



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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#### OFFICE OF THE PRIME MINISTER

No. 185 2003

#### 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. 10 of 2003: Community Courts Act, 2003.

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# ACT

**To provide for the recognition and establishment of community courts; to provide for the appointment of Justices and for clerks and messengers of court; to provide for the application of customary law by community courts; to provide for the jurisdiction of and procedure to be adopted by community courts; to provide for appeals from community courts to other courts; and to provide for connected and incidental matters.**

*(Signed by the President on 31 July 2003)*

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

### Definitions

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

“area”, in relation to a traditional community, means the geographic area habitually and predominantly inhabited by that traditional community;

“area of jurisdiction”, in relation to a court recognized or established under this Act, means the area for which that court has been so recognized or established;

“assessor” means an assessor who has been appointed as such under this Act;

“community court” means a community court recognized under section 2 or established under section 4;

“customary law” means the customary law, norms, rules of procedure, traditions and usages of a traditional community in so far as they do not conflict with the provisions of the Namibian Constitution or any other statutory law applicable in Namibia;

“financial institution” means a financial institution authorized to conduct banking business under the Banking Institutions Act, 1998 (Act No. 2 of 1998), or a building society finally registered as such under the Building Societies Act, 1986 (Act No. 2 of 1986);

“Justice” means a Justice appointed in terms of section 8;

“magistrate” means the magistrate of a district and includes an additional magistrate of that district;

“magistrate’s court” means the magistrate’s court of a district in which the community court concerned is situated;

“Minister” means the Minister responsible for Justice;

“prescribe” means prescribe by regulation under this Act;

“this Act” includes any regulation made under section 32;

“traditional authority” means the traditional authority referred to in section 2 of the Traditional Authorities Act, 2000 (Act No. 25 of 2000);

“traditional community” means an indigenous, homogenous, endogamous social grouping of persons comprising of families deriving from exogamous clans which share a common ancestry, language, cultural heritage, customs and traditions, recognises a common traditional authority and inhabits a common communal area; and includes the members of that community residing outside the common communal area;

“traditional leader” means a traditional leader as defined in section 1 of the Traditional Authorities Act, 2000 (Act No. 25 of 2000).

### **Application for recognition of courts**

2. (1) Where immediately before the commencement of this Act -
  - (a) any person or body had pursuant to any law repealed by section 33 jurisdiction to hear and determine any civil or criminal matter in the area of a traditional community or in any part of such area;
  - (b) any person or body (hereinafter in this Act referred to as a body of appeal) had pursuant to any law repealed by section 33 jurisdiction to hear and determine any appeal against an order or decision made or given by a person or body referred to in paragraph (a),

and one or more traditional authorities have been established and recognized in accordance with the Traditional Authorities Act, 2000 (Act No. 25 of 2000) for that traditional community, such authority or authorities may apply in writing to the Minister for recognition in respect of the area of the traditional community of a court (hereinafter referred to as a community court).

(2) An application referred to in subsection (1) shall be made within such period as may be determined by the Minister by notice in the *Gazette* and shall contain the following particulars:

- (a) The name of the traditional community in respect of which a court is to be recognized;
- (b) the area of such traditional community in respect of which jurisdiction is to be exercised by such court;
- (c) whether a body of appeal contemplated in subsection (1)(b) existed in such area before the commencement of this Act;
- (d) the names of the persons who in terms of this Act are qualified to be appointed as Justices or assessors;
- (e) such further information as the Minister may require.

(3) If on receipt of an application referred to in subsection (1) the Minister is satisfied that the requirements referred to in that subsection have been met and that the application contains all the particulars required by subsection (2), the Minister shall in respect of the area to which the application relates recognize by notice in the *Gazette* a community court for that area.

(4) A notice under subsection (3) shall state the traditional community in respect of which the community court is recognized; whether the court so recognized comprises a body of appeal; and the area in respect of which such court shall exercise jurisdiction.

(5) A community court recognized under subsection (3) shall upon recognition have the jurisdiction contemplated in section 12: Provided that where it is evident from a notice issued under subsection (4) that the court so recognized comprises a body of appeal, such court shall in addition have jurisdiction to hear and determine any appeal relating to a matter referred to in paragraph (a) of that section.

