



# GOVERNMENT GAZETTE

OF THE

# REPUBLIC OF NAMIBIA

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No. 1033

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 44

1995

### 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. 2 of 1995: Foreign Courts Evidence Act, 1995.

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## ACT

**To provide for obtaining of evidence of persons in Namibia by courts of law outside Namibia, and for matters connected therewith.**

*(Signed by the President on 13 February 1995)*

### ARRANGEMENT OF SECTIONS

1. Definitions.
2. High Court may order examination of witness in Namibia in connection with civil or criminal proceedings pending in a foreign court.
3. Magistrate to take examination of witness in Namibia in connection with civil proceedings pending in a foreign court.
4. Examination of witnesses.
5. Rights and privileges of witnesses.
6. Offences by witnesses.
7. Attendance of witnesses in certain countries.
8. Witnesses from certain countries attending court in Namibia not to be arrested for certain matters.
9. Certain fees not to be recovered in certain cases.
10. Minister may amend First or Second Schedule.
11. Rules.
12. Transitional provisions.
13. Repeal of Act 80 of 1962.
14. Short title and commencement.

First Schedule

Second Schedule

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

Definitions.

**1.** In this Act, unless the context otherwise indicates, "magistrate" includes an additional magistrate and a divisional magistrate, but does not include a regional magistrate.

High Court may order examination of witness in Namibia in connection with civil or criminal proceedings pending in a foreign court.

2. (1) If upon an application in the High Court of Namibia, it appears to the court or any judge that a court of law of competent jurisdiction outside Namibia, before which any civil or criminal proceedings are pending, is desirous of obtaining the evidence in relation to such proceedings of any witness within the High Court's jurisdiction, the court or judge hearing the application may grant an order for the examination of such witness before a person named in such order who, in the case of criminal proceedings, shall be a magistrate.

(2) Such an order shall not be granted if it appears to the court or judge that the evidence required is the furnishing of information in contravention of the provisions of section 2 of the Second General Law Amendment Act, 1974 (Act 94 of 1974) or is in connection with criminal proceedings of a political character or that the witness is an accused person in the proceedings concerned.

Magistrate to take examination of witness in Namibia in connection with civil proceedings pending in a foreign court.

3. Any magistrate shall, upon request of any judicial officer performing the functions of a magistrate in any country mentioned in the First Schedule, take the examination of any witness within his or her area of jurisdiction in connection with any civil proceedings pending in the court of such judicial officer.

Examination of witnesses.

4. (1) Any person required to take an examination under section 2 or 3 shall cause any person whose evidence is required, to be summoned to appear and give evidence or produce any book, document or object before him or her and upon such person's appearance shall administer an oath or affirmation to him or her (unless requested by the other country not to take such oath or affirmation) and take his or her evidence upon interrogatories or otherwise as ordered or requested, as if he or she were a witness in a magistrate's court in proceedings similar to those in connection with which his or her evidence is required.

(2) Any person so to be summoned shall be summoned in the same manner as a person may be subpoenaed to appear before such a court in similar proceedings.

(3) If at any time it appears to the person taking the examination that the evidence required is in connection with criminal proceedings of a political character or that the witness is an accused person in the proceedings concerned, he or she shall not proceed with the examination.

(4) Upon completion of the examination the person taking such examination shall transmit to the registrar of the court which granted the order for the examination or to the judicial officer who requested it, the evidence certified by him or her as correct, together with a certificate showing the amount paid to the witness in respect of the expenses of his or her appearance, the cost of the issue and service of the process for summoning the witness to appear and any other costs incurred in respect of the examination.

Rights and privileges of witnesses.

5. (1) Any person required to give evidence at an examination under section 4 shall be entitled to payment of such expenses and fees as are payable to witnesses in a magistrate's court in proceedings similar to those in connection with which his or her evidence is required.

(2) In connection with the giving of evidence or the production of any book, document or object at such an examination, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book, document or object in a magistrate's court in such proceedings, shall apply.

Offences by witnesses.

6. (1) Any person summoned to appear and give evidence or produce any book, document or object before any person taking an examination who, without sufficient cause, fails to attend at the time and place specified or to remain in attendance until the conclusion of the examination or until he or she is excused by the person taking the examination from further attendance, or, subject to section 4(1), refuses to be sworn or to make an affirmation as a witness, or having been sworn or having made an affirmation, fails to answer fully and satisfactorily any question put to him or her, or fails to produce any book, document or object in his or her possession or custody or under his or her control, which he or she was summoned to produce, shall be guilty of an offence and liable on conviction to a fine not exceeding N\$1 000 or to imprisonment for a period not exceeding three months.

