



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$1.32

WINDHOEK - 22 November 1996

No. 1447

CONTENTS

	<i>Page</i>
GOVERNMENT NOTICE	
No. 305 Promulgation of Identification Act, 1996 (Act 21 of 1996), of the Parliament.....	1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 305

1996

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 21 of 1996: Identification Act, 1996.

ACT

To provide for the compilation and maintenance of a population register in respect of the population of Namibia, for the issue of identity documents to persons whose names are included in the population register; and for matters connected therewith.

(Signed by the President on 6 November 1996)

ARRANGEMENT OF SECTIONS

1. Definitions.
2. Compilation and maintenance of population register.
3. Particulars to be recorded in population register.
4. Assignment of identity number.
5. Identity documents.
6. Proof of registration.
7. Photographs.
8. Fingerprints.
9. Verification of particulars.
10. Proof of identity.
11. Reproduction of documents.
12. Correction, cancellation and replacement.
13. Surrender or seizure of identity document or proof of registration of deceased person.
14. Secrecy.
15. Offences and penalties.
16. Evidence and presumptions.
17. Regulations.
18. Delegation of functions.
19. Repeal of Act 37 of 1970, Act 2 of 1979 and Act 5 of 1980, and savings.
20. Short title and commencement.

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows: -

Definitions

1. In this Act, unless the context indicates otherwise -

"identity document" means an identity document issued in terms of section 5;

"identity number" means an identity number assigned in terms of section 4;

"Minister" means the Minister of Home Affairs;

"permanent residence permit" means a permanent residence permit issued under section 26 of the Immigration Control Act, 1993 (Act 7 of 1993);

"Permanent Secretary" means the Permanent Secretary: Home Affairs;

"population register" means the population register referred to in section 2;

"prescribed" means prescribed by regulation;

"proof of registration" means a proof of registration referred to in section 6;

"this Act" includes the regulations.

Compilation and maintenance of population register

2. (1) The Minister shall, subject to this Act compile and maintain a population register for Namibia consisting of -

- (a) a register for Namibian citizens; and
- (b) a register for non-citizens holding permanent residence permits.

(2) The particulars required for the compilation and maintenance of the population register shall be obtained by the Minister from the documents that may be available to him or her.

Particulars to be recorded in population register

3. There shall in respect of every person whose name is included in the population register be recorded and kept in that register the following relevant particulars, namely -

- (a) the particulars required to be furnished when notice of birth is given;
- (b) if he or she is a Namibian citizen other than by birth, the date on which he or she obtained Namibian citizenship in terms of Article 4(2) - (5) of the Namibian Constitution, and particulars thereof;
- (c) if he or she is the holder of a permanent residence permit, the date on which he or she obtained permanent residence and particulars thereof;
- (d) the particulars of his or her marriage as contained in the relevant marriage register or any other document relating to the contracting of his or her marriage, and such other particulars concerning his or her marital status as may be furnished;
- (e) if an identity document has been issued to him or her -
 - (i) a photograph of himself or herself; and
 - (ii) his or her fingerprints and palmprints;
- (f) after his or her death, the particulars required to be furnished when notice of his or her death was given;
- (g) on his or her permanent departure from Namibia, the date of such departure;

- (h) particulars concerning the cancellation of his or her identity document in accordance with this Act; and
- (i) such other particulars as the Minister may by notice in the *Gazette* direct to be recorded in the population register, but subject to such conditions, exceptions or exemptions as may be determined in the notice.

Assignment of identity number

4. The Minister shall, upon issuing an identity document under section 5(1), assign to the person to whom such document is issued an identity number consisting of eleven figures.

Identity documents

5. (1) The Minister shall upon receipt of an application, in the prescribed form and manner, for an identity document by a person who has attained the age of 16 years and whose name is included in a register referred to in section 2(1), and after the person concerned has complied with the provisions of sections 7 and 8, issue an identity document in the prescribed form to such person.

