



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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No.2787

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## Government Notice

### OFFICE OF THE PRIME MINISTER

No. 137 2002

#### 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. 5 of 2002: Communal Land Reform Act, 2002.

## ACT

**To provide for the allocation of rights in respect of communal land; to establish Communal Land Boards; to provide for the powers of Chiefs and Traditional Authorities and boards in relation to communal land; and to make provision for incidental matters.**

*(Signed by the President on 25 July 2002)*

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

**CHAPTER I  
PRELIMINARY****Definitions**

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

“board” means a Communal Land Board established under section 2;

“board’s area” means the area described in a notice under section 2(5) in respect of a board;

“Chief” means a person who has been recognised under the Traditional Authorities Act, 2000 (Act No. 25 of 2000) as the Chief of his or her traditional community;

“commonage” means that portion of the communal area of a traditional community which is traditionally used for the common grazing of stock;

“communal area”, in relation to a traditional community, means the area comprising the communal land inhabited by the members of that community;

“communal land” means land referred to in section 15;

“customary land right” means any of the rights referred to in paragraphs (a), (b) and (c) of section 21;

“farming unit” means a portion of land allocated for farming purposes and conforming to the size prescribed under this Act for such purpose;

“leaseholder” means a person to whom a right of leasehold has been granted under this Act;

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“Minister” means the Minister of Lands, Resettlement and Rehabilitation;

“Permanent Secretary” means the Permanent Secretary: Lands, Resettlement and Rehabilitation;

“prescribed” means prescribed by regulation under this Act;

“region” means a region as defined in the Regional Councils Act, 1992 (Act No. 22 of 1992);

“regional council” means a regional council established under section 2 of the Regional Councils Act, 1992;

“residential unit” means a portion of land allocated for residential purposes and conforming to the size prescribed under this Act for such purpose;

“right of leasehold” means a right of leasehold granted under this Act;

“spouse” includes the spouse or partner in a customary union, whether or not such customary union has been registered, and “marriage” shall be construed accordingly;

“this Act” includes regulations made thereunder;

“Traditional Authority” means a Traditional Authority of which the traditional leaders have been recognised under the Traditional Authorities Act, 2000;

“traditional community” means a traditional community as defined in the Traditional Authorities Act, 2000.

## **Chapter II COMMUNAL LAND BOARDS**

### **Establishment of Communal Land Boards**

2.(1) Subject to subsection (4), the Minister must establish Communal Land Boards to perform the functions conferred on a board by this Act within the area for which each board is established in accordance with subsection (2).

(2) A board may under subsection (1) be established in respect of -

- (a) the whole of any region in which communal land is situated;
- (b) a defined part of such a region; or
- (c) an area comprising defined parts of two or more of such regions.

(3) Subject to subsection (4) the Minister may alter the boundaries of any area determined in respect of a board under subsection (1).

(4) The powers conferred by subsections (1) and (3) may be exercised by the Minister only after consultation with the traditional authorities which will be affected thereby.

(5) The Minister must give notice in the *Gazette* -

- (a) of every board established under subsection (1), with a description of the area for which the board is established;
- (b) of any alteration of the boundaries of the area of any board under subsection (3).

**Functions of boards**

3. Subject to the provisions of this Act, the functions of a board are -
- (a) to exercise control over the allocation and the cancellation of customary land rights by Chiefs or Traditional Authorities under this Act;
  - (b) to consider and decide on applications for a right of leasehold under this Act;
  - (c) to establish and maintain a register and a system of registration for recording the allocation, transfer and cancellation of customary land rights and rights of leasehold under this Act;
  - (d) to advise the Minister, either of its own motion or at the request of the Minister, in connection with the making of regulations or any other matter pertaining to the objectives of this Act; and
  - (e) to perform such other functions as are assigned to a board by this Act.

**Composition of Boards**

4. (1) Subject to section 5, a board consists of the following members to be appointed by the Minister -

- (a) one representative from each of the Traditional Authorities within the board's area, nominated by each such Authority;
- (b) one person to represent the organised farming community within the board's area;
- (c) the regional officer of the regional council concerned, and, if the board's area extends over the boundaries of two or more regions, the regional officer of each such region;
- (d) four women, of whom -
  - (i) two are women engaged in farming operations in the board's area; and
  - (ii) two are women who have expertise relevant to the functions of a board;
- (e) four staff members in the Public Service, of whom -
  - (i) one must be nominated by the Minister responsible for regional government;
  - (ii) one must be nominated by the Minister responsible for land matters;
  - (iii) one must be nominated by the Minister responsible for environmental matters; and
  - (iv) one must be nominated by the Minister responsible for agriculture; and
- (f) if any conservancy or conservancies, declared under section 24A of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975), exist within the board's area, one person nominated by the conservancy concerned or, where applicable, by the conservancies concerned jointly.

(2) For the purpose of seeking nominations as contemplated in paragraphs (a), (e) and (f) of subsection (1), the Minister must in writing request -

- (a) the Traditional Authorities in the board's area;
- (b) the Ministers referred to in paragraph (e) of that subsection; and
- (c) the relevant conservancy or conservancies referred to in paragraph (f),

to nominate, subject to section 5, a person for appointment to the board within the period specified by the Minister in such written request.

(3) The Minister may, for the purpose of appointing a member -

- (a) referred to in paragraph (b) of subsection (1), consult with any body or organization engaged in activities for furthering the interests of the farming community in the board's area and which the Minister recognises as being representative of that farming community; or
- (b) referred to in paragraph (d) of subsection (1), consult with any Chief or Traditional Authority or any other person whom the Minister may consider expedient.

(4) The Minister may, in respect of any member being a regional officer referred to in subsection (1)(c), and after consultation with the regional officer concerned, appoint any other person to attend on behalf of the regional officer a meeting of the board or any committee thereof during the absence of the regional officer, and a person so appointed, when so attending a meeting, shall be deemed to be a member of the board concerned.

(5) If a Traditional Authority or any conservancy or conservancies fail to nominate a person for appointment following a request of the Minister under subsection (2), the Minister may appoint any person whom the Minister thinks fit and the person so appointed holds office as if he or she had been nominated by the Traditional Authority or by the conservancy or conservancies concerned, as the case may be.

(6) The members of a board must elect the chairperson of the board from amongst their number.

### **Disqualifications**

**5.** A person does not qualify to be appointed to, or to remain a member of, a board if he or she -

- (a) is a member of the National Assembly or a regional council;
- (b) is a Chief;
- (c) is an unrehabilitated insolvent, whether his or her estate was sequestrated in Namibia or elsewhere; or
- (d) has been sentenced to imprisonment without the option of a fine for any offence, whether in Namibia or elsewhere.

### **Term of office**

**6.** (1) The members of a board holds office for a period of three years and are eligible for re-appointment.

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(2) The office of a member, other than a member referred to in section 4(1)(c), becomes vacant if -

- (a) he or she ceases to be qualified to hold office in terms of section 5;
- (b) he or she resigns as a member by notice in writing delivered to the Minister;
- (c) the person or authority by whom he or she was nominated for appointment as member, withdraws such nomination by written notice to the Minister; or
- (d) is removed from office under subsection (3).

(3) The Minister may by notice in writing remove a member from office if the Minister, after giving the member a reasonable opportunity to be heard, is satisfied that such member -

- (a) has been absent from three consecutive meetings of the board without the prior permission of the board and without good cause; or
- (b) is incapacitated by physical or mental illness or for any other cause is unable or unfit to efficiently discharge the functions of a member.

(4) The chairperson of a board holds office in that capacity for the period of his or her term of office as a member of the board, but shall vacate the office of chairperson if at least two-thirds of the members of the board adopt a resolution whereby he or she is removed from that office.

(5) A board must elect one of its members, other than the chairperson, to preside at a meeting of the board when a motion for a resolution contemplated in subsection (4) is discussed and voted on.

(6) If the office of a member of a board becomes vacant, the vacancy must be filled by the appointment of another person, with due regard to the provisions of section 4(1), for the unexpired term of office of the person who ceased to be a member.

**Meetings of boards**

7. (1) The first meeting of a board must be convened by the Minister, and thereafter a board must meet once every two months at such time and place as the board determines.

(2) A special meeting of the board -

- (a) may be convened by the chairperson if the prior approval in writing of the Minister is obtained for such meeting;
- (b) must be convened by the chairperson if he or she is in writing requested by the Minister to do so for the purpose of the transacting of any business stipulated by the Minister.

(3) A majority of the members of a board shall constitute a quorum for a meeting of the board.

(4) Subject to section 6(5), the chairperson of a board, or in the absence of the chairperson, the person elected by the members present from amongst their number, must preside at a meeting of the board.

(5) A board may, with the approval of the Minister, invite not more than two persons with appropriate expert knowledge or experience to assist the board, or any committee of the board, in the discharge of any of its functions, but no such person is qualified to exercise a vote at a meeting attended by him or her.

(6) Subject to section 6(4), questions at a meeting of a board must be decided by a majority of votes of the members present and voting, and in the event of an equality of votes, the person presiding at the meeting has a casting vote.