(6) The provisions of this Act shall, except to the extent otherwise provided, apply to a community court recognized under subsection (3) as if it were a community court established under section 4.

### **Application for establishment of community courts**

3. (1) A traditional authority of a traditional community may apply in writing to the Minister for the establishment of a community court in respect of the area of that traditional community, but only if no court has been recognized or established under this Act for that area.

(2) An application referred to in subsection (1) shall contain the following particulars:

- (a) The area to which the application relates;
- (b) the reasons for applying for the establishment of a court;

- (c) the names of the persons who in terms of this Act are qualified to be appointed as Justices or assessors for that area;
- (d) such further information as the Minister may require.

#### **Establishment of community courts**

4. (1) If on receipt of an application referred to in section 3 the Minister is satisfied that such application contains the required particulars and that no court has been recognized or established under this Act in respect of the area to which the application relates he or she shall by notice in the *Gazette* establish a community court for the area mentioned in the notice, and such community court shall within that area exercise the jurisdiction conferred on it by or under this Act.

(2) A community court may, by the notice mentioned in subsection (1), be allowed to carry such name as may be appropriate for the area in question.

(3) The Minister may, by notice in the *Gazette*, amend or revoke any notice referred to in this section.

#### **Financial assistance**

5. The Minister with the concurrence of the Minister of Finance shall, subject to such conditions as the Minister acting with such concurrence may determine or prescribe, at any time grant to a community court out of moneys appropriated by Parliament such financial assistance as may be necessary for defraying expenses in connection with the administration of such community court.

#### **Revenue account of community court**

6. (1) A traditional authority shall on behalf of the community court in its area open and operate a revenue account with any financial institution into which shall be paid all moneys accruing to such court in terms of this Act.

(2) The moneys in the revenue account of a community court shall be utilized to defray all expenses incurred in connection with the administration of such court, but moneys received by virtue of any grant under section 5 shall be utilized in accordance with the conditions determined or prescribed under that section.

(3) Notwithstanding the State Finance Act, 1991 (Act No. 31 of 1991), any fines and fees received by a community court in terms of this Act shall be paid into the revenue account of such community court.

(4) A traditional authority may realize any payment in kind received by a community court and shall, if such payment is so realized and is due to the community court, pay the money so obtained into the court's revenue account.

(5) The secretary of the traditional authority concerned shall, subject to the directions and control of such traditional authority, and in accordance with generally accepted accounting principles, keep such accounting and related records as are necessary to fairly represent the financial affairs of the community court.

(6) The accounting and related records referred to in subsection (4) shall be examined and audited annually by the Auditor-General.

#### **Composition of community courts**

7. (1) A community court shall be presided over by one or more Justices appointed by the Minister in accordance with the provisions of section 8 for such community court.

(2) A community court may appoint one or more assessors, each of whom shall be selected from amongst persons mentioned in the list approved in terms of subsection (3), to advise the community court on any matter to be adjudicated upon by the community court in the proceedings in question.

(3) For the purposes of the appointment of assessors, the Minister shall by notice in the *Gazette*, out of a list of names referred to in section 3(2)(c), approve not less than five and not more than ten assessors-designate.

(4) The grounds for disqualification and removal referred to in section 8(2) and (3), respectively, shall apply with the necessary changes to assessors.

(5) An assessor appointed in terms of subsection (2) shall be paid from moneys appropriated by Parliament such allowances as the Minister, with the concurrence of the Minister of Finance, may prescribe.

(6) A community court shall give due consideration to, but shall not be bound by, the opinion of any assessor.

(7) If during any proceedings before a community court, an assessor dies or he or she for any reason becomes incapable of taking his or her seat, the Justice or Justices presiding may either adjourn the proceedings in order to invoke the assistance of another person as assessor or proceed with the hearing with the remaining assessor.

(8) No person shall sit as a Justice or an assessor in any proceedings before a community court if he or she has any interest direct or indirect or personal or pecuniary in any matter before such court.

