/1986 ([OG 5254](#)).

Assignment of the administration of certain provisions of law to the Minister of Transportation, GN 179/1986 ([OG 5254](#)).

Assignment of the administration of certain provisions of law to the Minister of Justice, GN 55/1987 ([OG 5348](#)).

Assignment of the administration of certain provisions of law to the Minister of Nature Conservation, Mining, Trade and Tourism, GN 95/1987 ([OG 5378](#)).

Assignment of the administration of certain provisions of law to the Minister of Nature Conservation, Mining, Commerce and Tourism, GN 96/1987 ([OG 5378](#)).

Assignment of the administration of certain provisions of law to the Minister of Local Authorities and Civic Affairs, GN 116/1987 ([OG 5406](#)).

Assignment of the administration of certain provisions of law to the Chairman of the Cabinet, GN 164/1987 ([OG 5440](#)).

Assignment of the administration of certain provisions of the Regulations under the National Education Act, 1980 (Act 30 of 1980, [OG 4358](#)): Pupils in Government Schools to the Minister of National Education and the Central Personnel Institution, GN 115/1988 ([OG 5567](#)).

Assignment of the administration of certain provisions of law to the Minister of National Education and the Central Personnel Institution, GN 141/1988 ([OG 5590](#)).

Assignment of the administration of certain provisions of law to the Minister of Finance, GN 155/1988 ([OG 5607](#)).

Amendment of the assignment of the administration of certain provisions of law to the Minister of Local Authorities and Civic Affairs, GN 173/1988 ([OG 5623](#)).

Assignment of the administration of certain provisions of law to the Minister of Justice, GN 194/1988 ([OG 5638](#)).

See also *South West Africa Affairs Act 25 of 1969* (historical transfers of authority over a number of issues in South West Africa to Ministers of the relevant South African departments) (**CONSTITUTION**).

TRANSPORTATION

Namibian Transport Advisory Board Act 23 of 1991.

Summary: This Act ([GG 324](#)) establishes the Namibian Transport Advisory Board and sets forth its composition and functions.

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

Amendments: Act 12/1998 ([GG 1880](#)) amends sections 4 and 5.

National Transport Services Holding Company Act 28 of 1998.

Summary: This Act ([GG 1961](#)) provides for the incorporation of a holding company to undertake transport services. It repeals the National Transport Corporation Act 21 of 1987 ([OG 5439](#)). Most of the Act was brought into force on 1 January 1999 by GN 306/1998 ([GG 2018](#)). 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 in terms of GN 51/1999 ([GG 2075](#)).

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends sections 1-10, 14 and 17.

Regulations: Anything done under the National Transport Corporation Act 21 of 1987 ([OG 5439](#)) which could have been done under a corresponding provision of the new Act remains valid. However, since this Act makes no provision for regulations, regulations made under the repealed law would not survive.

Cases: The following cases concern the present Act –

Clear Channel Independent Advertising Namibia (Pty) Ltd & Another v Transnamib Holdings Ltd & Others 2006 (1) NR 121 (HC) (section 14(4))

Coetzee v Transnamib Holdings Ltd & Another 2015 (4) NR 1183 (HC) (Schedule 1, Item 8).

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 and Nuclear Facilities, 1980

*Amendment to the Convention on the Physical Protection of Nuclear Material
(renaming the convention as Convention on the Physical Protection of Nuclear
Material and Nuclear Facilities), 2005*

SADC Protocol on Transport, Communications and Meteorology, 1996

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 ([SA GG 2201](#)) 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.” Subsection (2) exempted certain trustees appointed prior to the Act from the provisions of the Act. Subsection (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), dated 12 November 1979, as amended. There were no amendments to the Act in South Africa after that date and prior to Namibian independence. The Act was repealed in South Africa by the *Trust Moneys Control Act 57 of 1988* ([RSA GG 11357](#)) which was not made expressly applicable to SWA.