(7) A decision of the board or an act performed under the authority of the board shall not be rendered invalid merely by reason of a vacancy in the membership of the board or the fact that a person not entitled to sit as a member of the board was present at a meeting thereof when such decision was taken or such act was authorized, if the decision was taken or the act was authorised by a majority of the members present and entitled to vote at the meeting.

(8) A board must cause minutes to be kept of the proceedings at its meetings.

### Committees

**8.** (1) A board may establish any committee consisting of members of the board for the purpose of advising the board on any matter which the board refers to the committee for investigation and advice.

(2) A committee may regulate its own procedure.

### Disclosure of interest

**9.** (1) If at any stage during the course of proceedings at any meeting of a board or a committee thereof it appears that a member has or may have an interest in a matter relating to the functions of the board or such committee which may cause a conflict of interests in the performance of his or her duties as a member of the board or such committee -

- (a) that member must forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining members to discuss the matter and determine whether the member is precluded from participating in such meeting by reason of a conflict of interests; and
- (b) such disclosure and the decision taken by the remaining members must be recorded in the minutes of the relevant meeting.

(2) If a member fails to disclose a conflict of interest as required by subsection (1) and is present at a meeting of the board or a committee, or in any manner participates in the proceedings, such proceedings in relation to the relevant matter shall, as soon as such non-disclosure is discovered, be rendered invalid and thereafter be reviewed by the board or the committee, as the case may be, in the absence of the member concerned.

(3) A member of the board who knowingly fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

### Remuneration

**10.** (1) The members of a board and persons referred to in section 7(5) who are not in the full-time employment of the Public Service must be paid such allowances in respect of their services as the Minister may determine with the concurrence of the Minister of Finance.

(2) Allowances referred to in subsection (1) may differ according to the different offices held by members or the different functions performed by them.



**Financing of boards**

**11.** All expenditure in connection with the performance of the functions of a board must be defrayed from moneys appropriated by Parliament for the purpose.

**Performance of administrative work**

**12. (1)** The administrative work, including the payment and receipt of money, in connection with the performance of the functions of a board must be performed -

- (a) by staff members in the Public Service made available by the Permanent Secretary for the purpose; or
- (b) by staff members of a regional council designated by such council upon agreement between the Minister and the regional council.

(2) The Permanent Secretary or the Regional Council, as the case may be, must appoint, in respect of each board, a staff member referred to in subsection (1) to act as the secretary of the board, who shall perform such functions as may be prescribed or as may be assigned to him or her by the chairperson of the board.

**Annual report**

**13. (1)** Every board must submit to the Minister, not later than 31 January of each year, a report on the functions performed by the board during the preceding year.

(2) The Minister must lay a copy of every report received in terms of subsection (1) on the table of the National Assembly within 28 days after receipt thereof if the National Assembly is in ordinary session, or if the National Assembly is not in ordinary session, within 28 days after the commencement of its first ensuing session.

**Limitation of liability**

**14.** A Chief or a Traditional Authority or a member of a board or a person referred to in section 12 is not personally liable for anything done in good faith in the performance of any function under this Act.

**CHAPTER III****COMMUNAL LAND AREAS****Extent of communal land**

**15. (1)** Subject to subsection (2), communal land consists of -

- (a) the areas described in Schedule 1 to this Act;
- (b) any area which is declared to be communal land under section 16(1)(a); and
- (c) any land which is incorporated under section 16(1)(b) into a communal land area referred to in paragraph (a) or (b).

(2) Where a local authority area is situated or established within the boundaries of any communal land area the land comprising such local authority area shall not form part of that communal land area and shall not be communal land.

**Establishment of new communal land areas and additions to or subtractions from communal land areas**

16. (1) The President, with the approval of the National Assembly, may by proclamation in the *Gazette*, -

- (a) declare any defined portion of unalienated State land to be a communal land area;
- (b) incorporate as part of any existing communal land area any defined portion of unalienated State land; or
- (c) withdraw from any communal land area, subject to the provisions of subsection (2), any defined portion thereof which is required for any purpose in the public interest,

and in such proclamation make appropriate amendments to Schedule 1 to this Act so as to include the description of any new communal land area declared under paragraph (a) or to redefine any communal land area affected by any change under paragraph (b) or (c).

(2) Land may not be withdrawn from any communal land area under subsection (1)(c), unless all rights held by persons under this Act in respect of such land or any portion thereof have first been acquired by the State and just compensation for the acquisition of such rights is paid to the persons concerned.

(3) The compensation payable to a person in terms of subsection (2) must be determined -

- (a) by agreement between the Minister and the person concerned; or
- (b) failing such agreement, by arbitration in accordance with the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965).

(4) Any portion of a communal land area withdrawn under subsection (1)(c) ceases to be communal land and becomes available for disposal as State-owned land.

**Vesting of communal land**

17.(1) Subject to the provisions of this Act, all communal land areas vest in the State in trust for the benefit of the traditional communities residing in those areas and for the purpose of promoting the economic and social development of the people of Namibia, in particular the landless and those with insufficient access to land who are not in formal employment or engaged in non-agriculture business activities.

(2) No right conferring freehold ownership is capable of being granted or acquired by any person in respect of any portion of communal land.

**Prohibition against fences**

18. Subject to such exemptions as may be prescribed, no fence of any nature -

- (a) shall, after the commencement of this Act, be erected or caused to be erected by any person on any portion of land situated within a communal land area; or
- (b) which, upon the commencement of this Act, exists on any portion of such land, by whomsoever erected, shall after such date as may be notified by the Minister by notice in the *Gazette*, be retained on such land,

unless authorisation for such erection or retention has been granted in accordance with the provisions of this Act.

#### CHAPTER IV

### ALLOCATION OF RIGHTS IN RESPECT OF COMMUNAL LAND

#### Rights that may be allocated

19. The rights that may be allocated in respect of communal land under this Act are divided into -

- (a) customary land rights; and
- (b) rights of leasehold.

#### *Part 1 - Customary land rights and grazing right*

#### Power to allocate and cancel customary land rights

20. Subject to the provisions of this Act, the primary power to allocate or cancel any customary land right in respect of any portion of land in the communal area of a traditional community vests -

- (a) in the Chief of that traditional community; or
- (b) where the Chief so determines, in the Traditional Authority of that traditional community.

#### Customary land rights that may be allocated

21. The following customary land rights may be allocated in respect of communal land -

- (a) a right to a farming unit;
- (b) a right to a residential unit;
- (c) a right to any other form of customary tenure that may be recognised and described by the Minister by notice in the *Gazette* for the purposes of this Act.

#### Application for customary land right

22. (1) An application for the allocation of a customary land right in respect of communal land must -

- (a) be made in writing in the prescribed form; and
- (b) be submitted to the Chief of the traditional community within whose communal area the land in question is situated.

(2) An applicant referred to in subsection (1) must furnish such information and submit such documents as the Chief or the Traditional Authority may require for purpose of consideration of the application.

(3) When considering an application made in terms of subsection (1), a Chief or Traditional Authority may -

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- (a) make investigations and consult persons in connection with the application;
- (b) if any member of the traditional community objects to the allocation of the right, conduct a hearing to afford the applicant and such objector the opportunity to make representations in connection with the application,

and may refuse or, subject to subsection (4) and section 23, grant the application.

(4) In granting an application for a right to a farming unit or a residential unit the Chief or Traditional Authority may -

- (a) allocate the right in respect of the specific portion of land being applied for or, by agreement with the applicant, any other portion of land; and
- (b) subject to section 23, determine the size and the boundaries of the portion of land in respect of which the right is allocated.

**Limitation on size of land that may be held under customary land rights**

**23.**(1) After the commencement of this Act, no person shall, without the written approval of the Minister, be entitled to be allocated and to acquire any customary land right in respect of communal land which exceeds the maximum size which the Minister, in consultation with the Minister responsible for agricultural affairs, may prescribe for the purposes of this subsection.

(2) In prescribing a maximum size under subsection (1), the Minister may differentiate -

- (a) according to the area where land is situated;
- (b) according to the purpose for which land is to be used; or
- (c) between persons according to the total extent of other land, whether communal land or otherwise, held by them under any right which permits the beneficial use of such land for a purpose similar to which land held under a customary land right may be used.

**Ratification of allocation of customary land right**

**24.**(1) Any allocation of a customary land right made by a Chief or a Traditional Authority under section 22 has no legal effect unless the allocation is ratified by the relevant board in accordance with the provisions of this section.

(2) Upon the allocation of a customary land right the Chief or Traditional Authority by whom it is allocated must forthwith notify the relevant board thereof and furnish to the board the prescribed particulars pertaining to the allocation.

(3) Upon receipt of a notification and the particulars referred to in subsection (2), the board must determine whether the allocation of the right in the particular case was properly made in accordance with the provisions of this Act.

(4) In exercising its function under subsection (3), a board may make such enquiries and consult such persons as it may consider necessary or expedient for that purpose and -

- (a) must ratify the allocation of the right if it is satisfied that such allocation was made in accordance with the provisions of this Act;

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- (b) may refer the matter back to the Chief or Traditional Authority concerned for reconsideration in the light of any comments which the board may make; or
- (c) must veto the allocation of the right, if -
  - (i) the right has been allocated in respect of land in which another person has a right;
  - (ii) the size of the land concerned exceeds the maximum prescribed size; or
  - (iii) the right has been allocated in respect of land which is reserved for common usage or any other purpose in the public interest.