### **Appointment of Justices**

**8.** (1) Subject to subsection (2), the Minister shall for each community court in writing appoint as Justices the persons who in are in terms of section 3(2)(c) named for appointment as Justices, and shall cause any such appointment to be made known by notice in the *Gazette*.

(2) No person shall be eligible for appointment as a Justice of a community court unless -

- (a) he or she is conversant with the customary law of the area in question;
- (b) by virtue of his or her integrity he or she is a fit and proper person to be entrusted with the responsibility of the office of Justice;
- (c) he or she is not a member of -
  - (i) Parliament;
  - (ii) a regional council; or
  - (iii) a local authority council; or
- (d) he or she is not a leader of a political party, whether or not that political party is registered under section 39 of the Electoral Act, 1992 (Act No. 24 of 1992).

(3) The Minister may, after consultation with the traditional authority concerned, by notice in the *Gazette* remove from office any Justice if he or she becomes subject to any disqualification contemplated in subsection (2), but only after the Minister afforded such Justice an opportunity to be heard.

(4) If a community court is unable to sit by reason of the absence of a Justice, the traditional authority concerned may, subject to subsection (6), request the Minister to appoint as an acting Justice the person designated by it.

(5) The Minister shall on receipt of a request referred to in subsection (4) in writing appoint the person designated by the traditional authority as an acting Justice to act during the absence of the Justice in whose place he or she has been so appointed.

(6) The provisions of subsection (2) shall apply in relation to the appointment of an acting Justice.

### **Appointment of clerks and messengers of court**

9. A community court shall appoint a clerk of the court and a messenger of the court to exercise such functions as may be conferred or imposed upon such clerk or messenger by the community court or in terms of this Act.

### **Allowances of Justices and remuneration of clerks and messengers of court**

10. (1) Subject to subsection (3), there shall be paid from moneys appropriated by Parliament such allowances to Justices and such remuneration to clerks and messengers of court appointed under this Act as may be prescribed under subsection (2).

(2) The Minister, with the concurrence of the Minister of Finance, shall prescribe the allowances payable to Justices for attending court sittings and the remuneration payable to clerks and messengers of court for duties performed under this Act.

(3) A Justice or a clerk or messenger of the court who receives remuneration as a traditional leader or a secretary under the Traditional Authorities Act, 2000 (Act No. 25 of 2000), shall not be entitled to allowances or remuneration under this Act.

(4) Any person who acts as a Justice under section 8(5) shall be entitled to be paid the allowances that would have been payable to the Justice in whose place he or she acts.

### **Oath of office**

11. (1) A Justice shall not perform any function as judicial officer of a community court unless he or she has taken an oath or made an affirmation, which shall be subscribed by him or her, in the form set out below, namely:

“I, ..... (full name), do hereby swear/solemnly and sincerely affirm and declare that I will in my capacity as a judicial officer of a community court administer justice to all persons alike, without fear, favour or prejudice, and as the circumstances in any particular case may require, in accordance with the laws and customs of the Republic of Namibia.”

(2) Any such oath or affirmation shall be taken or made in the official language or in any other language before the magistrate of a district in which the community court in question is situated, who shall at the foot thereof in writing make a statement to the effect that it was taken or made before him or her and of the date on which it was so taken or made and append his or her signature thereto.

### **Jurisdiction in respect of cases and persons**

12. A community court shall have jurisdiction to hear and determine any matter relating to a claim for compensation, restitution or any other claim recognized by the customary law, but only if-

- (a) the cause of action of such matter or any element thereof arose within the area of jurisdiction of that community court; or
- (b) the person or persons to whom the matter relates are in the opinion of that community court closely connected with the customary law.

#### **Application of customary law**

**13.** In any proceedings before it a community court shall apply the customary law of the traditional community residing in its area of jurisdiction: Provided that if the parties are connected with different systems of customary law, the community court shall apply the system of customary law which the court considers just and fair to apply in the determination of the matter.

