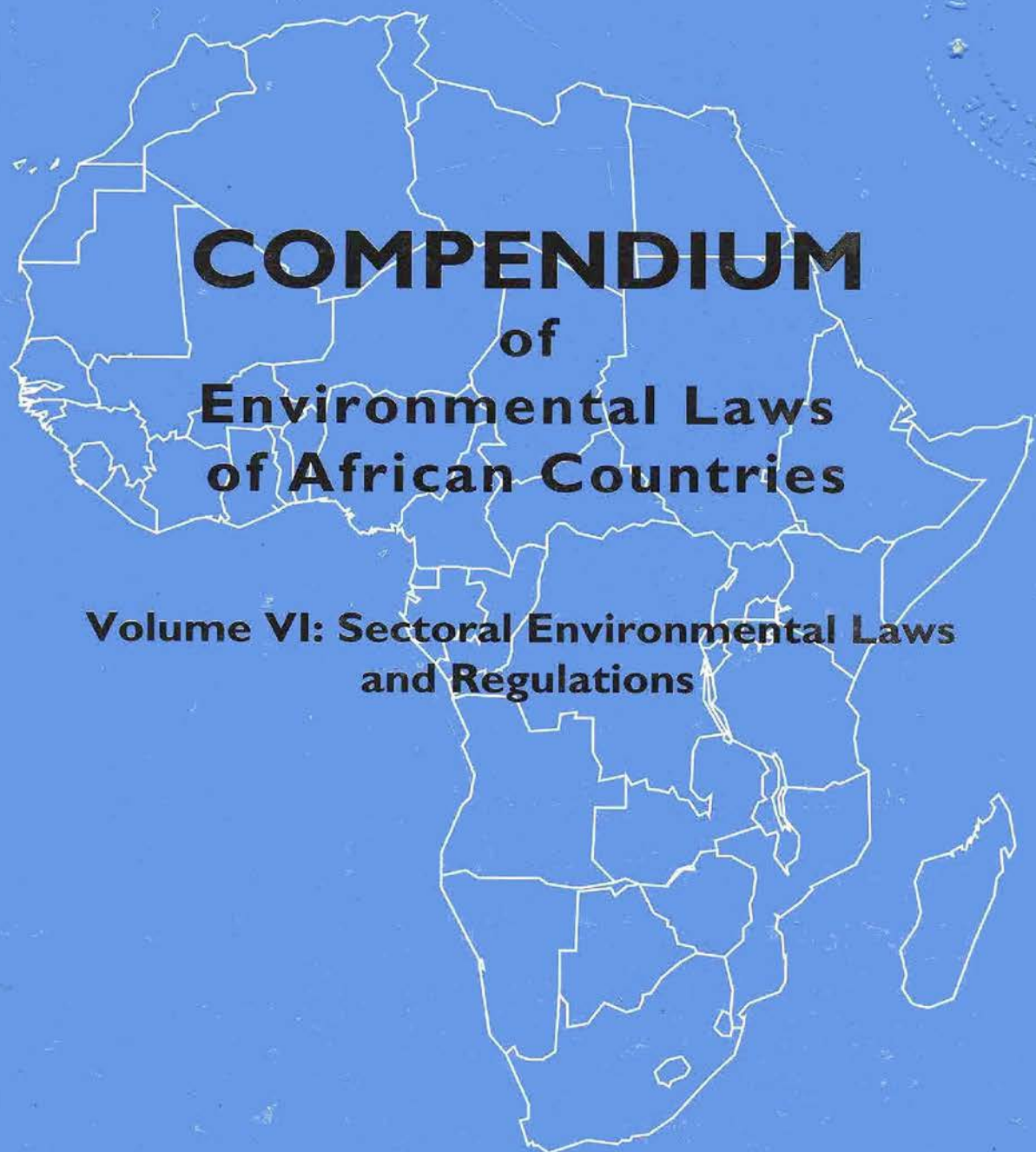




# UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa



# COMPENDIUM of Environmental Laws of African Countries

**Volume VI: Sectoral Environmental Laws  
and Regulations**

June 1998

# **COMPENDIUM**

of  
**Environmental Laws  
of African Countries**

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Environmental Law  
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## INTRODUCTION

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The Compendium of Environmental Law of African Countries is prepared by ELI/PAC under the auspices of the UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa which is funded by the Dutch Government. The objective of the Joint Project is to mobilize the expertise and guidance of six different agencies in working with selected African countries towards the enhancement of their legal and institutional capabilities in the field of environmental law. The agencies involved in this exercise are UNEP, UNDP, FAO, The World Bank, the IUCN and the WHO, all of which constitute the Project's Steering Committee.

Eight African countries were selected for the first phase of the project. Activities which are national in character have commenced in Burkina Faso, Malawi, Mozambique and Sao Tome and Principe. The project's work has also commenced in Kenya, Tanzania and Uganda, except that here the focus is on issues of sub-regional character and the concentration is on harmonization of laws and standards to deal with the priority subjects, identified by the respective countries together. Except for consultations with UNDP, Pretoria mainly no activities have commenced in South Africa where the national concern hitherto has been the evolution of the new constitution and the development of a national environmental policy, both essential for subsequent work on the structure of the national and provincial environmental laws.

The necessity for the compendium has been increasingly evident during the foregoing activities, particularly given the *modus operandi* in the project. The approach seeks to operationalize the concept of capacity building by involving the nationals of the project countries in the assessment of their environmental problems, review of the existing environmental laws and drafting of new and streamlined statutes consistent with the modern philosophy and enforcement of environmental law.

In this process, there have been frequent enquiries for the supply of environmental laws of other countries to provide analogies and inspiration for the national teams. It is often the case that laws from the developed countries of Europe and North America are readily available while one will only occasionally find such texts from other African countries. To date, there have been several efforts to collect laws related to environment and natural resources in Africa. An outstanding collection is at the IUCN Environmental Law Centre in Bonn. But there has been no collection which is published and readily available to prospective users in the region.

Over the years, UNEP ELIPAC has collected several texts of national environmental laws from all over the world. African texts from that collection formed the core for the compendium. In addition, all African countries were requested to supply up to date texts on selected themes in environmental law and their response has been highly impressive and very encouraging. In fact, enquiries are frequently being received from those who would like to receive the compendium. So the production of the 1996 Edition will proceed in order to fill that gap. Fresh requests will be sent out for more and updated texts in readiness for an updated 1997 Edition, planned to be released in 1998.

In our opinion, consumers of the compendium may be in the following five categories: First, the project countries which prompted the initiative to publish the compendium will utilize the handy texts in the on-going work. Secondly, other African countries will find use for the collection for similar endeavours. ELIPAC is working with a number of countries, beside the Joint Project, in the development of environmental laws, and additional requests are in the pipeline. Thirdly, the texts will be used in the same countries for teaching and research in environmental law, which is an exercise in capacity building. It is a fact that those engaged in research and teaching in Africa invariably rely on legislative texts published from North America and Europe and not from Africa which would focus analysis on any unique features of environmental laws in the continent. Fourthly, researchers and commentators from different jurisdictions will find an easy access to the texts from African countries and, therefore, facilitate comparative analysis and the evolution of the relevant doctrines on a global scale. The lack of access to the texts of African environmental laws has impeded this development. Fifthly, donor countries which, like the Dutch Government, may wish to work with countries in Africa or other continents, on the development of environmental laws, will find handy comparative materials. Similarly, partner agencies, which are all active in the development of environmental and natural resources laws in developing countries, should find the compendium to be a handy source of analogies.



Sharing of comparative texts of national statutes will have the significance of promoting progressive development of environmental laws and countries outside the region would also benefit from recent environmental legislation from Africa. But it may, in addition, lead to gradual harmonization of the respective laws, which may, in turn, be a powerful path to avoidance of conflicts. The 1996 Edition of the Compendium was produced in about four volumes. The first volume contains the framework environmental laws and EIA Regulations only. The remaining volumes are sectoral laws, organized country by the country in alphabetical order.

The ELI/PAC records profound gratitude to the governments which have made texts available for compilation of the Compendium. The process of creating laws is long and complex. But the development of environmental laws is particularly difficult because of the principles and requirements of the different stakeholders. Therefore, it is fitting that countries which complete the process should be proud to share such texts with the others. The Joint Project commends the initiative of African countries which is leading to the rapid growth of environmental laws in Africa.

June 1998

## BURKINA FASO

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### RAABO No. 014/PRES/MET Portant réglementation du transport du bois et charbon de bois au Burkina Faso

Le Ministre de l'Environnement et du Tourisme

Vu la Proclamation du 4 Août 1983;

Vu L'Ordonnance No. 85-001, CNR du 4 Août 1983,  
portant création du Conseil National de la Révolution;

Vu L'Ordonnance No. 84-045/CHR/PRS du 4 Août 1984,  
portant changement d'appellation et symbole de la Nation;

Vu Le Kiti No. 85-003/CNR/PRES du 31 Août 1985,  
portant composition du Gouvernement du Burkina Faso;

Vu L'Ordonnance No. 84-050/CNR/PRES du 4 Août  
1984, portant réorganisation Agraire et Foncière au  
Burkina Faso;

Vu Le Décret No. 85-144/CNR/PRES/CTOUR du 6 Mars  
1985, portant réglementation de l'Exploitation du bois  
de chauffe et du charbon de bois au Burkina Faso;

Vu La Circulaire No. 346-BS/M/E.T/CAPRO du 14 Mai  
1985, portant réglementation provisoire de l'Exploitation  
du bois et du charbon de bois au Burkina Faso;

#### ANNONCE

**Article 1.-:** La circulaire No. 85-00/2/CNR/PRES/SGG-  
CM du 30 Juillet 1985 portant transport spécial du bois  
de chauffe est abrogée;

**Article 2.-:** Les véhicules des services étatiques, des  
collectivités, para-étatiques, militaires et des projets  
forestiers transportant du bois de chauffe destiné à la com-  
mercialisation doivent être transformés conformément à  
la circulaire No.033/CNR/CAB portant sur les normes  
techniques de véhicules de transport de bois à usage  
domestique.

**Article 3.-:** Le transport du bois de chauffe par des  
véhicules non transformés dans le cas des mesures  
d'urgence pour une période limitée ne se fera que sur  
réquisition spéciale du Ministre chargé des Eaux et  
Forêts.

**Article 4.-:** La commercialisation du bois de chauffe par  
les structures ci-dessus citées à l'article 2 du présent  
Raabo est soumise à l'obtention d'un permis de circula-  
tion délivrée par le Ministère chargé des Forêts après  
l'acquittement d'une redevance versée en totalité.

**Article 5.-:** Toute infraction au présent Raabo sera  
sévèrement sanctionnée conformément à l'article 5 du  
Décret No. 85-144/CNR/PRES/CTOUR.

**Article 6.-:** Le Secrétaire Général du Ministère de  
l'Environnement et du Tourisme est chargé de  
l'application du présent Raabo qui prend effet pour  
compter de sa signature.

OUAGOUGOU, le 18 JUIN 1986

Le Ministre de L'Environnement et du Tourisme.



## Circulaire du Ministre de l'Environnement et du Tourisme, et du Commerce et de l'Approvisionnement du Peuple, portant réglementation provisoire de l'exploitation du bois et du charbon de bois au Burkina Faso.

La Patrie ou la mort, nous vaincrons!

1. La présente circulaire a pour objet de réglementer l'exploitation du bois et du charbon de bois à des fins commerciales.
2. L'exploitation du bois et du charbon de bois c'est tout mécanisme par lequel le bois est coupé ou ramassé et mis à la disposition du consommateur final sous sa forme brute ou transformée.
3. L'exploitation du bois et du charbon de bois à des fins commerciales n'est autorisée qu'aux personnes physiques ou morales détentrices d'une carte professionnelle de commerçant délivrée par le Ministère chargé du Commerce et d'un permis délivré par le Ministère chargé des Eaux et Forêts.
4. Les commerçants de bois et de charbon de bois sont répartis en trois niveaux comme suit:
  - débiteur
  - grossiste-transporteur
  - détaillant.
5. Est réputé:
  - débiteur: toute personne physique ou morale qui coupe ou ramasse le bois dans sa zone de concession et le vend aux grossistes-transporteurs sous sa forme brute ou transformée.
  - grossiste-transporteur de bois et de charbon de bois: tout commerçant qui achète le bois ou le charbon de bois auprès d'un débiteur, l'achemine en un lieu de stockage des centres de consommation dans le but de le céder à des détaillants.
  - détaillant: tout commerçant qui s'approvisionne en bois et charbon de bois auprès du grossiste-transporteur pour le revendre à des consommateurs.
6. Outre les conditions citées aux points 4 et 5 de la présente circulaire, les grossistes-transporteurs et les

détaillants devront disposer impérativement de moyens de transport adéquats, à savoir:

- des véhicules régulièrement soumis aux contrôles techniques du Ministère des transports et des communications;
- des charrettes conformes aux normes prescrites en la matière.

Ces véhicules et charrettes seront frappés d'un marquage particulier. Tout transport de bois par tout autre véhicule est strictement interdit.

7. La carte professionnelle de commerçant et le permis sont strictement personnels et ne peuvent être vendus, cédés, prêtés ou échangés.
8. La délivrance du permis est soumise à l'acquittement d'une redevance versée en totalité avant toute exploitation et selon les quotas fixés, et accompagné d'un cahier de charge déposé au haut Commissariat de la Province. La redevance ainsi perçue n'est pas remboursable.
9. La campagne d'exploitation forestière est ouverte du 1er Septembre de l'année en cours au 30 Juin de l'année suivante sauf dérogation par arrêté conjoint des Ministres chargés des Eaux et Forêts et du Commerce.
10. L'attribution des quotas prévus au point 8 aux commerçants de bois et de charbon de bois est faite en commission dans les provinces. La Commission est présidée par le Haut-Commissaire ou son représentant et composée comme suit:
  - le Haut commissaire,
  - le Directeur Provincial de l'Environnement et du Tourisme,
  - le Chef de service provincial des Eaux et Forêts,
  - un représentant des Ministère du Commerce et de l'Approvisionnement du Peuple,
  - trois représentants des C.D.R.,



- deux représentants des commerçants.
11. L'exploitation forestière est arrêtée dès épuisement des quotas.
12. Le Directeur Provincial de l'Environnement et du Tourisme pourra affecter tout ou partie du quota d'un commerçant de bois ou de charbon de bois qui se trouverait dans l'impossibilité d'honorer ses engagements à un tiers commerçant de bois agréé.
13. Dans les campagnes, le ramassage du bois mort ou la coupe du bois à des fins de consommation propre des ménages peut se faire sans autorisation préalable des services forestiers. La vente du bois en dehors des circuits décrits par la présente circulaire est formellement interdite et expose le contrevenant à de graves sanctions.
14. Les débiteurs, les grossistes-transporteurs sont tenus de participer à la production des plants par la création de pépinières. Toute tentative de se dérober de quelque manière que ce soit à ces actions de production sera considérée comme infraction et punie comme telle.
15. Les redevances dues à l'obtention des cartes professionnelles ou permis de coupe, les tarifs applicables à la vente du bois sont annexés à la présente circulaire.
16. Toute infraction aux dispositions de la présente circulaire est sanctionnée conformément aux articles 5 et 6 du décret No. 85-144.
17. Sont abrogées toutes dispositions antérieures contraires.
18. Les Secrétaires Généraux des Ministères de l'Environnement et du Tourisme, du Commerce et de l'Approvisionnement du Peuple sont chargés chacun en ce qui le concerne, de l'application de la présente circulaire qui prend effet pour compter du 1er Juin 1985.

Ouagadougou, le 1er juin 1985

Le Ministre de l'Environnement et du Tourisme, **Alain COEFE**

Le Ministre du Commerce et de l'Approvisionnement du Peuple, **Train Raymond PODA**

## BURUNDI

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### Ordonnance Ministérielle No. 710/32 du 18 Mars 1976 relative à la préparation de la Conférence des Nations Unies sur l'Eau, la Protection et l'Amélioration de l'Environnement et au Programme Hydrologique International

Le Ministre de l'Agriculture et de l'Elevage,

Vu la Constitution de la République du Burundi, spécialement en ses articles 29 et 40 ;

Vu la Loi no. 1/100 du 15 Mars 1976, sur les Concessions et l'Administration des eaux souterraines, des eaux des lacs et des cours d'eau, spécialement en ses articles 1 et 4;

Vu la Résolution 1979 (LIX) du Conseil Economique et Social des Nations Unies, notamment son point 6, et les points 15 à 17 de son aide-mémoire ;

Vu la Résolution 29994 (XXVII) de l'Assemblée Générale sur l'environnement ;

Vu la Résolution 238 (X) des Ministres de la CEA, portant adoption d'une stratégie pour le développement durant les années 1970 ;

Vu[...].

Attendu qu'il convient d'instituer un comité national responsable de la sauvegarde et l'amélioration de l'environnement dans le cadre des activités du Programme des Nations Unies pour l'Environnement et du Programme de l'UNESCO sur l'homme et la biosphère ;(...)

**Article 1.** La Commission Nationale Permanente des eaux est chargée des activités pour la préparation de la Conférence des Nations Unies sur l'eau, la protection et l'amélioration de l'environnement ; l'exécution du Programme Hydrologique International (PHI) et du Programme d'Hydrologie Opérationnelle (PHO).

**Article 1er.** Il est créé Une Commission Nationale Permanente des Eaux.

**Article 2.** Erigée en comité national, la Commission Nationale Permanente des eaux, pourra s'adjoindre des experts nationaux et internationaux, choisis pour leurs compétences.

**Article 3.**

Le comité national ainsi formé, en sa qualité de commission nationale des ressources en eau, est chargé de la responsabilité de coordonner, de normaliser et d'améliorer les activités de gestion et du développement de la mise en valeur des ressources en eau, et aura pour mission :

[...]

La sauvegarde et l'amélioration de l'environnement.

L'exécution du Programme Hydrologique International et d'Hydrologie Opérationnelle.

Le comité national assurera la coordination et le contrôle de l'exécution des programmes hydrologiques qui interviennent d'une manière fondamentale dans la recherche de l'équilibre optimum entre les demandes en eau et les ressources disponibles aux divers niveaux national, régional et international.[...]

**Article 5.** Le comité national se réunit selon les règles de procédure applicables à la commission nationale permanente des eaux.[...]

**Article 6.** La présente ordonnance entre en vigueur le jour de sa signature.

*Fait à Bujumbura, le 18 Mars 1976.*



## Décret-Loi No.1/22 du 31 Juillet 1978 portant Création de Périmètre de Reboisement du Domaine de l'Etat

Le Président de la République,

Vu le décret-loi No.1/186 du 26 Novembre 1976 portant organisation des pouvoirs législatif et réglementaire ;

Vu la loi du 29 Juin 1962 maintenant en vigueur les actes relatifs et réglementaires édictés par l'autorité tutélaire ;

Vu l'ordonnance du 1er Juillet 1885 rendue exécutoire par O.R.U. No.9 du 8 Mars 1927 relative à l'occupation des terres ;

Vu le décret du 12 Juin 1951, rendu exécutoire par O.R.U. No.42/45 du 28 Mars 1952 relatif à l'occupation illégale des terres ;

Vu l'Edit du Mwami No.5 du 10 Août 1961, relatif à l'enregistrement des propriétés foncières individuelles, spécialement en son article 6 ;

Vu le décret-loi No.1/191 du 30 Décembre 1976 portant retour au domaine de l'Etat des terres irrégulièrement attribuées ;

Sur proposition du Premier Ministre et Ministre de l'Agriculture, de l'Elevage et du Développement Rural et avis conforme du Conseil des Ministres,

### Décrète :

**Article 1.** Il est institué des périmètres de reboisement d'intérêt public sur les sols du Domaine de l'Etat situés:

- Commune MPANDA, sur une superficie totale de 2.435 ha définies à l'annexe I du présent décret-loi ;
- Commune d'ISALE, zone de MUBIMBI, sur une superficie totale de 6.308 ha définies à l'annexe II du présent décret-loi ;
- Communes de BURURI, KIGWENA et NYANZALAC, sur une superficie totale de 29.010 ha définie à l'annexe III du présent décret-loi;

A l'intérieur de ces périmètres, aucune vente ou location des biens domaniaux, quelle qu'en soit la superficie, ne peut être affecté.

Toute occupation irrégulière des sols inclus dans ces périmètres est inopposable à l'administration du domaine.

**Article 2.** Le Ministre ayant l'Agriculture dans ses attributions détermine à l'intérieur des périmètres définis à l'article précédent les surfaces réservées pour la réalisation des projets de plantation en essences forestières à vocation de bois d'oeuvre ou de bois de chauffage.

Ces surfaces ne peuvent inclure les sols où sont exercés des droits coutumiers ou des droits d'occupation régulièrement accordés aux intéressés par les autorités compétentes.

**Article 3.** Toute contestation des titulaires des droits prétendus sur les surfaces déterminées en application de l'article 2 doit être formulée par requête adressée à l'Administrateur communal ou au Chef de zone où se situent les biens litigieux, dans le délai d'un mois à compter de l'affichage aux bureaux de la commune ou de la zone de l'ordonnance déterminant les surfaces des reboisements, à peine de forclusion.

**Article 4.** Les contestations régulièrement formulées sont soumises à la décision d'une Commission présidée par le Directeur Général de l'Agriculture ou son délégué et composée en outre du Gouverneur de la Province, du Coordonnateur provincial des services de l'agriculture, de l'élevage et du développement rural, du Président du Tribunal de Résidence et de l'Administrateur communal territorialement compétents.

Le Secrétariat de la Commission est assuré par un fonctionnaire des affaires foncières désigné par le Président de la Commission.

**Article 5.** La Commission dispose des pouvoirs d'enquête les plus étendus. Elle peut requérir communication de tous documents détenus par l'administration, les juridictions ou les particuliers. Elle peut entendre tous témoins et requérir tous experts.

Toute enquête fait l'objet d'un procès-verbal où sont consignées les déclarations des parties et témoins, qui est signé du Président de la Commission ou du membre de la Commission délégué pour enquête.



**Article 6.** L'instruction achevée, la Commission statue sur pièces et prend ses décisions à la majorité simple des membres présents.

Toute décision se référant à des bornes délimitant la séparation entre le domaine et les propriétés privées doit être accompagnée d'un plan des lieux situant ces bornes et limites.

**Article 7.** Les décisions de la Commission sont notifiées aux intéressés par le secrétaire, par remise en copie contre

accusé de réception. En cas d'impossibilité de procéder à cette remise, la notification est effectuée par affichage aux bureaux de la commune ou de la zone.

Les décisions de la Commission sont exécutoires à compter de leur notification.

**Article 8.** Le Ministre ayant l'Agriculture dans ses attributions est spécialement chargé de l'exécution du présent décret-loi qui entre en vigueur le jour de sa signature.

*Fait à Bujumbura, le 1er Août 1978.*

## Décret-Loi No. 1/6 du 3 Mars 1980 portant création de parcs Nationaux et des Réserves Naturelles

Le Président de la République,

Vu le décret-loi No. 1/186 du 26 novembre 1976 portant organisation des pouvoirs législatif et réglementaire tel que modifié par le décret-loi No. 1/32 du 16 octobre 1978;

Vu la loi du 29 juin 1962 portant maintien en vigueur des actes législatifs et réglementaires édictés par l'autorité titulaire;

Vu le Décret du 24 juillet 1956 relatif à l'expropriation pour cause d'utilité publique;

Vu le Décret du 21 Avril 1937 portant réglementation de la chasse et de la pêche;

Vu le Décret du 18 décembre 1930 organisant la coupe et la vente du bois des forêts;

Vu l'O.R.U. n°. 83 bis/agri du 12 décembre 1933 établissant des réserves forestières;

Après avis conforme du Conseil des Ministres,

### Décrète:

**Art. 1.** Il est créé des parcs nationaux et des réserves naturelles sur le territoire du Brundi.

Les sites choisis pour constituer des parcs ou des réserves, les délimitations, le régime de protection et de conservation de la flore et de la faune seront déterminés par un décret.

**Art. 2.** Les périmètres réservés aux parcs et aux réserves naturelles ne sont susceptibles d'aucune cession ou concession à une titre quelconque.

**Art. 3.** Par dérogation à l'article précédent, l'Etat peut modifier la délimitation, la superficie d'un parc ou d'une réserve ainsi que le type d'animaux et d'arbres à y implanter ou à détruire.

L'espace ainsi libéré peut servir à d'autres fins.

**Art. 4.** Outre la flore et la faune qu'on trouve naturellement sur place, le service chargé de la conser-

vation de la nature peut implanter dans les périmètres indiqués autant de nouveaux arbres et animaux qu'il estime utile à la promotion du tourisme ou à la diversification du biotope.

**Art. 5.** Des mesures spéciales de conservation de la flore et de la faune sont prises par décision du conservateur après autorisation du Président de la République.

**Art. 6.** La chasse est strictement interdite dans les parcs nationaux et dans les périmètres désignés comme réserves naturelles intégrales.

**Art. 7.** Il est interdit d'installer des populations à proximité des parcs nationaux et des réserves naturelles intégrales.

L'exploitation des terres autour des parcs et des réserves n'est permise qu'à un rayon de 1.000 m au moins de la délimitation du parc ou de la réserve.

**Art. 8.** La visite des parcs et des réserves naturelles est autorisée par le conservateur selon les conditions qu'il aura fixées.

**Art. 9.** Par dérogation à l'article 7, des animaux ou des oiseaux peuvent être appréhendés pour des raisons scientifiques par des personnes dûment autorisées.

Des précautions doivent être prises afin de ne pas troubler l'équilibre écologique des parcs et de réserves naturelles.

**Art. 10.** La pêche est interdite dans les parcs nationaux et les réserves naturelles sauf autorisation expresse du conservateur.

Le conservateur indiquera les animaux et les poissons spécialement protégés contre la pêche dans les cours d'eau, les lacs, ou les étangs.

**Art. 11.** Les moyens de pêche doivent être de nature à ne pas provoquer un déséquilibre fluvial ou lacustre par obstruction du cours d'eau, de la rivière ou de lac.

**Art. 12.** Seule la pêche, artisanale est autorisée dans les parcs et les réserves naturelles.

**Art. 13.** Sauf autorisation expresse préalable, il est interdit de couper les arbres des parcs nationaux et des réserves naturelles.

**Art. 14.** Le conservateur indique les prescriptions à observer pour la coupe des bois afin d'empêcher la destruction des forêts.

Il fixe la taxe d'abattage des arbres.

**Art. 15.** Toute coupe d'arbres doit être supervisée par un agronome forestier.

**Art. 16.** Le conservateur doit veiller à sauvegarder la qualité des arbres des parcs et des réserves.

**Art. 17.** Les recettes d'exploitation des parcs nationaux et des réserves naturelles sont exemptes de toute imposition.

**Art. 18.** Toute contravention aux articles 6, 7, 10, 11, 13 et 14 sera punie d'un servitude pénale d'un mois et d'une amende de 10.000 à 50.000 F BU ou de l'une de ces peines seulement.

La récidive entraîne automatiquement le double de la peine précédente.

Le biens obtenus en violation des articles visés au paragraphe précédent doivent être saisis et vendus aux enchères.

**Article 19:** Les personnes régulièrement installées dans les périmètres désignés comme parc national ou réserve naturelle seront indemnisées selon la procédure prévue par le décret du 24 juillet 1956 relatif à l'expropriation pour cause d'utilité publique.

**Article 20:** Le présent décret-loi entre en vigueur le jour de sa signature.

*Fait à Bujumbura, le 3 mars 1980,*

**Colonel Jean-Baptiste BAGAZA,**

**Vu et scellé du sceau de la République, Le Ministre de la Justice, Laurent NZEYIMANA.**



## Décret No. 100/47 du 3 mars 1980 portant Création et Organisation de l'Institut National pour la Conservation de la Nature (I.N.C.N.)

Le Président de la République,

Vu le décret-loi N° 1/186 du 26 Novembre 1976 portant organisation des pouvoirs législatif et réglementaire tel que modifié par le décret-loi No. 1/32 du 16 octobre 1978;

Vu le décret-loi N° 1/30 du 10 octobre 1978 portant cadre organique des Etablissements Publics Burundais;

Vu le décret-loi N° 1/06 du 3 mars 1980 portant création de parcs nationaux et des réserves naturelles;

Vu les délibérations du Conseil des Ministres,

**Décète:**

### CHAPITRE I. DENOMINATION - SIEGE - OBJET

**Article 1.** Il est créé sous la dénomination "**Institut National pour la Conservation de la Nature**", en abrégé I.N.C.N., un établissement public à caractère administratif de nature scientifique doté de la personnalité civile, ci-après désigné.

**Article 2.** Le siège de l'Institut est établi à Bujumbura.

Il peut être transféré en toute autre localité du pays.

Des succursales seront ouvertes dans chaque parc et réserve naturelle sur décision du Conseil d'Administration.

**Article 3.** L'Institut est placé sous l'autorité directe du Président de la République.

**Article 4.** L'Institut National pour la Conservation de la Nature a pour objet:

- de créer, organiser et gérer les parcs nationaux et les réserves naturelles,
- assurer l'administration des biens et des services des parcs et des réserves,
- faire des études et des recherches visant la conserva-

tion de la Nature en général, de la faune et de la flore dans les parcs et les réserves intégrales en particulier,

- procéder à la diversification des espèces d'arbres et d'animaux dans les parcs et les réserves,
- assurer le meilleur rendement des sites touristiques des parcs et des réserves en collaboration avec l'Office National du Tourisme,
- former des techniciens spécialisés dans le domaine de la Conservation de la Nature,
- conclure des accords de coopération scientifique pour la réalisation de son objet,
- participer aux rencontres et conférences nationales et internationales sur la protection de la Nature,
- proposer au Président de la République la désignation des sites à ériger en parcs ou en réserves.

### CHAPITRE II ADMINISTRATION ET GESTION

**Article 5.** L'Institut est administré par un Conseil d'Administration composé comme suit:

a) Membres de droit

- un représentant du Ministère de l'Agriculture;
- un représentant de la Présidence de la République;
- Le Directeur Général du Ministère de l'intérieur;
- Le Directeur de l'Office National du Tourisme;
- Le Doyen de la Faculté d'Agronomie de l'Université du Burundi;
- Le Secrétaire Permanent de la Commission Nationale pour l'Unesco;
- Le Directeur du Centre National d'Hydrométéorologie;

- Le Directeur des Eaux et Forêts;
- Le Directeur de l'Office National du Bois.
- b) Membres nommés à titre personnel;
- c) Membres représentant le personnel;
- d) Membres représentant les usagers.

Les Membres du Conseil d'Administration sont nommés par le Président de la République.

Le Président du Conseil d'Administration est désigné par le Président de la République parmi les Membres du Conseil.

**Article 6.** Sous réserves des instructions du Président de la République, le Conseil d'Administration définit les orientations de l'action de l'Institut.

Il adopte le règlement intérieur et prend toutes les décisions nécessaires à la bonne marche de l'Institut.

**Article 7.** Le Conseil d'Administration vote le budget prévisionnel de l'exercice à venir, approuve, après examen, les comptes de l'exercice écoulé et veille à l'exécution de ses décisions.

**Article 8.** Le Conseil d'administration se réunit au moins, une fois par trimestre à l'initiative de son Président ou à la demande des 2/3 de ses membres.

Il se réunit obligatoirement pour l'adoption du budget prévisionnel et pour l'approbation des comptes de l'exercice écoulé.

Le quorum requis pour que le Conseil puisse valablement délibérer est de six membres.

Les décisions sont prises à la majorité simple des membres présents. En cas de partage des voix, celle du Président est prépondérante.

**Article 10.** Le Conservateur, Directeur Général de l'Institut, assiste avec voix consultative aux réunions du Conseil d'Administration et en assure le secrétariat.

**Article 11.** Les décisions du Conseil d'Administration sont annulées par le Président de la République si elles sont contraires à la loi, à la réglementation d'ordre public ou à l'intérêt général.

**Article 12.** Le mandat du Conseil d'Administration est rémunéré conformément à la réglementation en vigueur.

Cependant, le Conseil peut allouer des rémunérations pour des missions particulières accomplies par l'un de

ses membres. Les dépenses du Conseil d'Administration sont portées aux comptes des frais généraux de l'Institut.

**Article 13.** La gestion générale et financière de l'Institut est assurée par un comité de gestion composé du Directeur Général, du Directeur Administratif ou Financier et du Chef Comptable.

Le comité de gestion veille à l'application des décisions du Conseil d'Administration.

**Article 14.** La gestion journalière de l'Institut est confiée à un Directeur Général assisté d'autant de Directeurs que de besoin.

Ils sont nommés par le Président de la République.

**Article 15.** La durée de leur mandat est fixée à 4 ans. Il est renouvelable par décision du Président de la République après avis du Conseil d'Administration.

**Article 16.** Le Directeur Général représente l'Institut en justice et auprès des tiers.

**Article 17.** Sans préjudice des poursuites judiciaires à raison des infractions commises dans l'exercice de ses fonctions, le mandat du Directeur Général ou de ses adjoints peut être révoqué à tout moment par le Président de la République en cas de faute, négligence ou incompétence.

### CHAPITRE III RESSOURCES ET DEPENSES

**Article 18.** L'Etat affecte à l'Institut les immeubles et matériel utiles à la réalisation de son objet et dont la désignation et l'estimation seront portées sur un inventaire qui sera visé par le Président de la République ou son délégué.

**Article 19.** Les ressources de l'Institut proviennent:

- des dotations budgétaires de l'Etat.
- des revenus de son patrimoine,
- des subventions des pays et organismes étrangers,
- des recettes provenant de l'exploitation des parcs et des réserves,
- des dons ou legs faits conformément à la législation en vigueur.

**Article 20.** Les dépenses de l'Institut comprennent notamment:

- la rémunération des personnels et les charges sociales,



- les frais généraux de documentation et d'administration,
- les acquisitions de biens meubles et immeubles nécessaires à la réalisation de son objet.

#### **CHAPITRE IV DISPOSITIONS FINANCIERES ET COMPTABLES**

**Article 21.** Toute dépense de l'Institut doit être engagée par le Directeur Général ou son délégué.

Le Directeur Général doit contresigner tout document de paiement signé par le chef comptable.

Aucune dépense ne peut être engagée au-delà des limites des disponibilités budgétaires.

**Article 22.** Le Conseil d'Administration fixe le plafond au delà duquel l'encaisse de l'Institut doit être consignée à un compte spécial ouvert à la Banque de la République au nom de l'Institut.

Sont également virées à ce compte les dotations budgétaires et les recettes perçues autrement qu'en espèces.

**Article 23.** Les chèques ou ordres de virement établis au nom de l'Institut doivent être contresignés par le Directeur Général.

**Article 24** Chaque trimestre, le Directeur Général adresse au Président de la République un état faisant ressortir les recettes, les dépenses et la balance des sommes disponibles au regard du budget en cours.

**Article 25.** La comptabilité de l'Institut n'est pas soumise au règlement général de la comptabilité publique.

Elle est tenue selon les règles du plan comptable national et les modalités arrêtées par le Conseil d'Administration.

**Article 26.** L'exercice comptable court du 1<sup>er</sup> janvier au 31 décembre de chaque année date à laquelle les comptes sont arrêtés, l'inventaire et le bilan établis faisant ressortir le compte des pertes et profits et les soldes caractéristiques de gestion.

**Article 27.** Les comptes de l'Institut sont placés sous le contrôle permanent de deux commissaires aux comptes désignés par le Ministre des Finances.

**Article 28.** Si, au cours de leurs opérations, les commissaires aux comptes découvrent des irrégularités susceptibles de recevoir une qualification pénale à charge des responsables de l'Institut, ils doivent adresser immédiatement un rapport spécial au Président de la République avec copie pour information au Ministre des Finances et au Procureur Général de la République.

**Article 29.** Le mandat des commissaires aux comptes est rémunéré conformément à la réglementation en vigueur. Cette rémunération est portée aux comptes des frais généraux de l'Institut.

#### **CHAPITRE V DISPOSITIONS FINALES**

**Article 30.** Le présent décret entre en vigueur le jour de sa signature.

*Fait à Bujumbura, le 3 Mars 1980.*

**Jean-Baptiste BAGAZA. Colonel.**

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# Décret-Loi No.1/16 du 17 Mai 1982 Portant Code de la Santé Publique

Le Président de la République,

Vu le décret du 26 Juillet 1910 sur la fabrication des denrées alimentaires ainsi que l'ordonnance du 17 Octobre 1911 sur l'emballage, la préparation et la fabrication des denrées alimentaires, applicables au Burundi en vertu du décret du 10 Juin 1929 ;

Vu l'ordonnance No.127/6 du 15 Juin 1913 portant règlement sur les constructions dans les quartiers "européen" des circonscriptions urbaines telle que modifiée à ce jour ;

Vu le décret du 19 Juillet 1926 sur l'Hygiène et la Salubrité Publique tel que modifié à ce jour ainsi que ses ordonnances d'exécution ;

Vu le décret du 8 Janvier 1952 sur la sécurité et la salubrité du travail au Burundi ainsi que ses ordonnances d'exécutions, spécialement l'O.R.U. No.222/67 du 20 Mars 1958 portant dispositions générales relatives à la sécurité des lieux de travail, ainsi que l'O.R.U. No.41/78 du 28 Mai 1956 relative aux établissements dangereux, insalubres ou incommodes ;

Vu le décret du 19 Mars 1952 sur l'exercice de l'art de guérir tel que modifié à ce jour ainsi que ses ordonnances d'exécutions ;

Vu l'ordonnance No.74/213 du 22 Juin 1954 portant mesures de lutte contre les maladies quaranténaires, épidémiques et autres maladies transmissibles telle que modifiée à ce jour ;

Vu l'ordonnance No.41/291 du Septembre 1955 réglementant l'exploitation des hôtels, restaurants, pensions de famille et débits de boissons telle que modifiée à ce jour ;

Vu l'O.R.U. No.221/116 du 20 Mai 1958 réglementant les baignades dans les lacs et rivières ;

Vu l'A.L. No.001/31 du 2 Juin 1966 portant Code du Travail du Burundi, spécialement son titre VII ;

Vu le décret No.100/150 du 20 Septembre 1980 portant organisation de l'exercice de la pharmacie ;

Vu le décret No.100/87 du 4 Juin 1974 organisant l'ordre des médecins ;

Sur rapport du Ministre de la Santé Publique ;

Après délibération du Conseil des Ministres,

**Décète :**

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## TITRE I

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### Protection Générale de la Santé.

#### CHAPITRE I. MESURES APPLICABLES DANS LES AGGLOMÉRATIONS

**Article 1.** Les mesures édictées au présent chapitre seront applicables dans les communes ou parties de communes dont la liste sera fixée par l'ordonnance du Ministre chargé de la Santé Publique.

Le Ministre fixera également le délai d'application de ces mesures.

#### Section I EAUX POTABLES

**Article 2.** Dans les communes ou parties de communes visées à l'article 1er, tout projet de captage destiné à l'alimentation en eau est soumis à l'autorisation préalable du Ministre chargé de la Santé Publique ou des autorités sanitaires désignées par lui.

**Article 3.** L'autorisation devra respecter les normes internationales sur l'eau de boisson. Elle déterminera en outre, avec précision, le périmètre de protection des sources, des cours d'eau, des lacs naturels ou artificiels servant à l'alimentation en eau potable.



**Article 4.** Sous certaines réserves et dans des conditions précisées par le règlement de la salubrité prévu à l'article 17 ci-dessous, les particuliers peuvent être autorisés à procéder à des captages destinés à l'alimentation en eau. Dans chaque cas, l'autorisation rappellera les contraintes auxquelles sont tenues de se conformer les auteurs du projet de captage en cause.

**Article 5.** Dans tous les cas, l'autorisation de mise en consommation ne sera accordée qu'après un accord préalable du Ministre de la Santé Publique ou des autorités sanitaires désignées par lui.

## Section 2 EAUX USÉES

**Article 6.** Dans les communes ou parties de communes visées à l'article premier, l'évacuation des eaux de ruissellement sur la voie publique sera assurée au moyen d'un réseau d'égouts séparés.

**Article 7.** Les eaux usées (eaux ménagères, eaux de lessive et de toilette, effluents de fosses septiques) ne doivent en aucun cas être déversées dans les caniveaux ou égouts servant à l'évacuation des eaux pluviales.

**Article 8.** L'installation de fosses septiques est soumise à l'autorisation des autorités sanitaires désignées par le Ministre chargé de la Santé Publique. Les fosses septiques doivent répondre aux conditions fixées par le règlement de salubrité prévu à l'article 17 ci-dessous.

**Article 9.** Les fosses fixes peuvent être installées sous réserve qu'elles répondent aux normes fixées par le règlement de salubrité prévu à l'article 17 ci-dessous, qui détermine la périodicité et les conditions de leur vidange.

**Article 10.** Sauf disposition spéciale du Ministre chargé de la Santé Publique, il est interdit de procéder à l'épandage des matières de vidange à ras du sol, sur les légumes et les fruits destinés à la consommation.

**Article 11.** La création et l'usage des puisards sont tolérés tant que les effluents ne pourront être déversés dans le réseau d'égouts publics. Ils devront répondre aux conditions qui seront fixées par le règlement prévu à l'article 17 ci-dessous.

## Section 3 ORDURES MÉNAGÈRES

**Article 12.** Dans les communes ou parties de communes visées à l'article 1er, l'enlèvement des ordures ménagères sera assuré à la diligence des pouvoirs publics.

**Article 13.** Les particuliers seront tenus de se conformer à la réglementation fixée par les autorités sanitaires locales, concernant l'usage de poubelles couvertes et la périodicité de la collecte des ordures ménagères.

**Article 14.** L'élimination des ordures ménagères doit se faire selon les normes déterminées par le Ministre chargé de la Santé Publique.

**Article 15.** Les cadavres d'animaux de petite taille devront être détruits par le feu, les cadavres d'animaux de grande taille devront être enfouis par les services municipaux.

**Article 16.** L'incinération des ordures ménagères et autres immondices pourra être autorisée, dans les conditions fixées par le Ministre chargé de la Santé Publique.

## Section 4 MESURES RELATIVES AUX IMMEUBLES

**Article 17.** Dans les communes ou parties de communes visées à l'article 1er, aucun immeuble neuf ne pourra être construit s'il ne répond aux conditions fixées par le règlement de salubrité.

Ce règlement, établi conjointement par le Ministre chargé de la Santé Publique et le Ministre des Travaux Publics, de l'Équipement et du Logement déterminera notamment :

- a) la hauteur et les dimensions minimales des locaux d'habitations ;
- b) les conditions de ventilation et d'éclairage ;
- c) la propreté des façades, des sols et des abords ;
- d) les conditions d'installation des réservoirs d'eau qui devront être construites de façon à éviter la pullulation des moustiques ;
- e) les mesures propres à éviter la pullulation des rongeurs, des moustiques et de tous les autres animaux vecteurs de germes pathogènes ;
- f) les conditions de construction des lieux d'aisance : latrines et puisards ainsi que celles relatives à l'évacuation des eaux usées ;
- g) les conditions de construction et fonctionnement des fosses septiques, épuratrices et des appareils collectifs d'épuration.

**Article 18.** Lorsqu'il existe un réseau d'évacuation des eaux de pluie ou des eaux usées, aucune autorisation de



construire un immeuble neuf ne sera accordée, si le projet ne prévoit pas le raccordement aux réseaux précités.

**Article 19.** Lorsque fonctionne un réseau de distribution d'eau courante, seul sera autorisé l'usage de latrines à chasse d'eau, raccordées soit à une fosse septique soit un réseau d'égout public si un tel réseau existe.

### Section 5 DENRÉES ALIMENTAIRES

**Article 20.** Dans les communes ou parties de communes visées à l'article 1er, les emplacements où sont fabriquées, manipulées ou mises en vente les denrées alimentaires, doivent être tenus en parfait état de propreté, à l'abri des rongeurs, des insectes et de tous animaux vecteurs de germes pathogènes.

**Article 21.** Avant leur engagement, les personnels destinés à travailler dans une entreprise de fabrication, de manutention ou de vente de denrées alimentaires subiront un examen médical et devront être porteurs d'un certificat attestant qu'ils sont indemnes d'affections contagieuses cutanées, pulmonaires, intestinales ou autres affections jugées contagieuses par l'autorité sanitaire.

**Article 22.** Toute personne travaillant dans une entreprise de fabrication, de manutention ou de vente de denrées alimentaires est tenue de se conformer aux mesures de contrôle sanitaire et aux vaccinations obligatoires susceptibles d'être édictées par le Ministre chargé de la Santé Publique.

**Article 23.** Elle doit cesser toute activité professionnelle en cas de maladie transmissible. Il appartient au chef d'entreprise de veiller à l'application des dispositions qui précèdent. Le chef d'entreprise est tenu d'en référer aux autorités sanitaires locales. La reprise d'activité ne peut s'effectuer qu'avec l'accord desdites autorités.

### Section 6 HÔTELS, RESTAURANTS ET DÉBITS DE BOISSONS

**Article 24.** L'exploitation d'un hôtel, restaurants ou débits de boissons est soumise à la délivrance préalable d'une licence par le Ministre ayant le Commerce dans ses attributions. Toute délivrance de licence est subordonnée à l'avis favorable de l'autorité sanitaire compétente, qui doit vérifier que les conditions d'hygiène fixées par le règlement particulier visé à l'article 25 ci-après sont efficacement remplies.

**Article 25.** Le Ministre ayant le Commerce dans ses attributions et le Ministre chargé de la Santé Publique établissent le règlement auquel doivent se conformer les

hôtels, restaurants et débits de boissons. Ce règlement détermine notamment :

- a) pour les hôtels, les conditions d'occupation des chambres, les conditions d'éclairage et de ventilation, la dotation mobilière, l'équipement sanitaire (bains, douches, W.C. etc...), la fourniture de l'eau chaude et froide, les mesures à prendre en cas d'occupation par un malade contagieux etc...
- b) pour les restaurants, les conditions d'installations et de fonctionnement des cuisines, la dotation mobilière (armoire, tables, frigorifiques; etc...), le lavage des ustensiles et objets de vaisselle, l'installation et le fonctionnement des fourneaux, la conservation des vivres, la préparation des aliments consommés crus etc...
- c) pour les débits de boissons, les conditions d'hygiène à remplir en ce qui concerne les ustensiles et objets de vaisselle etc...
- d) pour l'ensemble des établissements en cause, l'alimentation en eau potable, l'installation des lieux d'aisance, la tenue des locaux, la destruction des animaux vecteurs de maladies contagieuses ou parasitaires, l'éloignement des animaux domestiques etc...

Le personnel desdits établissements sera soumis à un contrôle médical dont les règles seront fixées par le Ministre chargé de la Santé Publique.

### Section 7 CIMETIÈRES

**Article 26.** Dans les communes ou parties de communes visées à l'article 1er, aucune inhumation ne peut avoir lieu en dehors des terrains affectés à cet usage sauf dérogation motivée de l'Administrateur Communal.

**Article 27.** Tout projet de création de cimetière doit être soumis au Ministre de la Santé Publique qui, après enquête tendant à vérification que ledit projet répond aux conditions fixées à l'article 28 ci-après, accorde ou refuse l'autorisation d'exécuter le projet.

**Article 28.** Le Ministre chargé de la Santé Publique détermine :

- a) la distance entre le cimetière et les habitations les plus proches ;
- b) la distance entre le cimetière et les sources d'approvisionnement en eau ;
- c) les conditions d'inhumation dans les cimetières (dimension de fosses, écartement etc...);



d) les règles relatives aux exhumations, transport de corps, embaumement etc...

**Article 29.** Aucune incinération de corps humain ne peut avoir lieu sans l'autorisation de l'Officier d'état-civil. Les conditions d'incinération sont fixées par le Ministre chargé de la Santé Publique.

## **Chapitre II** MESURES APPLICABLES DANS LES COMMUNES RURALES

**Article 30.** Dans les communes autres que celles visées à l'article 1er, il appartient aux autorités locales, administratives et sanitaires de veiller à ce que les locaux d'habitation soient maintenus en parfait état de propreté et de salubrité.

Ils doivent s'assurer, en particulier, qu'il n'existe aucun dépôt d'immondices, aucune collection d'eau stagnante à proximité des habitations et que la prolifération des rongeurs, insectes et autres vecteurs de germes pathogènes est rendue impossible.

Ils doivent veiller à ce que les habitants creusent des latrines hygiéniques.

**Article 31.** Les autorités locales doivent veiller à ce que les sources d'eau destinées à l'alimentation en eau potable soient aménagées en respectant les prescriptions contenues dans l'article 3 ci-dessus.

**Article 32.** Elles devront en outre veiller à la destruction des cadavres d'animaux de petite taille et à l'ensevelissement des cadavres d'animaux de grande taille.

**Article 33.** Les autorités locales sont également responsables de la salubrité des locaux et emplacements où sont détenues, manipulées ou mises en vente des denrées alimentaires.

## **Chapitre III** HYGIÈNE ET SÉCURITÉ DES PISCINES ET BAINADES, DES MOYENS DE TRANSPORT, DU TRAVAIL ET DES ÉTABLISSEMENTS INDUSTRIELS

### **Section 1** PISCINES ET BAINADES (HYGIÈNE DES...)

**Article 34.** Les endroits où se déroulent les exercices de natation doivent être régulièrement soumis à un contrôle d'hygiène. Ce contrôle portera principalement sur l'analyse chimique et biologique de l'eau et sur la

propreté générale autour des piscines, bassins et baignades.

**Article 35.** Le Ministre chargé de la Santé Publique déterminera par ordonnance les normes de salubrité auxquelles devront répondre les piscines et les baignades.

### **Section 2** HYGIÈNE ET SÉCURITÉ DES MOYENS DE TRANSPORTS

**Article 36.** Les personnels affectés au transport de personnes doivent subir un examen médical d'embauche avant leur entrée en fonction, cet examen doit viser à dépister certaines tares qui pourraient constituer un danger grave pour les passagers et pour le conducteur lui-même.

**Article 37.** Le Ministre de la Santé Publique déterminera les maladies et anomalies sur lesquelles devront porter les examens médicaux ainsi que la périodicité de ceux-ci.

**Article 38.** Le Ministre chargé des Transports détermine, après avis du Ministre chargé de la Santé Publique, les normes d'hygiène et de salubrité auxquelles doivent répondre les véhicules affectés au transport des personnes.

### **Section 3** HYGIÈNE ET SÉCURITÉ DU TRAVAIL

**Article 39.**

Les Ministres ayant la Santé Publique et le Travail dans leurs attributions prescrivent les mesures propres à assurer la sécurité technique et la salubrité sur les lieux du travail ainsi qu'à sauvegarder la santé de toute personne partie à un contrat d'emploi de travail, d'apprentissage, de stage et de toute forme de louage de service.

**Article 40.** Il sera créée par ordonnance conjointe des Ministres chargés de la Santé Publique et du Travail, une commission interministérielle de sécurité et d'hygiène du Travail chargée de :

- analyser les demandes d'installation de tout établissement humain,
- étudier et rechercher tout ce qui peut contribuer à l'amélioration de l'hygiène et de la sécurité du travail et formuler à toutes dispositions qu'elle jugerait utiles dans ce domaine,
- étudier toutes les situations contraires à la législation dans le domaine de l'hygiène et de la sécurité du travail et proposer les mesures appropriées.

**Article 41.** Les ordonnances prises conformément aux dispositions de la présente section seront sanctionnées par des peines de 7 jours de servitude pénale et d'une amende de 500 à 1.000 Francs ou de l'une de ces peines seulement. En cas de récidive, l'amende peut être portée au double.

**Article 42.** Les employeurs sont civilement responsables des amendes prononcées à charge de leurs préposés en vertu des ordonnances prises conformément aux dispositions de la présente section.

**Article 43.** Le décret du 8 janvier 1952 est abrogé. Toutefois, les ordonnances prises en vertu de ce décret restent en vigueur aussi longtemps qu'elles ne seront pas modifiées ou remplacées par de nouveaux textes et pour autant qu'elles ne soient pas contraires aux dispositions prises ci-dessus.

#### Section 4 HYGIÈNE INDUSTRIELLE

**Article 44.** Le Ministre chargé de la Santé Publique détermine toutes les normes d'hygiène auxquelles doivent répondre les établissements industriels pour assurer la protection du voisinage contre les dangers et toutes nuisances dues aux déchets solides, liquides et gazeux qui en seraient issus ainsi que pour préserver les personnes employées dans ces établissements des accidents de travail et des maladies professionnelles.

**Article 45.** Les établissements industriels seront regroupés en différentes classes en raison des dangers d'inconfort et d'insalubrité qu'ils représentent pour l'environnement.

**Article 46.** La mise en exploitation de ces établissements est conditionnée par la délivrance par le Ministre chargé de la Santé Publique d'un certificat de conformité.

Ce certificat sera délivré sur avis de la commission interministérielle de sécurité et d'hygiène du travail, après qu'une enquête de commodo et incommodo effectuée par les services d'hygiène aura conclu à la conformité de l'établissement aux normes d'hygiène prescrites.

**Article 47.** Les infractions aux ordonnances d'exécution prises conformément aux dispositions de la présente section seront sanctionnées par des peines de un à six mois de servitude pénale et d'une amende de dix mille à cinquante mille francs ou de l'une de ces peines seulement.

#### Chapitre IV DES SANCTIONS

**Article 48.** Les infractions aux mesures visées aux chapitres I et II du présent titre sont passibles des sanctions ci-après énumérées :

- a) les infractions entraînant la pollution des eaux d'alimentation seront punies d'une servitude de 60 jours au plus et d'une amende de 5.000 à 10.000 Francs, ou de l'une de ces peines seulement ;
- b) seront punissables des mêmes peines, les infractions entraînant la pollution des sites (dépôts d'immondices, création de mares stagnantes, abandon de cadavres d'animaux) ;
- c) en outre, la violation des dispositions prévues aux sections 5 et 6 du chapitre I peut entraîner la fermeture des établissements ou locaux dans lesquels ces infractions ont été commises.

#### Titre II

#### Lutte contre les maladies transmissibles

#### Chapitre I DISPOSITIONS GÉNÉRALES

**Article 50.** Les maladies visées par le présent titre se répartissent dans les trois catégories suivantes :

1. *Maladies visées par le règlement sanitaire international* : variole, fièvre jaune, choléra, peste ;
2. *Les autres maladies épidémiques* : typhus exanthématique, fièvre récurrente à tique, poliomyélite antérieure aiguë, grippe, méningite, cérébro-spinale, rougeole, varicelle, affection diarrhéiques graves (fièvre typhoïde et paratyphoïde, dysenteries amibiennes et hacillaires), coqueluche, tétanos, diphtérie, hépatite virale, rage, oreillons, scarlatine, spirochétose ictéro-hémorragique, fièvres hémorragiques ;
3. *Les maladies sévissant à l'état endémique* : paludisme, lèpre, trypanosomiasis, bilharziose, tuberculose, trachome, maladies sexuellement transmissibles.



4. Les maladies dont la transmission à l'homme est faite par l'intermédiaire des animaux.

**Article 51.** Le Ministre de la Santé Publique pourra faire entrer dans les différentes catégories toute situation de santé qu'il considèrera provisoirement ou à titre définitif comme étant d'ordre public.

**Article 52.** Les Ministres chargés de la Santé Publique et de l'Elevage détermineront par ordonnance conjointe les mesures de lutte contre toutes les zoonoses et notamment contre le rage, la brucellose, la cysticercose, la tuberculose, la tétanos, la trypanosomiase, la salmonellose et le charbon bactérien.

**Article 53.** Ces affections donnent lieu à déclaration obligatoire de la part du personnel médical ou para-médical ayant constaté l'existence d'un cas.

Les maladies visées par le règlement sanitaire international doivent être déclarées immédiatement et par la voie la plus rapide.

**Article 54.** Les déclarations doivent être faites dans les conditions qui seront déterminées par le Ministre chargé de la Santé Publique.

**Article 55.** Nul ne peut se soustraire ni s'opposer de quelque façon que ce soit aux examens de dépistage et aux opérations de vaccination collectives organisées par le Ministre de la Santé Publique.

De même, nul ne peut se soustraire ni s'opposer de quelque façon que ce soit aux mesures prophylactiques, telles que la désinfection ou la désinsectisation des locaux, vêtements et objets de literie, susceptibles d'être édictées par l'autorité sanitaire.

## **Chapitre II** DISPOSITIONS PARTICULIÈRES.

### **Section 1** MALADIES VISÉES PAR LE RÈGLEMENT SANITAIRE INTERNATIONAL.

**Article 56 Varlole.** Tout cas déclaré de variole donne lieu à l'isolement du malade et ses objets pendant quatorze jours et la prise des mesures prophylactiques adéquates à la diligence des autorités sanitaires.

En cas de nécessité la vaccination antivariolique aura lieu dans les conditions et selon un calendrier fixés par le Ministre chargé de la Santé Publique.

**Article 57 Fièvre jaune.** Tout cas déclaré de fièvre jaune donne lieu à l'isolement du malade osus moustiquaire.

De même les objets contact seront isolés, à l'abri de moustiques, durant 6 jours. Il pourra être procédé, à la diligence des autorités sanitaires, à la prise de mesures prophylactiques particulières lorsqu'il s'agira de cas dépistés dans une agglomération.

Le Ministre chargé de la Santé Publique pourra prescrire l'organisation de séances de vaccination collective. La vaccination contre la fièvre jaune est obligatoire pour toute personne en provenance d'un pays où la maladie a été signalée et ne justifiant pas, par la production d'un certificat international de vaccination, avoir été vaccinée depuis moins de dix ans.

**Article 58. Choléra.** Tout cas déclaré ou suspect de choléra doit être immédiatement déclaré à l'autorité sanitaire la plus proche. Il sera soumis aussitôt au traitement jusqu'à guérison confirmée bactériologiquement.

**Article 59.** Le traitement devra être suivi d'une désinfection et d'une désinsectisation de l'habitation et de ses dépendances ainsi que tous les effets ayant servi au malade.

**Article 60.** Des mesures particulières

pourront être édictées par les autorités sanitaires selon les situations.

**Article 61. Peste.** Tout cas déclaré de peste entraîne l'isolement de malade dans un local approprié.

**Article 62.** Le Ministre de la Santé Publique déterminera les conditions dans lesquelles cet isolement sera effectué et le temps qu'il devra durer.

**Article 63.** La destruction des rats et des puces sera pratiquée à la diligence des autorités sanitaires dans un rayon défini par elles. Les bateaux entrant dans le pays doivent présenter un certificat de dératisation ou d'exemption de dératisation.

**Article 64.** Le Ministre de la Santé Publique pourra prescrire la vaccination de toute personne ayant été en contact avec un malade atteint de peste ainsi que toutes mesures prophylactiques justifiées par la situation.

### **Section 2** MALADIES ÉPIDÉMIQUES

Maladies Epidémiques

**Article 65.** Les affections épidémiques donnent lieu à la prise de mesures prophylactiques appropriées, à la diligence des autorités sanitaires.



Comme il est dit à l'art. 55 ci-dessus, nul ne peut se soustraire, ou s'opposer à ces mesures.

Les vaccinations obligatoires sont pratiquées conformément au calendrier fix,41

par le Ministre chargé de la Santé Publique. Comme il est dit à l'article 55 ci-dessus, nul ne peut se soustraire, ni s'opposer aux traitements organisés dans de telles conditions.

**Article 66. Flèvre typhoïde et paratyphoïde A et B.** Le Ministre chargé de la Santé Publique peut prescrire la vaccination contre la fièvre typhoïde et les flèvres paratyphoïdes A et pour toutes les personnes résidant dans une zone menacée.

La vaccination contre les flèvres typhoïde et paratyphoïde A et B peut également être rendue obligatoire pour les agents des services de santé et les élèves des établissements d'enseignement médical et sanitaire appelées à effectuer les stages dans les hôpitaux, ainsi que certaines collectivités et pour les personnes qui manipulent des denrées alimentaires.

**Article 67. - Typhus exanthématiques.** Tout cas déclaré de typhus exanthématique entraîne l'isolement et le traitement du malade.

**Article 68.** Le Ministre chargé de la Santé Publique détermine, en tant que besoin l'ensemble des mesures à prendre pour lutter contre les maladies épidémiques, telles que l'isolement des malades et sujets contacts et la durée de cet isolement, la durée de l'éviction scolaire de ces mêmes malades et sujets contacts, la prise des mesures prophylactiques particulières, l'organisation de service de vaccination collective. etc...

### Section 3 LES MALADIES ENDEMIQUES

**Article 69.** Le Ministre chargé de la Santé Publique détermine toutes les mesures nécessaires pour lutter contre le paludisme.

**Article 70.** Tout suspect de lèpre, doit faire l'objet d'un examen complet y compris un examen bactériologiques du mucus nasal et de la peau.

**Article 71.** Toute personne comme atteinte de lèpre est tenue de se soumettre aux traitements prescrits par l'autorité sanitaire.

**Article 72.** Aucune mesure d'isolement ou d'éviction ne doit être prise à l'endroit d'une personne suspect ou

atteinte de lèpre à la condition qu'elle se soumette au traitement spécifique avec assiduité.

**Article 73.** Toute personne atteinte de trypanosomiase doit être soumise d'office à un traitement approprié.

Des mesures appropriées sont prises à la diligence des autorités sanitaires en vue du dépistage de la maladie et de la destruction de l'insecte vecteur.

**Article 74.** Le Ministre chargé de la Santé Publique pourra prescrire les mesures nécessaires à la lutte contre la bilharziose et notamment la destruction des hôtes intermédiaires dans les zones contaminées ainsi que le dépistage systématique des porteurs des parasites.

**Article 75.** Les malades dépistés seront traités obligatoirement.

### Chapitre III CONTRÔLE SANITAIRE DES FRONTIÈRES.

**Article 76.** Pour l'application du règlement sanitaire international, notamment en ce qui concerne les personnes en provenance de l'étranger ou se rendant à l'étranger, le Ministre chargé de la Santé Publique édicte les mesures appropriées et désigne les autorités localement compétentes.

Le contrôle sanitaire des personnes visées ci-dessus s'effectue à la diligence desdites autorités.

**Article 77.** La navigation sur les lacs et autres voies d'eau est soumise au contrôle sanitaire du Ministre chargé de la Santé Publique.

Pour l'exercice de ce contrôle, le Ministre prend les mesures appropriées et désigne les autorités chargées localement de leur application. Ces mesures devront cependant tenir compte du contenu du règlement sanitaire international.

Le Ministre chargé de la Santé Publique détermine par ordonnance toutes les mesures nécessaires pour l'efficacité de ce contrôle.

### Chapitre IV DES SANCTIONS

**Article 78.** Toutes infractions aux dispositions des chapitres I, II et III du présent titre et, notamment, celles visées à l'article 55 sont passibles d'une servitude pénale de 3 mois au plus et d'une amende ne dépassant pas 3.000 francs ou de l'une de ces deux peines seulement.



### Titre III

#### MALADIES AYANT UN RETENTISSEMENT SOCIAL

##### Chapitre I DISPOSITIONS GÉNÉRALES

**Article 79.** Les maladies visées par le présent titre sont spécialement la tuberculose, sous toutes ses formes, les maladies sexuellement transmissibles, les maladies mentales, d'alcoolisme et les toxicomanies.

**Article 80.** Le Ministre chargé de la Santé Publique détermine, sur proposition du Conseil National de Santé tel que prévu par le décret No. 100/82 du 1 août 1977, d'autres affections qui pourront faire l'objet de mesures particulières.

##### Chapitre II DISPOSITIONS PARTICULIÈRES

###### Section I MALADIES TRANSMISSIBLES

**Article 81.: Tuberculose.** La lutte antituberculeuse est organisée sur l'ensemble du territoire national, selon un programme arrêté par le Ministre chargé de la Santé Publique. Concourent à cette lutte tous les établissements sanitaires aux différents échelons : dispensaires, centres de santé, hôpitaux.

**Article 82.** Toute personne atteinte de tuberculose doit obligatoirement subir un traitement approprié.

**Article 83.** Maladies sexuellement transmissibles.

Toute personne atteinte de maladie sexuellement transmissible, à la période contagieuse, est tenue de se soumettre aux traitements prescrits par les autorités sanitaires.

**Article 84.** Dans chaque cas signalé, les autorités sanitaires doivent procéder à une enquête épidémiologique afin de dépister l'origine de la maladie et prendre les mesures utiles pour s'opposer à sa propagation.

###### Section 2 MALADIES NON TRANSMISSIBLES

**Article 85.** Maladies mentales, alcoolismes et toxicomanies.

La lutte contre les maladies mentales est organisée sur l'ensemble du territoire national, selon un programme arrêté par le Ministre chargé de la Santé Publique.

Concourent à cette lutte tous les établissements sanitaires aux différents échelons : dispensaire, centres de santé, hôpitaux.

**Article 86.** Les autorités sanitaires désignées par le Ministre de la Santé Publique, peuvent sur demande du Procureur de la République, prononcer l'hospitalisation d'office des personnes atteintes de troubles mentaux, d'alcoolisme ou de toxicomanie et dont la libre circulation pourrait constituer un danger soit pour elles-mêmes, soit pour autres.

**Article 87.** En cas d'urgence, l'hospitalisation d'office peut être prononcée par l'autorité territoriale compétente, sous réserve qu'un examen médical pratiqué dans les vingt-quatre heures vienne conformer ou infirmer le bien fondé de la décision administrative.

**Article 88.** Dans chaque cas la décision est portée à la connaissance du Ministère Public qui doit recueillir les constatations et recevoir le recours de l'intéressé et de sa famille contre la décision de l'autorité sanitaire.

**Article 89.** Le Ministre chargé de la Santé Publique, nonobstant les dispositions d'ordre public relatives à la préparation, au commerce et à la circulation des toxiques et stupéfiants, prend les mesures utiles à la prévention et au traitement médical des toxicomanies.

### TITRE IV

#### Exercice des professions médicales et connexes

##### CHAPITRE I DEVOIRS DE LA MÉDECINE

###### Section 1 DISPOSITIONS GÉNÉRALES

**Art. 90.** L'autorisation d'exercer la médecine sur le territoire du Burundi est accordée par le Ministre de la Santé Publique.

**Art. 91.** Elle est accordée aux personnes titulaires d'un diplôme de Docteur en médecine reconnu par la Com-

mission d'équivalence des diplômes et répondant en outre aux conditions ci-après:

- 1° Etre de nationalité burundaise sauf dérogation expresse du Ministre chargé de la Santé Publique.
- 2° Avoir un certificat spécial de Médecine tropicale reconnu valable par le Ministre chargé de la Santé Publique ou avoir fait ses études dans un pays qui connaît la pathologie tropicale.
- 3° Dans tous les cas, avoir un certificat d'un stage dont les modalités et la durée seront déterminées par ordonnance du Ministre chargé de la Santé Publique. Toutefois les empiriques se livrant actuellement au traitement des malades dans le cadre de la médecine traditionnelle pourront continuer l'exercice de leur art dans les conditions et selon les modalités qui seront déterminées par le Ministre chargé de la Santé Publique.

**Art. 92.** Les médecins du service national de santé et les médecins des missions étrangères agréés doivent consacrer la totalité de leur activités professionnelles aux services, établissements ou institutions auxquels ils sont attachés. En cas d'urgence ils doivent cependant donner leurs soins même en dehors des établissements auxquels ils sont affectés.

### Section 2 L'EXERCICE LIBÉRAL DE LA MÉDECINE

**Art. 93.** L'exercice libéral de la médecine ne peut être autorisé que par le Ministre chargé de la Santé Publique.

**Art. 94.** Le Ministre chargé de la Santé Publique peut autoriser les médecins visés à l'article 92 ci-dessus à ouvrir des cabinets privés et à donner des soins dans les limites et les conditions fixées par l'autorisation ministérielle, dans le respect des dispositions contenues dans le décret n° 100/89 du 8 septembre 1977 fixant les principes généraux en matière d'octroi et de retrait de bourses d'études et de stages ainsi que les obligations de leurs bénéficiaires et après avis du Conseil de l'ordre des médecins prévu à l'article 122 ci-dessous.

Pour avoir cette autorisation les requérants devront en outre être de nationalité burundaise.

**Art. 95.** Les médecins libéraux, actuellement installés sur le territoire national, pourront continuer l'exercice de leur profession jusqu'à une date qui sera fixée par le Ministre chargé de la Santé Publique. Le Ministre détermine par ordonnance les conditions et les délais que devront respecter les médecins en cause pour obtenir le renouvellement de leur autorisation d'exercer.

**Art. 96.** Toute infraction aux dispositions figurant sur l'autorisation qui doit préciser l'adresse professionnelle du bénéficiaire, entraînera sa caducité immédiate.

**Art. 97.** Toutes les infractions aux dispositions des articles précédents sur l'exercice de l'art de guérir seront punies d'une servitude pénale de trois mois à deux ans et d'une amende de 2.000 à 10.000, -francs ou d'une de ces peines seulement.

### Section 3 DÉONTOLOGIE MÉDICALE

**Art. 98.** Les problèmes déontologiques peuvent se poser soit entre deux ou plusieurs médecins du service national de santé, soit les médecins du service national de santé et les médecins libéraux, soit entre deux ou plusieurs médecins traitant et malades seront de la compétence du Conseil National de l'Ordre des médecins.

## CHAPITRE II EXERCICE DE LA PHARMACIE ET APPROVISIONNEMENT EN MÉDICAMENTS ET MATÉRIEL MÉDICO-CHIRURGICAL

### Section 1 EXERCICE DE LA PHARMACIE

**Art. 99.** Toutes les questions relatives à l'exercice de la Pharmacie, aux activités du pharmacien d'officine, aux établissements de commerce en gros de produits pharmaceutiques, aux substances toxiques et vénéneuses, aux laboratoires de fabrication pharmaceutique, aux substances soporifique et stupéfiants, aux substances antiseptiques ou désinfectantes, aux produits phytopharmaceutiques et insecticides, aux produits cosmétiques et détergents, à l'optique, aux spécialités pharmaceutiques, aux importations de médicaments, à l'inspection de la pharmacie, à la publicité pharmaceutique ont été réglées par le décret n° 100/150 du 20 Septembre 1980 portant organisation de l'exercice de la pharmacie.

**Art. 100.** L'article 93 du même décret institue une commission consultative pharmaceutique ayant pour mission de donner des avis sur toutes les questions reprises dans l'article précédent ainsi que sur toute autre question intéressant l'exercice de la pharmacie.

### Section 2 L'APPROVISIONNEMENT EN MÉDICAMENTS ET MATÉRIEL MÉDICO-CHIRURGICAL

**Art. 101.** L'approvisionnement des diverses formations



du service national de santé en médicaments et matériel médico-chirurgical d'usage courant est assuré par le Ministère de la Santé Publique.

**Art. 102.** A cette fin, il est institué au Ministère un dépôt pharmaceutique central, placé sous la responsabilité d'un pharmacien diplômé, appartenant au service national de santé.

**Art. 103.** Dans le souci de décentralisation qui doit présider à l'organisation du service national de santé des dépôts pharmaceutiques secondaires seront créés au chef-lieu de chaque région sanitaire, au fur et à mesure que les moyens en personnel et en locaux auront pu être dégagés. Les dépôts pharmaceutiques régionaux seront placés sous la responsabilité d'un pharmacien diplômé, appartenant au service national de santé.

**Art. 104.** Le Ministère de la Santé Publique pourra approvisionner les institutions, organisations ou missions étrangères agréées, qui concourent la protection de la santé publique et au traitement des malades, dans des limites fixées conventionnellement entre le Ministre chargé de la Santé Publique et lesdites institutions, organisations ou missions.

### CHAPITRE III EXERCICE DE L'ART DENTAIRE

**Art. 105.** L'autorisation d'exercer l'art dentaire sur le territoire du Burundi est accordée par le Ministre chargé de la Santé Publique après avis du Conseil de l'Ordre des odontologistes visé à l'article 122, aux personnes titulaires d'un diplôme universitaire de dentiste reconnu valable par la commission nationale d'équivalence des diplômes.

En outre le candidat doit:

- a) Etre de nationalité burundaise sauf dérogation expresse du Ministre chargé de la Santé Publique.
- b) Accomplir d'une manière satisfaisante le stage dont la durée et les modalités sont déterminées par l'ordonnance du Ministre chargé de la Santé Publique.

**Art. 106.** Les docteurs en médecine, chirurgie et accouchement dont les diplômes sont reconnus par le Ministre chargé de l'Education Nationale et qui sont porteur d'un diplôme de stomatologiste sont autorisés à exercer l'art dentaire cumulativement avec la médecine, la chirurgie et l'art de l'accouchement.

**Art. 107.** Relèvent de l'art dentaire, toutes les manoeuvres sanglantes ou non sanglantes ainsi que les manipulations même accessoires pratiquées dans la bouche des patients et ayant pour but:

De préserver, guérir, redresser ou remplacer les organes de la mastication;

Manoeuvres et manipulations comprises dans la dentisterie opératoire, la prothèse buccale et orthodontie.

Il en est de même des diagnostics et pronostics préalables à ces manoeuvres ou manipulations.

**Art. 108.** La prise d'empreinte de la bouche en vue de la confection d'un appareil de prothèse bucco-dentaire et le placement de celui-ci sont interdits à toute personne non qualifiée conformément aux articles 105 et 106 du présent code.

**Art. 109.** Les stomatologistes et dentistes sont autorisés à prescrire tous les médicaments destinés au traitement des affections dentaires.

**Art. 110.** Les odontologistes exercent leur art soit en qualité de fonctionnaire du service national de santé, soit au sein des missions étrangères agréées, soit à titre privé.

**Art. 111.** L'ouverture et l'exploitation d'un cabinet dentaire privé sont subordonnées à l'autorisation du Ministre chargé de la Santé Publique après avis du Conseil de l'Ordre des odontologistes pris sur le rapport du Directeur ayant les services hospitaliers dans les attributions et dans le respect des dispositions contenues dans le décret n° 100/89 du 8 Septembre 1977 fixant les principes généraux en matière d'octroi et de retrait de bourses d'études et de stages ainsi que les obligations de leurs bénéficiaires.

**Art. 112.** Les problèmes déontologiques pouvant se poser soit entre deux ou plusieurs odontologistes soit entre odontologistes et malades sont de la compétence du Conseil de l'Ordre des odontologistes. Les problèmes déontologiques qui peuvent se poser soit entre odontologistes et pharmaciens, soit entre odontologistes et médecins seront réglés par le Conseil de l'Ordre des odontologistes auquel se sera joint le Conseil de l'Ordre des pharmaciens ou des médecins selon qu'il y aura en cause un pharmacien ou un médecin.

**Art. 113.** Aucun praticien qualifié conformément aux dispositions des articles 105 et 106 ne peut avoir recours, pour l'exécution des travaux de mécanique ou de prothèse dentaires dans l'immeuble où est installé son cabinet, à des personnes non légalement qualifiées conformément aux articles 105 et 106, sans avoir reçu préalablement l'autorisation du Ministre chargé de la Santé Publique.

**Art. 114.**

Il est interdit aux praticiens qualifiés de permettre aux personnes non qualifiées conformément aux articles 105



et 106 et effectuant des travaux de mécanique ou de prothèses dentaires, d'accéder, en présence d'un patient, à un local équipé en vue de la dispensation des soins dentaires.

**Art. 115.** Les praticiens qualifiés ne peuvent, dans l'exercice de leur profession, faire usage que de seul titre de dentiste. Ceux qui sont porteurs d'un diplôme universitaire peuvent y substituer ou y ajouter la mention de leur titre ou grade académique. Seuls les praticiens titulaires d'un diplôme de docteur en médecine, chirurgie et accouchements, peuvent faire usage de la dénomination <Médecin-dentiste> ou stomatologiste.

**Art. 116.** Les infractions aux dispositions sur l'exercice de l'art dentaire seront punies des mêmes peines que celles prévues à l'article 97 contre les violations des dispositions sur l'exercice de l'art de guérir.

**Art. 117.** Le Ministre chargé de la Santé Publique déterminera par ordonnance les contours de l'exercice de l'art dentaire.

#### CHAPITRE IV LABORATOIRES D'ANALYSES MÉDICALES

**Art. 118.** Nul ne peut diriger un laboratoire d'analyse médicales s'il n'est titulaire d'un diplôme reconnu valable par le Ministre chargé de la Santé Publique.

**Art. 119.** Le création, l'ouverture et l'exploitation d'un laboratoire sont subordonnées à l'autorisation du Ministre chargé de la Santé Publique après un rapport du directeur du département ayant les laboratoires dans ses attributions.

**Art. 120.** Le Ministre chargé de la Santé Publique déterminera par ordonnance les conditions auxquelles doivent répondre les laboratoires privés.

#### CHAPITRE V DES ORDRES DES MÉDECINS, DES PHARMACIENS ET ODONTOLOGISTES

**Art. 121.** L'Ordre des Médecins a été institué par le décret n° 100/187 du 4 juin 1974 qui en assure l'organisation.

**Art. 122.** Il sera créé par décret, en temps opportun des ordres des pharmaciens et des odontologistes.

#### CHAPITRE VI DES TECHNICIENS ET AUTRES AGENTS DU SERVICE NATIONAL DE SANTÉ

**Art. 123.** L'autorisation d'exercer la profession paramédicale et sanitaire sur le territoire du Burundi est accordée par le Ministre chargé de la Santé Publique aux personnes titulaires d'un diplôme reconnu valable par la commission nationale d'équivalence des diplômes.

En outre les candidats doivent:

- a) Etre de nationalité burundaise sauf dérogation expresse du Ministre chargé de la Santé Publique.
- b) Accomplir d'une manière satisfaisante, un stage dont les modalités et la durée sont déterminées par ordonnance du Ministre chargé de la Santé Publique.

**Art. 124.** Par dérogation aux dispositions réglementant l'exercice des diverses branches de l'art de guérir, le Ministre chargé de la Santé Publique détermine les actes que des personnes non qualifiées légalement, mais qui auront reçu à cette fin une formation spéciale, pourront accomplir:

- 1° au cours de l'instruction qui leur est préalablement donnée.
- 2° à défaut d'un nombre suffisant de personnels légalement qualifiés.

**Art. 125.** Le Ministre chargé de la Santé Publique fixe la liste limitative des actes professionnels susceptibles d'être accomplis par les différentes catégories de personnel para-médical ou sanitaire appartenant soit au service national de santé, soit à un organisme ou institution agréés.

**Art. 126.** Les Ministres ayant dans leurs attributions la Santé Publique, l'Intérieur, les Travaux Publics, le Commerce, les Transports, le Travail, l'Elevage, la Justice et l'Education nationale sont chargés, chacun en ce qui le concerne, de l'application du présent décret-loi qui entre en vigueur le jour de sa signature.

*Fait à Bujumbura, le Mai 1982.*

Par le Président de la République, Colonel Jean-Baptiste BAGAZA

Le Ministre de la Santé Publique, Dr. Fidèle BIZIMANA.

Vu et scellé du Sceau de la République, Le Ministre de la Justice et Garde des Sceaux, NZEYIMANA Laurent.



## Loi No. 1/6 du 25 mai 1983 portant Protection du Patrimoine Culturel National

Nous, Jean-Baptiste BAGAZA, Président de la République.

Vu la Constitution de la République du Burundi, spécialement en ses articles 40, 41, 45, 46, 56 et 80:

Revu le Décret du 16 août 1959 sur la protection des sites, monuments et productions de l'art indigène, rendu exécutoire au Burundi par l'Ordonnance No. 21/112 du 14 Août 1956;

Attendu qu'il convient d'actualiser la réglementation applicable à la protection du patrimoine culturel national;

Sur rapport de notre Ministre de la Jeunesse, des Sports et de la Culture;

Le Conseil des Ministres ayant délibéré;

L'Assemblée Nationale ayant adopté,

**Promulguons:**

### CHAPITRE I DÉFINITIONS

**Art. 1.** Aux termes de la présente loi sont considérés comme appartenant au patrimoine culturel national les biens meubles ou immeubles qui présentent un intérêt particulier sur le plan de l'archéologie, de la préhistoire, de la paléontologie, de l'histoire, de la littérature, du folklore, de l'art, des religions et de la sociologie.

**Art. 2.** Sont considérés comme biens meubles culturels notamment: les dessins, peintures, sculptures, statues, ustensiles et outillages des techniques nationale, objets d'ameublement, pièces de vannerie, tambours et autres instruments de musique, objets rituels, bijoux, armes ayant plus de trente années d'ancienneté, les fossiles, restes d'hommes ou d'animaux ayant plus de mille ans d'ancienneté, les collections et spécimens rares de zoologie, de botanique, de géologie, les objets de caractère paléontologique, le produit des fouilles archéologiques, les objets et la documentation, ethnologiques, les archives et les documents.

**Art. 3.** Sont considérés comme biens culturels immeubles notamment: les oeuvres architecturales, les oeuvres de sculpture ou de peinture monumentale, les grottes et les inscriptions murales, les sites historiques et en particulier les anciennes résidences et les tombes royales ou princières, les sites archéologiques y compris ceux sur lesquelles se trouvaient d'anciennes exploitations minières ou manufacturières, les sites ayant un caractère religieux ou sacré, les ouvrages combinés de l'homme et de la nature ayant une valeur spéciale en raison de leur beauté ou de leur intérêt historique ou artistique.

### CHAPITRE II DU CLASSEMENT DES BIENS CULTURELS

#### Section 1 GÉNÉRALITÉS

**Art. 4.** En vue d'assurer la protection et la conservation du patrimoine culturel national, les biens meubles et immeubles définis à l'article premier peuvent faire l'objet de décisions de classement prises par décret.

Lorsque le bien à classer est de nature immobilière, le classement peut être étendu à l'aire de protection nécessaire pour isoler, dégager, assainir ou mettre en valeur l'immeuble en cause.

**Art. 5.** Le classement d'un bien meuble ou immeuble peut opérer transfert de propriété à l'Etat.

Le classement d'un bien immeuble opéré sans transfert de propriété à l'Etat constitue une servitude d'utilité publique grevant l'immeuble en cause.

**Art. 6.** Tout immeuble que fait l'objet d'une décision de classement, avec ou sans transfert de propriété à l'Etat, est, à la requête du Ministre de la Culture, enregistré à la Conservation des Titres Fonciers dans un délai de deux mois à compter de la décision du Conseil des Ministres.

Si l'immeuble était déjà enregistré avant son classement, celui-ci mentionné au certificat d'enregistrement.

Sont formalités ont lieu aux frais de l'Etat.

## Section 2 PROCÉDURE DE CLASSEMENT

**Art. 7.** Il est institué une Commission de classement des biens culturels ci-après dénommée "La Commission". Cette Commission est nommé par décret.

**Art. 8.** La Commission est composée par un représentant du Ministre de la Culture et comprend d'autres membres, désignés par décret en raison de leurs fonctions ou de leur compétence en matière de patrimoine culturel national.

**Art. 9.** Les demandes de classement sont présentées à la Commission soit par le Ministre de la Culture, soit par le propriétaire du bien.

**Art. 10.** La Commission examine les demandes et, si elles lui paraissent fondées, formule des propositions de classement.

Toute proposition de classement mentionne:

- a) les mesures spéciales de protection que la Commission juge nécessaire pour assurer la bonne conservation du bien;
- b) une proposition chiffrée et motivée d'une éventuelle indemnisation du propriétaire; l'indemnité doit couvrir la valeur vénale du bien à l'époque de la proposition; si la proposition de classement ne prévoit pas le transfert de la propriété du bien à l'Etat, l'indemnité doit couvrir la valeur représentative de la perte partielle d'usage du bien que le classement entraînera pour le propriétaire.

**Art. 11.** Toute proposition de la Commission tendant au classement d'un bien est notifiée au propriétaire par lettre recommandée du Ministre de la Culture.

Elle mentionne que, dès sa réception, le propriétaire est tenu de respecter provisoirement les interdictions mentionnées à l'article 18 ainsi que les mesures spéciales de protection prévues en vertu de l'article 10, lettre a).

**Art. 12.** Pendant un délai de deux mois à compter de la notification de la proposition de classement, le propriétaire du bien peut faire opposition motivée par lettre recommandée adressée au Ministre de la Culture.

**Art. 13.** Le délai prévu à l'article précédent expiré, le Ministre de la Culture transmet le dossier complet de la proposition de classement à l'autorité compétente.

Si le propriétaire du bien a fait opposition, celle-ci est jointe au dossier, accompagnée des avis et considérations de la Commission. La décision de classement est communiquée au propriétaire par lettre recommandée du Ministre de la Culture.

**Art. 14.** Le propriétaire du bien dispose d'un délai de deux mois à compter de la notification de la décision de classement pour exercer devant le Tribunal compétent un recours contre le montant de l'indemnité proposée.

L'introduction de ce recours ne dispense pas le propriétaire de mettre le bien à la disposition du délégué du Ministre de la Culture si la propriété en est transférée à l'Etat, ni, dans tous les cas, de respecter les interdictions mentionnées à l'article 10 ainsi que les mesures spéciales de protection prévues en vertu de l'article 10 lettre a).

**Art. 15.** Si la décision de classement emporte transfert de la propriété à l'Etat, la notification doit préciser les délais dans lesquels le bien doit être remis par le propriétaire au délégué du Ministre de la Culture.

Pendant ce délai, le propriétaire ou l'exploitant est tenu de respecter les interdictions mentionnées à l'article 18 ainsi que les mesures spéciales de protection prévues en vertu de l'article 10, lettre a).

**Art. 16.** Si le propriétaire n'a pas introduit le recours prévu à l'article précédent, l'indemnité proposée lui est versée dans le mois qui suit l'expiration du délai de deux mois à compter de la notification de la décision de classement.

Dans le cas contraire, l'indemnité fixée par décision de justice lui est versée dans un délai d'un mois à compter du jour où ladite décision est devenue définitive.

## Section 3 EFFETS DU CLASSEMENT

**Art. 17.** Le classement produit ses effets à compter de la notification de la décision de classement au propriétaire. Les effets sont suspendus de plein droit si dans un délai de six mois aucune décision de classement n'a été notifiée au propriétaire.

**Art. 18.** Un bien classé ne peut être amputé, altéré, dégradé ou détruit; il est interdit de l'utiliser pour des inscriptions, des graffiti ou des affichages.

Un bien classé ne peut être déplacé, notifié, réparé, transformé ou restauré sans l'autorisation préalable du Ministre de la Culture, prise sur avis conforme de la Commission.



**Art. 19.** Le Ministre de la Culture peut, après avis conforme de la Commission, faire exécuter aux frais de l'Etat, les travaux de réparation ou d'entretien indispensables à la conservation d'un bien classé sauf dérogation spéciale.

**Art. 20.** Lorsque le bien a été classé sans transfert de la propriété à l'Etat, les effets du classement suivent le bien en quelques mains qu'il passe.

Tout projet d'aliénation d'un tel bien doit faire l'objet deux mois au moins avant sa réalisation d'une notification de la part du vendeur en forme de lettre recommandée adressée au Ministre de la Culture.

En outre, l'acte d'aliénation doit mentionner les références de la décision de classement du bien.

**Art. 21.** Les délégués du Ministre de la Culture ont un droit de libre accès à tout bien classé sans transfert de propriété à l'Etat.

### CHAPITRE III DÉCLASSEMENT DES BIENS CLASSÉS

**Art. 22.** Sur proposition du Ministre de la Culture, il peut être procédé par décret au déclassement d'un bien classé qui, entretemps, a perdu son intérêt.

**Art. 23.** Si l'Etat était propriétaire du bien déclassé, la décision de déclassement spécifie la destination qu'il recevra, celle-ci pouvant être la vente qui sera réalisée par le Ministre de la Culture conformément à la loi.

**Art. 24.** Si l'Etat n'était pas propriétaire du bien déclassé, le propriétaire recouvre tous les droits dont il était investi avant le classement.

Toutefois, sur avis de la Commission, le Ministre de la Culture peut réclamer au propriétaire une indemnité représentative de la plus value conférée au bien par les travaux de réparation et d'entretien exécutés aux frais de l'Etat pendant la durée du classement.

**Art. 25.** Le recouvrement des indemnités fondées sur l'application de l'article précédent s'opère conformément aux dispositions relatives à l'impôt sur les revenus.

**Art. 26.** Lorsque le bien déclassé est de nature immobilière, mention de la décision de déclassement est, à la diligence du Ministre de la Culture, portée sur le certificat d'enregistrement.

Cette formalité a lieu aux frais de l'Etat.

### CHAPITRE IV VENTE ET EXPORTATION DES BIENS CULTURELS MEUBLES

**Art. 27.** Les biens meubles classés appartenant au patrimoine national ne peuvent être exportés que moyennant l'autorisation préalable du Ministre de la Culture prise sur avis de la Commission.

### CHAPITRE V REGISTRE DES BIENS CLASSÉS

**Art. 28.** Il est ouvert au Ministère de la Culture un registre des biens culturels meubles et immeubles qui ont fait l'objet d'une décision de classement.

Les modalités de la tenue à jour de ce registre sont déterminées par le Ministre de la Culture.

### CHAPITRE VI FOUILLES ET DÉCOUVERTES ARCHÉOLOGIQUES

**Art. 29.** Nul ne peut effectuer sur un terrain lui appartenant ou appartenant à autrui des fouilles ou sondages à l'effet de rechercher des objets pouvant intéresser la préhistoire, l'histoire, l'art ou l'archéologie, sans avoir obtenu l'autorisation du Ministre de la Culture.

**Art. 30.** L'autorisation de fouilles détermine les conditions dans lesquelles les recherches devront être effectuées et les règles que le fouilleur devra observer tant dans l'exécution des travaux que pour la bonne conservation de ses découvertes.

**Art. 31.** Lorsque la demande d'autorisation de fouille émane d'une personne autre que le propriétaire du terrain, le consentement écrit de ce dernier doit être joint à la demande.

**Art. 32.** Le Ministre de la Culture peut déléguer une personne qualifiée aux fins de contrôler la bonne exécution des travaux entrepris par le fouilleur.

Ce délégué a libre accès en tout temps aux chantiers ouverts par le fouilleur.

**Art. 33.** Toute découverte d'objets pouvant intéresser l'histoire, la préhistoire, l'art ou l'archéologie, qu'elle intervienne au cours de fouilles autorisées ou fortuitement, doit être notifiée au Ministre de la Culture dans un délai de huit jours et par lettre recommandée.



**Art. 34.** Tous les biens découverts sur le territoire national et qui intéressent l'histoire, la préhistoire, l'art ou l'archéologie, constituent le patrimoine culturel national et doivent faire l'objet d'une décision de classement prise conformément à l'article 4.

Une récompense dont le montant est fixé par le Ministre de la Culture, sur avis de la Commission, peut être accordée à l'inventeur.

Cette récompense peut consister "dans la remise à l'inventeur d'objets provenant de ses fouilles auxquels l'Etat peut renoncer notamment en raison de leur similitude avec d'autres objets produits par les mêmes fouilles.

**Art. 35.** Le retrait de l'autorisation de fouilles peut être prononcé par le Ministre de la Culture, sur avis de la Commission:

- a) Lorsque le fouilleur ne respecte pas les règles et conditions imposées par l'autorisation pour l'exécution des recherches et la bonne conservation des objets découverts.
- b) lorsque, en raison de l'importance des découvertes, l'intérêt national exige que les fouilles entreprises soient poursuivies par l'Etat.

Dans ce dernier cas, l'auteur des recherches a droit à un dédommagement fixé par le Ministre de la Culture, sur avis de la Commission:

**Art. 36.** L'inventeur d'objet intéressant l'histoire, la préhistoire, l'art ou l'archéologie a le droit de publier librement les résultats de ses recherches.

**Art. 37.** Sur avis de la Commission, le Ministre de la Culture peut faire procéder aux frais de l'Etat à l'exécution de fouilles ou sondages sur des terrains appartenant à des particuliers.

**Art. 38.** Le propriétaire du terrain sur lequel les fouilles doivent être réalisées aux frais de l'Etat est avisé par lettre recommandée du Ministre de la Culture un mois avant le début des travaux.

Le propriétaire ne dispose d'aucun recours pour s'opposer aux fouilles et est tenu de mettre le terrain à la disposition du délégué du Ministre de la Culture dans les délais que ce dernier aura fixé.

Avant l'ouverture du chantier, un état des lieux contradictoire est dressé.

**Art. 39.** Au terme des travaux, le propriétaire recouvre tous les droits sur le terrain et bénéficie d'une indemnité dont le montant est fixé par le Ministre de la Culture, sur avis de la Commission.

Cette indemnité doit couvrir:

- a) la perte de revenus occasionnée au propriétaire par l'affectation du terrain ainsi que des constructions et des plantations qu'il porte, à l'exécution des travaux de fouilles;
- b) le préjudice résultant des dégradations et destructions provoquées par les travaux mêmes.

**Art. 40.** Au terme des travaux ou à la fin de chaque année si leur durée excède un an, le propriétaire reçoit notification de l'indemnité proposée par lettre recommandée du Ministre de la Culture.

Le propriétaire dispose d'un recours identique à celui organisé par l'article 15.

L'indemnité lui est versée conformément au prescrit de l'article 16.

## CHAPITRE VII SANCTIONS PÉNALES

**Article 41.** Sans préjudice des dommages-intérêts et restitutions prononcées en faveur de l'Etat, l'auteur de toute infractions aux dispositions de la présente loi est passible d'une servitude pénale de deux ans au maximum et d'une amende de deux mille francs au plus, ou de l'une de ces peines seulement.



## Décret-Loi No.1/30 du 27 Septembre 1982 portant création d'un périmètre de reboisement du domaine de l'Etat

Le Président de la République,

Vu la Constitution de la République du Burundi, spécialement en ses articles 45, 46 et 80 ;

Vu en son article 1, le décret-loi No.1/186 du 26 Novembre 1976 portant organisation des pouvoirs législatif et réglementaire, tel que modifié par le décret-loi No.1/32 du

16 Octobre 1978;

Vu la loi du 29 Juin 1962 maintenant en vigueur les actes législatifs édités avant l'Indépendance Nationale ;

Vu le décret du 31 Juillet 1972 relatif aux domaines publics et privés de l'Etat, spécialement en ses articles 10 et 11 ;

Vu le décret-loi No.1/191 du 30 Décembre 1979 portant retour au domaine de l'Etat les terres irrégulièrement attribuées ;

Sur proposition du Ministre de l'Agriculture et de l'Elevage et après avis conforme du Conseil des Ministres :

### Décète :

**Article 1.** Il est institué un périmètre d'une superficie de 5.000 ha de reboisement d'intérêt public sur les terrains du domaine de l'Etat, situé en Province de Bujumbura, Commune de Buyenzi, Zone de Muhuta, région de Rutongo. Cette superficie est répartie sur les collines de recensement de Rutongo, Mārara, Kanzoganya et Buringa.

A l'intérieur de ce périmètre, aucune vente ou location de biens domaniaux, qu'elle qu'en soit la superficie, ne peut être effectuée.

**Article 2.** Le Ministre ayant l'Agriculture dans ses attributions déterminera par ordonnance les superficies réservées au reboisement à essences forestières à voca-

tion de bois de service et de chauffage. Ces superficies ne peuvent pas inclure les terrains où sont exercés les droits coutumiers ou d'occupation régulièrement attribués par l'autorité compétente. Les familles installées dans le périmètre garderont une superficie de 4 ha maximum.

**Article 3.** Sous peine de forclusion, toute contestation au sujet des surfaces déterminées en application de l'article 2 doit être adressée au Chef de zone ou à l'Administrateur communal dans un délai d'un mois à compter de la date de l'affichage de l'ordonnance déterminant les superficies de reboisement aux bureaux de la zone ou de la commune.

**Article 4.** Les contestations régulièrement formulées sont soumises à la décision d'une Commission désignée par le Ministre de l'Agriculture.

**Article 5.** La Commission dispose des pouvoirs d'enquête les plus étendus. Elle peut notamment demander communication de tous les documents détenus par l'administration ou les particuliers, entendre tous témoins et requérir tous les experts nécessaires pour l'accomplissement de leur mission.

**Article 6.** L'instruction achevée, la commission statue sur pièces et prend des décisions à la majorité simple des membres présents. Toute décision se référant à des bornes délimitant la séparation entre le domaine de l'Etat et les propriétés privées doit être accompagnée d'un plan des lieux situant ces bornes et limites..

**Article 7.** Les décisions de la Commission sont notifiées aux intéressés, par remise en copie contre accusé de réception. En cas d'impossibilité de procéder à cette remise, la notification est effectuée par affichage aux bureaux de la commune ou de la zone. Les décisions de la Commission sont susceptibles d'un recours auprès du Ministre de l'Agriculture et de l'Elevage.

**Article 8.** Le Ministre de l'Agriculture et de l'Elevage est chargé de l'exécution du présent décret-loi qui entre en vigueur le jour de sa signature.

*Fait à Bujumbura, le 27 Septembre 1982.*

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## Decrét No. 1/41 du 26 Novembre 1992 portant Institution et Organisation du domaine public hydraulique

### LE PRESIDENT DE LA REPUBLIQUE,

Vu la Constitution de la République du BURUNDI,

Vu la loi No. 1/02 du 25 Mars 1985 portant Code forestier;

Vu la loi No. 1/008 du 1er Septembre 1986 portant Code Foncier du BURUNDI;

Vu le Décret No. 42/130 du 17 Septembre 1952 portant servitudes relatives aux eaux souterraines, aux eaux des lacs et des cours d'eau, ainsi qu'à leurs usages;

Vu le Décret No. 100/226 du 11 Décembre 1989 portant création et organisation de la Commission Nationale de l'Eau et de l'Energie;

Vu le rapport de la Commission Nationale de l'Eau et de l'Energie;

Sur proposition du Ministre de l'Aménagement, du Tourisme et de l'Environnement;

Après avis conforme du Conseil des Ministres;

### DECRETE:

#### TITRE I

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#### DISPOSITIONS GENERALES

**Article 1er:** Les dispositions du présent Décret-Loi ont pour objet de protéger le milieu aquatique, de préserver la ressource commune en eau et d'en concilier dans l'intérêt de tous les différents usagers. Elles visent à permettre une gestion équilibrée et l'harmonisation des règles qui en régissent l'usage par les personnes publiques ou privées, de manière à:

1° Garantir la conservation et le libre écoulement des eaux ainsi que la préservation des écosystèmes aquatiques;

2° Assurer l'alimentation en eau potable de la population et protéger contre toute pollution la qualité des eaux;

3° Valoriser l'eau comme ressource économique et satisfaire ou concilier les exigences de l'agriculture, des pêches, de l'industrie, de la production d'énergie, des transports du tourisme ainsi que de toutes autres activités humaines légalement exercées;

4° Lutter contre le gaspillage et la surexploitation;

5° Prévenir les effets nuisibles de l'eau.

#### TITRE II

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#### DOMAINE PUBLIC HYDRAULIQUE

**Article 2:** Font partie du domaine public hydraulique:

- les cours d'eau et les lacs naturels et artificiels, leurs lits, leurs berges jusqu'à la ligne atteinte par les eaux avant de déborder telle que déterminée après enquête par l'autorité de tutelle du domaine public hydraulique;

- les sources;

- les eaux souterraines;

- les marais recouverts par les eaux de façon permanente;

les ouvrages hydrauliques et leurs dépendances réalisés dans un but d'utilité publique par l'Etat ou pour son compte.

**Article 3:** Néanmoins sont réservés les droits d'usage légalement acquis par les personnes publiques ou privées sur les eaux citées à l'article 2, selon les conditions établies au titre XIII du présent Décret-Loi.

**Article 4:** Le domaine public hydraulique est inaliénable,



imprescriptible et insaisissable. Seuls des droits d'usage temporaire peuvent y être exercés dans les conditions prévues au titre III du présent Décret-Loi.

**Article 5:** Le domaine public hydraulique est administré par le Ministère ayant les eaux dans ses attributions ci-après désigné par "administration" avec le concours de l'autorité provinciale et communale selon des dispositions du présent Décret-Loi et celles prises pour son application. Les actes d'administration du domaine public hydraulique donnent lieu, lorsqu'ils lèsent des tiers, à indemnisation. Les indemnités ainsi dues sont réglées comme en matière d'expropriation pour cause d'utilité publique.

**Article 6:** Les îles, flots, alluvions qui se forment dans les cours d'eau et lacs appartiennent à l'Etat. Les atterrissements ou relais qui se forment à leurs berges sont incorporés au domaine public hydraulique.

**Article 7:** Si un cours d'eau ou un lac forme un nouveau lit en abandonnant son ancien lit, le nouveau lit est incorporé au domaine public hydraulique. L'ancien lit d'un cours d'eau peut être attribué à titre de compensation aux propriétaires des fonds occupés par le nouveau lit dans la proportion de la valeur du terrain perdu par chacun d'eux.

### TITRE III

#### USAGE DE L'EAU

##### Chapitre I DISPOSITIONS GÉNÉRALES

**Article 8:** Aucun travail, aucun ouvrage de prise d'eau ou de rejet, aucun prélèvement ou rejet ne peut être pratiqué sur le domaine public hydraulique sans une autorisation ou une concession de l'administration, sauf exceptions prévues par le présent Décret-Loi et sans préjudice des dispositions prévues au titre VIII ci-dessous.

**Article 9:** Néanmoins, le prélèvement et l'utilisation de l'eau du domaine public hydraulique à des fins domestiques peuvent être librement pratiqués. Sont considérés comme affectés à des fins domestiques le prélèvement et l'utilisation de l'eau destinés exclusivement à la satisfaction des besoins des personnes physiques dans les limites des quantités d'eau nécessaires à l'alimentation humaine, aux soins d'hygiène, au lav-

age et aux productions végétales ou animales réservées à la consommation familiale de ces personnes.

**Article 10:** Tout propriétaire d'un fonds ou celui qui en a la jouissance a le droit de disposer des eaux pluviales qui tombent sur ce fonds.

**Article 11:** L'administration peut prendre de plein droit des mesures de limitation ou de suspension provisoire des usagers de l'eau pour faire face à une menace ou aux conséquences d'accidents, de sécheresse, d'inondations ou à un risque de pénurie.

##### Chapitre II

##### DROITS ET OBLIGATIONS DES USAGERS

**Article 12:** Le droit d'usage sur les eaux du domaine public hydraulique peut être accordé par l'administration à toute personne physique et à toute personne morale de droit public ou de droit privé dans les conditions fixées aux articles ci-dessous.

**Article 13:** Les usagers des eaux du domaine public hydraulique n'ont le droit d'en user qu'à titre précaire et révocable dans les limites déterminées par le présent Décret-Loi et les règlements pris pour son application.

**Article 14:** L'usage de l'eau est commandé par l'ordre de priorité suivant: - la satisfaction des besoins de l'alimentation en eau potable de la population;

- la satisfaction des besoins en eau de l'agriculture, y compris la pêche et la pisciculture;
- la satisfaction des besoins de l'industrie;
- la mise en valeur des voies navigables;
- la mise en valeur des eaux présentant un intérêt du point de vue du tourisme et des loisirs.

**Article 15:** Le droit d'usage confère à son titulaire la mise à disposition d'un débit ou d'un volume d'eau calculé sur la base des données hydro-climatologiques et hydrologiques d'une année moyenne.

**Article 16:** Le droit visé à l'article 15 ci-dessus trouve toutefois sa limite dans le cas de défaillance des ouvrages de rétention, prélèvement et dérivation d'eau, de pénurie due aux facteurs climatiques et d'une manière générale, d'insuffisance imprévisible du débit ou du volume d'eau qui forme l'objet d'un droit d'usage. Dans ce cas, l'administration se réserve le droit de réduire ou de supprimer d'office sans indemnité les quantités d'eau auxquelles chacun des usagers a droit.



**Article 17:** Tout titulaire d'un droit d'usage de l'eau est tenu: - d'utiliser l'eau de façon rationnelle et économique et d'éviter le gaspillage;

- d'observer strictement les conditions arrêtées dans l'acte constitutif du droit;
- de respecter les droits des autres usagers légitimes de l'eau.

**Article 18:** En cas de cession du fonds, le droit d'usage de l'eau est transféré au nouveau propriétaire qui doit déclarer le transfert pour obtenir sa validation dans un délai de six mois à compter de la date de mutation de propriété, faute de quoi il en perd le bénéfice. En cas de morcellement du fonds bénéficiaire, la répartition des eaux entre les nouveaux fonds doit

faire l'objet de droits d'usage nouveaux qui se substituent au droit d'usage originaire.

### Chapitre III AUTORISATION ET CONCESSION INTÉRESSANT LES EAUX DU DOMAINE PUBLIC HYDRAULIQUE

**Article 19:** Sont soumis au régime de l'autorisation simple: 1) le prélèvement et l'utilisation des eaux du domaine public hydraulique pratiqués au moyen d'ouvrages non permanents;

- 2) les déversements, écoulement, jets, dépôts directs ou indirects d'eau ou de matières et plus généralement tout fait susceptible d'altérer la qualité de l'eau superficielle ou souterraine, sans préjudice de l'application des dispositions de l'article 82 ci-dessous;
- 3) les plantations et cultures sur les bords et dans le lit des cours d'eau et des lacs;
- 4) les travaux de recherche et de captage des eaux souterrain jaillissantes ou non, y compris géothermiques, à l'exclusif de l'utilisation de ces eaux;
- 5) les travaux de captage et l'utilisation des eaux des sources naturelles qui ne sont pas susceptibles d'une exploitation dans un but d'intérêt général;
- 6) les travaux de curage, d'approfondissement, de rectification et de régularisation des cours d'eau;
- 7) l'extraction du sable, de pierres, de terre, de graviers et de tout autre matériaux du lit et des bords des cours d'eau et des lacs.

**Article 20:** Sont soumis au régime de la concession: 1)

le prélèvement des eaux du domaine public hydraulique ainsi que leur exploitation à des fins de production d'énergie hydroélectrique pratiqués au moyen de prises d'eau et autres ouvrages présentant un caractère permanent;

- 2) l'utilisation des eaux souterraines ou non.
- 3) l'édification de barrages ou seuils permanents ainsi que l'utilisation des eaux retenues ou dérivées.

**Article 21:** L'administration peut établir des seuils au-delà desquels les procédures d'autorisation et de concession doivent être instruites; les modalités de ces procédures, leur durée maximale, les conditions obligatoires qu'elles doivent contenir, ainsi que de l'enquête préalable à leur délivrances, sont fixés par voie réglementaire.

**Article 22:** Les activités non couvertes par les articles 19 et 20 ci-dessus et pouvant intéresser les eaux relevant du domaine public sont classées par l'administration soit dans le régime de l'autorisation simple soit dans celui de la concession.

**Article 23:** Toute concession ou autorisation est précaire et révocable de plein droit, selon les modalités et avec les garanties prévues par le présent Décret-Loi et les règlements pris pour son application.

**Article 24:** Les demandes de concessions ou autorisations peuvent être refusées si les besoins à satisfaire ne sont pas justifiés, si leur satisfaction porte préjudice à la protection qualitative et quantitative des ressources en eau, si elles lèsent les intérêts de l'économie nationale ou sont contraires aux droits des tiers dûment établis.

**Article 25:** Les concessions sont accordées dans les limites possibles des disponibilités en eau évaluées sur la base des relevés, mesures, observations, statistiques et calculs dont dispose l'administration. Aucune indemnité ne peut être demandée à l'Etat au cas où le volume effectivement disponible n'atteint pas le volume concédé.

**Article 26:** L'administration peut obliger le concessionnaire à consentir une limitation provisoire des droits inhérents à la concession pour effectuer, après modification et de façon à limiter au minimum le dommage causé à l'intéressé, des travaux d'intérêt général sur le domaine public hydraulique.

**Article 27:** Toute concession peut être déclarée d'utilité publique par l'autorité concédante, soit d'office, soit à la demande du concessionnaire, si l'intérêt de l'aménagement projeté le justifie.

**Article 28:** La déclaration d'utilité publique autorise le



concessionnaire à utiliser le domaine public en vue de l'exécution des travaux prévus dans l'acte de concession et suivant les conditions qui y sont prévues. Si l'exercice de la concession donne lieu à expropriation, il y est procédé par les voies légales aux frais du concessionnaire.

**Article 29:** Toute concession ou autorisation est renouvelable au profit de son titulaire, sous réserve de modifications qui peuvent être apportées dans l'intérêt public, aux clauses de la concession ou de l'autorisation initiales.

**Article 30:** Toute concession ou autorisation est enregistrée par les soins de l'administration, selon les modalités qui sont arrêtées par voie réglementaire.

Toute autorisation ou concession accordée en vertu du présent Décret-Loi donne lieu à perception de frais de dossier, ainsi que de redevances en raison de l'usage des biens du domaine public hydraulique. Les critères d'application de la disposition susvisée sont édictés par voie réglementaire.

**Article 31:** Si l'utilité publique rend nécessaire la suppression, la modification des installations régulièrement faites, en vertu d'une autorisation ou d'une concession, le permissionnaire ou le concessionnaire a droit, sauf stipulation contraire de l'acte d'autorisation ou de concession, à une indemnité correspondant à la valeur simple du préjudice subi.

**Article 32:** Toute concession ou autorisation peut être modifiée ou révoquée à toute époque, sans indemnité, soit dans l'intérêt de la salubrité publique, et notamment lorsque cette modification ou réduction ou révocation est nécessaire à l'alimentation en eau potable des zones habitées, soit pour prévenir ou faire cesser les dommages causés par les eaux, soit pour cause d'inobservation des clauses qu'elle comporte. En cas de violation des dispositions législatives et réglementaires en vigueur, la révocation est prononcée de plein droit, sans préjudice de poursuites pénales.

**Article 33:** Toute concession ou autorisation modifiée ou révoquée dans les hypothèses autres que celles visées aux articles 11 et 32 alinéa premier ci-dessus fait l'objet d'une indemnité versée par l'Etat au profit de son titulaire.

**Article 34:** Sans préjudice des clauses particulières figurant dans l'acte de concession ou d'autorisation, la déchéance de la concession ou de l'autorisation peut être prononcée pour:

- gaspillage ou mauvaise utilisation des eaux;
- inobservance du présent Décret-Loi, des règlements pris pour son application;

- non paiement des redevances visées par le présent Décret-Loi, après mise en demeure;

- cession de la concession effectuée sans l'autorisation de l'administration ou sans que le transfert y afférent ait été validé dans les six mois suivant le décès de son titulaire, sauf dérogation expresse de l'administration sur les délais;

- non utilisation des eaux objet de la concession ou de l'autorisation dans un délai d'un an à partir de la délivrance de la concession;

- non utilisation des eaux concédées durant deux années consécutives.

**Article 35:** Toute cession totale ou partielle de concession ou tout changement de concessionnaire ne peut avoir lieu qu'après autorisation donnée par l'administration. En cas de décès du concessionnaire, l'ayant droit peut en demander le transfert à son nom dans un délai de six mois, sous peine de déchéance.

**Article 36:** En cas de déchéance de l'autorisation ou de la concession l'administration peut ordonner la remise des lieux dans l'état primitif et, le cas échéant, la faire effectuer d'office aux frais du concessionnaire ou du permissionnaire déchu.

## TITRE IV

### SERVITUDES

#### Chapitre I

#### SERVITUDES PROPRES AU DOMAINE PUBLIC HYDRAULIQUE

**Article 37:** Les fonds riverains d'un cours d'eau ou d'un lac sont grevés sur chaque rive à partir des limites du domaine public hydraulique d'une servitude d'utilité publique d'une largeur de 4 mètres dite "servitude de marche-pied" et de libre passage des engins de curage et d'entretien sur l'espace de laquelle il ne peut être fait aucune construction, clôture ou plantation.

L'administration peut requérir la démolition de toute construction, l'enlèvement des clôtures ou plantations existantes, dans les zones assujetties sous réserve d'une notification écrite préalable et d'une indemnisation fixée comme en matière d'expropriation pour cause d'utilité publique.



**Article 38:** Les fonds riverains d'un cours d'eau ou d'un lac sont grevés d'une servitude autorisant l'administration à installer des moyens de signalisation, de mesure et de relevé des eaux.

**Article 39:** Tout propriétaire ou toute personne ayant la jouissance d'un fonds grevé par les servitudes objet du présent chapitre, est tenu de s'abstenir de tout acte pouvant nuire à l'objet pour lequel la servitude a été établie.

## Chapitre II SERVITUDES D'INTÉRÊT PRIVÉ

### Section 1 SERVITUDES NATURELLES.

**Article 40:** Les servitudes naturelles afférentes aux eaux sont régies par les dispositions des articles 16 à 20 du Code Civil, 105 à 108 du Code Foncier et à l'article 1er du Décret No.42/130 du 17 Septembre 1952.

### Section 2 SERVITUDES LÉGALES

**Article 41:** Les servitudes légales afférentes aux eaux sont régies par les dispositions des articles 2 à 24 du Décret cité à l'article précédent.

**Article 42:** Les collectivités publiques, les établissements publics et les usagers des services publics qui entreprennent des travaux hydrauliques destinés à l'alimentation en eau de la population, à l'agriculture et à l'industrie ainsi qu'à l'évacuation des eaux usées ou de drainage, peuvent bénéficier de servitude de passage de canalisations souterraines ou à ciel ouvert, selon le cas, sur les terrains non bâtis.

## TITRE V

### DISPOSITIONS SPECIALES CONCERNANT CERTAINES UTILISATIONS DES EAUX

#### Chapitre I ALIMENTATION EN EAU POTABLE

**Article 43:** Par eau de consommation, on entend au sens du présent Décret-Loi de l'eau destinée à: - la boisson et

aux usages domestiques;

- la fabrication des boissons gazeuses, des eaux minérales et de la glace;
- la préparation et la conservation de toutes denrées et marchandises destinées à l'alimentation.

**Article 44:** Chaque fois que l'administration constate qu'il y a des difficultés d'approvisionnement de la population en eau potable, l'usage et la consommation en sont réglementés pendant la période et suivant les modalités qu'elle fixe.

**Article 45:** Toute personne physique ou morale chargée de distribuer l'eau de consommation est tenue de s'assurer que cette eau est conforme aux conditions et normes de potabilité fixées par l'administration ayant la santé publique parmi ses attributions (ci-après dénommée administration de la santé publique).

**Article 46:** La périodicité, les modalités et méthodes des analyses de contrôle pratiquées au niveau des ouvrages de production, d'adduction, de stockage, de traitement et de distribution des eaux de consommation sont fixées par l'administration de la santé publique.

**Article 47:** Le contrôle bactériologique, physique et chimique de l'eau potable distribuée est assurée au moyen d'analyses périodiques effectuées par les laboratoires agréés par l'administration de la santé publique.

**Article 48:** Lorsque les sources de prélèvement de l'eau de consommation comportent des risques de contamination ou de pollution, l'administration de la santé publique peut exiger des organismes chargés d'assurer la distribution d'eau, qu'ils mettent en place des moyens appropriés de contrôle de la qualité de l'eau.

**Article 49:** Les méthodes et produits chimiques employés pour le traitement et la potabilisation des eaux de consommation doivent être autorisés par l'administration de la santé publique.

**Article 50:** Les personnes atteintes de maladies transmissibles qui sont précisées par l'Administration de la Santé Publique ne peuvent pas exercer d'activités dans un service d'approvisionnement en eau destinée à la consommation. Toute personne exerçant cette activité doit faire l'objet d'un examen médical périodique dont les prescriptions et la périodicité sont fixées par l'administration de la santé publique.

#### Chapitre II IRRIGATION

**Article 51:** Les propriétaires et exploitants de terres



agricoles irriguées sont tenus de procéder à une mise en valeur intensive et à une valorisation optimale des ressources en eau.

**Article 52:** Tout irriguant est tenu de veiller à ce que les eaux utilisées ne constituent pas une source de propagation de maladies et de produits toxiques notamment en évitant la stagnation de l'eau.

**Article 53:** L'utilisation des eaux usées pour l'irrigation est fixée par voie réglementaire.

**Article 54:** Les conditions techniques de réalisation de projets d'irrigation, l'exploitation et l'entretien des installations destinées à l'irrigation sont fixées par voie réglementaire.

**Article 55:** La gestion des infrastructures hydrauliques, destinées à l'irrigation ou au drainage peut être assurée par les exploitants agricoles groupés en coopératives spécialisées d'irrigation et de drainage avec l'assistance des services techniques de l'administration ayant l'irrigation et le drainage parmi ses attributions.

### Chapitre III PÊCHE ET PISCICULTURE

**Article 56:** La pêche et la pisciculture dans les eaux du domaine public hydraulique, y compris les concessions de droits exclusifs de pêche et de pisciculture sont réglées par les dispositions législatives et réglementaires en vigueur, sous la tutelle de l'administration ayant la pêche et la pisciculture dans ses attributions. Néanmoins l'administration doit être entendue pour avis consultatif préalablement à l'octroi d'une concession de droits exclusifs de pêche ou de pisciculture sur les eaux du domaine public hydraulique.

### Chapitre IV EAUX INDUSTRIELLES

**Article 57:** Les industries sont tenues de procéder au recyclage des eaux utilisées chaque fois que ce recyclage est techniquement et économiquement réalisable.

**Article 58:** Les modalités d'application de l'article 57 ci-dessus sont déterminées par voie réglementaire.

**Article 59:** L'implantation ou l'extension des industries concernant les établissements dangereux, insalubres et incommodes est réglée par l'administration ayant l'industrie dans ses attributions. Néanmoins, l'administration doit être entendue pour avis consultatif préalablement à l'octroi d'une décision d'implantation ou d'extension de telles unités dès lors qu'elle utilise les eaux du domaine public hydraulique.

### Chapitre V NAVIGATION ET TRANSPORT

**Article 60:** La navigation et le transport sur les cours d'eau et les lacs sont réglés par les dispositions législatives et réglementaires en vigueur, sous la tutelle de l'administration ayant la navigation et les transports dans ses attributions. Néanmoins, l'administration doit être entendue pour avis consultatif préalablement à l'établissement de tout service régulier de transport sur les cours d'eau et les lacs.

## TITRE VI

### EFFETS NUISIBLES DES EAUX

#### Chapitre I PROTECTION DES SOLS

**Article 61:** Sans préjudice de l'application des dispositions prévues aux articles 2, 81-2°, 3° et 5° et 160 du code forestier relatives à la déforestation et à la lutte anti-érosive, quiconque désire entreprendre des travaux ou se livrer à des aménagements de terrain susceptibles de perturber le régime ou le mode d'écoulement des eaux des sources, lacs ou cours d'eau est tenu de solliciter au préalable l'autorisation de l'administration compétente. Les modalités d'application de la disposition susvisée sont arrêtées par voie réglementaire.

#### Chapitre II ASSAINISSEMENT

**Article 62:** L'assainissement des agglomérations vise à assurer l'évacuation rapide et sans stagnation des eaux usées domestiques et industrielles susceptibles d'occasionner des nuisances ainsi que des eaux pluviales susceptibles d'inonder des lieux habités, dans des conditions compatibles avec les exigences de la santé publique et de l'environnement.

**Article 63:** Sans préjudice de l'application des dispositions des articles 6, 7 et 18 du code de la santé publique, le raccordement à l'égout de toute habitation ou établissement rejetant des eaux usées est obligatoire dans les agglomérations dotées d'un réseau d'assainissement collectif. Les modalités de raccordement sont fixées par voie réglementaire.

**Article 64:** Dans les zones à habitat dispersé ou dans les centres ne disposant pas d'un réseau d'assainissement



collectif, l'évacuation des eaux usées doit se faire au moyen d'installations d'évacuation individuelles agréées par l'administration de la santé publique.

**Article 65:** Tout système individuel d'assainissement doit être mis hors d'état de servir ou de créer des nuisances, dès la mise en place d'un réseau collectif d'assainissement.

**Article 66:** Le raccordement au réseau public d'assainissement des eaux résiduaires, autres que domestiques, est soumis à l'autorisation préalable du gestionnaire du service public d'assainissement.

**Article 67:** Est obligatoire le pré-traitement des eaux résiduaires avant leur rejet dans le cas où, à l'état brut, elles peuvent affecter le bon fonctionnement du réseau public d'assainissement et des installations d'épuration.

**Article 68:** Il est interdit d'introduire dans les installations d'assainissement toute matière solide, liquide ou gazeuse susceptible d'affecter la santé du personnel d'exploitation ou d'entraîner une dégradation ou une gêne de fonctionnement des ouvrages d'évacuation et de traitement.

### Chapitre III

#### LUTTE CONTRE LES INONDATIONS

**Article 69:** L'Etat prend en charge avec la participation, le cas échéant, des provinces et des communes concernées, la réalisation de tous travaux et ouvrages de protection contre les inondations lorsque ces travaux et ouvrages présentent un caractère d'intérêt général.

**Article 70:** L'administration se réserve le droit de procéder d'office à la modification ou à la suppression de tout remblais, dépôt de matières encombrant clôture, plantation, construction ou de tout autre ouvrage susceptible de faire obstacle à l'écoulement des eaux ou de restreindre d'une manière nuisible le champ des inondations sur les parties submersibles des cours d'eau. Les indemnités accordées, s'il y a lieu, sont fixées comme en matière d'expropriation pour cause d'utilité publique.

**Article 71:** La délimitation des surfaces submersibles des vallées des cours d'eau est fixée, à l'initiative de l'administration, par voie réglementaire.

**Article 72:** Aucun ouvrage, aucune plantation ou obstacle visé à l'article 69 ci-dessus ne peut être réalisé sans autorisation préalable de l'administration.

**Article 73:** Sur les digues de protection contre les inondations il est interdit de construire ou de laisser subsister des ouvrages ou obstacles quelconques, exercer

quelconques activités susceptibles de dégrader ces digues et de nuire à l'écoulement des eaux.

**Article 74:** Sur base des données disponibles et dans les limites de ses possibilités techniques et financières, l'administration élabore et met en oeuvre un plan de prévision et d'annonce des crues et de lutte contre les inondations. Les conditions d'élaboration et de mise en oeuvre de ce plan sont fixées par voie réglementaire.

**Article 75:** Les ouvrages hydrauliques susceptibles de menacer la sécurité publique font l'objet d'un contrôle périodique au moins annuel par l'administration.

**Article 76:** Les conditions et prescriptions techniques d'étude, de réalisation, d'exploitation et de contrôle des ouvrages de lutte contre les inondations sont fixées par voie réglementaire.

## TITRE VII

### DISPOSITIONS RELATIVES AUX EAUX SOUTERRAINES

#### Chapitre I

##### RECHERCHE, CAPTAGE ET EXPLOITATION DES EAUX SOUTERRAINES

**Article 77:** Sans préjudice de l'application des dispositions de l'article 2 ci-dessus, tout travail visant à la recherche, au captage et à l'exploitation des eaux souterraines est soumis au régime soit de l'autorisation simple, soit de la concession selon les conditions fixées aux articles 19-4 et 20-2 du présent Décret-Loi. Les conditions et prescriptions techniques de recherche, captage, et exploitation des eaux souterraines sont arrêtées par voie réglementaire.

#### Chapitre II

##### CONTRÔLE DE LA PROFESSION DE FOREUR DE PUIITS

**Article 78:** Nul ne peut exercer l'activité de foreur de puits ou sondeur en vue de la recherche du captage et de l'exploitation des eaux souterraines, sans une autorisation préalable de l'administration ayant dans ses attributions l'exploitation du sous-sol, attestant la compétence professionnelle du titulaire. Le foreur ou sondeur dûment autorisé doit fournir sur requête de cette administration les informations et données relatives à ses activités. Les modalités et les prescriptions techniques pour la



délivrance de l'autorisation susvisée sont arrêtées par voie réglementaire. Toute autorisation délivrée au sens du présent article est enregistrée par les soins de l'administration, selon les modalités qui sont arrêtées par voie réglementaire.

### Chapitre III RÈGLES D'APPLICATION DES DISPOSITIONS DU PRÉSENT TITRE

**Article 79:** L'administration peut restreindre l'application des dispositions du présent Titre à des périmètres déterminés en fonction soit du potentiel estimé en eaux souterraines, soit de l'importance des eaux souterraines y découvertes. Les modalités de détermination des périmètres susvisés sont arrêtées par voie réglementaire.

## TITRE VIII

### PROTECTION DE LA QUALITE DES EAUX

#### Chapitre I PRÉVENTION ET CONTRÔLE DE LA POLLU- TION DES EAUX

**Article 80:** Nul ne peut déverser, laisser s'écouler, jeter, faire des dépôts directs ou indirects d'eau ou de matières et plus généralement être l'auteur de tout fait susceptible d'altérer les caractéristiques physiques, chimiques, biologiques ou microbiologiques de l'eau superficielle ou souterraine, sans autorisation préalable de l'administration assortie d'une obligation d'épurer les effluents. Des seuils de quantité et de concentration des substances déversées au-delà desquels l'autorisation visée au premier alinéa du présent article est requise sont fixés par la voie réglementaire, eu égard à la protection de la santé publique, à la bonne utilisation des eaux pour tous usages éventuels, à la protection de la flore et de la faune aquatiques et de celle des zones avoisinantes. Les modalités et les conditions d'octroi, de modification ou de retrait de l'autorisation visée au premier alinéa du présent article sont arrêtées par voie réglementaire.

**Article 81:** Il est interdit de jeter des cadavres d'animaux dans les eaux du domaine public hydraulique ou de les enterrer à proximité des puits, fontaines et des abreuvoirs publics.

### Chapitre II PÉRIMÈTRES DE PROTECTION

**Article 82:** - Autour de tout point de prélèvement, forage, source, puits ou ouvrage destiné à l'alimentation en eau potable des collectivités humaines, est institué un périmètre de protection qui comprend: 1) un périmètre de protection dont les terrains doivent être acquis en pleine propriété et clôturés par l'organisme chargé du prélèvement et de sa distribution pour l'alimentation en eau potable;

2) un périmètre de protection rapprochée à l'intérieur duquel il est interdit de:

- forer des puits, exploiter des carrières, ouvrir et remblayer des excavations;
- établir des sépultures;
- déposer des ordures ménagères, immondices, débris, cadavres d'animaux et tous produits et matières susceptibles d'altérer la qualité des eaux;
- installer des usines, établissements de commerce, abattoirs, parcs à bestiaux;
- installer des canalisations, réservoirs ou dépôts d'hydrocarbures, de produits chimiques et d'eaux usées de toutes natures;
- établir quelque construction que ce soit;
- épandre du fumier, engrais organiques ou chimiques ou tout produit destiné à la fertilisation des sols et à la protection des cultures;
- faire des cultures ou pacager les animaux.

3) le cas échéant, un périmètre de protection éloignée à l'intérieur duquel peuvent être réglementés les dépôts ou activités visées ci-dessus. Les périmètres de protection immédiate peuvent faire l'objet d'une expropriation pour cause d'utilité publique. Dans le cas où les interdictions figurant aux 2° et 3° du présent article entraîneraient en fait la perte de jouissance de parcelles effectivement mises en valeur, le propriétaire est en droit d'exiger l'indemnisation.

### TITRE IX ZONES DE SAUVEGARDE

**Article 83:** Dans le cas où la ressource en eau est menacée du point de vue qualitatif ou quantitatif des zones de



sauvegarde peuvent être instituées à l'initiative de l'administration sur des lacs, cours d'eau, sources ou nappes souterraines.

**Article 84:** L'administration peut arrêter des plans de sauvegarde des ressources hydrauliques de la zone pouvant comporter des restrictions absolues ou relatives d'activité à soumettre à autorisation préalable selon la nature et la localisation des besoins à satisfaire. Une décision de l'administration fixe dans chaque cas la délimitation de la zone et le contenu des plans de sauvegarde. Les modalités d'application des dispositions susvisées sont arrêtées par voie réglementaire.

## TITRE X

### ASSOCIATIONS LOCALES D'USAGERS

**Article 85:** Les propriétaires ou occupants de terrains ainsi que les personnes jouissant du droit d'utiliser l'eau dont dépend la mise en valeur de ces terrains peuvent, dans le but d'assécher, irriguer et protéger les fonds contre les effets nuisibles des eaux, constituer une association. Il en va de même pour les usagers d'un point d'eau aménagé et destiné à la consommation humaine en milieu rural, dans le but d'assurer la gestion et l'entretien de l'ouvrage et ses dépendances. De telles associations doivent avoir entre autre mission la protection de l'eau.

**Article 86:** Les associations visées à l'article précédent sont dotées de la personnalité civile à la condition que leurs statuts portent:

- 1) mention que l'association se trouve constituée sur la base de la présente loi;
- 2) désignation précise des associés;
- 3) description des fonds sur lesquels les associés exercent un droit de propriété ou d'occupation, avec mention, s'il y a lieu, des certificats d'enregistrement;
- 4) indication des concessions ou autorisations obtenues par les associés, pour la disposition de l'eau dont dépend la mise en valeur des terrains;
- 5) indication des servitudes légales exercées;
- 6) siège de l'association et la durée pour laquelle elle est constituée;
- 7) désignation précise des mandataires de l'association ainsi que l'étendue de leurs pouvoirs;

8) modalités de dissolution de l'association. Les associations constituées comme ci-dessus sont dotées de la personnalité civile à dater de la publication au Bulletin Officiel du BURUNDI d'un extrait des statuts contenant au moins les énonciations spécifiées au premier alinéa. Toute modification de l'un des points 2 à 8 du premier alinéa est publiée au Bulletin Officiel du BURUNDI. Elle n'est opposable aux tiers qu'à dater de sa publication.

**Article 87:** Les associations constituées en application des dispositions susvisées peuvent être déclarées d'utilité publique par l'Administration, même dans le cas où la concession d'usage de l'eau qui leur a été accordée n'a pas été elle-même déclarée d'utilité publique. elles fixent librement leurs statuts, tout en se conformant aux prescriptions du présent Décret-Loi.

**Article 88:** Ces associations exercent seules tous les droits et toutes les obligations de leurs membres se rapportant à l'usage de l'eau.

**Article 89:** Ces associations peuvent prendre relativement à leur objet, des règlements obligatoires pour leurs membres et leurs ayants-droit.

**Article 90:** L'administration peut charger ces associations d'un service public fixer les redevances qu'elles sont autorisées à percevoir pour la surveillance, l'entretien et l'utilisation des ouvrages dont elles prennent l'initiative ou dont elles assurent la gestion.

**Article 91:** L'Administration peut charger les associations visées au deuxième alinéa de l'article 85 ci-dessus de la gestion du service public d'approvisionnement en eau potable du milieu rural. Les modalités d'application de la disposition susvisées sont arrêtées par voie réglementaire.

## TITRE XI

### PLANIFICATION DE L'UTILISATION DES RESSOURCES

**Article 92:** Les actions de mobilisation et d'utilisation de ressources en eau sont réalisées selon un cadre planifié.

**Article 93:** Le plan directeur de mobilisation, utilisation et conservation des ressources en eau est basé notamment sur les données statistiques fournies par le cadastre hydraulique et la balance hydraulique, tels que définis au présent titre. Ce plan sert d'orientation aux programmes et actions de l'administration et aux activités des personnes privées.



**Article 94:** Le cadastre hydraulique est constitué par l'inventaire des données de base relatives aux ressources en eau, à leur utilisation et aux installations hydrauliques existantes.

**Article 95:** La balance hydraulique quantifie la confrontation entre les ressources en eau et les différents besoins.

**Article 96:** Il incombe à l'administration d'élaborer et mettre à jour les cadastres et les balances hydrauliques visés aux deux articles précédents. L'administration s'acquitte des tâches susvisées avec le concours des autres administrations concernées. Les conditions d'élaboration et de mise à jour des cadastres et balances hydrauliques sont arrêtées par voie réglementaire.

**Article 97:** Le plan directeur de mobilisation, utilisation et conservation des ressources en eau est conçu à l'échelle d'un bassin ou groupement de bassins hydrographiques. Ce plan est établi et mis à jour périodiquement par les soins de l'administration en collaboration avec les autres administrations concernées. L'administration soumet le projet de plan directeur et toute modification successive pour approbation à la Commission Nationale de l'eau. Après approbation par la Commission Nationale de l'eau, le plan directeur ainsi que toute modification successive sont publiés au Bulletin Officiel du BURUNDI.

## TITRE XII

### COMMISSIONS DES EAUX

**Article 98:** Pour l'application des dispositions du présent Titre, le territoire national est découpé en unités hydrographiques naturelles dénommées bassins ou sous-bassins hydrographiques. La dénomination et la délimitation des bassins ou sous-bassins hydrographiques sont fixées par voie réglementaire.

**Article 99:** Il est créé dans chaque bassin ou sous-bassin hydrographique une commission des eaux. Cette commission est placée sous la présidence du représentant de l'administration.

**Article 100:** La commission se réunit sur convocation de son président ou de celui qui le remplace, chaque fois qu'il l'estime nécessaire ou qu'il y est requis par cinq membres au moins.

**Article 101:** Les commissions des eaux émettent des avis sur toute question qui leur est soumise par l'administration ou par le gouverneur ou par l'un des gouverneurs ayant dans sa juridiction tout ou partie d'un

bassin ou sous-bassin hydrographique. Elles formulent des propositions en tout ce qui a trait à la gestion des ressources en eau du bassin ou sous-bassin hydrographique, y compris les mesures qu'elles jugent nécessaires pour en améliorer l'utilisation, favoriser leur mise en valeur et en assurer la conservation.

**Article 102:** Les fonctions des membres de la commission ne sont pas rémunérées. Cependant, des indemnités peuvent être allouées aux membres nommés, obligés de se déplacer soit pour assister aux séances, soit pour remplir une mission qui leur est confiée.

## TITRE XIII

### DISPOSITIONS PENALES

**Article 103:** Outre les officiers et agents de police judiciaire à compétence générale, sont habilités à rechercher et à constater les infractions aux dispositions du présent Décret-Loi et des règlements pris pour son application, les agents et employés de l'administration, ainsi que les agents et employés des administrations provinciales et communales compétentes sur le territoire.

**Article 104:** Les fonctionnaires, agents et employés visés à l'article précédent, porteurs d'une commission les y autorisant, à eux délivrée par le ministre ayant les eaux dans ses attributions, ont le droit de pénétrer, accompagnés du personnel qui les assiste, à l'intérieur d'une propriété bâtie ou non bâtie, clôturée ou non, aux fins de contrôler le respect des dispositions du présent Décret-Loi et des règlements pris pour son application, ainsi que des stipulations figurant dans les concessions et autorisations octroyées au sens du présent Décret-Loi.

Ils sont en droit de se faire produire par le titulaire d'une concession ou autorisation octroyée au sens du présent Décret-Loi ou par l'usager de l'eau tous renseignements utiles à l'exécution de leur mission. toutefois, l'accès des locaux à usage d'habitation ne leur est permis que sous réserve du consentement exprès de l'occupant. L'occupant qui a indûment refusé l'accès de la propriété est passible d'une amende allant de cinq à cent mille francs suivant la gravité de l'infraction sans préjudice d'autres mesures de contrainte édictées par l'autorité compétente.

**Article 105:** Toute violation des dispositions des articles 19, 20, 39, 61, 63, 64, 66, 68, 72, 73, 78, 80 et 81 est punie d'une amende dont le montant est fixé par voie réglementaire.

**Article 106:** L'administration chargée de l'eau peut



ordonner que tous les travaux effectués en violation des dispositions du présent Décret-Loi et de règlements pris pour son application soient démolis aux frais des contrevenants et que, le cas échéant, tout soit rétabli dans l'état primitif. Il en est de même pour tout travail exécuté en non-conformité avec les stipulations d'une autorisation ou concession accordée aux sens de présent Décret-Loi.

Néanmoins, l'administration peut requérir la modification des dits travaux dans un délai fixé, à l'expiration duquel l'administration exercera les pouvoirs visés au premier alinéa.

**Article 107:** Les présentes dispositions ne font pas obstacles, en ce qui concerne le Lac Tanganyika à l'intervention des agents habilités à constater les infractions en matière de navigation et du transport lacustre.

## TITRE XIV

### DISPOSITIONS FINALES ET TRANSITOIRES

#### Chapitre I

##### PROTECTION DES DROITS D'EAU ACQUIS

**Article 108:** Le présent Décret-Loi ne porte pas atteinte aux droits exercés en vertu du Décret du 6 mai 1952 concernant les concessions et l'administration des eaux, des lacs et des cours d'eau, selon les modalités prévues ci-dessous. L'usage de ces droits ne peut avoir été interrompu pendant plus de trois ans, à moins qu'il ne soit prouvé par leur titulaire que le non-usage n'est pas dû à sa négligence ou à sa faute.

**Article 109:** Il incombe au titulaire d'un droit visé à l'article précédent d'en revendiquer l'exercice moyennant une déclaration faite à l'administration dans un délai d'un an à partir de la date de promulgation de la présente loi, et de fournir tous les renseignements que l'administration

estime utiles pour vérifier la revendication du demandeur.

Toute revendication présentée après l'expiration du délai visé à l'alinéa précédent est reçue comme nouvelle demande de concession ou d'autorisation, selon les dispositions du Titre III du présent Décret-Loi.

**Article 110:** L'administration chargée de l'eau procède à la vérification de tout droit revendiqué en temps utile, sur la base des éléments fournis par le demandeur et de ceux qu'elle a pu recueillir. Les droits dûment constatés sont confirmés par l'administration moyennant leur enregistrement, selon des modalités arrêtées par voie réglementaire. L'administration peut restreindre l'exercice de tout droit constaté en y ajoutant toutes les conditions restrictives qu'elle estime opportunes dans l'intérêt d'une bonne gestion du patrimoine hydraulique du pays. Les dispositions des articles 15, 16, 26, 29, 31, 32, 33, 34, 35 et 36 du présent Décret-Loi sont applicables aux droits acquis constatés et enregistrés selon les dispositions ci-dessus.

#### Chapitre II EAUX PARTAGÉES

**Article 111:** Les dispositions du présent Décret-Loi et celles des règlements qui sont pris pour son application le sont sans préjudice des obligations internationales du BURUNDI envers les Etats avoisinants à l'égard de l'utilisation, la mise en valeur et la protection des ressources en eau partagées par le BURUNDI et ces Etats. Les obligations susvisées découlent des conventions et traités souscrits par le BURUNDI et un ou plusieurs Etats avoisinants, ainsi que de la coutume acceptée et observée par l'ensemble des Nations.

#### Chapitre III DISPOSITIONS FINALES

**Article 112:** Toutes dispositions antérieures contraires au présent Décret-Loi sont abrogées.

**Article 113:** Le Ministre de l'Aménagement, du Tourisme et de l'Environnement est chargé de l'application du présent Décret-Loi qui entre en vigueur le jour de sa signature.

Fait à Bujumbura, le 26 Novembre 1992.-

PAR LE PRESIDENT DE LA REPUBLIQUE: Major Pierre BUYOYA

LE PREMIER MINISTRE: Adrien SIBOMANA

LE MINISTRE DE L'AMENAGEMENT, DU TOURISME ET DE L'ENVIRONNEMENT:  
Louis NDUWIMANA

VU ET SCHELLE DU SCEAU DE LA REPUBLIQUE, LE MINISTRE DE LA JUSTICE ET GARDE DES  
SCEAUX: Sebastien NTAHUGA



## CAPE VERDE

### Lei n.º 41/II/84 de 18 de Junho 19984

O decréscimo do nível geral das águas, sem reabastecimento estatisticamente significativo dos lençóis freáticos, tende a colocar o país no inquietante limiar da crise hídrica generalizada.

Sendo certo que o combate a esse progressivo definhamento tem vindo a ser empreendido em escala mais ou menos larga, quer através da racionalização progressiva da gestão do recurso quer através de medidas de fomento diques de correcção torrencial, revestimento florestal, etc. é incontestável que, até ao presente a gestão da água em Cabo Verde tem-se resumido a administração da pública carência de um bem de primeira necessidade.

De facto, os nossos recursos disponíveis em água estão largamente dependentes das chuvas, cuja irregularidade de precipitação é por demais conhecida. Daí que a busca das soluções capazes de colmatar essa carência passe necessariamente por opções de exploração das águas subterrâneas ou pela dessalinização da água do mar, por um lado e, por outro, pela estrita racionalização do uso da água.

Ora a materialização dessas opções impostas por objectivas necessidades sociais, não é possível sem uma directa intervenção do Estado no domínio hídrico intervenção essa que pressuposta para o seu desenvolvimento afirma-se para o disciplinamento da sua distribuição, uso e controle, quer qualitativo, quer quantitativo.

Na verdade, foi a necessidade de intervir directamente na gestão de um recurso que, sendo essencial para a vida é no nosso caso, já escasso e tende para a finitude que levou o Decreto-lei nº 18/75 a afirmar o princípio da dominialidade pública das águas subterrâneas e posteriormente a constituição da República à consagrar que todos os recursos hídricos do País são propriedade do Estado e bem de todo o povo.

O presente Código assenta, pois, primeiro, no princípio da dominialidade pública das águas e, segundo, no seu outro correlativo e que é de a água ser um bem geral e cuja racionalização importa a todo o Povo. Na situação de penúria de água que se vive em Cabo Verde é de capi-

tal importância para a satisfação equilibrada das necessidades básicas de todos os utentes, que aos órgãos de gestão dos recursos hídricos sejam propiciadas condições para uma actuação flexível, capaz de se adaptar, em cada momento, às múltiplas circunstâncias que afectam o equilíbrio entre as necessidades e as disponibilidades.

Pretende-se, pois, com a presente lei, alcançar esse objectivo essencial mediante um sistema que defina o quadro jurídico-institucional dentro do qual esses órgãos devem mover-se, conferindo-lhes os meios e os poderes necessários à adopção das soluções mais adequadas às diversas situações.

É assim que, a par da dominialidade pública das águas, se assenta como princípios fundamentais do presente Código o de que as obras hidráulicas de interesse colectivo pertencem ao domínio público do Estado, e de que gestão dos recursos hídricos se deve fazer de forma planificada, e através de uma administração centralizada a nível nacional.

Por outro lado, houve que ter em conta os interesses legítimos constituídos validamente ao abrigo da ordem jurídica anterior e que não violem os princípios do sistema jurídico actual. E é neste contexto que expressamente se regulamenta os direitos de uso dos particulares em matéria de água, o que se justifica pela necessidade de garantir aos cidadãos a segurança e a estabilidade das relações jurídicas constituídas, elemento importante da segurança colectiva e factor relevante da confiança e paz social.

Se é certo, porém, que o princípio da dominialidade pública dos recursos hídricos é perfeitamente compatível com a subsistência dos direitos dos particulares, não é menos evidente que estes direitos estão condicionados pela própria necessidade de racionalização de um bem que tende à quase ameaça de racionamento. Daí que o exercício do direito de uso da água pelos particulares fique em regra dependente de concessão ou licença obedecendo cada uma delas a uma detalhada disciplina processual a ser seguida como condição de atribuição desse direito.



Salvaguardou-se também a necessidade de se garantir a participação de todos os sectores interessados na gestão de um recurso que já não é mais desdobrado num complexo de funções diferenciadas mas visto como recurso merecedor de uma gestão global.

É da necessidade dessa gestão integrada que, no tope da hierarquia surge o CNAG órgão onde têm assento representantes de todos os serviços que desempenham funções no domínio das águas, que, sem centralizar a capacidade de execução, assegura a gestão nacional através dos poderes de planeamento, decisão e controlo de tudo o que respeita às águas e que coordena a acção dos organismos de gestão local sem lhes amputar a ampla competência própria.

O presente Código evidencia que o dimensionamento dos recursos hídricos em Cabo Verde não se põe a nível de soluções conjunturais mas sim a nível de um valoramento institucional em que por um lado se promove uma acção coordenada do Estado e, por outro, se admite uma grande participação dos utentes a diversos níveis como forma de assegurar a sua sensibilização e um apoio que tende a transformar a problemática da água em parte da cultura nacional através da consciencialização de que, do desenvolvimento, conservação, aproveitamento e maior poupança dos nossos recursos hídricos dependerá o desenvolvimento económico-social do país e o futuro do nosso povo.

Nestes termos.

Por mandato do Povo, a Assembleia Nacional Popular decreta, nos termos da alínea b) do artigo 58.º da Constituição o seguinte:

## CAPITULO I DISPOSIÇÕES FUNDAMENTAIS

### Artigo 1.º (Objecto da lei)

1. A presente lei estabelece as bases gerais do regime jurídico de propriedade, protecção, conservação desenvolvimento, administração e uso dos recursos hídricos da República de Cabo Verde.

2. Considera-se recurso hídrico a água nos diferentes estados físicos, seus leitos e aquíferos.

### Artigo 2.º (Ambito de aplicação)

1. A presente lei aplica-se a todos os recursos hídricos existentes no solo subsolo e atmosfera da República do Cabo Verde.

2. O disposto nesta lei é aplicável à água dessalinizada.

3. A presente lei aplica-se igualmente às águas marítimas interiores e territoriais se e na medida em que, por qualquer forma, puderem interferir com os recursos hídricos referidos nos números antecedentes.

### Artigo 3.º (Princípio da dominialidade pública)

1. Todos os recursos hídricos pertencem ao domínio público do Estado.

2. Pertencem igualmente ao domínio-público do Estado as obras hidráulicas realizadas por pessoas colectivas de direito público, as revertidas ao Estado por extinção das respectivas concessões e, em geral, as destinadas a uso público ou colectivo.

### Artigo 4.º (Princípio da desvinculação dos direitos sobre os recursos hídricos)

Sem prejuízo dos direitos conferidos pela presente lei e seus regulamentos aos proprietários usufrutuário e titulares da posse útil o direito de propriedade o outro sobre a terra não confere qualquer direito real sobre recursos hídricos.

### Artigo 5.º (Inalienabilidade)

1. Os recursos hídricos e as obras hidráulicas de domínio público são inalienáveis e não podem ser objecto de direitos a favor de terceiros salvo pelos modos e dentro dos limites estabelecidos pelas leis que directamente lhes respeitem.

2. O disposto no número antecedente não prejudica a possibilidade de transferências dominiais entre pessoas colectivas de direito público, por acordo ou por decreto do Governo.

### Artigo 6.º (Uso comum)

1. A todos é lícito o uso dos recursos hídricos para os fins a que são destinados, nas condições estabelecidas na lei.

2. O uso de recursos hídricos é oneroso, estando sujeito ao pagamento de taxas nos termos da lei.

### Artigo 7.º (Benefício da colectividade)

A gestão dos recursos hídricos deve visar a obtenção de máximo benefício da colectividade, assegurando, paralelamente, o desenvolvimento e a conservação desses recursos, em condições de utilização racional.

### Artigo 8.º (Planeamento da gestão)

A gestão dos recursos hídricos deve ser planificada no quadro do Plano Nacional de Desenvolvimento.



**Artigo 9.º (Participação)**

1. É dever de todos os cidadãos, entidades públicas e privadas contribuir para o desenvolvimento, protecção, conservação, e melhor uso dos recursos hídricos e das oras hidráulicas.

2. Devem participar na gestão dos recursos hídricos os utentes de água e as entidades que intervenham na sua prospecção, produção, protecção, conservação e distribuição.

3. Com vista a assegurar a participação dos utentes a Administração dos recursos hídricos promoverá, nomeadamente:

- a) a criação de associações de utentes;
- b) a prévia discussão pública dos projectos importantes relativos aos recursos hídricos;
- c) o assento de representantes dos utentes nos órgãos de gestão;
- d) a criação de associações de defesa do ambiente.

**Artigo 10.º (Administração dos recursos hídricos Princípio da centralização)**

1. A administração dos recursos hídricos incumbe ao Estado e rege-se, pelo princípio da centralização a nível nacional, sem prejuízo da possibilidade de desconcentração e de delegação de poderes nos termos da lei.

2. São órgãos de administração dos recursos hídricos:

- a) O conselho Nacional de Aguas (CNAG);
- b) As Comissões de Agua (CA).

3. Na dependência directa do CNAG funciona a junta dos Recursos Hídricos e o Registo Nacional de Águas.

## CAPITULO II DAS FUNÇÕES DO ESTADO

### SECÇÃO I PLANEAMENTO

**Artigo 11.º (Balanço hídrico)**

Incumbe ao Estado proceder ao levantamento das necessidades nacionais em água, bem como ao inventário dos recursos hídricos existentes, potenciais e disponíveis, e estabelecer o balanço hídrico do país.

**Artigo 12.º (Planos de desenvolvimento dos recursos hídricos)**

1. O planeamento do desenvolvimento dos recursos hídricos far-se-á através do Plano Nacional de Recursos Hídricos e de Planos de Desenvolvimento das circunscrições hidrográficas.

2. Na elaboração e implementação dos planos referidos neste artigo será garantida a participação dos utentes da água e dos sectores de actividade estatal interessados no desenvolvimento dos recursos hídricos e ter-se-ão ainda em conta as orientações do Plano Nacional de Desenvolvimento.

### SECÇÃO II REGULAMENTAÇÃO

**Artigo 13.º (Poder regulamentar)**

compete ao Estado o poder regulamentar em tudo o que respeite à gestão e desenvolvimento dos recursos hídricos especialmente em materia de prospecção, captação, conservação, protecção e uso de água.

**Artigo 14.º (Delegação)**

O poder regulamentar poderá ser delegado nos municípios ou em outras pessoas colectivas públicas por escrito publicado no *Boletim Oficial*, definindo o objecto, a extensão e a duração da competência.

### SECÇÃO III DESENVOLVIMENTO

**Artigo 15.º (Princípio)**

Incumbe ao Estado, promover organizar e realizar a prospecção, captação e exploração dos recursos hídricos bem como adoptar medidas adequadas de prevenção e controlo dos efeitos nocivos das águas.

**Artigo 16.º (Prospecção, captação e exploração)**

1. Salvo o disposto no número seguinte a prospecção, captação e exploração de águas subterrâneas e atmosféricas competem exclusivamente ao Estado.

2. Quando tal se justifique poderá o Estado autorizar a outras pessoas colectivas públicas ou a particulares a prospecção, captação e exploração de água para fins determinados.

**Artigo 17.º (Controlo das obras hidráulicas)**

1. A execução e a exploração de obras hidráulicas estão

sujeitas a autorização, controle e fiscalização do Estado.

2. O disposto neste artigo aplica-se, nomeadamente à abertura, modificação e exploração de poços, furos, galerias e outras obras de captação e adução de águas.

**Artigo 18.º (Embargo)**

1. No exercício da sua função de controle o Estado pode embargar quaisquer obras hidráulicas iniciadas ou em curso, sem a competente autorização ou em contração às respectivas licenças.

2. A recusa de paralização das obras embargadas nos termos deste número ou o seu recomeço sem que o embargo tenha sido levantado constitui crime de desobediência.

**Artigo 19.º (Inutilização e destruição)**

1. O Estado pode igualmente proceder à inutilização ou destruição de obras hidráulicas executadas sem a competente autorização ou em contração às respectivas licenças.

2. A oposição material à execução das decisões tomadas ao abrigo do n.º 1 constitui crime de desobediência.

**Artigo 20.º (Normalização)**

Incumbe ao Estado a normalização dos critérios de projecto e de elementos de base bem como da tecnologia apropriada para a execução de obras hidráulicas.

**Artigos 21.º (Conceitos e tipos de obras hidráulicas)**

1. Para efeitos do presente Código, são consideradas hidráulicas as obras que se destinarem ao aproveitamento dos recursos hídricos e/ou à defesa contra os efeitos nocivos da água.

2. As obras hidráulicas podem ser de aproveitamento, de protecção ou mistas.

3. São de aproveitamento as obras destinadas a possibilitar, facilitar ou melhorar a captação, adução, utamento, armazenamento e distribuição de água a utentes.

4. Consideram-se de protecção as obras destinadas prevenir danos causados pelas águas nas infraestruturas nomeadamente as que protegem aproveitamentos hidráulicos, as estradas, pontes e diques, bem como obras que se destinam a prevenir a poluição e contaminação acidentais ou naturais de recursos hídricos.

**SECÇÃO IV  
PROTECÇÃO**

**Artigo 22.º (Princípio)**

Incumbe ao Estado a protecção dos recursos hídrico adoptando as medidas tendentes a prevenir ou combater a ocorrência ou os efeitos de factores susceptive de afectar a sua qualidade, quantidade ou uso normais.

**Artigo 23.º (Áreas de protecção)**

1. Sob proposta do conselho Nacional de Águas Governo estabelecerá áreas de protecção e defesa anexa às linhas de água naturais ou artificiais e às obras hidráulicas de interesse colectivo. O diploma que estabelecer a áreas de protecção fixará as condições da sua utilização.

2. O Governo definirá a área adjacente às nascentes obras de captação de água potável em que é proibida a realização de quaisquer construções ou actividades susceptíveis de prejudicar a qualidade ou quantidade d'água.

**Artigo 24.º (Normas de qualidade da água)**

O Governo estabelecerá normas gerais sobre a qualidade dos recursos hídricos e os mecanismos da sua defesa.

**Artigo 25.º (Poluição e contaminação)**

1. A poluição e a contaminação dos recursos hídricos são proibidas e punidas por lei.

2. Considera-se poluição a alteração das qualidades físicas, químicas ou biológicas das águas produzida directa ou indirectamente pela actividade humana e que as torne desagradáveis à vista, paladar ou olfacto e prejudique o uso ou usos normais a que se destinam.

3. Considera-se contaminação a introdução ou o lançamento na água de organismos biológicos patogénicos ou de substâncias químicas que a tornem imprópria para consumo humano ou animal e para utilizações domésticas ou perigosa para a saúde pública.

**Artigo 26.º (Poluição e contaminação domésticas)**

1. O Estado e os municípios adoptarão as medidas adequadas ao combate à poluição e contaminação doméstica.

2. São consideradas domésticas a poluição e a contaminação provenientes de evacuação por qualquer processo de águas usadas ou lixos domésticos.



**Artigo 27.º** (Poluição e contaminação animal, agrícola e industrial)

A criação e o abeberamento de animais, o emprego de adubos e pesticidas para uso agrícola e o depósito de dejectos industriais serão regulamentados com vista a evitar que afectem a qualidade da água.

**Artigo 28.º** (Descarga de águas residuais)

1. Toda a descarga de águas residuais carece de autorização das entidades competentes do Estado.

2. A autorização só poderá ser concedida quando a descarga não prejudique a qualidade da água para além dos limites fixados nas normas em vigor.

3. Quando se trata de afluentes tóxicos ou sempre que a saúde pública esteja em perigo, é obrigatória a depuração das águas residuais.

4. As autarquias locais, as explorações agrícolas ou pecuárias, as fábricas, pocilgas, matadouros, leitarias, produtores de lacticínios e de adubos e os estabelecimentos similares são obrigados a declarar a localização dos emissores das suas águas residuais e cumprir as prescrições especiais das autoridades competentes em matéria de tratamento e controlo le afluentes.

5. Para os efeitos da presente lei consideram-se residuais:

- a) As águas cujas qualidades químicas, biológicas e físicas, incluindo a temperatura, foram modificadas pelo uso;
- b) As águas que, sem terem sido objecto de uma utilização, receberem substâncias estranhas provenientes de actividades sociais e económicas;
- c) As águas de minas e jazigos;
- d) outras águas que tenham sido objecto de qualquer uso.

**Artigo 29.º** (Lançamento de poluentes sólidos)

Salvo autorização especial é proibido deitar nas águas lixos, detritos, resíduos ou outros poluentes sólidos de qualquer natureza.

## SECÇÃO V INVESTIGAÇÃO, FORMAÇÃO E INFORMAÇÃO

**Artigo 30.º** (Investigação e experimentação)

1. O Estado deve promover a investigação e a

experimentação no domínio dos recursos hídricos, visando, nomeadamente, a procura de novas fontes, métodos e técnicas para melhor aproveitamento, desenvolvimento e protecção da água.

2. Para efeitos do disposto no número antecedente o Estado apoiará e dinamizará as estruturas existentes, criará condições para a sua coordenação eficiente e poderá instituir centros especializados de investigação e experimentação de recursos hídricos.

**Artigo 31.º** (Ensino, informação e divulgação)

Com vista à formação de uma consciência nacional sobre a problemática da água, o Estado promoverá:

a) A inclusão nos programas oficiais de todos os graus de ensino de matérias relativas às normas e técnicas sobre conservação, protecção, prospecção e utilização correcta dos recursos hídricos;

b) Campanhas de informação, palestras, publicações e outras actividades visando a divulgação e a sensibilização da comunidade nacional sobre a problemática dos recursos hídricos.

## SECÇÃO VI APOIO AOS UTENTES

**Artigo 32.º** (Assistência técnica)

O Estado criará as condições necessárias à prestação de assistência técnica eficiente aos utentes dos recursos hídricos nos termos que forem regulamentados.

**Artigo 33.º** (Incentivos fiscais e financeiros)

Com o objectivo de incitar os utentes da água à escolha das soluções mais vantajosas para a colectividade o Estado poderá criar incentivos fiscais e financeiros, nomeadamente pela concessão de participações, de empréstimos e de vantagens fiscais relativamente aos custos de instalação de novos sistemas e métodos de captação, produção e utilização da água.

## SECÇÃO VII REGIME TARIFÁRIO

**Artigo 34.º** (Competência)

Compete ao Estado estabelecer o regime tarifário dos recursos hídricos.

**Artigo 35.º** (Princípios orientadores)

O regime tarifário visa:

- a) Proporcionar uma distribuição racional, eficiente e justa de água potável, o melhoramento das condições de saneamento básico e a criação de um meio ambiente agradável;
- b) Garantir o equilíbrio financeiro do sector;
- c) Fomentar a utilização óptima dos recursos hídricos mediante a procura de métodos e sistemas que permitam o seu aproveitamento racional, evitando perdas, esbajamento ou usos inadequados;
- d) Servir de instrumento da política económica geral e contribuir para a realização do Plano Nacional dos Recursos Hídricos;
- e) Contribuir para a realização da Reforma Agrária através de estímulos à produção cooperativa e à exploração directa da terra;
- f) Regular os custos da produção agro-pecuária tendo em consideração os objectivos da política de preços ao produtor e ao consumidor;
- g) Garantir a participação dos beneficiários directos no financiamento dos investimentos, nos custos de exploração e na formação de eventuais fundos de reposição, proporcionalmente ao aumento de benefícios obtidos em virtude da maior disponibilidade hídrica.

### SECÇÃO VIII DO REGISTO

#### Artigo 36.º (Registo nacional de águas)

O Registo Nacional de Águas destina-se ao registo da localização e identificação de todos os pontos de água e obras hidráulicas existentes, bem como de todos os actos jurídicos relativos às águas.

#### Artigo 37.º (Obrigatoriedade)

Serão obrigatoriamente inscritos no Registo Nacional de Águas a atribuição, modificação, suspensão, redução e extinção do direito de uso da água e, em geral, todos os actos jurídicos relativos às águas.

#### Artigo 38.º (Regulamentação)

O Governo regulamentará o registo de águas, bem como a orgânica, competência e funcionamento do Registo Nacional de Águas.

### CAPITULO III DA ADMINISTRAÇÃO DOS RECURSOS HÍDRICOS

#### SECÇÃO I DO CONSELHO NACIONAL DE ÁGUAS

#### Artigo 39.º (Função e composição)

1. O conselho Nacional de Águas é o órgão central de gestão dos recursos hídricos.

2. O Conselho Nacional de Águas é presidido Ministro do Desenvolvimento Rural e compreende representantes dos seguintes departamentos estatais:

Ministério do Interior;  
Ministério do Desenvolvimento Rural;  
Ministério dos Transportes e comunicações  
Ministério da Habitação e Obras Públicas;  
Ministério da Saúde e Assuntos Sociais;  
Secretaria de Estado da Cooperação e do Planeamento;  
Secretaria de Estado da Indústria e Energia;  
Secretaria de Estado das Finanças.

3. Faz ainda parte do Conselho Nacional de Água um representante do Instituto Nacional de Investigação Tecnológica e um representante dos Serviços de Investigação Agrária.

4. O Conselho Nacional de Águas depende directamente do Conselho de Ministros e goza de autonomia administrativa e financeira.

#### Artigo 40.º (Dos membros do Conselho Nacional de Águas)

1. Os representantes dos diferentes departamentos referidos no artigo antecedente são designados pelo Primeiro-Ministro, sob proposta do membro de Govern responsável.

2. Serão designados um efectivo e um suplente por cada departamento.

3. Os membros do Conselho Nacional de Águas si designados por dois anos e podem ser reconduzidos iguais e sucessivos períodos.

#### Artigo 41.º (Atribuições do Conselho Nacional de Águas)

São atribuições do Conselho:



- a) Assegurar o desenvolvimento e o uso dos recursos hídricos do país;
- b) Coordenar todas as actividades respeitantes à ministration dos recursos hídricos;
- c) Garantir a aplicação das leis e normas relativo aos recursos hídricos.

**Artigo 42.º** (Competência do Conselho Nacional de Águas)

1. Compete ao Conselho Nacional de Águas executar a política definida pelo Governo no domínio das água e, em geral, ocupar-se de tudo o que respeite à administração dos recursos hídricos do país, designadamente:

- a) O estabelecimento de programas e planos pa desenvolvimento, protecção e uso óptimos dos recursos hídricos;
- b) A promoção e coordenação dos trabalhos necessarios para melhor aproveitamento a protecção dos recursos existentes e aumento das disponibilidades.
- c) A centralização e controle das actividades relativas ao uso e aproveitamento de água;
- d) A supervisão e controle da aplicação dos principios e normas de gestão da água.

2. O conselho Nacional de Águas pode delegar parte dos seus poderes, nos termos da lei, na Junta dos Recursos Hídricos e nas Comissões de Água.

**Artigo 43.º** (Competência em matéria de planeamento)

No exercício da competência referida na alínea a) do artigo antecedente, o Conselho Nacional de Águas deve, nomeadamente:

- a) propôr ao Governo linhas de definição da política de gestão dos recursos hídricos à escala nacional e regional;
- b) Elaborar o Plano Nacional de Recursos Hídricos;
- c) Propôr ao Governo medidas de carácter legislativo;
- d) Estabelecer directivas de aplicação obrigatória portodas as entidades encarregadas de funções específicas relativas à água nos diversos serviços do Estado;
- e) Organizar e manter actualizado o inventário dos recursos hídricos e das necessidades em água;

f) Organizar o balanço hídrico;

g) Coordenar as acções de investigação no domínio da água;

h) Promover a formação no domínio da água.

**Artigo 44.º** (Competência em matéria de obras hidráulicas)

No âmbito da competência referida na alínea b) do artigo 42.º cabe ao Conselho Nacional de Águas, nomeadamente:

- a) Promover, organizar e coordenar as actividades destinadas ao aumento das disponibilidades existentes, designadamente prospecção e exploração da água;
- b) Promover e coordenar a elaboração de projectos e a execução de obras de protecção e aproveitamento dos recursos hídricos;
- c) Coordenar as actividades relativas à produção da água, em todos os aspectos;
- d) Superintender as actividades relativas á qualidade da água, ao controle sanitário e à luta contra a poluição e à contaminação.

**Artigo 45.º** Competência em matéria de uso e aproveitamento)

No exercício da competência referida na alínea c) do artigo 42.º incumbe ao Conselho Nacional de Águas, designadamente:

- a) Regulamentar o regime das licenças e concessões;
- b) Estabelecer o elenco dos usos possíveis dos recursos hídricos e a prioridade entre os mesmos de acordo com os princípios consagrados nesta lei;
- c) Organizar os sistemas de distribuição da águas aos diversos utentes;
- d) Definir as taxas e tarifas da água;
- e) Administrar as estruturas nacionais da água.

**Artigo 46.º** (Competência em matéria de supervisão e controle)

No exercício da sua competência referida na alínea do artigo 42.º, cabe ao Conselho Nacional de Águas nomeadamente:



- a) Apreciar e resolver os conflitos entre utentes relativos à titularidade de exercício de direito sobre a água, os ocorridos entre particulares autoridades administrativas em matéria da águas e, bem assim, os conflitos entre duas ou mais autoridades administrativas nesse domínio;
- b) Estabelecer multas e outras penalidades por contravenções hídricas;
- c) Exercer o controle e a fiscalização das obras hidráulicas e dos usos da água, em geral;
- d) Exercer a tutela sobre organismos que intervenham na gestão das águas.
- e) Aplicar sanções nos casos de contravenção, sem prejuízo da responsabilidade civil e criminal inerente à infracção cometida e aos danos causados.

**Artigo 47.º (Direito de informação)**

O CNAG tem o direito de requisitar e obter informações e dados de entidades públicas e privadas em matéria de suas atribuições.

**Artigo 48.º (Funcionamento)**

1. O Conselho Nacional de Águas reúne-se sempre que convocado pelo seu presidente e pelo menos uma vez em cada três meses.
2. O Conselho Nacional de Águas elaborará as normas de seu funcionamento.

**Artigo 49.º (Deliberação)**

1. O CNAG só pode deliberar validamente com a presença de, pelo menos, metade mais um dos seus membros.
2. O CNAG delibera por consenso. Na falta deste ou quando qualquer dos membros requeira a votação, as deliberações são tomadas por maioria absoluta de votos dos seus membros.

**SECÇÃO II  
JUNTA DOS RECURSOS HÍDRICOS**

**Artigo 50.º (Função)**

A Junta dos Recursos Hídricos é o organismo central de execução em matéria de recursos hídricos.

**Artigo 51.º (Competência da Junta)**

1. compete à Junta dos Recursos Hídricos preparar e

executar as deliberações do Conselho Nacional de Águas, sendo responsável, designadamente, pela supervisão e coordenação de todas as actividades respeitantes à administração, prospecção, exploração e controlo da quantidade e qualidade dos recursos hídricos realização manutenção, equipamento e conservação de obras hidráulicas e centralização dos dados sobre a água.

2. Compete ainda à Junta dos Recursos Hídricos exercer os poderes que lhe forem delegados pelo Conselho Nacional de Águas.

3. No exercício da sua competência a Junta dos Recursos Hídricos actuará em ligação com os serviços estatais e outros organismos públicos com funções específicas no domínio dos recursos hídricos, promovendo a sua permanente articulação.

4. Desde que não sejam da competência específica de outros organismos públicos, a Junta dos Recursos Hídricos poderá realizar directamente e pelos seus próprios meios os trabalhos, as obras e as demais operações materiais necessárias à consecução dos objectivos definidos pelo CNAG ou requisitá-los aos serviços estatais ou outros organismos públicos dotados de necessária capacidade ou ainda contratar a sua execução com entidades públicas ou privadas nacionais, estrangeiras ou internacionais de reconhecida idoneidade e capacidade.

**Artigo 52.º (Director-Geral da Junta dos Recursos Hídricos)**

1. A Junta é chefiada por um Director-Geral nomeado pelo Conselho de Ministros, sob proposta do Conselho Nacional de Águas.
2. No exercício das suas funções, o Director-Geral está vinculado às determinações do Conselho Nacional de Águas.
3. O Director-Geral da Junta assegura o secretariado do Conselho Nacional de Águas.

**SECÇÃO III  
DAS COMISSÕES DE ÁGUA**

**Artigo 53.º (Circunscrições hidrográficas)**

1. Para efeitos de administração local dos recursos hídricos, são constituídas unidades territoriais de gestão denominadas circunscrições hidrográficas.
2. As circunscrições hidrográficas são definidas pelo Governo sob proposta do Conselho Nacional de Águas, tendo em conta as condições geográficas e naturais que conferem unidade aos recursos e os critérios



administrativos e económicos que garantam dimensão e viabilidade á circunscrição.

**Artigo 54.º** (Comissão de Água)

1. A gestão dos recursos hídricos nas circunscrições hidrográficas compete às comissões de Água.

2. A Comissão de Água é constituída por um representante do CNAG que preside, por representantes locais dos departamentos governamentais, membros do Conselho Nacional de Águas e por um representante de cada tipo expressivo de uso local escolhidos pelos respectivos utentes locais, até ao máximo de três.

**Artigo 55.º** (Competência da comissão de Água)

competem à comissão de Água:

- a) Executar as directivas emanadas do Conselho Nacional de Águas;
- b) Promover a recolha de dados sobre a água, a nível local;
- c) Manter as infraestruturas existentes;
- d) Organizar a distribuição de água pelos utentes e assegurar a assistência técnica aos mesmos;
- e) Cuidar da gestão administrativa e financeira dos recursos locais;
- f) Resolver conflitos locais e aplicar penas no quadro da competência delegada pelo CNAG;
- g) Controlar a qualidade da água a nível local;
- h) O mais que lhe for delegado pelo Conselho Nacional de Águas.

**Artigo 56.º** (Brigada técnica)

Na dependência directa da comissão da Água funciona uma Brigada Técnica constituída por pessoal especializado pertencente aos quadros da Junta dos Recursos Hídricos.

**Artigo 57.º** (Funcionamento)

O Conselho Nacional de Águas estabelecerá em regulamento próprio as normas de funcionamento das comissões de Água e o esquema do seu relacionamento com a Junta dos Recursos Hídricos e a outros organismos públicos com funções específicas no domínio dos recursos hídricos a nível central.

## SECÇÃO IV DAS GARANTIAS

**Artigo 58.º** (Recursos)

1. Das decisões das Comissões de Água cabe recurso hierárquico para o conselho Nacional de Águas.

2. Das deliberações do Conselho Nacional de Águas cabe recurso contencioso para o Supremo Tribunal de Justiça.

**Artigo 59.º** (Responsabilidade da Administração)

A Administração da Água é responsável pelos prejuízos causados por facto dos seus agentes.

**Artigo 60.º** (Dever de fundamentar as decisões)

As decisões dos órgãos da Administração da Água que afectem direitos dos utentes, dirimam conflitos ou decidam sobre recursos são sempre reduzidas a escrito com os respectivos fundamentos.

## CAPITULO IV DO USO DOS RECURSOS HÍDRICOS

### SECÇÃO I DISPOSIÇÕES GERAIS

**Artigo 61.º** (Fins a que os recursos hídricos se destinam)

Os recursos hídricos destinam-se a satisfazer as necessidades da população em água potável para fins domésticos e responder às exigências do desenvolvimento económico e social do país, nomeadamente nos domínios de:

- a) Saneamento básico e conservação do meio ambiente;
- b) Agricultura, silvicultura e pecuária;
- c) Indústria;
- d) Serviços públicos;
- e) Recreação e cultura.

**Artigo 62.º** (Prioridades)

1. O abastecimento da população em água potável e para fins domésticos é prioritário.
2. A ordem de prioridades dos restantes usos da água,

será fixada pelo conselho Nacional de Águas, para cada circunscrição hidrográfica, em conformidade com as orientações do Plano Nacional de Desenvolvimento e em função da importância sócio-económica da circunscrição.

**Artigo 63.º** (Modos de exercício do direito de uso)

O direito de uso das águas pode ser exercido:

- a) Sem dependência de autorização;
- b) Por concessão;
- c) Mediante licença.

**Artigo 64.º** (Casos de dispensa de autorização)

É livre, não carecendo por isso de autorização, o uso de:

- a) Águas para consumo individual e fins domésticos, provenientes de qualquer tipo de captação ou reservatórios públicos a tal destinados;
- b) Águas pluviais caídas sobre um prédio particular desde que utilizadas pelo proprietário ou por seu cônjuge enquanto não extravazem do prédio em prejuízo dos direitos de terceiros;
- c) Águas pluviais caídas sobre terrenos públicos;
- d) Águas sobranes de prédios situados a montante, abandonadas pelo titular do respectivo direito de uso.

**Artigo 65.º** (Casos de concessão)

1. Só podem ser objecto de concessão exploração de recursos hídricos para a abastecimento da população aproveitamento de águas minero-medicinais.

2. Podem também ser estabelecidas concessões de recursos hídricos acessoriamente a concessões de serviços públicos.

**Artigo 66.º** (Casos de licença)

Fora dos casos previstos nos artigos 64.º e 65.º o uso e aproveitamento de recursos hídricos fica sujeito a licença.

**SECÇÃO II**

**DA ATRIBUIÇÃO DO DIREITO DE USO**

**Artigo 67.º** (Necessidade de requerimento)

A concessão e a licença de uso da água devem ser requeridas às autoridades competentes.

**Artigo 68.º** (Legitimidade para requerer)

1. A concessão e a licença podem ser requeridas por qualquer pessoa singular ou colectiva autorizada a exercer a actividade para a qual a água é destinada.

2. A concessão para abastecimento à população só pode ser feita a pessoa colectiva de direito público.

**Artigo 69.º** (Requerimento)

As concessões e licenças serão pedidas em requerimento contendo a identificação do requerente, o objectivo do aproveitamento, a área em que vai fazer-se, o modo e processos de o realizar e o volume de águas a utilizar, quando isso não possa inferir-se directamente do objectivo do aproveitamento e acompanhado de memória justificativa das razões sociais, económicas ou técnicas do empreendimento.

**Artigo 70.º** (Casos de recusa de licença)

A licença só pode ser recusada por razões de interesse público devidamente fundamentadas ou quando prejudique direitos de terceiros.

**Artigo 71.º** (Conteúdo obrigatório da licença e da concessão)

1. A licença deverá determinar expressamente o fim a que a água se destina, o volume máximo que pode ser aproveitado, a área e o local de aproveitamento e as condições especiais a que fica subordinado.

2. Para além do referido no n.º 1, a concessão deverá determinar expressamente o respectivo prazo, as obras hidráulicas a realizar e os prazos da sua execução, a tarifa máxima de venda da água se ao caso couber, e os prazos e condições de resgate.

**Artigo 72.º** (Prazo das concessões)

A concessão não pode ser estabelecida por prazo superior a 30 anos.

**Artigo 73.º** (Registo)

A concessão e a licença devem, obrigatoriamente, ser inscritas no Registo Nacional de Águas sob pena de não poderem ser opostas a terceiro.

**SECÇÃO III**

**CONTEÚDO DO DIREITO DE USO**

**Artigo 74.º** (Direitos do titular)

São direitos do titular de concessão ou de licença:

- 1. Utilizar os volumes de água autorizados;



2. Obter a protecção do Estado sempre que acções ilícitas de terceiros dificultem ou impeçam o uso das águas a que a concessão ou a licença se referem, sem prejuízo da faculdade de recorrer às vias judiciais adequadas para garantia do exercício e defesa do seu direito;

3. Ter assistência técnica fornecida pelo Estado, nos termos que forem estabelecidos por lei ou contrato;

4. Constituir servidões nos termos da lei;

5. Os demais que lhe forem conferidos ou reconhecidos por lei ou contrato.

#### **Artigo 75.º (Deveres do titular)**

São deveres gerais do titular de concessão ou de licença:

1. Fazer das águas um uso proveitoso e racional correspondente ao fim para que foram atribuídas;

2. Prevenir e combater os efeitos nocivos decorrentes da utilização dos recursos hídricos;

3. Adoptar medidas para impedir a contaminação e a poluição da água;

4. Utilizar a tecnologia e as técnicas recomendadas pelas entidades competentes;

5. Respeitar os direitos e legítimos interesses de terceiros;

6. Manter em bom estado de conservação e operacionalidade as instalações hidráulicas ao seu cuidado e contribuir para a manutenção das de interesse colectivo;

7. Colaborar com os organismos de gestão dos recursos hídricos na realização das atribuições destes;

8. Pagar nos prazos estabelecidos as taxas devidas pelo uso da água;

9. Comunicar às entidades competentes a ocorrência de qualquer facto que possa influir na quantidade, qualidade e distribuição racional das águas;

10. Facilitar o trabalho de fiscalização das entidades competentes;

11. Adaptar medidas de economia de água;

12. Cumprir pontualmente as obrigações contidas na concessão ou na licença.

#### **Artigo 76.º (Alienabilidade e onerabilidade)**

1. O direito de uso não pode ser alienado nem onerado;

2. A transferência de actividade a que a água se destina para novo titular implica a transmissão do respectivo direito de uso em condições iguais às estabelecidas para o primitivo titular, quando essa transmissão tenha sido previamente aprovada pelas entidades competentes para a gestão dos recursos hídricos.

3. O disposto neste artigo aplica-se ao conjunto das coisas sobre que o direito de uso se exerce ou afectadas a esse exercício, salvo tratando-se de instalações feitas com fim diverso do da concessão ou da licença.

#### **Artigo 77.º (Transmissibilidade mortis causa)**

Os direitos emergentes de concessão de recursos hídricos só se transmitem por sucessão legitimária e em conjunto com a actividade a que a água se destina.

### **SECÇÃO IV**

#### **LIMITAÇÃO, MODIFICAÇÃO, SUSPENSÃO**

e extinção do direito de uso

#### **Artigo 78.º (Requisição de águas)**

Em casos urgentes de incêndio ou calamidade pública as autoridades administrativas podem, sem processo nem indemnização, ordenar a utilização imediata de quaisquer águas atribuídas por concessão ou mediante licença se e na medida em que se mostrarem necessárias para conter ou evitar os danos.

#### **Artigo 79.º (Limitação ao uso das águas)**

1. Ao titular de direito de uso sobre fonte ou nascente não é lícito mudar o seu curso costumado se a população se abastece dela ou das suas águas vertentes para fins domésticos.

2. O disposto no número 1 é aplicável, com as necessárias adaptações, às águas pluviais referidas na alínea b) do artigo 64.º

3. O titular de direito de uso que, ao aproveitar águas subterrâneas, altere ou faça diminuir as águas de fonte ou reservatório destinado a uso público, é obrigado a repôr as coisas no estado anterior; não sendo isso possível é o direito de uso reduzido na medida do necessário para fornecer ao público água equivalente àquela de que ficou privado.

#### **Artigo 80.º (Modificação do direito de uso)**

O Estado pode, a todo o tempo, impôr ao titular do direito de uso as modificações nas obras e no regime hidráulico da licença ou da concessão que, por razões de interesse público devidamente fundamentadas, se mostrem necessárias.

**Artigo 81.º** (Alteração substancial)

Se as modificações impostas ao abrigo do artigo antecedente determinarem uma alteração substancial das condições que serviram de base ao estabelecimento da concessão ou à atribuição de licenças, poderá o titular do direito de uso rescindir o contrato de concessão ou desistir de licença, sem prejuízo da indemnização que lhe seja devida nos termos da lei.

**Artigo 82.º** (suspensão e redução do direito de uso)

O direito de uso pode ser suspenso, ou reduzido o volume de água a aproveitar, nos casos do artigo 86.º ou a pedido expresso do titular devidamente justificado, nos termos que forem regulamentados.

**Artigo 83.º** (Extinção do direito de uso)

1. O direito de uso extingue-se:

- a) Por morte ou extinção do respectivo titular, salvo o disposto no artigo 77.º;
- b) Pelo decurso do respectivo prazo;
- c) Pela cessação da actividade para que a água é destinada;
- d) Por inutilidade ou desnecessidade;
- e) Pela renúncia expressa e escrita do titular;
- f) Por abandono;
- g) Por revogação fundamentada;
- h) Pelo resgate da concessão.

2. Salvo disposição expressa em contrário, presume-se o abandono quando o titular não usar injustificadamente as águas atribuídas pelo espaço de seis meses.

3. São fundamentos para a revogação do direito de uso:

- a) Não cumprimento injustificado do plano de aproveitamento;
- b) Não fazer das águas atribuídas um uso proveitoso e racional correspondente ao fim a que se destinam;
- c) Não pagamento das taxas devidas;
- d) Prática de crime hídrico a que couber pena superior a dois anos de prisão;

e) Utilização das águas atribuídas para fins diversos dos a que se destinavam;

f) Infracção grave ou reiterada dos deveres impostos por lei ou das obrigações estabelecidas na licença ou concessão;

g) Situação de crise hídrica.

4. O resgate de concessão só pode efectivar-se decorrido pelo menos um terço do prazo estipulado e mediante notificação do concessionário com pelo menos um ano de antecedência.

**Artigo 84.º** (Efeitos da extinção)

Extinto o direito de uso todas as coisas sobre que se exercia ou afectas ao seu exercício, nomeadamente todas as obras e instalações hidráulicas, reverterão imediatamente para o Estado, sem prejuízo de compensação a que o titular possa ter direito nos termos da lei ou contrato.

**SECÇÃO V**  
**DISPOSIÇÕES DIVERSAS**

**Artigo 85.º** (Fiscalização)

O Estado tem o direito de fiscalizar, quando e pela forma que julgar mais conveniente, a exploração das concessões e o uso das licenças com o fim de verificar o cumprimento das condições impostas para o aproveitamento, assegurar o bom regime e política das águas e impedir a violação dos direitos de terceiros.