(5) If a board vetoes the allocation of a right under subsection (4)(c) it must inform the Chief or Traditional Authority and the applicant concerned in writing of the reasons for its decision.

**Registration of customary land right**

**25. (1)** If a board ratifies the allocation of a customary land right under section 24(4)(a) it must -

- (a) cause such right to be registered in the prescribed register in the name of the person to whom it was allocated; and
- (b) issue to that person a certificate of registration in the prescribed form and manner.

(2) The board must keep a duplicate copy of every certificate of registration issued under subsection (1).

**Duration of customary land right**

**26.(1)** Subject to section 27, and unless the right is relinquished by the holder thereof, a customary land right allocated under this Act endures for the natural life of the person to whom it is allocated.

(2) Upon the death of the holder of a right referred to in subsection (1) such right reverts to the Chief or Traditional Authority for re-allocation forthwith -

- (a) to the surviving spouse of the deceased person, if such spouse consents to such allocation; or
- (b) in the absence of a surviving spouse, or should he or she not consent as contemplated in paragraph (a), to such child of the deceased person as the Chief or Traditional Authority determines to be entitled to the allocation of the right in accordance with customary law.

(3) If, after the allocation of a customary land right to a surviving spouse referred to in subsection (2), such spouse enters into a second or subsequent marriage, then, upon the death of such surviving spouse, the right in question reverts to the Chief or Traditional Authority for re-allocation of such right forthwith -

- (a) to the surviving spouse, if any, of such second or subsequent marriage, if he or she consents to such allocation; or

- (b) in the absence of a surviving spouse from such second or subsequent marriage, or should he or she not consent as contemplated in paragraph (a), to such child, either from the first or such second marriage or any such subsequent marriage, as the Chief or Traditional Authority determines to be entitled to the allocation of the right in accordance with customary law.

(4) Upon the death of a surviving spouse of a second or subsequent marriage contemplated in subsection (3) to whom a customary land right has been allocated in terms of that subsection, such right reverts to the Chief or Traditional Authority, who then, subject to subsection (5), must determine the person to whom the right must be allocated, who may include -

- (a) a surviving spouse of a further marriage which the deceased person referred to in this subsection has entered into subsequent to the allocation of the right to him or her in terms of subsection (3);
- (b) any child from any of the marriages contemplated in the provisions of this section; or
- (c) any other person.

(5) For the purpose of determining the person to whom a customary land right must be allocated in the circumstances contemplated in subsection (4), the Chief or Traditional Authority concerned must first consult with such members of the family or families concerned as the Chief or Traditional Authority considers necessary or expedient to consult in accordance with customary law.

(6) Any reference in this section to a child must be construed as including an adopted child.

(7) If, in any of the circumstances provided for in the preceding provisions of this section, no surviving spouse or any children can be found to whom a customary land right can be allocated, or should the surviving spouse and such children decline to accept such allocation of a right, the Chief or Traditional Authority may allocate the right in question to any person as the Chief or Traditional Authority thinks fit.

### **Cancellation of customary land right**

27.(1) Subject to subsection (2), a Chief or Traditional Authority may, in accordance with customary law, cancel a customary land right, including a right referred to in section 28(1) -

- (a) if the holder of the right fails to observe in a material respect any condition or restriction attached to the right under this Act;
- (b) if the land is being used predominantly for a purpose not recognised under customary law; or
- (c) on any other ground as may be prescribed.

(2) Any cancellation of a customary land right by a Chief or a Traditional Authority under subsection (1) has no legal effect unless the cancellation is ratified by the relevant board.

(3) Upon the cancellation of a customary land right under subsection (1), the Chief or Traditional Authority by whom it was cancelled must forthwith notify the relevant board thereof and furnish to the board the prescribed particulars pertaining to the cancellation.

(4) A board must ratify the cancellation of a customary land right in terms of subsection (1) if it is satisfied that such cancellation was properly effected in accordance with the provisions of this Act.

(5) The board must cause to be entered in the prescribed register any cancellation of a customary land right in terms of this section.

### **Recognition of existing customary land rights**

**28. (1)** Subject to subsection (2), any person who immediately before the commencement of this Act held a right in respect of the occupation or use of communal land, being a right of a nature referred to in section 21, and which was granted to or acquired by such person in terms of any law or otherwise, shall continue to hold that right, unless -

- (a) such person's claim to the right to such land is rejected upon an application contemplated in subsection (2); or
- (b) such land reverts to the State by virtue of the provisions of subsection (13).

(2) With effect from a date to be publicly notified by the Minister, either generally or with respect to an area specified in the notice, every person who claims to hold a right referred to in subsection (1) in respect of land situated in the area to which the notice relates, shall be required, subject to subsection (3), to apply in the prescribed form and manner to the relevant board -

- (a) for the recognition and registration of such right under this Act; and
- (b) where applicable, for authorisation for the retention of any fence or fences existing on the land, if the applicant wishes to retain such fence or fences.

(3) Subject to section 37, an application in terms of subsection (2) must be made within a period of three years of the date notified under that subsection, but the Minister may by public notification extend that period by such further period or periods as the Minister may determine.

(4) A notification under subsection (2) or (3) must be published in the *Gazette* and be given in any other manner which the Minister considers expedient.

(5) An application in terms of subsection (2) must be accompanied by -

- (a) any documentary evidence, if available, which the applicant can submit in support of his or her claim;
- (b) a letter from the Chief or Traditional Authority of the traditional community within whose communal area the land in question is situated, furnishing the prescribed information;
- (c) any further information or documents as the board may require.

(6) In considering an application in terms of subsection (2), and notwithstanding a report by an investigating committee in terms of section 37 in a particular case, a board may make such investigations or inquiries and consult such persons as it may consider necessary or expedient to establish any fact relevant to the applicant's claim, including -

- (a) the date when and manner in which the applicant acquired the right in question;

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- (b) whether any other person claims to possess any right in relation to the land in question;
  - (c) whether the area of the land conforms to the prescribed size;
  - (d) the position of the boundaries or any beacons of the land.
- (7) If the board is satisfied as to the validity of the applicant's claim to the right, it must -
- (a) recognise the applicant's right to the land concerned and cause particulars of that right to be entered in the prescribed register; and
  - (b) issue to the applicant a certificate of registration.
- (8) If the applicant has, in terms of subsection (2)(b), applied for authorisation to retain any fence or fences which exist on the land in question and the board is satisfied that -
- (a) the fence or fences were erected in accordance with customary law or the provisions of any statutory law;
  - (b) the fence will not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community; and
  - (c) in the circumstances of the particular case, reasonable grounds exist to allow the applicant to retain the fence or fences concerned,
- the board must grant to the applicant authorisation for the retention thereof, subject to any conditions which it may consider expedient to impose.
- (9) If, in respect of any application in terms of subsection (2), the board is of the opinion -
- (a) that there are conflicting claims in relation to the land; or
  - (b) that reasonable grounds exist to doubt the validity of the applicant's claim,
- it must cause a hearing to be conducted in the prescribed manner to resolve the matter, and may make such decision in relation to the claim as it thinks just.
- (10) Without prejudice to the generality of the power conferred by subsection (9), a decision under that subsection may include -
- (a) affirmation of the claim;
  - (b) subject to subsection (11), rejection of the claim;
  - (c) affirmation of the claim subject to any variations as the board may determine, including variation in respect of the area or the position of the boundaries of the land if the board determines that the area of the land exceeds the prescribed size or that the position of the boundaries are not in accordance with customary law; or
  - (d) the allocation of a right in respect of an alternative portion of land if the land to which the applicant's claim relates encroaches on the commonage.



(11) If a board is not satisfied as to the validity of an applicant's claim to the right in question, it is not obliged to reject such claim but may instead refer the matter to the Chief or Traditional Authority concerned for consideration whether the applicant should be allocated a customary land right under this Act, whether in respect of the land to which the applicant's claim relates or to an alternative portion of land.

(12) Upon referral of a claim in terms of subsection (11), the Chief or Traditional Authority must consider and determine the claim as if it were a new application for the allocation of the right in question.

(13) Except if the Minister on good cause shown directs otherwise, no person shall on expiry of the period allowed for applications in terms of subsection (3) be entitled to apply for the recognition and registration of any right referred to in subsection (1), in which event -

- (a) the person holding the land shall be deemed to have relinquished his or her claim to that land; and
- (b) such land shall revert to the State and become available for the allocation of any right under this Act.

(14) If the person who holds a right referred to in subsection (1) dies -

- (a) before the expiry of the period referred to in subsection (3) and without such person having made the application contemplated in subsection (2), the surviving spouse or, in the absence of such a spouse, such child of that person as the board, in consultation with the Chief or Traditional Authority concerned may approve, may make that application as if the right held by the deceased person vested in such spouse or such child, as the case may be; or
- (b) after he or she has duly made the application contemplated in subsection (2), but before the determination of the application, that application shall be deemed to have been made by the surviving spouse or, in the absence of such a spouse, by a child referred to in paragraph (a), unless such spouse or such child, as the case may be, indicates otherwise.

