



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 1959

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 239

1998

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. 26 of 1998: Racial Discrimination Prohibition Amendment Act, 1998.

EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing provisions.

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Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To **amend the Racial Discrimination Prohibition Act, 1991, so as to amend the provisions relating to the disseminating of ideas in respect of racial superiority; to create certain defences against prosecution in terms of the Act; to increase the penalties in respect of offences; to make other provisions relating to vicarious responsibility; and to provide for incidental matters.**

(Signed by the President on 4 September 1998)

Substitution of section 11 of Act No. 26 of 1991

1. The following section is substituted for section 11 of the Racial Discrimination Prohibition Act, 1991 (hereafter referred to as the "principal Act"):

"Inciting racial disharmony

11. (1) No person shall publicly use any language or publish or distribute any written matter or display any article or do any act or thing with the intent to -

(a) threaten or insult any person or group of persons on the ground that such person belongs or such persons belong to a particular racial group; or

(b) cause, encourage or incite hatred between different racial groups or persons belonging to different racial groups; or

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(c) disseminate ideas based on racial superiority.

(2) For the purposes of subsection (1) "article" shall include any flag, insignia or emblem.

(3) No person shall establish, support or be a member of or participate in the activities of an organisation or movement of which the aim is to disseminate any ideas based on racial superiority aimed at members of any particular racial group or engage in activities aimed at causing, bringing about, promoting or contributing to any such disseminating of such ideas or engaging in such activities.".

Substitution of section 14 of Act No. 26 of 1991

2. The following section is substituted for section 14 of the principal Act :

"Offences and penalties

14. (1) Any person who contravenes any provision of sections 2 to 12, both inclusive, shall, subject to subsection (2), be guilty of an offence and on conviction be liable -

(a) in the case of an offence in terms of any of those sections, excluding section 11, to a fine not exceeding N\$ 80 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment; and

(b) in the case of an offence in terms of section 11, to a fine not exceeding N\$ 100 000 or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment.

(2) No person shall be convicted of an offence under subsection (1) of section 11 -

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- (a) if the act complained of was, at the time of the commission thereof, relevant to any subject of public interest, the discussion of which was for public benefit, and if on reasonable grounds such person believed the statement or statements concerned to be true; or
- (b) if such person, in good faith and with the intention of removing matters tending -
 - (i) to threaten or to insult any racial group or any person belonging to such racial group; or
 - (ii) to cause, encourage or incite hatred between different racial groups or between persons belonging to different racial groups,pointed out such matters; or
- (c) if it is established that the language, publication or distribution complained of communicated the truth and that the main purpose thereof was to so communicate the truth and not to cause any of the acts referred to in that subsection.”.

Substitution of section 17 of Act No. 26 of 1991

3. The following section is substituted for section 17 of the principal Act :

“Vicarious responsibility

17. If any person does or omits to do any act which constitutes an offence in terms of this Act, acted in a capacity of agent or employee, the employer or principal of the agent or employee shall be deemed himself or herself to have done or

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omitted to do such act, if it is proven that -

- (a) he or she connived at or permitted the act or omission by the agent or employee; or
- (b) (i) he or she failed to take all reasonable steps to prevent the act or omission by the agent or employee; and
- (ii) the act or omission by the agent or employee fell within the scope of the authority of employment of the agent or employee."

Short title

4. This Act shall be called the Racial Discrimination Prohibition Amendment Act, 1998.