Amendments: The following pre-independence South African amendment was applicable to SWA –

- *General Law Amendment Act 57 of 1975* ([RSA GG 4670](#)), which inserted section 8A making the Act applicable to SWA.

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)), which places certain duties on the Master of the High Court in respect of trusts.

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

Cases: *Ellis & Others NNO v Noabeb* 2015(2) NR 325 (HC) (a sole trustee cannot be a sole beneficiary).

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. It was repealed by the Water Resources Management Act 24 of 2004 ([GG 3357](#)), which never came into force. That Act has now been superseded by the Water Resources Management Act 11 of 2013 ([GG 5367](#)) – which repeals this Act and will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Applicability to SWA: Section 180 of the original Act stated “The Governor-General may, by proclamation in the *Gazette*, apply the provisions of this Act to the territory of South-West Africa or any area within that territory.” As amended by *Act 77 of 1969*, 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 *Act 77 of 1969* (25 June 1969).

RSA Proclamation 281 of 1970 ([RSA GG 2921](#)) applies section 162 to South West Africa with effect from 1 April 1971. It makes no mention of the applicability of future amendments to South West Africa, stating “I do hereby declare that as from 1 April 1971, the provisions of section 162 of the Water Act shall apply to the Territory of South-West Africa.” However, this proclamation presumably applied the stated sections as they stood at 1 April 1971.

RSA Proclamation 151 of 1971 ([RSA GG 3167](#)) 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 South West Africa. This Proclamation became effective from the date of its publication, 25 June 1971. It makes no mention of the applicability of future amendments to South West Africa, stating “I hereby declare, in terms of section 180(1) of the Water Act, 1956 (Act 54 of 1956), the provisions of the following sections of the said Act to be applicable to the Territory of South-West Africa with effect from the date of publication hereof... [followed by a list of section numbers].” However, this Proclamation presumably applied the stated sections as they stood at 25 June 1971.

The *Water Amendment Act 22 of 1985* ([OG 5142](#)) makes sections 9B, 30A(a) and 170(3) applicable to “the Territory of South West Africa”. Section 1(2) of *Act 22 of 1985* states “For the purposes of any provision of the principal Act the provisions of subsection (1) shall be deemed to be a proclamation made under section 180 of the principal Act.” *Act 22 of 1985* came into force on its date of publication (18 December 1985). It states “Sections 9B, 30A(a) and 170(3) of the Water Act, 1956 (hereinafter referred to as the principal Act), shall apply in the territory of South West Africa.” It does not make any of the amendments to these sections after the date of transfer explicitly applicable to South West Africa, and so apparently applies the stated sections as they stood in South Africa at the date of transfer, 28 September 1977. Alternatively, it is possible that *Act 22 of 1985* applied the sections in question as they stood in South Africa as of 18 December 1985. However, the first interpretation is supported by *Act 22 of 1985*: it amends section 9B “as inserted by section 2 of Act 36 of 1971 and amended by section 1 of Act 42 of 1975 and section 1 of Act 108 of 1977”. This marginal notation makes no mention of the amendment of section 9B by *Act 96 of 1984*,

which amended section 9B in South Africa after the date of transfer but prior to *Act 22 of 1985*.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977) dated 28 September 1977, as amended. None of the amendments to the Act in South Africa after that date were made expressly applicable to SWA.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Water Amendment Act 56 of 1961* ([RSA GG 30](#))
- *Water Amendment Act 71 of 1965* ([RSA GG 1136](#))
- *Water Amendment Act 11 of 1966* ([RSA GG 1380](#))
- *Agricultural Credit Act 28 of 1966* ([RSA GG 1546](#))
- *Water Amendment Act 79 of 1967* ([RSA GG 1763](#))
- *Establishment of the Northern Cape Division of the Supreme Court of South Africa Act 15 of 1969* ([RSA GG 2315](#))
- *Water Amendment Act 77 of 1969* ([RSA GG 2443](#))
Amendments in South Africa to section 162 were not applicable to South West Africa after this point.
- *Water Amendment Act 36 of 1971* ([RSA GG 3106](#))
Amendments in South Africa to other provisions of the Act which applied to South West Africa, with the *exception* of sections 9B, 30A(a) and 170(3), were not applicable after this point.
- *Water Amendment Act 45 of 1972* ([RSA GG 3516](#))
- *Water Amendment Act 42 of 1975* ([RSA GG 4720](#))
- *Water Amendment Act 108 of 1977* ([RSA GG 5660](#))
Amendments in South Africa to sections 9B, 30A(a) and 170(3) of the Act were not applicable to South West Africa after this point.