### **Grazing rights**

**29.(1)** Subject to the provisions of this section, the commonage in the communal area of a traditional community is available for use by the lawful residents of such area for the grazing of their stock, subject to -

- (a) such conditions as may be prescribed or as the Chief or Traditional Authority concerned may impose, including conditions relating to -
  - (i) the kinds and number of stock that may be grazed; and
  - (ii) the section or sections of the commonage where stock may be grazed and the grazing in rotation on different sections.
- (b) the right of the Chief or Traditional Authority or the relevant board to utilise any portion of the commonage which is required for the allocation of a right under this Act; and
- (c) the right of the President under section 16(1)(c) to withdraw and reserve any portion of the commonage for any purpose in the public interest.

(2) Notwithstanding subsection (1), the Chief or Traditional Authority may withdraw the grazing right of any resident who -

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- (a) fails to observe in a material respect any condition referred to in subsection (1)(a);
- (b) contravenes any provision of subsection (4); or
- (c) has access to other land, whether communal land or otherwise, held by such resident under any right the total extent of which is equal to or more than the maximum size prescribed by the Minister under section 23 and which the Chief or Traditional Authority considers to offer sufficient grazing for the stock of such resident.

(3) Notwithstanding subsection (1), the Chief or Traditional Authority may upon application of any person who is not a resident referred to in that subsection, grant a grazing right to such person, either for a specified or an indefinite period, and any such person shall exercise such right subject to the conditions referred to in subsection (1)(a): Provided that the Chief or Traditional Authority may at any time withdraw a grazing right granted under this subsection if, due to drought or any other reasonable cause, the Chief or Traditional Authority considers such cancellation in the interest of the residents of the traditional community concerned.

(4) Except with the written authority of the Chief or Traditional Authority, and ratification by the board concerned, no person shall -

- (a) erect or occupy any building or other structure on the commonage;
- (b) plough or cultivate any portion of the commonage;
- (c) take up his or her abode on or occupy any portion of the commonage; or
- (d) obstruct the approaches to any watering place on the commonage, or prevent or attempt to prevent any person from drawing water from, or watering stock at, such a watering place, or pollute the water at such watering place or interfere with the operation of any windmill, water-pump, water-pipe, dam or storage tank or other appurtenance installed or constructed at such a watering place;
- (e) carry on any activity on the commonage, other than the lawful grazing of stock, which may prevent or restrict the residents of the traditional community concerned from a reasonable exercise of their grazing rights.

(5) A person who contravenes any provision of subsection (4) is guilty of an offence and liable on conviction to a fine not exceeding N\$4 000 or imprisonment for a period not exceeding one year.

*Part 2 - Right of leasehold*

**Power to grant right of leasehold**

**30.** (1) Subject to subsections (3) and (4) and section 31, a board may, upon application, grant to a person a right of leasehold in respect of a portion of communal land, but a right of leasehold for agricultural purposes may be granted only in respect of land which is situated within a designated area referred to in subsection (2).

(2) The Minister, after consultation with the Traditional Authority and the board concerned, must designate by notice in the *Gazette*, in respect of the communal area of each traditional community, an area within which that board may grant rights of leasehold for agricultural purposes.

(3) Notwithstanding subsection (1) a person may apply to the Minister for approval for the grant of a right of leasehold in respect of land which is wholly or partly situated outside a designated area, and the Minister may grant the application if the Minister, after consultation with the Traditional Authority and the board concerned, is satisfied that -

- (a) the grant of the right of leasehold will not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community; and
- (b) in the circumstances of the particular case, reasonable grounds exist for the grant of approval.

(4) Subject to subsection (5), a board may grant a right of leasehold only if the Traditional Authority of the traditional community in whose communal area the land is situated consents to the grant of the right.

(5) If a Traditional Authority refuses to grant consent in terms of subsection (4) when in the opinion of the board consent ought to be given, the board may submit the matter to an arbitrator referred to in subsection (6) for decision, who may grant consent in the place of the Traditional Authority if he or she is satisfied that the Traditional Authority is withholding consent unreasonably.

(6) The Minister must appoint as arbitrator under subsection (5) a person approved by the board and by the Traditional Authority concerned and, if either the board or the Traditional Authority or both -

- (a) fail to communicate its or their decision to the Minister with respect to a person proposed for appointment within 30 days of being notified by the Minister of the person's name, address and qualifications; or
- (b) on a third occasion communicate disapproval of a person proposed for the particular appointment;

the Minister may disregard the requirement of approval stipulated by this subsection in so far as it concerns the board or the Traditional Authority or both, as the case may be.

### **Application for right of leasehold**

**31. (1)** An application for a right of leasehold in respect of communal land must be made in the prescribed manner to the board in whose area the land in question is situated.

(2) A right of leasehold may not be granted in respect of a portion of land which another person holds under a customary land right, unless such person agrees to relinquish his or her right in respect of the land, subject to the payment of compensation as agreed to by such person and suitable arrangements for his or her resettlement on alternative land.

(3) A board may not, without the prior written approval of the Minister, grant a right of leasehold in respect of any land -

- (a) which exceeds the maximum size prescribed for the particular use for which the right is required; or
- (b) if the applicant is a leaseholder in respect of another portion of land granted under this Act or occupies any communal land under a right referred to in section 35(1), unless recognition of such right is refused in accordance with that section.

(4) Before granting a right of leasehold in terms of subsection (1) in respect of land which is wholly or partly situated in an area which has been declared a conservancy in terms of section 24A of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975), a board must have due regard to any management and utilization plan framed by the conservancy committee concerned in relation to that conservancy, and such board may not grant the right of leasehold if the purpose for which the land in question is proposed to be used under such right would defeat the objects of such management and utilization plan.

#### **Conditions applicable to right of leasehold**

**32. (1)** A right of leasehold may be granted by a board only -

- (a) if an amount in respect of that right and any improvements on the land in question is paid to that board;
- (b) if security is furnished to the satisfaction of the board for the payment of the said amount upon registration of the right of leasehold; or
- (c) if the board allows such amount to be paid by way of instalments in a manner agreed upon between the board and the person to whom the right is granted.

(2) The amount referred to in subsection (1) must be determined in the manner prescribed.

(3) A right of leasehold is subject to such further conditions as may be prescribed by the Minister generally or as may be approved by the Minister in a particular case.

(4) Conditions referred to in subsection (3) may include conditions prescribing the circumstances in which the grantee of the right of leasehold -

- (a) may be required to cause the land in question to be surveyed, at his or her own expense, before the registration of such right in his or her name is effected; or
- (b) may be granted permission to cause the land in question to be surveyed at his or her own expense.

(5) Moneys paid in respect of the amount referred to in subsection (1) must be deposited in the fund established by or under any law for the purpose of regional development.

#### **Registration of right of leasehold**

**33. (1)** Subject to subsection (2), if an application for a right of leasehold is granted by a board, the board must -

- (a) cause such right to be registered in the prescribed register in the name of the applicant; and
- (b) issue to the applicant a certificate of leasehold in the prescribed form and manner.

(2) If the land in respect of which the right of leasehold is granted is surveyed land which is shown on a diagram as defined in section 1 of the Land Survey Act, 1993 (Act No. 33 of 1993) and the term of lease is for a period of 10 years or more, the leasehold must be registered in accordance with the provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

**Duration of right of leasehold**

34. (1) Subject to subsection (2), a right of leasehold may be granted for such period, not exceeding 99 years, as the board and the grantee of the right may agree.

(2) A right of leasehold granted for a period exceeding ten years is not valid unless it is approved by the Minister.

(3) A right of leasehold may be renewed by agreement between the board and the leaseholder, but subject to the approval of the Minister in a case referred to in subsection (2).

**Existing rights to occupy communal land**

35. (1) Subject to subsection (2), any person who immediately before the commencement of this Act held a right, not being right under customary law, to occupy any communal land, whether by virtue of any authority granted under any law or otherwise, may continue to occupy such land under that right, subject to the same terms and conditions on which the land was occupied immediately before the commencement of this Act, until -

- (a) such right is recognised and a right of leasehold is granted to such person in respect of the land upon acceptance of an offer made in terms of subsection (7);
- (b) such person's claim to the right to such land is rejected upon an application contemplated in subsection (2);
- (c) such person declines or fails to accept an offer of a right of leasehold made in terms of subsection (7); or
- (d) such land reverts to the State by virtue of the provisions of subsection (13).

(2) With effect from a date to be publicly notified by the Minister, either generally or with respect to an area specified in the notice, every person who claims to hold a right referred to in subsection (1) in respect of land situated in the area to which the notice relates, shall be required to apply in the prescribed form and manner to the relevant board -

- (a) for the recognition of such right and the grant of a right of leasehold under this Act; and
- (b) where applicable, for authorisation for the retention of any fence or fences existing on the land, if the applicant wishes to retain such fence or fences.

(3) Subject to section 37 an application in terms of subsection (2) must be made within a period of three years of the date notified under that subsection, but the Minister may by public notification extend that period by such further period or periods as the Minister may determine.

(4) A notification under subsection (2) or (3) must be published in the *Gazette* and be given in any other manner which the Minister considers expedient.