**Artigo 86.º** (Situação de crise hídrica)

O conselho Nacional de águas poderá declarar uma ou mais zonas do país em situação de crise hídrica quando esteja posta em perigo grave a quantidade e qualidade da água ou o balanço entre as necessidades e as disponibilidades não permita uma conveniente garantia dos usos prioritários da água.

**Artigo 87.º** (Irresponsabilidade do Estado)

O Estado é irresponsável por qualquer diminuição natural de caudal, caso fortuito ou de força, maior que impeçam ao titular do direito de uso o integral aproveitamento dos volumes de água autorizados.

**Artigo 88.º** (Regulamentação)

O Conselho Nacional de águas regulamentará a atribuição e o regime das licenças e das concessões.



## CAPÍTULO V DAS DISPOSIÇÕES PENAIS

### SECÇÃO I PRINCÍPIOS GERAIS

**Artigo 89.º** (Responsabilidade disciplinar, civil e criminal)

1. Qualquer violação às disposições da presente lei e seus regulamentos faz incorrer o infractor em responsabilidade disciplinar, civil ou criminal conforme ao caso couber.

2. Toda a violação não expressamente qualificada como crime hídrico será considerada simples contravenção, punida nos termos da presente lei, seus regulamentos e demais legislação em vigor.

### SECÇÃO II DOS CRIMES HÍDRICOS

**Artigo 90.º** (Obstáculos ao consumo humano)

As acções dolosas que visem impedir ou dificultar o uso da água para consumo humano são puníveis com pena de prisão de seis meses a dois anos.

**Artigo 91.º** (Contaminação)

1. A contaminação dolosa de recursos hídricos é punível com pena de prisão de dois a oito anos, sem prejuízo de pena mais grave se a ela houver lugar.

2. A contaminação por mera negligência, é punida com pena de prisão de dois meses a dois anos, sem prejuízo de pena mais grave se a ela houver lugar.

**Artigo 92.º** (Dano voluntário da obra ou instalação hidráulica)

O dano voluntário de barragens, diques, furos ou de qualquer outra obra ou instalação hidráulica é punível com prisão de dois a oito anos.

**Artigo 93.º** (Captação não autorizada)

A execução de obras de captação não autorizadas é punível com pena de prisão de um a seis meses.

**Artigo 94.º** (Tentativa e frustração)

A tentativa e a frustração de qualquer crime hídrico são sempre puníveis nos termos da lei geral.

## SECÇÃO III DAS CONTRAVENÇÕES

**Artigo 95.º** (Poluição)

A poluição de quaisquer recursos hídricos é punível com multa até 10 000 000\$.

**Artigo 96.º** (Descarga de águas residuais)

As descargas de águas residuais não autorizadas ou feitas em desacordo com as condições prescritas pela autoridade competente são punidas com multa até 1 000 000\$.

**Artigo 97.º** (Uso de água para fim não autorizado)

O uso de águas para fins não devida e antecipadamente autorizados é punível com multa até 50 000\$.

**Artigo 98.º** (Obstáculo ao uso)

Aquele que impedir ou dificultar o uso lícito de água para os fins a que se destine é punido com multa até 50 000\$, salvo o disposto no artigo 94.º

**Artigo 99.º** (Limite geral de multa por contravenção)

Para as contravenções não expressamente previstas represente lei não poderá ser estabelecida multa superior a 100 000\$.

## CAPÍTULO VI DISPOSIÇÕES FINAIS E TRANSITÓRIAS

**Artigo 100.º** (direitos adquiridos)

1. O disposto na presente lei e nos diplomas que a regulamentarem não prejudica os direitos de uso adquirido ao abrigo de lei, costume, acto ou contrato anteriores.

2. Os titulares dos direitos referidos no número antecedente ficam obrigados a prová-los por qualquer meio admitido em direito perante o conselho Nacional de águas no prazo de cento e oitenta dias a contar da entrada em vigor da presente lei, sob pena de caducidade.

3. Os direitos de uso reconhecidos nos termos deste artigo passam a reger-se pelo novo regime instituído pela presente lei e seus regulamentos, extinguindo se, em todo o caso, num prazo máximo de 30 anos.

**Artigo 101.º (Regulamentação)**

O Governo regulamentará a presente lei no que não for cometido a outros órgãos e especialmente no que respeita a:

1. Regime tarifário;
2. Obras hidráulicas;
3. Qualidade da água;
4. Processos por contravenções hídricas.
5. Contencioso hídrico.
6. Situação de crise hídrica.

**Artigo 102.º (Revogação)**

A presente lei revoga toda a legislação em contrário.

**Artigo 103.º (Entrada em vigor)**

A presente lei entra em vigor no prazo de um ano a contar da sua publicação no Boletim Oficial.

Aprovada em 23 de Maio de 1984.

O presidente da Assembleia Nacional Popular, Abilio Augusto Monteiro Duarte.

Promulgada em 4 de Junho de 1984.

Publique-se.

**O Presidente da República, ARISTIDES MARIA PEREIRA.**



## Decreto n.º 166/87 de 31 de Dezembro 1987

No uso da faculdade conferida pelo artigo 77.º da Constituição, o Governo decreta o seguinte:

**CAPÍTULO I**  
**DISPOSIÇÕES GERAIS**

**Artigo 1.º - 1.** O presente diploma regulamenta a aquisição, exercício e extinção dos direitos do uso dos recursos hídricos, em conformidade com o disposto no capítulo IV do código de águas.

2. As disposições deste diploma são, ainda, aplicáveis à constituição, exercício e extinção das servidões necessárias para a utilização da água ou para a construção e exploração de obras hidráulicas.

**Art. 2.º** Para os efeitos do presente regulamento, entendese pôr:

- a) **Licenças**», o acto administrativo pelo qual o Estado, representado pelo organismo competente de gestão dos recursos hídricos, permite a uma pessoa singular ou colectiva a utilização de determinados recursos hídricos, em proveito pessoal ou familiar ou como factor de produção numa determinada actividade agro-pecuária, industrial, mineira ou comercial;
- b) **Concessão**»: o acto administrativo pelo qual o Estado, representado pelo organismo competente da gestão dos recursos hídricos, autoriza a uma pessoa singular ou colectiva a gestão de determinados recursos hídricos, a fim de prestar com eles um serviço publico;
- c) **Autorização**»: o acto administrativo pelo qual o Estado permite a uma pessoa singular ou colectiva a realização de determinadas actividades relacionadas directamente com o uso dos recursos hídricos e que não são matéria de licenças ou concessões;
- d) **Aviso**»: a comunicação feita à Comissão de Águas por uma pessoa singular ou colectiva que esteja a utilizar recursos hídricos, na forma estabelecida no artigo 64.º do Código de Águas;

e) **Dotação máxima instantânea**»: a quantidade de água que o titular de um direito de uso de recursos hídricos pode explorar com o seu sistema a funcionar ao máximo da capacidade permitida;

f) **Montante máximo de exploração**»: o quantitativo total de água que o titular de um direito de uso pode explorar durante um período de tempo prefixado e em conformidade com o tipo de uso autorizado.

**Art. 3.º** O direito de uso dos recursos hídricos é um direito real de tipo administrativo, que recai sobre as águas e que consiste no uso e fruição delas, nas condições e em conformidade com as regras estabelecidas no Código de Águas e no presente Regulamento.

**Art. 4.º - 1.** O titular do direito do uso dos recursos hídricos tem o direito a utilizar os meios necessários para o seu exercício normal e eficiente, incluindo a constituição de servidões e a concessão de terrenos públicos.

2. O titular do direito de uso dos recursos hídricos pode construir às suas expensas, cumprindo as normas legais e regulamentares sobre a matéria, as obras hidráulicas necessárias para o normal e eficiente aproveitamento das águas.

**Art. 5.º - 1.** O direito de uso dos recursos hídricos pode ser consumptivo ou não consumptivo.

2. Considera-se consumptivo o uso de água que supõe o seu consumo ou transformação substancial das suas características físicas, químicas ou biológicas de modo a torná-las inadequadas para qualquer outro uso.

3. Uso não consumptivo é aquele que não produz qualquer transformação da água nas suas características físicas, químicas ou biológicas, de modo que podem continuar a ser usadas nesse ou qualquer outro uso.

**Art. 6.º - 1.** O direito de uso dos recursos hídricos só pode construir-se por acto administrativo emanado das autoridades competentes, sob a forma de concessão ou

licenças, sem prejuízo do uso livre da água estabelecido no artigo 64.º do Código de Águas.

2. Os titulares dos direitos referidos no número anterior deverão usar as águas em conformidade com o fim para o qual foi outorgada a respectiva concessão ou licença e na dimensão, proporção, duração, volume e outras modalidades determinadas no respectivo título ou contrato e nas normas legais e regulamentares aplicáveis.

**Art. 7.º** É aplicável ao direito de uso dos recursos hídricos o disposto nos artigos 127.º e seguintes do Código Civil:

**Art. 8.º** O direito de uso dos recursos hídricos pode recair, com as limitações estabelecidas na lei e nos regulamentos, sobre um ou mais dos usos consumptivos e não consumptivos referidos neste diploma:

## CAPÍTULO II DO REGIME DOS USOS

### SECÇÃO I DOS USOS DOMÉSTICOS

**Art. 9.º - 1.** O uso da água para consumo individual ou familiar, com fins domésticos, é livre, não carecendo por isso de autorização, sem prejuízo dos avisos a que se refere o artigo 97.º deste regulamento.

2. O uso da água potável, canalizada ou distribuída mediante fontenários ou viaturas devidamente autorizadas, rege-se pelas normas regulamentares sobre a matéria, designadamente pelo Regulamento da Distribuição da Água Potável e. do Saneamento.

**Art. 10.º - 1.** Os consumidores domésticos têm a faculdade de constituir servidões necessárias para o exercício do seu direito em conformidade com as normas contidas no Capítulo VI do presente Regulamento.

### SECÇÃO II DO ABASTECIMENTO DE ÁGUA ÀS POPULAÇÕES

**Art. 11.º - 1.** O serviço público de abastecimento de água às populações só poder ser objecto de concessão a uma pessoa colectiva de direito público ou a um serviço do Estado ou municipalizado.

2. Para os efeitos do número anterior, considera-se população todo estabelecimento educacional, hospitalar, hoteleiro, militar, de assistência social ou outros semelhantes mesmo que construídos fora dos limites urbanos.

**Art. 12.º - 1.** As concessões para abastecimento de água às populações serão outorgadas, mediante verificação da qualidade e rendimento da fonte de fornecimento, assim como da possibilidade de evacuação das águas residuais sem que causem prejuízos a terceiros ou degradação do meio ambiente.

2. As dotações máximas instantâneas e os montantes máximos de exploração serão fixados no respectivo contrato de concessão, tomando-se em conta as captações mínimas regulamentares e as disponibilidades reais das antes de abastecimento.

**Art. 13.º - 1.** com o objectivo de manter as dotações máximas instantâneas autorizadas nas referidas concessões, o Conselho Nacional de Águas poderá em caso de carência extraordinária de água, diminuir os caudais concedidos para outros usos na mesma fonte.

2. Em caso da medida estabelecida no número anterior não for suficiente, o CNAG poderá, ainda, dispôr de outras fontes para estes efeitos e pelo tempo que se mostrar necessário.

**Art. 14.º** O Conselho Nacional de Águas poderá autorizar temporariamente o estabelecimento de instalações provisórias para o abastecimento de água de acapamentos e outros agrupamentos transitórios.

### SECÇÃO III DOS SERVIÇOS PÚBLICOS

**Art. 15.º - 1.** As águas necessárias para os serviços municipais, tais como irrigação de espaços verdes, fontes, asseio das ruas e extinção de incêndios serão fornecidas pelos concessionários do abastecimento de águas às populações, nos lugares em que eles existam e em conformidade com as normas regulamentares aplicáveis.

2. Nos aglomerados urbanos em que não existam as referidas concessões, os órgãos de gestão local poderão solicitar concessões especiais de água, com vista à prossecução dos objectivos consignados no número anterior.

**Art. 16.º** Nos casos de carência de água, tais concessões poderão ser diminuídas e até suspensas pela respectiva Comissão de Águas, enquanto persista a situação de crise.

**Art. 17.º - 1.** A utilização de água necessária para o funcionamento de outros serviços públicos deverá ser autorizada por concessão outorgada pelo Conselho Nacional de Águas, na forma prevista no presente Regulamento.

2. As dotações máximas instantâneas e os montantes máximos de exploração, serão determinados no



respectivo contrato tendo em conta as necessidades reais do respectivo serviço e as disponibilidades hídricas existentes na respectiva área, segundo as orientações contidas no Plano Nacional de Desenvolvimento.

#### SECÇÃO IV DOS USOS AGRO-PECUÁRIOS E SILVICOLAS

**Art. 18.º** A utilização de água para fins agro pecuários ou silvículas deverá ser objecto de uma licença outorgada pelo organismo competente, quando a água requerida seja necessária para a irrigação de superfícies de cultura ou arvoredos e secundariamente no desenvolvimento de actividades ou trabalhos que tenham uma relação directa com a agricultura.

**Art. 19.º** Podem ser titulares destas licenças os cultivadores directos das terras, em quaisquer das formas permitidas pela legislação agrária em vigor e sempre que:

- a) As terras que pretendam irrigar tenham aptidão para cultura de rega;
- b) Não apresentem estas terras problemas de degradação do solo pela utilização do sistema de
- c) A irrigação se apresente como necessária e conveniente tendo em conta o tipo de cultura, a qualidade do solo e a zona na qual se pretende utilizar;
- d) Exista disponibilidade hídrica no local.

**Art. 20.º** Para a verificação do cumprimento das condições exigidas nas alíneas a), b) e c) do artigo anterior deverá ser ouvido o organismo competente.

**Art. 21.º - 1.** A respectiva licença deverá fixar as área máximas que podem ser regadas com os volumes de água autorizados.

2. As dotações máximas instantâneas serão fixadas consoante o sistema de irrigação e os montantes máximos de exploração serão expressos em metro cúbicos/hectares ano para cujo cálculo deverá ter-se em consideração o clima, o tipo de solo e de cultura e o adequado grau de eficiência exigível no uso da água, conforme o sistema de rega proposto.

**Art. 22.º** Sempre que seja excessivamente difícil ou dispendiosa a instalação de sistemas de medição de caudais, o Conselho Nacional de Águas poderá autorizar estas licenças com outros sistemas de cálculo de montantes máximos de exploração, enquanto não for possível ultrapassar as dificuldades que impeçam a medição indicada no artigo anterior.

**Art. 23.º - 1.** Os titulares destas licenças que consigam, mediante obras ou utilização de tecnologias especiais, aumentar a eficiência do aproveitamento de água para irrigação, poderão solicitar autorização para aumentar as áreas regadas fixadas na respectiva licença, devendo comprometer-se a manter o sistema uma vez modificada a licença.

2. Nestes casos o aumento de superfície irrigada não poderá significar qualquer aumento de taxas ou impostos a pagar pelo titular da licença.

**Art. 24.º** Os titulares destas licenças poderão, por razões justificadas, solicitar autorização para a mudança de localização das áreas irrigadas, sem alteração das respectivas dimensões, salvo o disposto no artigo anterior.

**Art. 25.º - 1.** Os titulares de licença para usos agropecuários e silvícolas têm o direito de armazenar água para usos domésticos e abeberamento de animais e mesmo para a racionalização e distribuição de rega sempre que cumpram com os requisitos legais e regulamentares para a construção e exploração de obras hidráulicas.

2. Terão ainda o direito a utilizar a água para a preparação e adequação de terras na forma e com as medidas tecnicamente recomendadas pelo organismo técnico competente do Ministério do Desenvolvimento Rural e Pescas.

**Art. 26.º - 1.** Nos casos de subdivisão legalmente autorizada de prédios em que sejam utilizadas águas para irrigação mediante licença, o Conselho Nacional de Águas determinará por resolução fundamentada e mediante audiência dos interessados, os montantes máximos de exploração das áreas irrigadas autorizadas para cada parcela.

2. O CNAG poderá negar o direito a qualquer delas se se concluir tecnicamente, pelo organismo competente do Ministério do Desenvolvimento Rural e Pescas, que a irrigação dessa parcela resulta anti-económica ou prejudicial para a conservação ou preservação do solo ou dos recursos hídricos.

**Art. 27.º - 1.** As licenças para usos exclusivamente pecuários deverão estabelecer as dotações máximas instantâneas e os montantes máximos de captação, em conformidade com as necessidades técnicas dos tipos de gado a abeberar, segundo a informação que deverá prestar ao organismo competente do Ministério do Desenvolvimento Rural e Pescas.

2. Sem prejuízo das licenças referidas no número anterior o Conselho Nacional de Águas poderá autorizar o



estabelecimento de lugares públicos para o abeberamento de gado, pelo uso dos quais poderá fixar e cobrar taxas de utilização.

### SECÇÃO V DOS USOS INDUSTRIAIS

**Art. 28.º** As licenças de uso da água para fins industriais serão outorgadas quando exista necessidade de sua utilização como matéria-prima: para transmissão de calor; para refrigeração; como dissolvente reactivo; para lavagem, purificação, separação ou eliminação de matérias ou como componente ou coadjuvante em qualquer processo de elaboração, transformação ou produção industrial.

**Art. 29.º** Poderão ser titulares destas licenças as pessoas singulares ou colectivas, devidamente autorizadas para o exercício da respectiva actividade industrial.

**Art. 30.º** Sem prejuízo das exigências estabelecidas no Capítulo III do presente Regulamento, os requerimentos para as licenças referidas nesta secção deverão ser acompanhadas pelos seguintes documentos:

- a) Planos e especificações técnicas das instalações e objectivos da empresa;
- b) Mapa de localização da indústria, com indicação dos lugares de captação da água e de descarga das águas residuais e dos eventuais sistemas de depuração ou tratamento de efluente;
- c) Descrições e especificações das medidas e obras que tenham por objectivo evitar a contaminação dos recursos hídricos ou do meio ambiente e bem assim prejuízos a terceiros.

**Art. 31.º** A licença não será outorgada enquanto não estiver comprovado tecnicamente que o funcionamento das instalações ocasionará prejuízo a contaminação ou poluição do meio ambiente.

**Art. 32.º - 1.** A licença respectiva determinará as dotações máximas instantâneas medidas em litros/segundo e os montantes máximos de exploração em metros cúbicos/ano.

2. Nos casos de devolução de parte de água captada à sua fonte de origem ou a um outro sistema autorizado de captação, sem que tenha sofrido alterações nas suas características físico-químico-biológicas, o montante consumido estabelecer-se-á pela diferença entre a água captada e a devolvida.

### SECÇÃO VI DOS USOS MINERAIS

**Art. 33.º** As licenças para usos mineiros serão outorgadas quando exista necessidade de utilização da água nas explorações mineiras quer na extracção das substâncias minerais, quer na recuperação secundária de matérias.

**Art. 34.º** Poderão ser titulares destas licenças as pessoas singulares ou colectivas devidamente autorizadas para o exercício da respectiva actividade mineira.

**Art. 35.º** As águas subterâneas encontradas ou detectadas no decurso dos trabalhos mineiros não farão parte da licença e o titular desta não poderá usá-las, devendo dar aviso imediato da sua existência à respectiva Comissão de Águas.

**Art. 36.º** para além dos requisitos gerais estabelecidos no Capítulo III deste Regulamento, os interessados em obter uma licença de água para usos mineiros deverão apresentar, conjuntamente com o respectivo requerimento:

- a) O título de concessão ou licença mineira;
- b) O respectivo plano de localização das actividades mineiras, com indicação das captações de águas solicitadas;
- c) Os projectos e planos dos sistemas de tratamento e depuração das águas residuais de rejeição de águas residuais.

**Art. 37.º** A respectiva licença fixará a dotação máxima instantânea em litros/segundo e o montante máximo de exploração determinado em metros cúbicos/ano assim como o sistema de captação e o destino e tratamento das águas residuais.

### SECÇÃO VII DOS USOS MINERO-MEDICINAIS

**Art. 38.º - 1.** A utilização de águas possuam características termais ou terapêuticas pelas suas propriedades físico-químicas e outras e que tenham sido declaradas como tais pela autoridade sanitária, só podem ser utilizadas mediante concessão outorgada a uma pessoa singular ou colectiva, em conformidade com as disposições deste Regulamento.

2. A disposição do número anterior aplica-se ainda às águas simplesmente minerais, mesmo que não tenham características termais ou terapêuticas.



**Art. 39.º - 1.** Compete aos Serviços da Saúde a regulamentação e controlo dos estabelecimentos que utilizem águas minero-medicinais, em quaisquer das suas formas e que possuam a respectiva concessão, outorgada em conformidade com as disposições do presente Regulamento.

2. O engarrafamento e comercialização de águas minerais que sejam objecto de alguma concessão será regulamentada e controlada pelas autoridades sanitárias e do comércio:

### SECÇÃO VIII DA RECEPÇÃO DE RESÍDUOS

**Art. 40.º** A utilização dos recursos hídricos para a recepção de resíduos aplica-se o disposto no Regulamento sobre Protecção dos Recursos Hídricos e da Qualidade da água.

### SECÇÃO IX DOS USOS NÃO CONSUMPTIVOS

**Art. 41.º - 1.** As licenças para extracção de materiais inertes de leitos ou á lveos de correntes de água permanentes ou inerentes carecem de informação técnica favorável dos serviços competentes em matéria de conservação de solos.

2. O disposto no número anterior aplica-se à extracção das areias e de outros materiais inerentes das praias.

3. Estas licenças serão outorgadas por um prazo determinado, calculado consuante o montante total de material a exirair e a capacidade técnica de exploração.

**Art. 42.º - 1.** A utilização de recursos hídricos como meio para o exercício de uma outra actividade, realizada individualmente, não carece de concessão ou licença de direito de uso da água.

2. Contudo dever-se-ão cumprir as disposições legais e regulamentares relacionadas com a respectiva actividade e as relativas à protecção dos recursos hídricos e da qualidade de água.

**Art. 43.º** Os organismos competentes para outorgar de concessões ou licenças para exercício de actividades que utilizam os recursos hídricos sem consumo de água, tais como pesca, navegação, hidroelectricidade e outros de verão solicitar o parecer do Conselho Nacional de Águas antes de proceder à respectiva autorização.

## CAPÍTULO III DAS LICENÇAS

### SECÇÃO I PRINCÍPIOS GERAIS

**Art. 44.º** As licenças para uso dos recursos hídricos podem ser outorgadas para qualquer utilização consumptiva, a excepção feita do abastecimento às populações, saneamento básico e serviços públicos que só podem ser objecto de concessões.

**Art. 45.º** Em conformidade com o disposto no artigo 76.º do Código de Águas o direito contido numa licença não pode ser alienado, nem onerado e a transferência de actividade a que a água é destinada só implica a transmissão do respectivo direito a uso da água, quando devida e previamente autorizada pelo organismo que outorgou a respectiva licença.

**Art. 46.º - 1.** As licenças para uso dos recursos hídricos devem ser outorgadas pelo Conselho Nacional de Águas, a pedido dos legítimos interessados e cumpridos os requisitos legais e regulamentares pertinentes.

2. O Conselho Nacional de Águas poderá delegar, total ou parcialmente, a competência referida no número anterior, nas respectivas Comissões de Água.

### SECÇÃO II DO PROCESSO

**Art. 47.º - 1.** Os requerimentos para licenças de uso de recursos hídricos deverão ser apresentados na respectiva Comissão de Águas, em formulários oficiais, elaborados pela Junta dos Recursos Hídricos e aprovados pelo Conselho Nacional de Águas, os quais deverão conter, pelo menos, a seguinte informação:

- a) Identificação do requerente e do representante legal, no caso de pessoas colectivas;
- b) Actividade para a qual a água requerida é destinada, com descrição dos sistemas de captação e utilização;
- c) Fonte ou origem da água e obras hidráulica existentes a serem utilizados no aproveitamento;
- d) Volumes requeridos;
- e) Servidões necessárias para o exercício do direito requerido;



- f) Possíveis águas residuais a serem rejeitadas, volume e carga contaminadora ou poluidora nelas contida;
- g) Outros antecedentes necessários para cabal compensação do direito requerido.

2. O formulário referido no número anterior deverá permitir o requerente, nesse mesmo acto e em conformidade com as regras estabelecidas nos respectivos regulamentos:

- a) As autorizações para a construção ou modificação das obras hidráulicas necessárias para o aproveitamento requerido;
- b) As servidões que sejam necessárias para a construção das referidas obras hidráulicas;
- c) A autorização para a rejeição de águas residuais;
- d) Assistência técnica para a construção e/ou exploração das respectivas obras hidráulicas;
- e) O apoio financeiro mediante créditos, participações ou outros sistemas superiormente aprovados.

**Art. 48.º** - 1. O requerimento deverão ser acompanhado dos seguintes documentos:

- a) Prova da autorização do requerente para o exercício da actividade para a qual a água é destinada;
- b) Memória justificativa das razões sociais, económicas ou técnicas do empreendimento;
- c) Plano de aproveitamento das águas requeridas, com a especificação de volumes de água e a sua incidência nos respectivos processos produtivos;
- d) Os exigidos pelos respectivos regulamentos, nos casos de requerimento simultâneo para construção de obras hidráulicas e rejeição de águas residuais;
- e) Os exigidos neste Regulamento para cada uso em especial.

2. A actividade agro-pecuária pode ser provada com as respectivas certidões de propriedade, posse útil, usufrutos ou contratos agrícolas permitidos por lei.

**Art. 49.º** A Junta dos Recursos Hídricos deverá prestar assistência técnica aos requerentes para a elaboração dos documentos indicados na alínea b) e c) do número 1 do artigo anterior, assistência que deverá ser inteiramente gratuita aos cultivadores directos de propriedades agrícolas inferiores ao limiar de intervenção estabelecido

na Lei n.º 1/II/82 de 26 de Março e às cooperativas de produção de qualquer natureza.

**Art. 50.º** - 1. O requerimento deverá cumprir as normas relacionadas com selos fiscais e o requerente deverá provar a sua identidade perante o secretário da respectiva comissão, mediante qualquer documento de identificação.

2. O Secretário da Comissão de Águas deverá passar uma certidão da apresentação do requerimento, com a especificação da data e hora de apresentação e dos documentos acompanhados.

3. Poderão não ser aceites aqueles requerimentos que não estejam conformes ao formulário oficial, que não contenham toda a informação requerida ou não sejam acompanhados dos documentos exigidos no artigo 48.º deste regulamento.

**Art. 51.º** Recebido o requerimento, a Comissão de Águas ou a Junta dos Recursos Hídricos deverá elaborar um extracto do respectivo conteúdo onde serão directamente notificados os interessados certos e mediante éditos aos incertos, a fim de, no prazo de 30 dias, alegarem o que lhes convier sobre o objecto do requerimento, juntando-se aos processos as suas alegações e provas.

**Art. 52.º** Para os efeitos do disposto no artigo anterior, consideram-se interessados certos:

- a) Os titulares de direitos de uso de água sobre a mesma fonte ou origem daquela solicitada pelo requerente;
- b) Os proprietários ou ocupantes legais dos prédios que tenham que ser onerados com servidões para o exercício do direito solicitado;
- c) Os proprietários e ocupantes legais dos prédios contíguos ao do solicitante, nos casos de direitos de água para fins agro-pecuários.

**Art. 53.º** - 1. A Junta dos Recursos Hídricos ou a Comissão de Águas, poderão ordenar que o interessado em oposição ou o próprio requerente apresentem provas, incluindo depoimento de testemunhas dentro de um prazo nunca superior a vinte dias.

2. São aplicáveis a este procedimento, com as devidas adaptações, as normas sobre a prova contida na legislação civil em vigor.

**Art. 54.º** - 1. A Junta dos Recursos Hídricos ou a Comissão de Águas poderão, a qualquer momento, solicitar às entidades e outros organismos de Estado, o seu parecer ou informação sobre o requerimento em apreciação.



2. As entidades ou organismos ouvidos deverão apresentar as suas observações dentro de 30 dias à contar da recepção do respectivo pedido.

**Art. 55.º** A Junta dos Recursos Hídricos ou a Comissão de Águas, poderão ordenar inspecções, periciais e outras diligências que sejam necessárias para o esclarecimento total do requerimento ou da respectiva oposição.

**Art. 56.º** A Junta dos Recursos-Hídricos ou Comissão de Águas, quando não seja competente, submeterão o requerimento a despacho do Conselho Nacional de Águas, acompanhado de informação, uma vez cumpridas todas as diligências ou vencidos os respectivos prazos.

**Art. 57.º** A licença só pode ser recusada por razões de interesse público devidamente fundamentada ou quando prejudique direitos de terceiros.

**Art. 58.º** As oposições deverão ser resolvidas com aplicação das seguintes regras:

- a) Serão preferidos os direitos de uso da água declarados prioritários para a respectiva circunscrição hidrográfica, em conformidade com o disposto no artigo 62.º do Código de Águas;
- b) Dentro da mesma prioridade, deverão ser preferidos aqueles cujas repercussões sociais e económicas sejam mais favoráveis às políticas gerais de Governo de carácter social, productivo e hídrico.
- c) Poderão ser reduzidos os volumes pretendidos, quando sejam manifestamente desproporcionados com a utilização a que são destinados ... quando a fonte da origem não tenha rendimento suficiente para satisfazer o requerimento, conjuntamente com os restantes direitos já concedidos;
- d) Tratando-se de requerimentos em igualdade de condições, uma vez aplicadas as regras anteriores, preferirá o que foi apresentado em primeiro lugar de conformidade com a respectiva certidão indicada no artigo 50.º do presente Regulamento.

**Art. 59.º** A resolução que outorga a licença deverá constar, necessariamente:

- a) Dorações máximas instantâneas e montantes máximos de exploração;
- b) Sistemas de captação autorizadas e as formas de controlo do mesmo;
- c) Fonte ou origem da água autorizada;
- d) Uso da água e actividade a que deve ser destinada;

- e) Servidões que devem ser constituídas para o cício do direito concedido;
- f) As eventuais autorizações de ocupação de terrenos públicos para construção de obras hidráulicas;
- g) Autorização para construção e/ou modificação de obras hidráulicas necessárias para o exercício do direito concedido;
- h) Assistência técnica a que tem direito o titular do direito e as condições em que deve ser prestada;
- i) Apoio financeiro em forma de participação ou créditos que são recomendáveis, em razão da importância sócio-económica de empreendimento;
- j) Condições especiais que o titular deve cumprir no exercício do direito concedido;
- l) Montante do respectivo cânone de captação;
- m) Emolumentos devidos pela licença;
- n) Eventuais autorizações para rejeição de água residuais, as respectivas condições e cânone pagar.

**Art. 60.º** O direito de uso de águas outorgado por licença manter-se-á enquanto o titular desenvolva legitimamente a actividade para a qual a água foi requerida, sem prejuízo das causas de extinção estabelecidas no artigo 83.º do Código de Águas.

**Art. 61.º - 1.** Contra as resoluções que outorgam licença não cabe qualquer recurso.

2. Contra as resoluções que indefiram os requerimentos de licenças cabe recurso, na forma prevista no artigo 58.º do Código de Águas.

**Art. 62.º** Todas as resoluções que outorgam, modifiquem ou extingam licenças de direitos de uso de água devem ser inscritas no Registo Nacional de águas, na forma prevista no respectivo regulamento.

### SECÇÃO III DO EXERCÍCIO DO DIREITO

**Art. 63.º** O direito do titular da licença de utilizar os volumes de água autorizados pode ser alterado, temporária ou permanentemente, pelas seguintes causas:

- a) Diminuição natural, por caso fortuito ou força maior do caudal da fonte autorizada;
- b) Em casos urgentes de incêndio ou calamidade pública,



em conformidade com o disposto no artigo 78.º do Código de Águas;

- c) Quando da utilização dos volumes concedidos resulte alteração ou diminuição de caudais em fontes ou reservatórios destinados ao uso público para consumo doméstico, em conformidade com o disposto no artigo 79.º do Código de Águas;
- d) Por situação de crise hídrica, declarada pelo Conselho Nacional de Águas, conforme o disposto no artigo 86.º do Código de Águas;
- e) Por resolução do Conselho Nacional de Águas, baseada no disposto no artigo 80.º do Código de Águas;
- f) Por declaração de zona de restrição total ou parcial de utilização de recursos hídricos, em conformidade com o estabelecido no Regulamento de Protecção dos Recursos Hídricos e da Qualidade da Água;
- g) Por pedido expresso do próprio titular.

**Art. 64.º - 1.** A forma de utilização dos volumes de água autorizados estará determinada na respectiva resolução de licença do direito.

2. A referida forma poderá ser modificada mediante resolução do organismo que outorga a respectiva licença, a pedido do próprio interessado ou sob proposta da Junta dos Recursos Hídricos, da respectiva Comissão de Águas, das Associações de Utentes ou das entidades ou organismos públicos relacionados com a respectiva utilização.

3. Os pedidos ou proposta de modificação deverão ser notificadas as partes directamente interessadas, tais como Comissões de Águas, Associações de Utentes, outros titulares de direitos sobre a mesma fonte de água e entidades e organismos públicos relacionados com a respectiva utilização para que no prazo de 20 dias a contar da data de notificação apresentem as suas observações e sugestões.

4. Contra a respectiva resolução caberá recurso em conformidade com as regras gerais.

**Art. 65.º - 1.** Quando o titular de uma licença seja impedido ou dificultado por acções ilegítimas de terceiros de utilizar os volumes de água autorizados, poderá recorrer directamente à autoridade policial para que lhe seja permitido o exercício do seu direito, sendo suficiente a exibição da respectiva resolução que outorgou a licença.

2. Em caso de dúvida a autoridade policial consultará a Comissão de Águas cuja resolução será imediatamente

obedecida, sem prejuízo dos recursos que os interessados possam apresentar em conformidade com a lei.

3. O disposto nos números anteriores não obsta a utilização das vias judiciais adequadas para defesa dos interesses dos lesados, em conformidade com a lei comum.

**Art. 66.º** O titular de uma licença terá direito a qualquer momento, de solicitar dos organismos competentes assistência técnica para as actividades directamente relacionadas com o aproveitamento hídrico.

**Art. 67.º** As associações de Utentes, as cooperativas de produção e os titulares de posse útil de terras distribuídas pela Reforma Agrária terão preferência na referida assistência técnica que lhes será fornecida nas melhores condições estabelecidas em cada organismo e, sempre que possível, sem qualquer encargo.

**Art. 68.º** Os titulares de licença não poderão usar as águas cujo uso foi autorizado, para uma utilização diferente da especificada na respectiva resolução, salvo nos seguintes casos:

- a) Para incêndios ou outras calamidades urgentes;
- b) Para consumo doméstico da sua família e de outras pessoas, sempre que gratuitamente e em forma esporádica;
- c) Para abeberamento de gado que se encontre em grave perigo de morte, por falta de outra fonte;
- d) Para refrigeração de motores.

**Art. 69.º** Constitui obrigação ineludível para todo titular de licenças, o cumprimento estrito das normas estabelecidas nos respectivos regulamentos sobre preservação dos recursos hídricos e da qualidade da água, conservação, exploração e manutenção de obras hidráulicas, propagação de doenças de base hídrica e racionalização e aproveitamento de água.

**Art. 70.º** As obrigações estabelecidas nas resoluções do Conselho Nacional de Águas, Comissões de Águas, na sua respectiva zona territorial e das Associações de Utentes, deverão ser cumpridas, pelos titulares de licenças, desde que convenientemente notificadas aos interessados e sem prejuízo dos recursos legais.

**Art. 71.º** Os titulares de licença serão responsáveis pessoalmente e pelos actos dos seus dependentes, pelos danos e prejuízos causados a terceiros pela utilização dos recursos hídricos feita em contravenção às normas legais ou regulamentares ou as resoluções legitimamente emitidas pelas autoridades competentes.



**Art. 72.º** As obrigações contidas no artigo 75.º do Código de Águas deverão ser cumpridas em conformidade com as regras estabelecidas nos respectivos regulamentos de aplicação.

**Art. 73.º** A fiscalização exercida pelos organismos competentes sobre os titulares de licença para controlar o cumprimento das suas obrigações, rege-se pelas normas respectivas contidas no Regulamento sobre Obras Hidráulicas.

#### SECÇÃO IV DA EXTINÇÃO DO DIREITO

**Art. 74.º - 1.** O direito de uso da água só se extingue por morte do respectivo titular quando não seja possível a sua transmissão nos termos do artigo 77.º do Código de Águas.

2. Não existindo legitimários, os outros secessores que adquirirem a propriedade das actividades a que a água se destina deverão solicitar ao organismo que outorgou a licença respectiva a sua renovação cumprindo os requisitos e seguindo o processo estabelecido na Secção II deste Regulamento.

**Art. 75.º** A extinção das pessoas colectivas de direito público, titulares de licenças para o uso das águas; não produz a extinção do respectivo direito quando o acto que declara a sua extinção transfira os respectivos patrimónios e actividades para outra entidade ou pessoa colectiva de direito público.

**Art. 76.º** Para efeitos do disposto na alínea c) do artigo 83.º do Código de Águas; as autoridades que procederem ao cancelamento de autorizações para o desenvolvimento de actividades agro-pecuárias, silvícolas, industriais, mineiras ou comerciais, deverão avisar esse facto ao Conselho Nacional de Águas.

**Art. 77.º - 1.** A renúncia ao direito de uso da água deverá ser reduzida a escrito e dirigida ao organismo que outorgou a respectiva licença.

2. A apresentação da renúncia não importa a suspensão automática das obrigações do titular do respectivo direito, nomeadamente no que diz respeito à conservação das respectivas obras hidráulicas. A resolução do organismo competente indicará o processo para transferência das referidas obras e as obrigações do renunciante até que tal transferência se efectue.

**Art. 78.º - 1.** Consideram-se causas justificadas do não uso das águas autorizadas mediante licença; entre outras; as seguintes:

- a) Paralisação da actividade para a qual a água é destinada, por caso fortuito e de força maior;
- b) Distribuição parcial ou total ou danos consideráveis nas obras hidráulicas respectivas, quando tal facto importe reparações ou construções de largo prazo;
- c) Tratando-se de usos domésticos, ausência de todo o grupo familiar, devidamente comunicado com antecedência à respectiva Comissão de Águas.

**Art. 79.º** Em caso de extinção do direito de uso da água outorgado por licença, a revisão prevista no artigo 84.º do Código de Águas só dá direito a indemnização, nos casos de recogação por situação de crise hídrica, aplicandose as regras contidas na legislação comum sobre expropriações por causa de utilidade pública.

#### CAPÍTULO IV DAS CONCESSÕES

**Art. 80.º - 1.** Só poderão ser outorgadas concessões de gestão de recursos hídricos para o serviço público de distribuição de água potável, para o saneamento mediante rede geral de esgotos e para o aproveitamento de águas minero-medicinais.

2. Também poderão ser outorgadas concessões sobre recursos hídricos, acessoriamente a concessões.

3. As concessões para abastecimento à população e saneamento, assim como as de serviços públicos de carácter municipal só podem ser feitas a pessoas colectivas de direito público ou a serviços públicos do Estado ou municipalizados.

**Art. 81.º** São aplicáveis à constituição, exercício e extinção das concessões as regras contidas no Capítulo III deste Regulamento com as modificações e complementos estabelecidos nos artigos seguintes:

**Art. 82.º** A competência para outorgar concessões de gestão de recursos hídricos pertence ao Conselho Nacional de Águas e é indelegável.

**Art. 83.º - 1.** Os pedidos da concessões não necessitam obedecer aos formulários oficiais, mas deverão cumprir os requisitos estabelecidos nos artigos 47.º e 48.º deste Regulamento.

2. Deverão ainda ser acompanhados dos estudos técnico-económicos dos custos e sistemas de exploração e do proposta de tarifas, em conformidade com o estabelecido no respectivo regulamento.



**Art. 84.º** - 1. Os requisitos para concessão deverão ser apresentados na Secretaria da Junta dos Recursos Hídricos, sendo aplicável, com as devidas adaptações, o preceituado no artigo 50.º deste Regulamento.

2. Os requerimentos a que se refere o número anterior poderão conter o pedido de declaração de utilidade pública, para as expropriações que sejam necessárias para a gestão requerida ou para a construção das obras hidráulicas de interesse público.

**Art. 85.º** A resolução que outorga a concessão deverão conter, para além das especificações estabelecidas no artigo 59.º deste Regulamento:

- a) As declarações de utilidade pública das eventuais expropriações para a construção de obras hidráulicas de interesse público;
- b) A tabela das tarifas autorizada pelos serviços serem prestados;
- c) As eventuais subvenções ou participações serem outorgadas; com especificação das suas condições e formas de operação
- d) O prazo de concessão, o qual não poderá exceder 30 anos.

**Art. 86.º** Não são aplicáveis às concessões as normas contidas nos artigos 57.º e 60.º deste Regulamento.

**Art. 87.º** - 1. Publicada no *Boletim Oficial* a relação que outorga uma concessão será elaborado o respectivo contrato administrativo, que deverá ser assinado pelo Presidente do Conselho Nacional de Águas e pelo concessionário e, posteriormente, inscrito no Registo Nacional de Águas.

2. O contrato deverá conter as cláusulas e estipulações que sejam necessárias para o adequado cumprimento das obrigações e direitos de ambas as partes, nomeadamente as referidas nos artigos 59.º e 86.º deste Regulamento.

**Art. 88.º** - 1. O titular de concessões de direitos de gestão de recursos hídricos pode solicitar a sua renovação, antes de expirado o respectivo prazo, mediante requerimento apresentado ao Conselho Nacional de Águas.

2. O processo de renovação deverá ajustar-se às regras contidas na Secção II do Capítulo III deste Regulamento, mas o concessionário poderá actualizar os estudos e documentação justificativa apresentada no primeiro requerimento.

3. Renovada a concessão elaborará-se um novo contrato administrativo, na forma estabelecida no artigo 88.º deste Regulamento.

**Art. 89.º** As concessões para distribuição de água potável e para saneamento por rede geral de esgotos são irrenunciáveis.

**Art. 90.º** - 1. O Conselho Nacional de Águas poderá notificar ao concessionário, por escrito e com pelo menos um ano de antecedência, a sua vontade de respectiva concessão, propondo o montante da respectiva indemnização e a forma do seu pagamento.

2. O concessionário poderá apresentar oposição fundamentada na falta dos requisitos legais ou no desacordo com o montante ou forma de pagamento da indemnização.

3. A oposição referida no número anterior deverá ser apresentada na Secretaria do Conselho Nacional de Águas dentro dos 30 dias seguintes à data de notificação da comunicação do resgate.

4. A não apresentação de oposição dentro do prazo estabelecido no número anterior fará presumir a aceitação do concessionário do resgate e do montante e forma de pagamento da indemnização.

5. Em caso de desacordo entre as partes decidirá em definitivo o Supremo Tribunal de Justiça.

## CAPÍTULO V DAS AUTORIZAÇÕES E AVISOS

**Art. 91.º** - Em casos devidamente justificados, as respectivas Comissões de Águas poderão autorizar temporariamente e a requerimento dos interessados determinadas actividades agro-pecuárias e a construção de vivendas ou instalações de carácter provisório nos leitos das ribeiras sempre que não prejudiquem o livre escoamento das águas e não causem prejuízos ao meio ambiente ou a terceiros.

2. Ainda que autorizadas em conformidade com o número anterior, o Estado não suportará qualquer indemnização pelos danos causados pelas águas às actividades ou construções realizadas nos leitos das ribeiras.

**Art. 92.º** - 1. Para estes efeitos considera-se leito de ribeira a superfície pela qual circulam as águas provenientes de precipitações pluviais médias dos últimos 20 anos e a faixa de 20 metros em cada margem, medida desde a linha mais alta de ocupação das águas.

2. A Junta dos Recursos Hídricos determinará tecnicamente o leito de cada ribeira, a pedido da respectiva Comissão de Águas e para os efeitos das autorizações referidas no artigo anterior.



**Art. 93.º - 1.** As pessoas singulares ou colectivas interessadas em realizar estudos e pesquisas destinadas a verificar a viabilidade técnico-económica de determinado aproveitamento hídrico, como etapa prévia ao respectivo requerimento do direito de uso deverão solicitar autorização ao organismo competente, para a realização dos referidos estudos ou pesquisas.

2. Os proprietários ou legítimos ocupantes de terrenos nos quais se pretendam fazer os referidos estudos, só poderão solicitar que não seja concedida a referida autorização quando provem que os estudos ou pesquisas podem ocasionar danos graves e irreversíveis nas suas actividades productivas ou quando se pretendam fazer em lugares destinados a habitação ou em quintais ou construções acessórias a elas.

3. A autorização compreenderá o direito de fazer sondagens e pesquisas, sem prejudicar as obras de qualquer natureza e tomando as medidas necessárias para evitar prejuízos às pessoas e bens e restituindo tudo ao estado em que se encontrava antes do início dos trabalhos.

4. As actividades referidas no número anterior que devem ser efectuadas em propriedades particulares, darão direito a indemnização pelos prejuízos causados, liquidados administrativamente pela respectiva Comissão de Águas, em caso de desacordo entre as partes.

**Art. 94.º - 1.** Nos lugares onde não existam sistemas públicos de distribuição de água para consumo doméstico poderão ser autorizadas pessoas singulares ou colectivas para transportar água potável, mediante viaturas especialmente acondicionadas e cumprido os requisitos sanitários, estabelecidos no respectivo Regulamento.

2. A autorização referida no número anterior é da competência do respectivo Secretariado Administrativo, mediante prévia audição da respectiva Comissão de Águas e das autoridades sanitárias.

3. A resolução deverá estabelecer:

- a) Local de abastecimento de água;
- b) Local e forma de distribuição da água;
- c) As tarifas que podem ser cobradas pelo transporte;
- d) As demais condições especiais que o autorizado deve cumprir.

4. As viaturas deverão circular munidas de uma guia de marcha, passada pelo respectivo Secretariado Administrativo e visada pelas autoridades sanitárias e a Comissão de Águas.

**Art. 95.º** Os comodatos e usufrutos que tenham por

objecto um prédio rústico ou parte deste devidamente autorizados, conferem aos comodatários ou usufrutuários o direito de uso da água sempre que tenham sido aprovados pelo Conselho Nacional de Águas.

**Art. 96.º - 1.** As pessoas singulares ou colectivas que utilizem águas provenientes de nascentes, proços, furos ou galerias, em forma permanente para consumo individual ou fins domésticos e aqueles que, com qualquer objecto, utilizem águas pluviais caídas sobre terrenos públicos, deverão dar aviso por escrito à respectiva Comissão de Águas indicando os volumes aproveitados, os sistemas de captação e os fins que se destinam tratando-se de águas pluviais.

2. A obrigação a que se refere o número anterior não isenta o utente do cumprimento das normas referentes à construção e exploração de obras hidráulicas, contempladas no regulamento respectivo.

3. A infracção à obrigação estabelecida no n.º 1 deste artigo será punida pela respectiva Comissão de Águas, com multa que não poderá exceder 10 000\$.

## CAPÍTULO VI DAS SERVIDÕES

**Art. 97.º** Compete ao Conselho Nacional de Águas impôr as servidões administrativas que sejam necessárias para o exercício dos direitos de uso dos recursos hídricos derivados de uma licença ou concessão, para a realização de obras de carácter hidráulico e para qualquer outra actividade relacionada com a preservação dos recursos hídricos, em conformidade com as regras contidas nos artigos seguintes.

**Art. 98.º** As servidões referidas no artigo anterior não podem ser adquiridas por usucapião.

**Art. 99.º** Em tudo o que não esteja regulamentado no presente diploma, são aplicáveis as servidões relacionados com o uso dos recursos hídricos; as disposições do Código Civil e leis especiais.

## SECÇÃO I DA CONSTITUIÇÃO

**Art. 100.º** Tem competência para constituir servidões administrativas relacionadas com a utilização dos recursos hídricos, o Conselho Nacional de Águas que poderá delegá-la total ou parcialmente, na respectiva Comissão de Águas.

**Art. 101.º - 1.** O requerimento para a constituição de uma servidão administrativa relacionada com os recursos hídricos deve ser apresentado pelo legítimo interessado,



devidamente fundamentado e acompanhado dos documentos que sejam necessários para fazer prova da utilidade e necessidade da respectiva servidão.

2. O requerimento pode ser apreventado conjuntamente com o requerimento de concessão ou licença posteriormente à outorga destas.

**Art. 102.º** - 1. O Conselho Nacional de Águas, ou a Comissão de Águas no uso dos poderes delegados, procederá à notificação do proprietário e/ou legítimo ocupante dos terrenos sobre os quais pretenda constituir a servidão para no prazo de 30 dias, a contar da data da notificação, deduzir oposição.

2. A não apresentação da oposição dentro do prazo fixado no número anterior, importa a presunção de aceitação pelos notificados da constituição da servidão.

**Art. 103.º** A oposição deverá ser apresentada por escrito devidamente fundamentada e com indicação dos meios de prova, sob pena de preclusão do uso desta faculdade.

**Art. 104.º** Uma vez apresentada a oposição dentro do prazo respectivo, o Conselho Nacional de Águas ou a respectiva Comissão de Águas no uso dos poderes delegados, convocará às partes para uma audiência de conciliação.

**Art. 105.º** Quando a referida conciliação se revele impossível o Conselho Nacional de Águas ou a respectiva Comissão de Águas produzirá as provas que considera, pertinente após o que decidirá, em definitivo, constituindo a servidão que provar necessária e fixando a justa indemnização.

2. O Conselho Nacional de Águas ou a respectiva Comissão poderá, a todo o tempo, solicitar as informações que reputar necessárias para a melhor resolução do caso, de qualquer serviço do Estado, entidades públicas ou privadas, ou pessoas singulares ou colectivas.

**Art. 106.º** - 1. O proprietário e/ou legítimo ocupante do prédio serviente, tem direito a ser indemnizado pelo proprietário do prédio dominante, pelos danos directos e indirectos da constituição e exercício da servidão, salvo nos casos em que os prejuízos sejam produzidos por culpa ou dolo do prejudicado, seus empregados ou dependentes, ou de terceiros.

2. A discussão sobre o montante e forma de pagamento das indemnizações referidas no número anterior não suspendem a constituição ou exercício das servidões.

**Art. 107.º** - 1. A extensão e conteúdo dos direitos e deveres da servidão não poderão ser alterados sem a

vontade expressa das partes ou resolução do órgão de gestão dos recursos hídricos competente.

2. a infracção ao disposto no número anterior faz o responsável incorrer na obrigação de restituir a situação ao estado em que se encontrava, sem prejuízo de uma multa de até 10 000\$ e da reparação pelos danos civis a que o lesado tenha direito em conformidade com a legislação em comum.

**Art. 108.º** As servidões não poderão ser utilizadas para outro fim diverso daquele para que foram constituído sem prévia autorização do Conselho Nacional de Águas ou da Comissão respectiva.

**Art. 109.º** Das resoluções do Conselho Nacional de Águas ou da respectiva Comissão de Águas em matéria de constituição, exercício ou extinção de servidões administrativas, cabe recurso, nos termos do artigo 58.º do Código de Águas.

## SECÇÃO II DAS SERVIDÕES EM ESPECIAL

**Art. 110.º** - 1. Pela servidão natural de escoamento, o prédio a jusante está obrigado a receber as águas que descem do prédio a montante, de forma natural, isto é sem que a mão do homem produza qualquer modificação na sua direcção.

2. No prédio serviente não pode ser feita coisa alguma que modifique esta servidão, nem no prédio dominante que a agrave.

3. Contudo, em ambos os prédios, podem ser realizadas obras hidráulicas destinadas a regularizar ou mazenar as águas sem que alterem a sua descida normal, cumprindo as condições e requisitos estabelecidas na lei e nos regulamentos sobre obras hidráulicas.

**Art. 111.º** - 1. Denomina-se servidão de aqueduto aquela que autoriza o titular de licença ou concessão para o uso dos recursos hídricos a transferir a água a que tenha direito, por meio de canalizações subterrâneas ou canais superficiais, através de prédios rústicos alheios, não sendo quintais, jardins ou terreiros contíguos a casas de habitações.

2. A respectiva autorização determinará as características técnicas a que se deverá ajustar o aqueduto e suas obras acessórias, assim como o seu tracado, que deverá ser o mais apto do ponto de vista técnico e económico.

3. A construção e manutenção do aqueduto e obras acessórias ficará a cargo exclusivo do dominante, mas o serviente poderá executar, pela sua conta e com



autorização do dominante, quaisquer outras obras destinadas a minimizar a carga da servidão.

**Art. 112.º** - 1. A indemnização que pagará o dominante deverá cobrir o valor do terreno efectivamente ocupado pelo aqueduto e das obras acessórias, incluindo uma faixa de terreno situada de cada um dos lados do aqueduto e de largura não inferior a 50% da largura deste, com um mínimo de 1 metro em toda a sua extensão, podendo a largura ser maior por acordo entre as partes ou, em casos fundamentados, por decisão do CNAG ou da respectiva Comissão.

2. A faixa lateral referida no número anterior está destinada à manutenção do adequado a recepção de resíduos e entulhos provenientes da sua limpeza e nela o dominante poderá exigir que não sejam realizadas plantações, nem obras que prejudiquem os referidos fins.

3. Quando os aquedutos, tendam o seu percurso portencestas, as faixas laterais estender-se-ão na sua totalidade, pelo contado do vale.

**Art. 113.º** - 1. Os proprietários e/ou ocupantes legítimos dos prédios servientes das servidões de aqueduto deverão obster-se de qualquer actividade que entrave o livro curso das águas, assim como de utilizar por qualquer forma, mesmo em usos não consumptivos sem autorização prévia e por escrito do dominante.

2. Os proprietários e/ou ocupantes legítimos dos retentos prédios servientes são solidariamente responsáveis por toda subtração ou diminuição de caudais que se verifique na extensão do aqueduto que passa pelo seu prédio e ficam sujeitos às sanções e pagamento de indemnizações a que houver lugar, sem prejuízo da faculdade de provar que não existiu culpabilidade da sua parte ou dos seus dependentes e empregados.

**Art. 114.º** - 1. O proprietário ou ocupante legal de um prédio no qual exista um aqueduto, quer de benefício exclusivo do prédio quer construído em virtude de uma servidão administrativa, poderá opôr-se à constituição de uma nova servidão, sempre que o aqueduto existente seja utilizável para fins pretendidas pela nova servidão.

2. Na situação prevista no número anterior, as obras de ampliação do aqueduto que sejam necessárias para permitir a passagem dos novos caudais, ficarão a cargo dos respectivos beneficiários e as despesas de manutenção deverão ser suportados em proporção ao respectivo benefício.

3. A resolução que autorize a servidão deverá fixar forma de distribuição das despesas e indemnizações a ..e houver lugar.

**Art. 115.º** - 1. Quando para seus gastos domésticos as pessoas não tenham acesso às fontes, poços e reservatórios destinados a esse uso, podem ser constituídas servidões de passagem, nos termos estabelecidos no Código Civil:

2. Estas servidões só serão constituídas quando se verifique que os reclamantes não podem obter água suficiente de outra proveniência, sem excessivo incómodo ou dispêndio.

3. Nos casos em que as servidões referidas beneficiem a mais do que uma pessoa ou família, as indemnizações a que houver lugar ficarão a cargo do Conselho Nacional de Águas ou da respectiva Comissão de Águas.

**Art. 116.º** - 1. Poderão ser constituídas servidões administrativas sobre terrenos de propriedade privada ou outorgados em posse útil, com o objectivo de construir obras hidráulicas de interesse particular.

2. A resolução que constitua a respectiva servidão deverá fixar a extensão do terreno objecto da servidão e a sua localização, tendo em conta os perímetros destinados à área de protecção e os respectivos acessos e faixas de manutenção.

3. A resolução deverá considerar a relação entre os benefícios que pode significar a obra para o dominante e os prejuízos que pode sofrer o serviente, para a determinação da conveniência da constituição da servidão e do montante da indemnização que houver lugar.

### SECÇÃO III DA EXTINÇÃO

**Art. 117.º** As servidões administrativas referidas neste Regulamento extinguem-se mediante resolução do Conselho Nacional de Águas ou da respectiva Comissão fundando-se em uma das seguintes causas:

- a) Não utilização injustificada e por causas imputáveis ao serviente, pelo prazo de um ano;
- b) Não pagamento da indemnização na forma estabelecida na resolução de constituição;
- c) Confusão numa mesma pessoa dos proprietários ou ocupantes legais dos prédios servientes e dominantes;
- d) Renúncia do proprietário ou ocupante legal do prédio dominante;
- e) Extinção do respectivo direito de uso da água do proprietário ou ocupante legal do prédio dominante;



f) Mudança de destino sem prévia autorização do Conselho Nacional de Águas ou da respectiva Comissão de Águas;

g) Prejuízos graves ou reiterados causados por culpa do dominante, os seus dependentes e empregados, nos bens ou direitos do serviente.

**Art. 118.º** O serviente pode requerer do Conselho Nacional de Águas ou da respectiva Comissão de Águas a revogação da servidão, baseado na existência de uma ou várias causas estabelecidas no artigo anterior, devendo ser seguido o processo fixado na Secção I deste capítulo para a constituição, com as devidas adaptações.

**Art. 119.º - 1.** Déclarada a extinção da servidão; o proprietário ou ocupante do prédio serviente, recupera o pleno exercício do seu direito sobre o terreno, sem repetição da indemnização.

2. Poderá ainda, utilizar as obras que não sejam levantadas pelo dominante dentro de seis meses seguintes à resolução de extinção da servidão, independentemente do pagamento de indemnização.

3. O dominante que pretenda fazer o levantamento das obras referidas no número anterior, para além de cumprir com as normas estabelecidas no Regulamento de Obras Hidráulicas, deverá deixar o terreno do serviente, na forma em que se encontrava antes da construção das obras mencionadas.

## CAPÍTULO VII DISPOSIÇÕES FINAIS E TRANSITÓRIAS

**Art. 120.º - 1.** Os pedidos de reconhecimento de direito de uso da água, adquiridos ao abrigo da lei, costume, acto ou contrato anteriores à data de entrada em vigor do Código de Águas, deverão ser apresentados no formulário especial que faz parte deste Regulamento, na Secretaria do Conselho Nacional de Águas, dentro dos 180 dias a contar da data de entrada em vigor mencionada e em conformidade com o disposto no seu artigo 100.º

2. No momento da apresentação, o interessado deverá exigir um documento justificativo da data e hora de entrega do pedido e dos documentos que o acompanham.

**Art. 121.º - 1.** O pedido referido no artigo anterior deverá ser assinado pelo interessado pessoalmente ou devidamente representado devendo a parte apresentar na Secretaria do Conselho Nacional de Águas o respectivo Bilhete de Identidade, ou qualquer outro documento

oficial que faça prova da sua identidade quando o mencionado pedido não tenha sido reconhecido pelo Notário.

2. Estes pedidos ficarão isentos do pagamento de qualquer selo ou imposto.

**Art. 122.º - 1.** A instrução dos processos relativos aos pedidos a que se referem os dois artigos anteriores obedece ao disposto na Secção II do Capítulo III e com as adaptações estabelecidas no Capítulo IV para os casos em que os referidos direitos sejam matéria de concessões.

2. Compete ao Conselho Nacional de Águas conhecer dos pedidos de reconhecimento de direito adquiridos do uso da água potável o qual poderá solicitar as informações de qualquer natureza que ache indispensável para o cabal conhecimento da situação a qualquer entidade ou pessoa singular ou colectiva.

3. A competência no número anterior não poderá ser delegada.

4. A resolução fixará o prazo de duração do direito adquirido, o qual não poderá exceder de 30 anos.

5. Ao termo do prazo o utente poderá requerer uma licença ou concessão, seguindo o procedimento e cumprindo as condições estabelecidas no Código de Águas e no presente Regulamento.

**Art. 123.º - 1.** A resolução que defira o pedido de reconhecimento do direito pretendido poderá fixar um prazo de transição para o exercício do mesmo comece a reger-se pelas disposições do Código de Águas e os seus regulamentos.

2. Equanto o Conselho Nacional de Águas não se pronuncie sobre o pedido, o titular do direito poderá continuar a exercê-lo da forma costumeira, sempre que não prejudique outros direitos de uso da água constituídos em conformidade com o novo ordenamento jurídico.

3. Os casos de conflitos resultantes da aplicação da norma contida no número anterior serão resolvidos dentro de 48 horas seguintes ao seu conhecimento, pelo Conselho Nacional de Águas.

**Art. 124.º** Os direitos adquiridos cujo reconhecimento não tenha sido requerido do prazo legal estabelecido ou cujo pedido tenha sido iderido extinguir-se-ão de pleno direito, sem prejuízo de solicitar a respectiva licença ou concessão em conformidade com as disposições do presente Regulamento.



**Art. 125.º** Das resoluções do Conselho Nacional de Águas, em matéria de direitos adquiridos cabe recurso, na forma prevista no artigo 58.º do Código de Águas.

Visto e aprovado em Conselho de Ministros.

*Pedro Pires - João Pereira Silva*

Promulgado em 27 de Maio de 1987.

Publique-se.

O Presidente da República, **ARISTIDES MARIA PEREIRA.**

## Decreto n.º 167/87 de 31 de Dezembro 1987

No uso da faculdade conferida pelo artigo 77.º da Constituição, o Governo decreta o seguinte:

### CAPÍTULO I DISPOSIÇÕES GERAIS

**Artigo 1.º** O presente Regulamento fixa as normas pelas quais se deve orientar a determinação, pagamento e cobrança de cânones, taxas, tarifas e emolumentos relacionados directamente com a utilização dos recursos hídricos, assim como o regime de incentivos e sanções pecuniárias sobre a matéria.

**Art. 2.º** Para efeitos do disposto no presente Regulamento, entende-se por:

- a) **Cânone**: a importância em dinheiro paga, anualmente, pelos titulares de concessões e licenças de uso dos recursos hídricos como contraprestação do direito de uso da água;
- b) **Taxa**: a importância em dinheiro paga periodicamente pelos utentes de água, como contraprestação do aproveitamento de obras ou equipamentos hidráulicos;
- c) **Tarifa**: o preço dos serviços de distribuição de água potável, cobrado periodicamente ou por quantidades fixas, pelos concessionários de tais serviços;
- d) **Emolumentos**: a importância em dinheiro, fixa e paga por uma só vez, pela emissão de concessões, licenças, autorizações ou certidões.

**Art. 3.º** Nenhuma entidade, seja pessoa singular ou colectiva de direito público ou privado, poderá ser isenta do pagamento de cânones, taxas e tarifas ou emolumentos, sem prejuízo do disposto no Capítulo III deste Regulamento.

**Art. 4.º - 1.** Os cânones, taxas, tarifas e emolumentos são as únicas contraprestações dos diversos serviços que possibilitam o uso da água.

2. Fica proibida a comercialização da água, salvo tando-se de situações devidamente autorizadas.

**Art. 5.º - 1.** As receitas provenientes da cobrança de cânones, taxas, tarifas e emolumentos e das sanções pecuniárias directamente relacionadas com os recursos hídricos, devem ser administradas e utilizadas no financiamento da gestão das águas.

2. O disposto no número anterior não obsta ao controlo financeiro estabelecido para fundos públicos, geridos por instituições com autonomia administrativa e financeira.

### CAPÍTULO II CÂNONES, TAXAS, TARIFAS E EMOLUMENTOS

#### SECÇÃO I DOS CÂNONES

**Art. 6.º - 1.** Os titulares de direitos de uso de água estão sujeitos a um «cânone de captação» fixado anualmente por resolução do Conselho Nacional de Águas, para cada circunscrição hidrográfica, atendendo aos seguintes critérios:

- a) Qualidade da água e natureza da respectiva utilização;
- b) Interesse económico e social do respectivo uso;
- c) Incidência da água no processo produtivo para que é destinada;
- d) Situação hídrica da respectiva circunscrição hidrográfica, nomeadamente no que respeita à pluviosidade nos anos imediatamente anteriores.
- e) Origem e fonte de água utilizada.

**Art. 7.º** A captação das águas marítimas para dessalinização e para substituição das águas interiores, em piscinas, redes de esgoto refrigeração industrial e



outros não está sujeita ao cânone de captação, sem prejuízo do pagamento das taxas ou emolumentos, nos casos previstos neste Regulamento.

**Art. 8.º** - 1. A resolução que fixe o cânone de captação estabeleceu sempre que possível o sistema de pagamento.

2. Na fixação do sistema de pagamento ter-se-á em conta os volumes de água efectivamente captados e medidos à entrada do respectivo sistema de captação.

3. Quando não existem sistemas de medição e não for possível o cálculo estimativo dos respectivos caudais, serão atendidas outras variáveis tais como períodos de tempo, as superfícies irrigadas e o número de pessoas beneficiadas.

**Art. 9.º** Os utentes que restituem ao meio ambiente parte do caudal captado; em iguais condições de qualidade e disponibilidade, ou permitam a sua utilização por outros utentes, beneficiação de uma redução do cânone da captação, proporcional ao caudal restituído ou utilizado pelos outros utentes.

**Art. 10.º** - 1. A resolução do Conselho Nacional de Águas que autoriza a rejeição de águas residuais fixará o respectivo cânone a pagar anualmente pelo utilizador, tendo em conta os seguintes critérios:

- a) Características e natureza do meio receptor do respectivo afluente nas águas rejeitadas;
- b) Quantidade de elementos contaminadores ou poluidores contidos;
- c) Perigosidade ou toxicidade dos referidos elementos;
- d) Investimentos realizados pelo interessado para minimizar os efectivos contaminadores ou poluidores.

2. O cânone será aplicado consoante o volume de água residual rejeitado; medido à saída do respectivo emissor, ou casos em que isso seja impossível ou demasiado oneroso, mediante estimativas de caudais, períodos de tempo, número de pessoas servidas ou outros sistemas que o Conselho Nacional de Águas repute adequados.

3. O montante do cânone poderá ser modificado pelo Conselho Nacional de Águas quando se verificarem mudanças significativas nos critérios estabelecidos no número 2 deste artigo.

**Artigo 11.º** O Conselho Nacional de Águas poderá fixar cânones especiais para usos não consumptivos, a serem pagos conjuntamente com as taxas e/ou emolumentos devidos em relação à actividade principal.

## SECÇÃO II DAS TAXAS

**Art. 12.º** Os titulares de direitos de uso de água, beneficiários de obras hidráulicas de interesse público, construídas com financiamento do Estado ou entidades públicas, ficarão sujeitos a uma «taxa de beneficiação» a fixar pelo Conselho Nacional de Águas, para cada empreendimento, sob proposta da Junta dos Recursos Hídricos.

**Art. 13.º** Para determinação da taxa, a que se refere o artigo anterior, fixar-se-á o montante da parte do investimento a ser suportado pelos beneficiários directos, tendo em conta os seguintes critérios:

- a) Não serão considerados os custos relativos a estudos de viabilidade, projectos de execução, fiscalização e seguros;
- b) Serão contabilizados apenas os juros e encargos financeiros dos créditos directos para a construção da obra;
- c) Serão deduzidos, estimativamente, Serão os benefícios indirectos do empreendimento, em percentagem não inferior a 20% nem superior a 50% do valor de construção da obra;
- d) Tratando-se de empreendimento de uso múltiplo, os cálculos deverão ser feitos em separado, para cada grupo de utentes específicos;
- e) Deverão ser deduzido os valores, acrescidos dos respectivos juros legais, das contribuições dos beneficiários quer em numerário, créditos, materiais ou trabalho pessoal.

**Art. 14.º** - 1. A parte do investimento a ser suportado pelos beneficiários directos e calculada segundo os critérios estabelecidos no artigo anterior, ser-lhes-á distribuída proporcionalmente, tendo em consideração os seguintes factores:

- a) O aumento de produção possível de obter pela maior disponibilidade hídrica;
- b) A capacidade económica do beneficiário;
- c) As características de cada actividade productiva e a incidência que sobre ela tem a utilização da água;
- d) Os custos de produção da actividade beneficiada;
- e) Os preços dos respectivos produtos no mercado nacional.



2. A quota parte de cada beneficiário será atribuída pelo período normal de amortização da obra, devendo ser paga anualmente.

**Art. 15.º - 1.** A taxa de beneficiação deverá ser paga pelos beneficiários a partir do segundo ano a contar da entrada em funcionamento da obra.

2. Tratando-se de utilização de água para fins agrícolas, a taxa referida no n.º 1 deste artigo, deverá ser paga a partir do terceiro ano a contar da entrada em funcionamento da obra.

**Art. 16.º** As entidades ou pessoas colectivas que tenham a seu cargo a administração de obras hidráulicas de interesse público deverão apresentar ao Conselho Nacional de Águas, até ao mês de Novembro de cada, um orçamento dos custos de exploração e conservação do respectivo empreendimento, tendo em conta os seguintes critérios:

- a) As despesas proporcionais às quantidades de água produzidas serão avaliadas em conformidade com os montantes de água distribuída e os preços em vigor no ano imediatamente anterior;
- b) As despesas fixas serão calculadas em conformidade com as previsões contidas na planificação sectorial e local com os preços em vigor no momento de apresentação do respectivo orçamento;
- c) Dever-se-á acrescentar ou diminuir as diferenças do exercício anterior entre o orçamento aprovado e os montantes efectivamente dispendidos;
- d) Ao total obtido poderá ser acrescentado uma percentagem não superior a 10% para despesas extraordinárias.

**Art. 17.º - 1.** Constituem despesas proporcionais às quantidades de águas produzida, todas aquelas que derivem de actividades que apenas são executadas quando a obra está em exploração efectiva, nomeadamente energia e combustível, renovação e manutenção do equipamento electromecânico e eventuais produtos químicos de tratamento e depuração.

2. Consideram-se despesas fixas aquelas que devem ser suportadas independentemente do rendimento produtivo da obra, nomeadamente salários do pessoal, manutenção e amortização das construções e viaturas, pagamento de prestação de serviços e as despesas de administração.

**Art. 18.º - 1.** Juntamente com o orçamento referido no artigo 14.º do presente regulamento, a entidade administrativa da obra hidráulica de interesse público deverá apresentar uma proposta de «taxa de conservação e exploração» a ser paga pelos utentes de respectiva obra

calculada com base na divisão aritmética do custo estimativo da exploração pelo volume de água que se calcula produzir no respectivo ano.

2. Poderá ser proposta uma taxa progressiva, em conformidade com os montantes de água efectivamente utilizada ou taxas diferenciadas para os diferentes usos. Em todo o caso, deverão ser feitas os cálculos para as receitas estejam equilibradas com custo de exploração e conservação cucluladas.

**Art. 19.º - 1.** Quando as obras hidráulicas de interesse público sejam administradas, pelos próprios utentes, organizados em associações, em conformidade com a lei, o seu orçamento deverá ser previamente aprovado pela Assembleia Geral e submetido posteriormente a conhecimento da respectiva Comissão de Águas, que o submeterá com o seu parecer à aprovação do Conselho Nacional de Águas.

**Art. 20.º** A extracção de materiais áridos do leito das ribeiras pertencentes ao domínio público estará sujeita a taxa única, fixada em função da quantidade de material extraído.

## SECÇÃO II DAS TARIFAS

**Art. 21.º - 1.** Os requerentes de concessão de direito de uso de água para abastecimento às populações deverão apresentar, conjuntamente com respectivo requerimento, o mais tardar dentro dos 30 dias a seguir da data de fixação dos cânones e taxas pelo Conselho Nacional de Águas, uma proposta de tarifas e eventuais taxas mensais a serem pagas pelos beneficiários desses serviços. Esta proposta deverá estar fundamentada no estudo dos custos de exploração e conservação da respectiva amortização dos investimentos, podendo ser-lhe acrescentada uma margem de benefícios, que, em nenhum caso, exercerá 5% desse orçamento.

2. A referida proposta deverá ser informada pelos serviços técnicos da Junta dos Recursos Hídricos e logo aprovada pelo Conselho Nacional de Águas, para a sua posterior apresentação ao Governo.

**Art. 22.º - 1.** Os concessionários de serviços de distribuição de água potável poderão solicitar a modificação das tarifas e taxas estabelecidas, segundo o processo indicado no artigo anterior, sempre que tenham transcorrido pelo menos 12 meses a contar da data de início da sua aplicação.

2. O pedido de modificação deverá ser acompanhado do respectivo estudo técnico-financeiro justificativo da pretensão e seguirá o processo indicado no número 2 do artigo anterior.



**Art. 23.º - 1.** As propostas de tarifas e taxas de abastecimento de água às populações, poderão conter:

- a) Tarifas progressivas, segundo as quantidades consumidas durante determinado período;
- b) Tarifas diferenciadas, segundo a natureza ou qualidade do beneficiário;
- c) Taxas especiais por aparelhos ou dispositivos destinados ao armazenamento ou aumento de disponibilidade da água;
- d) Tarifas especiais para determinados usos considerados voluptuários;
- e) Taxas por serviços especiais de ligação e assistência técnica e manutenção de instalações domiciliárias e outras semelhantes;
- f) Taxa de aluguer de contadores.

2. As tabelas de preços para a distribuição de água à populações por meio de viaturas, poderão estabelecer tarifas diferenciadas em conformidade com a distância existente entre o ponto de captação e o lugar de entrega.

**Art. 24.º** O Conselho Nacional de Águas poderá fixar, mediante resolução publicada no *Boletim Oficial*, tarifas especiais para:

- a) Abastecimento de água para barcos e aeronaves;
- b) Utilização de águas minero-medicinais;
- c) Outras águas ou utilização especiais.

**Art. 25.º** A fixação de preços de venda das águas minerais engarrafadas é da competência da Direcção-Geral do Comércio, ouvido o parecer do Conselho Nacional de Águas.

**Art. 26.º** Fica absolutamente proibido o fornecimento de água para qualquer uso a título oneroso, fora das disposições do presente Regulamento.

### SECÇÃO III DOS ELEMENTOS

**Art. 27.º** Mediante resolução publicada, no *Boletim Oficial*, o Conselho Nacional de Águas fixará os montantes e a forma de pagamento dos seguintes emolumentos:

- a) Por emissão e renovação de concessões e licenças de direitos de uso de água;

b) Por autorizações para construção modificação ou inutilização de obras hidráulicas;

c) Por autorização para rejeição de águas residuais e as suas renovações;

d) Por autorização para transporte de águas mediante viaturas;

e) Por certidões de qualquer natureza passadas pelo Conselho Nacional de Águas ou pelas Comissões de Águas.

f) Por normas técnicas para a construção, modificação, inutilização, exploração ou conservação de obras hidráulicas;

g) Por autorizações para extracção de materiais áridos do leito das ribeiras;

h) Por autorizações para estudos e pesquisas hidráulicas;

i) Por autorizações para actividades e construções provisórias no leito de ribeiras;

j) Por inscrições, anotações, certidões e outras actuações do Registo Nacional de Águas.

## CAPÍTULO III DOS INCENTIVOS E SANÇÕES

### SECÇÃO I DOS INCENTIVOS

**Art. 28.º - 1.** O Conselho Nacional de Águas poderá conceder os seguintes subsídios a suportar por receitas próprias:

a) Às entidades concessionárias de serviços de distribuição de água potável com o objectivo de permitir a fixação ou manutenção de tarifas que não cubram as despesas de exploração, conservação e amortização dos investimentos;

b) Às entidades que administrem as obras hidráulicas de interesse público, com o objectivo de impedir que as taxas a cobrar pela água para fins produtivos indicam de maneira demasiado onerosa nos preços dos respectivos produtos;

c) Às cooperativas de produção agro-pecuárias, industriais ou mineiras que necessitem de apoio, nomeadamente na fase inicial;

d) Às instituições de beneficência ou de serviço social;

e) Aos produtores; tratando-se de produtos ou sistemas de produção que seja necessário incentivar por razões de interesse nacional.

2. Em casos especiais, o Conselho Nacional de Águas poderá propor ao Governo a concessão dos subsídios indicados no número anterior suportados pelo orçamento geral do Estado ou por fundos especiais de qualquer natureza.

**Art. 29.º** - 1. O conselho Nacional de Águas, sob proposta da Junta dos Recursos Hídricos poderá participar no financiamento da construção ou modificação de obras hidráulicas que melhorem notavelmente a captação, distribuição, aproveitamento e conservação dos recursos hídricos ou permitam a recuperação ou neutralização das águas residuais.

2. Estas participações não poderão exceder a 50% do valor total da obra, fixando a respectiva resolução as modalidades de operação e os eventuais direitos do Conselho na exploração dessa obra.

**Art. 30.º** Os créditos concedidos pelos organismos financeiros do Estado aos titulares de direitos de uso de águas, para construção ou modificação de obras hidráulicas ou para modificação do sistemas produtivos que no entender do Conselho Nacional de 26 Águas suponham um significativo melhoramento no aproveitamento das águas ou uma notável diminuição das cargas contaminadoras ou poluidoras das águas residuais, obedecerão às seguintes condições

- a) Os prazos de amortização dos créditos outorgados não poderão ser inferiores a três anos, a não ser que o próprio interessado proponha um prazo menor;
- b) O montante do crédito deverá cobrir pelo menos 75% do valor do respectivo investimento, a não ser que o interessado solicite uma quantidade menor;
- c) Os juros a vencer deverão ser os mais baixos em vigor, no momento do pagamento total ou parcial do crédito;
- d) Não poderão ser exigidas as garantias pessoais.

## SECÇÃO II DAS SANÇÕES

**Art. 31.º** O não pagamento de cânones, taxas ou tarifas poderá dar lugar à aplicação das seguintes sanções:

- a) Suspensão do fornecimento da água;
- b) Cancelamento definitivo da respectiva concessão ou licença ou licença à rede domiciliária, quando

houver reincidência ou persistência na mora do pagamento;

- c) Multas de montante não superior a 50% da importância em dívida, podendo ser aumentada progressivamente até a sua duplicação em casos de reincidência ou persistência na mora;
- d) Cobrança de juros a contar da data em que o pagamento devia ser efectuado.

**Art. 32.º** São competentes para aplicação das sanções referidas no artigo anterior;

- a) A respectiva Comissão de Águas, tratando-se de cânone de captação ou taxas de beneficiação;
- b) As entidades que administrem as obras hidráulicas de interesse público, tratando-se de taxas de exploração e conservação;
- c) A respectiva Comissão de Águas tratando-se de cânones por rejeição de Águas residuais e de utilização de águas para usos não consumptivos;
- d) as entidades concessionárias de serviços de distribuição de água potável, tratando-se de tarifas.

**Art. 33.º** Das resoluções que apliquem sanções cabe recurso:

- a) Fara o Conselho Nacional de Águas tratando-se de resoluções das Comissões de Águas;
- b) Para a respectiva Comissão de Águas, tratando-se de resoluções de entidades que administrem obras hidráulicas de interesse público;
- c) Para o Conselho Deliberativo, de cada Município, tratando-se de resoluções sobre tarifas.

**Art. 34.º** Os fundos provenientes das sanções aplicadas pelas entidades concessionárias de serviços de distribuição de água potável constituirão receitas dos seus próprios orçamentos.

**Art. 35.º** Os titulares de direitos de uso de água potável poderão solicitar a remissão ou diferimento do pagamento das respectivas taxas ou tarifas, com fundamento em casos fortuitos ou força maior.

## CAPÍTULO IV DA COBRANÇA E PAGAMENTO

**Art. 36.º** Os cânones de captação e rejeição de águas residuais e as taxas de beneficiação serão pagos por períodos anuais, na respectiva Comissão de Águas, e no



lugar que esta indicar, mediante aviso público ou notificações particulares, aos interessados.

**Art. 37.º - 1.** As taxas de exploração e conservação serão pagas pelos períodos estabelecidos na resolução que as fixe e directamente à entidade que administre a respectiva obra hidráulica.

2. No caso em que a referida entidade seja um dos organismos de gestão dos recursos hídricos estabelecidos na lei, estas taxas poderão ser pagas por períodos anuais e conjuntamente com o cânone de captação e a taxa de beneficiação.

**Art. 38.º - 1.** As tarifas eventuais, taxas e as respectivas

sanções pecuniárias pelo seu não pagamento serão cobradas pelas entidades concessionárias na forma indicada na resolução que se aprovar.

**Art. 39.º** A interposição do recurso contra a resolução que fixe sanções pecuniárias não obsta ao respectivo pagamento, mas em caso de provimento os montantes pagos serão deduzidos das sucessivas taxas ou tarifas.

## **CAPÍTULO V** **DISPOSIÇÕES FINAIS E TRANSITÓRIAS**

**Art. 40.º** As dúvidas e os casos omissos relacionadas com o presente Regulamento serão resolvidos mediante decreto do Governo.

**Promulgado em 27 de Maio de 1987.**

*Pedro Pires - João Pereira Silva.*

**O Presidente da República, ARISTIDES MARIA PEREIRA.**

# GUINEA-BISSAU

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## Decreto n.º 11/86 de 10 de Maio 1986

O Ministério dos Recursos Naturais e Indústria tu...ela áreas tão vasta e importantes da economia do País, como os Recursos Hídricos, Geológicos e Minerais, Energéticos e Industriais.

Tem-se vindo a constatar que devido à diversidade dos ramos da Ciência e Tecnologia sob a alçada do Ministério existe uma dispersão de técnicos locais de investigação, locais de difusão de conhecimentos etc. que urge centralizar para eles obter uma melhor eficiência e organização.

Embora exista no Ministério um Gabinete de Estudos e Planeamento, este não está dimensionado para, nomeadamente, a realização de investigações e desenvolvimento no âmbito da normalização e regulamentação técnicas, promover a difusão de conhecimentos de resultados obtidos na investigação de quadros científicos e técnicos, designadamente através da colaboração com o ensino de todos os graus e concessão de estágios, defender a propriedade intelectual dos estudos e projectos do Ministério e seus técnicos, manter intercâmbio com os meios científicos e técnicos afins, nacionais e estrangeiras, e prestar colaboração técnica a outros serviços ou entidades públicas ou privadas.

Assim, entendeu o Ministério criar um serviço público suficientemente dotado de meios humanos, técnicos e materiais com o fim de empreender, promover e coordenar a investigação e outras acções necessárias para as realizações e para o progressor da ciência e tecnologia das áreas abrangidas pelo Ministério - Recursos Hídricos, Geológicos e Minerais, Energéticos e Industriais.

Nestes termos:

O Governo decreta, nos termos do artigo 74.º da Constituição, o seguinte:

**ARTIGO 1.º** É criado, sob a tutela do Ministério dos Recursos Naturais e Indústria, o Centro de Investigação e Tecnologia Aplicada, abreviadamente CITA.

**ARTIGO 2.º** Este diploma entra em vigor na data da sua aprovação.

Aprovado em Conselho de Ministros de 9 de Abril de 1986. - O Ministro dos Recursos Naturais e Indústria, *Filinto Barros*

Publique-se.

O Presidente do conselho de Estado, *João Bernardo Vieira*, General de Divisão.

### ESTATUTO DO CENTRO DE INVESTIGAÇÃO E TECNOLOGIA APLICADA

## CAPÍTULO I

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### GENERALIDADES

#### ARTIGO 1.º (Natureza)

O Centro de Investigação e Tecnologia Aplicada, abreviadamente designado por CITA, constitui um serviço público dotado de autonomia administrativa, financeira e patrimonial, sob a tutela do Ministério dos Recursos Naturais e Indústria.

#### ARTIGO 2.º (Finalidade)

O CITA tem por finalidade empreender, promover e coordenar a investigação e outras acções de pesquisa necessárias, com vista a aplicação prática, no domínio das actividades do Ministério de tutela no sentido do progresso técnico, científico económico do país.

#### ARTIGO 3.º (Atribuições)

Em ordem à prossecução dos seus fins, cabe ao CITA:

- a) Realizar investigações, estudos, e ensaios da sua iniciativa ou solicitados por entidades públicas ou privadas nacionais;



- a) Efectuar estudos no âmbito da normalização e regulamentação técnicas;
- c) Avaliar e controlar a qualidade dos produtos;
- d) Promover a difusão de conhecimento e resultados obtidos em actividades próprias ou alheias, recolher, classificar, publicar e difundir bibliografia e outros elementos de informação;
- e) Emitir pareceres, responder a consultas e prestar colaboração dentro do seu campo de actividades;
- f) Contribuir para o aperfeiçoamento e especialização de quadros nacionais, nomeadamente, através da colaboração com os estabelecimentos de ensino, o Instituto Nacional de Estudos e Pesquisas e outros e, mediante a concessão e eventual subvenção de estágios, facultando-lhes meios para a realização de trabalhos de investigação;
- g) Manter intercâmbio com os meios científicos e técnicos afins, nacionais e estrangeiras, e participar em actividades internacionais e contribuir para a difusão da técnica guineense no estrangeiro;
- h) Defender a propriedade intelectual dos estudos e Projectos efectuados no domínio (área) das actividades do CITA e, em estreita colaboração com os organismos internacionais tais como: a OMPI, OAPI e CRAT;
- i) Coordenar a investigação científica do Ministério de tutela;
- j) Qualquer outra atribuição que lhe seja conferida por lei, regulamento ou pelo Ministério de tutela.
- d) Conselho Fiscal;
2. São Departamentos do CITA;
- a) Departamento de Energia;
- b) Departamento Industrial;
- c) Departamento de Geologia e Minas;
- d) Departamento de Hidráulica e Recursos Hídricos;
- e) Departamento do Meio Ambiente;
- f) Departamento Administrativo e Financeiro;
- g) Departamento de documentação Técnica.

**DIVISÃO I**  
(ÓRGÃOS DIRECTIVOS E DE CONSULTA)

**SECÇÃO I**  
DIRECTOR-GERAL

**ARTIGO 5.º (Conceito)**

O CITA é dirigido por um Director-Geral nomeado pelo Conselho de Ministros sob proposta do Ministro dos Recursos Naturais e Indústria.

**ARTIGO 6.º (Competência)**

Compete ao Director-Geral:

- a) Dirigir, coordenar e representar o CITA;
- b) Convocar as reuniões de Conselho Científico;
- c) Convocar as reuniões do Conselho Directivo.

**SECÇÃO II**

**Conselho Científico**

**ARTIGO 7.º (Conceito)**

O Conselho Científico é um órgão de consulta sobre as grandes linhas de investigação, planeamento e de gestão, que devem orientar a acção do CITA nos diversos domínios da sua actividade.

**ARTIGO 8.º (Constituição)**

O Conselho Científico é constituído pelo Director-Geral do CITA e por elementos nomeados pelos seguintes Ministérios de vocação tecno-científica:

**CAPÍTULO II**

**ORGÂNICA GERAL**

**Disposições Gerais**

**ARTIGO 4.º (Estrutura)**

1. São órgãos Directivos e de Consulta:
- a) Director Geral;
- b) Conselho Científico;
- c) Conselho Directivo;

- a) Ministério dos Recursos Naturais e Indústria;
- b) Ministério do Desenvolvimento Rural e Pescas;
- c) Ministério da Coordenação Económica, Plano e Cooperação Internacional;
- d) Ministério do Equipamento Social e Transportes;
- e) Ministério da Educação Nacional, Cultura e Desportos;
- f) Ministério da Saúde Pública.

#### ARTIGO 9.º (Competência)

1. Compete ao conselho Científico pronuncia-se sobre todas as questões que lhe sejam postas pela Direcção do CITA, nomeadamente:

- a) Planos de trabalho globais do CITA, anuais e plurianuais;
- b) Relatório de actividades respeitantes aos Planos a que se refere a alínea anterior;
- c) Linhas gerais de investigação e desenvolvimento do CITA;
- d) Planos anuais e plurianuais de investigação;
- e) Política de formação profissional e carreiras específicas do pessoal do CITA;
- f) Regulamentação intensa dos critérios de missão, avaliação e selecção do pessoal do CITA;
- g) Orçamento e conta de Gerência do CITA.

2. O Conselho Científico é presidido por um representante do Ministério de tutela, nomeado pelo respectivo Ministro.

#### ARTIGO 10.º (Funcionamento)

1. O Conselho Científico reunirá ordinariamente de três em três meses e extraordinariamente sempre que for convocado pelo seu Presidente, por intermédio do Director-Geral, por iniciativa daquele ou a solicitação da maioria dos seus membros.

2. O quorum exigido para a reunião do Conselho Científico é de metade mais um dos seus membros.

3. As actas de cada reunião serão assinadas pelos presentes.

4. Poderão ser convocados ou convidados para as reuniões do Conselho Científico, outras pessoas, singulares ou colectivas, com especial competência nos assuntos a tratar.

### SECÇÃO III CONSELHO DIRECTIVO

#### ARTIGO 11.º (Conceito)

O Conselho Directivo assiste o Directo-Geral na Gestão e direcção do CITA.

#### ARTIGO 12.º (Constituição)

O Conselho Directivo é constituído pelo Director-Geral, que é o seu Presidente, e pelos responsáveis dos diferentes departamentos do CITA.

#### ARTIGO 13.º (Competência)

Compete em especial o Conselho directivo:

- a) Deliberar sobre a nomeação, promoção, demissão, sanções disciplinares, estímulos e outras questões relativas aos trabalhadores do CITA;
- b) pronunciar-se a pedido do Director-Geral sobre os assuntos que devem ser submetidos à consideração do Conselho Científico;
- c) Em geral, assistir e apoiar o director-Geral na execução dos assuntos correntes do CITA, assim como, na sua gestão e direcção.

#### ARTIGO 14.º (Funcionamento)

1. O Conselho Directivo deve reunir-se ordinariamente pelo menos uma vez por semana convocado pelo seu presidente.

2. O quorum exigido para a reunião do Conselho Directivo é de metade mais um dos seus membros.

3. Os membros do Conselho Directivo são pessoal e solidariamente responsáveis pelas decisões adoptadas nos seus respectivos conselhos, salvo que tivessem feito constar em acta o seu desacordo.

4. Todos os membros do conselho Directivo têm voz e voto nas reuniões dos respectivos Conselhos.

5. Em cada um dos Conselhos as resoluções ou acordos são tomados por maioria absoluta dos votos expressos, não sendo permitidas abstenções.



6. Em caso de empate o presidente tem voto de qualidade.

7. As actas de cada Conselho serão exaradas nos respectivos livros e assinados pelos presentes.

#### **SECÇÃO IV CONSELHO FISCAL**

##### **ARTIGO 15.º (Conceitos)**

O Conselho Fiscal é órgão fiscalizador das actividades financeiras do CITA.

##### **ARTIGO 16.º (Constituição)**

1. O Conselho Fiscal é composto por representantes das Direcções Gerais do Ministério de tutela.

2. Os membros do Conselho Fiscal escolherão entre si o respectivo Presidente.

##### **ARTIGO 17.º (Competência)**

Compete ao Conselho Fiscal:

- a) Examinar, rever e inspeccionar a contabilidade do CITA;
- b) Enviar cópias das actas das suas reuniões ao Ministério de tutela;
- c) Elaborar anualmente o parecer sobre o relatório de actividades e balanço, relativos ao exercício do ano anterior;
- d) Enviar o respectivo parecer ao Ministério de tutela até 31 de Março de cada ano.

##### **ARTIGO 18.º Funcionamento)**

1. O Conselho Fiscal reunirá pelo menos uma vez em cada trimestre, para apreciação do balancete trimestral, por convocação do seu Presidente, ou a pedido de três dos seus membros.

2. O Conselho Fiscal pode reunir-se validamente com a presença de pelo menos três dos seus membros.

3. De todas as reuniões do Conselho Fiscal serão lavradas actas que serão assinadas pelos membros presentes.

#### **DIVISÃO II DEPARTAMENTOS**

##### **SECÇÃO I DEPARTAMENTO DE ENERGIA**

##### **ARTIGO 19.º (Atribuições)**

1. ao Departamento de Energia cabe colaborar na realização dos objectivos gerais do CITA, especificamente dentro do seu campo de acção e genericamente em actividades tais como formação de normalização e regulamentação técnicas.

2. O campo de acção de Departamento de Energia é fundamentalmente o seguinte:

- a) Oferecer assistência técnica na área de Energia, visando aumentar o rendimento das Industrias através da racionalização dos consumos e da redução das perdas energéticas;
- b) Elaborar estudos de avaliação energética para as indústrias a implantar e das já implantadas;
- c) Elaborar um levantamento de dados para a execução dos perfis sectoriais de consumo, nas áreas industriais, transporte, residencial, agrícola, comércio e serviços;
- d) Efectuar a avaliação dos potenciais energéticos alternativos como o álcool e bagaço de cana, energia eólica e solar, óleos vegetais e minerais energéticos, além do perfil de conservação de energia;
- e) Elaborar estudos sobre mini-centrais hidroeléctricas.

##### **SECÇÃO II DEPARTAMENTO INDUSTRIAL**

##### **ARTIGO 20.º (Atribuições)**

1. Ao Departamento Industrial cabe colaborar na realização dos objectivos gerais do CITA especificamente dentro do seu campo de acção e genericamente em actividades tais como formação do pessoal, difusão de conhecimentos e preparação de normalização e regulamentação técnicas.

2. O campo de acção do Departamento Industrial é fundamentalmente o seguinte:

- a) Aproveitamento e valorização de recursos naturais e de desperdícios;
- b) Assimilação, adaptação e desenvolvimento de tecnologias que conduzem à criação de novas indústrias, sobretudo aquelas que resultam directamente de recursos naturais nacionais;
- c) Assistência técnica e tecnológica à Indústria Nacional e conseqüente, promoção, estabelecimento e verificação de qualidade;
- d) Apoio laboratorial;
- e) Assistência na montagem de novas instalações industriais e acompanhamento do seu arranque;
- f) Desenvolvimento de novos produtos e processos.

3. No Departamento Industrial existe um sector Agro-Industrial.

**ARTIGO 21.º (Atribuições do Sector Agro-Industrial)**

Ao Sector Agro-Industrial compete, nomeadamente, o estudo:

- a) Da avaliação industrial de matérias-primas agrícolas;
- b) Da melhoria dos produtos Agro-Industriais existentes no mercado;
- c) Da adaptação de tecnologias;
- d) Da tecnologia de pós-colheita e armazenamento de produtos agrícolas;
- e) Das embalagens;
- f) Do desenvolvimento das máquinas;
- g) Da assistência técnica à empresas agro-industriais;
- h) Da normalização de produtos e processos agro-industriais;
- i) Da emissão de certificados de qualidade.

**SECÇÃO III**

**DEPARTAMENTO DE GEOLOGIA E MINAS**

**ARTIGO 22.º (Atribuições)**

1. Ao Departamento de Geologia e Minas cabe colaborar

na realização dos objectivos gerais do CITA, especificamente dentro do seu campo de acção e genericamente em actividades tais como formação do pessoal, difusão de conhecimentos e preparação de normalização técnicas.

2. O campo de acção do Departamento de Geologia e Minas é fundamentalmente o seguinte:

- a) Aproveitamento e valorização dos recursos mineiros do país;
- b) Aperfeiçoamento de processos produtivos;
- c) Assessoria técnico-científica, nomeadamente para mineração ou lavra, beneficiamento e metalurgia extractiva e refinação;
- d) Assistência laboratorial.

**SECÇÃO IV**

**DEPARTAMENTO DE HIDRÁULICA E RECURSOS HÍDRICOS**

**ARTIGO 23.º (Atribuições)**

1. Ao Departamento de Hidráulica e Recursos Hídricos cabe colaborar na realização dos objectivos gerais do CITA, especificamente dentro do seu campo de acção e genericamente em actividades tais como formação do pessoal, difusão de conhecimentos e preparação de normalização e regulamentação técnicas.

2. O campo de acção do Departamento de Hidráulica e Recursos Hídricos recai fundamentalmente na assistência técnica ou valorização:

- a) De estrutura hidráulicas (obras de desvio provisório, tomadas de água, evacuadores de cheias e outras barragens etc.);
- b) De portos e infra-estruturas marítimas;
- c) Da protecção e beneficiação de costas;
- d) Dos estuários;
- e) Da regularização fluvial e torrencial;
- f) Dos esgotos e abastecimentos de águas;
- g) Da protecção dos recursos hídricos;
- h) Da qualidade da água e poluição.



**SECÇÃO V**  
**DEPARTAMENTO DO MEIO AMBIENTE**

**ARTIGO 24.º (Atribuições)**

1. Ao Departamento do Meio Ambiente cabe colaborar na realização dos objectivos gerais do CITA, especificamente dentro do seu campo de acção e genericamente em actividades tais como formação do pessoal, difusão de conhecimentos e preparação de normalização e regulamentação técnicas.

2. O campo de acção do Departamento do Meio Ambiente é fundamentalmente o seguinte:

- a) Estimular e coordenar as actividades no País relacionadas com a preservação e melhoria do meio natural, a conservação da natureza e a protecção e valorização dos recursos naturais, domínios estes a seguir designados genericamente por Meio Ambiente;
- b) Realizar os estudos necessários, em colaboração com os órgãos encarregados do planeamento económico e político nacional relativo ao meio ambiente, tendo em conta a experiência adquirida nacional e internacionalmente;
- c) Manter-se informado sobre os planos elaborados pelos organismos públicos e outras entidades envolvidas nos estudos e acções respeitantes ao meio ambiente e promover a sua coordenação;
- d) Acompanhar em íntima ligação com o Ministério do Desenvolvimento Rural e Pescas e outros organismos interessados, as actividades internacionais respeitantes ao meio ambiente e dar-lhes colaboração em tudo quanto respeita à participação Guineense em reuniões internacionais nestes domínios;
- e) Manter relações de cooperação com organismos estrangeiros interessados nos assuntos relativos ao meio ambiente e fomentar o intercâmbio e a difusão de informações científica e técnica neste domínio.

**SECÇÃO VI**  
**DEPARTAMENTO ADMINISTRATIVO E**  
**FINANCEIRO**

**ARTIGO 25.º (Atribuições)**

1. Ao Departamento Administrativo e Financeiro cabe assegurar a execução dos Serviços administrativos financeiros do CITA.

2. O campo de acção do Departamento Administrativo e Financeiro é fundamentalmente o seguinte:

- a) Assegurar um bom funcionamento da Secretaria Geral, no serviço do Pessoal e nos Arquivos do CITA;
- b) Assegurar a Gestão de todo o património do CITA;
- c) Assegurar um bom controle e uma boa execução dos movimentos financeiros do CITA;
- d) Elaborar o Orçamento do CITA;
- e) Controlar e assegurar a sua execução.

**SECÇÃO VII**  
**DEPARTAMENTO DE DOCUMENTAÇÃO**  
**TÉCNICA**

**ARTIGO 26.º (Atribuições)**

1. Ao Departamento de Documentação Técnica cabe colaborar na realização dos objectivos do CITA; especificamente dentro do seu campo de acção e genericamente em actividades tais como a centralização da documentação técnica, a normalização, a recolha e processamento de dados.

2. O Departamento de Documentação Técnica é composto por três Serviços:

- a) Biblioteca;
- b) Centro Informático;
- c) Centro de Normalização e Regulamentação.

**SUB-SECÇÃO I**  
**BIBLIOTECA**

**ARTIGO 27.º (Atribuições)**

Compete à Biblioteca:

- a) Coordenar as actividades documentais dos vários departamentos nos seus vários aspectos de recolha, conservação, catalogação, estudo e selecção, classificação, normalização, informação, difusão, etc.;
- b) Cooperar sob o ponto de vista de organização documental, apetrechamento e técnicas bibliográficas com outros organismos congéneres nacionais e estrangeiros;
- c) Promover, por meio de seminários, cursos, conferências ou outras reuniões, exposições e publicações, a difusão de conhecimentos e de resultados obtidos em actividades do CITA;

- d) Tudo o mais que lhe for cometido pelo Director-Geral do CITA ou Conselho Científico.

**SUB-SECÇÃO II**  
**CENTRO INFORMÁTICO**

**ARTIGO 28.º (Atribuições)**

1. Compete ao Centro Informático:
  - a) Proceder à investigação, desenvolvimento e aplicações nos domínios da informática cona interesse para o CITA;
  - b) Garantir o funcionamento dos meios de processamento automático da informação e acompanhar o progresso tecnológico desses meios;
  - c) Prestar apoio aos órgãos e serviços do CITA no domínio da informática.
2. O apoio nos domínios da informática é prestado pelo Centro Informático aos órgãos e departamentos do CITA e poderá ser extensivo a outras entidades e públicas e privadas, nas condições a fixar pelo Director-Geral.

**SUB-SECÇÃO III**  
**CENTRO DE NORMALIZAÇÃO E REGULAMENTAÇÃO**

**ARTIGO 29.º (Atribuições)**

Ao Centro de Normalização e Regulamentação compete:

- a) Efectuar estudos de investigação e desenvolvimento no âmbito da normalização e regulamentação técnicas;
- b) Promover, coordenar e conduzir actividades de normalização e regulamentação, desde o planeamento até à aplicação, em colaboração com os outros sectores técnicos do CITA;
- c) Elaborar documentos normativos e regulamentares em colaboração com outros organismos nacionais;
- d) Acompanhar e contribuir para as actividades internacionais de harmonização técnica regulamentar e normativa e desenvolver as acções que nesse sentido considere de interesse no plano nacional.

**CAPÍTULO III**

**GESTÃO ADMINISTRATIVA E FINANCERIRA**

**ARTIGO 30.º (Receitas)**

Constituem receitas do CITA:

- a) As verbas que lhe foram destinadas pelo Estado, designadamente de dotações orçamentais os subsídios especialmente concedidos;
- b) As quantias cobradas pelos serviços prestados pelo CITA a entidades públicas ou particulares nacionais du estrangeiras;
- c) Os rendimentos de bens que o CITA possua ou venha a possuir nomeadamente os relativos às suas patentes de invenção;
- d) O produto de venda de patentes de invenção de aparelhagem desenvolvida no CITA, de publicações e ainda a de bens móveis e imóveis pertencentes ao património que possam ser dispensados ou tenham sido inutilizados;
- e) O produto de empréstimos autorizados pelo Estado;
- f) Quaisquer outras verbas que por lei, contrato ou a qualquer outro título lhe sejam atribuídas, nomeadamente juros de quaisquer depósitos.

**ARTIGO 31.º (Disciplina de gestão financeira)**

A gestão financeira do CITA será disciplinada pelos seguintes instrumentos de gestão previsional:

- a) Orçamento privativo anual;
- b) Planos de actividades e financeiros anuais e plurianuais.

**ARTIGO 32.º (Elaboração e Aprovação dos orçamentos)**

A elaboração e aprovação do orçamento privativo, obedecerá ou legalmente fixado para os organismos dotados de autonomia administrativa a financeira.

**ARTIGO 33.º** Constituem despesas do CITA todas as que resultam do normal exercício das suas funções.



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**CAPÍTULO IV**

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**SERVIÇOS E PESSOAL****ARTIGO 34.º (Serviços)**

O CITA terá os serviços técnicos e administrativos necessários à realização dos seus fins.

**ARTIGO 35.º (Pessoal)**

1. O quadro de pessoal do CITA será aprovado por Decreto do Conselho de Ministros, sob proposta do Ministro de Tutela.

2. O pessoal do CITA ficará sujeita ao regime jurídico do contrato individual de trabalho, em vigor na República da Guiné-Bissau e aos regulamentos internos aprovados pelo Ministro de tutela.

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**CAPÍTULO V**

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**DISPOSIÇÕES FINAIS**

**ARTIGO 36.º** É transferido para o CITA todo o património documental e material, bem como o pessoal afecto ao antigo Laboratório Técnico de Apoio do Ministério dos Recursos Naturais e Indústria.

**ARTIGO 37.º** O CITA deve prosseguir os fins previstos no artigo 3.º em estreita colaboração com o Instituto Nacional de Estudos e Pesquisas — INEP.

**ARTIGO 38.º** As dúvidas suscitadas pela aplicação desta norma serão resolvidas por Despacho do Ministro de Tutela.

# MALAWI

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## The Forestry Act, 1997

MALAWI GOVERNMENT

*(Published 16th May, 1997)*

I assent

BAKILI MULUZI, PRESIDENT

9 May, 1997

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**An Act to provide for participatory forestry, forest management, forestry research, forestry education, forest industries, protection and rehabilitation of environmentally fragile areas and international co-operation in forestry and for matters incidental thereto or connected therewith**

ENACTED by the Parliament of Malawi as follows-

**PART I**

**PRELIMINARY**

**short title and commencement**

1. This Act may be cited as the Forestry Act, 1997, and shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

**Interpretation**

2. In this Act, unless the context otherwise requires-

“Minister” means the Minister for the time being responsible for forestry matters;

“Board” means the Forestry Management Board established under section 15;

**Cap.57.01**

“Customary land” has the meaning assigned thereto in the Land Act;

“forest” means an area of land proclaimed to be a forest under this Act or unproclaimed land with trees on it;

“forest management agreement” means an agreement made under section 31;

“forest plantation agreement” means an agreement made under section 36 for establishment and management of forest plantations;

“forest produce” includes trees, timber, firewood, branch-wood, poles, bamboos, chips, sawdust, plants, grass, reeds, peat, thatch, bedding, creepers, leaves, moss, fruits, seed, galls, slabs, roots,

bark, rubber, gum, resin, sap, flowers, fungi, honey, wax, earth, water, soil, stones, vertebrates, invertebrates, wild animals, hides, horns, bones, ivory, meat and such other produce as the Minister may, by notice published in the *Gazette*, declare to be forest produce;

“Fund” means the Forest Development and Management Fund established under section 55;

**Cap.69.01**

“highway authority” has the meaning assigned thereto in the Public Roads Act;

“licensing officer” means, in relation to any licence under this Act, an officer not below the rank of Principal Forestry Officer who may be authorized to issue licences;

“livestock” includes cattle, horses, mules, donkeys, pigs, sheep and goats;

“management authority” in relation to a village forest area, means a person designated as the management authority pursuant to the agreement establishing the village forest area;

“National Forest Plan” means a plan prepared under section 5;

“officer” means the Director of Forestry and any officer appointed pursuant to section 4;

**Cap.57:01**

“private land” has the meaning assigned thereto in the Land Act;



“protected forest area” means an area declared as such under section 26;

**Cap.57:01**

“public land” has the meaning assigned thereto in the Land Act;

“river” includes all natural or artificial water courses in which water ordinarily flows or remains either throughout the year or during particular seasons;

“timber” means any tree or part of a tree which has fallen or has been felled and any part of a tree which has been cut and all wood whether sawn, split, hewn, processed or otherwise fashioned;

“tree” means a woody perennial plant having a single well defined stem and a more or less defined crown and includes palm, shrubs, bush, climber, seedling, sapling and re-shoots of all ages and of all kinds and any part thereof;

“village forest area” means an area of customary land established

as such by an agreement under section 30;

“village natural resources management committee” means a committee elected by stakeholders of the village forest areas.

**Purposes of this Act**

3. The purposes of this Act are-

- (a) to identify and manage areas of permanent forest cover as protection or production forest in order to maintain environmental stability; to prevent resource degradation and to increase social and economic benefits;
- (b) to augment, protect and manage trees and forest on customary land in order to meet basic fuelwood and forest produce needs of local communities and for the conservation of soil and water;
- (c) to promote community involvement in the conservation of trees and forests in forest reserves and protected forest areas in accordance with the provisions of this Act;
- (d) to empower village natural resources management committees to source financial and technical assistance from the private sector, Non-Governmental Organizations and other organizations;

**Purposes of this Act**

- (e) to promote sustainable utilization of timber, fuelwood and other forest produce;
- (f) to promote optimal land use practices through agroforestry in smallholder farming systems;
- (g) to upgrade the capability of forestry institutions in the implementation of their resource management responsibilities and in development of human resources in forestry;
- (h) to control trafficking in wood and other forestry produce including exportation and importation;
- (i) to protect fragile areas such as steep slopes, river banks, water catchment and to conserve and enhance biodiversity;
- (j) to provide guidelines in planning and implementation of forestry research and forestry education;
- (k) to establish a forestry administration; and
- (l) to promote bilateral, regional and international co-operation in forest augmentation and conservation.

**PART II**

**ADMINISTRATION**

**Director of Forestry and other officers**

4. There shall be appointed in the public service an officer to be designated as the Director of Forestry and other officers subordinate to him, who shall be responsible for the administration of this Act subject to any general and specific directions of the Minister.

5. The Director of Forestry shall be responsible for-

**Duties of the Director of Forestry**

- (a) planning, promoting, conducting and assisting in the activities required to maintain, restore and develop the forest cover necessary for soil and water conservation, maintenance of biological diversity and the supply of forest produce;
- (b) Conducting and maintaining inventories of the forest resources and preparing both national forestry plans and forestry management plans;

- (c) conducting and co-ordinating research into the growth, management, protection and sustainable utilization of forest resources;
- (d) promoting participatory forestry;
- (e) facilitating the formation of village natural resources management committees and the establishment of rules of village forest areas;
- (f) undertaking training programmes for subordinate, technical and professional staff in the Department of Forestry to the highest levels possible;
- (g) promoting proper harvesting systems, transportation, marketing and sustainable utilization of forest produce;
- (h) encouraging and promoting proper co-ordination of forestry related activities carried out by other organizations;
- (i) promoting forest recreation and tourism in forest areas;
- (j) exercising the control and the management of forest reserves and protected forest areas in accordance with the provisions of this Act;
- (k) promoting the empowerment of local communities in the augmentation, control and management of customary land trees and forests in accordance with the provisions of this Act;
- (l) carrying out silvicultural operations or other forest work including operations to prevent pests and diseases, construction of buildings, water works, and roads, erection of power lines, telephone lines and radio masts and any other activities that enhance forest development in any part of a forest reserve or forest plantation;
- (m) preparing and updating National Forestry Plans in accordance with the National Forestry Policy;
- (n) co-ordinating forestry development and implementing the Forestry Programme of Action in the Southern Africa Development Community region.

#### **Inspection by an officer**

6. Pursuant to the provisions of this Act, an officer may-

- (a) demand the production by any person of a licence or other authority for any activity committed by such persons for which such licence or other authority is required by or under this Act;

(b) without a warrant-

- (i) Stop and inspect any carrier or vehicle which the officer reasonably suspects is carrying any forest produce which has been obtained in contravention of this Act or for which a transportation document is required under this Act;
- (ii) enter any premises in a forest reserve, any land or premises in which any activity licensed under this Act is conducted, or any village forest area or protected forest area and inspect such premises or land;
- (iii) enter upon any land building, tent, carriages, motor vehicle, trailer, aircraft, boat or locomotive for ensuring that the provisions of this Act are being complied with, or for the purpose of detecting any offence against this Act; and
- (iv) enter any land or premises and inspect silvicultural, forest harvesting and forest produce processing activities and wherever necessary provide advice on proper methods for carrying out such activities.

#### **Barriers across roads**

7. Any officer may, after consultation with the highway authority, temporarily place a barrier approved by the highway authority across any road in a manner consistent with such road safety standards and specifications as the highway authority shall specify for the purpose of examining or searching any motor vehicle or questioning any person in connection with the provisions of this Act.

#### **Search**

8. Wherever an officer has reason to believe that any person to have committed an offence under this Act, the officer may search the person or property of such person or property in such person's possession or control.

#### **Seizure of forest produce and article**

9. (1) Any officer or police officer may seize and detain-

- (a) any forest produce which the officer or police officer reasonably suspects has been obtained or removed in contravention of this Act;
- (b) any article which the officer or police officer reasonably suspects has been used in committing an offence under this Act.

(2) Any officer or police officer who seizes and detains any forest produce or article under subsection (1) shall issue a seizure certificate.



(3) Any village natural resources management committee may seize and detain any forest produce or article which the village natural resources management committee reasonably suspects has been obtained or removed from the village forest area in contravention of rules made by such village natural resources management committee.

#### **Custody of seized forest produce and article**

10. Any forest produce or article seized under section 9 shall be kept safely in the custody of an officer or the village natural resources management committee.

#### **Disposal of seized forest produce and article**

11. (1) Any forest produce or article in the custody of an officer or the village natural resources management committee under section 10 shall be retained until the case in connection with which the forest produce or article was seized has been tried and concluded or a decision not to prosecute has been made:

Provided that-

- (a) where any person has been tried and found guilty or where a person fails to claim the seized forest produce or article after being acquitted, the forest produce or article shall be disposed of at the discretion of the Director of Forestry;
- (b) where a decision has been made not to prosecute, the seized forest produce or article may be returned to the owner;
- (c) where any seized forest produce or article is perishable, the Director, of Forestry may order the forest produce or article to be sold or disposed of as he sees fit.

(2) Any forest produce or article in the custody of a village natural resources management committee in accordance of section 9 (3) shall be retained until the offence in connection with which it was seized has been tried and concluded or a decision not to prosecute has been made:

Provided that-

- (a) Where any person has been tried and found guilty or where a person fails to claim after being acquitted the forest produce or article shall be disposed of at the discretion of the village natural resources management committee according to its rules;
- (b) where a decision has been made not to prosecute, the seized forest produce or article may be returned to the owner;
- (c) where any seized forest produce or article is perish-

able, the village natural resources management committee may order the forest produce or article to be sold or disposed of in accordance with its rules.

#### **Money from the sale of forest produce or articles to be paid into the Fund**

12. Wherever the disposal of government seized forest produce or articles is by sale, all monies realized shall be payable into the Fund established under section 55.

#### **Arrest of a person for committing offence**

13. (1) Where any person is found committing or is reasonably suspected of having or of being about to commit an offence under this Act, any officer may, without warrant, arrest such person.

(2) Any person arrested pursuant to subsection (1) shall be charged with an appropriate offence before a court of law.

#### **Prosecution by officers**

14. The Director of Public Prosecutions may in writing nominate, by rank, any officer or class of officers of the Department of Forestry to undertake and prosecute criminal proceedings in respect of any offence committed under this Act.

## **PART III**

### **FORESTRY MANAGEMENT BOARD**

#### **Establishment of the Board**

15. There is hereby established a Board to be known as the Forestry Management Board.

#### **Composition of the Board**

16. (1) The Board shall consist of-

- (a) the following *ex officio* members-
  - (i) the Secretary for Natural Resources or his designated representative;
  - (ii) the Secretary for Agriculture and Livestock Development or his designated representative;
  - (iii) the Secretary for Lands and Valuation or his designated representative;

- (iv) the Secretary for Local Government and Rural Development or his designated representative;
  - (v) the Principal Secretary responsible for District Administration in the Office of the President and Cabinet or his designated representative;
  - (vi) the Secretary for Energy and Mining or his designated representative;
  - (vii) the Secretary for Works and Supplies or his designated representative;
  - (viii) the Secretary for Research and Environmental Affairs or his designated representative;
  - (ix) the General Manager of National Herbarium and Botanic Gardens or his designated representative;
  - (x) the General Manager of the Electricity Supply Commission of Malawi or his designated representative;
  - (xi) the Director of Forestry;
  - (xii) the Director of National parks and Wildlife;
  - (xiii) the Director of Fisheries;
- (b) and the following members who shall be appointed by the Minister-
- (i) one member representing the University of Malawi;
  - (ii) not less than three and not more than five members representing the general public; and
  - (iii) a representative of the Timber Association of Malawi.
- (2) The Minister shall appoint one of the members to be Chairman of the Board.
- (3) A member of the Board appointed under subsection (1) (b), (i), (ii) and (iii) shall hold office for a period of two years unless his appointment be sooner terminated and shall be eligible for re-appointment.
- (4) The membership of the Board as first and subsequently appointed and every change in the membership to the Board shall be published in the *Gazette*.
- (5) The office of the Director of Forestry shall provide the Secretariat of the Board.
- (6) The office of a member appointed pursuant to subsection (1) (b), (i), (ii) and (iii) shall become vacant-

- (a) upon his death;
- (b) if he is absent from three consecutive meetings of the Board without the approval of the Chairman or without other valid cause;
- (c) upon the expiry of one month's notice in writing of his intention to resign his office given by the member to the Minister; and
- (d) if he is convicted of an offence under the Act.

#### Functions of the Board

17. The functions of the Board shall be to advise the Minister on all matters relating to tree and forest management in Malawi, including in particular but not limited to-

- (a) advising on the declaration and revocation of areas which for the purpose of protecting forest species, biotic communities, sites of special interest or aesthetic values, the Board considers should be declared forest reserves, protected forest areas and fragile sites.
- (b) advising on the import, export and re-export of tree species specimen into and out of Malawi;

#### Meeting of the Board

18. (1) The Board shall meet not less than twice a year at such places and times as the Chairman may determine.

(2) The Board shall further meet at any time at the request, in writing, of any three of its members.

(3) The Board may, at the discretion of the Chairman, invite any person or persons to attend any meeting of the Board and such person or persons may take part in the proceedings of the meeting but shall not be entitled to vote.

(4) In the absence of the Chairman from any meeting of the Board the members present, if constituting a quorum, shall elect one of their number to preside at the meeting.

(5) One third of the members of the Board shall constitute quorum.

(6) At all meetings of the Board the decisions shall be reached by a simple majority, and the Chairman or other person presiding shall have, in the event of an equality of votes, a casting vote in addition to his deliberative vote.

(7) The Chairman of the Board shall report to the Board



at each meeting thereof the action taken in respect of any matter on which the Board has advised the Minister.

(8) The Board shall determine its own procedure.

#### **Members of the Board not deemed public officers**

19. A member of the Board, who is not a public officer shall not, by virtue only of his membership to the Board, be deemed to be an officer in the public service.

#### **Allowances**

20. Members of the Board shall be paid an honorarium determined by the Minister and shall be paid reasonable travelling expenses and subsistence allowance while engaged upon the business of the Board at the rate prescribed by the Minister.

## **PART IV**

### **FOREST RESERVES AND PROTECTED FOREST AREAS**

#### **Purposes of this Part**

21. The purpose of this Part is to provide for the declaration, conservation and management of forest reserves, protected forest areas and the biodiversity.

#### **Declaration of forest reserves**

22. The Minister may, after consultation with the Minister responsible for land matters, by order published in the *Gazette*, declare any public land not already reserved for another public purpose to be a forest reserve.

#### **Acquisition of land for forest reserve**

**Cap. 57:01**

**Cap. 58:04**

23. Any area of land proposed for a forest reserve and which is not public land shall first be acquired in accordance with the provisions of the Land Act and the Land Acquisition Act.

#### **Management of forest reserves**

24. In assuring the protection and management of forest reserves, the Director of Forestry shall prepare management plans as stipulated in section 5.

#### **Co-management of forest reserves**

25. The Director of Forestry may enter into agreement with local communities for implementation of the management plan that is mutually acceptable to both parties.

#### **Management of protected forest areas**

26. (1) Where the Minister finds that the protection of soil and water; resources, outstanding flora and fauna requires that any area of land be maintained or established as a forest, the Minister may, by order in the *Gazette*, after consultations with the Minister responsible for land matters, the Minister responsible for agriculture, the Minister responsible for Irrigation and Water Development, the owner or occupier and, in case of customary land, the traditional authority, declare such land to be a protected forest area.

(2) Where the Minister considers that land which requires protection as a forest reserve or protected forest area, is liable to serious degradation if not immediately protected, the Minister may declare such land to be a protected forest area for such period not exceeding one year as may be necessary to complete the consultations required by section 22 or subsection (1).

#### **Management of protected forest areas**

27. A declaration made under section 26 shall state the measures required for protection of the areas, the assistance to be provided by the Department of Forestry towards accomplishing such measures and the obligations of the owner, occupier or traditional authority to maintain and protect the forest resources of the area.

#### **Revocation of declarations**

28. (1) The Director of Forestry may recommend to the Minister to revoke or modify, by notice published in the *Gazette*, a declaration of a forest reserve or protected forest area with respect to any land, and the Minister shall first require a comprehensive environmental impact assessment.

(2) The Minister may, by notice published in the *Gazette*, amend such order the purpose of which is to delineate or excise land from a forest reserve or protected forest area subject to advice from the Board.

(3) Any environmental impact assessment made pursuant to the provisions of subsection (1), shall investigate the ecological consequences of proposed resolution of modification and the report of the assessment shall be submitted to the Minister together with the advice of the Director of Forestry within ninety days of completion of the assessment being made.

(4) The Minister shall not decide upon a proposal related to revocation or modification of a forest reserve or protected forest area until the Minister is in receipt of the report referred to in sub-section (3).

## PART V

### CUSTOMARY LAND FOREST

#### Purpose of this Part

29. The purpose of this Part is to provide for promotion of participatory forestry on customary land through protection, control and management of trees and forests by the people on customary land, the demarcation and management of village forest areas, ownership of indigenous forest trees, establishment of tree nurseries and regulation of forest produce.

#### Demarcation of village forest areas

30. Notwithstanding anything contained in this Act, any village headman may, with the advice of the Director of Forestry, demarcate on unallocated customary land a village forest area which shall be protected and managed in the prescribed manner for the benefit of that village community.

#### Forest management agreement

31. (1) For the proper management of village forest areas, the Director of Forestry may enter into a forest management agreement with a management authority providing for-

- (a) the specification of the nature of the forestry and other practices to be followed;
- (b) the assistance to be provided by the Department of Forestry and provision for use and disposition of the produce and revenue therefrom.
- (c) allocation of land to individuals or families for afforestation and revocation of such allocation if applicable provisions of the agreement are not adhered to by the occupier of the land so allocated;
- (d) formation of village natural resources management committees for the purposes of managing and utilizing village forest areas.

(2) Subject to the performance of unfulfilled obligations under a forest management agreement to the right of third parties, a forest management agreement may be terminated by either party.

(3) In the event of any dispute arising under a forest management agreement, the matter shall be referred to the Minister:

Provided that any party aggrieved with the Minister's decision may apply to the High Court for review of the Minister's decision.

(4) Any area designated as a village forest area but without the forest management agreement shall be managed in accordance with section 30.

(5) Any educational, religious or interested institutions in consultation with a village headman may demarcate, establish and manage a forest area or woodlot on customary land with the advice of the Director of Forestry subject to the provisions of subsections (1), (2) and (3).

#### Minister may make rules

32. (1) The Minister may make rules which shall apply to all customary land outside forest reserves and protected forest areas.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may-

- (a) provide for the protection of water catchment and fragile areas, rehabilitation of degraded areas and any other activity which would be conducive to good land husbandry;
- (b) facilitate the establishment and management of forest by village natural resources management committees for the benefit of local communities;
- (c) encourage District Councils, non-governmental organizations and the private sector to contribute towards the provision of forestry extension services, as well as the establishment and management of plantations in accordance with guidelines provided by the Department of Forestry;
- (d) provide for the establishment and maintenance of nurseries to provide seedlings for tree planting programmes;
- (e) authorize the payment, of grants or bonuses out of public funds for the encouragement of forestry;
- (f) provide for the declaration of endangered or essential tree species and their management;



(g) prescribe a mechanism for sharing costs and benefits between the Department of Forestry and village natural resources management committees in regard to forest produce confiscated from customary land forests.

#### **Approval of by-laws**

33. Any rules made by village natural resources management committees shall be approved by the Minister.

#### **Right to naturally growing trees**

34. (1) Any person who or community which protects a tree or forest, whether planted or naturally growing in any land which that person or community is entitled to use, shall acquire and retain the ownership of the tree and forest with the right to sustainable harvest and disposal of the produce.

(2) Any tree or forest owner under subsection (1) may seek the advice of the Director of Forestry on the management and utilization of his tree or forest.

## **PART VI**

### **AFFORESTATION**

#### **Purpose of this Part**

35. The purpose of this Part is to provide for the promotion of tree growing in forest reserves, public land, customary land and private land by the Government, non-governmental organizations and the community.

#### **Forest plantation agreement**

36. Notwithstanding anything to the contrary contained in this Act, the Minister may authorize the Director of Forestry to enter into a forest plantation agreement with any non-governmental organization or community who may wish to plant trees in forest reserves, public land, customary land and private land, and such agreement shall-

- (a) provide for the obligation to grow and manage tree species as specified in the agreement and in accordance with the plantations management plan which shall be approved by the Director of Forestry
- (b) convey the right to harvest the forest plantation in accordance with the terms of the agreement;
- (c) provide for advice and assistance from the Depart-

ment of Forestry in growing and managing the plantations;

- (d) specify obligations of each of the parties to the agreement.

#### **Right to planted forest produce**

37. Any person who plants any tree species on any land which that person is entitled to use for that purpose shall acquire and retain the right to harvest the resulting produce and to dispose of it freely.

## **PART VII**

### **FOREST PROTECTION**

#### **Purpose of this Part**

38. The purpose of this Part is to provide for the protection of trees, forest and forest produce against fires, pests and diseases..

#### **Prohibition against fires**

39. (1) No person shall light or cause to be lit a fire in any forest reserve or protected forest area except in places designated for that purpose or as otherwise authorized by an officer.

(2) An officer may order the closure of any place designated for the lighting of fires in a forest reserve or protected forest area and no person shall during such closure permit a fire to be lit in such place.

(3) No person shall light or cause to be lit a fire in any village forest area except with the authorization of the management authority subject to the provisions and conditions of the forest management agreement.

(4) Any person who lights a fire in or near a forest reserve, protected forest area or village forest area shall take all necessary precautions to prevent the fires escaping from control and shall be liable for any damage to the forest reserve, protected forest area or village forest area caused by any failure to take such precautions.

#### **Declaration of fire protection area**

40. The Director of Forestry may, by notice published in the *Gazette*, declare any forest area to be a fire protection area and the notice shall regulate the lighting of fires in such area.

**Assistance in fire fighting**

41. Any officer may require any person to assist in averting or extinguishing any fire threatening a forest reserve, protected forest area or village forest area.

**Forest pest and disease control**

42. Notwithstanding anything to the contrary contained in this Act, the Minister may authorize the Director of Forestry to-

- (a) order the spraying or clearing of a compartment of a plantation or of a whole plantation for the purpose of controlling the spreading of pests and diseases;
- (b) control movement of timber and other forest produce through issue of permits as the pest and disease situation may demand;
- (c) issue silvicultural notes and technical orders for purposes of controlling pests and diseases;
- (d) suspend further planting of tree species which are susceptible to pests and disease;
- (e) provide for control of vermin causing excessive damage beyond economic threshold in forest reserves;

**Cap. 64:01**

(f) provide for effective phytosanitation for all forest produce and all parts of the tree in accordance with the Plant Protection Act and to regulate importation of tree seed and other wood and forestry produce for purposes of pest and disease control.

**Prohibition of possession or use of weapons, traps, explosives, poisons or hunting animals**

43. (1) Any person who conveys into, or possesses or uses within any forest reserve or protected forest area any weapon, trap, explosive, poison or hunting animal shall be guilty of an offence.

(2) This section shall not apply to any officer acting in the performance of his duties.

**Prohibition of deposition of litter and waste**

44. Unless under a licence, no person shall deposit litter or noxious waste in forest reserves, protected forest areas and village forest areas.

**PART VIII**

**UTILIZATION OF FOREST PRODUCE IN FOREST RESERVES AND CUSTOMARY LAND**

**Purpose of this Part**

45. The purpose of this Part is to provide for licensing and sustainable use of forest land and utilization of forest produce on customary land, public land, forest reserves and protected forest areas.

**Acts under licence**

46. Unless under a licence, no person shall-

- (a) cut, take, fell, destroy, uproot, collect and remove forest produce from a forest reserve, customary land, public land and protected forest area;
- (b) cultivate crops, graze livestock, clear land, dig or break up land for any road or for any purpose whatsoever on such area of the forest reserve and protected forest area that may be specified in the licence;
- (c) prospect for and extract minerals in a forest reserve and protected forest area;
- (d) squat, reside, erect any building, livestock enclosures or any structure in a forest reserve and protected forest area;
- (e) perform such other acts as may be specified in the licence in the forest reserve and protected forest area.

**Permit for exportation, importation and re-exportation of forest produce**

47. The Director of Forestry may issue to any person a permit in the prescribed form to export or import or re-export certain types of forest produce.

**Restrictions on exports, import and re-exports of forest produce**

48. The Minister may, in consultation with the Minister responsible for trade, make regulations imposing restrictions on imports and exports and re-exports of certain type of forest produce.



**Waiver of feest, etc.**

49. The Director of Forestry may, subject to the general or special directions of the Minister, direct in writing that any fees or royalties payable under this Act shall be waived in whole or in part for a specified period.

**Forest produce from customary land**

50. (1) A resident of any village may collect forest produce from customary land other than village forest areas for domestic use.

(2) Any disposal of forest produce in a village forest area shall be in accordance with the provisions of the applicable forest management agreement.

(3) Where the wood arising from any activity on customary land is in excess of community domestic needs, the excess wood shall be disposed of by the village natural resources management committee for the benefit of that community.

**Suspension of a licence**

51. The Director of Forestry may, at any time that it appears to him that there has occurred or is about to occur a violation of any provision of this Act or of any condition of a licence, order the suspension of any or all operations under any licence until the licensee has taken necessary measures to remedy or prevent the violation.

**Grounds on which a licence may be refused**

52. The Director of Forestry may refuse to issue a licence if-

- (a) the applicant fails to comply with any prescribed conditions;
- (b) any licence formerly held by the applicant under this Act has been revoked by the Director of Forestry within the previous twelve months;
- (c) the applicant has been convicted of an offence under this Act within the previous twenty-four months;
- (d) he is satisfied on reasonable ground that the applicant is not a fit or proper person to hold such licence; or
- (e) he is satisfied that the interest of forest management shall be better served by a temporary freeze in issuing of licence of that class.

**Cancellation of a licence**

53. (1) The Director of Forestry may revoke any licence

issued to any person under this Part if he is reasonably satisfied of the existence of any ground that would entitle him under section 52 to refuse to issue a licence to that person.

(2) The Director of Forestry shall notify the licensee in writing of any cancellation under this section and shall state his reasons in writing.

**Appeal to the Minister**

54. (1) An applicant who has been refused a licence under section 52 may, within thirty days, appeal to the Minister in writing.

(2) Any licensee whose licence is cancelled under section 53 may, within thirty days, appeal to the Minister in writing.

(3) The Minister may, on proper cause being shown, allow an appeal out of the time prescribed.

(4) The Minister shall be free to hear the views of the Director of Forestry in determining an appeal under this section and may uphold, vary or quash the decision of the Director of Forestry.

(5) Any person aggrieved by the decision of the Minister may apply to the High Court for a review of the Minister's decision.

**PART IX****FOREST DEVELOPMENT AND MANAGEMENT FUND****Establishment of the Fund**

55. (1) There is hereby established a Fund to be known as the Forest Development and Management Fund (in this Act referred to as the "Fund")

(2) the Fund shall consist of-

- (a) such sums as shall be appropriated by Parliament for the purpose of the Fund;
- (b) advances made to the Fund under section 57;
- (c) such sums as may be received for the purposes of the Fund by way of voluntary contributions;
- (d) levies from a metre cube of wood felled or extracted by the Forestry Department;

- (e) payments made into the Fund under section 12; and
- (f) such sums or other assets may be donated for the purposes of the Fund by any foreign government, international agency or foreign institution or body.

**The Fund to vest in the Minister**  
**Cap. 37:01**

56. The Fund shall be vested in the Minister and, subject to this Act, shall be administered in accordance with his directions subject to the provisions of the Finance and Audit Act.

**Advances to the Fund**

57. If in any financial year the income of the Fund together with any surplus income brought forward from previous year is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance may make advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for finance may determine.

**Objects of the Funds**

58. The objects for which the Fund is established shall be the conservation, augmentation and management of forest resources and forest lands in Malawi.

**Application of the Fund**

59. Without derogation from the generality of section 57, the Fund may be applied to-

- (a) the incalculation of the twin concepts of multiple purpose management and sustainability in forestry into local communities;
- (b) the provision of an enabling environment for the participation of the local communities in forest management and conversation;
- (c) maintenance of equipment and records;
- (d) the cost of any scheme which the Minister considers to be in the interest of the management of forest reserves;
- (e) meeting any expenses arising from the establishment and maintenance of the fund; and
- (f) any purpose which the Minister considers to be in the interest of the objects of the Fund.

**Books and other records of account, audit and reports of the Fund**

**Cap. 37:01**  
**Cap. 37:01**

60. (1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund in accordance with the provisions of the Finance and Audit Act.

(2) The accounts of the Fund shall be audited by the Auditor General, who shall have all powers conferred upon him by the Finance and Audit Act.

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.

(4) The report under subsection (3) shall include a balance sheet, an income and expenditure account and annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

**Holdings of the Fund**

61. (1) All sums received for the purposes of the Fund shall be paid into a bank account and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister.

(2) Any part of the Fund not immediately required for the purposes of the Fund may, on the recommendation of the Board, be invested in such manner as the Minister, after consulting with the Minister responsible for finance, may determine.

**Financial year**

62. The Financial year of the Fund shall be the period of twelve months ending on 31st March in each year.

**PART X**

**OFFENCES AND PENALTIES**

**Purpose of this Part**

63. The purpose of this Part is to define offences against this Act and to provide for penalties.



### **Offences relating to forest reserves and protected forest areas**

64. Any person who, without authority under this Act-

- (a) fells, cuts, takes, destroys, removes, collects, uproots any indigenous tree or forest property in a forest reserve or protected areas;
- (b) connives with or causes another person to fell, cut, take, destroy, remove, collect, uproot any indigenous tree or forest property in a forest reserve or protected area;
- (c) squats, resides, erects a building, hut, livestock enclosures or any structure in a forest reserve or protected area;
- (d) clears, cultivates, digs or breaks up land for any road or for any purpose whatsoever and grazes livestock in a forest reserve or protected area;

shall be guilty of an offence and liable upon conviction to a fine of K5,000 and to imprisonment for a term of two years.

### **Offences relating to fires**

65. (1) Any person who lights or causes to be lit a fire in a forest reserve, protected forest area or village forest area in contravention of section 39 shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.

(2) Any person who permits a fire to burn out of control in, or to spread to a forest reserve or village forest area shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.

(3) Any person who, without reasonable cause, refuses to assist in averting or extinguishing a fire when required to do so under section 41 shall be guilty of an offence and liable upon conviction to a fine of K2,000 and to imprisonment for a term of one year.

### **Offences relating to wildlife**

66. Subject to the provisions of this Act, any person who-

- (a) pursues, kills, hunts, molests, captures or injures any animal, bird, fish, or reptile;
- (b) collects eggs or spawns from a forest reserve, a protected forest area or a village forest area,

shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.

### **Offences relating to forest pests and diseases**

67. Any person who knowingly contravenes the provisions of section 43 of this Act shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.

### **Offences relating to possession or trafficking of forest produce**

68. (1) Any person who-

- (a) knowingly received forest produce illegally; or
- (b) is found in possession of forest produce without a permit;
- (c) trafficks in forest produce without a licence,

shall be guilty of an offence.

(2) Any person who is convicted of an offence under subsection (1) shall be liable to a fine upon conviction of K20,000 and to imprisonment of ten years.

### **Offences relating to obstruction of officers**

69. Any person who-

- (a) obstructs or hinders any officer in the performance of his functions under this Act;
- (b) wilfully or recklessly gives to any officer false or misleading information which the officer is entitled to obtain under this Act;
- (c) refuses to furnish to any officer on request, particulars or information which the officer is entitled to obtain under this Act,

shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.

### **Offences relating to official documents or stamps**

70. Any person who, without lawful authority-

- (a) counterfeits or alters any licence, permit or pass required under this Act;
- (b) alters or defaces any prescribed document issued under this Act;

(c) makes upon or affixes to any forest produce a mark used in connection with forest produce by the Department of Forestry,

shall be guilty of an offence and liable upon conviction to a fine of K20,000 and to imprisonment for a term of ten years.

**Offences relating to possession or use of weapons, traps, explosives and poisons for hunting animals**

71. (1) Any person who contravenes the provisions of section 43 shall be guilty of an offence and liable upon conviction to a fine of K20,000 and to imprisonment for a term of ten years.

(2) This section shall not apply to any officer acting in the performance of his duties.

**Offences relating to deposition of litter and waste**

72. Any person who contravenes the provisions of section 44 shall be guilty of an offence and liable upon conviction to a fine of K5,000 and to imprisonment for a term of two years.

**Offences relating to import, export and re-export of forest produce**

73. Any person who imports, exports or re-exports or attempts to import, export or re-export any forest produce-

- (a) through any place other than a custom's post or port; or
- (b) without producing to a customs officer a valid licence to import or export or re-export the forest produce as the case may be.

shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of not less than five years.

**Additional orders upon conviction**

74. (1) Upon conviction of any person of an offence under this Act, the court may in addition to any other penalty provided by this Act, order-

- (a) that any forest produce which has been used in the commission of the offence shall be forfeited to the Government;

(b) that where any forest produce has been damaged, injured or removed in the commission of the offence, the person convicted shall pay compensation equivalent to the value of the forest produce so damaged, injured or removed;

(c) that the person convicted shall pay ten times the amount of any royalties and other fees which, had the act constituting the offence been authorized, would have been payable in respect thereof;

(d) the demolition and removal of any building, enclosure, hut, kraal, structure or anything erected, standing or being in the area in contravention of this Act;

(e) the destruction, uprooting or removal of any crop standing or being in the area in contravention of this Act;

(f) the seizure of any carrier or vehicle which has been used in committing the offence.

(2) Where an order is made under subsection (1) in respect of forest produce from a village forest area, the forest produce and article ordered to be forfeited and the amount ordered to be paid shall be forfeited and paid to the management authority in respect of that area.

**Authority to compound offences**

75. (1) The Director of Forestry may authorize any officer not below the rank of Principal Forestry Officer where the Director of Forestry is satisfied that an offence against this Act has been committed, and such person consents in writing to compounding under this section, to compound such offences by charging a sum of money not exceeding one and half the maximum fine prescribed for the offence and no further court proceedings shall be instituted.

(2) Where any article has been seized in connection with the offence compounded under this section, the officer compounding the offence shall dispose of the article according to section 11.

(3) Any offence in respect of which a prosecution is actually pending shall not be compounded under this section other than with the consent of the court before which the prosecution is pending.

(4) Any money received and any article confiscated under sub-section (1) or (2) in respect of forest produce from a village forest area shall be paid to the management authority in respect of that area.



## PART XI

### INTERNATIONAL CO-OPERATION IN FORESTRY

#### Purpose of this Part

76. The purpose of this Part is to provide for the promotion of the management of cross-border forests and forest resources and implementation of agreed national obligations arising from bilateral, regional and international environmental and other related Conventions to which Malawi is a party.

#### Cross-border management

77. For the proper management of cross-border forests and forest resources, the Director of Forestry may jointly produce management plans which shall lead to the realization of common forestry goals in cross-border areas.

#### Regional fora

78. Implementation of common plans may be reviewed in regional fora such as Joint Permanent Commissions of Co-operation, the Southern Africa Development Community and others.

#### Cross-border trade in forest produce

79. To assure sustainable utilization and marketing of forest resources across borders, the Director of Forestry shall institute mechanisms for the verification of the legality of the forest produce being imported or exported.

#### Implementation of agreements

80. The Minister may, by an order published in the *Gazette*, specify the measures for the proper implementation of relevant provisions of any convention on forestry to which Malawi is a party.

(2) Upon application in the prescribed form, a licensing officer may, where the officer finds that the making of charcoal shall utilize plantation timber or indigenous timber or trees consistently with the applicable forest management plan or forest management agreement or forest plantation agreement, issue a licence to make charcoal in such quantity and from such timber or trees as may be specified in the licence.

#### Permit for using and wood processing industries

82. No person shall engage in commercial processing of any wood or forest produce without a permit from the Director of Forestry and such commercial wood processing industries shall include-

- (a) tobacco curing, brick and tile making, wood carving, lime making, bamboo baskets making and chair making; and
- (b) wood processing industries, including sawmilling, veneer and plywood, blockboard, fibre and particle board, pulp and paper and any other industries.

#### Utilization of and trafficking in indigenous timber from private land

83. (1) No indigenous wood shall be moved from any private land to any place outside the private land without a permit issued by the Director of Forestry. Any revenue realized from the removal of the indigenous wood from leasehold land shall all accrue to the village natural resources management committee in the area.

(2) No indigenous endangered tree species shall be cut down without the written permission of the Director of Forestry.

(3) Indigenous wood may be used on a sustainable basis for any purpose within the demised area without the written permission of the Director of Forestry.

#### General indemnity

84. The Director of Forestry or any other officer shall not be held liable in damages or otherwise to any person by reason of his exercise or non-exercise in good faith of the powers vested in him under this Act.

#### Disposal of forest produce from private land Cap. 57:01

85. On application by a lessee in accordance with the Land Act, the Director of Forestry may grant permission for forest produce to be removed from, and used outside, the demised premises on payment of all prescribed royalties to the village natural resources management committee in the area.

## PART XII

### MISCELLANEOUS

#### Charcoal licensing

81. (1) No person shall make or sell charcoal from indigenous timber or tree except pursuant to a licence issued under this section.

## PART XIII

### REGULATIONS

#### Regulations

86. The Minister may make regulations for carrying this act into effect and, without prejudice to the generality of the foregoing, such regulations may-

- (a) prescribe the form and contents of any application, licence or agreement;
- (b) prescribe the conditions of any category of licence or agreement;
- (c) prescribe the rates and manner of payment of royalties, application fees and other fees;
- (d) regulate or prohibit access to any part of a forest reserve;
- (e) regulate forest utilization practices;
- (f) require the recording and reporting of information regarding sustainable utilization of forest and forest produce and approving the form, contents and manner of making records and reports, as submitted by the Director of Forestry;
- (g) prescribe the methods and requirements of scaling and making forest produce;
- (h) prescribe the marks to be used by officers in connection with the forest produce;
- (i) provide for the registration of forest property marks and regulating their use;

- (j) prescribe standards for the grading of wood and wood products, and requiring that any wood or wood product be graded according to such standards;
- (k) regulate the transportation, processing, sale of forest produce, including competitive bidding, and requiring permits, licences and documentation of such activities; and
- (l) prescribe anything required to be prescribed under this Act.

## PART XIV

### REPEAL AND SAVINGS

#### Repeal and savings Cap. 63:01

87. (1) The Forest Act is hereby repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1) in force immediately before the commencement of this Act-

- (a) shall, unless in conflict with this Act, continue in force and be deemed to be subsidiary legislation made under this Act;
- (b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(3) Any agreement or similar arrangement made pursuant to the provisions of the Act repealed by subsection (1) shall continue in force until terminated in accordance with terms and conditions thereof.

Passed in Parliament this eighteenth day of April, one thousand, nine hundred and ninety-seven.

R.L. GONDWE  
*Clerk of Parliament*



# MAURITANIE

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## ORDONNANCE No.85-144 du 4 Juillet 1985 Portant Code de l'Eau

### DISPOSITIONS GENERALES

**ARTICLE PREMIER.**-Le régime des eaux non maritimes et le régime des ouvrages hydrauliques sont déterminés par les dispositions du présent code.

navigables ou non, dont les débits dans les conditions naturelles normales sont supérieurs à dix mille mètres cubes par heure (10.000 m<sup>3</sup>/h), et de tous les lacs et étangs dont les capacités naturelles normales sont supérieures à un million de mètres cubes (1.000.000m<sup>3</sup>/h), et de tous les lacs et étangs dont les capacités naturelles normales sont supérieures à un million de mètres cubes (1.000.000m<sup>3</sup>) font partie du domaine public de l'Etat.

### TITRE PREMIER

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#### DISPOSITION FONDAMENTALE

**Art. 2.**- Dans les contextes géographiques et climatiques de notre pays, l'eau est une ressource précieuse dont les difficultés de renouvellement semblent s'accroître d'année en année. Sa préservation constitue donc un impératif national; de ce fait, toute utilisation abusive ou anarchique des eaux superficielles ou souterraines, à quelque fin que ce soit, est désormais interdite.

#### SECTION 2

#### LE DOMAINE HYDRAULIQUE ARTIFICIEL DE L'ETAT SE COMPOSE COMME SUIVANT:

**Art. 5.**- Les ouvrages exécutés pour faciliter la retenue des eaux, la circulation ou l'écoulement sur les cours ou étendues d'eau (digues, barrages, écluses, chaussées) dans la limite des terrains occupés et lorsque ces ouvrages ont été effectués par l'administration, un organisme qui en dépend ou une collectivité mandatée à cet effet.

**Art. 6.**- Les périmètres détenus en toute propriété par l'Etat, ou un organisme qui en dépend ainsi que les ouvrages d'aménagement des puits, forages, sources et points d'eau mis à la disposition du public.

### TITRE II

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#### DOMANIALITÉ

**Art. 3.**- Les ressources en eaux superficielles, souterraines ou atmosphériques, où qu'elles soient, situées dans les limites du territoire national, sont un bien collectif et, à ce titre, font partie intégrante du domaine public de l'Etat qui est inaliénable et imprescriptible.

**Art. 7.**- Les canaux servant à la navigation, à l'irrigation au drainage, aux aqueducs, au transport des eaux usées ainsi que leurs accessoires aménagés par l'Etat, un organisme qui en dépend ou une collectivité mandatée à cet effet.

**Art. 8.**- Les aqueducs, conduites d'eau, conduites d'égouts, l'ensemble des installations de toute nature qui en sont les accessoires ainsi que les chemins réservés le long de ces ouvrages pour l'entretien, dans les limites déterminées par le bord extérieur dudit chemin; le tout pour autant que ces ouvrages ou installations sont aménagés à l'usage public.

#### SECTION 1

#### DOMAINE HYDRAULIQUE NATUREL DE L'ETAT

**Art. 4.**- Sous réserve des droits des tiers dûment établis, en vertu des dispositions de l'ordonnance n° 83-127 portant réorganisation foncière et domaniale, les lits des cours d'eau permanents ou non, flottables ou non,

**Art. 9.**- Les ouvrages servant à l'aménagement des forces hydrauliques réalisés par l'Etat ou un organisme qui en dépend.

**Art. 10.**- Les droits de propriété existant sur le domaine hydraulique naturel de l'Etat à la date d'entrée en vigueur du présent code peuvent être convertis en droits d'usage

d'eau portant sur un volume équivalent aux droits de propriété.

### SECTION 3

#### DÉLIMITATION DU DOMAINE PUBLIC

**Art. 11.-** Les limites des eaux du domaine public sont fixées par des arrêtés conjoints des ministres chargés de l'Hydraulique et de l'Équipement après enquêtes; ces limites sont en principe fixées à partir du niveau atteint par les eaux avant tout débordement.

**Art. 12.-** Les limites des eaux du domaine public peuvent être fixées d'après l'interprétation de données hydrométriques, hydrologiques, botaniques ou autres.

**Art. 13.-** Les limites du domaine public déterminées par arrêté ne peuvent être modifiées que par des arrêtés pris dans les mêmes formes.

**Art. 14.-** Les arrêtés de délimitation sont pris sous réserve des droits des tiers qui ne peuvent cependant pas en exiger la modification.

**Art. 15.-** Les actions en reconnaissance de droits acquis sur les terrains compris dans une délimitation doivent être intentées sous peine de forclusion, dans un délai d'un an à compter de la date de publication de l'arrêté de délimitation.

**Art. 16.-** En cas de changement des limites naturelles des cours d'eau délimités, les riverains intéressés peuvent adresser une demande de nouvelles délimitations au ministre chargé de l'Hydraulique qui doit instruire la demande en liaison avec le ministre chargé de l'Équipement.

**Art. 17.-** Si, dans un délai d'un an à compter de la date de la demande, le ministre chargé de l'Hydraulique n'a pas statué, les riverains concernés peuvent saisir toute juridiction compétente.

## TITRE III

### RESTRICTIONS DU DOMAINE PRIVE

#### SECTION 1

#### DES SERVITUDES DÉPENDANT DE LA SITUATION DES LIEUX

**Art. 18.-** Les fonds intérieurs sont assujettis envers ceux qui sont plus élevés à recevoir les eaux qui en découlent naturellement sans que la main de l'homme y ait contribué.

Le propriétaire supérieur ne peut rien faire qui aggrave la servitude du fonds inférieur.

**Art. 19.-** Toute exploitation ou installation relative à l'utilisation des ressources hydriques dans un but d'utilité publique donne droit, sous réserve d'une juste indemnité, à l'ouverture, sur les fonds intermédiaires, d'une servitude de passage pour les lignes électriques, les chemins d'accès, les conduites souterraines d'eau potable et d'eaux usées, d'amenée d'eau aux usines, les canaux d'irrigation ou de drainage. Les habitations, leurs cours, jardins et dépendances ne peuvent être grevés de cette servitude.

**Art. 20.-** Un décret de déclaration d'utilité publique, pris sur rapport du ministre chargé de l'Hydraulique après enquête, fixe les modalités de détermination du tracé des servitudes requises et de fixation des indemnités.

### SECTION 2

#### DES ZONES DE PROTECTION

**Art. 21.-** Les périmètres de protection ont pour objet d'assurer la protection qualitative des eaux destinées à l'alimentation humaine, qu'elles proviennent des nappes souterraines, superficielles ou des rivières et des cours d'eau.

**Art. 22.-** En plus du périmètre de protection, il peut exister, à proximité immédiate du point d'eau, un périmètre détenu en pleine propriété par l'État ou l'organisme mandaté aux fins de le maintenir en parfait état.

**Art. 23.-** Un arrêté conjoint des ministres chargés de l'Hydraulique et de la Santé publique fixe, après enquête, l'étendue des terrains à acquérir en pleine propriété ou à réserver s'ils sont déjà domaniaux et la superficie du périmètre de protection. Cet arrêté détermine, en outre, les activités autres que celles prévues à l'article 25, qui sont interdites ainsi que les ouvrages à construire et les précautions à prendre pour protéger le point d'eau.

**Art. 24.-** Les terrains détenus en pleine propriété par l'État ou une collectivité publique doivent, dans la mesure du possible, être clôturés à l'intérieur de la zone de protection, toute activité autre que celle qui consiste à prélever de l'eau par les moyens prévus à cette fin est interdite.

**Art. 25.-** A l'intérieur du périmètre de protection, les activités suivantes sont interdites:

- le dépôt d'ordures, d'immondices et de détritiques;
- l'épandage de fumier, l'abreuvement, le parcage ou l'élevage d'animaux;



- le dépôt d'hydrocarbures ou de toute substance présentant des risques de toxicité (engrais, pesticides, etc.);
- l'exploitation de carrière à ciel ouvert;
- certaines constructions lorsqu'elles sont nommément interdites par un arrêté pris en application des articles 23 à 26 du présent code.

**Art. 26.-** En l'absence d'un arrêté particulier pris en vertu de l'article 23, les ministres chargés de l'Hydraulique et de la Santé publique peuvent, après enquête, prendre des arrêtés conjoints de portée générale fixant, pour chaque catégorie de points d'eau et par zone géographique, les superficies des terrains à détenir en pleine propriété ou à inclure dans les périmètres de protection.

Ces arrêtés de portée générale peuvent imposer des restrictions additionnelles à celles prévues à l'article 25 et déterminent les ouvrages à construire et les précautions à prendre pour assurer la protection des points d'eau.

**Art. 27.-** Les indemnités qui peuvent être dues aux propriétaires ou aux occupants des terrains à acquérir en pleine propriété ou compris dans un périmètre de protection sont fixées selon les règles applicables en matière d'expropriation pour cause d'utilité publique.

## TITRE IV

### RÉGIME D'UTILISATION DES EAUX

**Art. 28.-** L'utilisation ou l'accumulation artificielle des eaux pluviales tombant sur fonds privé est autorisée à condition que ces eaux demeurent sur ce fonds.

**Art. 29.-** En cas d'accumulation artificielle sur fonds privé, l'exploitant est tenu de déclarer la capacité et la nature des installations.

**Art. 30.-** Toute autre utilisation ainsi que les prélèvements d'eau par puits, forages, canal, détournement ou autre, sont astreints, ainsi que les ouvrages qui les accompagnent, à déclaration ou à autorisation suivant les dispositions du présent code.

**Art. 31.-** Toute utilisation d'eau et des ouvrages hydrauliques s'intègre dans le cycle hydrologique, et peut être déclarée d'utilité publique en ce qui concerne la préservation tant de la quantité que de la qualité des eaux.

**Art. 32.-** Toute utilisation de l'eau du domaine public peut donner lieu à la perception de redevances.

### SECTION 1 DÉCLARATION ET AUTORISATION

**Art. 33.-** Le ministre chargé de l'Hydraulique assure la gestion et la conservation des eaux et des ouvrages hydrauliques. Il reçoit les demandes, les déclarations et délivre, par arrêté, les autorisations d'user des ressources en eau.

Le régime des déclarations est fixé par arrêté conjoint des ministres chargés de l'Hydraulique et de l'Aménagement rural. Le régime des autorisations est fixé par décret pris sur rapport conjoint des ministres chargés de l'Hydraulique et de l'Aménagement rural.

**Art. 34.-** Le décret fixant le régime des autorisations doit, outre les dispositions prévues par les articles ci-après, concilier les intérêts des diverses catégories d'utilisateurs avec le respect des droits et usages antérieurement établis et la préservation du patrimoine hydrique national.

**Art. 35.-** L'autorisation est personnelle. Elle ne peut être transmise à des tiers autres que les héritiers du bénéficiaire.

**Art. 36.-** Toutefois, l'autorisation de faire usage des eaux accordée spécialement et explicitement en vue d'une exploitation agricole ou d'élevage, d'une exploitation industrielle ou touristique est un droit réel qui reste attaché à cette exploitation, en quelques mains qu'elle passe.

**Art. 37.-** Lorsque plusieurs demandes d'autorisation de captage d'eau souterraine ou superficielle sont en concurrence, le ministre chargé de l'Hydraulique statue en fonction des priorités définies à la section 5 du titre VI.

**Art. 38.-** Lorsqu'aucune commande en revêt un caractère de priorité par rapport aux autres demandes, le ministre de l'Hydraulique décide s'il y a lieu ou non d'accorder la préférence à la première en date.

**Art. 39.-** L'autorisation est toujours accordée sous réserve des droits des tiers.

**Art. 40.-** L'autorisation est précaire; elle est révoquée par le ministre chargé de l'Hydraulique dans les cas suivants:

- 1° Si un motif d'intérêt public en a nécessité le retrait, sauf cas de travaux publics ayant pour objet l'utilisation des eaux superficielles ou de concession pour l'utilisation des eaux définies à l'article 46;



2° Par inexécution, après mise en demeure, sauf len cas de force majeure, de l'une des conditions prévues par l'autorisation.

Dans le premier cas, la révocation donne droit au bénéficiaire, à titre de dédommagement du préjudice causé, à une indemnité fixée soit à l'amiable, soit par les tribunaux compétents.

**Art. 41.-** Les frais d'instruction sur place des demandes d'autorisation, que celle-ci soit accordée ou refusée, sont à la charge du demandeur. Il en est de même pour les frais de recolement des travaux. Les modalités d'assiette et de recouvrement sont prévues au titre VIII, section 1.

**Art. 42.-** La privation des droits d'usage exercés sur les eaux du domaine public par tout cultivateur, éleveur, pisciculteur, sylviculteur, industriel ou autres usagers donne lieu à une indemnité fixée à l'amiable ou par les tribunaux compétents.

Lorsque le préjudice causé consiste dans la privation de force motrice résultant de la création d'usine hydroélectrique, l'indemnité peut être allouée au bénéficiaire sous forme de fourniture d'énergie.

## SECTION 2

### CONCESSIONS D'UTILISATION

**Art. 43.-** Des concessions d'utilisation des eaux pour besoins propres peuvent être accordées aux établissements publics, sociétés d'économie mixte, aux personnes morales publiques ou privées, ou à des tiers lorsque leur installation présente un caractère d'intérêt général.

**Art. 44.-** Les concessions sont accordées par décret pris sur rapport conjoint du ministre chargé de l'Hydraulique et du ministre dont relève l'activité de l'organisme concessionnaire.

**Art. 45.-** Les agréments délivrés dans le cadre du Code des investissements doivent mentionner obligatoirement la nécessité d'obtention d'un décret de concession. Ces agréments sont suspendus, en matière d'hydraulique, jusqu'à l'entrée en vigueur du décret de concession.

## SECTION 3

### CONCESSION DE SERVICE PUBLIC

**Art. 46.-** Des concessions de service public fondées sur l'utilisation de l'eau sont accordées, pour une durée déterminée, aux personnes morales publiques. Elles peuvent, dans certains cas, être accordées à des personnes morales privées ou à des personnes physiques exerçant une activité présentant un caractère d'intérêt général.

**Art. 47.-** Les concessions de service public sont approuvées par décret pris sur rapport du ministre chargé de l'Hydraulique et du ministre dont relève l'activité de l'organisme concessionnaire. Ce décret fixe dans chaque cas les clauses et conditions de la concession, ainsi que sa durée qui ne doit pas cependant dépasser quatre-vingt-dix-neuf (99) ans.

**Art. 48.-** Les concessions sont accordées à titre onéreux. Cependant, compte tenu du degré d'intérêt général de l'activité du concessionnaire, la redevance peut être symbolique.

## SECTION 4

### PRÉLÈVEMENT DES EAUX SOUTERRAINES

**Art. 49.-** Le captage des eaux souterraines au moyen d'un puits d'une capacité inférieure ou égale à deux mètres cubes par jour et dont le débit ne dépasse pas cinq cent litres par heure, pour la satisfaction des besoins domestiques individuels, est autorisé à seule charge pour le propriétaire de déclarer l'ouvrage suivant les formes prévues par l'arrêté pris sous l'autorité de l'article 33.

**Art. 50.-** Les eaux souterraines sont classées en zone I, II et III.

*Sont classés en zone I:*

1. les bassins où l'utilisation des nappes souterraines approche des limites de leurs ressources;
2. les bassins qui alimentent les localités desservies par un service public de distribution;
3. les bassins où existe un danger potentiel d'intrusion saline ou d'une quelconque substance organique pouvant altérer la potabilité de l'eau ou sa salubrité.

*Sont classées en zone II,* les nappes situées dans les roches métamorphiques des mauritanides, les schistes précambriens et les granito-gneiss de l'Aftout-Guidimaka, les grès quartzites ordoviens de l'Assaba-Tagant, les grès infracambriens de l'Affolé, les schistes et pelites des Hodhs.

*Sont classés en zone III* tous les autres bassins du territoire national.

**Art. 51.-** Le classement ou le déclassement des bassins se fait par décret pris sur rapport du ministre chargé de l'hydraulique.

**Art. 52.-** L'autorisation de captage des eaux souterraines fixe les caractéristiques techniques des ouvrages et précise la nature et le rythme d'exploitation, notamment en ce qui concerne:



- 1° la puissance maximale des moyens d'exhaure;
- 2° le type de filtre à utiliser;
- 3° les limites des extractions horaires, journalières et annuelles;
- 4° l'interdiction d'extraction au-delà d'un certain seuil piézométrique;
- 5° le retour à la nappe des eaux non utilisées;
- 6° le contrôle périodique des ouvrages par un agent de la direction de l'Hydraulique.

**Art. 53.-** Sans préjudice des dispositions de l'article 49 en zone I, aucun captage d'eaux souterraines ne peut être fait sans autorisation du ministre chargé de l'Hydraulique. Cette autorisation est accordée après enquête et en cas de nécessité absolue, notamment lorsqu'il s'agit de captage desservant des localités non pourvues de réseau public de distribution, de l'abreuvement des animaux et de l'irrigation de cultures.

**Art. 54.-** Les limites d'extraction fixées par l'autorisation peuvent faire l'objet de restrictions, conformément aux dispositions de l'article 100.

**Art. 55.-** Toute extension ou modification des installations est soumise à une nouvelle autorisation.

**Art. 56.-** La limite d'exploitation d'une nappe située en zone I est déclarée par décret pris sur rapport du ministre chargé de l'hydraulique. Le décret précise les limites géographiques et la profondeur de la nappe considérée.

Aucune nouvelle demande d'autorisation de captage des eaux d'une nappe déclarée en limite d'exploitation n'est admise.

**Art. 57.-** En zone II, aucun captage débitant plus de deux (2) mètres cubes par heure ne peut être fait sans autorisation accordée après enquête par le ministre chargé de l'Hydraulique.

Est également soumise à autorisation l'exploitation, en un même lieu, de plusieurs captages débitant chacun moins de deux (2) mètres cubes par heure, mais dont le débit global est supérieur à deux (2) mètres cubes par heure.

**Art. 58.-** En zone III, aucun captage débitant plus de cinq (5) mètres cubes par heure ne peut être réalisé sans autorisation accordée, après enquête, par le ministre chargé de l'Hydraulique.

Est également soumise à autorisation l'exploitation, en un même lieu, de plusieurs captages débitant chacun

moins de cinq (5) mètres cubes par heure mais dont le débit global est supérieur à cinq (5) mètres cubes par heure.

**Art. 59.-** Le long de tout fleuve ou en bordure de tout lac, le captage des eaux peut être soumis au régime des eaux superficielles. Un décret pris sur rapport des ministres chargés de l'Hydraulique et de l'Aménagement rural fixe les règles générales soumettant ces eaux au régime des eaux superficielles.

## SECTION 5 EAUX MINÉRALES

**Art. 60.-** Outre les normes de potabilité visées au titre V, section 2, les eaux minérales doivent répondre à des critères définis par décret pris sur rapport conjoint des ministres chargés de l'Hydraulique et de la Santé publique.

**Art. 61.-** L'exploitation des eaux minérales constitue un service public. Outre l'exploitation en régie directe par l'Etat, il pourra être attribué des concessions de service public, conformément aux dispositions de la section 3 du titre IV.

## SECTION 6 PRÉLÈVEMENT DES EAUX SUPERFICIELLES

**Art. 62.-** Les captages d'eaux superficielles au moyen d'installations fixes ou mobiles ou au moyen d'ouvrages de dérivation d'un débit inférieur à cinq (5) mètres cubes par heure sont autorisés à charge simplement, pour le bénéficiaire, d'adresser au ministre chargé de l'Hydraulique une déclaration établie suivant la forme précisée par l'arrêté pris sous l'autorité de l'article 33.

**Art. 63.-** Aucun captage d'eaux superficielles au moyen d'installation fixes ou mobiles ou au moyen d'ouvrages de dérivation d'un débit supérieur à cinq mètres cubes par heure ne peut être fait sans autorisation, sauf cas prévus aux articles 28 et 66.

Cette autorisation est accordée par le ministre chargé de l'Hydraulique après enquête et avis du ministre chargé de l'Aménagement rural. Toute extension ou modification d'installation est soumise à une nouvelle autorisation.

**Art. 64.-** L'autorisation de captage destiné à l'irrigation fixe la superficie maximum à irriguer, les volumes journaliers et annuels maximum devant être prélevés.

**Art. 65.-** L'utilisation par des tiers des eaux de drainage, de lessivage, de colature ainsi que toutes les eaux provenant des excédents d'autres utilisateurs est soumise

à autorisation. Toutefois, ne sont pas soumis à autorisation préalable les captages de moins de cinq (5) mètres cubes par heure; ils sont seulement soumis à déclaration dans les formes et conditions fixées par l'arrêté pris sous l'autorité de l'article 33.

**Art. 66.-** Le captage d'eaux superficielles sans installations fixes ou mobiles est libre sous réserve de la réglementation applicable à la nappe considérée.

Sous la même réserve que ci-dessus, le captage d'eaux superficielles par une installation mobile pour des besoins temporaires est libre jusqu'à concurrence du débit prévu à l'article 62.

## SECTION 7 UTILISATIONS NON CONSOMMATRICES D'EAU

**Art. 67.-** Sont considérées comme utilisations non consommatrices d'eau:

1. la génération d'énergie hydroélectrique;
2. la réfrigération, lorsque celle-ci est effectuée en circuit fermé;
3. la navigation;
4. la pisciculture;
5. les activités récréatives.

**Art. 68.-** Toute utilisation non consommatrice d'eau est soumise à autorisation préalable du ministre chargé de l'Hydraulique. L'autorisation précise le volume d'eau pouvant être stocké et la durée du stockage.

**Art. 69.-** Les utilisations non consommatrices d'eau peuvent être soumises au paiement de redevance.

## TITRE V

### PROTECTION QUALITATIVE DES EAUX

#### SECTION 1 GÉNÉRALITÉS

**Art. 70.-** Les dispositions du présent titre ont pour objet la lutte contre la pollution des eaux et leur régénération dans le but de satisfaire ou de concilier les exigences:

- de l'alimentation en eau potable des populations et de la santé publique;
- de l'agriculture, de l'industrie, des transports et de toute autre activité humaine d'intérêt général;
- de la vie biologique du milieu récepteur et spécialement de la faune piscicole;
- des loisirs, des sports nautiques;
- de la protection des sites;
- de la conservation des eaux.

**Art. 71.-** Ces dispositions s'appliquent aux déversements, écoulements, rejets, dépôts directs de matière de toute nature et, plus généralement, tout fait susceptible de provoquer ou d'accroître la dégradation des eaux en modifiant leurs caractéristiques, qu'il s'agisse des eaux superficielles ou souterraines.

**Art. 72.-** Aucun déversement, écoulement, rejet, dépôt direct ou indirect dans une nappe superficielle ou souterraine, susceptible d'en modifier les caractéristiques physiques, y compris thermiques et radio-atomiques, chimiques, biologiques et bactériologiques, ne peut être fait sans autorisation accordée après enquête par le ministre chargé de l'Hydraulique.

**Art. 73.-** Les mesures destinées à prévenir la pollution des eaux sont déterminées par décret pris sur rapport conjoint des ministres chargés de l'Hydraulique, de la Santé publique et de l'Environnement.

#### SECTION 2 NORMES À RESPECTER SUIVANT LES USAGES

**Art. 74.-** Les eaux d'alimentation doivent satisfaire aux normes de potabilité en vigueur, notamment en ce qui concerne leurs caractéristiques physiques, chimiques, biologiques et bactériologiques.

**Art. 75.-** Des décrets pris sur rapport conjoint des ministres chargés de l'Hydraulique, de la Santé publique et de l'Environnement classent les cours d'eau, canaux, lacs, étangs ou nappes souterraines en fonction des usages auxquels leurs eaux sont destinées:

- consommation humaine;
- production d'aliments pour les besoins humains;
- élevage, agriculture, pisciculture, silviculture;
- utilisation minière ou industrielle;



- génération d'énergie hydroélectrique;
- réfrigération;
- navigation;
- activités récréatives.

**Art. 76.-** Ces décrets fixent, en tant que de besoin pour chacun des cours d'eau, section de cours d'eau, canaux, lacs, étangs, eaux souterraines, les conditions particulières dans lesquelles il doit être satisfait aux dispositions de l'article 70 en ce qui concerne les installations existantes.

**Art. 77.-** Les mesures de protection contre la pollution, par les hydrocarbures, des cours d'eau, canaux et lacs navigables ou qui viendraient à l'être, sont déterminées par décret pris sur rapport conjoint des ministres chargés de l'Hydraulique et de l'Environnement.

**Art. 78.-** L'usage des puits individuels pour l'alimentation humaine, prévu à l'article 49, n'est autorisé que si toutes les précautions sont prises pour mettre ces puits à l'abri des contaminations dues à la proximité des latrines, fosses septiques, dépôts d'ordures, immondices et cimetières. L'eau de ces puits doit présenter constamment les qualités requises par la réglementation et les normes en vigueur.

**Art. 79.-** Les agents chargés de l'hygiène dans les circonscriptions médicales doivent effectuer périodiquement des prélèvements d'échantillons d'eau de chaque puits public ou privé afin de les faire analyser par les laboratoires spécialisés. Ces agents peuvent, sur la base des résultats d'analyse des échantillons, proposer la suspension provisoire ou définitive de l'exploitation du puits ou simplement des restrictions d'usage. Les analyses ainsi effectuées ne donnent lieu à aucune perception de frais de contrôle.

**Art. 80.-** Des arrêtés pris conjointement par les ministres chargés de l'Hydraulique, de la Santé publique, de l'Habitat et de l'Urbanisme fixent les normes techniques applicables aux fosses septiques, latrines, dépôts d'ordures ménagères, zones d'enfouissement sanitaire, décharges publiques, lavoirs publics et abreuvoirs pour animaux.

Ces mêmes arrêtés fixent la forme selon laquelle la demande d'autorisation doit être formulée ainsi que l'autorité administrative à laquelle elle doit être adressée.

**Art. 81.-** En cas de distribution publique d'eau potable, le service distributeur ou le concessionnaire doit vérifier en tout temps que les dispositions ci-dessus sont respectées. Pour le contrôle de la qualité de l'eau, il est

nécessairement fait appel à un laboratoire agréé par le ministre chargé de la Santé publique.

**Art. 82.-** Le service distributeur ou le concessionnaire est tenu de faire analyser l'eau distribuée tous les trois (3) mois et autant de fois que le service chargé du contrôle de la qualité de l'eau le jugera utile, dans les cas d'épidémie ou de forte présomption. Les agents ou fonctionnaires du service chargé du contrôle doivent veiller à ce que les analyses ci-dessus soient bien effectuées et que les normes soient bien respectées.

**Art. 83.-** Les agents ou fonctionnaires du service chargé du contrôle doivent assurer le contrôle de la qualité des eaux, l'examen périodique du degré de pollution des cours d'eau, nappes souterraines et proposer l'élaboration de nouvelles normes. Ils ont libre accès à toute installation.

**Art. 84.-** Les frais de contrôle sont à la charge du service distributeur ou du concessionnaire.

### SECTION 3

#### FAITS SUSCEPTIBLES DE POLLUER L'EAU

**Art. 85.-** Le décret prévu à l'article 73 détermine:

- 1° les conditions dans l'espace et dans le temps, dans lesquelles peuvent être réglementés ou interdits les déversements, écoulements, rejets, dépôts directs ou indirects d'eau ou de matières et, plus généralement, tout fait susceptible d'altérer la qualité de l'eau superficielle ou souterraine;
- 2° les conditions dans lesquelles peuvent être réglementées la mise en vente et la diffusion de certains produits susceptibles de donner naissance à des déversements ayant fait l'objet d'une interdiction ou d'une réglementation en vertu de l'alinéa 1<sup>er</sup> du présent article ou d'accroître leur nocivité ou d'aggraver leur nuisance;
- 3° les conditions dans lesquelles sont effectués les contrôles des caractéristiques physiques, chimiques, biologiques ou bactériologiques des eaux réceptrices et des déversements, et notamment les conditions dans lesquelles il est procédé aux prélèvements et analyses d'échantillons;
- 4° les cas et les conditions dans lesquels l'Administration peut prendre, en raison du péril qui pourrait en résulter pour la sécurité ou la salubrité publique, toutes mesures de lutte immédiatement exécutoires. Dans tous les cas, les droits des tiers à l'égard des auteurs de pollution sont et demeurent réservés.

**SECTION 4**  
**MOYENS ADMINISTRATIFS DE LUTTE**  
**CONTRE LA POLLUTION**

**Art. 86.**- L'autorisation visée à l'article 72 donne lieu à la perception des frais de dossier et de redevance.

**Art. 87.**- Le régime financier définit l'emploi des ressources ci-dessus dégagées; elles servent notamment à financer la construction des ouvrages ou installations d'épuration ainsi que des frais récurrents.

**Art. 88.**- L'exploitation des ouvrages d'épuration ou de régénération des eaux peut être réalisée en régie directe ou faire l'objet de concessions conformément aux articles 46, 47 et 48.

**TITRE VI**

**DIVERSES UTILISATIONS DES EAUX**  
**ET ORDRE DE PRIORITÉ**  
**D'UTILISATION**

**SECTION 1**  
**EAUX DE CONSOMMATION HUMAINE**

**Art. 89.**- Quiconque offre au public de l'eau en vue de l'alimentation humaine, à titre onéreux ou à titre gratuit, et sous quelque forme que ce soit, y compris de la glace alimentaire, est tenu de s'assurer que cette eau est conforme aux normes définies dans le présent titre.

Est interdite pour la préparation, le conditionnement et la consommation de toutes denrées et marchandises destinées à l'alimentation, l'utilisation d'eau non potable.

**Art. 90.**- Dans les centres pourvus de distribution publique d'eau, il est interdit aux personnes physiques ou morales et notamment aux hôteliers et tenanciers d'immeubles de livrer, à titre onéreux ou gratuit, pour l'alimentation et pour tous usages ayant un rapport même indirect avec l'alimentation, une eau même potable autre que celle de distribution publique, excepté les eaux minérales, naturelles et de table autorisées.

**Art. 91.**- Les mêmes interdictions s'appliquent aux fabricants de glace, aux brasseurs, fabricants d'eau gazeuse, de sodas, de jus de fruits et, en général, aux fabricants de boissons hygiéniques.

**Art. 92.**- Nonobstant les vérifications qui peuvent être

faites par les services de contrôle, ou organismes habilités, le service de distribution ou le concessionnaire est toujours tenu pour responsable des dommages causés par la mauvaise qualité des eaux en raison d'un défaut d'entretien ou de gardiennage des ouvrages en exploitation, à charge pour le service public ou le concessionnaire de se retourner s'il y a lieu contre l'auteur ou les auteurs de la pollution.

**Art. 93.**- En cas de concession accordée dans les conditions prévues aux sections 2 et 3 du titre IV, le décret de concession fixe les obligations des parties afin d'assurer la conformité de l'eau distribuée avec les normes visées à l'article 74.

Cependant, en cas de modifications physiques, chimiques, biologiques ou bactériologiques de l'eau, les installations complémentaires doivent être réalisées par les concessionnaires dans les plus brefs délais.

**Art. 94.**- Il est interdit:

- de dégrader des ouvrages publics ou commerciaux destinés à produire, à conduire ou à recevoir des eaux potables;
- d'introduire ou laisser introduire des matières excrémentielles ou toute autre matière susceptible de nuire à la salubrité de l'eau des sources, fontaines, puits, citernes, conduites ou réservoirs ou autres accessoires servant à l'alimentation humaine;
- d'abandonner des cadavres d'animaux, débris de boucherie, matières fécales et, en général, tous résidus d'animaux dans les fosses ou excavations susceptibles de contaminer les eaux livrées à la consommation.

**SECTION 2**  
**UTILISATIONS DE L'EAU AUTRES QUE**  
**L'ALIMENTATION HUMAINE**

**Art. 95.**- Des décrets pris sur rapport conjoint du ministre chargé de l'Hydraulique et du ministre chargé du secteur d'activité considéré fixent les régimes et les conditions d'utilisation des eaux affectées aux usages suivants:

- élevage;
- agriculture;
- sylviculture;
- pisciculture;
- usages industriels et miniers;



- navigation;
- industries touristiques.

**Art. 96.-** Des décrets de concession peuvent être pris en faveur des établissements publics ou sociétés régionales de développement pour tout ou partie des régimes ci-dessus. Il peut en être de même pour les exploitations présentant un intérêt socio-économique particulier ou bénéficiant des dispositions du Code des investissements, réalisées par des personnes physiques ou morales de droit privé.

**Art. 97.-** Les propriétaires ou exploitants des terres agricoles situées dans une zone irriguée sont tenus d'éviter tout gaspillage des ressources en eau mises à leur disposition. Tout exploitant de terres irriguées est tenu de veiller à ce que les eaux utilisées ne constituent pas une source de propagation des maladies et ne causent pas de préjudice aux propriétés avoisinantes.

**Art. 98.-** L'utilisation des eaux usées pour l'irrigation n'est autorisée qu'après traitement de ces eaux en station d'épuration selon les méthodes et normes fixées par le décret prévu à l'article 73.

**Art. 99.-** Les industries sont tenues de procéder au recyclage des eaux utilisées suivant les règles et les normes en vigueur et compte tenu des aspects techniques et socio-économiques.

### SECTION 3

#### SITUATIONS NUISIBLES LIÉES AU PROBLÈME DE L'EAU

**Art. 100.-** Les situations nuisibles liées au problème de l'eau sont:

- les inondations et certaines crues;
- les sécheresses;
- l'érosion hydraulique et la sédimentation dans les canaux de navigation et d'irrigation;
- l'eutrophisation des lacs;
- la salinisation des eaux et des sols;
- l'épuisement des sources et des points d'eau.

**Art. 101.-** Un décret pris sur rapport conjoint des ministres chargés de l'Hydraulique, de l'Aménagement rural, de l'Environnement et de la Sécurité publique fixe les mesures à prendre concernant les situations nuisibles liées au problème de l'eau, les droits et les devoirs conséquents des individus et des personnes morales.

**Art. 102.-** Le décret cité à l'article 101 fixe, par ailleurs, les restrictions aux droits d'utilisation et de captage prévus aux articles 26, 31 et 54.

### SECTION 4

#### EFFETS SUR L'EAU DE L'UTILISATION DES AUTRES RESSOURCES

**Art. 103.-** L'exploitation des ressources autres que l'eau peut avoir une influence négative sur le cycle hydrologique et sur la qualité de l'eau. Il s'agit des exploitations suivantes:

- déboisement des pentes abruptes et des berges des rivières et cours d'eau;
- sillonnage des terres à fortes pentes sauf quand les sillons sont perpendiculaires à la pente;
- destruction abusive du court végétal par l'élevage d'animaux prédateurs de pâturage, surtout dans les zones à fortes pentes;
- méthodes agricoles destructives telles que arrachage et brûlage;
- carrières et mines.

**Art. 104.-** Un décret pris sur rapport conjoint des ministres chargés de l'Hydraulique, de l'Aménagement rural, de l'Environnement et de l'Aménagement du territoire fixe autant que de besoin par bassin et sous-bassin hydrographique la classification des terres suivant les usages actuels qui en sont faits et suivant les usages potentiels qui pourraient en être faits.

Ce décret fixe également les restrictions d'usages qui s'appliquent aux bassins et sous-bassins.

### SECTION 5

#### ORDRE DE PRIORITÉ DANS L'UTILISATION DES EAUX

**Art. 105.-** L'allocation des ressources en eau doit à tout moment tenir compte des besoins sociaux et économiques des populations. L'alimentation en eau des populations demeure, dans tous les cas, l'élément prioritaire dans l'allocation des ressources en eau.

**Art. 106.-** Lorsqu'il a pu être satisfait aux besoins humains en eau et dans la mesure où la sécurité revient aux besoins d'élevage, de l'agriculture, de la sylviculture, de la pisciculture et des projets de reboisement, enfin aux besoins des complexes industriels et agro-industriels. Les besoins de la navigation fluviale, de la génération d'énergie électrique, des industries minières et

touristiques sont satisfaits en fonction de leurs intérêts économiques et de priorités régionales.

**Art. 107.-** Lorsque certains événements exceptionnels, tels que force majeure, sécheresse, inondations, calamités naturelles surviennent, l'ordre de priorité peut être temporairement modifié. Un décret pris sur rapport des ministres chargés de l'Hydraulique, de l'Aménagement rural, de l'Environnement et de la Sécurité publique fixe les règles de modification des priorités, les interdictions, les droits et devoirs des individus et des personnes morales.

## TITRE VII

### RÉGIMES DES AGRÉMENTS D'ENTREPRISES DE TRAVAUX HYDRAULIQUES

**Art. 108.-** Les dispositions du présent titre s'appliquent aux entreprises déjà constituées ou qui viendraient à être créées et ayant notamment pour objet l'exécution d'ouvrages hydrauliques énumérés dans le titre II, section 2 du présent code ou de fournitures de matériaux s'y rapportant.

**Art. 109.-** Les entreprises visées à l'article 108 sont soumises au régime des agréments d'entreprises de travaux hydrauliques.

**Art. 110.-** Le ministre chargé de l'hydraulique reçoit les demandes, les instruit et délivre par arrêté les agréments pour l'exécution des travaux portant sur des ouvrages hydrauliques, ou de fournitures s'y rapportant, pour le compte de l'Etat, d'un organisme qui en dépend ou d'une collectivité publique.

**Art. 111.-** Le régime des agréments est fixé par décret, pris sur rapport conjoint des ministres chargés de l'hydraulique, de l'Équipement, et de l'Aménagement rural. Ce décret prévoit pour chaque groupe d'ouvrages de même nature une classification des entreprises, compte tenu de leurs moyens humains, techniques et financiers, et fixe, par catégorie d'entreprises, le montant maximum des marchés de travaux ou de fournitures qui peuvent leur être passés.

**Art. 112.-** Le classement, reclassement ou déclassement des entreprises se fait par décret pris sur rapport du ministre chargé de l'Hydraulique.

**Art. 113.-** L'instruction d'une demande d'habilitation, que celle-ci soit acceptée ou refusée, donne lieu à la perception de frais de dossier et de redevance.