The following South African amending Acts were not relevant to SWA because they amend only provisions of the Act which were not applicable to SWA:

- *Water Amendment Act 75 of 1957* ([SA GG 5908](#))
- *Water Amendment Act 63 of 1963* ([RSA GG 540](#))
- *General Law Amendment Act 102 of 1972* ([RSA GG 3610](#))
- *Water Amendment Act 58 of 1974* ([RSA GG 4452](#)).
- *Expropriation Act 63 of 1975* ([RSA GG 4780](#))
- *Water Amendment Act 27 of 1976* ([RSA GG 5043](#)).

Section 33 of the Public Service Act 2 of 1980 ([OG 4116](#)) repealed section 3(2) of Act 54 of 1956. However, AG 18/1980 ([OG 4212](#)), which brought Act 2 of 1980 into force, excluded section 33, and the reference to the Water Act in section 33 of Act 2 of 1980 was deleted altogether by the Water Amendment Act 4 of 1982 ([OG 4617](#)).

The Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends certain terminology.

Act 4/1982 ([OG 4617](#)) amends sections 1 and 3.

Act 22/1985 ([OG 5142](#)) amends several sections of the Act.

This Act was repealed by the Water Resources Management Act 24 of 2004 ([GG 3357](#)), which never came into force. That Act has now been superseded by the Water

Resources Management Act 11 of 2013 ([GG 5367](#)), which also repeals this Act but has not yet been brought into force.

Application of law: Section 42 of the Namibia Water Corporation Act 12 of 1997 ([GG 1703](#)) affects the applicability of this Act to the NamWater Corporation.

Regulations: Pre-independence regulations have not been comprehensively researched.

Section 180(3) and (4) of the Act give the State President of South Africa 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. Section 180(5) provides that the South West African Water Ordinance 13 of 1932 and the Artesian Water Control Ordinance 35 of 1955 will be deemed to be regulations issued under the Act, and provides rules for their interpretation.

The **Water Ordinance 13 of 1932** (GN 13/1932) (OG 478) was initially enacted as an Ordinance. It was then deemed by section 180(5) of the *Water Act 54 of 1956*, as amended by the Water Amendment Act 77 of 1969, to constitute regulations.

The **Artesian Water Control Ordinance 35 of 1955** (GN 229/1955) (OG 1930) was initially enacted as an Ordinance. It was then deemed by section 180(5) of the *Water Act 54 of 1956*, as amended by the Water Amendment Act 77 of 1969, to constitute regulations.

Section 180(5) provides the following rules of construction in respect of these Ordinances as regulations: (a) References to the “Administration” shall be construed as a reference to the department. (b) References to the “Administrator” shall, except in section 2(2), be construed as a reference to the Minister. (d) References to the “Legislative Assembly” shall be construed as a reference to Parliament.

Section 180(5) also provides that anything done by any authority under any provision of these Ordinances prior to the commencement of the Water Amendment Act 77 of 1969 shall be deemed to have been done by the corresponding authority under such provision as so construed.

RSA GN R.1277/1971 ([RSA GG 3218](#)) sets forth regulations for SWA pursuant to section 180(3) of the Act. These regulations are amended by RSA GN R.875/1975 (RSA GG 4692), AG GN 16/1980 (OG 4097) and section 8 of the SWA Water Amendment Act 22 of 1985 ([OG 5142](#)).