- (5) An application in terms of subsection (2) must be accompanied by -
  - (a) any documentary evidence, if available, which the applicant can submit in support of his or her claim;
  - (b) a letter from the Chief or Traditional Authority of the traditional community within whose communal area the land in question is situated, furnishing the prescribed information;

(c) any further information or documents as the board may require.

(6) In considering an application in terms of subsection (2), and notwithstanding a report by an investigating committee in terms of section 37 in a particular case, a board may make such investigations or inquiries and consult such persons as it may consider necessary or expedient to establish any fact relevant to the applicant's claim, including -

- (a) the date when and manner in which the applicant acquired the right in question;
- (b) whether any other person claims to possess any right in relation to the land in question;
- (c) whether the land to which the claim relates conforms to the prescribed size for the particular use for which the land is held;
- (d) the position of the boundaries or any beacons on the land;
- (e) whether the land is fenced-off and the nature, extent and date of erection of the fence.

(7) If the board is satisfied as to the validity of the applicant's claim, the board must in writing -

- (a) offer to grant to the applicant a right of leasehold in respect of the land;
- (b) state the conditions subject to which the leasehold is offered;
- (c) specify the time, not being less than 90 days after the date on which the offer is made, within which the offer may be accepted; and
- (d) inform such person that if he or she declines the offer or fails to accept it within the specified time, he or she shall cease to have any claim to the land in question.

(8) A person who refuses or fails to accept an offer made in accordance with subsection (7) shall cease to have any claim to the land in question, in which event the land shall revert to the State for the allocation of any right under this Act.

(9) If the applicant has, in terms of subsection (2)(b), applied for authorisation to retain any fence or fences which exist on the land in question and the board is satisfied that -

- (a) the fence or fences were erected in accordance with the provisions of any law or with the consent of a competent authority;
- (b) the fence will not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community; and
- (c) in the circumstances of the particular case reasonable grounds exist for allowing the applicant to retain the fence or fences concerned,

the board must grant to the applicant authorisation for the retention thereof, subject to such conditions as it may consider expedient to impose.

(10) If, in respect of any application in terms of subsection (2), the board is of the opinion -

- (a) that there are conflicting claims in relation to the land; or

- (b) that reasonable grounds exist to doubt the validity of the applicant's claim,

it must cause a hearing to be conducted in the prescribed manner to resolve the matter, and may make such decision in relation to the claim as it thinks just.

(11) Without prejudice to the generality of the power conferred by subsection (10), a decision under that subsection may include -

- (a) affirmation of the claim;
- (b) subject to subsection (12), rejection of the claim; or
- (c) affirmation of the claim subject to any variations as determined by the board, including variation in respect of the area or the position of the boundaries of the land if the board determines that the area of the land exceeds the prescribed size or that the position of the boundaries are not valid.

(12) Where a board is not satisfied as to the validity of an applicant's claim to the right in question, it is not obliged to reject such claim but may instead offer to the claimant the grant of a right of leasehold under this Act, either in respect of the piece of land to which the claimant's claim relates or a portion thereof or in respect of any other piece of land as the board may determine.

(13) Except if the Minister on good cause shown directs otherwise, no person shall, on expiry of the period allowed for applications in terms of subsection (3), be entitled to apply for the recognition of any right referred to in subsection (1) and the grant of a right of leasehold under this Act, in which event -

- (a) the person holding the land shall be deemed to have relinquished his or her claim to that land; and
- (b) such land shall revert to the State and become available for the allocation of a right under this Act.

### **Cancellation of right of leasehold**

**36.** In addition to the grounds for cancellation set out in a deed of leasehold, a right of leasehold may be cancelled by a board if the leaseholder fails to comply with the requirements or to adhere to any restrictions imposed by or under any other law pertaining to the utilisation of the land to which the right relates.

## **CHAPTER V GENERAL**

### **Preliminary investigation of claim to existing rights**

**37. (1)** The Minister, in consultation with a board, may establish for that board an investigating committee, comprising such members as the Minister may appoint, to -

- (a) conduct a preliminary investigation referred to in subsection (2); and
- (b) report to the board thereon.

(2) Notwithstanding sections 28 and 35 and the period allowed for applications referred to in subsection (2) of both those sections, if a board has not yet determined an application in respect of land occupied, used or otherwise controlled by a person and enclosed with a fence, irrespective whether an application has been made, the board may at any time direct an investigating committee referred to in subsection (1) to conduct a preliminary investigation to establish the circumstances concerning -

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- (a) the occupation, use or control of the land by that person;
  - (b) the existence of the fence on the land; and
  - (c) any other matter which the board itself may investigate in terms of either of those sections or which may be indicated by the board.
- (3) The person designated by the Minister as chairperson of the investigating committee must give at least 30 days' notice to the person in respect of whom the preliminary investigation is to be held, informing him or her -
- (a) of the time and place of the preliminary investigation;
  - (b) that he or she is required to attend the preliminary investigation to be questioned on the matters mentioned in subsection (2); and
  - (c) that any book or document relevant to the subject of the preliminary investigation which he or she may wish to submit to the investigating committee must be produced at his or her appearance before that committee.
- (4) For the purposes of a preliminary investigation -
- (a) the chairperson of the investigating committee may summon the Chief or any other traditional leader of the traditional community concerned and any other person who is believed to be able to furnish information on the subject of the preliminary investigation or to have in his or her possession or under his or her control a book or document which relates to that subject, to appear before the investigating committee at the time and place specified in the summons to be questioned or to produce that book or document;
  - (b) the committee may question a person appearing before it under oath or affirmation administered by the chairperson, and examine or retain for further examination or safe custody any such book or document, provided a receipt therefor is issued to the person and he or she is allowed to make and retain a copy of the book or document.
- (5) The notice referred to in subsection (3) and a summons referred to in subsection (4) must be signed by the chairperson of the investigating committee and be served in the manner prescribed.
- (6) A person summoned in terms of subsection (4) is guilty of an offence if he or she -
- (a) without sufficient cause fails to appear before the investigating committee at the time and place specified in the summons or to remain in attendance until excused by the chairperson from further attendance;
  - (b) at his or her appearance before the investigating committee refuses to be sworn in or to make an affirmation when requested to do so by the chairperson;
  - (c) having taken the oath or having made affirmation -
    - (i) fails to answer fully and satisfactorily any question lawfully put to him or her;
    - (ii) fails to produce a book, document or other object in his or her possession or under his or her control which he or she has been summoned to produce;



- (iii) gives false evidence knowing it to be false or not knowing or believing it to be true,

and a person convicted of any such offence is liable on conviction to a fine not exceeding N\$1 000 or imprisonment for a period not exceeding 3 months.

(7) If at the conclusion of the preliminary investigation the investigating committee thinks it expedient that the board should forthwith consider the person's claim to the land in question or to his or her entitlement to the fence on the land, the investigating committee must instruct that person to prepare and submit to the chairperson of the committee, within the time stipulated by the committee, his or her application in terms of section 28(2) or 35(2), as the case may be, in respect of the land and the fence for referral to the board.

- (8) If the person in respect of whom a preliminary investigation is held -
  - (a) fails to attend the preliminary investigation; or
  - (b) fails to comply with an instruction of the investigating committee in terms of subsection (7),

the investigating committee must state that fact in its report to the board.

(9) If the investigating committee reports to the board any failure on the part of the person as contemplated in subsection (8), the board may, by notice in writing served on that person in the prescribed manner -

- (a) inform him or her of the report of the investigating committee concerning his or her failure;
- (b) direct him or her to comply, within the time specified in the notice, with such requirements as the board may stipulate in the notice in connection with that failure; and
- (c) inform him or her of the provisions of subsection (10).

(10) If the person without reasonable cause fails to comply with a requirement stipulated in the notice referred to in subsection (9), the board may declare the person to be divested of any claim in respect of the land in question.

- (11) A person declared to be divested of a claim under subsection (10) -
  - (a) is not entitled to make an application in terms of section 28(2) or 35(2) in respect of the land concerned; and
  - (b) ceases to have any claim to or in respect of that land or anything erected or installed on the land,

notwithstanding that the period for applications in terms of either of those sections have not expired.

### **Transfer of rights**

**38.** Subject to such exemptions as may be prescribed, or unless any condition attaching to a customary land right or a right of leasehold under this Act provides otherwise -

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- (a) a customary land right may be transferred only with the written consent of the Chief or Traditional Authority concerned;
- (b) a right of leasehold may be transferred only with the written consent of the board concerned.

**Appeals**

**39.** (1) Any person aggrieved by a decision of a Chief or a Traditional Authority or any board under this Act, may appeal in the prescribed manner against that decision to an appeal tribunal appointed by the Minister for the purpose of the appeal concerned.

(2) An appeal tribunal consists of such person or number of persons as the Minister may appoint, who must be a person or persons with adequate skills and expertise to determine the appeal concerned,

(3) If two or more persons are appointed under subsection (2) the Minister must designate one of them to act as chairperson of the appeal tribunal.

(4) All the members of an appeal tribunal constitute a quorum for a meeting of that tribunal.

(5) If the tribunal consists of more than one member -

- (a) the decision of the majority of the members thereof shall be the decision of the appeal tribunal; and
- (b) the chairperson of the appeal tribunal has a casting vote in addition to a deliberative vote in the case of an equality of votes.