**Art. 114.-** Les entreprises agréées peuvent être assujetties au paiement d'un impôt spécial sur le chiffre d'affaires destiné à l'alimentation d'une caisse ou d'un fonds de l'eau, servant au financement du programme national de l'hydraulique, ainsi que des charges récurrentes y afférents.

**Art. 115.-** Les entreprises opérant dans le secteur de l'hydraulique devront, dans un délai de six (6) mois à compter de la date de publication du décret fixant le régime des agréments, se conformer aux prescriptions du présent code.

## TITRE VIII

### INFRACTIONS ET SANCTIONS

#### SECTION 1 CONSTATATION DES INFRACTIONS ET POURSUITES

**Art. 116.-** Les infractions prévues au présent code sont constatées par les officiers et agents de la police judiciaire, les agents et fonctionnaires relevant des services de l'Hydraulique, de l'Aménagement rural, de l'Environnement, de la Santé publique, ou tout autre agent ou fonctionnaire commis à cet effet.

**Art. 117.-** Les agents et fonctionnaires visés à l'article 116 sont commissionnés; ils prêtent serment devant le tribunal compétent de la circonscription administrative où ils sont appelés à servir.

**Art. 118.-** Les infractions constatées font l'objet d'un procès-verbal dûment notifié au contrevenant.

**Art. 119.-** Les agents et fonctionnaires visés à l'article 116 peuvent avoir accès aux domiciles privés et dépendances;

- soit en présence ou sur réquisition du procureur de la République, du juge d'instruction ou de toute autorité judiciaire compétente;
- soit sur mandat délivré expressement par une autorité judiciaire compétente.

**Art. 120.-** Avec l'assentissement exprès de la personne dont le domicile est visité, les visites domiciliaires peuvent se faire à toute heure du jour et de la nuit par les agents commissionnés désignés ci-dessus.



**Art. 121.-** Les actions et poursuites sont intentées directement par les ministres chargés de l'hydraulique, de l'Aménagement rural, de l'Environnement, de la Santé publique ou leurs représentants dûment mandatés sans préjudice du ministre public près lesdites juridictions.

**Art. 122.-** Les agents et fonctionnaires visés à l'article 116 peuvent, en cas de flagrant délit et dans les conditions prévues par les lois en vigueur, procéder à l'arrestation des délinquants et les conduire devant le procureur de la République ou l'autorité judiciaire compétente.

**Art. 123.-** Dans l'exercice de leurs fonctions, les agents et fonctionnaires désignés ci-dessus peuvent requérir la force publique.

## SECTION 2 DISPOSITIONS PÉNALES

**Art. 124.-** Toute personne qui a prélevé des eaux domaniales sans avoir effectué les formalités de déclaration ou sans avoir obtenu l'autorisation, en violation des dispositions du titre IV, peut se voir condamner à une amende de 2.500 à 10.000 ouguiya. Indépendamment de la peine prévue, la suspension de l'ouvrage peut être prononcée sans donner lieu à compensation.

**Art. 125.-** Toute personne qui, ayant obtenu une autorisation conformément aux dispositions du titre IV, section 1, ne se conforme pas aux conditions qui lui sont imposées, peut se voir condamner à une amende de 2.500 à 10.000 ouguiya.

**Art. 126.-** Le fait, pour un propriétaire d'ouvrage, de refuser de se conformer aux dispositions du présent code, des décrets, ou arrêtés qui seront pris sous son autorité, peut entraîner la suspension ou la suppression de l'ouvrage sans droit à la compensation.

**Art. 127.-** Toute personne qui exerce, à l'intérieur d'un périmètre de protection, une activité interdite par les dispositions du présent code, des décrets ou arrêtés qui seront pris sous son autorité, peut se voir condamner à une amende de 2.500 à 10.000 ouguiya.

**Art. 128.-** Quiconque effectue un déversement ou rejet dans une nappe souterraine ou un cours d'eau, lac, étang et d'une façon générale les eaux domaniales, sans avoir obtenu l'autorisation prévue à l'article 72, ou qui, après avoir obtenu l'autorisation, refuse de s'y conformer, peut

se voir condamner à une amende calculée proportionnellement aux dégâts causés. De plus, la suppression ou la suspension de l'ouvrage générateur des eaux ou matières déversées, ou des installations de déversement peut être prononcée sans toutefois donner lieu à une compensation.

**Art. 129.-** Le défaut, pour un propriétaire d'installation de déversement ou de rejet existant à l'entrée en vigueur du présent code, de se conformer dans un délai de deux ans aux conditions qui lui sont applicables, peut entraîner, en plus d'une amende de 5.000 à 20.000 ouguiya, la suspension ou la suppression de l'installation considérée.

**Art. 130.-** Quiconque empêche une personne désignée conformément aux articles 116 et 177 d'exercer ses fonctions ou de pénétrer sur les lieux visés peut se voir condamner à une amende de 2.500 à 10.000 ouguiya.

**Art. 131.-** Le défaut d'obtenir une autorisation ou de se conformer aux dispositions de l'arrêté fixant les normes techniques de construction des fosses septiques, des latrines et autres ouvrages visés par l'article 86 peut entraîner une amende de 2.500 à 10.000 ouguiya.

**Art. 132.-** Le défaut de se conformer aux mesures d'urgence fixées sous l'autorité de l'article 101 peut entraîner une amende de 10.000 à 50.000 ouguiya.

**Art. 133.-** Quiconque contrevient aux articles 89, 90 et 91 concernant la distribution d'eau non potable, d'eaux de bouteille non autorisée ou d'eau même potable, autre que celle de distribution publique, est passible d'une amende de 5.000 à 20.000 ouguiya.

**Art. 134.-** Toute personne qui, en contravention à l'article 94, aura introduit des matières susceptibles de nuire à la salubrité des eaux potables ou aura abandonné des matières polluantes ou putréfiables dans les infractuosités naturelles ou artificielles sera punie d'un emprisonnement de deux mois à un an et d'une amende de 10.000 à 50.000 ouguiya, ou de l'une de ces peines seulement.

**Art. 135.-** Quiconque est confondu d'utilisation abusive d'eau potable, que celle-ci soit volontaire ou due à la négligence, et à quelque fin que ce soit, peut être passible, après mise en demeure, d'une amende de 2.500 à 10.000 ouguiya. A la suite de trois procès-verbaux dûment notifiés par un agent ou fonctionnaire qualifié visé à l'article 116, le ministre chargé de l'Hydraulique peut prononcer, par arrêté, la suspension ou la suppression de l'ouvrage sans que cela ne donne lieu à compensation.

## TITRE IX

### DISPOSITIONS TRANSITOIRES

**Art. 136.-** Tout utilisateur d'eaux souterraines ou superficielles doit en faire la déclaration au ministre chargé de l'Hydraulique dans les formes précisées par l'arrêté pris sous l'autorité de l'article 32. Le délai de déclaration est fixé à un an à compter de la date de la publication de l'arrêté visé ci-dessus.

**Art. 137.-** L'autorisation est considérée comme acquise pour tous les captages d'eaux superficielles ou souterraines existant à la date d'entrée en vigueur du présent code. Toutefois, toute extension ou modification des installations existantes est soumise au régime général des autorisations nouvelles.

**Art. 138.-** En cas de manquement à l'obligation de déclaration dans les délais prévus à l'article 136, l'autorisation de captage sera frappée de nullité.

**Art. 139.-** Tout propriétaire d'installation de déversement doit, en plus de la déclaration de se conformer, dans un délai de deux ans à compter de la date d'entrée en vigueur du présent code, à ses dispositions ainsi qu'à celles des décrets ou arrêtés qui seront pris sous son autorité.

## TITRE X

### ABROGATION, PUBLICATION ET EXECUTION

**Art. 140.-** Toutes les dispositions antérieures contraires à la présente ordonnance sont abrogées.

**Art. 141.-** La présente ordonnance sera enregistrée, publiée au *Journal officiel* et exécutée comme loi de l'Etat.

Fait à Nouakchott, le 4 juillet 1985.

Le Président du Comité militaire de salut national,

Chef de L'Etat: Colonel Maaouya ould SID'AHMED TAYA.



## ORDONNANCE No. 88-144 du 30 Octobre 1988 portant Code des pêches maritimes.

Le Comité militaire de Salut National a délibéré et adopté;

Le Président du Comité militaire de salut national, chef de l'Etat, promulgue l'ordonnance dont la teneur suit:

### TITRE PREMIER

#### DISPOSITONS PRÉLIMINAIRES

**ARTICLE PREMIER.-** Ressources halieutiques de la Mauritanie. Les ressources biologiques des eaux maritimes mauritaniennes constituent un patrimoine national dont la préservation et la conservation constituent un impératif politique et économique de l'Etat. La gestion et l'aménagement de ce patrimoine seront conduits dans l'intérêt de la collectivité nationale, conformément aux règles posées par la présente ordonnance. Les modalités de son exploitation seront fixées par voie réglementaire.

Le droit de pêche dans les eaux mauritaniennes appartient à l'Etat, qui en autorise l'exercice conformément aux dispositions de la présente ordonnance et des règlements pris pour son application.

**Art. 2.-** Champ d'application. Les dispositions de la présente ordonnance sont applicables aux eaux maritimes intérieures, à la mer territoriale et à la zone économique exclusive, telles que définies par les textes législatifs en vigueur, ainsi qu'aux eaux salées ou saumâtres des estuaires et embouchures du fleuve Sénégal. Ces eaux sont ci-après désignées par l'expression "Eaux maritimes mauritaniennes".

**Art. 3.-** Activités de pêche. Au sens de la présente ordonnance et des règlements pris pour son application, on entend par pêche l'acte de capturer, extraire ou tuer par quelque procédé que ce soit les espèces biologiques, dont le milieu de vie normal ou le plus fréquent est l'eau. La pêche comprend:

1. Les activités préalables ayant pour finalité directe la pêche, le déploiement ou le retrait de dispositifs destinés à attirer le poisson, tout comme les activités ultérieures exercées directement et immédiatement sur les espèces extraites, capturées ou mortes;
2. Les opérations connexes de navires-gigogne et les opérations d'appui logistique et de transbordement des captures.

**Art. 4.-** Types de pêche en fonction de la finalité. En fonction de sa finalité, la pêche maritime peut être de subsistance, commerciale, scientifique ou sportive.

La pêche de subsistance a pour but principal l'obtention d'espèces comestibles pour la subsistance du pêcheur et de sa famille et ne donne pas lieu à la vente de la majeure partie des captures.

La pêche commerciale est pratiquée par des personnes physiques ou morales dans un but lucratif.

La pêche sportive est pratiquée sans but lucratif à des fins récréatives, avec un matériel dont la composition et les modalités d'utilisation pourront être définies par l'administration, et dans les zones qu'elle aura fixées.

**Art. 5.-** Pêche artisanale et pêche industrielle. Les critères de distinction entre la pêche artisanale seront définis par décret pris en conseil des ministres, sur proposition du ministre chargé des Pêches. Lors de la détermination de ces critères, seront prises en considération les caractéristiques générales des navires de pêche mauritaniens, notamment du point de vue de leur capacité et autonomie et d'éventuelles données relatives au développement à l'expansion de la flotte de pêche; les caractéristiques des embarcations normalement qualifiées de pêche artisanale; les critères de distinction établis au niveau des organisations internationales et des Etats de la région à laquelle appartient la Mauritanie; toutes autres données de nature sociale, économique, scientifique et technique qu'il est opportun de prendre en compte.

**Art. 6.-** Navires de pêche mauritaniens et navires de pêche étrangers. Sont considérés comme navires de pêche, les embarcations soumises à la législation sur les



navires de mer et dotées d'installations et d'engins conçus pour la conservation, le traitement ou la capture des animaux marins.

Les navires de pêche mentionnés au paragraphe précédent peuvent être soit de navires de pêche mauritaniens, soit des navires de pêche étrangers.

Sont des navires de pêche mauritaniens les navires de pêche naturalisés et immatriculés en Mauritanie conformément aux dispositions de la législation sur les navires de mer.

Sont des navires de pêche étrangers les navires de pêche qui ne sont pas des navires de pêche mauritaniens au sens de l'alinéa précédent.

Toute opération d'achat, de vente, de construction ou de transformation de navires de pêche est soumise à l'autorisation préalable du ministre chargé des Pêches.

de leurs réactions à l'exploitation durant le plan précédent:

2. Détermineront l'effort de pêche pouvant être entrepris dans les eaux maritimes mauritaniennes, correspondant à l'utilisation optimale des ressources tant du point de vue biologique qu'économique. Cette détermination s'impose à l'ensemble de la flotte opérant dans lesdites eaux. L'effort de pêche admissible ainsi déterminé tient compte globalement de l'effort dirigé et de l'effort exercé accidentellement en tant que prise accessoire;
3. Définiront le programme de concession de licences relatives aux principales pêcheries, aux limitations relatives aux opérations de pêche locales et à l'importance des activités de pêche qui pourront être effectuées par des navires de pêche étrangers.

Les plans d'exploitation optimale des pêcheries incluront des orientations sur la composition et l'évolution de la structure de la flotte sous pavillon mauritanien.

Les plans d'exploitation optimale des pêcheries feront l'objet de mesures de publicité adéquates.

**Art. 8.-** Conseil consultatif des pêcheries maritimes. Il est institué un organe dénommé conseil consultatif des pêcheries maritimes, dont la composition sera fixée par décret pris en conseil des ministres, sur proposition du ministre chargé des Pêches.

Ce conseil sera composé de représentants de l'administration, de professionnels concernés et, le cas échéant, de personnalités qualifiées sur le plan scientifique.

Le conseil est présidé par le ministre chargé des pêches ou son représentant. Lorsque l'examen d'une question relève d'une pêcherie spécifique, il peut être institué au sein du conseil une commission spéciale composée, outre les représentants de l'administration et les personnalités qualifiées, des opérateurs économiques principalement concernés par ladite pêcherie.

Le conseil consultatif des pêches maritimes a notamment pour rôle:

1. De donner un avis sur le choix des stratégies d'aménagement, de gestion et de développement des pêches;
2. De donner un avis préalable sur les plans d'exploitation optimale des pêcheries;
3. De donner périodiquement, au ministre chargé des Pêches et la demande de celui-ci, des avis consultatifs sur les questions d'ordre général concernant

## TITRE II

### GESTION ET AMÉNAGEMENT DES PÊCHES

#### CHAPITRE PREMIER PRINCIPES GÉNÉRAUX

**Art. 7.-** Plans d'exploitation optimale des pêcheries. Le ministre chargé des pêches élabore, sur la base des rapports établis par l'organisme chargé de la recherche scientifique et technique maritime, et après avis du conseil consultatif des pêches maritimes prévu à l'article 8 ci-après, des plans d'exploitation optimale des pêcheries. Ces plans couvrent une période de trois à cinq ans, mais sont révisables lorsque l'évolution des données biologiques et économiques l'exige.

Les plans d'exploitation optimale des pêcheries seront établis à l'égard des principales pêcheries. Aux fins du présent article, le terme pêcherie désigne un ou plusieurs stocks d'espèces biologiques et les opérations fondées sur ces stocks qui, sur la base de leurs caractéristiques géographiques, économiques, sociales, scientifiques, techniques ou récréatives, peuvent être considérées comme constituant une unité aux fins de conservation, gestion et aménagement.

Pour chaque grande pêcherie, les plans:

1. Etabliront un bilan de l'état des différents stocks et



l'exercice de la pêche et la commercialisation des produits de la mer et sur les mesures susceptibles d'être prises sur la base de l'article 18 ci-dessous;

4. En attendant la préparation des plans d'exploitation optimale des pêcheries, prévus à l'article 7 ci-dessus, le conseil consultatif des pêches donnera au ministre chargé des Pêches un avis sur l'effort de pêche permmissible, sur sa meilleure utilisation, et sur la taille et les caractéristiques de la flotte admissible.

Ces données seront programmées et révisées annuellement, en fonction des données soumises par les études disponibles sur l'état des ressources et des résultats du système d'exploitation.

**Art. 9.-** Débarquement des produits ou captures en Mauritanie. Sous réserve des dispositions de l'article 8, les navires de pêche autorisés à opérer dans les eaux maritimes mauritaniennes sont astreints au débarquement de leurs produits et captures dans les ports de Mauritanie.

Au sens des dispositions du paragraphe précédent, le débarquement s'entend de la mise effective à terre de tous les produits pêchés en vue, soit de leur stockage, soit de leur traitement ou transformation.

Toutefois, pour des raisons techniques, le ministre chargé des pêches ou l'autorité qu'il aura délégué à cet effet pourra autoriser le transbordement en rade des captures, sous contrôle douanier, en assimilation au débarquement.

**Art. 10.-** Dérogation à l'obligation de débarquement des produits ou captures. Des dérogations au principe posé à l'article 9 pourront être autorisées par décret en conseil des ministres, sur proposition du ministre chargé des Pêches, à l'égard des navires de pêche étrangers pour des raisons techniques, économiques ou de politique générale.

Toutefois, aucune dérogation aux dispositions de l'article 9 ci-dessus ne pourra être accordée aux navires capturant à titre principal les céphalopodes.

Le montant des redevances, paiements ou autres avantages perçus par l'Etat au titre de l'activité de chacun des navires étrangers exemptés de l'obligation de débarquement ne sera pas globalement inférieur au montant des redevances, paiements ou autres avantages exigés de chaque navire mauritanien similaire astreint au débarquement des captures en Mauritanie.

**Art. 11.-** Accords internationaux ou arrangements internationaux d'accès aux eaux maritimes mauritaniennes. Les accords internationaux ou autres arrangements d'accès de navires de pêche étrangers à l'exploitation des ressources des eaux maritimes mauritaniennes devront, notamment:

1. Spécifier le nombre et les caractéristiques techniques des navires dont les opérations sont permises aussi bien que les types de pêche et d'espèces et les tonnages dont la capture est autorisée.
2. Spécifier, le cas échéant, le nombre et les caractéristiques techniques des navires mauritaniens dont les opérations sont permises dans les eaux de l'Etat partie à l'accord.
3. Définir le montant des redevances ou autres paiements ou prestations en espèces ou en nature conformément aux dispositions de l'alinéa troisième de l'article 10 précédent. Les clauses financières des accords, ainsi que celles relatives à l'effort de pêche, seront de préférence valables pour des périodes au plus égales à douze mois.
4. Contenir une clause relative à la communication périodique et régulière par les armateurs au service compétent du ministère chargé des pêches de données statistiques sur les captures dans les conditions qui auront été requises.
5. Prévoir l'obligation de l'Etat du pavillon ou toute autre entité compétente d'adopter toutes les mesures appropriées afin de garantir que ses navires respectent les termes et conditions des accords ou autres arrangements et les dispositions pertinentes des lois et règlements de la Mauritanie, et notamment les formalités douanières relatives aux mouvements des navires et à l'exportation de leurs captures.

**Art. 12.-** Activités de navires opérant en dehors d'accords. En l'absence d'accords ou autres arrangements visés à l'article 11, le ministre chargé des Pêches pourra exiger que les armateurs des navires de pêche étrangers déposent auprès du Trésor public un cautionnement destiné à garantir le respect et l'exécution par lesdits armateurs des obligations assumées, en vertu de la présente ordonnance, des règlements pris pour son application, des licences de pêche et de tous autres engagements contractuels ou de certaines desdites obligations. Ce cautionnement sera restitué aux armateurs à la date de l'expiration de la licence, au vu d'un quitus délivré par le ministre chargé des Pêches. Il sera retenu par l'Etat dans une mesure appropriée en cas d'irrespect par les armateurs des obligations mentionnées.

Un arrêté conjoint des ministres chargés des Pêches et des Finances fixera les modalités du cautionnement et son montant. La décision de rétention du cautionnement est susceptible des recours administratifs et juridictionnels de droit commun.

**Art. 13.-** Taxes sur les produits de la pêche. Les produits de la pêche soumis à l'obligation de débarquement en vertu des dispositions de l'article 9 précédent donnent



lieu au moment de leur exportation au paiement des droits et taxes institués par les textes en vigueur.

**Art. 14.-** Respect effectif de l'obligation de débarquement des captures ou produits. Afin d'assurer le respect effectif de l'obligation de débarquement des produits ou captures en Mauritanie, des décrets définiront:

1. Les conditions d'octroi des autorisations de départ en carénage des navires de pêche;
2. Les modalités de suivi et de contrôle des marées et de opérations de carénage des navires de pêche, par l'institution habilitée à cet effet.

**Art. 15.-** Affrètement des navires de pêche. L'affrètement des navires de pêche étrangers par les personnes physiques ou morales mauritaniennes aux fins d'opérations de pêche dans les eaux maritimes mauritaniennes ne peut être autorisé qu'en fonction des stocks halieutiques disponibles.

Un décret pris en conseil des ministres sur proposition du ministre chargé des Pêches définira les conditions applicables à l'affrètement des navires de pêche étrangers.

**Art. 16.-** Accords et arrangements régionaux de coopération dans le secteur des pêches.

Le ministre chargé des Pêches se fixera pour objectif de promouvoir la négociation et la conclusion d'accords internationaux ou autres arrangements avec les Etats de la région et sous-région à laquelle appartient la Mauritanie, et assurer la participation de l'Etat mauritanien à des structures et organismes de coopération avec lesdits Etats en vue d'une meilleure gestion, conservation et aménagement des ressources halieutiques mauritaniennes.

**Art. 17.-** Registre des navires de pêche étrangers. Un arrêté du ministre chargé des Pêches pourra établir un registre des navires de pêche étrangers et définir les règles de son organisation et fonctionnement. Après sa création, l'inscription des navires de pêche sera condition de délivrance d'une licence de pêche pour opérer dans les eaux maritimes mauritaniennes conformément aux dispositions de la présente ordonnance.

Le registre des navires de pêche étrangers contiendra, notamment, les deux catégories de données et d'informations suivantes:

- a) Informations et données sur les navires, notamment, nom, port d'attache, et numéro d'immatriculation, spécifications techniques, telles que longueur, jauge brute, capacité des cales, puissance des moteurs, engins de pêche, nature de la coque, équipement,

fréquence indicatif d'appel et toutes autres informations utiles.

- b) Informations et données sur les activités des navires dans les eaux sous juridiction mauritanienne, entre autres, mention de l'accord avec l'Etat dont les navires battent pavillon, contrat d'affrètement, caractéristiques et spécifications des licences dont il a été ou est titulaire, mesures d'inspection dont il a fait l'objet, ainsi que, éventuellement, les infractions constatées et sanctions imposées.

Les informations de ce registre pourront être utilisées régionalement dans le cadre d'actions développées en vertu des dispositifs de l'article 16.

**Art. 18.-** Règlement d'application. Sans préjudice des autres clauses d'habilitation spéciales de la présente ordonnance, des décrets destinés à assurer l'exécution des dispositifs de la présente ordonnance seront adoptés en tant que de besoin. Ces décrets porteront notamment sur:

1. Les mesures applicables à la pêche dans les eaux maritimes mauritaniennes.
2. Les conditions d'octroi et de renouvellement des licences de pêche.
3. Les mesures spéciales applicables au stationnement et à l'activité dans les eaux maritimes mauritaniennes des navires désarmés de tout moyen de pêche et affectés à la collecte du produit de la pêche d'autres navires et embarcations de pêche.
4. Les mesures spéciales applicables à l'exercice de la pêche industrielle, artisanale, scientifique et sportive.
5. Les mesures relatives à l'embarquement de marins mauritaniens à bord de navires de pêche.
6. Les mesures de conservation et de gestion, notamment, ouverture minimale des mailles des filets, tailles et poids minimum des espèces, périodes de fermeture et zones réservées, limitation ou prohibition de certains types de navires de pêche ou d'engins et méthodes de pêche, limitation de l'accès à certaines activités spéciales de pêche ou de cueillette.
7. La réglementation spéciale des activités de navires produisant la farine de poisson.

La définition de mesures destinées à prévenir et régler les conflits entre les activités de pêche industrielle et de pêche artisanale.

Toutes autres dispositions et mesures relatives à la pêche.



## TITRE II

### SYSTEMES DE LICENCES

#### Section Première RÉGIME GÉNÉRAL

**Art. 19.-** Généralités de la licence. Aucun navire de pêche, national ou étranger, ne pourra se livrer à des activités de pêche dans les eaux maritimes mauritaniennes, s'il n'est titulaire d'une licence de pêche, délivrée dans les termes de la présente ordonnance et des règlements pris pour son application et en conformité avec les conditions dont est assortie ladite licence.

Les embarcations de pêche artisanale se livrant à des opérations de pêche commerciale seront soumises à l'obtention de licence dans les conditions prévues par arrêté du ministre chargé des Pêches.

**Art. 20.-** Obligation de conserver en permanence la licence à bord. Les capitaines des navires de pêche autorisés à opérer dans les eaux maritimes mauritaniennes devront conserver en permanence à bord la licence correspondante.

**Art. 21.-** Durée des licences. Sans préjudice de dispositions spéciales adoptées dans le cadre de la présente ordonnance ou de dispositions d'accords internationaux visés à l'article 11, les licences de pêche sont octroyées pour des périodes ne dépassant pas un an.

**Art. 22.-** Transfert de licences de pêche. Les transferts de licences de pêche ne peuvent être autorisés qu'à titre exceptionnel, par le ministre chargé des Pêches, en conformité avec les dispositions applicables des plans d'aménagement des pêcheries.

**Art. 23.-** Retrait ou suspension d'une licence de pêche pour des motifs de gestion des ressources halieutiques. Le ministre chargé des Pêches pourra suspendre ou retirer une licence de pêche pour les motifs tirés des exigences d'une gestion adéquate des ressources halieutiques.

Sans préjudice de normes spéciales concernant des compensations qui pourront être arrêtées, si une licence de pêche a été retirée ou suspendue en vertu du paragraphe précédent, la partie des redevances déjà payée relativement à la période non encore arrivée à expiration sera restituée au titulaire, sur sa demande.

**Art. 24.-** Conditions auxquelles sont soumises les licences de pêche. Les licences de pêche sont établies

dans les formes prescrites par voie réglementaire et sont subordonnées:

- a) Aux conditions générales prévues par la présente ordonnance;
- b) Aux conditions qui peuvent être formulées en vertu du paragraphe 2 du présent article;
- c) Aux conditions spéciales qui pourront être définies en vertu du paragraphe 3 du présent article.

Le ministre chargé des Pêches pourra, par arrêté dûment rendu public, définir des conditions générales supplémentaires dont seront assorties les licences de pêche ou certaines catégories de licences de pêche relatives, notamment aux périodes de fermeture de la pêche, aux zones d'accès prohibé, aux dimensions minimales des mailles et des espèces.

Le ministre chargé des Pêches fera inscrire dans une licence de pêche les conditions spéciales dont il juge le respect opportun, pouvant porter, notamment, sur:

- a) Le type de la méthode de pêche de toute activité de pêche autorisée;
- b) La zone à l'intérieur de laquelle la pêche ou toute autre activité pourra être exercée;
- c) La qualité des poissons ainsi que les quantités dont la capture est autorisée y compris, le cas échéant, des structures concernées par cette capture et autres accessoires.

La modification ou la suppression de tout ou partie de ces conditions spéciales sera notifiée sans délai au titulaire de la licence.

#### SECTION II NORMES SPÉCIALES

**Art. 25.** Licences pour navires mauritaniens. Une licence de pêche pour un navire mauritanien pourra être refusée ou suspendue:

- a) Si nécessaire en vue de garantir une gestion adéquate des ressources;
- b) Si le navire pour lequel la licence est demandée ne satisfait pas aux conditions et standards techniques de sécurité et de navigation nationaux et internationaux, sur avis de la direction Marine marchande;
- c) S'il existe des doutes sur les conditions de propriété

effective du navire, ou si le navire a été construit, acheté, ou transformé sans autorisation préalable du ministre chargé des Pêches;

- d) Si la personne ou le navire pour qui la licence est demandée ont été reconnus coupables par une juridiction mauritanienne de deux ou plusieurs infractions de pêche graves ou très graves, telles que prévues par la présente ordonnance au cours d'une période de deux ans précédant la date de demande de la licence;
- e) Si les opérations de pêche pour lesquelles la licence est demandée ne sont pas jugées opportunes, compte tenu des objectifs de la politique du développement des pêches.

L'acte de refus d'octroi ou de suspension de la licence pour un navire de pêche mauritanien sera toujours expressément motivé. Il est soumis aux voies de recours administratives et à la compétence de la Cour suprême statuant en matière administrative.

**Art. 26.-** Opérations de pêche de recherche scientifique. La réalisation d'opérations de pêche de recherche scientifique dans les eaux mauritaniennes est soumise à autorisation préalable du ministre chargé des Pêches, sur présentation par les entités intéressées d'un plan des opérations à réaliser.

Les opérations de pêche de recherche scientifique pourront, dans la mesure où cela est strictement nécessaire, être exemptées de l'obligation du respect des mesures de conservation adoptées dans le cadre de l'article 18 et qui auront été mentionnées dans l'autorisation.

Le ministre chargé des Pêches pourra exiger que des observateurs ou scientifiques mauritaniens embarquent à bord des navires de recherche scientifique opérant dans les eaux maritimes mauritaniennes.

La totalité des données recueillies pendant les opérations de pêche de recherche scientifique ainsi que les résultats obtenus après traitement et analyse seront communiqués au ministre chargé des Pêches ou à tout organisme qu'il aura désigné.

### TITRE III

#### DISPOSITIONS GÉNÉRALES RELATIVES AUX ACTIVITÉS DE PÊCHE

**Art. 27.-** Interdiction d'usage ou transport d'explosifs ou de substances toxiques. Il est expressément interdit:

- a) De faire usage, dans l'exercice de la pêche, de matières explosives ou de substances toxiques susceptibles d'affaiblir, étourdir, exciter ou tuer des poissons;
- b) De détenir à bord des navires de pêche, sauf autorisation spéciale du ministre chargé des Pêches, des matières et substances mentionnées à l'alinéa précédent.

**Art. 28.-** Mammifères marins. La chasse et la capture de toutes espèces de mammifères marins sont interdites en tout temps et en tout lieu.

**Art. 29.-** Marquage des navires de pêche. Sans préjudice des dispositions spéciales applicables aux embarcations de pêche artisanale, les navires de pêche industrielle autorisés à opérer dans les eaux maritimes mauritaniennes devront exhiber en permanence les noms, lettres et numéros permettant leur identification conformément aux règles qui auront été prescrites par voie réglementaire concernant, notamment, leur nature, couleur, dimensions et emplacement. Il est interdit d'effacer, de rendre méconnaissables, de couvrir ou de cacher par un moyen quelconque les noms, lettres et numéros portés sur les navires de pêches ou leurs accessoires.

**Art. 30.-** Déclaration sur les captures. Les navires de pêche industrielle autorisés à opérer dans les eaux maritimes mauritaniennes transmettront au service compétent du ministère chargé des Pêches de données statistiques et des informations sur les captures réalisées, dans les formulaires et dans les délais qui auront été prescrits par voie réglementaire.

Le contrôle statistique des captures réalisées par les embarcations de pêche artisanale fera l'objet de mesures



spéciales définies par arrêté du ministre chargé des Pêches.

**Art. 31.-** Journal de bord de pêche. Les capitaines et patrons des navires de pêche industrielle autorisés à opérer dans les eaux maritimes mauritaniennes tiendront à jour un journal de bord de pêche établi conformément au modèle approuvé par arrêté du ministre chargé des Pêches.

**Art. 32.-** Arrimage des engins de pêche des navires étrangers non autorisés à opérer. Les engins de pêche des navires étrangers non autorisés à opérer, qui se trouvent dans les eaux maritimes mauritaniennes, devront être recueillis à bord de manière à ne pas pouvoir être facilement utilisés pour pêcher.

**Art. 33.-** Déclaration à l'entrée et à la sortie des eaux maritimes mauritaniennes. Les navires de pêche étrangers devront effectuer, en utilisant la radio auprès de l'entité qui aura été désignée, et selon les fréquences utiles, les déclarations qui seront exigées par voie réglementaire. Ces déclarations pourront, notamment, concerner le moment et le lieu de leur entrée et sortie des eaux maritimes mauritaniennes, leur position à intervalles réguliers, leur cargaison et titres justificatifs, ou les captures éventuelles effectuées.

## TITRE IV

### ÉTABLISSEMENT DE CULTURES MARINES

**Art. 34.-** Établissement de cultures marines. Constitue un établissement de cultures marines toute installation faite en mer ou sur le rivage des eaux maritimes mauritaniennes, ayant pour but l'élevage et l'exploitation industrielle d'animaux marins et qui, ou bien entraîne une occupation assez prolongée du domaine public, ou bien, dans le cas d'une installation sur propriété privée, est alimentée par les eaux de mer. Entrent dans cette catégorie les établissements d'ostréiculture, de mytiliculture, de conchyliculture, d'aquaculture marine, etc.

Nul ne peut créer ou exploiter un établissement de cultures marines s'il n'y est préalablement autorisé par écrit par le ministre chargé des Pêches.

Sans préjudice des règles spéciales qui pourront être inscrites dans l'autorisation visée au paragraphe antérieur,

des mesures spéciales relatives à la création et à l'exploitation des établissements de cultures marines pourront être édictées par décret en conseil des ministres sur proposition du ministre chargé des Pêches.

## TITRE V

### QUALITÉ ET SALUBRITÉ DES PRODUITS DE LA PÊCHE

**Art. 35.-** Normes et procédures de contrôle. Un décret pris en conseil des ministres, sur proposition du ministre chargé des pêches, fixera les normes de qualité, les procédures de contrôle sanitaire et de salubrité des produits de la pêche en Mauritanie.

**Art. 36.-** Etablissement de traitement de poisson. Au sens du présent article, on entend par établissement de traitement de poisson tout local ou installation dans lequel du poisson est mis en boîte, séché, mis en saumure, salé, fumé, réfrigéré, mis en glace ou congelé ou traité de toute autre manière, pour mise en vente.

Sans préjudice des attributions propres des autres ministères compétents, la localisation géographique, la constitution et le fonctionnement d'établissement de traitement de poisson sont soumis à l'autorisation préalable du ministre chargé des Pêches.

Un décret pris en conseil des ministres, sur proposition du ministre chargé des Pêches, fixera les normes d'hygiène et de qualité relatives à la construction, au fonctionnement et à la production des établissements de traitement de poisson et aux conditions de contrôle et supervision des activités.

**Art. 37.-** Commerce international et intra-régional des produits de la pêche. Le ministre chargé des Pêches prendra les mesures appropriées, le cas échéant, en collaboration avec les autres ministres compétents, afin de promouvoir le commerce international et intra-régional des produits de la pêche de la Mauritanie.

Lors de la détermination des normes réglementaires mentionnées au paragraphe 3 de l'article 36, seront prises en compte le cas échéant, les normes de qualité recommandées par les organisations internationales compétentes et, dans une mesure appropriée, les pratiques généralement suivies dans les États importateurs ou potentiellement importateurs de produits de la pêche originaires de la Mauritanie.



## TITRE VI

### CONTROLE ET CONSTATATIONS DES INFRACTIONS

**Art. 38.-** Compétence pour la constatation des infractions. Les infractions aux dispositions de la présente ordonnance et de ses textes d'application sont recherchées et constatées par les agents suivants:

1. Les agents de l'administration chargés des pêches maritimes spécialement habilités à cet effet par écrit;
2. Les officiers de police judiciaire;
3. Les officiers commandant les navires ou avions de guerre;
4. Les officiers, officiers marinières, commandant des navires, embarcations ou aéronefs appartenant à l'Etat, et affectés à la surveillance maritime;
5. Les agents de l'administration des Douanes;
6. Les capitaines et officiers des ports;
7. Les officiers du Parc national du Banc d'Arguin;
8. Et tous les agents spécialement habilités à cet effet par décret.

Ces agents sont ci-après désignés par l'expression "agent de contrôle".

Les agents de contrôle prêtent serment devant le tribunal compétent, à moins qu'ils ne l'aient déjà prêté au titre de leurs fonctions.

Le serment est enregistré sans frais au greffe de la juridiction et n'est pas renouvelé en cas de changement de résidence dans le ressort d'une autre juridiction.

La formule du serment est la suivante:

"Je jure par Allah le tout-puissant de bien et loyalement remplir mes fonctions et d'observer en tout les devoirs qu'elles m'imposent."

**Art.39.-** Pouvoirs des agents de contrôle. Pour la recherche et la constatation des infractions sans préjudice des dispositions des articles 49 et suivants du Code de procédure pénale, les agents de contrôle visés à l'article 38 ci-dessus sont habilités à arraisonner et monter à bord de tout navire, à procéder à toute perquisition, contrôle, fouille et saisie qu'ils jugeront utiles, et notamment à

- a) Ordonner à tout navire de pêche se trouvant dans les eaux maritimes mauritaniennes de s'arrêter et d'effectuer toutes les manoeuvres nécessaires pour en faciliter la visite;
- b) Visiter le navire;
- c) Demander la production de la licence de pêche, journal de bord de pêche ou tout autre document relatif au navire ou aux captures qui se trouvent à bord, et prendre connaissance et éventuellement copie desdits documents;
- d) Ordonner que soient produits les filets et autres engins de pêche et les captures qui se trouvent à bord.

Lorsqu'ils ont des raisons de penser qu'une infraction aux dispositions de la présente ordonnance et de ses règlements d'application a été commise, les agents de contrôle pourront, en l'absence d'un mandat spécial à cet effet:

- a) Entrer et perquisitionner les locaux, sauf s'ils sont exclusivement destinés à habitation;
- b) Entrer et perquisitionner les locaux d'industries et traitement et de commercialisation de poisson;
- c) Recueillir des échantillons de poissons à bord de tout navire, véhicule ou locaux, objets d'inspection aux termes du présent article.

Les procédures de contrôle prévues au présent article seront précisées par décret pris en conseil des ministres, sur proposition du ministre chargé des Pêches. Ce décret précisera notamment les modalités d'emploi de la force armée lors des opérations de contrôle.

**Art. 40.-** Mesures conservatoires. Lorsqu'au cours des opérations de contrôle, les agents constatent qu'une infraction aux dispositions de la présente ordonnance et des règlements pris pour leur application a été commise, ils pourront, en l'absence de mandat spécial à cet effet:

- a) Saisir à titre de mesure conservatoire tout véhicule, engin, matériel de pêche, filets ou autres instruments qu'ils soupçonnent avoir été réalisés en conséquence de la commission d'une infraction ou qui soient conservés en infraction à la présente ordonnance.

Si nécessaire, pour sauvegarder les preuves d'une infraction ou pour garantir l'exécution des condamnations qui pourraient être prononcées, tout navire arraisonné aux termes du paragraphe précédent et son équipage pourront être conduits jusqu'au port le plus proche ou le plus convenable de la Mauritanie être retenus jusqu'à la fin des procédures prévues par la présente ordonnance



ou jusqu'au paiement de la caution prévue à l'article 63. Dans tous les cas, un navire de pêche étranger surpris en action de pêche dans la limite des eaux maritimes mauritaniennes sans y avoir été autorisé sera conduit dans un port mauritanien.

Un arrêté du ministre chargé des Pêches définira les autres infractions qui justifient le déroutement d'un navire vers un port mauritanien.

**Art. 41.-** Poursuite d'un navire de pêche. L'arraisonnement d'un navire de pêche pourra avoir lieu au-delà des limites de la zone économique exclusive si sa poursuite a été initiée dans les eaux maritimes mauritaniennes.

Le droit de poursuite est exercé conformément au droit international et cesse dès lors que le navire de pêche entre dans la mer territoriale de l'Etat dont il bat pavillon ou d'un Etat tiers. Ces dispositions sont cependant sans préjudice de celles d'accords internationaux qui pourraient être conclus.

**Art. 42.-** Procès-verbal d'infraction. Lors de la constatation d'une infraction, les agents de contrôle dresseront un procès-verbal d'infraction, contenant l'exposé précis des faits, de toutes les circonstances pertinentes entourant la commission de l'infraction et les témoignages éventuels. Le modèle de procès-verbal utilisé par les agents de contrôle sera approuvé par arrêté du ministre chargé des Pêches.

Le procès-verbal sera signé par les agents de contrôle, par les témoins éventuels et, dans la mesure du possible, par l'auteur de l'infraction, qui pourra formuler ses observations. Il sera, dès que possible, transmis au ministre chargé des Pêches, qui prendra les décisions prévues à l'article 43 ci-dessous.

Les procès-verbaux d'infraction dûment établis par ces agents de contrôle font foi jusqu'à inscription de faux pour les opérations qu'ils constatent, jusqu'à preuve du contraire pour les témoignages et aveux, et ne sont pas soumis à l'affirmation.

Ils sont exemptés des timbres et droits d'enregistrement.

**Art. 43.-** Notification du déroutement d'un navire de pêche. Les agents de contrôle qui auront dressé un procès-verbal d'infraction à l'encontre d'un navire de pêche devront le notifier immédiatement au ministre chargé des Pêches, qui prendra les mesures suivantes:

a) Décider de la destination des captures saisies à titre

de mesure conservatoire, conformément aux dispositions de l'article 40;

- b) Notifier le fait, le cas échéant, au ministre des Affaires étrangères, lequel en informera le gouvernement de l'Etat dont le navire bat le pavillon;
- c) Transmettre, dans un délai de trente jours, le dossier au procureur de la République près le tribunal territorialement compétent, à moins qu'il ne décide de transiger conformément aux dispositions de l'article 59 de la présente ordonnance.

**Art. 44.-** Relevé des objets et captures saisis. Lors de saisie à titre de mesure conservatoire des objets et captures visés à l'article 40, les agents de contrôle devront rédiger un relevé desdits objets et captures, spécifier leur quantité, état et toutes autres données pertinentes.

**Art. 45.-** Destination des captures saisies à titre de mesure conservatoire. Si les captures saisies aux termes du paragraphe premier de l'article 40 provenant d'activités de pêche prohibées sont susceptibles de se détériorer, le ministre chargé des Pêches fera procéder à leur vente immédiate ou, à défaut, à leur cession aux collectivités qu'il aura désignées. Le produit de la vente des captures sera consigné auprès du Trésor public jusqu'à la décision des autorités mentionnées dans le titre VIII.

S'il est juridiquement établi que les captures saisies, vendues ou cédées conformément au paragraphe précédent n'ont pas été effectuées lors de la commission d'une infraction, la valeur desdites captures devra être restituée à leur propriétaire.

**Art. 46.-** Procès-verbal de prélèvement d'échantillons. Tout agent de contrôle qui aura effectué des prélèvements d'échantillons de poisson à bord d'un navire, local ou véhicule, objet d'inspection aux termes de l'article 39, devra en dresser procès-verbal.

Le procès-verbal visé au paragraphe précédent spécifiera les espèces et quantités prélevées et sera signé par la personne responsable en possession des captures à qui sera remise copie du document.

Le modèle de ce procès-verbal sera approuvé par arrêté du ministre chargé des Pêches.

**Art. 47.-** Responsabilités des agents de contrôle. Sauf le cas de négligence ou de faute grave, il ne pourra être intenté aucune action contre un agent de contrôle pour tout fait commis de bonne foi dans l'exercice de ses attributions.



## TITRE VII

### INFRACTIONS ET SANCTIONS

**Art. 48.-** Responsabilité pénale. Sauf le cas visé à l'article 52 ci-dessous, les sanctions prévues dans la présente ordonnance sont applicables au capitaine ou maître de navire de pêche, l'armateur étant solidairement responsable du paiement des amendes.

Les concessionnaires et exploitants des établissements de pêche seront solidairement responsables du paiement des amendes prononcées à l'encontre de leurs employés ou ayants cause.

**Art. 49.-** Activités de pêche de navires étrangers non autorisés. Tout navire de pêche étranger qui aura entrepris des opérations de pêche dans la limite des eaux maritimes mauritaniennes sans y avoir été dûment autorisé conformément à l'article 19 de la présente ordonnance, sera confisqué d'office, avec ses filets, engins et produits de la pêche, au profit de l'Etat, sur décision du ministre chargé des Pêches; cette décision n'est pas susceptible de recours.

En outre, le capitaine du navire sera puni d'une peine d'emprisonnement de six (6) à douze (12) mois.

**Art. 50.-** Infractions de pêche très graves. Constituent des infractions de pêche très graves:

- a) Le non-respect de l'obligation de débarquement des produits de la pêche en Mauritanie et les transbordements illicites de captures sous quelque circonstance que ce soit;
- b) L'envoi en carénage d'un navire de pêche sans autorisation administrative préalable ou l'utilisation des départs en carénage à des fins de pêche;
- c) L'achat, la vente ou la construction d'un navire de pêche sans autorisation préalable du ministre chargé des Pêches.

Les infractions de pêche très graves seront punies d'une amende:

- de 50.000 jusqu'à 500.000 ouguiya pour les embarcations d'un tonnage inférieur à 5 TJB;
- de 550.000 jusqu'à 5.000.000 ouguiya pour les navires d'un tonnage supérieur ou égal à 5 TJB et inférieur à 99 TJB;
- de 5.100.000 jusqu'à 12.500.000 ouguiya pour les

navires d'un tonnage supérieur ou égal à 99 TJB et inférieur à 300 TJB;

- de 12.650.000 jusqu'à 25.000.000 ouguiya pour les navires d'un tonnage supérieur ou égal à 300 TJB et inférieur à 600 TJB;

- de 25.200.000 jusqu'à 100.000.000 ouguiya pour les navires d'un tonnage supérieur ou égal à 600 TJB;

et d'une peine d'emprisonnement de quatre (4) à huit (8) mois,

En outre, le tribunal prononcera:

- a) La confiscation des captures à bord ou du produit de leur vente;
- b) La confiscation des engins de pêche et substances employées dans la commission desdites infractions.

**Art. 51.-** Infractions de pêche graves. Constituent des infractions de pêche graves;

- a) La pêche dans les zones ou pendant les périodes interdites, ou la pêche d'espèces dont la capture est prohibée, ou dont le poids ou les dimensions sont inférieures à celles autorisées;
- b) L'usage d'engins de pêche non autorisés ou la détention à bord de ces engins sans autorisation administrative préalable;
- c) Le dépassement du taux de prises accessoires autorisé;
- d) La pratique d'un genre de pêche autre que celui autorisé;
- e) La vente, l'achat, le transport, le colportage des espèces biologiques destinées à l'élevage sans autorisation du ministre chargé des Pêches.

Les infractions de pêche graves seront punies d'une amende de 1.000.000 à 10.000.000 ouguiya et d'une peine d'emprisonnement de trois (3) à six (6) mois.

En outre, le tribunal prononcera:

- a) La confiscation des captures à bord ou du produit de leur vente;
- b) La confiscation des engins de pêche et substances employés dans la commission desdites infractions.

**Art. 52.-** Agression ou opposition avec violence ou menace de violence à l'encontre d'un agent de contrôle.



Quiconque agresse ou s'oppose avec ou sans violence à l'action d'un agent de contrôle dans l'exercice de ses fonctions ou menace ledit agent sera passible d'une amende de 100.000 à 600.000 ouguiya et d'une peine de prison de trois (3) à six (6) mois, ou de l'une de ces deux peines seulement, sans préjudice des peines plus graves prévues par les dispositions du Code pénal.

**Art. 53.-** Entraves à l'exercice des fonctions des agents de contrôle. Sans préjudice du cas particulier visé à l'article 52 ci-dessus, quiconque empêche intentionnellement les agents de contrôle d'exercer leurs fonctions ou détruit ou dissimule les preuves d'une infraction de pêche sera puni d'une amende de 50.000 à 200.000 ouguiya.

**Art. 54.-** Autres infractions. Les infractions aux dispositions de la présente ordonnance et des règlements pris pour son application seront punies d'une amende de 100.000 à 8.000.000 ouguiya.

En outre, le tribunal pourra prononcer:

- a) La confiscation des captures à bord ou du produit de leur vente;
- b) La confiscation des engins de pêche et substances employés dans la pratique desdites infractions.

**Art. 55.-** Montant des amendes. Le montant des amendes prévues aux articles précédents sera ajusté dans les limites fixées par la loi, en fonction de la nature de l'infraction, des caractéristiques techniques et économiques du navire, du genre de pêche pratiqué, des circonstances de l'espèce et du bénéfice économique que l'auteur de l'infraction en aura retiré.

**Art. 56.-** Récidive. En cas de récidive aux infractions prévues à l'article 50, le tribunal prononcera, outre les amendes et confiscations prévues audit article, la confiscation du navire de pêche utilisé dans la commission desdites infractions.

En cas de récidive aux infractions prévues aux articles 51, 52, 53 et 54, les amendes prévues auxdits articles seront portées au double.

Dans les deux cas, en ce qui concerne les capitaines de navires, les dispositions de l'article 58 s'appliquent de suite.

Il y a récidive lorsque, dans les vingt-quatre (24) mois qui précèdent la commission d'une infraction aux dispositions de la présente ordonnance, de ses règlements d'application et des dispositions auxquelles sont assujetties les licences de pêche, il a été rendu contre le contrevenant un jugement pour une infraction de même nature "

Au sens des présentes dispositions, on entend par "infraction de même nature" les infractions prévues par les dispositions d'un même article de la présente ordonnance.

**Art. 57.-** Présomption. Les captures et produits de pêche trouvés à bord d'un navire de pêche utilisé dans la commission d'une infraction à la présente ordonnance, à ses règlements d'application, et aux conditions auxquelles sont assujetties les licences de pêche, sont présumés, sauf preuve contraire, provenir de l'infraction.

**Art. 58.-** Suspension ou retrait administratif d'une licence de pêche et autres mesures à titre de sanction. Le ministre chargé des Pêches pourra suspendre ou retirer une licence de pêche, s'il constate qu'un navire de pêche a été utilisé dans la commission d'une infraction à la présente ordonnance, à ses règlements d'application ou aux conditions auxquelles sont assujetties les licences de pêche.

Il pourra également interdire à titre provisoire ou définitif l'exercice de la profession dans les eaux maritimes mauritaniennes à tout capitaine ou membre d'équipage d'un navire utilisé dans la commission d'une infraction à la présente ordonnance, à ses règlements d'application ou aux conditions auxquelles sont assujetties les licences de pêche.

## TITRE VIII

### COMPETENCES ET PROCEDURES ADMINISTRATIVES ET JURIDICTIONNELLES

**Art. 59.-** Transaction. Le ministre chargé des Pêches peut ne pas saisir le procureur de la République conformément à l'article 43 de la présente ordonnance et transiger au nom de l'Etat à l'égard des infractions visées aux articles 50, 51, 52, 53 et 54 de la présente ordonnance.

En l'absence de transaction, le ministre chargé des Pêches transmet sans délai le dossier au procureur de la République, en lui demandant de mettre en mouvement l'action publique.

A cet effet, il fait conduire, s'il y a lieu, le navire au port de la circonscription administrative du tribunal compétent pour y être remis au juge.

Dans ce cas, l'affaire est jugée dans un délai de deux (2) mois.



La transaction et l'action publique sont exclusives l'une de l'autre. S'il y a constitution de partie civile, celle-ci doit être préalablement désintéressée.

Le montant de l'amende de transaction ne saurait être inférieur au minimum du montant de l'amende prévue pour l'infraction commise et sera payable dans un délai de trente (30) jours suivant la transaction.

Le ministre chargé des Pêches peut, dans le cadre de la transaction, prononcer la confiscation au profit de l'Etat, des captures ou produits de leur vente, des engins de pêche et autres instruments employés dans la commission de l'infraction et ce, sans préjudice du prononcé des sanctions prévues à l'article 58 de la présente ordonnance.

Le paiement de l'amende de transaction implique reconnaissance de l'infraction et tient lieu de premier jugement pour la détermination de la récidive.

Pour les besoins de la transaction, le ministre chargé des pêches peut être assisté par une commission consultative dont il fixera, par arrêté, la composition et les attributions dans le respect des dispositions du présent article.

**Art. 60.-** Destination des biens, objets et produits confisqués. Le Ministre chargé des Pêches décidera de la destination des biens, objets et produits confisqués aux termes des dispositions de la présente ordonnance.

**Art. 61.-** Régime financier des amendes et confiscations. Le produit des amendes et confiscations prononcées en application de la présente ordonnance sera, après déduction des droits et taxes et autres frais, affecté et réparti par décret pris en conseil des ministres, sur proposition du ministre chargé des Pêches.

**Art. 62.-** Compétence des tribunaux mauritaniens. Les juridictions de la Mauritanie sont compétentes pour connaître de toutes les infractions aux dispositions de la présente ordonnance et des règlements pris pour son application commises dans les eaux maritimes mauritaniennes.

**Art. 63.-** Libération des navires et équipages après paiement d'une caution. Par décision du tribunal compétent, les navires et équipages seront immédiatement libérés

sur demande de l'armateur, du capitaine ou du maître du navire ou de son représentant local, avant jugement, dès paiement d'une caution suffisante.

La décision juridictionnelle mentionnée au paragraphe antérieur sera prononcée dans un délai maximum de soixante-douze (72) heures après introduction auprès du tribunal compétent de la demande de libération du navire et de ses équipages.

Le montant de la caution ne sera pas inférieur aux coûts d'arraisonnement et détention, de l'éventuel rapatriement des équipages et du montant de l'amende dont sont passibles les auteurs de l'infraction. Dans le cas des infractions pour lesquelles la présente ordonnance prescrit ou autorise la confiscation des captures, des engins de pêche et du navire, le tribunal ajoutera à la valeur du cautionnement la valeur desdites captures, des engins de pêche et du navire.

**Art. 64.-** Restitution de la caution. La caution prévue aux termes de l'article 63 sera immédiatement restituée:

- a) S'il a été prononcé une décision de non-lieu ou d'acquiescement des prévenus;
- b) Si le tribunal a condamné le ou les auteurs de l'infraction et s'il a été procédé au paiement intégral de toutes les amendes, dépenses et émoluments à la charge des auteurs de l'infraction, conformément au jugement, dans les trente (30) jours suivant ce dernier et, le cas échéant, des pénalités de retard dues.

**Art. 65.-** Dispositions transitoires. Les dispositions réglementaires prises en application de la législation des pêches antérieures demeurent en vigueur et conservent leur nature juridique d'origine jusqu'à la publication des mesures d'application prévues par la présente ordonnance.

**Art. 66.-** Législation abrogée. Sont abrogées les dispositions antérieures contraires ou incompatibles avec les dispositions de la présente ordonnance, notamment les articles 192 à 214 de la loi No 78-043 du 28 février 1978 portant Code de la marine marchande et des pêches maritimes.

**Art. 67.-** La présente ordonnance sera publiée suivant la procédure d'urgence et exécutée comme loi de l'Etat.

Fait à Nouakchott, le 30 octobre 1988.

Pour le Comité militaire de salut national, *Le Président:*  
Colonel Maaouya ould SID"AHMED TAYA.



## MOROCCO

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### Arrêté Viziriel (22 moharrem 1335) prescrivant les mesures à prendre contre la dourine (B.O. 27 nov. 1916), p.1110). 18 novembre 1916

Vu le dahir du 13 juillet 1914 (19 chaabane 1332) édictant les mesures générales propres à garantir les animaux domestiques contre les maladies contagieuses;

Vu, notamment, l'article 3 de ce dahir;

Considérant qu'il y a lieu de prendre des mesures spéciales contre la dourine;

**ART. 1<sup>er</sup>** - Les animaux suspects de dourine sont placés sous la surveillance du vétérinaire sanitaire, et il est interdit de les utiliser à la reproduction, jusqu'après l'identification des symptômes observés.

**ART. 2.** - Les animaux dourinés sont abattus, sauf les mâles, que leur propriétaire consent à faire émasculer.

**ART. 3** (Modifié, A. V. 21 sept. 1931 - 8 jomada I 1350).  
- La propriété ou la détention permanente à quelque titre que ce soit, de baudets étalons, doit faire de la part des intéressés, au début de chaque année, l'objet d'une déclaration à l'autorité locale de contrôle de la circonscription qui délivre au demandeur une carte de baudet étalon autorisé indiquant le nom, l'âge, la taille, le signalement du baudet, le nom et l'indication du domicile de son détenteur et comportant un certain nombre de cases réservées pour la mention des visites bimensuelles auxquelles ces animaux sont astreints.

**ART. 4** (Modifié, A. V. 21 sept. 1931 - 8 jomada I 1350).  
- Aucun baudet étalon ne peut être admis à pratiquer la monte si le propriétaire n'est pas possesseur de la carte prévue à l'article 3 ci-dessus, et si le baudet n'a pas été présenté régulièrement à la visite vétérinaire.

**ART. 5** (Modifié, A. V. 21 sept. 1931 - 8 jomada I 1350).  
- Le baudet étalon ainsi autorisé portera à l'oreille gauche un bouton métallique conforme au modèle adopté par l'administration. Il sera présenté tous les quinze jours, du 15 février au 1<sup>er</sup> septembre, à l'examen du vétérinaire de la circonscription, lequel mentionnera sur la carte individuelle de l'animal, les observations résultant de cette visite.

**ART. 6** (Modifié, A. V. 21 sept. 1931 - 8 jomada I 1350).

- Les baudets ne peuvent pratiquer la monte que sur les marchés. Ils ne doivent en aucun cas faire la saillie des ânesses, à l'exception de celles qui sont inscrites au livre du contrôle de la production mulassière, et pour lesquelles les propriétaires seront porteurs de la carte d'autorisation délivrée par l'autorité locale de contrôle de la circonscription. Ces ânesses devront être également présentées tous les quinze jours, du 15 février au 1<sup>er</sup> septembre à la visite sanitaire.

Les propriétaires sont tenus de faire, à l'aide de ciseaux, une raie très apparente sur la croupe à droite des juments et ânesses qui ont été soumises à la saillie de ces étalons.

Les juments et les ânesses saillies par des baudets étalons ne sont pas admises, dans le courant de la même année, à la saillie des étalons de l'État.

**ART. 7** (Modifié, A. V. 21 sept. 1931 - 8 jomada I 1350).

- Réciproquement et durant le même laps de temps, les juments et les ânesses saillies par les étalons de l'État ne peuvent être présentées aux baudets autorisés.

Les chefs de station de monte opèrent sur la croupe à gauche de ces juments une marque identique à celle dont l'article précédent fait mention.

**ART. 8** (Modifié, A. V. 21 sept. 1931 - 8 jomada I 1350).

- Lorsqu'un baudet étalon est vendu ou loué, les deux parties contractantes sont tenues d'en faire la déclaration à l'autorité locale de contrôle qui inscrit sur la carte de l'animal le nom et l'adresse de son nouveau détenteur.

**ART. 9** (Modifié, A. V. 21 sept. 1931 - 8 jomada I 1350).

- Toutes les infractions au présent arrêté sont passibles, suivant le cas de l'une des peines prévues par l'article 7 du dahir susvisé du 13 juillet 1914 (9 chaabane 1332).

Celles des infractions qui sont visées aux articles 4, 5 et 7 du présent arrêté peuvent en outre donner lieu à la cas-tration des baudets appartenant aux contrevenants.

**ART. 10** (*Ajouté, A. min. m. 172-70, 20 mars 1970, art. 1<sup>er</sup>*) - Les animaux atteints de dourine seront abattus sur les lieux d'exploitation et seront enfouis selon les instructions du vétérinaire inspecteur.

L'abattage et l'enfouissement seront pratiqués sous la responsabilité du vétérinaire inspecteur, chef des services provinciaux de l'élevage ou de son représentant.

En aucun cas, les animaux atteints ne pourront être dirigés vers un abattoir et ne pourront être livrés à la consommation.

**ART. 11** (*Ajouté, A. min. n. 172-70, 20 mars 1970, art. 1<sup>er</sup>*). Tout propriétaire qui se sera soumis aux mesures prescrites à l'article 10 ci-dessus pourra recevoir une indemnité destinée à tenir partiellement compte de la perte

subie du fait de l'abattage de ses animaux.

Cette indemnité sera fixée sur le vu d'un rapport d'expertise, établi par le vétérinaire inspecteur qui aura procédé aux opérations prévues à l'article 2.

L'indemnité prévue ne pourra excéder 40% de la valeur de l'animal abattu.

**ART. 12** (*Ajouté, A. min. n. 172-70, 20 mars 1970, art. 1<sup>er</sup>*). - Le vétérinaire inspecteur qui aura procédé à l'application des mesures sanitaires prescrites à l'article 10 ci-dessus adressera au ministère de l'agriculture et de la réforme agraire (direction des services vétérinaires, et de l'élevage) un rapport d'enquête sur les origines de la contamination ainsi qu'un procès-verbal d'estimation et d'abattage de l'animal et d'enfouissement contresigné par l'autorité locale.



**Arrêté Viziriel (27 kaada 1336) réglementant les conditions de l'exploitation, du colportage, de la vente et de l'exportation du liège, écorce à tan, charbon, bois, cendre de bois, produits résineux (B.O. 14 oct, 1918, p. 945)(1). 4 Septembre 1918**

Vu l'article 54 du dahir du 10 octobre 1917 (20 hija 1335) sur la conservation et l'exploitation des forêts;

**CHAPITRE I  
DES EXPLOITATIONS**

**ART. 1** (Modifié, A.V. août 1929 - 8 rebia I 1348).

— Tout particulier qui voudra exploiter, démascler, faire exploiter ou démascler par des tiers, en tut ou en partie, quelles que soient l'essence et la nature des produits à en tirer, les bois qui lui appartiennent, sera tenu d'en faire, trois mois au moins avant l'exploitation ou le démasclage, la déclaration à l'autorité de contrôle de la situation des bois.

Cette déclaration contiendra élection de domicile dans superficie ou le nombre d'arbres ainsi que l'âge et l'essence des bois à exploiter ou à démascler et enfin la nature et la quantité approximative des produits à entirer.

(A.V. 14 août 1929 - 8 rebia I 1348.) Si l'occupation du déclarant n'est l'objet, à la connaissance de l'autorité de contrôle, d'aucune revendication ou protestation, cette autorité transmettra la déclaration, sous réserve de tous droits des tiers, au chef de la circonscription forestière.

**ART. 2** - Le chef de la circonscription forestière ou son délégué procédera dans un délai d'un mois, à partir de la date à laquelle lui parvient la demande, à la reconnaissance du bois ou de la forêt à exploiter, écorcer ou à démascler, après avoir prévenu le déclarant de cette reconnaissance au moins huit jours à l'avance au domicile élu par lui, au moyen d'un avis remis par un préposé ou d'une lettre recommandée l'invitant à assister à l'opération ou à s'y faire représenter.

En tout cas, la présence du déclarant ou de son représentant suffira pour rendre la reconnaissance valable.

**ART. 3** - Le procès-verbal dressé par le chef de la circonscription ou son délégué contiendra toutes les constatations et tous les renseignements nécessaires pour

permettre au chef du service d'apprécier en toute connaissance de cause s'il doit faire opposition à l'exploitation et, au cas contraire, s'il y a lieu d'imposer des conditions pour assurer la régénération du peuplement.

Le procès-verbal mentionnera, en outre, la quantité maxima des divers produits que pourra fournir l'exploitation. Cette indication servira de base pour la délivrance des permis de colportage.

**ART. 4** - Le chef du service des eaux et forêts notifiera au déclarant qu'il ne s'oppose pas à l'exploitation ou au démasclage, qu'il la subordonne à telles conditions ou qu'il s'y oppose purement et simplement. Il fera connaître locale de contrôle qui aura reçu la déclaration.

**ART. 5** - L'opposition à l'exploitation ne pourra être faite que dans le cas où le terrain se trouve dans les conditions de l'article 25 du dahir du 10 octobre 1917 et si l'exploitation risque d'amener la dénudation définitive du sol ou la destruction du boisement.

**ART. 6** - Dans le cas où le chef du service des eaux et forêts le jugera nécessaire, il précisera les conditions auxquelles l'exploitation ou le démasclage devra être soumis, et notamment; 1° le mode d'exploitation à employer; 2° l'époque à laquelle la fabrication des divers produits pourra avoir lieu; 3° l'époque à laquelle la vidange devra être terminée; 4° les mesures d'ordre nécessaires pour exercer sur l'exploitation et l'écoulement des produits un contrôle efficace; 5° les mises en défense à imposer pour que l'exercice du pâturage ne nuise pas à la reconstitution des boisements exploités.

**ART. 7** (Modifié A. V. 27 nov. 1951 - 26 safar 1371 et décret 30 dé. 1957 - 7 jomada II 1377). - Si dans le délai de douze mois, à dater du visa de la déclaration, le conservateur des eaux et forêts n'a pas notifié sa décision à l'intéressé, l'exploitation ou le démasclage pourra être effectué.

**ART. 8** (Modifié, A. V. 27 nov. 1951 - 26 safar 1371). - Toute exploitation ou démasclage effectué sans la déclaration prescrite à l'article 1<sup>er</sup> ci-dessus, ou



commencé dans le délai de douze mois prévu à l'article précédent, avant notification de la décision du conservateur des eaux et forêts, ou effectué malgré son opposition, ainsi que toute infraction aux conditions imposées par cette décision, donneront lieu, à l'encontre du propriétaire des bois, de l'exploitant ou de leurs ayants droit à l'application des peines énoncées à l'article 55 du dahir susvisé du 10 octobre 1917 (20 hija 1335).

## CHAPITRE II COLPORTAGE ET VENTE

ART. 9 (Modifié, A. V. 14 août 1929 - 8 rebia I 1348; A. V. 24 déc. 1948 - 22 safar 1368; A. V. 5 déc. 1939 - 23 chaoual 1358; A. V. 27 nov. 1951 - 26 safar 1371). - Toute personne qui transportera ou fera transporter en quelque lieu que ce soit, ou mettra ou fera mettre en quelque lieu que ce soit, ou mettra ou fera mettre en vente sur un marché public du liège mâle ou de reproduction, des produits tannants (bois ou écorces brutes ou moulues (1), bois indigènes, glands, caroubes, charbon de bois, cendres de bois, produits résineux des forêts, lichens) (1), devra être munie d'un permis de colportage établi à son nom et indiquant son domicile, le poids ou la quantité des produits, leur nature exacte, leur origine, ainsi que leur destination. Ce permis devra accompagner effectivement les produits.

Le permis accompagnant du liège mentionnera obligatoirement s'il s'agit de liège mâle ou de liège de reproduction.

Pour les lièges, les produits tannants (bois et écorces), le charbon de bois et les produits résineux, la justification de l'origine par la production du permis de colportage s'étendra même à la vente en dehors des marchés publics.

En vue de la vérification des quantités de liège à colporter, ce produit devra, préalablement à la constatation, être mis en piles sur les lieux mêmes de l'exploitation par les soins de l'exploitant.

Ce permis sera délivré par l'agent forestier local sur le vu de l'avis de non-opposition à l'exploitation prévu à l'article 4. La quantité des produits qui seront ainsi rendus mobiles sera inscrite, par un fonctionnaire, sur l'avis de non-opposition.

Ces permis de colportage seront valables pour une durée fixe, mentionné sur chacun d'eux. Ils pourront être prorogés, s'il y a lieu, par l'autorité qui les aura délivrés.

Dans le cas où des lièges transportés recevraient des transformations en cours de route, les permis correspondants seront annulés par l'officier forestier et remplacés par de nouveaux permis indiquant la nouvelle catégorie dans laquelle entrent ces lièges ainsi que leurs nouveaux poids.

ART. 10 - Les permis de colportage seront présentés à toutes réquisitions, tant des fonctionnaires des eaux et forêts que de tous autres officiers de police judiciaire ou agents de la force publique.

Ces fonctionnaires ou agents apposeront leur visa sur les permis, en indiquant la date, le lieu et la quantité des produits dont ils constateront le transport.

ART. 11 (Modifié, A. V. 14 août 1929 - 8 rebia I 1348; A. V. 24 déc. 1948 - 22 safar 1368). - Les lièges, produits tannants (bois ou écorces), bois indigènes, charbon de bois, cendres de bois, produits résineux des forêts, glands, caroubes, lichens, colportés ou mis en vente sans permis, seront saisis et placés sous séquestre, ainsi que les enveloppes qui les contiennent et, s'il y a lieu, les voitures, attelages et bêtes de somme qui servent à les transporter.

Cette saisie et, s'il y a lieu, la vente des produits, s'effectueront selon la procédure fixée par les articles 61, 63 et 64 du dahir du 10 octobre 1917.

ART. 12 - Le colportage des produits énumérés à l'article 9 est interdit pendant la nuit, à moins d'autorisation spéciale dûment justifiée des autorités qui ont délivré le permis.

ART. 13 - (Modifié A. V. 14 août 1929 - 8 rebia I 1348; A. V. 5 déc. 1939 - 23 chaoual 1358; A. V. 27 nov. 1951 - 26 safar 1371) . - Tout acheteur de lièges, produits tannants (bois ou écorces), charbon de bois ou produits résineux devra, sous sa responsabilité, exiger la production du permis de colportage.

Il devra être muni constamment des permis de colportage établissant l'origine des produits de cette nature dont il fait commerce et enfermés dans ses magasins ou lieux d'achat ou de dépôt dont l'emplacement devra avoir été préalablement déclaré au service des eaux et forêts.

En ce qui concerne le charbon de bois, cette déclaration ne s'étend, toutefois, pas aux magasins ou lieux d'achat ou de dépôt situés à l'intérieur du périmètre urbain des centres érigés en municipalités.

ART. 14 (Modifié A. V. 14 août 1929 - 8 rebia I 1348; A. V. 5 déc. 1939 - 23 chaoual 1358; A. V. 27 nov. 1951 - 26 safar 1371). L'achat des lièges, produits tannants (bois et écorces), charbon de bois et produits résineux, dont l'origine n'est pas justifiée, est formellement interdit; les produits ainsi achetés seront saisis en quelque lieu qu'ils se trouvent et placés sous séquestre, dans les conditions prévues à l'article 11, ainsi que les enveloppes qui les contiennent et, s'il y a lieu, les instruments de pesage ayant servi à cet achat, le tout sans préjudice des autres peines encourues.



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**CHAPITRE III**  
**EXPORTATIONS**

**ART. 15** (*Modifié A. V. 14 août 1929 - 8 rebia I 1348; A. V. 24 déc 1948 - 22 safar 1368*). - Toute exportation de liège, produits tannants (bois et écorces), bois indigènes, charbon de bois, cendres de bois, produits résineux des forêts, caroubes et lichens, devra être accompagnée d'un certificat d'origine délivré par le service des eaux et forêts du port d'embarquement, sur le vu du permis de colportage ayant précédemment suivi ces produits et portant indication de leur origine.

**ART. 16** - Les permis de colportage seront retirés et annulés au fur et à mesure de leur échange contre le certificat d'origine qui doit les remplacer.

Ce certificat d'origine devra être rigoureusement exigé par le service des douanes, préalablement à tout embarquement.

**ART. 17** (*Modifié, A. V. 27 nov. 1951 - 26 safar 1371*). - Les infractions au présent arrêté seront constatées susvisé du 10 octobre 1917 (20 hija 1335) et punies des peines prévues à l'article 55, et les poursuites exercées conformément à l'article 57 dudit dahir.

**Arrêté Viziriel du 4 septembre 1918 (27 kaada 1336) relatif aux mesures à prendre en vue de prévenir les incendies de forêts (B.O. 14 oct. 1918, p. 946 et rectific. 4 nov. 1918, p. 1008).**

Vu les articles 46, 47 et 51 du dahir du 10 octobre 1917 (20 hija 1335) sur la conservation et l'exploitation des forêts:

**ART. 1<sup>er</sup>** - Pendant la période du 1<sup>er</sup> juillet au 31 octobre, les habitations, bâtiments d'exploitation et abris en marconnerie situés à l'intérieur ou dans un rayon de 200 mètres des bois et forêts, et dans lesquels on allume du feu, soit pour des usages domestiques, soit pour des besoins industriels, devront être entourés d'une tranchée de 25 mètres de largeur, débarrassée de toute broussaille ou végétation herbacée et, s'il est reconnu nécessaire par l'administration des eaux et forêts, de tout bois d'essence résineuse. Cette tranchée doit être constamment maintenue en bon état d'entretien et aucun dépôt de matière combustible ne pourra y être effectué.

**ART. 2** - Dans les abris ou gourbis sur perches, tentes, campements, chantiers, ateliers ou installations temporaires quelconques situés dans les bois et forêts ou dans la zone de 200 mètres, l'emploi du feu n'est autorisé pendant la même période que pour la cuisson des aliments.

Les foyers devront être entourés d'une tranchée de 25 mètres établie dans les conditions prescrites à l'article précédent.

L'emploi du feu, pendant la période d'interdiction, pour le grillage du minerai dans les exploitations sises dans les massifs boisés ou dans le rayon de 200 mètres de ces massifs, pourra être autorisé par le chef du service des eaux et forêts. Chaque four devra être entouré d'une tranchée établie dans les conditions prescrites et dont la largeur sera fixée par la décision d'autorisation.

*(Dernier alinéa modifié, A. V. 26 janv. 1947 - 4 rebia I 1366).* La fabrication du charbon ou du goudron dans les forêts, quel qu'en soient les propriétaires, pendant cette même période, devra s'effectuer dans les conditions prescrites par le service des forêts, qui pourra, s'il y a lieu, l'interdire temporairement ou définitivement.

**ART. 3** - Les compagnies concessionnaires ou fermières de chemins de fer ou de tramways à vapeur établis dans l'intérieur des forêts ou dans le rayon de 200 mètres de leur périmètre ne devront laisser subsister sur les emprises

des voies aucune herbe ou végétation herbacée, du 1<sup>er</sup> juin au 1<sup>er</sup> novembre.

Il devra, en outre, être établi, le long des sections de voies ferrées qui seront déterminées d'un commun accord entre la direction générale des travaux publics ou celle des chemins de fer militaires et le chef du service des eaux et forêts, des tranchées débarrassées de toutes broussailles et, s'il est reconnu nécessaire, de tous bois d'essence résineuse, et constamment maintenues en bon état d'entretien. Ces tranchées auront une largeur de 20 mètres et devront être exécutées dans les six mois de la décision qui en ordonnera l'exécution.

Les travaux d'établissement et d'entretien des tranchées seront exécutés par les compagnies et à leurs frais. A défaut, il sera fait application des dispositions de l'article 16 du dahir du 10 octobre 1917 (20 hija 1335), sans préjudice des sanctions prévues à l'article 55.

L'emploi, pendant la même période, des cylindres, tracteurs ou véhicules quelconques employant la vapeur comme force motrice sur les routes traversant les forêts ou situées à moins de 200 mètres de leur périmètre, sera subordonné à une autorisation du directeur général des travaux publics, prise après accord avec le service des eaux et forêts, en ce qui concerne les précautions à prendre pour éviter les mises à feu en forêt.

Les dispositions du présent article sont applicables aux administrations civiles ou militaires des chemins de fer.

**ART. 4** - Du 1<sup>er</sup> juillet au 31 octobre, sauf dans les régions séparées de tout massif boisé par un espace de plus d'un kilomètre complètement dépourvu de toute végétation ligneuse ou herbacée, aucune incinération de broussailles, herbes, chaumes ou autres végétaux sur pied ne pourra être pratiquée par les particuliers sur des terrains situés à moins de quatre kilomètres des bois et forêts.

La mise à feu de ces mêmes végétaux préalablement coupés ou disposés en tas pourra être autorisée sur demande spéciale du propriétaire, ou de l'occupant, faite au moins quinze jours à l'avance au représentant de l'autorité locale de contrôle.

Cette demande contient élection de domicile dans le



territoire et indique l'emplacement de l'incinération, son étendue, la nature des végétaux à incinérer et la date choisie pour l'opération.

Le représentant de l'autorité de contrôle enregistre et vise cette déclaration et, lorsqu'il s'agit de terrains situés à moins de 500 mètres des bois et forêts, l'adresse immédiatement au chef de la circonscription forestière.

Le représentant de l'autorité de contrôle, s'il s'agit de terrains situés à plus de 500 mètres des bois et forêts, le chef de la circonscription forestière, s'il s'agit de terrains dans la zone de 500 mètres, feront connaître leur décision au pétitionnaire, et, en cas d'autorisation, fixeront le jour et l'heure de l'opération, les tranchées à ouvrir, le nombre des travailleurs et toutes les précautions nécessaires. Le surveillant délégué par eux pourra imposer de nouvelles précautions au cours de l'opération et même la suspendre si la violence du vent peut faire craindre que le feu se propage.

**ART. 5** - Du 1<sup>er</sup> novembre au 30 juin, aucune incinération de végétaux sur pied ne pourra être effectuée dans un rayon de 500 mètres à partir de la limite des bois et forêts sans que la déclaration prévue à l'article précédent en ait été faite au moins dix jours à l'avance au représentant local de l'autorité de contrôle, qui la transmettra au chef de la circonscription forestière, s'il s'agit de terrains situés à moins de 200 mètres des bois et forêts.

Cette demande est instruite et l'autorisation d'incinération accordée dans les conditions prévues aux paragraphes 4 et 5 de l'article précédent.

**ART. 6** - Les infractions au présent arrêté sont constatées conformément aux dispositions de l'article 83 du dahir du 10 octobre 1917 sur la conservation et l'exploitation des forêts et les poursuites exercées conformément à l'article 57 dudit dahir.

**DECRET N° 2-88-554 (20 safar 1410) pris pour l'application de la loi n° 1-84 instituant des mesures d'encouragement aux investissements miniers promulguée par dahir n° 1-86-1 du 26 rebia II 1407 (29 décembre 1986). 22 septembre 1989**

**Art. 1<sup>er</sup>** (Modifié, décret n° 2-90-144, 19 févr. 1993 - 27 chaabane 1413, art. 1<sup>er</sup>) - Le programme d'investissement projeté ainsi que les listes de matériels, outillages et biens d'équipement y afférents doivent être déposés contre récépissé, par les entreprises au ministère chargé des mines, en vingt (20) exemplaires présentés suivant un modèle présenté par ce département, et ce, sous réserve des dispositions de l'article 14 ci-après.

Dans les trente jours qui suivent la date de leur dépôt, attestée par le récépissé, le ministre chargé des mines doit:

- a) Soit adresser avec la mention «conforme» un exemplaire du programme d'investissement:
  - au Premier ministre;
  - à l'entreprise, par lettre recommandée avec accusé de réception;
  - aux administrations et organismes intervenant aux fins de mise en application des avantages dont bénéficie l'entreprise;
- b) Soit faire retour à l'entreprise, par lettre recommandée avec accusé de réception, des documents déposés avec la mention «non conforme».

Tout retour de dossier doit être motivé. Le Premier ministre et les administrations et organismes visés au a) ci-dessus doivent être informés.

**Art. 2** (Abrogé et remplacé, décret n° 2-90-144, 19 févr. 1993 - 27 chaabane 1413 art. 1<sup>er</sup>) - Les administrations et organismes visés au a) de l'article premier ci-dessus sont tenus d'accorder les avantages prévus par la loi n. 1-84 susvisée, pour tout le programme d'investissement censé avoir reçu le visa de conformité en application de la loi n. 17-90 déterminant l'effet du silence de l'administration en ce qui concerne les programmes d'investissement dont elle est saisie pour attestation de leur conformité aux dispositions du code qui leur est applicable, promulguée par le dahir n. 1-90-76 du 13 jourmada I 1413 (9 novembre 1992).

Les avantages visés à l'alinéa précédent sont accordés à la demande de l'investisseur et sur présentation d'un exemplaire du programme d'investissement concerné et du récépissé de son dépôt auprès du ministère chargé des mines.

**Art. 11** (Abrogé et remplacé, décret n° 2-90-144, 19 févr. 1993 - 27 chaabane 1413, art. 1<sup>er</sup>) - Pour l'application des dispositions des articles 12 et 13 de la loi précitée n° 1-84, les services locaux de la taxe sur le chiffre d'affaires délivrent à l'entreprise une attestation qui lui permet d'acquérir, sur le marché local, les matériels, outillages et biens d'équipement en exonération de la taxe sur la valeur ajoutée.

Cette attestation est délivrée dans un délai maximum de 30 jours qui court à partir de la date de dépôt auprès des services précités ou de réception par ces derniers des factures pro forma correspondant aux matériels, outillages et biens d'équipement dont l'acquisition est envisagée sur le marché local.

**Art. 13** (Al. 4, abrogé et remplacé, décret n° 2-90-144, 19 févr. 1993 - 27 chaabane 1413, art. 1<sup>er</sup>) - Cette liste est transmise par l'entreprise au ministère chargé des finances aux fins de versement à cette dernière de la partie du coût du terrain prise en charge par l'Etat.

**Art. 17** (Al. 2, abrogé et remplacé, décret n° 2-90-144, 19 févr. 1993 - 27 chaabane 1413, art. 1<sup>er</sup>) - Les conclusions de la commission sont notifiées par son président, dans un délai maximum de 45 jours à compter de la date du dépôt du dossier dans les conditions prévues à l'article 14 ci-dessus, au ministre des finances et au ministre chargé des mines qui en informe l'entreprise dans un délai de 15 jours au maximum à compter de la date de notification des conclusions de la commission.

**Art. 20** (Modifié, décret n° 2-90-144, 19 févr. 1993 - 27 chaabane 1413, art. 1<sup>er</sup>) - Les travaux d'infrastructure et/ou les équipements spécifiques destinés à réalisation d'économie d'eau ou d'énergie, à l'utilisation des ressources énergétiques nationales autres que d'origine pétrolière, et à la préservation de l'environnement, sont après exécution, réceptionnés dans le délai maximum



d'un mois courant à compter de la date de dépôt du dossier de remboursements, par une commission présidée par le ministre chargé des mines ou son représentant, et constituée des représentants des ministres chargés des finances, des travaux publics, de l'intérieur et éventuellement de tout autre représentant d'une autorité gouvernementale concernée par la nature des travaux.

Cette commission s'assure que ces travaux ont été réalisés conformément au programme retenu par la commission visée à l'article 15 ci-dessus et dresse un procès-verbal de réception dont la copie est adressée par le ministre chargé des mines au ministre chargé des finances, dans le délai d'un mois courant à compter de la date de réception desdits travaux, pour mise en oeuvre du concours de l'Etat, et au président de la commission visée à l'article 15 ci-dessus pour information.

En cas de difficultés

**Art. 21** (Modifié, décret n° 2-90-144, 19 févr. 1993 - 27 chaabane 1413, art. 1<sup>er</sup>). -Le montant du concours de l'Etat

b) D'un dossier justificatif présenté suivant un modèle établi par le ministère chargé des mines et comportant notamment:

- une liste nominative des employés occupant un emploi stable, précisant la date de leur recrutement, certifié conforme par le directeur de la Caisse nationale de sécurité sociale ou par son délégué;
- un état descriptif détaillé accompagné des plans et des coupes des réalisations physiques de l'infrastructure et des équipements spécifiques retenus par la commission citée à l'article 15 ci-dessus;
- une copie des différentes factures, décomptes et attestations déterminant le montant global de l'investissement réalisé, récapitulée dans des relevés distincts de toutes ses composantes.

(La suite sans modification.)

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**Décret n. 2-88-554 (20 safar 1410) pris pour l'application de la loi  
n. 1-84 instituant des mesures d'encouragement aux  
investissements miniers promulguée par dahir n. 1-86-1  
du 26 rebia II 1407 (29 décembre 1986)  
(B.O. 18 oct. 1989, p. 276). 22 septembre 1989**

Vu la loi n. 1-84 instituant des mesures d'encouragement aux investissements miniers promulguée par le dahir n. 1-86-1 du 26 rebia II 1407 (29 décembre 1986), telle qu'elle a été modifiée par la loi n.08-88 promulguée par le dahir n. 1-88-20 du 17 ramadan 1408 (4 mai 1988)

Vu la loi n. 30-85-347 du 7 rebia II 1406 (20 décembre 1985), notamment son article 58;

Vu la loi de finances pour l'année 1988 n. 38-87 promulguée par le dahir n. 1-87-200 du 8 jourmada I 1408 (30 décembre 1987);

Après examen par le conseil des ministres réuni le 16 kaada 1409 (20 juin 1989)

**CHAPITRE I<sup>er</sup>  
DU DEPOT DES PROGRAMMES  
D'INVESTISSEMENT ET DU VISA DE  
CONFORMITE**

**Art. 1<sup>er</sup>** - Le programme d'investissement projeté ainsi que les listes de matériels, outillages et biens d'équipement y afférents, doivent être déposés contre récépissé, par les entreprises, au ministère chargé des mines, en vingt (20) exemplaires présentés suivant un modèle établi par ce département, et ce, sous réserve des dispositions de l'article 14 ci-après.

Dans les trente jours qui suivent la date de leur dépôt, attestée par le récépissé, le ministre chargé des mines doit:

- a) soit adresser avec la mention «conforme» un exemplaire du programme d'investissement:
  - au Premier ministre;
  - à l'entreprise;
  - aux administrations et organismes intervenant aux fins de mise en application des avantages dont bénéficie l'entreprise;

- b) soit faire retour, à l'entreprise, des documents déposés avec la mention «non conforme»

Tout retour de dossier doit être motivé et le Premier ministre doit en être informé.

**Art. 2** - L'entreprise à laquelle, à l'expiration du délai prévu à l'article premier ci-dessus n'a pas été fait retour de son dossier avec la mention «non conforme» peut saisir le Premier ministre en vue d'un réexamen dudit dossier.

**Art. 3** - Toute modification apportée au programme d'investissement déposé ou reconnu conforme ou aux listes de matériels, outillages et biens d'équipement y annexées, doit faire l'objet d'un nouveau dépôt dans les conditions prévues à l'article premier ci-dessus.

Toutefois, est admise une marge de fluctuation de 20% au maximum, sur le montant global du programme d'investissement précité à condition que l'entreprise dépose, contre récépissé, au ministère chargé des mines, en vingt (20) exemplaires, les documents concernant les modifications apportées au programme d'investissement initialement déposé.

**CHAPITRE II  
DE L'ETABLISSEMENT DES CONVENTIONS**

**Art. 4** - Les entreprises visées à l'article 5 de la loi précitée n. 1-84 sont tenues, pour pouvoir conclure une convention avec l'Etat, de déposer dans les conditions prévues à l'article premier (1<sup>er</sup> alinéa) ci-dessus, leur programme d'investissement projeté ainsi que les listes de matériels, outillages et biens d'équipement y afférents, et ce, sous réserve des dispositions de l'article 14 ci-après.

Dans les trente (30) jours qui suivent la date de dépôt de ces documents le ministre chargé des mines doit:

- a) soit en faire retour à l'entreprise avec la mention «non conforme», cette mesure doit alors être motivée et portée à la connaissance du Premier ministre;



- b) soit saisir la commission des conventions prévue à l'article 5 ci-après, de ces documents ainsi que de ses propositions concernant, d'une part, les avantages susceptibles d'être accordés à l'entreprise et, d'autre part, les conditions techniques et économiques relatives à la réalisation et à l'exploitation par celle-ci de l'investissement projeté.

**Art. 5** - Une commission des conventions est placée auprès du Premier ministre.

Elle instruit les dossiers qui lui sont soumis et adresse ses conclusions au ministère chargé des mines qui établit, sur cette base, le projet de convention.

En cas d'accord, l'entreprise signe le projet de convention qui est alors soumis à la signature conjointe du ministre chargé des mines et du ministre chargé des finances.

Dans le cas contraire, le Premier ministre statue en dernier ressort.

### CHAPITRE III

#### DES CONDITIONS DE REMBOURSEMENT DES MONTANTS DU DROIT D'IMPORTATION, DU PRELEVEMENT FISCAL A L'IMPORTATION ET DE LA TAXE SUR LA VALEUR AJOUTEE

**Art. 6** - Le remboursement, par l'entreprise au Trésor public, du prélèvement fiscal à l'importation prévu à l'article 7 de la loi précitée n. 1-84 doit avoir lieu durant les cinq premières années d'exploitation du gisement découvert par les recherches dont le programme a été exonéré dudit prélèvement, dans les conditions suivantes:

- a) Le remboursement est effectué par l'entreprise en cinq versements égaux au plus tard le 1<sup>er</sup> décembre de chaque année. La liquidation du prélèvement fiscal à l'importation intervient dès la notification à l'administration des douanes et impôts indirects, par le ministère chargé des mines, de la mise en exploitation du gisement découvert;
- b) En cas d'amodiation ou de cession de son titre minier, l'entreprise est tenue de rembourser la totalité du montant du prélèvement précité par anticipation. L'autorisation d'amodiation ou de cession ne sera accordée par le ministre chargé des mines qu'après attestation par l'administration des douanes et impôts indirects du versement de la totalité des sommes dues.

**Art. 7** - La demande de remboursement du droit d'importation prévu aux articles 8, 9 et 10 de la loi précitée n. 1-84 doit être adressée, par lettre recommandée avec accusé de réception ou déposée, contre récépissé, à l'administration des douanes et impôts indirects en trois

(3) exemplaires et présentée suivant le modèle établi par ladite administration.

A cette demande doivent être jointes les pièces justificatives suivantes:

- une ampliation de la déclaration de mise à la consommation afférente aux matériels, outillages et biens d'équipement importés et, le cas échéant, de l'acquit à caution d'admission temporaire pour les marchandises et les produits divers importés entrant dans la fabrication locale de matériels, outillages et biens d'équipement;
- les originaux, duplicata ou photocopies certifiées conformes des quittances des droits et taxes perçus;
- une facture du fournisseur étranger;
- une facture du revendeur du matériel importé, le cas échéant;
- une facture du fabricant local du matériel, le cas échéant.

Les entreprises visées à l'article 8 de la loi précitée n. 1-84 doivent, en outre, joindre:

- une ampliation de chacune des déclarations d'exportation accompagnée des copies des factures de vente établies au nom des destinataires à l'étranger revêtues du visa des services de la douane et récapitulées sur des relevés distincts;
- un certificat délivré par le service de la taxe sur le chiffre d'affaires du lieu dont dépend l'établissement principal ou le siège social de l'entreprise précisant le chiffre d'affaires global réalisé par le requérant pendant l'exercice fiscal écoulé.

La première demande de remboursement relative à tout programme d'investissement doit être accompagnée par un certificat délivré par le ministre chargé des mines attestant que les matériels, outillages et biens d'équipement faisant l'objet de la demande de remboursement ont été effectivement utilisés ou installés dans l'établissement du requérant conformément au programme d'investissement reconnu conforme ou ayant fait l'objet d'une convention.

**Art. 8** - La demande de remboursement du prélèvement fiscal à l'importation prévu aux articles 8, 9 et 10 de la loi précitée n. 1-84 doit être adressée, par lettre recommandée avec accusé de réception ou déposée, contre récépissé, en trois (3) exemplaires, à l'administration des douanes et impôts indirects et présentée suivant le modèle établi par ladite administration.



A cette demande doivent être jointes les pièces justificatives suivantes:

- une ampliation de la déclaration de mise à la consommation afférente aux matériels, outillages et biens d'équipement importés et, le cas échéant, l'ampliation de l'acquit à caution d'admission temporaire pour les marchandises et produits divers importés entrant dans la fabrication locale de matériels, outillages et biens d'équipement;
- les originaux, duplicata ou photocopies certifiées conforme des quittances des droits et taxes perçus;
- une facture du fournisseur étranger;
- une facture du revendeur du matériel importé, le cas échéant;
- une facture du fabricant local du matériel, le cas échéant;
- une ampliation de chacune des déclarations d'exportation accompagnée des copies des factures de vente établies au nom des destinataires à l'étranger revêtues du visa des services de la douane et récapitulées sur des relevés distincts;
- un certificat délivré par le service de la taxe sur le chiffre d'affaires du lieu dont dépend l'établissement principal ou le siège social de l'entreprise, précisant le chiffre d'affaires global réalisé par le requérant pendant l'exercice fiscal écoulé.

La première demande de remboursement relative à tout programme d'investissement doit être accompagnée par un certificat délivré par le ministre chargé des mines attestant que les matériels, outillages et biens d'équipement faisant l'objet de la demande de remboursement ont été effectivement utilisés ou installés dans l'établissement du requérant conformément au programme d'investissement reconnu conforme ou ayant fait l'objet d'une convention.

**Art. 9** - La demande de remboursement de la taxe prévue à l'article 12 de la loi précitée n. 1-84, présentée suivant un modèle établi par le ministère des finances (direction des impôts), doit être adressée par lettre recommandée, avec accusé de réception ou déposée, contre récépissé, au service de la taxe sur le chiffre d'affaires du lieu dont dépend l'établissement principal ou le siège de l'entreprise.

A cette demande doivent être jointes les factures ouvrant droit à remboursement accompagnées d'un relevé récapitulatif, dûment visé par le ministre chargé des mines comportant:

- a) la référence au programme d'investissement concerné;
- b) la référence aux factures, le numéro d'identification y figurant ainsi que le nom et l'adresse du fournisseur;
- c) La nature exacte des matériels, outillages et biens d'équipement, le montant des factures correspondantes et, le cas échéant, le taux et le montant des taxes mentionnées sur ces factures;
- d) la date, la référence et les modalités de paiement se rapportant à ces factures.

**Art. 10** - Les remboursements visés aux articles 7, 8 et 9 ci-dessus concernent exclusivement les importations et les acquisitions sur le marché local, effectuées par l'entreprise à compter de la date de notification du visa de conformité ou de la signature de la convention.

Ils doivent intervenir dans les 120 jours suivant celui du dépôt de la demande de remboursement.

#### **CHAPITRE IV DE L'EXONERATION DE LA TAXE SUR LA VALEUR AJOUTEE**

**Art. 11** - Pour l'application des dispositions du 1<sup>er</sup> alinéa de l'article 12 et de l'article 13 de la loi précitée n. 1-84 le service central de la taxe sur le chiffre d'affaires délivre, à l'entreprise, une attestation qui lui permet d'acquiescer, sur le marché local, des matériels, outillages et biens d'équipement en exonération de la taxe sur la valeur ajoutée.

Cette attestation est délivrée sur demande écrite de l'entreprise à laquelle doivent être jointes les factures proforma correspondant aux matériels, outillages et biens d'équipement précités dans un délai maximum de trente (30) jours à partir de la date de dépôt ou de réception de la demande.

#### **CHAPITRE V DES CONDITIONS D'AGREMENT DES ZONES INDUSTRIELLES ET DE VERSEMENT DE LA PARTIE DU COUT DU TERRAIN PRISE EN CHARGE PAR L'ETAT**

**Art. 12** - L'agrément des zones industrielles prévu par l'article 24 de la loi précitée n. 1-84 est accordé par arrêté du Premier ministre ou de l'autorité déléguée par lui à cet effet, pris après avis d'une commission placée auprès du Premier ministre.

La procédure d'agrément susvisé et le coût du terrain au sens de l'article 24 de la loi précitée n. 1-84 sont ceux



fixés par les alinéas 2 à 5 de l'article 17 du décret n. 2-82-623 du 2 rebia II 1403 (17 janvier 1983) pris pour l'application de la loi relative aux investissements industriels.

**Art. 13** - Toute entreprise qui procède à la valorisation minérale implantée dans une zone industrielle agréée peut, à compter du 24<sup>e</sup> mois qui suit celui de la notification du visa de conformité ou la signature de la convention, formuler une demande de versement de la partie du coût de terrain prise en charge par l'Etat.

Les demandes de versement sont adressées, par lettre recommandée avec accusé de réception ou déposées contre récépissé, au ministère chargé des mines.

L'entreprise établit la liste nominative des employés occupant un emploi stable, précisant la date à laquelle ils occupent leur emploi et la fait certifier conforme par le directeur de la Caisse nationale de sécurité sociale ou par son délégataire.

Cette liste est approuvée conjointement par le ministre chargé des mines et le ministre chargé de l'emploi et transmise au ministère chargé des finances aux fins de versement, à l'entreprise, de la partie du coût du terrain prise en charge par l'Etat.

Le versement prévu à l'alinéa ci-dessus doit intervenir dans un délai de 180 jours à compter de la date du dépôt auprès du ministère chargé des mines ou de la date de réception, par ce dernier, de la demande de versement.

#### CHAPITRE VI

#### DES CONDITIONS D'OCTROI DU CONCOURS DE L'ETAT AUX DEPENSES AFFERENTES AUX TRAVAUX D'INFRASTRUCTURE AINSI QU'AUX EQUIPEMENTS SPECIFIQUES DESTINES A LA REALISATION D'ECONOMIE D'EAU OU D'ENERGIE A L'UTILISATION DES RESSOURCES ENERGETIQUES NATIONALES AUTRES QUE CELLES D'ORIGINE PETROLIERE ET A LA PRESERVATION DE L'ENVIRONNEMENT

**Art. 14** - Pour bénéficier du concours de l'Etat aux dépenses afférentes à l'infrastructure ainsi qu'aux équipements spécifiques destinés à la réalisation d'économie d'eau ou d'énergie, à l'utilisation des ressources énergétiques nationales autres que celles d'origine pétrolière, énergies renouvelables comprises, et à la préservation de l'environnement, les entreprises doivent déposer contre récépissé au ministère chargé des mines en 20 exemplaires, un dossier présenté suivant un modèle établi par ce département.

Lorsqu'il s'agit du concours de l'Etat aux dépenses afférentes aux équipements spécifiques destinés à la réalisation d'économie d'eau ou d'énergie, à l'utilisation des ressources énergétiques nationales autres que celles d'origine pétrolière, énergies renouvelables comprises, l'entreprise doit joindre à son dossier, le cas échéant, les bilans de consommation d'énergie, d'eau et de production durant les trois dernières années.

**Art. 15** - La commission instituée par l'article 28 de la loi précitée n. 1-84 comprend, sous la présidence du Premier ministre ou de l'autorité gouvernementale déléguée à cet effet, les représentants:

- du ministre chargé des finances;
- du ministre chargé des travaux publics;
- du ministre chargé des mines;
- du ministre chargé du plan;
- du ministre chargé de l'intérieur;
- du ministre chargé de l'éducation nationale;
- du ministre chargé de la santé publique;
- du ministre chargé de l'habitat.

Toutefois lorsqu'elle doit examiner des dossiers relatifs aux équipements spécifiques destinés à la réalisation d'économie d'eau ou d'énergie, à l'utilisation des ressources énergétiques nationales autres que celles d'origine pétrolière, et à la préservation de l'environnement, la commission citée ci-dessus comprend les représentants:

- du ministre chargé des finances;
- du ministre chargé des travaux publics;
- du ministre chargé des mines;
- du ministre chargé de l'intérieur;
- du ministre chargé de la santé publique;
- du ministre chargé de l'industrie.

La commission peut s'adjoindre à titre consultatif toute autre personne compétente en la matière.

Elle est dotée d'un secrétariat permanent assuré par le ministère chargé des mines.



**Art. 16** - La commission prévue à l'article 15 ci-dessus se réunit sur convocation de son président lorsqu'il est saisi du dossier instruit par le secrétariat permanent.

**Art. 17** - La commission examine le dossier relatif aux dépenses afférentes à l'infrastructure ainsi qu'aux équipements spécifiques destinés à la réalisation d'économie d'eau ou d'énergie, à l'utilisation des ressources énergétiques nationales autres que celles d'origine pétrolière, énergies renouvelables comprises, et à la préservation de l'environnement, présenté par l'entreprise, tant du point de vue technique que financier et arrêté, conformément aux dispositions de l'article 28 de la loi précitée n. 1-84, les travaux d'infrastructure et les équipements spécifiques susceptibles de bénéficier du concours financier de l'Etat et fixe le montant maximum dudit concours.

Les conclusions de la commission sont notifiées par son président au ministre des finances et au ministre chargé des mines qui en informe l'entreprise dans un délai de 4 mois au maximum après le dépôt du dossier dans les conditions prévues à l'article 14 ci-dessus.

**Art. 18** - L'assiette de l'investissement devant servir à la détermination de la limite de 15% prévue par l'article 28 de la loi précitée n. 1-84 englobe le coût du programme d'investissement agréé, hors taxe à l'exception des intérêts intercalaires et du poste «divers et imprévus».

**Art. 19** - Le concours de l'Etat aux dépenses afférentes aux équipements spécifiques destinés à la réalisation d'économie d'eau ou d'énergie, à l'utilisation des ressources énergétiques nationales autres que celles d'origine pétrolière, et à la préservation de l'environnement est accordé en prenant en considération les éléments suivants:

- les investissements spécifiques pour économie d'énergie doivent permettre de réaliser, en permanence, une économie de 5% au moins de la consommation annuelle moyenne d'énergie connue rapportée au même volume de production sans toutefois, que cette économie puisse être inférieure à 250 tonnes d'équivalent pétrole par an. Ces investissements doivent avoir un coût total hors taxe, rapporté au nombre de tonnes équivalent pétrole d'énergie économisée par an supérieur ou égal à 1 000 dirhams;
- 10 000 thermies sont égales à une tonne d'équivalent pétrole;
- les équipements spécifiques acquis doivent permettre de manière permanente, l'utilisation de ressources d'énergie nationales autres que celles d'origine pétrolière, énergies renouvelables comprises, pour un minimum de 40% de l'énergie utilisée dans le projet;

- les investissements spécifiques pour économie d'eau doivent permettre de réaliser en permanence une économie de 30% au moins de la consommation annuelle moyenne d'eau connue rapportée au même volume de production;

- les investissements spécifiques destinés à la préservation de l'environnement doivent permettre la réduction des nuisances pour atteindre de manière permanente les normes en vigueur.

**Art. 20** - Les travaux d'infrastructure et/ou les équipements spécifiques destinés à la réalisation d'économie d'eau ou d'énergie, à l'utilisation des ressources énergétiques nationales autres que celles d'origine pétrolière, et à la préservation de l'environnement, sont après exécution, réceptionnés par une commission présidée par le ministre chargé des mines ou par son représentant, et constituée des représentants des ministres chargés des finances, des travaux publics, de l'intérieur et éventuellement de tout autre représentant d'une autorité gouvernementale concernée par la nature des travaux.

Cette commission s'assure que ces travaux ont été réalisés conformément au programme retenu par la commission visée à l'article 15 ci-dessus et dresse un procès-verbal de réception dont copie est adressée par le ministre chargé des mines au ministre des finances, pour mise en oeuvre du concours de l'Etat, et au président de la commission visée à l'article 15 ci-dessus pour information.

En cas de difficultés résultant de la non exécution des travaux conformément au programme retenu, le secrétariat permanent peut demander la réunion de la commission visée à l'article 15 ci-dessus afin de trancher la difficulté.

**Art. 21** - Le montant du concours de l'Etat aux travaux d'infrastructure et aux équipements spécifiques destinés à la réalisation d'économie d'eau ou d'énergie, à l'utilisation des ressources énergétiques nationales autres que celles d'origine ptrolière, et à la préservation de l'environnement, est accordé par décision du ministre des finances compte tenu;

a) du procès-verbal établi par la commission prévue à l'article 20 ci-dessus, après réception des travaux sur les sites et arrêt du montant du concours de l'Etat aux dépenses afférentes à l'infrastructure, et;

b) d'un dossier justificatif présenté suivant un modèle établi par le ministère chargé des mines et comportant notamment:

- une liste nominative des employés occupant un emploi stable, précisant la date à laquelle ils occupent leur emploi, certifiée conforme par le directeur de la



Caisse nationale de la sécurité sociale ou par son délégataire et approuvée conjointement par le ministre chargé des mines et le ministre chargé de l'emploi;

- un état descriptif détaillé accompagné des plans et des coupes des réalisations physiques de l'infrastructure et des équipements spécifiques retenus par la commission citée à l'article 15 ci-dessus;
- une copie des marchés et commandes passés dans le cadre du projet réalisé;
- une copie des différentes factures, décomptes et attestations déterminant le montant global de l'investissement réalisé, récapitulée dans des relevés distincts de toutes ses composantes;
- une copie des différentes factures, décomptes et attestations déterminant le montant des dépenses afférentes à l'infrastructure et aux équipements spécifiques retenus par la commission citée à l'article 20 ci-dessus et récapitulée dans des relevés distincts.

#### CHAPITRE VII DISPOSITIONS DIVERSES

**Art. 22** - Le rapport sur la réalisation du programme d'investissement prévu à l'article 32 de la loi précitée n. 1-84 doit être présenté suivant un modèle établi par le ministère chargé des mines et adressé audit ministère.

Copie dudit rapport est adressée au Premier ministre.

**Art. 23** - Le ministre chargé des mines est habilité à:

- proroger le délai fixé par le 2<sup>e</sup> alinéa de l'article 4 de la loi précitée n. 1-84;
- accorder l'autorisation prévue au 1<sup>er</sup> alinéa de l'article 11 de la loi précitée n. 1-84.

**Art. 24** - Le ministre chargé de l'industrie est habilité à arrêter la liste des matériels, outillages et biens d'équipement exclus du bénéfice de l'exonération du droit d'importation en application des dispositions du 2<sup>e</sup> alinéa de l'article 6 de la loi n. 1-84 précitée.

**Art. 25** - Le ministre chargé des finances est habilité à:

- prononcer la déchéance du droit aux exonérations prévues par le chapitre II de la loi précitée n. 1-84 après avis du ministre chargé des mines;
- proroger le délai fixé à l'article 18, 2<sup>e</sup> alinéa, a) de la loi précitée n. 1-84 après avis du ministre chargé des mines;
- retirer, en application de l'article 31 de la loi précitée n. 1-84 après avis du ministre chargé des mines, les avantages dont bénéficient les entreprises et ordonner, dans la même décision, le paiement des droits, taxes et impôts normalement exigibles.

**Art. 26** - Sous réserve des dispositions de l'article 36 de la loi précitée n. 1-84 sont abrogées toutes dispositions relatives aux mêmes objets notamment celles contenues dans:

- le décret n. 2-73-408 du 14 rejev 1393 (14 août 1973) définissant les conditions de dépôt des programmes d'investissements et les modalités d'établissement des conventions prévues par les articles 4 des dahirs portant loi instituant des mesures d'encouragement aux investissements industriels, miniers, touristiques et artisanaux;
- le décret n. 2-73-413 du 14 rejev 1393 (14 août 1973) fixant les conditions de dépôt des programmes d'investissements et les modalités de leur transmission pour la mise en application des mesures d'encouragement aux investissements;
- le décret n. 2-73-410 du 14 rejev 1393 (14 août 1973) fixant la composition et les modalités de fonctionnement de la commission prévue à l'article 14 du dahir portant loi n. 1-73-412 du 13 rejev 1393 (13 août 1973) instituant des mesures d'encouragement aux investissements miniers.

**Art. 27** - Le ministre de l'énergie et des mines, le ministre des finances, le ministre de l'emploi et le ministre du commerce et de l'industrie sont chargés, chacun en ce qui le concerne, de l'exécution du présent décret qui sera publié au *Bulletin officiel*.

# Loi No. 9-94 sur la protection des obtentions végétales

## Chapitre premier DISPOSITIONS GÉNÉRALES

**Article premier:** Les obtentions de nouvelles variétés végétales (variétés) sont protégées en vertu des dispositions de la présente loi et de ses textes d'application.

**Article 2:** Au sens de la présente loi, on entend par:

- (a) "variété": un ensemble végétal d'un taxon botanique du rang le plus bas connu qui, qu'il réponde ou non pleinement aux conditions pour l'octroi d'un droit d'obtenteur, peut être:
- défini par l'expression des caractères résultant d'un certain génotype ou d'une certaine combinaison de génotypes;
  - distingué de tout autre ensemble végétal par l'expression d'au moins un desdits caractères et
  - considéré comme une entité eu égard à son aptitude à être reproduit conforme.
- (b) "matériel de multiplication pour la production de plantes":
- le matériel de reproduction tel que semences et fruits;
  - le matériel de multiplication végétative tel que plantes ou parties de plantes, boutures, tubercules, bulbes, rhizomes.
- (c) "obtenteur":
- la personne qui a créé ou qui a découvert et mis au point une variété;
  - la personne qui est l'employeur de la personne précitée ou qui a commandé son travail, sauf dispositions contractuelles contraires;
  - l'ayant droit ou l'ayant cause de la première ou de la deuxième personne précitée, selon le cas.
- (d) "droit d'obtenteur": le droit de l'obtenteur prévu dans la présente loi.

(e) "administration compétente": les services gouvernementaux définis par voie réglementaire pour l'application de la présente loi et de ses textes d'application.

## Chapitre II CONDITIONS DE LA PROTECTION

**Article 3:** L'octroi du droit d'obtenteur ne peut dépendre d'autres conditions que celles prévues à l'article 5 de la présente loi sous réserve que la variété soit désignée par une dénomination conformément aux dispositions de l'article 14 ci-dessous, que l'obtenteur ait satisfait aux formalités prévues par la présente loi et ses textes d'application et qu'il ait versé les rémunérations visées à l'article 60 ci-dessous.

**Article 4:** Seules peuvent être protégées les variétés appartenant aux genres et espèces figurant dans une liste fixée par l'administration qui précise pour chaque genre ou espèce les éléments sur lesquels porte le droit de l'obtenteur.

**Article 5:** Le droit de l'obtenteur est octroyé, lorsque, à la suite de l'examen préalable prévu à l'article 50 ci-dessous, la variété est connue nouvelle, distincte, homogène et stable.

**Article 6:** La variété est réputée nouvelle si, à la date de dépôt de la demande du droit d'obtenteur, du matériel de reproduction ou de multiplication végétative, ou un produit de la récolte, ou un produit transformé de la variété n'a pas été vendu ou remis à des tiers d'une autre manière, par l'obtenteur ou avec son consentement, aux fins de l'exploitation de la variété depuis plus d'un an au Maroc ou, depuis plus de quatre ans, ou dans le cas des arbres et de la vigne depuis plus de six ans, à l'étranger.

**Article 7:** La variété est réputée distincte si elle se distingue nettement de toute autre variété dont l'existence, à la date de dépôt de la demande, est notoirement connue.

En particulier, est réputée notoirement connue, toute autre variété pour laquelle il existe dans tout autre pays une demande de protection sous réserve que celle-ci aboutisse



à l'octroi de droit d'obtenteur, ou une inscription à un registre officiel de variétés et ce à partir de la date de la demande ou de l'inscription, selon le cas. La notoriété peut en outre être établie par diverses références telles que culture ou commercialisation déjà en cours, présence dans une collection de référence ou description précise dans une publication.

**Article 8:** La variété est réputée homogène si elle est suffisamment uniforme dans ses caractères pertinents, sous réserve de la variation prévisible compte tenu des particularités de sa reproduction sexuée ou de sa multiplication végétative.

**Article 9:** La variété est réputée stable si ses caractères pertinents restent inchangés à la suite de ses reproductions ou multiplications successives, ou, en cas de cycle particulier de reproductions ou de multiplications, à la fin de chaque cycle.

**Article 10:** Toute obtention végétale peut faire l'objet de l'octroi d'un titre de protection appelé "certificat d'obtention végétale".

Le droit à la protection d'une variété appartient au premier déposant, jusqu'à preuve du contraire.

**Article 11:** Le droit d'obtention peut être requis par:

- les personnes physiques ou morales marocaines;
- les personnes physiques ou morales étrangères ayant leur domicile ou leur siège social au Maroc;
- les nationaux des Etats et les personnes physiques ou morales ayant leur domicile ou leur siège social sur le territoire desdits Etats, lorsque la législation de ces derniers accordent aux marocains une protection au moins équivalente à celle prévue par la présente loi.

**Article 12:** L'obtenteur qui a régulièrement fait le dépôt d'une demande de protection d'une variété auprès d'un Etat qui accorde aux marocains une protection au moins équivalente à celle conférée par la présente loi (première demande) jouit, pour effectuer le dépôt d'une demande d'octroi d'un droit d'obtenteur pour la même variété auprès de l'administration pendant un délai de 12 mois. Ce délai est compté à partir de la date du dépôt de la première demande. Le jour du dépôt n'est pas compris dans ce délai.

**Article 13:** Pour bénéficier du droit de priorité prévue à l'article 12 ci-dessus, l'obtenteur doit, dans la demande subséquente, revendiquer la priorité de la première demande. L'administration compétente peut exiger de l'obtenteur qu'il fournisse dans un délai de trois mois à compter de la date de dépôt de la demande subséquente, une copie des documents qui constituent la première

demande, certifiée conforme par le service auprès duquel elle aura été déposée, ainsi que les échantillons ou toute autre preuve que la variété qui fait l'objet des deux demandes est la même.

L'obtenteur bénéficiera d'un délai de deux ans après l'expiration du délai de priorité ou, lorsque la première demande est rejetée ou retirée, d'un délai fixé par l'administration compétente à compter du rejet ou du retrait pour lui fournir tout renseignement, document ou matériel prévus par la présente loi en vue de l'examen prévu à l'article 50 ci-dessous.

Les événements survenant durant le délai, prévu à l'article 12 ci-dessus, tels que le dépôt d'une autre demande, ou la publication ou l'utilisation de la variété qui fait l'objet de la première demande, ne constituent pas un motif de rejet de la demande subséquente. Ces événements ne peuvent pas non plus faire naître de droit au profit de tiers.

**Article 14:** La variété doit être désignée par une dénomination qui sera sa désignation générique. Cette dénomination ne doit pas:

- (a) être susceptible d'induire en erreur ou de prêter à confusion sur les caractéristiques, la valeur, ou l'identité de la variété ou de l'obtenteur, ou pouvoir être confondue avec une autre dénomination qui a déjà été déposée ou enregistrée pour une variété préexistante de la même espèce botanique ou d'une espèce similaire;
- (b) être contraire à l'ordre public, aux bonnes moeurs, ou aux conventions internationales;
- (c) consister uniquement en chiffres, sauf lorsque c'est une pratique établie pour désigner les variétés de l'espèce considérée.

Si la même variété a déjà été déposée ou enregistrée dans l'autre Etat, la dénomination utilisée doit être reprise, à moins qu'elle ne soit impropre pour des raisons d'ordre linguistique, d'ordre public ou de bonnes moeurs, ou si la dénomination ne répond pas aux exigences du premier alinéa ci-dessus. Si tel est le cas, l'obtenteur doit proposer une autre dénomination dans les conditions prévues à l'article 41 ci-dessous.

**Article 15:** Celui qui met en vente ou commercialise du matériel de reproduction ou de multiplication d'une variété protégée sur le territoire marocain doit utiliser la dénomination de cette variété, même après la fin de la durée de la protection, sous réserve des droits des tiers.

Il n'est pas porté atteinte aux droits antérieurs des tiers. Si en vertu d'un droit antérieur, l'utilisation de la dénomination d'une variété est interdite à une personne



qui, conformément aux dispositions du 1<sup>er</sup> alinéa ci-dessus, est obligée de l'utiliser, l'administration compétente doit demander à l'obteneur de proposer une autre dénomination pour la variété.

Lorsqu'une variété est offerte à la vente ou commercialisée, il est permis d'associer une marque de fabrique ou de commerce, un nom commercial ou une indication similaire, à la dénomination variétale enregistrée. Si une telle indication est ainsi associée, la dénomination doit néanmoins être facilement reconnaissable.

### Chapitre III ETENDUE DE LA PROTECTION

**Article 16:** Le droit d'obteneur porte:

- (a) sur la variété protégée;
- (b) sur toute variété qui ne se distingue pas nettement de la variété protégée conformément à l'article 7 ci-dessus;
- (c) sur toute variété essentiellement dérivée de la variété protégée, lorsque celle-ci n'est pas elle-même une variété essentiellement dérivée et;
- (d) sur toute variété dont la production nécessite l'emploi répété de la variété protégée.

Sous réserve des dispositions des articles 17 et 18 ci-dessous, l'autorisation de l'obteneur est requise pour les actes suivants accomplis à l'égard du matériel de reproduction ou de multiplication de la variété protégée et des variétés visées au 1<sup>er</sup> alinéa ci-dessus:

- la production ou la reproduction;
- le conditionnement aux fins de la production ou de la multiplication;
- l'offre à la vente;
- la vente ou toute autre forme de commercialisation;
- l'exploitation;
- l'importation;
- la détention à l'une des fins mentionnées aux points ci-dessus.

Sous réserve des dispositions des articles 17 et 18 ci-dessous, lorsque l'obteneur n'a pas été en mesure d'exercer son droit à l'égard du matériel de reproduction ou de multiplication, il pourra exercer son droit portant

sur les actes visés au deuxième alinéa ci-dessus à l'égard du produit de la récolte ou du produit transformé.

Au sens du 1<sup>er</sup> alinéa (c) ci-dessus, on entend par variété essentiellement dérivée d'une autre variété (variété initiale):

- une variété principalement dérivée de la variété initiale ou d'une variété qui est elle-même principalement dérivée de la variété initiale, tout en conservant les expressions des caractères essentiels qui résultent du génotype ou de la combinaison de génotypes de la variété initiale;
- une variété qui se distingue nettement de la variété initiale et
- sauf en ce qui concerne les différences résultant de la dérivation, une variété conforme à la variété initiale dans l'expression des caractères essentiels qui résultent du génotype ou de la combinaison de génotypes de la variété initiale.

**Article 17:** Le droit de l'obteneur ne s'étend pas:

- aux actes accomplis dans un cadre privé à des fins non commerciales;
- aux actes accomplis à titre expérimental;
- aux actes accomplis aux fins de la création de nouvelles variétés ainsi qu'aux actes prévus aux deuxième et troisième alinéas de l'article 16 ci-dessus, accomplis avec de telles variétés à condition que:
  - la variété protégée ne soit pas utilisée de façon répétée en vue de produire la nouvelle variété;
  - la nouvelle variété ne soit pas essentiellement dérivée de la variété protégée, lorsque celle-ci n'est pas elle-même une variété essentiellement dérivée;
  - la nouvelle variété soit nettement distincte de la variété protégée.
- et aux actes accomplis par les agriculteurs à des fins de reproduction ou de multiplication, sur leur propre exploitation, en utilisant le produit de la récolte qu'ils ont obtenu par la mise en culture de la variété protégée à l'exception des plantes arboricoles, ornementales et florales.

**Article 18:** Le droit de l'obteneur ne s'étend pas aux actes concernant de matériel de sa variété ou d'une variété essentiellement dérivée de sa variété qui a été vendu ou commercialisé par l'obteneur ou avec son consentement, à moins que ces actes:



- (a) impliquent une nouvelle reproduction ou multiplication de la variété en cause, ou
- (b) impliquent une exportation de matériel de la variété permettant de reproduire la variété pour un pays qui ne protège pas les variétés du genre végétal ou de l'espèce végétale dont la variété fait partie, sauf si le matériel exporté est destiné à la consommation.
- (c) On entend par "matériel" au sens du 1<sup>er</sup> alinéa ci-dessus en relation avec une variété:
  - (a) le matériel de reproduction ou de multiplication végétative, sous quelque forme que ce soit;
  - (b) le produit de la récolte, y compris les plantes entières et les parties de la plante, et
  - (c) tout produit fabriqué directement à partir du produit de la récolte.

**Article 19:** Pour chaque espèce, la durée de la protection est fixée par l'administration. Elle ne peut être inférieure à 20 ans pour les espèces de grande culture et à 25 ans pour les espèces arboricoles et la vigne.

La durée de protection débute à compter de la délivrance du certificat.

#### **Chapitre IV** **TRANSMISSION ET PERTE DES DROITS**

**Article 20:** Les droits attachés à une demande de certificat ou à un certificat sont transmissibles en totalité ou en partie.

Ils peuvent faire l'objet, en totalité ou en partie, d'une concession de licence d'exploitation, exclusive ou non exclusive.

Les droits conférés par la demande de certificat ou le certificat peuvent être invoqués à l'encontre d'un licencié qui enfreint l'une des limites de sa licence imposées en vertu de l'alinéa précédent.

Sous réserve du cas prévu à l'article 61 ci-dessous, une transmission des droits visés au premier alinéa ne porte pas atteinte aux droits acquis par des tiers avant la date de transmission.

Les actes comportant une transmission ou une licence, visés aux deux premiers alinéas, sont constatés par écrit, à peine de nullité.

**Article 21:** Toute personne de droit public ou privé peut, à l'expiration d'un délai de trois ans après la délivrance d'un certificat ou de quatre ans à compter de la date du

dépôt de sa demande, obtenir une licence obligatoire de ce certificat, dans les conditions prévues aux articles 22 à 24 ci-dessous, si au moment de la requête, et sauf excuses légitimes, le propriétaire du certificat ou son ayant cause:

- (a) n'a pas commencé à exploiter ou fait des préparatifs effectifs et sérieux pour exploiter l'obtention objet du certificat sur le territoire marocain ou
- (b) n'a pas commercialisé le produit objet du certificat en quantité suffisante pour satisfaire aux besoins du marché national ou
- (c) lorsque l'exploitation ou la commercialisation de la variété au Maroc a été abandonnée depuis plus de trois ans.

**Article 22:** La demande de licence obligatoire est formée auprès du tribunal compétent. Elle doit être accompagnée de la justification que le demandeur n'a pu obtenir du titulaire du certificat une licence d'exploitation et qu'il est en état d'exploiter l'obtention de manière sérieuse et effective.

La licence obligatoire ne peut être que non exclusive. Elle est accordée à des conditions déterminées, notamment quant à sa durée, son champ d'application et le montant des redevances auxquelles elle donne lieu.

Ces conditions peuvent être modifiées par décision du tribunal compétent, à la requête du titulaire du certificat ou du licencié.

**Article 23:** Toute cession des droits attachés à une licence obligatoire est, à peine de nullité, soumise à l'autorisation du tribunal compétent.

**Article 24:** Si le titulaire d'une licence obligatoire ne satisfait pas aux conditions auxquelles cette licence a été accordée, le titulaire du certificat, et le cas échéant les autres licenciés, peuvent obtenir du tribunal compétent le retrait de cette licence.

**Article 25:** Une variété indispensable à la vie humaine ou animale ou qui intéresse la santé publique, peut être exploitée d'office par toute personne présentant des garanties techniques et professionnelles.

L'exploitation d'office est édictée par un acte administratif.

**Article 26:** Du jour de la publication de l'acte administratif qui édicte l'exploitation d'office d'un certificat d'obtention végétale, toute personne présentant des garanties techniques et professionnelles peut demander l'octroi d'une licence dite licence d'office.



Cette licence ne peut être que non exclusive. Elle est demandée et octroyée dans les conditions fixées par voie réglementaire.

La licence d'office est octroyée à des conditions déterminées notamment quant à sa durée et son champ d'application.

Les redevances auxquelles elle donne lieu sont laissées à l'accord des parties et à défaut d'accord entre elles, leur montant est fixé par le tribunal compétent.

Elle prend effet à la date de la notification de l'acte qui octroie aux parties.

**Article 27:** Si le titulaire d'une licence d'office ne satisfait pas aux conditions requises, la déchéance peut être prononcée dans les conditions fixées par voie réglementaire.

**Article 28:** L'Etat peut obtenir d'office, à tout moment, pour les besoins de la défense nationale une licence d'exploitation d'une variété végétale, objet d'une demande de certificat ou d'un certificat d'obtention, que cette exploitation soit faite par lui-même ou pour son compte.

La licence d'office est accordée par un acte administratif dans les conditions fixées par voie réglementaire.

Cet acte administratif fixe les conditions de la licence.

Les redevances auxquelles donne lieu la licence d'office sont laissées à l'accord des parties et à défaut d'accord entre elles, leur montant est fixé par le tribunal administratif de Rabat.

La licence prend effet à la date de la demande de la licence d'office.

**Article 29:** Les droits attachés à une licence d'office ne peuvent être cédés ni transmis.

**Article 30:** Est déchu de son droit tout titulaire d'un certificat d'obtention végétale, selon le cas:

- 1° s'il est avéré, que la variété protégée ne remplit plus les conditions fixées aux articles 8 et 9;
- 2° s'il n'est pas en mesure de présenter à l'administration compétente les renseignements, documents ou matériel végétal utilisés pour le maintien de sa variété;
- 3° s'il ne propose pas, en cas de radiation de la dénomination de la variété après l'octroi du droit, une autre dénomination;

4° s'il n'a pas acquitté les rémunérations pour services rendus, les cas échéant, pour le maintien de son droit.

La déchéance est prononcée dans les conditions fixées par voie réglementaire.

Lorsqu'elle est prononcée au titre du 4° ci-dessus, le titulaire du certificat peut, dans les six mois qui suivent le terme du délai prévu, présenter un recours en vue d'être restauré dans ses droits s'il justifie d'une excuse légitime pour le défaut de paiement des rémunérations pour services rendus. Ce recours ne peut cependant porter atteinte aux droits acquis, le cas échéant, par les tiers.

L'obtenteur susceptible d'être déchu de ses droits, en application du 2° ou 3° ci-dessus, est mis en demeure de faire cesser cette situation par une notification qui lui est adressée par l'administration compétente. Si à l'expiration d'un délai de deux mois à compter de la réception de la notification, cette mise en demeure est restée sans effet, l'obtenteur est déchu de son droit d'obtenteur.

**Article 31:** La déchéance d'un droit d'obtenteur est notifiée au titulaire du certificat. Elle est inscrite au registre national des certificats d'obtention végétale et publiée au bulletin de la protection des obtentions végétales.

**Article 32:** La saisie d'un certificat est effectuée par acte extra-judiciaire signifié au titulaire du certificat, à l'administration compétente, ainsi qu'aux personnes possédant les droits sur le certificat; elle rend inopposable au créancier saisissant toute modification ultérieure des droits attachés au certificat.

A peine de nullité de la saisie, le créancier saisissant doit, dans le délai prescrit, se pourvoir devant le tribunal compétent, la validité de la saisie et aux fins de mise en vente du certificat.

**Article 33:** Le titulaire d'un certificat peut renoncer à tout moment en totalité ou en partie, aux droits attachés audit certificat.

La renonciation doit être faite par une déclaration écrite adressée à l'administration compétente. Elle prend effet à compter du jour de sa publication au bulletin de la protection d'obtentions végétales prévus à l'article 59 ci-dessous.

Toutefois, la renonciation peut être dénoncée avant sa publication au bulletin visé à l'alinéa précédent.

Si des droits réels de gage ou de licence ont été inscrits au registre national des certificats d'obtention végétale,



la renonciation n'est recevable que si elle est accompagnée du consentement des titulaires de ces droits.

**Article 34:** A la demande de toute personne qui justifie d'un intérêt légitime, la juridiction compétente peut être saisie aux fins de prononcer la nullité d'un certificat d'obtention végétale:

- s'il est établi que la variété n'était pas nouvelle et distincte lors de l'octroi du droit d'obtenteur ou
- s'il est établi que les renseignements et documents relatifs à l'homogénéité et la stabilité fournis par l'obtenteur n'étaient pas effectivement remplis lors de l'octroi du droit d'obtenteur ou
- s'il est établi que le droit d'obtenteur a été octroyé à une personne qui n'y avait pas droit, à moins qu'il ne soit transféré à la personne qui y a droit.

## Chapitre V COPROPRIÉTÉ DES CERTIFICATS

**Article 35:** Sous réserve des dispositions de l'article 38 ci-dessous, la copropriété d'une demande de certificat ou d'un certificat est régie par les dispositions suivantes:

- (a) chacun des copropriétaires peut exploiter l'obtention à son profit, sauf à indemniser équitablement les autres copropriétaires qui n'exploitent pas personnellement l'obtention ou qui n'ont pas concédé de licences d'exploitation à défaut d'accord amiable, cette indemnité est fixée par le tribunal compétent;
- (b) chacun des copropriétaires peut agir en contrefaçon à son seul profit. La requête en contrefaçon doit être notifiée aux autres copropriétaires. Il est sursis à statuer sur l'action lorsqu'il n'est pas justifié de cette notification;
- (c) chacun des copropriétaires peut concéder à un tiers une licence d'exploitation non exclusive à son profit, sauf à indemniser équitablement les autres copropriétaires qui n'exploitent pas personnellement l'obtention ou qui n'ont pas concédé de licence d'exploitation. A défaut d'accord amiable, cette indemnité est fixée par le tribunal compétent.

Toutefois, le projet de concession doit être notifié aux autres copropriétaires, accompagné d'une offre de cession de la quote-part à un prix déterminé.

Dans un délai de trois mois suivant cette notification, l'un quelconque des copropriétaires peut s'opposer à la concession de licence à la condition d'acquiescer la quote-part de celui qui désire accorder la licence.

A défaut d'accord dans le délai prévu à l'alinéa précédent, le prix est fixé par le tribunal compétent. Les parties disposent d'un délai d'un mois à compter de la notification de la décision judiciaire, pour renoncer à la concession de la licence ou à l'achat de la part de copropriété sans préjudice des dommages-intérêts qui peuvent être dus. Les dépens sont à la charge de la partie qui renonce.

- (d) une licence d'exploitation exclusive ne peut être accordée qu'avec l'accord de tous les copropriétaires ou par autorisation de justice;
- (e) chaque copropriétaire peut, à tout moment, céder sa quote-part. Les copropriétaires disposent d'un droit de préemption pendant un délai de trois mois à compter de la notification du projet de cession. A défaut d'accord sur le prix, celui-ci est fixé par le tribunal compétent. Les parties disposent d'un délai d'un mois à compter de la notification de la décision judiciaire, pour renoncer à la vente ou à l'achat de la part de copropriété sans préjudice des dommages-intérêts qui peuvent être dus; les dépens sont à la charge de la partie qui renonce.

**Article 36:** Les dispositions des articles 960 à 981 du dahir du 9 ramadan 1331 (12 août 1913) formant code des obligations et contrats ne sont pas applicables à la copropriété d'une demande de certificat ou d'un certificat.

**Article 37:** Le copropriétaire d'une demande de certificat ou d'un certificat peut notifier aux autres copropriétaires qu'il abandonne à leur profit sa quote-part. Compter de l'inscription de cet abandon au registre national des certificats d'obtention végétale ou, lorsqu'il s'agit d'une demande de certificat non encore publiée, à compter de sa notification à l'administration compétente, ledit copropriétaire est déchargé de toutes obligations à l'égard des autres copropriétaires. ceux-ci se répartissent la quote-part abandonnée à proportion de leurs droits dans la copropriété, sauf convention contraire.

**Article 38:** Les dispositions des articles 35 à 37 ci-dessus s'appliquent en l'absence de stipulations contraires.

Les copropriétaires peuvent y déroger à tout moment par un règlement de copropriété.

## Chapitre VI DÉPÔT DES DEMANDES DE CERTIFICAT D'OBTENTION VÉGÉTALE

**Article 39:** Les demandes de certificat d'obtention végétale doivent être déposées auprès de l'administration compétente dans les formes et conditions fixées par voie réglementaire.

Les personnes physiques ou morales n'ayant pas de domi-



cile ou de siège social au Maroc doivent constituer un mandataire ayant son domicile ou son siège social au Maroc.

Sauf stipulations contraires, le pouvoir du mandataire désigné dans les conditions prévues à l'alinéa précédent s'étend à tous les actes relatifs à l'exercice du droit d'obtenteur et à la réception de toutes les notifications prévues par la présente loi, à l'exception du retrait de la demande de certificat d'obtention végétale ou à la renonciation en totalité ou en partie aux droits attachés audit certificat.

**Article 40:** Le bénéfice de la date du dépôt de la demande est acquis si sont produites lors de ce dépôt toutes les pièces prévues par voie réglementaire en application du 1<sup>er</sup> alinéa de l'article 39 ci-dessus et si les rémunérations pour services rendus prévues à l'article 60 de la présente loi sont versées.

Si le dépôt ne comporte pas les pièces susvisées, la demande est déclarée irrecevable et renvoyée au déposant. Les rémunérations éventuellement versées lui sont remboursées.

En cas d'erreurs matérielles, celles-ci doivent être régularisées dans les deux mois de la notification qui est faite au déposant, faute de quoi la demande est rejetée et renvoyée au déposant.

**Article 41:** Une référence provisoire peut être donnée à la place d'une dénomination pour désigner la variété qui fait l'objet de la demande au moment du dépôt de celle-ci. Dans ce cas, la dénomination doit être proposée sous peine d'irrecevabilité de la demande dans les deux mois de la notification qui est adressée au titulaire de la demande par l'administration compétente.

**Article 42:** Un exemplaire de la demande de certificat d'obtention végétale est remis au déposant, lors du dépôt, revêtu d'un visa attestant le jour et l'heure du dépôt de la demande et comportant un numéro d'enregistrement.

**Article 43:** La demande est inscrite au registre national des demandes de certificat d'obtention végétale prévu à l'article 58 ci-dessous, dans l'ordre des dépôts sous le numéro qui a été attribué au déposant.

Ce numéro doit figurer sur toutes les notifications adressées au déposant jusqu'à la délivrance du certificat d'obtention végétale, le cas échéant.

**Article 44:** Jusqu'à la délivrance du certificat d'obtention végétale, le déposant peut demander la rectification des erreurs matérielles relevées dans les pièces déposées.

La requête doit être présentée par écrit et comporter le texte des modifications proposées par le déposant. Elle

est inscrite au registre national des demandes de certificat d'obtention végétale et n'est recevable que si elle est accompagnée de la justification du paiement de la rémunération pour services rendus exigible.

## Chapitre VII INSTRUCTION DES DEMANDES DE CERTIFICAT D'OBTENTION VÉGÉTALE

**Article 45:** Toute demande de certificat d'obtention végétale régulièrement déposée fait l'objet d'une publication dans le bulletin de la protection des obtentions végétales prévu à l'article 59 ci-dessous.

Cette publication a notamment pour objet de porter la demande de certificat d'obtention végétale à la connaissance de toute personne y ayant intérêt.

A compter du jour de la publication prévue aux alinéas précédents, toute personne peut prendre connaissance de la demande telle qu'elle est inscrite au registre national des demandes de certificat d'obtention végétale.

**Article 46:** Dans un délai de trois mois à compter de la date de la publication prévue à l'article précédent, toute personne y ayant intérêt peut présenter des observations à l'administration compétente, par écrit.

Ces observations doivent être motivées et ne peuvent porter que sur le fait que la variété déposée n'est pas susceptible de protection en application des dispositions des articles 5 et 14 de la présente loi.

**Article 47:** Les contestations relatives au bien-fondé du droit de l'obtenteur sur la variété pour laquelle un certificat d'obtention végétal est demandé sont portées directement devant les tribunaux compétents.

Elles font l'objet d'une inscription au registre national des demandes de certificat d'obtention végétale.

**Article 48:** Lorsque la dénomination de la variété proposée par l'obtenteur ou son ayant cause n'a pas figuré dans la demande initiale ou lorsque l'obtenteur propose, à la demande de l'administration compétente, une nouvelle dénomination, il est procédé à une publication de cette dénomination, il est procédé à une publication de cette dénomination dans le bulletin prévu à l'article 59 ci-dessous.

**Article 49:** Les observations présentées sont notifiées par l'administration compétente au titulaire de la demande.

Celui-ci dispose d'un délai d'un mois à compter du jour où il a accusé réception de la notification pour présenter ses arguments ou défense.



**Article 50:** La demande dûment enregistrée, l'administration compétente procède à l'instruction de la demande de certificat d'obtention végétale et, le cas échéant, à l'examen des observations qui s'y rapportent.

Il est procédé lors de l'instruction à l'examen préalable de la variété qui a pour objet de s'assurer que ladite variété est nouvelle, distincte, homogène et stable au sens de l'article 5 de la présente loi.

L'administration compétente fixe la liste des organismes techniques nationaux ou étrangers habilités à procéder à l'examen préalable des variétés faisant l'objet d'une demande de certificat d'obtention végétale.

**Article 51:** L'instruction est suspendue à la requête écrite de toute personne qui apporte la preuve qu'elle a intenté auprès du tribunal compétent une action en revendication de la propriété de la demande de certificat d'obtention. Toutefois, les essais décidés par l'administration peuvent être effectués.

L'instruction est reprise dès que la décision judiciaire consécutive à l'action visée au 1<sup>er</sup> alinéa ci-dessus a autorité de force de chose jugée. Elle peut être également reprise à tout moment sur le consentement écrit de la personne qui a intenté l'action en revendication. Ce consentement est alors irrévocable. Pendant cette période, le titulaire de la demande ne peut retirer celle-ci sans le consentement écrit de la personne qui a intenté l'action en revendication. De plus, celle-ci est appelée à participer à l'instruction au même titre que le titulaire de la demande.

**Article 52:** Lorsque les différentes mesures d'instruction ont été accomplies, un rapport sommaire résumant les résultats de l'instruction est notifié au titulaire de la demande. Celui-ci a deux mois pour présenter ses observations. Il peut, pendant ce délai, prendre connaissance de l'ensemble du dossier d'enquête auprès du service concerné de l'administration compétente.

Toute personne ayant présenté des observations dans les conditions prescrites dans la présente loi, est informée des conclusions du rapport concernant son intervention. Sur sa requête, l'administration compétente peut l'autoriser à prendre connaissance du dossier ayant trait à cette intervention. Elle peut présenter de nouvelles observations dans le même délai que ci-dessus.

### **Chapitre VIII** **DÉLIVRANCE DES CERTIFICATS** **D'OBTENTION VÉGÉTALE**

**Article 53:** A l'expiration du délai prévu à l'article 52 précédent, l'administration compétente statue sur la demande. Elle peut décider soit la délivrance du certificat

d'obtention végétale, soit le rejet de la demande, soit un supplément d'enquête dans des conditions et délais qu'elle doit fixer.

Sa décision est motivée. Elle est notifiée au déposant et le cas échéant aux auteurs des observations.

**Article 54:** Le certificat d'obtention végétale est délivré par l'administration compétente dans les conditions fixées par voie réglementaire. Il est établi au nom du titulaire de la demande de certificat d'obtention végétale. Si le titulaire de la demande n'est pas l'obteneur, le nom de ce dernier doit être mentionné sur le certificat d'obtention végétale.

Le certificat d'obtention végétale prend effet à la date de sa demande.

**Article 55:** Le certificat est inscrit au registre national des certificats d'obtention végétale.

**Article 56:** La délivrance du certificat d'obtention végétale est publiée au bulletin de la protection des obtentions végétales, dans un délai de trois mois à compter de la date de notification de délivrance faite au titulaire du certificat d'obtention végétale.

**Article 57:** A partir de la date de la publication prévue à l'article 56 ci-dessus, toute personne peut prendre connaissance du certificat d'obtention végétale tel qu'il est inscrit au registre national des certificats d'obtention végétale.

L'administration compétente conserve les pièces des dossiers des demandes de certificat se rapportant aux titres de protection, en original ou en reproduction, jusqu'à l'expiration d'un délai de cinq ans à compter de la fin de la protection.

Les registres nationaux des demandes de certificat d'obtention végétale et des certificats d'obtention végétale sont conservés indéfiniment.

### **Chapitre IX** **DISPOSITIONS DIVERSES**

**Article 58:** L'administration compétente tient un registre national des demandes de certificat d'obtention végétale et un registre national des certificats d'obtention végétale.

Au registre national des demandes de certificat d'obtention végétale sont inscrites dans l'ordre chronologique les demandes y relatives.

Sont également inscrits audit registre les indications ou renseignements complémentaires relatifs à chaque demande de certificat et dont la liste est fixée par voie réglementaire.



L'inscription des certificats d'obtention végétale au registre national des certificats d'obtention végétale a lieu dans l'ordre de leur délivrance.

La liste des indications ou actes complémentaires devant être inscrits sur ledit registre est fixée par voie réglementaire.

Pour l'inscription des mentions complémentaires consécutives à une décision judiciaire, les juridictions adressent à l'administration compétente, en expédition complète et gratuite, les décisions relatives à l'existence, l'étendue et l'exercice des droits attachés à la protection prévue par la présente loi.

**Article 59:** L'administration édite un "bulletin de la protection des obtentions végétales".

La périodicité et le contenu du bulletin sont fixés par voie réglementaire.

Les actes portant soit délivrance du certificat, soit transmission de la propriété, soit concession de droit d'exploitation ou de gage, relatifs à un certificat d'obtention, soit déchéance du certificat, soit renonciation en totalité ou en partie aux droits attachés audit certificat, ne sont opposables aux tiers que s'ils ont été régulièrement publiés au bulletin de la protection des obtentions végétales.

**Article 60:** Un décret, pris conformément aux dispositions du 1<sup>er</sup> alinéa de l'article 17 de la loi organique des finances promulguée par le dahir No. 1-72-260 du 9 chaabane 1392 (18 septembre 1972) fixe la rémunération des services rendus par l'Etat pour l'application de la présente loi et de ses textes d'application.

## Chapitre X ACTIONS EN JUSTICE

**Article 61:** Si un certificat d'obtention a été demandé soit pour une obtention soustraite à la personne qui a créé ou découvert et mis au point une variété végétale, ou à ses ayants cause, soit en violation d'une obligation légale ou conventionnelle, la personne lésée peut revendiquer la propriété de la demande de certificat ou du certificat délivré.

L'action en revendication se prescrit par trois ans à compter de la publication de la délivrance du certificat.

Toutefois, en cas de mauvaise foi au moment de la délivrance ou de l'acquisition du certificat, le délai de prescription est de trois ans à compter de l'expiration dudit certificat.

A compter du jour où une personne a apporté la justification qu'elle a intenté une action en revendication, le titulaire de la demande de certificat ou du certificat, ne peut retirer ladite demande ou renoncer audit certificat en totalité ou en partie sauf sur le consentement écrit de la personne qui a intenté ladite action.

**Article 62:** Toute atteinte portée aux droits du titulaire d'un certificat d'obtention végétale tels qu'ils sont définis à l'article 16 de la présente loi constitue une contrefaçon engageant la responsabilité civile de son auteur.

Le titulaire d'une licence obligatoire ou d'office visée aux articles 21, 26 ou 28 de la présente loi et, sauf stipulation contraire, le bénéficiaire d'un droit exclusif d'exploitation peuvent exercer l'action en responsabilité prévue au 1<sup>er</sup> alinéa ci-dessus, si, après une mise en demeure, le titulaire du certificat n'exerce pas cette action.

Le titulaire du certificat est recevable à intervenir à l'instance engagée par le licencié conformément à l'alinéa précédent.

Tout titulaire d'une licence est recevable à intervenir à l'instance engagée par le titulaire du certificat afin d'obtenir la réparation du préjudice qui lui est propre.

**Article 63:** Les faits antérieurs à la publication de la délivrance du certificat ne sont pas considérés comme ayant porté atteinte aux droits attachés au certificat. Pourront cependant être constatés et poursuivis les faits postérieurs à la notification, au responsable présumé, d'une copie conforme de la demande de certificat.

**Article 64:** Le titulaire d'une demande de certificat d'obtention végétale ou d'un certificat est en droit de faire procéder, avec autorisation de justice, à la description détaillée, avec ou sans saisie, de tous végétaux ou parties de végétaux, de tous éléments de reproduction ou de multiplication végétative prétendus obtenus en méconnaissance de ses droits. Ce droit est ouvert au concessionnaire d'un droit exclusif d'exploitation ou au titulaire d'une licence obligatoire ou d'office sous la condition fixée au 2<sup>e</sup> alinéa de l'article 62 ci-dessus.

A défaut par le requérant de s'être pourvu devant le tribunal dans le délai de 15 jours à compter du jour où la saisie ou la description est intervenue, la description ou saisie est nulle de plein droit, sans préjudice des dommages-intérêts qui peuvent être réclamés s'il y a lieu.

**Article 65:** La description détaillée, avec ou sans saisie des plantes, parties de plantes, ou tous éléments de reproduction ou de multiplication végétative de la variété considérée prétendue contrefaite, prévue par l'article 64



ci-dessus, est ordonnée par le président du tribunal compétent dans le ressort duquel les opérations doivent être effectuées.

L'ordonnance est rendue sur simple requête et sur la présentation soit du certificat d'obtention végétale soit, dans le cas prévu à l'article 63 de la présente loi, d'une copie conforme de la demande de certificat d'obtention végétale.

Si la requête est présentée par le concessionnaire d'un droit exclusif d'exploitation ou par le titulaire d'une licence obligatoire ou d'office visée aux articles 21, 26 ou 28 de la présente loi, le requérant doit justifier de l'inaction du propriétaire du certificat d'obtention végétale après une mise en demeure l'invitant à exercer l'action.

**Article 66:** Lorsque la saisie est ordonnée, le juge peut exiger du requérant un cautionnement qui doit être consigné avant qu'il soit procédé à la saisie. A peine de nullité et de dommages-intérêts contre l'agent du greffe ou l'huissier de justice, celui-ci doit, avant de procéder à la saisie, donner aux détenteurs de plantes, parties de plantes ou éléments de reproduction ou de multiplication végétative de la variété considérée, copie de l'ordonnance et, le cas échéant, de l'acte constatant le dépôt du cautionnement. Copie doit être laissée aux mêmes détenteurs du procès-verbal de saisie.

**Article 67:** Le tribunal peut, sur la demande de la partie lésée et autant que la mesure s'avère nécessaire pour assurer l'interdiction de continuer la contrefaçon, prononcer au profit de celle-ci afin de lui transférer la propriété, la confiscation de végétaux ou parties de végétaux, des éléments de reproduction ou de multiplication végétative obtenus en violation des droits du titulaire d'un certificat d'obtention et, le cas échéant, celle des instruments spécialement destinés au cycle de reproduction.

Il sera tenu compte de la valeur des objets confisqués dans le calcul de l'indemnité allouée au bénéficiaire de la condamnation.

**Article 68:** Les actions civiles et pénales prévues par le présent chapitre se prescrivent par trois ans à compter des faits qui en sont la cause.

L'action civile introduite suspend la prescription de l'action pénale.

**Article 69:** Lorsqu'une variété objet d'une demande de certificat ou d'un certificat d'obtention végétale est exploitée pour les besoins de la défense nationale par l'Etat ou ses fournisseurs, sous-traitants et titulaires de sous-commandes, sans qu'une licence d'exploitation leur ait été octroyée, la juridiction saisie ne peut ordonner ni

la cessation ou l'interruption de l'exploitation, ni la confiscation prévue à l'article 67 ci-dessus.

Si une expertise ou une description, avec ou sans saisie est ordonnée par le président de la juridiction saisie, il doit être sursis à l'expertise ou la description ou la saisie et à toute recherche dans l'entreprise si le contrat d'études ou de reproduction ou de multiplication comporte une classification de sécurité de défense.

Il en est de même si les études, la reproduction, la multiplication sont effectuées dans un établissement des armées.

Le président de la juridiction saisie peut, s'il en est requis par l'ayant droit, ordonner une expertise qui ne peut être effectuée que par les personnes agréées par l'autorité gouvernementale chargée de la défense nationale et devant ses représentants.

Une telle exploitation fait encourir de plein droit à ses auteurs la responsabilité définie au présent article.

**Article 70:** Lorsque le tribunal est saisi d'une action de contrefaçon, son président, saisi et statuant en la forme des référés, peut interdire, à titre provisoire, sous astreinte, la poursuite des actes argués de contrefaçon, ou subordonner cette poursuite à la constitution de garanties destinées à assurer l'indemnisation du titulaire du certificat d'obtention végétale ou du bénéficiaire d'un droit exclusif d'exploitation.

La demande d'interdiction ou de constitution de garanties n'est admise que si l'action au fond apparaît sérieuse et a été engagée dans un bref délai à compter du jour où le titulaire du certificat ou le bénéficiaire d'un droit exclusif d'exploitation a eu connaissance des faits sur lesquels elle est fondée. Le juge peut subordonner l'interdiction à la constitution par le demandeur de garanties destinées à assurer l'indemnisation éventuelle du préjudice subi par le défendeur si l'action en contrefaçon est ultérieurement jugée non fondée.

**Article 71:** Les secrets de production ou d'affaires des parties intéressées seront sauvegardés.

Il ne sera donné connaissance à la partie adverse des moyens de preuve propres à révéler de tels secrets que dans la mesure compatible avec leur sauvegarde.

**Article 72:** En matière civile, les litiges intervenus entre les parties à l'occasion de l'application de la présente loi relève de la compétence des tribunaux de première instance situés dans le chef-lieu de la circonscription des cours d'appel.

Les tribunaux de première instance compétents et le



ressort dans lequel ces juridictions exercent les attributions qui leur sont ainsi dévolues, sont fixés par voie réglementaire.

**Article 73:** Sans préjudice, les cas échéant, de l'application de peines prévues par des législations spéciales, notamment celle relative à la répression des fraudes, toute atteinte portée sciemment aux droits du titulaire d'un certificat d'obtention végétale, tels qu'ils sont définis à l'article 16 de la présente loi est punie d'une amende de 3.000 à 30.000 DH.

Le tribunal peut prononcer en outre la destruction du produit et/ou du matériel de multiplication ou de reproduction litigieux.

En cas de récidive, un emprisonnement de 2 mois à 1 an peut, en outre, être prononcé. Il y a récidive, au sens du présent article, lorsqu'il a été rendu contre le prévenu dans les 5 années antérieures une condamnation devenue irrévocable pour une infraction de qualification identique.

**Article 74:** L'action publique pour l'application des peines prévues à l'article 73 ci-dessus ne peut être exercée par le ministère public que sur plainte de la partie lésée.

Le tribunal saisi ne peut statuer qu'après que la juridiction civile ait constaté la réalité du dommage par une décision passée en force de chose jugée. Les exceptions tirées par le défenseur de nullité du certificat d'obtention ou des questions relatives à la propriété dudit certificat ne peuvent être soulevées que devant la juridiction civile.

**Article 75:** Quiconque se prévaut indûment de la qualité de propriétaire d'un certificat ou d'une demande de certificat d'obtention végétale est puni d'une amende de 3.000 à 30.000 DH.

**[PAGE 533 MISSING FROM ORIGINAL TEXT]**

L'objet d'un examen destiné à vérifier leur efficacité et leur innocuité à l'égard de l'homme, des animaux et de leur environnement compte tenu d'une destination donnée. Cette vérification peut, notamment, être effectuée par un contrôle de leur comportement physique, chimique, biologique ou toxicologique, éventuellement complété par des essais biologiques effectués par les laboratoires et services compétents.

Les homologations sont accordées pour une durée de dix ans. A l'expiration de ce délai, elles peuvent être renouvelées, après réexamen, pour une même durée et ce à la demande des requérants.

**Article 4:** Des autorisations de vente peuvent être délivrées par l'administration pour les produits en instance d'homologation. Elles cessent d'avoir effet à l'expiration d'un délai de quatre ans. Toutefois, ce délai peut, avant son expi-

ration, être prorogé pour une durée maximale de deux ans.

Elles ne peuvent être accordées qu'aux produits importés de pays dans lesquels lesdits produits ont été autorisés à être mis en vente après avoir subi des examens de même nature que ceux exigés par la législation et la réglementation marocaine pour leur homologation.

Lorsqu'un produit bénéficiant d'une autorisation de vente fait l'objet d'une décision de refus d'homologation en raison de son inefficacité, de sa phytotoxicité ou de sa toxicité vis-à-vis de l'homme, des animaux et de leur environnement, doivent cesser à compter de la date de notification de ladite décision, l'importation, la fabrication, la détention en vue de la vente, la mise en vente ou la distribution même à titre gratuit de ce produit.

Sont dispensés d'homologation les produits industriels simples, tels que le sulfate de cuivre, l'acide sulfurique, la chaux vive, le formol, le chlorate de sodium.

**Article 5:** Lorsqu'à la suite d'un fait nouveau ou en raison de son utilisation ou, éventuellement, après un nouvel examen, un produit ne satisfait plus aux conditions d'efficacité et d'innocuité à l'égard de l'homme, des animaux ou de leur environnement, l'homologation ou l'autorisation de vente est retirée.

Les décisions de retrait ou de suppression prévues au premier alinéa du présent article doivent être motivées.

**Article 6:** Les emballages, fûts ou récipients ayant servi à contenir des produits pesticides usage agricole ne doivent en aucun cas être employés à recevoir des produits destinés à l'alimentation de l'homme ou des animaux. L'élimination de ces emballages, fûts ou récipients doit être faite dans les conditions requises pour éviter tout risque pour l'homme, les animaux et l'environnement et indiquées dans la décision administrative d'homologation ou d'autorisation de vente.

**Article 7:** Les emballages ou étiquettes des produits définis à l'article premier, dont la vente est autorisée, doivent porter de façon apparente les prescriptions prévues par le dahir du 12 rabii II 1341 (2 décembre 1922) portant règlement sur l'importation, le commerce, la détention et l'usage des substances vénéneuses, notamment ses articles 4 et 36 ainsi que celles prescrites par les textes pris en application de la présente loi notamment celles concernant les doses et les modes d'emploi, les contre-indications et éventuellement les antidotes doivent également y être indiqués.

**Article 8:** Toute modification dans la composition ou les caractéristiques physiques, chimiques ou biologiques d'un produit homologué ou autorisé en application des dispositions de la présente loi doit faire l'objet d'une nouvelle demande d'homologation préalablement à toute



importation, mise en vente ou distribution même à titre gratuit.

**Article 9:** L'homologation ou l'autorisation de vente peut limiter les usages des pesticides visés à l'article premier ci-dessus pour prévenir les inconvénients éventuels, directs ou indirects de ces usages vis-à-vis de l'homme, des animaux et de leur environnement.

**Article 10:** La vente, le stockage ou l'entreposage des pesticides à usage agricole, qu'ils soient formulés ou fabriqués localement ou qu'ils soient importés, sont interdits dans tout local servant au stockage, au commerce ou à la manipulation de produits destinés à l'alimentation de l'homme ou des animaux.

Les locaux où s'exerce le commerce des produits pesticides à usage agricole ou qui servent d'entrepôt à ces produits doivent répondre aux conditions de salubrité déterminées par voie réglementaire.

**Article 11:** Il est interdit de détenir en vue de la vente, de mettre en vente, de vendre, de livrer, d'expédier ou de distribuer même à titre gratuit les pesticides à usage agricole, soit formulés ou fabriqués localement, soit importés autrement que renfermés dans leurs emballages d'origine qui doivent être hermétiques, étanches et résistants.

**Article 12:** Toute publicité commerciale pour les pesticides à usage agricole n'ayant pas fait l'objet d'une homologation ou d'une autorisation de vente ou d'une dispense d'homologation est interdite.

Est également interdite toute publicité relative à des pesticides à usage agricole dans laquelle il sera fait état de possibilités ou de conditions d'emploi non prévues soit dans les décisions d'homologation ou les autorisations de vente, ou de dispenses d'homologation, soit dans les textes pris pour l'application de la présente loi.

## TITRE II

### DE L'EXERCICE DES ACTIVITÉS D'IMPORTATION, DE FABRICATION ET DE COMMERCE DES PESTICIDES À USAGE AGRICOLE

**Article 13:** L'exercice des activités de fabrication, d'importation, de vente, de mise en vente ou de distribution même à titre gratuit des produits pesticides à usage agricole mentionnés dans l'article premier, est subordonné à un agrément délivré par l'administration.

**Article 14:** Les personnes physiques ou morales désirant exercer les activités citées à l'article 13 doivent remplir les conditions suivantes:

- les personnes physiques doivent être titulaires de l'un des diplômes visés ci-dessous;
- les personnes morales doivent justifier de l'emploi effectif de personnes titulaires de l'un desdits diplômes et exerçant des responsabilités au sein de l'entreprise en fonction de la nature de son activité.

Les diplômes visés ci-dessus sont les suivants:

- (a) diplôme d'ingénieur chimiste ou un diplôme reconnu équivalent, en ce qui concerne la fabrication des pesticides à usage agricole;
  - (b) diplôme d'ingénieur agronome délivré par l'institut agronomique et vétérinaire Hassan II ou par l'Ecole nationale d'agriculture de Meknès ou un diplôme reconnu équivalent, en ce qui concerne l'importation et la distribution en gros et semi-gros des pesticides à usage agricole;
  - (c) diplôme d'ingénieur d'application en phytologie, horticulture ou en agriculture, diplôme de technicien agricole en phytologie, horticulture ou en agriculture assorti d'une formation et d'un examen de qualification dont les conditions d'organisation sont fixées par l'administration ou l'un des diplômes prévus au (b) ci-dessus, en ce qui concerne le commerce au détail d'un ou plusieurs produits pesticides à usage agricole.
- les locaux servant à la fabrication, au stockage, à la vente ou à la mise en vente ou à la distribution même à titre gratuit des pesticides cités à l'article premier, doivent satisfaire aux conditions de sécurité et de salubrité prévues par la législation et la réglementation en vigueur.

**Article 15:** L'administration peut procéder à la suspension ou au retrait de l'agrément lorsque les conditions nécessaires à la délivrance de celui-ci ne sont plus réunies.

## TITRE III

### DISPOSITIONS PÉNALES

**Article 16:** Toute importation, fabrication, détention en vue de la vente, mise en vente ou distribution même à titre gratuit des produits pesticides à usage agricole, non homologués, non autorisés ou non dispensés

d'homologation est punie d'une amende de 10.000 à 30.000 dirhams.

**Article 17:** Sont punis d'une amende de 5.000 à 30.000 dirhams ceux qui auront commis une infraction aux dispositions du 3<sup>e</sup> alinéa de l'article 4 ou des articles 5, 8 et 22 de la présente loi.

**Article 18:** Sont punis d'une amende de 5.000 à 20.000 dirhams ceux qui contreviennent aux dispositions des articles 7 et 12 ci-dessus.

**Article 19:** Sans préjudice de sanctions plus graves édictées par le code pénal ou par les législations spéciales notamment en matière de répression des fraudes et des substances vénéneuses, est punie d'un emprisonnement d'un mois à un an et d'une amende de 1.200 à 30.000 dirhams ou de l'un de ces deux peines seulement:

1. Toute personne qui emploie les emballages fûts ou récipients ayant servi à des produits pesticides pour recevoir des produits destinés à l'alimentation de l'homme ou des animaux;
2. Toute personne qui, contraire aux dispositions du 1<sup>er</sup> alinéa de l'article 10, vend, stocke ou entrepose des pesticides à usage agricole dans des locaux servant au commerce, au stockage ou à la manipulation de produits destinés à l'alimentation de l'homme ou des animaux.

**Article 20:** Quiconque procède à la fabrication, à l'importation, à la vente, à la mise en vente, à la distribution même à titre gratuit des produits pesticides à usage agricole mentionnés à l'article premier, sans disposer de l'agrément prévu à l'article 13 de la présente loi, est puni de l'emprisonnement de 3 mois à 2 ans et d'une amende de 10.000 à 40.000 dirhams ou de l'une de ces deux peines seulement.

**Article 21:** En cas de récidive pour infraction de qualification identique dans un délai de douze mois qui suit la date à laquelle la première décision de condamnation est devenue irrévocable, l'emprisonnement ou les amendes prévus aux articles 16 à 20 ci-dessus sont portés au double.

**Article 22:** Sont qualifiés, pour procéder à la recherche et à la constatation des infractions à la présente loi et aux textes pris pour son application, les agents habilités de la répression des fraudes et de la protection des végétaux, selon la procédure prévue par la loi NO. 13-83 relative à la répression des fraudes sur les marchandises, promulguée par le dahir No.1-83-108 du 9 moharrem 1405 (5 octobre 1984.)

## Titre IV

### Dispositions transitoires

**Article 23:** Les personnes physiques ou morales exerçant les activités de fabrication, d'importation, de vente, de mise en vente ou de distribution, même à titre gratuit, de pesticides à usage agricole sont tenues de se conformer aux prescriptions de la présente loi, dans les délais ci-après.

- en ce qui concerne l'étiquetage (article 7), ce délai est d'un an à partir de la date de publication de la présente loi;
- en ce qui concerne les emballages (article 7), ce délai est de deux ans à partir de la date de publication de la présente loi;
- en ce qui concerne l'homologation des produits pesticides bénéficiant d'une homologation datant de plus de dix ans à la date d'entrée en vigueur de la présente loi, ce délai est de trois ans à partir de la date de publication de la présente loi.

Les personnes physiques ou morales exerçant à la date de publication de la présente loi les activités visées à l'alinéa précédent disposent d'un délai de trois ans, courant à partir de ladite date de publication, pour se conformer aux dispositions du titre II de la présente loi.



## NIGERIA

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### Federal Environmental Protection Agency Act (Cap 131 LFN) National Environmental Protection (Effluent Limitation) Regulations 1991

*Commencement : 15th August 1991*

In exercise of the powers conferred upon me by section 37 of the Federal Environmental Protection Agency Act and of all other powers enabling me in that behalf, I, Major-General Mamman Tsofo Kontagora (rtd), hereby make the following Regulations:-

#### **Installation of anti-pollution equipment**

1.-(1) Every industry shall install anti-pollution equipment for the detoxification of effluent and chemical discharges emanating from the industry.

(2) An installation made pursuant to paragraph (1) of this regulation shall be based on the Best Available Technology (BAT), the Best Practical Technology (BPT) or the Uniform Effluent Standards (UES).

2.-(1) The selected waste water parameters for the industries specified in column 1 of Schedule 1 to these Regulations are set out in columns 2 and 3 respectively of the Schedule.

(2) The parameters shall continuously monitored to ensure compliance with these Regulations.

#### **Treatment of effluent**

3.-(1) An industry which discharges effluent shall treat the effluent to a uniform level as specified in Schedule 2 to these Regulations to ensure assimilation by the receiving water into which the effluent is discharged.

(2) The nearest office of the Federal Environmental Protection Agency shall be furnished from time to time with the composition of any effluent treated as specified in paragraph (1) of this regulation.

#### **Additional sectoral effluent limitation treatment.**

4. An industry specified in column 1 of Schedule 3 to these Regulations shall be subject to the additional sectoral effluent limitations set out in columns 2 and 3 respectively of the Schedule.

#### **Penalty**

5. A person who contravenes a provision of these Regulations is guilty of an offence and liable on conviction to the penalty specified in section 35 or 36 of the Federal Environmental Protection Agency Act.

#### **Citation.**

6. These Regulations may be cited as National Environmental (Effluent Limitation) Regulations 1991.

SCHEDULES

SCHEDULE 1 Regulation 2

IMPORTANT WASTE WATER PARAMETERS FOR SELECTED INDUSTRIAL CLASSIFICATIONS

<i>Column 1 Industry</i>	<i>Column 2 *Group I</i>	<i>Column 3 *Group II</i>
(A) Aluminium Industry	Suspended Solids, Free Chlorine Fluoride, Phosphorus, Oil and Grease, pH.	Total Dissolved Solids, Phenol, Aluminium.
(B) Automobile Industry	Suspended Solids, Oil and Grease, BOD <sub>5</sub> , Chromium, Phosphorus, Cyanide, Copper, Nickel, Iron, Zinc and Phenol	COD, Chlorides, Nitrate, Ammonia, Sulphates, Tin, Lead, Cadmium, Total Dissolved Solids.
(C) Cane Sugar Processing Industry	BOD <sub>5</sub> , pH, Suspended Solids, Settleable Solids, Total Coliform, Oil and Grease, Toxic Materials	Alkalinity, Nitrogen, Total, Temperature, Total Dissolved Solids, Colour, Turbidity, Foam.
(C) Canned and Preserved Fruits and Vegetables Industry	BOD <sub>5</sub> , COD, pH	Colour, Faecal Coliforms, Phosphorus, Total Suspended Solids, Temperature, Total Dissolved Solids, Total Inorganic Carbon.
(E) Confined Livestock Feeding Industry	BOD <sub>5</sub> , COD .. ..	Faecal Coliforms, Nitrogen, Total Solids, Phosphate, pH, TOC.
(F) Beverage Industry	BOD <sub>5</sub> , pH, Suspended Solids, Settleable solids, Total coliform, Oil and Grease, Toxic Materials	Nitrogen, Phosphorus, Temperature, Total Dissolved Solids, Colour, Turbidity, Foam.
(G) Dairy Industry	BOD <sub>5</sub> , COD, pH, Suspended Solids	Chlorides, Colour, Nitrogen, Phosphorus, Temperature, Total Organic Carbon, Toxicity, Turbidity.
(H) Fertilizer Industry: Nitrogen Fertilizer industry	Ammonia, Chloride, Chromium, Total Dissolved Solids, Nitrate, Sulphate, Suspended Solids, Urea and other Organic Nitrogen Compounds, Zinc	Calcium, COD, Gas purification Chemicals, Iron, Total Oil and Greases, pH, Phosphate, Sodium, Temperature.
(I) Phosphate Fertilizer Industry	Calcium, Dissolved Solids Fluoride, pH, Phosphorus, Suspended Solids, Temperature	Acidity, Aluminium, Arsenic, Iron, Mercury, Nitrogen, Sulphate, Uranium.



<i>Column 1</i> <i>Industry</i>	<i>Column 2</i> <i>*Group I</i>	<i>Column 3</i> <i>*Group II</i>
(I) Flat Glass, Cement Lime, Gypsum and Asbestos Industries,	COD, pH, Phosphorus, Sulphate, Suspended Solids, Temperature.	BOD <sub>5</sub> , Chromates, Zinc, Copper, Chromium, Iron, Tin, Silver Nitrate, Organic and Inorganic Water Breaking Chemicals, Synthetic Resins, Total Dissolved Solids.
Cement, Concrete Lime and Gypsum	COD, pH, Suspended Solids, Temperature	Alkalinity, Chromates, Zinc, Sulphite, Total Dissolved, Solids.
Asbestos ..	COD, pH, TOC, Suspended	Chromates, Phosphates, Solids Zinc, Sulphite, Total Dissolved Solids.
(J) Grain Milling Industry	BOD <sub>5</sub> , Suspended Solids, Temperature	COD, pH, TOC, Total Dissolved Solids.
(K) Inorganic Chemicals Alkaline and Chlorine Industry	Acidity/Alkalinity, Total Solids, Total Suspended Solids, Chlorides, Sulphates	BOD <sub>5</sub> , COD, TOC, Chlo- rinated Benzeniods, Polynuclear Aromatics, Phenols, Fluorides, Silicates, Total Phosphorus, Cyanide, Mercury, Chromium, Lead, Titanium, Iron, Aluminium, Boron, Arsenic, Temperature.
(L) Leather Tanning and Finishing Industry	BOD <sub>5</sub> , COD, Chromium, Oil Grease, pH, Suspended Solids, Total Solids	Alkalinity, Colour, Hardness, Nitrogen, Sodium, Chloride, Temperature Toxicity.
(M) Meat Product Industry	BOD <sub>5</sub> , Ph, Suspended Solids, Settleable Solids, Oil and Grease, Total Coliform, Toxic Materials	Ammonia, Turbidity, Total Dissolved Solids, Phosphates, Colour.
(N) Metal Finishing	COD, Oil and Grease, Heavy Metals, Suspended Solids, Cyanide.	None Specified.
(O) Organic Chemicals Industry	BOD <sub>5</sub> , COD, pH, Total Suspended Solids, Free-Floating Oil	TOC, Organic Chloride, Total Phosphorus, Heavy Metals, Phenols, Cyanides, Total nitrogen, Other Pollutants.
(P) Petroleum Refining Industry	Ammonia, BOD <sub>5</sub> , Chromium, COD, Oil, pH, Phenols, Sulphides, Suspended Solids,	Chloride, Colour, Copper, Cyanide, Lead, Mercaptans,

Column 1 Industry	Column 2 *Group I	Column 3 *Group II
	Temperature, Total Dissolved Solids	Nitrogen, Odour, Total Phosphorus, Sulphate, TOC, Toxicity, Turbidity, Volatile Suspended Solids, Zinc.
(Q) Plastic Materials and Synthetics Industry	BOD <sub>5</sub> , COD, pH, Total Suspended Solids, Oil and Grease, Phenols	Total Dissolved Solids, Sulphates, Phosphorus, Nitrate, Organic Nitrogen, Ammonia, Cyanides, Toxic Additives and Materials, Chlorinated Benzenoids and Polynuclear Aromatics, Zinc, Mercaptans.
(R) Pulp and Paper Industry	BOD <sub>5</sub> , COD, TOC, pH, Total Suspended Solids, Coliform, Faecal Coliform, Colour, Heavy Metals, Toxic Materials, Turbidity Ammonia, Oil and Grease Phenols, Sulphide	Nutrients (Nitrogen and Phosphorus), Total Dissolved Solids
(S) Steam Generation and steam Electric Power Generation	BOD <sub>5</sub> , Chlorine, Chromate Oil, pH, Phosphate, Suspended Solids, Temperature.	Boron, Copper, Iron Non-degradable Organics, Total Dissolved Solids, Zinc.
(T) Steel Industry	Oil and Grease, pH, Chloride, Sulphates, Ammonia, Cyanides, Phenols, Suspended Solids, Iron, Tin, Temperature, Chromium, Zinc	None specified.
(U) Textile Mill Products Industry	BOD <sub>5</sub> , COD, pH, Suspended Solids, Chromium, Phenolics, Sulphide, Alkalinity Toxic Materials.	Heavy metals, Colour, Oil and Grease, Total Dissolved Solids, Sulphides, Temperature,

\*Group I: Most significant parameters for which effluent limit will most often be set.

\*Group II: Additional parameters.



**SCHEDULE 2 Regulation 3**  
**EFFLUENT LIMITATION GUIDELINES IN NIGERIA FOR ALL CATEGORIES**  
**OF INDUSTRIES**

Units in milligram per litre  
(mg/l) unless otherwise stated.

<i>Parameters</i>	<i>Limit for discharge into surface water</i>	<i>Limit for Land application</i>
Temperature	Less than 40°C within 15	Less than 40°C
meter of outfall		
Colour (Lovibond Units)	7	-
pH	6-9	6-9
BOD <sup>5</sup> AT 20°C	30(30)	50(50)
Total suspended solids	30	-
Total dissolved solids	2,000	2,000
Chloride (as Cl)	600	600
Sulphate (as SO <sub>4</sub> <sup>2-</sup> )	500	1,000
Sulphide (as S <sup>2-</sup> )	0.2	-
cyanide (as CN <sup>-</sup> )	0.1	-
Detergents (Linear alkylate sulphonate as methylene blue active substance)	15	15
Oil and grease	10	20(20)
Nitrate (as NO <sub>3</sub> )	20	-
Phosphate (as PO <sub>4</sub> <sup>3-</sup> )	5	10
Arsenic (as AS)	0.1	-
Barium (as Ba)	5	5
Tin (as Sn)	10	10
Iron (as Fe)	20	-
Manganese (as Mn)	5	-
Phenolic compounds (as phenol)	0.2	-
Chlorine (free)	1.0	-
Cadmium, Cd	Less than 1	-
Chromium (trivalent and hexavalent)	Less than 1	-
Copper	Less than 1	-
Lead	Less than 1	-
Mercury	0.05	-
Nickel	Less than 1	-
Selenium	Less than 1	-
Silver	0.1	-
Zinc	Less than 1	-
Total metals	3	-
Calcium (as Ca <sup>2+</sup> )	200	-
Magnesium (as Mg <sup>2+</sup> )	200	-
Boron (as B)	5	5
Alkyl mercury compounds	Not detectable	Not detectable
Polychlorinated Biphenyl (PCBs)	0.003	0.003
Pesticides (Total)	Less than 0.01	Less than 0.01
Alpha emitters, uc/ml	10 <sup>-7</sup>	-
Beta emitters, uc/ml	10 <sup>-6</sup>	-
Coliform (daily average)	400 MPN/100ml	500 MPN/100ml
Suspended fibre	-	-

SCHEDULE 3 Regulation 4

NATIONAL EFFLUENT LIMITATIONS AND GASEOUS EMISSIONS GUIDELINES IN NIGERIA FOR SPECIFIC INDUSTRIES

<i>Industry</i>	<i>Problems</i>	<i>Guidelines for Concentration</i>	<i>Maximum allowed for discharge into inland waters</i>
Agricultural Chemicals (Waste Water)	Phosphate Fertilizer	<b>Effluent mg/1</b>	
	Gypsum sludge, Acid waste water	Suspended solids	15
	High fluoride, High phosphate	Phosphate (PO <sub>4</sub> <sup>3-</sup> )	3
		Fluorides (F <sup>-</sup> )	1
		pH	8-9
	<i>Nitrogenous Fertilizer</i>		
	Similar problem	Free Ammonia (as NH <sub>4</sub> <sup>+</sup> )	0.1
		Arsenic (as As)	0.1
		Ph	6-9
		NO <sub>3</sub>	20
	<i>Urea Fertilizer</i>		
	Similar problem	Ammonia (as N)	0.6
		Ph	6-9
	<i>Pesticides</i>	Total Pesticides	0.1
		Less than Emission (mg/m <sup>3</sup> )	
(Gaseous Emission)	Particulate matter from blending and mixing	Particulate	100
	Fluorides	Fluoride	9.0
	Ammonia vapours	Ammonia	3,600
	Pesticide vapours	Total Pesticides	100
	(Solid Wastes) fertilizer manufacture	High volume gypsum from	
		<i>Effluent (mg/l)</i>	
Automotive Battery (Waste Water)	Total suspended	solids (TSS).....	28
	Acid Waste Water	Oil and grease	10
		pH	6-9
		Iron	0.20
		Cadmium	0.01
		Nickel	0.05
		Copper	0.06
		Lead	0.01
		Cobalt	0.5
		Arsenic	0.1
(Gaseous Emission) (Solid Wastes)	Lead particulate		
	Defective battery casing		
	Defective lead plates		



<i>Industry</i>	<i>Problems</i>	<i>Guidelines for Concentration</i>	<i>Maximum allowed for discharge into inland waters</i>
		<i>Effluent (mg/l)</i>	
Brewery	Alkaline effluent High suspended solids	Suspended solids BOD <sub>5</sub>	15 30
(Waste Water)	High BOD High COD	pH COD	6-9 80
(Solid Wastes)	Spent grain Defective packaging materials and labels Broken bottles		
		<i>Effluent (mg/l)</i>	
Dyestuffs and Dye Intermediates	Coloured effluent High suspended solids	Suspended solids	5.0
(Waste Water)	High BOD High COD	Zinc (as Zn) BOD <sub>5</sub> Oil and grease	3.0 15 15
(Gaseous Emmission Solid Wastes)	Organic vapour Sludge		
<i>Food Processing</i>		<i>Effluent (mg/l)</i>	
	High BOD <sub>5</sub> Oil and grease	BOD <sub>5</sub> Oil and grease Suspended solids	15 15 15
(Waste Water)	High suspended solids Particulate matter from grain elevators, starch manufacturing, feed and flour mills.	<i>Emmission (mg/m<sup>3</sup>)</i> Particulate	100
(Gaseous Emmission)	Odours from meat packing, fish processing, coffee roasting, starch manufacturing and rendering some solid wastes.		
(Solid Wastes)		<i>Effluent (mg/l)</i>	
Inorganic Chemicals	Acid waste waters from acid plants Gypsum sludge from soda ash plants Chlorides form soda ash Plant and electrolytic chlorine plant, mercury	Suspended solids Chlorides Sulphates pH	15 100 100 6-9

<i>Industry</i>	<i>Problems</i>	<i>Guidelines for Concentration</i>	<i>Maximum allowed for discharge into inland waters</i>
	from electrolytic chlorine plants		
		<i>Emission (ug/m<sup>3</sup>)</i>	
	Particulate matter from cement, soda ash and brick plants	Particulates	100
	Fluorides	Acetic acid	2,500
(Gaseous Emission)	Acid mist	Fluorides	100
	SO <sub>2</sub>	Hydrochloric acid	100
	Chlorine (as Cl <sub>2</sub> )	Nitric acid	100
	NO <sub>x</sub> from acid plants	Hydrogen sulphide	30
		SO <sub>2</sub>	830
		NO <sub>x</sub>	500
(Solid Wastes)	Sludges	<i>Effluent (mg/l)</i>	
Iron and Steel (Waste Water)	High suspended solids	ph	55-9.0
	High phenols	Suspended solids	15
	High ammonia	Ether solubles	10
	High cyanides	Phenol	0.020
	Spent pickle liquors	NH <sub>3</sub> as N	10
	Rolling mill oils	Cyanide (CN)	0.1
		Oil and grease	15
		Fe less than	1.0
			<i>Emission (ug/m<sup>3</sup>)</i>
	Suspended particulate	Particulate	100
	Sulphur dioxide from boilers, sinter plant, coke ovens and blast furnace	SO <sub>x</sub>	830
(Gaseous Emission)	Furnace	NO <sub>x</sub>	500
(Solid Wastes)	Flue dust		
	Slag Sludges		
Metal Working Plating and Finishing (Waste Water)	<i>Effluent (mg/l)</i>		
	Acids	Hg	0.01
	Cyanides	Cu	1.0
	Toxic metals	Ni	1.0
	Cutting and machine oils	Cr	1.0
		Zn	1.0
		Pb	0.01
		Cd	0.01
		Sn	1.0
		TSS	15.0
		pH	5.5-9.5



<i>Industry</i>	<i>Problems</i>	<i>Guidelines for Concentration</i>	<i>Maximum allowed for discharge into inland waters</i>
			<i>Emission (ug/m<sup>3</sup>)</i>
(Gaseous Emission)	Acid mist Alkaline mist Cyanides, fumes from anodizing, rust-proofing, cleaning, stripping, etc. operations.	Chromic acid Cyanide Hydrogen chloride Fluorides Nitric acid Phosphoric acid Sulphuric acid	30 1,150 100 806 100 100 100
(Solid wastes)	Sludges containing metals		
Mining and Metallurgy (Waste Water)	High volume of suspended solids from milling of ores (tailings) Acid wastes Dissolved metals from high Sulphide ores processing Radioactive effluent from Uranium mining tailings disposal Airborne dust crushing grinding, etc. generation of arsine acid fumes, ammonia vapour radon gas and radioactivity during uranium	Suspended solids pH Cu less than Zn less than Ni less than Pb less than R <sub>a</sub> <sup>266</sup> Particulate Silica SO <sub>2</sub> Ni Fe Cu	<i>Effluent (mg/l)</i> 15 5.5-9.0 1 1 1 1 226 3pCiL 100 15 830 5 10 100
(Gaseous Emission)	Milling operations and dust during yellow cake handling SO <sub>2</sub> generation from smelting operation	Arsine H <sub>2</sub> SO <sub>4</sub> HNO <sub>3</sub>	10 100 100
(Solid Wastes)	Generation of waste rock and mine/mill waste		
			<i>Effluent (mg/l)</i>
Petroleum Refinery (Waste Water)	High waste volumes containing phenolics sulphides oil and oil products (waste water)	Temperature (°C) pH Oil and grease Phenol (Total) Ammonia as NH <sub>4</sub> <sup>+</sup> Sulphide (as H <sub>2</sub> S) Total suspended solids BOD5 COD Total chromium Chromium (VI) less	30 6.5-8.5 10 0.5 0.20 0.20 30 10 40 0.3

<i>Industry</i>	<i>Problems</i>	<i>Guidelines for Concentration</i>	<i>Maximum allowed for discharge into inland waters</i>
		than	0.01
	Lead as pb <sup>2+</sup>	0.05	
	Cadmium less than	0.01	
	Cyanide less than	0.01	
			<i>Emission (ug/m<sup>3</sup>)</i>
(Gaseous Emission)	Particulates	Particulate	500
	Sulphur dioxide (SO <sub>2</sub> )	SO <sub>2</sub>	830
	NO <sub>x</sub>	NO <sub>x</sub>	500
	H <sub>2</sub> S-vapours	CO	5,000
	NH <sub>3</sub>	H <sub>2</sub> S	30
	Hydrocarbon vapours	Hydrocarbon	5,000
		Volatile Organic Carbon (VOC)	6,000
(Solid Wastes)	Oily chemical sludges, spent catalyst, discarded packaging materials.		
Petrochemicals			<i>Effluent (mg/l)</i>
(Waste Water)	High volume waste matter	Temperature °C)	30
	Storm water	pH	6.5-8.5
	Cooling water	oil and grease	10
		Phenol	0.5
		Ammonia (NH <sub>4</sub> <sup>+</sup> )	0.2
		Sulphide as H <sub>2</sub> S	0.2
		Total suspended solids	30
		BOD <sub>5</sub>	10
		COD	40
		Lead as Pb <sup>2+</sup>	0.05
		Chromium (VI)	<0.1
		Cadmium as Cd <sup>2+</sup>	<0.1
			<i>Emission (ug/m<sup>3</sup>)</i>
(Gaseous Emission)	Particulate	<b>Particulate</b>	500
	Carbon black dusts	Hydrocarbon	5,000
	SO <sub>x</sub>	Volatile organic	
	carbon	(VOC)	6,000
	NO <sub>x</sub>	Benzene	1,500
	CO	xylene	2,300
(Solid Wastes)	Hydrocarbons (HC)	Toluene	2,000
	Benzene		
	Xylene		
	Oily chemical sludges		
	Off speck products (carbon black: polypropylene chunks)		



<i>Industry</i>	<i>Problems</i>	<i>Guidelines for Concentration</i>	<i>Maximum allowed for discharge into inland waters</i>
	Spent catalyst Discarded packaging Material.		
Petroleum Exploration and Production Industry			<i>Effluent (mg/l)</i>
(Waste Water)	Produced formation Water Oily waste waters Drilling fluids solids Accidental spill of oil	Temperature (°C) pH Oil and grease Total suspended BOD <sub>5</sub> COD Lead as Pb <sup>2+</sup> Cr (VI) less than Zinc as Zn <sup>2+</sup> Copper as Cu <sup>2+</sup> Cadmium as Cd <sup>2+</sup>	35 6.5-8.5 10 30 10 40 0.05 0.1 1.0 1.5 <0.5
			<i>Emmission (mg/l)</i>
(Gaseous Emission) (Solid Wastes)	Hydrocarbon vapours drilling mud, drilling cuttings, produced sand, domestic wastes, oily sludges	Hydrocarbon	5,000
Pharmaceuticals (Waste Water)	None specified	BOD <sub>5</sub> Total suspended solids pH	30 25 6-9
Plastic and Synthetics			
(Waste Water)	High BOD High COD containing mercury, plasticiser and PCBs	BOD <sub>5</sub> Total suspended solids (TSS) COD Phenolics less than Zinc less than Oils and grease  Fluoride (F-) less than Copper (Cu <sup>2+</sup> ) less than	10 30 40 0.50 0.1.0 100  1.0 0.0
(Gaseous Emission)	Volatile organic Hydrocarbons		

<i>Industry</i>	<i>Problems</i>	<i>Guidelines for Concentration</i>	<i>Maximum allowed for discharge into inland waters</i>
(Solid Wastes)	Waste plastic products		<i>Effluent (mg/l)</i>
Pulp and Paper	High waste volumes containing: suspended bark and fibre from debarking and paper operations; fibres, spent liquors; wash waters from bleaching process; taste and odour producing wastes	BOD <sub>5</sub> COD Suspended Solids Bleaching agent should not be detectable, Settleable matter	15 100 30 3.0
(Waste Water)			<i>Emission (ug/m<sup>3</sup>)</i>
(Gaseous Emission)	Particulates, Sulphur dioxide,  NO <sub>x</sub> from power boilers  Calcium oxide Calcium sulphate particulate from lime kilns, Foul gases from digester blow tanks, Particulate and sulphur compounds from recovery boilers.	Particulate Hydrogen sulphide (H <sub>2</sub> S) Sulphur dioxide (SO <sub>2</sub> ) Nitrogen oxides (NO <sub>x</sub> )	100 100 830 500
(Solid Wastes)	High volume of bark sawdust and clarifier sludge.		
Rubber Manufacturing			<i>Effluent (mg/l)</i>
(Waste Water)	BOD Suspended solids Toxic metals	BOD <sub>5</sub>  Total suspended solids pH Lead (Pb) less than Chromium less than Zinc (Zn) less than	15 10 6-9 1 1 0.1
(Gaseous Emission)	Foul Gases	Volatile Organic Carbon (VOC)	2,000
(Solid Wastes)	Waste latex		
<i>Service Industries</i>	Oily waste waters	BOD <sub>5</sub>	<i>Effluent (mg/l)</i> 15



<i>Industry</i>	<i>Problems</i>	<i>Guidelines for Concentration</i>	<i>Maximum allowed for discharge into inland waters</i>
ing platforms (Waste Water)	from maintenance shops	Oil and grease	10
	fuelling depots and wash-	COD	40
	lead less than	1	
	High BOD wastes from tank car washing	Total Chromium less than	0.3
		Zinc (Zn) less than	0.1
			<i>Emission (ug/m<sup>3</sup>)</i>
(Gaseous Emission)	Exhaust fumes from idling containing SO <sub>2</sub> , NO <sub>2</sub> particulate	Particulate	100
		Sulphur dioxide (SO <sub>2</sub> )	830
	Exhaust air from maintenance shops containing particulate, welding fumes, solvents, and paint spray booths, etc.	Nitrogen oxides (NO <sub>x</sub> )	500
		Toluene	2,000
		Xylene	2,300
		VOC	6,000
		Benzene	1,500
		CO	5,000
(Solid Wastes)	Rags, wood soil impregnated with oil or oily wastes due to spills or accidents.	(hydrocarbons)	500
			<i>Effluent (mg/l)</i>
Soap and Detergent			
(Waste Water)	High pH	COD	40
	Oil and grease	BOD <sub>5</sub>	15
		Total suspended solids	<10
		Oil and grease	<10
		Ph	6-9
			<i>Emission (mg/m<sup>3</sup>)</i>
(Gaseous Emission)	Particulate matter	Particulate	100
	Sulphur Oxide	Sulphur dioxide	830
(Solid Wastes)	Packaging material		
			<i>(Effluent (mg/l))</i>
Sugar Processing			
(Waste Water)	High BOD <sub>5</sub>	BOD <sub>5</sub>	30
		Suspended solids	5
		Ph	6-9
			<i>Emmission (mg/m<sup>3</sup>)</i>
(Gaseous Emission)	Bagasse dust	Particulate	500
	Press Cake		
	Bagase		
	Bagasse ash		

Industry	Problems	Guidelines for Concentration	Maximum allowed for discharge into inland waters	
Tannery			<i>Effluent (mg/l)</i>	
(Waste Water)	High BOD <sub>5</sub>	Parameter	Chrome	Vegetable
		BOD <sub>5</sub>	50 (15)*	100 (30)
		COD	160 (40)*	80 (25)
Suspended solid wastes	Suspended from hide washing	solids	30 (10)*	40 (19)
*For discharge into Small Streams	High pH	Total	6-9	6-9
	high Sulphide			
	Solid wastes from lime			
	Sulphide treatment of hides	Chromium (iii)	0.3	2.0
	Spent vegetable and chrome tanning liquors	Chromium (vi)	0.1	0.1
	Grease from rendering	Floating matter	Not to be visible to naked eye operations	
		Oil and grease		10
		Chlorides (as Cl <sup>-</sup> )		50
		pH		6-9
		Sulphide		1
		Colour	None	None
		Odour	None	None
			<i>Emission (mg/m<sup>3</sup>)</i>	
(Gaseous Emission) boiler emissions	Particulate Odour in Hydrogen sulphide	Particulate	100	
	Odour from plant process	30		
(Solid Wastes)	solids from screening, sludge			
Textile Mills	<i>Effluent (mg/l)</i>			
(Waste Water)	High pH	pH	6-9	
	High suspended solids	BOD <sub>5</sub>	20	
	Colour	COD	8	
		Suspended solids	30	
		Chromium (vi)	<0.10	
		Phenols	0.01	
		Sulphide	0.20	
		Coliform 400 MPN/	100ml	
		Colour	None	
		Odour	None	
			<i>Emission (mg/m<sub>3</sub>)</i>	
(Gaseous Emission)	Particulate matter	Particulate	100	
(Solid Wastes)	Sludge			
	Textile Wastes			

\*For discharge into small streams

MADE at Lagos this 15th day of August 1991.