RSA GN R.1278/1971 ([RSA GG 3218](#)) sets forth regulations for SWA pursuant to section 30(2) of the Act. These regulations are amended by section 8 of the SWA Water Amendment Act 22 of 1985 ([OG 5142](#)).

Notices: AG GN 12/1980 ([OG 4089](#)), GN 167/1986 ([OG 5254](#)) and GN 50/2000 ([GG 2280](#)) concern the delegation of powers under the Act.

Rates and charges: Rates and charges are dealt with in General Notice 5/1978 ([OG 3716](#)), AG GN 52/1979 ([OG 3988](#)), AG GN 62/1980 ([OG 4099](#)), AG GN 80/1981 ([OG 4487](#)), AG GN 128/1984 ([OG 4965](#)), GN 132/1986 ([OG 5228](#)) and GN 10/1988 ([OG 5487](#)).

Cases: See *Namib Plains Farming CC v Valencia Uranium (Pty) Ltd & Others* 2011 (2) NR 469 (SC) at 480C-481E and 482A-E, summarising and discussing the

unreported High Court case in the same matter, which discussed sections 27, 28 and 30.

Commentary: Legal Assistance Centre / Mills International Human Rights Clinic, Stanford Law School, *Not coming up dry: regulating the use of Namibia's scarce water resources by mining operations*, Windhoek: Legal Assistance Centre, 2009, available at www.lac.org.na.

Water Research Act 34 of 1971, as amended in South Africa to October 1972.

Summary: This Act ([RSA GG 3105](#)) 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 ([RSA GG 3685](#)) as from 27 October 1972, but not future amendments: “Now, therefore, under the powers vested in me by the said section 15, I do hereby declare that all the provisions of the said Act shall, with effect from the date of publication hereof, be applicable in the Territory of South-West Africa.” This Proclamation did not make amendments to the Act in South Africa automatically applicable to SWA.

Neither of the two amending Acts enacted prior to the date of transfer – the *Water Research Amendment Act 16 of 1974* ([RSA GG 4199](#)) and the *Water Research Amendment Act 37 of 1975* ([RSA GG 4700](#)) – were applied to South West Africa by Proclamation of the State President, and it is debatable whether the wording of *RSA Proc. 279 of 1972* was intended to incorporate future amendments (“...all the provisions of the said Act... with effect from the date of publication hereof...”). However, based on the approach to the Act taken by the Administrator-General of South West Africa after the date of transfer, it appears that the wording of *RSA Proc. 279 of 1972* was understood to incorporate amendments to the Act.

Transfer of administration to SWA: The administration of the Act was transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977) dated 28 September 1977, as amended. (The Act gives the term Minister the meaning assigned to it in the *Water Act 54 of 1956*, where it is defined as being the Minister of Water Affairs; AG 3/1977 applies to all laws administered by that Minister.) After the date of transfer, the Administrator General made one South African amendment – the *Water Research Amendment Act 106 of 1977* – applicable to South West Africa, by means of AG Proclamation 29 of 1978 ([OG 3745](#)): “Under the powers vested in me by section 2 of the Water Research Amendment Act, 1977 (Act 106 of 1977), as applied by the Executive Powers Transfer Proclamation, 1977 (Proclamation AG. 3 of 1977), I hereby determine that the said Act shall come into operation on 1 July 1978”. (Section 2 of *Act 106 of 1977* states “This Act shall be called the Water Research Amendment Act, 1977, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.”)

Note that this Proclamation appears to assume that amendments to the principal Act were automatically applicable to South West Africa, with the power to declare a *commencement date* lying with the Administrator-General of South West Africa instead of the State President of South Africa by virtue of the Transfer Proclamation.