(2) An application in terms of subsection (1) shall be made within such period as may be prescribed in respect of any category of persons.

(3) An identity document shall contain only the following particulars in relation to the person to whom it was issued, namely -

- (a) his or her identity number;
- (b) his or her full name, gender, date of birth, height, colour of eyes, and the place where, or, in the case of a person not born in Namibia, the country, in which he or she was born;
- (c) whether or not he or she is a Namibian citizen;
- (d) a photograph of the person concerned;
- (e) such fingerprint or other mark as may be prescribed;
- (f) such other particulars in the population register as the Minister may by notice in the *Gazette* authorize to be included in an identity document but subject to such conditions, exceptions or exemptions as may be prescribed in the notice.

Proof of registration

6. (1) When a person applies for an identity document, or for official purposes lodges his or her identity document with the Minister, the Minister shall on application issue to the person concerned whose particulars are recorded in the population register in terms of section 3, a proof of registration in the prescribed form and manner.

(2) A proof of registration issued in terms of subsection (1) shall for the purposes of this Act be proof that the person concerned has applied for an identity document or has so lodged his or her identity document, as the case may be.

Photographs

7. Every person referred to in section 3 who has attained the age of 16 years shall present himself or herself to the Minister or any official designated by him or her to have a photograph taken when -

- (a) he or she applies for an identity document in terms of section 5(1); or
- (b) his or her identity document is required to be replaced in terms of section 12(3)(a).

Fingerprints

8. Every person referred to in section 3 who has attained the age of 16 years shall, when he or she applies for an identity document, have his or her fingerprints and palmprints taken in the prescribed manner so that they may be included in the population register.

Verification of particulars

9. The Minister may -
- (a) request any person furnishing any particulars in terms of this Act to furnish such documentary or other proof of the correctness of such particulars as is within the power of such person to furnish; and
 - (b) investigate or cause to be investigated any matter in respect of which particulars are required to be recorded in the population register.

Proof of identity

10. (1) An authorized officer as defined in subsection (3) may request any person reasonably presumed to have attained the age of 16 years to prove his or her identity within a reasonable time to that officer by presenting -

- (a) his or her identity document;
- (b) his or her passport, proof of identity or other travel document as the Minister may prescribe; or
- (c) any other proof of identity issued by the State on which the name and a photograph of the holder appear.

(2) If it comes to the attention of an officer acting in the service of the Ministry of Home Affairs that a person referred to in section 3 who has attained the age of 16 years has failed to apply for an identity document in terms of section 5(1), that officer shall take such steps as may be necessary to ensure that such person applies for an identity document.

- (3) For the purposes of subsection (1) "authorized officer" means -
- (a) a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977); or
 - (b) a person, or a member of a category of persons, designated by the Minister by notice in the *Gazette*.

Reproduction of documents

11. (1) Notwithstanding anything to the contrary contained in any other law, the Minister may in respect of any person reproduce or cause to be reproduced any document from which the population register is compiled or maintained by means of any process which in his or her opinion accurately and durably reproduces such documents, and may preserve or cause to be preserved those reproductions in lieu of such documents.

(2) A reproduction of any document referred to in subsection (1) shall, notwithstanding anything to the contrary contained in any other law, for all purposes be deemed to be the original document from which it was reproduced, and a copy of such reproduction which has been certified by the Minister as a true copy, shall in any court of law be conclusive proof of the contents of the relevant original document.

Correction, cancellation and replacement

12. (1) If -
- (a) an identity document does not reflect correctly the particulars of the person to whom it was issued, or contains a photograph which is no longer a recognizable image of that person; or
 - (b) a proof of registration does not reflect correctly the particulars of the person to whom it was issued,

the person concerned, shall within the prescribed period hand over the identity document or proof of registration, as the case may be, to the Minister.

(2) If the identity document or proof of registration referred to in subsection (1) is not handed over in accordance with that subsection, the Minister may order the person concerned to restore it to him or her or cause it to be confiscated.

