

Namibia

Executive Powers (Justice) Transfer Proclamation, 1979

Proclamation AG33 of 1979

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Republic of Namibia
Annotated Statutes

Executive Powers (Justice) Transfer Proclamation, 1979 Proclamation AG33 of 1979

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[\[Amended by Executive Powers \(Justice\) Transfer Amendment Proclamation, 1983 \(Proclamation AG24 of 1983\) on 1 January 1984\]](#)

[\[Amended by Executive Powers \(Justice\) Transfer Amendment Proclamation, 1985 \(Proclamation AG32 of 1985\) on 1 June 1984\]](#)

[\[Amended by Administration of Estates Amendment Act, 1987 \(Act 2 of 1987\) on 1 April 1987\]](#)

PROCLAMATION of the ADMINISTRATOR-GENERAL FOR THE TERRITORY OF SOUTH WEST AFRICA TRANSFER OF ADMINISTRATION OF DEPARTMENT OF JUSTICE TO THE ADMINISTRATOR-GENERAL

1. Definition

- (1) In this Proclamation "General Proclamation" means the Executive Powers Transfer (General Provisions) Proclamation, 1977 (Proclamation AG. 7 of 1977).
- (2) A reference in this Proclamation to any particular law, shall be construed as including a reference to a regulation, rule or other enactment made under or relating to that law.

2. Transfer of administration of Department of Justice

Notwithstanding anything to the contrary contained in any law but subject to the provisions of this Proclamation and the General Proclamation, the administration of the affairs of the territory of South West Africa in relation to any matter which at the commencement of this Proclamation is administered by the Minister of Justice of the Republic of South Africa, shall be carried on by the Administrator-General.

3. Application of laws

- (1) The provisions of subsection (1) of section 3 of the General Proclamation shall, without detracting from the provisions of subsection (2) of that section, not apply to -
 - (a) the reference to the Republic in the Insolvency Act, 1936 (Act [24 of 1936](#)), except where it occurs for the second and third times in section 148 thereof;

- (b) section 103(2) of, and the reference to the Republic or the State in, the Deeds Registries Act, 1937 (Act [47 of 1937](#));

[paragraph (b) amended by AG 32 of 1985]

- (c) the reference to the Republic in the Matrimonial Causes Jurisdiction Act, 1939 (Act [22 of 1939](#));
- (d) the reference to the Republic in the Magistrates' Courts Act, 1944 (Act [32 of 1944](#));
- (e) section 8 of the Internal Security Act, 1950 (Act [44 of 1950](#));
- (f) the reference to the Republic in the Riotous Assemblies Act, 1956 (Act [17 of 1956](#)), except where it occurs for the second and third times in section 5 thereof;
- (g) the State Attorney Act, 1957 (Act [56 of 1957](#));
- (h) the Supreme Court Act, 1959 (Act [59 of 1959](#));
- (i) the Extradition Act, 1962 (Act [67 of 1962](#));
- (j) the reference to the Republic in the Foreign Courts Evidence Act, 1962 (Act [80 of 1962](#));
- (k) the Reciprocal Enforcement of Maintenance Orders Act, 1963 (Act [80 of 1963](#));
- (l) the reference to the Republic in the Tear-Gas Act, 1964 (Act [16 of 1964](#));
- (m) the Admission of Advocates Act, 1964 (Act [74 of 1964](#));
- (n) the reference to the Republic in the Civil Proceedings Evidence Act, 1965 (Act [25 of 1965](#));
- (o) the reference to the Republic in, the Administration of Estates Act, 1965 (Act [66 of 1965](#));

[Paragraph (o) is amended by Act 2 of 1987. The comma after the word "in" is superfluous.]

- (p) the Reciprocal Enforcement of Civil Judgments Act, 1966 (Act [9 of 1966](#));
- (q) section 26(4)(c) of the Sectional Titles Act, 1971 (Act [66 of 1971](#));
- (r) sections 1 and 2 of the Admiralty Jurisdiction Regulation Act, 1972 (Act 5 of 1972);
- (s) section 35 of the General Law Amendment Act, 1972 (Act [102 of 1972](#));
- (t) sections 77, 78, 79 (except subsection (11) thereof), 106(1)(e), 111, 279(1)(b), (2) and (3), 323, 325, 326, 327, 333 and the reference to the Republic in sections 3, 212(4)(a), 229, where it occurs for the first time, and 328 of, and the reference to the State in relation to the authority to institute and conduct a prosecution and to make seizures in, the Criminal Procedure Act, 1977 (Act [51 of 1977](#)); and