Amendments: The following pre-independence South African amendments were apparently applicable to SWA –

- *Water Research Amendment Act 16 of 1974* ([RSA GG 4199](#))
- *Water Research Amendment Act 37 of 1975* ([RSA GG 4700](#)).

AG 29/1978 makes the *Water Research Amendment Act 106 of 1977* ([RSA GG 5658](#)) applicable to SWA as from 1 July 1978. This Act amends section 11, which deals with the levying of rates and charges.

Regulations: The Act makes no provision for regulations.

Namibia Water Corporation Act 12 of 1997.

Summary: This Act ([GG 1703](#)) establishes “NamWater” and provides for its powers, duties and functions. It was brought into force on 20 November 1997 by GN 234/1997 ([GG 1732](#)).

Amendments: Act 17/2001 ([GG 2674](#)), which has not yet been brought into force, amends sections 17, 18 and 19 and substitutes section 21.

The Water Resources Management Act 24 of 2004 ([GG 3357](#)), which has not yet been brought into force, amends a cross-reference in the Act.

The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends sections 17, 18, 19, 21, 22 and 28.

The Water Resources Management Act 11 of 2013 ([GG 5367](#)), which has not yet been brought into force, amends sections 6 and 7 and will repeal the Water Resources Management Act 24 of 2004.

Regulations: Regulations are authorised by section 43 of the Act, but none have yet been promulgated.

Notices: 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](#)).

Tariffs: 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 ([GG 3357](#)) 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 was intended to replace the *Water Act 54 of 1956*. However, it never came into force and has been repealed by the

Water Resources Management Act 11 of 2013 ([GG 5367](#)), which will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Commentary: Legal Assistance Centre / Mills International Human Rights Clinic, Stanford Law School, *Not coming up dry: regulating the use of Namibia's scarce water resources by mining operations*, 2009, available at www.lac.org.na.

***Water Resources Management Act 11 of 2013.**

Summary: This Act ([GG 5367](#)) concerns the management, development, protection, conservation and use of water resources. It establishes a Water Advisory Council, a Water Regulator and a Water Tribunal, as well as Basin Management Committees and Water Point Committees. It provides for an Integrated Water Resources Management Plan and a Water Pricing Policy, and covers licencing for water services providers and for water abstraction and use. Amongst the other topics it addresses are management of internationally shared water resources, protection of groundwater, control of water pollution, dams, flood management and wetlands. This Act repeals the *Water Act 54 of 1956* and the Water Resources Management Act 24 of 2004 (which was never brought into force). It will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Regulations: Subject to certain transitional provisions, anything done under a law repealed by this Act which may be done under a corresponding provision of this Act, remains in force. Pre-independence regulations have not been comprehensively researched.

Regulations: Pre-independence regulations have not been comprehensively researched.

Section 180(3) and (4) of the *Water Act 54 of 1956* gave the State President of South Africa the power to issue special water regulations for application in South West Africa, so long as such regulations were approved by both the Senate and the House of Assembly. Section 180(5) provided that the South West African Water Ordinance 13 of 1932 and the Artesian Water Control Ordinance 35 of 1955 would be deemed to be regulations issued under the Act, and provides rules for their interpretation.

The **Water Ordinance 13 of 1932** (GN 13/1932) (OG 478) was initially enacted as an Ordinance. It was then deemed by section 180(5) of the *Water Act 54 of 1956*, as amended by the Water Amendment Act 77 of 1969, to constitute regulations.

The **Artesian Water Control Ordinance 35 of 1955** (GN 229/1955) (OG 1930) was initially enacted as an Ordinance. It was then deemed by section 180(5) of the *Water Act 54 of 1956*, as amended by the Water Amendment Act 77 of 1969, to constitute regulations.

Section 180(5) of the *Water Act 54 of 1956* provided the following rules of construction in respect of these Ordinances as regulations: (a) References to the "Administration" shall be construed as a reference to the department. (b) References to the "Administrator" shall, except in section 2(2), be construed as a reference to the Minister. (d) References to the "Legislative Assembly" shall be construed as a reference to Parliament.

