

CITIZENSHIP AND IMMIGRATION

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

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

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

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

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

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

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

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

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

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

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

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

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

Cases:

S v Mwebo 1990 NR 27 (HC)

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

Müller v President of the Republic of Namibia & Another 1999 NR 190 (SC) (section 9).

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

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

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

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

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

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

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

Namibian Citizenship Act 14 of 1990.

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

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

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

Cases: *Alberts v Government of Namibia & Another* 1993 NR 85 (HC); *Swart v Minister of Home Affairs* 1997 NR 268 (HC) (section 5).

Namibian Citizenship Special Conferment Act 14 of 1991.

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

Immigration Control Act 7 of 1993.

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

Regulations: Regulations are contained in GN 134/1994 (GG 895), which (among other things) lists the “aids virus” as a contagious disease for immigration purposes. Maximum amounts in terms of section 11(2)(a) are set in GN 135/1994 (GG 895).

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

Djama v Government of the Republic of Namibia 1992 NR 37 (HC)

S v Luanda & Another 1993 NR 287 (HC).

The following cases deal with the present Act-

Swart v Minister of Home Affairs 1997 NR 268 (HC) (sections 1, 2(1)(b), 22; also discusses section 1 of the previous *Admission of Persons to the Republic Regulation Act 59 of 1972* and section 3(2)(b) of the previous *Residence of Certain Persons in South West Africa Regulation Act 33 of 1985*).

S v Ithilenga 1997 NR 239 (HC) (section 56(d))

Correia v Commanding Officer, Windhoek Prison & Another 1999 NR 48 (SC) 9(sections 24, 36, 39(2)(h), 41, 42(4)(b)(i))

S v Russel 1999 HR 39 (HC) (section 30(1)(a)—meaning of “employment”)

Frank & Another v Chairperson of the Immigration Selection Board 1999 NR 257 (HC); 2001 NR 107 (SC) (Immigration Selection Board as an administrative body subject to Article 18 of the Constitution; interpretation of section 26(3)(e); factors relevant to decision on permanent residence)

Sikunda v Government of the Republic of Namibia (3) 2001 NR 181 (HC) (section 49).

Government of the Republic of Namibia v Sikunda 2002 NR 203 (SC) (Composition of the Security Commission pursuant to Article 114 of the Constitution; Security Commission as subject to Articles 18 and 12 of the Constitution; section 49)

Namibia Refugees (Recognition and Control) Act 2 of 1999.

Summary: This Act concerns the recognition and control of refugees in Namibia and gives effect to certain provisions of international conventions on refugees to which Namibia is party. It came into force on 22 September 2000 (GN 234/2000, GG 2412).

Regulations: Namibia Refugees (Recognition and Control) Regulations are contained in GN 236/2000 (GG 2412).

Osire was declared as a reception area for refugees and others in GN 235/2000 (GG 2412).

Related international agreements: The Namibia Refugees (Recognition and Control) Regulations make reference to compliance with Article 35 of the UN Convention on Refugees, 1951 and Article II of the Protocol on Refugees, 1967. According to the UN Treaty Database, Namibia acceded to the 1951 Convention on 17 February 1995. However, Namibia is not listed in the UN Treaty Database as a party to the 1967 Protocol, although the Ministry of Foreign Affairs records accession by Namibia on 2 September 1994. This discrepancy may indicate that the instrument of accession has not yet been deposited with the Secretary-General of the United Nations.

INTERNATIONAL LAW

Convention relating to the Status of Refugees, 1951

accession: 17 February 1995

Reservation: "The Government of the Republic of Namibia reserves the right to designate a place or places for principal reception and residence for refugees or to restrict their freedom of movement in consideration of national security so required or make it advisable."

Protocol relating to the Status of Refugees, 1967.

There was some technical confusion concerning the deposit of Namibia's instrument of accession to this Protocol. The situation was clarified in an official communication from the United Nations dated on 11 June 2004, when Namibia's instrument of accession was accepted in deposit with effect from 17 February 1995 (the date when it was originally tendered). (United Nations Reference LA41TR/1/V-5/1)

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

accession: 2 September 1994 (Ministry of Foreign Affairs)

Convention Against Transnational Organised Crime, 2000

(came into force internationally on 29 September 2003)

signature: 13 December 2000 (source: Ministry of Foreign Affairs; Parliament)

ratification: 16 August 2002

(source: http://www.unodc.org/unodc/crime_cicp_signatures.html)

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

(came in force internationally on 25 December 2003)

signature: 13 December 2000 (source: Ministry of Foreign Affairs)

ratification: 16 August 2002

(source: http://www.unodc.org/unodc/crime_cicp_signatures.html)

Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000

(came into force internationally on 28 January 2004)

signature: 13 December 2000 (source: Ministry of Foreign Affairs)

ratification: 16 August 2002

(source: http://www.unodc.org/unodc/crime_cicp_signatures.html)