(6) An appeal tribunal may -

- (a) confirm, set aside or amend the decision which is the subject of the appeal;
- (b) make any order in connection therewith as it may think fit.

(7) A member of the appeal tribunal who is not a staff member in the Public Service must be paid from money appropriated by Parliament for the purpose such remuneration and allowances as the Minister determines with the concurrence of the Minister of Finance.

**Compensation for improvements**

**40.**(1) No person -

- (a) has any claim against a Chief, a Traditional Authority, a board or the State for compensation in respect of any improvement effected by him or her or any other person on land in respect of which such person holds or held a customary land right or a right of leasehold under this Act, including a right referred to in section 28(1) or 35(1); or
- (b) may remove or cause to be removed from such land, or destroy or damage or cause to be destroyed or damaged on such land, any improvement when he or she vacates or intends to vacate the land, whether such improvement was effected by such person or any other person, but the board concerned, after consultation with the Minister, may grant consent for the removal of any such improvement.

(2) Subsection (1) is not to be construed as precluding the holder of a customary land right or a right of leasehold who proposes to transfer his or her customary land right or right of leasehold to another person in accordance with the provisions of this Act from accepting, in accordance with an agreement entered into between such holder and that person, payment of compensation for any improvement on the land in respect of which the right is to be transferred.

(3) Notwithstanding subsection (1), and except if compensation is paid in the circumstances referred to in subsection (2) or in terms of subsection (4), the Minister, after consultation with the board concerned, may, upon the termination of a customary land right or a right of leasehold, pay to the person whose right has terminated compensation in respect of any necessary improvement effected by that person on the land concerned.

(4) If -

- (a) a right of leasehold has terminated in respect of land on which any improvement exists which was effected by the leaseholder during the currency of the lease; and
- (b) upon a subsequent grant of a further right of leasehold in respect of that land to another person, that person is required by the board in terms section 32(1) to pay any consideration in respect of that improvement,

the board must, from the moneys so recovered in respect of that improvement, pay compensation to the former leaseholder in such amount as may be determined in terms of subsection (5), except to the extent that any compensation has been paid to that leaseholder in terms of subsection (3).

(5) The amount of compensation payable to a person in terms of subsection (3) or (4) must be determined by agreement between the board concerned and such person, subject to the approval of the Minister, and failing such agreement or approval, by arbitration in accordance with the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965).

(6) Compensation payable to a person in terms of subsection (3) must be paid from moneys appropriated by Parliament for the purpose.

(7) If compensation in respect of any improvement has been paid from the State Revenue Fund in terms of subsection (3), and on a subsequent allocation of a customary land right or a right of leasehold in respect of the land concerned, the grantee is required to pay, and pays, to the board any consideration in respect of that improvement, the board must, from the moneys so received by it, make a refund to the State Revenue Fund equal to the amount of the compensation paid therefrom, or, if the consideration received by the board is insufficient, such lesser amount as the Minister, with the consent of the Minister of Finance, may approve.

### **Survey of communal land**

**41. (1)** A board may, with the prior approval of the Minister, but subject to subsection (2), cause any area of communal land within its region to be surveyed and a diagram and plan to be prepared in respect of the surveyed area.

(2) The survey of any area of land and preparation of a diagram and general plan in accordance with subsection (1), must be carried out in accordance with a lay-out plan which the board must cause to be prepared with the co-operation of the Traditional Authority concerned.

(3) Where the area to be surveyed comprises individual portions of land occupied or used by persons under a customary land right or a right of leasehold granted under this

Act, including a right referred to in section 28(1) or 35(1), a board may, with the consent of the Traditional Authority concerned and of any other person who will be affected thereby, and subject to the payment of just compensation by the State to such person, cause such adjustments to be effected to the layout of such individual pieces of land, as may be necessary for the purpose of preparing the lay-out plan in an effective manner.

#### **No consideration payable for customary land right**

42.(1) Except where, and to the extent to which, compensation for any improvement is payable in any of the circumstances contemplated in section 40, no consideration of any nature, whether money or goods or any other benefit of an economic value, may be paid or delivered or given, or may be claimed or received, by any person as compensation for the allocation of any customary land right under this Act.

(2) Subsection (1) does not apply to any fees, charges or other moneys which are prescribed to be paid in respect of any application or the issue of any certificate or document or for any other purpose in terms of this Act.

#### **Unlawful occupation of communal land**

43. (1) No person may occupy or use for any purpose any communal land other than under a right acquired in accordance with the provisions of this Act, including a right referred to in section 28(1) or 35(1).

(2) A Chief or a Traditional Authority or the board concerned may institute legal action for the eviction of any person who occupies any communal land in contravention of subsection (1).

#### **Fences**

44.(1) Any person who, without the required authorisation granted under this Act, and subject to such exemptions as may be prescribed -

- (a) erects or causes to be erected on any communal land any fence of whatever nature; or
- (b) being a person referred to in section 28(1) or 35(1), retains any fence on any communal land after the expiry of a period of 30 days after his or her application for such authorisation in terms of section 28(2)(b) or 35(2)(b) has been refused,

is guilty of an offence and on conviction liable to a fine not exceeding N\$ 4000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) If the offence for which a person is convicted in terms of subsection (1) is continued after the conviction, such person is guilty of a further offence and on conviction liable to a fine not exceeding N\$50 for every day on which the offence is continued.

(3) If any fence is found to be on any communal land in contravention of subsection (1), the Chief or Traditional Authority or the board concerned may, in accordance with the prescribed procedure, cause such fence to be removed and may dispose of the material used for the erection of the fence in such manner as may be prescribed.

(4) Any costs incurred in connection with the removal of a fence in terms of subsection (3) may be recovered from the person who erected or retained such fence in contravention of subsection (1).

**Regulations**

45. (1) The Minister may make regulations in relation to -
- (a) any matter which in terms of this Act is required or permitted to be prescribed;
  - (b) the procedure for investigations to be conducted by a board for the purpose of considering an application under this Act, including the summoning of witnesses;
  - (c) the fees payable for any application or the issue of any certificate or other document in terms of this Act;
  - (d) the procedure for referral of a matter to an arbitrator in terms of section 30(5);
  - (e) the procedure for applications for authorisation for the erection of a fence on communal land and the circumstances in which such authorisation is not required;
  - (f) the procedure and period for the lodging of appeals in terms of section 39 and the fee payable in respect thereof;
  - (g) matters relating to roads, fences, pounds, watercourses, woods and the use of water, wood, clay and stone on communal land;
  - (h) the conditions, in addition to conditions imposed by or under any other law, under which prospecting or mining operations may be carried out on communal land;
  - (i) the combating and prevention of soil erosion, the protection of the pastoral resources and the limitation and control of the grazing of stock;
  - (j) the payment of compensation to persons whose rights to the occupation or use of communal land, granted or acquired under this Act, including a right referred to in section 28(1) or 35(1), are terminated on account of the withdrawal of any land from a communal land area for a purpose in the public interest under this Act: and
  - (k) any other matter as the Minister may consider necessary or expedient for giving effect to this Act and for its administration.
- (2) Regulations made under subsection (1) may -
- (a) be declared to be applicable only in a specified area or areas or in respect of a specified category or categories of persons and different regulations may be made for different areas or different categories of persons;
  - (b) prescribe penalties for a contravention of or failure to comply with any provision thereof, but not exceeding a fine of N\$4 000 or imprisonment for a period exceeding one year, or to both such fine and such imprisonment.

**Repeal of laws**

46. The laws mentioned in Schedule 2 to this Act are repealed to the extent set out in the third column of that Schedule.

**Short title and commencement**

47. This Act is called the Communal Land Reform Act, 2002 and comes into operation on a date determined by the Minister by notice in the *Gazette*.

## SCHEDULE 1

## DESCRIPTION OF COMMUNAL LAND AREAS

## KAOKOLAND

*Area 1*

From a point where the +100 600 metre y-co-ordinate line on the LO 22/13-trigonometrical survey system intersects the middle of the Kunene River; thence eastwards along the said middle to a point where it intersects the meridian of longitude 14E 00' 00" east; thence south-eastward along a straight line to a point where the meridian of longitude 14E 32' 00" east intersects the parallel of latitude 18E 30' 00" south; thence along a straight line to the south-eastern corner beacon of the Omatambo Maowe Quarantine Camp 740; thence south-eastward along a straight line to a point five kilometres due east of the water-hole Onaiso; thence south-westwards along a straight line to a point where the western boundary of the road reserve of Main Road 67 intersects the northern boundary of the farm Kowares 276; thence south-eastward along the western boundary of the said road reserve to a point where it intersects the northern boundary of the Remaining Extent of Tevere 643; thence generally westwards and southwards along the boundaries of the following farms so as to exclude them from this area: The Remaining Extent of Tevere 643, Westend 642, Marenphil 641, De Ville 638, Portion 1 and the Remaining Extent of Kamdescha 624 and Farm 621, to a point where the middle of the Ombonde River intersects the north-western boundary of the last-mentioned farm (approximately 2 000 metres from the westernmost corner beacon thereof); thence generally north-westward along the middle of said Ombonde River up to its confluence with the Hoanib River; thence generally north-westwards along the middle of the Hoanib river to a point where it intersects the south-eastern boundary of Sesfontein 207; thence along the boundary of the said Sesfontein 207, so as to exclude it from this area, to a point where the middle of the Hoanib River intersects the south-western boundary of Sesfontein 207; thence south-westwards along the middle of the Hoanib River to a point where it intersects the meridian of longitude 13E 07' 02" east; thence northwards along the said meridian to a point where it intersects the parallel of latitude 19E 21' 57" south on the northern bank of the Hoanib River; thence south-westwards with the said bank to a point where it intersects the -5 300 metre y-co-ordinate line on the LO 22/13-trigonometrical survey system, thence north-westwards in a straight line to a point where the +92 200 metre y-co-ordinate line on the said system intersects the parallel of latitude 18E 00' 00" south; thence in a straight line to a point where the +100 600 metre y-co-ordinate line on the said system intersects the middle of the Kunene River, the point of beginning.