Section 180(5) of the *Water Act 54 of 1956* also provided that anything done by any authority under any provision of these Ordinances prior to the commencement of the Water Amendment Act 77 of 1969 shall be deemed to have been done by the corresponding authority under such provision as so construed.

RSA GN R.1277/1971 ([RSA GG 3218](#)) sets forth regulations for SWA pursuant to section 180(3) of the *Water Act 54 of 1956*. These regulations are amended by RSA GN R.875/1975 (RSA GG 4692), AG GN 16/1980 (OG 4097) and section 8 of the SWA Water Amendment Act 22 of 1985 ([OG 5142](#)). However, this Act explicitly repeals RSA GN R.1277/1971.

RSA GN R.1278/1971 ([RSA GG 3218](#)) sets forth regulations for SWA pursuant to section 30(2) of the *Water Act 54 of 1956*. These regulations are amended by section 8 of the SWA Water Amendment Act 22 of 1985 ([OG 5142](#)).

Rates and charges: Rates and charges have not been recorded here.

Cases: The following post-independence case concerns the repealed *Water Act 54 of 1956* –

Namib Plains Farming CC v Valencia Uranium (Pty) Ltd & Others 2011 (2) NR 469 (SC) at 480C-481E and 482A-E, summarising and discussing the unreported High Court case in the same matter, which discussed sections 27, 28 and 30 of the repealed Act.

Commentary: Legal Assistance Centre / Mills International Human Rights Clinic, Stanford Law School, *Not coming up dry: regulating the use of Namibia's scarce water resources by mining operations*, 2009, available at www.lac.org.na.

COMMENTARY

P Heyns, S Montgomery, J Pallett & M Seely (eds), *Namibia's Water: A Decision Makers' Guide*, Windhoek: Desert Research Foundation of Namibia and Department of Water Affairs, Ministry of Agriculture, Water and Rural Development, 1998

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Clever Mapaure, "'Water wars': legal pluralism and hydropolitics in Namibian water law", UNAM LLM thesis, 2009, available at <http://www.wisis.unam.na/theses/mapaure2009.pdf>

Natasha F Mungunda, "Access to water: A human right", *Namibia Law Journal*, Volume 3, Issue 2, 2011

Manfred O Hinz and C Mapaure, "Water is life: Customary and statutory water law, a problematic relationship – Ongoing research in the Kavango River Basin", *Namibia Law Journal*, Volume 4, Issue 1, 2012

MO Hinz, OC Ruppel & C Mapaure (eds), *Knowledge lives in the lake: Case studies in environmental and customary law from Southern Africa*, Windhoek: Namibia Scientific Society, 2012 (reviewed by Johannes DK Kariseb in *UNAM Law Review*, Volume 1, Issue 2, 2013, available at <http://unamlawreview.info>)

Dietrich Remmert, "Water Governance in Namibia – A Tale of Delayed Implementation, Policy Shortfalls, and Miscommunication", Institute for Public Policy Research, 2016, available at www.ippr.org.na.

See also *Mountain Catchment Areas Act 63 of 1970* (**ENVIRONMENT**).

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

WEIGHTS, MEASURES AND STANDARDS

Measuring Units and National Measuring Standards Act 76 of 1973, as amended in South Africa to January 1978.

Summary: This Act ([RSA GG 3968](#)) 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 has not yet come into force.

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 was 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.

Regulations: The Act makes no provision for regulations.

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, before its repeal in post-independence Namibia, stated “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.” Section 1 defined “Republic” and “statutory body” accordingly.

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. 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* ([RSA GG 9090](#)) – which was not made expressly applicable to SWA.

Amendments: The following pre-independence South African amendment was applicable to SWA –

- *Trade Metrology Amendment Act 34 of 1975* ([RSA GG 4697](#)).

