

International Law and Human Rights

International law generally refers to the rules which apply in relationships between nations. Namibia has joined together with other nations in some international agreements. These agreements are sometimes called “treaties” or “conventions”. Some examples of international agreements that Namibia has joined are the UN Convention on the Rights of the Child and the UN Convention on the Elimination of All Forms of Discrimination Against Women. The Namibian Constitution says that all international agreements which are binding on Namibia will be part of the law of Namibia, as long as they are consistent with the Constitution and any statutes passed by Parliament.

How international law becomes applicable to Namibia

The idea for an international agreement usually comes from discussions between representatives of different countries at an international forum, such as the United Nations, the International Labour Organisation or the African Union.

The first step is agreement on the text of the proposed agreement. This can be a long and difficult process involving many discussions, consultations and compromises.

When the countries taking part in the discussion feel that a sufficient degree of consensus is reached, then the agreement is opened for formal acceptance by the countries who are eligible to join the agreement. Different countries have different procedures for joining international agreements.

The Namibian Constitution explains how Namibia joins international agreements. The President of Namibia has the power to negotiate and sign international agreements on behalf of Namibia. But an international agreement can only become binding on Namibia after the National Assembly has agreed to it.

For each agreement, there is one government or international body which is selected to receive the communications from all the countries which have decided to join the treaty. This authority is called the “depository”. Namibia is not bound by any international agreement until the Namibian government has sent a formal notice of Namibia’s acceptance of the agreement to the depository for that agreement.

The United Nations is an international body established in 1945 by 51 countries committed to preserving peace through international cooperation. Today, nearly every nation in the world belongs to the United Nations. Officials from the United Nations assisted Namibia with the nation’s first free and fair elections in 1989 and the peaceful transition to independence in 1990.

The International Labour Organization (ILO) is a United Nations agency which specialises in labour issues. Most of the members of the United Nations are also members of the ILO.

The African Union is a group which has been joined by most of the countries in Africa to promote African unity and solidarity. It was formed in 2001 to replace a similar group, the Organization of Africa Unity (OAU), which had been in existence since 1963.

HOW NAMIBIA JOINS INTERNATIONAL AGREEMENTS

President considers and signs the international agreement.



Ministry responsible for international affairs sends formal documentation to the authority designated to receive communications about that agreement.

National Assembly votes that Namibia should agree to the treaty.



DEPOSITORY



Some examples of international agreements that Namibia has joined

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- UN Convention on the Rights of the Child
- UN Convention on the Elimination of All Forms of Discrimination Against Women
- ILO Convention concerning Forced or Compulsory Labour
- African Charter on Human and Peoples’ Rights
- African Charter on the Rights and Welfare of the Child

How to find out what agreements apply to Namibia

The Legal Assistance Centre has worked together with government to compile the **Namlex Appendix**, which is a list of all the agreements which Namibia has joined together with groups of other countries. Some of these agreements are open to countries all over the world. Others are limited to particular regions, such as being open only to African countries or Southern African countries. The Namlex Appendix includes other information as well, such as the date when a particular agreement became binding on Namibia. It also includes links to the text of each agreement online. The Namlex Appendix is available for free on the Legal Assistance Centre website: www.lac.org.na.

How Namibian courts use international law

Namibian courts have referred to specific international agreements that Namibia has joined in many cases. For example, one case referred to the UN Convention on the Rights of the Child. This international agreement says that all matters concerning a child must be decided in a way that protects the best interests of the child. So now the best interests standard is part of Namibian law.

In another case, the Namibian Supreme Court had to decide whether it is unconstitutional to put prisoners in chains. The Court made reference to two agreements Namibia has joined – the Convention Against Torture and the International Covenant on Civil and Political Rights. The Court said that the acceptance of these two agreements is an expression of Namibian values, so the provisions of these agreements helped the Court decide how to apply the Namibian Constitution to this issue. The Court ruled that putting prisoners in chains is a degrading practice which is not allowed in terms of the Namibian Constitution.

Human rights

Human rights are the basic rights and freedoms that belong to every person in the world, regardless of who they are or where they live. The roots of human rights can be found in most of the world's religions and philosophies. In spite of the many cultural differences between different societies, there is widespread general agreement around the world about certain basic values, such as equality, dignity and fairness. The basic rights that most countries and cultures in the world have recognised have come to be known as "human rights". ■

One important document on basic human rights is the Universal Declaration of Human Rights which was adopted by every member of the United Nations in 1948, after the Second World War, in the hope of making sure that the world would never again experience such terrible abuses of human rights. Every nation that has joined the United Nations since then has agreed to take action to promote universal respect for human rights, so every member of the United Nations is expected to follow the Universal Declaration of Human Rights. This declaration has influenced the constitutions, laws and court decisions of many nations - including the chapter on Fundamental Human Rights and Freedoms in the Namibian Constitution. It has also been a model for many of the rights protected by international agreements such as the African Charter on Human and People's Rights.

The Namibian Constitution includes strong protection for human rights. The Preamble (opening words) of the Constitution explains the connection between the adoption of the Namibian Constitution and the protection of fundamental human rights.

Preamble to the Namibian Constitution

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is indispensable for freedom, justice and peace;

Whereas the said rights include the right of the individual to life, liberty and the pursuit of happiness, regardless of race, colour, ethnic origin, sex, religion, creed or social or economic status;

Whereas the said rights are most effectively maintained and protected in a democratic society, where the government is responsible to freely elected representatives of the people, operating under a sovereign constitution and a free and independent judiciary;

Whereas these rights have for so long been denied to the people of Namibia by colonialism, racism and apartheid;

Whereas we the people of Namibia –

- have finally emerged victorious in our struggle against colonialism, racism and apartheid;
- are determined to adopt a Constitution which expresses for ourselves and our children our resolve to cherish and to protect the gains of our long struggle;
- desire to promote amongst all of us the dignity of the individual and the unity and integrity of the Namibian nation among and in association with the nations of the world;
- will strive to achieve national reconciliation and to foster peace, unity and a common loyalty to a single state;
- committed to these principles, have resolved to constitute the Republic of Namibia as a sovereign, secular, democratic and unitary State securing to all our citizens justice, liberty, equality and fraternity,

Now therefore, we the people of Namibia accept and adopt this Constitution as the fundamental law of our Sovereign and Independent Republic.