*Area 2*

From a point where the middle of the Kunene River meets the coast line of the Atlantic Ocean; thence Eastwards along the middle of the said river to a point where it intersects the + 100 600 metre y-co-ordinate line on the LO 22/13-trigonometrical survey system; thence in a straight line to a point where the +92 200 metre y-co-ordinate line on the said system intersects the parallel of latitude 18E 00' 00" south; thence south-eastward in a straight line to a point where the northern bank of the Hoanib River intersects the -5300 metre y-co-ordinate line on the said system, thence south-westwards along the said northern bank to a point where it intersects the meridian of longitude 13E east; thence south-westwards in a straight line to a point where the parallel of latitude 19E 32' 00" south intersects the coast line of the Atlantic Ocean; thence generally north-westwards along the said coast line to the point of beginning.

## DAMARALAND

From the point where the meridian of longitude 13E 07' 02" East intersects the middle of the Hoanib River; thence north-eastward along the middle of that river to a point where it intersects the south-western boundary of Sesfontein 207; thence along the boundary of the said Sesfontein 207, so as to include it in this area, to a point where the south-eastern

boundary thereof intersects the middle of the Hoanib River; thence generally south-eastward along the middle of the Hoanib River up to its confluence with the Ombonde River; thence along the middle of the Ombonde River to a point where it intersects the north-western boundary of Farm 621 (approximately 2 000 metres from its westernmost corner beacon); thence generally northwards and eastward along the boundaries of the following farms so as to include them in this area: Farm 621, the Remaining Extent and Portion 1 of Kamdescha 624, De Ville 638, Marenphil 641, Westend 642 and the Remaining Extent of Tevrede 643, to a point where the western boundary of the road reserve of Main Road 67 intersects the northern boundary of the last-mentioned farm; thence along the western boundary of the said road reserve to a point where it intersects the eastern boundary of the Remaining Extent of Marienhohe 639; so as to include the following farms in this area: The Remaining Extent of Tevrede 643, Portion 1 of Khoabendes 645, Portion 6 of Kaross 237, the Remaining Extent of Swartskamp 640, Portion 2 and the Remaining Extent of Marienhohe 639; thence south-eastward along the eastern boundary of the last-mentioned farm to its south-eastern corner beacon; thence generally southwards and south-westwards along the boundaries of the following farms so as to include them in this area: The Remaining Extent of Marienhohe 639, Quo Vadis 625, Waterbron 623, Condor 617, Emmanuel 613, Deo Volento 610, Dwars - Trek 611, Anker 602, Kakatswa Onguati 236, Portion 2 and Portion 1 of Amkarub 269, Portion 1 and the Remaining Extent of Brambach 271, the Remaining Extent and Portion 1 of Engelbrecht 272, Annabis 677, Spitskop 678, Rokeys 682, Portion 1 and the Remaining Extent of Aub 683, Smalruggens 684, Fransfontein 6, Waterval 384, Stille Woning 386, Braunfels 387, the Farm 388, Renosterkop 389, Löwenfontein 84, Otjiwarongo 150, Okombahe 139, Springbock-fontein 21, Tsumib 20, Kudubis 19, the Remaining Extent of Pforte 65, Sandamap - Noord 115, Sandamap 64, Eureka 99, Sukses 90, Hakskeen 89 and Portion 2 of Trekkoppe 120, to the most southern corner beacon of the last-mentioned farm, approximately 1 600 metres north of the Usakos-Swakopmund railway line; thence generally south-westwards along a line approximately 1 600 metres from and parallel to the said railway line to a point where it intersects the eastern boundary of Arandis Townlands 170, with geographic co-ordinate values 14E 59N 39O East and 22E 23N 25O South, thence generally northwards, westwards and southwards along the boundaries of the last-mentioned property, to a point with geographic co-ordinate values 14E 46N 55O East and 22E 26N 49O South, approximately 1 600 metres north of the Usakos B Swakopmund railway line, so as to exclude Arandis Townlands 170 from this area, thence generally south-westwards along a line approximately 1 600 metres from and parallel to the said railway line to a point where the meridian of longitude 14E 53' 33" East intersects the parallel of latitude 22E 29' 08" South; thence north-westwards along a straight line to a point with geographic co-ordinate values 14E 31N 58O East and 21E 55N 05O South, on the southern boundary of Desert Water South 219, thence eastward, north-eastward, northwards, westwards and southwards, along the boundaries of Desert Water South 219 and Desert Water North 218, to a point with geographic co-ordinate values 14E 31N 33O East and 21E 54N 25O South on the western boundary of Desert Water South 219; so as to exclude these two properties from this area: thence north-westwards along a straight line to a point where the meridian of longitude 13E 57'33" East intersects the parallel of latitude 21E 00' 09" South; thence north-westwards along a straight line to the point of beginning.

### OWAMBOLAND

From the point where the meridian of longitude 14E East intersects the middle of the Kunene River; thence eastward along the middle of that river to a point at the Ruacana Falls above the crest or lip where the said middle intersects the parallel of latitude 17E 23' 23,73" South; thence eastward along the said parallel of latitude to a point where it intersects the meridian of longitude 18E east; thence southwards along the said meridian of longitude 18° east to the point where it intersects the northern boundary of the farm Last Hope 880; thence westwards to the north-western corner beacon of the farm Tsintsabis 881; thence southwards along the western boundary of the last-mentioned farm to the north-eastern corner beacon of the Farm 878; thence westwards along the northern boundaries of the following farms: Farm 878, the Remaining Extent and Portion 1 of Concordia 876, Vaalwater 875, the Remaining of Pietersburg 1347, Mankettifeld 1074, Gutwohne Nord 1073, Kumewa 1072, Stofdraai 1071, Grenspos 1070, Geluksanker 1279

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and Operet 1260, to a point where the south-western road reserve boundary of Trunk Road 1, Section 10, intersects the northern boundary of Operet 1260; thence north-westwards along the north-eastern road reserve boundary of Trunk Road 1, Section 10, to a point where the north-eastern road reserve boundary intersects the parallel of latitude 18E 30N 00O South; thence westwards along the parallel of latitude 18E 30N 00O South to a point where the said parallel of latitude is intersected by a straight line drawn generally north-eastward from a point south-east of Otjivalunda East Salt Pan, so that the said salt pan is included; thence generally south-westwards along the said straight line to a point south-east of the said Otjivalunda East Salt Pan; thence generally westwards to the south-eastern corner beacon of the farm Quarantine Station 742; thence westwards along the southern boundary of the said farm Quarantine Station 742 to its south-western corner beacon; thence north-westwards in a straight line to a point where the parallel of latitude 18E 30N 00O South intersects the meridian of longitude 14E 32N 00O East; thence north-westwards in a straight line to a point where the meridian of longitude 14E East intersects the middle of the Kunene River, the point of beginning.

**KAVANGO***Area 1*

From the point where meridian of longitude 18E east intersects the parallel of latitude 17E 23' 23,73" south; thence eastward along the said parallel up to a point where it intersects the middle of the Okavango River; thence generally south-eastwards along the said middle up to point where it intersects the boundary common to Namibia and Botswana; thence generally westwards along the said boundary up to a point where it joins meridian of longitude 21( east; thence southwards along the said meridian of longitude up to a point where it intersects the parallel of latitude 19( 10' south; thence westwards along the said parallel of latitude to a point where it intersects the eastern boundary of the farm Talitha 1006; thence northwards along the boundaries of but excluding the following farms: Talitha 1006, Hero 1007, Verskyn 1012, Farm 1013, Wildgrund 1018 and Wildhagen 1019, to the north-eastern corner beacon of the last-mentioned farm; thence westwards along the boundaries of but excluding t? following farms: Wildhagen 1019, Farm 1020, Farm 1021, Tiervlei 1166, Na-Oes 1027, Onreg 1028, Tranedal 1033, Farm 1034, Farm 1039, Farm 1040, Wag-'n-Bietjie 1046, Farm 1047, Farm 1052, Farm 1164, Farm 1058, Farm 1059, Farm 1061, Randeier 1062, the Remaining Extent of Wildernis 882 and Last Hope 880, to a point where the meridian of longitude 18( east intersects the northern boundary of the farm Last Hope 880; thence northwards along the meridian of longitude 18( east to a point where it intersect the parallel of latitude 17E 23' 23,73" south, the point of beginning.