#### **Ascertainment of customary law**

**14.** If a community court entertains any doubt as to the existence or content of a rule of customary law relevant to any proceedings, after having considered such submissions thereon as may be made and such evidence thereon as may be tendered by or on behalf of the parties concerned, it may, without derogation from any other lawful source to which it may have recourse, consult decided cases, text books and other sources, and may receive opinions, either orally or in writing to enable it to arrive at a decision in the matter: Provided that -

- (a) any cases, text books, sources and opinions consulted by the court shall be made available to the parties; or
- (b) any oral opinion shall be given to the court in the same manner as oral evidence.

#### **Language to be used in community courts**

**15.** (1) The official language or any other language including the sign language which a community court may decide upon may be used during any proceedings before that community court.

(2) If the proceedings are conducted in a language with which any party to the proceedings before the community court -

- (a) professes not to be conversant; or
- (b) in the opinion of such community court, appears not to be sufficiently conversant,

a competent interpreter shall be called by the community court in order to translate such evidence into a language with which such party professes or appears to the community court to be sufficiently conversant.

#### **Representation**

**16.** A party to any proceedings before a community court shall appear in person and may represent himself or herself or be represented by any person of his or her choice.

#### **Service of process**

**17.** (1) Every process of a community court shall be of force throughout the Republic of Namibia.

(2) A messenger of the court appointed under section 9 shall serve any process of the community court for which he or she was appointed.



(3) Notwithstanding subsection (2), a member of the Namibian Police Force shall be competent to serve any process in connection with a matter in a community court as if he or she were a duly appointed messenger of that community court.

(4) For the purposes of this section “process” means any order, notice, summons or other writing issued under this Act by a community court.

### **Court records and attendance registers**

**18.** (1) Every community court shall be a court of record.

(2) The proceedings in a community court shall be recorded in writing by the clerk of the court.

(3) Copies of the records of the court referred to in subsection (2), shall within such period and in such manner as may be prescribed be furnished to the magistrate’s court and the Permanent Secretary: Justice.

(4) Any person may -

(a) under the supervision of the clerk of a community court and at all reasonable times, peruse a copy of any of the records of the court compiled in accordance with subsection (2); and

(b) on payment of such fee as may be prescribed obtain a copy of such records.

(5) For the purposes of determining the allowance payable under section 7 or 10 to an assessor or a Justice of a community court, as the case may be, the clerk of that court shall keep proper record of all sittings attended by any such assessor or Justice.

### **Proceedings in community courts**

**19.** (1) Subject to this Act, the practice and procedure in accordance with which the proceedings of a community court shall be conducted, including procedures and rules relating to evidence, the manner of execution of any order or decision and the appropriation of fines shall be in accordance with the applicable customary law, but all proceedings shall be in accordance with the principles of fairness and natural justice.

(2) No person shall give evidence or be examined as a witness in a community court unless he or she -

(a) takes an oath, which shall be administered by such court in the following form:

“I swear that the evidence that I shall give, shall be the truth, the whole truth and nothing but the truth, so help me God.”; or

(b) makes an affirmation, which shall be accepted by such court in the following form:

“I solemnly affirm that the evidence that I shall give, shall be the truth, the whole truth and nothing but the truth.”.

### **Summoning of persons**

**20.** (1) A community court may issue a summons requiring any person to appear at the time and place mentioned therein to testify to a subject matter before the community court.

(2) A community court may order the arrest of any person who, without reasonable excuse, fails to obey any summons issued under subsection (1) and served on him or her personally, or to remain in attendance throughout the proceedings.

(3) Where an order is made by a community court under subsection (2), the person whose arrest has been ordered shall be arrested and brought before the community court concerned-

- (a) by the messenger of the community court; or
- (b) if the messenger of the community court is for any reason unable to arrest that person and the requirements of subsection (4) have been met, by a messenger of a magistrate's court or by a member of the Namibian Police Force to whom the order is transmitted.

(4) If an order is to be executed as contemplated in subsection (3) by a messenger of a magistrate's court or by a member of the Namibian Police Force, that order shall be lodged with the magistrate's court for endorsement by a magistrate, and the magistrate shall, if he or she is satisfied that such order was lawfully issued, endorse it for execution.