MAJOR-GENERAL M.T. KONTAGORA (Rtd), Minister of Works and Housing



## National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulations 1991

*Commencement: 15th August 1991*

**In exercise of the powers conferred upon me by section 37 of the Federal Environmental Protection Agency Act and of all other powers enabling me in that behalf, I, Major-General Mamman Tsofo Kontagora (rtd), hereby make the following Regulations:-**

### **Restriction on the release of toxic substances**

1. No industry or facility shall release hazardous or toxic substances into the air, water or land of Nigeria's ecosystems beyond limits approved by the Agency.

### **Monitoring pollution units.**

2. An industry or a facility shall-

(a) have a pollution monitoring unit within its premises;

(b) have on site a pollution control; or

(c) assign the responsibility for pollution control to a person or body corporate accredited by the Agency.

3. A discharge, including solid, gaseous and liquid waste from any industry or facility shall be analysed and reported to the nearest office of the Agency every month, through a Discharge Monitoring Report.

### **Unusual or accidental discharges.**

4. An unusual discharge or accidental discharge of waste from any industry facility shall be reported to the nearest office of the Agency not later than 24 hours of the discharge.

5. An industry or facility shall submit to the nearest office of the Agency-

(a) a list of the chemicals used in the manufacture of its products;

(b) details of stored chemicals and storage conditions;

### **List of chemicals.**

(c) where chemicals are bought, sold or obtained, the name of any secondary buyer.

### **Pollution Response Centre.**

6. The State and zonal offices of the Agency shall serve as Pollution Response Centres for co-ordinating pollution response activities.

### **Contingency plan.**

7. An industry or a facility shall have a contingency plan approved by the Agency against accidental release of pollutants.

### **Machinery for combating pollution, etc.**

8.-(1) An industry or a facility shall set up a machinery for combating pollution hazard and maintain equipment in the event of an emergency.

(2) An industry or a facility shall, for the purposes of paragraph (1) of this regulation, have a stock of pollution response equipment which shall be readily accessible and available to combat pollution hazards in the event of accidental discharges.

### **Pollution emergency.**

9. If there is a case of pollution emergency, the nearest office of the Agency shall serve as an "On-the-Scene Co-ordinator" to co-ordinate all response activities.

### **Storage treatment and transport of harmful toxic waste.**

10.-(1) No person or body corporate shall engage in the storage treatment and transportation of harmful toxic waste within Nigeria without a permit issued by the Agency.

(2) The permit shall be in such form as may be determined by the Agency.

**Generator's liability.**

11.-(1) The collection, treatment, transportation and final disposal of waste shall be the responsibility of the industry or facility generating the waste.

(2) An industry or a facility shall be liable for any clean-up, remediation or restoration connected with the waste and where necessary, compensation to all affected parties.

**Industrial layouts in each State.**

12.-(1) Each State of the Federation shall-

(a) designate industrial layouts which shall be separate from residential areas; and

(b) provide buffer zones between industrial layouts and residential areas.

(2) A buffer zone shall-

(a) be rigidly kept away from developer

(b) be monitored to prevent developing encroachment by developers.

**Strategies for waste reduction.**

13. An industry or a facility including those to be established after the commencement of these Regulations, shall adopt in-plant waste reduction and pollution prevention strategies.

**Restriction on new source of pollution.**

14.-(1) No new industry or facility shall commence production without compliance with the provisions of these Regulations.

(2) The Agency shall prevent an industry or facility from commencing operation where the Agency believes that such industry or facility may constitute a new point source of pollution.

**Permissible limits of discharge into public drains, etc.**

15.-(1) No effluent with constituents beyond permissible limits shall be discharged into public drains, rivers, lakes, sea or underground injection without a permit issued by the Agency or any organisation designated by the Agency.

(2) No oil, in any form, shall be discharged into public drain, rivers, lakes, sea, or underground injection with-

out a permit issued by the Agency or any organisation designated by the Agency.

(3) Application for a permit and the permit shall be in the Forms set out in the schedule to these Regulations or as specified by the Agency.

(4) The Agency may revoke a permit issued under paragraph (1) of this regulation if the Agency is satisfied, after the due enquiry, that the industry or facility has not complied with any of the conditions specified in the permit.

(5) Revocation of a permit shall be in the Forms C and D set out in the Schedule to this Decree or as specified by the Agency.

(6) An industry or a facility with a new point source of pollution or a new process line with a new point source shall apply to the Agency for discharge permit not later than 180 days before commencing the discharge of any effluent arising from any operation.

**Solid wastes to be disposed of in environmentally safe manner.**

16.-(1) Solid wastes generated by any industry or facility, including sludges and all by-products, resulting from the operation of pollution abatement equipment, shall be disposed of in an environmentally safe manner.

(2) No industrial solid waste shall be disposed of in any municipal landfill.

**Release of gaseous matters.**

17. An industry or a facility which is likely to release gaseous, particulate, liquid or solid untreated discharges shall install, into its system, appropriate abatement equipment in such manner as may be determined by the Agency.

**Surrounding of factories.**

18. The surroundings of a factory or facility shall be maintained to preserve their aesthetic and sanitary conditions.

**Safety of workers.**

19. No industry shall expose an employee to any hazardous condition in his place of work.

**Environmental impact assessment, etc.**

20. The Forms set out in the Schedule to these Regulations shall be used for the purposes specified therein with or without modification by the Agency.



**21.** The Agency shall demand environmental audit from existing industries and environmental impact assessment from new industries and major developmental projects and the industries shall comply within 90 days of the receipt of the demand.

**Penalty.**

**22.** A person or body whether corporate or unincorporate who contravenes any provision of these Regulations shall be guilty of an offence and liable on conviction to the penalty specified in section 35 or 36 or the Act.

**Citation.**

**23.** These Regulations may be cited as the National Environmental Protection (Pollution Abatement in Industries and Facilities Generating wastes) Regulations 1991.

**SCHEDULES**

**Regulations 15(3) and 20**

**FORM A**

**FEDERAL ENVIRONMENTAL PROTECTION AGENCY**

**ACT (Cap 131 LFN)**

**APPLICATION FOR WASTE DISCHARGES/DISPOSAL PERMIT**

1. Name of Company Requesting Permit \_\_\_\_\_  
\_\_\_\_\_
2. Year of Incorporation and Registration Number of Business Name \_\_\_\_\_  
\_\_\_\_\_
3. Location(s) of Business Premises (i.e. State, Local Government Areas, etc.) \_\_\_\_\_  
\_\_\_\_\_
4. Result of Quantitative and Qualitative Sampling of Liquid, Gaseous and Solid Effluent from Factory:  
\_\_\_\_\_  
\_\_\_\_\_
5. Description of plant facilities, outfall location(s), Effluent characteristic(s) and production figures (please attach engineering drawings of layout of factory and process line) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. A listing of all toxic substances used or manufactured on the site (For guidance, refer to parts II and III of FEPA's Interim Guidelines): \_\_\_\_\_  
\_\_\_\_\_
7. Does the Factory have any other permit issued to the facility (State type):  
\_\_\_\_\_  
\_\_\_\_\_
8. Description of pollution abatement/monitoring facilities on site (including details of year of installation, capacity, etc) \_\_\_\_\_  
\_\_\_\_\_
9. Name and brief resume of FEPA accredited Consultant(s), Contractors involved with pollution control at the facility (attach resume if possible) \_\_\_\_\_  
\_\_\_\_\_



- 
10. Number and range of qualification and experience of staff involved with pollution control programme at the facility: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
11. A listing of all chemicals in use at the facility (trade names not acceptable): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
12. For new sources: A submission of an environmental impact assessment report is mandatory. Request for permit system must be made 180 days before discharge commences, (attach photocopies of the relevant documents). \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
13. A listing of all intermediates and final products at facility including details of storage condition(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
14. Any safety/contingency plan? (submit details) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
15. Distance of facility from residential area (include map) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
16. Distance from any other Industry (state name of industry and direction): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
17. Present discharge (outfall) locations (illustrate) and position of inspection tap for compliance monitoring \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
18. Volume of raw water consumption \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
-

19. Source of energy at facility and quantitative estimate of consumption on a monthly basis \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
20. Detailed description of waste disposal methods \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
21. Any other information? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Declaration*

I declare that all the foregoing information is correct to the best of my knowledge.

22. \_\_\_\_\_  
Name of Applicant or his Attorney
23. \_\_\_\_\_  
Designation:
24. \_\_\_\_\_  
Signature
- Date: .....19.....

*Note-*

Every application form for permit must be accompanied with N50.00 Bank Draft administration fee in the name of the Federal Environmental Protection Agency.

This Notice is for all private and public enterprises or facilities intending or already discharging any form of wastes (solid, liquid or gaseous) into Nigeria's ecosystem (including waste disposal Boards and mining and mineral prospecting companies, on and off farm processing facilities, etc.).

All applications duly processed will be issued with the discharge permit on or before 1st October 1991.

Non-possession of Federal Environmental Protection Agency Discharge Permit by 1st October 1991 shall be tantamount to criminal violation of Federal Environmental Protection Agency Act,

A permit shall be valid for two (2) years effective from 1st October, of the year of issue.



## FORM B

FEDERAL ENVIRONMENTAL PROTECTION AGENCY ACT (Cap. 131 LFN) P/N.....

## INDUSTRIAL WASTE DISCHARGE/DISPOSAL PERMIT

The Director of the Federal Environmental Protection Agency (FEPA), hereby grants an Industrial Waste Disposal Permit, pursuant to an application for registration dated .....day of.....19..... in respect of the following:

Full Name and Address of Permit Holder \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Location of site to which Permit relates \_\_\_\_\_

Mode of Discharge of Disposal to which this Permit relates \_\_\_\_\_

Type/Volume/Quality of waste/Wastes/Wastestream of which discharge or disposal is authorised \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This Permit is granted subject to the following conditions:

\_\_\_\_\_

Date

Name and Signature

*Notes:-*

1. The following conditions shall apply to Industrial Solid Waste

(a) appropriate site preparation; and

(b) pre-determination of -

(i) depth to groundwater;

(ii) direction of groundwater flow;

(iii) groundwater characteristics; available provisions for leachate containment;

(iv) available provision for leachate containment, sampling and analysis.

**FORM C**

**FEDERAL ENVIRONMENTAL PROTECTION AGENCY ACT (Cap. 131 LFN)**

**NOTICE OF REVOCATION OF PERMIT**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WHEREAS the Federal Environmental Protection Agency on ..... 19 ....., granted you a waste Disposal/Discharge Permit relating to \_\_\_\_\_  
\_\_\_\_\_

AND WHEREAS the Federal Environmental Protection Agency is satisfied that the following condition(s) specified in the Permit is/are not being complied with, namely:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOW THEREFORE the Federal Environmental Protection Agency hereby requires you to comply with the said condition(s) before \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Failure to do so shall result in the revocation of the Permit. \_\_\_\_\_  
\_\_\_\_\_

Date \_\_\_\_\_ Signed \_\_\_\_\_

Name \_\_\_\_\_ Designation \_\_\_\_\_



FORM D

FEDERAL ENVIRONMENTAL PROTECTION AGENCY

ACT

(Cap. 131 LFN)

REVOCATION ORDER

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WHEREAS the Federal Environmental Protection Agency on .....19..... granted to you a Waste Disposal Permit No ..... relating to \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

AND WHEREAS it appears to the Agency that the continuation of activities to which the permit relates would cause pollution or danger to public health or would be so seriously detrimental to the amenities of the locality affected by the activities that the continuation of them ought not to be permitted and that the pollution, danger or detriment cannot be avoided by modifying the conditions specified in the permit;

AND WHEREAS a notice by the Federal Environmental Protection Agency dated .....19..... requiring you to comply with the following condition(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

before .....19..... was served upon you on .....19..... and you have not complied with the said conditions within the said period:

NOW THEREFORE the Federal Protection Agency hereby revokes the permit with effect from .....19.....

Signature \_\_\_\_\_

Name \_\_\_\_\_

Designation \_\_\_\_\_

**FORM E**

**FEDERAL ENVIRONMENTAL PROTECTION AGENCY ACT**

**(Cap. 131 LFN)**

**CERTIFICATE OF SAMPLING**

This is to certify that \_\_\_\_\_

(Name of Registered Plant)

discharging treated waste/storm water/solid waste into: \_\_\_\_\_  
(identify point of discharge)

from a treatment plant \_\_\_\_\_  
(identify unit/code)

has collected water sample(s)/solid wastes samples from/at \_\_\_\_\_  
(Identify point of source)

on \_\_\_\_\_  
(Date) (Time)

Sample(s) has/have been taken to \_\_\_\_\_  
(identify laboratory)

for the analyses of the following parameters

- (i) \_\_\_\_\_ (vi) \_\_\_\_\_
- (ii) \_\_\_\_\_ (vii) \_\_\_\_\_
- (iii) \_\_\_\_\_ (viii) \_\_\_\_\_
- (iv) \_\_\_\_\_ (ix) \_\_\_\_\_
- (v) \_\_\_\_\_ (x) \_\_\_\_\_

Sample Preservation Method:

Name and Signature of Sample Collector: \_\_\_\_\_  
\_\_\_\_\_

Name and Signature of Federal Environmental Protection Agency Official: \_\_\_\_\_  
\_\_\_\_\_

Name and Signature of Company/Officer in-Charge \_\_\_\_\_  
\_\_\_\_\_

MADE at Lagos this 15th day of August 1991.

MAJOR-GENERAL M.T. KONTAGORA, (Rtd), *Hon. Minister of Works and Housing*



## SOUTH AFRICA

### The Cape Town Foreshore Act No. 26 of 1950

[ASSENTED TO 13 JUNE, 1950][DATE OF COMMENCEMENT: 1 AUGUST, 1950]

(Afrikaans text signed by the Officer Administering the Government)

#### as amended by

Cape Town Foreshore Amendment Act, No. 41 of 1957

Cape Town Foreshore Amendment Act, No. 17 of 1959

Cape Town Foreshore Amendment Act, No. 38 of 1960

Cape Town Foreshore Amendment Act, No. 1 of 1963

Cape Town Foreshore Amendment Act, No. 32 of 1965

Cape Town Foreshore Amendment Act, No. 70 of 1978

State Land Disposal Amendment Act, No. 66 of 1982

[with effect from 30 July, 1982 - see title LAND]

Cape Town Foreshore Amendment Act, No. 37 of 1987

Constitution of the Republic of South Africa, No. 200 of 1993

[with effect from 31 October, 1994 - see Proclamation No. R. 165 of 1994]

#### ACT

**To provide for the management, control and development of the Cape Town foreshore and to that end to establish a board in respect of the said foreshore and to define its functions, and to provide for other incidental matters.**

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

“**board**” means the Cape Town Foreshore Board established under section *two*;

“**council**” means the council of the City of Cape Town;

“**foreshore**” means the Cape Town Foreshore comprising the land referred to in the Schedule to this Act, together with any land which may be acquired by the board by virtue of the powers vested in it by paragraph (h) of sub-section (1) of section *ten*;

“**Governor-General**” means the Premier of the province of Western Cape;

[Definition of “Governor-General” inserted by Proclamation No. R.165 of 1994.]

“**Minister**” means the competent authority within the government of the province of Western Cape to whom the administration of this Act has under section 235 (8) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), been assigned.

[Definition of “Minister” substituted by s. 1 of Act No. 70 of 1978 and by Proclamation No. R.165 of 1994.]

#### **2. Establishment of Cape Town Foreshore Board.** -

(1) There is hereby established a board to be known as the Cape Town Foreshore Board, which shall be a body corporate capable of suing and being sued in its corporate name and of performing all such acts as are necessary for or incidental to the carrying out of its objects and the performance of its functions and duties under this Act.

(2) The board shall not be liable for any tax, duty or other charge imposed by or under any law.

#### **3. Constitution of board.** - (1) The board shall consist of five members of whom-

(a) three shall be appointed by the Governor-General; and

(b) two shall be appointed by the council.

(2) The Governor-General shall designate one of the members appointed under paragraph (a) of sub-section (1) to be chairman of the board.

**4. Tenure of office of members of board.** - A member of the board shall hold office-

- (a) in the case of a member referred to in paragraph (a) of subsection (1) of section *three*, for such a period, not exceeding five years, as the Governor-General may in each case determine; and
- (b) in the case of a member referred to in paragraph (b) of that subsection, for such period as the council may in each case determine.

**5. Vacation of office by members of board.** - A member of the board shall vacate his office-

- (a) if he resigns or dies or the board is abolished in terms of section *nineteen*;
- (b) if his estate is sequestrated or a notice with reference to him is published under subsection (1) of section *ten* of the Farmers' Assistance Act, 1935 (Act No. 48 of 1935);
- (c) if he becomes of unsound mind or is convicted of an offence under section *seventeen* or *eighteen* or is convicted of any other offence and sentenced to imprisonment without the option of a fine; or
- (d) if he has absented himself from four consecutive meetings of the board without its leave which shall not be granted for a period exceeding six months in any period of twelve months,

and may be removed from his office by the Governor-General on an address from the provincial legislature of the Western Cape during the same session praying for such removal.

[S.5 amended by Proclamation No. R.165 of 1994.]

**6. Remuneration and allowances of members of board**

- (1) There shall be payable to every member of the board who is not an officer in the public service, such remuneration and allowances in respect of his services as the Governor-General may determine.

(2) A member of the board who is an officer in the public service may receive such remuneration, in addition to his salary and allowances as such an officer, as may be determined subject to the laws governing the public service.

(3) Any remuneration or allowances which may become payable under subsection (1) or (2), shall be paid out of the funds of the board.

**7. Meetings of board.**- (1) The first meeting of the board shall be held at a time and place to be determined by the

Minister, and all subsequent meetings shall be held at such times and places as the board or the chairman of the board, if authorised thereto by it, may determine.

(2) The chairman of the board may at any time call a special meeting of the board and shall call such a meeting within fourteen days after receipt of a written request desiring such a meeting to be called and signed by not less than two members of the board.

(3) Three members of the board shall form a quorum for a meeting of the board.

(4) The chairman of the board shall preside at all meetings thereof at which he is present, and if he is absent from any meeting the members present thereat may elect one of their number to preside at such meeting.

(5) The decision of a majority of the members of the board present at any meeting thereof shall be deemed to be the decision of the board.

(6) In the event of an equality of votes on any matter before a meeting of the board, the person presiding at such meeting shall have a casting vote in addition to his deliberative vote.

**8. Staff of board.** - (1) The clerical and administrative work incidental to the performance by the board of its functions shall be performed at its expense and under its directions and control by officers in the public service to be seconded to the service of the board.

(2) The number of officers of various grades to be seconded to the service of the board under subsection (1) shall be determined from time to time by the Minister in consultation with the Board.

(3) Any officer seconded to the service of the board under this section shall in all respects remain subject to the laws governing the public service, and for that purpose the chief administrative officer of the board shall be deemed to be the head of the department in which such officer is employed.

**9. Ownership in foreshore vested in board.** - As from the commencement of this Act, the ownership in the land comprising the foreshore shall be vested in the board and the Registrar of Deeds at Cape Town is hereby required to cause the necessary entries and endorsements to that effect to be made in his registers and on the title deeds of the said land and to issue to the board upon application by it a certificate of registered title to the said land.

**10. Objects and powers of board.** - (1) The objects of the board shall be to control, manage and develop the foreshore and to dispose of the land included therein, and to that end the board shall have power-



- (a) subject to the provisions of section *eight*, to appoint such servants as it may consider necessary for the performance of its functions and the attainment of its objects;
- (b) to appoint from amongst its members one or more committees and to vest in any committee so appointed such of its powers as it may deem fit: Provided that the board shall not be divested of any of its powers which it may have vested in any such committee;
- (c) in consultation with the council, and subject to the approval of the Minister, to sub-divide, lay out, plan and develop the foreshore;
- (d) to cause surveys, plans, sections, maps, diagrams or drawings to be made in respect of the foreshore;
- (e) to reserve or set aside any portion of the foreshore for streets, open spaces or other public purposes, and to transfer to the council any portion so reserved or set aside;
- (f) to construct, or to authorise the council to construct, roads, streets, thoroughfares, bridges, subways, drains, sewers, aqueducts, conduits, water of other mains, power lines and such other works or buildings on or over the foreshore as the board may deem necessary;
- (g) to enter into contracts with the Union Government, including South African Railways and Harbours Administration, the council or any other body or person for the performance of any act which the board is empowered to perform;
- (h) with the approval of the Minister and subject to such conditions as he may determine-
- (i) to sell, let, hypothecate or otherwise encumber any land forming part of the foreshore, or to exchange any such land for other land or to donate it for any purpose or to deal therewith in any other manner; and
- (ii) to acquire by purchase, lease, exchange or otherwise any land or any interest in land or any building or other structure in as far as the acquisition thereof may be necessary for or incidental to the attainment of the objects of the board;
- (i) with the approval of the Minister, and subject to such conditions as he may determine, to advance money to the council for any purpose which in the opinion of the board will be conducive to the attainment of the objects of this Act;
- (j) generally to do all such things as may be necessary for or incidental to the attainment of the objects of this Act.

[**Note:** Proclamation No. 241 of 1980 provides that sub-s. (1) shall cease to be of force and effect as from 5 December, 1980.]

(2) .....

[Sub-s. (2) deleted by s. 1 of Act No. 37 of 1987.]

(3) The provisions of the Townships Ordinance, 1934 (Ordinance No. 33 of 1934), of the Cape of Good Hope, shall not apply in respect of any land forming part of the foreshore so long as the ownership in such land is vested in the board.

[**Note:** Proclamation No. 241 of 1980 provides that sub-s. (3) shall cease to be of force and effect as from 5 December, 1980.]

**11. Board may make rules.** - (1) The board may subject to the approval of the Minister make rules relating to-

- (a) the regulation and control of such land as it may from time to time reserve or set aside for streets, open spaces or other public purposes or any works constructed by it or under its authority;
- (b) the siting, construction, erection, maintenance and control of buildings and other improvements on the foreshore; and
- (c) generally any other matter in regard to which the Minister deems it necessary or expedient that the board should make rules in order that this Act may be effectively administered.

(2) Any rules made under subsection (1) may prescribe penalties, not exceeding a fine of twenty-five pounds, for a contravention of or failure to comply with such rules or any requirements or conditions prescribed in any permit, order or other document issued thereunder.

(3) Whenever any person has been convicted under any rule made in terms of paragraph (b) of subsection (1) the board may order him to remove or alter any building or improvement in respect of the siting, construction, erection, maintenance or control of which he has been so convicted or cause such building or improvement to be removed or altered at his expense.

[**Note:** Proclamation No. 241 of 1980 provides that s.11 shall cease to be of force and effect as from 5 December, 1980.]

**11bis. Foreshore not part of area of jurisdiction of any local authority.** - Subject to the provisions of sections *eleven ter, fifteen* and *fifteen bis*, the foreshore shall not form part of the area of jurisdiction of any municipal



council, divisional council, village management board or local board but the foreshore or any portion thereof may at any time, with the consent of the Minister, be included in any such area.

[S. 11bis inserted by s. 1 of Act No. 41 of 1957 and amended by s. 1 of Act No. 1 of 1963.]

**11ter. Application of certain laws to foreshore.** - (1)

(a) The Minister may, after consultation with the board and the council by notice in the *Provincial Gazette* direct that the foreshore or any portion thereof specified in such notice shall, subject to such conditions and reservations as may be specified in such notice and to any rules made by the board under section *eleven*, form part of the area of jurisdiction of the council for the purpose of the application of any law specified in such notice.

(b) Where any notice under paragraph (a) directs that the foreshore or any portion thereof shall form part of the area of jurisdiction of the council for the purpose of the application of any law, the foreshore or such portion thereof, as the case may be, shall also, subject to such conditions and reservations as may be specified in such notice and to any rules made by the board under section *eleven*, form part of the area of jurisdiction of the council for the purpose of the application of any by-law or regulation made under such law.

(2) The Minister may, after consultation with the board and the council, at any time by notice in the *Provincial Gazette* withdraw or amend any notice issued under sub-section (1).

[S. 11ter inserted by s. 1 of Act No. 41 of 1957 and amended by Proclamation No. R. 165 of 1994.]

**12. Funds of board.** - (1) The funds of the board shall consist of-

- (a) moneys derived from the sale of land by the board;
- (b) any loans granted to the board by the Minister of Finance out of moneys appropriated by Parliament for the purpose; and
- (c) any amounts which may become payable to the board under this Act or any rules made under section *eleven*.

(2) The board shall cause full and correct account to be kept of all amounts received or expended by it.

(3) Any moneys in the possession of the board which are not required for immediate use, shall be invested by it with the Public Debt Commissioners or in such other manner as the Minister may in consultation with the Minister of Finance determine.

[**Note:** Proclamation No. 241 of 1980 provides that s. 12 shall cease to be of force and effect as from 5 December, 1980.]

**13. Auditing of accounts.** - (1) The books and statements of account and balance sheet of the board shall be audited annually by the Controller and Auditor-General who may for the purposes of any such audit appoint one or more persons to assist him, subject to such directions as he may deem fit.

(2) The provisions of sections *thirteen*, *fourteen*, *fifteen*, *eighteen* and *nineteen* of the Exchequer and Audit Act, 1911 (Act No. 21 of 1911), shall *mutatis mutandis* apply in respect of such audit, and for that purpose-

(a) the references in sections *thirteen* and *eighteen* of the said Act to the Treasury, shall be deemed to be references to the Minister of Lands and to the board, respectively;

(b) the reference in sections *fourteen* and *fifteen* of the said Act to a person in the employment of the Union Government shall be deemed to include a reference to a person employed by the board; and

(c) the reference in section *nineteen* of the said Act to the Minister of Finance, shall be deemed to be reference to the Minister of Lands.

(3) As soon as possible after any such audit the Controller and Auditor-General shall transmit to the Minister and to the Minister of Finance a copy of the statements of account and balance sheet together with his certificate and report thereon.

(4) The Minister of Finance shall cause the accounts, balance sheet and report to be laid on the Tables of both Houses of Parliament within seven days after their receipt by him, if Parliament be then in ordinary session, or if Parliament be not then in ordinary session, within seven days after the commencement of its next ensuing ordinary session.

(5) The Controller and Auditor-General shall notify the board of any surcharge which he may have made under section *fifteen* of the Exchequer and Audit Act, 1911, as applied by sub-section (2) of this section, and the board shall, subject to the provisions of section *nineteen* of the said Act, as so applied, recover the amount thereof from the person against whom the surcharge was made: Provided that unless the Minister otherwise directs, the amount of any such surcharge which may be due from a person in the employment of the Union Government or the board, shall be recovered in equal monthly instalments by deductions from his monthly salary, not exceeding one-fourth thereof.



(6) The amount of any such surcharge may be recovered by the board by action in any competent court.

(7) An amount which shall be determined by the Treasury after consultation with the Minister and the Controller and Auditor-General, shall be paid by the board to the Consolidated Revenue Fund in respect of such audit.

[Note: Proclamation No. 241 of 1980 provides that s. 13 shall cease to be of force and effect as from 5 December, 1980.]

**14. Disposal of proceeds of sales of land.** - (1) The board may from time to time out of its funds, pay to the Consolidated Revenue Fund, the Railways and Harbours Fund and the council such amounts as may in each case be approved by the Minister in consultation with the Minister of Finance.

[Sub-s. (1) amended by s.1 of Act No. 17 of 1959.]

(2) Any amounts which may in terms of sub-section (1) become payable to the council shall be paid over to it subject to such conditions as the Minister may determine.

[Note: Proclamation No. 241 of 1980 provides that s. 14 shall cease to be of force and effect as from 5 December, 1980.]

**15. Payment of rates etc. on land included in foreshore.** - (1) No rates shall be levied by the council upon any land or property forming part of the foreshore, so long as such land or property has not been sold to any person by the board: Provided that if in the case of any such land or property let by the board, the Minister after consultation with the board and the council so determines, the council may levy rates, payable by the lessee concerned, on that land or property as from a date and on the basis similarly determined by the Minister.

[Sub-s (1) amended by s.1 of Act No 38 of 1960.]

(2) Whenever any such land or property has been sold by the board, it shall become rateable as from the date of the sale as if it has been transferred on that date to the person to whom it has been sold and rates thereon shall as from that date become payable by that person.

(3) The council may in respect of the year in which any land or property is sold as aforesaid levy rates on that land or property on the same basis as that on which rates on other land or property its area were levied for that year, and the person to whom the land or property was so sold shall in respect of that year pay such a portion of the rates thereon as is represented by the proportion which the unexpired portion of the year as from the date of the sale bears to the whole year.

(4) In this section "rates" means rates levied by the council on the value of immovable property.

**15bis. Levying of rates by the Divisional Council of the Cape.** - (1) Subject to the provisions of sub-sections (2) and (3), any land or property forming part of the foreshore, which-

(a) has been transferred by the board to any other person; or

(b) is let by the board under a lease registered in the Deeds Office at Cape Town, shall be rateable by the Divisional Council of the Cape on the basis on which, and subject to the provisions of the laws under which rates are levied by it on the value of immovable property in the area of jurisdiction of the council, as if the foreshore forms part of that area and its own area of jurisdiction: Provided that rates levied in terms of this sub-section on any such land or property so let, shall be payable by the person who according to the relevant lease, is the lessee thereof.

(2) No rates shall be levied in terms of sub-section (1) in respect of any period before-

(a) in the case of land or property referred to in paragraph (a) of that sub-section, the first day of January, 1964, or, where the land or property concerned is so transferred after that date, the date of the transfer;

(b) in the case of land or property referred to in paragraph (b) of that sub-section, a date to be determined by the Minister in each case.

(3) In respect of the year in which any land or property becomes rateable in terms of this section, there shall be payable on the land or property concerned such portion of the rates for that year as is represented by the proportion which the unexpired portion of the year, as from the date on which that land or property becomes so rateable, bears to the whole year.

[S. 15bis inserted by s. 2 of Act No. 1 of 1963.]

**16. Annual report by board.** - The Board shall from time to time, but not less than once in every year, submit to the Minister reports on its activities, and the Minister shall lay copies of all such reports on the Tables of both Houses of Parliament within fourteen days after receipt thereof if Parliament is then in ordinary session or if Parliament is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

[Note: Proclamation No. 241 of 1980 provides that s. 16 shall cease to be of force and effect as from 5 December, 1980.]



**17. Receiving of fees or rewards by members of board.**

- Any member of the board who directly or indirectly receives any fee or reward from any person in connection with any matter whatsoever dealt with by the board, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

**18. Preservation of secrecy.** - Any member of the board and any officer or other person in its service who discloses, except in the performance of his duties or as witness in a court of law, any information acquired by him in the course of his duties, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds.

**19. Abolition of board.** - (1) Whenever the Government-General is satisfied that the board has achieved the object for which it has been established or that the development of the foreshore has proceeded to a stage where the existence of the board is no longer necessary, he may by proclamation in the *Provincial Gazette* declare that the board shall be abolished with effect from a date to be specified in the proclamation.

Sub-s (1) amended by Proclamation No. R. 165 of 1994.]

(2) Subject to the provisions of section 19ter, as from the date specified in any proclamation issued under sub-section (1), all the powers, duties, assets and rights of the board shall vest in the State and all the liabilities and obligations of the board shall devolve upon the State, and any reference in any document to the board shall be deemed to be a reference to the State.

Sub-s (2) substituted by s. 2 (a) of Act No. 70 of 1978.]

(2A) .....

[Sub-s. (2A) inserted by s. 2(b) of Act No. 70 of 1978 and deleted by s.6 of Act No 66 of 1982.]

(3) The Registrar of Deeds at Cape Town shall cause all such notes and endorsements to be made in his registers and on the title deeds of any land forming part of the foreshore as may be necessary to give effect to the provisions of this section.

**19bis. Delegation of the Minister's powers.** - The Minister may delegate any of the powers conferred on him by section ten of this Act to any officer referred to in sub-section (1) of section eight seconded to the service of the board.

[S. 19bis inserted by s.1 (1) of Act No. 32 of 1965.]

**19ter. Lapse of validity of certain provisions.** - (1) Sections 10(1) and (3), 11, 12, 13, 14 and 16 shall cease to be of force and effect as from a date to be fixed by the

State President by proclamation in the *Gazette*.

(2) Different dates may be fixed in terms of sub-section (1) in respect of different sections referred to in that sub-section.

[S. 19ter inserted by s. 3 of Act No. 70 of 1978.]

**20. Short title and commencement.** - This Act shall be called the Cape Town Foreshore Act, 1950, and shall come into operation upon a date to be fixed by the Governor-General by proclamation in the *Gazette*.

**Schedule**

[Schedule amended by Proclamation No. R.165 of 1994.]

**DESCRIPTION OF CAPE TOWN FORESHORE**

The Crown Land known as the Cape Town Foreshore in extent approximately eighty morgen being the remaining portion of the land reclaimed from the sea in Table Bay in the Cape Division of the Province of the Cape of Good Hope, after deducting such portions thereof as have been reserved for the South African Railways and Harbours Administration.

The Minister is hereby authorised to define the boundaries of the said Crown Land by notice in the *Provincial Gazette*.

**CAPE TOWN FORESHORE AMENDMENT ACT NO. 41 OF 1957**

[ASSENTED TO 6 JUNE, 1957][DATE OF COMMENCEMENT: 14 JUNE, 1957]

(English text signed by the Officer Administering the Government)

**ACT**

**To amend the Cape Town Foreshore Act, 1950.**

1. Inserts sections 11bis and 11ter in the Cape Town Foreshore Act, No. 26 of 1950.

2. **Short title.** - This Act shall be called the Cape Town Foreshore Amendment Act, 1957.

**CAPE TOWN FORESHORE AMENDMENT ACT NO. 17 OF 1959**

[ASSENTED TO 23 MARCH, 1959][DATE OF COMMENCEMENT: 3 APRIL, 1959]

(English text signed by the Governor-General)



## ACT

**To amend the Cape Town Foreshore Act, 1950.**

1. Amends section 14 of the Cape Town Foreshore Act, No. 26 of 1950.

2. **Short title.** - This Act shall be called the Cape Town Foreshore Amendment Act, 1959.

**CAPE TOWN FORESHORE AMENDMENT ACT  
NO. 38 OF 1960**

[ASSENTED TO 21 APRIL, 1960][DATE OF COMMENCEMENT: 29 APRIL, 1960]

*(English text signed by the Governor-General)*

## ACT

**To amend the Cape Town Foreshore Act, 1950.**

1. Amends section 15 of the Cape Town Foreshore Act, No. 26 of 1950.

2. **Short title.** - This Act shall be called the Cape Town Foreshore Amendment Act, 1960.

**CAPE TOWN FORESHORE AMENDMENT ACT  
NO. 1 OF 1963**

[ASSENTED TO 16 FEBRUARY, 1963][DATE OF COMMENCEMENT: 20 FEBRUARY, 1963]

*(Afrikaans text signed by the State President)*

## ACT

**To amend the Cape Town Foreshore Act, 1950.**

1. Amends section 11*bis* of the Cape Town Foreshore Act, No. 26 of 1950.

2. Inserts section 15*bis* in the Cape Town Foreshore Act, No. 26 of 1950.

3. **Short title.** - This Act shall be called the Cape Town Foreshore Amendment Act, 1963.

**CAPE TOWN FORESHORE AMENDMENT ACT  
NO. 32 OF 1965**

[ASSENTED TO 1 APRIL, 1965][DATE OF COMMENCEMENT: 7 APRIL, 1965]

(Unless otherwise indicated)

*(English text signed by the State President)*

## ACT

**To amend the Cape Town Foreshore Act, 1950.**

1. Inserts section 19*bis* in the Cape Town Foreshore Act, No. 26 of 1950 (date of commencement 1 August, 1950).

2. **Short title.** - This Act shall be called the Cape Town Foreshore Amendment Act, 1965.

**CAPE TOWN FORESHORE AMENDMENT ACT  
NO. 70 OF 1978**

[ASSENTED TO 19 MAY, 1978][DATE OF COMMENCEMENT: 2 JUNE, 1978]

*(Afrikaans text signed by the State President)*

## ACT

**To amend the Cape Town Foreshore Act, 1950, so as to provide that on the abolition of the Cape Town Foreshore Board its powers, duties, assets and rights shall vest in and its liabilities and obligations shall devolve upon the State; that after the abolition of the said Board certain amounts may be paid to the City Council of Cape Town; for the lapse of the validity of certain provisions of the said Act; that for the purposes of sections 15 and 15*bis* of the said Act "board" shall include the State; and for incidental matters.**

1. Amends section 1 of the Cape Town Foreshore Act, No. 26 of 1950, by substituting the definition of "Minister".

2. Amends section 19 of the Cape Town Foreshore Act, No. 26 of 1950, as follows: paragraph (a) substitutes sub-section (2); and paragraph (b) inserts sub-section (2A).

3. Inserts section 19*ter* in the Cape Town Foreshore Act, No. 26 of 1950.

4. **Extension of meaning of "board".** - For the purposes of section 15 and 15*bis* of the principal Act "board" shall include the State.

5. **Short title.** - This Act shall be called the Cape Town Foreshore Amendment Act, 1978.

**CAPE TOWN FORESHORE AMENDMENT ACT  
NO. 37 OF 1987**

[ASSENTED TO 25 AUGUST, 1987][DATE OF COMMENCEMENT: 2 SEPTEMBER, 1987]

*(English text signed by the State President)*

**ACT**

**To amend the Cape Town Foreshore Act, 1950, so as to do away with a restriction in respect of the use of certain portions of the foreshore; and to provide for incidental matters.**

**1.** Amends section 10 of the Cape Town Foreshore Act, No. 26 of 1950, by deleting sub-section (2)..

**2. Short title.** - This Act shall be called the Cape Town Foreshore Amendment Act, 1987.



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## The Animals Protection Act No. 71 of 1962

[ASSENTED TO 16 JUNE, 1962]

[DATE OF COMMENCEMENT: 1 DECEMBER, 1962]

*(Afrikaans text signed by the State President)*

### as amended by

General Law Amendment Act, No.102 of 1972

[with effect from 5 July, 1972—see title GENERAL LAW AMENDMENT ACTS.]

Animals Protection Amendment Act, No.7 of 1972

Animals Protection amendment Act, No.54 of 1983

Animals Protection Amendment Act, No.20 of 1985

Animals Protection Second Amendment Act, No.84 of 1985

Protection of Animals Amendment Act, No.7 of 1991

Animal Matters Amendment Act, No.42 of 1993

### ACT

#### To consolidate and amend the laws relating to the prevention of cruelty to animals

**1. Definitions.**—In this Act, unless the context otherwise indicates—

“**animal**” means any equine, bovine, sheep, goat, pig, fowl, ostrich, dog, cat or other domestic animal or bird, or any wild animal, wild bird or reptile which is in captivity or under the control of any person;

“**Minister**” means the Minister of Justice;

“**owner**”, in relation to an animal, includes any person having the possession, charge, custody or control of that animal;

“**police officer**” includes a member of any force established under any law for the carrying out of police powers, duties or functions;

“**veterinarian**” means a person registered as such under the Veterinary and Para-Veterinary Professions Act, 1982 (Act No.19 of 1982).

[Definition of “veterinarian” substituted by s. 12 of Act No. 7 of 1991.]

**2. Offences in respect of animals.**—(1) Any person who—

(a) overloads, overdrives, overrides, ill-treats, neglects, infuriates, tortures or maims or cruelly beats, kicks, goads or terrifies any animal; or

[Para. (a) substituted by s. 13 (a) of Act No.7 of 1991.]

(b) confines, chains, tethers or secures any animal unnecessarily or under such conditions or in such a manner or position as to cause that animal unnecessary suffering or in any place which affords inadequate space, ventilation, light, protection or shelter from heat, cold or weather; or

(c) unnecessarily starves or under-feeds or denies water or food to any animal; or

(d) lays or exposes any poison or any poisoned fluid or edible matter or infectious agents except for the destruction of vermin or marauding domestic animals or without taking reasonable precautions to prevent injury or disease being caused to animals; or

(e) being the owner of any animal, deliberately or negligently keeps such animal in a dirty or parasitic condition or allows it to become infested with external parasites or fails to render or procure veterinary or other medical treatment or attention which he is able to render or procure for any such animal in need of such treatment or attention, whether through disease, injury, delivery of young or any other cause, or fails to destroy or cause to be destroyed any such animal which is so seriously injured or diseased or in such a physical condition that to prolong its life would be cruel and would cause such animal unnecessary suffering; or

(f) uses on or attaches to any animal any equipment, appliance or vehicle which causes or will cause in-

- jury to such animal or which is loaded, used or attached in such a manner as will cause such animal to be injured or to become diseased or to suffer unnecessarily; or
- (g) save for the purpose of training hounds maintained by a duly established and registered vermin club in the destruction of vermin, liberates any animal in such manner or place as to expose it to immediate attack or danger of attack by other animals or by wild animals, or baits or provokes any animal or incites any animal to attack another animal; or
- (h) liberates any bird in such manner as to expose it to immediate attack or danger of attack by animals, wild animals or wild birds; or
- (i) drives or uses any animal which is so diseased or so injured or in such a physical condition that it is unfit to be driven or to do any work; or
- (j) lays any trap or other device for the purpose of capturing or destroying any animal, wild animal or wild bird the destruction of which is not proved to be necessary for the protection of property or for the prevention of the spread of disease; or
- (k) having laid any such trap or other device fails either himself or through some competent person to inspect and clear such trap or device at least once each day; or
- (l) except under the authority of a permit issued by the magistrate of the district concerned, sells any trap or other device intended for the capture of any animal, including any wild animal (not being a rodent) or wild bird, to any person who is not a *bona fide* farmer; or
- (m) conveys, carries, confines, secures, restrains or tethers any animal—
- (i) under such conditions or in such a manner or position or for such a period of time or over such a distance as to cause that animal unnecessary suffering; or
- (ii) in conditions affording inadequate shelter, light or ventilation or in which such animal is excessively exposed to heat, cold, weather, sun, rain, dust, exhaust gases or noxious fumes; or
- (iii) without making adequate provision for suitable food, potable water and rest for such animal in circumstances where it is necessary; or
- (n) without reasonable cause administers to any animal any poisonous or injurious drug or substance; or
- (o) .....
- [Para. (o) substituted by s. 2 of Act No. 42 of 1993.]
- (p) being the owner of any animal, deliberately or without reasonable cause or excuse, abandons it, whether permanently or not, in circumstances likely to cause that animal unnecessary suffering; or
- (q) causes, procures or assists in the commission or omission of any of the aforesaid acts or, being the owner of any animal, permits the commission or omission of any such act; or
- (r) by wantonly or unreasonably or negligently doing or omitting to do any act or causing or procuring the commission or omission of any act, causes any unnecessary suffering to any animal; or
- (s) kills any animal in contravention of a prohibition in terms of a notice published in the *Gazette* under subsection (3) of this section,
- [Para. (s) inserted by s. 21 (b) of Act No. 102 of 1972.]
- shall, subject to the provisions of this Act and any other law, be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or in default of payment to imprisonment for a period not exceeding twelve months or to such imprisonment without the option of a fine, or, where any such act or omission is of a wilful and an aggravated nature, to a whipping not exceeding six strokes or to both such a fine and such a whipping or to both such imprisonment without the option of a fine and such a whipping.
- [Sub-s. (1) amended by s. 3 of Act No. 54 of 1983, by s. 5 of Act No. 20 of 1985 and by s. 13 (c) of Act No. 7 of 1991.]
- (2) For the purposes of sub-section (1) the owner of any animal shall be deemed to have permitted or procured the commission or omission of any act in relation to that animal if by the exercise of reasonable care and supervision in respect of that animal he could have prevented the commission or omission of such act.
- (3) The Minister may by notice in the *Gazette* prohibit the killing of an animal specified in the notice with the intention of using the skin or meat or any other part of such animal for commercial purposes.
- [Sub-s. (3) added by s. 21 (c) of Act No. 102 of 1972.]
- [Para. (m) substituted by s. 13 (b) of Act No. 7 of 1991.]



**2A. Animal fights.**—(1) Any person who—

- (a) possesses, keeps, imports, buys, sells, trains, breeds or has under his control an animal for the purpose of fighting any other animal;
- (b) baits or provokes or incites any animal to attack another animal or to proceed with the fighting of another animal;
- (c) for financial gain or as a form of amusement promotes animal fights;
- (d) allows any of the acts referred to in paragraphs (a) to (c) to take place on any premises or place in his possession or under his charge or control;
- (e) owns, uses or controls any premises or place for the purpose or partly for the purpose of presenting animal fights on any such premises or place or who acts or assists in the management of any such premises or place, or who receives any consideration for the admission of any person to any such premises or place; or
- (f) is present as a spectator at any premises or place where any of the acts referred to in paragraphs (a) to (c) is taking place or where preparations are being made for such acts,

shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding two years.

(2) In any prosecution in terms of subsection (1) it shall be presumed, unless the contrary is proved, that an animal which is found at any premises or place is the property or under the control of the owner of that premises or place, or is the property or under the control of the person who uses or is in control of the premises or place.

(3) Notwithstanding anything to the contrary contained in any law, a magistrate's court shall have jurisdiction to impose any penalty provided for in this section.

[S. 2A inserted by s. 3 of Act No. 42 of 1993.]

**3. Powers of court.**—(1) Whenever a person is convicted of an offence in terms of this Act in respect of any animal, the court convicting him may in addition to any punishment imposed upon him in respect of that offence—

- (a) order such animal to be destroyed if in the opinion of the court it would be cruel to keep such animal alive;
- (b) order that the person convicted be deprived of the ownership of such animal;

(c) declare the person convicted to be unfit to own or be in charge of any animal, or of any animal of a specified kind, for a specified period;

(d) make any order with regard to such animal as it deems fit to give effect to any order or declaration made under any of the preceding paragraphs.

(2) Any person who is found in possession or in charge of any animal in contravention of a declaration made in terms of paragraph (c) of sub-section (1), shall be guilty of an offence and liable on conviction to the penalties prescribed in sub-section (1) of section *two*.

**4. Power of court to award damages.**—(1) Whenever any person is convicted by a magistrate's court of an offence under this Act and it is proved that such person has by the commission of that offence caused loss to any other person or that any other person has as the result of such offence incurred expense in providing necessary veterinary attention or treatment, food or accommodation for any animal in respect of which the offence was committed or in caring for such animal pending the making of an order by the court for the disposal thereof, the court may, on application by such other person or by the person conducting the prosecution acting on the instructions of such other person, summarily enquire into and determine the amount of the loss so caused or expense so incurred and give judgement against the person convicted and in favour of such other person for the amount so determined, but not exceeding an amount of R5 000.

[Sub-s. (1) substituted by s. 6 (a) of Act No. 20 of 1985.]

(2) Any such judgment shall have effect as if it had been given in a civil action duly instituted before such court.

(3) The provisions of sub-sections (1) and (2) shall *mutatis mutandis* apply in respect of—

- (a) any costs incurred in connection with the custody of an animal seized in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), for the purposes of a prosecution in terms of this Act; and

[Para. (a) substituted by s. 9 of Act No. 7 of 1972 and by s. 6 (b) of Act No. 20 of 1985.]

- (b) any costs incurred in connection with the destruction of an animal in terms of an order under paragraph (a) of sub-section (1) of section *three* and the removal and burial or destruction of the carcass.

**5. When police officer may destroy any animal.**—(1) Whenever a police officer is of the opinion that any animal is so diseased or severely injured or in such a physical condition that it ought to be destroyed, he shall, if the owner be absent or refuses to consent to the destruc-



tion of the animal, at once summon a veterinarian or, if there is no veterinarian within a reasonable distance, two adult persons whom he considers to be reliable and of sound judgment, and if such veterinarian or adult person after having duly examined such an animal certify that the animal is so diseased or so severely injured or in such physical condition that it would be cruel to keep it alive, such police officer may without the consent of the owner destroy the animal or cause it to be destroyed with such instruments or appliances and with such precautions and in such manner as to inflict as little suffering as practicable.

(2) Any police officer who destroys any animal or causes it to be destroyed in the absence of the owner shall, if such owner's name and address are known, advise him of the destruction, and where the destruction of any animal takes place on any public place or public road shall, subject to the provisions of the Animal Diseases Act, 1984 (Act No. 35 of 1984), remove the carcass or cause it to be removed therefrom.

[Sub-s. (2) substituted by s. 10 of Act No. 7 of 1972 and by s. 14 of Act No. 7 of 1991.]

(3) A veterinarian may in respect of any animal exercise the powers conferred by sub-section (1) upon a police officer without summoning another veterinarian, police officer or any other person, and in respect of such exercise of those powers the provisions of sub-section (2) shall apply.

(4) Any expenses which may be reasonably incurred by any police officer or veterinarian in carrying out the provisions of this section may be recovered from the owner of the animal in question as a civil debt.

(5) It shall be a defence to an action brought against any person arising out of the destruction of an animal by him or with his authority, to prove that such animal was so severely injured or so diseased or in such a physical condition that it would have been cruel to have kept it alive, and that to summon a police officer or follow the procedure prescribed in this section would have occasioned unreasonable delay and unnecessary suffering to such animal.

**6. Poundmaster may recover expenses.**—Any poundmaster shall be entitled to recover from the owner of any impounded animal any reasonable expenses necessarily incurred by him in rendering or providing veterinary or medical attention for such animal.

**7. Owner may be summoned to produce animal for inspection by court.**—(1) A court trying any person for an alleged offence under this Act may summon the owner of any animal in respect of which such offence is alleged to have been committed to produce that animal at a time

and place stated in the summons for inspection by the court.

(2) Any person who without satisfactory excuse fails to comply with a summons issued in terms of sub-section (1) shall be guilty of an offence and liable on conviction to the penalties prescribed in sub-section (1) of section two.

**8. Powers of officers of society for prevention of cruelty to animals.**—(1) If authorized thereto by writing under the hand of the magistrate of a district, any officer of any society for the prevention of cruelty to animals may in that district—

(a) without warrant and at any time with the consent of the owner or occupier, or failing such consent on obtaining an order from a magistrate, enter any premises where any animal is kept, for the purpose of examining the conditions under which it is so kept.

(b) without warrant arrest any person who is suspected on reasonable grounds of having committed an offence under this Act, if there is reason to believe that the ends of justice would be defeated by the delay in obtaining a warrant;

(c) on the arrest of any person on a charge of an offence under this Act, seize any animal or thing in the possession or custody of that person at the time of the arrest and take it forthwith to a police officer, who shall deal with it in accordance with the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

[Para. (c) substituted by s. 7 of Act No. 20 of 1985.]

(d) exercise in respect of any animal the powers conferred by sub-section (1) of section five upon a police officer and in respect of such exercise of those powers, the provisions of the said section shall *mutatis mutandis* apply.

(2) Any authority granted under sub-section (1) may at any time for good cause be revoked by the magistrate of the district.

(3) An officer to whom authority has been granted under sub-section (1) shall, when required to do so in the exercise of his powers, produce that authority for inspection.

(4) Any person who wilfully obstructs, hinders or resists an officer authorized under sub-section (1) in the exercise of the powers conferred upon him or conceals any animal or thing with intent to defeat the exercise of such powers, or who upon demand fails to give his name and address to such officer, shall be guilty of an offence and liable on conviction to the penalties set out in sub-section (1) of section two.



**9. Costs may be awarded against vexatious complainant.**—If at the trial of any person on a charge of an offence under this Act, the court is satisfied that any person or body has without reasonable cause and vexatiously lodged or caused to be lodged the complaint which led to such trial, it may award costs, including attorney and client costs, on the magistrate's court scale, against such person or body as if the proceedings were civil proceedings between the accused and such person or body.

**10. Regulations.**—(1) The Minister may make regulations relating to—

- (a) the method and form of confinement and accommodation of any animal or class, species or variety of animals, whether travelling or stationary;
- (b) any other reasonable requirements which may be necessary to prevent cruelty to or suffering of any animal;
- (c) the seizure, impounding, custody or confining of any animal due to any condition of such animal, the disposal or destruction of such animal and the recovery of any expenses incurred in connection therewith from the owner of such animal; and

[Para. (c) substituted by s. 1 of Act No. 84 of 1985.]

(d) generally such matters as are required for the better carrying out of the objects and purposes of this Act.

(2) Such regulations may prescribe penalties for contravention thereof or failure to comply therewith not exceeding a fine of R4 000 or imprisonment for a period of twelve months.

Sub-s. (2) substituted by s. 4 of Act No. 54 of 1983 and by s. 8 of Act No. 20 of 1985 and amended by s. 15 of Act No. 7 of 1991.]

**10.A. ....**

[S. 10A inserted by s. 11 of Act No. 7 of 1972 and repealed by s. 16 of Act No. 7 of 1991.]

**11. Repeal of laws.**—The Prevention of Cruelty to Animals Act, 1914 (Act No. 8 of 1914), the Prevention of Cruelty to Animals Act, 1914, Amendment Act, 1922 (Act No. 14 of 1922), the Prevention of Cruelty to Animals Act, 1914, Amendment Act, 1928 (Act No. 10 of 1928), and the Prevention of Cruelty to Animals Amendment Act, 1949 (Act No. 28 of 1949), are hereby repealed.

**12. Short title and commencement.**—This Act shall be called the Animals Protection Act, 1962, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

**ANIMALS PROTECTION AMENDMENT ACT  
NO. 7 OF 1972**

[ASSENTED TO 8 MARCH, 1972]

[DATE OF COMMENCEMENT: 1 JANUARY, 1973]

(English text signed by the State President)

**ACT**

**To amend the provisions of the Performing Animals Protection Act, 1935, and the Animals Protection Act, 1962, in order to apply those Acts to the territory of South-West Africa; to amend the provisions of the first-mentioned Act in relation to the penalties; and to provide for incidental matters.**

**1.** Amends section 2 of the Performing Animals Protection Act, No. 24 of 1935, by substituting paragraph (d) of the proviso.

**2 and 3.** Substitute respectively sections 5 and 6 of the Performing Animals Protection Act, No. 24 of 1935.

**4:** Amends section 7 of the Performing Animals protection Act, No. 24 of 1935, by substituting paragraph (e).

**5.** Amends section 8 of the Performing Animals Protection Act, No. 24 of 1935, by substituting subsection (1).

**6.** Substitutes section 10 of the Performing Animals protection Act, No. 24 of 1935.

**7.** Amends section 11 of the Performing Animals Protection Act, No. 24 of 1935, as follows:—paragraph (a) substitutes the definition of "animal"; and paragraph (b) substitutes the definition of "police officer".

**8.** Inserts section 11A in the Performing Animals Protection Act, No. 24 of 1935.

**9.** Amends section 4 (3) of the Animals protection Act, No. 71 of 1962, by substituting paragraph (a).

**10.** Amends section 5 of the Animals protection Act, No. 71 of 1962, by substituting subsection (2).

**11.** Inserts section 10A in the Animals protection Act, No. 71 of 1962.

**12. Repeal of laws.**—The Prevention of Cruelty to Animals proclamation, 1919 (Proclamation No. 17 of 1919), the Prevention of Cruelty to Animals Amendment Proclamation, 1938 (Proclamation No. 24 of 1938), and the Prevention of Cruelty to Animals Amendment Proclamation, 1950 (Proclamation No. 42 of 1950), of the territory of South-West Africa, are hereby repealed.



**13. Short title and commencement.**—This Act shall be called the Animals Protection Amendment Act, 1972, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

**ANIMALS PROTECTION AMENDMENT ACT  
NO. 54 OF 1983**

[ASSENTED TO 27 APRIL, 1983]

[DATE OF COMMENCEMENT: 4 MAY, 1983]

*(English text signed by the State President)*

**ACT**

**To amend the Performing Animals Protection Act, 1935, and the Animals Protection Act, 1962, so as to further regulate certain penalties that may be imposed thereunder; and to provide for matters connected therewith.**

1. Amends section 7 of the Performing Animals Protection Act, No. 24 of 1935, by substituting paragraph (e).
2. Amends section 8 of the Performing Animals Protection Act, No. 24 of 1935, by substituting subsection (1).
3. Amends section 2(1) of the Animals Protection Act, No. 71 of 1962, by substituting the words following paragraph (s).
4. Amends section 10 of the Animals Protection Act, No. 71 of 1962, by substituting subsection (2).
5. **Short title.**—This Act shall be called the Animals Protection Amendment Act, 1983.

**ANIMALS PROTECTION AMENDMENT ACT  
NO. 20 OF 1985**

[ASSENTED TO 15 MARCH, 1985]

[DATE OF COMMENCEMENT: 3 APRIL, 1985]

*(English text signed by the State President)*

**ACT**

**To amend the Performing Animals Protection Act, 1935, so as to amend the Afrikaans text of section 3 (2) and to increase certain penalties; to amend the Animals Protection Act, 1962, so as to increase certain fines; to increase the maximum amount of compensation which can be granted to a person in respect of loss suffered or expense incurred by him as a result of an offence committed in terms of the last-mentioned Act; to substitute a reference to a repealed Act**

**and to delete a similar reference; and to make other provision in respect of the disposal of any animal or thing seized in the course of the prevention of cruelty to animals; and to provide for matters connected therewith.**

1. Amends section 3 (2) of the Performing Animals Protection Act, No. 24 of 1935, in the Afrikaans text.
2. Substitutes section 5 of the Performing Animals Protection Act, No. 24 of 1935.
3. Amends section 7 of the Performing Animals Protection Act, No. 24 of 1935, by substituting paragraph (e).
4. Amends section 8 of the Performing Animals Protection Act, No. 24 of 1935, by substituting subsection (1).
5. Amends section 2 (1) of the Animals Protection Act, No. 71 of 1962, by substituting the words following upon paragraph (s).
6. Amends section 4 of the Animals Protection Act, No. 71 of 1962, as follows:—paragraph (a) substitutes subsection (1); and paragraph (b) substitutes subsection (3) (a).
7. Amends section 8 (1) of the Animals Protection Act, No. 71 of 1962, by substituting paragraph (c).
8. Amends section 10 of the Animals Protection Act, No. 71 of 1962, by substituting subsection (2).
9. **Short title.**—This Act shall be called the Animals Protection Amendment Act, 1985.

**ANIMALS PROTECTION SECOND AMENDMENT ACT NO. 84 OF 1985**

[ASSENTED TO 20 JUNE, 1985]

[DATE OF COMMENCEMENT: 3 JULY 1985]

*(English text signed by the State President)*

**ACT**

**To amend the Animals Protection Act, 1962, so as to empower the Minister of Justice to make regulations relating to the seizure and disposal or destruction of animals; and to provide for matters connected therewith.**

1. Amends section 10 (1) of the Animals Protection Act, No. 71 of 1962, by substituting paragraph (c).
2. **Short title.**—This Act shall be called the Animals Protection Second Amendment Act, 1985.



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## The Physical Planning Act No. 88 of 1967

[ASSENTED TO 19 JUNE, 1967][DATE OF COMMENCEMENT: 7 JULY, 1967]

(Afrikaans text signed by the State President)

as amended by

Physical Planning and Utilization of Resources Amendment Act, No. 73 of 1975

Environment Planning Amendment Act, No. 104 of 1977

Environment Planning Amendment Act, No. 51 of 1981

Physical Planning Amendment Act, No. 87 of 1983

Physical Planning Amendment Act, No. 104 of 1984

Physical Planning Amendment Act, No. 92 of 1985

Regional Services Councils Act, No. 109 of 1985

Transfer of Powers and Duties of the State President Act, No. 97 of 1986

Environment Conservation Act, No 73 of 1989

KwaZulu and Natal Joint Services Act, No. 84 of 1990

Physical Planning Act, No 125 of 1991

### GENERAL NOTE

**This Act was amended by section 25 of Act No. 84 of 1990 in so far as it applies to the Province of Natal and that part of KwaZulu which falls outside that province.**

**This Act has been wholly repealed, except for the sections reproduced hereunder. Subscribers are advised to refer to section 36 of Act No. 125 of 1991 to establish the extent to which Act 88 of 1967 is still applicable.**

### ACT

**To promote co-ordinated environment planning and the utilization of the Republic's resources, and for those purposes to provide for control of the zoning**

**and subdivision of land for industrial purposes; for the reservation of land for industrial purposes; for the establishment of controlled areas; for restrictions upon the subdivision and use of land in controlled areas; for the compilation and approval of guide plans; and for restrictions upon the use of land for certain purposes unless reserved for use for such purposes; and for other matters incidental thereto.**

[Long title substituted by s. 13 of Act No. 73 of 1975 and by s. 12 of Act No. 92 of 1985.]

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

**"Administrator"** means an Administrator and the other members of the executive committee concerned;

**"building"** includes any structure;

**"business"** means any trade or occupation as defined in any ordinance relating to the licensing of trades and occupations and of the province concerned;

**"committee"** means a committee appointed in terms of section 6A (1);

**"controlled area"** means an area declared or deemed to have been declared a controlled area under section 5 and includes an area declared or deemed to have been declared under the said section part of a controlled area;

**"Department"**, in relation to any provision of this Act, means the Department or Office of State or provincial administration administered by the Minister or Administrator to whom the administration of that provision has been assigned by a proclamation issued under section 13B;

[Definition of "Director-General" inserted by s. 1 (a) of Act No. 51 of 1981.]

**"draft guide plan"** means a draft guide plan contemplated in section 6A (a);

**"factory"** means a factory as defined in section 3 of the Factories, Machinery and Building Work Act, 1941 (Act No. 22 of 1941), and includes any premises on which an activity is carried on and which the State President, by

proclamation in the *Gazette*, declares a factory for the purposes of this Act;

**“guide plan”** means a draft guide plan approved in terms of section 6A(10);

Definition of “guide plan” substituted by s.1 (b) of Act No. 51 of 1981.]

**“guide plan area”** means the area in respect of which a guide plan is applicable;

**“industrial activities”** means the establishment or carrying on of a factory;

[Definition of “industrial activities” inserted by s. 1 (a) of Act no. 92 of 1985.]

**“mineral”** means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth and having been formed by or subjected to a geological process, but does not include water and soil, unless they are taken from the earth for the production or extracting therefrom of a product of commercial value;

**“Minister”**, in relation to any provision of this Act, means the Minister or Administrator to whom the administration of that provision has been assigned by proclamation issued under section 13B;

[Definition of “Minister” substituted by s.1 (c) of Act No. 51 of 1981.]

**“natural area”**.....

[Definition of “natural area” deleted by s.1 (d) of Act No. 51 of 1981.]

**“natural resource”** means any raw material obtained from nature and includes soil, air, water and minerals;

[Definition of “natural resource” inserted by s.1 (e) of Act No. 51 of 1981.]

**“nature area”**.....

[Definition of “nature area” inserted by s.1 (e) of Act No. 51 of 1981

and deleted by s. 43 of Act No. 73 of 1989.]

**“processing”**, in relation to a mineral, means all processes through which a mineral is put, after having been removed from the earth, in order to refine it or to render it suitable for a specific purpose or to make the extraction of an element possible; and includes the recovery, concentration, refinement or conversion thereof;

[Definition of “processing” inserted by s. 1 (e) of Act No. 51 of 1981.]

**“quarry”** means any open excavation made with the intention of searching for or removing any soil, sand, gravel, stone or clay;

[Definition of “quarry” inserted by s.1 (e) of Act No. 51 of 1981.]

**“processing”**.....

[Definition of “processing” substituted for the definition of “process” by s.1 of Act No. 104 of 1977 and deleted by s. 1 of Act No 87 of 1983. But see definition of “processing” above

**“regional services council”** means a regional services council established in terms of the Regional Services Councils Act, 1985;

[Definition of “regional services council” inserted by s. 17 of Act No. 109 of 1985.]

**“resources”** includes land, minerals, water, means of generating power, labour and means of transport.

**“Secretary”**.....

[Definition of “Secretary” inserted by s.1 of Act No. 87 of 1983.]

**“use of land”**.....

S. 1 substituted by s. 1 of Act No. 73 of 1975. Definition of “use of land” deleted by s.1 of Act No 87 of 1983.]

2.....

S.2 amended by s. 2 of Act No 73 of 1975, substituted by s. 2 of Act No. 51 of 1981, amended by s. 2 (b) and (c) of Act No. 92 of 1985 and repealed by s. 36 (1) (a) of Act No. 125 of 1991.]

3.....

[S.3 amended by s. 3 of Act No. 73 of 1975 and by s.2 of Act No 104 of 1977, repealed by s. 3 of Act No. 92 of 1985 and amended by ss.46 and 47(sic) of Act No. 97 of 1986.]

4.....

[S.4 substituted by s.4 of Act No. 73 of 1975 and by s.3 of Act No 51 of 1981, amended by s.44 (1) of Act No. 73 of 1989 and repealed by s. 36 (1) (b) of Act No. 125 of 1991.]



**5. Establishment and disestablishment of controlled areas.** - (1) If the Minister is satisfied,

- (a) that an area should be declared a controlled area or part of an existing controlled area, he may by notice in the *Gazette* declare that area, as defined in the notice, a controlled area, or part of a controlled area as from a date specified therein;

[Para. (a) amended by s.47 of Act No. 97 of 1986.]

(b) that any controlled area or any part thereof should be disestablished, he may by notice in the *Gazette* declare that such area or the part thereof defined in the notice, shall as from a date specified therein, cease to be a controlled area or part of a controlled area, as the case may be.

[Sub-s. (1) amended by s. 46 of Act No. 97 of 1986.  
Para. (b) amended by s.47 of Act No. 97 of 1986.]

(2) No notice shall be issued under subsection (1) unless in each case the Minister has previously consulted the Administrator or Administrators of the province or provinces concerned in regard thereto.

[Sub-s. (2) amended by s. 47 of Act No. 97 of 1986.]

**6. Restriction upon use of land in controlled area.** -

(1) Subject to the provisions of subsection (2), no person shall-

- (a) use land in a controlled area otherwise than for a purpose for which it was being used immediately prior to the date as from which the area concerned was or is declared a controlled area or part of a controlled area; or
- (b) use land, in a controlled area, which at any time after the date referred to in paragraph (a), whether before or after the commencement of the Physical Planning Amendment Act, 1984, was not used for a purpose contemplated in the said paragraph (a), or for any other purpose authorized by or under this Act, for a continuous period of two years,

except under the authority of a permit and for the purpose and in accordance with the conditions specified therein.

[Sub-s. (1) substituted by s. 1 of Act No. 104 of 1984.]

(2) Subsection (1) shall not apply in respect of-

- (a) any area, immovable property, building, land or premises which is the subject of a proclamation issued or deemed to have been issued in terms of sec-

tion 19, 23, 24 or 25 of the Group Areas Act, 1966 (Act No. 36 of 1966);

(b) the use of land-

- (i) situated in the area of jurisdiction of a municipal council, city council, town council, village council, village management council, local board, or health committee, and land forming part of, in the Province of the Cape of Good Hope, a local area established under section 8 (1) (g) of the Divisional Councils Ordinance, 1976 (Ordinance No. 18 of 1976 of the Province of the Cape of Good Hope), and, in the Province of Natal, a development area as defined in section 1 of the Development and Services Board Ordinance, 1941 (Ordinance No. 20 of 1941 of the Province of Natal), and, in the Province of Transvaal, an area in respect of which a local area committee has been established under section 21 (1) of the Transvaal Board for the Development of Peri-Urban Areas Ordinance, 1943 (Ordinance No. 20 of 1943 of the Province of Transvaal); or

(ii) for agricultural or forestry purposes or for purposes incidental thereto, or for purposes of a road railway;

(c) the use of land for prospecting or mining for base minerals or for any other purpose for which authority, permission or consent is required in terms of any other law or condition contained in the title deed of the land;

(d) the use of land for a business within a Black residential area, as defined in section 1 of the Blacks (Urban Areas) Consolidation Act, 1945 (Act No. 25 of 1945);

(e) land-

(i) which has been reserved for the utilization of a particular natural resource;

[Sub-para. (i) substituted by s.45 of Act No. 73 of 1989.]

(ii) which is situated within a guide plan area.

(3) The provisions of subsection (2) (c) shall not apply in respect of the use of land-

(a) for the erection of a dwelling or the conduct of a business in connection with mining or prospecting activities;

(b) the purposes of any other business.

[S.6 amended by s. 5 of Act No. 73 of 1975 and substituted by s.4 of Act No. 51 of 1981.]

**6A.....**

[S. 6A inserted by s.6 of Act No. 73 of 1975, substituted by s.5 of Act No. 51 of 1981, amended by s.2 of Act No. 87 of 1983, by s. 2 of Act No. 104 of 1984, by s.4 of Act No. 92 of 1985 and by s. 17 of Act No. 109 of 1985 and repealed by s.36 (1) (a) of Act No. 125 of 1991.]

**6B.....**

[S.6B inserted by s. 6 of Act No. 73 of 1975, substituted by s.5 of Act No. 51 of 1981, amended by s.2 of Act No. 87 of 1983, by s.2 of Act No. 104 of 1984, by s. 4 of Act No. 92 of 1985 and by s. 17 of Act No 109 of 1985 and repealed by s. 36(1) (a) of Act No. 125 of 1991.]

**7.Exemptions.** - The Minister may by notice in the *Gazette*, on such conditions as he may determine and in so far as he may deem expedient, exempt-

(a) any land, any class of land or any particular use of land from any or all of the provisions of section 2 (1) (b) or (e), 4(2), 6 (1) or 6B (1) or (2);

[Para. (a) substituted by s. 6 of Act No. 92 of 1985.]

(b) any town planning scheme from the provisions of section 2 (1) (a);

(c) any person from any or all the provisions of section 2 (1) (c) or (d).

and may in like manner at any time withdraw such exemption.

[S.7 substituted by s.7 of Act No. 73 of 1975, by s.4 of Act No 104 of 1977 and by s. 4 of Act No. 87 of 1983.]

**8.Issue of permits.** - The Minister may in his discretion-

(a) direct that a permit (to be signed by an officer designated thereto by him) be issued subject to such conditions as he may determine, authorizing-

(i) the use of land specified in a notice issued in terms of section 4 (1) for a purpose other than the purpose for which the land was being lawfully used at the date of such notice; or

(ii) the use of any particular land for any brick making or sand washing or stone crushing or a quarry, or for the processing of any mineral in any other manner; or

[Sub-para (ii) substituted by s.7 of Act No. 92 of 1985.]

(iii) the use of land in a controlled area for a purpose

for which it was not being used at the date as from which the area concerned was or is declared a controlled area or part of a controlled area;

(iv) the use of land in a controlled area for a purpose for which it was being used immediately prior to the date referred to in subparagraph (iii), in a case where the land concerned at any time after that date was not so used for a continuous period of two years.

[Sub-para (iv) added by s. 3(a) of Act No.104 of 1984.]

(b) direct that a permit shall be available only for a portion of the land in respect of which it has been issued.

(2)The Minister may-

(a) at the request of the owner of land on whose application a permit has been issued under this section or of his successor in title, revoke or amend such permit; or

(b) if any land in respect of which a permit has been issued, is used contrary to a condition subject to which the permit has been issued, after not less than one month's notice revoke the permit.

(3)A permit issued under subsection (1) (a) (iii) or (iv) shall lapse if at any time after the issue thereof the land concerned is not used for a continuous period of two years for any purpose authorized in the permit.

[S.8 amended by s.8 of Act No. 73 of 1975 and substituted by s.7 of Act No. 51 of 1981. Sub-s. (3) added by s. 3 (b) of Act No. 104 of 1984.]

**9. Delegation of powers by Minister.** - (1).....

[Sub-s (1) substituted by s.9 of Act No. 73 of 1975 and by s.5 (a) of Act No. 87 of 1983, amended by s.8 of Act No. 92 of 1985 and deleted by s. 36 (1) (a) of Act No. 125 of 1991.]

(2) The Minister or Administrator may, subject to such conditions as he may determine, delegate to any officer (with a rank not lower than that of under-secretary) in the Department any of his powers under section 6A(3), (9), (12) (a), (b), (c) or (d), (13) or (15) (b) or 8.

[Sub-s. (2) substituted by s.9 of Act No. 73 of 1975 and by s.8 of Act No. 51 of 1981.]

(3) A permit issued or power exercised by virtue of a delegation under subsection (1) or (2) shall for all purposes be deemed to have been issued or exercised by the Minister.



(4) Any person from whom approval is required under section 2 or any applicant for a permit who is aggrieved by a decision by virtue of a delegation under this section may at any time within 60 days after the date of such decision appeal to the Minister.

[Sub-s. (4) substituted by s.8 of Act No. 51 of 1981 and by s.5 (b) of Act No. 87 of 1983 and amended by s.8 (c) of Act No. 92 of 1985.]

**9A. Investigation of suspected offences.** - (1) The Director-General may, whenever he suspects that any provision of this Act or a condition imposed in terms of section 2 or 8 is being contravened or not being complied with on any premises, give written instructions to an officer in his Department with a rank not lower than that of administrative officer to conduct any investigation necessary to ascertain whether such contravention or failure is taking place.

[Sub-s (1) amended by s.9 of Act NO. 92 of 1985.]

(2) When such an officer conducts any investigation under subsection (1) he may without warrant-

- (a) at any time during the day, without previous notice enter any premises and thereon make such examination and enquiry as may be necessary for the conduct of such investigation;
- (b) at any time and at any place require of any person who has in his possession or custody or under his control any book, document or other thing, the production to him of that book, document or other thing then and there or at a time and place fixed by him;
- (c) examine and make extracts from or copies of any such book, document or other thing, and require any person an explanation of any entries therein, and seize any such book, document or other thing as, in his opinion, may afford evidence of a contravention of or failure to comply with any provision or condition mentioned in subsection (1);
- (d) question, either alone or in the presence of any other person, as he thinks fit, with respect to any matter relevant to any such investigation, any person whom he finds on any premises entered under this section;
- (e) require any person who he has reasonable grounds for believing is in possession of information relevant to any such investigation, to appear before him at a time and place fixed by him and then and there question that person concerning any matter relevant to such investigation.

[S. 9A inserted by s. 10 of Act No. 73 of 1975.]

**10. Withdrawal and amendment of proclamations and notices.** - Whenever the State President or the Minister is by this Act authorized to issue a proclamation or notice, he may in like manner, whenever it is deemed expedient, withdraw or amend the proclamation or notice (including a proclamation or notice deemed to have been issued in terms of a provision of this Act).

**11. Offences and penalties.** - (1) Any person who-

- (a) contravenes section 2(1) (e), 4(2), 6(1), 6A (12)(b), 6B(1) or 2, or fails to comply with a direction under section 6B(4); or

[Para (a) substituted by s.5(a) of Act No.104 of 1977, by s.9 of Act No.51 of 1981 and by s.10(a) of Act No.92 of 1985.]

- (b) fails to comply with a condition referred to in section 2(2), 4(2), 6B (2) or 8(1); or

[Para (b) substituted by s.5(a) of Act No.104 of 1977 and amended by s.10 (b) of Act No.92 of 1985.]

- (c) refuses or fails, without sufficient cause, to answer fully and satisfactorily to the best of his knowledge and belief any relevant question lawfully put to him by an officer mentioned in subsection (2) of section 9A in the exercise of his powers in terms of that section or to comply with any lawful requirement of such officer in the exercise by him of such powers; or
- (d) gives an answer to any such question or makes any relevant statement to such officer which is false in any material particular, knowing such answer or statement to be false; or
- (e) hinders or obstructs any such officer in the exercise of his powers in terms of the said section 9A,

shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment, and, in the case of a continuing contravention, to a fine not exceeding twenty rand for every day during which the contravention is continued.

(2) Whenever any person is convicted of an offence referred to in subsection (1) (a) or (b), the court convicting him may, in addition to any other punishment imposed for that offence, summarily enquire into and assess the monetary equivalent of any advantage which that person may have gained in consequence of that offence, and



impose on him a fine equal to the amount so assessed or, in default of payment imprisonment for a period not exceeding one year.

[Sub-s. (2) substituted by s. 5(b) of Act No. 104 of 1977.]

(3) Notwithstanding anything in any other law contained, a magistrate's court shall have jurisdiction to impose any punishment prescribed in subsections (1) and (2).

[S.11 substituted by s.11 of Act No. 73 of 1975.]

**12.Evidence.** - (1) A document which purports to have been certified by the Director-General, or by an officer in the Department authorized thereto by the Director-General, to be a true and correct copy of any approval or permission granted in writing, or a permit issued or conditions imposed, in terms of this Act, shall, upon the mere production thereof at any prosecution in terms of this Act, be *prima facie* evidence of the granting of such approval or permission or the imposition of such conditions, as the case may be.

[Sub-s: (1) amended by s.6 of Act No.87 of 1983.]

(2).....

[Sub-s (2) amended by s.6 of Act No.87 of 1983 and deleted by s.11 of Act No. 92 of 1985.]

(3).....

[Sub-s (3) deleted by s.11 of Act No. 92 of 1985.]

(4) When in any prosecution for a contravention of section 6 (1) it is alleged that land was not used for a continuous period of two years for any purpose contemplated in that provision, it shall be presumed, until the contrary is proved, that such land was not so used.

[S. 12 substituted by s. 12 of Act No. 73 of 1975 and by s.6 of Act No. 104 of 1977. Sub-s (4) added by s.4 of Act No. 104 of 1984.]

**13.Exclusion of Black Areas.** - No provision of sections 2 to 12, inclusive, shall be applicable or be made applicable in any area consisting of land referred to in section 21 (1) of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), or in a scheduled Black area as defined in that Act.

**13A.....**

[S. 13A inserted by s.10 of Act No. 51 of 1981 and repealed by s. 36 (1) (a) of Act No. 125 of 1991.]

**13B.Administration of Act.** - The State President may by proclamation in the *Gazette* assign the administra-

tion of any provision of this Act to any Minister or the Administrator of a province.

[S.13B inserted by s.10 of Act No. 51 of 1981.]

**14.Repeal of laws and savings** - (1) The Natural Resources Development Act, 1947 (Act No. 51 of 1947), and the Natural resources Development Amendment Act, 1955 (Act No. 30 of 1955), are hereby repealed.

(2) A proclamation or permit issued or exemption granted or anything done under any provision of the laws repealed by subsection (1) shall be deemed to have been issued, granted or done under the corresponding provision of this Act.

**15.Short title.** - This Act shall be called the Physical Planning Act, 1967.

[S. 15 substituted by s.14 of Act No. 73 of 1975 and by s.12 of Act No. 51 of 1981.]

#### PHYSICAL PLANNING AND UTILIZATION OF RESOURCES AMENDMENT ACT NO 73 OF 1975

[ASSENTED TO 30 JUNE, 1975][DATE OF COMMENCEMENT: 16 JULY, 1975]

(Afrikaans text signed by the State President)

#### ACT

**To amend the Physical Planning and Utilization of Resources Act, 1967, so as to provide for the reservation of land for use for specific purposes; for the compilation and approval of guide plans; for restrictions upon the use of land for certain purposes unless reserved for use for such purposes; and for the investigation of suspected offences; and to provide for matters connected therewith.**

*1. Substitutes section 1 of the Physical Planning and Utilization of Resources Act, No 88 of 1967.*

*2. Amends section 2 of the Physical Planning and Utilization of Resources Act, No 88 of 1967, by adding subsection (4).*

*3. Amends section 3 of the Physical Planning and Utilization of Resources Act, No. 88 of 1967, by adding subsection (5).*

*4. Substitutes section 4 of the Physical Planning and Utilization of Resources Act, No. 88 of 1967.*

*5. Amends section 6 (2) of the Physical Planning and Utilization of Resources Act, No. 88 of 1967, by substituting paragraph (d).*



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6. Inserts sections 6A and 6B in the Physical Planning and Utilization of Resources Act No. 88 of 1967 .

7. Substitutes section 7 of the Physical Planning and Utilization of Resources Act, No. 88 of 1967.

8. Amends section 8 (1) (a) of the Physical Planning and Utilization of Resources Act, No. 88 of 1967, by inserting subparagraph (iA).

9. Amends section 9 of the Physical Planning and Utilization of Resources Act, No. 88 of 1967, by substituting subsections (1) and (2).

10. Inserts section 9A in the Physical Planning and Utilization of Resources Act, No. 88 of 1967.

11 to 14 inclusive. Substitutes respectively sections 11 and 12, the long title and section 15 of the Physical Planning and Utilization of Resources Act, No. 88 of 1967.

15. **Short title.** - This Act shall be called the Physical Planning and Utilization of Resources Amendment Act, 1975.

## The Conservation of Agricultural Resources Act No. 43 of 1983

[ASSENTED TO 21 APRIL, 1983][DATE OF COMMENCEMENT: 1 JUNE, 1984]

(Afrikaans text signed by the State President)

as amended by

Abolition of Racially Based Land Measures Act, No. 108 of 1991

[with effect from 24 June, 1994 - see title LAND]

### ACT

To provide for control over the utilization of the natural agricultural resources of the Republic in order to promote the conservation of the soil, the water sources and the vegetation and the combating of weeds and invader plants; and for matters connected therein.

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

“**advisory board**” means the Conservation Advisory Board established by section 17;

“**authorized person**” means a person authorized in terms of section 4 (5);

“**conservation**”, in relation to the natural agricultural resources, includes the protection, recovery and reclamation of those resources;

“**conservation committee**” means a conservation committee established under section 15;

“**control measure**” means a control measure referred to in section 6;

“**cultivation**”, in relation to land, means any act by means of which the topsoil is disturbed mechanically; and “**cultivate**” has a corresponding meaning;

“**department**” means the Department of Agriculture;

“**direction**” means a direction referred to in section 7;

“**Director-General**” means the Director-General: Agri-

culture;

“**erosion**” means the loss of soil through the action of water, wind, ice or other agents, including the subsidence of soil;

“**executive officer**” means the executive officer referred to in section 4;

“**grazing capacity**”, in relation to veld, means the production capacity over the long term of that veld to meet the feed requirements of animals in such a manner that the natural vegetation thereon does not deteriorate or is not destroyed;

“**invader plant**” means a kind of plant which has under section 2 (3) been declared an invader plant, and includes the seed of such plant and any vegetative part of such plant which reproduces itself asexually;

“**land user**” means the owner of land, and includes -

(a) any person who has a personal or real right in respect of any land in his capacity as fiduciary, fideicommissary, servitude holder, possessor, lessee or occupier, irrespective of whether he resides thereon;

(b) any person who has the right to cut trees or wood on land or to remove trees, wood or other organic material from land; and

(c) in relation to land under the control of a local authority, that local authority, but not a person who carries on prospecting or mining activities;

“**large stock unit**” means a unit which consists of the prescribed number of animals of a prescribed kind, type, breed, age or sex, or which is in a prescribed phase of production or is of a prescribed approximate live mass;

“**local authority**” means any institution or body contemplated in section 84 (1) (f) of the Republic of South Africa Constitution Act, 1961 (Act No.32 of 1961);

“**Minister**” means the Minister of Agriculture;

“**natural agricultural resources**” means the soil, the



water sources and the vegetation excluding weeds and invader plants.

**“officer”** means an officer or employee as defined in section 1 of the Public Service Act, 1957 (Act No.54 of 1957);

**“owner”**, in relation to land -

(a) means the person in whom the ownership in that land is vested or in whose name that land is registered, or if that person is absent from the Republic or his whereabouts are unknown, his authorized representative in the Republic;

(b) which in the opinion of the executive officer has been purchased by any person but has not yet been registered in his name, means such purchaser;

(c) which in the opinion of the executive officer is subject to a usufruct, means the usufructuary;

**“prescribe”** means prescribe by regulation; and **“prescribed”** has a corresponding meaning;

**“prospecting or mining activities”** means activities which are controlled in terms of the Mines and Works Act, 1956 (Act No.27 of 1956), and includes the use of land for the purposes of a quarry as defined in section 1 of the Physical Planning Act, 1967 (Act No.88 of 1967);

**“regional conservation committee”** means a regional conservation committee established under section 16;

**“regional director”** means an officer who is in charge of the activities of the department within a particular region determined by the Minister in terms of section 16 (1);

**“regulation”** means a regulation made under this Act;

**“scheme”** means a scheme established in terms of section 8;

**“soil conservation work”** means any work which is constructed on land for -

(a) the prevention of erosion or the conservation of land which is subject to erosion;

(b) the conservation or improvement of the vegetation or the surface of the soil;

(c) the drainage of superfluous surface or subterranean water;

(d) the conservation or reclamation of any water source; or

(e) the prevention of the silting of dams and the pollution of water, but not a work which is constructed on land in the course of prospecting or mining activities;

**“this Act”** includes the regulations;

**“urban area”** means land which -

(a) is under the control of a local authority, but excluding any commonage or any other land under such control which in the opinion of the executive officer is utilized for agricultural purposes; or

(b) is subdivided into erven or lots and public open spaces and streets which are bounded by such erven or lots and public open spaces;

**“virgin soil”** means land which in the opinion of the executive officer has at no time during the preceding ten years been cultivated;

**“water course”** means a natural flow path in which run-off water is concentrated and along which it is carried away;

**“weed”** means any kind of plant which has under section 2(3) been declared a weed, and includes the seed of such plant and any vegetative part of such plant which reproduces itself asexually;

**“weed killer”** means any substance or remedy or any mixture or combination of any substance or remedy which is registered in terms of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No.36 of 1947), as an agricultural remedy for use in connection with the combating of weeds or invader plants.

**2.Application of Act.** - (1) Subject to the provisions of subsection (2) this Act shall not apply -

(a) to any land which is situated in an urban area;

(b).....[illegible]

[Para.(b) deleted by Proclamation No.R.116 of 1994]

(c) to any land situated within any area declared under section 2 of the Mountain Catchment Areas Act, 1970 (Act No.63 of 1970), to be a mountain catchment area.

(2)(a)The provisions of this Act relating to weeds and invader plants shall also apply to land which is situated within an urban area.

(b)The provisions of this Act relating to the burning of veld shall not apply to a private forest as defined in



section 1 of the Forest Act, 1968 (Act.72 of 1968), to which any provision of that Act which relates solely to State forests has been applied under section 2 (2) of that Act.

(3)The Minister may by regulation declare any plant to be a weed or an invader plant for the purposes of this Act, either throughout the Republic or in one or more areas therein.

**3.Objects of Act.** - The objects of this Act are to provide for the conservation of the natural agricultural resources of the Republic by the maintenance of the production potential of land, by the combating and prevention of erosion and weakening or destruction of the water sources, and by the protection of the vegetation and the combating of weeds and invader plants.

**4.Executive officer and authorized person** - (1) An officer of the department designated as executive officer by the Minister shall exercise the powers and perform the duties conferred or imposed upon the executive officer by or under this Act or a scheme.

(2)The executive officer shall exercise his powers and perform his duties with due regard to any instructions issued by the Minister.

(3)(a)Any power conferred or duty imposed upon the executive officer may be exercised or performed by the executive officer personally or by an officer under a delegation or direction or under the control of the executive officer.

(b)Any decision made or order given by such officer may be withdrawn or amended by the executive officer and shall, until it has been so withdrawn or amended, except for the purposes of this paragraph, be deemed to have been made or given by the executive officer.

(4)(a)Notwithstanding the provisions of subsection (3) (a) the executive officer may in writing authorize an employee of a local authority, or an employee of an irrigation board established by section 79 of the Water Act, 1956 (Act. No. 54 of 1956), for a particular irrigation district as defined in that Act, to exercise such powers or perform such duties of the executive officer in terms of this Act as may be specified in such authority, in relation to the combating of weeds and invader plants in the area of jurisdiction of the local authority concerned, or in the irrigation district concerned, as the case may be.

(b)An authority under the definition of "officer" in section 13 of the Weeds Act, 1937 (Act No.42 of 1937), which has prior to the commencement of this section been granted to an employee of a local authority or an irrigation board mentioned in paragraph (a) of this subsection and is at the said commencement still in force,

shall be deemed to be an authorization granted in terms of that paragraph.

(c)The provisions of subsection (3) (b) shall *mutatis mutandis* apply to any decision made or order given by any person who is authorized in terms of paragraph (a) of this subsection or is deemed in terms of paragraph (b) of this subsection to be so authorized.

(5)If the Minister deems it expedient for the purposes of the exercise of a power or the performance of a duty conferred or imposed upon himself or the executive officer by or under this Act or a scheme, he may authorize any person who is not an officer to exercise such powers or to perform such duties as the Minister or the executive officer, as the case may be, may grant to or impose upon that person.

**5.Prohibition of the spreading of weeds.** - (1) No person shall -

(a)sell, agree to sell or offer, advertise, keep, exhibit, transmit, send, convey or deliver for sale, or exchange for anything or dispose of to any person in any manner for a consideration, any weed; or

(b)in any other manner whatsoever disperse or cause or permit the dispersal of any weed from any place in the Republic to any other place in the Republic.

(2)(a)If seed, grain, hay or any other agricultural product contains any weed the executive officer may issue an order that the seed, grain, hay or other agricultural product concerned -

(i)be returned to the place of origin thereof;

(ii)be forwarded to a specified place in order to have the weed concerned removed therefrom; or

(iii)be destroyed in such manner as he may determine.

(b)A copy of any such order shall be served on the owner of the seed, grain, hay or other agricultural product concerned: Provided that a copy of an order referred to in subparagraph (i) of paragraph (a) may be served on the person who has the control of that seed, grain, hay or other agricultural product instead of on the owner thereof.

(c)Any such order shall be executed by the person on whom it has been served within the period specified therein, failing which the executive officer may take such steps for the execution thereof as he may deem necessary.

(d)The costs incurred in connection with the execution thus of such order shall be borne by the owner of the seed, grain, hay or other agricultural product concerned, and may be recovered from him by the executive officer.



- (3)(a) If any weed adheres to an animal which is driven on a public road, conveyed in a vehicle or offered for sale at a livestock auction, the executive officer may issue an order that the weed concerned be removed from that animal.
- (b) A copy of any such order shall be served on the owner or on the person who has the control of the animal concerned.
- (c) The provisions of subsection (2) (c) and (d) shall *mutatis mutandis* apply to an order referred to in paragraph (a) of this subsection.
- (4) The provisions of subsections (1) and (2) shall not apply with regard to weed which occurs in seed which is conveyed or sold to or is present on the premises of an establishment which is registered in terms of the Plant Improvement Act, 1976 (Act No. 53 of 1976), in respect of the business of the cleansing of propagating material for sale, provided the words "uncleansed seed" or "onskoongemaakte saad" appear on the containers of such seed or on labels attached thereto.
- (5) Any person who removes any weed from seed, grain, hay or any other agricultural product or from an animal in terms of any order under subsection (2) or (3) shall deal with it in such manner as will ensure that it will not be able to reproduce itself.
- (6) Any person who contravenes any provision of subsection (1) or (5) or fails to execute any order served on him under subsection (2) or (3) shall be guilty of an offence.
- 6. Control measures.** - (1) In order to achieve the objects of this Act the Minister may prescribe control measures which shall be complied with by land users to whom they apply.
- (2) Such control measures may relate to -
- (a) the cultivation of virgin soil;
- (b) the utilization and protection of land which is cultivated;
- (c) the irrigation of land;
- (d) the prevention or control of waterlogging or salination of land;
- (e) the utilization and protection of vleis, marshes, water sponges, water courses and water sources;
- (f) the regulating of the flow pattern of run-off water;
- (g) the utilization and protection of the vegetation;
- (h) the grazing capacity of veld, expressed as an area of veld per large stock unit;
- (i) the maximum number and the kind of animals which may be kept on veld;
- (j) the prevention and control of veld fires;
- (k) the utilization and protection of veld which has burned;
- (l) the control of weeds and invader plants;
- (m) the restoration or reclamation of eroded land or land which is otherwise disturbed or denuded;
- (n) the protection of water sources against pollution on account of farming practices;
- (o) the construction, maintenance, alteration or removal of soil conservation works or other structures on land; and
- (p) any other matter which the Minister may deem necessary or expedient in order that the objects of this Act may be achieved, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.
- (3) A control measure may -
- (a) contain a prohibition or an obligation with regard to any matter referred to in subsection (2);
- (b) provide that the executive officer may exempt a person from such prohibition or obligation by means of a written consent;
- (c) prescribe the procedure with regard to the lodging of an application for such written consent.
- (4) Different control measures may be prescribed in respect of different classes of land users or different areas or in such other respects as the Minister may determine.
- (5) Any land user who refuses or fails to comply with any control measure which is binding on him, shall be guilty of an offence.
- 7. Directions.** - (1) The executive officer may by means of a direction order a land user to comply with a particular control measure which is binding on him on or with regard to the land specified in such direction, or if it is in the opinion of the executive officer essential in order to achieve the objects of this Act, to perform or not to perform any other specified act on or with regard to such land.
- (2) Any such direction may provide that any requirement

imposed therein shall be complied with in the manner or within the period specified in the direction.

(3) Any such direction -

(a) shall be published by the executive officer by notice in the *Gazette*; or

(b) shall be contained in a written notice served in the prescribed manner on the land user concerned.

(4) Any direction which has been published or served in terms of subsection (3) -

(a) shall be binding upon the land user specified therein and his successor in title in relation to the land mentioned in the direction; and

(b) may be withdrawn or amended by the executive officer by the service of a written notice on the land user concerned or his successor in title or the publication of a notice in the *Gazette*.

(5)(a) Any direction which has been declared applicable with regard to land under section 3, 4 or 7 of the Soil Conservation Act, 1969 (Act No.76 of 1969), and is in force at the commencement of this section, shall be deemed to be a direction which has been served in terms of this section on the land user in respect of the land mentioned therein.

(b) Any notice given under section 2 of the Weeds Act, 1937 (Act No.42 of 1937), or any order issued in terms of section 5bis of that Act which is in force at the commencement of this section, shall be deemed to be a direction served in terms of this section on the land user in respect of the land mentioned therein.

(6) Any land user who -

(a) refuses to receive a direction served on him in the prescribed manner; or

(b) refuses or fails to comply with a direction binding on him,

shall be guilty of an offence.

**8. Schemes** - (1) The Minister may, with the concurrence of the Minister of Finance, by notice in the *Gazette* establish a scheme in terms of which assistance, out of moneys appropriated by Parliament for this purpose, may be granted to land users by means of -

(a) the payment of subsidies in respect of -

(i) the construction of soil conservation works;

(ii) the reparation of damage to the natural agricultural resources or soil conservation works which has been caused by a flood or any other disaster caused by natural forces;

(iii) the reduction of the number of animals being kept on land in order to restrict the detrimental effect of a drought on that land;

(iv) the restoration or reclamation of eroded, disturbed, denuded or damaged land;

(v) the planting and cultivation of particular crops which improve soil fertility or counteract the vulnerability of soil to erosion;

(vi) the combating of weeds or invader plants;

(vii) the performance or omission of anything else which the Minister may deem necessary or expedient in order to achieve the objects of this Act; and

(b) the supplying of weed killers in order to combat weeds or invader plants, and the rendering of services by the department, including the utilization of weed killers, in order to combat weeds or invader plants on the land of land users.

(2) Different schemes may be so established in respect of different areas, and the provisions of a scheme may differ in respect of different areas in such respects as the Minister may determine.

**9. Provisions of schemes.** - (1) The Minister may in a notice by which a scheme is established -

(a) set out the objects of the scheme;

(b) mention the areas in which the periods during which the scheme shall apply;

(c) mention the acts in respect of which assistance may be rendered under the scheme;

(d) mention the basis for the determination of subsidies which may be paid under the scheme;

(e) determine the requirements which have to be complied with in order to qualify for assistance under the scheme;

(f) determine the procedure with regard to the lodging of an application in terms of the scheme;

(g) require that particular reports with regard to the progress and completion of the act concerned shall be submitted at specified times;



- (h) mention the conditions on which assistance may be rendered under the scheme;
- (i) provide that -
  - (i) any subsidy or grant paid or made under section 6 of the Soil Conservation Act, 1969 (Act No.76 of 1969), and the conditions, determined or prescribed under that section, upon which it was so paid or made; or
  - (ii) any financial or other assistance rendered under section 5 (1) (b) of the Weeds Act, 1937 (Act No.42 of 1937), and the conditions, determined under that section, upon which it was so rendered,

shall be deemed to be assistance rendered under the scheme, and the conditions on which such assistance has been so rendered; and

- (j) provide generally for any other matter which, in the opinion of the Minister, is necessary or expedient in order to promote or achieve the objects of the scheme, and the generality of this provision shall not be limited by the preceding paragraph of this subsection.

(2) Any person who -

- (a) after his application for participation in a scheme has been approved, refuses or fails to comply with the provisions of the scheme; or
- (b) refuses or fails to satisfy the conditions on which assistance has been rendered in terms of a scheme or are in terms of a scheme deemed to have been so rendered.

shall be guilty of an offence.

**10. Rendering of advice.**- (1) (a) The executive officer, any other officer of the department, a member of a conservation committee or an authorized person may at any reasonable time enter upon land with a view to rendering advice, relating to the utilization and conservation of the natural agricultural resources or the control of weeds and invader plants in accordance with the objects of this Act, to the land user of the land concerned.

(b) The executive officer, such other officer or such authorized person shall produce proof of his identity on being so requested by the land user of the land so entered upon.

(2) A person entering upon land under subsection (1) may -

- (a) carry out such investigations and make such surveys as is deemed necessary for the rendering of the advice concerned;

(b) provide the land user concerned with plans and specifications which he may use in connection with the utilization and conservation of the natural agricultural resources or the control of weeds or invader plants; and

(c) erect or effect such beacons and marks on that land as are necessary for the application of the advice rendered in terms of subsection (1), or to indicate the site where a soil conservation work should be constructed.

**11. Minister may perform certain acts.** - (1) The Minister may out of moneys appropriated by Parliament for this purpose perform or cause to be performed on or in respect of any land, any act in relation to any matter mentioned in paragraphs (a) to (p) of subsection (2) of section 6 which he may deem necessary in order to achieve the objects of this Act.

(2) (a) Subject to the provisions of paragraph (b) of this subsection the costs of the performance of any act referred to in subsection (1) or such part of those costs as the Minister may determine, shall be repayable by the owner of the land on or in respect of which the act was performed.

(b) If an act which has been performed on or in respect of any land in terms of subsection (1), has or is likely to have, in the opinion of the Minister, a beneficial effect on the land of another owner, such portion of the costs mentioned in paragraph (a) as the Minister may determine, shall be repayable by such other owner.

(3) (a) Any amount which is repayable in terms of subsection (2) shall for the purposes of the recovery thereof be deemed to be assistance as defined in section 1 of the Agricultural Credit Act, 1966 (Act No.28 of 1966), which has been rendered by the Minister to the owner concerned on condition that -

(i) if the amount due is repaid within 60 days of the date on which the executive officer has ordered that owner in writing to do so, no interest shall be payable thereon; and

(ii) if the amount due is not so repaid, interest thereon shall be charged at the rate mentioned in section 15 (1) of the Agricultural Credit Act, 1966, as from the date on which the executive officer has ordered the repayment concerned in writing.

(b) Notwithstanding the provisions of paragraph (a) (i) the Minister may after consideration of a written application by any owner of land, approve on such terms and conditions as he may in each case determine, including the right to require that a mortgage bond be



registered in terms of section 34 of the Agricultural Credit Act, 1966, that -

- (i) repayment of the amount due, including interest, be postponed for a specified period; or
  - (ii) the amount due, including interest, be repaid in specified instalments at specified times.
- (c) Notwithstanding anything to the contrary contained in any law, any amount accruing to the Agricultural Credit Account referred to in section 20A of the Agricultural Credit Act, 1966, by virtue of this subsection, shall be transferred to the State Revenue Fund.
- (4) (a) The Minister may with the concurrence of the owner of any land and subject to such conditions as may be agreed upon between the Minister and that owner, perform any act referred to in subsection (1) on or in respect of the land of that owner for the purpose of public demonstration or for research in any matter relating to veld, soil or water conservation or the combating of weeds or invader plants.
- (b) Notwithstanding the provisions of subsection (2), no portion of the costs of the performance of any act in terms of paragraph (a) of this subsection shall be repayable by the owner of the land concerned.
- (5) (a) The Minister, any officer of the department or an authorized person may at any reasonable time -
- (i) enter upon any land in order to perform an act referred to in subsection (1) on or in respect of that land or any other land; and
  - (ii) proceed over any land in order to reach land on or in respect of which any act referred to in subsection (1) is to be performed.
- (b) Any person referred to in paragraph (a) may, after notice to the land user of the land so entered upon -
- (i) take with him such assistants, labourers, animals, vehicles, implements, equipment, instruments, appliances, chemicals and other aids as he may require for the purposes of an act referred to in subsection (1) whenever he enters upon that land;
  - (ii) erect a temporary camp on that land;
  - (iii) dig out or take any sand, soil, clay, gravel, stone, water, bush, wood, or other material on that land which he may require for use in connection with the said purposes;
  - (iv) distribute on or remove from that land any insect or the eggs thereof or any other organism which is inju-

rious to weeds or invader plants occurring on that land, or remove from that land any plant or portion of a plant upon which such insect, eggs or organism is present; and

- (v) destroy on or remove from that land any weeds or invader plants which are present thereon.
- (c) Any officer or authorized person referred to in paragraph (a) shall produce proof of his identity on being so requested by the land user of the land so entered upon.
- (6) (a) The Minister may with the concurrence of the Minister of Finance pay to a land user out of moneys appropriated by Parliament for this purpose such compensation as he may deem reasonable in respect of a temporary camp which is erected on land in terms of subsection (5) (b) (ii), or in respect of sand, soil, clay, gravel, stone, water, bush, wood or other material which is dug out or taken in terms of subsection (5) (b) (iii).
- (b) The payment of compensation in terms of paragraph (a) shall only be considered if -
- (i) an application in this connection is submitted to the executive officer by the land user concerned in writing within 90 days of the date on which the camp concerned is removed from the land concerned, or the sand, soil, clay, gravel, stone, water, bush, wood or other material concerned is dug out or taken; and
  - (ii) the act concerned referred to in subsection (5) (a) was not performed on land of the land user concerned or does not have or is not likely to have a beneficial effect on such land.
- (c) Compensation paid in terms of paragraph (a) shall form part of the costs referred to in subsection (2) (a).

## 12. Maintenance of soil conservation works and maintenance of certain states

**of affairs.**- (1) (a) A soil conservation works shall, except where otherwise provided in this Act or a scheme, be maintained by every land user of the land concerned and his successor in title at his own expense in a manner which, in the opinion of the executive officer, will ensure the continued efficiency thereof.

- (b) The state of affairs arising on any land after any act has been performed thereon or in respect thereof in order to achieve the objects of this Act, shall be maintained in such manner as in the opinion of the executive officer will obviate the necessity or a repetition of that act.



(c) Notwithstanding the provisions of paragraph (a) the executive officer may order a land user in writing, or on application grant written consent to a land user, to alter, remove or destroy a particular soil conservation work.

(2) (a) If a land user or his successor in title refuses or fails to comply with the provisions of subsection (1) in respect of -

(i) a soil conservation work or an act for which assistance has been rendered under a scheme or is deemed to have been so rendered, or which has been constructed or performed in terms of section 11 of this Act or section 4 (4), 7, 8 or 19 of the Soil Conservation Act, 1969 (Act No. 76 of 1969); or

(ii) an act which has been performed in terms of section 4 and 5 of the Weeds Act, 1937 (Act No. 42 of 1937),

an amount equal to the monetary value of such assistance, or the actual costs less any contribution already paid by a land user, of such construction or performance, or such portion of such amount or actual costs as the executive officer may in each case determine, shall be repayable.

(b) An amount which is repayable in terms of paragraph (a) -

(i) shall be paid by the person who is the land user of the land concerned on the date on which the executive officer becomes aware of such refusal or failure, unless the person concerned proves, in the case of a soil conservation work which has been altered, removed or destroyed, to the satisfaction of the executive officer that it was altered, removed or destroyed before he became the land user of the land concerned; and

(ii) shall be paid to the executive officer within 60 days of the date on which he ordered the land user concerned in writing to pay the amount due.

(c) If a land user fails to pay the amount repayable by him in terms of paragraph (b) within the period referred to in subparagraph (ii) of that paragraph, interest at a rate equal to the rate determined in terms of section 26 (1) of the Exchequer and Audit Act, 1975 (Act No. 66 of 1975), and which is applicable on the date on which the executive officer ordered the repayment concerned in writing, shall be payable in respect of the amount due.

(3) If the executive officer becomes aware of any refusal or failure to comply with the provisions of subsection (1), he may order a land user to repair or reconstruct the soil conservation work concerned or to repeat the act concerned.

(4) The land user concerned shall not be discharged from prosecution for a contravention of the provisions of subsection (1) on account of the payment of an amount due in terms of subsection (2), or the repair or reconstruction of a soil conservation work or the repetition of an act in terms of subsection (3) or otherwise.

(5) Any person who contravenes any provision of subsection (1) or refuses or fails to comply with an order contemplated in subsection (3) shall be guilty of an offence.

### 13. Minister may order payment of certain amounts.

(1) (a) The Minister may order any owner of land in writing to pay an amount determined by the Minister, to a land user in respect of the increase or likely increase in the value of the land of such owner as a result of the beneficial effect on that land of a soil conservation work which has been constructed by such land user.

(b) Any such order shall only be issued by the Minister if -

(i) the construction of the soil conservation work concerned has been required in terms of a direction; and

(ii) the land user by whom the soil conservation work concerned has been constructed, has requested the Minister in writing to so order the owner of the land concerned.

(c) In determining the amount which is payable by an owner of land in terms of paragraph (a), the Minister shall, in addition to any other relevant circumstance, also take into consideration -

(i) the actual cost of the construction of the soil conservation work concerned; and

(ii) which portion of such cost has been paid to the land user concerned by way of a subsidy in terms of a scheme.

(d) If any owner of land fails to pay the amount owing by him in terms of paragraph (a), to the land user concerned within 90 days of the date on which the Minister ordered the payment of that amount in writing, such land user may recover the amount due from such owner by way of a civil action in any competent court.

(2) (a) The Minister may order any owner of land in writing to pay an amount determined by the Minister, to an owner of other land in respect of the decrease or likely decrease in the value of the land of such other owner as a result of detrimental effect on that land of a soil conservation work which has been constructed by the first-mentioned owner on his land.



(b) Any such order shall only be issued by the Minister if -

- (i) the construction of the soil conservation work concerned has been required in terms of a direction; and
  - (ii) the owner of the land the value of which has decreased or is likely to decrease as a result of the alleged detrimental effect of the soil conservation work concerned, has requested the Minister in writing to so order the owner of the land on which that soil conservation work has been constructed.
- (c) In determining the amount which is payable by an owner of land in terms of paragraph (a), the Minister shall, in addition to any other relevant circumstances, also take into consideration -
- (i) the actual cost of the construction of the soil conservation work concerned; and
  - (ii) which portion of such cost has by way of subsidy in terms of a scheme been paid to the owner by whom the soil conservation work concerned has been constructed.
- (d) If any owner of land fails to pay the amount owing to him in terms of paragraph (a), to the other owner concerned within 90 days of the date on which the Minister ordered the payment of that amount in writing, such other owner may recover the amount due from the first-mentioned owner by way of a civil action in any competent court.

**14. Expropriation of land for purposes of restoration or reclamation.** - (1) If the Minister is of opinion that it is necessary for the restoration or reclamation of the natural agricultural resources of any land in order to achieve the objects of this Act, he may expropriate that land.

(2) The provisions of the Expropriation Act, 1975 (Act No.63 of 1975), shall *mutatis mutandis* apply with reference to the expropriation of land under subsection (1) of this section.

**15. Conservation committees.** - (1) The Minister may establish a committee, to be known as a conservation committee, in respect of any area determined by the Minister.

(2) A conservation committee so established for any area -

- (a) shall promote the conservation of the natural agricultural resources in the area concerned in order to achieve the objects of this Act on or with regard to the land in that area;

(b) shall advise the department on any matter as to the application of this Act or a scheme in the area concerned, or which it may deem necessary in order that the objects of this Act may be achieved in the area concerned; and

(c) may exercise such other powers and shall perform such other duties as may be conferred or imposed upon it by or in terms of this Act or by the Minister.

(3) (a) The members of a conservation committee shall be appointed by the Minister by virtue of their knowledge of and interest in the conservation of the natural agricultural resources of the Republic, and shall consist of -

(i) two land users designated by the Minister; and

(ii) so many additional persons, not being less than three, as the Minister may from time to time determine, who are land users.

(b) A member referred to in paragraph (a) (ii) shall be nominated by the farmers' association, farmers' union or district agricultural union, as the case may be, for the area concerned, to serve on the conservation committee concerned.

(c) Whenever the appointment of a member referred to in paragraph (a) (ii) becomes necessary, the regional director of the region within which the area concerned is situated, shall request the farmers' association, farmers' union or district agricultural union concerned, as the case may be, in writing to submit its nomination to him in writing within a specified period.

(d) If the farmer's association, farmers' union or district agricultural union concerned, as the case may be, fails to comply with such request within the specified period, the said regional director may nominate such land users as he may deem fit for appointment as members of the conservation committee concerned in the place of the land users required to be nominated.

(e) A member of a conservation committee shall be a land user in the area in respect of which the conservation committee has been established.

(f) Any area determined under section 9 of the Soil Conservation Act, 1969 (Act No.76 of 1969), in respect of which a soil conservation committee has been established under that section, shall be deemed to have been determined under subsection (1) of this section.



- (g) Notwithstanding the provisions of paragraph (a) the persons who, at the commencement of this section, are the members of a soil conservation committee which has been established in respect of any such area under section 9 of the Soil Conservation Act, 1969, shall constitute the conservation committee in respect of that area for the remainder of their period of office.
- (4) (a) A member of a conservation committee shall hold office for such period, not being more than five years, as the Minister may determine at the time of the appointment of that member, and such member may, at the expiry of his period of office by effluxion of time, be reappointed as a member of the conservation committee.
- (b) A member of a conservation committee shall vacate his office if -
- (i) he has absented himself from two consecutive meetings of the conservation committee without the leave of the committee;
  - (ii) he ceases to be a land user in the area in respect of which the conservation committee has been established;
  - (iii) he tenders his resignation in writing to the chairman of the conservation committee;
  - (iv) he has been convicted of an offence under this Act;
  - (v) he has been convicted of any other offence in respect of which he was sentenced to imprisonment without the option of a fine, and such sentence has not been suspended; or
  - (vi) the Minister, if in his opinion sufficient reasons exist therefor, terminates his membership of the conservation committee.
- (c) A vacancy on a conservation committee arising in terms of paragraph (b) or as a result of the death of a member, shall be filled by appointment in the manner in which the member who vacated his office or died, was required to be appointed.
- (d) A member who is appointed by virtue of paragraph (c) shall hold office for the unexpired portion of the period for which the member who vacated his office or died, was appointed.
- (5) (a) The person who at the commencement of this section is the chairman of a soil conservation committee which has been established in respect of a particular area in terms of section 9 of the Soil Conservation Act, 1969, shall be the chairman of the conservation committee in respect of the area concerned until a chairman is elected in term of paragraph (b) (ii) of this subsection.
- (b) The members of a conservation committee shall elect a chairman from among themselves -
- (i) at the first meeting after the establishment of that conservation committee; and
  - (ii) at the first meeting of that conservation committee after the office of chairman thereof has become vacant for any reason whatsoever, or as soon thereafter as may be convenient.
- (c) The chairman elected in terms of paragraph (b) (ii) shall hold office for the unexpired portion of the period of which he has been appointed as a member of the conservation committee concerned.
- (d) The chairman of a conservation committee may vacate his office as such without terminating his membership of the conservation committee.
- (6) (a) The calling and attendance of and the quorum for a meeting of a conservation committee shall be as prescribed.
- (b) Except in so far as may be prescribed, the person who presides at a meeting of a soil conservation committee shall determine the procedure of the meeting.
- (7) The decision of a majority of the members of a conservation committee present at any meeting thereof shall constitute the decision of that committee: Provided that in the event of an equality of votes the member presiding at that meeting shall have a casting vote in addition to his deliberative vote.
- (8) No decision taken by a conservation committee or act performed under the authority of a conservation committee shall be invalid by reason only of an interim vacancy on the committee or by reason of the fact that a person who is not entitled to sit as a member of the committee sat as a member of the committee at the time when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the requisite majority of the members of the committee who were present at the time and entitled to sit as members.
- (9) A conservation committee may from time to time appoint from its own members the sub-committee which it may deem necessary, to exercise the powers and perform the duties which the conservation committee may confer upon, delegate to or impose upon it.
- (10) (a) Each conservation committee shall appoint one



of its members or any other person as secretary of the conservation committee.

(b) Any person so appointed shall in the prescribed manner dispose of any documents relating to the functions of the conservation committee.

(11) (a) Members of a conservation committee who are not in the full-time service of the State may in respect of their services as such members be paid out of moneys appropriated by Parliament for this purpose, such allowances as the Minister may with the concurrence of the Minister of Finance determine.

(b) Any person appointed in terms of subsection (10) as secretary of a conservation committee may in respect of the performance of his functions as such be paid out of moneys appropriated by Parliament for this purpose, such remuneration and allowances as the Minister may with the concurrence of the Minister of Finance determine.

**16. Regional conservation committees.**- (1) The Minister may establish in respect of any region determined by him, a committee to be known as a regional conservation committee.

(2) A regional conservation committee so established in respect of a particular region shall -

(a) advise every conservation committee in the region concerned on matters regarding the conservation of the natural agricultural resources;

(b) advise the department and the advisory board on any matter arising from the application of this Act or a scheme in the region concerned, or which it may deem necessary in order that the objects of this Act may be achieved in that region; and

(c) perform such duties as may be imposed upon it by the Minister.

(3) (a) The members of a regional conservation committee shall be appointed by the Minister and shall consist -

(i) of the regional director of the region concerned and an officer of the department under the control of that regional director;

(ii) subject to the provisions of paragraph (b), of two representatives of each particular area within the region concerned which the department considers to be a subregion of that region; and

(iii) one representative of each provincial agricultural

union the area of which forms part of the region concerned.

(b) For the purposes of paragraph (a) (ii) the Minister may, if he deems it expedient, appoint one additional representative of any particular subregion as a member of a regional conservation committee.

(c) The members referred to in paragraphs (a) (ii) and (b) shall be appointed by the Minister from a list of names consisting of the names of at least four members of the conservation committees within each subregion, and who are recommended for such appointment by the regional director concerned after consultation with the provincial agricultural union concerned.

(d) A member referred to in paragraph (a) (iii) shall be nominated by the provincial agricultural union concerned to serve on the regional conservation committee concerned.

(e) Whenever the appointment of a member referred to in paragraph (a) (iii) becomes necessary, the regional director concerned shall request the provincial agricultural union concerned in writing to submit its nomination to him within a specified period.

(f) If a provincial agricultural union fails to comply with such request within the specified period, the said regional director may nominate any person whom he deems fit in the place of the person required to be nominated, for appointment as a member of the regional conservation committee concerned.

(4) (a) A member referred to in subsection (3) (a) (ii) or (b) shall hold office for the unexpired portion of the period for which he has been appointed as a member of a conservation committee.

(b) A member referred to in subsection (3) (a) (iii) shall hold office for such period, not being more than five years, as the Minister may determine at the time of the appointment of the member.

(c) A member referred to in subsection (3) (a) (ii) or (iii) or (b) may at the expiration of his term of office by effluxion of time be reappointed.

(d) A member of a regional conservation committee shall vacate his office if -

(i) he has absented himself from two consecutive meetings of the regional conservation committee without the leave of the committee;

(ii) in the case of a member referred to in subsection (3)



- (a) (i), he ceases to be regional director or the region concerned or officer under his control;
- (iii) in the case of a member referred to in subsection (3) (a) (ii) or (b), he ceases to be a member of a conservation committee;
- (iv) he tenders his resignation in writing to the chairman of the regional conservation committee; or
- (v) the Minister, if in his opinion sufficient reasons exist therefor, terminates his membership of the regional conservation committee.
- (e) A vacancy on a regional conservation committee arising in terms of paragraph (d) or as a result of the death of a member, shall be filled by appointment in the manner in which the member who vacated his office or died, was required to be appointed.
- (f) A member who is appointed by virtue of paragraph (e) shall hold office for the unexpired portion of the period for which the member who vacated his office died, was appointed.
- (5) The officers referred to in subsection (3) (a) (i) shall be the chairman and vice chairman, respectively, of the regional conservation committee to which they have been appointed.
- (6) (a) A regional conservation committee shall meet as often and at such times and places as the chairman may determine.
- (b) The majority of the members of a regional conservation committee shall constitute a quorum for a meeting of that regional conservation committee.
- (c) The chairman or in his absence the vice-chairman of a regional conservation committee shall preside at all meetings of that regional conservation committee at which he is present.
- (d) The person presiding at a meeting of a regional conservation committee shall determine the procedure at the meeting.
- (7) The provisions of section 15(7) and (8) shall *mutatis mutandis* apply to a regional conservation committee.
- (8) The secretarial and administrative work incidental to the performance of its functions by a regional conservation committee shall be performed by an officer of the department under the control of the regional director concerned.
- (9) Members of a regional conservation committee who are not in the full-time service of the State may in respect of their services as such members be paid out of moneys appropriated by Parliament for this purpose, such allowances as the Minister may with the concurrence of the Minister of Finance determine.
- 17. Conservation Advisory Board.** - (1) There is hereby established an advisory board to be known as the Conservation Advisory Board.
- (2) The advisory board shall advise the Minister on matters concerning -
- (a) the desirability of prescribing specific control measures with regard to a particular area;
- (b) the desirability of establishing a specified scheme, and the provisions of any such scheme; and
- (c) any other matter arising from the application of this Act or a scheme, or which it may deem necessary in order to achieve the objects of this Act or which the Minister may refer to it for advice.
- (3) (a) The members of the advisory board shall be appointed by the Minister and shall consist of -
- (i) the executive officer and another officer of the department;
- (ii) one officer of the Department of Environment Affairs who has been nominated by the Minister of Environment Affairs and Fisheries;
- (iii) one person from among the members of each regional conservation committee; and
- (iv) one person nominated by the South African Agricultural Union.
- (b) For the purposes of paragraph (a) (iii) -
- (i) a member of any regional conservation committee who is an officer shall not be appointed as a member of the advisory board; and
- (ii) the Minister may, if he deems it expedient, appoint one person from among the members of any particular regional conservation committee as a member of the advisory board.
- (4) (a) A member referred to in subsection (3) (a) (iii) shall hold office for the unexpired portion of the period for which he has been appointed as a member of a regional conservation committee.
- (b) A member referred to in subsection (3) (a) (iv) shall hold office for such period, not being more than five years, as the Minister may determine at the time of appointment of that member.

- (c) A member referred to in subsection (3) (a) (iii) or (iv) may at the expiration of his term of office by effluxion of time be reappointed.
- (d) A member of the advisory board shall vacate his office if -
- (i) he has absented himself from two consecutive meetings of the advisory board without the leave of the board;
- (ii) in the case of a member referred to in subsection (3) (a) (i) or (ii), he vacates the office held at the time of his appointment;
- (iii) in the case of a member referred to in subsection (3) (a) (iii), he ceases to be a member of a regional conservation committee;
- (iv) he tenders his resignation in writing to the chairman of the advisory board; or
- (v) the Minister, if in his opinion sufficient reasons exist therefor, terminates his membership of the advisory board.
- (e) A vacancy on the advisory board arising in terms of paragraph (d) or as a result of the death of a member, shall be filled by appointment in the manner in which the member who vacated his office or died, was required to be appointed.
- (f) A member who is appointed by virtue of paragraph (e) shall hold office for the unexpired portion of the period for which the member who vacated his office or died, was appointed.
- (5) The officers referred to in subsection (3) (a) (i) shall be the vice-chairman and chairman, respectively, of the advisory board.
- (6) The provisions of sections 15 (7) and (8) and 16 (6), (8) and (9) shall *mutatis mutandis* apply to the advisory board.
- 18. Powers of investigation.** - (1) The executive officer, any other officer of the department, a member of a soil conservation committee or an authorized person may at any reasonable time enter upon any land in order -
- (a) to determine whether and to what extent erosion or other damage occurs on that land;
- (b) to determine whether weeds or invader plants occur on that land;
- (c) to determine the condition of the grazing on that land;
- (d) to determine whether and to what extent the natural vegetation is deteriorating or has been destroyed on that land;
- (e) to determine whether and to what extent the water sources on that land are polluted on account of farming methods or have become weaker or have ceased to exist;
- (f) to ascertain whether a soil conservation work should be constructed on that land, and whether a direction should be served on the land user of that land;
- (g) to demarcate an area on that land which is required to be demarcated for the purposes of this Act or a scheme, and for the purposes of such demarcation to make the necessary surveys and erect or effect beacons or marks;
- (h) makes such other surveys, take soil or plant samples and undertake such other investigations as he may deem necessary on that land in order to make an assessment of the condition of the soil, the water sources and the vegetation, and may for the purposes of such assessment take such photographs as he may deem necessary;
- (i) to determine whether sand, soil, clay, gravel, stone or other material which is required for the performance of an act referred to in section 11, is present on that land;
- (j) to determine whether the land user concerned -
- (i) is complying with a control measure;
- (ii) is complying with the requirements of a direction;
- (iii) is complying with the provisions of a scheme; or
- (iv) is otherwise utilizing the natural agricultural resources in a manner which will ensure that the objects of this Act are achieved on or with regard to that land;
- (k) to inspect the effect of an act referred to in section 11 which has been performed on that land;
- (l) to determine the number and kind of animals on that land;
- (m) to carry out any other investigation connected with any matter referred to in this Act or a scheme, on or in respect of that land; and
- (n) to proceed over that land for the purpose of reaching land on or in respect of which any other duty or function referred to in this subsection is to be performed.



- (2) Any person entering upon land under subsection (1) may -
- (a) examine any book or document in the possession or custody of the land user concerned or his employee, agent or manager, and which on reasonable grounds is suspected to have a bearing on a matter referred to in this Act or a scheme, and make copies of or extracts from such book or document;
  - (b) demand an explanation from the land user concerned or his employee, agent or manager, of any relevant entry in a book or document referred to in paragraph (a), or of anything observed by him in connection with a matter referred to in subsection (1);
  - (c) demand that the land user concerned or his employee, agent or manager on that land render all reasonable assistance, including the transport of such person on the land concerned, which such person may desire in order to enable him to perform the functions or duties referred to in subsection (1) on or in connection with the land concerned; and
  - (d) take with him when he enters upon the land concerned such assistants, labourers, animals, vehicles, implements, equipment, instruments, appliances, chemicals and other aids as he may need to perform the duties referred to in subsection (1) on or in relation to that land.
- (3) No compensation shall be payable to a land user in respect of the rendering of assistance in terms of subsection (2) (c).
- (4) Any person referred to in subsection (1) may at any reasonable time -
- (a) (i) enter upon and inspect any land, building or vehicle on or in which there is any seed, grain, hay or other agricultural product present which contains or is suspected to contain weeds;
  - (ii) inspect or test such seed, grain, hay or other agricultural product or take a sample thereof for inspection or testing in order to determine whether it contains weeds; and
  - (iii) seize any quantity of such seed, grain, hay or other agricultural product which may serve as proof of any offence under this Act, and remove from or leave on or in such land, building or vehicle such quantity thereof as he may determine, and, if he deems it necessary, affix any identification mark to such seed, grain, hay or other agricultural product or the containers thereof; or
- (b) examine an animal which is driven on a public road, conveyed in a vehicle or offered for sale at a live-stock auction, in order to ascertain whether any weed adheres to such animals.
- (5) The executive officer, other officer or authorized person shall produce proof of his identity on being so requested by the land user of the land or the person in charge of the building or vehicle which is entered upon in terms of this section or the person in charge of an animal which is examined in terms of subsection (4).
- (6) Any person who -
- (a) obstructs or hinders any officer, member of a conservation committee or authorized person in the exercise of his powers or the performance of his duties in terms of this section or a scheme;
  - (b) whenever any person demands from him any statement or explanation in terms of this section or a scheme, refuses or fails to furnish that statement or explanation or furnishes a statement or explanation which is false or misleading, knowing that it is false or misleading; or
  - (c) refuses or fails to render to any officer, any member of a conservation committee or any authorized person the reasonable assistance which he demands in the performance of his functions in terms of this section or a scheme,
- shall be guilty of an offence.
- 19. Erection and maintenance of beacons and marks.**
- (1) Any beacon or mark which is erected or effected on any land in terms of this Act or a scheme shall comply with the requirements prescribed in respect thereof.
- (2) (a) Every land user of any land on which any such beacons or mark has been erected or effected and any successor in title of his shall maintain the beacon or mark.
  - (b) No person shall without the written consent of the executive officer damage, destroy, remove, alter or otherwise tamper with any such beacon or mark.
  - (3) Any person who contravenes or fails to comply with any provision of subsection (2) shall be guilty of an offence.
- 20. Powers of executive officer.**- (1) The executive officer may consider any application or request made in terms of this Act or a scheme, and may make any investigation or inquiry in connection therewith which he may deem necessary, and may for the purposes of such investigation or inquiry demand that such documents or information as he may determine, be submitted to him.



(2) Whenever by or in terms of this Act or a scheme any period is specified within which any act is to be performed or anything is to be done, the executive officer may, save where it is provided otherwise, extend the period, either before or after its expiry.

(3) An approval, authorization or a consent by the executive officer in terms of this Act or a scheme may -

(a) be made subject to such conditions as the executive officer may in each case determine; and

(b) be amended or withdrawn by the executive officer in any particular case if he deems it expedient.

(4) If the executive officer, by virtue of a power vested in him by or under this Act or a scheme -

(a) refuses to approve an application or a request which has been submitted to him in writing; or

(b) amends or withdraws an approval, authorization or a consent in terms of subsection (3) (b),

he shall notify the applicant concerned in writing of his decision and of the grounds on which it is based.

(5) Any person who refuses or fails to comply with the conditions on which any approval, authorization or consent has been granted in terms of this Act or a scheme shall be guilty of an offence.

**21. Appeal against decisions or action.** - (1) Any person who considers himself aggrieved by any decision or action in terms of this Act or a scheme by the executive officer or any officer to whom powers have been delegated under section 26, may appeal to the Minister against the decision or action concerned.

(2) Such appeal shall be lodged with the Director-General within the prescribe time and in the prescribed manner, and shall be accompanied by the prescribed amount.

(3) The Director-General shall refer the appeal for inquiry and report thereon to an officer of the department of other than the executive officer or an officer concerned in the decision or action against which the appeal is brought, and thereupon the Director-General shall submit the documents concerned, the said report and the Director-General's recommendation with reference to the appeal, to the Minister.

(4) An appellant may request or be requested to appear before the officer concerned at an inquiry referred to in subsection (3), to be heard and questioned, and he may be assisted or represented by any person.

(5) (a) The Minister may after consideration of the docu-

ments submitted to him in terms of subsection (3), confirm or set aside or alter the decision or action against which the appeal is brought, or issue such order in connection therewith as he may deem necessary.

(b) The Director-General shall notify an appellant in writing of the decision of the Minister as to the appeal.

(c) If the Minister alters or sets aside the decision or action by the executive officer or other officer concerned, the amount referred to in subsection (2), or such portion thereof as the Minister may determine, shall be repayable to the appellant concerned.

(d) The decision of the Minister as to an appeal shall be final.

(6) Any person who, after being requested thereto in terms of subsection (4), refuses or fails to appear at an inquiry referred to in subsection (3) or, having appeared, to answer fully and in a satisfactory manner every question lawfully put to him, shall be guilty of an offence.

**22. Secrecy.** - (1) No person shall, except for the purpose of the performance of his functions or duties under this Act or a scheme, or for the purpose of legal proceedings under this Act, or when required to do so by any court or under any law, disclose to any other person any information acquired by him in the performance of his functions or duties under this Act or a scheme, and which relates to the business or affairs of any other person.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

**23. Penalties.** - (1) Any person is on -

(a) a first conviction of an offence under section 5 (6), 6 (5), 7 (6) (b), 9 (2) (b), 12 (5) or 18 (6) (b), liable to a fine not exceeding R5000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;

(b) a second or subsequent conviction of an offence mentioned in paragraph (a), whether the same or any other offence mentioned in that paragraph, liable to a fine not exceeding R10 000 or to imprisonment for a period not exceeding four years or to both such fine and such imprisonment.

(c) conviction of an offence under section 7 (6) (a), 9 (2) (a), 18 (6) (a), 18 (6) (c), 19 (3), 20 (5), 21 (6) or 22 (2), liable to a fine not exceeding R500 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(2) A magistrate's court shall be competent to impose



any penalty provided for in this section.

**24. Presumptions and evidence.**- In any prosecution under this Act -

- (a) it shall be presumed, unless the contrary is proved, that the applicable provisions of this Act apply to the land on or in respect of which the offence concerned has allegedly been committed;
- (b) in which a particular direction is involved, a document which purports to be certified by the executive officer as a true copy of that direction shall be admitted in evidence in any court without further proof or production of the original;
- (c) it shall be presumed, unless the contrary is proved, that, if the copy referred to in paragraph (b) of a direction purports to be endorsed by the executive officer to the effect that he published the direction of which that copy purports to be a copy, by notice in the *Gazette* or that direction was served by written notice on a person mentioned in such endorsement, that the executive officer published the said direction by notice in the *Gazette* or that it was served on the said person by written notice, as the case may be;
- (d) it shall be presumed, unless contrary is proved, that a soil conservation work which has been altered, removed or destroyed, was so altered, removed or destroyed -
  - (i) without the executive officer having issued an order or granted a consent referred to in section 12 (1) (c) in respect thereof; and
  - (ii) by the person who was the land user in respect of the land concerned on the date on which the executive officer became aware of such alteration, removal or destruction; and
- (e) it shall be presumed, unless the contrary is proved, that a beacon or mark which has been damaged, destroyed, removed, shifted, altered or otherwise tampered with after having been erected in terms of this Act or a scheme, was so damaged, destroyed, removed, shifted, altered or otherwise tampered with -
  - (i) without the executive officer having granted a consent in terms of section 19 (2) (b) therefor; and
  - (ii) by the person who was the land user of the land concerned on the date on which the executive officer became aware of such damage, destruction, removal, shifting, alteration or tampering.

**25. Liability of employer or principal.** - (1) Any act or omission of any employee, agent or manager which con-

stitutes an offence under this Act, shall be deemed to be the act or omission of his employer or principal, and such employer or principal may be convicted and sentenced in respect thereof unless he proves -

- (a) that that act or omission was not permitted or connived at by him; and
- (b) that he took all reasonable steps to prevent an act or omission of the nature concerned; and
- (c) that an act or omission, whether lawful or unlawful, of the nature concerned did not under any condition or circumstances fall within the course of the employment or the scope of the authority of the employee, agent or manager concerned.

(2) For the purposes of subsection (1) (b) the fact that an employer or a principal forbade an act or omission of the nature concerned, shall not by itself be regarded as sufficient proof that he took all reasonable steps to prevent such act or omission.

(3) The provisions of subsection (1) do not relieve the employee, agent or manager of any liability of being convicted and sentenced in respect of the act or omission concerned.

**26. Delegation of powers of Minister.** - The Minister may in writing delegate all the powers that this Act grants him, or one or more thereof, except the powers referred to in sections 2 (3), 6, 8, 21 and 29, to one or more officers or the department, but shall not be divested of any power which he has so delegated.

**27. Defects in form.** - A defect in the form of any direction, order, instruction, approval, authorization, consent, application, request, notice, certificate, report or other document which has been issued or furnished in terms of this Act or a scheme shall not render invalid any administrative proceedings to which such direction, order, instruction, approval, authorization, consent, application, request, notice, certificate, report or other document relates, and shall not be a ground for exception in any legal proceedings, provided the requirements for such direction, order, instruction, approval, authorization, consent, application, request, notice, certificate, report or other document have been substantially complied with and the meaning thereof is intelligible.

**28. Limitation of liability.** - No person, including the State, shall be liable in respect of anything done in good faith in the exercise of a power or the performance of a duty conferred or imposed upon him by or under this Act or a scheme.

**29. Regulations.** - (1) The Minister may make regulations-

- (a) as to the categories into which weeds and invader plants are divided;
- (b) as to the documents with reference to a direction and the service thereof which are to be obtained and kept by the executive officer;
- (c) as to the powers and duties of a conservation committee;
- (d) with the concurrence of the Minister of Finance, prescribing the matters in respect of which fees shall be payable, and the tariff of those fees;
- (e) as to any matter which in terms of this Act is required or permitted to be prescribed or done by regulation.

and, generally, with reference to any matter which he considers necessary or expedient to prescribe in order to achieve or to promote the objects of this Act, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.

(2) Different regulations may be made under this section in respect of different areas or in such other respects as the Minister may determine.

(3) Any regulation may prescribe penalties, not exceeding a fine of R500 or imprisonment for a period of three months or both such fine and such imprisonment, for any contravention of or failure to comply with its provisions.

**30. Repeal of laws.** - Subject to the provisions of sections 4 (4), 7 (6), 9 (1) (i), 12 (2) and 15 (3) (f) and (g) and (5) (a), the laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

**3.1 Short title and commencement.**- (1) This Act shall be called the Conservation of Agricultural Resources Act, 1983, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be affixed under subsection (1) in respect of different provisions of this Act.

**Schedule**

**LAWS REPEALED**

No. and year of law	Short title	Extent of repeal
Act. No. 42 of 1937	Weeds Act, 1937	The whole
Act. No. 2 1939	Weeds Amendment Act, 1939	The whole
Act. No. 32 of 1964	Weeds Amendment Act, 1964	The whole
Act. No. 74 of 1969	Weeds Amendment Act, 1969	The whole
Act. No. 76 of 1969	Soil Conservation Act, 1969	The whole except part IV
Act. No. 4 of 1971	Soil Conservation Amendment Act, 1971	The whole
Act. No. 38 of 1971	Second Soil Conservation Amendment Act, 1971	The whole
Act. No. 11 of 1973	Soil Conservation Amendment Act, 1973	The whole
Act. No. 21 of 1974	Soil Conservation Amendment Act, 1974	The whole
Act. No. 63 of 1975	Expropriation Act, 1975	Section 82
Act. No. 22 of 1977	Soil Conservation Amendment Act, 1977	The whole



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# The Forest Act No. 122 of 1984

[ASSENTED TO 12 JULY, 1984]

[DATE OF COMMENCEMENT: 27 MARCH, 1986]

*(English text signed by the State President)*

## as amended by

Transfer of Powers and Duties of the State President Act,  
No. 97 of 1986

[with effect from 3 October, 1986 - see title CONSTITUTIONAL LAW]

Forest Amendment Act, No. 52 of 1987

Forest Second Amendment Act, No. 90 of 1987

Forest Amendment Act, No. 14 of 1988

Forest Amendment Act No. 25 of 1989

Forest Amendment Act, No. 53 of 1991

Post Office Amendment Act, No. 85 of 1991

[with effect from 19 June, 1991 - see title POSTS AND TELEGRAPHS]

Abolition of Racially Based Land Measures Act, No. 108 of 1991

[with effect from 24 June, 1994 - see title LAND]

General Law Third Amendment Act, No. 129 of 1993

[with effect from 1 September, 1993 - see title GENERAL LAW AMENDMENT ACTS]

Forestry Laws Rationalisation and Amendment Act, No. 51 of 1994

Forest Amendment Act, No. 63 of 1995

## ACT

**To provide for the protection, management and utilization of forests; the protection of certain plant and animal life; the regulation of the trade in forest produce; the prevention and combating of veld, forest and mountain fires; the control and management of**

**a national hiking way system and national botanic gardens; and matters connected therewith.**

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**I. Interpretation.**- In this Act, unless the context indicates otherwise -

“**advisory committee**” means an advisory committee established under section 40(1);

“**board**” in Part VII means the National Hiking Way Board mentioned in section 29;

**"board".....**

[Definition of "board" in Part IX deleted by s.1(a) of Act No. 53 of 1991.]

**"chief executive officer"** means the person appointed by the Minister as Chief Executive Officer of the National Botanical Institute under section 69(1)(c);

[Definition of "chief executive officer" inserted by s.1(b) of Act No. 53 of 1991.]

**"connecting route"** means a route which connects the starting point or terminus of the main route of a hiking trail or walk to some other point on the main route;

**"consultative committee"** means a consultative committee established under section 13(4)(a)(i);

**"council"** in Part VIIA means the National Forestry Advisory Council established under section 46A;

[Definition of "council" substituted by s.1(a) of Act No. 63 of 1995.]

**"demarcated forest"** means any undemarcated forest converted into demarcated forest under section 10(1)(c);

**"department"** means the Department of Water Affairs and Forestry;

[Definition of "department" substituted by s.5(a) of Act No. 51 of 1994.]

**"director"....**

[Definition of "director" deleted by s.1(c) of Act no. 53 of 1991.]

**"director-general"** means the Director-General: Water Affairs and Forestry;

[Definition of "director-general" substituted by s.5(b) of Act No. 51 of 1994.]

**"fire belt"** means a strip of land, whether under trees or not, prepared and maintained for the purpose of preventing the spreading of veld, forest or mountain fires;

**"fire control area"** means an area declared to be a fire control area under section 18(1);

**"fire control committee"** means a fire control committee established under section 19(1);

**"fire control region"** means an area declared to be a fire control region under section 18 (1);

**"fire protection scheme"** means a fire protection scheme contemplated in section 20;

**"forest officer"** means the incumbent of a post designated under section 5 or a person designated under section 16(2)(c) or in terms of a regulation under section 73(1)(f);

[Definition of "forest officer" substituted by s.1 of Act No. 52 of 1987.]

**"forest produce"** means anything which occurs, is grown or grows in a forest, timber plantation or State forest, including anything which is produced by any vertebrate or invertebrate member of the animal kingdom or any member of the plant kingdom in a forest, timber plantation or State forest;

**"fund"** in Part VII means the National Hiking Way Fund mentioned in section 36(1);

**"fund" ....**

[Definition of "fund" in Part VIII deleted by s.1(b) of Act No. 63 of 1995.]

**"fund"** in Part IX means the National Botanical Institute Fund established by section 64 (1);

[Definition of "fund" in Part IX substituted by s.1(d) of Act No. 53 of 1991.]

**"hiker"** means any person who as a walker makes authorized use of the national hiking way system;

**"hiking trail"** means that part of the national hiking way system contemplated in section 28(1)(a);

**"institute"** means the National Botanical Institute referred to in section 57;

[Definition of "institute" inserted by s.1(e) of Act No. 53 of 1991.]

**"land"** means -

(a) land held under separate grant, deed or transfer or certificate of title; or

(b) land held under a lease, licence or allotment from the State with an option to purchase, provided that such lease, licence or allotment is registered in the office of a registrar of deeds or a surveyor-general's office;

**"local authority"** means any local authority as defined in section 1 of the Promotion of Local Government Affairs Act, 1983 (Act No. 91 of 1983);



[Definition of "local authority" substituted by s.59 of Act No. 129 of 1993.]

**"local control committee"** means a local control committee established under section 13(4)(a)(ii);

**"main route"** means the primary route of a hiking trail or walk;

**"managing committee"** means a managing committee established in terms of section 41(1);

**"Minister"** means the Minister of Water Affairs and Forestry;

[Definition of "Minister" substituted by s.5(c) of Act No. 51 of 1994.]

**"national botanic garden"** means a national botanic garden mentioned in Schedule 1 to this Act;

**"national hiking way system"** means the national hiking way system mentioned in section 28(1);

**"nature reserve"** means a State forest or a part thereof which has been set aside as a nature reserve under section 15(1)(a)(i);

**"owner"** in Parts II and VI includes a person who is legally competent to exercise control over the land in question;

**"police officer"** means a member of any police force in the Republic established by law;

**"prescribed"** means prescribed by regulation;

**"private forest"** means a forest or timber plantation on land not owned by the State, excluding a forest or timber plantation on such land in respect of which the right to the trees thereon vests in the State;

**"protected tree"** means a tree on land to which a notice in terms of section 13(1) applies;

**"regional fire control committee"** means a regional fire control committee established under section 19(1);

**"regulation"** means a regulation made or deemed to have been made under this Act;

**"State forest"** means State land which was acquired for the purposes of this Act or which was reserved for those purposes with the concurrence of the Minister of Public Works, and includes a State plantation, State sawmill, State timber preservation plant, land controlled and managed by the department for research purposes, as a tree

nursery, or for the establishment of a commercial timber plantation, an area which has been set aside for the conservation of fauna and flora, for the management of a water catchment area, for the prevention of soil erosion or sand drift, or for the protection of indigenous forests, and all trees on -

(i) any other State land, excluding land purchased from the State but not yet transferred to the purchaser; and

(ii) any other land if the right to those trees vests in the State;

**"supplementary route"** means a route supplementary to the main route of a hiking trail or walk;

**"this Act"** includes the regulations;

**"timber"** means all wood in trees whether standing, fallen or felled, and all wood whether produced in or imported into the Republic, and whether sawn, split, hewn or planed, or fashioned or processed in some other manner;

**"tree"** includes any tree seedling, sapling, transplant or coppice shoot of any age;

**"undemarcated forest"** means any State forest or a part thereof not converted into demarcated forest under section 10(1)(c);

**"walk"** means that part of the national hiking way system contemplated in section 28(1)(b);

**"wilderness area"** means a state forest or a part thereof set aside under section 15 (1)(a)(ii) as a wilderness area.

## PART I

### APPLICATION AND ADMINISTRATION OF ACT

#### 2. Application of Act.- (1).....

(Sub-s.(1) deleted by Proclamation No. R.116 of 1994 and by s.6 of Act No.51 of 1994.)

(2) (a) The Minister may, upon the written request of the owner of a private forest, by notice in the *Gazette* declare any provision of this Act which is applicable only in respect of State forests to be applicable in respect of that private forest, if in his opinion it will

contribute to the more effective conservation of that private forest, or the more effective protection of any forest produce occurring in that private forest.

(b) A notice in terms of paragraph (a) must define the area to which it applies.

**3. Granting of powers to persons in control of private forests. -**

(1) The director-general may confer upon a person placed in control of a private forest by the owner thereof any or all of the powers vested in a forest officer in terms of this Act.

(2) Such a person may exercise that power or those powers only in respect of that private forest in question and only for as long as he is in control of that private forest.

**4. Delegation of powers.-**

(1) The Minister may on such conditions as he may deem fit delegate to any officer of the department any power conferred upon him by this Act, excluding the power to make regulations.

(2) The director-general may on such conditions as he may deem fit delegate to any officer of the department any power conferred upon him by or in terms of this Act.

**5. Designation of forest officers.-** The director-general may designate posts in the department the incumbents of which are forest officers for the purposes of this Act.

**6. Appointment of honorary forest officers.-**

(1) The director-general may appoint any person as an honorary forest officer.

(2) An honorary forest officer has in respect of -

- (a) a State forest;
- (b) land in respect of which a notice in terms of section 13(1) applies;
- (c) an area defined in a notice in terms of section 25; and
- (d) any part of the national hiking way system.

the same powers as a forest officer, excluding the powers mentioned in sections 76 and 77: Provided that the director-general may in his discretion restrict the powers of an honorary forest officer who is a minor.

(3) The director-general may at any time, without any obligation to furnish reasons, withdraw the appointment of an honorary forest officer if he considers it desirable.

**7. Use of land for afforestation.-**

(1) Without the prior written approval of the director-general no land, including land in the possession of the State -

- (a) which has not been used previously for the establishment and management of a commercial timber plantation; or
- (b) which for a period of more than five years after the removal, harvesting or destruction of a commercial timber crop, has not been so used,

may be used for the planting of trees to produce timber for commercial or industrial purposes.

(2) An owner who intends to establish a commercial timber plantation on any land, shall apply in the prescribed manner for the approval required in terms of subsection (1), and the director-general may in his discretion grant the approval on such conditions as he may deem fit.

(3) An owner who feels aggrieved by the withholding of the approval or by any condition on which approval was granted, may appeal in the prescribed manner and within the prescribed time to the Minister, and he may grant the approval or set aside or vary that condition or impose such conditions as he may deem fit.

(4) Any condition contemplated in subsection (2) or imposed by the Minister as a result of an appeal in terms of subsection (3) binds every successor in title of the owner of that land.

**8. Protection of natural water sources.-**

(1) The Minister may in respect of land which in terms of this Act is being or may be used for the planting of tree to produce timber, by notice served on the owner of that land or by notice in the *Gazette*, prohibit the planting of trees within an area defined in the notice or the reforestation of such an area after the harvesting or destruction of a timber crop or prohibit any other act or direct the owner to take any other steps which in the opinion of the Minister are necessary for the protection of any natural water source.

(2) An owner of land shall not permit the regeneration of a commercial timber plantation on any part of his land in respect of which a notice in terms of subsection (1)



applies, after an existing timber crop has been harvested or destroyed.

**9. Registration of afforestation rights against title deeds.**- (1) At the request of the director-general the registrar of deeds of the deeds registry in which the title deed is registered of land in respect of which application has been made for the approval required in terms of section 7(1), must cause a note to be made in his registers and on the office copy of the title deed in question of particulars of any approval withheld or granted, and any condition on which it was granted, and no fees are payable in respect of the making of such note.

(2) A registrar of deeds must cause a note of the particulars mentioned in subsection (1) to be made on the original title deed of the land in question when it is lodged in his office for any purpose.

#### **9A. Loans for planting of trees.-**

(1) The Minister may from moneys appropriated for that purpose by Parliament, and subject to the provisions of regulations contemplated in section 73(1)(gA), grant a loan to any person for the planting or replanting of trees to produce timber for any purpose.

[Sub.s.(1) substituted by s.2(a) of Act No. 63 of 1995.]

(2)(a) Application for a loan referred to in subsection (1) must be made to the director-general in the prescribed form.

(b) .....

[Para (b) deleted by s.2(b) of Act No. 63 of 1995.]

(3) The director-general may on such conditions as he may deem fit delegate to any officer in the public service any power conferred upon him by or in terms of this Act in respect of the payment or repayment of loans contemplated in subsection (1).

[S.9A inserted by s.2 of Act No. 52 of 1987.]

### **PART III**

## **CONTROL OVER STATE FORESTS**

#### **10. Demarcation of State forests.-**

(1)(a) If the Minister is of the opinion that it is necessary for the better achievement of the objects of this Act

that an undemarcated forest or a part thereof be entrenched against alienation by being converted into demarcated forest, he must -

(i) give notice in the *Gazette* of his intention to demarcate that forest or part thereof; and

(ii) cause a copy of that notice to be served on the body which in his opinion represents organized agriculture in the district in which that forest or part thereof is situated, as well as on the magistrate of that district.

(b) Any person who wishes to object against the proposed demarcation, shall within 30 days of the publication of the notice in the *Gazette*, lodge his objection in writing with the Minister, setting out the grounds on which he objects.

(c) After the expiry of the period of 30 days and after having considered any objections lodged, the Minister may by notice in the *Gazette* declare that undemarcated forest or part thereof to be demarcated forest and assign a name mentioned in the notice thereto.

(2) No demarcated forest or any part thereof shall be withdrawn from demarcation except with the approval, by resolution, of Parliament, and the Minister must by notice in the *Gazette* give notice of such withdrawal.

(3) Notwithstanding the provisions of subsections (1) and (2), the Minister may by notice in the *Gazette* -

(a) amend the definition of a demarcated forest if after a survey or resurvey it should appear to be incorrect;

(b) amend the name assigned to a demarcated forest or assign a new name thereto.

#### **11. Limitation of rights in respect of State forests.-**

(1) Notwithstanding anything to the contrary in any law contained, no servitude or other right of any nature in respect of a State forest or any part thereof shall be acquired by prescription, but subject to the provisions of subsection (2) of this section and sections 15(5) and (6) and 38(1), the Minister may grant a servitude or other right of that nature in respect of a State forest or any part thereof with the approval, by resolution, of Parliament and on such conditions as Parliament may determine.

(2)(a) The director-general may in the prescribed manner in respect of any part of a State forest -

(i) grant any right, whether of a permanent or temporary nature, for public purposes to a provincial administration, a local authority, the South African



Transport Services, the Department of Posts and Telecommunications, the postal company or the telecommunications company as defined in the post Office Act, 1958 (Act No. 44 of 1958.), the National Transport Commission or any other department of State or statutory body;

[Sub-para.(i) substituted by s.3 of Act No. 52 of 1987 and by s.78 of Act No. 85 of 1991.]

(ii) grant a temporary right to any person for the purpose of trading, grazing, cultivation of land, abutment, aqueduct, drilling, the erection of mills, factories, residences or camping facilities, the construction and use of roads and conduits for the transmission or conveyance of electricity, gas, any liquid or other thing, and the establishment and use of facilities for the transmission of communications overland, by radio or in any other manner, or for the utilization of any part of a State forest for any other purpose, provided that the exercise of that right will not in any manner be detrimental to the State forest in question or any forest produce occurring in it.

(b) The provisions of this section shall not be construed as prohibiting the granting under any law of a right in connection with the prospecting for, and mining of, any mineral and source material as defined in the Minerals Act, 1991 (Act. No. 50 of 1991), and the Nuclear Energy Act, 1993 (Act No. 131 of 1993), respectively, in a State forest, and the disposal of such mineral and source material, but no forest produce shall be cut, damaged, taken or removed by the holder of such a right, except on the authority of a licence or permit of the director-general.

[Para.(b) substituted by s.3 of Act No. 63 of 1995.]

(3) A servitude, a right to forest produce, a right of grazing, cultivation, residence or camping, a right to the conveyance or use of water, or any other right in respect of a State forest or a part thereof which exists at the commencement of this Act and which existed at the commencement of the Forest Act, 1941 (Act No. 13 of 1941), remains in force, but shall only be exercised in the prescribed manner.

(4) The director-general shall cause a register to be kept in which all servitudes and rights of any nature in respect of State forests must be noted, and which must reflect in respect of each servitude or right.-

(a) the nature thereof;

(b) the manner in which it came into existence;

(c) the name of the holder thereof or of the beneficiary in the case of a personal servitude;

(d) in the case of a praedial servitude, a description of the dominant tenement.

## 12. Restriction on use of roads in State forests.-

(1) Notwithstanding anything to the contrary in any law contained, the director-general may in his discretion at any time temporarily or permanently close any road in a State forest, other than a road constructed or maintained by a person legally competent to construct or maintain it, or prohibit access to such a road by any person or the public permanently or during specified times.

(2) The director-general shall give notice of a decision in terms of subsection (1) in such manner as he may deem fit.

## PART IV

### PROTECTION OF BIOTA AND ECOSYSTEMS

#### 13. Protection of trees on private land.-

(1) Subject to the provisions of subsection (2), the Minister may in respect of any land not forming part of a State forest by notice in the *Gazette* declare a particular tree, a particular group of trees belonging to a particular species occurring on that land, to be a protected tree or trees.

(2) A declaration in terms of subsection (1) shall only be made with a view to -

(a) in the case of a particular tree -

(i) the preservation of the scenic beauty;

(ii) the preservation of some natural scenic attraction; or

(iii) the conservation of a distinctive specimen of any species of tree contemplated in paragraph (c)(i), (ii) or (iii);

(b) in the case of a particular group of trees -

(i) the prevention of soil erosion or sand drift or the reclamation of the soil or drift sand;

(ii) the promotion of any object mentioned in paragraph (a)(i) or (ii); or



(iii) the conservation of distinctive specimens of any species of tree contemplated in paragraph (c)(i), (ii) or (iii);

(c) in the case of trees belonging to a particular species -

(i) the maintenance of the natural diversity of species;

(ii) the preservation of tree-dominated biomes;

(iii) the conservation and development of natural resources; or

(iv) the promotion of any object mentioned in paragraph (a)(i) or (b)(i).

(3) A notice under subsection (1) must identify the tree, group of trees or species of tree in question, define the land in respect of which the notice applies, and state the appropriate object mentioned in subsection (2).

(4)(a) The Ministry may -

(i) establish a consultative committee, constituted as he may determine, to advise him in any case he may deem necessary about the exercise of his powers under subsection (1); and

(ii) establish a local control committee, constituted as he may determine, to perform with regard to a particular area, region or place, prescribed functions in connection with any protected tree.

(b) The Minister appoints the members of the consultative committee and a local control committee, and may designate an alternate member for any member.

(c) A member or alternate member of the consultative committee or a local control committee who is not in the full-time employment of the State, may be paid from moneys appropriated by Parliament for that purpose such allowances as the Minister, with the concurrence of the Treasury, may determine either generally or in respect of a particular member or alternate member or a particular committee.

(5)(a) Subject to the provisions of section 22 and 24 and any applicable regulation no person shall after the publication of a notice in terms of subsection (1) cut, damage, destroy, disturb or remove any protected tree from the land in question, or collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any part or produce thereof, except with the written consent of the Minister granted on application by the owner of that land and on such conditions as he may determine.

(b) The Minister may, on such conditions as he may de-

termine, exempt any person from the provisions of this subsection with regard to a cultivated tree belonging to a particular species contemplated in subsection (2)(c).

(6) A forest officer, a nature conservation officer in the service of a provincial administration, an officer of the Department of Agriculture or the Natal Parks, Game and Fish Preservation Board and a police officer may at any reasonable time enter upon privately owned land in order to determine whether the provisions of subsection (5) are being contravened, and such an officer may search any vehicle or premises in order to determine whether any part or product of a protected tree is being transported in that vehicle or is being sold or displayed or offered for sale or is in any other manner disposed of in or upon those premises.

#### 14. Prejudice as a result of protection of trees on private land.-

(1) An owner of land in respect of which a notice in terms of section 13(1) applies, may recover any patrimonial loss that he has suffered as a result of the refusal of the Minister to consent to the cutting of a protected tree on his land or the imposition under section 13(5) of a condition, from the State and if the owner and the director-general fail to agree upon the amount of compensation, the amount shall be determined by a competent court in terms of section 14 of the Expropriation Act, 1975 (Act No. 63 of 1975), and the provisions of that section and section 15 of that Act apply *mutatis mutandis* in the determination of that amount.

(2) If an owner of land in respect of which a notice in terms of section 13(1) applies, satisfies the director-general that the issue of that notice or the imposition of a condition under section 13(5) will result in a substantial interference with the beneficial occupation of his land, or the rendering of a substantial part thereof unavailable for the purpose for which it was being used when the notice was issued, he shall cause that land to be Expropriated in terms of the Expropriation Act, 1975, as if it were required for public purposes.

(3) An owner of land who intends to act in terms of subsection (1) or (2), shall do so in the prescribed manner and within the prescribed time.

#### 15. Nature reserves and wilderness areas.-

(1) (a) The Minister may by notice in the *Gazette* set aside any State forest or any defined part thereof.-

(i) as a nature reserve for the preservation of a particular natural forest or particular plants or animals or for some other conservation purpose mentioned in the notice;



(ii) on the recommendation of the Council for the Environment established by section 2 of the Environment Conservation Act, 1982 (Act No. 100 of 1982), as a wilderness area for the preservation of an ecosystem or the scenic beauty.

(b) a notice in terms of paragraph (a) must define the area set aside with the aid of a map or a description of the boundaries thereof.

(c) The control over, and the management of, a nature reserve or wilderness area vest in the director-general.

(2) No land set aside as a nature reserve or wilderness area or any part thereof shall be withdrawn from such setting aside except with the approval, by resolution, of Parliament, and the Minister must by notice in the *Gazette* give notice of such withdrawal.

(3)(a)(i) Subject to the provisions of subparagraph (ii), no person shall in a nature reserve or wilderness area cut, disturb, damage, take, collect, destroy or remove any forest produce.

(ii) The director-general may perform any act and take any measure in a nature reserve or wilderness area which is not inconsistent with the objects for which that reserve or area was set aside.

(b) An act or measure contemplated in paragraph (a) may, in respect of a nature reserve, be aimed at -

(i) the restoration of ecologically disturbed habitats;

(ii) the prevention and combating of soil erosion;

(iii) the prevention and combating of veld, forest and mountain fires;

(iv) the maintenance of the natural genetic and species diversity;

(v) the exercise of control over plants and animals which are, in the opinion of the minister or an officer of the department or other person designated by him, undesirable;

(vi) the removal and marketing of any forest produce;

(vii) the making available to the public of open air recreation facilities;

(viii) research;

(ix) education,

and in respect of a wilderness area, any of those objects other than that mentioned in subparagraph (vii).

(4)(a) Subject to the provisions of section 11(2)(b), subsections (3), (5) and (6) of this section, and paragraph (b) of this subsection the Minister may grant a servitude or other right of any nature in respect of any nature reserve or wilderness area or any part thereof with the approval, by resolution, of Parliament and on such conditions as Parliament may determine.

(b) If the Minister is satisfied that the national security necessitates it, he may grant a servitude or other right of a temporary nature to any person, subject to the approval thereof, by resolution, of Parliament as soon as practicable after the granting thereof and subject to such conditions as Parliament may then determine.

(5) Every servitude or right which is in force on the date of a notice in terms of subsection (1), remains in force, and in the case of a temporary right the director-general may renew that right in terms of section 11(2)(a) in favour of the beneficiary or any other person, if he is satisfied that the continued exercise of that right will not materially prejudice the achievement of the objects for which the nature reserve or wilderness area in question was set aside.

(6) The director-general may in terms of section 11(2) (a) renew any temporary right the granting of which was approved by Parliament in terms of subsection (4) in favour of the beneficiary or any other person, if he is satisfied that the continued exercise of that right will not materially prejudice the achievement of the objects for which the nature reserve or the wilderness area in question was set aside.

## PART V

### CONTROL OVER QUALITY OF TIMBER AND SETTling OF DISPUTES OVER PRICES

#### 16. Control over quality of timber.-

(1) The Minister may, by notice in the *Gazette* prohibit the removal from one place to another, or the purchase, sale or disposal, of any timber, except on such conditions as he or she may determine and which are set out in the notice.

[Sub-s.(1) substituted by s.4 of Act No. 63 of 1995.]

(2) Such a notice may -

(a) prohibit the use for trade purposes, or the sale, dis-



posal or removal from one place to another, of any timber which is not of the prescribed dimensions, grades or standard of quality or which has not been graded, packed or marked in the prescribed manner;

- (b) provide generally for the improvement of the quality and the methods of manufacture and marketing of any timber or timber product;
- (c) provision for the inspection of any timber by any person, including the incumbent of a post designated by the Minister;
- (d) contain provisions regarding the place, time and manner of inspection of any timber intended for removal from one place to another, the person to whom notice of any intended removal shall be given, the fees to be paid for that inspection, and when and to whom those fees shall be paid;
- (e) prescribe the manner of taking samples of any timber for examination, analysis or testing, and the circumstances and the manner in which that timber may or must be graded, marked, regraded or remarked.

(3) The provisions of a notice in terms of subsection (1) may include a stipulation to the effect that the grades, standard of quality and packing or marking of any timber shall comply with stated specifications of the South African Bureau of Standards, and that each piece of that timber shall be marked in such a manner as to convey that it complies with the specifications in question.

#### **17. Disputes regarding price of timber in the round in private contracts and of forest produce derived from State forests.-**

- (1) Where the parties to a contract for the supply of timber in the round are unable to agree on a price in terms of the price review provisions of that contract, any of the parties concerned may refer the dispute to the director-general in the prescribed manner and he may determine the price in question in the prescribed manner.
- (2) A price determined by the director-general in terms of subsection (1), is deemed to have been determined in accordance with the price review provisions of the contract in question.
- (3) Notwithstanding the provisions of subsection (1), a dispute shall not be referred to the director-general, and he shall not continue to determine a price, in a case where in the opinion of the minister it is undesirable that a price be determined by the director-general, and he has notified the parties concerned and the director-general of his decision.
- (4) Where the parties to a contract for the supply for a

period of five years or longer of forest produce derived from a State forest are unable in terms of the applicable price review provisions to agree on a price, and the Minister has indicated that in his opinion agreement will not be reached, the dispute shall be referred to arbitration.

## **PART VI**

### **PREVENTION AND COMBATING OF VELD, FOREST AND MOUNTAIN FIRES**

#### **18. Fire control areas and regions.-**

- (1)(a) The Minister may, with the concurrence of the Minister of Agriculture, by notice in the Gazette declare any area defined in the notice to be a fire control area and assign a name to that area, if he considers it desirable that the provisions of sections 19 to 23 should be applicable in that area, and may in like manner declare two or more fire control areas to be a fire control region.
- (b) The Minister of Agriculture may delegate the power vested in him under paragraph (1) to an officer in the Department of Agriculture.

[Para. (b) added by s. 60 of Act No. 129 of 1993.]

- (2) No land in the area of jurisdiction of a local authority shall be included in a fire control area without the approval of that local authority.
- (3) The Minister may in like manner alter the boundaries of a fire control area or a fire control region or change the name thereof.

**19. Fire control committees and regional fire control committees.-** (1) The Minister may by notice in the *Gazette* establish a fire control committee in respect of a fire control area, and a regional fire control committee in respect of a fire control region.

- (2) A fire control committee and a regional fire control committee shall be constituted in the prescribed manner, and shall carry out such duties and may exercise such powers as may be prescribed.
- (3) A member of a fire control committee or regional fire control committee or any person acting for or on the instructions of such a committee, may enter upon any land in respect of which a fire protection scheme is applicable, with the necessary workmen and equipment, and may perform any act on that land which may or must



be performed by that committee in terms of the fire protection scheme.

(4) A member of a fire control committee or a regional fire control committee who is not in the full-time employment of the State, may be paid from funds available to the committee, such allowances as the Minister, with the concurrence of the Treasury, may determine either generally or in respect of a particular member or a particular committee.

(5)(a) If -

(i) a fire control committee or a regional control committee has not during any consecutive 12 months held any meeting; or

(ii) the Minister, after such investigation as he may consider necessary, is of the opinion that the withdrawal of the declaration of an area to be a fire control area or fire control region is desirable, the Minister may, by notice in writing to the members of the committee in question, terminate their terms of office and by notice in the *Gazette* withdraw the declaration of the area in question to be a fire control area or fire control region and the establishment of the committee in question.

(b) The Minister must appoint a committee consisting of three officers of the department, one of whom he must designate as chairman, to advise him in connection with liquidation of the affairs of a committee contemplated in paragraph (a), and after consideration of the report of the committee, make such order relating to the matter as he may deem fit, and that order shall be binding on persons affected thereby.

## 20. Fire protection schemes.-

(1) A fire control committee and a regional fire control committee shall as soon as practicable prepare a fire protection scheme for the area for which it was established, or different schemes for different parts of that area, which may not be contrary to any provision of this Act, and which it shall submit to the Minister.

(2) A fire protection scheme shall contain the particulars which the minister may prescribe in general or relating to the area of a specific fire control committee or regional fire control committee.

(3) The Minister may approve, or amend and approve, a fire protection scheme prepared in terms of subsection (1), and he must, subject to the provisions of subsection (4), direct that from a date determined by him that scheme shall apply in the area in question.

(4) After the approval of a fire protection scheme -

(a) the director-general shall at least one month before the date on which it becomes applicable, by notice in the *Gazette* and in an English and Afrikaans newspaper circulating in the area in question, give notice of that approval and the date determined by him, and set out where the scheme will be available for inspection;

(b) the director-general may at any time serve a copy thereof on any owner of land to which it applies or will apply.

(5) From the date determined in terms of subsection (3) an approved fire protection scheme binds every owner of land to which it applies and every successor in title of such an owner.

(6) The Minister may, after consultation with the fire control committee or regional fire control committee concerned, amend the provisions of a fire protection scheme with effect from a date determined by him, and the provisions of subsection (4) apply *mutatis mutandis* in respect of such an amendment.

(7)(a) At the request of the director-general the registrar of deeds of the deeds registry in which the title deed of land in a fire control area is registered, must cause a note to be made in his registers and on the office copy of the title deed in question to the effect that such land is situated in a fire control area, and the registrar must cause a similar note to be made on the original title deed of that land when it is lodged in his office for any purpose.

(b) No fees are payable in respect of the making of such a note.

**21. Financial assistance to fire control committees and regional fire control committees:-** The Minister may, from moneys appropriated by Parliament for that purpose and on such conditions as he may determine, render assistance by way of a grant or otherwise to a fire control committee or regional fire control committee.

## 22. Clearing and maintenance of fire belts in fire control areas.-

(1)(a) Within 12 months after an area has been declared to be a fire control area, every owner of land in that area shall enter into an agreement with -

(i) every owner of land in that area whose land adjoins his land; and

(ii) every owner of land outside that area whose land adjoins his land coincides with the boundary of the area, in which the owners concerned agree to clear, jointly or individually, a fire belt on both sides of the boundary between their properties, or as close to the bound-



ary as is practically possible, or on the one or the other side of that boundary, an to maintain that fire belt.

[Para.(a) substituted by s.2(a) of Act No. 53 of 1991.]

- (b) A fire belt must be of such a nature and extent that it will, having regard to local circumstances, be reasonably sufficient to prevent a fire on land on one side thereof from spreading to land on the other side thereof.
- (c) Without prejudice to the provisions of paragraph (a), an owner of land in a fire control area part of the boundary of which land coincides with the border of the Republic, shall clear and maintain a fire belt on his land as close to that boundary as possible.

[Para. (c) substituted by s.2(b) of Act No. 53 of 1991.]

- (d) For the purposes of this section "owner", in relation to State land or other land under the control of the State, means the officer in charge of the department of State or provincial administration exercising control over that State land or other land, or a person authorized by him.

(2) An agreement referred to in subsection (1) must -

- (a) indicate the approximate location and route of the fire belt in question by means of a sketch plan;
- (b) describe the manner in which the fire belt is to be cleared and maintained, and fix the approximate width thereof;
- (c) stipulate which of the owners concerned is to undertake the work involved in the clearing and maintenance of the fire belt or, if they intend to execute the work jointly, the assistance to be rendered by each of them;
- (d) stipulate the date, which may not be later than a date determined by the Minister by notice in the *Gazette*, on which the clearing of the fire belt is to be completed;
- (e) stipulate for what share of the costs involved in the clearing and maintenance of the fire belt each of the owners concerned is responsible; and
- (f) in the case of a fire belt to be cleared and maintained within or adjoining the road reserve of a public road, stipulate the precautionary measures to be taken for the protection of the travelling public.

(3) Negotiations between owners contemplated in subsection (1) with a view to the entering into of an agree-

ment or the amendment of an existing agreement, shall be commenced within the prescribed time and conducted in the prescribed manner.

(4)(a) Where an owner is unable despite such diligent search as may be expected in the circumstances to trace any other owner mentioned in subsection (1) with a view to the entering into of an agreement or the amendment of an existing agreement, he shall apply to the magistrate's court within whose area of jurisdiction the land in question is situated for an order under which his proposal for the clearing and maintenance of the fire belt in question, with due regard to the aspects mentioned in subsection (2), is approved.

(b) A magistrate's court considering such an application shall, after such investigation as it may consider necessary, issue such order as it may deem equitable.

(c) In order to clear or maintain a fire belt in accordance with the provisions of a plan approved in terms of paragraph (a), the owner may enter upon the adjoining land in question with the necessary workmen and equipment and, subject to any prohibition under section 25(3), perform such acts as are reasonably necessary to clear or maintain the fire belt.

(5)(a) An owner of land in a fire control area who is of the opinion that the entering into of an agreement in terms of subsection (1) is being delayed or made impossible by the conduct or demands of the other owner, shall, after 14 days' notice in writing to that owner, apply to the magistrate's court within whose area of jurisdiction the land in question is situated for an order as contemplated in subsection (4)(a).

(b) The provisions of subsections (4)(b) and (c) apply *mutatis mutandis* in respect of an application in terms of this subsection, and the court may make such order as to costs as it may deem equitable.

(6)(a) An owner of land in respect of which an agreement in terms of subsection (1) or an order under subsection (4) or (5) is applicable and who is of the opinion that a provision thereof is excessively burdensome as regards him, may, after 14 days' notice in writing to every other owner concerned, apply to the magistrate's court within whose area of jurisdiction that land is situated for an order amending that provision, and the court may, after such investigation as it may consider necessary, issue such order, including an order as to costs, as it may deem equitable.

(b) Where an owner contemplated in paragraph (a) is unable despite such diligent search as may be expected in the circumstances to trace the other owner



concerned with a view to giving him the required notice, the court in question may, on the application of the owner, direct that notice be given in such manner as it may deem fit.

(7) Every person who grants to another person a right in respect of land in a fire control area by virtue of which the control of that land devolves upon that other person, shall when granting that right notify him in writing of the content of any agreement in terms of subsection (1) or any order under subsection (4), (5) or (6) which is in force in respect of that land.

(8)(a) Subject to any prohibition under section 25(3) an agreement in terms of subsection (1) or an order under subsection (4), (5) or (6) binds every successor in title of the owner concerned and every person contemplated in subsection (7) to whom notice as required in that subsection has been given or to whose notice that agreement or order has subsequently been brought in any manner, and such an agreement or order shall only be amended by an agreement in writing concluded in accordance with the procedure prescribed by subsection (3) or in consequence of an application in terms of subsection (6).

(b) No person shall clear or maintain a fire belt contemplated in subsection (1) in a fire control area in a manner other than in accordance with the provisions of an agreement in terms of that subsection or an order in terms of subsection (4), (5) or (6).

**23. Exemption from duty to clear and maintain fire belts in fire control areas.-** Notwithstanding the provisions of section 22, the Minister may at any time -

(a) exempt two or more owners of land adjoining each other on their joint application, or an owner contemplated in section 22(4), (5) or (6) on his application, from the provisions of section 22(1), on such conditions as he may determine;

(b) by notice in the *Gazette* and on such conditions as he may determine, exempt all owners of land in a fire control area or a defined part thereof from the provisions of section 22(1).

**24. Fire belts outside fire control areas.-**

(1)(a) Notwithstanding anything to the contrary contained in this Act, but subject to any prohibition under section 25(3) and the provisions of this section, any owner of land not situated in a fire control area, who for the protection of his land requires a fire belt on both sides of the boundary between his land any land adjoining his land, may clear and maintain a fire belt as contemplated in section 22(1).

(b) Such an owner shall in the prescribed manner give to the owner of the adjoining land in question notice of his requirements regarding the fire belt which he wishes to clear and maintain.

(c) The time when and the manner in which the fire belt is to be cleared, the manner in which it is to be maintained, the location, length and width thereof, the nature of the assistance to be rendered by the owners, and the share of the costs in connection therewith to be borne by each, must be determined by agreement between them and, if they are unable to agree on application by either of them after 14 days' written notice to the other, by the magistrate's court within whose area of jurisdiction the land in question is situated, and that court may make such order as to costs as it may deem fit.

(d) The work involved in the clearing and maintenance of a fire belt must be done in accordance with the provisions of an agreement contemplated in paragraph (c), and if one of the parties to the agreement fails to comply with such a provision, the other party may proceed to clear or maintain the fire belt and may recover the costs involved from the first-mentioned party.

(2)(a) Notwithstanding anything to the contrary contained in this Act, but subject to any prohibition under section 25(3) and the provisions of this subsection, an owner of land, including State land, not situated in a fire control area, who for the protection of his land requires a fire belt on his side of the boundary between his land and any land adjoining his land, may clear and maintain a fire belt as contemplated in section 22(1).

(b) Such an owner who intends to clear the required fire belt by burning shall in the prescribed manner give to the owner of the adjoining land in question at least 14 days before he begins with the work in connection with the clearing or maintenance of the fire belt written notice of his intention so to begin on a stated day.

(c) An owner to whom notice has so been given and who requires a fire belt on both sides of the common boundary may before that stated day in writing require the owner concerned to follow the procedure prescribed by subsection (1), and in that case the provisions of that subsection apply and the notice given is deemed to be a notice in terms of subsection (1)(b).

(3) The provisions of this section do not apply in respect of -

(a) an owner of land who wishes to clear or maintain a fire belt entirely on his land in a manner other than by burning;



(b) the South African Transport Services, and nothing in this Act contained shall be construed as prohibiting the clearing or maintenance of a fire belt in a manner other than by burning.

(4) For the purposes of this section "owner", in relation to State land or other land under the control of the State, means the officer in charge of the department of State or provincial administration exercising control over that State land or other land, or a person authorized by him.

#### **24A. Fire belts on border of Republic outside fire control areas.-**

(1)(a) Without prejudice to the provisions of sections 22 and 24, an owner of land outside a fire control area part of the boundary of which land coincides with the border of the Republic, shall clear and maintain a fire belt on his land as close to that boundary as possible.

(b) A fire belt must be of such a nature and extent that it will, regard being had to local circumstances, be reasonably sufficient to prevent a fire on land on one side thereof from spreading to land on the other side thereof.

(2) For the purposes of this section "owner", in relation to State land or other land under the control of the State, means the officer in charge of the department of State or provincial administration exercising control over that State land or other land, or a person authorized by him.

(3) Notwithstanding the provisions of subsection (1), the Minister may at any time by notice in the *Gazette* and on such conditions as he may determine, exempt any owner or all owners of land contemplated in that subsection or any category of such owners from the provisions of that subsection.

[S.24A inserted by s.3 of Act No. 53 of 1991.]

#### **25. Extraordinary precautions in times of fire hazard.-**

(1) If the director-general is of the opinion that any State forest or private forest, whether inside or outside a fire control area, is subject to an extraordinary fire hazard, he may with a view to protecting that forest, by notice in the *Gazette*, direct that in an area defined in that notice and during the period mentioned therein, no person shall make a fire in the open air or, if such a fire has been made, allow it to continue to burn or add fuel thereto, otherwise than in accordance with such conditions as he may determine in that notice.

(2) If the director-general is of the opinion that the destruction by burning of any ground cover, including slash

in any timber plantation or any harvest residue, whether inside or outside a fire control area, during any period in any year can give rise to an increased fire hazard, he may by notice in the *Gazette* direct that no person shall in that manner destroy specified ground cover, slash or harvest residue inside an area defined in the notice and during a period in any year specified therein.