*Area 2*

From a point at the northern extremity of Sibanana Island in the Okavango River; thence north-eastward in a straight line up to Beacon 22 where meridian of longitude 23E 18' 00" east intersects the parallel of latitude 17E 40' 00" south; thence southwards along the said meridian of longitude up to a point where it intersects the boundary common to Namibia and Botswana; thence generally westwards along said boundary up to point where it intersects the middle of the Okavango River; thence generally north-westwards along the said middle to the point of beginning.

**CAPRIVI**

That part of Namibia lying east of the meridian of longitude 23E 18' 00".

**BUSHMANLAND**

From a point where the eastern boundary of the farm Talitha 1006 is intersected by the parallel of latitude 19E 10N south; thence eastward along the said parallel of latitude 19E 10N south to a point where the said parallel of latitude intersects the boundary common to Namibia and Botswana; thence southwards along the said common boundary



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to point where it intersects the parallel of latitude 20E south; thence westwards along the said parallel of latitude 20E south-eastern corner beacon of the Otjitou Native Reserve 235; thence north-westwards along the boundary of the said Otjituo Native Reserve to the south-eastern corner beacon of the farm Sandveld Game Ranch 1265; thence in a northerly, north-easterly and northerly direction along the boundary, of but excluding the following farms: Sandveld Game Ranch 1265, Oorkant 953, Onjama 952, Simondeum 991, Rumara 993, Farm 1124, the Remaining Extent and Portion 1 of Horabe Wes 1139, Hieromtrent 995, Vreugde 1000, Rooidag 1001 and Talitha 1006, to a point where the eastern boundary of the last-named farm is intersected by the parallel of latitude 19E 10N south, being the point of beginning.

**HEREROLAND WEST**

From a point where the middle of the Otjosondjou Omuramba intersects the southern boundary of the Eastern Native Reserve 792; thence generally north-westwards along the boundary of the Eastern Native Reserve 792 to where it meets the Waterberg East Native Reserve 341; thence north-westwards, north-eastward and south-eastward along the boundaries of and including the said Waterberg East Native Reserve 341 and the Otjituo Native Reserve 235, to the corner beacon common to the Otjituo Native Reserve 235 and the Eastern Native Reserve 792 on the parallel of latitude 20E south; thence in a south-easterly direction along the boundary of the Eastern Native Reserve 792 to a point where the said boundary intersect the middle of the Otjosondjou Omuramba; thence generally westwards and south-westwards along the middle of the Otjosondjou Omuramba to a point where is intersects the southern boundary of the Eastern Native Reserve 792, being the point of the beginning.

**HEREROLAND EAST***Area 1*

From the corner beacon common to the Otjituuo Native Reserve 235 and the Eastern Native Reserve 792 on the parallel of latitude 20E south; thence eastward in a straight line along the said parallel of latitude 20E south to a point where it intersects the boundary common to Namibia and Botswana; thence southwards along the said common boundary to a point where it intersects the parallel of latitude 22E south; thence westwards along the said parallel to a point where it intersects the meridian of longitude 20E east; thence in a straight line south to the south-western corner beacon of the farm 855; thence northwards along the boundaries of and including the following farms: Farm 855, Farm 854, Farm 849, Farm 848, Farm 843, Farm 842, Farm 837 and Farm 836, to the north-western corner beacon of the last-mentioned farm; thence south-westwards, northwards and generally westwards along the boundaries of an including the Epukiro Native Reserve 329 and the Eastern Native Reserve 792 to a point where the boundary of the last-mentioned Reserve intersects the middle of the Otjosondjou Omuramba; thence northwards and north-eastward along the middle of the said Omuramba to a point where it intersects the north-eastern boundary of the Eastern Native Reserve 792; thence north-westwards along the north-eastern boundary of the last-mentioned Reserve to the corner beacon common to the Otjituuo Native Reserve 235 and the Eastern Native Reserve 792, being the point of beginning.

*Area 2*

Aminuis Native Reserve 330 Registration Division L.

*Area 3*

Beginning at the north-eastern beacon of farm 949, Registration Division L; thence clockwise along the boundaries of the following farms so as to include them in this area; The said Farm 949, Farms 951, 953, 955, 957, 959, 961, 963, 965, 967, 969, 968, 966, 964, 962, 960, 958, 956, 954, 952, 950, 948 and 949, to the north-eastern beacon of the last-mentioned farm, the point of beginning.

## NAMALAND

*Area 1*

Starting at a point, the most western corner beacon of the farm Uibis 34, then generally eastwards, along the boundaries of the following farms, so as to include them in to this area: Uibis 34, portion A of farm Fleyfeld 33, portion B of Fleyfeld 33, Ubians 32, Ganaus 27, the Remaining Extent of Hatzum II 28, Rosenhof 97, Anis-kubab 96, Gibeon Reserve 76, Portion 1 of New Castle 218, Glencoe 78, Portion 1 of Kriess 219, Portion 1 of Verloorveld 220, to the north-eastern corner beacon of the last-mentioned farm, thence southwards along the boundaries of the following farms so as to include them in this area: Portion 1 and the Remaining Extent of Verloorveld 220, Portion A of Goamus 70, Goamus Ost 69, the Remaining Extent and Portion 2 of Ventershoop 164, the Remaining Extent of Springbokvlei 237, Portion 1, the Remaining Extent and Portion 2 of Zoekmakar 236, Portion 1 of Gross Daberas 17, Portion 1, the Remaining Extent and Portion 2 of Daberas Ost 18, the Remaining Extent of Klein Daberas 19, Tses Reserve 169, Blaukehl-Nord 141, Blaukehl-Sud 142, to the most south-eastern corner beacon of the last-mentioned farm, thence westwards along the boundaries of the following farms so as to include them in to this area: Blaukehl-Sud 142, Portion 1 of Blau Ost 144, Bloemhof 311, the Remaining Extent, Portion 4 and Portion 1 of Itzawisis 9, to a point common to the last-mentioned farm, Paradis 8 and Berseba Reserve 170, thence eastwards along the boundaries of the following farms so as to include them in to this area: Berseba Reserve 170, the Remaining Extent and Portion 1 of Nabaos 7, the Remaining Extent and Portion 1 of Gellap-West 4, Berseba Reserve 170, to the most southern corner beacon (Neck, Trigonometric Beacon) of the last-mentioned farm, thence westwards along the boundaries of the following farms so as to include them into this area: Berseba Reserve 170, Garis 74, Schnepfenrivier 73, Kosis 72, Isaaksbrunn 71, Soromaas Reserve 40, to the south-western corner beacon of the last-mentioned farm; thence northwards, eastwards and northwards along the boundaries of the following farms so as to include them into this area, Soromaas Reserve 40, the Remaining Extent and Portion 1 of Florsheim 69, Nugoais 65, Pfalz 61, Doachas 57, Landshut 58, Berseba Reserve 170, Eidsamub 51, Liebenstein 50, Portion 2 and Portion 1 of Ou Tempelhof 583, Teschenbrugge 48, Kinachas I 37, Vergelee 380, Portion A of Kosis 36, Kamagams 35, Uibis 34, to the most western corner beacon of the last-mentioned farm, the point of beginning.

*Area 2*

Certain portion of the remaining extent of the farm Bondelswarts Reserve No. 134, Registration Division V, situate in the magisterial district of Karasburg, held under certificate of registered title No. 1800/1967; and

Certain portion 23 (a portion of portion 8 of portion A) of the farm Kalkfontein West No. 48, Registration Division V, situate in the magisterial district of Karasburg, held under deed of transfer No. 1801/1967;

*Area 3*

Certain portion of the remaining extent of the farm Warmbad West No. 305, Registration Division V, situate in the magisterial district of Karasburg, held under certificate of registered government title No. 1534/1973;

Certain portion 1 of the farm Warmbad West No. 305, Registration Division V, situate in the magisterial district of Karasburg, held under grant of land T1783/1977; and

*Area 4*

The farms Gainatseb No. 67, Eastwood No. 73, Tsumamas No. 74, and Kranspoort No. 475, Registration Division A, situate in the magisterial district of Outjo.

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Certain Farm Hoachanas No. 120, registration division M, situate in the magisterial district of Mariental, measuring 14252,5049 hectares.

SCHEDULE 2  
Laws Repealed  
(section 45)

No. and year of law	Short title	Extent of repeal
Act No. 18 of 1936	Development Trust and Land Act, 1936	The whole
Act No. 17 of 1939	Development Trust and Land Amendment Act, 1939	The whole
Act No. 18 of 1954	Development Trust and Land Amendment Act, 1954	The whole
Act No. 56 of 1954	South West Africa Native Affairs Administration Act, 1954	The whole
Act No. 73 of 1956	Development Trust and Land Amendment Act, 1956	The whole
Act No. 41 of 1958	Development Trust and Land Amendment Act, 1958	The whole
Act No. 110 of 1976	Development Trust and Land Amendment Act, 1976	The whole
Proclamation No. AG. 19 of 1978	Administration of the South African Bantu Trust in South West Africa Proclamation, 1978	The whole