- (3) If by virtue of this section the Minister has obtained possession of -
- (a) an identity document, he or she shall, subject to section 6, cancel it in the prescribed manner and replace it with an improved identity document upon payment of the prescribed fee; or
 - (b) a proof of registration he or she shall -
 - (i) effect the necessary corrections on the proof of registration, if in his or her opinion it can be done; or

- (ii) in the prescribed manner cancel it and replace it with an improved proof of registration.

(4) When it comes to the attention of the Minister that an identity document has been issued to a person whose name is not required in terms of section 3 to be included in the population register, the Minister shall request that person to return the identity document to him or her for cancellation.

Surrender or seizure of identity document or proof of registration of deceased person

13. (1) Any person who has in his or her possession a document being or purporting to be an uncanceled identity document or proof of registration of a person who has died, shall -

- (a) if such document came into his or her possession before such person's death, within three months after such death has come to his or her knowledge; or
- (b) if such document came into his or her possession after such person's death, within three months after the document came into his or her possession,

hand over such document for cancellation to a person designated as a registrar or assistant registrar of births and deaths under section 3 of the Births, Marriages and Deaths Registration Act, 1963 (Act 81 of 1963).

(2) A document handed over to such registrar or assistant registrar in terms of subsection (1), shall upon the receipt thereof be cancelled in the prescribed manner.

(3) When it comes to the attention of such registrar or assistant registrar that any person is in possession of a document being or purporting to be an uncanceled identity document or proof of registration of a person who has died he or she shall without delay seize that document, and cancel it in the prescribed manner.

(4) A document cancelled in terms of subsection (2) or (3) shall be destroyed and the identity number of the deceased shall be retained on the population register for a period of 12 months following the date of death of the person concerned and thereafter such number shall be deleted.

Secrecy

14. (1) Subject to the provisions of subsection (2), no person shall disclose to any other person any information recorded in the population register or any identity document or proof of registration and which he or she acquired by virtue of his or her functions in terms of any law, except for the purposes of this Act or any judicial proceedings or the performance of his or her functions in terms of any other law, and no person to whom any such information has to his or her knowledge been disclosed in contravention of the provisions of this subsection, shall disclose such information to any other person.

IDENTIFICATION ACT, 1996

(2) Notwithstanding the provisions of subsection (1), the Minister may furnish any information in relation to a person whose name is included in the population register to any ministry, regional council, local authority, statutory institution or body established by or under any law for any purpose of that ministry, council, authority, institution or body.

Offences and penalties

15. Any person who -

- (a) for the purposes of this Act knowingly makes or causes to be made a statement which is false in a material respect;
- (b) having come into possession of an identity document or a proof of registration, belonging to another person, represents it as his or her own, or fails to hand it over as soon as practicable to the person to whom it belongs or to the Minister or any other person designated by the Minister for that purpose;
- (c) forges or utters, knowing it to be forged, or makes any unauthorised alteration in any identity document or proof of registration;
- (d) with intent to deceive, imitates, alters, defaces, destroys or mutilates any identity document or proof of registration;
- (e) with intent to deceive, allows an identity document or a proof of registration issued to him or her to come into the possession of any other person;
- (f) knowingly gives out that any incorrect particulars in an identity document or a proof of registration are correct;
- (g) at any time after a new identity document was issued to him or her, in accordance with the provisions of this Act, be in possession or regain possession of an identity document previously issued to him or her under this Act or under the provisions of any law repealed by section 19(1), or without lawful reason fails to return for cancellation that previous identity document to the Minister within 14 days after the new identity document was issued to him or her or after he or she regained possession of the previous document, as the case may be;
- (h) without lawful reason has in his or her possession -
 - (i) any stamp or other instrument which is used or capable of being used for purposes of this Act; or