(3) If the director-general is of the opinion that in any area, whether inside or outside a fire control area, the clearing or maintenance of a fire belt by burning or the execution of block burns during any period in any year could give rise to an increased fire hazard, he may, notwithstanding anything to the contrary contained in this Act, by notice in the *Gazette* prohibit the clearing and maintenance of a fire belt in that manner or the execution of block burns in an area defined in the notice and during a period in any year specified therein.

(4) A notice in terms of this section also applies to State land in an area defined in the notice.

#### **26. Fighting and extinguishing of fires.-**

(1) Any person who has reasonable grounds for believing that a fire occurring on any land may endanger life or property, may, either alone or with any other person under his control, enter upon that land or land to which the fire can spread in order to prevent the spreading of that fire or to extinguish it.

(2) Subject to the terms of any agreement in terms of section 27, any forest officer may, to the exclusion of any other person, take over control of the fighting and extinguishing of a fire occurring within 10 kilometres of the boundary of a State forest or a mountain catchment area contemplated in section 2 of the Mountain Catchment Areas Act, 1970 (Act No. 63 of 1970.)

(3) Any person acting under subsection (1) or a forest officer acting under sub-section (2) -

(a) may take such measures as he may consider reasonably necessary in the circumstances for the protection of life or property or for preventing the fire from spreading or to extinguish it, and may for that purpose damage or destroy trees, grass, crops or other vegetation;

(b) may give to any person present at the fire or any person present on any land to which the fire is liable to spread or any person having an interest in that land, such orders as are reasonably necessary to prevent the fire from spreading or to extinguish it;

(c) may order any person whose life may be or may become endangered or whose presence at or in the vi-



cinity of the fire may obstruct an action in connection with the fire, to remove himself together with any vehicle or other thing under his control.

(4) No person who acted in terms of subsection (1) or who rendered assistance in the fighting or extinguishing of a fire or who performed any act or rendered any service in pursuance of an order under subsection (3), is entitled to any reward or compensation, but the director-general may pay to any person who has rendered assistance, performed any act or rendered any service in connection with a fire which threatened a State forest or a mountain catchment area, such compensation as he may, with the concurrence of the Treasury, determine.

(5) A person or forest officer who performed any act in terms of subsection (1) or (3), shall as soon as practicable report the circumstances and the steps taken to a police officer at the nearest police station.

**27. Agreements for mutual assistance in fighting fires.-**

(1) The director-general may, with the concurrence of the Treasury, enter into an agreement with any person regarding the rendering of mutual assistance in fighting and extinguishing fires occurring on, or constituting a threat to, a State forest or mountain catchment area contemplated in section 2 of the Mountain Catchment Areas Act, 1970 (Act No. 63 of 1970), or any land belonging to, or under the control of, that person.

(2) Such an agreement may provide for the payment of compensation for services rendered in terms thereof.

**PART VII**

**NATIONAL HIKING WAY SYSTEM**

**28. National hiking way system.-**

(1) The national hiking way system contemplated in section 31B of the Forest Act, 1968 (Act No. 72 of 1968), continues to exist, notwithstanding the provisions of section 89(1) of this Act, and is divided into -

- (a) hiking trails, including appurtenant beacons, notice boards and route indicators, and sites quarters, shelters and essential amenities intended for overnight stays; and
- (b) walks, including appurtenant beacons, notice boards and route indicators, and sites, shelters and essential amenities not intended for overnight stays.

(2) The Minister may, on the recommendation of the board, by notice in the *Gazette* declare any hiking trail or walk to be part of the national hiking way system.

(3) Such a hiking trail or walk may include a hiking trail or walk -

(a) constructed and intended to be maintained and controlled on behalf of the board by officers of the department in terms of section 37(2) or by a managing committee in terms of section 41(4);

(b) constructed and intended to be maintained and controlled on behalf of the board by any body which has agreed to the declaration of that hiking trail or walk to be part of the national hiking way system.

(4) A hiking trail or walk may consist of a main route, alternative routes, connecting routes and emergency routes.

**29. National Hiking Way Board.-** The National Hiking Way Board established in terms of section 31F of the Forest Act, 1968 (Act No. 72 of 1968), continues, notwithstanding the provisions of section 89(1) of this Act, to exist as a juristic person.

**30. Objects of board.-** The objects of the board are to promote by means of the national hiking way system the mental and physical welfare of the inhabitants of the Republic and to contribute to their environmental education.

**31. Constitution of board:-** (1) The board consists of the members appointed by the Minister in terms of subsection (2).

(2) The Minister must appoint the following persons as members of the board:

(a) Four officers of the department, of whom one must be designated as chairman by the Minister and one as vice-chairman to act as chairman in the absence of the chairman.

(b) one officer of the Department of National Education;

(c) one person nominated by the South African Tourism Board established by section 2 of the South African Tourism Board Act, 1983 (Act No. 100 of 1983);

(d) one person nominated by the National Parks Board of Trustees established under section 5(1) of the National Parks Act, 1976 (Act No. 57 of 1976);

(e) one officer of the nature conservation authority of each of the four provincial administrations;



(f) one person nominated by the South African Agricultural Union;

(g) four persons nominated by the Mountain Club of South Africa;

(h) as many other persons, but not exceeding nine, as the Minister may determine and who must be persons or nominees of organizations which in the opinion of the Minister can assist the board to achieve its objects.

(3) The Minister may appoint any other person as a member of the board in the place of the person or persons contemplated in subsection (2)(c), (d), (f) or (g) if the organization in question fails to submit to the director-general the name or names of a person or persons nominated by it within three months from the date on which it is requested in writing by the director-general to do so.

(4) Subject to the provisions of subsections (2) and (3), the Minister may appoint an alternate member for any member of the board.

### **32. Term of office and vacating of office by members of board -**

(1) A member or alternate member of the board holds office for such period, but not exceeding three years, as the Minister may determine at the time of his appointment, and at the expiry of his term of office he may be appointed again.

(2) A member or alternate member of the board shall vacate his office if he -

(a) becomes insolvent;

(b) becomes of unsound mind;

(c) is convicted of an offence and sentenced to imprisonment without the option of a fine.

(d) resigns by written notice to the Minister;

(e) is absent from two consecutive meetings of the board without leave of the chairman.

(3) The Minister may at any time remove a member or alternate member of the board from office if in his opinion there are sufficient reasons for doing so.

(4) If a member or alternate member of the board dies or vacates his office in terms of subsection (2) or (3), the Minister may, subject to the provisions of sections 31(2) and (3), appoint another person in his place for the unexpired part of his term of office.

### **33. Meetings and procedure of board.-** (1) The board

shall meet at the times and places determined by the chairman, but at least once per year.

(2) The quorum for, and procedure at, meetings of the board are as prescribed.

(3) A resolution of the board is not invalid only by reason of the fact that a vacancy existed on the board when the resolution was adopted.

**34. Allowances to members of board and of managing and advisory committees.-** A member or alternate member of the board or a member of a managing or advisory committee who is not in the full-time employment of the State may be paid from the fund such allowance as the Minister, with the concurrence of the treasury, may determine in general or in respect of a particular member or alternate member.

### **35. Functions of board.-**

(1) the board shall with the means at its disposal endeavour to achieve the objects for which it was established, and to that end the board may -

(a) exercise control over and maintain the national hiking way system;

(b) investigate the desirability of constructing new and extending existing hiking trails and walks;

(c) cause new hiking trails and walks to be constructed and existing hiking trails and walks to be extended by a managing committee or other body on behalf of the board, and recommend to the Minister that hiking trails and walks be declared to be part of the national hiking way system;

(d) recommend to the minister that a hiking trail or walk constructed, maintained and controlled by any other body be declared to be part of the national hiking way system, on such conditions as the board and that body agree upon;

(e) advise the Minister on any matter affecting the national hiking way system or which the minister refers to the board;

(f) enter into any contract of insurance which the board may consider desirable for the performance of its functions.

(2) The board may establish subcommittees and appoint as members thereof members of the board or any other person who in the opinion of the board can make a contribution to assist the board in the carrying out of its duties and the exercise of its powers.



(3) The board may, with the concurrence of the Minister, take over the maintenance and control of a hiking trail or walk contemplated in section 28(3)(b) from the body in question, or transfer the maintenance and control of a hiking trail or walk contemplated in section 28(3)(a) to any other body, on such conditions as the board and that body may agree upon.

(4) The board may assign the carrying out of any of its duties or delegate the exercise of any of its powers to a committee established under subsection (2) or to a member of the board.

(5) The board may make moneys from the fund available to a committee contemplated in section 42(1) to assist it in defraying the costs involved in the auditing of its financial records, its insurance, its mapping and publicity by it in connection with the hiking trail or walk controlled by it.

### 36. National Hiking Way Fund.-

(1) The National Hiking way Fund established by section 31H(1) of the Forest Act, 1968 (Act No. 72 of 1968), continues, notwithstanding the provisions of section 89(1) of this Act, to exist, and into that fund there must be paid -

- (a) moneys appropriated by Parliament for the purposes of the fund;
- (b) moneys collected in respect of the use of that part of the national hiking way system contemplated in section 28(3)(a); and
- (c) moneys which may accrue to the fund from any other source.

(2) The board shall administer the fund in accordance with instructions approved by the Minister on the recommendation of the board, and moneys in the funds shall, subject to the provisions of subsection (4), be utilized to defray expenses incurred by the board in the carrying out of its functions and the exercise of its powers.

(3) Once in its financial year, which is to end on 31 March, the board shall before a date determined by the Minister submit to him for his approval an estimate of the revenue and expenditure of the board for the next financial year, and the board may during the course of a financial year submit supplementary or revised estimates of revenue and expenditure for that year to the Minister for his approval.

(4) The board shall not incur any expenditure except in accordance with an estimate of expenditure approved by the Minister in terms of subsection (3).

(5) The board may invest moneys in the fund not required for immediate use with the public Debt Commissioners or in such other manner as the Minister, with the concurrence of the Treasury, may approve.

(6) Any unexpended balance in the fund at the end of a financial year shall be carried forward as a credit in the fund to the next financial year.

### 37. Records and accounts of board. -

(1) The board shall cause a record to be kept of moneys received by, and disbursements made from, the fund, and of the assets, liabilities and financial transactions of the board, and shall as soon as practicable after the end of each financial year cause accounts and a balance sheet to be drawn up which shall reflect, with appropriate particulars, moneys received and expenditure incurred by it during, and its assets and liabilities at the beginning and end of, that financial year, and such records, accounts and balance sheet shall be audited annually by the Auditor-General at a fee to be agreed upon by the board or, failing agreement, at a fee determined by the Minister of Finance.

(2) The work of the board in connection with the planning, construction, maintenance and control of the national hiking way system, and the accounting services in connection with the fund, shall be carried out by officers of the department, subject to the provisions of this Part, and the costs involved, as determined annually by the director-general, shall be paid by the board to the State from the fund.

(3) The chairman of the board is the accounting officer charged with the responsibility of accounting for moneys received and expenditure incurred by or on behalf of the board.

### 38. Hiking trails and walks in State forests and on State land.-

(1) Notwithstanding the provisions of sections 11(1) and 15(4), a hiking trail or walk may be constructed in any State forest, other than a state forest set aside as a wilderness area in terms of section 15(1)(a)(ii): Provided that if it is proposed to construct a hiking trail or walk in a State forest in respect of which a surface right permit issued under the Mining Rights Act, 1967 (Act No. 20 of 1967), remains in force under section 48 of the Minerals Act, 1991 (Act No. 50 of 1991), the permission of the minister of Mineral and Energy Affairs shall first be obtained.

[Sub-s.(1) amended by s.5 of Act No. 63 of 1995]

(2) A hiking trail or walk may be constructed on other



State land in accordance with the provisions of an agreement between the board and the officer in charge of the department of State or provincial administration exercising control over that State land.

### 39. Hiking trails and walks on private land.-

(1) Where the board desires to enter upon or occupy private land in order to construct a hiking trail or walk, the board must obtain the required rights by way of a written agreement with the owner of that land.

(2) Such an agreement must contain stipulations to the following effect:

(a) The right to the hiking trail or walk shall be permanent or for such period as may be agreed upon and shall bind every successor in title of the owner and every lessee or occupier of the land;

(b) the route of the hiking trail or walk shall not be surveyed, but shall be indicated by painted footprints or other suitable route indicators;

(c) the board shall accept liability for any loss or damage suffered by the owner wilfully or negligently caused by a hiker, and shall indemnify the owner against any claim which a hiker may institute against him;

(d) the location of sites, shelters, quarters and essential amenities, if any, shall be indicated by unsurveyed beacons which shall be pointed out to the owner;

(e) the board shall be responsible for the repair of soil erosion caused by the hiking trail or walk or the use thereof;

(f) such other terms as the Minister may, after consultation with the board, determined by notice in the *Gazette*.

(3)(a) The board shall as soon as practicable after the entering into of an agreement contemplated in subsection (1) send a copy thereof to the registrar of deeds of the deeds registry in which the title deed of the private land in question is registered, and the registrar must cause a note relating to the agreement to be made in his registers and on the office copy of the title deed in question, and must cause a similar note to be made on the original title deed if it is at any time lodged in his office.

(b) No fees are payable in respect of the making of such a note.

(4) An owner of private land who has entered into an agreement contemplated in subsection (1) with the board

shall at all reasonable times permit any member of the board, an advisory or managing committee or a committee contemplated in section 42(1), an officer of the department performing any function in terms of this Part or a contractor engaged in the construction or maintenance of the hiking trail or walk, to enter upon his land with the necessary workmen and equipment in order to conduct any investigation or inspection or perform any act which is necessary for the performance of any function in terms of this Part.

(5) The provisions of subsection (3) apply *mutatis mutandis* in respect of the diversion of a hiking trail or walk in terms of an agreement contemplated in subsection (1).

**40. Advisory committees** - The board may establish as many advisory committees as it considers expedient.

(2)(a) Such an advisory committee consists of five members, of whom one must be an officer of the department and the others persons who in the opinion of the board represent any body or the inhabitants of any area which have some special interest in hiking or walking: Provided that if the board is unable to find a sufficient number of persons who are willing to serve on the committee, it may appoint officers of the department to fill the vacancies.

(b) The members must be persons who in the opinion of the board have special knowledge of hiking trails or walks by virtue of their training or experience, or who are otherwise suitable to serve as members of the committee.

(c) A member holds office for such period, but not exceeding three years, as the board may determine and the board must designate one of the members as chairman of the advisory committee.

(d) A member of the board may not be appointed as a member of an advisory committee.

(e) with the permission of the chairman of the board the chairman of an advisory committee may attend meetings of the board and participate in its proceedings, but he shall not be entitled to vote.

(3) An advisory committee must advise the board on the development and administration of that part of the national hiking way system situated in, or planned for, the area for which it was established, and perform such other functions as may be prescribed.

(4) An advisory committee meets at the times and places determined by the chairman, and shall conduct its meetings according to the prescribed procedure.



**41. Managing committees.-**

(1) If requested thereto by the director-general, the board shall establish a managing committee in respect of any hiking trail or walk contemplated in section 28(3)(a) or any part thereof.

(2)(a) Such a managing committee consists of at least five members who in the opinion of the board represent any local authority, any other body, the inhabitants of any area, and the owners of any private land who have some special interest in the hiking trail or walk in question and who, in the opinion of the board, have special knowledge of the construction, maintenance or control of hiking trails and walks by virtue of their training or experience.

(b) Unless the director-general directs otherwise, the board shall appoint an officer of the department to serve in an advisory capacity on a managing committee.

(c) A member holds office for such period, but not exceeding three years, as the board may determine.

(d) The director-general must convene the first meeting of a managing committee, at which the members shall elect one of their number as chairman.

(3) A managing committee meets at the times and places determined by the chairman, and shall conduct its meetings according to the prescribed procedure.

(4) Subject to the directions of the board, a managing committee must on behalf of the board construct, maintain or control that part of the national hiking way system designated by the board, and the costs involved must be defrayed from moneys made available to the managing committee from the fund by the board.

(5) A managing committee shall cause a record of all its financial transactions to be kept in the prescribed manner.

**42. Control over and maintenance of hiking trails and walks by other bodies.-**

(1) A hiking trail or walk controlled by a body contemplated in section 28(3)(b) shall be controlled and maintained on behalf of the board by a committee established by that body in the prescribed manner and subject to the directions of the board.

(2) A body contemplated in subsection (1) shall cause a record to be kept of moneys received by it in respect of the use of the hiking trail or walk in question, or from any other source, and expenditure incurred by it in connection with the maintenance and control of that hiking

trail or walk, and shall as soon as practicable after the end of its financial year, which is to end of 31 March, cause accounts to be drawn up which must reflect moneys received and disbursements made by it during that financial year.

(3) The accounts contemplated in subsection (2) shall be audited by an auditor registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act no. 80 of 1991), and a copy of the audited accounts together with a report dealing with the activities of the body in question during that financial year shall as soon as practicable thereafter be submitted by that body to the board.

[Sub-s.(3) substituted by s.6 of Act No. 63 of 1995.]

**43. Fees for use of national hiking way system.-** The tariff of fees for the use of the sites, shelters or quarters and essential amenities intended for overnight stay -

(a) in respect of a hiking trail contemplated in section 28(3)(a) must be determined by the Minister, after consultation with the board, and income derived from the collection of those fees accrues to the fund;

(b) in respect of a hiking trail contemplated in section 28(3)(b) must be determined by the other body in question and approved by the board, and income derived from the collection of those fees accrues to that body.

**44. Temporary closing or diversion of hiking trails and walks.-** A hiking trail or walk may at any time temporarily be closed to the public or, with the consent of the owner of the land in question, be diverted by the director-general or the chairman of the managing committee or committee in charge of that hiking trail or walk.

**45. Use of national hiking way system.-**

(1) Every person who uses a hiking trail or walk shall obey every provision of a code of conduct prescribed by the board and which applies in respect of that hiking trail or walk.

(2) No person who suffers any loss or damage as a result of his use of a hiking trail or walk has any claim in respect thereof against any other person.

(3) Any person who by his use of a hiking trail or walk causes loss or damage in any manner to any other person, is liable therefor to such person.

**46. Annual report by board.-**

(1) As soon as practicable after the end of each financial year the board shall from information to be supplied to it by the director-general, all advisory and managing com-



mittees and all committees contemplated in section 42(1), compile a report on all activities during that financial year with regard to the national hiking way system and any other matter which the Minister may request the board to deal with in such report.

(2) That report, together with the audited balance sheet and accounts pertaining to the fund, shall be submitted to the Minister, and he must lay it upon the Table in Parliament within 14 days after he has received it, if Parliament is then in session or, if Parliament is not then in session, within 14 days of the beginning of the next session.

## PART VIIA

[Part VIIA inserted by s.7 of Act No. 63  
of 1995.]  
**NATIONAL FORESTRY ADVISORY  
COUNCIL**

**46A. Establishment of National Forestry Advisory Council.**- The Minister may establish a body to be known as the National Forestry Advisory Council.

[S.46A inserted by s.7 of Act No. 63 of 1995.]

**46B. Object of council.**- The object of the council is to advise the Minister on any aspect of commercial and non-commercial forestry referred to the council by the Minister, and on any other forestry-related matter.

[S.46B inserted by s.7 of act No. 63 of 1995.]

**46C. Constitution of council.**- (1) The council shall consist of such number of members as the Minister may from time to time determine.

(2)(a) Whenever a member of the council has to be appointed, the Minister shall.-

(i) by notice in at least two national newspapers and so many local newspapers as the Minister may determine, invite all interested persons to submit to him or her, within the period mentioned in the notice, the names of persons who in the opinion of such interested persons are fit to be so appointed;

(ii) establish a committee consisting of the number of persons which the Minister may determine, designate a chairperson for the committee and submit to the committee all the nominations received.

(b) The chairperson of the appropriate committee of the National Assembly and the chairperson of the corresponding committee of the Senate, or their delegates, shall be members of the committee referred to in paragraph (a)(ii).

(c) The committee referred to in paragraph (a)(ii) shall from the nominations submitted to it by the Minister, compile a short list of eligible candidates who have knowledge of any matter referred to in section 46B or who can make a contribution to the achievement of the objects of the council, and submit it to the Parliamentary committees referred to in paragraph (b).

(d) The Parliamentary committees referred to in paragraph (b) shall, within one month after receipt of the nominations from the Minister, and in consultation with each other, make a recommendation to the Minister as to which candidate should be appointed to the council.

(e) A member of the council shall be appointed by the Minister after due consideration of the recommendation made to him or her in terms of paragraph (d).

[S.46C inserted by s.7 of Act No. 63 of 1995.]

**46D. Term of office of members of council.**-

(1) A member of the council shall hold office for such period, but not exceeding three years, as the Minister may determine at the time of his or her appointment as a member.

(2) The Minister may, after consultation with the Parliamentary committees referred to in section 46C(2)(b), at any time terminate the term of office of a member of the council if there is sufficient reason for doing so.

[S.46D. inserted by s.7 of Act No. 63 of 1995.]

**46E. Meetings of council, records to be kept and submission of advice to Minister.**-

(1) The Minister shall determine.-

(a) the manner of the calling of, the quorum for, and the procedure at, meetings of the council; and

(b) what records shall be kept by the council and the manner in which the advice of the council shall be submitted to the Minister.

(2) The Minister shall designate one member of the council as the chairperson and not more than three members as the vice-chairpersons.

(3)(a) If the chairperson of the council is absent from any meeting of the council, the members present shall elect one of the vice-chairpersons to preside at the meeting.

(b) If the chairperson as well as all the vice-chairpersons are absent from any meeting the members present shall elect one from among their number to preside at the meeting.

(4)(a) The Minister shall regularly report on the activities of the council to the Parliamentary committees referred to in section 46C(2)(b) requesting such a report.

(b) The Minister shall on receipt submit the advice of the council to the Parliamentary committees referred to in section 46C(2)(b) for their consideration and comment within one month, prior to acting on that advice.

[S.46E inserted by s.7 of Act No. 63 of 1995.]

**46F. Committees of council.-**

(1)(a) The council may, with the approval of the Minister, from among its number, elect an executive committee consisting of such number of members as the Minister may from time to time determine.

(b) The chairperson of the council shall be the chairperson of the executive committee.

(c) The executive committee shall perform such functions as the council, with the approval of the minister, may from time to time determine.

(2)(a) The council may, with the approval of the Minister, establish other subcommittees, consisting of such persons as may be determined by the council, in order to assist the council in the performance of its functions and with the co-ordination of the provinces.

(b) The council shall designate a member of a subcommittee as the chairperson of that subcommittee.

[S.46F inserted by s.7 of Act No. 63 of 1995.]

**46G. Allowances of members of council and committees.-** A member of the council, and a member of a committee of the council, who is not in the full-time employment of the State, shall be paid from moneys appropriated by Parliament for this purpose, such allowances as the Minister, with the concurrence of the Minister of Finance, may determine either in general or in any particular case.

[S.46G inserted by s.7 of Act No. 63 of 1995.]

**46H. Staff of council.-** The director-general shall designate, subject to the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), as many officers and employees of the department as may be necessary to assist the council and any committee thereof in the performance of the administrative work of the council or of such committee.

[S.46H inserted by s.7 of Act No. 63 of 1995.]

**PART VIII**

**FORESTRY COUNCIL**

**47. Forestry Council.-** The Forestry Council established by section 10A of the Forest Act, 1968 (Act No. 72 of 1968), continues, notwithstanding the provisions of section 89(1) of this Act, to exist as a juristic person.

**48. Objects of council.-** The objects of the council are to promote and encourage the development of the forest and timber industry.

**49. Constitution of council.-**

(1) The council consists of the members appointed by the Minister in terms of subsection (2).

(2) The Minister must appoint the following persons as members of the council:

(a) Three officers of the department;

[Para.(a) substituted by s.1(a) of Act No. 14 of 1988.]

(b) six persons chosen by the Minister from a list of the names of at least eight persons nominated by associations which in the opinion of the Minister represent timber growers;

(c) six persons chosen by the Minister from a list of the names of at least eight persons nominated by associations which in the opinion of the Minister represent timber processors;

(d) five other persons who in the opinion of the Minister can assist the council to achieve its objects.

(2A) The Minister shall designate a member of the council as chairman of the council and another such member as vice-chairman thereof.

[Sub.s.(2A) inserted s.1(b) of Act No. 14 of 1988.]



(3) The director-general must request the associations contemplated in subsections (2)(b) and (c) in writing to submit to him a list of names as contemplated in those subsections, and if upon the expiry of a period of three months after such an association has so been requested it -

(a) has not submitted such a list to the director-general; or

(b) has submitted a list which does not contain the names of an adequate number of persons who in the opinion of the minister are suitable for appointment, the Minister must appoint the required number of persons considered by him as suitable.

(4) Subject to the provisions of subsection (2) and (3), the Minister may appoint an alternate member for each member of the council.

(5) A member or alternate member of the council holds office for such period, but not exceeding three years, as the Minister may determine at the time of his appointment and at the expiry of his term of office, may be appointed again.

(6) No person shall be appointed as a member or alternate member of the council if he:-

(a) is an unrehabilitated insolvent; or

(b) is not a South African citizen permanently resident in the Republic.

(7) A member or alternate member of the council shall vacate his office if he -

(a) becomes subject to a disqualification contemplated in subsection (6);

(b) becomes of unsound mind;

(c) is convicted of an offence and sentenced to imprisonment without the option of a fine;

(d) is absent from more than two consecutive meetings of the council without leave of the chairman.

(8) If a member or alternate member of the council dies, or resigns by notice in writing to the Minister, or has to vacate his office in terms of subsection (7), the Minister may, subject to the provisions of subsections (2), (3), (4) and (5), appoint a person in his place for the unexpired part of his term of office.

**50. Functions of council.-** The council shall with the means at its disposal do what it considers necessary to achieve the objects for which it was established, and to that end it may -

(a) by itself or in co-operation with any department of State or person undertake research, research development and timber technology promotion, and provide training respect of any matter which, in the opinion of the council, affects the forest or timber industry;

(b) with the concurrence of the minister and on such conditions as he may approve, utilize moneys in the fund to comply with any requirement set by the Minister of Finance under section 15 of the Agricultural Credit Act, 1966 (Act No. 28 of 1966), in connection with a loan under section 10 of that Act for the establishment or management of a private forest;

(c) with the concurrence of the Minister and on such conditions as he may approve, grant financial assistance to any person in order to achieve the objects contemplated in paragraph (a);

(d) with the concurrence of the Minister, order a survey of all commercial timber plantations, and on such conditions as the minister may approve, grant financial assistance in connection with that survey;

(e) advise the Minister on any aspect affecting the forest or timber industry, including legislation which applies to the industry;

(f) advise the Minister in respect of a levy under section 55;

(g) investigate any matter affecting the forest or timber industry which the council considers necessary or which the Minister refers to the council;

(h) with the concurrence of the Minister, appoint committees and working groups to assist the council in the carrying out of its duties and the exercise of its powers.

#### **51. Meetings of council.-**

(1) The council shall meet at the times and places determined by the chairman or, in his absence, the vice-chairman, but not less than twice per year.

(2) The quorum for, and the procedure at, a meeting of the council, including the attendance of, and the participation in the proceedings by, any person who is not a member or alternate member of the council, are as prescribed.

**52. Allowances and remuneration payable to members of council and certain other persons.-** A member or alternate member of the council and a member of a committee or working group of the council who is not in the full-time employment of the State shall be paid from



the fund such allowances and remuneration as the Minister may determine in general or in any particular case, after consultation with the council and in consultation with the Minister of Finance.

[S.52 substituted by s.2 of Act No. 14 of 1988.]

### 53. Forestry Industry Fund.-

(1) The Forestry Industry Fund established by section 10H(1) of the Forest Act, 1968 (Act No. 72 of 1968), continues, notwithstanding the provisions of section 89(1) of this Act, to exist, and into that fund must be paid -

- (a) moneys collected by virtue of the provisions of section 55;
- (b) moneys appropriated by Parliament for the objects of the council;
- (c) interest on investments; and
- (d) moneys accruing to the fund from any other source.

(2)(a) The fund shall be administered by the council in accordance with such instructions as the Minister may approve on the recommendation of the council, and moneys in the fund must, subject to the provisions of paragraph (b) and subsection (4), be utilized to defray expenses incurred by the council in the performance of its functions.

(b) Moneys or assets donated or bequeathed to the council shall be utilized only in accordance with the conditions of that donation or bequest.

(3) Once in its financial year, which is to end on 31 March, the council shall before a date determined by the Minister, submit to the Minister for his approval an estimate of the revenue and expenditure of the council for the next financial year, and the council may during the course of a financial year submit to the Minister for his approval supplementary or revised estimates of revenue and expenditure for that year.

(4) The council shall not incur any expenditure except in accordance with an estimate of expenditure approved by the Minister in terms of subsection (3).

(5) The council may, with the concurrence of the Minister and on such conditions as he may determine, establish and administer a reserve fund.

(6) The council may invest moneys in the fund or reserve fund not required for immediate use with the Public Debt Commissioners or in such other manner as the Minister may approve.

(7) Any unexpected balance in the fund at the end of a financial year shall be carried forward as a credit in that fund to the next financial year.

### 54. Records and accounts of council.-

(1) The council shall cause a record to be kept of moneys received by, and disbursements made from, the fund, and of the assets, liabilities and financial transactions of the council, and shall, as soon as practicable after the end of each financial year, cause accounts and a balance sheet to be drawn up which must reflect, with appropriate details, moneys received and expenditure incurred by it during, and its assets and liabilities at the beginning and end of, that financial year, and such records, accounts and balance sheet shall be audited annually by the Auditor-General at a fee to be agreed upon or, failing agreement, at a fee determined by the Minister of Finance.

(2)(a) The administrative and clerical work of the council and the accounting services connected with the fund must be performed by officers of the department, and the cost thereof, as determined annually by the director-general, shall be paid by the council to the State from the fund.

(b) Notwithstanding the provisions of paragraph (a), the council may, with the approval of the minister, on the conditions determined by him and with the concurrence of the Treasury, cause the work and services contemplated in paragraph (a) to be performed by any other person.

[Para.(b) substituted by s.1 of Act No. 90 of 1987.]

(3) The chairman of the council is the accounting officer charged with the responsibility of accounting for moneys received by, and disbursements made from, the fund.

### 55. Levy on timber and imported timber derivatives.-

(1) The Minister may, after consultation with the council, by notice in the *Gazette*, impose a levy in respect of any timber or imported timber derivative.

(2) Such a notice must contain particulars regarding the manner in which the amount of the levy is determined, the person or class of persons by whom or by which it is payable, and the person (including an association contemplated in section 49(2) charged with the collection thereof, and may contain such other directions by the minister (including the manner in which the round wood equivalent of any timber or imported timber derivative is to be calculated) as he may consider necessary for the collection of the levy.

(3) Different levies may be imposed in respect of different kinds or uses of timber or imported timber deriva-



tives or different persons or classes of persons.

(4) The Minister may in a notice under subsection (1) prescribe penalties for a contravention of, or a failure to comply with, its provisions not exceeding the penalties prescribed by section 75(12).

#### **56. Reports by council.-**

(1) The council shall as soon as practicable after the end of each financial year submit to the minister a report with regard to -

- (a) its activities during that financial year, together with an audited balance sheet and a full account of its revenue and expenditure for that financial year; and
- (b) any other matter which the Minister may request the council to deal with in that report.

(2) The Minister must lay that report upon the Table in Parliament within 14 days after he has received it, if Parliament is then in session or, if Parliament is not then in session, within 14 days of the beginning of the next session.

## **PART IX**

### **NATIONAL BOTANICAL INSTITUTE**

[Heading substituted by s.4 of Act No. 53 of 1991.]

#### **57. National Botanical Institute.-**

(1) As from the commencement of the Forest Amendment Act, 1991, the juristic person established by this section, as it read before the substitution thereof by section 5 of the said Act, shall be known as the National Botanical Institute.

(2) A reference to the Board for National Botanic Gardens in or on any law, deed or other document shall, unless clearly inappropriate, be construed as a reference to the National Botanical Institute.

[S.57 substituted by s.5 of Act No. 53 of 1991.]

**58. Objects of institute.-** The objects of the institute are to promote the utilization and conservation of, and knowledge and services in connection with, Southern African flora, and to that end the institute may -

- (a) by itself or in co-operation with any person assess the botanical research and conservation needs of the Republic and develop programmes to meet these needs;
- (b) establish, develop and maintain collections of plants in national botanic gardens and in herbaria;
- (c) undertake and promote research in connection with indigenous plants and related matters;
- (d) study and cultivate specimens of endangered plant species;
- (e) investigate and utilize, and promote the utilization of, the economic potential of indigenous plants;
- (f) promote an understanding and appreciation of the role of plants among the public.

[S.58 substituted by s.6 of Act No. 53 of 1991.]

#### **59. Constitution of institute.-**

- (1) The institute consists of the prescribed number of members appointed by the Minister in the prescribed manner.
- (2) The Minister must designate one member as chairman and one as vice-chairman of the institute to act as chairman in the absence of the chairman.
- (3) The Minister may in the prescribed manner appoint an alternate member for any member of the institute.

#### **60. Term of office and vacating of office by members of institute.-**

- (1) A member or alternate member of the institute holds office for such period, but not exceeding three years as the Minister may determine, and at the expiry of his term of office he may be appointed again.
- (2) A member or alternate member of the institute shall vacate his office if he -
  - (a) becomes insolvent;
  - (b) becomes of unsound mind;
  - (c) is convicted of an offence and sentenced to imprisonment without the option of a fine;
  - (d) is absent from three consecutive meetings of the institute without leave of the chairman;
  - (e) resigns by written notice to the Minister;
  - (f) is removed from office under subsection (3).

(3) The Minister may at any time remove a member or alternate member of the institute from office if in his opinion there are sufficient reasons for doing so.

(4) If a member or alternate member of the institute dies or ceases to be a member or alternate member in terms of subsection (2) or (3), the Minister may in the prescribed manner appoint a person in his place for the unexpired part of his term of office.

(5) A resolution of the institute is not invalid only by reason of the fact that a vacancy existed on the institute when the resolution was adopted.

**61. Functions of institute.-**

(1) In order to achieve its objects the institute may -

(a) establish, develop, manage and maintain national botanic gardens, herbaria, research laboratories, educational facilities and a botanical information service;

(b) subject to the provisions of section 69, engage such employees as it may deem necessary to enable it to perform its functions;

(c) take such steps as it may consider necessary to protect or conserve any plant, animal or property under its control;

(d) supply printed matter, plants, meals or refreshments or render any other service to visitors to a national botanic garden or other places under the control of the institute at a tariff of fees determined by the institute, and for that purpose construct, establish, furnish and maintain and, with the approval of the Minister, let any structure, depot or site;

(e) with the concurrence of the Minister, enter into an agreement with any person to undertake any activity mentioned in paragraph (d) in a national botanic garden or other place under the control of the institute of such conditions and upon payment of such sum as the institute may determine;

(f) regulate, control or prohibit access by the public to a national botanic garden or other place under the control of the institute or any part thereof, and charge moneys determined by the institute for such access;

(g) render services relevant to its objects on a scale of fees determined by the institute;

(h) with the concurrence of the Minister, establish a company which has as its object the production and supply of products or the rendering of services on behalf of the institute;

(i) with the concurrence of the Minister and the Minister of Finance, borrow moneys for the performance of its functions;

(j) accept unconditional donations of money or movable property;

(k) sell, exchange or donate specimens or parts of plants from a national botanic garden or other place under the control of the institute, or by purchase, exchange or in any other manner acquire any plant or part of a plant to establish it in a national botanic garden or other place under the control of the institute;

(l) investigate the desirability of declaring land to be a national botanic garden;

(m) by itself or in co-operation with any person undertake, cause to be undertaken or promote research in connection with indigenous plants and foreign invasive plants which could endanger indigenous plants, and related matters;

(n) develop and maintain liaison with persons and organizations with similar objects within and outside the Republic;

(o) collate, process and through publications, lectures, courses and other educational means disseminate information relating to indigenous plants and their value to man;

(p) establish committees of the institute consisting of members of the institute and working groups consisting of persons appointed by the institute, to assist the institute with the performance of its functions or to advise the institute on any matter;

(q) perform such other acts as the institute may consider necessary for the achievement of its objects.

(2) The institute may, with the concurrence of the minister, accept money or movable property donated on some condition, and such money or assets must be used or employed in accordance with the condition in question.

[S.61 substituted by s.7 of Act No. 53 of 1991.]

**62. Meetings of institute.-** The institute, a committee of the institute and a working group shall meet in the prescribed manner and shall follow the prescribed procedure at their meetings.

**63. Allowances to members of institute.** - A member or alternate member of the institute who is not in the full-time employment of the State may be paid from the fund such allowances as the minister, with the concur-



rence of the Treasury, may determine in general or in respect of a particular member or alternate member.

#### 64. National Botanical Institute Fund.-

(1) There is hereby established a fund called the National Botanical Institute Fund, into which must be paid -

- (a) loans to the institute from moneys appropriated by Parliament for that purpose, on such conditions as the minister, with the concurrence of the Minister of Finance, may determine;
- (b) annual grants-in-aid from moneys appropriated by Parliament for that purpose, which the Minister may pay to the institute in such amounts, for such purposes and on such conditions as he may determine;
- (c) moneys derived from the letting of structures or sites by the institute;
- (d) interest on investments;
- (e) moneys received by way of donation;
- (f) moneys received by way of entrance fees to national botanic gardens or other places under the control of the institute or for sales of printed matter or plants or for services rendered;
- (g) moneys which immediately before the commencement of this Act were available to the Council which in terms of section 6 of the Cultural Institutions Act, 1969 (Act no. 29 of 1969), controlled and managed the institutions named in Government Notices R.1022 of 26 June 1970 and 773 of 15 April 1983;
- (h) moneys received from any other source.

(2) The fund shall be administered by the institute in accordance with such instructions as the Minister, on the recommendation of the institute, may approve, and moneys in the fund shall, subject to the provisions of subsection (5), be utilized to defray expenses incurred by the institute in the performance of its functions.

(3) The chief executive officer shall invest moneys in the fund not required for immediate use or as a reasonable operating balance with the Public Debt Commissioners or, with the concurrence of the Treasury, on fixed deposit at interest with a banking institution or building society in the Republic approved by the institute, or the institute may invest such moneys in such other manner as the Minister, with the concurrence of the Treasury, may approve.

(4) Once in its financial year, which is to end on 31 March, the institute shall before a date determined by the Minis-

ter submit to him for his approval an estimate of the revenue and expenditure of the institute for the next financial year, and the institute may in the course of a financial year submit supplementary or revised estimates of revenue and expenditure for that year to the Minister for his approval.

(5) The institute shall not incur any expenditure save in accordance with an estimate of expenditure approved by the Minister in terms of subsection (4).

(6) Any unexpected balance in the fund at the end of a financial year shall be carried forward as a credit in the fund to the next financial year.

[S.64 substituted by s.8 of Act No. 53 of 1991.]

#### 65. Records and accounts of institute.-

(1) The institute shall cause a record to be kept of moneys received or expended by it, and of its assets, liabilities and financial transactions, and shall as soon as practicable after the end of each financial year cause a statement of income and expenditure and a balance sheet to be drawn up which must reflect, with appropriate particulars, moneys received and expenditure incurred by it during, and its assets and liabilities at the beginning and end of, that financial year.

(2) The record, statement of income and expenditure and balance sheet contemplated in subsection (1) shall be audited by the Auditor-General at a fee to be agreed upon with the institute or, failing agreement, at a fee determined by the Minister of Finance.

(3) The chief executive officer is the accounting officer charged with the responsibility of accounting for moneys received and expenditure incurred by the institute.

#### 66. National botanic gardens.-

(1) Every area defined in Schedule 1 to this Act is a national botanic garden with the name assigned to it in the Schedule.

(2) The Minister may by notice in the *Gazette* declare:-

- (a)(i) State land procured for the purposes of this Part or which has been reserved for those purposes with the approval of the Minister of Public Works; or
- (ii) any land made available by the owner thereof by agreement with the Minister of Public Works for the purposes of a national botanic garden for such period and on such conditions as the Minister, after consultation with the institute, may approve, to be a national botanic garden with a name assigned to it in that notice and amend schedule 1 by adding thereto the name and a definition of the land in question,



[Para.(a) amended by s.47 of Act No. 97 of 1986.]

(b) land contemplated in paragraph (a) to be part of a national botanic garden or, subject to the provisions of subsection (3) and the conditions of an agreement contemplated in paragraph (a)(ii), exclude land from a national botanic garden and amend Schedule 1 accordingly.

[Sub-s.(2) amended by ss.46 and 47 of Act No. 97 of 1986.]

(3) Except with the approval, by resolution, of Parliament, land contemplated in subsection (2)(a)(i) which forms part of a national botanic garden or land contemplated in section 67(2) shall not be alienated or employed for any other purpose.

(4) The Minister may by notice in the *Gazette* amend Schedule 1 in order to -

- (a) amend the definition of land declared to be a national botanic garden if the definition thereof is found to be incorrect; or
- (b) assign another name to a national botanic garden or amend a name.

[Sub-s.(4) amended by ss.46 and 47 of Act No. 97 of 1986.]

**67. Registration of land and immovable property donated to institute.-**

(1) Donations of land or other immovable property to the institute may only be accepted by the Minister of Public Works, and must be registered in the name of the State.

(2) Land, other than land contemplated in section 66(2)(a)(ii), declared to be a national botanic garden and not registered in the name of the State, is deemed to be so registered, and the registrar of deeds of the deeds registry where the land in question is registered must at the request of the Minister of Public Works cause the necessary note to be made on the title deeds in question and in his registers, and no fees are payable in respect of the making of such a note.

**68. Making land and buildings available to institute.-** the Minister of Public Works may on such basis and conditions as he may determine, make any land or building available to the institute to enable the institute to perform its functions, and may provide or works and services in respect of that land or the maintenance of that building.

**69. Chief Executive Officer and officers of institute.-**

(1) For the performance of the functions of the institute -

- (a) the Minister determines its establishment;
- (b) the institute may appoint persons as officers in the posts on its establishment designated by the Minister;
- (c) the Minister must after consultation with the institute, appoint a person as Chief Executive Officer of the National Botanical Institute to be in charge of the other officers of the institute, and responsible to the institute for the carrying out of their duties.

(2) The conditions of service of the chief executive officer and the other officers of the institute shall be determined by the Minister, with the concurrence of the Minister of Finance.

(3) The institute may at any time terminate the services of any officer if in its opinion there are sound reasons for doing so, but the services of the chief executive officer may only be terminated by the Minister, after consultation with the institute.

[S.69 substituted by s. 9 of Act No. 53 of 1991.]

**70. Reports by institute.-**

(1) The institute shall as soon as practicable after the end of each financial year submit to the Minister a report with regard to -

- (a) its functions during that year together with an audited balance sheet and a statement of its income and expenditure during that year; and
- (b) any other matter which the Minister may request the institute to deal with in that report.

(2) The Minister must lay that report upon the Table in Parliament within 14 days after he has received it, if Parliament is then in session or, if Parliament is not then in session, within 14 days of the beginning of the next session.

**71. Delegation of powers.-**

(1)(a) The Minister may delegate any power vested in him by this Part to an officer of the department or to the chief executive officer or to any other officer of the institute.

(b) The Minister of Public Works may delegate any power vested in him by this Part to an officer in the



Department of Public Works and Land Affairs or to the chief executive officer or to any other officer of the institute.

[Para.(b) amended by s.4 of Act No. 52 of 1987.]

(2) The institute may delegate any power vested in it by this Part to the chief executive officer or to any other officer of the institute or to a committee of the institute established by the institute under section 61(1)(m).

(3) The Minister, the Minister of Public Works or the institute is not divested of any power which he or it has delegated under subsection (1) or (2), as the case may be, and may rescind or amend any decision of the officer or committee concerned.

#### **72. By-laws of institute.-**

(1) The institute may, with the concurrence of the Minister, make by-laws relating to -

(a) the powers and duties of officers of the institute with respect to -

(i) the exclusion of members of the public from certain parts of a national botanic garden;

(ii) the disposal or acquisition of any indigenous plant from or for a national botanic garden;

(b) the conditions on which, and the times when, a national botanic garden may be visited by the public;

(c) the protection or conservation of any animal, plant or property in a national botanic garden or belonging to the institute;

(d) the protection of any tree, plant, building, rock, fence, seat or other object in a national botanic garden against defacement by writing or in any other manner;

(e) any other matter which may or must be prescribed by by-law or which, in the opinion of the institute, is necessary for the control and management of a national botanic garden.

(2) Different by-laws may be made in respect of different national botanic gardens.

(3) A by-law may prescribe penalties for any contravention of, or any failure to comply with, its provisions, of a fine not exceeding R1 000 or imprisonment not exceeding three months or both such fine and such imprisonment.

## **PART X**

### **REGULATIONS, TARIFFS AND CHARGES**

#### **73. Regulations.-**

(1) The Minister may make regulations -

(a) with regard to State forests in general or a particular State forest or a part thereof relating to -

(i) the establishment of timber plantations, the disposal of forest produce and the felling, working and removal thereof;

(ii) the granting of rights in or over State forests or in connection with forest produce and the procedure in connection therewith;

(iii) the manner in which trees, timber or other forest produce which has been sold, shall be dealt with or the manner in which it shall be processed, and the manner in which products derived therefrom shall be disposed of;

(iv) the establishment and management by the department of sawmills and other plant and appurtenances for the sawing or processing of forest produce, and the carrying on by the department of trade in forest produce and any other activities incidental thereto;

(v) the use of grazing in State forests;

(vi) the clearing, ploughing or cultivation of land;

(vii) the use of land for industrial, trading, residential, camping or recreational purposes;

(viii) the hunting or catching of game, birds or fish;

(ix) the control or destruction of animals or plants where it is necessary in his opinion;

(x) the issue of licenses, permits or other authorizations in respect of rights in or over State forests or in respect of forest produce;

(xi) access to State forests, including the conditions on which vehicles not owned by the State may be operated on any road in a State forest, other than a road constructed or maintained by a person who by law is entitled to do so, and the circumstances in which such a road shall not be available to the operators of such vehicles;

- (xii) the exercise of any servitude or right contemplated in section 11(3), including the matters contemplated in subparagraphs (xiii) to (xviii);
  - (xiii) the kinds of forest produce and the quantities thereof which may be cut, taken or removed, and the season in which or the times when it may be cut, taken or removed;
  - (xiv) a prohibition for specified periods on the grazing of stock or the cutting or taking of forest produce in , or the removal of forest produce from, any defined area for the purpose of regenerating a forest or of conserving forest produce or pasturage, or for the prevention of soil erosion or sand drift, or for the reclamation of soil or drift sand;
  - (xv) the areas in which, and the periods during which, rights of grazing or of cutting, taking or removing of forest produce may be exercised for the purpose of regenerating a forest, of conserving young trees, or of regulating the yield of forest produce;
  - (xvi) the limiting of the cutting, taking or removal of forest produce to domestic or farming requirements, and a prohibition on the sale thereof;
  - (xvii) the areas in which and the periods during which a right of residence or camping may be exercised;
  - (xviii) the obligation of the beneficiary in the case of a servitude or other right to obtain from the director-general a permit defining the nature of that servitude or right an specifying where, when an in what manner it may be exercised;
- (b) with regard to a tree or trees declared to be a protected tree or trees in terms of section 13(1), the consultative committee established in terms of section 13(4)(a)(i), and local control committees established in terms of section 13(4)(a)(ii), relating to -
- (i) the term of office of members of the consultative committee and the manner in which the committee shall perform its functions;
  - (ii) the term of office of members of local control committees, the functions of those committees in connection with any protected tree or trees, and the manner in which those committees shall perform their functions;
  - (iii) the cultivation and grazing of land in the vicinity of any protected tree, the granting of financial assistance for the erection of stock-proof fences, and the clearing and maintenance of fire belts for the protection of such a tree;
- (iv) the exercise of control over the collection, removal, transport, export, purchase, sale or donation or the acquisition or disposal in any other manner of parts or produce of protected trees;
  - (v) the planting of trees of the same species to replace protected trees with a view to the promotion of any object mentioned in section 13(2)(b)(i) or 13(2)(c) and as a condition for the cutting or destruction of those trees;
  - (vi) the objects and scope of management plans for protected trees, the framing of such plans and the application of any provision thereof in respect of an owner, occupier or lessee of land to which a notice in terms of section 13(1) applies;
  - (vii) any other matter which the Minister may deem necessary or expedient to prescribe in order to achieve the objects mentioned in section 13;
- (c) with regard to fire control committees or regional fire control committees in general or a particular fire control committee or regional fire control committee relating to -
- (i) the constitution of such a committee and the appointment of its members by the director-general;
  - (ii) the duties and powers of such a committee, including the particulars to be contained in a fire protection scheme;
  - (iii) The procedure to be followed at meetings of such a committee and the manner in which it is to perform its functions;
  - (iv) the manner in which the expenditure of such a committee is to be defrayed, including the power of such a committee to levy, with the concurrence of the Minister, charges annually or otherwise on a uniform or differential basis on owners of land within the area concerned or on a class of such owners;
- (d) with regard to the administration and control of the national hiking way system, the National Hiking Way Board, and advisory and managing committees, or a particular advisory or managing committee, relating to -
- (i) the quorum for, and the procedure to be followed at, meetings of the said Board and advisory and managing committees;
  - (ii) the constitution of advisory and managing committees, and the appointment of members of those committees;



- (iii) the duties and powers of advisory or managing committees;
- (iv) stipulations which an agreement contemplated in section 39(1) must contain;
- (v) the issue of permits or other authorizations in connection with the use of any hiking trail or walk;
- (vi) any other matter which the Minister may consider necessary or expedient to prescribe in order to achieve the objects of the said Board;
- (e) with the concurrence of the Minister of Constitutional Development, with regard to the making of surveys and the gathering of information relating to the requirements in respect of forest produce, the production and potential production of timber plantations and forests, timber supplies and such other information as he may consider necessary for the development of the forest and timber industry, including regulations relating to -
- (i) the registration of owners of timber plantations or forests, persons intending to establish or expand timber plantations, and persons who are engaged in, or who intend to become engaged in, the sawing, processing or sale of forest produce;
- (ii) the inspection of any timber plantation or forest, or of the premises of persons engaged in the sawing, processing or sale of any forest produce;
- (iii) the collection of data by owners of timber plantations or forests, and, persons engaged in the sawing, processing, distribution or sale of any forest produce, the records to be kept and the returns (other than returns regarding processing techniques) to be rendered to the director-general by those owners or persons, and the times when those returns are to be rendered;
- (f) with regard to the combating of any fungus or bacterial disease or insect or parasitic pest which affects or may affect any kind of forest tree or timber in any State forest or private forest or on other land or in any ship, vehicle, vessel, aircraft, building, depot or place where timber is stored, stacked, seasoned, or processed, the prevention of the introduction into, or the spreading within the Republic, of any such disease or pest, and the inspection of any forest trees or timber by any person or the incumbent of a post designated by the Minister;
- (g) with regard to the institute relating to -
- (i) the manner in which voting shall take place at meetings of the institute or a committee of the institute, and the number of votes required for a decision of the institute or a committee;
- (ii) the safety, care and preservation of property of the institute;
- (iii) the control over, and use of, moneys received by the institute;
- (iv) the keeping of records, and the times when, the form in which, and the persons to whom, financial statements and reports in respect of the institute are to be furnished;
- (v) any matter which the Minister may consider necessary or expedient to prescribe in order to achieve the objects of the institute;
- [Para.(g) substituted by s.10 of Act No. 53 of 1991.]
- (gA) with regard to loans referred to in section 9A-
- (i) relating to the persons to whom and the land in respect of which a loan may be granted;
- (ii) relating to the manner in which application for a loan is to be made;
- (iii) ....
- [Sub-para.(iii) deleted by s.9(b) of Act No. 63 of 1995.]
- (iv) with the concurrence of the minister of Finance, relating to the terms and conditions on which and the rate of interest at which such a loan may be granted, the security which shall be furnished in respect thereof and the time within which it shall be repaid;
- [Para.(gA) inserted by s.5 of Act No. 52 of 1987 and amended by s.9(a) of Act No. 63 of 1995.]
- (h) prescribing or otherwise dealing with any matter which in terms of any other provision of this Act is required to be or may be prescribed or otherwise dealt with by regulation;
- (i) generally for the better carrying out of the provisions or objects of this Act.
- (2) Different regulations may be made under subsection (1) in respect of different regions of the Republic, different plantations or forests or classes of plantations or forests, different owners or classes of owners of plantations or forests, different national botanic gardens, or such other matters as the minister may consider necessary.
- (3) Before any regulation is made under this section, it

shall be referred to the Parliamentary committees referred to in section 46C(2)(b) for their approval.

[Sub-s.(3) substituted by s.9(c) of Act No. 63 of 1995.]

(4) Regulations under subsection (1) may provide for penalties for any contravention of, or any failure to comply with, its provisions not exceeding the penalties prescribed by section 75(2).

**74. Tariffs and charges.**- The Minister may, with the concurrence of the Minister of Finance -

(a) in respect of any state forest determine a tariff of fees which may vary according to circumstances, relating to -

- (i) the disposal of forest produce;
- (ii) the use and occupation of land for industrial or trading purposes or for residential, cultivation, grazing, camping, picnicking or other purposes;
- (iii) the use and occupation of buildings;

(b) determine the tariff of charges to be paid for any service rendered by an officer or employee of the department;

(c) determine the circumstances under which, and the conditions on which, the fees payable in terms of a tariff of fees contemplated in section 43(a) may be decreased or exemption from payment thereof may be granted by an officer of the department or the incumbent of a designated post.

## PART XI

### OFFENCES, POWERS OF FOREST AND POLICE OFFICERS AND OF MAGISTRATES' COURTS AND RELATED MATTERS

**75. Offences.**-

(1)(a) Any person who -

- (i) contravenes a provision of section 7(1) or 8(2);
- (ii) fails to comply with a condition imposed under section 7(2) or 7(3);
- (iii) contravenes a prohibition in terms of a notice

under section 8(1) or fails to comply with a direction under the said section, is guilty of an offence.

(b) The director-general may by notice in writing to an owner of land contemplated in section 7(1) or 8(1) in respect of which any person has been convicted of an offence in terms of subsection (1)(a)(i) or (1)(a)(iii) of this section, direct that owner to remove the trees or natural regeneration in question, as the case may be, from that land within a period stated in the notice.

(c) An owner of land who fails to comply with a notice under paragraph (b), is guilty of an offence and liable on conviction to a fine not exceeding R10 for each day on which he so fails.

(2) Any person who -

(a) without authority -

(i) cuts, damages, destroys, collects, takes or removes -

(aa) seven-week ferns (*Rumohra adiantiforme*); or

(bb) any other forest produce;

[Sub-para.(i) substituted by s.1(a) of Act No. 25 of 1989.]

(ii) damages, alters, shifts, removes or interferes with any beacon, boundary mark, fence, notice board or other structure;

(iii) lights or uses a fire or adds fuel to a fire or fails to extinguish a fire which he has lighted or used or to which he has added fuel;

(iv) is in possession of any explosive, fuel or other inflammable substance, in any State forest or private forest;

(b) in the open air -

(i) leaves unattended a fire which he, with or without authority, has lighted or used or to which he has added fuel, before that fire is extinguished;

(ii) with or without authority, lights or uses a fire or adds fuel to a fire which spreads and causes damage or injury to another;

(iii) wilfully or negligently throws down, puts down or drops a burning match or other burning material or any material capable of spontaneous combustion or self-ignition, or starts a fire, or sets alight veld, and thereby causes a fire which spreads and by which pasturage is burnt down or plant material is burnt, or



which causes damage to, or loss of, any other movable or immovable property;

- (iv) within the road reserve of any road, makes or uses a fire in a place other than a fire-place which has been designated and is being maintained by a competent authority, or for a purpose other than the burning of a fire belt in accordance with the provisions of this Act,

is guilty of an offence and liable on conviction -

- (aa) in the case of an offence referred to in paragraph (a)(i)(aa), to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment;
- (bb) in the case of an offence referred to in paragraph (a)(i)(bb), to a fine not exceeding R4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Sub-s.(2) amended by s.1(b) of Act No 25 of 1989.]

3.(a) Any person who -

- (i) without authority clears, ploughs or cultivates land;
- (ii) without authority in any manner hunts or kills any game, birds or other animals, or catches or kills any insects, or angles, or is accompanied by a dog, or has a fire-arm in his possession;
- (iii) without authority robs any beehive or bees' nest or disturbs or removes a swarm of bees;
- (iv) without authority enters a part of a forest where entry is by notice prohibited, or climbs through or over a fence or gate;
- (v) smokes where smoking is by notice prohibited;
- (vi) damages, alters, shifts or in any other way interferes with a notice or notice board;
- (vii) dumps or scatters litter,

in a State forest or private forest, is guilty of an offence.

- (b) Any person whose dog or stock is present without authority in a State forest or a private forest, is guilty of an offence.
- (c) Any person who contravenes or fails to comply with a condition of a licence, permit or other authorization issued in terms of this Act in connection with a State forest or private forest or the use of a hiking trail or walk, is guilty of an offence.

(4) Any person who contravenes or fails to comply with a condition of a licence, permit or other authorization issued in terms of this Act in connection with a State forest and liable on conviction to the penalties prescribed by subsection (2)(a)(i)(bb).

[Sub-s.(4) amended by s.1(c) of Act No. 25 of 1989.]

(5) Any person who contravenes a provision of a notice under section 16(1) or fails to comply with a condition stipulated therein, or who hinders or obstructs a person appointed by the Minister in terms of section 16(2)(c) in the performance of his duties or the exercise of his powers, is guilty of an offence and liable on conviction to the penalties prescribed by subsection (2)(a)(i)(bb).

[Sub-s.(5) amended by s.1(c) of Act No. 25 of 1989.]

(6) Any person who -

- (a) without authority makes upon or affixes to, any forest produce a mark used by the department to indicate that such produce is the property of the State, or makes upon or affixes to, any forest produce in a State forest a mark to indicate that such forest produce may be cut or removed from that forest;
- (b) without authority alters or erases a mark placed upon any forest produce in terms of this Act or in terms of a licence, permit or other authorization issued in terms of this Act;
- (c) hinders or obstructs a forest officer, police officer or other person in the performance of his duties or the exercise of his powers in terms of this Act,

is guilty of an offence.

(7)(a) Any person who hinders or obstructs a member of a fire control committee or any other person contemplated in section 19(3) in the performance of his duties or the exercise of his powers is guilty of an offence.

(b) Any person who contravenes a provision of a fire protection scheme or fails to comply therewith, is guilty of an offence and liable on conviction to a fine not exceeding R10 for each day on which he so contravenes or fails.

(8)(a) An owner of land contemplated in section 22(1) who -

- (i) fails to conclude an agreement required by section 22(1) or to obtain an order contemplated in section 22(4) or (5) within 12 months after the establishment of a fire control area in terms of section 18(1);



[Sub-para.(i) substituted by s.11(a) of Act No. 53 of 1991.]

(ii) fails to complete a fire belt before the date determined in that agreement or order, or a court order contemplated in section 22(6), or to maintain a fire belt in accordance with the provisions of the agreement or order,

is guilty of an offence and liable on conviction to a fine not exceeding R10 for each day on which he so fails.

(b) An owner of land contemplated in section 22(1) who fails to comply with a provision of that section or any provision of an agreement required by it or a court order under section 22(4), (5) or (6), other than a provision to which subsection (8)(a) of this section applies, is guilty of an offence.

(c) Any owner of land contemplated in section 24(1) or (2) who clears a fire belt referred to in that section without giving the required notice, and any owner contemplated in section 24(1) to whom the required notice was given and who fails to render the assistance agreed upon, is guilty of an offence and liable on conviction to the penalties prescribed by subsection (2)(a)(i)(bb).

[Para.(c) amended by s. 1(c) of Act No. 25 of 1989.]

(cA) An owner of land contemplated in section 24A(1) who fails to comply with a provision of that section is guilty of an offence.

[Para. (cA) inserted by s.11(b) of Act No. 53 of 1991.]

(d) Any person who contravenes a provision of a notice issued under section 25, is guilty of an offence and liable on conviction to the penalties prescribed by subsection (2)(a)(i)(bb).

[Para.(d) amended by s.1(c) of Act No. 25 of 1989.]

(e) Any person who fails to comply with an order under section 26(3) is guilty of an offence.

(f) Any owner, occupier or person in control of land on which a veld, forest or mountain fire occurs who fails to take such steps as are under the circumstances reasonably necessary to extinguish the fire or to confine it to that land or to prevent it from causing damage to property on adjoining land, is guilty of an offence and liable on conviction to the penalties prescribed by subsection (2)(a)(i)(bb).

[Para.(f) amended by s.1(c) of Act No. 25 of 1989.]

(9) Any person who -

(a) damages, removes, alters, obstructs, shifts or interferes with any quarters, essential amenities, route indicator, notice board or shelter established in terms of Part VII, or obstructs access to a hiking trail or walk or disturbs hikers on a hiking trail or walk;

(b) damages, destroys, alters, shifts, removes or interferes with any beacon, boundary mark, stile or fence on land on which a hiking trail or walk has been constructed;

(c) takes removes, damages, destroys or interferes with livestock, a structure, crops or harvests on land on which a hiking trail or walk has been constructed;

(d) lights, uses or adds fuel to any fire next to or on a hiking trail or walk, at a place other than a place designated for that purpose;

(e) in any manner catches, hunts or kills any game, birds or other animals, or catches or kills any insects, or angles next to or on a hiking trail or walk;

(f) cuts, damages, destroys collects or removes any trees, shrubs or other vegetation next to or on a hiking trail or walk;

(g) is present on a hiking trail or walk with a vehicle or any animal under his control;

(h) in any manner wilfully makes a mark or sign on or upon a rock, building, tree or other vegetation next to or on a hiking trail or walk;

(i) leaves or deposits any litter, refuse or empty containers on a hiking trail or walk or on land on which it has been constructed, except in a container or at a place designated for that purpose;

(j) contravenes or fails to comply with a provision of a code of conduct prescribed by the National Hiking Way Board.

is guilty of an offence.

(10) Any person who -

(a) refuses or neglects to produce a licence, permit or other authorization to a person who demands it in terms of section 78;

(b) refuses a forest officer entry upon land contemplated in section 79(a);

(c) is found in possession of any forest produce in respect of which there is reasonable suspicion that it was obtained unlawfully from a State forest or private forest and who is unable to give a satisfactory account of his possession.



is guilty of an offence.

(11) A forest officer or employee of the department who

- (a) solicits or receives, or agrees to receive, whether for himself or another person, any payment, advantage or reward, whether of a pecuniary or other nature, in consideration of his doing anything in conflict with his duty or of his refraining from doing his duty;
- (b) solicits or receives, or agrees to receive, any payment, advantage or reward, whether of a pecuniary or other nature, in consideration of his doing his duty;
- (c) trades in forest produce, other than forest produce grown or produced on his own land, or acts as an agent for any person trading in forest produce,

is guilty of an offence.

(12) Any person convicted of an offence in terms of the Act for which no penalty is expressly provided, is liable to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Sub-s.(12) amended by s.1(d) of Act No. 25 of 1989.]

**76. Powers of arrest of forest and police officers.** - A forest officer or police officer may without warrant arrest any person -

- (a) who is found in possession of any forest produce in respect of which there is reasonable suspicion that it was obtained unlawfully from a state forest or private forest and who is unable to give a satisfactory account of his possession;
- (b) whom he suspects on reasonable grounds of having committed any offence mentioned in section 75(d) or of having taken part in the commission of such an offence;
- (c) whom he suspects on reasonable grounds of having committed any offence mentioned in this Act or of having taken part in the commission of such an offence and who in his opinion will fail to appear in answer to a summons.

**77. Powers of seizure of forest and police officers.**-

- (1) A forest officer or police officer may seize any -
- (a) forest produce in respect of which he suspects on reasonable grounds an offence mentioned in this Act to have been committed.

- (b) weapon, vehicle, equipment or animal which he suspects on reasonable grounds to have been used in the commission of any offence mentioned in this Act.

(2) An officer who carries out a seizure under subsection (1), shall as soon as practicable report the relevant facts to a magistrate within whose area of jurisdiction the seizure took place, and the magistrate may make such order as to the retention or disposal of the forest produce, property or animal as he may, with due regard to the facts reported to him, consider equitable or expedient.

**78. Production of documents.**- Any person who in terms of this Act is required to be in possession of a licence, permit or other authorization shall produce it on demand of a magistrate, justice of the peace, forest officer, police officer or other authorized officer.

**79. Other powers of forest officers.**- A forest officer -

- (a) may in the performance of any function in terms of this Act -
  - (i) after reasonable notice to the owner or occupier of land, enter upon that land with the necessary workmen and equipment, and conduct thereon any investigation or inspection or perform any act which is necessary for the performance of that function.
  - (ii) in so far as it may be necessary to gain access to any land mentioned in paragraph (a)(i), after reasonable notice to the owner or occupier concerned, enter upon and go across any other land with the necessary workmen and equipment;
- (b) has in respect of any offence under this Act all the powers vested by law in a police officer.

**80. Illegal squatting, camping or cultivation in State forests.**- When a forest officer lodges an affidavit to the effect that as far as he can ascertain a person is without authority squatting, camping, residing, building a structure, or clearing or cultivating land, in a State forest, with the clerk of the magistrate's court within whose area of jurisdiction the State forest in question is situated, the clerk shall summon that person to appear before the court to show cause why he should not be ordered to leave the State forest or to remove the structure or planted crop in question, as the case may be, and if that person fails so to appear or fails to prove that he has the necessary authority, the court may order that he shall, within a period fixed by the court, leave the State forest and not return thereto, or that he shall remove therefrom that structure or crop, and the court may also authorize the forest officer or any other officer designated by the court, to remove, destroy or otherwise dispose of that structure or



crop if that person fails to do so within the period fixed by the court.

**81. Disposal of forest produce involved in offences and payment of compensation.-**

(1)(a) A court which at the trial of any person on a charge in terms of this Act, any other law or the common law finds that forest produce has been removed unlawfully from a state forest or private forest, may, without prejudice to any other power of that court, order that the forest produce in question be returned to the person entitled thereto or that damages, as determined by the court, be paid by the accused to the person concerned.

(b) A court which at the trial of any person on a charge in terms of this Act, any other law or the common law finds that forest produce or other property in a State forest or private forest has been unlawfully cut or damaged, whether wilfully or negligently, may, without prejudice to any other power of that court, order that damages, as determined by the court, be paid by the accused to the person concerned.

(c) A court which at the trial of any person on a charge under section 75(4) finds that an act has been committed in respect of any protected tree or any part thereof or product derived therefrom, contrary to the provisions of section 13(5), may, without prejudice to any other power of the court, order that the person in possession of any part removed from or a product derived from that protected tree or of any timber obtained from the cutting or damaging thereof hand it over to the director-general for disposal thereof to the benefit of the State, or the court may order that the person concerned pay an amount which, in the opinion of the court, is equal to the amount by which he has benefitted as a result of his act to the State.

(2) Any order of a court contemplated in subsection (1) shall be executed in the same manner as a judgement of that court in a civil case.

**82. Award of part of fine recovered to informant.-** A court which imposes a fine for an offence in terms of this Act, may order that a sum not exceeding one-fourth of the fine recovered, be paid to any person, not being an officer in the service of the State, upon whose information the conviction for that offence was obtained or who assisted materially in bringing the offender to justice.

**83. Presumptions in criminal proceedings.-**

(1) When in a prosecution for an offence in terms of this Act it is alleged in the charge that any forest produce or timber is the property of the State or of a particular person, it is presumed, until the contrary is proved, that such

forest produce or timber is the property of the State or of that person, as the case may be.

(2) When in a prosecution for an offence in terms of section 75(5), it is alleged in the charge that structural timber was produced from trees grown in the Republic, it is presumed, until the contrary is proved, that such structural timber was so produced.

**84. Presumption of negligence.-** When in any action by virtue of the provisions of this Act or the common law the question of negligence in respect of a veld, forest or mountain fire which occurred on land situated outside a fire control area arises, negligence is presumed, until the contrary is proved.

## PART XII

### MISCELLANEOUS

**85. Rights regarding certain public services.-** Notwithstanding anything to the contrary in any law contained, no right of entry upon any State forest or private forest for the purposes of the Post Office Act, 1958 (Act No.44 of 1958), or the construction or maintenance of electrical power lines, roads or railways, including the taking of stone, sand, earth or water, shall be exercised without prior consultation with the director-general or the owner, as the case may be, except in the case where -

(a) the director-general or the owner, as the case may be, has pointed out suitable and adequate land or places for the exercise of the right in question;

(b) communications are interfered with or endangered by trees and the contemplated steps are essential for the removal of the interference or danger, but in such a case the authority concerned shall as soon as practicable notice the director-general or owner, as the case may be, of the steps which have been taken.

**86. Service of documents.-** A notice or other document or communication required or authorized in terms of this Act to be served upon or sent to any person, is deemed, except where otherwise provided in this Act, to have been effectually served or sent -

(a) if a copy is delivered to him; or

(b) if a copy is left with some adult person apparently residing at or occupying or employed at his last known abode or office or place of business in the Republic; or



(c) if a copy is despatched by registered post addressed to him at his last known address, which may be any place or office contemplated in paragraph (b).

**87. Restriction of liability.**- No person, including the State, is liable in respect of anything done in good faith in the exercise of a power or the carrying out of a duty conferred or imposed by or under this Act.

87A. ....

[S.87A inserted by s.2 of Act No. 25 of 1989 and repealed by s.7 of Act No. 51 of 1994.]

**88. Operation of Act with regard to other laws.**- The provisions of this Act apply in addition to, and not in substitution for, the provisions of any other law which are not in conflict with or inconsistent with the provisions of this Act.

**89. Repeal of laws, and savings.**-

(1) Subject to the provisions of this section, the laws mentioned in Schedule 2 are hereby repealed to the extent indicated in the third column thereof.

(2) An area declared to be a fire protection area in terms of section 12(1)(a) of the Soil Conservation Act, 1969 (Act No. 76 of 1969), a fire protection committee established under section 12(1)(b) of that Act, and a fire protection scheme approved in terms of section 13(3) of that Act, are deemed to be an area declared to be a fire control area under section 18(1) of this Act, a fire control committee established under section 19(1) of this Act, a scheme approved in terms of section 20(3) of this Act, respectively.

(3)(a) For the purposes of this subsection "Council" means the council which in terms of section 6 of the Cultural Institutions Act, 1969 (Act No. 29 of 1969), controlled and managed the institutions named in Government Notices R.1022 of 26 June 1970 and 773 of 15 April 1983.

(b) The persons who immediately before the commencement of this Act were members of the Council are deemed to have been appointed under section 59 as members of the Board for National Botanic Gardens with effect from the respective dates on which they were appointed as members of the Council.

(c)(i) Every person who immediately before the commencement of this Act was an employee of the Council, is deemed to have been appointed in terms of section 69(1) as an officer of the Board for National Botanic Gardens, his conditions of service (including remuneration) are deemed to have been determined in terms of section 69(2), and any benefits or rights accrued by virtue of his service with the Council are deemed to have accrued by virtue of service with the Board for National Botanic Gardens.

(ii) Save in accordance with disciplinary measures by the Board for National Botanic Gardens, the remuneration of a person contemplated in subparagraph (i) shall not without his consent be reduced solely as a result of the provisions of this subsection.

(d) At the commencement of this Act the assets, liabilities, rights and obligations if the Council devolve upon the Board for National Botanic Gardens.

(4) Anything done under a power conferred by or in terms of a provision of a law repealed by subsection (1), is deemed to have been done under a power conferred by or in terms of the corresponding provision of this Act.

(5) The provisions of this Act do not affect any agreement in connection with the management of a State forest, the disposal of forest produce, the granting of rights in respect of grazing, cultivation, the erection of sawmills and factories, trading, camping, residence, or the construction of communications by land, radio or otherwise, between the State and any other person which is in force at the commencement of this Act.

**90. Short title and commencement.**- This Act is called the Forest Act, 1984, and comes into operation on a date determined by the State President by proclamation in the *Gazette*.

**Schedule 1**

**DEFINITION OF NATIONAL BOTANIC GARDENS KIRSTENBOSCH NATIONAL BOTANIC GARDEN**

Lot BH of Kirstenbosch Estate, Kirstenbosch 875, Klassenbosch 883, and Luberts Gift 871.

Erf 138862, Cape Town at Newlands, in the Municipality of Cape Town, Administrative

District of the Cape, Province of the Cape of Good Hope, in extent 4,4738 hectares.

[Definition of "Kirstenbosch National Botanic Gardens" amended by Government Notice

No. 1393 of 6 August, 1993.

**KARROO NATIONAL BOTANIC GARDEN**

Portions 41 and 92 of hartebeeste Rivier, division of Worcester, Portion 1 of Brewels Kloof, division of Worcester and Erf 3755, Townlands of Worcester.

**HAROLD PORTER NATIONAL BOTANIC GARDEN**

Elf 607, Bettys Bay Townlands, division of Caledon, and Portions 37 and 167 of Hangklip, Bettys Bay Townlands, division of Caledon.

**NATAL NATIONAL BOTANIC GARDEN**

Remaining Portions of Lots 212 and 795 of Townlands of Pietermaritzburg, Portion 26 of Exchange of Ordinance Land, Townlands of Pietermaritzburg, and Portion 1 of A of Lot 629, Townlands of Pietermaritzburg. Remainder of Lot 366, Pietermaritzburg, situate in the Administrative District of Natal, Province of KwaZulu/Natal, in extent 2,5153 hectares.

[Definition of "Natal National Botanic Garden" amended by Government Notice No. 1351 of 5 August, 1994.]

**LOWVELD NATIONAL BOTANIC GARDEN**

Portion 30 of Boschrand 283 JT, and Portion 73 of Nelspruit 312 JT.

**DRAKENSBERG NATIONAL BOTANIC GARDEN**

[Name and definition of "Drakensberg National Botanic Garden" deleted by Government

Notice No. 2855 of 31 December, 1987.]

**WITWATERSRAND NATIONAL BOTANIC GARDEN**

Portions 5, 22, 82, 107 and 119 of the Remaining Portion of Roodekrans 183 1Q, Townlands

of Roodepoort, and Holdings 1, 2 and 3 of The Poortview Agricultural Holdings, Townlands of Roodepoort.

Erven 1701 to 1704, 1711 to 1731, the portion of Erf 1748, in extent 120 square metres, situate west of

line AE shown on Diagram 5603/88 approved by the Surveyor-General, Erven 1777 to 1782, 1803 and 1804, Roodekrans Extension 6, Roodepoort.

Portion 145 (a portion of Portion 118) of the farm Roodekrans 183, Registration Division 1Q, Transvaal, in extent 13,3688 hectares.



Erven 2062 to 2081, 2086 and 2093 to 2097, Rangeview Extension 4, Krugersdorp, situated in the PWV Province (previously of the Province of the Transvaal), jointly in extent 3,4135 hectares.

[Definition of "Witwatersrand National Botanic Garden", previously "Transvaal National Botanic Garden", amended by government Notice No. 2277 of 26 October, 1987, by Government Notice No. 739 of 22 April, 1988, by Government Notice No. 1153 of 9 June, 1989, by Government Notice No. 396 of 1 March, 1991 and by Government Notice No. 1948 of 18 November, 1994.]

#### ORANGE FREE STATE NATIONAL BOTANIC GARDEN

Lilyvale 2313.

#### TINIE VERSFELD WILD FLOWER RESERVE

Portion 4 of the Farm Slangkop, division of Malmesbury.

#### EDITH STEPHENS CAPE FLATS WILD FLOWER RESERVE

Portion 28 (a portion of Portion 5) of sweet home 609, division Cape.

#### PRETORIA NATIONAL BOTANIC GARDEN

The following portions of the farm Koedoespoort 325, situate in the Registration Division JR, Province of the Transvaal:

1. Portion 6, in extent 0,8565 hectares, as represented on and described in Diagram SG No. A2233/21.
2. Portion 7, in extent 6,5054 hectares, as represented on and described in Diagram SG No. A2234/21.
3. Portion 8, in extent 3,4261 hectares, as represented on and described in Diagram SG No. A2235/21.
4. Portion 11 (a portion of Portion 6), in extent 1,7131 hectares, as represented on and described in Diagram A No. 2063/24.
5. Portion 12 (a portion of Portion 6), in extent 1,7131 hectares, as represented on and described in Diagram A No. 297/25.
6. Portion 13 (a portion of Portion 6), in extent 0,6838 hectares, as represented on and described in Diagram A No. 1003/25.
7. Portion 14 (a portion of Portion 6), in extent 1,2848 hectares, as represented on and described in Diagram A No. 1039/26.
8. Portion 15 (a portion of Portion 6), in extent 1,2848 hectares, as represented on and described in Diagram A No. 1040/26.
9. Portion 16 (a portion of Portion 6), in extent 1,2848 hectares, as represented on and described in Diagram A No. 1041/26.
10. Portion 17 (a portion of Portion 6), in extent 4,5368 hectares, as represented on and described in Diagram A No. 1042/26.
11. Portion 97 (a portion of Portion 91), in extent 53,3864 hectares, as represented on and described in Diagram LG No. A6006/63.

[Definition of "Pretoria National Botanic Garden" added by Government Notice No. 3005 of 30 October, 1992.]

Schedule 2

LAWS REPEALED

Number and year of law	Short title	Extent of repeal
Act No. 72 of 1968	Forest Act, 1968.....	The whole
Act No. 76 of 1969	Soil Conservation Act, 1969.....	Part IV
Act No. 37 of 1971	Forest Amendment Act, 1971.....	The whole
Act No. 46 of 1972	Forest Amendment Act, 1972.....	The whole
Act No. 45 of 1973	Forest Amendment Act, 1973.....	The whole
Act No. 57 of 1974	Forest Amendment Act, 1974.....	The whole
Act No. 36 of 1975	Forest Amendment Act, 1975.....	The whole
Act No. 63 of 1975	Expropriation Act, 1975.....	Section 76
Act No. 58 of 1976	Forest Amendment Act, 1976.....	The whole
Act No. 87 of 1978	Forest Amendment Act, 1978.....	The whole
Act No. 58 of 1979	Forest Amendment Act, 1979.....	The whole
Act No. 12 of 1982	Forest Amendment Act, 1982.....	The whole
Act No. 29 of 1983	Forest Amendment Act, 1983.....	The whole

**FOREST AMENDMENT ACT NO. 52 OF 1987**

[ASSENTED TO 9 SEPTEMBER, 1987] [DATE OF COMMENCEMENT: 18 SEPTEMBER, 1987]

*{Afrikaans text signed by the State President}*

**ACT**

**To amend the Forest Act, 1984, so as to rectify or substitute certain references and designations; to make provision for the granting of state loans to landowners for certain purposes; and to authorize the granting of certain rights in respect of State forests to certain departments of State; and to make provision for matters connected therewith.**

1. Amends section 1 of the Forest Act, No 122 of 1984, by substituting the definition of "forest officer".
2. Inserts section 9A in the Forest Act, No. 122 of 1984.
3. Amends section 11(2)(a) of the Forest Act, No. 122 of 1984, by substituting subparagraph (i).
4. Amends section 71(1)(b) of the Forest Act, No. 122 of 1984, by substituting the expression "Department of Public Works and Land Affairs" for the expression "Department of Community Development".
5. Amends section 73(1) of the Forest Act, No. 122 of 1984, by inserting paragraph (gA).

**6. Substitution of certain words and expressions in Act 122 of 1984.-** The principal Act is hereby amended -

- (a) by the substitution for the expression "the House of Assembly" wherever it occurs of the word "Parliament"; and
- (b) by the substitution for the expression "Minister of Community Development" wherever it occurs of the expression "Minister of Public Works"

**7. Short title.-** This Act shall be called the Forest Amendment Act, 1987.

**FOREST SECOND AMENDMENT ACT NO. 90 OF 1987**

[ASSENTED TO 6 OCTOBER, 1987] [DATE OF COMMENCEMENT: 16 OCTOBER, 1987]

*{Afrikaans text signed by the State President}*

**ACT**

**To amend the Forest Act, 1984, so as to empower the Forestry Council to cause its administrative and clerical work and the accounting services connected with the Forestry Industry Fund to be performed alternatively by persons other than officers of the Department of Environment Affairs.**

1. Amends section 54(2) of the Forest Act, No. 122 of 1984, by substituting paragraph (b).



**2. Short title.-** This Act shall be called the Forest Second Amendment Act, 1987.

**FOREST AMENDMENT ACT NO. 14 OF 1988**

[ASSENTED TO 14 MARCH, 1988] [DATE OF COMMENCEMENT: 23 MARCH, 1988]

*(English text signed by the State President)*

**ACT**

**To amend the Forest Act, 1984, in order to change the constitution of the Forestry Council; to provide for the payment of remuneration to members of the council, committees and working groups of the council; and to provide for matters incidental thereto.**

1. Amends section 49 of the Forest Act, No. 122 of 1984, as follows:- paragraph (a) substitutes subsection (2)(a); and paragraph (b) inserts subsection (2A).

2. Substitutes section 52 of the Forest Act, No. 122 of 1984.

**3. Short title.-** This Act shall be called the Forest Amendment Act, 1988.

**FOREST AMENDMENT ACT NO. 25 OF 1989**

[ASSENTED TO 14 MARCH, 1989] [DATE OF COMMENCEMENT: 23 MARCH, 1989]

*(English text signed by the acting State President)*

**ACT**

**To amend the Forest Act, 1984, so as to increase the penalty for the unauthorized cutting, damaging, destroying, collecting, taking or removing of certain ferns in any State forest or private forest; to adjust other penalties; and to grant to the Minister the power to enter into agreements with the governments of self-governing territories.**

1. Amends section 75 of the Forest Act, No. 122 of 1984, as follows:- paragraph (a) substitutes subsection (2)(a)(i); paragraph (b) substitutes in subsection (2)(b) the words following upon subparagraph (iv); paragraph (c) substitutes in subsections (4), (5) and (8)(c), (d) and (f) the expression "subsection (2)(a)(i)(bb)" for the expression "subsection (2)", and paragraph (d) substitutes in subsection (12) the expression "R2 000" for the expression "R 500".

2. Inserts section 87A in the Forest Act, No. 122 of 1984.

**3. Short title.-** This Act shall be called the Forest Amendment Act, 1989.

**FOREST AMENDMENT ACT NO. 53 OF 1991**

[ASSENTED TO 14 MAY, 1991] [DATE OF COMMENCEMENT: 22 MAY, 1991]

*(English text signed by the State President)*

**ACT**

**To amend the Forest Act, 1984, so as to make further provision regarding the clearing and maintenance of fire belts; to change the name of the Board for National Botanic Gardens to the National Botanical Institute; and to extend and further define the objects and functions of the said institute; and to provide for matters connected therewith.**

1. Amends section 1 of the Forest Act, No. 122 of 1984, as follows:- paragraph (a) deletes the definition of "board" in Part IX; paragraph (b) inserts the definition of "chief executive officer"; paragraph (c) deletes the definition of "director"; paragraph (d) substitutes the definition of "fund" in Part IX; and paragraph (e) inserts the definition of "institute".

2. Amends section 22(1) of the Forest Act, No. 122 of 1984, as follows:- paragraph (a) substitutes paragraph (a); and paragraph (b) substitutes paragraph (c).

3. Inserts section 24A in the Forest Act, No. 122 of 1984.

**4 to 9 inclusive.** Substitute respectively the heading to Part IX and sections 57, 58, 61, 64 and 69 of the Forest Act, No. 122 of 1984.

10. Amends section 73(1) of the Forest Act, NO. 122 of 1984, by substituting paragraph (g).

11. Amends section 75(8) of the Forest Act, No. 122 of 1984, as follows:- paragraph (a) substitutes paragraph (a)(i); and paragraph (b) inserts paragraph (cA).

12. Amends Part IX of the Forest Act, No. 122 of 1984, by substituting the words "chief executive" and "institute" for the words "director" and "board" wherever they occur.

**13. Short title.-** This Act shall be called the Forest Amendment Act, 1991.



**FORESTRY LAWS RATIONALISATION AND AMENDMENT ACT NO. 51 OF 1994**

[ASSENTED TO 23 NOVEMBER, 1994]  
[DATE OF COMMENCEMENT: 7 DECEMBER, 1994]

*(English text signed by the President)*

**ACT**

To provide for the rationalisation of certain laws relating to forestry matters that remained in force in various areas of the national territory of the Republic by virtue of section 229 of the Constitution; to amend the Wattle Bark Industry Act, 1960, so as to redefine certain expressions; to amend the Forest Act, 1984, so as to redefine certain expressions; and to delete certain obsolete provisions; to amend the Management of State Forests Act, 1992, so as to redefine a certain expression; and to provide for matters connected therewith.

**1. Repeal of laws, and savings.-**

(1) Subject to the provisions of subsection (2), the laws mentioned in the second column of Schedule 1 are hereby repealed as indicated in the third column of Schedule 1 and in Schedule 2, to the extent that such laws were in force in the various areas of the national territory of the Republic as set out in the fourth column of Schedule 1 immediately prior to the date of commencement of the Constitution.

(2) Anything done under a law mentioned in the second column of Schedule 1 and which is capable of being done under a provision of a law mentioned in the second column of Schedule 3, shall be deemed to have been done under such provision of such law.

**2. Extension of application of certain laws.-**

(1) Subject to the provisions of subsection (2), the laws mentioned in the second column of Schedule 2 which immediately prior to the date of commencement of the Constitution were in force in the national territory of the Republic, excluding the areas of the national territory set out in the fourth column of schedule 1, shall, from the date of commencement of this Act, also apply in respect of all the areas of the national territory set out in the fourth column of Schedule 1, to the extent indicated in the third column of Schedule 3.

(2) Notwithstanding the provisions of subsection (1), the provisions of Part VIII of the Forest Act, 1984 (Act No. 122 of 1984), mentioned in the second column of Schedule 3, shall apply in respect of the territory of the former Republic of Transkei, from the date contemplated in section 3(2) of this Act.

**3. Repeal of Act 15 of 1984 (Transkei).-**

(1) Subject to the provisions of this section, the Forestry Council Act, 1984 (Act No. 15 of 1984) (Transkei), is hereby repealed.

(2) Subsection (1) shall commence on a date determined by the President by proclamation in the *Gazette*.

(3)(a) The Minister of Water Affairs and Forestry shall appoint a committee consisting of three officers of the Department of Water Affairs and Forestry, one of whom shall be designated by the Minister as chairperson of the committee, to furnish him or her with a report on the winding up of the affairs of the Transkei Forestry Council.

(b) After consideration of the report of the committee, contemplated in paragraph (a), the Minister of Water Affairs and Forestry may make such order with regard to the assets and liabilities of the Transkei Forestry Council as he or she, with the concurrence of the Minister of Finance, and after consultations with the Forestry Council referred to in section 47 of the Forest Act, 1984 (Act No. 122 of 1984), deems fit.

(4)(a) The Minister of Water Affairs and Forestry may for the efficient carrying out of the Forestry Council Act, 1984 (Act No. 15 of 1984) (Transkei), prior to the date contemplated in subsection (2), by notice in the *Gazette*, amend or adapt the said Act to regulate its application or interpretation and to reconstitute the Transkei Forestry Council.

(b) The Minister of Water Affairs and Forestry may at any time amend or withdraw a notice referred to in paragraph (a) by like notice in the *Gazette*.

4. Amends section 1 of the Wattle Bark Industry Act, No. 23 of 1960, as follows:- paragraph (a) substitutes the definition of "director-general"; and paragraph (b) substitutes the definition of "Minister".

5. Amends section 1 of the Forest Act, No. 122 of 1984, as follows:- paragraph (a) substitutes the definition of "department"; paragraph (b) substitutes the definition of "director-general"; and paragraph (c) substitutes the definition of "Minister".

6. Amends section 2 of the Forest Act, No. 122 of 1984, by deleting subsection (1).

7. Repeals section 87A of the Forest Act, No. 122 of 1984.

8. Amends section 1 of the Management of state Forests Act, No. 128 of 1992, by substituting the definition of "Minister".

**9. Short title.-** This Act shall be called the Forestry Laws Rationalisation and Amendment Act, 1994.



## Schedule 1

## LAWS REPEALED BY SECTION 1 (1)

No. and Year of Law	Short title law repealed	Extent of in respect of which law	Area of national territory is repealed
(a) Act No.23 of 1960 Act No.44 of 1967	Wattle Bark Industry Act, 1960 Wattle Bark Industry Amendment	The whole	The former Republics of The whole of Transkei, Bophuthatswana,
Act No. 59 of 1974	Wattle Bark Industry Amendment Act, 1974	The whole	Venda and Ciskei and the former self-governing territories of Lebowa, Gazankulu, Qwaqwa, KwaZulu, KwaNdebele and KaNgwane
(b) Act No. 24 of 1986 Act, 1986	Wattle Bark Industry Amendment	The whole	The former self-governing territories of Lebowa, Gazankulu, Qwaqwa, KwaZulu, KwaNdebele and KaNgwane
(c) Proclamation No.191 of 1967	Trust Forest Regulations, 1967	Regulation 6 and regulations 9 to 26, to the extent indicated by item 1 of Schedule 2	The former Republic of of Bophuthatswana and the former self-governing territories of Gazankulu, Qwaqwa and KwaNdebele
Proclamation No. 340 of 1968		The whole	
Act No. 72 of 1968	Forest Act, 1968	The whole except sections 5 and 6	
Act No. 37 of 1971	Forest Amendment Act, 1971	The whole	
Act No. 46 of 1972	Forest Amendment Act, 1972	The whole	
(d) Act No. 45 of 1973	Forest Amendment Act, 1973	The whole	The former self-governing territories of Qwaqwa and KwaNdebele
Act No. 57 of 1974	Forest Amendment Act, 1974	The whole	
(e) Act No. 36 of 1975	Forest Amendment Act, 1975	The whole	The former self-governing territory of KwaNdebele
Act No. 58 of 1976	Forest Amendment Act, 1976	The whole	
(f) Act No. 60 of 1969	Transkei Forest Act, 1969	The whole except the provisions as indicated by item 2 of Schedule 2	The former Republic of Transkei
Act No. 6 of 1971	Transkeian Nature	Section 38, to Conservation Act 1971	the extent indicated by item 3 of Schedule 2
No. and Year of Law	Short title	Extent of law repealed	Area of national territory in respect of which law is repealed
Act No.5 of 1972	Transkeian General Law Amendment Act, 1972	Section 10	
Act No. 7 of 1974	Transkeian Forest Amendment Act 1974	Sections 2 and 3	

(g)	Act No. 6 of 1976	Ciskeian Forestry Act, 1976	The whole, except the provisions as indicated by item 4 of Schedule 2	The former Republic of Ciskei
	Act No. 20 of 1985	Forestry Amendment Act, 1985 (Ciskei)	The whole	
(h)	Act NO. 13 of 1978	Lebowa Forestry Act, 1978	The whole, except the provisions as indicated by item 5 of Schedule 2	The former self-governing territory of Lebowa
(i)	Act No. 15 of 1980	KwaZulu Forestry Act, 1980	The whole, except the provisions as indicated by item 6 of Schedule 2	The former self-governing territory of KwaZulu
	Act No. 2 of 1990	KwaZulu Forestry Amendment Act, 1990	The whole	
(j)	Act No. 16 of 1981	Forest Act, 1981 (Venda)	The whole, except the provisions as indicated by item 7 of Schedule 2	The former Republic of Venda
(k)	Act No. 4 of 1981	KaNgwane Forestry Act, 1981	The whole, except the provisions as indicated by item 8 of Schedule 2	The former self-governing territory of KaNgwane

**Schedule 2**

**EXTENT OF REPEAL OF CERTAIN LAWS**

**1. Trust Forest Regulations, 1967 (Proclamation R.191 of 1967)**

Regulations 9 to 26 inclusive, only in so far as they relate to land set aside as a reserved forest or plantation under Regulation 6.

**2. Transkei Forest Act, 1969**

Except -

(a) section 2(1)(l) in so far as it relates to the protection of trees on land which is not a Government forest;

(b) section 7 in so far as it relates to trees contemplated in this section on land which is not a Government forest;

(c) section 8;

(d) section 23 read with section 2(1)(l) in so far as it relates to the protection of trees on land which is not a government forest;

(e) section 24 read with section 7(4) in so far as it relates to trees contemplated in section 7(4) on land which is not a Government forest; and

(f) section 26.

**3. Transkeian Nature Conservation Act, 1971**

Section 38 only in so far as it amends the Transkei Forest Act, 1969, in Part 2 of Schedule 16.

**4. Ciskeian Forestry Act, 1976**

Except -



- (a) section 2(1)(l) in so far as it relates to the protection of trees on land which is not a Government forest;
- (b) section 7 in so far as it relates to trees contemplated in this section on land which is not a Government forest;
- (c) section 8;
- (d) section 24 read with section 2(1)(l) in so far as it relates to the protection of trees on land which is not a Government forest; and
- (e) section 25 read with section 7(5) in so far as it relates to trees contemplated in section 7(5) on land which is not a Government forest.

#### 5. Lebowa Forestry Act, 1978

Except -

- (a) section 2(1)(l) in so far as it relates to the protection of trees on land which is not a Government forest;
- (b) section 7 in so far as it relates to trees contemplated in this section on land which is not a Government forest;
- (c) section 8;
- (d) section 24 read with section 2(1)(l) in so far as it relates to the protection of trees on land which is not a Government forest; and
- (e) section 25 read with section 7 (5) in so far as it relates to trees contemplated in section 7(5) on land which is not a Government forest.

#### 6. KwaZulu Forestry Act, 1980

Except -

- (a) section 2(1)(l) in so far as it relates to the protection of trees on land other than a Government forest;
- (b) section 7 in so far as it relates to trees contemplated in this section on land other than a Government forest;
- (c) section 8;

(d) section 26 read with section 2(1)(l) in so far as it relates to the protection of trees on land other than a Government forest; and

(e) section 27 read with section 7 in so far as it relates to trees contemplated in section 7 on land other than a Government forest.

#### 7. Forest Act, 1981 (Venda)

Except -

- (a) section 2(1)(l) in so far as it relates to the protection of trees on land which is not a Government forest;
- (b) section 7 in so far as it relates to trees contemplated in this section on land which is not a Government forest;
- (c) section 8;
- (d) section 24 read with section 2(1)(l) in so far as it relates to the protection of trees on land which is not a Government forest; and
- (e) section 25 read with section 7(5) in so far as it relates to trees contemplated in section 7(5) on land which is not a Government forest.

#### 8. KaNgwane Forestry Act, 1981

Except -

- (a) section 2(1)(l) in so far as it relates to the protection of trees on land other than a Government forest;
- (b) section 7 in so far as it relates to trees contemplated in this section on land other than a Government forest;
- (c) section 8;
- (d) section 26 read with section 2(1)(l) in so far as it relates to the protection of trees on land other than a Government forest, and
- (e) section 27 read with section 87 in so far as it relates to trees contemplated in section 7 on land other than a Government forest.

Schedule 3

EXTENSION OF THE APPLICATION OF CERTAIN LAWS BY SECTION 2

Number and year of law	Short title	Extent of extension of application
Act No. 23 of 1960	Wattle Bark Industry Act, 1960	The whole
Act No.122 of 1984	Forest Act, 1984	The whole, except sections 13 and 14, Part IX, section 73(1)(b) and (g) and section 75(4)
Act No.128 of 1992	Management of State Forests Act, 1992	The whole

**FOREST AMENDMENT ACT NO. 63 OF 1995**

[ASSENTED TO 28 SEPTEMBER, 1995]  
[DATE OF COMMENCEMENT: 4 OCTOBER, 1995]

{Unless otherwise indicated}

{Afrikaans text signed by the President}

**ACT**

**To amend the Forest Act, 1984, so as to delete or substitute certain definitions and obsolete provisions; to provide for the establishment of the National Forestry Advisory Council; to provide for the objects, constitution and powers of the council; and to provide for the abolition of the Forestry Council; and to provide for matters connected therewith.**

1. Amends section 1 of the Forest Act, No. 122 of 1984, as follows:- paragraph (a) substitutes the definition of "Council"; and paragraph (b) deletes the definition of "fund" relating to Part VIII.

2. Amends section 9A of the Forest Act, No. 122 of 1984, as follows:- paragraph (a) substitutes subsection (1); and paragraph (b) deletes subsection (2)(b).

3. Amends section 11(2) of the Forest Act, No. 122 of 1984, by substituting paragraph (b).

4. Amends section 16 of the Forest Act, No. 122 of 1984, by substituting subsection (1).

5. Amends section 38(1) of the Forest Act, No. 122 of 1984, by substituting the proviso.

6. Amends section 42 of the Forest Act, No. 122 of 1984, by substituting subsection (3).

7. Inserts Part VIIIA in the Forest Act, No. 122 of 1984.

**8. Repeal of Part VIII of Act 122 of 1984, and transitional provisions.-**

(1) Subject to the provisions of this section, Part VIII of the principal Act is hereby repealed.

{Date of commencement to be proclaimed.}

(2)(a) The Minister of Water Affairs and Forestry shall appoint a committee consisting of three persons, one of whom shall be designated by the Minister as the chairperson of the committee, to furnish the Minister with a report on the dissolution and winding-up of the Forestry Council.

(b) After consideration of the report of the committee referred to in paragraph (a), the Minister of Water Affairs and Forestry may make such order with regard to the assets and liabilities of the Forestry Council as the Minister, with the concurrence of the Minister of Finance, deems fit.

9. Amends section 73 of the Forest Act, No. 122 of 1984, as follows:- paragraph (a) substitutes the words preceding subsection (1)(gA)(i); paragraph (b) deletes subsection (1)(gA)(iii); and paragraph (c) substitutes subsection (3).

**10. Short title and commencement.-**

(1) This Act shall be called the Forest amendment Act, 1995.

(2) Section 8(1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.



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- 16(a) See R. v. Khwaza, 1954 (3) S.A. 253 (E.).
- 19(1)(b) As to who must be given notice, see R. v.v.d. Berg, 1951 (1) S.A. 410(T).
- 24 See R. v. Mapupu, 1946 (2) P.H. H342.
- 26 On presumption of negligence, see Barker v. venter, 1953 (3) S.A. 771 (E); van Wyk v. Hermanus Munkipality, 1963 (4) S.A. 285 (C.).

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SECTION No.	ANNOTATION
2	Wattle Bark Industry Agreement in G.N.R. 1019 of 29 June, 1962, considered in Scheepers v. Robbertse, 1973 (2) S.A. 508(N).

### FORESTS AND FORESTRY

#### REFERENCES TO DECIDED CASES

##### FOREST ACT, No. 72 OF 1968

SECTION No.	ANNOTATION
9(2)	See <i>De Vries v. Minister van Bosbou en Andere</i> , 1980(4) S.A. 627 (C).
9(2)(f)	See <i>De Vries v. Minister van Bosbou en Adnere</i> , 1980(4) S.A. 627 (C).
15	See <i>Quathlamba (PTY.) Ltd. v. Minister of Forestry</i> , 1972 (2) S.A. 783(N).
17	See <i>S. v. Mnomiya</i> , 1970(1) S.A. 66 (N).
21	See <i>S. v. Mnomiya</i> , 1970(1)S.A. 66(N).
21(1)(c)	See <i>S. v. Louterwater Landgoed (Edms.) Bpk. en Andere</i> , 1972(2) S.A. 809 (C); <i>S.v. M.</i> 1982(1) S.A. 240(N).  <i>On sentence</i> , see <i>S. v. Mosehla</i> , 1973(1) S.A. 457(T).  <i>For essential elements of offence</i> , see <i>S. v. Matsevulana</i> , 1977(2) S.A. 391(E).
21(2)(c)	As to proof of offence, see <i>S. v. Gumede &amp; Others</i> , 1971 (1) S.A. 325 (N).
23	See <i>Quathlamba (Pty) Ltd. v. Minister of Forestry</i> , 1972 (2) S.A. 783 (N) (reversed) <i>Minister of forestry v. Quathlamba (Pty.) Ltd. and.</i> , 1973 (3) S.A. 69 (A.D.); <i>Titlestad v. Minister of Water Affairs</i> , 1974 (3) S.A. 810(N); <i>Porrirt v. Molefe</i> , 1980(4) S.A. 818 (N); <i>Peattle and Others v. Clan Syndicate (Pty.) Ltd.</i> , 1984 (4) S.A. 829 (N); <i>Clan Syndicate (Pty.) Ltd. v. Peattle and OOthers</i> , NN.O., 1986(2) S.A. 791 (A.D.).
28	See <i>Quathlamba (Pty.) Ltd. v. Minister of Forestry</i> , 1972(2) S.A. 783 (N).

**FORESTS AND FORESTRY**

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FOREST ACT, No. 122 OF 1984

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84	See Louw and Others v. Long, 1990(3) S.A. 45 (E); Dews and Another v. Simon's Town Municipality, 1991(4) S.A. 479(C); Steenberg v. De Kaap Timber (Pty.) Ltd., 1992(2) S.A. 169 (A.D.).
87	See Simon's Town Municipality v. Dews and Another, 1993(1) S.A. 191 (A.D.).

**FORESTS AND FORESTRY**

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## The Prevention and Combating of Pollution of the Sea by Oil Amendment Act No. 59 of 1985

[ASSENTED TO 24 MAY, 1985]  
[DATE OF COMMENCEMENT: 24 APRIL, 1985]

{Afrikaans text signed by the State President}

### ACT

**To amend the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, so as to make other provision in respect of certain amounts to be paid into the Oil Pollution Prevention Fund; and to provide for matters connected therewith.**

1. Amends section 26(2) of the Prevention and Combating of Pollution of the Sea by Oil Act, No. 6 of 1981, by substituting paragraph (a).

2. **Short title and commencement.** - This Act shall be called the prevention and Combating of Pollution of the Sea by Oil Amendment Act, 1985, and shall be deemed to have come into operation on 24 April 1985.

### PREVENTION AND COMBATING OF POLLUTION OF THE SEA BY OIL AMENDMENT ACT NO. 63 OF 1987

[ASSENTED TO 11 SEPTEMBER, 1987]  
[DATE OF COMMENCEMENT: 25 SEPTEMBER, 1987]

{English text signed by the State President}

### ACT

**To amend the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, so as to make provision for the jurisdiction of courts and for the imposition of penalties; and to provide for matters connected therewith.**

1. Amends section 20 of the Prevention and Combating of Pollution of the Sea by Oil Act, No. 6 of 1981, by adding subsection (4).

2. Amends section 30 of the Prevention and Combating of Pollution of the Sea by Oil Act, No. 6 of 1981, by adding subsections (3), (4) and (5).

3. **Short title.**- This Act shall be called the Prevention and Combating of Pollution of the Sea by Oil Amendment Act, 1987.

### PREVENTION AND COMBATING OF POLLUTION OF THE SEA BY OIL AMENDMENT ACT NO. 9 OF 1990

[ASSENTED TO 9 MARCH, 1990]  
[DATE OF COMMENCEMENT: 21 MARCH, 1990]

{Afrikaans text signed by the State President}

### ACT

**To amend the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, so as to provide for the abolition of the Oil Pollution Prevention Fund and the substitution of the State Revenue Fund therefor; and to increase the fines which may be imposed under the Act; and to provide for incidental matters.**

1. Amends section 1(1) of the Prevention and Combating of Pollution of the Sea by Oil Act, No. 6 of 1981, as follows:- paragraph (a) deletes the definition of "Fund"; and paragraph (b) inserts the definition of "State Revenue Fund".

2. Amends section 8(1) of the Prevention and Combating of Pollution of the Sea by Oil Act, No. 6 of 1981, by substituting paragraph (b).

3. Substitutes section 26 of the Prevention and Combating of Pollution of the Sea by Oil Act, No. 6 of 1981.

4. Amends section 27 of the Prevention and Combating of Pollution of the Sea by Oil Act, No. 6 of 1981, by substituting subsection (2).

5. Amends section 30 of the Prevention and Combating of Pollution of the Sea by Oil Act, No. 6 of 1981, by substituting subsection (2).

6. **Assets, liabilities, rights, duties and obligations of Oil Pollution Prevention Fund to devolve upon State.**

- (1) Any credit in the oil Pollution Prevention Fund referred to in section 26 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981 (Act No. 6 of



1981), immediately before the date of commencement of this Act, shall be paid into the State Revenue Fund established by section 81 of the Republic of South Africa Constitution Act, 1983 (Act No. 110 of 1983), while all other assets and the liabilities, rights, duties and obligations of such first-mentioned Fund on such date, shall devolve upon the State.

(2) Any reference in any law or document to the Oil Pollution Prevention Fund shall be construed as a reference to the State.

**7. Short title.** - This Act shall be called the Prevention and Combating of Pollution of the Sea by Oil Amendment Act, 1990.

#### PREVENTION AND COMBATING OF POLLUTION OF THE SEA BY OIL ACT NO. 6 OF 1981

[ASSENTED TO 6 FEBRUARY, 1981]

[DATE OF COMMENCEMENT: 1 OCTOBER, 1982]

{English text signed by the State President}

as amended by

Prevention and Combating of Pollution of the Sea by Oil Amendment Act, No. 59 of 1985

Prevention and Combating of Pollution of the sea by Oil Amendment Act, No. 63 of 1987

Prevention and Combating of Pollution of the Sea by Oil Amendment Act, No. 9 of 1990

#### ACT

**To provide for the prevention and combating of pollution of the sea by oil; to determine liability in certain respects for loss or damage caused by the discharge of oil from ships, tankers or offshore installations; and to provide for matters connected therewith.**

**1. Definitions.**- (1) In this Act, unless the context otherwise indicates -

“**area of the Republic**” includes the territorial waters of the Republic;

“**certificate**” means a certificate contemplated in section 13;

“**Convention**” means the International Convention on Civil Liability for Oil Pollution Damage, signed in Brussels on 29 November 1969 and published for general information under General Notice No. 58 of 1978 in *Government Gazette* No. 5867 of 27 January 1978, and

includes any amendments thereof and additions thereto signed, ratified or acceded to by the Republic of South Africa;

“**Convention State**” means a state which is a party to the Convention;

“**Director-General**” means the Director-General; Transport;

“**discharge**”, in relation to oil, means any discharge of oil from a ship or a tanker or an offshore installation into a part of the sea which is a prohibited area and includes any escaping, spilling, leaking, pumping or dumping of oil from such ship, tanker or offshore installation into such part of the sea; and “**discharge**” when used as a verb shall be construed accordingly;

“**Fund**” .....

[Definition of “Fund” deleted by s.1(a) of Act No. 9 of 1990.]

“**high-water mark**” means the highest line reached by the water of the sea during ordinary storms occurring during the most stormy period of the year, excluding exceptional or abnormal floods;

“**incident**” means any occurrence, or series of occurrences having the same origin, which causes a discharge of oil from any ship, tanker or offshore installation or which creates the likelihood of such a discharge.

“**low-water mark**” means the lowest line to which the water of the sea recedes during periods of ordinary spring tides;

“**master**”, in relation to a ship or a tanker, means any person (other than a pilot) having charge or command of such ship or tanker and, in relation to an offshore installation, means the person in charge thereof;

“**Minister**” means the Minister of Transport Affairs;

“**natural oil**” means natural oil as defined in section 1 of the Mining Rights Act, 1967 (Act No. 20 of 1967);

“**nautical mile**” means the international nautical mile of 1 852 metres;

“**offshore installation**” means a facility situated wholly or partly within the prohibited area and which is used for the transfer of oil from a ship or a tanker to a point on land or from a point on land to a ship or tanker or from a bunkering vessel to a ship or a tanker, and includes any exploration or production platform situated within the prohibited area and used in prospecting for or the mining of natural oil;

“oil”, in relation to a discharge of oil from -

(a) a ship, tanker or offshore installation in that part of the prohibited area which constitutes the territorial waters of the Republic and the sea adjoining the said territorial waters to the landward side thereof, means any kind of mineral oil and includes spirit produced from oil and a mixture of such oil and water or any other substance;

(b) a ship, tanker or offshore installation in that part of the prohibited area which adjoins the said territorial waters to the seaward side thereof, means any kind of mineral oil and includes spirit produced from oil and a mixture of such oil and water or any other substance which contains one hundred parts or more of oil in a million parts of the mixture,

but in relation to loss or damage caused as contemplated in section 9(1)(a) where the discharge in question took place from a tanker, and for the purposes of section 13(1), means oil as defined in paragraph 5 of Article 1 of the Convention;

“owner”, in relation to a ship or a tanker, means the person or persons registered as the owner of such ship or tanker or, in the absence of registration, the person or persons to whom such ship or tanker belongs,

“prescribed” means prescribed by regulation;

“principal officer” means the officer in charge of the office of the Marine Division of the Department of Transport at any port;

“prohibited area” means the territorial waters of the Republic and that portion of the fishing zone, as defined in section 3 of the Territorial Waters Act, 1963 (Act No. 87 of 1963), situated within a distance of fifty nautical miles from the low-water mark, and includes the sea between the high- and low-water marks as well as any tidal lagoon or tidal river as defined in section 1 of the Sea-shore Act, 1935 (Act No. 21 of 1935), and internal waters as defined in section 1 of the Marine Traffic Act, 1981;

“sea” means the water and the bed of the sea and includes the land between the high- and low-water marks as well as any tidal lagoon or tidal river as defined in section 1 of the Sea-shore Act, 1935;

“ship” means any kind of vessel or other sea-borne object from which oil can be discharged, excluding a tanker, whether or not such vessel or object has been lost or abandoned, has stranded, is in distress, disabled or damaged, has been wrecked, has broken up or has sunk;

“State Revenue Fund” means the fund established by

section 81 of the Republic of South Africa Constitution Act, 1983 (Act No. 110 of 1983);

[Definition of “State Revenue Fund” inserted by s.1 of Act No. 9 of 1990.]

“tanker” means any seagoing vessel of any type whatsoever, actually carrying oil in bulk as cargo and in respect of which the provisions of the Convention are applicable;

“territorial waters of the Republic” means the territorial waters of the Republic as defined in section 2 of the Territorial Waters Act, 1963;

“this Act” includes any regulation made thereunder.

(2) Where more than one discharge of oil results from the same occurrence or from a series of occurrences having the same origin, they shall for the purposes of this Act be regarded as one discharge.

**2. Discharge of oil prohibited.** - (1) If any oil is discharged from a ship, tanker or offshore installation the master of such ship, tanker or offshore installation and, if he is not the owner of such ship, tanker or offshore installation, also the owner thereof, shall be guilty of an offence unless -

(a) the oil in question was discharged for the purpose of securing the safety of such ship, tanker or offshore installation or of any other ship or tanker or of preventing damage to such ship, tanker or offshore installation or to any other ship or tanker or the cargo thereof, or of saving life, and such discharge of the oil was necessary for such purpose or was a reasonable step to take in the circumstances;

(b) the oil in question escaped from the ship, tanker or offshore installation in consequence of damage to the ship, tanker or offshore installation, and as soon as practicable after the damage occurred all reasonable steps were taken for preventing or (if it could not be prevented) for stopping or reducing the escape of the oil; or

(c) the oil in question escaped by reason of leakage, and neither such leakage nor any delay in discovering it was due to any lack of reasonable care, and as soon as practicable after the escape was discovered, all reasonable steps were taken for stopping or reducing it.

(2) The onus of proving any exception, exemption or qualification contemplated in subsection (1)(a), (b) or (c) shall be upon the accused.

(3) If in any prosecution for an offence under subsection (1) it is proved that a mixture containing oil was dis-



charged from a ship, tanker or offshore installation in the part of the prohibited area which adjoins the territorial waters of the Republic to the seaward side thereof, it shall be deemed, unless the contrary is proved, that such mixture contained one hundred parts or more of oil in a million parts of the mixture.

**3. Reporting of discharge and damage causing discharge or likelihood of discharge. -**

(1) When oil has been discharged from a ship, tanker or offshore installation the master of such ship, tanker or offshore installation, or any member of the crew of such ship or tanker or of the staff employed in connection with such offshore installation, designated by such master, shall forthwith by the quickest means of communication available report the fact that such discharge has taken place to the principal officer at the port in the Republic nearest to where such ship, tanker or offshore installation is.

(2) if, while it is within the prohibited area, a ship or a tanker sustains any damage, whether to its hull, equipment or machinery, which causes, or creates the likelihood of, a discharge of oil from such ship or tanker, or having sustained such damage, enters the prohibited area in such damaged condition, the master of such ship or tanker, or any member of its crew designated by the master, shall forthwith by the quickest means of communication available report to the principal officer at the port in the Republic nearest to where such ship or tanker then is the fact that such damage was sustained, the nature and location on the ship or tanker of the damage, the position at sea where the damage was sustained, the name of the ship or tanker, its port of registry, its official number, its position, its course and, if in the Republic, its destination, the quantity and type of oil on board and, in the case of a tanker to which the provisions of section 13 apply, the particulars contained in the certificate.

(3) For the purposes of subsection (2) damage to a ship or a tanker shall be deemed to have created the likelihood of a discharge of oil from such ship or tanker if it is of such a nature as to detrimentally affect, in any degree, the ship's or tanker's seaworthiness or efficient working.

(4) If the master of a ship or a tanker fails to comply with the provisions of sub-section (1) or (2) or if the master of an offshore installation fails to comply with the provisions of subsection (1), such master shall be guilty of an offence.

**4. Powers of Minister to take steps to prevent pollution of the sea where oil is being or is likely to be discharged. -**

(1) If any oil is being discharged or is in the opinion of the Minister likely to be discharged from a ship or a tanker the minister may, with a view to preventing the pollution or further pollution of the sea by such

oil, require the master or the owner of such ship or tanker or both such master and owner -

(a)(i) to unloaded the oil from the ship or tanker or oil from a specified part of the ship or tanker;

(ii) to transfer oil from a specified part of the ship or tanker to another specified part of the ship or tanker;

(iii) to dispose of any oil so unloaded or transferred, in such manner and within such period as the Minister may direct if he deems fit to do so;

(b) to move the ship or tanker or cause the ship or tanker to be moved to a place specified by the Minister;

(c) not to move the ship or tanker from a place specified by the Minister, except with the approval of the Minister and in accordance with the conditions subject to which such approval was granted;

(d) not to unload any cargo or oil, or any cargo or oil specified by the Minister, from the ship or tanker except with the approval of the Minister and in accordance with the conditions subject to which such approval was granted;

(e) to carry out such operations for the sinking or destruction of the ship or tanker, or any part thereof, or the destruction of the oil on the ship or tanker, or such quantity thereof, as the Minister may specify;

(f) to steer such course, while the ship or tanker is within the prohibited area, as the Minister may specify;

(g) to obtain the services of one or more suitable vessels to stand by such ship or tanker during a period determined by the Minister;

(h) to take such other steps in regard to the ship or tanker or its cargo or the oil therein or both the ship or tanker and its cargo or the oil therein as may be specified by the Minister, to prevent the discharge or further discharge of oil from the ship or tanker.

(2)(a) If, in the opinion of the minister, the master and the owner of the ship or tanker in question are or would be incapable of complying with a requirement made or contemplated in terms of subsection (1) or could not reasonably be expected to comply with such requirement, or the powers conferred upon the Minister in terms of subsection (1) are inadequate for the purpose contemplated in that subsection, the Minister may cause any such steps to be taken as he has power to require to be taken in terms of the said subsection.

(b) Any reference in paragraph (a) to the power of the Minister to require steps to be taken in terms of sub-



section (1), includes a reference to the power of the Minister in terms of that subsection to require that a specified step be not taken.

(c) If any person performs salvage operations in connection with a ship or tanker, any requirement of the minister in terms of subsection (1) in connection with such ship or tanker or its cargo or oil shall also be made known to such salvor, and any such requirement that a specified step be not taken shall thereafter, unless the Minister otherwise directs, also be binding upon such salvor and any such requirement that a specified act be performed shall, unless the Minister otherwise directs, also be construed as a requirement in terms of that subsection and binding upon such salvor that no steps be taken by such salvor which would obstruct or be likely to obstruct the performance of the specified act.

(3) If the owner of a ship or a tanker, in complying with a requirement of the Minister in terms of subsection (1), incurs any expenses and -

(a) the discharge or likelihood of a discharge of the oil in question was due wholly to the fault of the State; or

(b) the discharge or likelihood of a discharge of the oil in question was due partly to the fault of the State,

the amount of such expenses, in the event contemplated in paragraph (a), or the applicable proportion of the amount of such expenses determined in accordance with the provisions of the Apportionment of Damages Act, 1956 (Act No. 34 of 1956), in the event contemplated in paragraph (b), shall become payable to the owner by the State.

(4) The provisions of subsections (1)(a), (d), (g) and (h), (2)(a) and (b) and (3) shall *mutatis mutandis* apply in respect of oil discharged or, in the opinion of the minister, likely to be discharged from an offshore installation.

**5. Prevention or removal or pollution of the sea by oil.**- (1) If in the opinion of the Minister oil is likely to be discharged from a ship or a tanker he may take such measures, including the destruction, burning or disposal in any other manner of oil in such ship or tanker, as he may deem fit to guard against or to prevent pollution of the sea by such oil.

(2) If any oil is discharged from a ship or a tanker the Minister may cause any pollution of the sea caused thereby to be removed.

(3) If the Minister takes measures in terms of subsection (1) or causes any pollution to be removed in terms of subsection (2), he may order any person who -

(a) is capable of supplying any goods or services; or

(b) is capable of manufacturing, producing, processing or treating any goods; or

(c) is the owner of or has the power to dispose of or has in his possession or under his control any goods, or is a supplier of any service.

which may be required for the purpose of such measures or the removal of such pollution, to supply or deliver or sell such goods or a specified quantity or number thereof, or to supply such service, to the Minister or a specified person, or to manufacture, produce, process or treat a specified quantity or number of such goods and to supply or deliver or sell it to the Minister or to a specified person, within a specified period and at a specified place, as the case may be.

(4) Any person who has received an order under subsection (3) shall be deemed to be capable of performing the act which he has been ordered to perform, unless he proves that he is not so capable.

(5) In respect of any goods supplied, delivered, sold, manufactured, produced, processed or treated or any service supplied in terms of this section, the person concerned shall, when called upon to do so, declare and certify the cost to him of every item invoiced, in addition to stating the selling price, in the case of goods, and the amount of the compensation, in the case of a service, claimed by him.

(6) The Minister may institute, through an independent chartered accountant designated by him for that purpose, a cost investigation in connection with any goods or service in respect of which an order has been issued in terms of subsection (3).

(7) In every contract resulting from an order issued in terms of subsection (3), or from the acceptance, by or on behalf of the Minister, of an offer for the manufacture, production, processing, treating or supply of any goods or for the supply of any service, there shall be deemed to be incorporated a condition that the price or compensation stipulated by the seller or supplier concerned shall be subject to confirmation or adjustment by the Minister.

(8) Every person who supplies any service, or supplies, delivers, sells, manufactures, produces, processes or treats any goods, in accordance with an order issued in terms of subsection (3), shall, in the absence of agreement, be paid by the Minister or the person concerned, as the case may be, compensation or a price equal to the amount of the cost to him of the supply of the service in question, or of the goods in question, or of the manufacture, production, processing or treating thereof, plus a percent-



age of such cost or an amount fixed in the notice in question, or, where the Minister has instituted a cost investigation in terms of subsection (6), the compensation or price determined by the Minister.

(9) If the discharge or likelihood of the discharge of the oil in question was due -

(a) wholly to the fault of the State, the owner of the ship or tanker in question shall not be liable under the provisions of section 9(1)(b) for any expenditure incurred by the Minister by virtue of the provisions of this section.

(b) partly to the fault of the State, the amount of any expenditure so incurred by the Minister and recoverable from the owner concerned in terms of the provisions of section 9(1)(b), shall be reduced to such extent as is just and equitable regard being had to the degree in which the State was at fault in relation to the discharge or likely discharge.

(10) The provisions of this section, excluding the provisions of subsection (1), shall *mutatis mutandis* apply in respect of a discharge of oil from an offshore installation.

**6. Moving of ship or tanker from certain area.-** The Minister may order the master of any ship or tanker to move, subject to such instructions as the Minister may issue, his ship or tanker and any object it may have in tow from an area in which removal of pollution of the sea by oil is in progress or about to be undertaken.

**7. Inspection of ship or tanker and of records, and taking of samples of oil.-** Any person authorized thereto by the Minister and any member of the South African Police or of the police force of the South African Railways and Harbours Administration may go on board any ship or tanker in any part of the prohibited area to ascertain whether any document required by this Act to be carried on board such ship or tanker is so carried on board or, if he has reasonable grounds for believing that any provision of this Act has been or is being contravened in connection with such ship or tanker, may so go on board and inspect such ship or tanker or any part or cargo thereof, inspect and make copies of any documents or records kept in respect of such ship or tanker or in respect of its cargo or oil on board thereof, take samples of any oil on board such ship or tanker, take soundings of tanks, spaces and bilges and test any equipment on board such ship or tanker which is intended for use in preventing a discharge of oil from such ship or tanker.

**8. Right of entry upon land.-** (1) Any person or member referred to in section 7 and any other person authorized thereto by the Minister may enter upon any land with such workmen, machinery, vehicles, equipment, appliances, instruments and other articles, and may per-

form all such acts thereon, as may be necessary for the purpose of complying with any provision of this Act, or for the purpose of making any enquiries or undertaking any investigations with a view to determining whether any pollution of the sea by oil has occurred and whether the removal of such pollution is feasible, or for the purpose of erecting camps or other temporary works which may be considered necessary in connection with the removal of such pollution of the sea by oil, or for the purpose of ascertaining whether or not any provision of this Act or condition imposed thereunder is being complied with, and may, for the purpose of gaining access to such land, enter upon and cross any other land with the said workmen, machinery, vehicles, equipment, appliances, instruments and other articles: Provided that:-

(a) no such entry shall be made into any building, or upon any enclosed space attached to a dwelling, except with the consent of the occupier thereof;

(b) as little damage, loss or inconvenience as possible shall be caused in the exercise of the powers conferred by this subsection, and such compensation as may be agreed upon or, failing agreement, determined by a competent court, shall be paid from the State Revenue Fund for any damage, loss or inconvenience so caused.

[Para. (b) substituted by s. 2 of Act No. 9 of 1990.]

(2) Any person who prevents any entry authorized or the exercise of any powers conferred by subsection (1) or who wilfully obstructs or hinders any person so entering in the performance of his functions under this Act shall be guilty of an offence.

**9. Liability for loss, damage or costs caused by discharge of oil.-** (1) Subject to the provisions of this Act the owner of any ship, tanker or offshore installation shall be liable for -

(a) any loss or damage caused, elsewhere than on such ship, tanker or offshore installation, in the area of the Republic by pollution resulting from the discharge of oil from such ship, tanker or offshore installation;

(b) the costs of any measures taken or caused to be taken by the Minister in terms of this Act after an incident has occurred in respect of such ship, tanker or offshore installation, for the purposes of reducing loss or damage caused as contemplated in paragraph (a) through the discharge of any oil, or for the purposes of preventing such loss or damage being caused, whether or not a discharge as contemplated in paragraph (a) has occurred and whether or not such a discharge in fact subsequently occurs; and

(c) any loss or damage caused in the area of the Repub-



lic by any measures so taken or caused to be taken after a discharge as contemplated in paragraph (a) has occurred.

(2) For the purposes of subsection (1)(b) -

(a) any measures taken or caused to be taken by the Minister in terms of this act to remove or prevent pollution of the sea by oil discharged or likely to be discharged from any ship, tanker or offshore installation, shall be deemed to be measures taken or caused to be taken by the Minister for the purposes contemplated in that subsection;

(b) the costs referred to in that subsection shall include:-

(i) expenses reasonably incurred in connection with the taking of measures referred to in that subsection;

(ii) an amount deemed by the Director-General to be sufficient to compensate the South African National Foundation for the Conservation of Coastal Birds, an organization registered under the National Welfare Act, 1965 (Act No. 79 of 1965), as a welfare organization, or any similar organization approved by the Minister, for expenses incurred in rescuing, conveying, treating, feeding, cleaning and rehabilitating coastal birds polluted by oil discharged from the ship, tanker or offshore installation in question.

(3) The owner of any ship, tanker or offshore installation shall not be liable for any loss, damage or costs as set out in subsection (1) if he proves that the discharge or, as the case may be, the anticipated discharge in question -

(a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or

(b) was wholly caused by an act or omission on the part of any person, not being the owner or a servant or agent of the owner, with intent to do damage; or

(c) was wholly caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids, in the exercise of that function.

(4) Where a ship or a tanker is together with another ship or tanker or with an offshore installation involved in an incident and a liability is incurred by virtue of the provisions of subsection (1) by each of the owners concerned, but the loss, damage or costs for which each of the owners would be liable cannot reasonably be separated from that or those for which the other owner or owners would be liable, the owners concerned shall be jointly and severally liable for all such loss, damage or costs.

(5) If the owner of any ship, tanker or offshore installation incurs a liability in terms of the provisions of subsection (1) for any loss or damage suffered or costs incurred as a result of an incident which occurred without such owner's actual fault or privity -

(a) the provisions of section 261 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), shall not apply in respect of such liability;

(b) the aggregate of all amounts payable by such owner in respect of such liability, in so far as it relates to a particular incident, shall not exceed -

(i) in the case of a ship or a tanker, one hundred and thirty-three units of account for each ton of the ship's or tanker's tonnage, or fourteen million units of account, whichever is the lesser;

(ii) in the case of an offshore installation, a sum determined by the Minister, but not exceeding fourteen million units of account.

(6) The provisions of subsection (1)(b) shall not be construed as rendering, in the case of a tanker, any costs incurred in terms of the said subsection before a discharge of oil from such tanker has occurred, recoverable by virtue of the application of the provisions of the Convention.

(7) No legal proceedings to enforce a claim in respect of a liability incurred in terms of subsection (1) shall be entertained by any court unless such proceedings are commenced with not later than three years after the date on which such claim arose: Provided that no such proceedings shall be so entertained after the expiration of a period of six years after the date on which the incident by reason of which the said liability was incurred, took place, or in the case where the incident consists of a series of occurrences having the same origin, six years after the date on which the first of those occurrences took place.

(8) For the purposes of this section -

(a) "unit of account" means a Special Drawing Right as defined by the International Monetary fund, and the value of such Special Drawing Right in South African currency shall be calculated in accordance with the method of valuation applied by the International Monetary Fund and which is in effect at the time when payment is made, or, in the event of an application in terms of section 12(1), at the time when such application is considered by the court;

(b) the tonnage of a ship or a tanker shall be its net tonnage with the addition of any engine room space deducted for the purpose of ascertaining its net tonnage.



**10. Limitation of liability.**- (1) When an incident has occurred in respect of a ship, tanker or offshore installation the owner of such ship, tanker or offshore installation shall not be liable otherwise than under the provisions of this Act to any person for any -

(a) loss or damage referred to in section 9(1)(a) or (c);  
or

(b) costs referred to in section 9(1)(b),

suffered or incurred as a result of that incident.

(2) No servant or agent of the owner of a ship, tanker or offshore installation shall be liable to any person for any loss, damage or costs referred to in subsection (1).

(3) Any person performing salvage operations in connection with a ship, tanker or offshore installation with the agreement of the owner or master thereof, shall, for the purposes of subsection (2), be regarded as the agent of such owner.

(4) Any person in the service of the State or any person engaged in terms of section 27(1) read with section 4(2)(a) or section 22(1), as the case may be, to perform any act required to be performed in terms of section 4(1), shall not be liable (except in the case of any wilful act or omission on the part of any such person) to any person for any loss of or damage to any ship, tanker or offshore installation or, in the case of such ship or tanker, its cargo or oil, caused by or arising out of or in any manner connected with the performance of such act.

(5) If by virtue of the provisions of section 5 measures are being taken to guard against, prevent or remove pollution of the sea by oil in the prohibited area, any person in the service of the State, any officer of or member of the crew of any vessel employed in the taking of such measures, the employer of such officer or member, or the owner of such vessel, shall not be liable (except in the case of any wilful act or omission on the part of any such person, officer, member, employer or owner) to any person for any loss of or damage to any ship, tanker or offshore installation in the said area, or, in the case of such ship or tanker, its cargo or oil, caused by or arising out of or in any manner connected with the taking of such measures.

(6) Any person in the service of the State or any person engaged in terms of section 27(1) read with section 4(2)(a) or section 22(1), as the case may be, to perform any act required to be performed in terms of section 4(1), shall not be liable (except in the case of any wilful act or omission on the part of any such person) for any loss or damage suffered or costs incurred by any person as a result of any measures taken, or as a result of any measures not having been taken, in terms of this Act, to prevent or remove pollution of the sea by oil.

**11. Exemption in respect of warships or tankers used in the service of a State.**-(1) The provisions of section 9(1) shall not apply in respect of any warship or in respect of any tanker for the time being used exclusively in the service of any state for other than commercial purposes.

(2) In relation to a tanker owned by a State and for the time being used for commercial purposes, section 13(1) shall be deemed to have been complied with if there is in force in respect of such tanker a certificate, issued by the government of such State, in which it is stated that the tanker is owned by that State and that any liability which may be incurred in connection with such tanker by virtue of the provisions of section 9(1) will be met by the government concerned to the extent of the aggregate amount contemplated in section 9(5).

(3) Every Convention state shall, for the purposes of any legal proceedings brought in a court referred to in section 20(1) to enforce a claim in respect of a liability incurred under section 9(1) as a result of a discharge of oil from a tanker referred to in subsection (2), be deemed to have submitted to the jurisdiction of that court: Provided that nothing in this subsection contained shall authorize the issue of execution against the property of any Convention State.

**12. Applications to court.**- (1) If the owner of a ship, tanker or offshore installation has or is alleged to have incurred a liability in terms of the provisions of subsection (1) of section 9 in the circumstances contemplated in subsection (5) of that section, he may in the prescribed manner apply to the court for the determination, in accordance with the provisions of the said subsection (5), of the aggregate amount payable by him in respect of such liability.

(2) If on an application referred to in subsection (1) the court finds that the applicant has incurred the liability in question and is, by virtue of the provisions of section 9(5), entitled to pay in respect of such liability an aggregate amount not exceeding an amount calculated in accordance with the provisions of section 9(5), the court shall, after determining such aggregate amount in accordance with the provisions of section 9(5), direct the applicant to deposit such amount with the Master of the said court or to furnish the said Master with a written guarantee, acceptable to the court, for the payment of such amount, and any amount so deposited or guarantee so furnished shall, for the purposes of this section, be deemed to constitute a fund.

(3) The Master referred to in subsection (2) shall appoint a person nominated by the applicant and a person nominated by the director-General as joint trustees of the fund referred to in subsection (2).



(4) The trustees referred to in subsection (3) shall in the prescribed manner administer the fund referred to in subsection (2) and distribute it among the several persons establishing claims in connection with the incident from which the liability originated.

(5) Where any amount has already been paid in or towards satisfaction of any claim in respect of the loss, damage or costs to which the liability relates, by the owner of the ship, tanker or offshore installation in question or by the person referred to in section 15 as the insurer, the person who paid such amount shall, to the extent of that amount, be in the same position with respect to any distribution made by the trustees in terms of subsection (4) as the person to whom such amount was paid would have been.

(6) If the owner concerned has made any reasonable sacrifice or taken any other reasonable measures to prevent or reduce loss or damage to which the liability relates, he shall be in the same position with respect to any distribution made by the trustees in terms of subsection (4) as if he had a claim in respect of the liability equal to the cost of the sacrifice or other measures.

(7) If the owner or insurer referred to in subsection (5) establishes that he may be compelled to pay, at a date subsequent to the distribution in terms of subsection (4) of the fund referred to in subsection (2), an amount in or towards satisfaction of any claim as contemplated in subsection (5), which payment would have entitled him to the right envisaged in subsection (5) had it been made before the said distribution, the trustees may out of the said fund provisionally set aside an amount in order to enable the said owner or insurer to enforce the said right against the said fund at such subsequent date.

(8) For the purposes of this section "court" means any division of the Supreme Court of South Africa.

**13. Compulsory insurance against liability for loss, damage or costs.-** (1) No tanker carrying more than 2,000 long tons of oil in bulk as cargo shall enter or leave a port in the Republic or arrive at or leave an offshore installation in the territorial waters of the Republic nor, if such tanker is registered in the Republic, a port in any other country or an installation similar to an offshore installation in the territorial waters of any other country, unless it carries on board a valid certificate, issued by the competent authority specified in subsection (2), stating that there is in force in respect of such tanker a contract of insurance or other financial security for an amount not less than an amount fixed, *mutatis mutandis*, in accordance with the provisions of section 9(5)(b), to cover the liability of the owner of such tanker for any loss, damage or costs which may become payable by him in terms of the provisions of section 9(1) as a result of any incident which may occur in respect of such tanker.

(2) The certificate referred to in subsection (1) shall be a certificate issued -

(a) in the case of a tanker registered in the Republic, by the Director-General in terms of the provisions of section 14;

(b) in the case of a tanker registered in a Convention State other than the Republic, by or under the authority of the government of such other Convention State.

(3) (a) a certificate shall not be a valid certificate for the purposes of subsection (1) if the period of validity of the insurance or other financial security to which it relates, will expire while the tanker concerned will be within the territorial waters of the Republic at a time before a new contract for such insurance or other financial security becomes operative.

(b) Insurance or other financial security shall be deemed not to satisfy the requirements of this section if such insurance or other financial security can be terminated, for reasons other than the expiry of the period of validity thereof, before the expiration of a period of three months from the date on which notice of such termination is given to the authority who issued the certificate in question, unless a new certificate is issued within the said period of three months.

(4) The master of a tanker referred to in subsection (1) shall at the request of any principal officer, oil pollution officer, customs officer, pilot, port captain or person authorized by the Minister in terms of section 7, produce the certificate in question to such principal officer, oil pollution officer, customs officer, pilot, port captain or person.

(5) If a tanker attempts to leave a port in the Republic or an offshore installation in the territorial waters of the Republic in contravention of the provisions of subsection (1), the Minister may cause such tanker to be detained until a valid certificate in respect of such tanker is produced.

(6) If a tanker enters or leaves, or attempts to enter or to leave, a port or arrives at or leaves, or attempts to arrive at or to leave, an offshore installation in contravention of the provisions of subsection (1), the master of such tanker and, if the master is not the owner of such tanker, also the owner thereof, shall be guilty of an offence.

(7) If the master of a tanker refuses or fails to produce a certificate when requested in terms of subsection (4) to do so, the said master shall be guilty of an offence.

(8)(a) No ship carrying more than 2,000 long tons of oil in bulk as cargo and which is registered in a state other than a Convention State shall enter or leave a



port in the Republic or arrive at or leave an offshore installation in the territorial waters of the Republic unless it carries on board a certificate as contemplated in subsection (1), issued by or under the authority of the government of a Convention State, or such a certificate recognized by the director-General.

- (b) The provisions of subsections (3) to (7), inclusive, shall *mutatis mutandis* apply in respect of any ship and any certificate referred to in paragraph (a).

#### 14. Issue of certificate by Director-General.-

(1)(a) Every person desiring a certificate referred to in section 13(2)(a) shall in writing apply therefor to the Director-General.

(b) An application referred to in paragraph (a) shall be accompanied by the prescribed particulars and such other particulars as may be required by the Director-General in connection therewith, as well as a prescribed amount.

(2) If, on an application referred to in subsection (1), the Director-General is satisfied that there will be in force in respect of the tanker in question, through out the period for which the certificate is to be issued, a contract of insurance or other financial security for an amount contemplated in section 13(1), he shall issue to the applicant such certificate in the prescribed form.

(3) If, on such an application, the Director-General is of the opinion that a doubt exists as to whether the person providing the insurance or other financial security will be able to meet his obligations under the relevant contract, or as to whether the insurance or other financial security in question will in all circumstances cover the owner's liability for any loss, damage or costs which may become payable by him in terms of the provisions of section 9(1), he may refuse to issue a certificate.

(4)(a) If at any time after the issue of a certificate in terms of this section the Director-General is of the opinion that due to a change in the circumstances a doubt of the nature contemplated in subsection (3) has arisen, he may cancel such certificate and shall upon such cancellation immediately notify the owner of the tanker in question and the person providing the insurance or other financial security thereof.

(b) Whenever the person to whom a certificate was issued by the Director-General in terms of this section, ceases to be the owner of the tanker to which the certificate relates, the Director-General shall cancel such certificate.

(5) The Director-General shall send a copy of every certificate issued by him and a copy of every notice of can-

cellation in terms of subsection (4) to every principal officer, who shall hold such copies available for public inspection.

(6) Whenever a certificate is cancelled in terms of subsection (4) the person to whom the certificate was issued shall at the request of the Director-General return such certificate to him within a period of thirty days as from the date of such request.

**15. Proceedings against insurers.-** (1) If it is alleged that the owner of a tanker has incurred a liability in terms of the provisions of section 9(1) as a result of an incident which occurred in respect of such tanker while there was in force in respect of such tanker a contract of insurance or other financial security to which a certificate referred to in section 13(1) related, proceedings to enforce a claim in respect of that liability may be brought against the person (hereinafter in this section referred to as the insurer) who provided the insurance or other financial security.

(2) In any proceedings brought against the insurer by virtue of the provisions of this section it shall be a defence, in addition to any defence relating to the liability of the owner concerned, for such insurer to prove that the incident in question was caused by the wilful act or omission of the owner himself.

(3) The insurer may, whether or not the incident in question occurred without the owner's actual fault or privity, limit his liability in respect of claims relating to such incident, instituted against him by virtue of the provisions of this section, to an aggregate amount determined in accordance with the provisions of section 9(5)(b) and shall for that purpose make an application to the court *mutatis mutandis* in accordance with the provisions of section 12.

(4) Where the owner as well as the insurer made an application to the court in terms of the provisions of section 12, any amount deposited or the payment of which was guaranteed in terms of section 12(2) in pursuance of either application shall be deemed to have been so deposited or guaranteed also in pursuance of the other application.

**16. Depositing of amount or furnishing of guarantee by owner of ship, tanker or offshore installation in respect of certain costs.-** If an amount has in terms of the provisions of section 9(1)(b) become payable by the owner of a ship, a tanker to which the provisions of section 13(1) do not apply or an offshore installation in respect of costs referred to in section 9(1)(b), or if the Director-General believes, on reasonable grounds, that an amount may become so payable, such owner shall either deposit with the Director-General an amount, or furnish the Director-General with a written guarantee, accept-



able to him, for the payment of an amount deemed by the Director-General to be sufficient to satisfy the amount which has or may become so payable by the said owner.

**17. Refund of excess costs paid by owner.**- (1) If the Director-General is satisfied that no amount in respect of costs referred to in section 9(1)(b) is, or will become, payable in terms of the provisions of that section by an owner referred to in section 16 and that no pollution or further pollution of the sea by oil will be caused by the ship, tanker or offshore installation in question, he shall-

- (a) refund any amount deposited in terms of section 16, or so much thereof as has not been utilized to satisfy any amount which had become payable by such owner in respect of such costs;
- (b) cancel any guarantee furnished in terms of section 16 if no amount is payable in terms thereof in respect of such costs or if any amount which became so payable in respect of such costs has been paid.

(2) The Director-General may at any time refund so much of any amount deposited in terms of section 16, or, as the case may be, agree to a reduction of any amount guaranteed in terms of the said section by so much, as, in his opinion, is not required to satisfy any costs referred to in section 9(1)(b).

(3) In the event of an application having been made to the court in terms of section 12 in respect of the incident in question, the Director-General shall refund to the owner concerned so much of any amount deposited in terms of section 16, or, as the case may be, agree to a reduction of any amount guaranteed in terms of the said section by so much, as exceeds the amount to which the State is entitled in terms of a distribution made in terms of section 12(4).

**18. Ratification by Minister of certain expenses.**- The Minister may ratify the incurring of any expenses by the state (otherwise than in pursuance of section 5(1) or (2) or by any local authority or other public body or any other person in removing pollution of the sea by oil discharged from any ship, tanker or offshore installation, to the extent to which such expenses could have been incurred by the Minister in terms of section 5(1) or (2), and any expenses the incurring of which has been so ratified, shall be deemed to be costs referred to in section 9(1)(b).

**19. Detention of ships pending payment of costs for which owner is liable.**- (1) If the owner of a ship fails to pay costs payable by him in terms of section 9(1)(b), or fails to make a deposit or to furnish a guarantee which he is in terms of section 16 required to make or to furnish, the Minister may, in the prescribed manner -

(a) cause the ship in question or any other ship or ships, or the ship in question and any other ship or ships of the owner -

(i) to be detained until such costs have been paid or such deposit has been made or guarantee furnished, as the case may be: Provided that such detention shall not exceed a period of seven days or such further period as the division of the Supreme Court of South Africa having jurisdiction may authorize; and

(ii) on the authority of the said division of the Supreme Court of South Africa and subject to its directions -

(aa) where such detention has been effected because of a failure to pay such costs due, to be seized and, after notice in the *Gazette* of the proposed realization thereof, to be realized in satisfaction of those costs;

(bb) where such detention has been effected because of a failure to make a deposit or to furnish a guarantee, and costs become payable by the owner in terms of section 9(1)(b) at a time when the required deposit has not yet been made or guarantee has not yet been furnished, to be seized and, after notice as prescribed in item (aa), to be realized in satisfaction of those costs;

(b) on the authority of the said division of the Supreme Court of South Africa and subject to its directions, cause to be seized and realized in satisfaction of those costs, any goods of such owner on such ship or ships.

(2) The Minister shall cause any ship or goods detained or seized in terms of sub-section (1) to be released forthwith from detention or seizure if the owner concerned pays the costs, makes the deposit or furnishes the guarantee referred to in that subsection or by virtue of a direction contemplated in section 12(2) deposits an amount with the Master concerned or furnishes the said Master with a guarantee as contemplated in that section, before the realization, in terms of the said subsection, of the ship or goods in question.

(3) Notwithstanding anything to the contrary in any law contained, the proceeds of the realization of any ship or goods which took place in terms of this section, shall be applied to satisfy the costs in connection with which the realization took place, with preference over the satisfaction of any lien upon such ship or any obligation secured by a mortgage over such ship or goods or a share therein.

(4) The provisions of this section shall *mutatis mutandis* apply to the owner of a tanker to which the provisions of section 13(1) do not apply.

**20. Jurisdiction of courts.**- (1) Any division of the Su-



preme Court of South Africa, and within the limits of its jurisdiction as determined in section 29 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), but subject to the provisions of section 12(8), any magistrate's court, shall have jurisdiction in respect of all causes of action arising out of the provisions of this Act.

(2) Any division of the Supreme Court of South Africa, within the limits of its jurisdiction as determined in section 92 of the Magistrates' Courts Act, 1944 (Act no. 32 of 1944), any magistrates' court for a regional division, shall have jurisdiction in all criminal matters arising out of the provisions of this Act.

(3) No prosecution in respect of an offence under this Act shall be instituted except on the authority, which may be given in writing or otherwise, of the attorney-general having jurisdiction in the area of the court in question.

(4) Any offence under this Act shall, for purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed at any place where the accused happens to be.

[Sub-s. (4) added by s.1 of Act No. 63 of 1987.]

**21. Minister's permission required for transfer of oil or for certain other acts in respect of ships or tankers.**- (1) No person shall:-

(a) outside a harbour as defined in section 1(1) of the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act No. 70 of 1957), or a fishing harbour as defined in section 1 of the Sea Fisheries Act, 1973 (Act No. 58 of 1973), and within the prohibited area, render any ship having oil on board (whether as cargo or otherwise), or any tanker, incapable of sailing or manoeuvring under its own power;

(b) within the prohibited area transfer any oil from any ship or tanker to any other ship or tanker or to an offshore installation or from such offshore installation to any ship or tanker,

except with the permission of the Minister and in accordance with the provisions of this Act.

(2) In giving his permission for the performance of any act referred to in subsection (1), the Minister may impose any conditions subject to which such act shall be performed, and such conditions may include the obligation to obtain the services of one or more tugs, spray boats or other vessels to stand by during a period determined by the Minister.

**22. Powers of Minister in case of default by master or owner.**- (1) If -

(a) the master or owner of a ship or a tanker refuses or fails to perform, within the time specified by the Minister, any act which he has in terms of paragraph (a), (b), (c), (f), (g) or (h) of section 4(1) been required to perform;

(b) the master of an offshore installation refuses or fails to perform, within the time specified by the Minister, any act which he has in terms of paragraph (a), (g) or (h) of section 4(1) been required to perform; or

(c) any person refuses or fails to comply with a condition imposed by the Minister in terms of section 21(2),

the Minister may cause such act to be performed or such condition to be complied with, and for that purpose may cause steps to be taken which may include the taking over of control of such ship, tanker or offshore installation.

(2) All expenses reasonably incurred by the Minister by virtue of the provisions of subsection (1), shall be deemed to be costs referred to in section 9(1)(b).

**23. Salvor not to be prejudiced.**- Subject to the provisions of section 19(3) no provision of this Act shall be construed as derogating from any right to a salvage award, nor shall a salvor who would otherwise be entitled to a salvage award in respect of an act of salvage actually performed, cease to be so entitled merely on the ground that such act was carried out as a direct or indirect result of a requirement laid down or an order issued in terms of this Act.

**24. Pollution safety certificate required for operation of offshore installation.**-(1) Subject to the provisions of subsection (2) no person shall operate an offshore installation unless a pollution safety certificate issued in terms of the provisions of this section is in force in respect thereof.

(2) No offshore installation which is operated at the date of commencement of this Act shall continue to be so operated after the expiration of a period of twelve months as from the said date unless a pollution safety certificate has in terms of the provisions of this section been issued in respect thereof.

(3) Any person desiring a pollution safety certificate shall in writing apply therefor to the Director-General, and the Director-General shall, subject to the provisions of subsection (4), upon receipt of such an application issue a pollution safety certificate in the prescribed form in respect of the offshore installation in question, subject to such conditions relating to the operation of the offshore installation as may be determined by the Director-General and specified in the pollution safety certificate.



(4) No pollution safety certificate shall be issued by the Director-General in terms of this section unless the offshore installation in question complies with such conditions and requirements relating to the construction and operation thereof as the Minister may prescribe by regulation.

(5) Any person who -

(a) operates an offshore installation in contravention of the provisions of sub-section (1) or (2);

(b) in operating an offshore installation fails to comply with any condition specified in the pollution safety certificate in question,

shall be guilty of an offence.

**25. Exemptions by Minister.** - (1) The Minister may exempt any ship or any class of ships or any tanker or any class of tankers or any offshore installation from any of or all the provisions of this Act.

(2) The Minister may exempt any person performing salvage operations in connection with a ship or a tanker from which oil is being discharged or, in the opinion of the minister, is likely to be discharged, from any liability in respect of any consequences of the discharge of the oil in question.

**26. Income and expenditure** - (1) There shall be paid into the State Revenue Fund -

(a) any amount deposited in terms of section 16 and any amount paid to the State by virtue of the provisions of section 9(1);

(b) the proceeds of the realization of any goods, property or assets in terms of section 19;

(c) any fines paid or recovered in consequence of the conviction of any person under section 30;

(d) all money paid to or recovered by the Minister in consequence of a removal in terms of section 27(6) of pollution of the sea by oil; and

(e) any other money which may become payable to the State by virtue of the provisions of this Act.

(2) Expenses incurred -

(a) to undertake or promote the research determined by the Minister, on any matter which, in the opinion of the minister, is connected with the pollution of the sea by oil;

(b) when the Minister deems it necessary or expedient

in the public interest, for defraying expenditure incurred in preventing or removing the pollution of the sea by oil in or discharged from ships, tankers or offshore installations and in connection with matters incidental thereto;

(c) for the payment of remuneration and allowances of persons engaged in terms of section 27(1) and persons referred to in section 27(3)(b);

(d) for the defraying of expenses incurred in removing, or in taking steps to prevent, pollution of the sea by oil, in terms of section 27(6);

(e) for the hire or purchase of equipment, buildings, machinery and accessories, apparatus, seagoing vessels, vehicles, aircraft and any other movable or immovable property deemed by the Minister to be necessary for or conducive to the performance of his functions in terms of the provisions of this Act;

(f) for the defraying of expenses incurred in the instruction of officers of the State and other persons in connection with pollution of the sea by oil and in the training of such officers and persons in the prevention and removal of such pollution and inactivities incidental thereto;

(g) for any purpose connected with the performance by the Minister of his functions in terms of the provisions of this Act; and

(h) for the defraying of expenses incurred by the Director-General which are incidental or conducive to the performance of his functions in terms of the provisions of this Act,

shall be defrayed out of money appropriated by Parliament for such purpose: Provided that for the purposes of paragraph (b) the defraying of expenditure incurred in preventing or removing pollution of the sea by oil in or discharged from any ship, tanker or offshore installation shall not exempt the owner of such ship, tanker or offshore installation from liability under this Act for payment of such expenditure.

[S.26 amended by s.1 of Act No. 59 of 1985 and substituted by s.3 of Act No.9 of 1990.]

**27. Sundry powers of Minister.**- (1) The Minister may, subject to the laws governing the public service, engage as many persons as he may deem necessary to perform such functions as may be required to be performed in order to carry out the provisions this Act.

(2) If a person who is or was employed by virtue of the provisions of subsection (1) caused the State any loss or damage because he -



(a) is or was responsible for a deficiency in money in the State Revenue Fund, or for the destruction of, or damage to, any property acquired with money from the State Revenue Fund or any other State property;

(b) due to any wilful act or omission on his part, is or was responsible for any claim necessitating any payment from the State Revenue Fund.

such loss or damage may be recovered from such person in the prescribed manner.

[Sub-s.(2) substituted by s.4 Act No. 9 of 1990]

(3)

(a) The Minister may establish such bodies as he may deem necessary to assist him in carrying out the provisions of this Act.

(b) The remuneration and other conditions of service of persons serving on any body contemplated in paragraph (a) shall from time to time be determined by the Minister with the concurrence of the Minister of Finance.

(4) The Minister may establish and maintain a patrol service by means of boats, ships and aircraft to patrol the prohibited area with a view to combating pollution of the sea by oil.

(5) The Minister may do all such other things as are incidental or conducive to the performance of his functions in terms of this Act.

(6) The Minister may cause steps to be taken to remove or prevent pollution of the sea by oil outside the prohibited area in such circumstances and on such conditions as he may deem fit.

**28. Regulations.** - (1) The Minister may make regulations -

(a) prescribing measures to be taken on board or in respect of a ship or a tanker when such ship or tanker is rendered incapable of sailing or manoeuvring under its own power as contemplated in section 21;

(b) prescribing the machinery and equipment to be installed and maintained on or in connection with a ship, tanker or offshore installation for the purposes of the removal or prevention of pollution of the sea by oil discharged or likely to be discharged from such ship, tanker or offshore installation during a transfer of oil as contemplated in section 21(1)(b) or, in the case of such ship or tanker, during the period when such ship or tanker has been rendered incapable of sailing or

manoeuvring under its own power as contemplated in section 21(1)(a);

(c) prescribing, in respect of ships or tankers registered in the Republic under the Merchant Shipping Act, 1951 (Act No. 57 of 1951), and in respect of ships or tankers not so registered but which ply between a port in the Republic or an offshore installation and any other port or installation similar to an offshore installation, the equipment to be carried on board such ships or tankers for use in preventing a discharge of oil, and standards for the maintenance of such equipment;

(d) as to the powers, duties and conditions of service of trustees appointed in terms of section 12(3);

(e) as to all matters which in terms of this Act are required or permitted to be prescribed by regulation,

and generally, for the better achievement of the objects and purposes of this Act.

(2) Regulations made under subsection (1) may prescribe for any contravention thereof or failure to comply therewith penalties not exceeding the penalties prescribed in section 30(2)(a).

**29. Delegation of powers** - The Minister as well as the Director-General may delegate to any person or to two or more persons any of the powers conferred upon them respectively in terms of the provisions of this Act other than, in the case of the minister, the provisions of section 28.

**30. Offences and penalties.**- (1) Any person who -

(a) contravenes or fails to comply with the provisions of -

(i) section 14(6); or

(ii) section 21(1);

(b) wilfully fails to comply with an order or requirement of the Minister in terms of -

(i) section 4(1);

(ii) section 4(2)(c);

(iii) section 5(3); or

(iv) section 6;

(c) hinders or obstructs any person in the performance of his functions by virtue of the provisions of -

- (i) section 4(2)(a);
- (ii) section 5(6);
- (iii) section 7; or
- (iv) section 22(1),

shall be guilty of an offence.

(2) Any person convicted of an offence referred to in -

- (a) section 3(4), 8(2), 13(7), 24(5) or subsection (1)(a)(i), shall be liable to a fine not exceeding R10 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;
- (b) subsection (1)(b)(iii), (b)(iv), c(i), (c)(ii), (c)(iii) or (c)(iv), shall be liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;
- (c) subsection (1)(a)(ii), shall be liable to a fine not exceeding R40 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;
- (d) section 2(1) or 13(6) or subsection (1)(b)(i) or (b)(ii), shall be liable to a fine not exceeding R200 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[Sub-s.(2) substituted by s.5 of Act No. 9 of 1990.]

(3) If any person -

- (a) admits to the Director-General that he has contravened any provision of this Act, or that he has failed to comply with any such provision with which it was his duty to comply;
- (b) agrees to abide by the decision of the Director-General; and
- (c) deposits with the Director-General such sum as that officer may require of him, but not exceeding the

maximum fine which may be imposed upon a conviction for the contravention or failure in question.

the Director-General may, after such enquiry as he deems necessary, determine the matter summarily and may, without legal proceedings, order by way of penalty the whole or any part of the said deposit to be forfeited.

[Sub.s(3) added by s.2 of Act No. 63 of 1987.]

(4) There shall be a right of appeal to the Minister, whose decision shall be final, from a determination or order of the Director-General under subsection (3) whereby a penalty exceeding R500 is imposed, provided such right is exercised within a period of three months from the date of such determination or order.

[Sub-s.(4) added by s.2 of Act No. 63 of 1987]

(5) The imposition of a penalty under subsection (3) shall be deemed not to be a conviction of an offence, but no prosecution in respect of the offence in question may thereafter be instituted.

[Sub-s.(5) added by s.2 of Act No. 63 of 1987.]

**31. Repeal of laws, and savings.**-(1) Subject to the provisions of subsection (2), the Prevention and Combating of Pollution of the Sea by Oil Act, 1971 (Act No. 67 of 1971), the Prevention and Combating of Pollution of the Sea by Oil Amendment Act, 1972 (Act No. 92 of 1972), and the Prevention and Combating of Pollution of the Sea by Oil Amendment Act, 1973 (Act No. 72 of 1973), are hereby repealed.

(2) Any notice, approval, authorization or document given, granted or issued and any other thing done under any provision of any law repealed by this Act shall, unless inconsistent with the provisions of this Act, be deemed to have been given, granted, issued or done under this Act.

**32. Short title and commencement.**- This Act shall be called the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.



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## Transport General Amendment Act No. 82 of 1985

[ASSENTED TO 28 SEPTEMBER, 1995]  
[DATE OF COMMENCEMENT: 6 OCTOBER, 1995]

*(Afrikaans text signed by the President)*

### ACT

**To amend the Railway Construction Act, 1985, and the Second Railway Construction Act, 1985, so as to provide for the payment of further moneys for certain expenses incurred; to amend the Maritime Zones Act, 1994, so as to substitute a definition; to empower the Minister to amend Schedule 2 by notice in the *Gazette*; and to amend the powers of the Minister to make regulations; and to validate certain registering authorities; and to provide for matters connected therewith.**

1. *Amends section 1 of the Railway Construction Act, No. 75 of 1985, by inserting subsection (2A)*

2. *Amends section 1 of the Second Railway Construction Act, No. 94 of 1985, by inserting subsection (2A)*

3. *Amends section 1 of the Maritime Zones Act, No. 15 of 1994, by substituting paragraph (c) of the definition of "installation".*

4. *Substitutes section 12 of the Maritime Zones Act, No. 15 of 1994.*

5. *Amends section 13 of the Maritime Zones Act, No. 15 of 1994, by deleting paragraph (b).*

6. **Validation of certain registering authorities.**-(1) If a local government body has been dissolved in terms of section 10 (3) (f) of the Local Government Transition Act, 1993 (Act No. 209 of 1993), and the rights, powers and obligations of such local government body have been taken over a transitional local council, a transitional metropolitan council or a transitional metropolitan substructure, and that local government body was appointed as a registering authority in terms of section (2(1) of the Road Traffic Act, 1989 (Act No. 29 of 1989), or deemed to be so appointed in terms of section 153 (2) of that Act, such transitional local council, transitional metropolitan council or transitional metropolitan substructure shall be deemed to have been duly appointed as the registering authority for the area for which, and upon the conditions

under which, the local government body concerned had been appointed as registering authority.

(2) Any power, duty or function exercised or performed, before the commencement of this Act, in terms of the Road Traffic Act, 1989, by a transitional council or a transitional substructure which is deemed to have been appointed as a registering authority in terms of subsection (1), shall be deemed to have been validly so exercised or performed.

7. **Short title.**- This Act shall be called the Transport Second General Amendment Act, 1995.

### TRANSPORT SECOND GENERAL AMENDMENT ACT NO. 82 OF 1985

[ASSENTED TO 28 SEPTEMBER, 1995]  
[DATE OF COMMENCEMENT: 6 OCTOBER, 1995]

*(Afrikaans text signed by the President)*

### ACT

**To amend the Railway Construction Act, 1985, and the Second Railway Construction Act, 1985, so as to provide for the payment of further moneys for certain expenses incurred; to amend the Maritime Zones Act, 1994, so as to substitute a definition; to empower the Minister to amend Schedule 2 by notice in the *Gazette*; and to amend the powers of the Minister to make regulations; and to validate certain registering authorities; and to provide for matters connected therewith.**

1. *Amends section 1 of the Railway Construction Act, No. 75 of 1985, by inserting subsection (2A)*

2. *Amends section 1 of the Second Railway Construction Act, No. 94 of 1985, by inserting subsection (2A)*

3. *Amends section 1 of the Maritime Zones Act, No. 15 of 1994, by substituting paragraph (c) of the definition of "installation".*

4. *Substitutes section 12 of the Maritime Zones Act, No. 15 of 1994.*

5. *Amends section 13 of the Maritime Zones Act, No. 15 of 1994, by deleting paragraph (b).*

**6. Validation of certain registering authorities.**-(1) If a local government body has been dissolved in terms of section 10 (3) (f) of the Local Government Transition Act, 1993 (Act No. 209 of 1993), and the rights, powers and obligations of such local government body have been taken over a transitional local council, a transitional metropolitan council or a transitional metropolitan substructure, and that local government body was appointed as a registering authority in terms of section (2(1) of the Road Traffic Act, 1989 (Act No. 29 of 1989), or deemed to be so appointed in terms of section 153 (2) of that Act, such transitional local council, transitional metropolitan council or transitional metropolitan substructure shall be deemed to have been duly appointed as the registering

authority for the area for which, and upon the conditions under which, the local government body concerned had been appointed as registering authority.

(2) Any power, duty or function exercised or performed, before the commencement of this Act, in terms of the Road Traffic Act, 1989, by a transitional council or a transitional substructure which is deemed to have been appointed as a registering authority in terms of subsection (1), shall be deemed to have been validly so exercised or performed.

**7. Short title.**- This Act shall be called the Transport Second General Amendment Act, 1995.



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## The Sea Fisheries Act No. 12 of 1988

[ASSENTED TO 14 MARCH, 1998][DATE OF COMMENCEMENT: 1 JULY, 1990]

(except ss.7 to 14 inclusive and ss. 27)

to 29 inclusive on 1 September, 1989)

(English text signed by the State President)

**as amended by**

Sea Fishery Amendment Act, No. 98 of 1990

Sea Fishery Amendment Act, No. 57 of 1992

General Law Third Amendment Act, No. 129 of 1993

[with effect from 1 September, 1993 - see title GENERAL LAW AMENDMENT ACTS]

Maritime Zones Act, No.15 of 1994

[with effect from 1 September, 1993 - see title GENERAL LAW AMENDMENT ACTS]

Sea Fishery Amendment Act, No. 74 of 1995

### ACT

**To provide for the conservation of the marine ecosystem and the orderly exploitation, utilization and protection of certain marine resources; for that purpose to provide for the exercise of control over sea fishery; and to provide for matters connected therewith.**

[Long title substituted by s.21 of Act No.57 of 1992.]

### ARRANGEMENT OF SECTIONS

Section

1. Definitions.

#### **PART I: GENERAL POLICY FOR CONSERVATION AND UTILIZATION OF SOUTH AFRICAN LIVING MARINE RESOURCES**

2. Minister may determine general policy.

#### PART II

##### APPLICATION AND ADMINISTRATION OF ACT

3. Application of Act.

4. Delegation of powers.

5. Fishery control officers.

6. Honorary fishery officers.

#### PART III

##### SEA FISHERY ADVISORY COMMITTEE

7. Establishment of Sea Fishery Advisory Committee.

8. Constitution of advisory committee.

9. Term of office and vacating of office by members or alternate members of advisory committee.

10. Meetings of advisory committee.

11. Subcommittees.

12. Allowances and remuneration of members of advisory committee and subcommittees and alternate members of advisory committee.

#### PART IV

##### INDUSTRIAL BODIES AND INTEREST GROUPS IN DIFFERENT BRANCHES

##### OF FISHING INDUSTRY

13. Recognition of industrial bodies and interest groups by Minister.

14. Powers of industrial bodies and interest groups.

#### PART V

##### QUOTA BOARD

15. Establishment of Quota Board.

16. Constitution of board.
17. Alternate members, chairman and vice-chairman, term of office, removal from office, filling in vacancies, meetings, allowances and remuneration, and vacating of office.
18. Functions of board.
19. Determination of maximum mass of fish available for quotas.
20. Suspension, cancellation and reduction of quotas.
21. Inquiries in connection with quotas.
22. Reconsideration of decisions of board.
23. Keeping of register of quotas.
24. Transferability of quotas.

**PART VI: GRANTING AND TERMINATION OF RIGHTS OF EXPLOITATION**

25. Granting and termination of rights of exploitation by Minister.

**PART VII: PROMOTION OF FISHING INDUSTRY**

26. Development of fishing harbours and other facilities.
27. Sea Fishery Fund.
28. Appropriation of fund.
29. Levy on fish and fish products and certain other marine resources.

**PART VIII: CONTROL OVER CATCHING, PROCESSING, EXPORT AND DISPOSAL OF FISH**

30. Licensing of fishing boats, and premises, vehicles or vessels as factories.
31. Licensing of implements.
32. Exemption from licensing.
33. Protection of fish.
34. Marine reserves.
35. Restrictions on quantity of fish which may be caught or processed.
36. Control over disposal of fish.

37. Control over export of fish.

**PART IX: CONTROL OVER CERTAIN OTHER MARINE RESOURCES**

38. Control over collection and removal of aquatic plants and shells.
39. Issue of permits.
40. Transfer of permits and appeal to Minister.

**PART X: MISCELLANEOUS PROVISIONS**

41. Exemptions.
42. Obtaining of information by Minister.
43. Adoption or ratification of conventions, treaties or agreements.
44. Appeal by aggrieved person.

**PART XI: REGULATIONS, TARIFFS AND FEES**

45. Regulations.
46. Tariffs and fees.

**PART XII: OFFENCES AND PENALTIES, FORFEITURE AND SEIZURE, AND PAYMENT OF REMUNERATION TO INFORMANT**

47. Offences and penalties.
48. Forfeiture and seizure.
49. Payment of remuneration to informant.

**PART XIII: JURISDICTION, EVIDENCE, LIMITATION OF LIABILITY, FOREIGN VESSELS IN FISHING ZONE, POWERS OF FISHERY CONTROL OFFICERS AND POLICE OFFICERS, AND APPLICATION OF ACT**

50. Jurisdiction and evidence.
51. Limitation of liability.
52. Use of foreign vessels as fishing boats and factories in fishing zone.
53. Powers of fishery control officers and police officers.
54. Application of Act to Prince Edward Islands, Walvis Bay and certain islands and rocks.



**PART XIV: REPEAL OF LAWS, AND SAVINGS,  
SHORT TITLE AND COMMENCEMENT**

55. Repeal of laws, and savings.

56. Short title and commencement.

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

**“advisory committee”** means the sea Fishery Advisory Committee established in terms of section 7;

**“aquatic plant”** means any kind of plant, alga or other plant organism found in the sea or in or on the sea-shore;

**“board”** means the Quota Board established by section 15;

**“catch”** means to take out of the sea or the sea-shore in any manner whatsoever, to remove from the sea-shore, possess in a net, whether the net is in the water or not, possess in, upon or next to a vessel, or to land;

**“department”** means the Department of Environment Affairs;

**“director-general”** means the Director-General: Environment Affairs;

**“exploiter”** means a person to whom a right of exploitation has been granted in terms of section 25;

**“factory”** means any premises, vehicle or vessel on or in which fish or fish products are salted, dried, smoked, packed, chilled, frozen, canned or otherwise treated for commercial purposes, or fish is kept alive for commercial purposes, excluding a fish shop, supermarket, hotel, boarding house, restaurant, refreshment or tea room or eating house, or a fishing boat in or on which fish which is caught off such fishing boat is only gutted, salted or chilled for the preservation thereof;

**“fish”** means every species of sea animal, whether vertebrate or invertebrate, including the spawn or larvae of such sea animal, excluding any seal or seabird;

**“fisherman”** means a person who catches or attempts to catch fish on a full-time or part-time basis, whether such fish is found in the sea or in or on the sea-shore, with the purpose of selling or attempting to sell or otherwise disposing or attempting to dispose of such fish at a consideration, including a person assisting therewith;

**“fishery control officer”** means an incumbent of a post or rank referred to in section 5;

**“fishing boat”** means any vessel which is used by a fish-

erman for catching fish or which is used for the transport or processing of fish caught by a fisherman;

[Definition of “fishing boat” substituted by s.1 (a) of Act No.57 of 1992]

**“fishing harbour”** means a declared fishing harbour referred to in section 26 (1);

**“fishing industry”** means the whole of the trade engaged in the catching, breeding or acquisition by any other means of fish, the processing thereof and the provision or delivery for trade purposes of such fish or fish products, excluding a fish shop, supermarket, hotel, boarding house, restaurant, refreshment or tea room or eating house;

**“fishing zone”** means the territorial waters of the Republic and the exclusive economic zone referred to in sections 4 and 7 of the Maritime Zones Act, 1994, respectively.

[Definition of “fishing zone” substituted by s.15 (1) of Act No.15 of 1994]

**“fish product”** means any product, whether in a processed form or not, wholly or partly derived from fish;

**“fund”** means the Sea Fishery Fund referred to in section 27;

**“high-water mark”** means the highest line reached by the water of the sea during ordinary storms during the most stormy period of the year, excluding and exceptional or abnormal flood;

**“implement”** means any net or other apparatus or means used for in connection with catching fish;

**“licence”** means a licence issued in terms of this Act;

[Definition of “licence” substituted by s.1 (b) of Act No.57 of 1992]

**“local authority”** means any institution or body referred to in section 84 (1) (f) of the Provincial Government Act, 1961 (Act No.32 of 1961), the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No.18 of 1936), and the Natal Parks Board established under the Nature Conservation Ordinance, 1974 (Ordinance 15 of 1974), of Natal;

[Definition of “local authority” substituted by s.1 (a) of Act No.98 of 1990]

**“low-water mark”** means the lowest line to which the water of the sea recedes during periods of ordinary spring tides;

**“master”**, in relation to a fishing boat or vessel, means -

(a) the person having command or control of the fishing boat or vessel; or

(b) the person having control of the catching of fish from the fishing boat or vessel;

[Definition of “master” substituted by s.1 (c) of Act No.57 of 1992]

**“Minister”** means the Minister of Environment Affairs;

[Definition of “Minister” substituted by s.1 (d) of Act No.57 of 1992]

**“nautical mile”** means the international nautical mile of 1 852 metres;

**“officer”** means an officer as defined in section 1 (1) of the Public Service Act, 1984 (Act No.111 of 1984);

**“permit”** means a permit issued in terms of this Act;

[Definition of “permit” substituted by s.1 (e) of Act No.57 of 1992]

**“police officer”** means a member of the Force as defined in section 1 of the Police Act, 1958 (Act No. 7 of 1958);

**“prescribed”** means prescribed by regulation;

**“quota”** means the maximum mass or quantity of fish of a particular species allocated to a person which he may catch or receive in any other manner obtain during a specified period and may utilize on the authority of a permit;

[Definition of “quota” substituted by s.1 (f) of Act No.57 of 1992]

**“quota holder”** means the person to whom a quota has been allocated in terms of section 18;

**“regulation”** means a regulation made and includes a notice issued under this Act;

[Definition of “regulation” substituted by s.1 (b) of Act No.98 of 1990.]

**“Republic”** means the provinces mentioned in section 1 of the Republic of South Africa Constitution Act, 1983 (Act No.110 of 1983), the harbour and settlement of Walvis Bay and the islands and rocks mentioned in Schedule 2;

**“right of exploitation”** means a right to utilize living

marine resources or aquatic plants for commercial purposes on the authority of a permit;

[Definition of “right of exploitation” substituted by s.1 (g) of Act No. 57 of 1992.]

**“sea”** means the water and the bed of the sea within the fishing zone, including the sea-shore, but excluding the water and the beds of tidal rivers and tidal lagoons;

[Definition of “sea” substituted by s.1 (h) of Act. No. 57 of 1992.]

**“sea-shore”** means the water and the land between the low-water mark and the high water mark;

**“shell”** means the shell or portion of the shell of any the sea animal found in the sea or on the sea-shore;

**“territorial waters”** means the sea within a distance of 12 nautical miles from the low water-mark;

**“this Act”** includes any regulation or notice made or issued under this Act;

**“tidal lagoon”** means any lagoon in which a rise and fall of the water level takes place as a result of the tides;

**“tidal river”** means that part of any river in which a rise and fall of the water level takes place as a result of the tides;

**“vehicle”** means any vehicle in, on or with which goods can be transported;

**“vessel”** means any water navigable craft of any type whatsoever, whether self-propelled or not; and

**“year”** means any period of 12 consecutive months.

## PART I

### GENERAL POLICY FOR CONSERVATION AND UTILIZATION OF SOUTH AFRICAN LIVING MARINE RESOURCES

[Heading amended by s. 2 of Act No. 57 of 1992.]

**2. Minister may determine general policy.** - The Minister may from time to time by notice in the *Gazette* determine the general policy with regard to the conservation and utilization of the South African living marine



resources to be applied with a view to the protection and sustainable utilization of the marine ecosystem and living marine resources and derivatives thereof, to the greatest benefit of the present and future inhabitants of the Republic, regard being had to economic, social and cultural values.

[S. 2 substituted by s. 3 of Act No.57 of 1992.]

## PART II

### APPLICATION AND ADMINISTRATION OF ACT

**3. Application of Act.** - This Act shall not apply in respect of -

- (a) fish found in water which does not at any time during the year form part of the sea;
- (b) the catching of fish in a tidal lagoon, tidal river or estuary along the coast of the province of Natal or from the sea-shore along the said coast, excluding that part of the said coast in an area which consists of land referred to in section 21 (1) of the Development Trust and Land Act, 1936 (Act No.18 of 1936), or in a scheduled Black area as defined in section 49 of the said Act; or
- (c) an area bordering on the sea which has in terms of the National Parks Act, 1976 (Act No.57 of 1976), been declared to be a national park or part of such park, or which has been declared a lake area under the Lake Areas Development Act, 1975 (Act No.39 of 1975).

**4. Delegation of powers.** - (1) The Minister may -

- (a) delegate any power conferred upon him by or under this Act, excluding the power to make regulations to any officer of the department on the conditions determined by him; and

[Para.(a) substituted by s.4 of Act No.57 or 1992.]

- (b) by notice in the *Gazette* delegate, in respect of any particular species of fish, aquatic plants, or shells, in general or in respect of a defined area, any power conferred upon him by or under this Act, excluding the power to make regulations, to any person, including a local authority or body of persons.

(2) Any person to whom any power has been delegated

under subsection (1) may, with the written approval of the Minister, delegate that power to any person to whom the Minister could have delegated it.

(3) The director-general may delegate any powers conferred upon him by or under this Act to an officer in the department on the conditions determined by him.

(4) No power in respect of land in an area referred to in section 21 (1) of the Development Trust and Land Act, 1936 (Act No.18 of 1936), or in a scheduled Black area as defined in section 49 of the said Act, shall be delegated under subsection (1) or (2) unless the Minister of Constitutional Development and Planning consents thereto.

**5. Fishery control officers.** - (1) The Minister may, subject to the provisions of the Public Service Act, 1984 (Act No.111 of 1984), designate posts in the department of which the incumbents shall be fishery control officers.

(2) The Minister may by notice in the *Gazette* and with the concurrence of -

- (a) the Administrator of a province, subject to the provisions of the Public Service Act, 1984 (Act No.111 of 1984), designate posts in that administration or a statutory body under the control of such Administrator;
- (b) the South African Bureau of Standards referred to in section 2 of the Standards Act, 1982 (Act No.30 of 1982), designate posts in that Bureau;
- (c) a local authority or statutory body, designate posts in such local authority or statutory body;
- (d) the National Parks Board of Trustees established in terms of section 5 (1) of the National Parks Act, 1976 (Act No.57 of 1976), designate posts in that Board.

of which the incumbents shall be fishery control officers.

(3) The Minister may by notice in the *Gazette*

- (a) with the concurrence of the Minister of Defence, designate a particular rank or ranks in the South African Navy; and
- (b) with the concurrence of the Minister of Justice, designate a particular rank or ranks in the Prisons Service,

of which the incumbents shall be fishery control officers, and may so alter or cancel such designation.

(4) The Minister may, with the concurrence of the Minister of Finance, determine the additional remuneration



(if any) which is payable to the incumbents of posts designated under subsection (2).

(5) The incumbents of posts designated under subsections (1) and (2) shall be furnished by the director-general or any other officer designated by the director-general for that purpose with a prescribed identity card, and whenever such incumbent exercises any power or performs any duty or function in terms of this Act, he shall, at the request of any person affected thereby, produce that identity card to such person for inspection.

**6. Honorary fishery officers.** - (1) The director-general may by written notice to any person, appoint such person as an honorary fishery officer.

(2) An honorary fishery officer shall be invested with the prescribed powers.

(3) The director-general may at any time, without giving reasons, withdraw the appointment of an honorary fishery officer in writing if he deems it desirable.

(4) Any person appointed under subsection (1) shall be furnished by the director-general or any other officer designated by the director-general for that purpose with a certificate of appointment, and whenever such person exercises any power or performs any duty or function in terms of this Act, he shall, at the request of any person affected thereby, produce that certificate to such person for inspection.

### PART III

#### SEA FISHERY ADVISORY COMMITTEE

**7. Establishment of Sea Fishery Advisory Committee.**- The Minister shall establish a committee called the Sea Fishery Advisory Committee, to advise him in relation to -

- (a) any matter on which he has to consult the advisory committee in terms of this Act;
- (b) any matter which the Minister refers to the advisory committee for investigation and advice.

**8. Constitution of advisory committee.** - (1) The advisory committee shall consist of the number of persons, but at least five, appointed by the Minister who in his opinion possess the necessary expertise in their relevant fields of study to make a substantial contribution towards the functions of the advisory committee.

(2) The Minister shall appoint an alternate member for each member of the advisory committee, and any alternate member so appointed may attend and take part in the proceedings at any meeting of the advisory committee during the absence, or vacancy in the office, of the member for whom he has been appointed as alternate member.

(3) (a) The Minister shall appoint the chairman and vice-chairman of the advisory committee for the period and subject to the conditions determined by him.

(b) If the chairman cannot act as chairman for one or other reason the vice-chairman shall act as chairman and shall execute the functions of the chairman.

**9. Term of office and vacating of office by members or alternate members of advisory committee.** - (1) A member or alternate member of the advisory committee holds office for such period, but not exceeding three years, as the Minister may determine at the time of his appointment, and may be appointed again at the end of his term of office.

(2) A member or alternate member of the advisory committee shall vacate his office if he -

- (a) becomes insolvent;
- (b) becomes mentally disturbed;
- (c) is convicted of an offence and is sentenced to imprisonment without the option of a fine;
- (d) is absent from three consecutive meetings of the advisory committee without leave of the chairman;
- (e) resigns by written notice to the Minister; or
- (f) is removed from office under subsection (3).

(3) The Minister may at any time remove a member or alternate member of the advisory committee from office if in his opinion there are sufficient reasons for doing so.

(4) If a member or alternate member of the advisory committee ceases to hold office for some or other reason, the Minister may appoint a person in his place for the unexpired period of his term of office.

**10. Meetings of advisory committee.** - (1) The first meeting of the advisory committee shall be held at a time and place determined by the chairman, and thereafter the advisory committee shall meet at such times and places as the advisory committee may from time to time determine.

(2) The chairman may at any time convene a special



meeting of the advisory committee at the time and place determined by him.

(3) The Minister shall determine the number of members of the advisory committee who shall form a quorum for a meeting.

(4) If both the chairman and the vice-chairman are absent from a meeting of the advisory committee, the members present shall elect a person from among their number to preside at the meeting.

(5) The decision of the majority of the members of the advisory committee present at a meeting shall constitute a decision of the advisory committee, and in the event of an equality of votes on any matter, the person presiding shall have a casting vote in addition to his deliberative vote.

(6) No decision taken by the advisory committee or act performed under the authority of the advisory committee shall be invalid merely by reason of a vacancy on the advisory committee or because any person not entitled to sit as a member of the advisory committee, sat as such a member at the time when the decision was taken or the act was authorized by the majority of the members of the advisory committee present at the time and who were entitled to sit as members.

(7) For the purposes of this section "member" includes an alternate member present at the relevant meeting of the advisory committee during the absence, or vacancy in the office, of the member for whom he has been appointed as alternate member.

**11. Subcommittees.** - (1) The advisory committee may constitute one or more subcommittees of the advisory committee, which may, subject to the directions of the advisory committee, perform such functions of the advisory committee as the advisory committee may determine.

(2) A subcommittee shall consist of one or more members of the advisory committee and, if the advisory committee deems it necessary, one or more persons whom the advisory committee may deem fit, and the advisory committee may at any time dissolve or reconstitute such subcommittee.

(3) One of the members of a subcommittee shall be designated by the advisory committee as chairman of the subcommittee.

**12. Allowances and remuneration of members of advisory committee and subcommittee and alternate members of advisory committee.** - The director-general may pay to a member and alternate member of the advisory committee, and a member of a subcommittee,

who is not in the full-time employment of the State, from moneys appropriated by Parliament for the purpose, the allowances and remuneration which the Minister may determine in general or in a specific case, with the concurrence of the Minister of Finance.

## PART IV

### INDUSTRIAL BODIES AND INTEREST GROUPS IN DIFFERENT BRANCHES OF FISHING INDUSTRY

**13. Recognition of industrial bodies and interest groups by Minister.** - The Minister may, by notice in the Gazette, recognize any industrial body or interest group in a branch of the fishing industry which in the opinion of the Minister is representative of the specific branch, as industrial body or interest group of that branch.

**14. Powers of industrial bodies and interest groups.** - An industrial body or interest group recognized under section 13, shall have the power to furnish information and to advise the advisory committee in respect of any matter in the fishing industry on which it is consulted by the advisory committee.

## PART V

### QUOTA BOARD

**15. Establishment of Quota Board.** - There shall be a board called the Quota Board, which shall be a juristic person.

**16. Constitution of board.** - The board shall consist of the number of members appointed by the Minister, but any person who has a direct or indirect interest in any manner whatsoever in the fishing industry, or whose spouse or child has such an interest, or a person in the employment of the State, shall subject to section 17 (2) not be appointed as a member or alternate member of the board.

**17. Alternate members, chairman and vice-chairman, term of office, removal from office, filling of vacancies, meetings, allowances and remuneration, and vacating of office.** - (1) The provisions of sections 8 (2) and (3), 9 (1), (3) and (4), 10 and 12 shall apply *mutatis*



*mutandis* to the board, and for the purposes of such application a reference in the said sections to the advisory committee or subcommittee shall be construed as a reference to the board.