(5) The community court may impose a fine not exceeding N\$100 or payment of an equivalent amount in kind as determined by that community court after hearing the person who has been brought before it in terms of subsection (3).

### **Transfer of cases**

**21.** (1) In any proceedings before a community court, the community court may -

- (a) if it is of the opinion that such community court does not have jurisdiction to hear the matter; or
- (b) for any other good cause,

at any stage before an order is made, either of its own accord or on application by any interested party, refer the matter to the magistrate's court for directions as to the transfer of that matter to any other court.

(2) The magistrate's court to whom a matter has been referred in terms of subsection (1) may -

- (a) annul the proceedings and transfer the case to be heard *de novo* by any other community court or by a magistrate's court of competent jurisdiction; or
- (b) direct that the proceedings be continued in the community court which referred the matter to it.

### **Orders of community courts**

**22.** (1) Subject to this Act, a community court may in proceedings before it make any or all of the following orders -

- (a) an order for compensation, damages, restitution or specific performance according to customary law;
- (b) any order as to costs, fees or other charges,

payable in money or an equivalent amount in kind.

- (2) Any order made under subsection (1) -
  - (a) shall be fair and reasonable and not be in conflict with the Namibian Constitution or any other statutory law;
  - (b) may provide that the amount payable thereunder (whether in money or in kind) be paid over a period not exceeding one year in such instalments and intervals as may be determined by the community court concerned.

### **Enforcement of orders of community courts**

**23.** (1) If an order of a community court is not satisfied within the period specified by that community court, the person in whose favour it was given may register the order at the magistrate's court by lodging with the clerk of such magistrate's court a copy of the order of the community court duly certified as such by the clerk of the community court.

(2) The clerk of the magistrate's court shall, at the request of a person who has registered an order of a community court as contemplated in subsection (1), issue to such person a writ of execution in respect of the order and such writ shall be executed by a messenger of the magistrate's court in all respects as if the order were that of the magistrate's court.

### **Limitation of liability for compensation**

**24.** (1) Where compensation was awarded by a court other than a community court to an injured person under any law for any damage or loss suffered by such person and the compensation was accepted by him or her, the person against whom such award was made shall not be liable at the suit of the first-mentioned person to any proceedings in a community court in respect of the injury for which the award was made.

(2) Where compensation was in accordance with the customary law awarded by a community court under this Act to an injured person for any damage or loss suffered by him or her, the person against whom the award was made shall not be liable at the suit of the first-mentioned person in any other court (including a community court) for the payment of compensation in respect of the injury for which the award was made.

### **Matters being dealt with in other courts**

**25.** If during proceedings before a community court it comes to the attention of such court that there is already an action pending in another court (including a community court) between the same parties based on the same cause of action, and in respect of the same subject matter, such court shall stay those proceedings until -

- (a) the proceedings in such other court, including proceedings on appeal, have been disposed of; or
- (b) the proceedings in such other court have been withdrawn.

### **Appeals against orders or decisions of community courts**

**26.** (1) A party to any proceedings in a community court who is aggrieved by any order or decision of that community court may appeal to the magistrate's court: Provided that where the appeal is lodged against an order or decision of a community court recognized under section 2, and such court is vested with the jurisdiction contemplated in the proviso to subsection (5) of that section, an aggrieved party shall first exhaust his or her rights of appeal existing within such community court: Provided further that if such party is dissatisfied with the decision of such last-mentioned court he or she may appeal against such decision to the magistrate's court.

(2) An appeal under subsection (1) to a magistrate's court shall be lodged with the clerk of that magistrate's court within 30 days from the date of the order or decision appealed against or within such extended period as the magistrate's court hearing the appeal may allow, but where such party is in terms of the first proviso to that subsection required to exhaust his or her rights of appeal as contemplated in that proviso, such appeal shall be lodged and further dealt with in accordance with the applicable customary law or be lodged within such period and in such manner as may be prescribed.

(3) The execution of any order or decision of a community court shall be suspended until the appeal (if any) relating to such order or decision has been decided or withdrawn or in the opinion of the magistrate of the magistrate's court been abandoned.