[paragraph (t) amended by AG 24 of 1983]

- (u) the Attorneys Act, 1979 (Act [53 of 1979](#)).
- (2) Notwithstanding the provisions of section 3(1)(a) of the General Proclamation, the reference to -
- (a) the Government of the Republic -
 - (i) in sections 3(1)(c) and (l) and 99 of the Deeds Registries Act, 1937 (Act [47 of 1937](#));
 - (ii) in the Official Secrets Act, 1956 (Act [16 of 1956](#));
 - (iii) in section 21(2)(d) of the General Law Amendment Act, 1962 (Act [76 of 1962](#)),shall be construed as including a reference to the Administrator-General ; and
 - (b) the State President in section 117 of the Criminal Procedure Act, 1977 (Act [51 of 1977](#)), shall be construed as including a reference to the Administrator-General.

4. Amendment of section 1 of Act [44 of 1950](#), as amended by section 1 of Act [50 of 1951](#), section 1 of Act [76 of 1962](#) and section 3 of Act [37 of 1963](#)

Section 1 of the Internal Security Act, 1950, is hereby amended by the substitution in subsection (2) for the expression “section one of the Industrial Conciliation Act, 1937 (Act [No. 36 of 1937](#))” of the expression “section 79 of the Wage and Industrial Conciliation Ordinance, 1952 (Ordinance 35 of 1952), and for the word “Act”, wherever it occurs, of the word “Ordinance”.

[A closing quote is missing after the phrase “section 79 of the Wage and Industrial Conciliation Ordinance, 1952 (Ordinance 35 of 1952).”.]

5. Amendment of section 2 of Act [44 of 1950](#), as amended by section 2 of Act [76 of 1962](#) and section 1 of Act [79 of 1976](#)

Section 2 of the Internal Security Act, 1950, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The provisions of subsection (2)(b), (c), (cA), and (d) shall not apply in relation to an employers’ organization or trade union registered under the Wage and Industrial Conciliation Ordinance, 1952 (Ordinance 35 of 1952), or to any employers’ organization or trade union whose registration under the said Ordinance has been cancelled in terms of section 31 of that Ordinance, until such organization or trade union or any office-bearer, officer or member thereof has had a reasonable opportunity of exhausting, in respect of such cancellation, the remedies provided in section 71 of 72 of the said Ordinance.”.

6. Amendment of section 5 of Act [44 of 1950](#), as amended by section 4 of Act [50 of 1951](#), section 3 of Act [15 of 1954](#) and section 3 of Act [76 of 1962](#)

Section 5 of the Internal Security Act, 1950, is hereby amended -

(a) by the substitution for subsection (1)bis of the following subsection:

“(1)bis If a committee of the National Assembly of South West Africa reports to the said National Assembly -

- (a) that the name of a member of the said National Assembly, the Legislative Assembly of South West Africa, the Legislative Council of an area declared by or under any law to be a self-governing area, the Damara Representative Authority, the Nama Council, the Elected Coloured Council of South West Africa, or the Kaptein’s Council or Legislative Council of Rehoboth appears on a list in the custody of the officer referred to in section 8 and that there are no circumstances which would justify the removal of his name from such list; or
- (b) that any such member has been convicted of an offence under section 11 or is a communist; or
- (c) that any such member is or was at any time before or after the commencement of the Executive Powers (Justice) Transfer Proclamation, 1979, of the Administrator-General, an office-bearer, officer, member or active supporter of the Communist Party of South Africa, whether or not his name appears on any such list as aforesaid, or that he has at any time before or after the commencement, of the said Proclamation professed to be a communist or advocated, advised, defended or encouraged the achievement of any of the objects of communism or any act or omission which was calculated to further the achievement of any such object,

the Administrator-General may if the said report is approved by the said National Assembly and the said National Assembly does not recommend that no action be taken, notify that member and also the President of the said National Assembly, the Chairman of the Assembly, Council or Authority concerned, or the Kaptein or Speaker of the said Kaptein’s Council or Legislative Council, as the case may be, in writing that the said member shall as from a date specified in the notice, cease to be such a member, and as from that date he shall

for all purposes be deemed to be incapable of sitting as any such member in terms of the provisions of the law governing the institution and constitution of the Assembly, Council, Authority or Legislative Council concerned, as the case may be, and his seat shall become vacant.”; and

- (b) by the substitution in subsection (3) for the words “Industrial Conciliation Act, 1937 (Act [No. 36 of 1937](#))” of the words “Wage and Industrial Conciliation Ordinance, 1952 (Ordinance 35 of 1952)”.