Act 14/1995 ([GG 1129](#)) 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 ([GG 3568](#)), which has not yet come into force, makes substantial amendments to this Act.

Regulations: Regulations are authorised by section 42 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Tariffs: 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).

***Accreditation Board of Namibia Act 8 of 2005.**

Summary: This Act ([GG 3480](#)) establishes the Accreditation Board of Namibia and provides for the accreditation of laboratories providing testing and calibration, bodies which provide certain certification and inspection services and certifications of competence. The Act will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 6, 7, 8, 13 and 15, and substitutes section 9.

Regulations: The Act makes no provision for regulations.

Standards Act 18 of 2005.

Summary: This Act ([GG 3569](#)) 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* (RSA GG 207), which in turn repealed the *Standards Act 24 of 1945*. This Act was brought into force on 20 September 2013 by GN 248/2013 ([GG 5290](#)).

Regulations: Regulations and notices made in terms of the *Standards Act 24 of 1945* remained in force pursuant to section 31(2) of the *Standards Act 33 of 1962*, and those made or surviving under the *Standards Act 33 of 1962* remain in force pursuant to section 35 of this Act. However, pre-independence regulations have not been researched.

Regulations made in terms of the current Act are contained in GN 249/2013 ([GG 5290](#)).

Rules: Rules relating to fees for services rendered by the Namibian Standards Institution are contained in General Notice 95/2017 ([GG 6270](#)), which is repealed and replaced by General Notice 90/2018 ([GG 6599](#)).

Notices: In General Notice 294/2014 ([GG 5537](#)), the Namibian Standards Institution declares marks of conformity, in terms of section 21(1) of the Act, which may be applied to any commodity, system or document falling within the scope of a Namibian Standard that has been issued under section 20 of the Act.

Specific Namibian Standards are announced and withdrawn from time to time, in General Notices which have not been recorded here.

Appointments: The appointment of members of the Namibian Standards Council is announced in GN 233/2010 ([GG 4584](#)).

Relevant international law: Note that the Act and the regulations in GN 249/2013 make reference to the Code of Good Practice for the Preparation, Adoption and

Application of Standards contained in Annex 3 to the World Trade Organisation
Agreement on Technical Barriers to Trade (TBT), 1994

Namibian Time Act 9 of 2017.

Summary: This Act ([GG 6449](#)) sets the standard time of Namibia at two hours in advance of the Greenwich Mean Time. It repeals the Namibian Time Act 3 of 1994 ([GG 811](#)), which provided for differentiations in the standard time of Namibia for the summer and winter periods.

INTERNATIONAL LAW

†Agreement Establishing the World Trade Organization (WTO) (the Marrakesh Agreement), 1994

OTHER INTERNATIONAL DOCUMENTS

Memorandum of Understanding on Co-operation in Standardization, Quality Assurance, Accreditation and Metrology in SADC, 1999 (non-binding)

signature: 9 November 1999 (source: Ministry of Foreign Affairs)

‘WHITES’

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

See Cultural Promotion Ordinance 9 of 1980 (promotion of culture for “white population group”) (**CULTURE AND CULTURAL INSTITUTIONS**).

YOUTH

National Youth Service Act 6 of 2005.

Summary: This Act ([GG 3468](#)) establishes the National Youth Service and the Youth Service Fund. It defines “youth” as persons between the ages of 16 and 30. The Act was brought into force on 7 September 2005 by 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.

Regulations: Regulations are authorised by section 30 of the Act, but none have yet been promulgated.

National Youth Council Act 3 of 2009.

Summary: This Act ([GG 4276](#)) 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. The Act was brought into force on 15 November 2011 by GN 211/2011 ([GG 4834](#)).

Regulations: Regulations are authorised by section 48 of the Act, but none have yet been promulgated.

INTERNATIONAL LAW *African Youth Charter, 2006*

See also **CHILDREN**.