(4) In hearing an appeal under subsection (1) a community court may confirm, set aside, amend or vary any order or decision or give or make any order which, in accordance with the applicable customary law, the circumstances may require.

### **Hearing of appeals by magistrates' courts**

27. (1) Notwithstanding the provisions of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), a magistrate's court shall have jurisdiction to hear and determine any appeal against any order or decision of a community court, and for the purposes of such appeal the magistrate presiding -

- (a) shall appoint two assessors, each of whom shall be selected from amongst persons mentioned in the list approved in terms of section 7(3), to advise him or her with regard to the appeal;
- (b) may, where the records submitted to him or her do not furnish sufficient evidence or information for the determination of the appeal, hear such further evidence as he or she thinks necessary.

(2) If during any such proceedings before the magistrate's court an assessor dies or he or she for any other reason becomes incapable of taking his or her seat, the presiding magistrate may either adjourn the proceedings in order to invoke the assistance of another person as assessor or proceed with the hearing with the remaining assessor.

(4) No person shall sit as an assessor during the hearing of an appeal in a case in which he or she has a personal or pecuniary interest or which was dealt with at any stage by a court of which he or she was then a member or an assessor.

(5) An assessor appointed under subsection (1) shall be entitled to be paid from moneys appropriated by Parliament such allowances as the Minister, with the concurrence of the Minister of Finance, may prescribe.

(6) The magistrate hearing the appeal shall give due consideration to, but shall not be bound by, the opinion of any assessor.

### **Decision of magistrate's court on appeal**

28. (1) Subject to subsection (2), a magistrate may in determining an appeal against an order or decision of a community court (hereinafter in this section referred to as the court of first instance) -

- (a) confirm such order or decision;
- (b) amend or set aside such order or decision;
- (c) remit the case to the court of first instance for further hearing with such instructions as to how any defect in the earlier proceedings might be overcome;

- (d) give or make any order which, in accordance with the applicable customary law, the circumstances may require.

(2) A magistrate shall not on appeal give or make any order that exceeds the jurisdiction of the court of first instance.

### **Further appeals**

**29.** (1) An appeal against an order or decision made or given by a magistrate's court under section 28 shall lie to the High Court.

(2) An appeal referred to in subsection (1) shall be noted and dealt with in the same manner as if it were an appeal in civil proceedings referred to in Chapter XI of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

### **Contempt of community court and other related offences**

**30.** (1) Any person who wilfully -

- (a) obstructs or in any way interferes with, or knowingly prevents, the service of any summons issued by a community court; or
- (b) dissuades, hinders or prevents or attempts to dissuade, hinder or prevent any person lawfully summoned to appear as a party or witness before a community court, from so appearing,

shall be guilty of an offence and upon conviction by the community court be liable to a fine not exceeding N\$1 000 or to the payment of an equivalent amount in kind as determined by that community court.

(2) Any person who wilfully -

- (a) insults any member of a community court during any sitting of the community court; or
- (b) interrupts the proceedings of a community court; or
- (c) otherwise wilfully disturbs the peace or order of such proceedings,

shall be guilty of an offence and may forthwith be removed and detained in custody, as if he or she were a prisoner awaiting trial, until the rising of the community court and shall in addition to such removal and detention be liable to a fine not exceeding N\$1 000 or the payment of an equivalent amount in kind as determined by that community court.

### **Other offences**

**31.** No person shall act as a member of a community court unless such person has been appointed as a Justice of a community court recognized or established under this Act, and where such person purports to act as a duly appointed Justice without having been so appointed-

- (a) any order or decision made or given by such person shall be null and void; and
- (b) such person shall be guilty of an offence and upon conviction be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

### **Regulations**

**32.** (1) The Minister may make regulations in relation to -

- (a) the instituting of proceedings in community courts;
- (b) the procedure to be observed in community courts;
- (c) the times and places of holding court sittings;
- (d) the manner in which records shall be kept of evidence and of proceedings in the court and the custody and disposal of such records, and the duties of the clerk of the court in respect thereof;
- (e) the manner of procuring the attendance of witnesses;
- (f) the appointment of interpreters and the allowances payable to them;
- (g) the service or execution of any process of a community court and the fees payable in respect thereof;
- (h) the hours during which the office of the clerk of a community court shall be open for the transaction of business;
- (i) the translation of court records by a sworn translator;
- (j) any matter required or permitted to be prescribed by regulation under this Act or which the Minister may consider necessary or expedient to prescribe in order to ensure the proper dispatch and conduct of the proceedings of a community court.