(2) The Chairman of the board shall possess at least a three-year diploma or degree in law conferred by a South African university as well as at least five years' experience in the administration of justice.

[Sub-s. (2) substituted by s. 2 of Act No.98 of 1990.]

(3) (a) A member or alternate member of the board shall vacate his office if he or his spouse or child acquires a direct or indirect interest in any manner whatsoever in the fishing industry or that member is employed by the State.

(b) The provisions of section 9 (2) are applicable *mutatis mutandis* to a member or alternate member of the board.

**18. Functions of board.** - (1) The functions of the board are to

(a) recommend to the Minister for his approval guidelines for the determination of quotas and the granting of rights of exploitation;

(b) allocate quotas on application to persons in the different branches of the fishing industry, subject to subsection (3) and section 19, on the conditions determined by the board and in accordance with the approved guidelines.

(c) grant rights of exploitation in terms of section 25 and in accordance with the approved guidelines.

[Sub-s. (1) substituted by s. 5 of Act No.57 of 1992.]

(2) Application for the allocation of quotas shall be made on the prescribed form.

(3) Quotas to foreign states desiring to exercise fishing activities within the fishing zone, excluding the territorial waters, may only be allocated by the Minister.

**19. Determination of maximum mass of fish available for quotas.** - The Minister shall from time to time, after consultation with the advisory committee determine, on the conditions that he may deem fit, the maximum mass of fish of a particular species which is available for the allocation of quotas by the board.

**20. Suspension, cancellation and reduction of quotas.** - (1) If a quota holder -

(a) furnishes information which is not true or complete

in connection with his application for the allocation of a quota;

(b) contravenes or fails to comply with a condition subject to which a permit has been issued;

(c) contravenes a provision of this Act or fails to comply therewith;

(d) is at any time convicted of any offence or for any other reason is not a proper person to perform the business with regard to the quota allocated to him, the board may request the quota holder by way of a written notice sent by registered post to his last known address, to furnish reasons in writing within a period of 21 days from the date of the notice, why the quota which has been allocated to him, should not be suspended, cancelled or reduced.

(2) If after the lapse of the period referred to in subsection (1), no reasons have been furnished or the board is of the opinion that the reasons furnished are not well-founded or acceptable, as the case may be, and that the relevant quota should be suspended, cancelled or reduced, the board shall recommend to the Minister that he -

(a) suspends the quota in question;

(b) cancels the quota in question with effect from a certain date; or

(c) reduces the quota in question.

(3) The Minister may -

(a) suspend the quota in question for the period determined by him;

(b) cancel the quota in question from a date determined by him;

(c) reduce the quota in question; or

(d) decide not to suspend, cancel or reduce the quota.

(4) On the suspension of a quota under subsection 3 (a), the quota holder shall be deemed not to be a quota holder for the period for which the quota has been so suspended.

(5) A suspension, cancellation or reduction of a quota shall be recorded by the director-general in the register referred to in section 23.

**21. Inquiries in connection with quotas.** - (1) The board may with regard to the allocation of quotas and the formulation of guide-lines for the allocation of quotas request the director-general to inquire into any matter in order to enable the board to perform its functions properly.



[Sub-s. (1) substituted by s.6 of Act No.57 of 1992.]

(2) For the purposes of such inquiry the director-general may appoint a committee to conduct the inquiry.

(3) Such committee may -

(a) order any person who in its opinion may be able to give information of material importance concerning the subject of the inquiry, or who is believed to have in his possession or custody or control any register, book, document or thing which may have a bearing on that subject, to appear before such committee with such register, book, document or thing;

(b) call upon, and administer an oath to, or accept an affirmation from, any person present at the inquiry, whether he has been or could have been ordered under paragraph (a);

(c) interrogate or require any person who has been called upon under paragraph (b) to produce a register, book, document or thing referred to in paragraph (a).

(4) An order for the attendance before such committee shall be in the form determined by such committee, and shall be signed by the chairman, who shall be appointed for the purpose of the inquiry by the director-general.

(5) The law relating to privilege as applicable to a person summoned to give evidence or to produce a register, book, document or thing before a court of law, shall be applicable in respect of the interrogation of, or production of a register, book, document or thing by, a person referred to in subsection (3).

**22. Reconsideration of decisions of board.** - (a) If any person is aggrieved by a decision of the board with regard to the allocation or non-allocation of a quota, the board shall, at the written request of such person to the board within 30 days after the publication of such decision, reconsider such decision, and the decision of the board after such reconsideration shall be final.

(b) Any person referred to in paragraph (a) shall be entitled to appear before the board and be heard, whether personally or by means of a representative, and to give evidence himself and call other persons as witnesses.

**23. Keeping of register of quotas.** - The director-general shall keep a register of all quotas allocated under section 18, and such register shall contain the prescribed particulars, and shall be available for inspection by the public at the prescribed places and times.

**24. Transferability of quotas.** - (1) A quota or a part of a quota allocated in terms of section 18 is transferable in accordance with the guide-lines determined by the Minister after consultation with the Competition Board established by section 3 of the Maintenance and Promotion of Competition Act, 1979 (Act No.96 of 1979), and announced in a manner that he may deem fit.

(2) Guide-lines referred to in subsection (1) may provide for the transfer of quotas -

(a) in the fishing industry in general; or

(b) in respect of a particular branch of the fishing industry.

(3) If a quota holder desires to transfer his quota or a part thereof to any other person, he shall apply in the prescribed manner to the board for such transfer and supply the prescribed information.

[Sub-s. (3) substituted by s. 7 (a) of Act No.57 of 1992.]

(4) If the proposed transfer complies with the guide-lines referred to in subsection (1), the board may approve the application.

[Sub-s. (4) substituted by s. 7 (a) of Act No.57 of 1992.]

(5) The board must inform the director-general of every transfer, and the director-general must amend the register referred to in section 23 accordingly.

[Sub-s. (5) added by s. 7 (b) of Act No.57 of 1992.]

## PART VI

### GRANTING AND TERMINATION OF RIGHTS OF EXPLOITATION

**25. Granting and termination of rights of exploitation by Minister.** - (1) The Minister shall on application in the prescribed manner grant a right of exploitation to a person who at the date of commencement of this Act either had access to the sea in any branch of the fishing industry or had such access in the industry of collecting aquatic plants or shells, and such grant shall be made on the basis of such person's historical performance in the said industry:

(2) New entrants to any branch of the industries referred to in subsection (1), shall -



(a) where the branch concerned is not controlled by way of quotas, apply to the Minister in the prescribed manner for the granting of a right of exploitation;

(b) where the branch concerned is controlled by way of quotas, apply to the board in the prescribed manner for the granting of a right of exploitation,

and the Minister or the board, as the case may be, may approve such application subject to the conditions determined by the Minister or the board, or refuse it.

[Sub-s. (2) substituted by s. 8 of Act No. 57 of 1992.]

(3) A right of exploitation -

(a) shall be granted for a specified period, and the exploiter shall, before the lapse of such period, apply in the prescribed manner for the extension of such right;

(b) shall only be alienated with the prior approval of the Minister or the board, as the case may be, on the conditions determined by the Minister or the board, and such alienation may only take place if the quota (if any), or a portion thereof, or any permit, connected with the right of exploitation, is also transferred to the same person; and

(c) may be suspended or terminated by the Minister if he is of the opinion that a conviction of an exploiter of an offence in terms of this Act, is such that his continued participation is no longer in the interest of either the resource in question or the industry in question or the resource and the industry.

[Sub-s. (3) substituted by s. 8 of Act No. 57 of 1992.]

## PART VII

### PROMOTION OF FISHING INDUSTRY

**26. Development of fishing harbours and other facilities.** - (1) (a) Subject to paragraph (b) the Minister may by notice in the *Gazette* declare a harbour or a defined portion or a harbour of a defined area of the sea and the sea-shore, to be a fishing harbour.

(b) If the Minister desires to declare a commercial harbour or a portion of such harbour to be a fishing harbour, he shall obtain the prior approval of the Minister of Transport therefor.

(2) The Minister may within or outside any fishing harbour, in the sea, on the sea-shore or on adjacent land, from funds appropriated for that purpose by Parliament, erect or acquire and maintain and control the use of buildings, works and facilities which in the opinion of the Minister are necessary for the promotion of the interests of the fishing industry or not detrimental to such interests, and may allow that such buildings, works and facilities be erected, acquired, maintained or controlled by another person.

[Sub-s. (2) substituted by s. 9 of Act No. 57 of 1992.]

**27. Sea Fishery Fund.** - (1) The Sea Fisheries Research Fund established by section 19 of the Sea Fisheries Act, 1973 (Act No. 58 of 1973), shall continue to exist, under the name of the Sea Fishery Fund, notwithstanding the repeal of the said Act by section 55, and into that fund there shall be paid -

(a) moneys in respect of levies collected by virtue of the provisions of section 29;

(b) moneys appropriated by Parliament for the realization of the objects of the fund;

(c) interest on investments;

(d) moneys which, with the approval of the Minister and with the concurrence of the Minister of Finance, may accrue to the fund from any other source; and

(e) interest recovered under section 29 (2) (d).

(2) (a) The fund shall be administered by the director-general with the concurrence of the Minister of Finance, in accordance with an estimate or a supplementary or revised estimate of revenue and expenditure approved by the Minister in respect of every financial year, which shall end on 31 March, and no expenditure payable from the fund may be incurred except in accordance with such estimate of expenditure.

(b) The director-general shall be the accounting officer charged with the responsibility of accounting for moneys received and expenditure incurred by the fund.

(3) The director-general shall invest moneys in the fund not required for immediate use with the Public Investment Commissioners.

(4) Any unexpended balance in the fund at the end of a financial year shall be carried forward as a credit in the fund to the next financial year.



(5) The Auditor-General shall annually audit the books and accounts of the fund.

**28. Appropriation of fund.** - (1) The Minister may, from moneys available in the fund, undertake research and development in connection with sea fishery, including research and development with relation to -

- (a) the utilization, conservation and protection of the living resources of the sea;
- (b) the utilization of the sea and the sea-shore in a so far as they may be necessary to protect the living resources of the sea;
- (c) improved methods for the catching of fish;
- (d) the breeding of fish or the cultivation of aquatic plants; and
- (e) the manufacturing of fish products or products wholly or partially obtained from aquatic plants and the packing, processing and marketing of such products.

(2) The Minister may, from moneys available in the fund, arrange for the undertaking of research and development contemplated in subsection (1) by any competent institution of State or any person or body, or grant financial assistance in connection therewith on the conditions determined by him with the concurrence of the Minister of Finance.

(2A) Money in respect of levies collected by virtue of the provisions of section 29 in respect of fish, fish products, aquatic plants and shells or collected by virtue of the provisions of section 20 of the Sea Fisheries Act, 1973, in respect of fish or any product thereof, within the fishing zone, including the territorial waters, of the Republic of Namibia, shall be paid out of the fund to the Republic of Namibia.

[Sub-s. (2A) inserted by s. 3 of Act No.98 of 1990.]

(3) The moneys in the fund shall be appropriated for the purposes referred to in this section by the Minister on the recommendation of the advisory committee and with the concurrence of the Minister of Finance.

**29. Levy on fish and fish products and certain other marine resources.** - (1) The Minister may, after consultation with the advisory committee and with the concurrence of the Minister of Finance, by notice in *Gazette* impose a levy on all fish or fish of a species specified in the notice which is landed by fishermen, and any product thereof, and aquatic plants and shells collected and removed from the sea-shore or the sea.

(2) Such a notice -

- (a) shall contain the amount of the levy and the times and places at which the levy is payable, and may contain such other directions by the Minister as he may deem necessary for the collection of the levy and the payment thereof into the fund (including the manner in which the mass of fish or fish products shall be determined for the purposes of the calculation of the levy);

[Para. (a) substituted by s. 10 (a) of Act No. 57 of 1992.]

- (b) may impose different levies in respect of different species of fish, different fish products, aquatic plants or shells, or different exploiters or participants in the relevant industry, or different areas;
- (c) may contain an exemption from payment of the levy in respect of fish, fish products, aquatic plants or shells landed at a place or in an area specified in the notice, if the proceeds of the levy, in the opinion of the Minister, would not justify the expenses of collecting such levy;
- (d) may prescribe that interest is payable at the rate determined in the notice on any levy which is received after the date on which such levy was payable;
- (e) may prescribe penalties which do not exceed the penalties prescribed by section 47, for any contravention of or failure to comply with the provisions of the notice; and
- (f) may at any time be amended or withdrawn by the Minister by notice in the *Gazette*.

[Para. (f) added by s. 10 (c) of Act No. 57 of 1992.]

(3) The director-general may recover the amount in respect of a levy and any interest which is due and payable in terms of a notice under subsection (1), in a competent court of law.

(4) The director-general may by notice sent by registered post -

- (a) direct any person who is liable for payment of a levy, to furnish the director-general with the particulars mentioned in the notice within a period specified in the notice; and
- (b) require any person who is liable for payment of a levy, to render returns to the director-general, and prescribe the form in which and the times when the returns shall be rendered, the particulars the returns shall



contain and the statements which shall accompany the returns.

## PART VIII

### CONTROL OVER CATCHING, PROCESSING, EXPORT AND DISPOSAL OF FISH

**30. Licensing of fishing boats, and premises, vehicles or vessels as factories.** -(1) Subject to the provisions of section 52, no person may use any vessel as a fishing boat or, as the case may be, any premises, vehicle or vessel as a factory unless it has been licensed in terms of this section.

(2) Any person desiring to use any vessel, premises or vehicle as a fishing boat or a factory, as the case may be, shall apply in the prescribed manner to the director-general for the issue of a licence to him therefor.

(3) If the director-general is convinced that the applicant has a right to the vessel, premises or vehicle in question, he shall, subject to the provisions of subsection (4), approve the application, and upon payment of the prescribed fee issue the licence in the name of the applicant in question subject to the conditions determined in or in terms of subsection (5).

(4) (a) The director-general may refuse to approve an application for a licence if he is satisfied that -

- (i) information furnished in the application is incorrect or incomplete;
- (ii) in the case of a vessel, the vessel in question is not intended for use as a fishing boat of factory; or
- (iii) the approval of the application will not be in the interest of the fishing industry or a resource in question in the fishing industry.

[Para. (a) substituted by s. 11 (a) of Act No. 57 of 1992.]

(b) If the Minister is satisfied that -

- (i) it is in the interest of the fishing industry or a resource in question in the fishing industry that the licensing of additional vessels as fishing boats, in general or in respect of a specified area or place, should not be allowed;

[Sub-para. (i) substituted by s.11 (b) or Act No.57 of 1992.]

(ii) the harbour facilities in a specified fishing harbour are inadequate to accommodate more fishing boats than the number already making use of those facilities; or

(iii) the harbour, landing, storing or handling facilities in a particular fishing harbour are inadequate to deal satisfactorily with more than the catch of the fishing boats already making use of that harbour.

he may direct the director-general to discontinue, until he directs otherwise, the licensing of additional vessels in general or, as the case may be, in respect of that area, place or fishing harbour.

[Sub-s. (4) amended by s.11 (c) of Act No.57 of 1992]

(5) (a) A licence is valid for the period mentioned therein, which period shall be determined by the director-general.

(b) A licence is issued by the director-general subject to the conditions determined by him, including conditions with relation to -

- (i) the allocation of a registration number to a fishing boat and the manner in which it shall be displayed on that vessel;
- (ii) the use of the harbour, landing, storing or handling facilities in a particular fishing harbour;
- (iii) the area within which or the place where the vessel may be used as a fishing boat;
- iv) fish belonging to a particular species which may not be caught by means of the use of that fishing boat; and
- (v) such other matters as the Minister may determine in general or in respect of a particular fishing boat.

(6) The licensee of a licensed fishing boat shall within 21 days after -

- (a) the changing of his name or address;
- (b) an alteration to the fishing boat in question, including the change of the name thereof, in such a manner that the description thereof in the licence is incorrect or inapplicable; or
- (c) he has sold the vessel or ceased to use it as a fishing



boat, furnish the director-general with particulars of such change in writing.

(7) The director-general may -

- (a) if the licensee of a fishing boat fails to comply with a condition referred to in subsection (5) (b) or with the provisions of subsection (6);
- (b) in the case of a conviction of such licensee of any offence in terms of this Act in respect of a fishing boat, or
- (c) if such licensee, without the written permission of the director-general, fails to use the vessel in question as a fishing boat for a continuous period of 12 months or longer, by notice sent by registered post to the last known address of the licensee, cancel the licence in question, or suspend it for such period as he may deem fit.

[Sub-s. (7) substituted by s. 11 (d) of Act No.57 of 1992.]

(8) If the owner or lessee of a vessel registered in a foreign state is a South African citizen or, in the case of a company, is a company as defined in section 1 of the Companies Act, 1973 (Act No.61 of 1973), or, in the case of a close corporation, is a corporation as defined in section 1 of the Close Corporations Act, 1984 (Act No.69 of 1984), or is the owner or lessee of any boat which is permitted to catch fish in the fishing zone, excluding the territorial waters, the Minister may, notwithstanding the provisions of section 52 and on the application of such owner or lessee, direct the director-general to issue a licence or permit, as the case may be, in respect of that vessel for such period and area as may be determined by the Minister.

31. ....

[S.31 substituted by 2.4 of Act No.98 of 1990 and repealed by s.12 of Act No.57 of 1992.]

32. ....

[S.32 repealed by s. 12 of Act No. 57 of 1992.]

33. ....

[S.33 amended by s.5 of Act No. 98 of 1990 and repealed by s.12 of Act No. 57 of 1992.]

**34. Marine reserves.** - (1) The Minister may by notice in the *Gazette* -

- (a) set aside an area as a marine reserve for the protection within such reserve, of fish in general or fish

belonging to a particular species or any aquatic plant; and

- (b) assign a name to such reserve in the notice.

(2) A notice under subsection (1) -

- (a) shall contain a description of the boundaries of the area which is set aside;
- (b) may stipulate which fish or aquatic plants, if any, may be caught or collected or may not be caught or collected; and
- (c) may determine the conditions on which such fish may be disturbed or caught.

(3) The stipulations contemplated in subsection (2) (b) shall be made according to a management plan approved by the Minister in respect of a marine reserve.

(4) The director-general may in a marine reserve perform any act or allow the performance of any act and take any measures which are not incompatible with the objects for which the reserve has been set aside.

(5) No marine reserve or any part thereof shall be withdrawn from such setting aside except with the approval, by resolution, of Parliament, and the Minister shall by notice in the *Gazette* give notice of such withdrawal.

35. ....

[S.35 amended by s.6 of Act No. 98 of 1990 and repealed by s. 12 of Act No. 57 of 1992.]

**36. Control over disposal of fish.** - (1) ....

[Sub-s. (1) amended by s.7 of Act No.98 of 1990 and deleted by s.13 of Act No.57 of 1992.]

(2) ....

[Sub.s (2) deleted by s. 13 of Act No. 57 of 1992.]

(3) ....

[Sub.s (3) deleted by s. 13 of Act No. 57 of 1992.]

(4) ....

[Sub.s (4) deleted by s. 13 of Act No. 57 of 1992.]

(5) ....

[Sub.s (5) deleted by s. 13 of Act No. 57 of 1992.]



(6) .....

[Sub.s (6) deleted by s. 13 of Act No. 57 of 1992.]

(7) (a) The Minister may, at the request of all parties involved in an agreement, if the parties cannot agree on a price, determine the minimum price at which fishermen may deliver fish belonging to a particular species or a product thereof, to a quota holder.

(b) A determination of a minimum price by the Minister under paragraph (a) is final.

**37. Control over export of fish.** - (1) The Minister may, subject to the provisions of any other law pertaining to the import and export of goods and with a view to the protection and utilization of any fish resource, by notice in the *Gazette* make regulations prohibiting that fish, fish belonging to a particular species or a particular fish product be exported in general or to a specified country or area -

(a) except on the authority of a permit issued by him; or

(b) unless it has been approved for export by a person assigned by him for that purpose.

[Sub.s. (1) amended by s.8 of Act No.98 or 1990.]

(2) The Minister may by notice sent to him by registered post order any person who exports or has exported fish, to furnish the director-general or any other person mentioned in the notice, at specified times within a specified period, with the particulars mentioned in respect of fish or fish products which such person has available for export or has exported,

[Sub-s. (2) substituted by s. 14 (a) of Act No. 57 of 1992.]

(3) A permit referred to in subsection (1) (a) may determine -

(a) the quantity of fish or fish products which may be exported;

(b) the period within which, the place from where, the country or area to where and the manner in which the export shall take place; and

(c) such other conditions as the Minister may deem fit.

(4) .....

[Sub-s. (4) deleted by s.14 (b) of Act No.57 of 1992.]

## PART IX

### CONTROL OVER CERTAIN OTHER MARINE RESOURCES

**38. Control over collection and removal of aquatic plants and shells.** - (1) Notwithstanding the provisions of the Sea-shore Act, 1935 (Act No.21 of 1935), and subject to the provisions of any regulation made under section 45, no person shall collect and remove or cause to be collected and removed any aquatic plants or shells from the sea or the sea-shore, except for his own use and in the prescribed quantities, without being the holder of a permit issued by the Minister and otherwise than in accordance with the conditions contained in the permit.

(2) The Minister may, subject to such conditions and on payment of such fees as determined by him with the concurrence of the Minister of Finance, on application by any person, issue a permit for the collection and removal of aquatic plants or shells from the sea or the sea-shore: Provided that -

(a) before issuing a permit in respect of an area situated in or bordering on the area of jurisdiction of a local authority, he shall consult that local authority;

(b) if he is of opinion that the issue of a permit will encroach upon the enjoyment of the sea or the sea-shore by the general public or upon the rights of an interested person in the area concerned, he shall direct the applicant to -

(i) notify the interested person in writing of his application; and

(ii) cause a notice drawing the attention of the public to his application to be published in an Afrikaans and English newspaper circulating in the area in question, in which they are requested to submit in writing to the director-general for the Minister's decision with a specified period of at least 30 days from the date of the notice, any objections to his application.

(3) A permit, concession or agreement with relation to the collection or removal of aquatic plants or shells from the sea or from the sea-shore or a delegation of any power to a local authority in respect thereof in terms of the Sea-shore Act, 1935 (Act No.21 of 1935), the Sea Fisheries Act, 1940 (Act No.10 of 1940), or the Sea Fisheries Act, 1973 (Act No.58 of 1973), which was still in force immediately before the commencement of this Act, shall



be deemed respectively to be a permit issued or a delegation made in terms of this Act.

**39. Issue of permits.** - (1) A permit issued to any person authorizing the performance of any act which under this Act may be performed under the authority of such permit, shall -

(a) be issued for a specified period, which shall be stated in the permit;

[Para.(a) substituted by s. 15 (a) of Act No.57 of 1992.]

(b) be issued subject to the conditions determined by the Minister or the director-general, as the case may be, which shall be contained in the permit;

(c) be issued subject to the payment of the fees (if any) determined by the Minister with the approval of the Minister of Finance.

[Para. (c) substituted by s.15 (c) of Act No.57 of 1992.]

(2) A permit referred to in subsection (1) may at any time be amended or cancelled by the Minister or the director-general, according to who issued it.

**40. Transfer of permits and appeal to Minister.** - (1) Notwithstanding any provision to the contrary contained in any law, no person to whom a licence or permit has been issued in terms of any provision of this Act, may transfer such licence or permit to any other person without the consent of the director-general, and then only subject to the conditions determined by him.

(2) Any person who has applied in accordance with the provisions of this Act for the issue of a licence or permit by the director-general, and who feels aggrieved by the decision of the director-general in relation to -

(a) the refusal to issue a licence or permit in accordance with such application; or

(b) a condition on which such licence or permit has been issued, may appeal against such decision to the Minister in the prescribed manner and within the prescribed period, and such person shall furnish the reasons on the basis of which the appeal is made.

(3) The Minister shall consider and appeal under subsection (2) and may, subject to the conditions determined by him, ratify, set aside or amend the decision, and the director-general shall notify the appellant of such ratification, setting aside or amendment in writing.

## PART X

### MISCELLANEOUS PROVISIONS

**41. Exemptions.** - (1) .....

[Sub.s (1) deleted by s.16 of Act No.57 of 1992.]

(2) If in the opinion of the Minister there are sound reasons for doing so, he may, subject to the conditions determined by him, in writing exempt any person or local authority from a provision of this Act, and he may at any time cancel or amend an exemption so granted.

**42. Obtaining of information by Minister.** - The Minister may, subject to the provisions of the Statistics Act, 1976 (Act No.66 of 1976), direct any person or particular category of persons carrying on any business or engaging in any activity in connection with the catching, transportation, treating, processing, refrigeration, freezing, collection or removal, as the case may be, of fish, fish products, aquatic plants or shells, to furnish him within the period specified in the direction with such information in respect of that business or activity as may be so specified and may be considered necessary for the purposes of the administration of the provisions of this Act.

**43. Adoption or ratification of conventions, treaties or agreements.** - (1) The State President may by proclamation in the *Gazette* add to this Act any Schedule in which a translation of any convention, treaty or agreement relating to sea fishery matters which has been accepted by the Republic or adopted or ratified on behalf of the Republic is included.

(2) The State President may do all things necessary -

(a) to ratify or cause to be ratified on behalf of the Republic any amendment of any convention, treaty or agreement referred to in subsection (1); or

(b) to ratify or cause to be ratified on behalf of the Republic any convention treaty or agreement which may from time to time be adopted in substitution of a convention, treaty or agreement accepted or ratified on behalf of the Republic; and may by proclamation in the *Gazette* -

(i) amend the appropriate Schedule to this Act to give effect to any amendment ratified under paragraph (a); and



(ii) substitute for the convention, treaty or agreement appearing in the appropriate Schedule to this Act, the convention, treaty or agreement which has been ratified in terms of paragraph (b).

(3) The Minister shall lay a copy of any proclamation issued under subsection (1) or (2), on the Table in Parliament within 14 days after publication of such proclamation in the *Gazette* if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

**44. Appeal by aggrieved person.** - Any person who feels aggrieved by a decision of a person to whom any power has been delegated under section 4 (1), (2) or (3), may appeal in the prescribed manner and within the prescribed period to the director-general or the Minister, according to who delegated the power, and shall furnish the prescribed information at the time of appeal.

## PART XI

### REGULATIONS, TARIFFS AND FEES

**45. Regulations.** - (1) The Minister may after consultation with the advisory committee make regulations with regard to -

(a) any matter which in terms of this Act or may be prescribed by regulation;

(aA) the prohibition of the possession or use of any implement or kind of implement for the catching of fish or fish belonging to a particular species or category, in general or within a defined area, indefinitely or during a specified period, unless the implement has been licensed and a permit for its use has been issued by the director-general;

[Para.(aA) inserted by s.17 (b) of Act No. 57 or 1992.]

(b) the nature and construction of any implement or apparatus which may or shall be used in connection with the catching of fish and the handling, or determination of the mass, thereof at a factory or which may not be so used;

(c) the methods whereby fish or fish belonging to a particular species shall be caught or may not be caught;

(d) the manner in which the size of fish shall for the purposes of this Act be determined;

(e) the method by which the mass of fish which has been caught shall be determined, the condition or form in which such fish shall be when landed and the mass is determined, and the apparatuses which shall be used for the landing, or the determination of the mass, of fish;

(f) the manner in which boundary beacons, buoys, notices, notice boards or other marks used in connection with the catching or protection of fish shall be placed, maintained, used, protected and controlled;

(g) the circumstances in which fish which has been caught shall be returned to the sea or may not be returned to the sea or shall be released from an implement or may not be released;

(h) the disposal of fish seized or forfeited or declared forfeited in terms of this Act;

(i) the control over and management of a fishing harbour;

(j) access to, or prohibition from access to, and the use of a fishing harbour or any part thereof by any vessel or vehicle;

[Para. (j) substituted by s.17 (c) of Act No.57 of 1992.]

(k) the prohibition from entering or access to any fishing harbour of any fishing boats or other vessels registered or licensed in any foreign state or owned by the citizens thereof or in which a foreign state or its citizens have a controlling interest or which a foreign state or its citizens hold under charter;

(kA) the regulation of and control over the artificial reproduction and breeding of marine species;

[Para. (kA) inserted by s.17 (d) of Act no. 57 of 1992.]

(l) research and development regarding the protection and utilization of marine resources;

[Para. (l) substituted by s.17 (e) of Act No.57 or 1992.]

(lA) the prohibition that fish or fish belonging to a particular species or category -

(i) be caught or disturbed, in general or in a defined area, indefinitely or during a specified period, by any person or any category or persons;



(ii) be landed at a place other than a specified place;

(iii) be caught, disturbed, possessed or transported unless the fish complies with any specified requirements with regard to length, mass or any other specified biological characteristic or state;

(iv) be caught otherwise than in a specified manner;

(v) be caught or disturbed by means of a specified implement or in a specified manner;

(vi) be transferred at sea from one vessel or fishing boat to another vessel or fishing boat,

[Sub-para. (vi) inserted by s. 66 of Act No. 129 of 1993.]

except on the authority or a permit issued by the director-general and in accordance with the conditions determined by him in the permit;

[Para.(1A) inserted by s.17 (f) of Act No.57 of 1992.]

(1B) the prohibition that more than a specified quantity or mass of any fish, or fish belonging to a particular species or category, be caught, disturbed, possessed or transported during the course of any or a specified year or any other period, in general or within a defined area, by any person or fisherman or fishing boat or by all the participants in the fishing industry jointly, except on the authority of a permit issued by the director-general and in accordance with the conditions determined by him the permit;

[Para. (1B) inserted by s. 17 (f) of Act No. 57 or 1992.]

(1C) the prohibition of any fisherman or the master of any fishing boat from catching or attempting to catch fish in any manner unless -

(i) such fisherman or master furnishes the director-general with prescribed information;

(ii) in the case of a fishing boat, an observer designated by the director-general is present on the boat and prescribed tracking apparatus has been installed on board;

[Para (1C) inserted by s. 17 (f) of Act No. 57 of 1992.]

(1D) the prohibition of the supply of ships' stores, excluding medical supplies, without the approval of the Minister or otherwise than in accordance with conditions determined by him, to a fishing boat, factory or vessel registered or licensed in a foreign state and used as a fishing boat or factory;

[Para. (1D) inserted by s. 17 (f) of Act No. 57 of 1992.]

(1E) the prohibition that fish or fish belonging to a particular species or category or any product of such fish, in general or in a defined area, indefinitely or during a specified period -

(i) be sold or offered for sale or delivered by any or a specified person or any category of persons to any other person or to any person belonging to any category of persons;

(ii) be purchased or acquired or received by any or a specified person or any category of persons from any person or from a person belonging to any category of persons, except on the authority of a permit issued by the director-general and in accordance with the conditions determined by him in the permit;

[Para (1E) inserted by s. 17 (f) of Act No. 57 of 1992.]

(1F) the prohibition that fish or fish belonging to a particular species or category be processed in a factory, in general or in a defined area, indefinitely or during a specified period, except on the authority of a permit issued by the director-general and in accordance with the conditions determined by him in the permit.

[Para (1F) inserted by s. 17 (f) of Act No. 57 of 1992.]

(m) any other matter which he may deem desirable for the conservation or protection of fish or fish food;

(n) the making of surveys and the gathering of information regarding -

(i) the requirements and demand in respect of fish products;

(ii) the potential of fish resources; and

(iii) the catching, transport, treating, processing, refrigeration, freezing or removal of fish, fish products, aquatic plants or shells.,

including regulations providing for

(aa) the registration of persons involved in any of the said activities;

(bb) the inspection of any fishing boat or factory;

(cc) the collection of data by persons involved in the said activities, the records which shall be kept and the returns which shall be rendered to the director-general by such persons and the times when such returns shall be submitted;

- (o) the constitution, quorum, functions and procedure at meetings of a committee appointed by the director-general under section 21 (2), the term of office of the members thereof and, with the concurrence of the Minister of Finance, the allowances and remuneration payable to such members not in the full time employment of the State;
- (p) the identification of fish or product or fish which are packed, in order to exercise control over the utilization of a fish resource; and
- (q) the application of the provisions of any convention, treaty or agreement with relation to sea fishery matters which has been adopted or ratified on behalf of the Republic or has been accepted by the Republic.

[Sub-s. (1) amended by s.17 (a) of Act No. 57 of 1992.]

(2) Different regulations may be made under subsection (1) in respect of different areas or different species of fish or different fish products or such other matters as the Minister may deem necessary.

(3) A regulation made under subsection (1) may provide that a person who contravenes or fails to comply with a provision thereof, shall be guilty of an offence and on conviction be liable to a fine not exceeding

R50 000 or imprisonment for a period not exceeding six years or to both such fine and such imprisonment.

[Sub-s. (3) substituted by s.9 of Act No. 98 of 1990]

**46. Tariffs and fees.** - The Minister may, with the concurrence of the Minister of Finance, determine the fees payable in respect of -

- (a) the issuing of any licence or permit required in terms of this Act and in respect of which fees are payable;
- (b) the use of a fishing harbour or the facilities available in such harbour; and
- (c) levies on fish, fish products or the other marine resources to which this Act is applicable.

## PART XII

### OFFENCES AND PENALTIES, FORFEITURE AND SEIZURE, AND PAYMENT OF REMUNERATION TO INFORMANT

**47. Offences and penalties.** - (1) Any person who -

- (a) catches or kills fish by means of any poison or narcotic substance;
- (b) catches or kills fish by detonating any substance in the sea, except on the authority of a permit issued by the director-general and in accordance with the conditions of such a permit;
- (c) catches fish by means of any implement other than an implement prescribed in respect thereof;
- (d) catches fish by means of any method other than a method prescribed in respect thereof;
- (e) catches or has in his possession any fish of which the size is less than the size prescribed in respect thereof or which does not comply with the other biological requirements or characteristics prescribed in respect thereof;
- (f) possesses, sells or displays or offers for sale any fish or any portion of fish the catching of which is prohibited by this Act;
- (g) contravenes the provisions of section 30 (1) or (6) or 38 (1) or of a regulation made under section 37 (1) or fails to comply with an order referred to in section 21 (3) (a), 37 (2) or 42;

[Para. (g) substituted by s.10 (a) of Act No. 98 of 1990 and by s. 18 (a) of Act No. 57 of 1992.]

(h) without being the holder of a permit as provided by



this Act, performs any act for which a permit is required or contravenes or fails to comply with a condition on which the permit was issued;

- (i) returns to the sea or allows to be returned to the sea or abandons in any other place any edible, usable or marketable dead fish, either whole or in processed form, and thus causes the fish to be wasted or to create a pollution hazard;

[Para (i) substituted by s. 18 (b) of Act No. 57 of 1992.]

- (j) exports or imports any live fish, except in terms of a permit issued by the Minister or his delegate, or otherwise than in accordance with the conditions on which the permit was issued;

- (k) dumps or allows to enter or permits to be dumped or discharged in the sea anything which is or may be injurious to fish, fish food or aquatic plants, or which may disturb or change the ecological balance in any area of the sea, or which may detrimentally affect the marketability of fish or aquatic plants, or which may hinder the catching of fish;

- (l) fails to comply with any requirement or order by a fishery control officer, police officer or honorary fisher officer under this Act, or gives any false information in response to such a requirement or order;

- (m) resists or hinders any fishery control officer, police officer or honorary fishery officer in the exercise of any power or the performance of any duty in terms of this Act;

- (n) falsely represents himself to be a fishery control officer or an honorary fishery officer;

- (o) uses any fishing boat or any implement without the consent of the owner or master thereof;

[Para. (o) substituted by s.10 (b) of Act No.98 of 1990.]

- (p) allows any fishing boat or any implement of which he is the licensee to be used for the catching of fish in contravention of the provisions of this Act,

[Para. (p) substituted by s.10 (b) of Act No. 98 of 1990.]

shall be guilty of an offence and liable on conviction to a fine not exceeding R50 000 or to imprisonment for a period not exceeding six years or to both such fine and such imprisonment.

[Sub-s. (1) amended by s.10 (c) of Act No. 98 of 1990.]

- (2) (a) If any person is convicted of an offence in terms

of this Act, the court shall summarily enquire into and determine the monetary value of any advantage which he may have gained in consequence of that offence; and, in addition to any other punishment that may be imposed in respect of that offence, impose a fine equal to three times the amount so determined and, in default of payment thereof, imprisonment for a period not exceeding one year.

[Para. (a) substituted by s.10 (d) of Act No. 98 of 1990.]

- (b) A magistrate's court shall have jurisdiction to impose an additional penalty referred to in paragraph (a), even though that penalty may, either alone or together with any other punishment imposed by the court, exceed the punitive jurisdiction of a magistrate's court.

**48. Forfeiture and seizure.** - (1) The court convicting any person of an offence in terms of this Act may, in addition to any other penalty it may impose -

- (a) in the case of a first conviction, declare any fish, aquatic plants, shells or implement in respect of which the offence was committed or which was used in connection with the commission thereof, or any rights of the convicted person thereto, to be forfeited to the State; and

- (b) in the case of a second or subsequent conviction, declare such fishing boat, vessel or vehicle so used, or any rights of the convicted person thereto, to be forfeited to the State, and cancel, or suspend for such period as the court may think fit, any registration done in respect of the convicted person or any licence or permit issued or granted to him in terms of this Act.

- (2) (a) A declaration of forfeiture in terms of section (1) shall not affect any rights which any person other than the convicted person may have to such boat, vessel, vehicle or implement, if it is proved that he had taken all reasonable steps to prevent the use thereof in connection with the offence or could not have prevented the commission of the offence.

- (b) The provisions of section 35 (4) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall mutatis mutandis apply in respect of any such rights.

- (3) Any fish, aquatic plants, shells, fishing boat, vessel, vehicle or implement or any right thereto forfeited to the State under the provisions of this section, may be sold or destroyed or may be dealt with in such other manner as the Minister may direct.

- (4) The court convicting any person of an offence in terms of section 52 (4) shall, in addition to any other penalty it may impose -



(a) in the case of section 52 (4) (a), declare the vessel, implement, fish and fish products;

[Para (a) substituted by s.19 of Act No. 57 of 1992.]

(b) in the case of section 52 (4) (b), declare the implement, fish and fish products,

[Para. (b) substituted by s. 19 of Act No. 57 of 1992.]

which were used in connection with the commission of the offence or in respect of which the offence was committed, as the case may be, to be forfeited to the State, unless the fish or fish products have been forfeited to the State in terms of section 53 (5), and cancel or suspend for such period as the court may think fit any licence or permit issued or granted to him in terms of this Act.

[Sub-s. (4) added by s. 11 of Act No. 98 of 1990.]

**49. Payment of remuneration to informant.** - The director-general may, from moneys appropriated by Parliament for the purpose and with the concurrence of the Minister of Finance, pay to any person, excluding a person in the employment of the State, who furnished him with any information or material of proof with relation to an offence in terms of this Act, irrespective of whether such information or material of proof has led to a prosecution and conviction before a competent court, a remuneration in cash which, in the opinion of the director-general, is reasonable and fair in the circumstances.

### PART XIII

#### JURISDICTION, EVIDENCE, LIMITATION OF LIABILITY, FOREIGN VESSELS IN FISHING ZONE, POWERS OF FISHERY CONTROL OFFICERS AND POLICE OFFICERS, AND APPLICATION OF ACT

**50. Jurisdiction and evidence.** - (1) If any person is charged with having committed any offence in terms of this Act on or in the sea, any court whose area of jurisdiction borders on or includes any part of the sea in the vicinity where the offence has allegedly been committed, shall be competent to try the charge, and the offence shall, for all purposes connected with or consequential upon the trial of the charge, be deemed to have been committed within the area of jurisdiction of that court.

(2) If any fishing boat, vessel or vehicle has been used in connection with any offence in terms of this Act, or if any fish, aquatic plants, shells or implement in respect of or by means of which an offence in terms of this Act has been committed, is found or proved to have been upon or in any fishing boat, vessel or vehicle -

(a) any person who was on board such fishing boat or vessel or in or on the vehicle at the time when the offence was committed, shall be deemed to be guilty of an offence, unless he proves that he did not commit the offence, did not take part in the commission thereof and could not have prevented the commission thereof; and

(b) the offence shall, unless contrary is proved, be deemed to have been committed in respect of all fish, aquatic plants, shells or implements which were found or are proved to have been upon or in such fishing boat, vessel or vehicle at such time.

[Sub-s. (2) substituted by s.12 of Act No. 98 of 1990.]

(3) In any prosecution for a contravention of this Act -

(a) based on any act alleged to have been performed in a particular area, the act in question shall be deemed to have been performed in such area;

(b) any information obtained by means of any instrument or chart used to determine any distance or depth, shall be deemed to be correct, unless the contrary is proved.

(4) If in any prosecution for an offence in terms of this Act it is proved that in any area in the sea within a distance of eight kilometres from any factory, including any factory other than that defined in section 1, or any other installation, any fish or fish food has been or is being injured or has died or is dying or the marketability thereof or of aquatic plants has been or is being adversely affected, or the ecological balance has been or is being disturbed or changed, it shall be presumed, until the contrary is proved, that it has been or is being caused by something discharged from that factory or installation into the sea.

(4A) (a) If any person is found with more than the prescribed quantity or mass of fish in his possession or custody, he shall be deemed to have caught such fish, unless the contrary is proved.

(b) If any diving equipment and west-coast or east-coast rock lobster are found on board a vessel or fishing boat, such rock lobster shall be deemed to have been caught by means of the diving equipment, unless the contrary is proved.



[Sub-s. (4A) inserted by s. 68 of Act No. 129 of 1993.]

(5) In any prosecution for an offence in terms of this Act, it shall be no defence that the accused had no knowledge of some fact or other or did not act intentionally.

**51. Limitation of liability.** - (1) The State, the Minister, a member of the board or any person in the employment of the State shall not be liable by virtue of anything done in good faith under the provisions of this Act.

(2) The State, the Minister or any person in the employment of the State shall not be liable (except in the case of any intentional act or omission on the part of any such person) to any person who, except in the performance of any duty or function in terms of this Act or any other law

(a) makes use of any aircraft, fishing boat, vessel or vehicle which is the property or under the control of the State;

(b) is present in any fishing harbour or on an island; or

(c) leaves any fishing boat or vessel or any other property in a fishing harbour or makes use of the facilities of a fishing harbour,

or to the spouse or any dependant of any such person, for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to any property caused by or arising out of or in any manner connected with the use of any aircraft, fishing boat, vessel or vehicle referred to in paragraph (a), the presence referred to in paragraph (b) or the presence of any property or the use of any facilities referred to in paragraph (c).

**52. Use of foreign vessels as fishing boats and factories in fishing zone.** - (1) The State President may on the conditions determined by him enter into an agreement with a foreign state whereby a vessel registered in that foreign state is permitted, subject to the provisions of this section, to operate as a fishing boat or factory within the fishing zone, excluding the territorial waters.

[Sub-s. (1) substituted by s. 20 of Act No. 57 of 1992.]

(2) If an agreement contemplated in subsection (1) provides that a vessel registered in the foreign state in question may be used as a fishing boat or factory within the fishing zone, excluding the territorial waters, the Minister may direct the director-general to issue on application by the owner of that vessel a permit in respect of that vessel authorizing it to be so used as a fishing boat or factory.

(3) A permit contemplated in subsection (2) shall be is-

sued for such period, subject to such conditions and restrictions and against payment of such fees as may be determined by the Minister with the concurrence of the Minister of Finance, and the Minister may at any time and at his own discretion cancel such permit and so amend or alter such conditions, restrictions or fees.

(4) An owner or master of a vessel registered in a foreign state who uses such vessel as a fishing boat or factory, or prepares it for such use -

(a) within the fishing zone without a permit being issued in terms of subsection (2) or section 30 (8) in respect thereof;

(b) within the fishing zone in contravention of or without complying with any condition on which a permit has been issued in terms of subsection (2) in respect thereof,

shall be guilty of an offence and liable on conviction to a fine of at least R250 000 but not exceeding R1 000 000;

[Sub-s. (4) substituted by s. 13 (a) of Act No. 98 of 1990.]

(5) Any person who without lawful cause or in contravention of any condition on which a permit has been issued, transfers fish or fish products outside a harbour or fishing harbour from a vessel referred to in subsection (4), to any other vessel, shall be guilty of an offence and liable on conviction to a fine of at least R250 000 but not exceeding R500 000.

[Sub-s. (5) added by s. 13 of Act No. 98 of 1990]

**53. Powers of fishery control officers and police officers.** - (1) A fishery control officer generally or specially authorized thereto by the Minister, and a police officer may -

(a) board any fishing boat or vessel, enter any factory, any premises or place used for the storage or sale of fish, fish products, aquatic plants or shells and enter any vehicle used for the transport or sale of fish, fish products aquatic plants or shells, and perform on such fishing boat, premises, place, vessel or vehicle or in that factory such acts as may be necessary to ascertain whether the provisions of this Act were or are being complied with;

(b) examine any implement or object which he has reasonable grounds to suspect is being used or intended for use in the catching or handling of fish, the processing of fish products or the collection of aquatic plants or shells;

(c) subject to the provisions of subsection (3), if he has



reasonable grounds to suspect that an offence in terms of this Act has been committed in respect of fish, fish products, aquatic plants or shells or has been or is about to be committed in respect of or by means of any implement, and that such fish, fish products, aquatic plants, shells or implement is upon any premises or at any place or upon any fishing boat, vessel or vehicle or in any factory, at any time. enter upon and search such premises, place, fishing boat, vessel, vehicle or factory and search any person thereupon or therein, and seize any such fish, fish products, aquatic plants or shells, implement, fishing boat, vessel or vehicle, as well as any books or other documents on or in such premises, place, fishing boat, vessel or vehicle or in such factory;

- (d) if he has reasonable grounds to suspect that any fishing boat, premises, place, vessel, vehicle or factory has been or is being used in connection with any offence in terms of this Act, or that any fish, fish products, aquatic plants or shells, or implement as to which there are reasonable grounds for suspecting that an offence in terms of this Act has been committed in respect thereof or by means thereof, is or has been on any fishing boat, premises, place, vessel or vehicle or in any factory, require the persons on such fishing boat, premises place, vessel or vehicle or in such factory, to furnish him with their names and addresses or require the licensee of such fishing boat to furnish him with their names and addresses of the master and of the members of the crew of such fishing boat;
- (e) by a prescribed signal order the master of a fishing boat to stop such boat or to sail to a harbour indicated by the fishery control officer or police officer;
- (f) order the master of a fishing boat to remove it at a specified time from a fishing harbour or not to bring it into a fishing harbour -
- (i) if the fishing boat is a fishing boat referred to in this subsection; or
- (ii) if, irrespective of where the fishing boat is registered, any person who is or at any time was a member of the crew of such fishing boat, was at any time convicted, in terms of a law which is or was in force in the Republic, of any offence committed on such fishing boat while it was within the fishing zone; or
- (iii) if, irrespective of where the fishing boat is registered, the fishing control officer or police officer is satisfied, upon reasonable grounds, that such fishing boat was at any time used within the fishing zone in connection with any activity that constituted an offence in terms of any law;

- (g) question any person who, in his opinion, may be capable of furnishing any information which he may require, and for that purpose require a fishing boat, vessel or vehicle to be stopped;
- (h) require any person to produce to him any invoices, delivery notes or other documents in his possession in connection with any fish or fish products which are or in his opinion may be the subject of any criminal case in terms of this Act, and in his discretion seize such invoices, notes or other documents for submission to and disposal of by a court;
- (i) require any person employed on a fishing boat, vessel or vehicle or at or in a factory, to assist him in the examination of any container, implement or fish on such fishing boat, vessel or vehicle or in such factory, in order to ascertain whether the provisions of this Act have been complied with in connection therewith.

(2) A fishery control officer shall in the exercise of his powers under subsection (1) be deemed to be a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(3) Whenever any fishery control officer or police officer exercises any of his powers under this section, he may only enter or search a dwelling in accordance with the provisions of the Criminal Procedure Act, 1977.

(4) The powers conferred by subsection (1) may, in respect of any fishing boat licensed in terms of this Act or any vessel used as a fishing boat in the fishing zone, and in respect of any person or any fish or implement thereon, be exercised also outside the fishing zone.

(5) Any fish, fish products, aquatic plants or shells or implement seized under subsection (1) (c), shall be forfeited to the State: Provided that -

- (a) in the event of the fish, fish products, aquatic plants or shells or implement forming the subject of a prosecution, the court may set aside the forfeiture and
- (b) in any other case the Minister may set aside the forfeiture, if the owner of the fish, fish products, aquatic plants or shells or implement, as the case may be, satisfies the Minister, within 30 days after seizure, that no offence was committed by him or by any other person with his knowledge or consent, in respect of the fish, fish products, aquatic plants or shells or by means of the implement:

Provided further that fish, fish products, aquatic plants or shells so seized may be sold or destroyed at any time



after the seizure, and if the forfeiture is set aside in terms of paragraph (a) or (b), the proceeds of the sale (if any) shall be handed over to the owner.

**54. Application of Act to Prince Edward Islands, Walvis Bay and certain islands and rocks.** - This Act shall also apply to -

- (a) the Prince Edward Islands as defined in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948);
- (b) the harbour and settlement of Walvis Bay; and
- (c) the islands and rocks mentioned in Schedule 2.

## PART XIV

### REPEAL OF LAWS, AND SAVINGS, SHORT TITLE AND COMMENCEMENT

**55. Repeal of laws, and savings.** - (1) Subject to the provisions of subsection (2) the laws mentioned in Schedule 1 are hereby repealed to the extent indicated in column 3 thereof.

(2) A registration of, or any licence in respect of, a fishing boat, factory or implement and any permit or permission for the performance of any act in connection with fish or fish products under any provision of a law referred to in subsection (1), shall be deemed to be an appropriate registration, licence, permit or permission in terms of the corresponding provision of this Act (if any), respectively, for the unexpired portion of the period for which it would have been valid had this Act not been passed.

**56. Short title and commencement.** - (1) This Act shall be called the Sea Fishery Act, 1988, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.

(2) Different dates may be determined in terms of subsection (1) in respect of different provisions of this Act.

## Schedule 1

### SEA FISHERY AMENDMENT ACT NO.98 OF 1990

[ASSENTED TO 28 JUNE, 1990][DATE OF  
COMMENCEMENT: 19 OCTOBER, 1990]

(English text signed by the State President)

#### ACT

**To amend the Sea Fishery Act, 1988, so as to amend a certain definition; to provide for the payment of money in respect of certain levies to the Republic of Namibia; to provide for the making of regulations in respect of certain matters; to increase the penalties in respect of certain offences; to further regulate declarations of forfeiture of certain things by the court; to create a certain presumption regarding certain goods in respect of which an offence has been committed; to regulate anew the use of foreign vessels in the fishing zone; and to create an offence in respect of the transfer of fish outside a fishing harbour from a foreign vessel to any other vessel; and to provide for incidental matters.**

1. Amends section 1 of the Sea Fishery Act, No.12 of 1988, as follows: -paragraph (a) substitutes the definition of "local authority"; and paragraph (b) substitutes the definition of "regulation".

2. Amends section 17 of the Sea Fishery Act, No.12 of 1988, by substituting section (2).

3. Amends section 28 of the Sea Fishery Act, No. 12 of 1988, by inserting subsection (2A).

4. Substitutes section 31 of the Sea Fishery Act, No.12 of 1988.

5. Amends section 33 (1) of the Sea Fishery Act, No.12 of 1988, by substituting the words preceding paragraph (a).

6. Amends section 35 (1) of the Sea Fishery Act, No. 12 of 1988, by substituting the words preceding paragraph (a).

7. Amends section 36 (1) of the Sea Fishery Act, No. 12 of 1988, by substituting the words preceding paragraph (a).

8. Amends section 37 (1) of the Sea Fishery Act, No. 12 of 1988, by substituting the words preceding paragraph (a).

9. Amends section 45 of the Sea Fishery Act, No. 12 of 1988, by substituting sub-section (3).

10. Amends section 47 of the Sea Fishery Act, No. 12 of 1988, as follows: -paragraph (a) substitutes subsection (1) (g); paragraph (b) substitutes subsection (1) (o) and (p); paragraph (c) substitutes the words following upon subsection (1) (p); and paragraph (d) substitutes subsection (2) (a).

11. Amends section 48 of the Sea Fishery Act, No. 12 of 1988, by adding subsection (4).

12. Amends section 50 of the Sea Fishery Act, no. 12 of 1988, by substituting subsection (2).

13. Amends section 52 of the Sea Fishery Act, No. 12 of 1988, as follows: -paragraph (a) substitutes subsection (4); and paragraph (b) adds subsection (5).

14. **Short title.** - This Act shall be called the Sea Fishery Amendment Act, 1990 and shall come into operation on a date fixed by the State President by proclamation in the Gazette.

**SEA FISHERY AMENDMENT ACT NO. 57 OF 1992**

[ASSENTED TO 26 APRIL, 1992][DATE OF COMMENCEMENT: 23 OCTOBER, 1992]

(Afrikaans text signed by the State President)

**ACT**

To amend the Sea Fishery Act, 1988, so as to alter certain definitions; to redefine the power of the Minister of Environment Affairs to determine a certain general policy regarding the South African living marine resources; to make different provision in relation to the delegation of certain powers by the said Minister; to extend the powers of the Quota Board; to regulate a new the granting of certain rights of exploitation; to extend the said Minister's power in relation to the development of fishing harbours; to make different provision in relation to certain levies on fish and fish products and certain other marine resources; to extend the grounds upon which applications for certain licences may be refused and certain licences may be suspended or cancelled; to regulate anew the

making of certain regulations by the said Minister; to make provision that the Director-General: Environment Affairs be furnished with certain particulars in relation to fish or fish products that have been exported; to make different provision in relation to the issue of certain permits and the determination of the fees payable for such permits; to render certain acts punishable; and to effect certain textual adjustments; and to provide for matters connected therewith.

1. Amends section 1 of the Sea Fishery Act, No. 12 of 1988, as follows: -paragraph (a) substitutes the definition of "fishing boat"; paragraph (b) substitutes the definition of "licence"; paragraph (c) substitutes the definition of "master"; paragraph (d) substitutes the definition of "Minister"; paragraph (e) substitutes the definition of "permit"; paragraph (f) substitutes the definition of "quota"; paragraph (g) substitutes the definition of "right of exploitation"; and paragraph (h) substitutes the definition of "sea".

2. Amends the heading to Part 1 of the Sea Fishery Act, No. 12 of 1988, by deleting the word "OPTIMAL".

3. Substitutes section 2 of the Sea Fishery Act, No. 12 of 1988.

4. Amends section 4 (1) of the Sea Fishery Act, No. 12 of 1988, by substituting paragraph (a).

5. Amends section 18 of the Sea Fishery Act, No. 12 of 1988, by substituting subsection (1).

6. Amends section 21 of the Sea Fishery Act, No. 12 of 1988, by substituting sub-section (1).

7. Amends section 24 of the Sea Fishery Act, No. 12 of 1988, as follows: -paragraph (a) substitutes subsections (3) and (4); and paragraph (b) adds subsection (5).

8. Amends section 25 of the Sea Fishery Act, No. 12 of 1988, by substituting subsections (2) and (3).

9. Amends section 26 of the Sea Fishery Act, No. 12 of 1988, by substituting subsection (2).

10. Amends section 29 (2) of the Sea Fishery Act, No. 12 of 1988, as follows: paragraph (a) substitutes paragraph (a); paragraph (b) deletes the word "and" at the end of paragraph (d); and paragraph (c) adds paragraph (f).

11. Amends section 30 of the Sea Fishery Act, No. 12 of 1988, as follows: -paragraph (a) substitutes subsection (4) (a); paragraph (b) substitutes subsection (4) (b) (i); paragraph (c) substitutes the words following upon subsection (4) (b) (iii); and paragraph (d) substitutes subsection (7).



12. Repeals sections 31, 32, 33 and 35 of the Sea Fishery Act, No. 12 of 1988.
13. Amends section 36 of the Sea Fishery Act, No. 12 of 1988, by deleting subsections (1), (2), (3), (4), (5) and (6).
14. Amends section 37 of the Sea Fishery Act, No. 12 of 1988, as follows: -paragraph (a) substitutes subsection (2); and paragraph (b) deletes subsection (4).
15. Amends section 39 (1) of the Sea Fishery Act, No. 12 of 1988, as follows: -paragraph (a) substitutes paragraph (a); and paragraph (b) substitutes paragraph (c).
16. Amends section 41 of the Sea Fishery Act, No. 12 of 1988, by deleting subsection (1).
17. Amends section 45 (1) of the Sea Fishery Act, No. 12 of 1988, as follows: -paragraph (a) substitutes the words preceding paragraph (a); paragraph (b) inserts paragraph (aA); paragraph (c) substitutes paragraph (j); paragraph (d) inserts paragraph (kA); paragraph (e) substitutes paragraph (l); and paragraph (f) inserts paragraphs (lA), (lB), (lC), (lD), (lE) and (lF).
18. Amends section 47 (1) of the Sea Fishery Act, No. 12 of 1988, as follows: -paragraph (a) substitutes paragraph (g); and paragraph (b) substitutes paragraph (i).
19. Amends section 48 (4) of the Sea Fishery Act, No. 12 of 1988, by substituting paragraphs (a) and (b).
20. Amends section 52 of the Sea Fishery Act, No. 12 of 1988, by substituting subsection (1).
21. Substitutes the long title of the Sea Fishery Act, No. 12 of 1988.
22. **Short title and commencement.** - This Act shall be called the Sea Fishery Amendment Act, 1992, and shall come into operation on a date determined by the State President by notice in the *Gazette*.

## The Sea Fishery Amendment Act, 1995. No.74 of 1995

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

### GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

### ACT

**To amend the Sea Fishery Act, 1988, so as to delete a definition and to amend others; to delete an obsolete provision; to further regulate the Minister's power to make regulations; to repeal certain laws; to provide that the said Act shall apply throughout the Republic; and to provide for matters connected therewith.**

(Afrikaans text signed by the President)

(Assented to 28 September 1995.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

**Amendment of section 1 of Act 12 of 1988, as amended by section 1 of Act 98 of 1990, section 1 of Act 57 of 1992 and section 15 of Act 15 of 1994**

1. Section 1 of the Sea Fishery Act, 1988 (hereinafter referred to as the principal Act), is hereby amended -

- (a) by the deletion of the definition of "Republic";
- (b) by the substitution for the definition of "sea" of the following definition: "sea" means the water and the bed of the sea within the fishing zone, including the sea-shore **[but excluding] and** the water and the **[beds of tidal rivers and tidal lagoons] bed of a tidal river, tidal lagoon and harbour and includes the internal**

waters referred to in section 3 of the Maritime Zones Act, 1994 (Act No.15 of 1994); Provided that in the case of rivers and lagoons, internal waters shall only include tidal rivers and tidal lagoons;" and

(c) by the substitution for the definition of "territorial waters" of the following definition;

"territorial waters" means the **[sea within a distance of 12 nautical miles from the low-water mark] territorial waters referred to in section 4 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);"**

### Amendment of section 3 of Act 12 of 1988

2. Section 3 of the principal Act is hereby amended by substitution for paragraph (b) of the following paragraph;

"(b) the catching of fish in a tidal lagoon, tidal river or estuary along the coast of the province of KwaZulu-Natal or from the sea-shore along the said coast **[excluding that part of the said coast in an area which consists of land referred to in section 21(1) of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), or in a scheduled Black area as defined in section 49 of the said Act]; or"**

**Amendment of section 45 of Act 12 of 1988, as amended by section 9 of Act 98 of 1990, section 17 of Act 57 of 1992 and section 66 of Act 129 of 1993.**

3. Section 45 of the principal Act is hereby amended by the substitution for paragraph (1B) of subsection (1) of the following paragraph:

"(1B) the prohibition that more than a specified quantity or mass of any fish, or fish belonging to a particular species or category, be caught, disturbed, possessed, kept, controlled or transported during the course of any or a specified year or any other period, in general or within a defined area, by any person or fisherman or fishing boat or by all the participants in the fishing industry jointly, except on the authority of a permit issued by the director-general and in accordance with the conditions determined



by him or her in the permit or on the authority of, and in accordance with the conditions imposed in terms of, any means as approved by the Minister;”.

#### Repeal of laws

4. The laws mentioned in the Schedule are hereby repealed to the extent indicated in column 3 thereof.

#### Extension of application of Act 12 of 1988

5. The principal Act shall apply throughout the Republic.

#### Short title and commencement

6. This Act shall be called the Sea Fishery Amendment Act, 1995, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

### SCHEDULE

#### (SECTION 4)

#### SEA FISHERY AMENDMENT ACT NO.74 OF 1995

[ASSENTED TO 28 SEPTEMBER, 1995][DATE OF COMMENCEMENT TO BE PROCLAIMED]

(Afrikaans text signed by the President)

#### ACT

To amend the Sea Fishery Act, 1988, so as to delete a definition and to amend others; to delete an obsolete provision; to further regulate the Minister's power to make regulations; to repeal certain laws; to provide that the said Act shall apply throughout the Republic; and to provide for matters connected therewith.

1. Amendment of section 1 of Act 12 of 1988, as amended by section 1 of Act 98 of 1990, section 1 of Act 57 of 1992 and section 15 of Act 15 of 1994.-Section 1 of the Sea Fishery Act, 1988 (hereinafter referred to as the principal Act), is hereby amended -

(a) by the deletion of the definition of "Republic";

(b) by the substitution for the definition of "sea" of the following definition:

"sea" means the water and the bed of the sea within the fishing zone, including the sea-shore and the water and

the bed of a tidal river, tidal lagoon and harbour and includes the internal waters referred to in section 3 of the Maritime Zones Act, 1994 (Act No.15 of 1994): Provided that in the case of rivers and lagoons, internal waters shall only include tidal rivers and tidal lagoons;"; and

(c) by the substitution for the definition of "territorial waters" of the following definition:

"territorial waters" means the territorial waters referred to in section 4 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);".

2. Amendment of section 3 of Act 12 of 1988. - Section 3 of the principal Act is hereby amended by substitution for paragraph (b) of the following paragraph:

"(b) the catching of fish in a tidal lagoon, tidal river or estuary along the coast of the province of KwaZulu-Natal or from the sea-shore along the said coast; or"

3. Amendment of section 45 of Act 12 of 1988, as amended by section 9 of Act 98 of 1990, section 17 of Act 57 of 1992 and section 66 of Act 129 of 1993. - Section 45 of the principal Act is hereby amended by the substitution for paragraph (1B) of subsection (1) of the following paragraph:

"(1B) the prohibition that more than a specified quantity or mass of any fish, or fish belonging to a particular species or category, be caught, disturbed, possessed, kept, controlled or transported during the course of any or a specified year or any other period, in general or within a defined area, by any person or fisherman or fishing boat or by all the participants in the fishing industry jointly, except on the authority of a permit issued by the director-general and in accordance with the conditions determined by him or her in the permit or on the authority of, and in accordance with the conditions imposed in terms of, any other means as approved by the Minister;".

4. Repeal of laws. - The laws mentioned in the Schedule are hereby repealed to the extent indicated in column 3 thereof.

5. Extension of application of Act 12 of 1988.- The principal Act shall apply throughout the Republic.

6. Short title and commencement. - This Act shall be called the Sea Fishery Amendment Act, 1995, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

**Schedule**

(SECTION 4)

No. and year of law	Short title	Extent of repeal
Decree 9 of 1992 of the former Republic of Transkei	Environmental Conservation Decree, 1992	Chapter 10
Act 10 of 1987 of the former Republic of Ciskei	Nature Conservation Act, 1987	Section 70 and Chapter 7, excluding sections 51, 52, 56, 58, 66 and 67



# TANZANIA

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## The Forest Ordinance 1957 Cap 389 Chapter 389 Forests

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SCHEDULE



## CHAPTER 389: FORESTS

An Ordinance to consolidate and amend the law relating to the Conservation and Management of Forests and Forest Produce and to amend the Mining Ordinance

Ord. 1957 No. 30 [.....]

### PART I

#### PRELIMINARY

##### Short title and commencement

1. This Ordinance may be cited as the Forests Ordinance and shall come into operation on such date as the Governor may by notice in the Gazette appoint.

##### Interpretation

2. In this Ordinance unless the context otherwise requires - "African" means a person belonging to a tribe of the Territory;

"Chief Conservator" means the person for the time being performing the duties of the Chief Conservator of Forests;

"court" means a court having jurisdiction to try a charge of any offence against this Ordinance;

"firewood" includes parts of trees made up into bundles or loads, or cut wood for burning, and all refuse wood generally, but does not include logs or poles;

"forest manager" means a person appointed in that capacity under the provisions of section 11;

"forest officer" means any officer of the Forest Department of or above the rank of forest guard and includes an honorary forest officer appointed under section 4;

"forest produce" includes:-

- (i) trees, timber, firewood, charcoal, sawdust, withies, bark, bast, roots, fibres, resins, gums, latex, sap, galls, leaves, fruits and seeds; and
- (ii) within forest reserves only, vegetation of any kind, litter, soil, peat, honey, wax and wild silk; and
- (iii) such other things as the Governor may from time to time by notice published in the Gazette declare to be

forest produce, either generally or within any forest reserve;

"forest reserve" includes a territorial forest reserve and a local authority forest reserve;

##### Cap.123

"leasehold land" does not include any land held under a mining claim granted under the Mining Ordinance.

"license" means a valid license granted by the Chief Conservator of Forests, or any person duly authorized by him in that behalf, or by a local authority, under section 19;

"livestock" includes cattle, sheep, goats, pigs, horses, donkeys, mules and all other domesticated animals and their young;

"local authority" includes a county council, municipal, town council, local council and native authority;

"local authority forest reserve" means an area declared to be a local authority forest reserve under section 5;

"log" means the stem of a tree or a length of stem or branch after felling, cross-cutting and trimming, but does not include a pole;

"Minister" means the Minister for Natural Resources;

"owner" in relation to any land means any person having a freehold or leasehold estate (or any interest deemed under any law for the time being in force to be a freehold or leasehold estate) in, or a right of occupancy in respect of, such land;

"permit" means a permit in writing issued by the Chief Conservator under section 8;

"pole" means a tree or part of a tree of suitable size for use in the round as a telegraph, telephone, power transmission or building pole or for similar purposes;

"police officer" means a police officer as defined in section 2 of the Police Force Ordinance; - Cap 322

"public highway" means a public highway as defined in the Highways Ordinance;

"reserved tree" means any tree declared by order made under section 17 to be a reserved tree; - Cap 167

"senior forest officer" means any officer of the Department of or above the rank of forester;

"territorial forest reserve" means an area declared to a territorial forest reserve under section 5;

“timber” means any tree or part of a tree which has fallen or been felled or cut off, and all wood, whether or not sawn, split, hewn or otherwise cut up or fashioned, but does not include firewood or poles;

“tree” includes palms, bamboos, canes, shrubs, bushes, plants, poles, climbers, seedlings, saplings, and the re-growth thereof of all ages and all kinds and any part thereof;

“unreserved land” means land not situated within a forest reserve which is not freehold or leasehold land (or not deemed to be freehold or leasehold land under any law for the time being in force) or land occupied under a right of occupancy granted under the provisions of section 6 of the Land Ordinance; - Cap 113

**Administration of Ordinance**

3. The Chief Conservator and the Officers and staff of the Forest Department shall be responsible for the administration of this Ordinance.

**Minister may appoint honorary forest officer**

4. The Minister may by notice published in the Gazette appoint any person he deems fit to be an honorary forest officer for the purposes of this Ordinance. Any such appointment shall be for such period as may be specified in the notice. The Minister may in his discretion at any time revoke such appointment.

**Declaration of forest reserve**

5. (1) Subject to the provisions of section 6, the Governor may by order published in the Gazette declare any area of unreserved land to be a territorial forest reserve or a local authority forest reserve as from the date specified in the order and may at any time vary or revoke such order.

(2) As soon as practicable after the publication of an order made under the provisions of subsection (1) declaring any area of unreserved land to be a territorial forest reserve the Chief Conservator shall cause the boundaries of such forest reserve to be visibly demarcated on the ground.

(3) As soon as practicable after the publication of an order made under the provisions of subsection (1) declaring any area of unreserved land to be a local authority forest reserve the local authority concerned shall cause the boundaries of such forest reserve to be visibly demarcated on the ground.

**Requirements for declaration of area as forest reserve**

6. (1) Before the Governor makes any order under section 5 declaring any area of land to be or from part of a

reserve he shall:-

(a) ascertain that the Chief Conservator has given not less than ninety days notice in writing of the proposed declaration of the said area as a forest reserve, which notice shall describe the proposed boundaries of the forest reserve, and that such notice has been published in the Gazette and exhibited at the office of every District Commissioner within whose district any part of the said area is situated, and in such other manner as may be customary in the area concerned;

(b) take into consideration any grounds of objection that may be notified in accordance with subsection (2);

(c) satisfy himself:-

(i) that all claims to rights in relation to land or forest produce notified in accordance with subsection (2) have been investigated and determined in accordance with the provisions of subsection (4);

(ii) that all rights so claimed which have been determined to be lawfully exercisable by any person or group of persons within the said area have been recorded in accordance with the provisions of section 7 or have been voluntarily surrendered;

(iii) that in the case of voluntary surrender such compensation (if any) as may be attributable to the loss of the said rights has been assessed in accordance with the provisions of subsection 99) and has been or will be duly paid.

(2) Any person or group of persons who:-

(i) objects to the declaration of such an area as a forest reserve; or

(ii) claims any rights in relation to land or forest produce in such area or part thereof,

may before the expiry of the period of ninety days following upon the publication of the notice referred to in paragraph (a) of subsection (1), lodge with any District Commissioner within whose jurisdiction any part of the area is situate notice either in writing or, if such person or group of persons is or are illiterate, by word of mouth, stating either:-

(a) the grounds of his or their objection; or

(b) the rights claimed, as the case may be,

and where verbal notice is given such District Commissioner shall record the same in writing.

(3) Any notice stating grounds of objection lodge in ac-



cordance with the provisions of subsection (2) shall be submitted by the District Commissioner through the Chief Conservator to the Governor.

(4) Any notice stating a claim to rights in relation to land or forest produce shall be investigated by the District Commissioner within whose jurisdiction the area is situate or the rights are claimed, or by such other officer or person as the Minister may appoint for the purpose, and the District Commissioner or other officer or person so appointed shall determine the nature and extent of such of the rights so claimed as may be lawfully exercisable, if any, and shall without delay notify in writing the person or group of persons claiming such rights of such determination and the grounds thereof.

(5) Notwithstanding any other provision of this section no claim in respect of any rights arising subsequent to the publication of a notice of intention to declare an area to a forest reserve shall be investigated under this section.

(6) Any person or group of person aggrieved by the determination on the part of the District Commissioner, or other officer or person thereunto appointed in regard to rights in relation to land or forest produce claimed by him, or them, may appeal within one month of such determination to the court of a Resident Magistrate having jurisdiction in the area concerned. The Resident Magistrate may appoint assessors not exceeding four in number, being persons having their ordinary place of residence within, or possessing knowledge of, the said area, to assist him at the hearing of such appeal, but shall not be bound to conform to the opinions of such assessors. The Resident Magistrate may confirm, rescind or vary the determination of the District Commissioner or other officer or person, and may make such further or other order as he may think just, and his decision shall be final.

The Chief Justice may make rules governing all matters of procedure in the submission and hearing of such appeals.

(7) Every right in relation to land or forest produce in respect of which no claim has been made in accordance with the provisions of subsection (2) shall, subject to the provisions of this Ordinance, be deemed to be extinguished.

#### **Grant of permits to take forest produce**

(8) Any person or group of persons possessing any rights in relation to land or forest produce which have been determined under this section to be lawfully exercisable in a forest reserve shall be entitled to surrender all or any of such rights and on the surrender of any such rights the same shall be extinguished.

(9) Any compensation payable in respect of rights to land or forest produce within any area within a proposed forest reserve which have been voluntarily surrendered shall be assessed by the District Commissioner within whose jurisdiction such area is situate or by such other officer or person as the Governor may appoint in this behalf. Such compensation shall be assessed on holders of the right reason of the surrender of such right.

Provided that in assessing compensation no account shall be taken of:-

- (a) improvements made or works constructed on the land after publication of the notice referred to in paragraph (a) of subsection (1); or
- (b) the loss of any right not ordinarily enjoyed by the holder or holders thereof at the time of publication of such notice.

(10) Any compensation awarded under the provisions of this section shall be paid out of such funds as may be set aside for this purpose by the Legislative Council, save and except that if an area in which the right to such compensation arises is declared a local authority forest reserve and the Governor in Council is of the opinion that the local authority concerned has received profits of management of the said forest reserve in excess of the costs of management and development of the said forest reserve or may reasonably be expected to receive such profits, the Governor in Council may order that the said compensation or any part thereof be paid or reimbursed to Government by the local authority concerned.

(11) If the Governor in Council has ordered the payment or reimbursement of compensation by the local authority under the provisions of subsection (10) he may at a later date order that the amount of the said compensation or any part thereof be refunded to the local authority out of the public funds of the Territory.

#### **Recording of rights in relation to land or forest produce**

7. (1) Any rights in relation to land or forest produce which have been determined under section 6 to be lawfully exercisable within any area declared to be forest reserve, shall, if they are not voluntarily surrendered, be recorded within such time and in such manner as may be prescribed, and the Chief Conservator shall, subject to the provisions of section 8, permit the exercise of such rights.

#### **Grant of permits to take forest produce**

(2) A copy of any record made as aforesaid concerning



rights in relation to land or forest produce which is certified by or on behalf of the Chief Conservator, or such other person or officer as the Minister may appoint for the purpose, as the case may be, shall be *prima facie* evidence for all purposes of the possession of such rights as may be therein set forth by such or group of persons as may be respectively shown therein as possessing such rights.

8. Where any person or group of persons possesses any rights in relation to forest produce which have been determined under section 6 to be lawfully exercisable in a forest reserve, and such rights have been duly recorded as in section 7 provided, such person or any member or members of such group of persons shall apply in the prescribed manner to the Chief Conservator for permit in writing to exercise such rights. The Chief Conservator, if he is satisfied that such person or group of persons is or are the person or group of persons lawfully entitled to the exercise of such rights, shall without charge grant a permit accordingly and such permit when granted to any person or group of persons shall be lawful authority to the holder or holders and to his or their heirs and successors according to law for the exercise of those rights in relation to forest produce to such extent, for such period, in such manner and subject to such terms and conditions as may set forth in such permit.

Provided that such terms and conditions shall not be inconsistent with the nature of such rights.

**Restriction on creation of new rights in area of intended reserve**

9. (1) The provisions of this section shall apply to any area of unreserved land in respect of which notice has been given in accordance with paragraph (a) of subsection (1) of section 6, with effect from the date of publication of such notice (hereinafter referred to in this section as the effective date).

(2) Notwithstanding the provisions of any other law, and in particular, but without prejudice to the prejudice to the generality of the foregoing the provisions of the Land Ordinance, on the effective date and thereafter the following provisions shall, subject to the provisions of subsection (3), apply to such area:- Cap 113

- (a) no right in relation to land in such area shall be capable of being created or existing except by or under a grant under section 6 or section 11 of the Land Ordinance;
- (b) subject to the provisions of section 3 of the Land Ordinance, it shall not be lawful for any person to use or occupy any land in such area unless he holds a right of occupancy granted under section 6 or sec-

tion 11 of the Land Ordinance or a grant or lease made under section 20 of the Land Ordinance; and

- (c) no right in relation to forest produce in such area shall be capable of being created or existing.

(3) Nothing in subsection (2) of this section shall prejudice or effect:-

- (a) any right to forest produce in such area enjoyed immediately before the effective date; or

- (b) the right of any native or native community to the use and occupation of any land within such area which such native or native community was lawfully using or occupying in accordance with native law and custom immediately before the effective date; or

- (c) the right of any native or native community who or which lawfully succeeds under native law and custom to the use and occupation of land to which paragraph (b) of this subsection applies.

Provided however, as follows:-

- (i) any rights specified in paragraph (b) or (c) of this subsection shall be extinguished if at any time thereafter such native or native community or his or its successor in title, as the case may be, abandons the land concerned for a period of three months or more or if such right is merged in a right of occupying immediately before the effective date.

(4) The Chief Conservator shall cause:-

- (i) the boundaries of every such area to be beaconed; and

- (ii) notices to be exhibited on such boundaries, both in the English and appropriate vernacular languages,

in such manner as may be sufficient for such boundaries to be known in the neighborhood.

(5) The preceding provisions of this section shall cease to apply to such area:-

- (a) if at the time before it is declared to be a forest reserve under the provisions of section 5, the Chief Conservator by notice in the *Gazette* declares that the intention to declare such area to be a forest reserve has been abandoned, or

- (b) when such area, as near as may be, is declared to be a forest reserve under the provisions of section 5.



### PART III

## LOCAL AUTHORITY FOREST RESERVES

### Local authorities to manage local authority forest reserves

10. (1) The Governor shall, in an order under section 5 declaring any area to be a local authority forest reserve, specify the local authority which shall be responsible for the maintenance and control of such local authority forest reserve, and the said local authority shall upon the coming into operation of order have the duty of managing such local authority forest reserve, and meeting the costs of management, and any revenue derived from fees for forest produce and licenses charged or issued in respect of such local authority forest reserve shall form part of the revenue of the said local authority:-

### Local authority may appoint

(2) Except as hereinbefore provided nothing in this section shall be deemed to transfer to or vest in a local authority any right, title or interest whatsoever in or over any land declared to be a local authority forest reserve.

11. (1) A local authority specified in any order made under subsection (1) of section 10 may appoint a forest manager.

(2) A forest manager shall manage the local authority forest reserve in respect of which he is appointed as agent for and under the direction of the local authority.

(3) The Chief Conservator may by notice published in the Gazette grant such forest manager and any such other officers or employees of the local authority as he deems fit either by name or by office, the powers of a forest officer in respect of a local authority forest reserve for such period as may be specified in the said notice, and may in his discretion at any time revoke such grant.

### Control of Chief Conservator over management of local authority forest reserves

12. (1) A local authority forest reserve shall be managed by the local authority specified in that regard in accordance with the advice of the Chief Conservator.

(2) The Chief Conservator shall be entitled to make such written representations as he thinks fit to the local authority concerned regarding the management of a local authority forest reserve and shall be entitled, upon making a written request to such effect, to appear before the local authority personally or by his representative for the purpose of making such representations orally.

(3) If the Minister, after considering a report from the Chief Conservator, is satisfied that, owing to mismanagement of any local authority forest reserve by the local authority concerned, it is in the public interest that such local authority forest reserve shall cease to be managed by such local authority, he may by order published in the Gazette direct that such local authority forest reserve shall be managed by the Chief Conservator and thereupon the Chief Conservator shall exercise all and any powers conferred on the local authority under this Ordinance and such local authority shall cease to exercise powers.

(4) Upon the coming into operation of any under the provisions of subsection (3) any powers granted under the provisions of subsection (3) of section 22 shall be deemed to be canceled.

(5) The Chief Conservator shall manage any local authority forest reserve which he is directed to manage under the provisions of subsection (3) on behalf of and for the benefit of the local authority concerned and the net profits of management (if any) shall, after deduction of the costs of management and development, be deemed to be part of the revenue of the said local authority, which shall likewise bear any loss incurred.

(6) For the purposes of the preceding subsection the net profits of management and the costs of management and development shall be such sums as the Chief Conservator, with the prior approval of the Minister, shall notify in writing to the local authority.

### Cancellation of declaration in respect of local authority forest reserves

13. From the date of any order in the Gazette canceling a declaration of a local authority forest reserve such reserve shall cease to be managed by the local authority specified in the declaration and all other powers and privileges of such forest reserve shall cease and such local authority shall not, as of right, be entitled to any compensation, but the Governor may, in his discretion, grant to such local authority such compensation as he may consider just and reasonable having regard to all the circumstances.



## PART IV

### FORESTRY DEDICATION COVENANTS

#### Forestry dedication covenants

14. (1) Where the owner of any land enters into a covenant with the Chief Conservator to the effect that such land or any part thereof shall not, without the previous consent in writing of the Chief Conservator, be used otherwise than for the growing, in accordance with the rules or practice of good forestry, or trees for the commercial production of forest produce, or for water conservation, such covenant shall, subject to the provisions of subsection (3), be enforceable against the covenant and, subject to any contrary intention expressed in such covenant, against his successors in title and all persons deriving title under him or them.

(2) As respects the enforcement of any such covenant against persons other than the covenantor, the Chief Conservator shall have the like rights as if he had at all material times been the absolute owner in possession of ascertained land adjacent to the land in respect of which the covenant is sought to be enforced and capable of being benefitted by the covenant, and the covenant had been expressed to be for the benefit of that adjacent land.

(3) Nothing in this section shall render enforceable any covenant entered into under subsection (1) Where the use of such land in accordance with such covenant contravenes the provisions of any law of the time being in force is inconsistent with any other prior covenant relating to the use of such land and binding on such owner and his successors in title and persons deriving title under him or them.

## PART V

### PROTECTION OF FORESTS AND FOREST PRODUCE Forests Reserves (Forest land)

#### Restrictions and prohibitions within forest reserves

15. (1) Any person who in any forest reserve without a license or other lawful authority:-

- (i) cuts, removes, has in his possession, sets fire to or damages any forest produce; or

- (ii) clears, cultivates or breaks up for cultivation or any other purpose, any land; or

- (iii) constructs or resides on any saw-pit or work place; or

- (iv) occupies or resides on any land; or

- (v) erects any building, shelter or livestock to enter therein; or

- (vi) collects any honey, or beeswax, or hangs or places on any tree or elsewhere any honey barrel, hive or other receptacle for the purpose of collecting honey or beeswax; or

- (viii) constructs any road, path, water course, tramway, or fence, or obstructs any existing road, path, tramway or water course; or

- (ix) covers any tree stump with brushwood or earth or by any other means whatsoever conceals, destroys or remove such tree stump or any part thereof; or

- (x) damages, defaces, alters, shifts, removes, or in any way whatsoever interferes with, any beacon, fence notice or notice board,

shall be guilty of an offence against this Ordinance.

(2) If any person, without lawful excuse, the burden of proof of which shall be on him, within, or in the vicinity of, any forest reserve, has in his possession any implement for cutting, taking, working or rendering any forest produce, he shall be guilty of an offence against this Ordinance.

(3) The Chief Conservator may by notice published in the *Gazette* exempt the whole or any part of any forest reserve from the application of the provisions of any of the paragraphs of subsection (1), or of subsection (2), subsection to such conditions and limitations as he may think fit.

(4) If any livestock are found grazing, or depastured in, or entering any forest reserve such livestock shall be presumed, unless the contrary is shown, to have been grazed, depastured or allowed to enter by the authority of the owner and of the person, if any, actually in charge of such livestock.

#### Public to assist in protecting forest reserve from fire

16. (1) It shall be lawful for any forest officer, police officer, administrative officer, forest manager, or any local authority fire brigade officer to require any person who is within a reasonable distance of any forest reserve



to assist in averting or extinguishing any fire in or threatening to enter or affect such forest reserve, or in securing any property within the forest reserve from loss or damage arising from fire.

Provided that no such person shall be required to do anything which may reasonably be expected to expose him to the risk of death or serious injury.

(2) Any person who fails to comply with any lawful requirement made under this section shall be guilty of an offence against this Ordinance.

(3) Any person other than a Government officer or an employee of a local authority who has been required by one of the persons mentioned in subsection (1) to assist in averting or extinguishing any fire, or in securing any property from loss or damage by fire, shall be entitled to receive payment for such work at such rates as the District Commissioner in whose district the forest reserve is situated considers adequate, regard being had in the case of unskilled labour to the rates for such labour customarily prevailing at the time in the district within which such forest reserve is situated.

### Unreserved Land

#### Reserved trees

17. (1) The Minister may by order published in the *Gazette* declare in respect of any unreserved land that any tree or class of trees shall be reserved.

(2) If any unreserved land referred to in any order made under subsection (1) ceases to be unreserved land the provisions of such order shall cease to apply in respect of such land.

#### Restrictions over the use of trees in unreserved land

18. (1) Any person who without a license of other lawful authority fells, cuts, damages, or removes any reserved tree on any unreserved land shall be guilty of an offence against this Ordinance.

(2) Any person who without a license or other lawful authority cuts, fells, damages or removes any tree on any unreserved land for the purpose of sale, barter or profit or for use in any trade, industry or commercial undertaking shall be guilty of an offence against this Ordinance.

Provided that:-

(a) any African who is not lawfully prohibited from so doing by the native authority in whose area any un-

reserved land is situated, may without a license cut and remove from such land trees, not being reserved trees, for any of the following purposes:-

- (i) for use in connection with any African domestic art or craft, which expression shall include the manufacture of domestic furniture and fittings and agricultural implements for sale to Africans living in the neighborhood;
- (ii) for the preparation of charcoal for use in connection with any African domestic art or craft;
- (iii) for clearing land for African cultivation in localities where cultivation is not prohibited under any local rules or orders for the control of grazing or the prevention of soil erosion;
- (b) the provisions of this subsection shall not apply to the removal by any person of any edible fruit from any tree, not being a reserved tree, planted or cultivated by such person.

## PART VI

### LICENSES

#### Grant of licenses

19. (1) The Chief Conservator or any person authorized by him in that behalf may grant licenses for all or any of the purposes of this Ordinance. Every such license shall be subject to such conditions as may be specified therein, and there shall be payable in respect thereof such fee as may be prescribed.

(2) A local authority may grant licenses for all or any of the purposes of this Ordinance in respect of any local authority forest reserve which it maintains or controls. Every such license shall be subject to such conditions as may be specified therein, and there shall be payable in respect thereof such fee as may be prescribed.

(3) The Chief Conservator, or any person authorized by him in that behalf, or a local authority, as the case may be, may at any time cancel or suspend any license granted by or on behalf of the Chief Conservator or such local authority, the holder of which has infringed any of the conditions upon or subject to which the said license vary the conditions of any such license.



## PART VII

### POWERS OR OFFICERS

#### Power to demand license or authority for acts done; of seizure and arrest

20. Any administrative officer, forest officer may:-

- (a) demand from any person the production of any license or authority for any act committed by such person for which a license or authority is, under the provisions of this Ordinance, or any other law, required:
- (b) require any person whom he has reasonable grounds to suspect of being in possession of any forest produce unlawfully obtained to stop and give account of his possession of such forest produce and, except within a municipality or township, without warrant, search such person or any baggage, package, parcel, vehicle, boat, tent or building in the possession or under the control of such person in which such forest produce may reasonably be suspected of being contained or stored;

Provided that the powers conferred under this paragraph upon forest rangers, forest guards and upon police officers below the rank of inspector shall not extend to the search of domestic building.

Provided further that the power of search of domestic buildings without a warrant conferred upon other officers under this paragraph shall only be exercised in the presence of two independent witnesses;

- (c) seize and detain any forest produce or livestock in respect of which there is reason to believe that an offence has recently been committed against this Ordinance together with any boats, vehicles, machinery, tools or implements used or likely to have been used in the commission of such offence.

Provided that the person seizing such property shall forthwith report such seizure to the nearest magistrate; if found guilty such property shall be forfeited to the Government.

- (d) arrest without warrant any person whom he reasonably suspects has committed or has been concerned in an offence against this Ordinance where:-
- (a) such person refuse to give his name and address or gives a name and address which there is reason to believe to be false, or

- (b) there is reason to believe that such person will abscond.

Provided that every officer making an arrest under this paragraph shall ensure that the person so arrested is taken without delay before the nearest magistrate.

#### Power to compound offenses

21. A senior forest officer may, if he is satisfied that a person has committed an offence against this Ordinance, compound such offence by accepting from such person a sum of money together with the forest produce, if any, in respect of which the offence has been committed:

Provided that:-

- (i) such sum of money shall not exceed five times the amount of the fee prescribed as being payable for such forest produce under paragraph (g) of subsection (1) of section 30, or the damage caused by the offence, or the sum of twenty thousand shillings (Shs.20,000/=), whichever is the least, in respect of each offence;
- (ii) the power conferred by this section shall only be exercised where the value of the forest produce in respect of which the offence has been committed, or the damage caused by the offence, does not exceed one hundred thousand shillings (Shs.100,000/=);
- (iii) the power conferred by this section shall only be exercised where the person admits that he has committed the offence and agrees in writing in the prescribed form to the offence being dealt with under this section;
- (iv) the officer exercising the power conferred by this section shall give to the person from whom he receives such sum of money a receipt thereof in the prescribed form, and shall as soon as is practicable thereafter report the exercise of such power to the Chief Conservator and to the administrative officer in charge of the areas in which the offence was committed;
- (v) if any proceedings are brought against any such person for an offence against this Ordinance it shall be a good defence if such person proves that the offence with which he is charged has been compounded under this section;
- (vi) any sum of money received under this section shall be dealt with in the same manner as if it were a fine imposed by a court.



## PART VIII

### MISCELLANEOUS OFFENSES

#### Unlawful receiving or possession of forest produce

22. Any person who without lawful authority or excuse, the burden of proof of which shall be on him, receives, is found in possession of any forest produce with respect to which an offence against this Ordinance has been committed, unless he can account for such possession or can show that he came by such produce innocently, shall be guilty of an offence against this Ordinance.

23. Any person who:-

#### Counterfeiting and similar offenses

- a) counterfeits, alters, obliterates or defaces any stamp, mark, sign, license, permit, authority or receipt used or issued under this Ordinance, or any rules, orders or notices made there under;
- (b) fraudulently or without due authority uses or issues any stamp, mark, sign license, permit, authority or receipt intended to be used or issued under this Ordinance, or any rules, orders or notices made thereunder;
- (c) without due authority alters, moves, destroys or defaces any boundary mark of a forest reserve,

shall be guilty of an offence against this Ordinance and shall be liable on conviction of a fine not exceeding five hundred thousand shillings (Shs.500,000/=) or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.

24. Any person who:-

#### Interference with or obstruction of officers, etc., of the Forest Department

- (a) without lawful authority or excuse, the proof which lies on him, wears any uniform or part of a uniform, or any badge or other mark issued by the Forest Department to be worn by officers or staff of the Forest Department; or
- (k) prescribing the names to be applied to forest produce in order to promote its better utilization and marketing and providing for the manner in which any list of names made hereunder may be from time to time amended or varied;
- (l) providing for the compulsory use of property marks by timber dealers licensed to take timber under this

Ordinance or any rules made thereunder, and the registration of such marks;

- (m) providing for the compulsory use of property marks by local authorities and owners of private woodlands for the purpose of identifying timber sold from local authority forest reserves and private woodland;
  - (n) providing for the prohibition of the use of marks not registered under the provisions of rules made under this section;
  - (o) prohibiting or regulating the use of roads or paths other than public highways within forest reserve and provide for the repair of roads, trucks or bridges in a forest reserve by any person damaging the same;
  - (p) prohibiting or regulating within forest reserves the lighting of fires smoking, or the carrying, kindling or throwing of any fire or light or inflammable material;
  - (r) providing for the registration of such Forest Department brands, tags or other devices for marking livestock as may be necessary to identify livestock licensed to graze in forest reserves;
  - (s) prohibiting or regulating the export from the Territory or from any area of the Territory of forest produce;
  - (t) prescribing the form of forestry dedication covenants;
  - (u) providing generally for the carrying out of the purposes and provisions of this Ordinance or prescribing anything which may be prescribed under this Ordinance.
- (2) Any rules made under the provisions of this section may require acts or things to be performed or done to the satisfaction of a prescribed person, and may empower a prescribed person to issue orders to any other person requiring acts or things to be performed or done, imposing conditions and prescribing periods and dates upon, within or before which, such acts or things shall be performed or done or such conditions shall be fulfilled.
- (3) A local authority may, with the approval of the Minister for Local Government and Administration, make rules applicable to any local authority forest reserve which it maintains and controls prescribing for such any or all of the matters which the Governor in Council may prescribe or regulate under the provisions of paragraphs (a), (c), (d), (f), (g), (h), (i), (o) and (p) of subsection (1) and specifying the officers who may act on its behalf in administering the provisions of this Ordinance.
- (4) The Governor in Council or local authority may in making a rule under this section prescribe for a breach thereof a fine not exceeding three hundred thousand



shillings (Shs.300,000/=) or imprisonment for a term not exceeding six months or both such fine and such imprisonment.

**Power to grant exemptions**

31. The Governor may, by notice in the Gazette, exempt any person or class of persons or any land or class of lands from any or all of the provisions of this Ordinance or any rules, orders or notices made thereunder, subject to such conditions and limitations as may be specified in such notice.

**Saving of mining rights and amendment of Mining Ordinance Cap. 123  
Cap. 126**

32. (1) Nothing in this Ordinance shall derogate from a mining claim, prospecting right or exclusive prospecting license registered, issued or granted under the provisions of the Mining Ordinance or an exploration right or exclusive prospecting license issued under the provisions of the Mining (Mineral Oil) Ordinance, or adversely affect enjoyment by the holder of any such claim, right or license of any right conferred thereby in relation to land, minerals or forest produce.

Provided that nothing in this subsection shall be read as exempting any such holder from complying with any provision of the Mining Ordinance (as amended by subsection (2) of this section) or any condition of a license granted under the Mining (Mineral Oil) Ordinance, which relates to forest reserves or forest produce.

(2) The Mining Ordinance is hereby amended as follows:-

(a) by substituting a colon for the semicolon at the end of subsection (2) of section 14 thereof and by indenting immediately below such subsection the following proviso:-

(a) any tree within a forest reserve; or

(b) any tree situate outside a forest reserve, which has been declared under section 17 of the Forests Ordinance to be a reserved tree unless licensed in that behalf under the provision of that Ordinance;"; - Cap 389

(b) by deleting the words "forest or" in paragraph (b) of the proviso appearing below subsection (3) of section 14 thereof, by deleting the semicolon at the end of such paragraph and substituting therefor the comma and word ",or", and by adding immediately below such paragraph the following new paragraph, to be lettered (c)-.

"(c) prospect in a forest reserve, unless he has first given

notice to the chief Conservator of Forests and complies with any conditions imposed by the Chief Conservator of Forests:

prospect that such condition shall not be inconsistent with the nature of any right enjoyed by such holder by virtue of such prospecting right;"; and

(c) by repealing section 56 thereof and substituting therefor the following new section, to be numbered 56:-

**"Right of lessee and claim holder to take**

56. (1) A lessee may, on the lands included within the area of his lease, cut, take and use any tree when necessary in the course of mining operations or when required for mining or domestic purposes:

Provided that he shall be liable for any fees and royalties which may be payable under the law relating to forestry.

(2) A claim holder may on the lands included within the area of his claim, cut, take and use any tree when necessary in the course of mining operations or when required for mining or domestic purposes:

Provided that he shall not cut, take or use:-

(a) any tree within a forest reserve; or - Cap 389

(b) any tree situate outside a forest reserve which has been declared under section 17 of the Forest Ordinance to be a reserved tree, unless licensed in that behalf under the provisions of that Ordinance:

And provided further that he shall be liable for any fees and royalties which may be payable under that Ordinance."

**PART XI**

**REPEAL AND SAVINGS**

*Repeal of*

33. The Forests Ordinance is hereby repealed: Provided that, notwithstanding such repeal:-

(a) (i) all forest reserves other than native authority forest reserves existing at the commencement of this Ordinance shall be deemed to have been declared as territorial forest reserves under the provisions of this Ordinance;



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- (ii) all native authority forest reserves existing at the commencement of this Ordinance shall be deemed to have been declared as local authority forest reserves under the provisions of this Ordinance;
- (iii) all native authorities who have been nominated under the provisions of the Ordinance so repealed to exercise control over such native authority forest reserves shall be deemed respectively to have been declared under the provisions of this Ordinance to be responsible for the maintenance and control of the same as local authority forest reserves;
- (iv) all licenses granted under the provisions of the Ordinance so repealed shall be deemed to have been made or granted under this Ordinance;
- (v) all the rules made under the provisions of the Ordinance so repealed which are specified in the Schedule to this Ordinance shall, to the extent that the same remain in force at the commencement of this Ordinance, be deemed to have been made under the provisions of this Ordinance;
- (b) all such declarations, licenses and rules as are referred to in paragraph (a) of this proviso, may be varied or amended in accordance with the provisions of this Ordinance and, if not previously expired, shall remain in force until canceled or revoked hereunder.

## Rules Under section 30 The Forest Rules, 1959

G.Ns. 1959 Nos. 76, 138, 243 and 267

### Short title and commencement

1. These Rules may be cited as the Forest Rules, 1959, and shall come into force on the 1st day of April, 1959.

### Interpretation

2. The expressions used in the Rules shall, unless the context otherwise requires, have the meanings respectively assigned to them in section 2 of the Forests Ordinance (hereinafter referred to as "the Ordinance").

### Recording of rights in respect of forest reserves and granting of permits in respect of such rights.

3. A District Commissioner or other person who has determined rights in relation to land or forest produce under subsection (4) of section 6 of the Ordinance to be lawfully exercisable within any area to be declared a forest reserve, which rights have not been voluntarily surrendered under subsection (8) of section 6 of the Ordinance, shall record such rights in schedule stating *inter alia* the nature and extent of the rights which have been determined, the names and addresses of the persons lawfully exercising such rights, and, if the rights are confined to a particular locality, the locality in which the rights are lawfully exercisable, and such schedule shall be transmitted to the Chief Conservator who shall cause the said schedule to be published in the *Gazette* at or about the same time as the publication of the order declaring the said forest reserve:

Provided that where such rights are lawfully exercisable by a group of persons such group may be designated in such a way as the District Commissioner deems fit so as to identify the persons entitled to exercise such rights but without necessarily specifying their names.

### Application for permits

4. At any time after the publication of a schedule recording the rights under the provisions of rule 3 of these Rules any person or group of persons named in the Schedule may apply to the Chief Conservator for permission to exercise the right record to be exercisable by them-

[Subsidiary]

(a) if the application is made by a person on his own behalf on Form A in the First Schedule hereto; and

(b) if the application is made on behalf of a group of persons on Form B in the First Schedule hereto.

### Classification of trees

5. For the purpose of fixing fees which may be charged here under, trees shall be classified in the categories set out in the Second Schedule hereto.

### Disposal of forest produce

6. The Chief Conservator and officers so authorized by him may dispose of forest produce-

(a) at the fees prescribed in Part A of the Third Schedule hereto or alternatively in the case of forest produce on unreserved lands at the fees prescribed in Part B of the Third Schedule hereto; or

(b) by public tender; or

(c) by public auction; or

(d) by private treaty.

### Disposal of forest produce at prescribed fees

7. The disposal of forest produce at the fees prescribed in parts A or B of the Third Schedule hereto shall be subject to the following conditions:-

(a) where a maximum and minimum fee prescribed, a Senior Forest Officer shall fix the hereto after considering the species, size, the accessibility and the potential market value of the produce concerned;

(b) the fees prescribed shall apply to produce which is felled and harvested and collected by the purchaser; where such produce is felled, prepared, delivered or otherwise dealt with or disposed of by a government servant acting in the scope of his employment, the Chief Conservator may, on behalf of Government, in addition to the fee prescribed for such produce charge a further fee being not more than three times the said prescribed fee.



- (c) any Senior Forest Office may allow remission of or part of the fees payable when in his sole discretion he deems that natural defects in forest produce have materially reduced the value of such produce to the purchaser, provided that no defect which the Senior Forest Officer deems to have been caused by the neglect of the purchaser or his servants shall be taken into account;
- (d) if when charging the fees set out in Part A of the Third Schedule the Chief Conservator of Forest is satisfied that it is necessary for logs to be moved more than twenty-five miles from the place of felling to the place of sawing or for sawn timber to be moved more than twenty-five miles from the place of sawing to the nearest point of sale, reallege or shipment, whichever is the nearest, a rebate of fees may be allowed at the rate set out in the Fourth Schedule hereto;

Provided that no rebate for distance shall be allowed when the fees prescribed in Part B of the Third Schedule are charged.

#### **Registered Forest Department marks, brands and tags**

8. The marks, brands and tags delineated in the Fifth Schedule hereto shall be the registered Forest Department marks, brands and tags respectively for the purposes of identifying-

- (a) forest produce authorized to be taken from territorial forest reserves or unreserved land;
- (b) forest produce which has been seized or forfeited;
- (c) livestock licensed to graze in territorial forest reserves;
- (d) territorial forest reserves.

#### **Registered forest produce**

9. (1) Any person who, unless authorized to do by a Senior Forest Officer, removes from a territorial forest reserve or from the place of felling or collection on unreserved land any trees, timber, logs, poles or firewood for the taking of which a licence or permit is required unless and until such trees, timber, logs or poles have first been marked by a Forest Officer with the appropriate registered Forest Department mark or unless and until such fire wood has first been measured by a Forest Officer, shall commit an offence against these Rules.

(2) Any person who, without lawful authority, removes from the place in which it is situated any forest produce marked with the registered Forest Department mark denoting that such produce has been seized or forfeited, shall commit an offence against these Rules.

10. (1) The Chief Conservator of Forests and officers authorized by him may issue licences for the cultivation of crops and the grazing of livestock within forest reserves and the fees for such licences shall be those set out in Part A of the Sixth Schedule. The cultivation fees shall be determined according to the fertility of the soil, the nature of Cultivation, grazing, building and residence in forest reserves the crop, the accessibility of the area, the availability of water the amount of clearing to be done by the Licensee, and the grazing fees shall be determined according to quality and accessibility of the grazing, the water available and the amount of clearing to be done by the Licensee. The Chief Conservator of the management of the forest reserve to do so.

(2) The Chief Conservator of Forests, and officers authorized by him, may issue licences to reside or to erect buildings for other purposes within a forest reserve and the fees shall be those set out in Part B of the Sixth Schedule. The fees shall be determined according to the nature of the buildings are to be put. The Chief Conservator of Forest may waive fees for residing or for erecting buildings within a forest reserve when, in his opinion, it is to the advantage of the management of the forest reserve to do so.

#### **Identification of livestock licensed to graze in forest reserves**

11. (1) A Senior Forest Officer may at his discretion require to be branded or tagged with a registered Forest Department brand or tag any livestock which is licensed to graze in a territorial forest reserve.

2 In any territorial forest reserve in respect of which livestock licensed to graze is required to be branded or tagged in accordance with paragraph (1) of this rule, no person shall graze any livestock which has not been so branded or tagged:

Provided that the provision of this paragraph shall not apply to the offspring of livestock licensed to graze in a territorial forest reserve which, in the opinion of the Chief Conservator, are too young to be branded or tagged.

#### **Identification of forest produce taken from local authority forest reserves**

12. (1) Any local authority which disposes of trees, timber, logs and poles from a local authority forest reserve shall, before such produce is removed from the said reserve, cause it to be marked with a distinctive mark, for the purpose of identifying such produce.

(2) For the purposes of this rule, any local authority which disposes of forest produce shall adopt a distinctive mark which shall differ from the registered Forest Department marks, and shall



Identification of forest produce taken from local authority forest reserves notify the Chief Conservator of the pattern of mark.

#### Closure of roads

13. (1) Any Senior Forest Officer may-

- (a) close to traffic any roads or tracks, other than public highways, in territorial forest reserves for such period as he may consider necessary either for the purpose of repair, maintenance or protection of such roads or tracks, or for the protection of forest produce or Government property within the reserve from damage caused by the condition of the roads or tracks, or for the protection of forest produce or Government property within the reserve against fire or theft;
- (b) restrict the types, weights and sizes of vehicles which may use any road track or bridge, other than public highways, in territorial forest reserve.

(2) Any such closure or restriction shall be notified to the public by notices in English and Kiswahili place in conspicuous positions at all entrances to the forest reserve affected by such closure or restriction, and any person who causes or permits any vehicle to use any road or track in contravention of such closure or restriction shall, provided that such closure or restriction has been notified in accordance with the provisions of this paragraph, be guilty of an offence against these Rules two hundred shillings.

#### Restrictions in respect of fire

14. Any person who lights fires, smokes, carries, kindles or throws any fire or inflammable material in any forest reserve or area of any forest reserve where such acts have been notified as being forbidden by a written notice placed in a conspicuous position in such forest reserve or area in English and Kiswahili upon the instructions of

or purporting to be issued by order of the Chief Conservator shall be guilty of an offence against these Rules.

#### Closure of forest of fire

15. (1) The Chief Conservator of Forests may for such period as, in his opinion, is necessary make orders for the closure of any forest reserve or area within a forest reserve to protect such reserve or area from fire and it shall be an offence against these Rules punishable on conviction by a fine not exceeding two hundred shillings, for any person to enter or be in any such reserve or area other than officers of the Government or of a local authority managing the reserve acting in the execution of their duties or other persons authorized by a Senior Forest Officer or by the local authority forest reserve.

(2) Any order for the closure of a forest reserve or area within a forest reserve made under the provision of paragraph (1) of this rule shall be notified to the public by the exhibition of notices in English and Kiswahili at the office of every District Commissioner within whose district any part of the said area is situated or by notices placed at intervals along the boundaries of the said area and in such manner as may be customary in the area concerned.

#### Compounding offences

16. The form of agreement set out in the Seventh Schedule shall be used in compounding offences under section 21 (iii) of the Ordinance, and the form of receipt to be given to a person who compounds an offence shall be a General Revenue Receipt.

#### Penalties

17. Any person who is convicted of an offence against these Rules shall, unless some other penalty is provided, be liable to a fine not exceeding three thousand shillings or imprisonment for a term not exceeding six months or to both such fine and such imprisonment.



# TOGO

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## Décret du 5 février 1938 portant organisation du régime forestier du territoire du Togo

### LA PRESIDENT DE LA REPUBLIQUE FRANCAISE,

Vu le décret du 6 mars 1877, rendant le code pénal métropolitain applicable dans les colonies de la Côte Occidentale d'Afrique;

Vu le mandat sur le Togo, confirmé à la France par le Conseil de la Société des Nations en exécution des articles 22 et 119 du traité de Versailles, en date du 28 juin 1919;

Vu les décrets des 23 mars 1921 et 21 février 1925, déterminant les attributions et les pouvoirs du Commissaire de la République au Togo;

Vu le décret du 19 septembre 1936, portant réorganisation administrative du Togo;

Vu le décret du 22 mai 1924, fixant la législation applicable au Cameroun et au Togo;

Vu le décret du 30 décembre 1912, sur le régime financier des colonies;

Vu le décret du 15 mars 1926, portant réorganisation du domaine et du régime des terres domaniales au Togo;

Vu le décret du 13 juillet 1923, portant organisation du personnel colonial des eaux et forêts;

Vu le décret du 16 novembre 1924, portant réorganisation de la Justice Française en Afrique Occidentale Française;

Vu le décret du 23 avril 1931, portant majoration du principal des amendes pénales en Afrique Occidentale Française;

Vu le décret du 28 octobre 1931, portant majoration du principal des amendes pénales prononcées par les juridictions indigènes au Togo;

Vu le décret du 11 mai 1934, rendant applicable au territoire du Togo placé sous mandant de la France, le décret du 2 septembre 1933 portant modification du code d'instruction criminelle en Afrique Occidentale Française;

Sur le rapport du ministre des colonies et du garde des sceaux, ministre de la justice;

### DECRETE :

## TITRE PREMIER

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### Généralités

**Article 1<sup>er</sup> :** Les forêts vacantes et sans maître dans le territoire du Togo ainsi que les périmètres de reboisement définis à l'article 6 appartiennent au territoire.

**Article 2 :** Sont qualifiés forêts, les terrains dont les fruits exclusifs ou principaux sont les bois d'ébénisterie, d'industrie, ou de service, les bois de chauffage et à charbon ou des produits accessoires tels que: les écorces et fruits à tanin, les écorces textiles et tinctoriales, le kapok, le caoutchouc, la glu, les résines, les gommes, les bambous, les palmiers spontanés et tous autres végétaux ne constituant pas un produit agricole.

## TITRE II

### Du domaine forestier

#### CHAPITRE PREMIER DOMAINE CLASSÉ - DOMAINE PROTÉGÉ PÉRIMÈTRE DE REBOISEMENT

##### SECTION I GÉNÉRALITÉS

**Article 3:** les forêts domaniales sont réparties en deux catégories:

- 1° forêts classées constituant le domaine forestier classé.
- 2° forêts protégées constituant le domaine protégé.

**Article 4:** Sont considérées constituant le domaine protégé.

- 1° les forêts réservées, avant la date de promulgation du présent décret, par des arrêtés du Commissaire de la République, c'est-à-dire qui ont déjà été soumises à un régime spécial restrictif concernant l'exercice des droits d'usage des indigènes et les exploitations. Des arrêtés du Commissaire de la République placeront définitivement ces forêts dans le domaine classé sous les conditions que les actes constitutifs de mise en réserve déterminent leurs limites d'une façon précise, qu'elles soient reconnues libres de tout droit d'usage ou que ces droits d'usage aient fait l'objet d'un règlement d'aménagement;
- 2° les forêts classées par voie d'arrêté du Commissaire de la République conformément aux dispositions du présent titre.

**Article 5:** Sont considérées comme forêts protégées toutes autres forêts du domaine n'ayant pas encore fait l'objet d'un arrêté de classement.

**Article 6:** Sont classées obligatoirement comme périmètre de reboisement les parties de terrain nu ou insuffisamment boisé comprenant:

- 1° les versants montagneux offrant un angle de 35 degrés et plus, dont la mise en réserve serait reconnue indispensable.
- 2° les dunes du littoral.
- 3° les terrains où pourraient se produire des ravinelements et éboulements dangereux.

Facultativement pourront être classées, comme périmètre de reboisement, certaines parties de terrain insuffisamment boisé, à mettre en régénération.

**Article 7:** Après constatation de reboisement, ces terrains et massifs peuvent être incorporés dans le domaine forestier classé par arrêté du Commissaire de la République.

##### SECTION II PROCÉDURE DU CLASSEMENT

**Article 8:** Le service forestier, après entente avec l'administrateur commandant le cercle, procède avec les représentants des villages intéressés à une reconnaissance générale du périmètre à classer et des droits d'usage ou autres s'exerçant sur la forêt.

Le projet de classement de la réserve forestière avec indication précise des limites prévues est remis à l'administrateur commandant de cercle qui le porte à la connaissance des intéressés par tous les moyens de publicité conformes aux règlements ou usages locaux.

Dans les trente jours qui suivent le dépôt du projet de classement au Chef-lieu de cercle, l'administrateur supérieur ordonne la réunion de la commission dite de classement, composée comme suit:

- le commandant de cercle, président
- le chef du service forestier ou son représentant, membre
- le Chef ou un notable de chaque village intéressé, membre

Cette commission se transporte au Chef-lieu du cercle ou de la subdivision, examine le bien fondé des réclamations qui auront pu être formulées par les habitants:

- 1° elle détermine les limites de la forêts à classer.
- 2° elle constate l'absence ou l'existence de droits d'usage grevant la forêt à classer dans ce dernier cas, elle constate la possibilité de plein exercice de ces usages à l'extérieur du périmètre réservé, sinon elle fixe les limites de la surface sur laquelle ils seront concentrés par voie de règlement et en tenant compte des règles limitatives énoncées aux articles 14, 16 et 17 du présent décret.

Il est établi un procès-verbal des opérations de la commission qui est transmis à l'administrateur supérieur après avis du Chef du service forestier et du receveur des domaines. Le projet de classement est ensuite transmis au Commissaire de la République pour décision.



**Article 9:** L'arrêté de classement est inséré au journal officiel du Togo, il est porté par les soins de l'administrateur, commandant de cercle à la connaissance de tous les villages intéressés.

**Article 10:** Les indigènes qui auraient des droits autres que des droits d'usage ordinaires à faire valoir sur les parties de la forêt à classer pourront former opposition pendant un mois à dater du jour du dépôt, au Chef-lieu du cercle du projet de classement. Les réclamations seront inscrites sur un registre tenu au Chef-lieu du cercle. Les contestations pourront être réglée à l'amiable par la Commission de classement, sans quoi les opposants devront porter leurs revendications devant les tribunaux compétents en intervenant dans la procédure de l'immatriculation que l'administration engagera dans ce cas plus tôt, pour les terrains contestés. Le délai ci-dessus de un mois n'exclut pas les délais accordés par les textes relatifs à l'immatriculation.

### SECTION III ALIÉNATION

**Article 11:** Les forêts domaniales classées ne pourront être aliénées en totalité ou en partie qu'après déclassement par arrêté du Ministre des Colonies pris sur la proposition du Commissaire de la République, après avis d'une commission composée ainsi qu'il suit:

- le Commandant du cercle, président
- le Chef du service forestier, membre
- un délégué de l'administration des domaines, membre.

## CHAPITRE II DES USAGES DES INDIGÈNES

### SECTION I PRINCIPES

**Article 12:** Les collectivités indigènes continuent à exercer leurs droits d'usage coutumier dans le domaine forestier protégé, y compris les chantiers forestiers, sans que les exploitants puissent prétendre, à ce titre, à aucune compensation.

L'exercice des droits d'usage est strictement limité à la satisfaction des besoins personnels et collectifs des usagers.

En ce qui concerne les bois pour la fabrication des pirogues, des demandes doivent être adressées par les chefs de village l'agent forestier, là où il en existe. Des

arrêtés du Commissaire de la République fixeront les modalités d'attribution des permis qui pourront être accordés gratuitement ou à titre onéreux.

**Article 13:** Les périmètres de reboisement sont affranchis de tous droits d'usage.

**Article 14:** Les forêts classées sont soustraites à l'exercice des droits d'usage des indigènes, autres que ceux de ramassage du bois mort, la récolte des fruits, des plantes alimentaires et médicinales et ceux reconnus par les arrêtés de classement.

**Article 15:** Les limites des forêts classées sont toujours choisies de manière qu'en dehors d'elles subsistent des surfaces boisées très largement suffisantes pour le libre exercice des droits d'usage des indigènes.

Quand en raison de la faiblesse du taux de boisement ou dans le cas où l'intérêt public est en cause, il n'est pas possible de laisser de vastes espaces boisés libres, il sera procédé préalablement à l'acte de classement à un règlement d'aménagement de ces usages.

**Article 16:** L'exercice des droits d'usage sur les forêts classées est toujours subordonné à l'état et à la possibilité des forêts. En particulier l'introduction dans certaines forêts classées des moutons, chèvres, peut être interdite lorsque le parcours de ces animaux présente un danger pour les peuplements.

Il peut être retiré sans compensation dans les cas où l'intérêt public est en cause.

Les droits de parcours ne peuvent s'exercer:

- 1° dans les forêts aménagées;
- 2° dans les périmètres de reboisement;
- 3° dans les terrains repeuplés artificiellement ou reboisés;
- 4° dans les parcelles portant des boisements de moins de cinq ans;
- 5° pendant cinq ans après l'incendie, dans les parties de forêts classées et incendiées.

**Article 17:** Le Commissaire de la République pourra prendre tous règlements utiles pour l'exercice des droits d'usage tant dans le domaine classé que dans le domaine protégé tels que cantons mis en défense, obligation des délivrances usagères, etc.

**Article 18:** Les droits d'usage autres que ceux de parcours pourront être rachetés par voie de cantonnement ou moyennant une indemnité en argent. Les conditions de ce rachat seront déterminées de gré et, en cas de con-



testation, fixées par le Commissaire de la République en Conseil d'administration.

## SECTION II

### USAGES À CARACTÈRES COMMERCIAUX

**Article 19:** L'exploitation commerciale par les collectivités indigènes, des palmiers, karités, gommiers, kapokiers, rotins et autres plantes dont les récoltes leur appartiennent traditionnellement, continue d'être libre dans les forêts protégées, sous réserve que les récoltes soient faites de manière à ne pas détruire les végétaux producteurs. Des arrêtés du Commissaire de la République régleront ou interdiront les saignées.

Dans les forêts classées, elle est subordonnée à la délivrance d'un permis d'exploitation spécial et gratuit, indiquant où peuvent s'exercer les droits de récolte. Ce permis peut être retiré par arrêté du Commissaire de la République si les usagers ne se conforment pas aux réglementations en vigueur.

Les usagers seront tenus d'assurer l'entretien des parcelles forestières appartenant au domaine privé du territoire sur lesquelles ils exercent de façon habituelle leurs droits d'usage.

Le droit d'usage pourra être retiré par un arrêté du Commissaire de la République aux usagers qui malgré du Commissaire de la République aux usagers qui malgré deux avertissements faits à plus de trois mois d'intervalle n'auront pas assuré l'entretien des parcelles définies au paragraphe précédent.

Au cas où un particulier demande un permis d'exploitation pour ces produits, il n'est accordé qu'après que la collectivité intéressée aura déclaré y renoncer. Ce permis sera toujours accordé avec un cahier des charges et pour une durée déterminée permettant à l'administration de réserver ainsi l'avenir de la collectivité indigène.

## SECTION II

### CULTURES SUR SOL FORESTIER

**Article 20:** Les cultures sur sol forestier après défrichage et incinération des arbres sont formellement interdits dans les forêts classées et à l'intérieur des périmètres de reboisement.

Le Commissaire de la République pourra cependant autoriser des cultures temporaires sur des terrains destinés à être ensuite enrichis en essences de valeur.

Elles pourront être défendues même dans le domaine forestier protégé, dans les zones à longues saisons sèches,

où la rareté et l'état de dégradation des boisements nécessiteront cette mesure. Des arrêtés du Commissaire de la République détermineront les territoires où cette interdiction sera imposée.

Exception faite pour les Zones où ce défrichage est nécessaire à la lutte contre les glossines, tout défrichage de bois et broussailles est interdit sauf autorisation spéciale et motivée de l'administrateur dans des bandes de 10 mètres de largeur longeant les rives des cours d'eau.

## SECTION IV

### ESPÈCES PROTÉGÉES

**Article 21:** Dans les zones désignées par décision du Commissaire de la République, l'abattage, l'arrachage, la mutilation des karités, kolatiers, rôniers copaïers (*Copaïfera guibourtiana*), palmiers à huile sont interdits sauf autorisation.

Le Commissaire de la République désignera par arrêtés les autres espèces de valeur qu'il jugera utile de protéger, soit partiellement, soit d'une façon absolue.

### Feux de brousse - Incendies de forêt

**Article 22:** Il est interdit d'abandonner un feu non éteint susceptible de se communiquer aux herbages.

Les feux de brousse sont interdits, sauf ceux ayant pour but le renouvellement des pâturages ou le débroussaillage des terrains de cultures et sous les réserves portées à l'article 23. Les mises à feu sont soumises aux prescriptions suivantes et à celles des arrêtés du Commissaire de la République à intervenir en exécution du présent décret.

Les surfaces à incendier doivent être limitées par des bandes débroussaillées et désherbées.

La mise à feu ne peut être effectuée que de jour et par temps calme.

Elle se fait avec l'autorisation du Chef de village. La collectivité doit se tenir prête à intervenir pour combattre l'incendie qui se propagerait hors des limites prévues.

Dans les territoires où les infractions aux dispositions précédentes et les incendies dans les massifs forestiers classés se répéteraient trop fréquemment, les mises à feu seront en outre assujetties par des arrêtés du Commissaire de la République à un régime d'autorisation administrative et de déclaration préalable.

**Article 23:** Il est défendu de porter ou d'allumer du feu, en dehors des habitations et des bâtiments d'exploitation,



dans l'intérieur et à la distance de 500 mètres de forêts classées situées en bordure de savanes ou dans la Zone des savanes. Cependant des charbonnières et fours à charbon pourront être établis en forêt et dans la zone de 500 mètres dans des conditions qui seront fixées par arrêté du Commissaire de la République.

L'autorité administrative, d'abord avec les agents forestiers, fera procéder d'office en saison favorable, par les usagers des forêts ou par les indigènes habitant les villages limitrophes, à l'incinération des herbes, à la limite de la forêt classée, et le long des routes et chemins ordinaires traversant les territoires réservés, afin de préserver les forêts classées des effets possibles des mises à feu inconsidérées. Ces travaux rentrent dans le système des prestations annuelles. Dans le cas où ils seraient très importants, ils pourront être rémunérés.

**Article 24:** Le Commissaire de la République pourra, par arrêté pris en conseil, déterminer les zones soumises à la surveillance des usagers ou des populations indigènes voisines des forêts et les modalités de ce service de surveillance.

Ce service rentre, en principe, dans le système des prestations annuelles.

Il pourra être rétribué dans le cas où la surveillance deviendra particulièrement active.

**Article 25:** Quiconque n'aura pas obtempéré à une réquisition faite en vue de combattre un incendie de forêt ou menaçant la forêt, sera puni des peines portées à l'article 63 du présent décret.

En ce qui concerne les indigènes, la réquisition sera réputée valablement faite, lorsqu'elle aura été adressée au Chef du village par un agent quelconque de l'autorité administrative ou du service des eaux et forêts.

### CHAPITRE III EXPLOITATION

**Article 26:** L'exploitation des forêts domaniales par des services publics ou des particuliers peut être faite:

- soit en règle:
- soit par vente de coupes;
- soit par permis temporaire d'exploitation;
- soit par permis de coupe, d'un nombre limité d'arbres, de pièces mètres-cubes ou stères.

Les forêts classées, aménagées ou en voie d'aménagement ne pourront toutefois être exploitées qu'en règle ou par coupes régulières vendues par adjudications publiques.

Des arrêtés spéciaux du Commissaire de la République pourront d'ailleurs suspendre temporairement l'exploitation de certaines forêts classées si le service des eaux et forêts estime que l'état de dégradation ou l'appauvrissement des peuplements l'exige.

Les périmètres de reboisement seront fermés à l'exploitation jusqu'à leur incorporation dans le domaine classé comme il est prévu à l'article 7 ci-dessous.

Les réserves botaniques seront, d'autre part, fermées indéfiniment à toute exploitation.

**Article 27:** Les permis temporaires d'exploitation sont accordés:

- 1° par le Commissaire de la République pour les lots égaux ou inférieurs à 10.000 hectares.
- 2° par décret sur rapport du ministre des colonies pour les lots supérieurs à 10.000 hectares.

**Article 28:** Sous réserve des dispositions de l'article précédent, l'exploitation des forêts domaniales, par des services publics ou des particuliers, sera réglementé par un arrêté du commissaire de la République en conseil d'administration pris sur avis du service des eaux et forêts.

## TITRE III

### Forêts des particuliers

**Article 29:** Les particuliers propriétaires de terrains boisés ou de forêts, y exerceront tous les droits résultant de leur titre de propriété sous les réserves contenues dans le décret, mais ne pourront en pratiquer le défrichement qu'en vertu d'une autorisation administrative, après avis du service des eaux et forêts.

Cette autorisation ne peut être refusée que si le défrichement est susceptible de compromettre:

- 1° le maintien des terres sur les pentes des montagnes;
- 2° la défense du sol contre les érosions et les envahissements des cours d'eau;

- 3° la protection des sources et leurs bassins de réception;
- 4° la protection des dunes et côtes et la constitution d'écran contre la violence des vents;
- 5° la salubrité publique;
- 6° la défense du territoire.

Les concessionnaires à titre provisoire de terrains domaniaux n'étant pas considérés comme propriétaires sont astreints, outre les règles ci-dessus, concernant le défrichement, aux formalités, redevances et taxes prévues pour les titulaires de permis de coupe ou permis d'exploitation s'ils se livrent sur lesdits terrains à l'exploitation des bois et produits forestiers dans un but commercial;

**Article 30:** En cas de contravention pour défrichement sans autorisation, le Commissaire de la République pourra, par des arrêtés pris en conseil, mettre en demeure les propriétaires de rétablir en nature de bois les lieux défrichés dans un délai qui ne peut excéder cinq années.

**Article 31:** Si dans un délai d'un an après la mise en demeure tout ou partie de la superficie à reboiser n'est pas replantée, il sera procédé au reboisement par les soins de l'administration, qui poursuivra par voie de contrainte, le remboursement du prix des travaux, pour lequel remboursement elle aura privilège sur les biens meubles et immeubles des débiteurs. Le prix sera établi suivant mémoire détaillé dressé par le service forestier et visé par le président du tribunal ou le juge de paix à compétence étendue.

## TITRE IV

### Encouragement du reboisement par les collectivités et les particuliers

**Article 32:** Dans l'intérêt public il peut être accordé en dotation révoquée par le Commissaire de la République aux particuliers, collectivités indigènes et établissements publics, à charge de les reboiser, des étendues de terrains domaniaux nus ou couverts de boisement très dégradé.

Les bénéficiaires exploitent librement les terrains reboisés sous réserve des restrictions visant la protection des terrains en pente et celles inscrites dans l'acte de dotation.

**Article 33:** Des subventions pourront être accordées à

raison des travaux entrepris par les collectivités ou particuliers pour le reboisement. Elles consisteront soit en délivrance de graines ou plantes, soit en argent.

**Article 34:** Les modalités d'application du présent titre seront réglées par arrêtés du Commissaire de la République en conseil d'administration.

## TITRE V

### Répression des infractions

#### CHAPITRE 1<sup>er</sup> PROCÉDURE

##### SECTION I RECHERCHE ET CONSTATATION DES DÉLITS

**Article 35:** Les agents forestiers assermentés et les officiers de police judiciaire recherchent et constatent par procès-verbaux, les infractions aux règlements forestiers sur toute l'étendue du territoire. Certains autres services pourront être également habilités à cet effet par le Commissaire de la République.

**Article 36:** Les agents forestiers assermentés peuvent s'introduire dans les dépôts, scieries et chantiers de construction pour y exercer leur surveillance.

Ils ne pourront s'introduire dans les maisons, cours et enclos si ce n'est en présence ou sur réquisition soit du juge de paix à compétence étendue, soit d'un officier de police judiciaire. En ce qui concerne les indigènes, ils devront être accompagnés du Chef de village ou, à défaut, de deux notables.

Ils ont libre accès sur les quais maritimes ou fluviaux, dans les gares et sont autorisés à parcourir librement les voies de chemin de fer toutes les fois que le service l'exige.

Ils peuvent visiter tous les trains et radeaux de bois.

**Article 37:** Les agents forestiers assermentés conduisent devant le président du tribunal compétent tout délinquant dont ils ne peuvent s'assurer de l'identité. Ils ont le droit de requérir la force publique pour la répression des infractions en matière forestière ainsi que pour la recherche et la saisie des produits forestiers exploités en délit vendus en fraude, ou circulant en contravention aux dispositions d'arrêtés du Commissaire de la République.



**Article 38:** Les agents forestiers indigènes non assermentés ne peuvent rechercher et constater que les infractions en matière forestière commises par les indigènes, les chefs de collectivités indigènes également mais seulement en ce qui concerne les infractions aux dispositions du chapitre II du titre II du présent décret.

Ils conduisent tout inconnu surpris en flagrant délit devant l'agent forestier ou l'officier de police judiciaire le plus proche, qui dresse procès-verbal.

**Article 39:** Les délits ou contraventions en matière forestière sont prouvés soit par procès-verbaux.

Les procès-verbaux, soit par témoins à défaut ou en cas d'insuffisance des procès-verbaux.

Les procès-verbaux dressés par les agents indigènes assermentés devront être affirmés devant l'autorité administrative la plus proche.

Cette affirmation a lieu dans les huit jours qui suivent celui de la clôture du procès-verbal.

**Article 40:** Le prévenu qui veut s'inscrire en faux contre un procès-verbal est tenu de la faire au moins huit jours avant d'audience indiquée par la citation. Il doit faire en même temps le dépôt des moyens de faux et indiquer les témoins qu'il veut faire entendre.

Le prévenu contre lequel a été rendu un jugement par défaut est admis à faire sa déclaration d'inscription en faux pendant le délai qui lui a été accordé pour se présenter à l'audience sur l'opposition par lui formée.

**Article 41:** Les agents européens du service forestier ne pourront entrer en fonction qu'après avoir prêté serment devant le tribunal de première instance ou le juge de paix à compétence étendue de la circonscription administrative où ils sont appelés à servir.

Ce serment n'est pas renouvelé en cas de changement de résidence dans le territoire.

Il sera prêté par écrit, si ces agents résident en dehors du siège du tribunal ou de la justice de paix.

Certains agents forestiers indigènes désignés spécialement par Commissaire de la République pourront prêter serment dans les mêmes conditions.

## SECTION II CONFISCATION ET SAISIE

**Article 42:** Dans tous les cas où il y a matière à confiscation de produits forestiers, les procès-verbaux qui

constateront la contravention ou le délit comporteront la saisie desdits produits.

Si ceux-ci ont disparu ou ont été endommagés par l'action ou la faute du contrevenant, les tribunaux en détermineront la valeur à charge de restitution, sans préjudice du dommage occasionné. Dans ce cas, les poursuites et peines prévues par l'article 400 aliéna 5 du code pénal, seront applicables.

**Article 43:** Tous bois ou produits abattus ou récoltés sans autorisation administrative seront confisqués.

**Article 44:** Les tribunaux pourront prononcer la confiscation des bois et produits régulièrement achetés ou provenant d'exploitation autorisées, mais qui auront été exploités ou transportés en dehors des conditions fixées par le présent décret ou par les cahiers des charges et les arrêtés du Commissaire de la République pris pour son exécution.

**Article 45:** Tous bois ou produits provenant de confiscation ou restitution seront vendus soit par voie d'adjudication publique, soit de gré à gré au profit du budget local.

## SECTION III ACTIONS ET POURSUITES

**Article 46:** Les actions et poursuites sont exercées directement par le chef de service forestier ou son représentant devant les juridictions françaises, suivant les règles générales de compétence, sans préjudice de droit qui appartient au ministère public près ces juridictions.

Les officiers forestiers ont le droit d'exposer l'affaire devant le tribunal et sont entendus à l'appui de leurs conclusions. Devant les juridictions françaises, ils siègent à la suite du procureur et des substituts et assistent à l'audience en uniforme et découverts. En l'absence d'officiers forestiers un fonctionnaire remplira les fonctions de chef de service forestier.

**Article 47:** Si dans une instance en réparation de délits ou contraventions, le prévenu excipe d'un droit de propriété ou autre droit réel, le tribunal statue sur l'incident en ce conformant aux règles suivantes:

L'exception préjudicielle n'est admise que si elle est fondée, soit sur un titre apparent, soit sur des faits de possession équivalente, et si ces moyens de droit sont de nature à enlever au fait ayant provoqué la poursuite, son caractère de délit ou contravention.

Dans le cas de renvoi à fins civiles, le jugement fixe un bref délai qui ne pourra être supérieur à trois mois, dans



lequel la partie doit saisir les juges compétents et justifier de ses diligences, sinon il est passé outre.

Toutefois en case de condamnation, il est sursis à l'exécution de la peine d'emprisonnement si elle est prononcée et le montant des amendes, restitutions et dommages-intérêts est versé à la caisse des dépôts et consignations pour être remis à qui il sera ordonné par le tribunal statuant sur le fond du droit.

**Article 48:** Les jugements en matière forestière seront notifiés au chef du service forestier.

Celui-ci peut, par délégation du Commissaire de la République, concurremment avec le ministère public près les juridictions indigènes ou françaises, interjeter appel des jugements en premier ressort.

Il peut aussi, concurremment avec le ministère public, se pourvoir en cassation contre les arrêts et jugements en dernier ressort des juridictions françaises.

Il est réservé au procureur général de se pourvoir, dans les mêmes cas, en annulation contre les décisions des juridictions indigènes.

Sur l'appel de l'une ou de l'autre partie, le chef de service forestier a droit d'exposer l'affaire devant la cour ou devant le tribunal colonial d'appel et est entendu à l'appui de ses conclusions.

Il siège à la suite du procureur général et de ses substituts comme indiqué à l'article 46 ci-dessus.

**Article 49:** Les actions en réparation des délits et contraventions se prescrivent par un an à partir du jour où ils ont été constatés lorsque les prévenus sont désignés dans le procès-verbal. Dans le cas contraire, le délai de prescription est de dix-huit mois.

Dans le cas d'infractions à la réglementation des défrichements, les actions se prescrivent par quatre ans, à dater de l'époque où le défrichement a été consommé.

**Article 50:** Tous les agents du service forestier pourront faire, pour toutes les affaires relatives à la police forestière, tous exploits et autres actes de justice que les huissiers ont coutume de faire. Ils pourront toutefois se servir du ministère des huissiers.

**Article 51:** Les dispositions réglant au Togo la procédure en matière répressive devant les tribunaux indigènes sont applicables à la poursuite des délits et contraventions, en matière forestière, devant ces deux ordres de juridiction, sauf les modifications édictées par le présent décret.

Les infractions aux dispositions du présent décret sont de la compétence des tribunaux de simple police, à l'exception de celle prévues par les articles 56, 57, 60 et 64 qui seront déférées aux tribunaux français, conformément aux règles générales déterminant dans le territoire la compétence des différents tribunaux.

## SECTION IV TRANSACTIONS

**Article 52:** Les officiers des eaux et forêts ou, à défaut, les commandants de cercle et les chefs de subdivision sont autorisés à transiger au nom du Commissaire de la République avant ou après jugement, même définitif, pour les infractions de nature à entraîner une amende en principal ne dépassant pas 100 francs. Ils devront adresser au Commissaire de la République copie des transactions qu'ils auront consenties. Au-dessus de 100 francs, les transactions sont accordées par le Chef du service forestier, sous réserve de l'approbation du Commissaire de la République.

Après jugement définitif, la transaction ne peut porter que sur les amendes, restitutions, frais et dommages.

**Article 53:** Au cas où le délinquant accepte de se libérer par des travaux en nature, le commandant de cercle ou le chef de subdivision prescrivent alors, d'accord avec le service forestier, le genre de travaux, obligatoirement d'intérêt forestier, auxquels seront affectées les journées de travail tenant lieu de transaction.

Le montant des transactions consenties doit être effectué dans les délais fixés dans l'acte de transaction, faute de quoi il est procédé soit aux poursuites soit à l'exécution du jugement.

## CHAPITRE II INFRACTIONS ET PÉNALITÉS COUPES ET EXPLOITATIONS NON AUTORISÉES MUTILATION D'ARBRES

### SECTION I PERMIS DE COUPE ET D'EXPLOITATION

**Article 54:** Les concessionnaires ou exploitant divers ne pourront commencer leurs exploitations qu'après avoir reçu le permis d'exploitation de l'autorité compétente, ou exploiter après expiration des délais fixés, à peine d'être poursuivis comme délinquants.

**Article 55:** Quiconque coupera ou enlèvera des arbres ou exploitera des produits forestiers accessoires, sans y



avoir été autorisés ou sans jouir du droit d'usage, sera puni d'une amende de principe de 10 à 100 francs et d'un emprisonnement de six jours à un mois ou de l'une de ces deux peines seulement, sans préjudice de la confiscation ou des restitutions et dommages-intérêts.

S'il y a eu exploitation \_ caractère commercial, le délit sera puni d'une amende en principal de 20 à 2.000 francs et d'un emprisonnement d'un mois à un an, ou de l'une de ces deux peines seulement.

Si l'infraction est commise dans une forêt domaniale classée, le maximum de l'emprisonnement sera d'un an au cas prévu à l'alinéa 1<sup>er</sup>, de deux ans au cas prévu à l'alinéa 2.

Si l'infraction est commise dans une portion de forêt temporairement concédée, la moitié des bois ou produits, ainsi que les restitutions et dommages-intérêts, reviendra aux exploitants autorisés.

Si l'infraction est commise dans une coupe régulière, le tout redeviendra à l'acheteur de cette coupe.

La mutilation ou l'écorçage effectués indûment seront punis des mêmes peines.

**Article 56:** Quiconque coupera, arrachera, mutilera ou endommagera d'une façon quelconque des arbres ou plants naturels d'espèces protégées visées à l'article 21 ou des plants ou arbres d'essences de valeur qui seront désignées par des arrêtés du Commissaire de la République ou des plants ou arbres mis en place de main d'homme sera puni d'une amende en principal de 20 à 200 francs et d'un emprisonnement d'un mois à cinq ans ou de l'une de ces deux peines seulement, sans préjudice des dommages-intérêts.

## SECTION II

### MARTEAUX FORESTIERS - MARQUES

**Article 57:** Quiconque aura contrefait ou falsifié les marques régulièrement déposées des marteaux particuliers, quiconque aura fait usage de ces marteaux contrefaits ou falsifiés, quiconque s'étant indûment procuré les marteaux véritables en aura fait frauduleusement usage, quiconque aura enlevé ou tenté d'enlever les marques de ces marteaux sera puni d'un emprisonnement d'un mois à deux ans.

Si ces marteaux servent aux marques de l'administration forestière, la peine sera de trois mois à cinq ans.

## SECTION III EXPLOITATION

**Article 58:** Tout acheteur de coupe ou titulaire d'un permis de coupe ou d'exploitation ou son représentant, convaincu d'avoir abattu ou récolté dans sa coupe ou sur le terrain défini par son permis d'autres produits que ceux faisant l'objet du cahier des charges ou du permis, sera condamné à un emprisonnement de six mois à deux ans et à une amende en principal de 50 à 1.000 francs ou à l'une de ces deux peines seulement, sans préjudice des confiscations ou restitutions et des dommages-intérêts.

Il sera puni des mêmes peines s'il se livre à des manoeuvres frauduleuses quelconques tendant à ne pas payer les taxes ou redevances dues.

**Article 59:** Tout acheteur de coupe ou titulaire d'un permis de coupe ou d'exploitation, ou son représentant convaincu d'avoir abattu ou récolté dans les parties de forêts situées en dehors du périmètre de sa coupe ou du terrain sur lequel porte son permis, sera condamné aux peines prévues par l'article précédent.

**Article 60:** Tout acheteur de coupe ou titulaire d'un permis de coupe ou d'exploitation ou son représentant qui se sera livré à des manoeuvres frauduleuses quelconques tendant à faire passer comme provenant de sa coupe des bois ou autres produits forestiers coupés ou récoltés hors du périmètre de sa coupe par un tiers, ou qui aura favorisé lesdites manoeuvres, sera condamné à un emprisonnement d'un mois à cinq ans et, solidairement avec les auteurs principaux du délit, à une amende en principal de 200 à 2.000 francs ou à l'une de ces deux peines seulement, sans préjudice des confiscations ou restitutions et dommages-intérêts. Les auteurs ou complices seront passibles des mêmes peines.

**Article 61:** Tout acheteur de coupe ou titulaire d'un permis d'exploitation est pénalement responsable de tout délit commis par ses employés et ouvriers dans sa coupe ou dans le terrain sur lequel porte son permis. Pour les délits et en faisant connaître les auteurs des délits, dans un rapport transmis sous pli recommandé à l'agent des eaux et forêts ou le chef de poste intéressé, au plus tard dix jours après la constatation du délit.

Néanmoins, il demeure toujours responsable du paiement des amendes, restitutions et dommages-intérêts auxquels ses préposés ouvriers pourraient être condamnés.

Aucune peine d'emprisonnement ne pourra être prononcée à l'égard du concessionnaire s'il n'est pas



établi que le délit a été commis sur son ordre, ou avec son consentement exprès.

**Article 62:** Le Commissaire de la République pourra ordonner, par arrêté pris en conseil d'administration, le retrait des droits d'exploitation et l'interdiction, pendant un délai d'un à cinq ans, d'obtenir de nouveaux droits pour toute personne qui s'est rendue coupable de toute infraction aux dispositions du présent décret ou des arrêtés et cahiers des charges pris ou établis pour son exécution.

Le retrait et l'interdiction pendant cinq ans sont obligatoires pour les récidivistes.

#### SECTION IV

##### CULTURES EN FORÊTS - FEUX DE BROUSSE INCENDIES DE FORÊT

**Article 63:** Toute contravention à l'article 20 du présent décret ou à la réglementation des feux prévus par les articles 22, 23, 24, 25 et aux prescriptions des arrêtés pris pour leur exécution, sera punie d'une amende en principal de 10 à 100 francs et pourra l'être en outre d'un emprisonnement de huit jours à trois mois, sans préjudice des dommages-intérêts.

Dans le cas d'une contravention à l'article 20, la peine de prison est obligatoire, sans préjudice, en cas de destruction d'arbres ou de plants visés à l'article 56, des peines portées audit article du présent décret et de tous dommages-intérêts s'il y a lieu.

Toutefois, les circonstances atténuantes seront admises.

**Article 64:** Quiconque aura, par imprudence, négligence, inattention, inobservation des règlements, involontairement causé un incendie dans une forêt classée, sera puni d'une amende en principal de 20 à 1.000 francs et d'un emprisonnement d'un mois à deux ans ou de l'une de ces peines seulement.

Si l'incendie a été allumé volontairement dans un intérêt personnel de culture ou autre, la peine d'emprisonnement qui pourra être élevée jusqu'à trois ans, sera obligatoire.

Si l'incendie volontaire a causé des pertes de vies humaines, l'emprisonnement, également obligatoire, sera de trois mois au moins et de cinq ans au plus.

En cas d'incendie volontaire, allumé dans une intention criminelle dans une forêt, classée ou non, seront respectivement applicables aux personnes du statut européen et aux justiciables des tribunaux indigènes, l'article 434, alinéas 3 et 10 du code pénal et l'article 47, 4° et 5° du décret du 21 avril 1933.

Les compagnies concessionnaires ou fermières et serv-

ices publics exploitant des chemins de fer traversant ou longeant des forêts classées ne devront laisser subsister aucune végétation herbacée ou arbustive sur les emprises de voies et sur vingt-mètres de chaque côté de l'axe de la voie, pendant la traversée des périmètres réservés et durant toute la durée de la saison sèche.

Les compagnies ou services sont autorisés à procéder par temps calme à l'incinération des herbages et broussailles dans la bande de 40 mètres mais l'alinéa 1<sup>er</sup> du présent article leur sera applicable au cas où les feux se propageront en dehors des limites prescrites. A défaut, ces travaux pourront être exécutés aux frais des compagnies et services sur décision du Commissaire de la République.

**Article 65 Nouveau:** décret du 13 juin 1941 modifiant le décret du 5/2/1938 promulgué par arrêté n° 432 du 13 août 1941.

Les collectivités indigènes sont pécuniairement responsables des infractions à l'article 20 du présent décret, à la réglementation des feux de brousse prévue par les articles 22, 23, 24 et 25, ainsi que les incendies des forêts classées commis dans leur voisinage, à moins qu'elles ne puissent établir la preuve que le délit a été commis par quelqu'un d'étranger à la collectivité.

#### SECTION V PÂTURAGES

**Article 66:** Les propriétaires d'animaux trouvés de jour en délit dans les forêts non ouvertes au parcours, seront condamnés d'une amende en principal de 50 centimes à 2 francs par chèvre, le tout sans préjudice s'il y a lieu, des dommages-intérêts. Si la contravention a lieu sur des parties de forêts désignées au paragraphe 3 de l'article 16, le maximum de l'amende sera appliqué.

Lorsque le délit ne résultera pas de circonstances purement fortuites ou d'une simple négligence, il pourra, en outre, être prononcé contre le berger ou ses complices un emprisonnement de cinq jours à deux mois.

Les animaux trouvés en contravention pourront être mis en fourrière. Ils pourront aussi être confisqués.

#### SECTION VI INFRACTIONS DIVERSES

**Article 67:** Quiconque aura détruit, déplacé ou fait disparaître, tout ou partie des bornes, marques ou clôtures servant à limiter les forêts classées ou des cantons forestiers, sera puni d'une amende en principal de 10 à 100 francs et d'un emprisonnement de six jours à trois mois, ou de l'une de ces deux peines seulement, le tout



sans préjudice des dommages-intérêts et de la remise des lieux en état.

**Article 68:** Le propriétaire d'une forêt qui aura défriché les terrains interdits par l'article 29 du présent décret sera puni d'une amende en principal de 100 à 1.000 francs, sans préjudice de la remise en état des lieux prévue par les articles 30 et 31.

**Article 69:** Quiconque aura mis volontairement obstacle à l'accomplissement des devoirs des agents du service forestier sera puni d'une amende en principal de 20 à 200 francs, et d'un emprisonnement de six jours à un mois, ou de l'une de ces deux peines seulement sans préjudice des cas constituant la rébellion.

**Article 70:** Sous réserve des droits d'usage, toute extraction ou enlèvement non autorisé des pièces, sable, tourbe, terre, gazon feuilles et, en général, de tout produit des forêts classées non compris dans les produits énumérés à l'article 2, donnera lieu à une amende en principal de 5 à 20 francs. Il pourra, en cas de récidive, être prononcé un emprisonnement de trois à quinze jours.

## SECTION VII GÉNÉRALITÉS

**Article 71:** Dans tous les cas où il y a lieu à dommages-intérêts, le chiffre de ceux-ci ne pourra être inférieur au montant de l'amende prononcée par le tribunal.

**Article 72:** Les maris, pères, mères et tuteurs sont civilement responsables des délits et contraventions commis par leurs femmes, enfants mineurs et pupilles.

**Article 73:** Les complices sont punis comme les auteurs principaux et condamnés solidairement aux amendes, frais, dommages-intérêts et restitutions prévus.

**Article 74:** Les contraventions aux arrêtés du Commissaire de la République pris pour l'exécution du présent décret, qui ne seraient pas déjà prévues et punies par les articles ci-dessus, seront punies d'une amende de 5 à 100 francs et d'un emprisonnement d'un à cinq jours, ou de l'une de ces deux peines seulement.

**Article 75:** Les circonstances atténuantes seront applicables aux matières régies par le présent décret.

Les juridictions françaises pourront appliquer à la peine d'emprisonnement les dispositions de la loi du 26 mars 1891 pour le sursis.

**Article 76:** En cas de récidive lorsque, le maximum de l'amende sera toujours appliqué. Il y a récidive lorsque, dans les douze mois qui précèdent le jour où le délit a été commis, il a été prononcé contre le délinquant ou contrevenant une condamnation définitive pour délit ou contravention forestière.

## TITRE VI DISPOSITIONS GÉNÉRALES

**Article 77:** Aucun droit d'exploitation ou de récolte des produits de la forêts ne peut être concédé à titre gratuit.

**Article 78:** Le dixième du produit des amendes, confiscations, restitutions, dommages-intérêts et contrainte sera attribué aux agents du service forestier et, le cas échéant, aux agents des autres services habilités conformément aux dispositions de l'article 35 qui auraient verbalisé en matière forestière.

Sur ce dixième, une partie pourra être attribuée aux Chefs des collectivités indigènes qui auront coopéré à la police forestière.

**Article 79:** Les dispositions du décret du 23 Avril 1931, portant majoration des amendes pénales en Afrique Occidentale Française, et celles du décret du 28 Octobre 1931, portant majoration du principal des amendes pénales prononcées par les juridictions indigènes au Togo, sont applicables au présent décret.

**Article 80:** Le service du Trésor est chargé de poursuivre et d'opérer le recouvrement des amendes, restitutions, frais et dommages-intérêts résultant des jugements et arrêtés rendus pour délits et contraventions prévus par le présent décret.

La contrainte par corps sera de droit prononcée pour le recouvrement des sommes dues par suite d'amendes, frais, restitutions et dommages-intérêts.

**Article 81:** Sont abrogées toutes dispositions antérieures contraires au présent décret.

**Article 82:** Le ministre des colonies et le garde des sceaux, ministre de la justice, sont chargés de l'exécution du présent décret, qui sera publié au journal officiel de la République Française, au journal officiel du territoire du Togo et inséré au bulletin officiel du ministère des colonies.

Paris, le 5 février 1938

Signé: Albert LEBRUN

Source: *J.O. du 16 mars 1938, pp. 202-210*

## Décret n° 68-10 du 16 janvier 1968 interdisant la chasse de nuit

### LE PRESIDENT DE LA REPUBLIQUE,

Vu les ordonnances n°s 15 et 16 du 14 avril 1967;

Vu la convention internationale de Londres du 8 novembre 1933, relative à la conservation de la faune et de la flore africaines à l'état naturel;

Vu l'ordonnance n° 4 du 16 janvier 1968, réglementant la protection de la faune et l'exercice de la chasse au Togo;

Sur proposition du ministre de l'économie rurale;

Le conseil des ministres entendu;

### DECRETE :

**Article 1<sup>er</sup>:** Il est formellement interdit sur toute l'étendue du territoire, à toute personne ou groupe de personnes, détenteurs ou non de permis de chasse régulièrement délivré, de se livrer de nuit à l'exercice de la chasse.

**Article 2:** Les infractions au présent décret dont les constats et les verbalisations relèvent des attributions des agents spécialisés de la faune ainsi que ceux du service des eaux et forêts, sont punies conformément aux articles 34, 35, et 37 de l'ordonnance n° 4 du 16 janvier 1968.

**Article 3:** Le ministre de l'économie rurale est chargé de l'exécution immédiate du présent décret qui sera publié au journal officiel de la République togolaise.

Fait à Lomé, le 16 janvier 1968

Signé: Gal. G. EYADEMA

Source: J.O. du 16 février 1968, p. 110



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**Décret n° 79-139 du 18 avril 1979 portant modalités d'application de l'ordonnance n° 4 du 16 janvier 1968 réglementant la protection de la faune et l'exercice de la chasse au Togo**

**LE PRESIDENT DE LA REPUBLIQUE,**

Sur rapport du ministre de l'aménagement rural;

Vu l'ordonnance n° 1 du 14 février 1967;

Vu l'ordonnance n° 15 du 14 avril 1967;

Vu l'ordonnance n° 4 du 16 janvier 1968, réglementant la protection de la faune et l'exercice de la chasse au Togo, spécialement en ses articles 5, 21 et 34;

Le conseil des ministres entendu;

**DECRETE :**

**Article 1<sup>er</sup> :** Est passible des peines prévues à l'article 34 de l'ordonnance n° 4 du 16 Janvier 1968 susvisée quiconque sans autorisation spéciale de l'autorité compétente:

- 1° se livre à la chasse ou à la capture du gibier, dans le périmètre des réserves naturelles et parcs nationaux, ou sans permis de chasse de la catégorie correspondante à l'action de chasse entreprise;
- 2° se livre à la chasse ou à la capture des espèces protégées à l'annexe I de l'Ordonnance n° 4 du 16 Janvier 1968 susvisée;
- 3° se livre à la chasse ou à la capture du gibier sur le terrain d'autrui sans l'accord du maître des lieux;
- 4° se livre à la chasse ou à la capture du gibier en utilisant des feux encerclants, des lumières éblouissantes, des poisons, des explosifs, des véhicules à moteur

terrestres ou aériens, des armes ou matériels de guerre ou autres armes prohibées;

5° fabrique, expose, met en vente, achète ou fait usage de pièges à gibier hors des cas de mesures prises pour la lutte contre les espèces nuisibles;

6° expose, met en vente, achète ou consomme du gibier tué ou capturé dans des conditions illicites.

**Article 2 :** Les espèces prédatrices énumérées à l'annexe II de l'ordonnance n° 4 du 16 janvier 1968 susvisée peuvent en tout temps être abattues dans les zones d'habitation et d'exploitation agricole.

Cet abattage ne peut être opéré par arme à feu que par les titulaires d'un permis national de chasse en cours de validité.

**Article 3 :** La chasse des espèces non prédatrices est interdite dans les récoltes pendantes ou dans les plantations permanentes.

Toutefois, la maître des lieux pourra y chasser, en prenant des mesures de précaution pour éviter tout dommage aux personnes ou aux récoltes.

**Article 4 :** La chasse est autorisée avec armes non prohibées à l'intérieur des propriétés closes de murs, sous réserve de l'accord du propriétaire et de la tranquillité du voisinage.

**Article 5 :** La ministre de l'aménagement rural et le ministre de la justice, garde des sceaux, sont chargés chacun en ce qui le concerne de l'exécution du présent décret qui sera publié au journal officiel de la République togolaise.

Lomé, le 18 avril 1979

Signé: Gal. G. EYADEMA

Source: J.O. du 1<sup>er</sup> juin 1979, p. 274

**Décret n° 84-171 du 04 juin 1980 portant modalités d'application de l'ordonnance n° 4 du 16 janvier 1968 réglementant la protection de la faune et l'exercice de la chasse au Togo**

**LE PRESIDENT DE LA REPUBLIQUE,**

Sur rapport du ministre de l'aménagement rural;

Vu la constitution du 30 décembre 1979, et plus spécialement en ses articles n° 15-32-34;

Vu l'ordonnance n° 4 du 16 janvier 1968, réglementant la protection de la faune et l'exercice de la chasse au Togo, spécialement en ses articles 7, 12, 16, 17, et 34 telle que modifiée par l'ordonnance n° 79-139 du 17 avril 1979;

Le conseil des ministres entendu;

**DECRETE :**

**Article 1<sup>er</sup> :** Le présent décret régleme les dispositions relatives à la nature, à l'attribution, aux latitudes d'abattage, au contrôle, à la publication, à la durée de l'échéance des divers permis de chasse.

**Permis de chasse et de capture**

**Article 2 :** Les valeurs des diverses catégories de permis prévues à l'article 11 de l'ordonnance n° 4 du 16 Janvier 1968 sont fixées comme suit:

Permis de petite chasse n° 1	6.000
Permis de petite chasse n° 2	6.000
Permis annuel de moyenne chasse Résident	20.000
Touristique (valable pour 20 jours)	25.000
Permis annuel de grande chasse Résident	25.000
Touristique (valable pour 1 mois)	40.000
Permis spécial de capture commerciale	
valeur de l'espèce en sus Résident	40.000
Non résident	50.000
Permis scientifique de chasse ou de capture	
valeur de l'espèce en sus Résident	40.000
Non résident	50.000
Permis spécial d'exploitation d'espèces	
vivantes Résident	40.000
Non résident	50.000
Permis spécial d'importation et de circulation	
d'espèces vivantes	25.000
Permis spécial de circulation et d'exportation	
des trophées Résident	40.000
Non résident	50.000
Permis spécial d'importation et de circulation	
des trophées Résident	20.000
Non résident	30.000

**Article 3 :** Les taxes d'abattage ou valeurs des espèces sont fixées comme suit:



**Mammifères**

Eléphant		<i>Loxodonta africana</i>	100.000
Hippopotame		<i>Hippopotamus amphibius</i>	100.000
Panthère		<i>Panthera pardus</i>	50.000
Lion		<i>Leo leo</i>	50.000
Buffle		<i>Syncerus caffer</i>	25.000
Hippotrague		<i>Hippotragus equinus</i>	25.000
Oryctérope		<i>Orycteropus afer</i>	20.000
Crocodile		Genre <i>Crocodylus-osteolaemus</i>	20.000
Grand Python		Genre <i>Python</i>	20.000
Bongo		<i>Boecerus euryceros</i>	16.000
Bubale		<i>Alcelaphus major</i>	16.000
Cob defassa ou waterbuck		<i>Kobus defassa</i>	10.000
Cob de buffon		<i>Adenota Kob</i>	10.000
Cob de Roseaux		<i>Redunca redunca</i>	10.000
Néotrague		<i>Neotragus pygmaeus</i>	10.000
Guib		<i>Tragelaphus scriptus</i>	10.000
Sitatonga		<i>Limnotragus apekei</i>	10.000
Phacochère		<i>Phacocheirus aethiopicus</i>	10.000
Hylochère		<i>Hyochoerus meinertzhageni</i>	10.000
Potamochère		<i>Potamochoerus porcus</i>	10.000
Céphalophe à dos jaune		Genre <i>Cephalophus</i>	5.000
Ourébi		<i>Ourebia ourebia</i>	5.000
Chevrotin aquatique		<i>Hyemoschus aquaticus</i>	5.000
Gazelle		Genre <i>Gazella</i>	5.000
Serval		<i>Felis serval</i>	5.000
Hyène		Genres <i>Crocuta, Hyaena</i>	5.000
Chacui		Genre <i>Canis</i>	5.000
Lycaon		<i>Lycaon pictus</i>	5.000
Anomalures (ou écureuils) volants (6)		Genre <i>Anomalurus</i>	5.000
Cynocéphale		<i>Papio papio</i>	5.000
Daman d'arbre		<i>Dendrohyrax dorsalis</i>	2.000
Servalin		<i>Felis brachyuria</i>	2.000
Renard des sables		<i>Vulpes pallida</i>	2.000
Civettes		<i>Civettictis civetta</i>	2.000
Nandinie		<i>Nandinia binotata</i>	2.000
Porc-épic		<i>Hystrix zechi</i>	2.000
Colobe magistrat		<i>Colobus polykomos</i>	2.000
Colobe baie		<i>Colobus badinus</i>	2.000
Colobe vrai		<i>Colobus verus</i>	2.000
Colobe vrai		<i>Colobus verus</i>	2.000
Galago		Genre <i>Galago</i>	2.000
Patas		<i>Erythrocebus patas</i>	2.000
Cercocèbe		Genre <i>Cercocebus</i>	2.000
Mone		<i>Cercopithecus mona</i>	2.000
Hocheur		<i>Cercopithecus nictitans</i>	2.000
Diane		<i>Cercopithecus diana</i>	2.000
Mongoustes	(4)	Genre <i>Herpestes</i>	2.000
Ratel	(4)	<i>Mellivora capensis</i>	2.000
Génette	(4)	<i>Genetta</i>	2.000
Loutre	(4)	Genre <i>Lutra aonyx</i>	2.000
Zorille	(4)	<i>Zorilla striatus</i>	2.000
Athérure	(4)	<i>Atherura africana</i>	2.000
Pangolin	(6)	Genre <i>Phataginus uromanis</i>	2.000

**Oiseaux**

Echasse		Himantopus himantopus	2.000
Grue		Balearica pavonica	2.000
Cigogne		Ciconia ciconia	2.000
Outarde	(4)	Neotris Cafra	2.000
Aigle	(4)	Genre Cuncuma	2.000
Buse	(4)	Genre Buteo	2.000
Aigrette	(4)	Genre Egretta	2.000
Marabout	(4)	Leptopilos grumeniferus	2.000
Tantale ibis	(4)	Ibis ibis	2.000
Pélican-Comoran	(4)	Genre Pélicanus phalarocoras	2.000
Poule de rocher	(6)	Ptilopachus petrosus	2.000
Avocette	(6)	Recurvirostra avocetta	2.000
Vautour	(6)	Genre Noeophron	2.000
Héron	(6)	Genre Bubulcus	2.000
Effraie, Chouette, Duc	(6)	Genres Tyto scotopulia, Bubo otus	2.000
Perroquet, Perruche	(6)	Genre Psittachus	2.000
Jabirus	(6)	Ephippiortynchus senegalensis	2.000

**Article 4:** Les latitudes d'abattage des espèces par permis sont définies ainsi qu'il suit par catégorie:

**1° Permis de petite chasse**

<i>Catégorie A</i>	<i>Nombre d'espèces autorisé</i>
Petits carnassiers	5
Primates	5
Antilopes	5
Oiseaux	10

**2° Permis annuel de moyenne chasse**

<i>Catégorie B</i>	
Bovins	4
Carnassiers (sauf lion et panthère)	4
Tubulidentés	4
Antilopes	6
Primates	6
Suidés	6
Rongeurs	6
Oiseaux	2

**3° Autres permis**

- Permis de chasse touristique de passager
- Permis annuel de grande chasse
- Permis spécial de capture commerciale
- Permis scientifique de chasse ou de capture

*Catégorie C*

Eléphantidés	1
Hippopotamidés	1
Traguilidés	1
Carnassiers (y compris lion et panthère)	6 (dont 1 lion ou 1 Panthère maximum)
Bovins	8



Suidés	8
Tubulidentés	8
Insectivores	8
Primates	8
Reptiles	8
Antilopes	10
Pholidotes	10
Oiseaux	100

L'abattage des femelles est interdit pour toute catégorie de permis de chasse, sauf sur autorisation spéciale du Chef de l'Etat.

**Article 5:** Les permis sportifs de petite, moyenne et grande chasse donnent le droit de chasser sur toute l'étendue du territoire national, en dehors des réserves de chasse ou de faune, des forêts classées et des propriétés closes ou d'accès interdit, signalées de façon apparente par les propriétaires ou usagers ordinaires.

Ils sont valables un an à compter du jour de leur délivrance. Ils sont renouvelables.

**Article 6:** L'autorisation en vue de la pénétration, la circulation soit par voie terrestre ou aérienne à basse altitude, et le campement dans les réserves naturelles pour des fins de recherches scientifiques est exclusivement délivrée par le Chef de l'Etat sur avis du ministre de l'aménagement rural.

**Article 7: Dispositions communes à tous les permis.** Ces permis sont essentiellement personnels. Ils ne peuvent être ni cédés, ni vendus, ni prêtés.

Les permis ne peuvent être délivrés qu'aux personnes âgées d'au moins 18 ans révolus.

Il ne peut être délivré à la même personne qu'un seul permis sportif dans la même année. Cependant, il peut être délivré pendant la validité d'un permis, un permis d'une catégorie supérieure moyennant le versement de la différence du prix entre les deux permis. Le total des latitudes d'abattage ainsi accordé ne pourra jamais dépasser le total de celles prévues par le permis de la catégorie la plus élevée.

Ces permis doivent être présentés à toute réquisition des agents de l'autorité compétente. En cas de perte de permis, une déclaration doit être faite par l'intéressé. En cas de perte de permis, une déclaration doit être faite par l'intéressé. Un duplicatim pourra lui être délivré moyennant le versement d'une taxe spéciale équivalant au dixième de la valeur du permis initial.

Les permis de chasse ne pourront être accordés qu'à des personnes possédant des armes régulièrement déclarées.

Leur délivrance peut être refusée par l'autorité administrative, si la nécessité s'en fait sentir. Le chef de l'Etat, sur proposition du ministre de l'aménagement rural, pourra limiter par arrêté le nombre des permis sportifs susceptibles d'être accordés annuellement.

**Article 8: Permis scientifiques de chasse et de capture.** Ils sont accordés par le ministre de l'aménagement rural sur avis du directeur des forêts et chasses.

La demande de permis doit indiquer le nom et la qualité du bénéficiaire ainsi que le nombre d'animaux de chaque espèce et les motifs.

**Article 9: Permis de capture commerciale.** Ils sont accordés par le ministre de l'aménagement rural sur avis du directeur des forêts et chasses dans les conditions suivantes:

Le bénéficiaire doit être une personne physique ou morale agréée par les autorités compétentes, ayant acquitté une patente spéciale et présentant du point de vue technique toutes les garanties jugées nécessaires et suffisantes par l'administration des forêts et chasses. En plus de la patente, le bénéficiaire aura à acquitter par bête exportée un droit équivalant au dixième de la valeur du permis.

Il sera autorisé à détenir jusqu'à leur vente, des animaux et des oiseaux non protégés ou partiellement protégés dont il sera tenu de déclarer le nombre au service des forêts et chasses.

Le permis de capture ne donne aucun des droits équivalents à un permis de chasse et ne peut donner lieu à l'utilisation d'armes à feu.

**Article 10: Conditions d'obtention des permis de chasse.** Pour obtenir un permis de chasse ou de capture, l'intéressé doit remplir un imprimé de demande de permis qu'il trouvera généralement dans les inspections forestières ou à la direction de forêts et chasses. Il doit en outre produire les pièces suivantes:

- 1° permis d'introduction d'armes;
- 2° permis de détention ou de port d'armes;



- 3° deux photos d'identité;
- 4° des timbres fiscaux selon le montant fixé par arrêté du ministre de l'aménagement rural;
- 5° quittance afférente au permis;

La délivrance de ces permis relève de la compétence du ministre de l'aménagement rural.

**Article 11: Photographie des grands animaux gibiers.** La prise de vues photographiques ou cinématographiques à des fins professionnelles des animaux intégralement protégés est réservée aux titulaires de permis scientifiques spéciaux qui devront obtenir à cet effet une autorisation spéciale du ministre de l'aménagement rural. Cette autorisation précisera les conditions particulières auxquelles les bénéficiaires devront se conformer.

**Article 12: Publication des permis.** La publication des permis scientifiques, des licences de capture et de guides de chasse sera faite au journal officiel, avec indication des noms et qualités des titulaires des permis, de la nature et de la validité de ceux-ci.

**Article 13: Déchéance des permis.** La publication de la déchéance, de la privation d'octroi des permis de chasse ou de licence de capture ou de guide de chasse sera faite au journal officiel dans les mêmes conditions que ci-dessus.

Par ailleurs, quiconque aura obtenu un permis de chasse en trompant la bonne foi de l'autorité administrative, se verra confisquer le nouveau permis et sera considéré en position d'infraction conformément aux dispositions de l'article 34 de l'ordonnance n° 4 du 16 janvier 1968.

**Article 14: Obligations des titulaires des permis sportifs et scientifique.** Les titulaires d'un permis quelconque autre que le permis sportif de petite chasse sont obligés de tenir un carnet de chasse qui sera présenté, de même que le permis, à toute réquisition des agents de l'autorité compétente.

**Article 15: Légitime défense.** Aucune infraction ne peut être relevée contre celui qui, pour la nécessité immédiate de sa défense, de celle d'autrui ou de celle de son propre cheptel domestique, a dû abattre ou tenté d'abattre du gibier en dehors des conditions réglementaires, et ceci hors des zones de protection administratives.

Tout acte de légitime défense doit faire l'objet d'une déclaration dans le plus bref délai aux agents des forêts et chasses.

La légitime défense ne pourra être retenue lorsque l'agression de l'animal aura résulté d'une provocation

ou d'un manquement aux conditions particulières visées à l'article 11.

### Guide de chasse

**Article 16:** L'exercice de la profession de guide de chasse est subordonnée aux conditions ci-après:

- être âgé de 25 ans au moins
- être titulaire d'une licence de guide en cours de validité
- connaître parfaitement la liste des animaux partiellement protégés
- connaître la législation en matière de chasse
- connaître les différentes taxes d'abattage
- posséder des moyens matériels suffisants
- avoir des notions concrètes de secourisme
- n'avoir encouru aucune peine pouvant entraîner la perte des droits civiques.

**Article 17:** Le candidat à la profession de guide de chasse est soumis à un test d'aptitude auprès des services compétents portant sur les dispositions énumérées à l'article précédent.

**Article 18:** Le guide de chasse est tenu de contracter auprès d'une compagnie d'assurance agréée une assurance couvrant intégralement sa responsabilité civile, celle du ou des aspirants guides et du personnel qu'il emploie, pour tout accident ou dommage qui pourrait survenir à ses clients au cours de l'expédition.

**Article 19:** Le guide de chasse est responsable civilement des infractions à la réglementation de la chasse et de la protection de la faune, commises par ses clients au cours des expéditions de chasse qu'il conduit ou accompagne.

### Produits de la chasse: trophées et dépouilles, viande de chasse

**Article 20:** L'autorisation d'exporter les dépouilles et trophées de chasse est subordonnée à l'obtention d'un certificat d'origine, d'un permis d'exportation et d'un certificat sanitaire. En l'absence de ces documents, les dépouilles ou trophées seront confisqués par les services compétents.

**Article 21:** L'autorisation d'exporter les dépouilles et trophées de chasse n'est délivrée par les services compétents, qu'après contrôle de la conformité entre les



quota d'abattage, la nature et le nombre des trophées et dépouilles à exporter.

**Article 22:** L'autorisation de réexportation des dépouilles et trophées de chasse nécessite la délivrance et la présentation préalable d'un certificat d'origine, d'un permis de réexpédition et d'un certificat sanitaire. En l'absence de ces documents, les dépouilles ou trophées seront confisqués par les services compétents.

**Article 23:** La détention des trophées et dépouilles n'est tenue pour régulière que dans la mesure où le détenteur en prouve la régularité, soit par cession en bonne et due forme, soit au moyen d'une autorisation d'abattage valide.

**Article 24:** La possession de trophées et dépouilles sans aucune de ces justifications est considérée comme un abattage illégal et sanctionné comme tel.

**Article 25:** Les établissements hôteliers et restaurants peuvent obtenir une autorisation annuelle de la direction des forêts et chasses pour l'introduction de la viande de gibier dans les menus sous réserve d'un contrôle hygiénique obligatoire.

Le responsable de l'établissement autorisé est tenu de fournir les justifications nécessaires pour la consommation de ladite viande à tout agent des forêts et chasse ou tout officier de police judiciaire qui en fait la demande. L'autorisation est annulée et l'infraction est considérée comme un délit de chasse, si ledit responsable

ne se conforme pas à la législation de la chasse en vigueur.

**Article 26:** Des inspections pourront être pratiquées pour la recherche du gibier dans les places, marchés, voitures automobiles, voitures de chemin de fer, établissements hôteliers, marchands de comestibles et généralement tout lieu où le gibier peut être livré pour la consommation.

#### Commerce des produits de chasse

**Article 27:** En application de l'article 17 de l'ordonnance n° 4 du 16 Janvier 1968 susvisée, tout commerce de trophées et de viande, des espèces inscrites à l'annexe I, II, III de ladite ordonnance doit obéir aux dispositions suivantes:

- 1° les trophées ou viande doivent être obtenus conformément aux lois et règlements sur la protection de la faune et l'exercice de la chasse.
- 2° les trophées mis en vente sur le territoire national doivent obligatoirement être accompagnés d'un certificat d'origine.

En l'absence de ces documents, les trophées seront saisis par les services compétents.

**Article 28:** Le ministre de l'aménagement rural et le garde des sceaux, ministre de la justice, sont chargés chacun en ce qui le concerne de l'exécution du présent décret qui sera publié au journal officiel de la République togolaise.

Lomé, le 4 juin 1980

Signé: Gal G. EYADEMA

Source: J.O. du 1<sup>er</sup> juillet 1980, pp. 401-405

## Arrêté n° 18/MAR du 13 juillet 1983 fixant le prix de vente du permis et carnet de chasse

**LE MINISTRE DE L'AMENAGEMENT RURAL,**

Vu l'article 21 de la constitution;

Vu l'ordonnance n° 4 du 16 janvier 1968;

Vu le décret n° 80-16/PR-MAR du 28 mai 1980;

Vu le décret n° 80-171 du 4 juin 1980;

Vu le décret du 5 février 1938;

**A R R E T E :**

**Article 1<sup>er</sup>:** Le prix de vente d'un permis et carnet de chasse est fixé à mille (1.000) francs.

**Article 2:** Le présent arrêté qui prend effet pour compter de sa date de signature, sera publié au journal officiel de la République togolaise.

**Lomé, le 13 juillet 1983**

**Signé: S. K O R T H O**

*Source: J.O. du 16 octobre 1983, p. 746*



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Arrêté n° 19/MAR du 13 juin 1983 fixant le montant de timbres  
fiscaux pour l'obtention de permis de chasse

**LE MINISTRE DE L'AMENAGEMENT RURAL,**

**A R R E T E :**

Vu l'article 21 de la Constitution;

Vu l'ordonnance n° 4 du 16 janvier 1968;

Vu le décret n° 80-160/PR-MAR du 28 mai 1980;

Vu le décret n° 80-171 du 4 juin 1980;

Sur proposition du directeur des forêts, des chasses et de  
l'environnement;

**Article 1<sup>er</sup>:** Le montant des timbres fiscaux pour  
l'obtention des permis de chasse est désormais fixé à  
mille (1.000) francs.

**Article 2:** Le présent arrêté qui prend effet pour compter  
de sa date de signature, sera publié au journal officiel de  
la République togolaise.

Lomé, le 13 juin 1983

Signé: S. K O R T H O

*Source: J.O. du 16 octobre 1983, p. 746*

## Arrêté n° 21/MAR du 13 juillet 1983 définissant les modalités de l'exercice de la chasse

**LE MINISTRE DE L'AMENAGEMENT RURAL,**

Vu l'article 21 de la Constitution;

Vu l'ordonnance n° 4 du 16 janvier 1968;

Vu le décret n° 80-160/PR-MAR du 28 mai 1980;

Vu le décret n° 80-171 du 4 juin 1980;

Vu le décret du 5 février 1938;

### ARRETE :

**Article 1<sup>er</sup> :** L'exercice de la chasse en dehors de la chasse coutumière est subordonné à l'obtention d'un permis de chasse dans les conditions suivantes:

- a) l'introduction d'une demande écrite timbrée à mille (1.000) francs.
- b) la production de deux (2) photos d'identité.
- c) la production des permis d'introduction, de détention et de port d'armes.
- d) le versement d'une taxe afférente à la valeur de chaque catégorie de permis.
- e) le paiement du prix de vente du permis et carnet de chasse fixé par arrêté du ministre de l'aménagement rural.

**Article 2 :** L'exercice de la chasse dans les parcs nationaux, réserves de faune, forêts classées, reboisements et dans les propriétés privées ainsi que la chasse de nuit sont rigoureusement interdits par la loi.

**Article 3 :** Tout détenteur d'un permis de chasse doit se présenter au chef-lieu de la circonscription forestière où il désire chasser afin de se faire enregistrer au registre de chasse.

Il devra obligatoirement se faire accompagner durant la chasse d'un guide forestier.

**Article 4 :** Tous les animaux abattus doivent faire l'objet d'enregistrement dans le permis en carnet de chasse ouvert à cet effet au niveau de chaque circonscription forestière.

**Article 5 :** L'utilisation pendant la chasse des moyens prohibés par la loi tels que: pièges, poisons fosses, feux encerclants, engins éclairants, fusils de guerre, aéronefs etc... est formellement interdite.

**Article 6 :** Les recettes provenant du prix de vente du permis et carnet de chasse seront versées dans un compte spécial au profit du service des forêts, des chasses et de l'environnement pour la réalisation de certains travaux spécifiques d'aménagement et de gestion des zones cynégétiques.

**Article 7 :** Les infractions aux dispositions du présent arrêté sont punies des amendes et peines d'emprisonnement prévues par les textes en vigueur, avec préjudice des dommages-intérêts, assorties de la confiscation des animaux abattus ainsi que des engins qui ont servi à commettre le délit.

**Article 8 :** Le présent arrêté qui prend effet à compter de sa date de signature, sera publié au journal officiel de la République togolaise.

Lomé, le 13 juillet 1983

Signé: S. KORTHO

Source: J.O. du 16 octobre 1983, pp. 746-747



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## Décret n° 84-62 du 23 mars 1984 réglementant la circulation et la répression des délits d'accident de circulation dans les réserves de faune et parcs nationaux

### LE PRESIDENT DE LA REPUBLIQUE,

Sur rapport du ministre de l'aménagement rural;

Vu la constitution du 30 décembre 1979, et plus spécialement en ses articles n°s 15, 32, 34;

Vu le décret du 5 février 1938, portant organisation du régime forestier du territoire du Togo;

Vu l'ordonnance n° 4 du 16 janvier 1968, réglementant la protection de la faune et l'exercice de la chasse au Togo, spécialement en ses articles 34, 35, 36, et 37;

Vu le décret n° 80/171 du 4 juin 1980 portant modalités d'application de l'ordonnance n° 4 du 16 janvier 1968;

Le conseil des ministres entendu.

### DECRETE :

**Article 1<sup>er</sup>:** La circulation des véhicules et engins à deux (2) roues est réglementée au niveau des réserves de faune et parcs nationaux comme suit:

#### DE JOUR:

- |                         |         |
|-------------------------|---------|
| a) véhicule poids léger | 50 km/h |
| b) véhicule poids lourd | 40 km/h |

#### DE NUIT:

- |                         |         |
|-------------------------|---------|
| a) véhicule poids léger | 40 km/h |
| b) véhicule poids lourd | 35 km/h |

**Article 2:** Tout accident, mortel ou non, survenue à un animal sauvage par un usager de la route doit être immédiatement signalé aux autorités compétentes (agent du service forestier, préfets ou tout autre agent de la force de l'ordre) les plus proches.

Si l'animal est mort, il doit être transporté et remis aux autorités compétentes susvisées.

Lomé, le 23 mars 1984  
Signé: Gal G. EYADEMA

(Voir modifications au verso)

Source: J.O. du 16 avril 1984, pp.291-294

**Article 3:** Dans les parcs nationaux et réserves de faune où il existe des postes de contrôle faune, tous les accidents survenus pendant la traversée de ces aires protégées doivent faire l'objet d'une déclaration aux agents chargés de contrôle au niveau de ces postes.

**Article 4:** Tout excès de vitesse relevé contre un usager de la route dans les parcs nationaux et réserves de faune est puni d'une amende de vingt cinq mille (25.000) francs CFA.

Cette amende est portée au double lorsque l'infraction a eu lieu la nuit.

**Article 5:** Les infractions au présent décret et aux textes réglementaires seront unies d'une amende de cent mille (100.000) francs et d'un emprisonnement de deux ans, sans préjudice des dommages et intérêts.

Les dommages et intérêts sont calculés suivant l'espèce, le sexe et l'âge selon le barème annexé au présent décret.

**Article 6:** Tout animal qui ne figure pas sur le barème annexé au présent décret conformément à l'article 5, sera classé parmi les espèces appartenant à sa famille.

**Article 7:** L'emprisonnement est prononcé, sans bénéfice de sursis et sans circonstances atténuantes dans les cas de récidive, de fuite ou de dissimulation des animaux tués.

**Article 8:** Quiconque aura ramassé et consommé la viande d'un animal écrasé dans un parc national ou réserve de faune sera puni de la peine prévue à l'article 5 du décret. Cette peine sera doublée dans le cas du délinquant ou d'un agent de l'Etat chargé de la gestion des aires protégées dont la culpabilité est dûment établie.

**Article 9:** Le ministre de l'aménagement rural est chargé de l'exécution du présent décret, qui sera publié au journal officiel de la République togolaise.

**MODIFICATIONS**

Décision issue du Conseil des Ministres en date du 19 Septembre 1991, relative aux nouvelles limitations de vitesse sur le tronçon de la route nationale 1 traversant les réserves de faune:

\* Véhicule poids léger:

- 90 km/h, de jour  
- 80 km/h, de nuit

\* Véhicule poids lourd:  
- 70 km/h, de jour  
- 60 km/h, de nuit

(Voir annexe à la page 132)

*Source: Quotidien togolais d'information "la Nouvelle Marche" n° 3598 du 20 Septembre 1991, page 1.*

**ANNEXE**

(voir J.O. du 16 avril 1984, pp.291-294)

*Source: J.O. du 16 avril 1984, pp.291-294*



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## Décret n° 90-178 du 7 novembre 1990 portant modalités d'exercice de la chasse au Togo

### LE PRESIDENT DE LA REPUBLIQUE,

Vu l'ordonnance n° 4 du 16 janvier 1968, réglementant la protection de la faune et l'exercice de la chasse au Togo;

Vu l'ordonnance n° 84-03 du 7 février 1984, portant modification de l'ordonnance n° 4 du 16 janvier 1968 en ses articles 34, 35 et 36;

Vu le décret n° 68-10 Janvier 1968, interdisant la chasse de nuit sur toute l'étendue du territoire;

Vu les décrets n° 79-139 du 18 avril 1979 et n° 79-139 du 18 avril 1979 et n° 80-171 du 04 juin 1980, portant modalités d'application de l'ordonnance n° 4 du 16 janvier 1968;

Vu le décret n° 88-87 du 9 mai 1988, portant attributions et organisation du ministère de l'environnement et du tourisme;

Vu le décret n° 90-18 du 13 février 1990, portant restructuration du gouvernement;

Le conseil des ministres entendu;

### DECRETE :

**Article 1<sup>er</sup>:** La période d'exercice de la chasse au Togo est fixée du 1<sup>er</sup> janvier au 30 Avril de chaque année, de 6 heures à 17 heures.

**Article 2:** Lorsqu'en dehors de cette période, les cultures et les récoltes des paysans se trouvent menacées, ceux-ci sont autorisés à chasser les animaux prédateurs dans les limites de leurs habitations et de leurs exploitations.

**Article 3:** L'obtention du permis de chasse est subordonnée à un test d'aptitude à cet exercice. Les modalités de ce test seront définies par arrêté conjoint du ministre de l'environnement et du tourisme et du ministre de l'intérieur et de la sécurité.

**Article 4:** Les valeurs des diverses catégories de permis fixées à l'article 2 du décret n° 80-171 du 4 Juin 1980 sont modifiées comme suit:

### \* PERMIS DE PETITE CHASSE

Catégorie B (petite chasse n° 2) 20.000 F

### \* PERMIS SPECIAUX DE CHASSE SPORTIVE

Catégorie A (permis de moyenne chasse)	40.000 F
Catégorie B (permis de moyenne chasse touristique valable pour 20 jours)	50.000 F
Catégorie C (permis de grande chasse)	75.000 F
Catégorie D (permis de grande chasse touristique valable pour 1 mois)	80.000 F

**Article 5:** Les taxes d'abattage ou valeurs des espèces fixées à l'article 3 du décret n° 80-71 du 04 juin 1980 sont modifiées conformément au tableau annexé au présent décret.

