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5), but it was extended by section 2 of the Treaties of Peace Act 32 of 1921 (SA GG 1167) until such time as it is repealed. It was repealed in South Africa by section 36 of General Law Amendment Act 108 of 1993 (RSA GG 14976).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 makes 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 The Act was repealed in South Africa prior to Namibian independence by the Diplomatic Immunities and Privileges Act 74 of 1989 (RSA GG 11928).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)
The Diplomatic Privileges Proclamation 63 of 1989 (RSA GG 11861) amends the Act as it applied to SWA.

Related international agreements:
- 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 came into operation on 1 October 2004 (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, 1949
- Geneva Convention for the Amelioration of Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949
- Geneva Convention relative to Protection of Civilian Persons in Time of War, 1949

**RELATED MATTERS**
- Proc. 7/1997 (GG 1605) announces the signing and ratification of the Fourth ACP-EU Convention of Lomé.
- Proc. 24/1997 (GG 1723) announces the signing and ratification of the SADC Protocol on Transport, Communications and Meteorology.
- Proc. 7/1997 (GG 1605) announces the consent and ratification of the Protocol on the
accession of three additional members of the European Union to the Fourth ACP-EU Convention of Lomé.

Proc. 6/1998 (GG 1803) announces the accession to the memorandum of understanding on road transportation in the Southern African Customs Union.


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.


CASES CITING ARTICLE 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), ARE THEY MENTIONED IN SUPREME COURT JUDGMENT?

Namunjepo & Others v Commanding Officer, Windhoek Prison & Another 1999 NR 271 (SC) at 284H-ff ???

Government of the Republic of Namibia & Others v Mwilima & Others 2002 NR 235 (SC)

S v Mushwena & Others 2004 NR 35 (HC), 2004 NR 276 (SC)

Waterberg Big Game Hunting Lodge Ojahevita (Pty) Ltd v Minister of Environment, Tourism, 2005 NASC 9 (23 November 2005)

Alexander v Minister of Justice & Others, SA 32/2008, 2010 NASC 2 (9 April 2010), para. 83-6 (ICCPR cited to support court’s view of substantive guarantee of liberty in Constitution) -- Art 144?

Chairperson of the Immigration Selection Board v Frank & Another, 2001 NR 107 (SC) - Art 144?


SELECTED COMMENTARY


ADD CROSS-REFERENCES TO STATUTES WHICH REFERENCE INTERNATIONAL AGREEMENTS OR INCLUDE THEM AS SCHEDULES?

See also Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 (ARBITRATION)


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).