



Republic of Namibia

MINISTERIAL MOTIVATION

FOR

**ACCESSION TO THE STATUTE OF THE
HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW**

IN THE NATIONAL ASSEMBLY

BY

THE MINISTER OF JUSTICE

MS. YVONNE DAUSAB, MP

21 October 2020

– To be checked against delivery –

1. I rise to motivate the accession of Namibia to the Statute of the Hague Conference on Private International Law in accordance with Article 63(2)(e) of the Namibian Constitution read together with Article 32(3)(e).
2. The Hague Conference¹ is an intergovernmental organization dating back to 1893 with 85 members representing States from all continents. The purpose of the Hague Conference is to oversee the progressive unification of the rules of private international law to provide for legal certainty where different legal systems are applicable to a matter. These rules act as guidelines in cross-border situations and indicate which State's law applies to the issue at hand. They also determine whether a foreign judgment may be recognized and enforced abroad. Finally they may establish cooperation mechanisms between States with a view to overcoming the challenges of cross-border legal procedures. It is important to note that these conventions regulate private law as opposed to criminal law. This means that it regulates relationships between people and not between a citizen and the State.
3. To date, the Hague Conference has adopted 41 Conventions and the most widely ratified Conventions deal with the following:
 - 3.1 The abolition of legalisation of foreign documents (Apostille);
 - 3.2 Service of process;
 - 3.3 Taking of evidence abroad;
 - 3.4 Access to justice;
 - 3.5 International child abduction;
 - 3.6 Intercountry adoption;
 - 3.7 Conflicts of laws relating to the form of testamentary dispositions;
 - 3.8 Maintenance obligations; and
 - 3.9 Recognition of divorces.

¹ <https://www.hcch.net/en/about/vision-and-mission>

4. The most recent Conventions are the Convention on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary (2006), the Convention on Choice of Court Agreements (2005), the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance together with the Protocol on the Law Applicable to Maintenance Obligations (2007) and the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019).
5. In this age of globalization, it is a well-known fact that cross-border relations are very common, and the importance of private international law can therefore not be overstated. For example, if one were doing business in Namibia with a partner from Botswana and legal documents needed to be served on the partner in Botswana the process could be made much simpler if Namibia was party to the Convention on Service Abroad of Judicial and Extrajudicial Documents like Botswana is. Instead one will now have to involve the Namibian High Court to be granted leave to serve the document abroad by substituted service. Another example would be when a crime is committed abroad and evidence has to be led in a Namibian court. At present the court may find the evidence inadmissible, because it was not collected in terms of the evidence legislation applicable in Namibia. If Namibia were party to the Convention on Taking of Evidence, the evidence from abroad would be admissible under this private international law.
6. By becoming parties to the Hague Conventions, States establish a legal environment that provides individuals and companies with legal certainty and predictability, which enables them to plan their lives and transactions across borders effectively. Being Party to these Conventions will help Namibians improve their personal lives through the recognition of the payment of maintenance across borders; easy authentication of public documents; safety of tourists both in Namibia and Namibians abroad; and improved ease of easily doing business internationally.
7. Namibia is currently an admitted State to the Conference, which means that Namibia was admitted by an affirmative vote but still needs to accept the Statute to become a Member State. Namibia is already party to two (2) Conventions, namely

the authentication of public documents, through *Apostilles* and Inter-country adoption. Membership of these Conventions has made international interactions simple and cost effective for both the Namibian Government and the Namibians making use of these processes. Other countries in the region that are Member States are: the Republic of South Africa and the Republic of Zambia.

8. I am requesting approval for Namibia to accept the Conference's invitation to full membership. Full membership will allow Namibia, together with the other Members, to participate actively in the negotiations of any new Convention or other instrument. Namibia would thus add its voice to these important negotiations and ensure that its objectives are met.
9. Membership will also grant Namibia priority access to technical assistance with the implementation and operation of the Conventions e.g. the introduction of e-Apostilles. The lack of implementation of international conventions is often a stumbling block for progress and Namibia is often badly rated by international organizations as a result. This will not be the case with the Hague Conventions as they provide ample technical assistance that we can harness as full members. Membership does not equate to automatic accession to all the Conventions of the Hague and each Ministry is still able to determine whether it will become party to the conventions relating to their Ministries or not. Membership however provides priority access to technical assistance.
10. I therefore request the support and approval of this August House to accept the invitation from the Hague Conference on International Law to become a full member of The Hague Conference. This is the best way to receive the full benefit of those Conventions that Namibia supports and is already a party to and I urge this August House to take full advantage of this opportunity.

I thank you.