

STATE PRESIDENT'S OFFICE

No. 130.

28 January 1994

NO. 203 OF 1993: TRANSFER OF WALVIS BAY TO NAMIBIA ACT 1993.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:

ACT

To provide for the transfer to Namibia of the territory of and sovereignty over Walvis Bay and certain islands; and to provide for matters incidental thereto.

WHEREAS Walvis Bay and the twelve islands commonly known as the Penguin Islands formed part of the Colony of the Cape of Good Hope from 7 August 1884 and 6 July 1874, respectively, and were administered and legislated for as part of that Colony until 30 May 1910;

WHEREAS from 31 May 1910 Walvis Bay and the Penguin Islands formed part of the Union of South Africa and were administered and legislated for as part of the Province of the Cape of Good Hope;

WHEREAS Walvis Bay was from 1 October 1922 in terms of the South West Africa Affairs Act, 1922 (Act No. 24 of 1922), for reasons of expediency administered and legislated for as if it were part of the then Territory of South West Africa and as if the inhabitants thereof were inhabitants of the said Territory;

WHEREAS from 31 May 1961 Walvis Bay and the Penguin Islands in terms of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961), formed part of the Republic of South Africa, and it was expedient and desirable, from 1 September 1977, to administer and legislate for Walvis Bay as part of the Province of the Cape of Good Hope;

AND WHEREAS the Government of the Republic of South Africa deems it desirable to transfer Walvis Bay to the Republic of Namibia;

(English text signed by the State President.)  
(Assented to 14 January 1994.)

BE IT THEREFORE ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:

Definitions

1. In this Act, unless the context otherwise indicates

- (i) "date of transfer" means the date referred to in section 2(1); (i)
- (ii) "Namibia" means the Republic of Namibia; (iii)
- (iii) "South Africa" means the Republic of South Africa; (iv)
- (iv) "the Governments" means the Government of South Africa and the Government of Namibia; (ii)
- (v) "Transitional Executive Council" means the council established by section 2 of the Transitional Executive Council Act, 1993 (Act No. 151 of 1993); (v)
- (vi) "Walvis Bay" means the port, settlement and territory described in the Walvis Bay and St. John's River Territories Annexation Act, 1884 (Act No. 35 of 1884), of

the Cape of Good Hope, as "the Port or Settlement of Walvis Bay situated on the West Coast of South Africa, to the North of the Tropic of Capricorn, together with certain Territory surrounding the same". and includes the Island of Ichaboe and the other islands, islets and rocks mentioned in the Ichaboe and Penguin Islands Act, 1874 (Act No. 4 of 1874), of the Cape of Good Hope. (v)

#### Transfer of Walvis Bay to Namibia

2. (1) Walvis Bay shall be transferred to Namibia with effect from 1 March 1994 or such other date as may be agreed upon by the Governments.

(2) (a) The State President may after consultation with the Transitional Executive Council, before, on or after the date of transfer by proclamation in the Gazette make such laws, not inconsistent with this Act, as he may deem necessary or expedient in order to give effect to or to regulate the transfer contemplated in subsection (1), any matter arising therefrom or incidental thereto and any agreement concluded in respect thereof by the Governments.

(b) The State President may in any such law amend or repeal any legal provision, including any Act of Parliament.

(3) The transfer mentioned in subsection (1) shall take place in accordance with the provisions of this Act, any agreement mentioned in subsection (2) and any law contemplated in that subsection.

Cessation of sovereignty and authority of South Africa over Walvis Bay

3. Notwithstanding the provisions of any other law.

(a) Walvis Bay shall from the date of transfer cease to be part of South Africa;

(b) South Africa shall from that date cease to have sovereignty over Walvis Bay; and

(c) South Africa shall from that date cease to exercise authority in Walvis Bay, except in so far as the Governments may agree otherwise.

#### Saving of certain rights

4. Land and immovable property situated in Walvis Bay and any right or interest in such land or property, which on the date of transfer vest in South Africa shall continue so to vest until such time as the matter is resolved by the Governments in accordance with internationally recognized laws of State succession and agreements entered into by the Governments.

#### Citizenship

5. (1) Notwithstanding any provision to the contrary contained in any law, any person who is ordinarily resident in Walvis Bay and who immediately prior to the date of transfer was a South African citizen and elects to retain South African citizenship, shall continue to be a South African citizen after that date, and such a person shall continue to be entitled to reside in Walvis Bay.

(2) Notwithstanding any provision to the contrary contained in the South African Citizenship Act, 1949 (Act No. 44 of 1949)

(a) no person born in Walvis Bay on or after the date of transfer shall be a South African citizen by birth;

(b) if any South African citizen who on the date of transfer was

ordinarily resident in Walvis Bay and thereafter ceased to be a South African citizen, returns to South Africa for permanent residence therein, or intends to reside permanently in South Africa, as the case may be, and is not a prohibited person under the law then in force in South Africa, the Minister of Home Affairs shall, upon application in the form prescribed in terms of the South African Citizenship Act, 1949, allow such person to resume South African citizenship and shall for that purpose issue to such person a certificate in the form prescribed under that Act;

- (c) subsection (11) of section 10 of the South African Citizenship Act, 1949, shall apply mutatis mutandis in respect of a certificate mentioned in paragraph (b).

#### Repeal of laws

6. Any legal provision, including any Act of Parliament, in force in Walvis Bay immediately prior to the date of transfer shall, in so far as South Africa is concerned, cease to be of force in Walvis Bay as from that date.

#### Short title and commencement

7. This Act shall be called the Transfer of Walvis Bay to Namibia Act, 1993, and shall come into operation on a date fixed by the State President, after consultation with the Transitional Executive Council, by proclamation in the Gazette.