(2) Different regulations may be made under subsection (1) in respect of different community courts and any regulation made under that subsection may in respect of any contravention thereof or a failure to comply therewith prescribe a penalty not exceeding a fine of N\$2 000 or imprisonment for a period not exceeding six months.

(3) No regulation made under subsection (1) shall be of any force unless published in the *Gazette*.

### **Repeal of laws, and savings**

**33.** (1) Subject to subsections (3) and (4), the laws specified in the Schedule are hereby repealed to the extent indicated in the third column of that Schedule.

(2) Anything done under a law repealed by subsection (1) and which could have been done under a corresponding provision of this Act shall be deemed to have been done under that corresponding provision.

(3) Where immediately before the commencement of this Act any person or body had jurisdiction as contemplated in section 2(1)(a) or (b), such person or body shall from such commencement continue to have such jurisdiction as if this Act had not been passed, but only until a date determined by the Minister by notice in the *Gazette* or, if a community court is under this Act recognized in the area in which such person or body had exercised jurisdiction, until the recognition of such court.

(4) Any case pending before any person or body referred to in subsection (3) immediately before the date determined by the Minister under that subsection, shall from such date stand removed to the court which in terms of this Act has jurisdiction to hear and determine the same: Provided that any case partly heard at that date may be further heard and determined as if such person or body had not, by virtue of a notice issued under that subsection, ceased to have such jurisdiction.

### **Short title and commencement**

**34.** This Act shall be called the Community Courts Act, 2003, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

## SCHEDULE

LAWS REPEALED  
(Section 33)

Column 1 No. and year of law	Column 2 Title of law	Column 3 Extent of repeal
Proclamation No. 28 of 1923	Rehoboth Community: Confirmation of Agreement Proclamation, 1923	The whole
Proclamation No. R.348 of 1967	Civil and Criminal Jurisdiction. - Chiefs, Headmen, Chiefs' Deputies and Headmen's Deputies, Territory of South West Africa Proclamation, 1967	The whole
Proclamation No. R.222 of 1969	Civil and Criminal Jurisdiction. - Chiefs, Headmen, Chiefs' Deputies and Headmen's Deputies, Territory of South West Africa Amendment Proclamation, 1969	The whole
Proclamation No. R.320 of 1970	Jurisdiction of Chiefs, Chief Tribal Councillors (Ngambelas), Tribal Councillors (Kuta Members), Tribal Councils (Kutas), Headmen of Wards (Silalo Indunas) and Representatives of Chiefs. - Eastern Caprivi Zipfel Proclamation, 1970	The whole
Proclamation No. R.304 of 1972	Civil and Criminal Jurisdiction. – Chiefs, Headmen, Chiefs' Deputies and Headmen's Deputies, Territory of South-West Africa Amendment Proclamation, 1972	The whole
Proclamation No. R.241 of 1973	Civil and Criminal Jurisdiction. – Chiefs, Headmen, Chiefs' Deputies and Headmen's Deputies, Territory of South-West Africa Amendment Proclamation, 1973	The whole
Proclamation No. 160 of 1975	Proclamation to provide for the establishment of a Nama Council, Tribal Authorities and Village Management Boards in Namaland, 1975	The whole
Proclamation No. AG. 70 of 1980	Jurisdiction of Traditional Authorities in Hereroland in respect of Civil and Criminal Amendment Proclamation, 1980	The whole
Act No. 27 of 1985	Native Administration Proclamation Amendment Act, 1985	The whole
Ordinance No. 2 of 1986	Damara Community and Regional Authorities and Paramount Chief and Headmen Ordinance, 1986	The whole
Ordinance No. 3 of 1986	Tswana Chief and Headmen Ordinance, 1986	The whole