7. Substitution of section 5bis of Act [44 of 1950](#), as inserted by section 4 of Act [15 of 1954](#)

The following section is hereby substituted for section 5bis of the Internal Security Act, 1950:

“5bis. Disqualification of certain persons of being nominated or elected and of sitting as members of certain bodies.

(1) No person in respect of whom a notice has been issued in terms of paragraph (a) of subsection (1)bis of section 5 and no person whose name appears on any list in the custody of the person referred to in section 8 or who has been convicted of an offence in terms of section 11 or is a communist, shall be capable of being nominated or chosen as member of the National Assembly of South West Africa, the Legislative Assembly of South West Africa, the Legislative Council of an area declared by or under any law to be a self-governing area, the Damara Representative Authority, the Nama Council, the Elected Coloured Council of South West Africa, or the Kaptein’s Council or the Legislative Council of Rehoboth and, if he is nominated or chosen, of sitting unless he has, prior to his nomination or election, obtained the written approval of the Administrator-General irrespective of the time at which he may have been nominated as member or for election.

(2) If any person who is incapable of being nominated or chosen as any member in terms of subsection (1) is nominated or chosen as such a member, the Administrator-General shall notify that member and also the President of the National Assembly of South West Africa, the Chairman of the said Legislative Assembly, Council or Authority, or the Kaptein or Speaker of the said Kaptein’s Council or Legislative Council, in writing that the said member was incapable in terms of subsection (1) of being nominated or chosen and thereupon his seat shall deemed vacant.”.

8. Amendment of section 5ter of Act [44 of 1950](#), as inserted by section 4 of Act [76 of 1962](#) and amended by section 1 of Act [24 of 1967](#) and section 1 of Act [2 of 1972](#)

Section 5ter of the Internal Security Act, 1950, is hereby amended by the substitution in the proviso to subsection (1) for the expression “Industrial Conciliation Act, 1956 (Act [No. 28 of 1956](#))” of the expression “Wage and Industrial Conciliation Ordinance, 1952 (Ordinance 35 of 1952)”.

9. Substitution of section 15 of Act [44 of 1950](#)

The following section is hereby substituted for section 15 of the Internal Security Act, 1950:

“15. Reports to National Assembly of South West Africa.

As soon as possible after action has been taken under section 2, 5, 6, 9, 10 or 14 the Administrator-General shall report the circumstances to the National Assembly of South West Africa.”.

10. Amendment of section 3 of Act [3 of 1953](#), as amended by section 31 of Act [62 of 1955](#), section 16 of Act [76 of 1962](#) and section 10 of Act [79 of 1976](#)

Section 3 of the Public Safety Act, 1953, is hereby amended -

- (a) by the substitution for paragraph (c) of subsection (3) of the following paragraph:

“(c) any law relating to the qualifications nomination, election or term of office of members of the National Assembly of South West Africa, the Legislative Assembly of South West Africa, the Legislative Council of an area declared by or under any law to be a self-governing area, the Damara Representative Authority, the Nama Council, the Elected Coloured Council of South West Africa,

or the Kaptein's Council or the Legislative Council of Rehoboth, or the holding of sessions of the said National Assembly, the said Legislative Assembly, or any such Council or Authority, or to the powers, privileges or immunities thereof or of the members or committees thereof, is altered or suspended;";

- (b) by the substitution in paragraph (d) of the said subsection (3) for the words "Industrial Conciliation Act, 1937 (Act [No. 36 of 1937](#))" of the words "Wage and Industrial Conciliation Ordinance, 1952 (Ordinance 35 of 1952)"; and
- (c) by the deletion of paragraph (ii) of the proviso to the said subsection (3).

11. Amendment of section 21 of Act [76 of 1962](#), as amended by section 19 of Act [62 of 1966](#), section 33 of Act [34 of 1969](#) and section 14 of Act [91 of 1977](#)

Section 21 of the General Law Amendment Act, 1962, is hereby amended by the substitution in subsection (5) for the words "Industrial Conciliation Act, 1956 (Act [No. 28 of 1956](#))" of the words "Wage and Industrial Conciliation Ordinance, 1952 (Ordinance 35 of 1952)".

12. Short title

This Proclamation shall be called the Executive Powers (Justice) Transfer Proclamation, 1979.