**Article 6:** La chasse sportive et le tourisme cynégétique sont exercés pendant cette période d'ouverture sur toute l'étendue du territoire national, en dehors des parcs nationaux, des réserves de faune et des forêts classées.

**Article 7:** L'exercice du droit de chasse ne porte pas sur les animaux intégralement protégés figurant à l'annexe 1 de l'ordonnance n° 4 du 16 janvier 1968.

**Article 8:** L'exercice de la chasse coutumière pendant cette période de chasse est réglementé comme suit:

Est qualifié usager coutumier de petite chasse pour animaux non protégés, quiconque chasse suivant la coutume locale et la tradition dans les limites de sa préfecture et hors des réserves et zones protégées ou classées, avec des armes traditionnelles de fabrication locale à l'exclusion de toute arme à feu et de tout procédé interdit par l'ordonnance n° 4 du 16 janvier 1968.

Toutefois, l'organisation de la chasse coutumière sera subordonnée à une demande formulée par le chef de file, précisant la composition du groupe, les lieux et la date de l'exercice de la chasse et soumise à l'approbation du préfet de la localité concernée.

Les dommages causés lors de cette partie de chasse aux habitations, aux exploitations agricoles et autres biens engagent entièrement la responsabilité du chef de file.

**Article 9:** Les infractions au présent décret seront punies conformément aux dispositions de l'ordonnance n° 84-03 du 07 février 1984 portant modification de l'ordonnance n° 4 du 16 janvier 1968 réglementant la protection de la faune et l'exercice de la chasse au Togo.

**Article 10:** Le ministre de l'environnement et du tourisme est chargé de l'exécution du présent décret, qui sera publié au journal officiel de la République togolaise.

Lomé, le 7 novembre 1990

Signé: Gal G. EYADEMA

Source: *J.O. du 5 décembre 1990, pp. 38-40*



## ANNEXE

## (Taxes d'abattage ou de capture des espèces animales sauvages)

Les taxes d'abattage ou valeurs des espèces animales sauvages sont fixées comme suit:

## Mammifères

<i>Nome vulgaires</i>	<i>Noms scientifiques</i>	<i>Valeur F CFA</i>
Eléphant	<i>Loxodonta african</i>	300.000
Hippopotame	<i>Hyppopotamus amphibius</i>	200.000
Panthère	<i>Panthera pardus</i>	100.000
Lion	<i>Leo leo</i>	100.000
Buffle	<i>Syncerus caffer</i>	100.000
Hippotrague	<i>Hippotragus equinus</i>	100.000
Oryctérop[e	<i>Pructerp[is afer</i>	50.000
Crocodile	Genre <i>Crocodylus ontelaemus</i>	50.000
Python de Seba	<i>Python sebae</i>	50.000
Bongo	<i>Boecerus euryceros</i>	25.000
Bubale	<i>Alcelaphus major</i>	75.000
Cob défassa ou Waterbuck	<i>Kobus defassa</i>	25.000
Cob de Buffon	<i>Adenota kob</i>	15.000
Cob des Roseaux	<i>Redunca redunca</i>	15.000
Néotrague	<i>Neotragus pygmaeus</i>	15.000
Guib	<i>Tragelaphus scriptus</i>	15.000
Sitatonga	<i>Limnotragus apekei</i>	15.000
Phacochère	<i>Phacocheirus aethiopicus</i>	15.000
Hylochère	<i>Hylochoerus meinertzhagenti</i>	15.000
Potamochère	<i>Potamochoerus porcus</i>	15.000
Céphalophe à dos jaune	Genre <i>Cephalophus</i>	5.000
Ourébi	<i>Ourebia ourebia</i>	5.000
Chevrotin aquatique	<i>Hyemoschus aquaticus</i>	5.000
Gazelle	Genre <i>Gazella</i>	5.000
Serval	<i>Felis serval</i>	5.000
Hyène	Genres <i>Crocota, Hyaena</i>	5.000
Chacal	Genre <i>Canis</i>	5.000
Lycaon	<i>Lycaon pictus</i>	5.000
Anomalures (ou écureuils volants (6))	Genre <i>Anomalurus</i>	5.000
Cynocéphale	<i>Papio papio</i>	5.000
Daman d'arbre	<i>Dendrophyrax dorsalis</i>	2.000
Servalin	<i>Felis brachyuria</i>	2.000
Renard des sables	<i>Vulpes pallida</i>	2.000
Civette	<i>Civettictis civetta</i>	2.000
Porc-épic	<i>Hystrix zechi</i>	5.000
Colobe magistrat	<i>Colobus polykomos</i>	15.000
Colobe baie	<i>Colobus badinus</i>	15.000
Colobe vert	<i>Colobus verus</i>	15.000
Galago	Genre <i>Galago</i>	5.000
Patas	<i>Erythrocebus patas</i>	5.000
Cercocèbe	Genre <i>Cercocebus</i>	5.000
Mone	<i>Cercopithecus mona</i>	5.000
Hocheur	<i>Cercopithecus nictitans</i>	5.000
Diane	<i>Cercopithecus diana</i>	5.000
Mangoustes	Genre <i>Herpestes</i>	5.000
Ratel	<i>Mellivora capensis</i>	5.000
Génette	<i>Genetta genetta</i>	5.000
Loutre	Genre <i>Lutra aonyx</i>	5.000

Gorille	Gorilla striatus	5.000
Athérure	Atherura africana	5.000
Pangolin	Genre Phataginus uromanis	5.000
<b>Oiseaux</b>		
Echasse	Himantopus himantopus	5.000
Grue couronnée	Balearica pavonina	5.000
Gaterdo	Neotis cafra	5.000
Cigogne	Ciconia ciconia	5.000
Aigle	Genre Cuncuma	5.000
Buse	Genre Buteo	5.000
Aigrette	Genre Egretta	5.000
Marabout	Leptopilos grumeniferus	5.000
Tantale Ibis	Ibis ibis	5.000
Pélican-Comoran	Genre Pelicanus phalacrocorax	5.000
Poule de rocher	Ptilopachus petrosus	3.000
Avocette	Recurvirostra avocetta	3.000
Vautour	Genre Noeophron	5.000
Héron	Genre Bubulcus	5.000
Effraie, chouette, Duc		
Genres Tyto scotopulia, Bubo otus	5.000	
Perroquet, Perruche	Genre Psittachus	3.000
Jabirus	Ephippiortynchus senegalensis	2.000

#### 6. - DE LA PECHE

Loi n° 64-14 du 11 juillet 1964

Arrêté n° 10/MAR du 22 septembre 1986



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# Loi n° 64-14 du 11 juillet 1964 portant réglementation de la pêche

L'Assemblée nationale a délibéré et adopté;

Le Président de la République promulgue la loi dont la teneur suit:

**Article 1<sup>er</sup>:** Le gouvernement exerce la surveillance et la police de la pêche dans l'intérêt général.

## CHAPITRE PREMIER DE LA PÊCHE MARITIME

**Article 2:** Les établissements de pêche industrielle, à l'exclusion des pêches traditionnelles, les parcs, les dépôts de coquillages formés sur le rivage de la mer, le long des côtes, sur les lagunes et sur les rives des lagunes sont soumis à autorisation dans les conditions qui seront fixées par décret en conseil des ministres. Les infractions auxdits décrets seront passibles d'une amende de douze mille (12.000) à cent vingt mille (120.000) francs.

**Article 3:** L'utilisation des plages ou parties de plage et la délimitation des zones réservées au bain, au tourisme, à l'industrie, au rejet des eaux résiduaires ou tout autre usage, seront réglementées par décret.

L'occupation de ces zones peut donner lieu à perception de redevances dans les conditions qui seront fixées par décret en conseil des ministres.

**Article 4:** La pêche est interdite aux navires étrangers dans les eaux territoriales togolaises en deçà d'une limite fixée à douze mille marins au large de la laisse de basse mer.

**Article 5:** Si le capitaine d'un navire étranger ou les hommes de son équipage sont surpris en action de pêche dans les eaux territoriales togolaises, le capitaine est puni d'une amende de cent vingt mille (120.000) à un million deux cent mille (1.200.000) francs.

**Article 6:** En cas de récidive, la peine d'amende peut être portée au double; en outre, la confiscation des engins et des produits de la pêche est obligatoirement prononcée et le capitaine est passible d'un emprisonnement de quinze jours à trois mois.

Il y a récidive lorsque, dans les deux années précédant la constatation du délit, il a été rendu contre le contrevenant un jugement en application de l'article 4 de la présente loi.

**Article 7:** En cas d'infraction à l'article 4 de la présente loi, le navire peut être saisi et retenu jusqu'à entier paiement des frais de garde et d'entretien, des frais de justice et des amendes.

Passé le délai de trois mois à compter du jour où le jugement est devenu définitif, le navire peut être vendu par autorisation de justice.

**Article 8:** Les dispositions qui précèdent ne portent pas atteinte à la libre circulation des navires de pêche étrangers naviguant ou mouillant dans les eaux territoriales togolaises.

## CHAPITRE II DE LA PÊCHE FLUVIALE

**Article 9:** Dans le souci de protéger et de conserver certaines espèces de poisson, la pêche dans les fleuves, rivières, lacs, bassins, sera réglementée par décret pris en conseil des ministres.

## CHAPITRE III DE LA PÊCHE MARITIME

**Article 10:** Il est interdit de faire usage pour la pêche maritime ou pour la pêche fluviale d'explosifs ou matières explosives de quelque nature que ce soit, de drogues pouvant détruire, enivrer ou modifier le comportement normal des poissons, crustacés, coquillages ou animaux aquatiques quelconques.

Sont prohibés, la vente, le transport et le colportage du produit des pêches interdites au paragraphe précédent.

Lorsque les produits de la pêche ont toutes les apparences d'avoir été obtenus à l'aide d'explosifs ou de drogues, la preuve contraire incombe aux détenteurs de ces produits.

**Article 11:** Toute infraction aux dispositions de l'article 10 sera punie d'une peine d'emprisonnement de un à cinq ans et d'une amende de cinquante mille (50.000) francs ou de l'une de ces deux peines seulement.

La confiscation des explosifs ou drogues et du produit de la pêche sera obligatoire. En outre, le tribunal pourra ordonner la confiscation des navires ou bateaux ayant servi commettre le délit et des véhicules ayant servi au transport des explosifs ou drogues ou du produit de la pêche prohibée.

**Article 12:** Le bénéfice de la transaction est exclu en matière de pêche par explosifs ou drogues.

**Article 13:** La pêche maritime ou fluviale à l'aide de feux, d'engins électriques ou d'engins éclairants peut être interdite ou réglementée par décret en conseil des ministres.

Le rejet à la mer et la décharge dans la limite des eaux territoriales de tous produits toxiques et notamment des hydrocarbures sont passibles des peines prévues à l'article 28 ci-après.

#### CHAPITRE IV DE LA CONSTATATION ET DE LA POURSUITE DES INFRACTIONS

**Article 14:** Les agents assermentés des services de pêches, des eaux et forêts, d'élevage et des douanes, les officiers de police judiciaire et les personnes commissionnées par arrêté ministériel et dûment assermentées constatent les infractions en matière de pêche maritime ou de pêche fluviale.

**Article 15:** Les agents visés à l'article 14 ci-dessus et les personnes commissionnées par arrêté ministériel ne peuvent entre en fonction qu'après avoir prêté serment devant le tribunal de première instance.

**Article 16:** Les délits en matière de pêche seront prouvés par procès-verbaux qui feront foi jusqu'à preuve du contraire.

**Article 17:** Les agents visés à l'article 14 sont autorisés à saisir les instruments de pêche prohibés ainsi que les produits de pêche frauduleuse. Ces engins prohibés ne peuvent être remis sous caution. Ils sont déposés au greffe et détruits après jugement définitif.

**Article 18:** En cas de refus de la part des délinquants de remettre immédiatement les filets ou engins prohibés après sommation, le tribunal pourra prononcer une peine d'amende d'un montant double de la valeur des engins prohibés. Cette amende ne se confond pas avec les peines sanctionnant le délit de pêche.

**Article 19:** Les poissons saisis seront vendus sans aux enchères publiques par les saisissants. Il sera dressé sur le champ procès-verbal de la vente. Ce procès-verbal devra être signé de deux témoins majeurs.

**Article 20:** Les agents visés à l'article 14 ont le droit de requérir directement la force publique pour la répression des délits et pour les saisies en matière de pêche.

**Article 21:** Toutes les poursuites exercées en réparation de délits pour faits de pêche sont portés devant le tribunal correctionnel.

**Article 22:** Les procès-verbaux dressés en matière de pêche sont transmis au représentant du ministère public dans le délai de cinq jours.

**Article 23:** Les fonctionnaires spécialement habilités à cet effet par le gouvernement exercent, conjointement avec les officiers du ministère public, les poursuites et actions en réparation des délits de pêche. Ils ont le droit d'exposer l'affaire devant le tribunal et sont entendus à l'appui de leurs conclusions. Ils peuvent exercer les voies de recours, ce droit étant indépendant de celui du ministère public.

**Article 24:** Les agents du service des pêches peuvent faire toute citation et signification d'actes de procédure.

**Article 25:** Les infractions en matière de pêche peuvent être poursuivies selon la procédure de flagrant délit.

**Article 26:** Les actions en réparation de délits de pêche se prescrivent par un an à compter du jour où les délits ont été constatés.

Toutefois, les actions résultant des infractions à l'article 12 restent soumises à la prescription de droit commun.

**Article 27:** Les infractions en matière de pêche, à l'exception des infractions à l'article 10 peuvent donner lieu à transaction.

Les transactions relèvent du directeur du service des pêches.

Lorsque la transaction intervient après jugement, son montant ne peut, en aucun cas, être inférieur au total des amendes prononcées et frais de justice.

**Article 28:** Les infractions aux décrets pris pour l'application de la présente loi seront passibles d'une amende de douze mille (12.000) à cent vingt mille (120.000) francs et d'un emprisonnement de quinze jours à six mois ou de l'une de ces deux peines seulement. La confiscation des engins de pêche et des poissons peut être prononcée s'il y a lieu.



**Article 29:** Les peines prévues par la présente loi pourront être portées au double lorsque les délits auront été commis la nuit.

**Article 30:** La présente loi sera exécutée comme loi de la République togolaise.

Lomé, le 11 juillet 1964

Signé: N. GRUNITZKY

*Source: J.O. du 16 août 1964, pp. 527-528*

## Arrêté n° 10/MAR du 22 septembre 1986 portant suspension provisoire de la pêche dans les retenues d'eau artificielles administratives

**LE MINISTRE DE L'AMENAGEMENT RURAL,**

Vu l'article 21 de la constitution;

Vu le décret n° 75-42 du 14 mars 1975, portant organisation et définition des attributions du ministère du développement rural et du ministère de l'aménagement rural;

Vu le décret n° 80-160/PR-MAR du 28 mai 1980, portant organisation des services du ministère de l'aménagement rural;

Vu les nécessités de service;

**A R R E T E :**

**Article 1<sup>ER</sup>:** Sont provisoirement suspendues toutes activités de pêche sur toute l'étendue du territoire, afin de mieux suivre la recherche sur le développement de certaines espèces ichthyques.

**Article 2:** Tout contrevenant aux dispositions du présent arrêté est passible des peines prévues à l'article 11 de la loi n° 64-14 du 11 juillet 1964 portant réglementation de la pêche.

**Article 3:** Le présent arrêté prend effet à compter de la date de sa signature.

Lomé, le 22 septembre 1986

Signé: S. KORTHO

*Source: J.O. du 16 janvier 1987, p.40*



# ZIMBABWE

## Mines and Minerals Act Chapter 21:05

*Revised Edition*

1996, Printed by the Government Printer, Harare

### MINES AND MINERALS ACT

#### CHAPTER 21:05 MINES AND MINERALS ACT

*Acts 38/1961, 24/1962 (s.2), 18/1963 (s.24), 19/1973 (s.12), 7/1964, 22/1964 (s.54), 10/1966, 9/1967 (s.17), 30/1968 (s.38), 17/1969, 80/1971 (s.33), 39/1973 (s.52), 46/1973, 15/1975, 22/1976, 41/1976, 42/1976 (s.10), 48/1976, 7/1978, 41/1978 (s.12), 15/1979, 32/1979, 37/1979, 29/1981, 20/1982, 26/1987, 8/1988, 9/1990, 14/1991, 3/1992, 22/1992 (s.9), 10/1993, 10/1994; R.G.N.s 153/1963, 801/1963, 214/1964/ 386/1964, 216/1970, 217/1970, 313/1970, 88/1974, 1135/1975.*

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SCHEDULE: Grading of Development Work.

**AN ACT to consolidate and amend the law relating to mines and minerals.**

[Date of commencement: 1st November, 1961.]

**PART I**

**PRELIMINARY**

**1 Short title**

This Act may be cited as the Mines and Minerals Act. [Chapter 21:05].

**2 Rights to minerals vested in President**

The dominium in and the right of searching and mining for and disposing of all minerals, mineral oils and natural gases, notwithstanding the dominium or right which any person may possess in and to the soil on or under which such minerals, mineral oils and natural gases are found or situated, is vested in the President, subject to this Act.

**3 Acquisition of mining rights**

Except where otherwise provided under any title deed to land granted prior to the 1st November, 1961, rights can be acquired in the manner hereinafter in this Act set out and in such manner only to all minerals, mineral oils and natural gases.

**4 Savings**

(1) Every prospecting licence, mining location or other mining right whatsoever legally acquired before the 1st November, 1961, and legally held at that date, and every special grant made before that date and legally held at that date, is hereby confirmed, but shall from and after that date be held under and subject to this Act:

Provided that-

(i) in the case of a prospecting licence, such licence shall be valid until and inclusive of the 1st November, 1963;

(ii) Whenever, prior to the promulgation of the Mines and Minerals Ordinance, 1895, any mining location had been registered without a discovery point being established and a discovery notice, posted, or whenever, prior to the promulgation of the Mines and Minerals Ordinance, 1903, any mining location had been registered and the discovery reef thereof is unascertainable from the documents in the possession of the mining commissioner, or cannot otherwise be proved, the expression "discovery reef", in relation to such location, shall mean the main or principal reef discovered, exposed or opened up in such location;

(iii) whenever the width of any mining location has been extended under the Mining Laws Defining Regulations, 1896, the date of acquisition of title to such extended width shall, if the ground covered by such extended width was open to prospecting at the time when such extended width was pegged, be deemed to be the same as the date of acquisition of title to such mining location;

(iv) in the case of an exclusive prospecting order, the terms and conditions thereof, including the conditions prescribed in the Mines and Minerals Act, 1951 (No. 18 of 1951), for an extension or renewal of the order, shall continue in force, notwithstanding anything contained in this Act which is contrary to or inconsistent with such terms or conditions, as though the laws repealed by this Act had not been so repealed.

(2) With effect from the 7th December, 1979-

(a) Special Grants Nos. 6, dated the 10th December, 1901, and 82, dated the 29th October, 1925, as held by the Wankie Colliery Company Limited (hereinafter in this subsection called the company) immediately before the 7th December, 1979, shall be deemed to be special grants issued under Part XX in respect of the reduced concession area as defined in the Wankie Coalfield Act [Chapter 167 of 1974], and the company shall continue to exercise its rights thereunder subject to the terms and conditions of the special grants and to such provisions of this Act as are not inconsistent therewith:

(b) coal mining lease No. 1, dated the 1st November, 1976, granted to the company in terms of the Wankie coalfield Act [Chapter 167 of 1974], shall be deemed to be a special grant issued in terms of Part XX, and the provision in the mining lease for the payment of an annual rent being construed as a provision for the payment of an annual fee referred to in subsection (2) of section three hundred and three, and the company shall continue to exercise its rights thereunder accordingly.



## 5 Interpretation

(1) In this Act-

**"alluvial deposit"** means-

- (a) in relation to precious stones, any deposit, either non-coherent or consolidated, of any geological age, which has been formed by the agency of water of wind;
- (b) in relation to any other mineral, any accumulation of sand, gravel or clay deposited by surface-water containing valuable minerals;

**"approved beneficiation plant"** means a bank assay department, factory, refinery, smelter or treatment plant which has been declared to be an approved beneficiation plant in terms of section *two hundred and forty-seven*;

**"approved cultivation scheme"** means a scheme approved by the Board under section *one hundred and eighty*;

**"approved inspector"** means a person for the time being registered in the Register of Approved Prospectors;

**"aqueduct"** means any artificial work, appliance or structure, other than a pipeline, for the conveyance of water, wherever situated;

**"arbitration"** means arbitration in terms of the Arbitration Act [*Chapter 7:02*], for which purpose the parties to a dispute shall be deemed to have entered into a written agreement to submit the dispute to arbitration, the arbitrators to be one person appointed by each of the parties, together with a third person appointed by such arbitrators;

**"base minerals"** means all minerals and mineral substances, other than nuclear energy source material, precious metals, precious stones, mineral oil, natural gases and coal, and includes all such slimes, concentrates, slags, tailings and residues as are valuable and contain base minerals as hereinbefore defined;

**"block"** means a claim or a group of claims which may be registered in terms of this Act under one certificate of registration;

**"Board"** means the Mining Affairs Board established under Part II;

**"Chamber of Mines of Zimbabwe"** means the Chamber of Mines of Zimbabwe incorporated in terms of the Chamber of Mines of Zimbabwe Incorporation (Private) Act [*Chapter 21:02*];

**"coal"** means anthracite, bituminous coal, brown coal, oil shale and lignite;

**"course of a reef"** means a line on the surface marking the intersection of the centre of a reef with such surface and, in cases where the whole or any portion of a reef is situated below the surface of the ground, the course of such reef shall be ascertained by projecting vertically to the surface the various points at which the centre of such reef approaches nearest to the surface, when the various points thus obtained shall be deemed to constitute the course of such reef;

**"dam"** means any works permitting of the artificial storage or accumulation of water, together with the water and all land submerged at high flood-level;

**"disposal"**, in relation to any mineral or mineral-bearing product, means the sale, donation or other alienation of such mineral or mineral-bearing product;

Provided that, where any mineral or mineral-bearing product is disposed of under an agreement in terms of which delivery of the mineral or mineral-bearing product is to be effected-

- (a) at some future date; or
- (b) over a period of time;

the mineral or mineral-bearing product, as the case may be, shall be deemed to have been disposed of on the dispatch thereof or on the dispatch of each consignment thereof, as the case may be;

**"dump"** means any aggregate of rock fragments or tailings which contain valuable minerals and have been accumulated by mining on a mining location;

**"eluvial deposit"** means a residual concentration of minerals in the immediate vicinity of the outcrop of the vein or lode from which it is derived;

**"exclusive prospecting order"** means an order issued under Part VI;

**"exclusive prospecting reservation"** means the area embraced by an exclusive prospecting order;

**"extra-lateral right"** means the right of following a reef on its dip beyond the vertical limits of a block;

**"holder"**, in relation to a registered mining location, means the person in whose name such location is registered with the mining commissioner or with the Board or with the Secretary and, in the case of a deceased person or of a company in liquidation, or of any person un-



der a legal disability, means the executor, administrator, liquidator, trustee, tutor, curator or other person who has the administration or control of the property of the person in whose name such location is registered;

**"holding"**, in relation to private land, means the whole area of land which is held by an owner under one title or one agreement with the State:

Provided that if the owner of a holding has leased any portion thereof to any other person under an agreement of lease which is registered in the Deeds Registry, such portion shall be deemed to be a separate holding;

**"inspector of mines"** means an inspector of mines appointed in terms of section *three hundred and forty-three*;

**"land surveyor"** means a land surveyor duly admitted to practise in Zimbabwe and, at the time of the performance by him of any acts under this Act in such capacity, entitled so to practise in Zimbabwe;

**"mine"**, includes any place, excavation or working whereon, wherein or whereby any operation in connection with mining purposes is carried on;

**"mine surveyor"** means a person who possesses, at the time of the performance by him of any acts under this Act required or permitted to be performed by a mine surveyor, such qualifications as may from time to time be specified by the Minister by statutory instrument;

**"miner"** means the person actually carrying on the work of mining on any mining location, whether he is the holder or the lessee or assignee of the rights of such holder;

**"mineral"** means-

- (a) any substance occurring naturally in or on the earth, which has been formed by or subjected to a geological process; and
- (b) any substance declared to be a mineral in terms of paragraph (a) of subsection (3), to the extent of such declaration;

but does not include-

- (i) except for the purposes of Part XX, mineral oils and natural gases; or
- (ii) any substance declared not to be a mineral in terms of paragraph (b) of subsection (3), to the extent of such declaration;

**"mining commissioner"** means the mining commissioner of the mining district within which the land or

claims concerned, as the context may require, are situated;

**"mining district"** means a mining district declared in terms of section *three hundred and forty-two*;

**"mining lease"** means a mining lease issued under Part VIII or the area covered by such a mining lease, as the context may require, and subject to section *one hundred and sixty-eight*, includes a special mining lease;

**"mining location"** means a defined area of ground in respect to which mining rights, or rights in connection with mining, have been acquired under this Act or which were acquired under any previous law relating to mines and minerals and which were held immediately before the 1st November, 1961;

**"mining purposes"** means the purpose of obtaining or extracting any mineral by any mode or method or any purpose directly or indirectly connected therewith or incidental thereto;

**"Minister"** means the Minister of Mines or any other Minister whom the President may, from time to time, assign the administration of this Act;

**"nuclear energy source material"** means uranium or thorium or any other substance containing one or both of such elements in such concentrations as may be prescribed;

**"occupier"**, in relation to land, means the person lawfully and actually using or possessing any land under and by virtue of any grant or agreement;

**"ore"** means all forms of minerals or mineral aggregates which in the abstract are of economic value;

**"output"** means

- (a) in respect of precious stones, precious stones which have been recovered from any mining location;
- (b) in respect of any other mineral, ore which has been mined and reduced to a saleable form or which is in a saleable form on being mined;

**"owner"**, as applied to land, means the registered owner of such land or any person lawfully holding land in accordance with any enactment or agreement with the State which entitles such person to obtain title hereto on the fulfilment by him of the conditions prescribed by such enactment or agreement and the duly authorized representative of any such person or, in the case of any portion of Communal Land, the occupier of such portion;

**"peg"** means-



(a) an artificial post or rod, other than a metal peg, of a height or not less than one comma two metres above the ground and not less than one hundred millimetres in diameter or of such other dimensions as may be prescribed;

(b) a metal peg of a height of not less than one comma two metres above the ground or such other height as may be prescribed and not less than ten millimetres in cross-section;

**“placer deposit”** means any form of mineral deposit which does not fall within the definitions of “reef”, “dump”, “alluvial deposit”, “eluvial deposit”, or “rubble deposit”;

**“pint of departure”** means any point at which the course of a reef crosses a boundary of a mining location;

**“precious metals”** means gold, silver, platinum and platinoid metals in an unmanufactured state, and includes all such slimes, concentrates, slags, tailings, residues and amalgams as are valuable and contain such precious metals;

**“precious stones”** means rough or uncut diamonds or emeralds or any substances which may, in terms of subsection (2), be declared to be precious stones for the purposes of this Act;

**“primary purposes”** means domestic purposes and the support of animal life;

**“private land”**, means any land the ownership of which has by law, grant or title deed become vested in any person, and includes any land held by any person under any enactment or agreement whereby such person is entitled to obtain from the State title thereto on the fulfillment by him of the conditions prescribed by such enactment or agreement;

**“private water”** bears the same meaning as in the Water Act [Chapter 20:22]

**“prospecting licence”** means an ordinary or a special prospecting licence taken out under section *twenty*;

**“public water”** bears the same meaning as in the Water Act [Chapter 20:22],

**“quarry”** means any place, excavation or working, other than a mining location, where any substance other than a mineral is obtained or extracted by means of quarrying operations;

**“reef”** means any form of ore deposit contained within the defined boundaries occurring in the earth’s crust that has been deposited in the enclosing country rocks, and

includes a true fissure vein, contact vein, segregated vein, gash vein, bedded vein or metalliferous banket, and all such deposits as conform generically to the above classification and any bed of any mineral, such as ironstone or limestone, but does not include alluvial deposits, eluvial deposits, placer deposits, rubble deposits or coal;

**“Register of Approved Prospectors”** means the register established in terms of section *fourteen*;

**“registered mine manager”** means the person registered in terms of the regulations as the mine manager of the mining location concerned;

**“registered mining location”** means-

(a) a mining location which has been registered under this Act or which was registered under any previous law relating to mines and minerals and was held immediately before the 1st November, 1961;

(b) a mining lease or a special mining lease;

(c) a special grant as defined in this section or a special grant issued under Part XX;

but does not include any exclusive prospecting reservation or a special grant to carry out prospecting operations;

**“rubble deposit”** means any natural deposit of rock fragments accumulated at or near the surface of the ground;

**“Secretary”** means the Secretary of the Ministry for which the Minister is responsible;

**“special grant”** means-

(a) a special grant issued under Part XIX;

(b) a special grant which was acquired before the 1st November, 1961, under any law relating to mines and minerals and which was held immediately before that date;

(c) any mining right or any right in connection with mining which was acquired before the 1st September, 1935, and was registered in terms of section 86 of the Mines and Minerals Ordinance, 1903, and which was held immediately before the 1st November, 1961;

**“special mining lease”** means a special mining lease issued under Part IX or the area covered by such a special mining lease, as the context may require;

**“specified”**, in relation to a mineral or mineral-bearing product, means specified in a notice made in terms of section *two hundred and forty-seven*;

“**State land**” means land the ownership of which is vested in the President, excluding Communal Land:

Provided that, for the purposes of section *Twenty-six* and *twenty-nine*, State land shall not include any land which is private land;

“**strike**” means a horizontal line drawn at right angles to the dip of a reef;

“**town lands**” means any land falling within-

- (a) the area in terms of the Urban Councils Act [*Chapter 29:15*] of any municipality or town or any local government area for which a local board has been established; or
- (b) any other area declared by the President, by statutory instrument, to be town lands for the purposes of this Act;

“**well**” means a shaft sunk for the express purpose of abstracting water and which is being used for the abstraction of water.

(2) The Minister may, by statutory instrument, declare any substance to be precious stones for the purposes of this Act.

(3) The Minister may, by statutory instrument, declared that-

- (a) any naturally-occurring substance, which is obtained or extracted by mining or quarrying or by similar methods, shall be a mineral for the purposes of all or any of the provisions of this Act;
- (b) any substance referred to in paragraph (a) of the definition of “mineral” in subsection (1) shall not be a mineral for the purposes of all or any of this Act;

and may in like manner amend or revoke any such declaration.

the Mining Affairs Board which shall exercise and perform the powers, functions and duties conferred and imposed upon it by this Act and by any other enactment.

(2) The Board shall, in addition, perform such other functions and duties as may from time to time be required of it by the Minister.

## 7 Constitution of Board

(1) The Board shall consist of-

- (a) the Secretary or, in his absence, the Deputy Secretary of the Ministry responsible for mines, who shall be the chairman; and
- (b) an under secretary or, in his absence, an assistant secretary of the Ministry responsible for mines; and
- (c) the Chief of Government Mining Engineer; and
- (d) the Director of Metallurgy; and
- (e) the Direction of Geological Survey; and
- (f) six other members appointed in terms of subsection (3).

(2) A member appointed in terms of subsection (3) shall hold office for such period, not exceeding two years, as may be fixed in his case by the Minister and shall be eligible for re-appointment.

(3) Of the members appointed by the Minister-

- (a) four, of whom two shall be small-workers, shall be selected by the Minister from a panel of names submitted by the Chamber of Mines of Zimbabwe;
- (b) one shall be selected by the Minister from a panel of names submitted by the Commercial Farmers' Union of Zimbabwe;
- (c) one shall be a member of the Institute of Chartered Accountants of Zimbabwe who is publicly practising as a chartered accountant in terms of the Chartered Accountants Act [*Chapter 27:02*].

(4) The Chief Government Mining Engineer, the Director of Metallurgy and the Director of Geological Survey may each appoint another member of the Public Service, who is not a member of the Board, to be his alternate member on the Board, and such alternate member shall be entitled to attend and vote at any meeting of the Board in the absence of the other officer who appointed him.

(5) The Chamber of Mines of Zimbabwe and the Commercial Farmers' Union of Zimbabwe may nominate

## PART II

### ESTABLISHMENT AND FUNCTIONS OF MINING AFFAIRS BOARD

#### 6 Establishment and functions of Mining Affairs Board

(1) There is hereby established a board to be known as



persons to be alternates to the members of the Board appointed by the Minister under paragraphs (a) and (b), respectively, of subsection (3) and each such person shall, if approved by the Minister, be an alternate member of the Board and shall be entitled to attend and vote at any meeting of the Board in the absence of the member whom he is an alternate.

(6) If any body which is entitled to submit a panel of names in terms of subsection (3) for any cause whatsoever fails or neglects or refuses to submit such panel, it shall be lawful for the Minister to appoint to the Board any person as a member.

#### **6 Filling of vacancies**

(1) The office of a member of the Board, who is not a member of the Public Service, shall upon the declaration of the Minister be vacated-

- (a) if his estate is sequestrated or assigned; or
- (b) if he is absent from three consecutive meetings of the Board without the permission of the Board; or
- (c) if he gives one month's notice in writing to the Minister of his intention to resign office and his resignation is accepted by the Minister; or
- (d) if he is incapacitated by physical or mental illness or is otherwise unable or unfit to discharge the functions of a member; or
- (e) if he is convicted of an offence and sentenced to imprisonment therefor without the option of a fine, whether such sentence is suspended or not.

(2) When a member's office is declared vacant, the Minister shall appoint a person, chosen as such member was chosen, to fill the vacancy.

(3) If any member of the Board, other than the chairman, is prevented by illness, absence from Zimbabwe or other specific cause from exercising his functions on the Board, the Minister may appoint any person to act for such member during his absence.

(4) If the chairman is prevented by illness, absence from Zimbabwe or other specific cause from exercising his functions on the Board, the Minister may appoint any person to act as chairman during his absence, and the person so appointed shall during the term of his appointment exercise all the powers and fulfil all the duties of the chairman.

(5) If a member of the Board is appointed to act as chairman, the Minister may appoint any person to act as a member of the Board during the period of the chairman's

absence.

#### **6 Remuneration of members of Board**

The members of the Board shall be paid, out of moneys appropriated by Act of Parliament for the purpose, such remuneration or allowances or both as the Minister, after consultation with the Minister responsible for finance, may from time to time determine.

#### **10 Procedure of Board**

(1) The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings and proceedings as it thinks fit.

(2) Seven members of the Board shall form a quorum at any meeting thereof.

(3) The chairman of the Board may himself at any time call a special meeting of the Board.

(4) The decision of the majority of the members of the Board present at any meeting shall constitute the decision of the Board:

Provided that in the event of an equality of votes at any such meeting the chairman at the meeting shall have a casting vote in addition to his deliberative vote.

(5) At all meetings of the Board the chairman or, in his absence, such member as the members present shall elect, shall act as chairman.

(6) No member of the Board shall vote upon or take part in a discussion if he has, directly or indirectly, any pecuniary interest in the matter before the Board.

#### **11 Powers of Board in relation to applications**

(1) In the exercise of its functions and duties the Board shall have power-

(a) to require any area of ground or mining location which is the subject matter of an application or an investigation to or by the Board to be examined by such person or persons as the Board may appoint for the purpose;

(b) to summon any applicant, the holder of any mining location, an owner of any land or any person having an interest in or knowledge of any matter before the Board to appear before the Board to give any evidence or explanations which the Board may require;

(c) to require the production of books, plans, accounts and other documents relating to any application or matter before the Board.

(2) Any person appointed under paragraph (a) of subsection (1) shall, if authorized by the Board, have power to take and remove samples of ore from the area of ground or mining location in question.

**12 Witnesses may be examine on oath**

(1) The Board may examine persons appearing before it on oath, which oath the chairman of the Board is hereby empowered to administer.

(2) Any person who, after having been duly sworn, wilfully makes a false statement to the Board on any matter relevant to the inquiry knowing such statement to be false, or not knowing or believing it to be true, shall be guilty of an offence and liable to the same punishment as if he had been convicted of perjury.

(3) If any person summoned to give evidence or to produce books, plans, accounts and other documents fails to appear before the Board or fails to produce such books, plans, accounts and other documents to the Board, or refuses to be examined on oath or to answer any question, he shall be guilty of an offence and liable to a fine not exceeding five hundred dollars or, in default of payment to imprisonment for a period not exceeding twelve months.

**13 Penalty for obstruction**

Any person who obstructs or hinders any person authorized by the Board in his examination of a mining location or other area of ground shall be guilty of an offence and liable to a fine not exceeding five hundred dollars or, in default or payment, to imprisonment for a period not exceeding twelve months.

**PART III**

**REGISTER OF APPROVED PROSPECTORS**

**14 Register of Approved Prospectors**

(1) The Secretary shall establish and maintain at the head office of the Ministry of Mines a register to be known as the Register of Approved Prospectors.

(2) There shall be entered in the Register of Approved Prospectors-

(a) the name of every approved prospector registered as such in terms of paragraph (a) or subsection (3) of

section *fifteen*; and

(b) the area for which the approved prospector is registered in terms of subparagraph (i) of paragraph (a) of subsection (3) of section *fifteen*; and

(c) particulars of any renewal, cancellation or suspension of the registration of such approved prospector; and

(d) such other particulars as the Secretary may deem necessary.

**15 Application for registration as approved prospector**

(1) A person who wishes to be registered as an approved prospector shall-

(a) make application in writing to a mining commissioner in the prescribed form; and

(b) submit therewith such photographs of himself as may be prescribed; and

(c) pay at the time of making such application the prescribed fee; and

(d) provide such other information as the mining commissioner may require:

Provided that a person who is not a permanent resident of Zimbabwe shall not be entitled to make any such application unless he has first obtained the prior written consent of the Secretary, and submits with his application such consent.

(2) On receipt of an application in terms of subsection (1) the mining commissioner shall satisfy himself as to the fitness of the applicant to be registered as an approved prospector, including the extent of the knowledge of the applicant pegging procedures and of the rights and duties of prospectors and owners and occupiers of land under this Act, and shall then forward the application to the Secretary, together with his report and recommendation thereon.

(3) On receipt of an application, report and recommendation from the mining commissioner in terms of subsection (2) the Secretary may-

(a) if he is satisfied that no good cause to the contrary exists, grant the application, in which case he shall-

(i) register the applicant as an approved prospector; and

(ii) issue to him a numbered certificate or registration as an approved prospector which shall be in the prescribed form;



or

- (b) remit the application to the mining commissioner for further investigation, report and recommendation; or
- (c) refuse the application, in which case the applicant shall be notified accordingly:

Provided that before refusing an application the Secretary shall notify the applicant that he is considering refusing his application, informing him of the grounds therefor, and give him an opportunity to make written representations in connection therewith within twenty-one days after the date of such notification.

(4) An applicant whose application in terms of subsection (1) has been refused by the Secretary may, within twenty-one days after the date of notification of such refusal, appeal in writing, giving grounds, to the Minister who may-

- (a) allow the appeal, in which case the Secretary shall proceed in accordance with paragraph (a) of subsection (3) as if he had originally granted the application; or
- (b) dismiss the appeal, in which case the applicant shall be notified accordingly.

(5) An applicant whose appeal in terms of subsection (4) has been dismissed by the Minister may not make a fresh application in terms of subsection (1) until after the expiry of a period of five years from the date on which his appeal was dismissed or such lesser period as the Minister may specify when dismissing the appeal.

(6) No application in terms of subsection (1) shall be granted unless the applicant has attained the age of eighteen years.

## 16 Expiry and renewal of registration

(1) Subject to sections *seventeen* and *eighteen*, the registration of a person as an approved prospector shall be valid for a period of five years from the date of registration and then it shall automatically expire unless, prior to the expiry of such period, the registration is renewed for a further period of five years which shall be final.

(2) An approved prospector who wishes to renew his registration as such shall, not later than two months before his registration is due to expire in terms of subsection (1)-

- (a) make written application to a mining commissioner on the prescribed form; and
- (b) pay at the time of making such application the prescribed fee; and

(c) submit therewith his certificate of registration as an approved prospector.

(3) On receipt of an application in terms of subsection (2) the mining commissioner-

(a) shall issue the applicant with a temporary document which shall serve as his certificate of registration as an approved prospector during the remainder of the current period of registration; and

(b) may, and if so instructed by the Secretary shall, satisfy himself afresh as to the matters referred to in subsection (2) of section *fifteen* and shall forward the application, together with his report and recommendation thereon, to the Secretary.

(4) On receipt of an application, report and recommendation from the mining commissioner in terms of subsection (3) the Secretary may-

(a) if he is satisfied that no good cause to the contrary exists, renew the registration of the applicant for a further period of five years, endorse the certificate of registration accordingly and return it to the holder or

(b) remit the application to the mining commissioner for further investigation, report and recommendation; or

(c) refuse the application, in which case the applicant shall be notified accordingly:

Provided that before refusing an application the Secretary shall notify the applicant that he is considering refusing his application, informing him of the grounds therefor, and give him an opportunity to make written representations in connection therewith within twenty-one days after the date of such notification.

(5) An applicant whose application in terms of subsection (1) has been refused by the Secretary may, within twenty-one days after the date of notification of such refusal, appeal in writing, giving grounds, to the Minister who may-

(a) allow the appeal, in which case the Secretary shall proceed in accordance with paragraph (a) of subsection (4) as if he had originally granted the application; or

(b) dismiss the appeal, in which case the applicant shall be notified accordingly.

(6) An applicant whose appeal in terms of subsection (5) has been dismissed by the Minister may not make a fresh application for registration as an approved prospector in terms of subsection (1) of section *fifteen* until after the expiry of a period of five years from the date on which



his appeal was dismissed or such lesser period as the Minister may specify when dismissing the appeal.

### 17 Cancellation or suspension of registration

(1) The registration of a person as an approved prospector shall be cancelled or suspended by the Secretary on the direction of the Minister given in accordance with this section.

(2) If an approved prospector-

(a) is convicted of an offence, whether under this Act or otherwise; or

(b) has, in the exercise of any rights under this Act, conducted himself in a manner;

which, in the opinion of the Minister, renders it necessary to suspend or cancel his registration as an approved prospector, the Minister may direct the Secretary-

(i) to suspend his registration for a specified period which shall expire before the date on which that registration is in any event due to expire in terms of subsection (1) of section *sixteen*; or

(ii) to cancel his registration;

as the case may be.

(3) Before giving a direction in terms of subsection (2) the Minister shall notify the approved prospector concerned that he is considering taking action in terms of that subsection, informing him of the grounds therefor, and give him an opportunity to make written representations in connection therewith within twenty-one days of the date of such notification.

(4) The cancellation or suspension of the registration of a person as an approved prospector in terms of this section shall be in addition to any other penalty which may be imposed under this Act or any other law.

(5) The Secretary shall give written notice to the approved prospector concerned of the cancellation or suspension of his registration in terms of this section and the period of suspension.

### 18 Effect of expiry, cancellation or suspension of registration

(1) A person whose registration as an approved prospector has expired in terms of section *sixteen* or has been cancelled or suspended in terms of section *seventeen* shall forthwith surrender to a mining commissioner his certificate of registration as an approved prospector.

(2) Where a certificate of registration as an approved prospector has been surrendered in terms of subsection (1) by reason of the suspension of the registration of the holder, such certificate shall be returned to the holder immediately on the expiry of the period of suspension.

(3) Until the period of suspension has expired a person whose registration as an approved prospector has been suspended in terms of section *seventeen* shall be deemed not to be registered as such.

(4) A person whose registration as an approved prospector has been cancelled in terms of section *seventeen* may not make a fresh application in terms of section *fifteen* for registration as an approved prospector until after the expiry of a period of five years from the date on which his registration was cancelled or such lesser period as the Minister may specify when directing the cancellation.

### 19 Duplicate certificate of registration as an approved prospector

(1) If an approved prospector has lost his certificate of registration or the certificate has been destroyed, he may apply to a mining commissioner for a duplicate copy thereof.

(2) On making an application referred to in subsection (1) the approved prospector shall-

(a) pay the prescribed fee; and

(b) furnish a solemn declaration in a form to be approved by the mining commissioner which shall state-

(i) the name of the holder of the certificate; and

(ii) the number of the certificate; and

(iii) that the certificate has been lost or destroyed; and

(c) submit such photographs as he would be required to submit if he were making an application in terms of section *fifteen*.

(3) On receipt of an application complying with this section the mining commissioner shall forward the application and the solemn declaration to the Secretary who shall, if he is satisfied that no good cause to the contrary exists, issue a duplicate copy of the certificate endorsed as such and forward it to the applicant.

(4) A duplicate copy of a certificate issued in terms of this section shall be available for all purposes for which the original would have been available.



## PART IV

### ACQUISITION AND REGISTRATION OF MINING RIGHTS

#### 20 Prospecting licences

(1) Subject to this section and section *twenty-four*, any person who is a permanent resident of Zimbabwe or any duly appointed agent of such person may take out at the office of any mining commissioner one or more prospecting licences on payment of the appropriate fee prescribed in respect of each such licence.

(2) On making application for a prospecting licence the applicant shall furnish to the mining commissioner his full name and permanent postal address, which shall appear on the licence issued to him, and such other information as the mining commissioner may require.

(3) The mining commissioner may refuse to issue a prospecting licence, but shall forthwith report each refusal to the Secretary.

(4) Upon receipt of a report in terms of subsection (3), the Secretary shall refer the report to the Minister and shall, if so instructed by the Minister, direct the mining commissioner to issue a prospecting licence.

#### 21 Appointment of approved prospector as representative of holder of prospecting licence

(1) Any holder of a prospecting licence may, in writing under his hand, appoint an approved prospector to act as his representative under any prospecting licence already issued to him or under any prospecting licence which may thereafter be issued to him.

(2) A representative appointed in terms of subsection (1) shall act under a prospecting licence to which his appointment relates solely for the benefit of the holder of the licence.

(3) The rights conferred by this Act upon the holder of a prospecting licence-

(a) shall be exercised by the holder personally only if he is an approved prospector;

(b) shall, where the holder is not an approved prospector, be exercised only by a representative appointed by the holder in terms of subsection (1).

(4) Without prejudice to any right of the holder of a prospecting licence to cancel such an appointment, the appointment of a person as a representative in terms of sub-

section (1) shall automatically be terminated if the registration of that person as an approved prospector expires or is cancelled or suspended.

#### 22 Duplicate prospecting licence

(1) If the holder of a prospecting licence has lost such licence, he may apply to any mining commissioner for a duplicate copy thereof.

(2) On such application he shall furnish a solemn declaration in a form to be approved by the mining commissioner which shall state-

(a) that the licence has been lost or destroyed; and

(b) from what mining commissioner's office he originally obtained the licence; and

(c) the number of the licence.

(3) On receipt of such application and such solemn declaration the mining commissioner shall make any necessary inquiries at the office from which the original licence was obtained and shall, if he is satisfied that no good reason to the contrary exists, issue a duplicate copy of such licence to the application on payment of the prescribed fee for each such copy.

(4) A duplicate copy of a licence issued in terms of this section shall be available for all purposes for which the original would have been available.

#### 23 Duration of prospecting licence

A prospecting licence shall be valid until and inclusive of the second anniversary of the date of issue thereof.

#### 24. Holder of prospecting licence to be 18 or older

No person who is under the age of eighteen years shall hold any prospecting licence.

#### 25 Sale of prospecting licence forbidden

(1) No person shall sell or otherwise dispose of any prospecting licence or certificate of registration as an approved prospector.

(2) Any sale or other disposition in terms of subsection (1) shall be void and the parties to such sale or other disposition shall be guilty of an offence.

#### 26 Land open to prospecting

Subject to the provisions and limitations contained in section *thirty-one*, the following land is open to prospecting-

- (a) all State land and Communal Land;
- (b) all private land in the title to which there has been reserved either to the British South Africa Company or to the Government Zimbabwe the right to all minerals or the power to make grants of the right to prospect for mineral;
- (c) all land held by any person under any enactment or agreement whereby such person is entitled to obtain from the State title thereto on the fulfilment by him of the conditions prescribed by such enactment or agreement.

**27 Rights of prospecting and pegging conferred by prospecting licence**

(1) Subject to section *twenty-one* and *three hundred and sixty-eight*, every holder of a prospecting licence shall be entitled to the following rights-

- (a) the right, subject to the provisions and limitations hereinafter contained, of prospecting and searching for any minerals, mineral oils and natural gases on land open to prospecting, but not of removing or disposing of any mineral discovered save for the *bona fide* purpose of having it assayed or of determining the nature thereof or with the permission in writing of the mining commissioner;
- (b) the right, subject to the provisions hereinafter contained, of pegging-
  - (i) one block of precious metal claims; or
  - (ii) one block of precious stones claims;
  - (iii) one block of base mineral claims.

(2) No drilling or excavation work, whether at the surface or underground, shall be undertaken by the holder of a prospecting licence, save in the exercise of exclusive rights conferred on him by subsection (5) of section *forty-one* or subsection (2) of section *forty-two*.

**28 Cancellation of certain rights to timber conferred by certain title deeds**

Any condition in a title deed to any piece of land stating that all indigenous timber is reserved and may be cut free of charge by holders of mining locations or prospecting licences shall be regarded as *pro non scripto* and every right possessed by any such holder by virtue of such a condition shall cease with effect from the 1st November, 1961.

**29 Surface rights of holder of prospecting licence**

(1) In this section-

"location" means the area covered by the relevant prospecting notice and, where a discovery notice has also been posted, the area as extended by that discovery notice;

"private land" does not include Communal Land.

(2) The holder of a prospecting licence, hereinafter in this section called the prospector, shall, when *bona fide* employed in the pursuit of any of the rights conferred by section *twenty-seven*, the onus of proof whereof shall lie on him, be entitled to the following rights-

- (a) the right to take free of charge for primary purposes any public water or private water from land not closed to prospecting in terms of section *thirty* or *thirty-five* but only in so far as such taking does not interfere with the use of such water for primary purposes by the owner or occupier of the land;
- (b) after having posted his prospecting notice-
  - (i) subject to the *Forest Act [Chapter 19:05]* and to such conditions as may be prescribed, and on payment to the occupier or, where there is no occupier, the owner of the land in advance of such tariff rate as may be prescribed, the right to take and use for firewood within the limits of his location any dead indigenous wood or timber found within those limits on land which is neither Communal Land nor land in regard to which a reservation has been made under section *thirty-six* or *thirty-seven*; and
  - (ii) subject to this section, the right to erect within the limits of his location any temporary accommodation for himself and his employees and any temporary buildings or machinery for the purposes of his work:

Provided that this subparagraph shall not be deemed to confer any right, title or interest in the land upon which such accommodation, buildings or machinery may have been erected;

- (c) the right to remove, within ten days or such longer period as may be determined by the mining commissioner after the expiration of his prospecting notice, any accommodation, buildings or machinery which may have been erected under subparagraph (ii) of paragraph (b);

(3) A prospector who, after the expiry of the period of



seven days from the posting of his prospecting notice, accommodates employees on occupied private land situated within his location shall forthwith give to the occupier of the land written notice of that fact describing the site of the accommodation.

(4) If an occupier of private land to whom notice has been given in terms of subsection (3) objects to the site chosen for such accommodation by the prospector and agreement between the occupier and the prospector on any such objection is not reached, the occupier may, within seven days of receipt of the notice or such longer period as may be determined by the mining commissioner, refer the matter to the mining commissioner to decide where the employees of the prospector should be accommodated and the decision of the mining commissioner shall be final and without appeal.

### 30 Meaning of "land under cultivation" and "permanent improvements"

For the purposes of section *thirty-one*-

"land under cultivation" means-

- (a) land which has been *bona fide* cleared or ploughed or prepared for the growing of farm crops;
- (b) ploughed land on which farm crops are growing;
- (c) ploughed land from which farm crops have been reaped, for a period of three years from the date of completion of such reaping;
- (d) land which has been *bona fide* prepared for the planting of such permanent crops as orchards or tree plantations, and land on which such crops have been planted and are being maintained;
- (e) ploughed land on which grass has been planted and maintained for harvesting, rotation of crops or stock feeding, for a period of six years from the date of planting;

Provided that if any land such as is described in paragraphs (a) and (d) is not utilized for the growing of farm crops or of such permanent crops as orchards or tree plantations within two years of its having been *bona fide* cleared or ploughed or prepared for such crops, such land shall forthwith become open to prospecting;

"permanent improvements" does not include fences of any description, aqueducts, pipelines, wells, boreholes, dams or reservoirs.

### 31 Ground not open to prospecting

(1) Save as provided in Parts V and VII, no person shall

be entitled to exercise any of his rights under any prospecting licence or any special grant to carry out prospecting operations or any exclusive prospecting order-

- (a) upon any holding of private land except with the consent in writing of the owner or of some person duly authorized thereto by the owner or, in the case of a portion of Communal Land, by the occupier of such portion, or upon any State land except with the consent in writing of the President or of some person duly authorized thereto by the President-
  - (i) within four hundred and fifty metres of the site of the principal homestead on such holding or on such State land, whether such homestead is already erected or actually in the course of erection;
  - (ii) within four hundred and fifty metres of the site of any intended principal homestead, which site has been registered with the mining commissioner by the landowner:

Provided that if a principal homestead is not erected on such a site within three years after the date of such registration, such site shall thereupon become open to prospecting;

- (iii) within ninety metres of any area set aside on which housing constructed of brick or concrete has been erected for occupation by farm employees, if the total value of such housing is not less than five thousand dollars;
  - (iv) within ninety metres of any other building or permanent improvement of a value of not less than five hundred dollars;
  - (v) within ninety metres of any permanent cattle dip tank or spray race;
  - (vi) upon any land under cultivation or within fifteen metres thereof;
  - (vii) within nine metres of any other permanent *bona fide* farm building, except on payment to the landowner of such compensation as may be fixed by agreement or, failing agreement, by the Administrative Court to whom the matter shall be referred for decision;
- (b) upon any mining location, other than one in respect of which he may have acquired the exclusive right of prospecting under such licence or special grant or exclusive prospecting order;
- (c) within the surveyed limits of any city, town, township or village, or upon a belt fifty metres in width outside such limits;



- (d) upon any site which is on town lands, but outside the surveyed limits of any city, town, township or village situated thereon, and has been surveyed and set aside for any specific purpose;
- (e) upon any licensed aerodrome or any emergency landing ground or aerodrome of the State;
- (f) upon any rifle range of the State, any railway reserve or any cemetery;
- (g) except with the consent in writing-
- (i) of the owner or of some person duly authorized thereto by the owner, upon any holding of land which does not exceed one hundred hectares in extent and which is held by such owner under one separate title:

Provided that if such owner has one or more holdings which are contiguous and the total area of such contiguous holdings exceeds one hundred hectares this paragraph shall not apply to such holdings; or

- (ii) in the case of a portion of Communal Land which does not exceed one hundred hectares in extent, of the occupier of such portion;
  - (iii) where any consent in terms of this paragraph is unreasonably withheld, the Minister may authorize any person to exercise his rights under any prospecting licence or any special grant to carry, out prospecting operations or any exclusive prospecting order on such land, subject to such conditions as the Minister may impose;
  - (h) upon any Communal Land occupied as a village without the written consent of the rural district council established for the area concerned.
- (2) Where a site intended for a principal homestead has been registered by the landowner under subparagraph (ii) of paragraph (a) of subsection (1)-
- (a) the landowner shall as soon as may be after such registration erect a peg marking the centre of the site and bearing an inscription stating the purpose of such peg, and shall maintain such peg and maintain such inscription in legible form;
  - (b) the landowner shall not, if such principal homestead has not been erected within the period of three years mentioned in the proviso to that subparagraph, be entitled again to register such site or any portion thereof until a period of not less than twelve months has elapsed from the date upon which such site again became open to prospecting.
- (3) If a landowner fails to comply with any provisions of

paragraph (a) of subsection (2), the mining commissioner may cancel the registration of the site to which such failure relates.

### 32 Disputes between landowners and prospectors

If any dispute arises between the holder of a prospecting licence or a special grant to prospect or an exclusive prospecting order and a landowner or occupier of land as to whether land is open to prospecting or not, the matter shall be referred to the Administrative Court for decision.

### 33. Registration of arable land

(1) Every owner of a holding of private land, or any person who has acquired the right to obtain title to private land under an agreement of sale which has been notarially executed, may apply to the mining commissioner for the registration of the arable portion or portions of such land, not exceeding in all two hundred hectares in extent.

(2) Any arable land which, at the date of the application mentioned in subsection (1), is not open to prospecting and pegging by virtue of paragraph (a) of subsection (1) of section *thirty-one* shall be deducted from the area of two hundred hectares which may be registered in terms of this section.

(3) Every applicant shall submit with his application, made in terms of subsection (1), a plan of the holding showing the area or areas which he wishes to be registered, together with a certificate from such person as may be approved by the mining commissioner confirming the situation and extent of such area or areas and of any other arable land and land under cultivation within such private land.

(4) Upon receipt of the plan and such certificate, referred to in subsection (3), the mining commissioner shall, if he is satisfied as to the title of the applicant and that the plan is satisfactory, register such land.

(5) Upon the registration of any land by the mining commissioner under this section, the land so registered shall, during the period of registration, be deemed to be land under cultivation for the purposes of section *thirty-one*.

(6) The person in whose favour registration has been granted under this section shall beacon the area or areas so registered in such as the mining commissioner may direct, and shall maintain the beacons in proper order and condition.

(7) If the person in whose favour registration has been granted under this section fails to beacon such area or areas or to maintain the beacons in proper order and condition, the mining commissioner may cancel the registration.



(8) The period of registration mentioned in (5) shall terminate on the 31st August next succeeding the second anniversary of the date upon which the person upon whose application the registration was granted became the owner of the land so registered, or upon which such notarial agreement was executed, as the case may be:

Provided that the mining commissioner may on application extend the period of such registration for any period not exceeding three years.

(9) Any person who is aggrieved by the refusal of the mining commissioner to grant an extension of the period of registration may appeal against that decision to the Administrative Court.

### **34 Roads and railways may be included in location under certain conditions**

(1) In this section-

"roads includes any area of land reserved for road purposes under Part III of the Roads Act [Chapter 13:12] and any restricted road declared under Part IV of that Act.

(2) Subject to this section and section *three hundred and seventy-seven*, the holder of a prospecting licence or of a special grant or of an exclusive prospecting order or of a mining lease, may include in his location any road, railway, track, electric power line, aqueduct, pipeline, occupied dwelling, well, borehole, dam, reservoir or works designed to prevent soil erosion or any land reserved for the taking of road-making materials under section 24 of the Roads Act [Chapter 13:12].

(3) No person shall carry on prospecting or other mining or development operations upon any road, nor within fifteen metres of the middle of the road.

(4) No person shall carry on prospecting or other mining or development operations or erect any building for the purposes of a mining location upon any railway track, nor within forty-five metres of any railway track.

(5) No person shall hinder or impede the use of any road or railway track by mining operations.

(6) Notwithstanding anything in this Act relating to the erection and maintenance of pegs and beacons no person shall erect any pegs or beacons of a mining location on any road or railway track, nor within fifteen metres of the middle of any road, nor within forty-five metres of any railway track, but in lieu thereof there shall be fixed such means of indicating the position of the location as shall be prescribed.

(7) No person shall carry on prospecting or other mining

or development operations within twenty-five metres of any pipeline constructed of asbestos pipes exceeding thirty centimetres in diameter or five metres of any other pipeline, nor within ten metres of any occupied dwelling, nor within thirty metres of any aqueduct, well or borehole, nor within ninety metres of any dam or reservoir, without the consent of the owner of such work, and no person shall impart or interfere with any such work or impede the use of such work by mining operations.

(8) No person shall carry on prospecting or other mining or development operations-

(a) within ten metres of the centre line of an electric power line carrying 33kV or less; or

(b) within twenty-five metres of the centre line of an electric power line carrying more than 33kV but not more than 132kV; or

(c) within forty metres of the centre line of any electric power line carrying more than 132kV; or

(d) within ten metres of a pole mounted transformer or ground mounted transformer with a capacity of less than 300kVA; or

(e) within twenty-five metres of any other transformer or electricity substation or electrical equipment or building used for the transmission or distribution of electricity.

(9) No person shall carry on prospecting or other mining or development operations upon any land reserved for the taking of road-making materials under section 24 of the Roads Act [Chapter 13:12].

(10) The holder of any mining location which is pegged across any works designed to prevent soil erosion shall maintain such works in good condition, so that they continue to function for the purposes for which they were made:

Provided that this subsection shall not, during the period of an approved cultivation scheme, apply in respect of any mining location to which that scheme relates.

(11) Nothing in this section shall be deemed in any way to prejudice the right of any person to recover from the holder of a prospecting licence or a mining location damages for any injury which he may prove to have been sustained by him in consequence of any act or thing done by such holder even though such holder has complied with this section.

### **35 Reservations against prospecting and pegging**

(1) The mining commissioner may, and, if so instructed



by the Secretary on the authority of the Minister, shall reserve by notice posted at his office any area against prospecting and pegging, and all rights possessed by the holder of any prospecting licence or exclusive prospecting order to prospect for and peg minerals shall cease and may not be exercised within such area as from the date and hour of the posting of such notice or such later hour or later date and hour as may be specified in such notice:

Provided that the holder of a mining location, other than an exclusive prospecting reservation, within any such area shall retain and may exercise all rights lawfully held by him which existed at the date and hour as from which such notice takes effect in terms of this subsection.

(2) A reservation notice posted in terms of subsection (1) may specify that the reservation shall be for a specific period only:

Provided that nothing in this subsection shall be construed so as to prohibit the earlier withdrawal of the reservation in terms of this section.

(3) Where the mining commissioner has so reserved any area otherwise than on the instructions of the Secretary, he shall forthwith report the matter to the Secretary, who shall refer the matter to the Minister.

(4) If the Minister does not approve of such reservation, the Secretary shall instruct the mining commissioner to withdraw such reservation, and the mining commissioner shall forthwith comply with such instruction by posting a notice of withdrawal at his office.

(5) If the Minister approves of such reservation, the Secretary shall inform the mining commissioner of such approval.

(6) Where a reservation has been made on the instructions of the Secretary or the Minister has approved of a reservation mentioned in subsection (3), such reservation shall be advertised by notice in the *Gazette*.

(7) Where the mining commissioner has made a reservation mentioned in subsection (3), he may before the approval thereof by the Minister, by notice posted at his office, withdraw such reservation and, where a reservation has been made on the instructions of the Secretary with the authority of the Minister or where a reservation referred to in subsection (3) has been approved by the Minister, he shall, if so instructed by the Secretary on the authority of the Minister, in like manner withdraw such reservation.

(8) A reservation may be withdrawn either in whole or in part.

(9) Every withdrawal of a reservation which has been advertised in the *Gazette* shall, likewise, be advertised by notice in the *Gazette*.

(10) The beaconing and demarcation of any area reserved under this section shall be carried out in such manner as the mining commissioner may direct.

(11) For all the purposes of this Act, every special reservation of any area against prospecting and pegging which was lawfully made by the Administrator, the Government or a mining commissioner before the 1st November, 1961, and which was still in force immediately before that date, shall be deemed to be a reservation made by notice by the mining commissioner on the instructions of the Secretary under this section.

### 36 Reservation of timber on application by landowner

(1) Every owner or occupier of a holding of private land may apply for and shall be granted by the mining commissioner a reservation against the cutting or taking by prospectors or miners of fifty *per centum* of such indigenous wood or timber as is existing on his land at the time of his application for the reservation.

(2) A reservation of indigenous wood or timber made under subsection (1) shall not restrict prospecting or pegging or the working of mining locations on any such area

(3) Any indigenous wood or timber within any area described in paragraph (a) of subsection (1) of section *thirty-one* shall be part of and be included in any timber reservation granted to such owner.

(4) The owner or occupier shall beacon and demarcate the area in which the wood or timber is reserved in such manner and within such time as the mining commissioner may direct.

(5) Where a reservation of timber has been granted under this section-

(a) the owner or occupier shall be entitled-

(i) to cut such wood or timber, and no more, outside the area of the reservation as may be necessary for the *bona fide* purposes of clearing or for the improvement of pastures;

(ii) to use the wood or timber so cut for his own purposes or to sell it to a prospector or miner, with the consent of the mining commissioner, to sell it to any other person;

(b) a prospector or miner shall be entitled in the exercise of prospecting or mining rights in the area of the reservation-



- (i) to cut such indigenous wood or timber, and no more, as interferes with prospecting or mining operations, development work or the erection of buildings for mining purposes:

Provided that he shall stack or pile all wood or timber cut; and

- (ii) with the consent of the owner, to use for his own purposes indigenous wood or timber cut in terms of subparagraph (i).

(6) Where a reservation of timber has been granted under this section and it appears to the mining commissioner that a redistribution of the indigenous wood or timber on the land is necessary or desirable because the holding has been subdivided or for any other reason, he may cancel such reservation and grant a fresh reservation, and subsections (2), (3), (4) and (5) shall apply, *mutatis mutandis*.

(7) If any dispute arises as to the equal division of wood or timber under this section, the matter shall be referred to the Administrative Court for decision.

### 37 Reservation of timber on instruction of Minister

(1) The mining commissioner may, when authorized thereto by the Minister, reserve by notice posted at his office all indigenous wood and timber or any specified indigenous wood or timber on any area, and all rights conferred by this Act upon any holder of a prospecting licence or special grant or upon any holder of a mining location to cut or take such wood or timber shall cease and may not be exercised within such area as from the date and hour of the posting of the reservation notice, but any such reservation of wood or timber shall not restrict prospecting or pegging within such area or the cutting of wood or timber which interferes with prospecting or mining operations.

(2) The beaconing and demarcation of any area reserved under subsection (1) shall be carried out in such manner as the mining commissioner may direct.

(3) The mining commissioner may, under the same conditions and in the same manner, withdraw any reservation made under subsection (1).

### 38 Notice of intention to prospect

(1) This section shall apply to-

- (a) town lands;
- (b) private land the boundaries of which are fenced or clearly marked by beacons and cut lines or consist of rivers, roads or railway lines;

- (c) any area of land declared under the Forest Act [*Chapter 19:05*] to be demarcated forest or protected private forest;

(d) Communal Land.

(2) Every person, before exercising any of his rights under a prospecting licence, special grant to carry out prospecting operations issued under subsection (1) of section *two hundred and ninety-one* or exclusive prospecting order on any land to which this section applies shall give notice of his intention to do so in whichever one or more of the following forms is applicable to the case-

- (a) if the land is a portion of town lands, he shall give notice in writing by registered letter addressed to the local authority concerned;

- (b) if the land is occupied private land, he shall give notice in writing to the occupier of the land in person or by registered letter addressed to the occupier at his ordinary postal address;

- (c) if the land is unoccupied private land, he shall give notice in writing by registered letter addressed to the owner at his ordinary postal address;

- (d) if the land has been declared a demarcated forest, he shall give notice in writing to the chief executive officer of the Forestry Commission established under the Forest Act [*Chapter 19:05*].

- (e) if the land has been declared a protected private forest, he shall give notice in writing to the owner of such land in person or by registered letter addressed to the owner at his ordinary postal address or, if such land is unoccupied, to the mining commissioner;

- (f) if the land is in Communal Land, he shall give notice in writing to any rural district council established for the area concerned;

and shall state in such notice his permanent postal address.

(3) In every notice given in terms of subsection (2) there shall, in addition, be stated the name and address of the person who will be in charge of prospecting operations on the land concerned.

(4) A notice which has been duly given in terms of this section by the holder of a prospecting licence shall be valid for a period of one hundred and twenty days from the date on which it was delivered or posted, as the case may be, and, if such holder has not pegged and registered a block on the land concerned within that period, he shall give fresh instructions notice in terms of this section before continuing to exercise his rights under the prospecting licence.



(5) A notice which has been duly given in terms of this section by the holder of an exclusive prospecting order or a special grant to carry out prospecting operations shall be valid for the period of validity of that order or special grant.

(6) Notwithstanding subsection (4) and (5), in the event of any change in the particulars notified in terms of subsection (3), the holder shall forthwith give notice of that change and subsection (2) shall apply, *mutatis mutandis*, to the giving of that notice.

(7) Where a mining location has been pegged by a person who has failed to give any notice required in terms of this section, the pegging of the mining location shall not be deemed to be invalid by virtue only of the failure to give such notice.

(8) Any person who fails to give any notice required in terms of this section, whether or not a mining location has been pegged, shall be guilty of an offence and liable to a fine not exceeding two hundred dollars, or, in default of payment, to imprisonment for a period not exceeding six months.

### 39 Hours of pegging and posting notices

(1) No person shall peg any mining location, which term includes the posting of a prospecting, discovery or registration notice, between six o'clock in the afternoon and six o'clock in the morning.

(2) The pegging of any locations during the period prohibited by subsection (1) shall not confer any rights whatsoever on any person.

(3) No pegging shall be deemed to be illegal by reason of being done on a Sunday or public holiday.

### 40 Manner in which notices to be posted

(1) If a prospecting, discovery or registration notice is posted on a notice board, such board shall be fixed on a peg.

(2) All notices shall be distinctly and legibly written, printed or painted, and no paper or other material which is liable to be washed off, and no writing liable to be rendered illegible by rain or exposure shall, except for purely temporary purposes, be deemed a proper marking.

### 41 Prospecting notices

(1) Subject to this Act, any holder of a prospecting licence may and, if he wishes to drill or excavate, whether at the surface or underground, shall post a notice to be called a "prospecting notice" on ground open to pros-

pecting.

(2) Such notice shall-

(a) in so far as material be in the prescribed form, and all the particulars required by such form shall be dully filled in;

(b) be carried on a peg erected in a conspicuous and accessible place.

(3) On posting a prospecting notice the holder of the prospecting licence under which it is posted shall immediately forward to-

(a) the mining commissioner; and

(b) whichever authority or person would be entitled in terms of section *thirty-eight* to be given notice of intention to prospect on the land affected by the prospecting notice;

a certified copy of the prospecting notice, together with a plan based on a map issued under the authority of the State and of a scale of not less than 1:25 000 sufficiently identifying the point where such notice has been posted and the area covered thereto.

(4) No person shall post a second prospecting notice by virtue of any licence until such time as notice of abandonment has been posted on the ground previously located in the manner provided in section *two hundred and fifty-eight* or until the prospecting notice previously posted under the same licence has lapsed.

(5) The posting of a prospecting notice in terms of subsection (1) shall confer upon the holder of the prospecting licence under which it is posted the exclusive right of prospecting, including the right to drill and excavate, whether at the surface or underground, for a period of thirty-one days each of twenty-four hours from the time of such posting on all ground which is open to prospecting at the time of the posting of such notice within an area described by a radius of three hundred metres from the point where the prospecting notice has been posted:

Provided that on the posting of a registration notice in terms of section *forty-four* all such rights outside the area of the block pegged shall lapse.

### 42 Discovery of minerals or precious stones

(1) If the holder of a prospecting licence, after posting his prospecting notice, by the work of himself or his agents, discovers within the area covered by such notice any ore or deposit of precious metals or precious stones, he shall mark the point of such discovery a peg marked "DP".



(2) If the holder or a prospecting licence, after the posting of his prospecting notice, in like manner discovers within the area covered by such notice any ore or deposit of any base mineral, he shall mark the point of such discovery by a peg marked "DP" and indicate upon a notice to be styled a "discovery notice" in the prescribed form, posted at the spot where his prospecting notice is posted, the position of the DP peg, the nature of the base mineral he has discovered and the date and time of the discovery, and thereupon for the remainder of the period of thirty-one days mentioned in section *forty-one* he shall be entitled to the sole and exclusive right of prospecting, including the right to drill and excavate, whether at the surface or underground, upon all ground open to prospecting within an area described a radius of nine hundred metres from his prospecting notice.

(3) the intersection of a reef by a borehole shall be deemed to constitute a discovery within the meaning of this section.

(4) If the holder of more than one special prospecting licence posts two discovery notices in such positions that the areas covered by such notices overlap, and thereafter he posts a registration notice in terms of section *forty-four* in respect of one of such areas, so much of the common segment as lies outside the block pegged by him shall, for the unexpired period of the prospecting notice in respect of which such registration notice was posted, be deemed to form part of the area covered by the other discovery notice.

#### **43 Pegging of precious metal, precious stones or base mineral blocks**

(1) A block of precious metal or precious stones claims shall, if possible, be pegged in regular form, and may be pegged in irregular form only if it is not possible to peg it in regular form.

(2) The regular form of a block of precious metal or precious stones claims shall be a parallelogram, which for a ten claim block shall not exceed five hundred metres in length nor two hundred meters in breadth, and the block shall be pegged in the following manner-

(a) the pegger shall first measure off a straight line, which in the case of reef claims shall be in the direction of the strike of the reef, extending for a maximum of distance of fifty metres in respect of each claim, not exceeding ten in all, which he desires to include in the block;

(b) the line thus established shall be known as the "centre line", and its ends shall be established by pegs,

marked E and F respectively, which shall be known as the "centre end pegs";

(c) the pegger shall then measure off two parallel straight lines drawn as nearly as possible at right angles to the centre line, and passing respectively through each centre end peg and extending for equal distances not exceeding one hundred metres from each of those pegs on each side of the centre line;

(d) the lines thus measures off shall be known as the "end lines", and their ends shall be established by pegs, to be known as "corner pegs", marked A, B, C and D respectively in such manner that the line AD passes through E and the line BC passes through F;

(e) straight lines on either side of the centre line and joining the corner pegs A and B and C and D shall then constitute and be known as the "side lines" of the block;

(f) the point marked "DP" shall lie within the boundaries of the block thus established, and no ground not open to prospecting, except as otherwise provided in section *thirty-four*, shall be included within such boundaries

(3) A block in irregular form of precious metal or precious stones claims shall be so pegged as to fulfil all the following conditions-

(a) it shall be bounded on not more than two sides by ground open to prospecting;

(b) its area shall not exceed the area of a regular block of ten claims;

(c) the length of any straight line which can be drawn between any two points on its boundary lines, whether the course of such line lies within or without the block, shall not exceed five hundred metres;

(d) the point marked "DP" shall lie within its boundaries, and except as otherwise provided in section *thirty-four*, no ground not open to prospecting shall be included within such boundaries;

(e) in the case of reef claims the pegger shall fix pegs marked "Q" and "R" respectively at two points within the boundaries of his block, and the straight line joining such pegs shall determine the mean direction of the end lines of the block;

(f) the boundary lines shall be straight lines, and the position of all points at which they intersect shall be



established by corner pegs lettered in consecutive alphabetical order commencing with the letter A.

(4) A block of base mineral claims may be pegged in any form, but shall be so pegged as to fulfil all the following conditions-

- (a) the boundary lines shall be straight lines;
- (b) the pegger shall erect pegs at all point of intersection of the boundary lines, and, if any boundary is more than three hundred metres in length, he shall erect intermediate pegs, so that no peg shall be more than three hundred metres from the next adjoining peg on either side;
- (c) all pegs shall be lettered in consecutive alphabetical order, commencing with the letter A;
- (d) the point marked "DP" shall lie within the boundaries of the block, and no ground not open to prospecting, except as otherwise provided in section *thirty-four*, shall be included within such boundaries.

(5) Where a block of base mineral claims is pegged by the holder of an ordinary prospecting licence it shall, in addition to the conditions mentioned in subsection (4), fulfil the following conditions-

- (a) it shall consist of not more than twenty-five claims and each claim shall not exceed one hectare in extent;
- (b) the length of any straight line which may be drawn between any two points on its boundary lines, whether the course of such line lies within or without the block, shall not exceed one thousand two hundred and fifty metres.

(6) Where a block of base mineral claims is pegged by the holder of a special prospecting licence, it shall, in addition to the conditions mentioned in subsection (4), fulfil the following conditions-

- (a) it shall consist of not more than one hundred and fifty claims, and each claim shall not exceed one hectare in extent;
- (b) the length of any straight line which may be drawn between any two points on its boundary lines, whether the course of such line lies within or without the block, shall not exceed two thousand metres.

(7) Every peg mentioned in this section shall bear on it, in addition to the distinguishing letter, the number of the licence under which the block was pegged and the name of the holder of the licence

#### 44 Registration notices

(1) Within the period of thirty-one days each of twenty-four hours from the posting of the prospecting notice, the holder of the prospecting licence who has discovered within the area covered by notice any ore or deposit of precious metals or precious stones or any ore or deposit of any base mineral may peg a block, and thereafter, within the said period, post upon such block a notice, to be styled a "registration notice", in like manner to the posting of the prospecting notice, and such registration notice shall be posted adjacent to the point marked "DP", and the block so pegged shall include such registration notice and the point marked "DP".

(2) Failure to peg off such block, and thereafter to post such registration notice within the period mentioned in subsection (1), shall be deemed to constitute an abandonment of all rights acquired by the posting of such prospecting notice.

(3) Notwithstanding subsection (1) or (2), where the discovery of the ore or deposit is by means of a borehole, the period within which a registration notice may be posted and a block pegged shall be extended to ninety days each of twenty-four hours from the time of the posting of the prospecting notice.

(4) A registration notice shall, so far as material, be in the form prescribed, and particulars required by such form shall be duly filled in.

#### 45 Registration of blocks

(1) The holder of any mining location upon which a registration notice has been posted may, on application to the mining commissioner within a period of thirty-one days after the date of posting such registration notice, and on payment of the prescribed fee, obtain a certificate of registration.

(2) On every such application the applicant shall lodge the following with the mining commissioner-

- (a) the prospecting licence and the power of attorney or other document, if any, under and by virtue of which the block was located;
- (b) a copy of the prospecting notice;
- (c) in the case of a base mineral block, a copy of the discovery notice;
- (d) a copy of the registration notice;
- (e) a plan in triplicate based on a map issued under the authority of the State and of a scale of not less than



1:25 000, sufficiently identifying the position of the block to be registered, the position and lettering of the pegs, including the peg marked "DP", and the position of the prospecting notice;

- (f) a certificate under his hand stating that the said copies of such notices are true copies and that all facts stated therein are true and correct;
  - (g) if the block is pegged on ground for which the consent of the owner is required, the written consent of the owner or some person duly authorized thereto by the owner.
- (3) If registration is granted, the mining commissioner shall-
- (a) return to the applicant one copy of the plan lodged with the registered number of the block endorsed thereon; and
  - (b) send notification of such registration and one copy of the plan lodged with the registered number of the block endorsed thereon to whichever authority or person would be entitled in terms of section *thirty-eight* to be given notice of intention to prospect on the land on which the block is pegged; and
  - (c) retain a copy of the plan.
- (4) When application is made for a certificate of registration of a block which has been previously registered and abandoned or forfeited, the applicant shall furnish, if possible, the previous name and registered number of the block and so far as is possible any re-pegging of any location shall perpetuate the original name of such location
- (5) If the holder of any location fails to apply for a certificate of registration in the manner prescribed within the period of thirty-one days, he shall be deemed to have abandoned such block:

Provided that if such holder makes application within the said period to the mining commissioner for an extension of the period and furnishes any reason for such extension which to the mining commissioner seems good and sufficient, the mining commissioner may extend the said period for a further period not exceeding sixty-two days.

(6) If such holder of a location fails to apply for a certificate of registration in the manner prescribed within such extended period, he shall be deemed to have abandoned such block.

#### 46 Numbering of locations

The mining commissioner shall, on the original registration of every mining location, assign a registered number and name in his register.

#### 47 Pegging of sites

(1) In this section

"property" means two or more blocks of claims, whether contiguous or otherwise, owned by one person, from which the ore is being treated at the same milling or reduction plant, or which are under the control of one registered mine manager.

(2) The holder of a registered mining location may peg on any ground open to prospecting in the vicinity of such location a site or sites for the purpose of erecting thereon residences for himself or his employees, for a mill or other machinery required for the efficient working of his location, or for tailings or waste rock dumps, for slimes or return water dam or dams, for the purpose of burning charcoal required for his mining location, or for any other legitimate object connected with and necessary for the purposes of his location:

Provided that the mining commissioner may, upon special application made to him for that purpose, and after consultation with the occupier of the land, grant permission for a site or sites to be pegged and registered on ground open to prospecting, although not in the vicinity of a registered mining location, for the purposes of such location.

(3) Save as otherwise provided in subsection (4), the maximum area which may be pegged as sites in terms of subsection (2) in respect of any one mining location or property shall be forty hectares and no one site shall exceed an area of forty hectares.

(4) The mining commissioner shall, on application made to him, permit the holder of a registered mining location or property to peg a site exceeding forty hectares or sites in the aggregate exceeding forty hectares if he is satisfied that such holder requires such larger area.

(5) In pegging a site, the position of all the points of intersection of the boundary lines, which shall be straight lines, shall be established by pegs, lettered in consecutive alphabetical order commencing with the letter A, and bear the word "site" and the registered number of the mining location in respect of which such site is pegged, and no ground not open to prospecting shall be included within such boundaries:



Provided that in no case shall the distance between two adjacent pegs on the same boundary line exceed three hundred metres.

(6) Any such holder who is aggrieved by the refusal of the mining commissioner to grant permission in terms of subsection (3) may appeal against such refusal to the Administrative Court.

#### 48 Registration of sites

(1) Any pegger of any site mentioned in section *forty-seven* shall, on the same day as such site is pegged, post on it a registration notice as nearly as material in the prescribed form, and shall, within a period of thirty-one days from the date of such pegging, apply to the mining commissioner for a certificate of registration.

(2) On such application he shall lodge with the mining commissioner-

- (a) a copy of the registration notice; and
- (b) a plan in triplicate based on a map issued under the authority of the State and of a scale of not less than 1:25 000 sufficiently identifying the form, position and extent of the site; and
- (c) a certificate under his hand that the copy of the registration notice is a true copy and that all the facts therein stated are true and correct; and
- (d) the prescribed registration fee.

(3) The mining commissioner shall, if satisfied that the applicant is legally entitled to peg such site, issue to him a certificate of registration.

(4) If registration of a site is granted, the mining commissioner shall-

- (a) return to the applicant one copy of the plan lodged with the registered number of the site endorsed thereon; and
- (b) send notification of such registration and one copy of the plan lodged with the registered number of the site endorsed thereon to whichever authority or person would be entitled in terms of section *thirty-eight* to be given notice of intention to prospect on the land on which the site is pegged; and
- (c) retain a copy of the plan.

(5) If the pegger of a site fails to apply for a certificate of registration in the manner prescribed within the aforesaid period of thirty-one days, he shall be deemed to have abandoned such site:

Provided that if such pegger makes application within the said period to the mining commissioner for an extension of the period and furnishes any reason for such extension which to the mining commissioner seems good and sufficient, the mining commissioner may extend the said period for a further period not exceeding sixty-two days.

(6) If such pegger fails to apply for a certificate of registration of the site in the manner prescribed within such extended period, he shall be deemed to have abandoned such site.

#### 49 Sites to be attached to location

(1) Every site which is registered with the mining commissioner in terms of section *forty-eight* shall be deemed to be inalienably attached to the location in respect of which it was pegged, and every transfer, hypothecation, option, abandonment, forfeiture or cancellation affecting such location shall act as a transfer, hypothecation, option, abandonment, forfeiture or cancellation affecting any site attached to such location, and no separate sale, lease, hypothecation or option purporting to affect any site apart from the mining location to which it is attached shall be valid.

(2) Any order of court affecting any mining location shall be deemed to affect similarly any site attached to such location.

(3) At any time prior to the hypothecation, giving of an option or lease, abandonment, forfeiture or cancellation of a mining location the holder thereof may apply to the mining commissioner for the cancellation of the registration of any site attached thereto, and, on filing with the mining commissioner the certificate of registration of such site, and on payment of the fee prescribed in section *forty-eight*, for the simultaneous re-registration thereof under a fresh registered number as attached to any other mining location registered in his name in the same vicinity, and upon such re-registration such other mining location shall, for the purposes of subsection (1), be deemed to be the location in respect of which the site was pegged.

#### 50 Cancellation of certificate of registration

(1) Subject to subsection (2), the mining commissioner may, notwithstanding subsection (1) of section *fifty-eight*, at any time cancel a certificate of registration issued in respect of a block or site if he is satisfied that-

- (a) at the time when such block or site was pegged it was situated on ground reserved against prospecting and pegging under section *thirty-one* or *thirty-five* or on ground not open to pegging in terms of subsection (3) or section *two hundred and fifty-eight*; or



(b) provisions of this Act relating to the method of pegging a block or site were not substantially complied with in respect of such block or site.

(2) At least thirty days before cancelling a certificate of registration under subsection (1), the mining commissioner shall give notice to the holder of the block or site of his intention to cancel such certificate and of the grounds for such cancellation and of the proposed date of such cancellation, and shall at the same time inform the holder that he may, at any time before that date, appeal in writing to the Minister against such cancellation.

(3) Such notice shall be given by registered letter addressed to the holder of the block or site at the postal address recorded in the office of the mining commissioner or, if no such address is recorded, by publication thereof in the *Gazette*.

(4) Where such an appeal is made, the Minister shall give directions to the mining commissioner as to whether or not the certificate of registration is to be cancelled, and the mining commissioner shall comply with such directions.

(5) Upon such cancellation the mining commissioner shall post upon the board whereon notices of forfeiture are posted a notice giving particulars of such cancellation and shall, in addition publish those particulars in the *Gazette* and in a newspaper circulating in his district.

(6) A mining location, the certificate of registration of which has been cancelled in terms of this section, shall, for the purposes of sections *two hundred and sixty-eight*, *two hundred and sixty-nine*, *three hundred and sixty-three* and *three hundred and seventy-five*, be deemed to have been forfeited and, accordingly, any reference in section *two hundred and sixty-nine* to the posting of a forfeiture notice shall be read as including a reference to the posting of the notice of such cancellation.

### 51 Beaconing of locations

(1) Within a period of two calendar months from the date of issue of a certificate of registration in respect of any mining location, all the pegs of such location shall be replaced by stone beacons or beacons consisting of concrete or mason work:

Provided that, where the pegs of a mining location have been replaced by stone beacons in terms of this subsection and thereafter a return in terms of paragraph (a) of subsection (1) of section *two hundred and fifty-one* has been rendered each month for six successive months in respect of that mining location, such beacons shall be replaced by beacons consisting of concrete or mason work.

(2) Every such stone beacon shall be at least six hundred millimetres high and one comma two metres in diameter at the base, and in the centre of such beacon there shall be solidly and securely fixed a peg in an upright position and standing not less than six hundred millimetres above the top of such beacon.

(3) Every such concrete or mason work beacon shall-

(a) unless securely set into the solid rock, be embedded into the ground to a depth of not less than three hundred millimetres; and

(b) be at least six hundred millimetres high; and

(c) be at least six hundred millimetres square at ground level and three hundred millimetres square at the top; and

(d) have in the centre thereof, solidly and securely fixed, a steel peg in an upright position and standing not less than six hundred millimetres above the top of the beacon

(4) Every such concrete beacon shall be-

(a) of concrete consisting of at least one part of fresh cement to three parts of clean sand and six parts of clean stone aggregate; and

(b) solid or, if not solid, the shell thereof shall be not less than fifty millimetres thick.

(5) Where a beacon is placed on a boundary line there shall-

(a) in the case of a stone beacon, be dug two direction trenches not less than one metre long, three hundred millimetres wide and three hundred millimetres deep, or other permanent means of demarcation approved by the mining commissioner; or

(b) in the case of a concrete or mason work beacon, be engraved upon the top of the beacon, or otherwise affixed to the top of the beacon in such permanent manner as the mining commissioner may approve, two clear direction marks not less than one hundred millimetres long;

to indicate the direction of the boundary lines.

(6) The upright pegs of every beacon shall bear a metal plat, the upper edge of which shall be level with the upper edge of such peg and which shall be not less than two hundred millimetres square and shall face inwards, and on which shall be legibly printed or painted, in the order shown, the following particulars-



- (a) a letter corresponding to the letter assigned to such peg in the registration notice; and
- (b) the name of the block or, if a site, the word "site", and
- (c) the nature of the mineral in respect of which the location is pegged; and
- (d) the registered number of the location; and
- (e) the date of the original registration of the location; and
- (f) the name or names of the holder or holders; and
- (g) in the case of a site, the registered number of the block of claims to which it is attached.

(7) All beacons, pegs, claim plates, direction trenches and direction marks shall be kept and maintained in good order until a quittance certificate has been issued in terms of section *two hundred and sixty-nine* in respect of the mining location in question, and holders of mining locations shall make a certificate to the mining commissioner annually that the beacons, pegs, claim plates, direction trenches and direction marks of such location are in good order and condition and that they comply with the requirements of this Act.

(8) subsections (2) to (6) shall not affect the validity of the beaconing of any mining location lawfully beaconed in accordance with the corresponding provisions in force immediately before the 1st January, 1974, hereinafter referred to as the old provisions, and the beacons, pegs, claim plates and direction trenches of any such location may be kept and maintained in accordance with the old provisions.

#### 52 Survey for excess areas

(1) If at any time the mining commissioner has reason to believe that the number of claims in any block exceeds the number registered in such block, he may cause the boundaries of such block to be surveyed by a land surveyor.

(2) If the number of claims in such block is found on such survey to exceed the number registered as aforesaid, the holder thereof shall be liable to pay to the mining commissioner the cost of such survey, in addition to any amount which he may be liable to pay under section *fifty-four*.

(3) The mining commissioner may, before authorizing any such survey, require any person who has field information regarding the excess to lodge with him such sum

of money as may, in his opinion, be necessary to cover the cost of such survey.

(4) The money so lodged shall, in the event of any excess being established by any such survey, be repaid to the person so informing as aforesaid; but, if no excess is established, the cost of such survey shall be paid with or out of such money, and any balance returned to the person so informing.

#### 53 Excess areas lawfully pegged

If more than ten precious metal claims have been pegged under one prospecting licence or special authority issued before the 1st September, 1935, which entitled the holder of such licence or authority to peg more than ten precious metal claims as one mining location, and such claims have been registered under one certificate of registration, all claims so registered shall be held as one block for all purposes of this Act.

#### 54 Excess areas not lawfully pegged

(1) If at any time after the registration thereof it is found that the number of claims in a block pegged and registered under one prospecting licence or other authority exceeds the number of claims registered in such block, the mining commissioner shall notify the holder thereof.

(2) The holder thereof shall, within thirty-one days of a date to be fixed by the mining commissioner in such notice, forward to the mining commissioner the certificate of registration of such block, together with a fine which shall consist of a sum of fifty dollars for each claim or portion of a claim in excess of the number of claims originally registered in such block.

(3) Upon receipt of the certificate of registration and the fine, the mining commissioner shall register such excess claims as part of the original block and shall endorse upon the certificate of registration of such block the number of the excess claims so registered and the date of registration.

(4) Any excess claims so registered under this Act and any excess claims similarly registered under any law relating to mines and minerals which was in force before the 1st September, 1935, shall be held, together with the claims originally registered in the block, as one block for all purposes of this Act.

#### 55 Determination of number of claims in block

(1) In-

(a) subsection (2), every fifty metres in length and every hectare; and



(b) subsection (3), every hectare;

in area shall represent a claim.

(2) The number of claims in any precious metal or precious stones block shall be determined in a regular block by the length of the longest line which can be drawn within the block parallel to either side line, and in an irregular block by the length of the longest line which can be drawn between any two points on its boundary lines, whether the course of such line lies within or without the block, or in either case by the area, whichever may show the greater number of claims.

(3) The number of claims in every base mineral block shall be determined by its area:

Provided that-

(i) in the case of a base mineral block which has been pegged by the holder of an ordinary prospecting licence, if the length of the longest straight line which can be drawn between any two points on its boundary lines, whether the course of such line lies within or without the block, exceeds one thousand two hundred and fifty metres, then notwithstanding the fact that the total area of the block does not exceed twenty-five claims, every fifty metres of that excess of length shall be deemed to represent one claim;

(ii) in the case of a base mineral block which has been pegged by the holder of a special prospecting licence, if the length of the longest straight line which can be drawn between any two points on its boundary lines, whether the course of such line lies within or without the block, exceeds two thousand metres, then, notwithstanding the fact that the total area of the block does not exceed one hundred and fifty claims, every fifty metres of such excess of length shall be deemed to represent one claim.

(4) For the purposes of applying subsection(3) to any base mineral block registered under the provisions in force immediately before the 1st January, 1974, the first one hundred and fifty metres of any excess of length referred to in that subsection shall be disregarded.

#### **56. Re-adjustment of internal beacons of groups of base mineral locations**

Notwithstanding section *fifty-two*, *fifty-four* and *fifty-five*, the Secretary may authorize the holder of any group of contiguous base mineral mining locations, after a survey thereof has been made by a land or mine surveyor, to adjust the beacons of blocks within the outside boundaries of such group of mining locations, and thereupon fines in respect of excess claims shall only be payable

on the excess claims existing after the adjustment of the internal beacons of the mining locations within the area:

Provided that no additional ground outside the boundary of the area originally pegged shall be included in any adjustment of beacons, nor shall the total area originally pegged be reduced.

#### **57 Wilful overpegging**

Nothing in section *fifty-two*, *fifty-three*, *fifty-four*, *fifty-five* and *fifty-six* shall be deemed to relieve any person from liability under this Act to any penalty prescribed for the wilful pegging of a mining location of a larger size than he is entitled to our purports to peg.

#### **58 Impeachment of title, when barred**

When a mining location or a secondary reef in a mining location has been registered for a period of two years it shall not be competent for any person to dispute the title in respect of such location or reef on the ground that the pegging of such location or reef was invalid or illegal or that provisions of this Act were not complied with prior to the issue of the certificate of registration.

#### **59 Lost certificates of registration**

(1) If the holder of the certificate of registration or of special registration last issued in respect of any mining location has lost or mislaid such certificate, he may, thirty days after publication in the *Gazette*, in a form to be approved by the mining commissioner, of notice of his intention to do so, apply to the mining commissioner for a duplicate copy thereof.

(2) Such holder shall furnish to the mining commissioner with his application a solemn declaration which, *inter alia* shall state-

(a) the fact of the loss or destruction of the certificate or that the same has been mislaid; and

(b) that he has not delivered or pledged the certificate to any person either as security for money advanced to or owing by him or otherwise; and

(c) that he is of right entitled to the mining location mentioned in the certificate of which a duplicate is required.

(3) On receipt of such application and such solemn declaration the mining commissioner shall, if he is satisfied that no good reason to the contrary exists, issue a duplicate copy of such certificate to the applicant on payment of the prescribed fee.



(4) A duplicate copy of a certificate issued in terms of this section shall supersede and take the place of the original.

#### **60 Address to be given to mining commissioner**

(1) Every holder of a mining location on registration of such location in his name at the office of the mining commissioner and every lessee and assignee of such holder shall furnish such mining commissioner with an address within Zimbabwe at which all notices, orders or other processes shall be served by the mining commissioner or other officer duly appointed for the purposes of this Act, and any such holder, lessee or assignee may at any time change such address by registering at the office of such mining commissioner any other address within Zimbabwe.

(2) Service of any such notice, order or other process at such registered address shall be deemed to have the same effect as personal service.

(3) In default of any address being registered as by this section required, the posting in the office of the mining commissioner of any such notice, order or other process shall be deemed to have the same effect as personal service.

(4) Nothing in this section contained shall be construed so as to preclude the High Court from giving such directions with regard to service as to it seem proper or expedient.

#### **61 Obligations of partnerships and companies**

(1) No more than six persons shall be registered as the joint holders of a mining location.

(2) When two or more persons are registered as the joint holders of a mining location, each and every such person shall be jointly and severally responsible for every obligation and liability attaching to the registered holder of such location.

(3) Every partnership or company which is the holder of a mining location shall at the time of registration register at the office of the mining commissioner the name of an accredited agent residing in Zimbabwe, and such agent shall, when registered, be personally responsible under this Act for all matters, acts and omissions in connection with such location in the same manner as if such location were registered in his name as his own property.

(4) If such partnership or company at any time revokes the registration of any such accredited agent, it shall register some other person as its accredited agent.

(5) A registered accredited agent may at any time resign his appointment as such by giving notice in writing to the mining commissioner, but such resignation shall not take effect until the expiration of forty-eight hours after the receipt of such notice by the mining commissioner.

(6) Where a registered accredited agent has resigned, the partnership or company concerned shall, within forty-eight hours after receipt of notice from the mining commissioner of the fact of such resignation, register some other person as its accredited agent.

(7) Subsections (3), (4) and (6) shall apply to every partnership or company which is working a mining location under tribute or option:

Provided that the time of registration shall be within two weeks of the start of such working.

(8) Nothing in this section shall be taken in any way to relieve a company or the members of a partnership of any liability incurred or any duty imposed under this Act in regard to any mining location held by such company or such partnership.

#### **Cancellation of certificate of registration without abandonment**

(1) On application by the holder of any registered mining location, and on the production of the certificate of its registration, the Secretary may, at his discretion, authorize a mining commissioner to cancel such certificate of registration of such location without abandonment or forfeiture of such location, and cause to be issued to the said holder at one and the same time a fresh certificate or certificates of registration of the whole or any portion or portions of such location which have been previously beacons off within such location in the manner prescribed in this Act, assigning to such certificate or certificates fresh registered numbers.

(2) The said holder shall pay to the mining commissioner the prescribed fee for each such fresh certificate.

(3) Within a period of seven days from the date of issue of such fresh certificate or certificates, or within such period as the mining commissioner may fix, the holder of such location shall remove all the beacons of the original mining location not used for the beaconing of the new portion or portions, and on the beacons of the new portion or portions shall replace the registered number originally assigned to such location by the new registered number assigned to such portion or portions.



## PART V

### PROSPECTING AND PEGGING ON GROUND RESERVED AGAINST PROSPECTING AND PEGGING

#### 63 Interpretation in Part V

In this Part-

"order" means an order made under section *seventy-one* or *seventy-two*;

"owner", in relation to State land, means the Minister responsible for the administration of such land;

"reserved ground" means land upon which a prospector is prohibited in terms of paragraphs (a) and (g) of subsection (1) of section *thirty-one* from exercising any of his rights under his prospecting licence without the consent in writing of the owner of the land, but does not include that portion of such land which lies within two hundred and twenty-five metres of the site of the principal homestead mentioned in subparagraph (1) of paragraph (a) of that subsection.

#### 64 Application for authority to prospect on reserved ground

(1) Any person may make written application to the Board for authority to prospect on reserved ground.

(2) The applicant shall furnish to the Board-

(a) full details of that portion of the reserved ground on which authority to prospect is sought, together with a plan thereof prepared by a mine or land surveyor; and

(b) the reasons why he thinks that such reserved ground may warrant the granting of the authority; and

(c) full information as to his financial status; and

(d) any other information relative to the application which may be required of him by the Board.

(3) On receipt of the application by the Board-

(a) the chairman of the Board may issue a direction to the mining commissioner to reserve the ground to which the application relates against prospecting and pegging in terms of section *thirty-five*, and the mining commissioner shall, without obtaining authority of the Minister, forthwith reserve such ground accordingly;

(b) the Board may refuse the application or approve it provisionally.

#### 65 Procedure on provisional approval

(1) If the Board provisionally approves such application it shall-

(a) unless the chairman of the Board has issued a direction to the mining commissioner under paragraph (a) of subsection (3) of section *sixty-four* itself issue such a direction, and the mining commissioner shall comply therewith; and

(b) after the mining commissioner has reserved the ground in accordance with a direction given under paragraph (a), of subsection (3) of section *sixty-four* or paragraph (a), notify the owner and the occupier, if any, of the reserved ground, of the application and require them to inform the Board in writing within thirty days of such notification whether they object to the grant of the application.

(2) Notification in terms of paragraph (b) of subsection (1) shall be given by posting a registered letter to the owner and the occupier, if any.

#### 66 Grant or refusal of application

(1) If an owner or occupier of reserved ground informs the Board that he has objections to the grant of the application, the Board shall, on a day fixed by it and notified to the applicant and the objector, hear such evidence and arguments as those persons may wish to lay before it in regard to the grant or refusal of the application.

(2) If no notification of objection to the grant of the application has been received from the owner or the occupier, or if no notification was given in terms of paragraph (b) of subsection (1) of section *sixty-five* owing to the whereabouts of the owner and the occupier, if any, being unknown to the Board, the Board shall proceed with the consideration of the application.

#### 67 Board's powers in regard to application for authority to prospect

(1) The Board may, after holding a hearing in terms of subsection (1) of section *sixty-six* or considering the application in terms of subsection (2) of that section-

(a) grant authority to the applicant to prospect on such ground in such manner and by such means and for such period as shall be specified by the Board in such authority, if the Board is satisfied-

(i) that the applicant's financial status is such that he will be able to pay any sum which may become payable



by him under section *eighty* or *eight-two* as a result of the exercise of his rights under such authority; and

- (ii) that minerals are likely to occur within the area to which the application relates; and
- (iii) that little or no interference with the rights of the owner or occupier of the ground will result from such prospecting; or

(b) refuse the application

(2) Before granting any such authority, the Board-

(a) shall consult the Natural Resources Board;

(b) may, and, if so required by the owner or the occupier of any of the reserved ground, shall, require the applicant to furnish a guarantee satisfactory to the Board for the payment of the sum mentioned in subsection (i) of paragraph (a) of subsection (1).

(3) The Board may attach to an authority such conditions as it may think fit.

#### **68 Extension and amendment of authority granted under section 67**

(1) The holder of an authority granted under section *sixty-seven* may, at any time before the expiry of the period for which the authority was granted, make written application to the Board-

(a) for an extension of the period for which the authority was granted;

(b) for the amendment of the authority in respect of the manner in or means by which the prospecting operations are to be carried out.

(2) On receipt of such application the Board shall notify the owner and the occupier, if any, of the reserved ground of such application and require them to inform the Board in writing within thirty days of such notification whether they object to the grant of the application, and subsection (2) of section *sixty-five* shall apply, *mutatis mutandis*, in respect of such notification.

(3) Sections *sixty-six* and *sixty-seven* shall apply, *mutatis mutandis*, in respect of such application.

(4) The holder of an authority in respect of which an extension of the period has been granted under this section may, in like manner and subject to the like conditions, from time to time apply for and be granted an extension or amendment of the authority.

#### **69 Board may authorize more extensive prospecting operations**

(1) Where, on the written application of the holder of an authority granted under section *sixty-seven* made before the date on which the reservation in respect of the reserved ground is withdrawn by the mining commissioner under section *eighty-one*, the Board is satisfied that, having regard to the results of the prospecting operations carried out on the reserved ground under the authority, such a course is justified, it may, after consultation with the owner and the occupier, if any, of such ground, grant authority for the conduct of such more extensive prospecting operations on such ground as shall be specified by the Board and in such manner and by such means and during such period as the Board may specify.

(2) subsection(2) of section *sixty-seven* shall apply, *mutatis mutandis*, in respect of such authority.

(3) The Board may attach to an authority such conditions as it may think fit.

(4) It shall be a condition of every authority granted under this section and of every extension thereof that the holder of the authority shall conduct prospecting operations progressively inwards from the perimeter of the reserved ground in such manner as the Board shall specify in the authority, but the Board may grant exemption from such a condition if it is satisfied that the proper prospecting of the area would be unduly impeded thereby.

#### **70 Extension and amendment of authority granted under section 69**

(1) The holder of an authority granted under section *sixty-nine* may, at any time before the expiry of the period for which the authority was granted, make written application to the B-

(a) for an extension of the period for which the authority was granted;

(b) for the amendment of the authority in respect of the manner in or means by which the prospecting operations are to be carried out.

(2) The Board may, after consultation with the owner and the occupier, if any, of the reserved ground, refuse such application or grant it subject to such conditions as for such period as it may think fit.

(3) subsection (2) of section *sixty-seven* shall apply, *mutatis mutandis*, in respect of such authority.

(4) The holder of an authority in respect of which an



extension of the period has been granted under this section may, in like manner and subject to the like conditions, from time to time apply for and be granted an extension or amendment of the authority.

#### **71 Holder of authority may apply for order**

(1) The holder of an authority granted under section *sixty-seven or sixty-nine* may, at any time before the date on which the reservation in respect of the reserved ground is withdrawn by the mining commissioner under section *eighty-one*, in writing request the Board to recommend to the Administrative Court that an order be made by that Court authorizing the acquisition by him of mining title in such form and to or in respect of so much of the reserved ground as shall be specified in such request.

(2) On receipt of the request, the Board shall-

- (a) if it is not satisfied that, having regard to the results of prospecting operations carried out under the authority, a deposit of minerals exists which is economic or likely to prove economic, refuse the request; or
- (b) if it is so satisfied, refer the matter to the Administrative Court, together with its recommendation that mining title be granted, as to the form of such title, the area to be covered by such title and the conditions to be attached to such title, and as to any other matter which to it may seem relevant:

Provided that where the owner and the occupier, if any, of the reserved ground have agreed in writing that the Board should itself issue the order and such agreement has been lodged with the Board, the Board shall not refer the matter to the Administrative Court and may itself issue an order for the grant of mining title in such form as it may determine and subject to such terms and conditions as may have been agreed upon by the parties and notified to the Board and such additional terms and conditions as the Board may determine.

#### **72 Grant or refusal of order by Administrative Court**

(1) Where a matter has been referred to the Administrative Court under section *seventy-one*, the Court shall, on a day fixed by it and notified in writing by registered post to the person seeking the order and the owner and the occupier, if any, of the reserved ground concerned, hear such evidence and arguments as those persons may wish to lay before it in regard to the grant or refusal of the order.

(2) Subject to subsection (3), the Administrative Court may grant or refuse to grant an order.

(3) The Administrative Court shall not grant an order-

(a) unless it is satisfied that the national interest would be better served by the ground in respect of which the order is sought being used for mining purposes than by its being used for agricultural purposes;

(b) unless, if the owner or occupier of the reserved ground concerned has so required, the person seeking the order has furnished a guarantee satisfactory to the Court for the payment by him under the provisions of this Part by way of compensation or in respect of the acquisition by him of the reserved ground or of the holding of which the reserved ground forms a part.

(4) The Administrative Court may, in granting an order, attach thereto such conditions as to it may seem necessary or desirable, and shall attach a condition as to the period within which the rights under the order may be exercised.

#### **73 Appeals**

(1) There shall be no appeal against the grant or refusal by the Board of an application for an authority under section *sixty-seven or sixty-nine* or for the extension or amendment of an authority under section *sixty-eight or seventy* or the refusal of the Board to recommend a request for an order under section *seventy-one*.

(2) Any person who is aggrieved by a decision of the Administrative Court on a matter referred to it under section *seventy-one* may, within thirty days of such decision, appeal against that decision to the Supreme Court.

#### **74 Persons to whom copies of order to be sent**

The registrar of the Administrative Court shall by registered post send a copy of the order to the owner and the occupier, if any, of the reserved ground to which the order relates, to the person in whose favour it is made, to the mining commissioner and to the Board.

#### **75 Authority or order may not be ceded**

The rights granted under an authority granted under this Part or an order shall be personal to the holder thereof who may not cede or assign any such rights to any other person:

Provided that the rights granted under an order may be ceded or assigned with the permission in writing of the owner of the reserved ground or on the authority of the Administrative Court.

#### **76 Rights of holders of authorities and orders**

(1) The person to whom an authority is granted under



this Part shall, subject to the terms and conditions of such authority and in terms of this Act, and notwithstanding the reservation of the ground on a direction given under this Part, have the sole and exclusive right of prospecting on the reserved ground to which such authority relates.

(2) The person in whose favour an order is made shall, subject to the terms and conditions of such order and in terms of this Act, and notwithstanding the reservation of the ground on a direction given under this Part, have the sole and exclusive right of pegging and registering mining locations on or acquiring mining leases in respect of the reserved ground to which such order relates.

#### **77 Revocation of authority or order**

(1) If the person to whom an authority has been granted under this Part or the holder of an order fails to comply with any of the terms and conditions attached to such authority or order, as the case may be, he shall be guilty of an offence and liable to a fine not exceeding five hundred dollars or, in default of payment, to imprisonment for a period not exceeding twelve months.

(2) Where a person to whom such authority has been granted fails to comply with the terms and conditions thereof, the Board may, in addition, revoke the authority.

(3) Where the holder of an order fails to comply with the terms and conditions thereof, the Administrative Court may, in addition, revoke the order and may direct the mining commissioner to declare any mining location registered by virtue of such order and held by such holder to be forfeited, and the mining commissioner shall, whether or not such mining location is currently protected from forfeiture by an inspection or protection certificate issued in terms of Part IX, comply with such direction.

#### **78 Approval of transfer of mining location**

(1) A mining location which has been registered on reserved ground under an order may not as long as the ground remains reserved be transferred except to a person approved of by the Board, after consultation with the owner and the occupier, if any, of such reserved ground.

(2) The Board shall not approve of the transfer of such a mining location to any person unless he has furnished a guarantee satisfactory to the Board for the payment of such sum as is mentioned in paragraph (b) of subsection (3) of section *seventy-two* and the Board is satisfied that the holder of such location has paid all compensation and other moneys payable by him in terms of the order by virtue of which the location was pegged and registered or in terms of this Part.

#### **79 Forfeiture of mining location**

(1) The terms and conditions of every order which relates to mining on reserved ground shall be binding on any person to whom a mining location registered under such order is transferred and on any miner thereof.

(2) If any such person fails to comply with any such terms or conditions, the Board may forthwith direct the mining commissioner to declare such mining location forfeited, and the mining commissioner shall, whether or not such mining location is currently protected from forfeiture by an inspection or protection certificate issued in terms of Part IX, comply with such direction.

#### **80 Compensation**

Any owner or occupier of reserved ground who is injuriously affected by the exercise of any rights under an authority or order granted under this Part or by any mining operation on any mining location registered under such order shall be entitled to recover compensation from the person to whom the authority was granted or in whose favour the order was made or the holder of the mining location, as the case may be, in such amount as may be agreed upon or, failing such agreement, as shall be determined by the Administrative Court.

#### **81 Withdrawal of reservation**

The Board shall, if it is satisfied that the reservation of any ground made under section *thirty-five* in consequence of a direction given under paragraph (a) of subsection (3) of section *sixty-four* or paragraph (a) of subsection (1) of section *sixty-five* is no longer necessary, direct the mining commissioner to withdraw such reservation, and the mining commissioner shall comply with such direction.

#### **82 Compulsory acquisition of land by holder of an authority or order**

(1) Where an authority has been granted under this Part in respect of reserved ground mentioned in subparagraph (1) of (ii) of paragraph (a) of subsection (1) of section *thirty-one* or an order has been granted in respect of any reserved ground, the owner of such reserved ground may, subject to this section, apply to the High Court for an order compelling the holder of such authority or order, as the case may be, to acquire by purchase, exchange or otherwise the whole or a portion of the holding of which such reserved ground forms a part.

(2) At least thirty days before making such application, the owner of the reserved ground shall be registered post give notice in writing to the holder of the authority or order, as the case may be, of his intention to make such application.



(3) Notwithstanding section *eighty-four*, the holder of an authority or order, as the case may be, to whom notice has been given under subsection (2), may not after the expiry of a period of twenty-one days from the date of the receipt by him of such notice and until the High Court has disposed of the application or the application has been withdrawn, relinquish his rights under such authority or order, as the case may be.

(4) On an application made under this section, the High Court may refuse the order applied for or may grant it if the court is satisfied that-

- (a) the holder of the authority or order, as the case may be, is not precluded by the provisions of the Constitution or any enactment from owning such land; and
- (b) the exercise by the holder of the authority or order, as the case may be, of the rights granted thereunder has resulted or is likely to result in such interference with the rights of the owner or occupier of the reserved ground as will render such ground or the holding of which such ground forms a part unsuitable, as far as such owner or occupier is concerned, for the purpose for which it was being used or was *bona fide* intended to be used immediately before the date of the making of the application to that Court and where such application is for an order compelling the acquisition of the whole of the holding or a portion thereof by an exchange of land, or partly by an exchange of land and partly by some other means, and the land required to be given in exchange for such holding or portion thereof is State land, the Court may make its order conditional upon such land being made available by the President for the purposes of such exchange.

(5) In deciding whether to grant or refuse the order applied for, the Court shall have regard to the stage which the prospecting operations of the holder of the authority or order, as the case may be, have reached at the time of the application and the extent to which minerals are present on the land and the economic possibilities of such minerals.

(6) If the High Court grants the order it shall determine the price to be paid or other consideration to be given for the reserved ground, having regard to the matters set out in section *eighty-three*.

(7) The costs of both parties to an application under this section shall be borne by the holder of the authority or order, as the case may be:

Provided that the High Court may make such order as to costs as to it seems just if the Court is of the opinion-

- (a) that the applicant has unreasonably refused a fair of-

fer for the acquisition of the holding concerned or portion thereof by such holder; or

- (b) that the application is vexatious or frivolous.

(8) Where the owner of the reserved ground and the holder of the authority or order, as the case may be, have agreed in writing, the application mentioned in subsection (1) may be made to the Administrative Court, and in that event subsections (2) to (7) shall apply, *mutatis mutandis*, to and in respect of any such application.

(9) Any person who is aggrieved by the decision of the Administrative Court on an application made to it under subsection (8) may appeal against that decision to the Supreme Court.

### 83 Factors to be considered in fixing price

Where a Court grants an order under section *eighty-two* it shall, in determining the price to be paid or other consideration to be given for the land by the holder of the authority or order, as the case may be, make due allowance for-

- (a) the value of any improvements on and development of the land;
- (b) the possible loss of profits over the period of three years next succeeding the date of the application for such order
- (c) the depreciation, if any, in the value of that portion of the holding which is not the subject of such order;
- (d) the expense or loss, other than loss of profits, caused to the owner by the grant of the authority or order;
- (e) any other loss directly or indirectly caused by the grant of the authority or order or the exercise of any right granted thereunder;

but no account shall be taken of any minerals which have been or may be discovered on such land.

### 84. Relinquishment of rights under an authority or order

(1) Save as otherwise provided in section *eighty-two*, the holder of an authority or order granted under this Part may at any time give notice in writing to the owner or occupier of the reserved ground to which such authority or order, as the case may be, related of his intention to relinquish his rights under such authority or order, as the case may be, and shall lodge a copy of such notice with the Board.

- (2) The rights of such holder under the authority or or-

der, as the case may be, shall cease with effect from the time and date of the lodging of such notice with the Board.

(3) Nothing in this section contained shall affect the right of the owner or the occupier, if any, of the reserved ground to claim compensation from the holder of the authority or order, as the case may be, in respect of damage arising from anything done by the holder before the date of such relinquishment

#### 85 Board's authority required for acquisition of mining title in certain circumstances

(1) Where the Board has made a recommendation under section *seventy-one*, it shall not be competent, except with the authority of the Board, for any person other than the person at whose request that recommendation was made to peg and register a mining location or to be granted a mining lease on or in respect of the whole or any portion of the ground to which such recommendation relates, within a period of seven years from the date of such recommendation.

(2) The Board may, in granting such authority, attach thereto such conditions as it thinks fit, including a condition as to the reimbursement of the person at whose request the recommendation was made in respect of any expenditure incurred by him in connection with or arising out of operations conducted by him on the reserved ground concerned and as to the payment to him of such reward for any discovery made by him as the Board considers just.

## PART VI

### EXCLUSIVE PROSPECTING RESERVATIONS

#### 86 Interpretation in Part VI

In this Part-

"concession holder" means a person in whose favour an order has been made;

"order" means an exclusive prospecting order made in terms of this Part;

"programme" means the programme of operations mentioned in section *ninety six*;

"reservation" means the area embraced by an order.

#### 87 Application for order

(1) Any person may make written application to the Board for the making of an order in his favour over any defined area in Zimbabwe, including any area reserved under section *thirty-five*.

(2) The applicant shall-

(a) deposit with the Secretary in respect of a period of six months a sum calculated at the rate of two cents per month for every hectare or part of a hectare of the area in respect of which the order is sought:

Provided that a deposit in terms of this Paragraph shall not exceed ninety thousand dollars; and

(b) furnish the Board with-

(i) full information as to his financial status;

(ii) if so required by the Board, particulars of any guarantees that may be offered for the performance of his obligations under the order;

(iii) particulars of the minerals which he wishes to seek and mine;

(iv) details illustrated by a sketch plan of the area to be embraced by the order and the size of such area;

(v) a statement whether or not he wishes the order to authorize him to prospect for specified minerals on any registered base mineral blocks within the reservation;

(vi) any further information required of him by the Board;

(vii) if the applicant is a company, the full names and nationality of the directors and the full names by which those directors have at any time been known in any part of the world;

(viii) a programme of the prospecting operations he intends to carry out within the reservation during the first period of six months from the date of granting the order.

(3) The chairman of the Board may provisionally approve an application before it is considered by the Board and, if he does so, he shall issue a direction to the mining commissioner to reserve the area embraced by the application against prospecting and pegging in terms of section *thirty-five*, and the mining commissioner, with-



out obtaining the authority of the Minister, shall forthwith reserve such area accordingly.

(4) On receipt of the application the chairman of the Board shall-

- (a) publish a notice in the *Gazette* giving details of the application and inviting objections thereto; and
- (b) if in any application authorization is sought to prospect on any registered base mineral blocks within the proposed reservation, give written notice to every registered holder of any such block.

### 88 Hearing of application by Board

The Board shall, at a place and on a day fixed by it and notified to the applicant and to any person who has lodged written objection with the Board to the grant of the application, hear such evidence and arguments as those persons may wish to lay before it in regard to the grant or refusal of the application or any part thereof.

### 89 Board's recommendation in respect of application

(1) If on any application under this Part the Board is satisfied-

- (a) that the applicant is a fit and proper person to obtain an order and is of adequate financial standing to undertake the operations under an order; and
- (b) that it would not be against the national interest to make such an order;

the Board may, subject to section *nine-three*, recommend to the Minister the making of an order in favour of the applicant over such an area and subject to such conditions as the Board may think fit to recommend.

(2) In making a recommendation in terms of subsection (1) the Board may recommend, in accordance with subsection (3) of section *ninety-three*, that the area to be embraced by the order applied for should exceed the maximum area specified in Paragraph (a), (b) or (c), as the case may be, of subsection (2) of section *nine-three*.

(3) If on any such application the Board is not satisfied in terms of subsection (1), it shall refuse to recommend the application and shall notify the applicant accordingly and such refusal shall be final and without appeal.

### 90 President may approve or refuse order

(1) Whenever on any application under this Part the Board recommends the making of an order, it shall submit to the Minister the application, together with all relevant documents, its written report and its recommendation in

regard thereto.

(2) The Minister shall submit such recommendation to the President, who may refuse the application or authorize the issue of an order in terms of the recommendation of the Board or on such amended terms and conditions as he may think fit to fix.

### 91 Issue of order

(1) If the President has approved of the making of an order, the Minister shall forthwith make an order in favour of the applicant which shall be in accordance with the terms and conditions fixed by the President and which shall specify the date from which the rights granted thereunder may be exercised and the date upon which the exercise of those rights shall cease.

(2) Every order shall be published in the *Gazette* and a copy of such order shall be sent to the applicant, to the Board and to the mining commissioner of the district in which the reservation is situated.

(3) Every order shall be laid before Parliament as soon as may be after Parliament next sits after the order is published in the *Gazette*.

(4) Where an order is made any reservation of the ground made in accordance with a direction given under subsection (3) of section *eighty-seven* shall be deemed to have been withdrawn by the mining commissioner in all respects as if he had posted a notice of such withdrawal under that section at six o'clock in the morning on the day specified in the order as being the date from which the rights granted thereunder may be exercised.

### 92 Rights granted under order may not be ceded

(1) The rights granted under an order shall be personal to the concession holder who may not, save with the permission in writing of the Minister given in terms of subsection (2), cede or assign any such rights to any other person.

(2) The Minister may, on the recommendation of the Board and on such terms and conditions as the Board may recommend, permit a concession holder to cede or assign such rights to another person, but the Board shall only make such a recommendation in circumstances which it considers to be special.

### 93 Limitation of area of reservation

(1) For the purposes of subsection (5) a block shall be regarded as being worked or developed if the current inspection certificate for such block was obtained by any method other than by the payment of a fee in terms of section *two hundred and twelve*.



(2) Subject to subsection (3), no reservation shall exceed-

- (a) in the case of an order made solely in respect of coal, mineral oils or natural gases, one hundred and thirty thousand hectares;
- (b) in the case of an order which includes precious stones, other than diamonds, two thousand six hundred hectares;
- (c) in the case of any other order sixty-five thousand hectares;

and no order shall be granted in respect of an area which is less than two thousand six hundred hectares, except in the case of an order granted solely in respect of precious metals or precious stones.

(3) A reservation may exceed the maximum area specified in Paragraph (a), (b) or (c), as the case may be of subsection (2) if the Board, having due regard to-

- (a) the particular suitability of the applicant and his financial and operational capacity to fulfil the obligations under and within the period of the order recommended by the Board in relation to the minerals specified therein; and
- (b) the geographical situation of the area and the nature and extent of previous and current prospecting and mining activity therein; and
- (c) the absence of and the need for geological mapping, geophysical and geochemical investigations and other relative geological detail in respect of the area;

recommends that the reservation should exceed the said maximum area.

(4) An order may require a concession holder-

- (a) to furnish guarantees to the Minister to his satisfaction that the obligations of the holder under the order will be discharged;
- (b) to abandon a portion or portions of the reservation within such period of periods as are specified in the order.

(5) Subject to such terms and conditions as may be prescribed in the order, an order may authorize the concession holder to prospect on all registered base mineral blocks or specified registered base mineral blocks in his reservation which are not being worked or developed on the date of the lodging of the application for the order, but, save as aforesaid, no order may be made to authorize prospecting on any other registered block.

(6) Nothing in this section contained shall be deemed to prohibit the fixing of additional terms and conditions under an order.

#### 94 Duration of order

No order shall be granted for a period in excess of three years but an order may be extended by the Minister, on the recommendation of the Board, for a further period or periods not exceeding three years in all.

#### 95 Challenge of validity of order, when barred

(1) After a period of twelve months has elapsed since the date of publication of an order in the *Gazette*, it shall not be competent for any person to allege that any of the provisions of this Act were not complied with prior to the making of the order.

(2) Within thirty days of the extension of any order granted in terms of subsection (1), the concession holder shall deposit with the Secretary a sum calculated in accordance with the provisions of Paragraph (a) of subsection (2) of section *eighty-eight*.

#### 96 Submission of programmes of work

(1) Every concession holder shall, from time to time, prepare and submit for the approval of the Board programmes of the prospecting operations which he intends to carry out within his reservation during periods of six months.

(2) The first programme prepared in terms of subsection (1) shall be submitted for the approval of the Board at the time of the application for the grant of an order in terms of subsection (1) of section *eighty-seven*.

(3) The second programme and all other subsequent programmes shall, unless the concession holder has previously abandoned the whole of his reservation under section *one hundred and twelve*, be submitted to the approval of the Board not later than thirty days after the expiry of the period within which the last preceding programme was required to be carried out or, if an extension of such period has been granted under subsection (2) of section *one hundred*, not later than thirty days after the expiry of the extended period.

(4) Every programme shall contain particulars of the prospecting operations which are intended to be carried out thereunder and of the estimated cost of such operations.

#### 97 Deposit by concession holder in respect of longer period

(1) Where the Board has approved a longer period under subsection (2) of section *ninety-six*, the concession holder



shall, within thirty days from the date of such approval, if so required by the Board, deposit with the Secretary

a further sum calculated at the rate set out in Paragraph (a) of subsection (2) of section *eighty-seven*, in respect of so much of such longer period as exceeds six months:

Provided that-

(i) a deposit in terms of this subsection shall not, together with the deposit made in terms of paragraph (a) of subsection (2) of section *eighty-seven*, exceed nine thousand dollars;

(ii) where the deposit made in terms of Paragraph (a) of subsection (2) of section *eighty-seven* amounts to ninety thousand dollars, no deposit shall be required in terms of this subsection.

(2) If the concession holder fails to comply with a requirement in terms of subsection (1), the Board may recommend to the Minister that the order be revoked and the Minister may revoke the order.

#### **98 Powers of Board in regard to programmes**

On receipt of a programme, the Board shall consider it and-

(a) if satisfied that the programme makes provision of the proper prospecting of the reservation and that the estimated expenditure is consistent with the programme, the Board shall approve it;

(b) if not satisfied, the Board shall reject the programme.

#### **99 Failure to submit programme**

(1) If the concession holder fails to submit a programme within the period mentioned in section *ninety-six*, or if the programme submitted does not satisfy the Board, the Board shall by notice in writing require the concession holder to submit a programme or an amended programme, as the case may be, within such period, being not less than thirty days, as the Board shall specify in such notice.

(2) If at the end of the period specified in the notice the concession holder has not submitted a programme satisfactory to the Board, the Board shall inform the Minister, and the Minister shall revoke the order.

(3) The Minister, when he revokes the order, may, on the recommendation of the Board, by action in any court of competent jurisdiction recover from the concession holder as a penalty a sum calculated at the rate of eight cents per hectare or portion of a hectare of the reservation in respect of each month or portion of a month be-

tween the date of the revocation of the order and the date of expiry of the order.

(4) Notice under subsection (1) shall be given by posting a registered letter to the concession holder.

#### **100 Report by concession holder on work carried out**

(1) Every concession holder shall carry out the programme of work approved by the Board under section *ninety-eight* within the period covered by such programme or any extension thereof granted under subsection (2), and shall at any time after the completion thereof, but not later than thirty days after the expiry of such period or any extension thereof, submit to the Board a written report on the work carried out by him during the period covered by the programme, including particulars of the expenditure incurred in the carrying out of such work.

(2) The Board may, on application made to it before the expiry of the period within which the programme of work is required to be carried out, as the Board may think fit, and where such extension has been granted, the Board may from time to time grant further extensions of such period.

(3) Where the Board has granted such an extension, the Minister may, on the recommendation of the Board, recover from the concession holder a sum calculated at the rate of two cents per hectare or portion of a hectare of the reservation for each month or portion of a month of such extension.

#### **101 Failure to complete programme**

(1) If a concession holder fails to satisfy the Board that he has carried out the programme approved by the Board, within the period covered by such programme or such extended period as the Board may have granted under section *one hundred*, the Board may recommend to the Minister-

(a) that the order be revoked; and

(b) that there be recovered from the concession holder such sum of money as, in the opinion of the Board, it would have been necessary for the concession holder to expend in order to carry out or complete, as the case may be, such programme.

(2) Where the Board does not recommend that the order be revoked the order shall continue in all respects as if the programme had been completed.

(3) Where the Board has recommended that the order be revoked, the Minister shall revoke such order, and if the Board has made a recommendation mentioned in paragraph (b) of subsection (1), the Minister may by action



in any court of competent jurisdiction recover such sum from the concession holder.

### 102 Failure to submit report.

(1) If a concession holder fails to submit a report in terms of subsection (1) of section *one hundred*, the Board shall notify him in writing that no report has been received and that the order is liable to be revoked.

(2) If such report is not received by the Board within twenty-one days of the posting of such notification, the Board shall inform the Minister, and the Minister shall revoke the order.

(3) Notification under subsection (1) shall be given by posting a registered letter to the concession holder.

### 103 Rights of concession holders

(1) In this section-

"private land" does not include Communal Land.

(2) Save as provided in section *one hundred and six*, within a reservation no person, other than the concession holder, may in terms of this Act prospect or peg and register any mining location or be issued with a special grant in respect of coal, mineral oils or natural gases:

Provided that the Minister may, on the recommendation of the Board, and with the consent of the concession holder, which consent shall not be unreasonably withheld, authorize within such period as he may specify, any person to peg and register a mining location within a reservation for a mineral other than a mineral for which the concession holder is authorized to prospect.

(3) No person shall peg and register more than five mining locations under an authority issued in terms of subsection (2).

(4) No base mineral mining location pegged and registered under an authority issued in terms of subsection (2) shall exceed twenty-five claims.

(5) The concession holder shall retain his right to prospect over any mining location pegged and registered under an authority issued in terms of subsection (2).

(6) Subject to any provision in his order limiting the minerals for which he may prospect or peg and register mining locations, a concession holder shall, in terms of this Act, have the right of prospecting and pegging and registering mining locations in his reservation or may within his reservation be issued with a special grant in respect of coal, mineral oils or natural gases:

Provided that a concession holder-

(a) need not take out a prospecting licence or post a prospecting or discovery or registration notice in terms of this Act; and

(b) shall not be subject to subsection (2) of section *twenty-seven*.

(7) Within his reservation a concession holder shall, when *bona fide* employed in the exercise of any of the rights conferred by his order, the onus of proof whereof shall lie upon him, be entitled to the following rights-

(a) the right to take free of charge for primary purposes any public water or private water from land not closed to prospecting in terms of section *thirty-one or thirty-four*, but only in so far as such taking does not interfere with the use of such water for primary purposes by the owner or occupier of the land;

(b) subject to this section and of the Forest Act [*Chapter 19:05*] and to such conditions as may be prescribed and on payment to the occupier or, where there is no occupier, the owner of the land in advance of such tariff rate as may be prescribed, the right to take and use for firewood or for any purposes connected with his prospecting operations any indigenous wood or timber from land open to prospecting which is neither Communal Land nor land in regard to which a reservation has been made under section *thirty-six or thirty-seven*;

(c) subject to this section, the right to erect on land open to prospecting any temporary accommodation for himself and his employees and any temporary buildings or machinery for the purposes of his work:

Provided that this paragraph shall not be deemed to confer any right, title or interest in any land upon which such accommodation, buildings or machinery may have been erected;

(d) the right to remove, within three months or such longer period as may be determined by the mining commissioner after the expiration or revocation of his order, any accommodation, buildings or machinery which may have been erected under paragraph (c).

(8) A concession holder who desires to take indigenous wood or timber from land referred to in paragraph (b) of subsection (7) which is private land shall give notice of such desire-

(a) if the land is occupied, to the occupier of the land in person or by registered letter addressed to the occupier at his ordinary postal address; or



(b) if the land is unoccupied, by registered letter addressed to the owner at his ordinary postal address;

and thereafter the concession holder and the occupier or owner may agree as to the area and period within which such wood or timber may be taken, the quantity and kinds of such wood or timber to be taken, the price to be paid for such wood or timber and any other conditions relating to such wood or timber.

(9) If, within a period of seven days from the date of the giving notice in terms of subsection (8), no agreement has been concluded in accordance with that subsection, the concession holder shall have the rights conferred upon him by paragraph (b) of subsection (7) in respect of the land concerned.

(10) A concession holder who accommodates employees on occupied private land situated within his reservation for longer than seven days shall forthwith give to the occupier of the land written notice of that fact describing the site of the accommodation.

(11) If an occupier of private land to whom notice has been given in terms of subsection (1) objects to the site chosen for such accommodation by the concession holder and agreement between the occupier and the concession holder on any such objection is not reached, the occupier may, within seven days of receipt of the notice or such longer period as may be determined by the mining commissioner, refer the matter to the mining commissioner to decide where the employees of the concession holder should be accommodated and the decision of the mining commissioner shall be final and without appeal.

#### 104 Cutting and transporting of timber

(1) If, in regard to any indigenous wood or timber required in connection with his prospecting operations, any concession holder does not carry out by his own labour or by the labour of his employees or with his own transport all or any of the following operations-

- (a) the cutting of such wood or timber;
- (b) the transporting of such wood or timber;
- (c) the burning therefrom of any charcoal;

then the occupier of the land on which such wood or timber is situated shall have the first option of carrying out such cutting or transporting or burning or all such operations, as the case may be, on such terms and conditions as may be mutually agreed upon.

(2) If no mutual agreement is reached, the matter shall be referred to the mining commissioner to decide on what

terms and conditions and within what time the occupier of the land may exercise his option.

#### 105 Approved prospector to be in charge of all operations

(1) A concession holder may, in writing under his hand, appoint one or more approved prospectors to act as his representatives under his order and any such representative shall act under that order solely for the benefit of the concession holder.

(2) The rights conferred by this Act upon the concession holder by section *one hundred and three-*

- (a) shall be exercised by the concession holder personally only if he is an approved prospector;
- (b) shall, where the concession holder is not an approved prospector, be exercised only through a representative appointed by the concession holder in terms of subsection (1).

(3) Without prejudice to any right of the concession holder to terminate any such appointment, the appointment of a person as a representative in terms of subsection (1) shall automatically be terminated if the registration of that person as an approved prospector expires or is cancelled or suspended.

#### 106 Concession holder's rights limited in certain cases

(1) For the purposes of this section-

- (a) a block shall be regarded as being developed-
  - (i) during the period between the date of first registration thereof and the date of issue of the first inspection certificate for such block;
  - (ii) if the current inspection certificate for such block was obtained by any method other than by payment of a fee in terms of section *two hundred and twelve*;
- (b) a "property" means two or more blocks of claims, whether contiguous or otherwise, owned by one person, from which the ore is being treated at the same milling or reduction plant, or which are under the control of one registered mine manager;
- (c) a "standard block" means a block which may be pegged by the holder of an ordinary prospecting licence.

(2) A concession holder may not, for a period of sixty days from the date of the publication of his order in the *Gazette*, prospect or peg within five hundred metres of the boundaries of any property or registered block within the reservation which is being worked or developed.



(3) Notwithstanding subsection (2) of section *one hundred and three*, the holder of any property or registered block referred to in subsection (2) shall, during the period of sixty days referred to in subsection (2), have the right-

- (a) to prospect and peg and apply for the registration of standard blocks not exceeding six in all within five hundred metres of the boundaries of his property or registered block:

Provided that the rights conferred by this paragraph shall be confined to prospecting, pegging and applying for the registration of blocks in respect of a mineral for which such property or registered block was being worked or developed on the date of the publication of the order in the *Gazette*; and

- (b) subject to section *forty-seven*, to peg a site or sites in respect of such registered block or in respect of any registered block within such property not exceeding an area of ten hectares in all.

#### 107 Rights of holder of existing location unaffected

(1) An order shall not affect the rights of the holder of a mining location within a reservation to mine and develop his mining location.

(2) The holder of a mining location in a reservation who, save in a *bona fide* exercise of the rights mentioned in subsection (1), hinders or obstructs a concession holder in the exercise of any rights conferred upon him by the order to prospect on such location, shall be guilty of an offence and liable to a fine not exceeding five hundred dollars or, in default of payment, to imprisonment for a period not exceeding twelve months.

(3) If a concession holder unlawfully hinders or obstructs the holder of a mining location in the exercise of his rights, he shall be guilty of an offence and liable to a fine not exceeding five hundred dollars or, in default of payment, to imprisonment for a period not exceeding twelve months.

#### 108 Demarcation of reservation

A concession holder shall erect beacons or notices demarcating the boundaries of his reservation in such manner as the mining commissioner may direct and shall maintain such beacons or notices in good order and condition in their proper position.

#### 109 Performance of conditions of order

(1) Every concession holder shall, when required by the Minister, furnish him with such information as may be

necessary to satisfy the Minister that the conditions of the order are being complied with.

(2) If any concession holder is found to have given incorrect or incomplete information for the purposes of subparagraph (vii) of paragraph (b) of subsection (2) of section *eighty-seven*, or fails to comply with subsection (1), or in the opinion of the Minister has not complied with any terms or conditions of the order, the Minister may forthwith revoke such order, and thereupon the rights of the concession holder thereunder shall cease.

(3) Nothing in this section contained shall be deemed to relieve any concession holder of any penalty to which he may be liable under section *one hundred and one*.

#### 110 Increase of reservation

(1) A concession holder may, at any time after the approval by the Board of the programme mentioned in subsection (2) of section *ninety-six* make application to the Board for the inclusion of an additional area in the order.

(2) Sections *eighty-seven*, *eighty-eight*, *ninety* and *ninety-one* shall apply, *mutatis mutandis*, to any application made in terms of this section.

(3) Where an order is amended in terms of this section, the Board may require the concession holder to submit, within such period as the Board may specify, an amended programme of operations to be carried out in the reservation as so amended, and thereafter section *ninety-nine* shall apply, *mutatis mutandis*.

#### 111 Inclusion of additional minerals in order

(1) If in the course of exercising his rights under his order the concession holder discovers within his concession any mineral other than a mineral for which he is authorized to prospect he may apply to the Board for the inclusion of such mineral in his order.

(2) In making an application in terms of subsection (1), the concession holder shall furnish all particulars of the nature of the mineral he has discovered and of the situation and circumstances of the discovery.

(3) Sections *ninety* and *ninety-one* shall apply, *mutatis mutandis*, to any application made in terms of this section.

(4) Where an order is amended in terms of this section, the Board may require the concession holder to submit, within such period as the Board may specify, an amended programme of operations to be carried out in the reservation, and thereafter section *ninety-nine* shall apply, *mutatis mutandis*.



**112 Abandonment of reservation**

(1) At any time before the Board has approved the second programme mentioned in subsection (3) of section *ninety-six*, the concession holder may, subject to subsection (2), by written notice to the Board abandon the whole or a portion or portions of his reservation.

(2) It shall not be competent for a concession holder-

(a) to give more than one such notice; or

(b) to give such notice in respect of such portions of the reservation as would result in the area of the reservation to be retained by him being divided into separate portions or, except in the case of an order granted solely in respect of precious metals or precious stones, being less than two thousand six hundred hectares in extent.

(3) On receipt of a notice given under subsection (1), the Board shall inform the Minister thereof, and he shall-

(a) in the case of the abandonment of the whole reservation, revoke the order; or

(b) in the case of the abandonment of a portion or portions of the reservation, amend the order accordingly.

(4) Where at any time after the Board has approved the programme mentioned in subsection (2) of section *ninety-six*, the concession holder desires to abandon the whole or a portion of his reservation, he may make written application to the Board for the revocation or amendment of his order, as the case may be.

(5) If on an application made under subsection (4), the concession holder satisfies the Board-

(a) that he has carefully prospected his reservation or that portion which he desires to abandon, as the case may be; and

(b) that an economic deposit of any mineral for which he is authorized to prospect under his order is unlikely to be discovered in his reservation or that portion which he desires to abandon, as the case may be; and

(c) that he has complied with all the terms and conditions of his order; and

(d) that he has duly carried out the programme last approved by the Board under section *ninety-eight*;

the Board may recommend to the Minister that the order be revoked or amended, as the case may be, and the Minister may revoke or amend the order accordingly.

(6) If on an application under subsection (4), the Board is not satisfied as to any matter mentioned in subsection (5), it shall refuse the application, and such refusal shall be final and without appeal.

(7) Where an order is revoked or amended by the Minister under this Part, the Board shall publish notice thereof in the *Gazette* and the ground shall become open to prospecting and pegging in terms of this Act on the day following the date of such publication.

**113 Disposal of deposits**

The total of the amounts deposited under paragraph (a) of subsection (2) of section *eighty-seven* and subsection (1) of section *ninety-seven*, hereinafter referred to as the deposit, shall be disposed of by the Secretary in whichever of the following ways is applicable to the case-

(a) where the application for an order is refused there shall be refunded to the applicant the whole of the deposit;

(b) where the concession holder has not, under subsection (1) of section *one hundred and twelve*, abandoned the whole or any portion of his reservation, there shall, upon the approval by the Board of the reports mentioned in subsection (1) of section *one hundred and sixteen*, be refunded to him the deposit divided into equal amounts in proportion to the total number of reports required to be submitted, as and when such reports are submitted;

(c) where the concession holder has, under subsection (1) of section *one hundred and twelve*, abandoned a portion of his reservation, the concession holder shall forfeit and the Secretary shall pay to the Consolidated Revenue Fund out of the deposit a sum calculated at the rate of two cents for each hectare or portion of a hectare of the area so abandoned for each month or portion of a month of the period between the date of the making of the order and the date of receipt by the Board of the notice of abandonment, reduced by such sum as the concession holder satisfied the Board that he has expended on operations within the area in respect of which the order was made carried out in the exercise of the rights granted under the order between the date of the making of the order and the date of the receipt by the Board of the notice of abandonment, and any balance of the deposit shall be refunded to the concession holder upon the approval by the Board of the programme mentioned in subsection (2) of section *ninety-six*;

(d) where the concession holder has, under subsection (1) of section *one hundred and twelve*, abandoned the whole of the reservation, the concession holder



shall forfeit and the Secretary shall pay to the Consolidated Revenue Fund out of the deposit a sum calculated at the rate of two cents for each hectare or portion of a hectare of the reservation for each month or portion of a month of the period between the date of the making of the order and the date of the receipt by the Board of the notice of abandonment, reduced by such sum as the concession holder satisfied the Board that he has expended on operations within the reservation carried out in the exercise of the rights granted under the order between the date of the making of the order and the date of the receipt by the Board of the notice of abandonment, and any balance of the deposit shall be refunded to the concession holder ;

- (e) where an order is revoked under subsection (2) of section *ninety-nine*, the deposit shall be forfeited by the concession holder and shall be paid by the Secretary to the Consolidated Revenue Fund.

**114 Compensation for interference with registered mining location**

If a concession holder exercises on a registered base mineral block any prospecting rights conferred upon him by his order under subsection (5) of section *ninety-three*, he shall be liable to pay compensation to the holder of such location for any loss or damage caused thereby in such amount as may be agreed upon or, failing agreement, as shall be determined by arbitration.

**115 Concession holder may expropriate dormant location**

If in the exercise of his rights under an order a concession holder discovers, in a registered base mineral block upon which he has been authorized to prospect under subsection (5) of section *ninety-three*, a mineral for which he may prospect under such order, other than the mineral for which such block is registered or a mineral which has within the twelve months preceding the date of the lodging of the application for the order, been produced from the block and declared to the mining commissioner in terms of section *two hundred and fifty-one* he may, upon the authority of the President granted by him upon the recommendation of the Board, expropriate such base mineral block upon the payment of such compensation as may be agreed upon or, failing such agreement, as shall be determined by arbitration:

Provided that in assessing such compensation no allowance shall be made for the actual or potential value of the mineral discovered by the concession holder .

**116 Plans and reports to be lodged by concession holder**

(1) Not later than three months after the expiry or revocation of an order, the person who was the concession holder under such order shall lodge with the Board in triplicate a final report, including plans and other relevant information, which shall be in two separate parts with respect to-

- (a) prospecting work carried out by the concession holder on any mining location within the reservation during the currency of such order; and
- (b) prospecting work carried out by the concession holder within his reservation which has not been registered as a mining location:

Provided that if during the period referred to in this subsection, the concession holder applies in writing to the Board for an extension of such period and satisfies the Board that he was prevented by circumstances beyond his control from complying with this subsection within that period the Board may extend the period by such further period as the Board may determine.

(2) Any person who fails to comply with subsection (1) shall be guilty of an offence and liable to a fine not exceeding five hundred dollars or, in default of payment, to imprisonment for a period not exceeding twelve months and in addition to a fine not exceeding twenty dollars for every day during which his default continues.

**117 Dangerous workings**

Section *two hundred and sixty-two* shall, save in respect of shafts, open surface working and excavations not made by him apply, *mutatis mutandis* to a concession holder in respect of his reservation and for this purpose the date of the expiration or revocation of the order shall be regarded as the date of the abandonment of the reservation.

**118 Withdrawal of reservation made by mining commissioner**

Where the mining commissioner has reserved any ground against prospecting and pegging under section *thirty-five* in consequence of a direction given under subsection (3) of section *eighty-seven*, the Board shall upon the refusal of the application direct the mining commissioner to withdraw the reservation, and the mining commissioner shall, without obtaining the authority of the Minister, withdraw such reservation.



### 119 Order granting relief from provisions of this Part in certain circumstances

(1) If at any time after the making of an order the Board, on the application of the concession holder, is satisfied that his operations have been or are likely to be restricted or curtailed by abnormal circumstances beyond his control, the Minister may, on the recommendation of the Board, give such directions as he deems fit for the relief of the concession holder from this Part.

(2) Without derogation from the generality of subsection (1), directions given in terms of that subsection may include provision for-

(a) refunding the deposit referred to in section *one hundred and thirteen*;

(b) where the reservation or a portion thereof is abandoned, reserving the ground so abandoned against prospecting and pegging pending a return to circumstances permitting normal operations and granting a first option in respect of the ground so reserved to the concession holder in respect of any fresh application in terms of this Part on the return of such circumstances;

(c) the suspension for an appropriate period of the concession holder's obligations under this Part and the extension of the order for a like period.

(3) To the extent that any direction given in terms of subsection (1) is inconsistent with any other provision of this Act that direction shall prevail.

(4) Directions given in terms of subsection (1) may at any time be revoked or varied by the Minister.

(5) Where directions given by the Minister in terms of subsection (1) affect the period of the order, the Minister shall publish notice thereof in the *Gazette*.

## PART VII

### PEGGING OF UNDERGROUND EXTENSIONS

#### 120 Interpretation in Part VII

In this Part-

"authorized holder" means a holder in whose favour an order has been made;

"holder", in relation to an underground extension block, means the person in whose name such block is from time to time registered;

"order" means an order issued under this Part authorizing a holder of a registered mining location to peg and register an underground extension;

"owner", in relation to State land, means the Minister responsible for the administration of such land;

"reserved ground" means land upon which a prospector is prohibited in terms of paragraph (a), (c), (d), (e), (f) or (g) of subsection (1) of section *thirty-one* or subsection (1) of section *thirty-five* from exercising any of his rights under his prospecting licence;

"underground extension block" means a block which has been pegged and registered under an order.

#### 121 Application for order

(1) If the holder of a registered mining location, other than a site, has reason to believe that a deposit of any mineral occurs underground beneath reserved ground, he may make written application to the Board for an order authorizing him to peg and register an underground extension block or blocks contiguous to such location.

(2) The applicant shall furnish to the Board -

(a) full details of the reserved ground; and

(b) the reasons why he considers that such reserved ground warrants the granting of the authority; and

(c) the depth from the surface of the ground at which he wishes to be authorized to mine such reef; and

(d) full information as to his financial status; and

(e) any other information required of him by the Board.

(3) On receipt of the application by the Board -

(a) the chairman of the Board may, if the application relates to reserved ground referred to in paragraph (a) or (g) of subsection (1) of section *thirty-one* issue a direction to the mining commissioner to reserve the ground to which the application relates against prospecting and pegging in terms of section *thirty-five* and the mining commissioner shall, without obtaining the authority of the Minister, forthwith reserve such ground accordingly;

(b) the Board may refuse the application or approve it provisionally.



### 122 Procedure on provisional approval

(1) If the Board provisionally approves such application it shall-

(a) unless the chairman of the Board has issued a direction to the mining commissioner under paragraph (a) of subsection (3) of section *one hundred and twenty-one* itself issue such a direction, and the mining commissioner shall comply therewith; and

(b) after the mining commissioner has reserved the ground in accordance with a direction given under paragraph (a) of subsection (3) of section *one hundred and twenty-one* or paragraph (a), notify the owner and the occupier, if any, of the reserved ground, of the application and require them to lodge, within thirty days of such notification, or such longer period not exceeding sixty days as the Board may, on application made within the period of thirty days, approve, their objections, if any, to the grant of the application.

(2) Notification in terms of paragraph (b) of subsection (1) shall be given by posting a registered letter to the owner and the occupier, if any.

### 123 Grant or refusal or application

(1) If an owner or occupier of reserved ground lodges objections to the grant of the application, the Board shall on a day fixed by it and notified to the applicant and the objector hear such evidence and arguments as those persons may wish to lay before it in regard to the grant or refusal of the application.

(2) If no objection has been received or if no notification was given in terms of paragraph (b) of subsection (1) of section *one hundred and twenty-two* owing to the whereabouts of the owner and the occupier, if any, being unknown to the Board, after due inquiry, the Board shall proceed with the consideration of the application.

(3) After holding a hearing in terms of subsection (1) or considering the application in terms of subsection (2), the Board may refuse the application or, subject to section *one hundred and twenty-four*, grant it, in whole or in part, subject to such terms and conditions as it may fix, including a condition as to the period within which the rights under the order may be exercised.

(4) If the owner or the occupier of the reserved ground is aggrieved by the grant of the application, he may, within twenty-one days after the Board's decision, appeal to the Minister in writing against that decision, setting out the grounds of his appeal.

(5) On any such appeal the Minister may revise or alter the decision of the Board and may revoke the grant of the application or amend the terms and conditions fixed by the Board, and the Minister's decision shall be final and without appeal.

### 124 Board to be satisfied on certain points

The Board shall not grant an order unless it is satisfied-

(a) that there is reason to believe that the deposit occurs beneath the reserved ground; and

(b) that conditions permit of the mining of such reef below the surface without disturbing or detracting from the use or value of the reserved ground; and

(c) that the mining of such reef will be carried out without in any way interfering with the rights of the landowner in the reserved ground or causing any foreseeable loss or damage to such landowner; and

(d) that the financial status of the applicant is such that he will be able to pay any compensation payable under section *one hundred and thirty-three*.

### 125 Publication of order

(1) If no appeal is made to the Minister within the prescribed time or, if an appeal is made, on receipt of the Minister's decision thereon, the Board shall make an order consistent with the terms and conditions fixed by it or the Minister, as the case may be, authorizing the applicant to peg and register an underground extension block on the reserved ground.

(2) Every order shall be published in the *Gazette* and a copy of the order shall be sent to the applicant and to the mining commissioner of the district in which the reserved ground is situated and to the owner or the occupier of the reserved ground affected by such order.

### 126 Rights or applicant

An authorized holder shall, subject to the terms and conditions of the order in terms of this Act, have the sole and exclusive right of pegging and registering an underground extension block or blocks on the reserved ground:

Provided that such authorized holder need not post a prospecting notice or DP peg in terms of this Act.

### 127 Order may not be ceded

The rights granted under an order shall be personal to the authorized holder who may not cede or assign any such rights to any other person.



### 128 Approval of transfer of underground extension block

(1) An underground extension block may not be transferred except to a person approved of by the Board.

(2) The Board shall not approve of the transfer of an underground extension block to any person unless it is satisfied that his financial status is such that he will be able to pay any compensation payable under section *one hundred and thirty-three* and that the existing holder of the block has paid all compensation payable by him in terms of that section.

### 129 Forfeiture of underground extension block.

(1) The terms and conditions attached to an order shall be binding on every registered holder of an underground extension block.

(2) If the holder of an underground extension block fails to comply with such terms and conditions, he shall be guilty of an offence and liable to a fine not exceeding five hundred dollars or, in default of payment, to imprisonment for a period not exceeding twelve months.

(3) In addition the Board may direct the mining commissioner to declare the underground extension block to be forfeited and the mining commissioner shall, whether or not such block is currently protected from forfeiture by an inspection or protection certificate issued in terms of Part XI, comply with such direction.

### 130 Indicatory beacons

Notwithstanding anything to the contrary contained in this Act, the mining commissioner may authorize the authorized holder to demarcate his underground extension block by indicatory beacons posted off the reserved ground in accordance with regulations.

### 131 Surface rights abrogated

The holder of an underground extension block may not exercise in respect of such block any of the surface rights mentioned in section *one hundred and seventy-eight*.

### 132 Secondary reefs

(1) The holder of an underground extension block who discovers a secondary reef therein shall notify the Board or such discovery.

(2) The Board may authorize such holder on such terms and conditions it thinks fit to impose to mine such secondary reef.

(3) Such holder shall upon such authorization register

the secondary reef with the mining commissioner in terms of this Act, but shall not post a DP peg or secondary reef registration notice or Q and R pegs.

### 133 Compensation

Any owner or occupier of reserved ground who is injuriously affected by any mining operations carried on any underground extension block shall be entitled to recover compensation from the holder of such block in such amount as may be agreed or, failing agreement, as shall be determined by the Administrative Court.

### 134 Conversion of underground extension block

(1) If the surface of an underground extension block ceases to be reserved ground, the holder of such block shall immediately notify the mining commissioner of the fact, and if the mining commissioner is, after due inquiry, satisfied that such ground is no longer reserved ground, he shall direct such holder to beacon the block in terms of this Act and, if such block has been pegged in irregular form, to erect pegs marked Q and R in terms of paragraph (e) of subsection (3) of section *forty-three*, and, if a secondary reef has been registered, to erect pegs marked Q and R in terms of paragraph (c) of subsection (1) of section *one hundred and seventy*.

(2) As soon as the holder has complied with the directions of the mining commissioner under subsection (1) the block shall cease to be an underground extension block and shall no longer be held subject to the order under which it was pegged and registered.

## PART VIII

### MINING LEASES

#### 135 Application for mining lease

(1) The holder of a registered mining location or of contiguous registered mining locations may make written application to the mining commissioner for the issue to him of a mining lease in respect of a defined area within which such mining location or locations are situated:

Provided that, save as is provided in section *thirty-four*, ground not registered as a mining location in the name of the applicant shall not be included within the defined area unless it is open to prospecting.

(2) The applicant shall furnish to the mining commissioner-



- (a) particulars of the minerals which are being mined or are to be mined in the area applied for;
- (b) details illustrated by a sketch plan based on a map issued under the authority of the State and of a scale of not less than 1:25 000 identifying the position of the area applied for and of any registered mining locations situated therein and specifying the extent of such area;
- (c) If any precious metal reef blocks are covered by the application, details of such blocks in respect of which he wishes to retain extra-lateral rights in the event of the mining lease being issued;
- (d) a list of all the mining locations registered in his name, situated within the area applied for, and the certificates of registration of such locations;
- (e) the name and address of the owner and the occupier, if any, of the land to which the application relates;
- (f) any other information relevant to the application which may be required of him by the mining commissioner or the Board.

(3) The sketch plan mentioned in paragraph (b) of subsection (2) shall indicate the position of each mining location mentioned in paragraph (d) of that subsection and the position of the boundaries of any holding of land falling within the area applied for.

(4) The boundaries of the area applied for shall be straight lines.

### 136 Reservation of ground by mining commissioner

(1) Where the area applied for includes any ground which is not registered as a mining location in the name of the applicant, the mining commissioner shall, on receipt of the application, without obtaining the authority of the Minister, reserve the ground against prospecting and pegging in terms of section *thirty-five*.

(2) The landowner or occupier of land shall, in respect of the ground not so registered in the name of the applicant and reserved under subsection (1) and which was open to prospecting at the time such reservation was made, during the period of the reservation, have the same rights in all respects as if the ground not so registered formed part of a mining location registered in the name of the applicant.

### 137 Submission of application for provisional approval by Board

(1) On receipt of an application in terms of section *one hundred and thirty-five* and after complying where nec-

essary with the provisions of subsection (1) of section *one hundred and thirty-six*, the mining commissioner shall submit the application to the Board together with any report he may wish to make on the application.

(2) The Board shall consider any application submitted to it under subsection (1) and shall, if it is satisfied, having regard to the provisions of subsections (3) and (5) of section *one hundred and forty-two*, that the application has a reasonable prospect of success, provisionally approve the application in respect of either the whole or a portion of the area applied for or, if not so satisfied, shall refuse the application.

(3) Notwithstanding subsection (2), if the Board is satisfied-

(a) that the applicant will meet the criteria mentioned in paragraphs (a) and (b) of subsection (1) of section *one hundred and fifty-nine*; or

(b) having regard to the matters set out in subsection (2) of section *one hundred and fifty-nine*, that it is desirable in the interests of the development of Zimbabwe's mineral resources to consider the grant of a special mining lease to the applicant;

the Board may require the applicant to apply for a special mining lease in terms of Part IX.

(4) When the Board has arrived at decision under subsection (2) or (3) it shall return the application to the mining commissioner together with written notification of the decision.

(5) The mining commissioner shall notify the applicant in writing of the Board's decision under subsection (2) or (3) and, where the Board has provisionally approved the application, the mining commissioner shall in writing require the applicant to submit, within such period as the mining commissioner shall specify, a plan in triplicate prepared by a land surveyor of the area provisionally approved by the Board which shall, where it is a portion of the area originally applied for, thereafter be deemed to be the area applied for.

(6) The plan mentioned in subsection (5) shall show all points of intersection of the boundary lines of the area concerned and all points of intersection of such boundary lines by the boundary lines of any piece of land in respect of which an approved diagram or general plan filed on record in the office of the Surveyor-General

(7) If the applicant fails to submit the plan mentioned in subsection (5) within the period specified by the mining commissioner, or within such extended period as the mining commissioner may have allowed, the application shall be deemed to have withdrawn.



(8) Within the period or extended period mentioned in subsection (7), the applicant may, by written notice to the mining commissioner, withdraw his application.

(9) The decision of the Board under subsection (2) or (3) shall be final and without appeal, but-

- (a) the provisional granting of an application under subsection (2) shall not in any way affect the discretion of the Board to approve or refuse the application under section *one hundred and forty-two*;
- (b) a decision that the applicant should apply for a special mining lease under Part IX shall not in any way affect the discretion of the Board, the Minister or the President under that Part to make or not to make a recommendation or to grant or refuse an application, as the case may be.

### 138 Notice of application to be published in *Gazette*

On receipt of the plan mentioned in section *one hundred and thirty-seven* the mining commissioner shall-

- (a) publish a notice in the *Gazette* giving details of the application, including particulars of the mining locations to which the application relates, and inviting the lodging, within a period of thirty days from the date of such publication, of objections thereto;
- (b) by registered letter notify the owner and the occupier, if any, of the ground applied for of the application and invite them to lodge, within a period of thirty days from the date of the publication in the *Gazette* of the notice mentioned in paragraph (a), their objections thereto.

### 139 Determination of objections

(1) If in any objection lodged with the mining commissioner under section *one hundred and thirty-eight* it is alleged that the title of the applicant to any of the mining locations to which the application relates is defective on the ground that the pegging of such locations was invalid or illegal or that this Act was not complied with prior to the issue of the certificate or registration in respect of such locations, the objection shall be determined by the mining commissioner in terms of this Act.

(2) If in any objection so lodged it is alleged by the owner or the occupier of the land that any ground which is not registered in the name of the applicant as a mining location was not, on the date of the reservation of the ground by the mining commissioner under subsection (1) of section *one hundred and thirty-six* open to prospecting and pegging, the matter shall be determined by the Administrative Court.

(3) Any objection not mentioned in subsections (1) and (2) shall be determined by the Board.

### 140 Transmission of objections to Administrative Court

(1) The mining commissioner shall, as soon as he receives an objection mentioned in subsection (2) of section *one hundred and thirty-nine* transmit it to the Administrative Court for determination.

(2) The registrar of the Administrative Court shall, as soon as the Court has determined an objection transmitted to it under subsection (1), forward to the mining commissioner a copy of the Court's determination.

### 141 Submission of application to Board

After the period for the lodging of objections has expired and all the objections mentioned in subsections (1) and (2) of section *one hundred and thirty-nine* have been determined, the mining commissioner shall submit the application to the Board, together with-

- (a) any objections thereto mentioned in subsection (3) of that section; and
- (b) copies of the determinations made in respect of any other objections lodged with him; and
- (c) his report on the application.

### 142 Consideration of application by Board

(1) On receipt of the documents mentioned in section *one hundred and forty-one* the Board shall consider the application and any objections mentioned in subsection (3) of section *one hundred and thirty-nine*.

(2) The Board may, having regard to any determination made on any objection by the Administrative Court or the mining commissioner and any objection mentioned in subsection (3) of section *one hundred and thirty-nine* refuse the application or, subject to subsections (3), (4) and (5), approve it.

(3) The Board shall not approve an application unless it is satisfied-

- (a) that the applicant's financial status is such that he will be able to meet any payment which may become due by him under the provisions of section *three hundred and forty-four*; and
- (b) that mining operations on a substantial scale are likely to be conducted for a considerable period within the area applied for; and



(c) that no ground not open to prospecting, save as provided in section *thirty-four* is included in the area to which such approval would relate.

(4) Before approving an application the Board may, and, if so required by the landowner, shall, require the applicant to furnish a guarantee satisfactory to the Board for the payment mentioned in paragraph (a) of subsection (3).

(5) The Board may approve the application in respect of the whole of the area applied for or, having regard to the dispersal of the mineral deposits within the area, to the extent of the ground necessary for the mining operations mentioned in paragraph (b) of subsection (3) and to any other factor which the Board may deem to be relevant, may approve the application in respect of a portion of the area applied for, and may, in approving the application require the inclusion in the mining lease of such terms and conditions not inconsistent with this Act, as the Board may fix, including a condition amending any plan previously approved in terms of Part XIII.

(6) The decision of the Board to grant or refuse an application under this section shall be final and without appeal.

#### 143 Notice to applicant of Board's decision

(1) The Board shall notify the applicant and any objector in writing of its decision under section *one hundred and forty-two* and, where the application has been approved, of the terms and conditions to be included in the mining lease under subsection (5) of that section.

(2) Where such approval relates to a portion of the area applied for, the Board shall furnish the applicant with details of such portion.

(3) Within thirty days of the date of the notification mentioned in subsection (1), the applicant may, by written notice given to the Board, the owner and the occupier, if any, of the land withdraw his application.

#### 144 Submission of amended survey plan

(1) Where the Board has approved of the application in respect of a portion of the area applied for and the applicant does not withdraw his application under subsection (3) of section *one hundred and forty-three* he shall, within the period mentioned in that subsection, or such longer period as the Board may allow, submit to the Board an amended plan in triplicate prepared by a land surveyor of the area approved.

(2) If the applicant fails to submit such amended plan within the period mentioned in subsection (1), the Board shall inform him that the amended plan has not been re-

ceived and, if the plan is not received by the Board within thirty days from such notification, the application shall be deemed to have been withdrawn.

(3) Subsection (6) of section *one hundred and thirty-seven* shall apply, *mutatis mutandis* to the preparation of an amended plan for the purposes of this section.

#### 145 Issue of mining lease

(1) Where the Board has approved an application under section *one hundred and forty-two* the Board shall, unless the application has been withdrawn under subsection (3) of section *one hundred and forty-three* or the application is deemed to have been withdrawn under subsection (2) of section *one hundred and forty-four* forthwith issue a mining lease in favour of the applicant in respect of the area approved and in accordance with the terms and conditions fixed by the Board under subsection (5) of section *one hundred and forty-two* and shall give notice in writing of the issue thereof to the owner and the occupier, if any, of the land and to any objector.

(2) The original of such lease shall be sent to the applicant together with a copy of the plan prepared by a land surveyor mentioned in section *one hundred and thirty-seven* or *one hundred and forty-four* as the case may be, and one copy of such mining lease and such plan shall be sent to the mining commissioner by the Board.

(3) The Board shall retain a copy of such mining lease and of such plan for the purposes of record.

#### 146 Register of mining leases

(1) The Board shall assign a number to each mining lease issued under this Part and such number and the particulars of each lease shall be recorded in a register of mining leases kept by the Board for the purpose.

(2) The mining commissioner shall keep a register in which shall be recorded the number assigned thereto by the Board and the particulars of every mining lease issued in respect of ground within his district.

#### 147 Withdrawal of reservation

Where the mining commissioner has reserved ground under section *one hundred and thirty-six* and-

(a) the application has been withdrawn or is deemed to have been withdrawn under section *one hundred and thirty-seven* or has been refused, the mining commissioner shall forthwith, without obtaining the authority of the Minister, withdraw the reservation;

(b) the application has been provisionally approved in respect of a portion of the area applied for, the min-



ing commissioner shall forthwith, without obtaining the authority of the Minister, withdraw the reservation in respect of the portion not approved;

(c) the application has been approved in respect of the whole or a portion of the area applied for, the mining commissioner shall, without obtaining the authority of the Minister, withdraw the reservation-

(i) after the mining lease has been issued; or

(ii) after the application has been withdrawn under section *one hundred and forty-three*; or

(iii) after the application is deemed to have been withdrawn under section *one hundred and forty-four*; or

as the case may be.

#### 148 Second or subsequent applications

Where an application has been refused under section *one hundred and thirty-seven* or *one hundred and forty-three* or has been withdrawn under section *one hundred and thirty-seven* or *one hundred and forty-three* or is deemed to have been withdrawn under section *one hundred and thirty-seven* or *one hundred and forty-four* the person who made the application for a mining lease in respect of the same area until a period of twelve months has elapsed from the date of the refusal or withdrawal or the date on which the application is deemed to have been withdrawn, as the case may be.

#### 149 Approval of transfer of mining lease

(1) A mining lease may not be transferred except to a person approved of by the Board, after consultation with the owner of the ground covered by the lease.

(2) The Board shall not approve of the transfer of a mining lease to any person unless the Board is satisfied that his financial status is such that he will be able to meet any payment which may become due by him under section *three hundred and fourteen*.

(3) Before approving of the transfer of a mining lease to any person the Board may, and if so required by the landowner, shall, require that person to furnish a guarantee satisfactory to the Board for the payment mentioned in subsection (2).

#### 150 Mining rights of holder of mining lease

(1) Subject to any prior right possessed by the holder of any mining location under section *one hundred and seventy-one*, every holder of a mining lease, hereinafter in this Part called the lease holder, shall possess the following mining rights-

(a) the exclusive right of mining any ore or deposit of any mineral mentioned in paragraph (a) of subsection (2) of section *one hundred and thirty-five* which occurs within the vertical limits of the area covered by his lease; and

(b) the exclusive right within the vertical limits of the area covered by his lease of mining any ore or deposit of any other mineral discovered within such area after he has notified the mining commissioner of such discovery:

Provided that nothing in this paragraph contained shall be construed so as to confer any right to mine any coal or mineral oil or natural gas.

(2) The holder of a mining lease which includes any precious metal blocks in respect of which he gave details under paragraph (c) of subsection (2) of section *one hundred and thirty-five* shall retain, in respect of such blocks, the extra-lateral rights which he held at the date of issue of the lease.

(3) The holder of a mining lease which includes such precious metal blocks shall, notwithstanding anything contained in this Part, keep and maintain in good order all the original beacons, pegs and claim plates of such blocks and shall make a certificate to the mining commissioner annually that such beacons, pegs and claim plates are in good order and condition and that they comply with section *fifty-one*.

#### 151 Beaconing of mining lease area

(1) Subject to this section, within a period of two months from the date of issue of a mining lease or such longer period as the mining commissioner may allow, the lease holder shall-

(a) erect beacons of concrete or solid mason work at all points of intersection of the boundary lines of the area covered by the lease and at all points of intersection of such boundary lines by the boundary lines of any piece of land in respect of which an approved diagram or general plan is filed on record in the office of the Surveyor-General; and

(b) if any boundary is more than three hundred meters in length, erect intermediate beacons so that no beacon shall be more than three hundred metres from the next adjoining beacon on either side.

(2) All beacons mentioned in paragraph (a) of subsection (1) shall be erected under the supervision of, and in the position determined by, a land surveyor and may be so erected at the time the area concerned is surveyed for the purposes of preparing the plan mentioned in section *one hundred and thirty-seven* or *one hundred and forty-four*.



(3) The beacons referred to in subsection (1) shall be lettered in consecutive alphabetical order in a clockwise direction commencing with the letter A but omitting the letter Y and Z, and if there are more beacons than twenty-four the letters and figures A2, B2 and so on shall be used in respect of the beacons up to forty-eight and thereafter the letters and figures A3, B3 and so on shall be used.

(4) Every beacon mentioned in this section shall bear on it, in addition to the distinguishing letter, the words "Mining Lease" followed by the number assigned to such lease by the Board.

(5) The distinguishing letter and the particulars mentioned in subsection (4) shall be engraved upon the beacon or otherwise affixed thereto in such permanent manner and in such position as the mining commissioner may approve.

(6) Subsections (3) and (4), paragraph (b) of subsection (5) and subsections (7) and (8) of section *fifty-one* shall apply, *mutatis mutandis* to and in respect of all such beacons.

#### 152 Cancellation of certificates of registration

Upon the issue of a mining lease the certificates of registration in respect of all mining locations situated within the area covered by such lease shall be deemed to have been cancelled:

Provided that any site attached to any such mining location shall be deemed to be attached to such lease, and thereafter section *forty-nine* shall apply, *mutatis mutandis* to or in respect of such sites.

#### 153 No impeachment of title to mining leases

When a mining lease has been issued it shall not be competent for any person to dispute the title of the lease holder to any of the ground covered by the lease on the following grounds-

- (a) that the pegging of any of the mining locations which were included in the area covered by such lease or of any secondary reef which was registered in respect of any such location was invalid or illegal or that provisions of this Act or of any other enactment were not complied with prior to the issue of the certificate of registration of any such location or reef;
- (b) that any ground not open to prospecting was included in the area covered by the lease;
- (c) that provisions of this Act were not complied with in respect of such lease prior to the issue thereof.

#### 154 Increase of area of mining lease

(1) A lease holder may make written application to the Board for the inclusion in his mining lease of an additional contiguous area of ground.

(2) Subsection (2), (4) and (4) of section *one hundred and thirty-five* and sections *one hundred and thirty-six* to *one hundred and forty-four* and sections *one hundred and forty-seven*, *one hundred and forty-eight* and *one hundred and fifty-two* shall apply, *mutatis mutandis* to or in respect of such application, the reservation of the ground, the plan of the area concerned, any objections to the application, the approval or refusal of the application, the withdrawal of the reservation, the beaconing of the additional area and the certificates of registration of mining locations within such area, respectively.

(3) Where the Board has approved an application made under this section, the Board shall, unless the application has been withdrawn or is deemed to have been withdrawn, amend the original and the copies of the mining lease mentioned in section *one hundred and forty-five* accordingly, and shall return the amended original and a copy of the lease to the lease holder and the mining commissioner, respectively, and send a copy of the plan to each of them and shall retain one copy of the lease and of the plan.

(4) As soon as subsection (3) has been complied with, the registers mentioned in section *one hundred and forty-six* shall be amended accordingly.

(5) Where the area covered by a mining lease is amended by the inclusion of an additional area, the lease holder shall beacon such additional area in accordance with section *one hundred and fifty-one* so however, that-

- (a) the letter Y shall precede the letter or letters to be engraved upon or affixed to the beacons of the additional area under that section; and
- (b) it shall not be necessary for the lease holder to erect a new beacon at any point which is already demarcated by a beacon of the original area of the lease.

(6) Where the area covered by a mining lease is amended under this section, section *one hundred and fifty-three* shall apply in all respects as if the lease had been issued in respect of the increased area.

#### 155 Abandonment of portion of mining lease

(1) A lease holder may make written application to the Board, through the mining commissioner, for the abandonment of any portion or portions of his mining lease:



Provided that it shall not be competent for a lease holder so to apply if-

- (a) the mining lease is the subject of a hypothecation or option registered under Part XVII; or
- (b) such abandonment would result in the area covered by the lease to be retained by him being divided into separate portions or if the boundaries of the reduced area of the lease would not be straight lines.

(2) the applicant shall, with his application, submit to the Board a plan in triplicate prepared by a land surveyor of the area or areas which he wishes to abandon.

(3) The Board may, if it is satisfied that all the terms and conditions of the mining lease have been complied with by the applicant, approve the application or may refuse it, and the Board's decision shall be final and without appeal.

(4) Where the Board has approved an application made under this section, the Board shall amend the original and the copies of the mining lease accordingly and shall retain one copy of the plan and send a copy thereof to the lease holder and the mining commissioner.

(5) As soon as subsection (4) has been complied with, the registers mentioned in section *one hundred and forty-six* shall be amended accordingly.

(6) Upon any such abandonment the lease holder shall-

- (a) remove the pegs or direction marks indicating the direction of boundary lines of any beacon which falls outside the reduced area of the mining lease;
- (b) erect beacons in accordance with the provisions of section *one hundred and fifty-one* along such boundaries of the reduced area of the lease as do not form part of the boundaries of the area covered by the lease before such abandonment, so, however, that the letter Z shall precede the letter or letters to be inscribed on the new beacons under that section.

(7) Where the area covered by a mining lease is amended under this section, section *one hundred and fifty-three* shall apply in all respects as if the lease had been issued in respect of the reduced area.

#### **156 Total abandonment of mining lease**

(1) A lease holder who desires to abandon the whole of

his mining lease may in writing apply to the Board, through the mining commissioner, for the cancellation of his mining lease:

Provided that it shall not be competent for a lease holder so to apply if the mining lease is the subject of a hypothecation or option registered under Part XVII.

(2) The lease holder shall together with such application lodge with the mining commissioner his copy of the mining lease.

(3) On receipt of the application the Board shall cancel the mining lease and shall inform the mining commissioner and the applicant of such cancellation, and the fact of such cancellation shall be noted in the registers mentioned in section *one hundred and forty-six*.

#### **157 Failure to comply with terms and conditions of mining lease**

(1) If the Board is satisfied that a lease holder has failed to comply with any of the terms and conditions of his mining lease, the Board may recommend to the Minister that-

- (a) there be recovered from the lease holder as a penalty such sum as the Board may deem appropriate; or
- (b) that the mining lease be cancelled.

(2) Where the Board has recommended the recovery of a penalty under paragraph (a) of subsection (1), the Minister may by action in any court of competent jurisdiction recover from the lease holder the sum so recommended or such lesser sum as the Minister may deem fit.

(3) Where the Board has recommended that the lease be cancelled, the Minister may-

- (a) direct the Board to cancel the lease; or
- (b) recover from the lease holder by action in any court of competent jurisdiction, as a penalty, such sum as he may determine after consultation with the Board.

(4) If the Minister directs that the lease be cancelled, the Board shall comply with such direction and shall inform the mining commissioner and the lease holder, and the fact of such cancellation shall be noted in the registers mentioned in section *one hundred and forty-six*.

## PART IX

### SPECIAL MINING LEASES

#### 158 Interpretation in Part IX

In this Part-

"application" means an application for a special mining lease made in terms of section *one hundred and fifty-nine*;

"mining development plan" means a plan referred to in paragraph (e) of subsection (3) of section *one hundred and fifty-nine*.

#### 159 Application for special mining lease

(1) Where the holder of one or more contiguous registered mining locations intends to establish or develop a mine thereon and, subject to subsection (2)-

(a) investment in the mine will be wholly or mainly in foreign currency and will exceed one hundred million United States dollars in value; and

(b) the mine's output is intended principally for export;

he may apply in writing to the mining commissioner for a special mining lease in respect of a defined area within which his mining location or locations are situated:

Provided that, except as provided in section *one hundred and thirty-five*, ground not registered as a mining location in the name of the applicant shall not be included within the defined area unless it is open to prospecting.

(2) The Board may permit a person to make an application under subsection (1) notwithstanding that either or both the criteria mentioned in paragraphs (a) and (b) of that subsection will not be met, if the Board, having regard to-

(a) the nature and size of the mineral deposits within the area over which the applicant seeks a special mining lease; and

(b) the estimated life and economic viability of the proposed mine; and

(c) the extent of the investment that will be made in the proposed mine; and

(d) the proposed method of extraction, mining and treatment of ore from the proposed mine; and

(e) any other relevant circumstance;

considers that it is desirable in the interests of the development of Zimbabwe's mineral resources to consider the grant of a special mining lease to the applicant.

(3) An applicant for a special mining lease shall furnish to the mining commissioner-

(a) particulars of the minerals which are being mined or are to be mined in the area applied for; and

(b) a sketch plan based on a map issued under the authority of the State and of a scale not less than 1:25 000 identifying the position of the area applied for and any registered mining locations situated therein and specifying the extent of the area; and

(c) a list of all the registered mining locations of which he is the sole or joint holder and which are situated within the area applied for, and the certificates of registration of such locations; and

(d) the name and address of each owner and the occupier, if any, of the land to which the application relates; and

(e) a plan for the development and operation of the proposed mine, including-

(i) a feasibility study relating to the development of the proposed mine; and

(ii) a financing plan indicating the type and source of finance to be obtained in order to develop the proposed mine and construct the necessary infrastructure and facilities; and

(iii) a marketing plan setting out proposals and a timetable for the beneficiation and disposal of the output of the proposed mine, together with any relevant marketing studies; and

(iv) proposals for the efficient and economic exploitation of the mineral deposits to be mined, specifying the proposed method of mining and treatment of the ore and the dates on which such mining and treatment will commence; and

(v) an economic evaluation of the proposed mine, including a detailed forecast of the capital investment, operating costs and projected revenues and profits; and

(vi) a comprehensive report, supported by documentary evidence, on the mineral deposits to be mined, including details of their extent, grade and quantity and distinguishing between proven, probable and esti-



mated ore reserves and indicating the anticipated mining conditions; and

- (vii) a report on the anticipated impact of mining operations on the environment and any measures to be taken to assess, prevent or minimize such impact, including proposals for-
  - A. the prevention or treatment of pollution; and
  - B. the treatment and disposal of waste;
  - C. the protection of rivers and other sources of water; and
  - D. the reclamation and rehabilitation of land disturbed by mining operations; and
  - E. monitoring the effect of mining operations on the environment; and
- (viii) details of any roads, railway lines, electricity supply and other infrastructure which will be required and which the applicant proposes to provide for the purposes of mining operations; and
- (ix) the proposed timetable for the establishment and operation of the proposed mine and the facilities associated with it; and
- (x) details of any insurance to be taken out against liability arising from mining operations, including liability for damage to the environment and injury to persons and property; and
- (xi) proposals for the storage, recording and shipment of the output of the proposed mine; and
- (xii) information on the extent to which local goods and services will be utilized in the development and operation of the proposed mine; and
- (xiii) details of the manpower requirements of the proposed mine, including the numbers of expatriate staff and any proposals for training citizens of Zimbabwe; and
- (f) any other information which might reasonably affect the grant or refusal of the application or which relates to the applicant's ability to perform his obligations under a special mining lease or any agreement under section *one hundred and sixty-seven*; and
- (g) any other information relevant to the application which the mining commissioner or the Board may require.

#### 160 Application of certain provisions of Part VIII to special mining leases

(1) Subject to this section, sections *one hundred and thirty-six to one hundred and forty-two* shall apply, *mutatis mutandis*, to the consideration of applications and the determination of any objections thereto:

Provided that the Board shall not have power to approve or refuse an application, but instead shall make recommendations thereon to the Minister, and any reference in those sections to an approval or refusal of an application by the Board shall be construed as a recommendation by the Board to the Minister that the application should be granted or refused, as the case may be.

(2) The Board shall not recommend to the Minister that an application be granted unless the Board is satisfied, in addition to the matters referred to in subsection (3) of section *one hundred and forty-two*, that

- (a) the criteria mentioned in paragraphs (a) and (b) of subsection (1) of section *one hundred and fifty-nine* will be met or, if those criteria will not be met, that having regard to the matters referred to in paragraphs (a) to (e) of subsection (2) of section *one hundred and fifty-nine*, it would be desirable in the interests of the development of Zimbabwe's mineral resources for the application to be granted; and
- (b) the area to which the application relates contains a mineral or group of minerals which may profitably be mined and sold or otherwise disposed of; and
- (c) the applicant's mining development plan takes proper account of environmental and safety factors; and
- (d) the applicant's programme for mining operations will ensure the efficient, timely and beneficial use of the mineral resources concerned; and
- (e) the applicant's proposals for the procurement and use of local goods and services and the employment of Zimbabwean citizens are satisfactory; and
- (f) the applicant is able and willing to comply with the terms and conditions of any special mining lease that may be granted to him and of any agreement that may be concluded with him in terms of section *one hundred and sixty-seven*; and
- (g) the applicant possesses or can obtain the technical and financial resources required to develop and operate the proposed mine; and



(h) it would be in the national interest for the applicant to be granted a special mining lease.

(3) The Board shall not recommend refusal of an application on the ground that the Board is not satisfied as to any matter referred to in subsection (2) unless the Board has notified the applicant of the proposed recommendation and the reasons therefor, and has given the applicant a reasonable opportunity to modify his mining plan or make representations or otherwise to remove the ground on which the proposed recommendation is based.

(4) Where the Board recommends to the Minister that an application should be granted, the Board may include in its report recommendations as to-

- (a) the minimum amount which the applicant should be required to invest in the development of the proposed mine; and
- (b) where the proposed mine is to be developed by a company, the minimum shareholding which the applicant should hold in the company; and
- (c) the area to be included in the special mining lease and
- (d) the period of the special mining lease and any renewal thereof; and
- (e) the terms and conditions to be inserted in the special mining lease and in any agreement to be entered into with the applicant under section *one hundred and sixty-seven*; and
- (f) the period within which construction of the proposed mine should commence; and
- (g) any other matter connected with or incidental to the special mining lease.

**161 Recommendation that application be granted in part**

(1) Before recommending to the Minister that an application should be granted in respect of a portion of the area applied for, the Board shall notify the applicant in writing of its intention to make the recommendation and shall furnish him with details of the portion concerned.