- (ii) any form used for purposes of issuing any identity document or proof of registration or other document under this Act, or any reproduction or imitation of any such form;
- (i) without lawful reason fails or refuses to comply with a request made in terms of section 9(a), 10(1) or 12(4);
- (j) without lawful reason fails or refuses to comply with a provision of section 5(2), 7, 8, or 13(1); or
- (k) contravenes a provision of section 12(1) or 14(1),

shall be guilty of an offence and liable on conviction -

- (i) in the case of an offence referred to in paragraph (a), (c), (d), (e), (h) or (j) to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; and
- (ii) in the case of any other offence, to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Evidence and presumptions

16. (1) If in any criminal proceedings in relation to an offence in terms of this Act the question arises as to whether an identity document, or a particular identity document, issued to a particular person was issued to the accused, a document purporting to be a statement under oath or affirmation by a person alleging therein -

- (a) that he or she is officially concerned with the fingerprints and palmprints in the population register, and that he or she is proficient in the identification of fingerprints and palmprints;
- (b) that he or she has received fingerprints and palmprints certified by the person who took them to be the fingerprints and palmprints of the accused; and
- (c) that he or she has compared the fingerprints and palmprints referred to in paragraph (b) with the fingerprints and palmprints in the population register and by virtue of his or her proficiency has come to a conclusion in relation to the said question,

shall upon the mere production thereof be *prima facie* proof of the conclusion mentioned therein.

(2) If in any prosecution in terms of section 15(d) it is proved that any identity document or proof of registration was imitated, altered, defaced, destroyed or mutilated, it shall be *prima facie* proof that the relevant act was done with intent to deceive.

Regulations

17. (1) The Minister may make regulations relating to -
- (a) the issue of duplicate identity documents or proof of registration, the circumstances under, and the conditions subject to, which they may be issued and the fees payable therefor;
 - (b) the issue of certificates in respect of particulars contained in the population register or in an identity document, the purposes for which such certificates may be used, the evidential value thereof and the fees payable therefor;
 - (c) the making of special arrangements in connection with the inclusion of the names of persons in the population register in exceptional circumstances;
 - (d) the issuing of instructions and the prescribing of forms which may be necessary for the effective carrying out of the provisions of this Act,

and, generally any matter which is required or permitted to be prescribed in terms of this Act or are necessary or expedient to be prescribed in order to achieve the objectives of this Act.

(2) Any regulation made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith not exceeding a fine of N\$2 000 or imprisonment for a period of six months or both such fine and such imprisonment.

Delegation of functions

18. (1) The Minister may -
- (a) delegate any power granted to him or her by or under this Act, except the power conferred by this paragraph; and
 - (b) assign the performance of any duty imposed upon him or her by this Act,

to the Permanent Secretary or any other staff member in the Public Service.

(2) A power so delegated and a duty so authorized shall be exercised or performed, subject to the directions of the Minister, who may at any time withdraw such delegation or authority.

(3) A delegation under subsection (1)(a) does not divest the Minister from the power so delegated.

Repeal of Act 37 of 1970, Act 2 of 1979, and Act 5 of 1980, and savings

19. (1) Subject to the provisions of subsection (2), the Identity Documents in South West Africa Act, 1970 (Act 37 of 1970), the Identification of Persons Act, 1979 (Act 2 of 1979) and the Identification of Persons Amendment Act, 1980 (Act 5 of 1980) are hereby repealed.

(2) Any regulation, directive, authority made or given under any provision of any law repealed by subsection (1) shall, in so far as it is not inconsistent with this Act, be deemed to have been made or given under a corresponding provision of this Act.

(3) An identity document issued under the provision of any law repealed by subsection (1) shall, notwithstanding the repeal of such law, remain in force and be deemed to be an identity document issued under this Act until such date as determined by the Minister, by notice in the *Gazette*, with effect from which such an identity document shall cease to be a valid identity document.

(4) Any identity document or other related document issued by the Ministry of Home Affairs on or after 1 July 1994 and before the commencement of this Act, and purporting to be such identity document or other related document shall be deemed to have been issued under this Act.

Short title and commencement

20. This Act shall be called the Identification Act, 1996, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.