(2) Any person who after having been sworn or having made an affirmation as a witness, gives false evidence before the person taking the examination, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.

Attendance of witnesses in certain countries.

7. (1) Whenever a subpoena purporting to be issued by the proper officer of a competent court of law in any country mentioned in the Second Schedule is received from any such officer by any magistrate within whose area of jurisdiction the person named in such subpoena resides or is, or is alleged to be residing, for the attendance of such person to give evidence or to produce any book, paper or document in his or her possession or custody or under his or her control in such country -

- (i) in any civil or criminal proceedings before a competent court of law;
- (ii) at a bail application;
- (iii) at any meeting of creditors to be held in terms of a law of any such country similar to section 40 of the Insolvency Act, 1936 (Act 24 of 1936);
- (iv) before a commission of inquiry to which the provisions of a law of any such country similar to the provisions of the Commissions Act, 1947 (Act 8 of 1947) apply;
- (v) at an inquest;
- (vi) at a maintenance inquiry held in terms of a law of any such country similar to the Maintenance Act, 1963 (Act 23 of 1963);
- (vii) at a meeting of creditors, members or contributories to be held in terms of a law of any such country similar to section 412 of the Companies Act, 1973 (Act 61 of 1973) or sections 66 and 78 of the Close Corporations Act, 1988 (Act 26 of 1988);
- (viii) for purposes of an examination held in any such country similar to an examination contemplated in section 205 of the Criminal Procedure Act, 1977 (Act 41 of 1977); or
- (ix) at an inquiry held in terms of a law of any such country similar to section 13 or 30 of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act 41 of 1971),

**FOREIGN COURTS EVIDENCE ACT, 1995**

such magistrate shall, if he or she is satisfied that the subpoena was lawfully issued, endorse it for service upon such person as if it was a subpoena duly issued in proceedings similar to those in connection with which it was issued.

(2) Upon service of the subpoena on any person an amount sufficient to cover reasonable expenses to be incurred by him or her in proceeding to and returning from the court or other place named in the subpoena and during such person's detention at the place where his or her evidence is to be given, shall be tendered to him or her.

(3) Any person subpoenaed under this section who, without sufficient cause, fails to attend at the time and place specified in the subpoena, shall be guilty of an offence and liable on conviction to a fine not exceeding N\$1 000 or to imprisonment for a period not exceeding three months.

(4) Any magistrate's court in whose area of jurisdiction the subpoena has been served or the person subpoenaed resides, shall have jurisdiction to try such person for a contravention of subsection (3).

(5) The return of the person who under subsection (1) is authorized to serve a subpoena showing that service was duly effected, together with a certificate under the hand and seal of the person presiding at the court from which the subpoena was issued, showing that the person subpoenaed failed, without establishing sufficient cause, to attend as required when called upon, shall, for purposes of subsection (3), be deemed sufficient proof of such person's failure to attend.

Witnesses from certain countries attending court in Namibia not to be arrested for certain matters.

**8.** No person subpoenaed in any country mentioned in the Second Schedule to appear before a court in Namibia, and who by virtue of any provision of any law of such country is required so to appear, shall while attending such court be liable to be arrested upon any civil or criminal warrant for any debt due or offence committed in Namibia before appearing before such court.

Certain fees not to be recovered in certain cases.

**9.** No fees other than disbursements shall be recovered from any court outside Namibia in respect of the issue or service of any process for the purposes of this Act, unless the Minister otherwise directs or unless the process relates to or has been issued or served in pursuance of an order under section 2.

Minister may amend First or Second Schedule.

**10.** The Minister of Justice may by notice in the *Gazette* amend the First or Second Schedule by the exclusion therefrom of any country or the inclusion therein of any country.

Rules.

**11.** (1) Any power to make rules under the High Court Act, 1990 (Act 16 of 1990) shall be deemed to include the power to make rules for giving effect to the provisions of section 2 of this Act.

(2) Any power to make rules under the Magistrates' Courts Act, 1944 (Act 32 of 1944) shall be deemed to include the power to make rules for giving effect to the provisions of section 3 of this Act.

Transitional provisions.

**12.** Anything done under the Foreign Court Evidence Act, 1962 (Act 80 of 1962), 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.

Repeal of Act 80 of 1962.

**13.** The Foreign Courts Evidence Act, 1962 (Act 80 of 1962) is hereby repealed.

Short title.

**14.** This Act shall be called the Foreign Courts Evidence Act, 1995.

#### FIRST SCHEDULE

The Republic of South Africa.

#### SECOND SCHEDULE

The Republic of South Africa.

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