

EXPLANATORY MEMORANDUM

**TO THE REGULARISATION OF STATUS OF CERTAIN
RESIDENTS OF NAMIBIA, THEIR DESCENDANTS AND
FOREIGN SPOUSES BILL**

The purpose of the Regularisation of Status of Certain Residents of Namibia, Their Descendants and Foreign Spouses Bill is:

- to provide for a process for application for acquisition of Namibian citizenship by naturalisation for holders of South West Africa identification documents;
- to provide for a process for application for acquisition of Namibian citizenship by birth or descent of the descendants of holders of South West Africa identification documents;
- to provide for a process for application for the acquisition of Namibian citizenship by marriage or customary marriage of foreign spouses of holders of South West Africa identification documents;
- to provide for a prohibition of retroactive right to benefits of persons who acquire citizenship under this Act; and
- to provide for incidental matters.

Clause 1 Definitions

“**customary marriage**” means a customary marriage as defined in section 1 of the Marriage Act, 2024 (Act No. xx of 2024);

“**foreign spouse**” means a person, not being a Namibian citizen, who is a party to a marriage or customary marriage with a person eligible to acquire Namibian citizenship in terms of section 2;

“**liberation struggle**” means the political, diplomatic, military or under-ground struggle waged against colonialism, racism and apartheid which struggle was waged in Namibia and other countries and resulted in the attainment of the independence of Namibia on 21 March 1990;

“**marriage**” means a marriage as defined in section 1 of the Marriage Act, 2024 (Act No. xx of 2024);

“**South West Africa identification document**” means an identification document issued in terms of the Identity Documents in South West Africa Act, 1970 (Act No. 37 of 1970) or the Identification of Persons Act, 1979 (Act No. 2 of 1979);

Clause 2 Application for Namibian citizenship by holders of South West Africa identification documents

A person who -

- (a) is currently ordinarily resident in Namibia;
- (b) was issued with a valid South West Africa identification document;
- (c) has been ordinarily resident in Namibia since the date of issue of the South West Africa identification document; and
- (d) is not already documented as a Namibian citizen;

may apply Namibian citizenship by naturalisation to regularise his or her status in Namibia.

The application must be made within a period five years from the date of commencement of the Act. This period can be extended.

Clause 3 Application for Namibian citizenship by descendants of persons eligible to acquire Namibian citizenship

An application for Namibian citizenship by birth or descent can be lodged for a descendant of a person referred to in clause 2 if such descendant is a minor and is not yet registered as a Namibian citizen. This option is also available where the parent (or ascendant) -

- (a) is deceased but if still living would have qualified for Namibian citizenship in terms of clause 2; or
- (b) who is still living and qualifies for Namibian citizenship in terms of section 2, but refuses or fails to make an application for Namibian citizenship in terms of that section.

Clause 4 Application for Namibian citizenship by foreign spouses of persons eligible to acquire Namibian citizenship

A foreign spouse to a person referred to in clause 2, whether in a subsisting or dissolved (civil) marriage or customary marriage may apply for Namibian citizenship by marriage. The application must be made within five (5) years from the date of commencement of the Act.

For one to apply under this clause:

- (a) The marriage must have been entered into in good faith;
- (b) The foreign spouse must have ordinarily resided in Namibia as the spouse to the person referred to in clause 2; and
- (c) There must be proof of the existence of the marriage relied upon.

A foreign spouse is excluded from the application of this clause if at the the time of entering into the marriage he or she was -

- (a) enjoying diplomatic immunity in Namibia under any law relating to diplomatic privileges
- (b) a career representative of another country; or
- (c) a member of any police, military or security unit whether or not he or she was seconded for service within Namibia by the Government of another country; or
- (d) an illegal immigrant; or
- (e) serving in the armed or security forces of any foreign country while that country was at war with Namibia.

Clause 5 No retroactive right to benefits of citizenship

A person who receives a certificate of Namibian citizenship in terms of this Act does not get any retroactive entitlement to social benefits or any other benefits which are available only to Namibian citizens. Those benefits can only be claimed from the date of issue of such certificate of Namibian citizenship.

Clause 6 Fees not payable

No fees are payable for an application made under this Act.

Clause 7 Regulations

The Minister can make regulations for the Act.

Clause 8 Short title and commencement

The Act is to be called the the Regularisation of Status of Certain Residents of Namibia, Their Descendants and Foreign Spouses Act, 2024 and comes into operation on a date determined by the Minister by notice in the Gazette.