(2) Within thirty days of the date of the notification mentioned in subsection (1), the applicant may, by written notice to the Board and any owner and occupier of land within the area applied for, withdraw his application.

(3) If the applicant does not withdraw his application in terms of subsection (2) he shall, within the period mentioned in that subsection, or such longer period as the

Board may allow, submit to the Board an amended plan in triplicate, prepared by a land surveyor, of the area in respect of which the Board has recommended that the application should be granted.

(4) If the applicant fails to submit an amended plan in terms of subsection (3) within the period mentioned in subsection (2), the Board shall notify him in writing that the amended plan has not been received and, if the plan is not received by the Board within thirty days from such notification, the application shall be deemed to have been withdrawn.

(5) Subsection (6) of section *one hundred and thirty seven* shall apply, *mutatis mutandis*, to the preparation of an amended plan for the purposes of this section.

**162 Forwarding of application to Minister and President**

(1) Having considered an application in terms of section *one hundred and sixty*, and, where appropriate, having complied with section *one hundred and sixty-one*, the Board shall without delay forward the application to the Minister together with its recommendations thereon and-

- (a) copies of all objections lodged in respect of the application and copies of the determinations made in respect of the objections; and
- (b) the mining commissioner's report on the application.

(2) The Minister, having considered the documents forwarded to him in terms of subsection (1), shall submit them to the President, together with his recommendations thereon, for the President's approval.

**163 Issue of special mining lease**

(1) After considering documents submitted to him in terms of subsection (2) of section *one hundred and sixty-two*, the President may authorize the Minister to issue a special mining lease in accordance with the Board's recommendations or on such other terms and conditions as the President may direct.

(2) Where the President has authorized him to do so, the Minister shall forthwith issue a special mining lease to the applicant, subject to sections *one hundred and sixty-four* and *one hundred and sixty-seven*, in accordance with the President's authorization or directions.

(3) The Minister shall cause the original of any special mining lease he issues under subsection (2) to be sent to the applicant together with a copy of the plan, prepared by a land surveyor, of the area over which the lease is issued, and shall cause copies of the lease and the plan to be sent to the Board and the mining commissioner.



**164 Terms and conditions of special mining lease**

(1) A special mining lease shall not be issued in respect of an area within which there is more than one mine that will be established and developed by the holder of the special mining lease.

(2) A special mining lease shall not be issued-

(a) to an individual, unless he is a citizen of Zimbabwe; or

(b) subject to subsection (3), to a body of persons, unless they constitute a body corporate.

(3) A special mining lease may be issued to two or more persons jointly if each of them is qualified under subsection (2) to be issued with the lease:

Provided that, where a special mining lease is issued to two or more persons jointly, their obligations under the lease shall be joint and several.

(4) A special mining lease shall not be issued for a period exceeding twenty-five years, but provision may be made for its renewal by the Minister with the President's approval for periods not exceeding ten years, having regard to the life of the mine concerned and the circumstances then prevailing.

(5) Subject to the President's directions, a special mining lease shall contain such provisions, not inconsistent with this Act, as the Minister may determine.

**165 Application of further provisions of Part VIII to special mining leases**

Subject to this Part, sections *one hundred and forty-six to one hundred and fifty-three* and *one hundred and fifty-five to one hundred and fifty-seven* shall apply, *mutatis mutandis*, to special mining leases.

**166 Issue of mining lease instead of special mining lease**

If an application for a special mining lease has been refused in terms of this Part but the Board is satisfied that the applicant meets the requirements for the issue of a mining lease under Part VIII, the Board may, with the applicant's consent, issue him with a mining lease under section *one hundred and fifty-five*.

**167 Agreement re issue of special mining lease**

The Minister, with the approval of the President, may enter into an agreement, not inconsistent with this Act, with any person regarding-

- (a) the issue of a special mining lease to that person, and the renewal of the special mining lease; and
- (b) the terms and conditions of any special mining lease that may be issued to that person; and
- (c) the liabilities and obligations of that person in terms of any special mining lease that may be issued to him, including payments by way of royalties, rents and fees; and
- (d) any other matter connected with or incidental to any special mining lease that may be granted to that person.

**168 Application of other provisions of this Act relating to mining leases**

Subject to this Part, provisions of this Act relating to mining leases and the rights and obligations of the holders thereof shall apply, *mutatis mutandis*, in relation to any special mining lease and its lease holder, except to the extent that those provisions are inconsistent with this Part.

**PART X****RIGHTS OF CLAIM HOLDERS AND LANDOWNERS****169 Precious metal reef claims; mining rights within vertical limits**

Every holder of a registered block of precious metal reef claims shall possess the following mining rights-

- (a) the exclusive right of mining such portions of his discovery reef as are comprised within the vertical limits of his block;
- (b) the exclusive right within the vertical limits of his block of prospecting for any other precious metal reefs which may exist within such limits in addition to his discovery reef, such reefs being hereinafter designated "secondary reefs"
- (c) the exclusive right, after discovery of any secondary reef, of pegging and registering such reef in the manner provided in section *one hundred and seventy* and thereafter of mining such portions of such reef as are comprised within the vertical limits of his block;
- (d) the exclusive right of mining any placer deposit, al-



luvial deposit, eluvial deposit, rubble deposit or dump containing precious metals found within the vertical limits of his block;

- (e) the exclusive right within the vertical limits of his block of prospecting for any base mineral or precious stones and if any ore or deposit of any base mineral or precious stones is discovered within the block, the holder thereof shall notify the mining commissioner of such discovery and shall, subject to this Act, thereafter have the right of working such ore or deposit within the vertical limits of his block.

#### 170 Pegging of secondary reef

(1) If the holder of a registered block of precious metal reef claims by the work of himself or his agents discovers a secondary reef, he may peg such reef in the following manner-

- (a) the point of discovery shall be marked by a peg marked DP:

Provided that where the reef is discovered at depth the said peg shall be placed as surface at a point as nearly as possible vertically above the point of discovery;

- (b) the pegger shall post near such peg a notice to be styled a secondary reef registration notice which shall be so far as is material in the form prescribed and shall contain the following particulars-

- (i) the depth from the surface of the reef;
- (ii) the direction of the dip of the reef;
- (iii) the approximate angle from the horizontal of the dip of such reef;
- (c) the pegger shall fix pegs marked Q and R respectively at two points within the boundaries of his block, the straight line joining such pegs being at right angles to the strike of the reef.

(2) The pegger of any secondary reef in respect of which a registration notice has been posted may, on application to the mining commissioner within a period of thirty-one days after the date of the posting of such registration notice, obtain a certificate of registration.

(3) The applicant shall lodge with every such application the following with the mining commissioner-

- (a) a copy of such registration notice;
- (b) a plan in duplicate showing the position of the secondary reef in relation to the boundaries of such registered block;

- (c) a certificate under his hand stating that the said copy of such notice is a true copy and that all the facts stated therein are true and correct.

(4) The mining commissioner shall assign a number to every secondary reef for which a certificate of registration has been issued.

(5) After he has issued a certificate of registration of the secondary reef, the mining commissioner shall return to the applicant one copy of the plan lodged with the registered number of such reef endorsed thereon, and shall retain the other copy.

#### 171 Precious metal reef claims: extra-lateral mining rights

(1) For the purposes of this section a block shall be deemed to be that portion of the block as pegged with lies between the side lines and the corrected end lines.

(2) For the purposes of extra-lateral rights conferred by this section, a regular block of precious metal reef claims shall have its end lines corrected as follows-

- (a) straight horizontal lines shall be drawn parallel to each other and to the mean direction of the end lines of the block as pegged;
- (b) each of such horizontal lines shall pass through one of the corner pegs of the block and they shall be so drawn that no portion of either of them shall lie outside the end lines of the block as pegged.

(3) Every holder of a registered regular block of precious metal reef claims shall possess the extra-lateral rights of pursuit of and mining the following portions of his discovery reef as it descends outside the vertical limits of his block-

- (a) if only two points of departure are established, such portions of the reef as lie in its course within the block and as are comprised between two vertical planes of unlimited dimensions passing through straight horizontal lines drawn through the points of departure parallel to the corrected end lines;
- (b) if more than two points of departure are established, such portions of the reef as lie in its course within the block and as are comprised between two vertical planes of unlimited dimensions passing through straight horizontal lines drawn through the points of departure between which the course of the reef lies within the block and parallel to the corrected end lines;
- (c) if only one point of departure is established and that point is situated on a corrected end line or if no point



of departure is established, such portions of the reef as are comprised between vertical planes of unlimited dimensions passing through the corrected end lines;

- (d) if only one point of departure is established and that point is situated on a side line, such portions of the reef as lie between two vertical planes of unlimited dimensions, of which one passes through a straight horizontal line drawn through the point of departure and parallel to the corrected end lines and the other passes through that corrected end line towards which the course of the reef runs within the block from the point of departure.

(4) Every holder of an irregular registered block of precious metal reef claims shall possess the extra-lateral rights of pursuit of and mining the following portions of his discovery reef as it descends outside the vertical limits of his block-

- (a) if only two points of departure are established, such portions of the reef as lie in its course within the block and as are comprised between vertical planes of unlimited dimensions passing through straight horizontal lines drawn through the points of departure and parallel to the line QR;

- (b) if more than two points of departure are established, such portions of the reef as lie in its course within the block and as are comprised between vertical planes of unlimited dimensions passing through straight horizontal lines drawn through the points of departure between which the course of the reef lies within the block and parallel to the line QR;

- (c) if only one point of departure is established, such portions of the reef as are comprised between vertical planes of unlimited dimensions passing through two straight horizontal lines, both of which shall be drawn parallel to the line of QR so that one of them passes through the point of departure and the other passes through the point at which a line drawn through the DP peg at right angles to the line QR crosses a boundary line of the block on that side of the DP peg which is opposite to the point of departure;

- (d) if no point of departure is established, such portions of the reef as are comprised between vertical planes of unlimited dimensions passing through two straight horizontal lines which shall be drawn parallel to the line QR through the points at which a line drawn through the DP peg at right angles to the line QR crosses the boundary lines of the block.

(5) Every holder of a registered block of precious metal reef claims, whether such block is regular or irregular,

shall possess the same extra-lateral rights of pursuit of and mining and secondary reef registered by him as are given to the holder of an irregular block in respect of his discovery reef by subsection (4).

(6) Notwithstanding anything in this section contained, the holder of a registered block of precious metal reef claims shall not have or exercise any extra-lateral right in respect of any reef unless and until-

- (a) it is established that some portion of the course of such reef lies within such block; or

- (b) he has obtained a special grant of such right in terms of section *two hundred and eighty-five*.

(7) Notwithstanding anything in this section contained, no holder of any block of precious metal reef claims registered after the 1st September, 1935, shall have any extra-lateral right of pursuit of or mining any platinum or platinoid metal reef.

#### **172 Mining rights: other than precious metal claims**

Subject to any prior right possessed by the holder of any mining location under section *one hundred and seventy-one* and this Act, every holder of a registered block of claims shall possess the following mining rights-

- (a) the exclusive right of mining any ore or deposit of the mineral in respect of which the block is registered which occurs within the vertical limits of his block; and

- (b) the exclusive right within the vertical limits of his block of prospecting for any ore or deposit of any mineral other than the mineral in respect of which the block is registered and if any such ore or deposit is discovered within such block, the holder thereof shall notify the mining commissioner of such discovery and shall, subject to this Act, thereafter have the right of mining such ore or deposit within the vertical limits of his block:

Provided that nothing in this paragraph contained shall confer any rights to mine any coal or mineral oil or natural gas.

#### **173 Conversion of blocks**

(1) The holder of a registered block of precious metal claims may, if he proves to the satisfaction of the mining commissioner that any base mineral occurs in such block in such amount as to exceed in value the amount of the precious metal contained therein, apply for the conversion of the block into a base mineral block, and thereupon the mining commissioner shall issue a new registration certificate for the area originally registered.



(2) The holder of a registered block of claims other than precious metal reef claims may, if he proves to the satisfaction of the mining commissioner that any reef containing precious metals occurs in such block in such amount as to exceed in value the amount of the mineral contained therein for which such block was registered, apply for the conversion of the block or any part thereof into a precious metal reef block or blocks, and shall peg such reef in terms of section *forty-three* and thereupon the mining commissioner shall issue a new registration certificate or certificates for the area converted.

(3) The mining commissioner may, if it appears to him that any precious metal discovered in any registered block of base mineral claims occurs in such quantity in such block as to exceed in value the mineral in respect of which the block was originally registered or that such block includes any ground which formerly formed part of a location registered for precious metal, call upon the holder to show cause why the block should not be relocated and repegged under the provisions of this Act relating to the pegging of precious metals and if the holder of such block fails to show cause to the satisfaction of the mining commissioner, the holder shall forthwith relocate and repeg the block in such manner as in this Act is prescribed for such precious metal, and shall thereafter hold such claims as precious metal claims.

(4) The mining commissioner may, if it appear to him that any precious stones discovered in any registered block of claims other than precious stones claims occur in such block in such amount as to exceed in value the mineral in respect of which the block is registered, call upon the holder to show cause why the block or portion thereof should not be relocated and repegged under the provisions of this Act relating to the pegging of precious stones claims and if the holder of such block fails to show such cause to the satisfaction of the mining commissioner, the holder shall relocate and repeg such block or portion of such block in such manner as in this Act is prescribed for precious stones and shall thereafter hold the block or such portion thereof as precious stones claims:

Provided that if the whole block is not so repegged, the holder may, at his option, abandon the remaining portion or portions of such block or may retain such remaining portion or portions as one or more blocks of claims registered for the mineral in respect of which the block was registered prior to such repegging and the mining commissioner may issue a fresh certificate of registration for any separate portion so retained.

(5) The holder of a registered block of claims other than precious stones claims may, if he proves to the satisfaction of the mining commissioner that precious stones occur in such block in such amount as to exceed in value the amount of mineral contained therein in respect of which the block was originally registered, apply for the

relocation of such block under the provisions of this Act relating to the pegging of precious stones claims and if the mining commissioner approves the application, the holder shall forthwith relocate and re-register the block in such manner as in this Act is prescribed for precious stones, and the claims shall thereafter be held as precious stones claims:

Provided that if the whole block is not so repegged the remaining portion or portions shall be dealt with in the manner prescribed in subsection (4).

(6) The holder of a registered block of reef claims may apply for the conversion of the whole or any portion of such block into a block of dump, rubble deposit, alluvial or eluvial claims. If the mining commissioner approves the application, the holder shall forthwith relocate and re-register such block or portion of such block, and thereafter it shall be held as a dump rubble deposit, alluvial or eluvial claims block. If the whole block is not so relocated and re-registered, the holder shall abandon the remaining portion of the block.

(7) The holder of a registered block of claims may apply for the conversion of the whole or any portion of such block into a site. Such holder shall peg such site in terms of section *forty-seven* and the mining commissioner shall, if satisfied that the area pegged is not in excess of the holder's requirements for a site, issue a certificate of registration in terms of section *forty-eight*. If the whole block is not registered as a site, the holder shall abandon that portion of the block which is not so registered.

(8) The holder of a registered site may apply to the mining commissioner for the conversion of the whole or any portion of such site into a registered block of claims. If the mining commissioner approves the application, the holder of the site shall forthwith relocate and re-register such site or portion thereof in such manner as in this Act is prescribed for the appropriate class of mineral, and thereafter it shall be held as a registered block of claims in respect of the mineral for which it has been registered. If the whole site is not registered as a block of claims the holder shall abandon that portion of the site which is not so re-registered or may re-register such portion as a site.

(9) Where any conversion is effected under this section the holder shall pay to the mining commissioner in respect of the new certificate of registration the fee that would have been payable under Part III if such certificate of registration had been an original certificate of registration.

#### 174 Provisions concerning conversion or blocks

- (1) Where the holder of a registered block of claims has-
- (a) applied for the conversion of the whole or portion of



the block in terms of subsection (2) of section *one hundred and seventy-three*; and the mining commissioner has issued a new registration certificate; or

(b) relocated and repegged the whole or portion of the block under subsection (3) of section *one hundred and seventy-three* the mining commissioner shall report the matter to the Board.

(2) After receiving any report in terms of subsection (1), if the Board, after inquiring into the circumstances of the case and affording the holder an opportunity of making representations, is of the opinion that the block was not originally pegged for the *bona fide* purpose of working the mineral for which it was registered, the Board may recommend to the Minister that one or both of the following penalties be imposed-

(a) payment by the holder of an amount not exceeding two thousand dollars for each precious metal block so registered or relocated and repegged;

(b) such block be excluded from section *one hundred and seventy-one*

(3) On receipt of a recommendation in terms of subsection (2) the Minister may make an order providing for one or both of the penalties referred to in Paragraphs (a) and (b) of subsection (2), as he may deem fit.

(4) Where the Minister has imposed a penalty referred to-

(a) in paragraph (a) of subsection (2), the amount shall be payable by such holder to the mining commissioner for payment into the Consolidated Revenue Fund and, in default of payment, the amount may be recovered by the mining commissioner from such holder in any court of competent jurisdiction;

(b) in paragraph (b) of subsection (2), the mining commissioner shall endorse on the registration certificate relating to the block the fact that it is excluded from section *one hundred and seventy-one*

#### **175 Amendment of registration certificates of base mineral blocks**

(1) If the holder of a registered block of base mineral claims discovers that any base mineral occurs in such block in such amount as to exceed in value the amount of the mineral contained therein in respect of which the block is registered, he may apply to the mining commissioner for the amendment of the certificate of registration of such block by the substitution of such first-mentioned mineral for the mineral in respect of which the block is registered, and the mining commissioner, if he is satisfied as to the grounds on which the application is

made, may approve the application and, if he so approves, shall amend the certificate of registration and his records accordingly.

(2) The mining commissioner may, if it appears to him that any base mineral occurs in any registered base mineral block in such amount as to exceed in value the amount of the mineral contained therein in respect of which the block is registered, call upon the holder to show cause why the certificate of registration of the block should not be amended; if the holder of such block fails to show such case to the satisfaction of the mining commissioner, the mining commissioner shall amend his records accordingly and thereafter the certificate of registration shall be deemed to have been amended accordingly.

#### **176 Sites: mining rights**

The holder of a registered site shall in respect of any minerals which may exist within the vertical limits of his site, *mutatis mutandis* possess, but only within such limits, the same rights as are possessed by the holder of a registered block of claims in respect of minerals within the vertical limits of his block, but such rights shall be inseparably connected with and shall not be alienated in any way from such site.

#### **177 Priority of mining rights**

(1) For the purposes of this section-

"pegger" means the person in whose name or on whose behalf a mining location, reef or deposit was registered and each and every successor in title to the rights acquired by such person.

(2) For the purposes of subsection (3)-

"acquisition of title" shall be taken to mean the due performance of the first physical act required to be done under this Act, or any previous law governing mining rights at the time when the act was performed, in order to acquire any exclusive rights in respect of any mining location, reef or deposit.

(3) Priority of acquisition of title to any mining location, reef or deposit, if such title has been duly maintained, shall in every case determine the rights as between the various peggers or mining locations, reefs or deposits as aforesaid and in all cases of dispute the rule shall be followed that, in the event of the rights of any subsequent pegger conflicting with the rights of a prior pegger, then, to the extent of which such rights conflict, the rights of any subsequent pegger shall be subordinated to those of the prior pegger, and all certificates of registration shall be deemed to be issued subject to the above conditions.



(4) In case of any dispute arising with regard to any reef which has been registered by one pegger and is claimed as a discovery or secondary reef by another, the rule of priority shall be followed even though it involves the following of such reef into or through the vertical limits of the block or site belonging to another.

(5) Where reefs apparently distinct, but in reality merely branches of the same reef, or forming part of an irregular deposit, coalescing in depth, have been independently located by more than one pegger, then, up to the time of the fact of such coalescence as aforesaid having been established, each pegger shall, in pursuance of his *prima facie* right, have the right of following the reef even below any point of junction:

Provided that after establishment of such coalescence the right of pursuit below the point of junction shall be vested in the first pegger.

(6) Where any reefs intersect on the dip, each pegger shall have the right of following his reef through and beyond the junction of the reefs, but the whole of the ore at such junction shall, subject to subsection (7), be the property of the first pegger, and if any question arises as to the extent of the ore included in such junction, the same shall be referred to arbitration.

(7) In all cases the holder of any mining location shall, as long as he is *bona fide* in pursuit of his *prima facie* rights, have the right of working and of extracting any of the minerals which he is entitled to mine under this Act, until such time as any other pegger has obtained an injunction from the mining commissioner or from the High Court to stay such working, and all minerals so extracted prior to receiving notice from any other pegger who succeeds in establishing his priority rights shall be deemed to be and shall remain the property of such holder as aforesaid

(8) If the holder of any mining location claims that an encroachment has been made on his location by a subsequent pegger, and the subsequent pegger proves-

- (a) that there is no encroachment accordingly to the beacons existing at the time when such subsequent pegger pegged the alleged encroachment; and
- (b) that the alleged encroachment was caused by the failure of the claimant or of his predecessor in title to maintain his beacons in their original positions;

the claimant shall be ordered to establish or replace his beacons in their original positions as shown on the survey or sketch plan lodged with the mining commissioner, and no action for damages shall lie against the subsequent pegger for any damages caused by the alleged encroachment.

#### 178 Surface rights of miners

(1) For the purposes of paragraph (e) of subsection (2)-

“property” means two or more blocks of claims, whether contiguous or otherwise, owned by one person, from which the ore is being treated at the same milling or reduction plant or which are under the control of one registered mine manager.

(2) Every miner of a registered mining location shall have and possess the following respective surface rights-

- (a) the right, subject to any existing rights, to the use of any surface within the boundaries thereof for all necessary mining purposes of his location; and as against the holder of a prospecting licence or of any other mining location the right, except as in section *three hundred and fifty-seven* provided, to the use of all surface within such boundaries;
- (b) the right to use, free of charge, soil, waste rock or indigenous grass situated within his location for all necessary mining purposes of such location;
- (c) the right to sell or otherwise dispose of waste rock recovered by him from his location in the course of *bona fide* mining operations:

Provided that-

- (i) nothing in this paragraph contained shall be construed so as to derogate from the right conferred upon the Minister under section *four hundred and two* or any person duly authorized by him under that section;
- (ii) as from the date on which the rights of the miner to carry on the work of mining on the location cease, the rights of the miner to sell or otherwise dispose of such waste rock shall cease and any agreement for the sale or other disposition of such waste rock shall be of no further force or effect;
- (d) the same right of taking water for primary purposes as is possessed by the holder of a prospecting licence;
- (e) subject to this section and of the Forest Act [*Chapter 19:05*] and to such conditions as may be prescribed and on payment to the occupier or, where there is no occupier, the owner of the land in advance of such tariff rate as may be prescribed, the right to take and use for firewood or for the purposes of his mining location any indigenous wood or timber from land open to prospecting which is neither Communal Land nor land in regard to which a reservation has been made under section *thirty-six or thirty-seven*:

Provided that nothing in this paragraph shall be con-



strued so as to permit a miner to use any wood or timber taken by him for firewood elsewhere than on his location or, where his location is a block forming part of a property, on that property.

(3) A miner who desires to take indigenous wood or timber from land referred to in paragraph (e) of subsection (2) which is private land shall give notice of such desire-

(a) if the land is occupied, to the occupier of the land in person, or by registered letter addressed to the occupier at his ordinary postal address; or

(b) if the land is unoccupied, by registered letter addressed to the owner at his ordinary postal address;

and thereafter the miner and the occupier or owner may agree as to the area and period within which such wood or timber may be taken, the quantity and kinds of such wood or timber to be taken, the price to be paid for such wood or timber and any other conditions relating to such wood or timber.

(4) If, within the period of seven days from the date of the giving of notice in terms of subsection (3), no agreement has been concluded in accordance with that subsection, the miner shall have the rights conferred upon him by paragraph (e) of subsection (2) in respect of the land concerned.

(5) Section *one hundred and four* shall apply, *mutatis mutandis*, in relation to a miner in respect of indigenous wood or timber required by him in connection with his mining operations.

#### **179 Saving of rights of landowner over mining location**

Subject to subsection (12) of section *one hundred and eighty*, the owner or the occupier of land on which a registered mining location is situated shall retain the right to graze stock upon or cultivate the surface of such location in so far as such grazing or cultivation does not interfere with the proper working of the location for mining purposes.

#### **180 Approval of scheme to cultivate surface of mining location**

(1) For the purposes of this section and sections *one hundred and eighty-one*

and *one hundred and eighty-two*-

"landholding parties" means-

(a) in relation to land, other than Communal Land, to which an approved cultivation scheme or proposed scheme relates-

(i) the owner; and

(ii) where the occupier of the land is not the owner thereof, the occupier of that land;

(b) in relation to Communal Land to which an approved cultivation scheme or proposed scheme relates, any rural district council within the area of which that Communal Land is situated;

"mining parties" means-

(a) the holder of; and

(b) where the miner of the registered mining location is not the holder thereof, the miner of; and

(c) the holder of a hypothecation or option registered under this Act over;

the registered mining location to which an approved cultivation scheme or proposed scheme relates.

(2) Subject to subsection (3)-

(a) the occupier of any land on which a registered mining location is situated may lodge with the mining commissioner, for examination by him and approval by the Board, a written scheme, together with three copies thereof, in regard to the cultivation by such occupier of the whole or any part of the surface of such location:

Provided that-

(i) no such scheme shall provide for the cultivation of land for the purpose of planting or establishing orchards, tree plantations or other like permanent crops;

(ii) where the occupier is not the owner of the land, no such scheme shall be lodged with the mining commissioner unless the owner has agreed to the scheme and his agreement has been endorsed on the scheme and signed by him;

(b) a rural district council may lodge with the mining commissioner, for examination by him and approval by the Board, a written scheme, together with three copies thereof, in regard to the cultivation, by persons entitled to reside in such Communal Land, of the surface of any registered mining location situated on communal Land within the area of such rural district council:



Provided that no such scheme shall provide for the cultivation of land for the purpose of planting or establishing orchards, tree plantations or other permanent crops.

(3) Not later than thirty days before lodging a scheme under subsection (2), the occupier or rural district council, as the case may be, shall give notice of his or its desire to lodge the scheme, together with a copy of the scheme, to-

- (a) each of the mining parties affected thereby; and
- (b) where notice is being given by the occupier and he is not the owner of the land, the owner of the land;

in person or by posting a registered letter addressed to the ordinary postal address of the person concerned:

Provided that, if a scheme has been agreed to by all the landholding and mining parties and the agreement of each such party has been endorsed on the scheme and signed by him, this subsection shall not apply and the scheme may forthwith be lodged under subsection (2).

(4) On receipt of a scheme under subsection (2) and if satisfied that subsection (3) has been complied with or does not apply, the mining commissioner shall forthwith by registered letter-

- (a) notify each of the mining parties affected thereby or the receipt of the scheme and require the holder of the registered mining location to lodge with him, within twenty-one days of the date of such notification, his certificate or registration or his copy of the mining lease or special grant to carry out mining operations, as the case may be; and
- (b) if the scheme has not been agreed to by a mining party affected thereby and his agreement endorsed on the scheme and signed by him, send to that party a copy of the scheme and require him to inform the mining commissioner in writing, within twenty-one days of the date of such notification, whether he agrees to the scheme or objects to it and, if he objects, to set out his objections.

(5) After complying with subsection (4), the mining commissioner shall submit to the Board any scheme lodged with him under subsection (2), together with any objections thereto lodged under subsection (4) and his own report on the scheme and the objections.

(6) If, upon examination of the documents submitted to it under subsection (5) and after consulting the Minister responsible for agriculture, the Board is satisfied that-

- (a) the period of the scheme is clearly stated in the scheme

and that the scheme is to terminate on a date specified therein; and

- (b) the registered mining location concerned is being held for *bona fide* mining purposes; and
- (c) the scheme specifies the basis on which the compensation shall be calculated in the event of the scheme under section *one hundred and eighty-one*; and
- (d) the scheme is satisfactory in all respect and is not designed or likely to hinder or prevent the future exploitation of the mineral resources of the mining location;

the Board may approve the scheme.

(7) If the Board is not satisfied as to any of the matters referred to in subsection (6), it shall refuse to approve the scheme and may submit to the landholding and mining parties affected by the scheme such amendments to the scheme as it may deem fit and require them to state within a period to be specified by the Board-

- (a) in the case of landholding party, whether or not he agrees to the amendments;
- (b) in the case of a mining party, any objections he may have to the amendments

(8) If the landholding parties agree to the amendments submitted to them by the Board under subsection(7), the Board may, after considering any objections to the amendments stated by the mining parties, amend the scheme accordingly and approve the scheme as amended.

(9) Where the Board has approved a scheme it shall-

- (a) endorse its approval on the scheme and on the copies thereof; and
- (b) retain the original copy of the scheme; and
- (c) send a copy of the scheme to each of the parties to the scheme and to the mining commissioner who shall forthwith enforce on the certificate of registration or copy of the mining lease or special grant, as the case may be, the fact that the registered mining location is subject to a scheme and the period of the scheme.

(10) The board shall keep a record of schemes which have been approved by it under this section.

(11) Upon approval of a scheme by the Board under this section-

- (a) in the case of land other than Communal Land, the



occupier shall be entitled, subject to the provisions of the scheme, to exercise the rights conferred on him by the scheme, and

- (b) in the case of Communal Land, persons entitled in terms of the Communal Land Act [Chapter 20:04] to cultivate the land concerned shall be entitled, subject to the provisions of the scheme, to exercise the rights conferred on them by the scheme; and
- (c) the scheme shall be binding on the holder of the registered mining location concerned and on the miner, if any, thereof.

(12) Where a scheme has been approved by the Board under this section, any rights of cultivation conferred by section *one hundred and seventy-nine* in respect of the land to which the scheme relates shall be suspended for the duration of the scheme.

(13) Upon the approval of a scheme by the Board under this section the mining commissioner shall forthwith, without obtaining the authority of the Minister, reserve the ground covered by the scheme against prospecting and pegging under section *thirty-five*

for the period of the scheme.

(14) Upon the termination of a scheme, whether by effluxion of time or otherwise, the mining commissioner shall by notice posted at his office withdraw the reservation.

#### 181 Termination of scheme by miner

(1) Subject to this section, the miner of the registered mining location concerned or, if the location is not being mined, the holder thereof may at any time during the currency of an approved cultivation scheme terminate the scheme by giving written notice of termination to each of the landholding parties, either in person or by posting a registered letter to the ordinary postal address of the party concerned:

Provided that, if the miner is not the holder of the registered mining location, no notice of termination may be given unless the holder has agreed thereto and his agreement has been endorsed thereon and signed by him.

(2) A notice of termination of a scheme under subsection (1) shall specify the date on which the termination is to take effect which shall be a date not less than two months from the date of the giving of the notice of termination to the landholding parties:

Provided that, if notice has to be given to two or more landholding parties and is not given to them on the same day, the date so specified shall be not less than two months from the date of the last giving of such notice.

(3) Where notice of termination of a scheme has been given under this section-

- (a) the miner or, if there is no miner, the holder of the registered mining location shall on or before resumption of the land concerned pay to-
  - (i) in the case of land other than Communal Land, the occupier or, if there is no occupier, the owner of the land;
  - (ii) in the case of Communal Land, any rural district council established for the area concerned, for distribution to the persons entitled in terms of the Communal Land Act [Chapter 20:04] to cultivate the land;

such compensation as may be mutually agreed upon or, failing agreement, as may be determined, on the basis specified in the scheme, by the Board or by the Administrative Court on appeal from the determination of the Board under subsection (5);

(b) the scheme shall cease to be of effect and the miner or holder, as the case may be, may resume possession of the land to which the scheme related-

- (i) on the date specified for that purpose in the notice of termination; or
- (ii) where the compensation referred to in paragraph (a) has not been paid before the date referred to in subparagraph (i), as soon as that compensation has been paid.

(4) Notwithstanding subsection (3), no person shall be disturbed in his cultivation of land under a scheme terminated under this section until he has had time to reap at the proper season any annual crops sown before the date of receipt of the notice of termination by-

- (a) in the case of land other than Communal Land, the occupier of the land;
- (b) in the case of Communal Land, the rural district council, if any, established for the area concerned.

(5) If either party is dissatisfied with the determination of compensation by the Board for the purposes of subsection (3), he may appeal against that determination to the Administrative Court.

#### 182 Termination of scheme by consent

(1) An approved cultivation scheme may at any time be terminated, either as to the whole or a part of the area covered thereby, by the mutual consent of the landholding and mining parties affected by the scheme.

(2) Where a scheme is terminated under subsection (1)



the parties involved in such termination shall forthwith inform the mining commissioner of the termination and the mining commissioner shall notify the Board.

(3) Any person who fails to comply with subsection (2) shall be guilty of an offence and liable to a fine not exceeding one hundred dollars or to imprisonment for a period not exceeding three months.

### 183 Board may cancel scheme

(1) Where the owner or occupier of any land, other than Communal Land, to which an approved cultivation scheme relates has in the opinion of the Board failed adequately to exercise his rights under the scheme, the Board may call upon him to show cause why the scheme should not be cancelled and, if the owner or occupier fails to show such cause to the satisfaction of the Board, the Board may, after consultation with the Minister responsible for agriculture cancel the scheme.

(2) Where the persons entitled in terms of the Communal Land Act [*Chapter 20:04*] to cultivate Communal Land to which an approved cultivation scheme relates have in the opinion of the Board failed adequately to exercise their rights under the scheme, the Board may call upon any rural district council established for the area concerned to show cause why the scheme should not be cancelled, and, if the rural district council fails to show such cause to the satisfaction of the Board, the Board may cancel the scheme.

### 184 Resumption of rights by miner

On the expiry of the period of an approved cultivation scheme or on the termination of a scheme under section *one hundred and eighty-two* or the cancellation of a scheme under section *one hundred and eighty-three*, the miner or if there is no miner, the holder of the registered mining location concerned may exercise his full rights in respect of the registered mining location or part thereof, as the case may be, without payment to any person for or in respect of anything done in the exercise of any rights under the scheme.

### 185 Termination of scheme on forfeiture or abandonment of location

(1) Subject to subsection (3) of section *two hundred and seventy-two*, if title to a mining location to which an approved cultivation scheme relates is extinguished by forfeiture or abandonment or in any other manner before the period of the scheme expires, the scheme shall be deemed to have been terminated and Part V shall thereafter apply to or in respect of so much of the land covered by the scheme as comes within the definition of "land under cultivation" contained in section *thirty*.

(2) Where a portion of a mining location to which an approved cultivation scheme relates is abandoned before the period of the scheme expires, the scheme shall be deemed to have been terminated in respect of that portion of the location which has been abandoned and Part V shall apply to so much of the abandoned portion as comes within the definition of "land under cultivation" contained in section *thirty*.

### 186 Scheme to bind successors in title

Unless an approved cultivation scheme is terminated or deemed to have been terminated or is cancelled before the expiry of the period thereof, the scheme and sections *one hundred and eighty to one hundred and eighty-five* shall for the period of the scheme apply to or in respect of and be binding on-

- (a) any person to whom the mining location to which the scheme relates is transferred and on any miner thereof; and
- (b) any person to whom land, other than Communal Land, covered by the scheme is transferred and on any occupier thereof; and
- (c) any person becoming entitled in terms of the Communal Land Act [*Chapter 20:04*] to cultivate any Communal Land covered by the scheme:

Provided that, where a scheme has been terminated under section *one hundred and eighty-two* as to part only of the area covered thereby, this section shall apply in relation to the remainder of the area.

### 187 Inspection certificates and payments to landowners during period of agreement

During the currency of an approved cultivation scheme-

- (a) any inspection certificate falling due in respect of the registered mining location to which the scheme relates shall, notwithstanding anything contained in Part XI, be obtainable, without any work having been executed for the purpose, on payment of the fee referred to in section *two hundred*; and
- (b) neither the owner of the land concerned nor, in the case of Communal Land, the President shall be entitled to any payment under section *one hundred and eighty-eight* in respect of such location which would otherwise be due for the period of the scheme.

### 188 Payments to landowners

(1) In this section-



“block” does not include an underground extension block;

“producing mining location” means a block, mining lease or special grant in respect of which there have been rendered under section *two hundred and fifty-one* returns of minerals or mineral-bearing products won from the block, mining lease or special grant, as the case may be, during at least two months of the period to which an application made under subsection (2) relates;

“special grant” means a special grant to carry out mining operations issued under Part XIX or a special grant issued under Part XX.

(2) Subject to any regulations, every owner of a holding of private land shall, on application to the mining commissioner made on the prescribed form and within such period as may be prescribed and on furnishing such evidence as may be required by the mining commissioner to substantiate his claim, be entitled to the following payments for any period falling within the year ending on the previous 31st December during which a registered mining location situated upon his land was held-

- (a) in respect of a site or a producing mining location, the appropriate sum prescribed for the purposes of this paragraph;
- (b) where paragraph (a) does not apply, in respect of any registered block, mining lease or special grant, the appropriate sum prescribed for the purposes of this paragraph which shall be a sum smaller than the corresponding sum prescribed by the purposes of paragraph (a):

Provided that, where the whole or any part of the period during which the location was held is covered by an order issued by the Board under subsection (4), the sum to be paid for that period or that part of that period, as the case may be, shall be the sum specified by the Board in its order.

(3) The owner of any holding of private land on which a registered mining location is situated may apply in writing to the Board for an order authorizing increased payments in respect of that location.

(4) On receipt of an application under subsection (3) the Board may, if satisfied that-

- (a) on account of mining operations, whether past or present, on the registered mining location concerned, the applicant is denied the use of the surface of the location or a substantial portion thereof; and
- (b) it is in all the circumstances reasonable that payments in respect of the registered mining location concerned

should be made at a rate higher than the appropriate rate prescribed for the purposes of paragraph (b) of subsection (2);

make an order specifying for the purposes of the proviso to paragraph (b) of subsection (2) a sum which shall be greater than the appropriate sum prescribed for the purposes of that paragraph but not greater than the sum prescribed for the purposes of paragraph (a) subsection (2).

(5) An order made by the Board under subsection (4) may-

- (a) be made in respect of-
  - (i) the year preceding the year in which the application for the order is made:

Provided that no owner shall be entitled by virtue of an order having been made to any additional payment for a period for which payment has already been made to any person under subsection (2); and

- (ii) a definite or an indefinite period;
- (b) at any time be amended or revoked by the Board.

(6) The Board shall forthwith notify the mining commissioner and the owner of the land concerned of every order made under subsection (4) and of any amendment or revocation thereof.

(7) Subsections (2) to (6) shall apply in respect of Communal Land as if all Communal Land within the area under the jurisdiction of any one rural district council were a holding and the rural district council were the owner thereof:

Provided that any payments due in terms of subsection (2) in respect of such Communal Land shall be paid to the District Development Fund referred to in section 3 of the District Development Fund Act [*Chapter 29:06*].

(8) Notwithstanding anything contained in this section, an owner of land shall not be entitled to receive the payments referred to in subsection (2) if he or his spouse or any child of either of them holds any direct or indirect pecuniary interest in the mining location concerned, other than the payments referred to in this section or in section *two hundred and thirty-two* or an entitlement to a share in the royalties due on minerals, mineral oils or natural gases won from that mining location

(9) For the purposes of subsection (8), a person shall not be regarded as holding a pecuniary interest in a mining location solely by reason of his ownership of shares in a public company unless-



(a) his shareholding is such that he has: or

(b) where any other person referred to in subsection (8) owns shares in the same company, their combined shareholding is such that they have;

a controlling interest in the company.

(10) If the owner of a holding of land is entitled to any share in the royalties due on minerals, mineral oils or natural gases won from that holding of land and he invokes that entitlement by claiming a share of any royalties paid thereon in respect of any one year ending on the 31st December, he shall not be entitled to any payments in terms of this section in respect of any mining location on that holding of land for that year.

(11) From and after the 1st January, 1974, any condition in a title deed to any piece of land in terms of which payments due to the owner of the land under this section are payable to any person other than the owner of the land shall be regarded as *pro non scripto* and the rights possessed by any such person in terms thereof shall lapse with effect from that date, and it shall not be lawful to include any such condition in any title deed to any piece of land.

(12) Nothing in this section contained shall be deemed to deprive the owner of any holding of land held under the title known as the Matabeleland Volunteer Right (Victoria Agreement) of any rights conferred by such title:

Provided that an amount equal to five *per centum* of any amount due under such title shall be deducted as the cost of collection.

(13) All moneys payable in terms of this section shall be defrayed from moneys appropriated for the purpose by Act of Parliament.

#### **189 Miner to fence mining location adjacent to pasture land**

(1) Where the owner or occupier of any land has fenced off a portion of such land for the purpose of depasturing stock, the mining commissioner may, on application by such owner or occupier, direct any miner who is carrying on mining operations within the area so fenced off, to fence off in the manner prescribed the whole or any portion of his mining location within such period as the mining commissioner may specify.

(2) If the miner fails to comply with such direction within the period specified, the owner or occupier may himself fence off the whole of the mining location and may recover the cost thereof from the miner.

#### **190 Trading on mining locations**

(1) For the purposes of subsection (3) "liquor" has the meaning assigned to it in the Liquor Act [Chapter 14:12].

(2) No person shall erect upon any registered mining location any building for the purpose of trading in any way with the public or for any other business not legitimately connected with and necessary for the purposes of such location, or carry on any such business upon such location except when authorized thereto by the Secretary with the consent of the holder of such location and, unless the title deed of the land on which such location is situated is such that the consent of the owner of the land is not required, with the consent of the owner of the land.

(3) In giving his consent, such holder of owner, as the case may be, shall state whether or not the right to trade in liquor is included, and the Secretary shall, in granting his authority, state accordingly whether or not such right is included.

#### **191 Agreement as to use of private water**

The use of any private water on private land may be acquired by a miner requiring the use thereof for mining purposes upon such terms and conditions as may be mutually agreed upon between such miner and the owner of the private water.

#### **192 Registration of agreement**

Any agreement between a landowner and a miner as to the use of private water may be reduced to writing and registered at the office of the mining commissioner.

#### **193 Right of miner to private water on State land**

Private water may be taken free of charge by a miner from any source of supply existing upon State land which is both unalienated and unoccupied, under such conditions as may in each case be fixed by the President.

#### **194 Public water**

The right of any miner to the use of any public water for purposes other than primary purposes shall be regulated by the Water Act [Chapter 20:22].

#### **195 Subterranean water and storm-water**

(1) In subsection (2)-

"storm-water" has the meaning given by section 2 of the Water Act [Chapter 20:22].



(2) The use of any water issuing from or brought to the surface of the ground from the subterranean working of any mining location, provided the presence of such water in such workings is not due to a contravention of any provisions of this Act, and of any storm-water conserved by a dam or reservoir constructed by the holder of any mining location on such mining location or on any site attached to such mining location, which, but for such dam or reservoir, would have run to waste, shall, to the extent to which it may be required for the necessary purposes of such location or of any other mining location in the same vicinity, be vested in the holder of such location.

#### **196 Owner or occupier of land may appoint agent**

(1) The owner or occupier of any land may register with the mining commissioner or with the Board the name and postal address of a person appointed by such owner or occupier to represent him as his agent in any matter arising under this Act.

(2) Every such appointment shall be valid for a period of twelve months, but may be renewed from time to time for like periods.

## **PART XI**

### **PRESERVATION OF MINING RIGHTS**

#### **197 First inspection certificates**

(1) Except as otherwise provided in this Act, the holder of any block of base mineral claims or of any block of reef or placer deposit claims registered for precious metals or of any mining lease shall, within a period of six months from the date of registration of such block or the issue of such mining lease, as the case may be, apply to the mining commissioner for and obtain a first inspection certificate therefor in respect of work executed upon such block or mining lease.

(2) A certificate issued in terms of subsection (1) shall protect the block or the mining lease from forfeiture for a period of twelve months from the date of registration of the block or the date of issue of the mining lease, as the case may be.

(3) Subsection (1) and (2) shall not apply to a mining lease upon which the principal mineral being mined or to be mined is precious stones.

#### **198 Second inspection certificates**

(1) Within a period of twelve months from the date of the registration of such block or the issue of such mining lease, the holder thereof shall apply to the mining commissioner for and obtain a second inspection certificate therefor in respect of work executed upon such block or mining lease.

(2) A certificate issued in terms of subsection (1) shall protect the block or mining lease from forfeiture for a period of twelve months from the date of expiry of the first inspection certificate.

#### **199 Subsequent inspection certificates, etc.**

(1) During each succeeding period of twelve months, beginning from the date of expiry of the first inspection certificate, the holder of a registered block or mining lease shall apply to the mining commissioner for and obtain an inspection certificate in respect of work executed upon such block or mining lease.

(2) A certificate issued in terms of subsection (1) shall protect the block or mining lease from forfeiture for a period of twelve months from the date of expiry of the last inspection certificate.

(3) Notwithstanding subsections (1) and (2), if the mining commissioner has reason to believe that any registered block or mining lease has not been worked at all, or has not been adequately developed or worked for a period of one year from the date of registration of such block or the issue of such mining lease, as the case may be, he shall defer the issue of an inspection certificate and refer the matter to the Board for investigation.

(4) If, in the light of an investigation carried out in terms of subsection (3), the Board is satisfied that the registered block or mining lease has not been worked at all, or has not been adequately developed or worked for a period of one year from the date of registration of such block or the issue of such mining lease, the Board shall call upon the holder of such block or mining lease to make representations to it as to why such block or mining lease should not be forfeited.

(5) After considering any representations made by the holder in terms of subsection (4), unless the Board finds that-

- (a) the failure to develop or work, or adequately to develop or work such block or mining lease, is due to circumstances beyond the control of the holder and that he has made every effort to overcome them; or
- (b) it is the holder's declared intention to start or continue developing or working the block or mining lease within a period of six months on a scale satisfactory to the Board; or



- (c) there is reasonable cause for the delay in developing or working the block or mining lease or for not adequately developing or working such block or mining lease; or
- (d) the block forms part of a series of not more than ten blocks contiguous to a main block being worked by the holder and is essential to the proper working of such main blocks;

the Board shall order the mining commissioner to forfeit forthwith the registered block or mining lease, and shall notify the holder accordingly.

(6) A person aggrieved by a decision of the Board in terms of this section may appeal to the Minister against such decision within thirty days of the notification thereof.

(7) The noting of an appeal in terms of subsection (6) shall suspend the forfeiture of the registered block or mining lease until the Minister's decision on the appeal has been given.

(8) Upon an appeal in terms of subsection (6), the Minister may confirm the forfeiture or set it aside.

#### **200 Particulars to accompany application of or inspection certificate**

Every application for an inspection certificate, except as otherwise provided in this Act, shall be accompanied by a certificate by the applicant declaring the nature and extent of the work which has been executed and that none of such work has previously been used for the purpose of obtaining an inspection certificate or a certificate of extra work, and by the prescribed fee.

#### **201 Mining commissioner may order inspection of development work**

(1) Where an inspection certificate is applied for in respect of development work, the mining commissioner may, before issuing the inspection certificate, order an inspector or mines or any other official of the Ministry responsible for mines to inspect the work and measure it.

(2) The mining commissioner shall give notice to the holder of the block or the mining lease concerned of such inspection, and such holder shall, if so required by the mining commissioner, be present at such inspection and afford all facilities and information necessary for measuring.

#### **202 Issue of inspection certificate**

On receipt of the certificate mentioned in section *two*

*hundred* and the prescribed fee, the mining commissioner shall issue to the applicant an inspection certificate:

Provided that the mining commissioner may refuse to issue such certificate if he is not satisfied that any work declared has been executed *bona fide* for the purposes of developing minerals or locating the reef in the block of mining lease concerned.

#### **203 Work defined**

For the purposes of this Part-

"work" includes-

- (a) development work as defined in section *two hundred and eight*;
- (b) the production of minerals;
- (c) capital expenditure;
- (d) such other work in connection with a mining location as the Minister may from time to time, by statutory instrument, declare to be work for the purposes of this section.

#### **204 Period within which work to be executed**

The work required to be executed for obtaining an inspection certificate shall-

- (a) in the case of the first inspection certificate, be executed within a period of six months from the date of registration of the block or the date of the issue of the mining lease, as the case may be;

Provided that-

- (i) development work performed by the holder of a prospecting licence subsequent to the posting of his prospecting notice may be declared for the purpose of obtaining such inspection certificate for such block;
- (ii) in the case of the first inspection certificate for a mining lease, any work performed by the holder thereof within a period of twelve months before the date of the issue of the lease upon any registered mining location in respect of which the lease was issued may be declared for the purpose of obtaining such inspection certificate;
- (b) in the case of the second inspection certificate, be executed within a period of twelve months from the date of the registration of the block or the date of the issue of the mining lease, as the case may be;
- (c) in the case of the third or subsequent inspection cer-



tificate, be executed during the period for which the last issued inspection certificate was valid:

Provided that if more than the amount of work prescribed in this Part has been executed during that period, any excess of such work may be used for the purpose of obtaining the two next succeeding inspection certificates.

#### **205 Amount of work required to obtain inspection certificates for blocks pegged under ordinary prospecting licences**

(1) The amount of work required to obtain an inspection certificate for a block of claims, whether pegged under an ordinary prospecting licence or a special prospecting licence, shall be-

- (a) in the case of development work on-
  - (i) a block of base mineral claims, five metres;
  - (ii) a block of precious metal claims, ten metres;
- (b) in the case of the production of minerals, such quantity or value as may be prescribed in respect of the mineral for which the block is registered;
- (c) in the case of capital expenditure on-
  - (i) a block of base mineral claims, four hundred dollars;
  - (ii) a block of precious metal claims, two hundred and fifty dollars;
- (d) in the case where other work has been prescribed under paragraph (d) of section *two hundred and three*, such amount as may be prescribed;

for every five claims or portion of five claims registered for the block:

Provided that the amount of work required for obtaining a first or second inspection certificate shall be fifty *per centum* of the work prescribed in paragraph (a), (b) or (c).

(2) In prescribing the quantity or value of minerals for the purposes of paragraph (b) of subsection (1), the Minister may prescribe different quantities or values for different minerals.

#### **206 Inspection by survey**

The holder of a registered block of reef or placer deposit claims who lodges with the mining commissioner a survey plan of his block completed by a land surveyor may apply for and obtain one inspection certificate for such block on payment of the prescribed fee for each such certificate.

#### **207 When development work not required for precious metal claims**

(1) If the holder of a registered block of precious metal reef or placer deposit claims satisfied the Board that-

- (a) no development work is required for the proper working of such block by reason of the nature of the deposits of the precious metal; or
- (b) no further development work is required for the proper working of the block by reason of the fact that such block has already been thoroughly developed;

the Minister may upon the application of such holder authorize the issue of an inspection certificate for such block upon the payment of the prescribed fee.

(2) If the holder of a block of precious metal reef or placer deposit claims satisfied the Board that he was unable to carry out *bona fide* development work upon such block owing to circumstances which were entirely beyond his control, the Minister may upon the application of such holder authorize the issue of an inspection certificate for such block upon the payment of the prescribed fee.

(3) Lists of blocks for which inspection certificates have been issued in terms of this section shall from time to time be posted on a board to be exhibited in some conspicuous way outside the office of the mining commissioner.

#### **208 Development work defined**

(1) Development work shall consist of shafts, drives, adits or tunnels, winzes, rises and boreholes, and shall be performed for the purpose of developing the mineral contained within the mining location.

(2) Development work shall include trenching or excavation of a minimum depth of one metre which has been performed for the tracing of a reef or the proving of a deposit:

Provided that-

- (i) the trenching or excavation may only be utilized for obtaining first and second inspection certificates; and
  - (ii) each seven cubic metres of trenching or excavation shall count as one metre of development work.
- (3) Development work shall be new work and not the restoration or cleaning out of development work previously done
- (4) The minimum dimensions of development work, and the ratio in which work of larger dimensions or at cer-



tain distances from the surface shall be allowed to be reckoned as development work, shall be as fixed and prescribed in the First Schedule.

(5) The Minister may from time to time, by statutory instrument, declare any work in connection with a mining location not mentioned in subsections (1) and (2) to be development work for the purposes of this Part.

(6) Work may not be declared for the purpose of obtaining an inspection certificate in respect of development work to the extent that expenditure incurred in respect of that development work has been declared for the purpose of obtaining an inspection certificate in respect of capital expenditure.

#### **209 Cleaning out, restoration and other work may be used under certain conditions**

(1) Notwithstanding subsection (3) of section *two hundred and eight*, where *bona fide* work in connection with cleaning out, dewatering or restoration of old workings on a mining location is to be undertaken with a view to the reopening of such mining location, and, in addition, it can be shown to the satisfaction of the mining commissioner that an expenditure of not less than two thousand dollars will be incurred in carrying out such cleaning out, dewatering or restoration work, the holder of such property may apply for and be granted, on completion of such work to the said value of two thousand dollars, one certificate of inspection in respect of the block on which the work has been done, and for each additional amount of one thousand dollars expended in excess of two thousand dollars one certificate of extra work.

(2) A certified statement showing the amount and nature of the work done shall be lodged with the mining commissioner, to whom one month's notice shall be given by the holder of the mining location of his intention to carry out the work with a view to reopening such mining location.

(3) Capital expenditure on plant shall not be taken into account in arriving at the valuation of the work carried out.

#### **210 Conditions for inspection by production**

(1) The Minister may, in special circumstances, on application by the miner and on the recommendation of the Board, reduce the quantity or value of minerals prescribed under section *two hundred and five* in respect of any mining location for the purpose of obtaining any particular inspection certificate.

(2) Where two or more minerals are produced from any mining location, the total value of such minerals shall be aggregated for the purpose of obtaining inspection certificates.

(3) For the purpose of obtaining an inspection certificate in respect of the production of minerals, the value of such minerals shall be the value thereof shown in the return referred to in subparagraph (i) of paragraph (a) of subsection (1) of section *two hundred and fifty-one*.

#### **211 Conditions for inspection by capital expenditure**

(1) For the purposes of section *two hundred and three*- "capital expenditure" does not include-

(a) the purchase price paid or other consideration given in respect of the acquisition of a mining location;

(b) expenditure incurred in the exercise of rights under an exclusive prospecting order.

(2) If any dispute arises as to whether any expenditure declared for the purpose of obtaining an inspection certificate is capital expenditure, the matter shall be referred to the Board, whose decision shall be final and without appeal.

(3) For the purpose of obtaining an inspection certificate in respect of capital expenditure, any capital expenditure incurred in respect of any mining location after the date of the registration of the block or the date of the issue of the mining lease, as the case may be, may, notwithstanding section *two hundred and four*, be declared unless such expenditure was incurred more than two years before the date on which it is declared.

(4) Where capital expenditure is incurred in respect of any property, such expenditure may be declared for the purpose of obtaining an inspection certificate for any block forming part of such property, and in such case no certificate of extra work shall be required for any such inspection certificate.

(5) For the purposes of subsection (4)-

"property" means two or more blocks of claims, whether contiguous or otherwise, owned by one person from which the ore is being treated at the same milling or reduction plant or which are under the control of one registered mine manager.

(6) Every declaration of capital expenditure for the purpose of obtaining an inspection certificate or a certificate of extra work shall be accompanied by a statement certified by the auditors of the applicant for the inspection certificate, setting out the amount of expenditure ranking as capital expenditure for the purposes of this Act and such other information relevant to the application as may be required by the mining commissioner.

(7) For the purpose of obtaining the first or second in-



spection certificate, any expenditure in respect of prospecting operations other than expenditure incurred in the exercise of rights under an exclusive prospecting order may be declared as capital expenditure.

(8) Expenditure incurred in respect of development work may not be declared for the purpose of obtaining an inspection certificate in respect of capital expenditure to the extent that development work has been declared for the purpose of obtaining an inspection certificate in respect of development work.

### **212 Inspection certificates for base mineral blocks obtainable by payment**

(1) Subject to subsection (3) of section *one hundred and ninety-nine*, the holder of a registered block of base mineral reef or placer deposit claims may, from time to time, when an inspection certificate falls due, obtain such certificate upon payment to the mining commissioner of the prescribed sum for every five claims or portion of five claims registered for the block.

(2) If the mining commissioner has reason to believe that any block of base mineral claims has been pegged or is being held for any purpose other than *bona fide* mining purposes, he may report the matter to the Board, and the Board may order that no inspection certificate may be obtained in respect of such block under this section except with the approval of the Board or may, if it thinks fit, order the mining commissioner to declare such block to be forfeited.

(3) The Board shall not approve of the issue, under subsection (2), of more than one inspection certificate at a time.

(4) The Board may at any time discharge an order made under subsection (2).

(5) Where the Board has under subsection (2) ordered the mining commissioner to declare a block to be forfeited, the mining commissioner shall forthwith, whether or not such block is currently protected from forfeiture by an inspection or protection certificate issued in terms of this Part, declare it to be forfeited.

(6) If the Minister is satisfied that the general market conditions prevailing in respect of or any other circumstances relating to any base mineral are such as to discourage the production of such mineral, he may, upon the application in writing made to the Board by the holder of any block registered for such mineral and upon the recommendation of the Board, reduce the fee prescribed under subsection (1) in respect of any certificate due at the date of such application or which will become due within a period of twelve months from such date:

Provided that-

(i) the Minister shall not so reduce the fee unless he is satisfied that such market conditions or circumstances, as the case may be, have prevailed for a period of at least two years immediately preceding the date of the application;

(ii) the Minister shall not so reduce the fee to an amount which is less than one-half of such prescribed fee.

(7) The Minister may in like manner and in like proportions reduce the fee prescribed under subsection (3) of section *two hundred and twenty-one* for mining leases upon which such mineral is the principal mineral being mined or to be mined.

(8) If the Minister is satisfied that the general market conditions prevailing in respect of or any other circumstances relating to any base mineral are such as to discourage the production of such mineral, he may, by statutory instrument, declare that during such period as may be specified in such notice, the fee payable under subsection (1) for inspection certificates which fall due within such period for all blocks registered for such mineral shall be reduced to such amount as may be specified in such notice:

Provided that-

(i) the Minister shall not so reduce the fee unless he is satisfied that such market conditions or circumstances, as the case may be, have prevailed for a period of at least two years immediately preceding such declaration;

(ii) the Minister shall not so reduce the fee to an amount which is less than one-half of such prescribed fee;

(iii) the period specified in such notice shall not exceed one year, but the Minister may in like manner and from time to time reduce the fee for further periods not exceeding one year at a time.

(9) During the period of any reduction or inspection fees in terms of subsection (8) the fee payable for inspection certificates under subsection (3) of section *two hundred and twenty-one* for mining leases on which such mineral is the principal mineral being mined or to be mined shall be deemed to have reduced in like proportions.

### **213 Extra work certificates**

(1) Notwithstanding sections *one hundred and ninety-seven*, *one hundred and ninety-eight* and *one hundred and ninety-nine*, when any work has been executed on any block of claims while such block was still subject to



those sections, in respect of which work an inspection certificate or a certificate of extra work has not previously been obtained, the holder may, upon giving a certificate under his hand to that effect and describing the nature and extent of such work, apply for and obtain from the mining commissioner a certificate of extra work so executed.

(2) In like manner a holder may, on complying with subsection (2) of section *two hundred and nine*, obtain a certificate of extra work.

(3) A certificate of extra work may not be applied for in respect of work executed more than twelve months before the date of application for such certificate:

Provided that capital expenditure may be used for the purpose of obtaining such a certificate if such expenditure was incurred within two years of the date of application for such certificate.

**214 Availability of extra work certificates**

(1) For the purposes of subsection (4)-

“property” means two or more blocks of claims, whether contiguous or otherwise, owned by one person from which the ore is being treated at the same milling or reduction plant or which are under the control of one registered mine manager.

(2) A certificate of extra work may be used for the purpose of obtaining an inspection certificate for any other block which is registered in the name of the person to whom such certificate was issued or in which such person has a registered interest of not less than one-half and which is contiguous to, or forms part of a series of blocks in which such person has a registered interest of not less than one-half and which are contiguous to, the block on which the work was executed, and for that purpose the work in respect of which the certificate of extra work was issued shall be regarded as if executed on the block for which the inspection certificate is to be obtained:

Provided that-

- (i) the number of blocks covered by inspection certificates issued in respect of certificates of extra work which have been obtained by virtue of work executed on any one block shall, in the case of precious metal blocks, at no time exceed ten;
- (ii) in the case of a certificate of extra work issued in respect of work executed upon a block registered for chrome or mica, such certificate may be used under like conditions for the purpose of obtaining an inspection certificate for any other block registered for the same mineral as the first-mentioned block,

whether or not such other block is situated in the same mining district as the first-mentioned block and whether or not it is contiguous to the block on which the work was executed.

(3) In like manner, a certificate of extra work issued in respect of work executed on a block registered in the names of two holders in equal undivided interests may be used for the purpose of obtaining an inspection certificate for any other block registered in the name of either of such holders in such manner as may, by written agreement to be filed with the mining commissioner, be agreed upon between them.

(4) Notwithstanding the limitation contained in subsection (1), a certificate of extra work issued in respect of work executed on a block of precious metal claims shall, on the authority of the Board and under like conditions, be available for obtaining an inspection certificate of a block which forms part of a series of not more than twenty blocks contiguous to the block upon which the work was executed:

Provided that-

- (i) the Board shall not grant such authority unless it is satisfied that-
  - (a) the holder of the block for which the inspection certificate is to be obtained is carried on mining operations to the limit of his resources as far as plant, materials and labour are concerned; and
  - (b) distribution of work over the blocks would not be in the best interests of his mining operations; and
  - (c) all the blocks for which inspection certificates are to be obtained are necessary for the proper working of the property of which such first-mentioned block forms a part and that such holder has a registered interest of not less than one-half in such blocks;
- (ii) the number of blocks covered by inspection certificates issued under this subsection shall at no time exceed twenty.

**215 Work executed by option holders or tributors**

If work has been executed by any person on a block registered in the name of another but over which such person has an option or a tribute which has been approved in terms of Part XVII, such work, after providing for the inspection certificate next due for such block, shall be apportioned in accordance with the terms of a written agreement entered into for that purpose between the holder of the block and the holder of the option or the tributor, as the case may be:

Provided that-



- (i) the work so apportioned to the option holder or tributor shall, subject to sections *two hundred and thirteen* and *two hundred and fourteen*, be regarded as if executed upon any other block registered in his name or over which he holds an option or tribute:
- (ii) in the case of an option, a duplicate original, grosse or notarially certified copy of the agreement shall be filed with the mining commissioner before a certificate of extra work is issued;
- (iii) the option holder or tributor shall obtain such certificate of extra work during the period of the operation or tribute, as the case may be, or within fourteen days of the expiration thereof.

#### 216 Filing of extra work certificates

The mining commissioner to whom any certificate of extra work is presented for the purpose of obtaining an inspection certificate shall retain and file such certificate of extra work.

#### 217 Protection certificates for blocks

- (1) The Secretary may authorize a mining commissioner to grant protection certificate in respect of any block of reef or placer deposit claims.
- (2) A protected block shall not, during the period of protection, be liable to forfeiture for any failure to take out an inspection certificate, but the date on which inspection certificates fall due shall be as prescribed in sections *one hundred and ninety seven*, *one hundred and ninety-eight* and *one hundred and ninety-nine*, and any inspection certificate which may be due shall be obtained on or before the expiry of the protection certificate.
- (3) The Minister may, in circumstances which he may deem exceptional, by notice in writing to the holder of the blocks concerned, grant protection for any period in respect of any number of blocks or class of blocks or for all blocks situated in a particular area.
- (4) A block protected under subsection (3) shall not, during the period of protection, be liable to forfeiture for failure to obtain an inspection certificate, and the period within which the first or the next inspection certificate, as the case may be, has to be obtained in respect of any such block shall be extended by a period equal to the period of such protection.
- (5) The fee payable for a certificate in terms of subsection (1) or the grant of protection in terms of subsection (3) shall be as prescribed:

Provided that the Minister may remit, in whole or in part,

any fee payable for the grant of protection in terms of subsection (3).

#### 218 Precious stones blocks to be worked continuously

- (1) The holder of a block of precious stones claims shall continuously work his claims from the date of registration of such block and shall pay to the mining commissioner annually in advance the prescribed fee in respect of such block.
- (2) The Board may, on the application of such holder-
  - (a) exempt him from the obligation continuously to work such claims for such period as it may deem fit;
  - (b) where such block forms part of a group of contiguous blocks of precious stones claims owned by such holder, authorize him to restrict his work to any one or more of such blocks.
- (3) The holder of a mining lease upon which the principal mineral being mined or to be mined is precious stones shall continuously work such lease from the date of issue thereof and shall, in respect of such mining lease, pay to the mining commissioner annually in advance the prescribed fee.

- (4) The Board may, on the application of the holder of a mining lease referred to in subsection (3), exempt him from the obligation continuously to work such mining lease for such period as it may deem fit.

#### 219 Alluvial, eluvial, rubble deposit and dump precious metal claims to be worked continuously

- (1) The holder of a block of precious metal claims which are registered as alluvial, eluvial, rubble deposit or a dump claims shall continuously work his claims from the date of registration of such block and shall pay to the mining commissioner annually in advance the prescribed fee.
- (2) The Board may, on the application of such holder-
  - (a) exempt him from the obligation continuously to work such claims for such period as it may deem fit;
  - (b) where such block forms part of a group of contiguous blocks of claims similarly registered, authorize him to restrict his work to any one or more of such blocks.

#### 220 Unutilized dumps

- (1) Where the Minister has cause to believe that any dump on any registered mining location appears to be unutilized, the Minister may direct the Board to investi-



- (a) whether or not the dump is economically viable; and
- (b) whether the dump is in fact unutilized and, if so, the reasons therefor.

(2) In making an investigation in terms of subsection (1), the Board shall take into account-

- (a) the length of time that the dump has not been worked; and
- (b) the reasons, if any, given by the holder of the registered mining location concerned as to why the dump has not been worked; and
- (c) the intentions of the holder of the registered mining location concerned in regard to the future working of the dump; and
- (d) any other relevant factors bearing on the matter.

(3) At the conclusion of the investigation carried out in terms of subsection (2), the Board shall submit a report to the Minister advising whether or not it considers the dump to be unutilized, and whether or not the dump is economically viable, and shall forward a copy thereof to the holder of the registered mining location concerned.

(4) A holder of a registered mining location may, upon receipt of a copy of a report in terms of subsection (3) submit his comments thereon to the Minister for consideration.

(5) Where the Board reports that it considers the dump to be unutilized and that is economically viable, the Minister may, if he considers it to be in the public interest to do so, direct the holder of the registered mining location concerned to work the dump himself or to tribute it so that it can be worked by someone else, within such reasonable period as the Minister may specify.

**221 Amount of work required and fees payable to obtain inspection certificates for mining leases**

(1) The amount of work required to obtain an inspection certificate for a mining lease shall be-

- (a) in the case of development work-
  - (i) if the principal mineral being mined or to be mined is a base mineral, five metres;
  - (ii) if the principal mineral being mined or to be mined is a precious metal, ten metres;
- (b) in the case of production of minerals, such quantity or value as may be prescribed in respect of the prin-

cipal mineral being mined or to be mined upon the mining lease;

(c) in the case of capital expenditure-

- (i) if the principal mineral being mined or to be mined is a base mineral, four hundred dollars;
- (ii) if the principal mineral being mined or to be mined is a precious metal, one thousand dollars;
- (d) in the case where other work has been prescribed under paragraph (d) of section *two hundred and three*, such amount as may be prescribed;

for every five hectares or portion of five hectares contained in the area covered by the mining lease:

Provided that the amount of work required for obtaining a first or second inspection certificate shall be fifty *per centum* of the work prescribed in paragraph (a), (b) or (c).

(2) For the purpose of obtaining an inspection certificate for a mining lease, the holder may declare work of any of the kinds specified in section *two hundred and three*.

(3) For the purpose of obtaining any particular inspection certificate for a mining lease, the holder may declare work of one or more of the kinds of work specified in section *two hundred and three* and, if sufficient work has not been executed to obtain the inspection certificate, he may, if the principal mineral being mined or to be mined is a base mineral, make up the deficiency by the payment of the prescribed sum for every five hectares or portion of five hectares contained in the area covered by the mining lease not account for by the execution of work.

(4) For the purposes of this section, the Board shall determine which mineral is the principal mineral being mined or to be mined upon a particular mining lease and may from time to time reconsider and alter its determination.

**PART XII**

**WORKING OF ALLUVIAL, ELUVIAL AND CERTAIN OTHER DEPOSITS**

**222 Control of working of alluvial or eluvial deposits of designated minerals**



(1) In this section-

"designated mineral" means chromite and any other mineral declared to be a designated mineral in terms of subsection (2); -

"working period" means a period notified by a miner under an order issued in terms of section *two hundred and twenty-five* as the period during which he proposes to conduct operations, including, where required by the order, the rehabilitation of the surface of the land worked, on the land concerned and includes any extension of such period permitted under the order.

(2) The Minister may, by statutory instrument, declare any mineral to be a designated mineral for the purposes of this section and may in like manner revoke any such declaration.

(3) No person shall work any alluvial or eluvial deposit of a designated mineral except under an order issued in terms of section *two hundred and twenty-five*.

(4) The miner of any alluvial or eluvial deposit of a designated mineral in respect of which an order has been issued in terms of section *two hundred and twenty-five* shall, before commencing or continuing operations under the order on-

- (a) a block pegged under an ordinary prospecting licence, pay to the mining commissioner a levy consisting of the prescribed sum for every claim or portion of a claim registered for such block for every year ending on the 31st December or portion of such year falling within any working period relating to that block;
- (b) any part of a block pegged under a special prospecting licence, a mining lease or a special grant or, where a portion only of a block, mining lease or special grant is subject to the order, any part of that portion, pay to the mining commissioner a levy consisting of the prescribed sum for every hectare or portion of a hectare in that part for every year ending on the 31st December or portion of such year falling within any working period relating to that part.

(5) Where-

- (a) an alluvial or eluvial deposit of a designated mineral other than chromite was being worked immediately before the date on which the mineral concerned became a designated mineral in terms of subsection (2);
- (b) there was not at that time in force in relation thereto an order issued before 1st January, 1974, which is deemed to have been issued under section *two hun-*

*dred and twenty-five* or an order issued under section *two hundred and twenty five*;

provisions of subsection (3) shall not apply to the working of that deposit until-

- (i) an order is issued in terms of section *two hundred and twenty-five* or the expiry of the period of three months commencing on the date on which the mineral becomes a designated mineral, whichever is the sooner; or
- (ii) where, during the period of three months referred to in subparagraph (i), an application for an order has been made in terms of section *two hundred and twenty-three* and the application has not been determined, the determination of the application.

### **223 Application for order controlling working of such deposits**

(1) Any person wishing to work a deposit referred to in subsection (3) of section *two hundred and twenty-two* shall make application in writing to the Board for an order prescribing the manner of and conditions governing the working of the deposit.

(2) An application referred to in subsection (1) shall specify details of the proposed method of working the deposit and shall be supported by a plan, based on a map issued under the authority of the State and of a scale of not less than 1:25 000, showing the registered mining location concerned:

Provided that, where, in the case of a block pegged under a special prospecting licence, a mining lease or a special grant, a portion only thereof is proposed to be covered by the order, that portion shall be accurately shown on the plan.

(3) The applicant shall send a copy of his application and the supporting plan to-

(a) the Natural Resources Board; and

(b) where the land affected by the application is-

(i) State land, the Minister responsible for the administration of that land;

(ii) Communal Land, any rural district council established for the area concerned;

(iii) private land, the owner and the occupier, if any.

(4) An application in terms of this section may relate to more than one mining location.

**224 Application for order in respect of certain other deposits or reefs**

- (1) This section shall apply to the working of-
- (a) any deposit of any mineral the working of which interferes with or is likely to interfere with the bed, banks or course of a public stream or any swamps or marshes forming the source of a public stream or found along its course; and
  - (b) any alluvial or eluvial deposit or rubble or placer deposit of a mineral other than a designated mineral as defined in section *two hundred and twenty-two*; and
  - (c) any chromite reef carried out by surface strip-mining using open-cast workings
- (2) Where any working referred to in subsection (1) is being carried out or is about to be commenced, written application may be made to the Board by-
- (a) in respect of any land, the Natural Resources Board;
  - (b) where the land concerned is-
    - (i) State land, the Minister responsible for the administration of that land;
    - (ii) Communal Land, any rural district council established for the area concerned;
    - (iii) private land, the owner or the occupier, if any;
- for an order prescribing the manner of and conditions governing the working of the deposit or reef concerned.
- (3) Any application referred to in subsection (2) shall specify-
- (a) the registered mining location concerned; and
  - (b) the proposed contents of the order applied for.
- (4) The applicant shall send a copy of his application to the miner and to every other party entitled to make application in terms of subsection (2) in respect of the land concerned.
- (5) An application in terms of this section may relate to more than one mining location.

**225 Board may make order**

- (1) After hearing any evidence and representations made by the applicant and the other parties to whom copies of the application are required to be sent, the Board may

refuse an application made in terms of section *two hundred and twenty-three* or *two hundred and twenty-four* or may make an order prescribing the manner of and conditions governing the working of the deposit or reef.

- (2) An order made in terms of this section-
- (a) may contain provisions requiring the miner to rehabilitate the surface of any land worked;
  - (b) shall contain provisions requiring the miner to give notice of-
    - (i) every period during which he proposes to conduct operations, including, where required by the order, the rehabilitation of the surface of any land worked; and
    - (ii) the particular land within the area covered by the order on which such operations are proposed to be conducted;

to the mining commissioner and where the land concerned is-

- A. State land, to the Minister responsible for the administration of that land;
- B. Communal Land, to any district council established for the area concerned;
- C. private land, to the owner and the occupier, if any, thereof.

**226 Board may amend order**

(1) Where an order has been made in terms of section *two hundred and twenty-five* application for the amendment of the order may be made in writing to the Board by-

- (a) the miner; or
- (b) the Natural Resources Board; or
- (c) where the land affected by the order is
  - (i) State land, the Minister responsible for the administration of that land;
  - (ii) Communal Land, any district council established for the area concerned;
  - (iii) private land, the owner and the occupier, if any.

(2) A application in terms of subsection (1) shall specify the order concerned and the amendment applied for and the applicant shall send a copy of the application to all other interested parties referred to in subsection (1).



(3) After hearing any evidence and representations made by the applicant and the other interested parties referred to in subsection (1), the Board may refuse the application or may make an order amending the order concerned.

### 227 Appeal to Administrative Court

An appeal against any decision of the Board under section *two hundred and twenty-five* or *two hundred and twenty-six* shall lie to the Administrative Court at the instance of the applicant or any of the other interested parties referred to in the said section.

### 228 Order binding on all miners

(1) An order made under section *two hundred and twenty-five*, as amended from time to time by an order made under section *two hundred and twenty-six*, shall be binding on every miner of the mining location concerned.

(2) Notwithstanding the forfeiture, abandonment or cancellation of the registered mining location to which an order made under this Part relates, or the cancellation by the Board under subsection (1) of section *two hundred and thirty* of any rights under any order, any provisions of such order requiring the miner to rehabilitate the surface of the land concerned shall continue in force and be binding on the person who was the miner of the mining location concerned.

### 229 Enforcement of this Part

(1) A copy of every order made under this Part shall be sent to

- (a) the miner; and
- (b) the registered owner of the mining location; and
- (c) where the land affected by the order is
  - (i) State land, the Minister responsible for the administration of that land;
  - (ii) Communal Land, any visual district council established for the area concerned;
  - (iii) private land, the owner and the occupier, if any; and
- (d) the Natural Resources Board; and
- (e) the mining commissioner.

(2) The mining commissioner shall cause inspections of the mining location to be made periodically.

(3) If any person-

(a) contravenes subsection (3) or (4) of section *two hundred and twenty-two*; or

(b) contravenes or fails to comply with the provisions of an order made under this Part which are binding on him;

he shall be guilty of an offence and liable to a fine not exceeding one thousand dollars or, in default of payment, to imprisonment for a period not exceeding twelve months.

(4) The court which has convicted any person of an offence under subsection (3) shall cause notification of the conviction and the sentence imposed to be sent to the Board.

### 230 Cancellation of rights under order

(1) In the event of a conviction under subsection (3) of section *two hundred and twenty-nine* the Board may cancel any right to work any deposit or reef under the order concerned made under this Part.

(2) The Board shall cause notification of the cancellation of any rights under subsection (1) to be sent to the miner, the mining commissioner and, where the land concerned is-

- (a) State land, the Minister responsible for the administration of that land;
- (b) Communal Land, any rural district council established for the area concerned;
- (c) private land, the owner and the occupier, if any, thereof.

### 231 Evidence of order

The production of a copy of any order made under this Part which purports to be certified as correct by the Secretary of the Board shall be sufficient evidence of the making of the order and of its contents.

### 232 Special payments to landowners

(1) As soon as possible after receipt of a levy referred to in subsection (4) of section *two hundred and twenty-two*, the mining commissioner shall, if any of the land in respect of which the levy has been paid is-

(a) Communal Land, pay to the District Development Fund referred to in section 3 of the District Development Fund Act [*Chapter 29:06*]; or

(b) private land, pay to the owner thereof;



the amount of the levy.

(2) Where the land in respect of which a levy has been paid does not consist solely of Communal Land or of land held by one owner, the manner of allocation of the amount of the levy shall be as prescribed.

(3) All moneys payable in terms of this section shall be defrayed from moneys appropriated for the purpose by Act of Parliament.

(4) subsections (8), (9), (10), (11) and (12) of section *one hundred and eighty-eight* shall apply, *mutatis mutandis*, in respect of the payments referred to in this section.

(5) An order prescribing the manner of and conditions governing the work of an alluvial or eluvial deposit which is in force immediately before the 1st January, 1974, shall, unless it relates to the working of a deposit in relation to which it is not competent to issue an order in terms of this Part, continue in force and be deemed to have been issued in terms of section *two hundred and twenty-five*

### PART XIII

#### CONTROL OF SITING OF WORKS ON MINING LOCATIONS

##### 233 Interpretation in Part XIII

In this Part, any reference to the owner or occupier of land shall be construed, in relation to-

- (a) Communal Land, as a reference to any rural district council established for the area concerned;
- (b) State land, as a reference to the Minister responsible for the administration of the land concerned.

##### 234 Approved plan required prior to erection of certain works

(1) Subject to section *two hundred and thirty-nine*, no miner of a registered mining location shall erect or construct upon his mining location any of the following works-

- (a) machinery or plant used for the treatment of ores, concentrates, tailings, slimes or other residues;
- (b) dumps

(c) dams for the storage of waste water or slimes;

(d) compounds for his employees;

(e) buildings of a permanent nature;

(f) sewage disposal works;

(g) recreation grounds;

(h) roads;

unless and until he has lodged with the mining commissioner a plan showing the position of such works and such plan has been approved under this Part.

(2) Before erecting or constructing any works mentioned in subsection (1), the miner of any registered mining location shall-

- (a) lodge with the mining commissioner for his approval a plan in triplicate showing the position of the boundaries of the location and of the proposed site of such works or of the areas within which such works are situated;
- (b) furnish to the mining commissioner the name and address of any owner and occupier, if any, of the land concerned and particulars of all mining locations which are contiguous to the mining location to which the plan relates

(3) The miner shall, at the same time, furnish a copy of such plan to each such owner and occupier, if any, of land.

##### 235 Particulars to be shown on plan

Such plan shall, in addition to the particulars mentioned in paragraph (a) of subsection (2) of section *two hundred and thirty-four*, indicate the position of the workings of such location, the position of any works erected or constructed under section *two hundred and thirty-nine* and the position of any rivers, hills and other natural features, and shall be prepared in such a manner as to indicate as clearly as possible the position of the proposed site and conform to the requirements of the mining commissioner as to manner of preparation.

##### 236 Procedure on receipt of plan

On receipt of the plan referred to in section *two hundred and thirty-four*, the mining commissioner shall forthwith-

- (a) by registered letter notify-
  - (i) every owner and occupier, if any, of land concerned; and



- (ii) every holder of a contiguous mining location; of the receipt of the plan and require them to lodge, within twenty-one days after the date of such notification, their objections, if any, to the approval of the plan or to any works which may have been erected or constructed under section *two hundred and thirty-nine*; and
- (b) consult the provincial planning officer of the Department of Physical Planning, the regional mining engineer, the provincial water engineer and the regional and inspector of the Department of Natural Resources and, where it is proposed to construct a road, the regional agricultural extension officer of the Department of Agricultural Technical and Extension Services.

### 237 Approval of plan

(1) If any objections have been lodged under section *two hundred and thirty-six*, the mining commissioner shall, on a day fixed by him and notified to the miner who submitted the plan and the objectors, hear such evidence and arguments as those persons may wish to lay before him in regard to the approval or otherwise of the plan or the siting of any works which have been erected or constructed under section *two hundred and thirty-nine*.

(2) If no objection has been received or if no notification was given under section *two hundred and thirty-six* owing to the whereabouts of the owner or the occupier or the holder of a contiguous mining location not being known to the mining commissioner after due inquiry, the mining commissioner shall proceed to consider the matter.

(3) After holding a hearing in terms of subsection (1) or considering the matter in terms of subsection (2), the mining commissioner may-

- (a) approve the plan; or
- (b) approve the plan with such amendments and subject to such conditions as he may deem necessary; or
- (c) refuse to approve the plan:

Provided that the mining commissioner shall not uphold any object or require any amendment or impose any condition if the mining operations of the miner who lodged the plan are likely to be affected adversely and materially thereby.

(4) In arriving at a decision for the purposes of subsection (3), the mining commissioner shall take into account the views, if any, expressed by the provincial planning officer of the Department of Physical Planning, the regional mining engineer, the provincial water engineer, the regional land inspector of the Department of Natural

Resources or the regional agricultural extension officer of the Department of Agricultural Technical and Extension Services:

Provided that, if he considers it necessary for the fair decision of the application, he shall give the applicant an opportunity of making representations in relation to such views, either at the hearing in terms of subsection (1) or otherwise.

(5) If the mining commissioner does not so approve of the siting of any works which may have been erected or constructed under section *two hundred and thirty-nine*,

such work shall thereupon be deemed to have been erected or constructed in contravention of this Part and section *two hundred and forty* shall apply thereto.

(6) If any person is aggrieved by the decision of the mining commissioner he may, within ten days of such decision, appeal against the decision to the Administrative Court, and the decision of that Court thereon shall be final and without appeal.

(7) On the approval of a plan under this section the mining commissioner shall return one copy of the plan to the miner concerned with such approval endorsed thereon and send one copy similarly endorsed to the landowner and to the occupier of the land, if any, concerned and shall retain the other copy similarly endorsed for purposes of record

### 238 Amendment of plan

At any time after a plan has been approved under section *two hundred and thirty-seven*, the miner of the mining location to which the plan relates, or the owner or occupier of the land concerned, may apply to the mining commissioner for an amendment of the plan, and this Part shall apply, *mutatis mutandis*, in respect thereof as if such application were a plan submitted to the mining commissioner under section *two hundred and thirty-four*.

### 239 When works may be erected or constructed without approved plan

(1) For the purposes of subsection (2)-

"property" means two or more blocks of claims, whether contiguous or otherwise, owned by one person, from which the ore is being treated at the same milling or reduction plant, or which are under the control of one registered mine manager.

(2) Notwithstanding anything contained in section *two hundred and thirty-four*, the miner of any registered mining location or property may, subject to subsection (5) of section *two hundred and thirty-seven*, at any time be-



fore a plan has been approved under section *two hundred and thirty-seven*, erect or construct upon such location of property all or any of the following works-

- (a) dumps other than tailings;
- (b) residences to house not more than thirty-two persons employed in mining operations;
- (c) roads not exceeding four metres in width which have no artificial surface such as gravel, stone or similar material:

Provided that-

- (i) nothing in this paragraph contained shall be construed so as to permit the construction of a road if there is in existence any other suitable road which serves the same purpose;
- (ii) no such road may be constructed unless and until the siting thereof has been approved by-

(a) in the case of Communal Land, any rural district council established for the area concerned;

(b) in any other case, the conservation and extension officer of the district.

(3) For the removal of doubt it is hereby declared that a miner mentioned in subsection (2) may prior to the erection or construction of any of the works mentioned in that subsection lodge with the mining commissioner for his approval in respect of such works the plan referred to in paragraph (a) of subsection (2) of section *two hundred and thirty-four*.

#### **240 Mining commissioner may order removal or unauthorized works**

(1) If any miner erects or constructs any works on a registered mining location in contravention of this Part or of any condition attached to the approval of a plan under section *two hundred and thirty-seven*, the mining commissioner may order the holder or the miner of such mining location, within such period as shall be specified in the order, to remove such works or to discontinue the use thereof.

(2) If such holder or miner fails to comply with such order within the period specified therein, he shall be guilty of an offence and liable to a fine not exceeding five hundred dollars or, in default of payment, to imprisonment for a period not exceeding twelve months and the mining commissioner may thereafter make a fresh order or orders requiring such holder or miner to comply with his original order within a period which the mining com-

missioner shall specify, and if such holder or miner fails to comply with such further order or orders he may again be prosecuted notwithstanding any previous conviction or acquittal for failing to comply with any previous order and shall be liable to the penalties prescribed by this subsection.

(3) Upon the conviction of a person for a contravention of subsection (2), the mining commissioner may authorize the owner or occupier of the land concerned or the holder or miner of a contiguous mining location to remove such works and if such owner, occupier, holder or miner does so he shall be entitled to recover the cost of such removal from the holder or miner to whom the order was given under subsection (1).

#### **241 Re-siting of existing roads**

(1) Where any road in respect of which a plan has not been approved under section *two hundred and thirty-seven* has been constructed upon a registered mining location, whether it was constructed before or after the 1st November, 1961, the mining commissioner may, on the application of the owner or occupier of the land concerned, order the holder or miner of the mining location concerned to discontinue the use of such road or to alter the course thereof within such period as the mining commissioner may specify.

(2) If such holder or miner fails to comply with such order within the period specified therein he shall be guilty of an offence and liable to a fine not exceeding two hundred dollars or, in default of payment to imprisonment for a period not exceeding three months.

#### **242 Approved plan to be binding on successors in title**

A plan approved under section *two hundred and thirty seven* shall, subject to section *two hundred and thirty-eight*, be binding upon any holder or miner of the mining location concerned and upon any owner or occupier of the land.

## **PART XIV**

### **ROYALTY**

#### **243 Application of Part XIV**

This Part shall apply to the holder of a special mining lease only to the extent that the terms and conditions of



his special mining lease or of any agreement entered into with him in terms of section *one hundred and sixty-seven* are consistent with this Part.

#### 244 Royalty

(1) Subject to this Part, the miner of a registered mining location shall pay royalty on all minerals or mineral-bearing products won from such location which have been disposed of by him or on his behalf, whether within or outside Zimbabwe, during any month, at such rate per unit of mass as may be fixed in terms of section *two hundred and forty-five*.

(2) Where a registered mining location forms part of a property mentioned in section *two hundred and forty-six* royalty shall be paid in terms of subsection (1) on the total of all minerals or mineral-bearing products won from such property.

(3) Where the royalty assessed in respect of minerals or mineral-bearing products disposed of in any one month-

(a) does not exceed two hundred dollars, there shall be a full rebate of such royalty;

(b) exceeds two hundred dollars but does not exceed three hundred dollars, the royalty payable shall be three times the amount by which the assessed royalty exceeds two hundred dollars.

(4) There shall be a full rebate of royalty in respect of all minerals or mineral-bearing products used wholly within Zimbabwe.

(5) There shall be a rebate or royalty in respect of any mineral or mineral-bearing product which is-

(a) disposed of to or received from treatment by an approved beneficiation plant; and

(b) specified in relation to that approved beneficiation plant;

at the rate specified by the Minister in terms of section *two hundred and forty-seven* in respect of that approved beneficiation plant:

Provided that where the degree of beneficiation specified in the application made in terms of subsection (1) of section *two hundred and forty-seven* relating to the approved beneficiation plant is not carried out in relation to any mineral or mineral-bearing product in respect of which a rebate referred to in this subsection has been earned, the owner of such mineral or mineral-bearing product shall, on the disposal thereof, pay royalty in the amount of the rebate to the mining commissioner within

whose mining district the registered mining location from which the mineral or mineral-bearing product was won is situated.

#### 245 Fixing of royalty

(1) Before the 31st August in each year the Minister may fix the rate of royalty payable in terms of section *two hundred and forty-four*

(2) The rate of royalty fixed in terms of subsection (1) shall apply to the period of twelve months commencing on the 1st January next following the year in which the rate of royalty is fixed.

(3) In fixing the rate of royalty in terms of subsection (1) the Minister shall have regard to-

(a) the prices at which minerals or mineral-bearing products were sold during the period of three years immediately preceding the 1st July in the year in which the rate is fixed;

(b) the representations, if any, by the Chamber of Mines of Zimbabwe relating to the rate of royalty;

(c) any other matter which he deems fit.

(4) Notwithstanding subsections (1) and (2), where production commences in Zimbabwe of a mineral or mineral-bearing product in respect of which no rate of royalty has been fixed or, if the Minister considers it desirable in the national interest, where production of such a mineral or mineral-bearing product has previously commenced and been carried on, the Minister -

(a) may as soon as possible fix the rate of royalty which shall be payable in respect of that mineral or mineral-bearing product for-

(i) the period ending on the 31st December of the year in which such rate is fixed; or

(ii) if no rate has been fixed for such period in terms of subsection (1), the period of twelve months commencing on the 1st January next following the date on which such rate is fixed;

or both;

(b) shall, in fixing the rate of royalty in terms of this subsection, have regard to-

(i) the prices at which that mineral or mineral-bearing product was sold during the period of three years ending on the 30th June preceding the date when the rate of royalty is fixed;



(ii) the representations, if any, by the Chamber of Mines of Zimbabwe relating to the rate of royalty;

(iii) such other matters as he may deem fit.

(5) In fixing the rate of royalty in terms of this section the Minister may fix different rates of royalty in respect of different minerals or mineral-bearing products.

(6) As soon as any rate of royalty has been fixed in terms of this section it shall be advertised by notice in the *Gazette* and by notice posted at the office of every mining commissioner.

#### 246 Meaning of "property"

(1) For the purpose of calculating royalty on any mineral or mineral-bearing product, other than chrome, when ore from two or more blocks of claims, whether contiguous or otherwise, owned or held under a tribute agreement by the same person is treated at the same milling or reduction plant, then such blocks of claims shall be deemed to be one property.

(2) For the purpose of calculating royalty on chrome, all blocks owned or held under a tribute agreement and worked by the same person in any one mining district shall be deemed to be one property.

#### 247 Beneficiation plant

(1) The Minister may, upon the application by the owner thereof, by statutory instrument, declare any bank assay department, factory, refinery, smelter or treatment plant which is situated in Zimbabwe to be an approved beneficiation plant in relation to a mineral or mineral-bearing product to be specified in the notice.

(2) In a declaration made in terms of subsection (1) the Minister shall specify the rate of rebate of royalty which shall apply in respect of any specified mineral or mineral-bearing product treated at the approved beneficiation plant referred to in the declaration.

(3) A person making an application referred to in subsection (1) shall specify the degree of beneficiation which it is proposed to carry out at the bank assay department, factory, refinery, smelter or treatment plant, as the case may be.

(4) The Minister may, by statutory instrument, withdraw a declaration made in terms of subsection (1) in respect of any approved beneficiation plant-

(a) where the approved beneficiation plant is not operated as such for any period which exceeds, or aggregate of periods which exceed, three months in any one year; or

(b) where the degree of beneficiation carried out at the approved beneficiation plant is reduced below that specified in the application made in terms of subsection (1) relating to that plant.

(5) The owner of an approved beneficiation plant shall, not later than the tenth day of each month, render a return in the form prescribed of all minerals and mineral-bearing products disposed of to or received for treatment by the beneficiation point in the preceding month to the mining commissioner within those mining district the registered mining location from which the minerals or mineral-bearing products were won is situated.

#### 248 Dump may be unit for royalty purposes

Notwithstanding anything to the contrary contained in section *two hundred and forty-six*, a dump shall be deemed to be a separate property if-

(a) the right to work the dump is held by a person other than the miner working the block on which it is situated; or

(b) the dump is worked by a person other than the miner working the block on which it is situated; or

(c) the reduction plant for the treatment of the dump is entirely separate from that in or at which the ore extracted from the block on which the dump is situated is being treated; or

(d) the person who has disposed of the right to work the dump or block on which the dump is situated has no interest in the working of the reduction plant for the treatment of the dump or of the ore extracted from the block on which the dump is situated, as the case may be, or the extraction from such dump or block, other than the payment, rental or royalty specified in the agreement under which the right to work the dump or block is given..

#### 249 Exemption of royalty when ore extracted for experimental purposes

If any miner desires to extract or treat ore from his location for experimental or similar purposes, he may apply to the Secretary for permission to treat or deal with the mineral or mineral-bearing product obtained from his location for a limited period or up to a limited amount, and the Secretary may permit such treatment or dealing without payment of royalty under such terms and conditions as may by him be deemed expedient.

#### 250 Acquisition or removal of ore, etc., to be declared

If any person acquires or removes from the mining location from which it was derived any ore, tailings, slimes,



concentrates, residues or other mineral-bearing product he shall immediately-

- (a) declare such acquisition or removal to the mining commissioner;
- (b) render to the mining commissioner such returns thereof as may be prescribed.

#### 251 Monthly returns and payment of royalty

(1) A miner shall, not later than the tenth day of each month-

- (a) render to the mining commissioner a return in the prescribed form showing-
  - (i) in respect of minerals, other than precious stones, or mineral-bearing products won from his mining location-
    - A. the output; and
    - B. full details of the disposal thereof by him or on his behalf;
  - (ii) in respect of precious stones won from his mining location, such details relating thereto and to the disposal thereof during the preceding month and the quantity thereof held by him at the end of the preceding month as may be prescribed;

and

- (b) furnish the mining commissioner with such affidavits, certificates and documents relating to any matter referred to in paragraph (a) as the mining commissioner may require; and
- (c) submit to the mining commissioner the royalty payable by him in terms of section *two hundred and forty-four* in respect of the preceding month or the provisional amount of royalty assessed in terms of subsection (2).

(2) Where it is impracticable for any reason to calculate before the tenth day or any month the royalty payable in respect of the preceding month the mining commissioner may assess a provisional amount of royalty which shall be payable.

(3) When the correct amount of royalty is assessed the miner shall-

- (a) be entitled to a refund of any sum paid by him in terms of subsection (2) which exceeds the correct amount of royalty payable in terms of section *two hundred and forty-four*; or

(b) pay to the mining commissioner such sum as represents the difference between the correct amount of royalty payable in terms of section *two hundred and forty-four* and the amount paid in terms of subsection (2).

#### 252 Inspection of books and records, etc.

The mining commissioner or any person duly authorized by him shall at all reasonable times have access for the purpose of inspection to all books and records, reports and other documents relating to the acquisition, disposal or removal of any mineral or mineral-bearing product as may be necessary for the purpose of ascertaining or verifying any return, details solemn declaration, certificate or document rendered under this Part.

#### 253 Prohibition of disposal of minerals when royalty or returns, etc., have not been lodged

(1) If the miner of a registered mining location fails to pay any royalty due in respect of such location the mining commissioner may issue an order prohibiting the disposal of any minerals or mineral-bearing products from such location or from any other location which is being worked by the miner, whether or not the miner has failed to pay any royalty due in respect of the other location, until all outstanding royalty has been paid or until an arrangement has been made which is acceptable to the mining commissioner for the payment of such royalty.

(2) If the mining commissioner has reason to believe that minerals or mineral-bearing products have been produced or disposed of from any registered mining location and he has not received in respect thereof the return, details, solemn declarations, certificates and documents referred to in section *two hundred and fifty-one* he may issue an order prohibiting the disposal of any minerals or mineral-bearing products from that location until the return, details, solemn declarations, certificates and documents have been rendered and any royalty due in respect of such disposal has been paid or until an arrangement has been made which is acceptable to the mining commissioner for the payment of such royalty.

(3) A miner who fails to observe an order issued in terms of this section and any person who, knowing of such order, receives any minerals from the location referred to in the order contrary to the terms thereof shall be guilty of an offence.

#### 254 Remission of royalty

(1) The President may remit, in whole or in part, the royalty payable on-

- (a) any mineral or mineral-bearing product or class thereof; or

- (b) any mineral or mineral-bearing product won from any specified registered mining location or property mentioned in section *two hundred and forty-six*;

for such period as he may determine whenever he deems it expedient to do so as an inducement to-

- (i) the commencement or continuation of mining operations; or  
 (ii) the processing or refining within Zimbabwe of minerals or mineral-bearing products; or  
 (iii) the development of any export market;

and such remission may be granted with effect from a date which precedes the date on which it is granted by not more than four years.

(2) Notwithstanding the provisions of this Part, where a remission of royalty was granted or ordered before the 1st January, 1970, in respect of any period extending beyond the 31st December, 1969, that remission of royalty shall continue to apply in respect of that period.

## PART XV

### PAYMENTS OF LOCAL AUTHORITIES

#### 255 Miners to make certain payments to local authorities

(1) The Minister, acting with the approval of the Minister responsible for finance and after consultation with the Minister responsible for local government and any organization which the Minister considers represents mining interests, may by statutory instrument, require any miner of a registered mining location, or any class of such miners, to pay a specified sum at specified intervals to any local authority within whose area the registered mining location is situated.

(2) The Minister may specify a sum for the purposes of subsection (1) as a lump sum or as a percentage of the value of the output of the mining location concerned, or in such other manner as the Minister may think appropriate.

(3) Every miner to whom a notice in terms of subsection (1) applies shall make the payments required by the notice, and in the event of his default any sums unpaid shall be a debt due to the local authority concerned, and may be recovered by the local authority from the miner by

proceedings in a competent court.

#### 256 Certain dumps to constitute separate mining locations

For the purposes of section *two hundred and fifty-five*, a dump shall be deemed to be a separate mining location if-

- (a) the right to work the dump is held by a person other than the miner working the mining location on which it is situated; or  
 (b) the dump is worked by a person other than the miner working the mining location on which it is situated;

and the person working the dump or holding the right to work it shall be deemed to be the miner of the dump.

#### 257 Remission or exemption from liability to make payments

(1) The Minister, acting with the approval of the Minister responsible for finance and after consultation with the Minister responsible for local government and any organization which the Minister considers represents mining interests, may remit, in whole or in part, the sums payable in terms of section *two hundred and fifty-five*-

- (a) by any miner or class thereof; or  
 (b) in respect of any mineral or mineral-bearing product or class thereof;

for such period as the Minister may determine, whenever he considers it expedient to do so as an inducement to-

- (i) the commencement or continuation of mining operations; or  
 (ii) the development of any export market;

and the Minister shall cause any such remission to be notified in writing to every miner and local authority concerned.

(2) On application being made by a miner who wishes to extract ore from his mining location for experimental or similar purposes, the Secretary may permit the miner, subject to such terms and conditions as the Secretary may fix, to extract the ore without paying any sums in respect of it in terms of section *two hundred and fifty-five*.

(3) The Secretary shall ensure that the local authority concerned is notified in writing of any permission granted by him in terms of subsection (2).



## PART XVI

### ABANDONMENT AND FORFEITURE

#### 258 Abandonment of unregistered locations

- (1) The holder of any mining location with respect to which no certificate of registration has yet been obtained may at any time abandon such location.
- (2) Prior to such abandonment, the holder shall remove all beacons, if any, from such location, and shall post on a peg on the location a notice stating the fact and date of such abandonment.
- (3) No person shall make any relocation upon any unregistered mining location abandoned or deemed to be abandoned under the provisions of this Act until after the expiration of seven clear days from and exclusive of the date on which such location was abandoned or deemed to be abandoned.

#### 259 Abandonment of registered blocks or sites

- (1) Subject to section *two hundred and seventy-nine*, the holder of a registered block or site may abandon such block or site, or any portion of such block or site, by applying in writing to the mining commissioner for and obtaining a certificate of abandonment.
- (2) Such certificate of abandonment shall be deemed to constitute valid and sufficient proof of such abandonment.
- (3) If such holder abandons a portion only of such block or site, he shall re-beacon the remainder of such block or site according to section *fifty-one*.

#### 260 Forfeiture for failure to obtain inspection certificate for block

Failure to obtain an inspection certificate within the period prescribed therefor shall, unless a protection certificate has been obtained under section *two hundred and seventeen* in respect of such block, render liable to forfeiture the block in respect of which such failure has taken place.

#### 261 Forfeiture of alluvial, eluvial, rubble deposit or dump precious metal claims

If the holder of a block of precious metal claims which are registered as alluvial, eluvial, rubble deposit or dump claims fails to work his claims continuously, the block shall be liable to forfeiture unless-

(a) he has been exempted in respect of such block under paragraph (a) of subsection (2) of section *two hundred and nineteen*; or

(b) the Board has under paragraph (b) of subsection (2) of that section authorized him to restrict his work to one or more blocks and such block is one of the blocks on which work is not required to be done.

#### 262 Forfeiture of precious stones blocks

If the holder of a block of precious stones claims fails to work his claims continuously, the block shall be liable to forfeiture unless-

(a) he has been exempted in respect of such block under paragraph (a) of subsection (2) of section *two hundred and eighteen*; or

(b) the Board has under paragraph (b) of subsection (2) of that section authorized him to restrict his work to one or more blocks and such block is one of the blocks on which work is not required to be done.

#### 263 Forfeiture of mining leases

(1) If the holder of a mining lease fails to obtain any inspection certificate within the period prescribed therefor, the mining commissioner shall by registered letter notify the holder of such failure and shall send a copy of such letter to the Board.

(2) If within a period of thirty days from the date of posting such notification such holder has failed to obtain such inspection certificate, the mining commissioner shall inform the Board and the Board shall, by registered letter, notify the holder that the mining lease is liable to forfeiture.

(3) Within a period of thirty days from the date of the posting by the Board of such notification, the holder of the mining lease may, if he has not obtained such inspection certificate, make written application to the Board for an extension of time within which to obtain such certificate.

(4) If within the period mentioned in subsection (3), the holder of the mining lease has not obtained such inspection certificate or has failed to make such application for an extension of time, the Board may direct the mining commissioner to declare the mining lease to be forfeited, and the mining commissioner shall forthwith comply with such direction.

(5) Where the holder of a mining lease has made application to the Board for the extension of time mentioned in subsection (3), the Board may refuse such application



or may grant an extension of time for such period as it may deem fit.

(6) Where an extension of time has been granted under subsection (5), the Board may, on the application of the holder of the mining lease, from time to time, grant further extensions of time.

(7) Where the Board has refused to grant any such extension of time or where an extension has been granted and the holder of the mining lease has failed to obtain the inspection certificate before the expiry of such extension of time, the Board may direct the mining commissioner to declare the mining lease to be forfeited, and the mining commissioner shall forthwith comply with such direction.

**264 Forfeiture of sites**

If at any time the monthly rent of any registered mining site has remained due and unpaid for a period of three months or more, such site shall be liable to forfeiture:

Provided that in the case of a site attached to a mining lease, the mining commissioner shall by registered post notify the lease holder that payment of the site rent is so in arrear and if such rent is not paid within thirty days of the posting of such notification, the mining commissioner may declare the site to be forfeited.

**265 Forfeiture of mining locations**

(1) If a holder of a registered mining location fails to comply with a directive given by the Minister in terms of subsection (5) of section *two hundred and twenty*, the Minister may order in writing that the registered mining location on which the dump concerned is situated be forfeited, unless the holder thereof satisfies the Minister that he took all reasonable and practicable steps to comply with the directive either by working the dump himself or by tributing it to someone else but was unable to do so.

(2) Subject to subsection (3), an order in terms of subsection (1) shall not take effect until a period of thirty days has expired after holder of the registered mining location concerned has been notified in writing of the order.

(3) During the period of thirty days referred to in subsection (2), any person aggrieved by an order in terms of subsection (1) to forfeit a registered mining location may appeal to the High Court against such order and, pending the determination of such appeal, the mining location concerned shall not be forfeited.

(4) The procedure in any appeal in terms of subsection (3) shall be as prescribed in rules of court.

(5) In any appeal in terms of subsection (3), the High Court may make such order in the matter as it thinks just.

**266 Locations belonging to estate of deceased persons: special conditions as to forfeiture**

(1) Any registered mining location belonging, and which is notified in writing to the mining commissioner by any person interested as belonging, to the estate or registered in the name of any deceased person, minor, mentally disordered or defective person or insolvent shall not, after the date of the receipt of such notification by the mining commissioner, be liable to forfeiture by reason of failure to take out any certificate within the prescribed period, or to pay licence moneys, rents, dues, fees or fines until after the expiration of a period of thirty days from the issue of letters of administration to the executor or executors of such deceased person, or, in the case of the estate of any minor, mentally disordered or defective person or insolvent, from the date of appointment of a curator or trustee of such estate.

(2) It shall be competent for any executor, curator of trustee within the aforesaid period of thirty days, according to the circumstances of the case, either to take out any certificate required as aforesaid or make the necessary payments in respect of licence moneys, dues, fees or fines, and to retain such location as aforesaid as an asset in such estate:

Provided that-

(i) if the issue of such letters of administration or the appointment of such curator or trustee has been made outside Zimbabwe, the above period of thirty days shall be reckoned from the date of the official recognition in Zimbabwe of such letters of administration or appointment, as the case may be;

(ii) in all cases after the expiration of six months from the date of the aforesaid notification to the mining commissioner, the provisions of this section shall cease to apply to such location unless the High Court otherwise directs.

**267 Removal of buildings and machinery from abandoned, forfeited or cancelled location**

Subject to section *three hundred and sixty-six*, the former holder of any mining location which has been abandoned, forfeited or cancelled may, within a period of three months from the date of such abandonment, forfeiture or cancellation, remove any buildings or machinery belonging to him:

Provided that-



- (i) if such location or any part of it is repegged by any other person as a fresh mining location, the holder of such fresh mining location shall not be liable for any damage done to such buildings or machinery in the due and proper exercise of his rights as such holder;
- (ii) the owner or the occupier of the land on which such buildings or machinery situated shall not be liable for any damage done to such buildings or machinery in the due and proper exercise of his rights as owner or occupier of the land;
- (iii) the mining commissioner may, if he is satisfied that it is necessary to do so, extend the period within which the buildings or machinery may be removed by a further period not exceeding three months.

#### **268 Removal of beacons from abandoned or forfeited locations**

Whenever any mining location or part of such location has been abandoned, or whenever any mining location has been duly forfeited according to law, and the holder has not removed all pegs and beacons appertaining to such location or the part abandoned, it shall be lawful for any mining commissioner, claim inspector or other person duly authorized thereto by the mining commissioner at any time after the date of such abandonment of forfeiture, to remove and destroy all the beacons, pegs and boundary marks of such location, or of so much as has been abandoned:

Provided that no such removal or destruction may be carried out until a quittance certificate has been issued in terms of section *two hundred and sixty-nine* in respect of such mining location or part thereof.

#### **269 Open workings to be protected on abandonment, forfeiture or cancellation of location**

(1) In this section-

“director” means any person who controls or governs the company or is a member of a body or group of persons which controls or governs the company or, where there is no such body or group, is a member of the company;

“holder” includes the person who was the holder of an abandoned, forfeited or cancelled mining location before its abandonment, forfeiture or cancellation;

“occupier” in relation to Communal Land, means any rural district council established for the area concerned;

“owner”, in relation to State land, means the Minister responsible for the administration of such land;

“quittance work” means any work required for proper compliance with subsection (2).

(2) On or before the abandonment, forfeiture or cancellation of a registered mining location or not later than thirty days after the posting by the mining commissioner of the notice mentioned in section *two hundred and seventy-two*, the holder of such location shall fill in all shafts, open surface workings and excavations or otherwise so deal with them as permanently to ensure the safety of persons and stock:

Provided that the mining commissioner may in circumstances which he may deem exception extend such period of thirty days.

(3) If any holder fails to comply with subsection (2) he shall be guilty of an offence and, whether or not he is prosecuted therefor, the mining commissioner shall in writing order him to comply with subsection (2) within a time prescribed by the mining commissioner in such order.

(4) If the holder fails to comply with an order issued in terms of subsection (2) he shall be guilty of an offence and, notwithstanding any previous conviction or acquittal for a contravention of subsection (2), he may be prosecuted for a contravention of such order.

(5) If there is a continued failure to comply with subsection (2) or of any order made under subsections (3) or (4), the mining commissioner may make further like order or orders requiring such holder to comply with subsection (3), and upon any failure to comply with any such subsequent order or orders such holder shall be guilty of an offence.

(6) Orders may be made under subsection (3) in respect of any registered mining location which was abandoned, forfeited or cancelled on or after the 1st July, 1947, and in respect of which a quittance certificate has not been issued.

(7) The manner in which shafts, open surface workings and excavations shall be dealt with for the purposes of subsection (2) shall be prescribed by regulation, and compliance with such regulations shall be sufficient compliance with that subsection.

(8) When such shafts, open workings or excavations have been filled in or suitably enclosed and protected, the holder shall, not later than thirty days after the completion of such work, send to the mining commissioner a certificate in the form prescribed by regulation stating the nature of the work which has been done for the purposes of subsection (2) and if there are no shafts, open surface workings or other excavations on the mining lo-



cation which require quitance work, the holder shall, not later than thirty days after the posting of the notice mentioned in section *two hundred and seventy-two* by the mining commissioner, sent to the mining commissioner a certificate to that effect:

Provided that, if the holder has not complied with subsection (2) within the period specified therein, he shall, not later than thirty days after the posting of the notice mentioned in section *two hundred and seventy-two*, send to the mining commissioner a written statement to that effect stating the reasons therefor.

(9) In addition to the certificate required by subsection (8), the holder shall send to the mining commissioner the written consent of the occupier or, if there is no occupier, the owner of the land upon which the relevant mining location was situated to the issue of a quitance certificate in terms of this section:

Provided that, if the holder has not been able to obtain such written consent, he shall send instead to the mining commissioner a written statement to that effect.

(10) If written consent to the issue of a quitance certificate is lodged in terms of subsection (9), the mining commissioner shall issue a quitance certificate relieving the holder from any further responsibility in terms of subsection (2).

(11) If written consent to the issue of a quitance certificate is not lodged in terms of subsection (9), the mining commissioner shall be registered letter notify the occupier of the land or, if there is no occupier, the owner of the land upon which the relevant mining location was situated that he has received such certificate and that a quitance certificate relieving such holder from any further responsibility under subsection (2) will be granted to such holder unless a written objection giving full details of all unprotected or insufficiently protected shafts, open surface workings or excavations is lodged by or on behalf of such owner or occupier within thirty days of the date of the posting of such notification by the mining commissioner.

(12) If the whereabouts of the owner or the occupier of any land are unknown to the mining commissioner after due inquiry or if no objection is lodged with the mining commissioner within the prescribed period, the mining commissioner shall issue a quitance certificate relieving the holder from any further responsibility under subsection (2).

(13) If an objection is received to the issue of a quitance certificate, the mining commissioner shall notify the person who lodged such objection and the holder of the time when a person appointed by the mining commissioner will inspect the abandoned or forfeited mining location,

and the objector may attend at such inspection and point out to the inspector in what respect he considers the quitance work to be insufficient.

(14) If the mining commissioner is satisfied from the report of the inspector that the quitance work is adequate, he shall issue a quitance certificate relieving the holder from any further responsibility under subsection (2).

(15) If the mining commissioner is not satisfied in terms of subsection (14), he shall give written notice to the holder of what additional work is necessary and shall order the holder to perform such work within a time specified by the mining commissioner.

(16) If the holder fails to comply with the order of the mining commissioner within the specified time he shall be guilty of an offence and the mining commissioner shall thereafter make a fresh order or orders requiring such holder to comply with his original order within a period specified by the mining commissioner.

(17) If the holder fails to comply with any such further order or orders he may again be prosecuted notwithstanding any previous conviction or acquittal for failing to comply with any previous order of the mining commissioner.

(18) When the holder has complied with any order made by the mining commissioner in terms of this section, the mining commissioner shall issue to such holder a quitance certificate relieving such holder from any further responsibility under subsection (2).

(19) A copy of every quitance certificate issued in terms of this section shall be sent by the mining commissioner to the relevant owner or occupier of land.

(20) If any holder fails to furnish a certificate or written statement in terms of subsection (8) or (9) or makes any false statement in such certificate or written statement, he shall be guilty of an offence.

(21) Where, in the case of a registered mining location formerly held by a company, the company has been dissolved before the issue of a quitance certificate in terms of this section in respect of that registered mining location, every person who was a director of the company-

(a) at the time of the abandonment, forfeiture or cancellation of the registered mining location or at any time thereafter; or

(b) where the dissolution of the company occurred before the forfeiture or cancellation of the registered mining location, at the commencement of the winding up of the company or, in the event of a dissolution not preceded by a winding up, at its dissolution;



shall upon the dissolution of the company be deemed to be a holder of the registered mining location for the purposes of this section.

### **270 Removal of or interference with protective works prohibited**

(1) Except in the exercise of any right acquired under this Act or with the permission in writing of the mining commissioner and subject to such conditions as the mining commissioner may attach to such permission, no person shall remove or interfere with any fencing or other works erected or constructed under section *two hundred and sixty-nine* for the protection of mine workings.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding five hundred dollars or, in default of payment, to imprisonment for a period not exceeding twelve months.

(3) If any person is convicted of an offence under this section, the court may, in addition to any other penalty imposed by it, order such person to restore such fencing or other works or otherwise so to deal with them as permanently to ensure the safety of persons or stock.

### **271 Mining commissioner may declare location to be forfeited**

(1) Subject to section *two hundred and sixty-three*, where any mining location is liable to forfeiture in terms of this Act, the mining commissioner may declare such location to be forfeited.

(2) Nothing in subsection (1) shall be construed as affecting in any way the duty of the mining commissioner to declare a location to be forfeited under section *seventy-seven, seventy-nine, one hundred and twenty-nine, two hundred and twelve* or *three hundred and thirty*.

### **272 Relocation of abandoned, forfeited or cancelled locations and reinstatement of forfeited locations**

(1) Lists of registered mining locations which have been abandoned or forfeited in terms of this Act shall from time to time be posted on a board to be exhibited in some conspicuous way outside the office of the mining commissioner, and any such location may be relocated after the expiration of thirty-five clear days from and exclusive of the date of the posting of the notice relating thereto, unless the declaration of forfeiture is revoked in terms of this section or in the said notice it is upon instruction of the Secretary otherwise provided.

(2) The person who at the date of the declaration of forfeiture was the holder of a block or site which has been declared forfeited in terms of section *two hundred and*

*seventy-one* owing to his failure to obtain the necessary inspection certificate or to pay site rent therefor may apply to the mining commissioner for the revocation of such declaration of forfeiture.

(3) If-

(a) the application under subsection (2) is made within twenty-one days of the date of the posting in terms of subsection (1) of the notice of forfeiture relating to such mining location; and

(b) the prescribed fee is paid to the mining commissioner; and

(c) the applicant is granted a protection certificate under section *two hundred and seventeen* or obtains the necessary inspection certificate for such mining location or pays the arrears of site rent, as the case may be, within twenty-one days of the date of the posting in terms of subsection (1) of the notice of forfeiture relating to such mining location;

the mining commissioner shall revoke the declaration of forfeiture and upon such revocation such mining location shall be regarded for all purposes as if no forfeiture thereof had been declared and any approved cultivation scheme which relates to such mining location shall not be affected by such forfeiture.

### **273 Mine plans to be lodged on abandonment or closing down**

(1) This section shall not apply to any mine upon which no development work has been done at a depth of more than fifteen metres.

(2) If the miner of any mine on which mining operations are being carried out intend to close down such mine or substantially reduce mining operations, he shall, not less than sixty days before such closing, down or such substantial reduction of mining operations, give written notice to the mining commissioner of such intention.

(3) A notice given in terms of subsection (2) shall state the reasons why the miner intends to close down the mine or substantially reduce mining operations.

(4) The mining commissioner shall, as soon as practicable after receiving a notice given in terms of subsection (1), forward it to the Minister, together with his comments thereon.

(5) Within thirty-one days of the date of closing down a mine or substantially reducing mining operations, the miner shall lodge with the mining commissioner in respect of each mine a plan or plans which shall comply with the following conditions-



- (a) where development work has been executed to a vertical or incline depth of more than one hundred metres on the dip, the plan or plans shall be prepared by a mine surveyor;
- (b) where development work has been executed to a vertical or incline depth of not more than one hundred metres on the dip, the plan or plans shall be prepared by a mine surveyor or otherwise shall be based on tape and compass survey;
- (c) the plan or plans shall show details of all work done on the mine, together with such further particulars as the mining commissioner may require;
- (d) plans prepared by a mine surveyor shall be drawn to any recognized scale; other plans shall be drawn to a scale of 1:250 or 1:500:

Provided that with effect from the promulgation of the regulations made under paragraph (c) of subsection (2) of section *four hundred and three* the plans to be lodged in terms of this paragraph shall comply with the said regulations and not with the aforesaid conditions.

(6) If the miner of any mine shows to the satisfaction of the Chief Government Mining Engineer that he is unable to prepare or cause to be prepared the plans required under subsection (3), the Chief Government Mining Engineer shall cause such plans to be prepared by a Government mining engineer.

(7) The miner of any mine who-

- (a) fails to furnish such notice or to lodge such plans as are prescribed; or
- (b) wilfully refuses to produce such plans or to allow them to be examined or copied by the inspector of mines or any other officer duly authorized thereto by the Minister; or
- (c) conceals any part of the workings of the mine from a Government mining engineer who has been instructed to prepare the plans under subsection (3); or
- (d) knowingly produces or transmits an imperfect or inaccurate plan;

shall be guilty of an offence.

## PART XVII

### REGISTRATION OF TRANSFERS, HYPOTHECATIONS, OPTIONS, TRIBUTE AGREEMENTS AND CONDITIONS GOVERNING MINING RIGHTS ON RESERVED GROUND

#### 274 Interpretation in Part XVII

In this Part-

"mining location" does not include an exclusive prospecting reservation, a special grant or a special grant issued under Part XX.

#### 275 Registration of transfer of mining locations and transfer duty payable

(1) When any registered mining location or any interest therein is sold or otherwise alienated in any manner whatsoever, the seller or person who so alienates shall notify the mining commissioner of the transaction within sixty days of the date of such transaction, and shall inform him of the name of the person to whom such location or interest is sold or otherwise alienated and of the amount of the valuable consideration, if any, agreed upon, and the date of the transaction.

(2) When any registered mining location or any interest therein has been sold or otherwise alienated, whether before or after the 1st November, 1961, in any manner whatsoever for valuable consideration, transfer duty at the rate fixed by Parliament shall be paid by the purchaser, which term shall include any person becoming entitled to such location or interest therein by way of sale, exchange or other like transaction.

(3) If the holder of a registered mining location has granted to any person the right to purchase such location, and if the said right to purchase becomes vested in some other person by cession or assignment of the said right, then upon the exercise of the said right to purchase any sums paid for any such cession or assignment shall be deemed to form part of the consideration in the sale or alienation of such mining location.

(4) The transfer duty payable in terms of subsection (2)



shall be calculated on the cash value of the consideration. If the consideration consists partly of cash and partly of shares in a company already formed or to be formed, which is to acquire such location, the cash value of such shares shall be deemed to be their nominal value; if the consideration of any portion thereof consists of anything other than cash or such shares, then the duty shall be payable on the true cash value thereof, to be assessed by the parties concerned to the satisfaction of the mining commissioner. If the payment of the consideration or any portion is contingent upon the happening of some future event, the purchaser shall give security to the satisfaction of the mining commissioner that he will pay transfer duty at the rate fixed as aforesaid on such consideration or such portion thereof if and when such consideration becomes payable.

(5) The transfer duty payable in terms of subsection (2) shall be paid within six months from the date of the sale or other alienation of the mining location, as the case may be:

Provided that-

- (i) such period may be extended by the Secretary on cause shown, but in any such case from and after the expiration of such period of six months and until payment or deposit of the amount of such duty, interest thereon at the rate of twelve *per centum* per annum shall be payable and paid by the purchaser;
  - (ii) if the payment of the consideration or any portion thereof is contingent upon the happening of some future event, the period of six months provided for by this subsection shall, in respect of the transfer duty on such consideration or such portion thereof be calculated as from the happening of such event.
- (6) Subject to this Act, any person entitled to be registered as the holder of a registered mining location, or any interest therein, shall make application to the mining commissioner for the transfer of such location or interest, and every such application shall be in writing and signed by or on behalf of the applicant, and shall be accompanied by the following particulars-
- (a) the last issued certificate of registration or of special registration of the location, or the holder's copy of the mining lease, as the case may be;
  - (b) certificates by the transferor and transferee in the prescribed form;
  - (c) a duplicate original, grosse or notarially certified copy of any and every existing written agreement affecting or bearing upon the sale, alienation, exchange or transfer;

(d) in the event of there being no such existing written agreement, certificates by the transferor and transferee to that effect;

(e) the original or a notarially certified copy of any power of attorney which may be required to authorize an agent to act on behalf of any party to the transfer if the original power is lodged with the mining commissioner and the applicant does not wish the mining commissioner to retain it, he shall furnish with it a copy which the mining commissioner shall compare with the original, certify to be a true copy and retain;

(f) if such application is in respect of the transfer of any mining location registered for precious stones or any interest therein, a certificate from the Secretary that the Minister has granted the permission required under section *two hundred and eighty-two* in respect of such transfer.

(7) The mining commissioner shall, on receipt of such application and other documents and of the transfer duty or, if no such duty is or may in the future be payable or the whole of such duty has been remitted under subsection(9), of the prescribed fee, and if he is satisfied that the other provisions of this Act have been complied with, register transfer by making the necessary entries in his registers and other records:

Provided that-

- (i) no transfer as aforesaid shall be valid unless it has been registered by the mining commissioner, and no such registration shall be made-
  - (a) while such location is liable to forfeiture or under attachment;
  - (b) until duties, fees, royalties, rents or other moneys due and payable to the mining commissioner under this Act in respect of the property to be transferred have been paid;
  - (c) where the location is situated in the area of a rural council, unless there is produced to the mining commissioner a certificate, issued by the rural council concerned, stating that all charges payable to the council in respect of the location during the period of five years immediately preceding the date of issue of the certificate have been paid or are, in the opinion of the council, irrecoverable:

Provided that no such certificate shall be valid for the purposes of this paragraph for a longer period than three months from the date of issue thereof;



(d) where the transferee is not a permanent resident of Zimbabwe, unless the mining commissioner, after consultation with the Reserve Bank of Zimbabwe, is satisfied that all requirements imposed by or under the Exchange Control Act [Chapter 22:05] have been complied with;

(ii) where the location transferred is a mining lease, the mining commissioner shall endorse on the holder's copy of the mining lease the fact of transfer, the date of registration thereof and the name of the transferee and shall transmit to the Board the particulars of such transfer;

(iii) where security is required under subsection (4), the mining commissioner shall not register transfer until such security has been given.

(8) The mining commissioner shall also, on receipt of the prescribed fee, issue to the transferee a certificate of registration in the form prescribed and such certificate shall record the interest of the transferee, whether whole or otherwise, in such block.

(9) If it is proved to the satisfaction of the Minister that a transfer applied for is merely for the purpose of carrying out the reconstruction of any company holding a mining location, or the amalgamation of two or more companies holding locations, the duty to be paid in respect of such transfer shall be one-half of the rate aforesaid.

(10) If in any transfer from one company to another registered by the mining commissioner under this section, it is shown to the satisfaction of the Minister that at the date of the sale or other alienation of the mining location such mining location was acquired-

(a) by a company from its wholly-owned subsidiary; or

(b) by a wholly-owned subsidiary of a company from its parent company; or

(c) by a wholly-owned subsidiary of a company from another wholly-owned subsidiary of the same parent company; or

(d) by a company in which the majority shareholder is the same person who holds a majority of shares in the company which transferred the location;

the Minister shall remit the whole or any part of the duty payable under this section.

(11) If when any transfer is applied for the applicant did not derive his rights to transfer from the holder, but there has been any intermediate agreement of sale or aliena-

tion, or some other person has previously acquired the right to obtain transfer, transfer may be made direct to the applicant:

Provided that if transfer duty payable on any such intermediate transaction or acquisition of rights has not been paid, such duty shall be payable by the applicant and the requirements of subsection (2) shall be met in respect of each such intermediate transaction or acquisition of rights.

(12) No such transfer shall be registered until each seller and purchaser, or their respective agents, has filed a certificate in accordance with the prescribed form.

(13) All certificates lodged in terms of subsection (6) shall be filed in the office of the mining commissioner, who shall keep a register in which full particulars as to any transfer shall be kept; such particulars shall include the names of the parties to the transaction, the name and registered number of the mining location, the nature and amount of the stipulated consideration, if any, and the extent of the interest transferred.

#### 276 Registration of hypothecation of mining location

(1) Any holder of a registered mining location may make application to the mining commissioner for the hypothecation of the whole or of any portion of his interest in such location.

(2) Every such hypothecation shall be effected at the Office of the Secretary, where a register shall be kept in which full particulars as to the date and nature of the transaction, the names of the parties concerned, the official number of the mining location to be hypothecated, the stipulated amount for which the hypothecation is to be effected and the rate *per centum* and the times at which interest, if any, is payable shall be duly registered.

(3) Every such application as aforesaid shall be accompanied by three duplicate original notarial copies or three notarially certified copies of the agreement between the parties to the transaction, embodying the terms upon which the hypothecation is to be effected, which notarial copies shall be endorsed by the notary before whom the same were completed to the effect that the minute or original filed in his protocol is stamped with revenue stamps in accordance with the fees fixed by Parliament.

Provided that where such notarial copies are endorsed by the notary to the effect that the hypothecation is auxiliary or collateral to or substituted for a previous hypothecation executed by the same person for the same debt or obligation and that the minute or original relating to such previous hypothecation was duly stamped in



accordance with such prescribed fees no such stamps or corresponding endorsement shall be required in respect of such subsequent hypothecation.

(4) The Secretary shall thereupon inscribe upon such deed of hypothecation an official or registered number, as also a certificate of registration of such hypothecation, and shall return to the notary who prepared them one copy, file another in his office and issue the third copy to the person in whose favour such hypothecation is effected:

Provided that-

(i) prior to the issue of such certified deed as aforesaid, the Secretary shall require the certificate of registration or of special registration or the holder's copy of the mining lease, as the case may be, of such location to be produced for his inspection, and shall inscribe on such certificate or mining lease the fact of such hypothecation as aforesaid having been effected, and also the date of registration of such hypothecation;

(ii) if the mining location sought to be hypothecated is registered for precious stones or in the case of a mining lease, the principal mineral being mined or to be mined on such location is precious stones, the Secretary shall not register such hypothecation unless he is satisfied that the Minister has granted the permission required under section *two hundred and eighty-two* in respect thereof.

(5) Should the hypothecation of any interest in any mining location be for the purpose of securing any issue of debentures, the fees fixed in terms of subsection (3) shall only be payable on such amount of debentures as are actually issued from time to time in respect of such location.

#### **277 Hypothecation in respect of loans granted by the State**

(1) If out of moneys provided by Parliament the Minister has, at the request of the holder of a mining location-

- (a) made a loan to such holder; or
- (b) caused work to be done on such location; or
- (c) sold to such holder mining machinery for use on such location;

and such holder has failed to give suitable and sufficient security for the repayment of such loan, the payment for such work or the purchase price of such machinery, the Minister may instruct the Secretary to register a hypothecation of all or any of the mining locations reg-

istered in the name of such holder in favour of the State.

(2) On receipt of such instruction the Secretary shall, in respect of every mining location to be hypothecated in terms of subsection (1), enter in the register required to be kept in terms of section *two hundred and seventy-six*

- (a) the official number of such location; and
- (b) the amount of the loan, the cost of the work done or the amount of the purchase price owed by the holder, as the case may be; and
- (c) the rate *per centum* and the terms on which interest is payable; and
- (d) the fact that such location is hypothecated to the State.

(3) Such entries shall constitute a hypothecation of such location in favour of the State from the date on which such entries were made and for the amount stated and the interest thereon.

#### **278 Registration of options on mining locations**

(1) When and as often as any holder of a registered mining location or locations has agreed in writing to grant to any other person, hereinafter termed the option holder, the option of exercising the right to purchase, or in any other manner to deal with, such location or locations at a certain future date, such option holder may apply to the mining commissioner for the registration of a notarial deed embodying the terms of such contract in the office of such mining commissioner, where a register shall be kept in which full particulars as to such contract shall be described; such particulars shall include-

- (a) the names of the parties to the contract; and
- (b) the name and registered number of the mining location or locations to which such contract relates; and
- (c) the date upon which the right or option conferred by such contract commences and expires

(2) Every such application as aforesaid shall be accompanied by three duplicate original notarial copies or three notarially certified copies of such deed and, if the application is in respect of a contract relating to a mining location registered for precious stones or a mining lease on which the principal mineral being mined or to be mined is precious stones or any interest therein, a certificate from the Secretary that the Minister has granted the permission required under section *two hundred and eighty-three* in respect thereof.

(3) The mining commissioner, on receipt of such appli-



cation and of the deeds above mentioned, shall forthwith register such contract, retain one copy and return two copies to the applicant with an endorsement thereon by him of the fact of such registration:

Provided that if the application is in respect of a contract relating to a mining location registered for precious stones or a mining lease on which the principal mineral being mined or to be mined is precious stones or any interest therein, the mining commissioner shall not register the contract unless the certificate mentioned in subsection (2) is produced to him.

(4) There shall be paid by the applicant for the registration of the above mentioned deed the fees fixed by Parliament and where consideration is given and received for such option and the whole consideration is not in cash the true cash value of such consideration shall, for the purpose of determining the fees payable by the applicant, be declared by the option holder and the registered holder at the time of the registration of the option:

Provided that prior to the registration of such certified deed as aforesaid, the mining commissioner shall require the certificate of registration, or of special registration, or the holders's copy of the mining lease, as the case may be, of such location to be produced for his inspection, and shall inscribe on such certificate or copy the fact of such an option as aforesaid having been effected and also the date of registration of such option.

(5) Whenever an agreement registered in terms of this section contains provisions granting a tribute or any other limited right to work the mining location to the option holder, so much of such agreement as relates to the tribute or other limited right to work the mining location, hereinafter called the tribute agreement, shall, while it remains in force, be binding upon any person who acquires the ownership of such mining location or any interest therein, and it shall not be lawful for the holder of such mining location to abandon such location during the period that such tribute agreement remains in force.

(6) Whenever an agreement registered in terms of this section contains provisions granting a tribute or any other limited right to work the mining location to the option holder, the mining commissioner shall, in addition to inscribing on the certificate of registration or of special registration or the holder's copy of the mining lease, as the case may be, of such mining location the fact of an option having been effected and the date of the registration thereof, inscribe on such certificate of registration or of special or copy of the mining lease, as the case may be, the fact of the existence of the agreement granting a tribute or any other limited right to work such mining location.

### 279 Registration of hypothecation or option is bar to transfer

(1) The registration of a hypothecation or option over any mining location shall, during the period for which such hypothecation or option continues to be of force and effect, be a bar to-

- (a) the transfer of such mining location, unless the consent in writing of the holder of the hypothecation or option or the cancellation thereof has been obtained and filed in the office of the mining commissioner; and
- (b) the abandonment of the whole or portion of such mining location.

(2) Notwithstanding anything in this section contained, the registration of a hypothecation or option shall not be a bar to the transfer of a mining location if the transfer is to be passed-

- (a) in execution of the judgement of any competent court by the officer appointed by law or by that court; or
- (b) by the trustee of an insolvent estate or by such an assignee as is described in Part VIII of the Insolvency Act [Chapter 6:04]; or
- (c) by an executor administering and distributing an estate under the Administration of Estates Act [Chapter 6:01]; or
- (d) by the liquidator of a company which is being wound up by or under the supervision of the High Court:

Provided that on any such transfer of a mining location over which an option is registered, the option shall continue and shall be endorsed by the mining commissioner on the new certificate of registration or special registration or on the holder's copy of the mining lease, as the case may be.

(3) The registration of an option over any mining location shall, during the period for which such option continues to be of force and effect, be a bar to the subsequent registration of any hypothecation of or any other option over such mining location, unless the consent in writing of the holder of the registered option or the cancellation thereof has been obtained and filed in the office of the mining commissioner.

### 280 Registration of tribute agreements

(1) If any holder of a registered mining location has agreed in writing to grant a tribute or any other limited



right to work such mining location to any other person, hereinafter called the tributor, such tributor may, after such agreement has been approved under Part XVIII, apply to the mining commissioner for the registration of a notarial deed embodying the terms of such agreement in the office of such mining commissioner, where a register shall be kept in which particulars as to such agreement shall be entered.

(2) Such particulars shall include-

- (a) the names of the parties to the agreement; and
- (b) the name and registered number of the mining lease to which such agreement relates; and
- (c) the date upon which the rights conferred by such agreement commence and expire.

(3) The applicant shall produce to the mining commissioner four duplicate original notarial copies or four notarially certified copies of such deed and the certificate of registration or of special registration or the holder's copy of the mining lease, as the case may be, of the mining location, and if the application is in respect of a tribute agreement relating to a mining location registered for precious stones or a mining lease on which the principal mineral being mined or to be mined is precious stones or on interest therein, a certificate from the Secretary that the Minister has granted the permission required under section *two hundred and eighty-two* in respect thereof.

(4) The mining commissioner shall, on receipt of an application in terms of subsection (1) and of the documents mentioned in subsection (3)-

- (a) register the agreement; and
- (b) retain two copies of the deed; and
- (c) return the other copies of the deed to the applicant with an endorsement made thereon by him of the fact of such registration; and
- (d) inscribe on the certificate of registration or of special registration or the copy of the mining lease, as the case may be, the fact of the agreement having been registered and the date of the registration thereof.

(5) There shall be paid by the applicant for the registration of such deed the fee fixed by Parliament.

(6) Any agreement registered in terms of this section shall, while it remains in force, be binding upon any person who acquires the ownership of such mining location or any interest therein, and it shall not be lawful for the holder of such mining location to abandon the whole or

part of such location during the period that such agreement remains in force.

(7) If in any agreement referred to in subsection (1) the tributor is granted the option of exercising the right to purchase or in any other manner to deal with such mining location at a certain future date, then the agreement may only be registered in terms of section *two hundred and seventy-eight*.

### **281 Registration of conditions governing mining rights on reserved ground**

(1) In giving written consent in terms of paragraph (a) of subsection (1) of section *thirty-one*, the President or other person giving such consent may impose terms prescribing the conditions under which mining rights on any mining location that may be pegged and registered in terms of such consent may be exercised.

(2) If the President or other person has given a written consent referred to in subsection (1), the mining commissioner shall upon the registration of any mining location pegged under such consent-

- (a) register the terms of such consent in a register to be kept by him; and
- (b) retain the original written consent; and
- (c) inscribe on the certificate of registration the fact of such consent having been registered.

(3) The terms of any written consent registered under this section shall be binding upon the holder of the registered mining location and upon any person who acquires the ownership of such mining location or any interest therein.

(4) Upon application by the holder of the mining location or of the person who have such written consent, the mining commissioner shall supply a certified copy of the written consent filed in his office to such person.

(5) If any person is guilty of any breach of the terms imposed in any written consent registered in terms of this section, he shall be guilty of an offence and liable to a fine not exceeding five hundred dollars.

(6) On the contravention of this section the holder and any lessee or tributor or manager of the mining location in respect of which such terms were imposed shall be liable to prosecution and conviction for such contravention.

(7) After a conviction for a contravention of subsection (5) or (6) the mining commissioner shall, upon application by the person who owns the land upon which such



mining location is situated, declare the mining location in question to be forfeited.

(8) In any prosecution for a contravention of subsection (5) or (6) a copy of any written consent certified as correct by the mining commissioner shall be received in evidence upon its production by the prosecutor.

**282 No tribute, sale or alienation of precious stones location without approval of Ministers**

(1) Notwithstanding anything contained in this Act or any other enactment, no holder of a mining location registered for precious stones or a mining lease on which the principal mineral being mined or to be mined is precious stones shall tribute, cede, assign, sell or otherwise alienate in any manner whatsoever, that mining location or mining lease or any interest therein without the permission of the Minister.

(2) The Minister may require the holder and such other person to furnish to him such information as he may require for the purpose of deciding whether he should or should not grant his permission under this section.

**PART XVIII**

**APPROVAL OF TRIBUTE AGREEMENTS**

**283 Interpretation in Part XVIII**

In this Part-

"grantor" means any person who has under a tribute agreement given a tributor the right to mine a mining location;

"mining location" does not include a special grant or a special grant issued under Part XX;

"tribute agreement" means any agreement or arrangement entered into after the 1st July, 1947, whereunder any person has given a tribute, licence, concession, authority or other right to mine a mining location to a tributor; and includes any such agreement which was entered into before the 1st July, 1947, and which is renewed after such date, and any agreement to alter the terms of a tribute agreement which has been approved by the Board and any renewal of a tribute agreement which has been approved by the Board;

"tributor" means the person who has been granted the right to mine a mining location under a tribute agreement.

**284 Submission of tribute agreements for approval**

The terms of every tribute agreement shall be reduced to writing and such agreement, together with the prescribed number of copies thereof, shall be submitted to the mining commissioner for examination and approval by the Board of the mining commissioner.

**285 Approval of tribute agreements by mining commissioner**

(1) The Board may authorize the mining commissioner to approve any tribute agreement which conforms to a standard agreement drawn up and approved by the Board.

(2) If any tribute agreement submitted to the mining commissioner conforms to such standard agreement, the mining commissioner may approve such agreement and shall report such approval to the Board and to the occupier or, if there is no occupier, the owner of the land concerned and shall furnish the Board with a copy of the agreement.

(3) If the mining commissioner does not himself approve a tribute agreement he shall submit the agreement to the Board for consideration.

**286 Approval of tribute agreements by Board**

If upon examination of any tribute agreement which has been submitted to it by a mining commissioner the Board is satisfied-

- (a) that the method of fixing the tribute royalty payable to the grantor and the rate of such royalty are satisfactory and are not likely to retard the progress or expansion of the mine or bring about the early cessation of mining operations; and
- (b) that the interests of both the grantor and the tributor are adequately safeguarded thereunder; and
- (c) that the period of such agreement is clearly defined and, if termination of the agreement by notice is provided for, that the interests of the parties to the agreement are adequately protected; and
- (d) that the development work required by the agreement is reasonable in the circumstances and is not unduly burdensome or likely to cause the premature cessation of mining operations on the mine; and
- (e) that the tributor is required to carry out sufficient development work to ensure the continuity of mining operations on the mine; and
- (f) that the grantor is entitled periodically and at reasonable times to inspect the mine and satisfy himself that the terms of the agreement are being observed; and



- (g) that in all respects the agreement is satisfactory and likely to result in the mine being mined to the best advantage;

the Board may approve the agreement and shall endorse such approval thereon and shall inform the owner or occupier of the land concerned of such approval.

#### **287 Refusal of approval of or amendment of tribute agreements**

(1) If the Board is not satisfied in terms of section *two hundred and eighty-six* it may refuse to approve the agreement or may submit to the parties thereto such amendments as it may deem fit.

(2) If the parties agree to such amendments the Board shall make the necessary amendments to the agreement and the agreement shall have effect as so amended and approved by the Board.

(3) If the Board refuses to approve an agreement or is only prepared to approve an agreement with such amendments as the parties refuse to accept, the parties may appeal to the Minister to reverse the Board's decision, and the Minister, whose decision shall be final, may uphold or reverse the Board's decision.

(4) If the Minister reverses or alters the Board's decision, the Board shall approve the agreement in accordance with the Minister's decision and shall endorse the agreement accordingly.

#### **288 Records of agreements**

(1) The Board and the mining commissioner shall keep a copy of all tribute agreements submitted for approval under this Part.

(2) The Board shall further keep a record of what agreements have been approved or disapproved and the details of any amendments made to any agreements with the approval of the parties and shall notify the mining commissioner of approved agreements.

#### **289 Penalty for acting under unapproved agreement**

(1) No party to a tribute agreement shall exercise any right under such agreement unless and until such agreement has been examined and approved by the Board or a mining commissioner.

(2) Any party who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding five hundred dollars or, in default of payment, to imprisonment for a period not exceeding twelve months.

#### **290 Provision of disposal of minerals**

(1) If a tributor is mining a mining location under an unapproved agreement or in conflict with the terms of an approved agreement the mining commissioner shall issue an order prohibiting the disposal of minerals from such mining location until he is satisfied that the agreement has been approved under this Part or until the terms of the approved agreement are complied with.

(2) Any miner of such mining location who fails to observe such an order and any person knowing of such an order who contrary thereto receives any minerals from such mining location shall be guilty of an offence.

## **PART XIX**

### **SPECIAL GRANTS**

#### **291 Issue of special grants**

(1) The Secretary may issue to any person-

- (a) a special grant to carry out prospecting operations; or
- (b) a special grant to carry out mining operations or any other operations for mining purposes;

upon a defined area situated within an area which has been reserved against prospecting or pegging under section *thirty-five* for a period which shall be specified in such special grant and on such terms and conditions, including terms and conditions relating to the amendment or cancellation thereof, as may be approved by the Minister and shall be incorporated in such special grant.

(2) A copy of every special grant issued and of all documents relating thereto shall be retained by the Secretary for purposes of record.

(3) The Secretary shall send written notification of the issue of a special grant to every occupier or, if there is no occupier, owner of land falling within the area covered by the special grant.

#### **292 Register of special grants**

The Secretary shall maintain a register of special grants issued under section *two hundred and ninety-one* in which there shall be recorded the official number assigned to each grant and the particulars thereof.



**293 Fee for special grant**

The person to whom a special grant is issued shall pay the prescribed fee in respect of the issue of a special grant or any renewal thereof.

**294 Application of other provisions of this Act to special grants**

(1) Where a special grant to carry out mining operations has been issued, provisions of this Act relating to registered mining locations shall apply to such special grant but only in so far as they do not conflict with the terms and conditions of the special grant.

(2) Where a special grant to carry out prospecting operations has been issued, the holder of the special grant shall, subject to the terms and conditions of the special grant, have the following rights-

(a) the exclusive right of prospecting within the area of the special grant on all ground which is open to prospecting on the date on which the special grant is issued, including the right to drill and excavate, whether at the surface or underground;

(b) the same surface rights within the area of the special grant as are conferred upon the holder of a prospecting licence under section *twenty-nine*, and for this purpose the date on which the special grant is issued shall be deemed to be the date of the posting of a prospecting notice by the holder of the special grant:

Provided that the holder of a special grant shall have the right of removing any accommodation, buildings of machinery which have been erected within that area within three months or such longer period as may be determined by the mining commissioner after the expiration or cancellation of the special grant.\*

**295 Beaconing of special grant**

The holder of a special grant shall beacon such grant in such manner as the mining commissioner may direct and shall maintain the beacons in good order and condition in their proper position.

**296 Conversion of special grant to registered block**

(1) If after the issue of any special grant, whether such grant was issued before or after the 1st November, 1961, any portion of such grant becomes land which would but for the presence of such grant be open to prospecting and pegging in terms of this Act, the Minister may permit or may direct the holder of the special grant to peg and register such portion in accordance with this Act governing the pegging and registration of blocks of claims:

Provided that for the purpose of such pegging the holder of the special grant shall not be required to take out a prospecting licence nor to post a prospecting, discovery or registration notice.

(2) If the holder of the special grant fails to comply with any such direction within such period as the Minister may have allowed, the Minister may cancel the special grant.

(3) On the issue of the certificate of registration in respect of any such portion of the special grant, the grant shall be deemed to have been cancelled in respect of that portion.

**PART XX**

**SPECIAL GRANTS FOR COAL, MINERAL OILS AND NATURAL GASES**

**297 Interpretation in Part XX**

In this Part-

“grantee” means any person to whom a special grant has been issued, ceded or assigned under this Part;

“special grant” means a special grant issued under this Part.

**298 Right to mine coal, mineral oils or natural gases may only be acquired under special grant**

Subject to section *three hundred and seven*, no rights to mine coal, mineral oils or natural gases or nuclear energy source material may be acquired except under and in accordance with a special grant issued under this Part.

**299 Application for special grant**

Any person who wishes to mine coal, mineral oils or natural gases or nuclear energy source material may apply to the Board for a special grant, and on such application shall furnish to the Board-

- (a) full information as to his financial status; and
- (b) particulars of any guarantees that may be required for the performance of his obligations under the special grant; and
- (c) information whether the application relates to coal, mineral oils or natural gases; and



(d) details illustrated by a sketch plan of the area to be embraced by the grant and the size of such area; and

(e) if the applicant is a company, the full names and nationality of each director and the full names by which those directors have at any time been known in any part of the world; and

(f) any further information required of him by the Board.

### **300 Consideration and report by Board on application for special grant**

(1) The Board shall consider every application in terms of section *two hundred and ninety-nine* and shall report thereon to the Minister with its recommendation whether the application should be granted or refused.

(2) In considering an application in terms of section *two hundred and ninety-nine* the Board shall have regard to whether-

(a) the applicant is a fit and proper person to be issued with a special grant;

(b) the financial status of the applicant is such that he will be able to comply with the terms and conditions of any special grant that may be issued to him;

(c) it would be in the national interest to issue the special grant.

(3) Where the Board recommends that an application shall be granted it may include in its report recommendations relating to-

(a) the minimum capital which the applicant should be required to invest in the development of the area to be covered by the special grant;

(b) the period that should be permitted to the applicant to bring operations in the area to be covered by the special grant to the producing stage;

(c) the minimum rate of production of coal, mineral oils or natural gases or nuclear energy source material that should be conducted by the applicant;

(d) the amount of royalty that should be paid by the applicant to the Minister in respect of coal, mineral oils or natural gases or nuclear energy source material won by the applicant;

(e) the annual fee that should be paid by the applicant to the Minister as a consideration for the issue of the special grant.

### **301 President may grant or refuse application for special grant**

(1) The Minister shall submit the report and recommendations of the Board made to him in terms of section *three hundred* to the President who may refuse the application or authorize the Minister to issue a special grant on such terms and conditions as he may fix.

(2) Where the President has refused an application made in terms of section *two hundred and ninety-nine* the applicant shall not make a fresh application in terms of that section until at least three months have elapsed since the refusal of his last application.

### **302 Rights under special grant personal to the grantee**

The rights granted under a special grant shall be personal to the grantee, who may not cede or assign any such rights to any other person unless authorized to do so by the President.

### **303 Rate of royalty and annual fee**

(1) Notwithstanding Part XIV, provision may be made in a special grant stipulating for the payment of royalty on all coal, mineral oils or natural gases or nuclear energy source material won by the grantee under his special grant at such rate as the President may fix.

(2) Provision may be made in a special grant for the payment by the grantee of such annual fee as the President may fix as consideration for the issue of the special grant.

### **304 Amendment of area covered by special grant**

The President may, on application by a grantee, extend or reduce the area covered by his special grant or may alter the boundaries thereof.

### **305 Cancellation of special grant**

(1) If a grantee contravenes the terms and conditions attached to his special grant, the President may cancel such grant.

(2) No grant shall be cancelled in terms of subsection (1) unless written notice has been given to the grantee of the proposed cancellation twelve months before such cancellation.

### **306 Application of certain sections**

(1) Sections *two hundred and ninety two* to *two hundred and ninety-five* shall apply, *mutatis mutandis*, in relation to every special grant.

(2) Section *two hundred and sixty nine* shall apply, *mutatis mutandis*, to a grantee in respect of his mining location registered under the special grant, and for this purpose the date of the expiration or cancellation of the special grant shall be regarded as the date of the forfeiture of such mining location.

**307 This Part not to apply to certain blocks registered under Part XII of Cap.195 of 1939**

This Part shall not apply to the holder of a block of coal, mineral oil or natural gas claims which was registered under Part XII of the Mines and Minerals Act [*Chapter 195 of 1939*].

## PART XXI

### MINING ON TOWN LANDS

**308 Application of this Act to town lands**

(1) This Part shall apply to town lands.

(2) The right to prospect for and mine and win minerals on or under any town lands shall be governed by the other Parts of this Act, except in so far as they conflict with this Part.

**309 Local authorities may make by-laws on certain matters**

The local authority having control over any town lands shall have full power and authority to make and enforce regulations and by-laws for proper and efficient sanitary arrangements, for the enclosing of all pits, excavations and dangerous surface works and for the protection of the neighbourhood within which prospecting and mining are being carried on, and shall for the above purposes have the right to enter upon and inspect all such works existing or proceeding on such lands:

Provided that no such regulation or by-law shall be of any force or effect until approved by the Minister and duly published in statutory instrument.

**310 Consent required for pegging of sites on town lands**

No holder of a registered mining location shall be entitled to peg or acquire any site on any town lands under section *forty-seven* unless and until he has obtained the consent in writing of the local authority concerned or,

failing the consent of such local authority, the consent of the President.

**311 Limitation of timber rights**

No holder of a prospecting licence or of a mining location situated on town lands shall have the right of cutting indigenous wood or timber upon such lands without the consent of the mining commissioner, who shall only give his consent when such wood or timber interferes with prospecting or mining operations or the erection of buildings required for such operations.

**312 Disposal of subterranean water**

(1) The holder of any mining location situated on town lands shall lead into the nearest natural water channel any water issuing from or brought to the surface of the ground from the subterraneous working of such location and not being used by such holder.

(2) The holder, while complying with subsection (1), shall not pollute any water in such channel.

## PART XXII

### ACQUISITION OF LAND BY HOLDERS OF MINING LEASES OR BY STATE

**313 Interpretation in Part XXII**

In this Part-

"private land" means any land the ownership of which has by law, grant or title deed become vested in any person.

(2) The Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, in respect of matter arising under this Part.

**314 Compulsory purchase or sale of private land covered by mining lease**

(1) Subject to subsection (3), where a mining lease has been issued and the whole or a portion of the land covered by such mining lease is private land, the owner of such private land may apply to the Administrative Court for an order compelling the holder of such mining lease to purchase-

(a) so much of his land as falls within the area of the mining lease;



(b) where a portion only of his land falls within the area of the mining lease and by reason of the presence of such mining lease or the nature of the mining operations carried out in the area of such mining lease all his land has become unsuitable, so far as he or the occupier of the land, if any, is concerned, for the agricultural purpose for which it is being used or is *bona fide* intended to be used, all such land.

(2) Subject to subsection (3), the holder of a mining lease may apply to the Administrative Court for an order compelling an owner of private land to sell to him so much of such land as falls within the area of the mining lease.

(3) It shall not be competent for an application to be made under this section for an order if the proposed purchaser is a person who is precluded by the constitution or any law from owning the land concerned or if the purchase or sale of such land is prohibited by any such enactments.

(4) The Administrative Court may grant or refuse the order applied for.

(5) The Administrative Court, in deciding whether to grant or refuse an order, shall have regard to the following matters-

(a) the extent to which the surface of the land concerned is required for mining purposes or likely to be required for mining operations;

(b) the value of permanent improvements erected or constructed for mining purposes or likely so to be erected or constructed on the land concerned;

(c) the value of the land for agricultural purposes;

(d) the interference or possible interference with the use or intended use of the land by the owner or occupier thereof of the mining operations being carried out or intended to be carried out by the holder of the mining lease;

(e) in the case of an order referred to in paragraph (b) of subsection (1), whether the land concerned has become unsuitable, so far as the owner or occupier of the land, if any, is concerned, for the agricultural purpose referred to in that paragraph;

(f) any other matter which the Court may seem relevant.

(6) If the Administrative Court grants the order it shall determine the price to be paid for the land and shall in doing so make allowance for the depreciation, if any, in the value of any remaining portion of the land concerned due to the reduction in area of the land or the mining operations of the holder of the mining lease, but no deduction shall be made in respect of the appreciation, if

any, in the value of such remaining portion due to such mining operations.

### **315 Right of holder of mining lease to purchase State land**

(1) Subject to subsection (2), the holder of a mining lease shall be entitled to purchase from the State any State land falling within the area of the mining lease:

Provided that nothing in this subsection contained shall be construed so as to constitute an encumbrance upon such land or so as to preclude the sale or other alienation thereof by the State to some other person before such holder has indicated that he intends to purchase such land.

(2) It shall not be competent for the holder of a mining lease to purchase land under subsection (1) if he is precluded by the Constitution or any law from owning such land or if the purchase or sale of such land is prohibited by any such enactment or if such land is land held by any person under any enactment or agreement whereby such person is entitled to obtain from the President title thereto on the fulfillment by him of the conditions fixed by such enactment or agreement, as the case may be.

(3) If the holder of the mining lease and the President are unable to agree upon the price to be paid for the land mentioned in subsection (1), the President shall refer the matter to the Administrative Court for determination.

### **316 Compulsory purchase of land not covered by mining lease**

(1) For the purposes of this section-

"mining property" means a registered block or two or more such blocks, whether contiguous or otherwise, owned by one person from which the ore is being treated at the same milling or reduction plant or which are under the control of one registered mine manager.

(2) Where the owner of any private land on which the whole or a portion of a mining property, other than a mining lease, is situated considers that the nature and extent of the mining operations being carried out or likely to be carried out thereon fulfil the requirements in that regard for the issue of a mining lease in respect of such mining property, he may make application in writing to the Board, through the mining commissioner, for a certificate to that effect.

(3) The Board shall, on a day fixed by it, being not less than thirty days after the date of posting such notification, and notified to the applicant and the holder of the mining property, hear such evidence and arguments as those persons may wish to lay before it in regard to grant or refusal of the application.



(4) If the Board is satisfied that mining operations on a substantial scale are likely to be conducted for a considerable period on the mining property concerned it shall issue the certificate unless the holder of the mining property satisfies the Board that his financial status is such that he is unable to meet any payments for which he would be liable if the order mentioned in subsection (6) were granted.

(5) The decision of the Board to grant or refuse the application shall be final and without appeal:

Provided that if the Board's decision to refuse the application is based solely on the ground that the financial status of the holder is inadequate, the owner of the land may appeal against such decision to the Administrative Court.

(6) On the issue to him of the certificate referred to in subsection (2) the owner of the land concerned may apply to the Administrative Court for an order compelling the holder of the mining property to purchase-

(a) so much of his land as falls within the area of such mining property; or

(b) where a portion only of his land falls within the area of the mining property and by reason of the presence of such mining property or the nature of the mining operations carried out thereon all his land has, so far as he or the occupier of the land, if any, is concerned, become unsuitable for the agricultural purpose for which it is being used or is *bona fide* intended to be used, all such land;

and subsections (3), (4), (5) and (6) of section *three hundred and fourteen* shall apply, *mutatis mutandis*, in respect of such application.

(7) The Board may, if it considers that any application made under this section is vexatious or frivolous, order the applicant to reimburse the holder of the mining property in respect of any costs or expenses incurred by him in connection with the application in such amount as to the Board may seem just and equitable.

### 317 Compulsory purchase of land covered by mining locations

(1) If the owner of any holding of private land upon which one or more registered mining locations are situated finds that by reason of the presence of such mining locations or the nature of the mining properties carried out thereon such holding has become unsuitable, so far as he or the occupier of the land, if any, is concerned, for the purpose for which it is being used or is *bona fide* intended to be used, he may apply to the Minister for the purchase

by the President of such holding of land and shall inform the Minister of the price which he considers should be paid to him for such land:

Provided that it shall not be competent for any owner so to apply by reason of the presence of a registered mining location owned by him or in which he or his wife or the minor child of either of them has a direct or indirect interest or of any registered mining location, other than a mining lease, which was registered within a period of two years before the making of such application.

(2) If the President is satisfied that-

(a) the holding of land has, by reason of the presence thereon of the mining location or by reason of the nature of the mining operations carried out thereon, become unsuitable, so far as the applicant or the occupier, if any, of such land is concerned, for the purpose mentioned in subsection (1); and

(b) the price stipulated by the applicant is fair and reasonable;

he shall purchase such holder at that price.

(3) If the President is not so satisfied as to the matter mentioned in paragraph (a) of subsection (2) or as to the price stipulated by the applicant or as to both such matters, he shall refer such matter or matters to the Administrative Court for determination.

(4) The Administrative Court shall determine any matter referred to it under subsection (3) and shall cause a copy of such determination to be sent to the Minister and to the applicant.

(5) If the Administrative Court finds in favour of the applicant on the matter mentioned in paragraph (a) of subsection (2) or the President has not referred that matter to the Administrative Court for determination, the President shall purchase the land at the price stipulated by the applicant or, if the matter of the price to be paid for such land has been referred to the Administrative Court and the applicant agrees within thirty days of the Court's determination to accept the price determined by that Court, at the price so determined:

Provided that if the applicant does not so agree to accept the price as determined by the Administrative Court, the President shall not be found to purchase the land.

(6) Where the President has purchased land under this section then, for the purposes of subsection (1) of section *three hundred and fourteen*, such land shall be deemed to be private land and the President shall be deemed to be the owner thereof.



### 318 Cost of survey to be borne by holder of mining location

Where any land is purchased by the holder of a mining location under the provisions of this Part, the cost of the survey of such land for the purpose of obtaining title thereto shall be borne by such holder.

## PART XXIII

### EXPROPRIATION OF MINING LOCATIONS NOT BEING WORKED OR DEVELOPED

#### 319 Interpretation in Part XXIII

In this Part-

"expropriated location" means a mining location which has been transferred to the Minister in terms of this Part and is registered in his name;

"order" means an order of expropriation made under this Part.

#### 320 Report that mining location not being adequately worked

(1) If any person has reason to believe that a registered mining location is not being worked at all or is not being adequately developed or worked, he may report the matter in writing to the mining commissioner and, with such report, shall lodge a deposit of four hundred dollars.

(2) On receipt of such report the mining commissioner shall obtain from a Government mining engineer a report on the matter.

(3) If the mining commissioner has reason to believe, whether in consequence of the receipt of a report mentioned in subsection (1) or otherwise, that a registered mining location is not being worked at all or is not being adequately developed or worked, he shall obtain a report from a Government mining engineer.

(4) On receipt of the report of the Governing mining engineer under subsection (2) or (3), the mining commissioner shall refer the matter to the Board.

#### 321 Board shall investigate why mining location is not being adequately developed or worked

Upon the receipt of a report in terms of section *three*

*hundred and twenty*, the Board shall inquire into the history of the mining location and investigate the mining activities that have been or are being conducted on such mining location with a view to discovering whether such location is being adequately developed or worked.

#### 322 Board may call upon holder to show cause why his mining location should not be expropriated

If after investigation the Board is of opinion that the mining location is not being developed or worked at all or is not being adequately developed or worked, it shall call upon the registered holder of such location to show cause why such location should not be expropriated.

#### 323 Recommendation for order of expropriation

After considering the representations made by the registered holder under section *three hundred and twenty-two*, the Board may recommend to the President that an order expropriating the mining location be made by him unless it is satisfied as to any one of the following matters-

- (a) that the failure to develop or work or adequately to develop or work such location is due to causes beyond the control of the holder, which he has made every effort to overcome;
- (b) that it is the holder's intention to start or continue developing or working the location within a period of six months on a scale satisfactory to the Board;
- (c) that the location is essential to other mining properties being conducted by the holder and will be worked when the mine which he is at present operating ceases to be productive;
- (d) that there is reasonable cause for the delay in developing or working such location or for not adequately developing or working such location;
- (e) that the location forms part of a series of not more than ten blocks contiguous to a main block being worked by the holder and is essential to the proper working of such main block.

#### 324 Order of expropriation

(1) Whenever the Board makes a recommendation for the making of an order of expropriation, it shall submit to the President all relevant documents and a written report setting out the grounds for its recommendation.

(2) Upon receipt of such report and recommendation the President may require the Board to make further investigations and shall afford the holder of the location an opportunity of making representations to him why the order should not be granted.



(3) If after considering all the information laid before him the President is of opinion that the mining location is not being worked at all or is not being adequately developed or worked, he may make an order declaring that the mining location is expropriated.

(4) Every order made by the President under this section shall be published in the *Gazette* and a copy of the order shall be sent to the holder of the expropriated mining location and to the mining commissioner of the district in which the mining location is situated and, where the expropriated mining location is a mining lease, to the Board.

### 325 Transfer of expropriated location

(1) Upon receipt of a copy of the order the mining commissioner shall transfer the expropriated location to the Minister by making the necessary entries in the appropriate register and other records and shall inform the Board of such transfer.

(2) No fee or duty shall be payable in respect of anything done in terms of subsection (1).

(3) Save as provided by section *three hundred and twenty-nine*, no compensation shall be payable to the holder of any expropriated location or to any other person in respect of an expropriated location.

### 326 Part XI not to apply to expropriated location in certain respects

The provisions of Part XI in regard to the obtaining of inspection certificates shall not apply to an expropriated location.

### 327 Sale of expropriated location

(1) The Board may sell any expropriated location on such terms and conditions as it thinks fit.

(2) The Board shall publish monthly in the *Gazette* and in such newspapers circulating in Zimbabwe as it may select a statement describing expropriated locations and calling for tenders for their purchase.

(3) The Board shall be under no obligation to accept any tender or the highest tender.

(4) In determining the purchaser the Board shall pay due regard to his ability to finance and conduct mining operations on the expropriated location.

### 328 Disposal of expropriated location without consideration

The Minister may, on the recommendation of the Board,

transfer any expropriated location to any person for no valuable consideration.

### 329 Disposal of purchase price

The purchase price of any expropriated location shall be paid by the Board to the holder from whom such location was expropriated less any costs incurred by the Board in connection with such location and its sale.

### 330 Forfeiture of expropriated location

If an expropriated location has not been sold or transferred within twelve months of the date when it was transferred to the Minister, the Board shall, in the case of a mining lease, cancel such lease, or otherwise the mining commissioner shall declare such expropriated location to be forfeited, whether or not it is currently protected from forfeiture by an inspection or protection certificate issued in terms of Part XI:

Provided that if the Board is of the opinion that no economic deposit of any mineral has been found or likely to be found thereon, such location may be so cancelled or forfeited after the expiration of such shorter period as the Board may fix.

### 331 Part IX applies to expropriated location on transfer from Minister

An expropriated location which has been transferred to any person shall be subject to Part XI in regard to the obtaining of inspection certificates, and for such purpose the date of registration by the mining commissioner of the transfer shall be deemed to be the date of the registration of the block or the date of the issue of the mining lease, as the case may be.

### 332 Refund of deposit.

The deposit mentioned in section *three hundred and twenty* shall, after the Board has considered the matter under section *three hundred and twenty-three*, be refunded to the person who made the deposit:

Provided that if the Board is of the opinion that the report made under section *three hundred and twenty* is frivolous or vexatious it may direct that such deposit be forfeited and be paid by the mining commissioner into the Consolidated Revenue Fund.

### 333 Applicability of this Part

Nothing in this Act contained shall be construed so as to preclude the expropriation under this Part of a mining location, the last issued inspection certificate for which was obtained by payment under section *two hundred and twelve*.



## PART XXIV

### TERMINATION OF ENTITLEMENT TO SHARE IN ROYALTIES

#### 334 Interpretation in Part XXIV

In this Part-

"beneficiary" means the beneficiary under an entitlement;

"entitlement" means a right, by virtue of a condition in the title deed to any land, to any share in the royalties due on minerals, mineral oils or natural gases won from such land or to any share in any other revenues whatsoever which may accrue by reason of the ownership of the said land from the exercise in relation to such land of or kindred rights under the law relating to mines and minerals;

"judge" means the Chief Justice or any other judge of the High Court whom the Chief Justice may appoint to decide any question of compensation referred to a judge by the President in terms of this Part.

#### 335 President may terminate entitlement

Subject to this Part, the President may at any time declare any entitlement to be absolutely terminated.

#### 336 President may refer question of compensation to judge

(1) If the President considers it desirable to terminate an entitlement, the Minister shall notify the beneficiary thereof, who shall forthwith inform the Minister of the amount of compensation which he considers should be paid to him for the loss of his entitlement.

(2) If the President and the beneficiary agree on the amount of the compensation, the President may forthwith declare that the entitlement concerned is absolutely terminated.

(3) Upon any declaration made in terms of subsection (2) the amount of compensation agreed shall become payable to the beneficiary.

(4) If the President and the beneficiary are unable to agree on the amount of the compensation and if, after negotiations with the beneficiary, the President still considers it desirable to terminate the entitlement, the President shall refer the question of compensation to a judge for his determination, and the Minister shall notify the beneficiary of such reference.

#### 337 Procedure and powers of judge

Subject to this Part, the procedure to be followed in any proceedings for the determination of compensation in terms of this Part shall be as determined by the judge, who shall have and may exercise, *mutatis mutandis*, any of the powers conferred in terms of the Arbitration Act [Chapter 7:02] or the Schedule thereto on-

- (a) a judge in regard to the summoning of witnesses; and
- (b) an arbitrator.

#### 338 No costs to be awarded

Save as provided in section *three hundred and thirty-nine*, neither party to any proceedings in terms of this Part shall be liable to pay the costs of the other party and the judge shall not make any order as to costs.

#### 339 Powers of President on determination of compensation

(1) The President shall, within twelve months of the date of the determination by the judge of the amount of compensation due to a beneficiary-

- (a) declare that his entitlement is absolutely terminated; or
- (b) notify the beneficiary that he does not intend to make such a declaration.

(2) Upon any declaration made in terms of P (a) of subsection (1), the amount of compensation fixed by the judge shall become payable to the beneficiary in question from moneys appropriated for the purpose by Act of Parliament.

(3) If the President gives notification in terms of P (b) of subsection (1), the Minister shall, subject to subsection (4), pay to the beneficiary from moneys appropriated for the purpose by Act of Parliament the costs incurred by the beneficiary in connection with the proceedings.

(4) If the Minister considers that the amount claimed as costs by a beneficiary for the purposes of subsection (3) is excessive, he may require costs to be taxed, in which event the costs shall be determined and taxed by the registrar of the High Court in accordance with the rules of the High Court relating to the taxation of costs.

(5) Notification in terms of P (b) of subsection (1) shall not preclude the president thereafter from taking action afresh in terms of section *three hundred and thirty-six*:

Provided that, on a further reference to a judge to fix the



amount of compensation, no alteration to the amount for compensation previously fixed shall be made unless fresh facts justifying such alteration are adduced to the judge.

### 340 Effect of declaration in terms of this Part

(1) With effect from the date on which the President makes a declaration in terms of this Part that an entitlement is absolutely terminated, that entitlement shall lapse and cease to be of force or effect for all purposes whatsoever.

(2) Whenever an entitlement has been terminated in terms of this Part, the Minister shall give written notice of the fact and date of such termination to the beneficiary and to the Registrar of Deeds, who shall record the termination in the appropriate register in the Deeds Registry.

## PART XXV

### ADMINISTRATION OF ACT

#### 341 Administration of Ministry

(1) The Secretary shall be and is hereby vested with authority generally to supervise and regulate the proper and effectual carrying out of this Act by mining commissioners or other officers of the Public Service duly appointed thereto, and to give all such orders, directions or instructions as may be necessary.

(2) The Secretary may at his discretion assume all or any of the powers, duties and functions by this Act vested in any mining commissioner, and may lawfully perform all such acts and do all such things a mining commissioner may perform or do, and is further empowered in his discretion to authorize the correction of any error in the administration or in the carrying out of the provisions of this Act, or to perform any other lawful act which may be necessary to give due effect to its provisions.

(3) The Secretary may exercise such of the powers by this Act vested in the Minister as may be delegated to him by the Minister.

#### 342 Declaration of mining districts

The Minister may, from time to time, by statutory instrument, declare any area within Zimbabwe to be a mining district, and may, by like notice, alter the boundaries of or abolish any such district.

#### 343 Appointment of officers

For the purposes of this Act, there shall be-

- (a) a Chief Mining Commissioner; and
- (b) in respect of every mining district, a mining commissioner who shall perform the functions imposed upon him under this Act or any other enactment; and
- (c) whenever the exigencies of the mining industry so require, an acting mining commissioner, assistant mining commissioner, or such other officer to perform the functions of a mining commissioner; and
- (d) a Director of Geological survey; and
- (e) a Director of Metallurgy; and
- (f) a Chief Government Mining Engineer; and
- (g) Regional Mining Engineers; and
- (h) a Chief Mine Surveyor; and
- (g) Regional Mining Engineers; and
- (h) a Chief Mine Surveyor; and
- (i) Regional Mine Surveyors; and
- (j) such inspectors of mines and other mining officers as may be necessary for the efficient administration of this Act;

who shall respectively perform the functions imposed upon them under this act or any other enactment.

#### 344 Mining commissioner's powers to take oaths.

(1) Any such mining commissioner, acting mining commissioner or assistant mining commissioner may, with the consent of the Secretary, delegate to any other officer any of the powers or duties by this Act vested in him.

(2) In all matters in which, in terms of this Act, an oath or solemn declaration is required to be made, such mining commissioner, assistant mining commissioner, acting mining commissioner or any other person may and is hereby empowered to administer such oath or receive such solemn declaration.

#### 345 Jurisdiction of High Court and mining commissioners

(1) Except where otherwise provide in this Act, or except where both the complainant and defendant have agreed in writing that the complainant or dispute shall be investigated and decided by the mining commissioner



in the first instance, the High Court shall have and exercise original jurisdiction in every civil matter, complaint or dispute arising under this Act and if in the course of any proceeding and if it appears expedient and necessary to the Court to refer any matter to a mining commissioner for investigation and report, the Court may make an order to that effect.

(2) Where the parties have agreed in writing, as provided for in subsection (1), the mining commissioner shall, in the investigation and the decision of the complaint or dispute, be guided by sections *three hundred and forty-six to three hundred and sixty*.

(3) The mining commissioner, before whom any claim, dispute or proceeding is brought, shall hear and determine such claim, dispute or proceeding in the manner set forth in this Act and shall be and is hereby empowered to give and make all such orders, directions judgments or decrees, and do or cause to be done all such things, as may be necessary to give effect to this decision in respect of such claim, dispute or proceeding:

Provided that no mining commissioner shall have or exercise any criminal jurisdiction except as provided in section *three hundred and eighty-nine* mentioned, nor adjudicate upon any claim for debt or damages.

#### **346 Judicial powers of mining commissioners**

(1) A mining commissioner may hold a court in any part of the mining district to which he is appointed, or at his discretion in such place outside the said mining district as may be convenient to the parties interested, and may adjourn such court from time to time and from place to place as occasion may require.

(2) A mining commissioner shall hear and determine, in the simplest, speediest and cheapest manner possible, all actions, suits, claims, demands, disputes and questions arising within his jurisdiction, as set forth in section *three hundred and forty-five*, and make such order as to costs as he may deem just.

(3) For the purpose of such hearing a mining commissioner shall examine witnesses on oath, which oath he is hereby empowered to administer, and take down the evidence in writing to be signed by the person given the same, and do all things which he may deem necessary for a proper decision.

(4) A mining commissioner shall have power to summon all witnesses required by the respective parties, or whom he may deem necessary to appear before him, and, in default of any such witness appearing, may, upon proof that his reasonable expenses have been paid or tendered to him, issue a warrant for his arrest, and may inflict

upon him such penalties as he would have been liable to for disobedience to a subpoena to appear before a magistrates court.

(5) The service of the summons and the execution of the warrant, issued in terms of subsection (3), may be lawfully performed by any person appointed for that purpose by the mining commissioner.

(6) Any witness who, being duly sworn, wilfully gives false evidence before such mining commissioner on any question material to the matter at issue, knowing such evidence to be false, or not knowing or believing it to be true, shall be deemed guilty of perjury, and shall be liable to be prosecuted and punished accordingly.

#### **347 Summons and commencement of proceedings before mining commissioner**

(1) Every proceeding in a mining commissioner's court shall be commenced by a summons which shall as nearly as material be in the prescribed form.

(2) Every summons shall be issued by such mining commissioner upon the application of any complainant, and shall be filled up according to the nature of his case so as to show the substance of the complaint, and shall require the defendant to appear before the mining commissioner's court on a day and at a place to be named in the summons.

(3) Upon the day and at the place so named, or upon any adjourned day of hearing and upon proof of such service or substituted service of the said summons as the mining commissioner thinks sufficient, the court shall proceed to investigate the matter of such complaint, and in the presence of the parties interested, or of such of them as appears to him sufficiently to represent all the parties who, having been duly served with such summons, do not appear, shall hear, receive and examine evidence and determine such complaint in a summary way, with full power to adjourn the hearing of such complaint to any other time or place, and to make all such amendments in any proceedings in such course as may be necessary for the purpose of determining the real question at issue between the parties.

#### **348 Summary hearing of complaints**

Notwithstanding requirements of sections *three hundred and forty-five* and *three hundred and forty-six*, the mining commissioner may, if the parties concerned consent thereto in writing and are both present at the hearing, hear and determine any such complaint as above mentioned, summarily, and without any formal proceedings taken before him.



A minute of the decision shall be made by him a register of complaints in which shall be entered every complaint laid before him together with particulars thereof.

### 349 Mining commissioner may amend summons

No complaint shall be dismissed by any mining commissioner for informality, either in the summons itself or in the entry thereof, nor shall any objection to any such summons or complaint be taken or allowed for any alleged defect or misnomer or inaccurate description of any person or place or on the ground that the complainant appears at the hearing of the summons to be entitled to different relief from that sought therein, or for any variance between such summons and the evidence adduced on the part of the complainant, but such summons may be amended by the mining commissioner so that the real question in controversy between the parties plainly appears and the court shall proceed to adjudicate according to the rights of the parties.

Provided that if it appears to the mining commissioner, upon the hearing of the case, that the defendant has been deceived, misled or prejudiced, by reason of any such amendment having been made, such mining commissioner may, on such terms as to costs or otherwise as he thinks fit, adjourn the further hearing of the case to another day.

### 350 Mining commissioner to keep register of his decisions

(1) A minute in the form prescribed of every decision of a mining commissioner's court shall be entered by such mining commissioner in the register mentioned in section *three hundred and forty-eight* and he shall make an order in accordance with such decisions, and note the same in that register; and such decision with the order so noted shall be signed by the mining commissioner, and no formal order or other record of such decision shall be necessary.

(2) A copy of such minute or order shall be given on demand by the mining commissioner to any of the parties interested therein, and any copy certified by the mining commissioner as a true copy shall at all times be admitted in all courts and places whatsoever as conclusive evidence of such decision or order having been given or made.

(3) Failure to obey any such order shall, unless an appeal to the Supreme Court has been entered against the same, render the person in default liable to the penalties provided by section *three hundred and fifty-nine*.

### 351 Writs of execution

(1) Where any sum of money is awarded in a mining commissioner's court by way of costs and the same is

not forthwith paid, the mining commissioner, on the application of the person entitled to receive such sum or of any legal practitioner or duly authorized agent on his behalf, shall grant to the party so applying a writ of execution under his hand as nearly as practicable in the form in use in a magistrates court:

Provided that the mining commissioner may withhold the issue of such writ, if he considers it just and reasonable so to do, until after the expiration of three days from the date of the decision under which such sum was awarded.

(2) Any messenger of a magistrates court to whom such writ is directed by such mining commissioner for execution shall do and perform all things in respect of such writ which such messenger is required to do and perform in respect of a writ of execution issued out of a magistrates court in the case of the non-payment of money under the judgement of such court.

(3) Every such messenger may, by virtue of such writ, seize and take such property and dispose thereof in the same manner as he could seize, take and dispose thereof by virtue of a writ issued out of a magistrates court.

### 352 Mining commissioner may direct surveys for purposes of trial of case

If before or during the hearing of any complaint it appears to the mining commissioner that it will be necessary for a survey to be made of any land or mining location in dispute, such mining commissioner may order either party to cause such survey and a plan thereof to be made, and the costs thereof shall be in the discretion of the mining commissioner.

### 353 Mining commissioner's powers when encroachment alleged

(1) Any mining commissioner may at his discretion upon the application of any person claiming to be legally interested in any mining location, by writing under the hand of such mining commissioner, authorize a surveyor or other duly appointed officer to enter upon any mining location or land adjacent to such first-mentioned mining location for the purpose of ascertaining whether the holder, owner or occupier of the mining location or land so to be entered upon is encroaching upon such first-mentioned mining location.

(2) Such surveyor or officer may thereupon enter upon the mining location or land described in such order and descend any shaft or mine, and for such purpose use the engines and machinery ordinarily employed for that purpose.

(3) Such surveyor or officer may make such plans or



sections of the mining location or land entered upon and of any drives or other works therein or thereon as are necessary for the purpose aforesaid.

(4) Every such surveyor or officer shall, before entering upon such mining location or land, make a sworn declaration before such mining commissioner that he, the said surveyor or officer, will not, except as a witness in a court of justice, without the consent in writing of the holder, owner or occupier of the mining location or land to be entered upon, divulge or cause to be divulged, to any person whomsoever, any information obtained upon or by such entry, save only as to whether such holder, owner or occupier is encroaching upon such first-mentioned mining location.

#### **354 Mining commissioner may grant injunctions**

(1) Any person claiming to be legally interested in any mining location, or in any servitude appertaining to a mining location, or complaining that he has been obstructed or interfered with in the enjoyment of his rights in respect of the premises aforesaid, may make application to the mining commissioner for an injunction in terms of this section.

(2) At least twenty-four hours before the making of such application the applicant shall serve or cause to be served notice thereof on all the parties interested in opposing the application, or on such persons as appear to the mining commissioner sufficiently to represent such parties.

(3) If the mining commissioner is satisfied that reasonable attempts have been made to serve notices on the parties mentioned in subsection (2) without success it shall be sufficient service of any such notice if the same is advertised in such newspaper and for such time as the mining commissioner appoints.

(4) Upon such application the mining commissioner may in the presence of such parties as aforesaid, or in the absence of any of them upon whom service of such notice is proved to his satisfaction to have been effected, hear, receive and examine evidence.

(5) The mining commissioner may in his discretion and upon such terms as he may consider just, by order under his hand, enjoin any person named in such order to refrain from encroaching upon, occupying, using or working such mining location or servitude as aforesaid, or from prospecting thereon or extracting or removing any mineral or other substance to which this Act applies from such mining location, or from selling or disposing of or otherwise interfering with such mining location, servitude, mineral or other substance or any share or interest therein, or from obstructing or interfering with such applicant in the enjoyment of his rights in respect of the premises aforesaid.

(6) On every such application the mining commissioner shall make such order as to costs as to him seems just.

(7) Every such order shall be in force for such period as is named therein unless it is sooner discharged by the mining commissioner making it or by the High Court.

(8) Nothing in this section contained shall be deemed to divest the High Court of the power of granting injunctions in any matter arising under this Act.

#### **355 How mining commissioner's orders to be served**

Every order made by a mining commissioner under section *three hundred and fifty-four* shall, unless the mining commissioner otherwise orders, be served by delivering a copy to the person to be bound thereby, and at the same time showing the original order if such person requires to see the same, and every such order shall be entered by the mining commissioner, who made it, in the register to be kept by him as aforesaid.

Provided that if the mining commissioner sees fit so to direct, it shall be sufficient service of any such order to publish a copy thereof in such newspaper, and to affix a copy thereof in such conspicuous place at or near the property in dispute, if any, as the mining commissioner appoints.

#### **356 When mining commissioner may permit working of locations under injunctions**

When any injunction has been granted by a mining commissioner under this Act, such mining commissioner may, upon application of any holder or holders of any registered mining location adjacent to the mining location under such injunction, who shows to the satisfaction of such mining commissioner that the location of such holder or holders will sustain damage, or be materially depreciated in value, by reason of the non-working of the mining location under injunction, order, upon such terms and conditions as he thinks fit, such working of the mining location as in his opinion will be sufficient to prevent such damage or depreciation and the mining commissioner shall make such order as to the cost of such working as he thinks just.

#### **357 Mining commissioner may authorize certain works**

(1) Any holder of any mining location may apply to the mining commissioner for an order authorizing the applicant to sink such boreholes for water on any land or any other mining location or to construct or erect upon or over any land or any other mining location such aqueducts, roads, railways, tramways, wires, electric power lines, fencing or other works as may be necessary for the more advantageous working of the mining location held



by the applicant, or authorizing the applicant to sink tunnels or boreholes on such land or other mining location for the purpose of ascertaining or prosecuting any extralateral rights to which the applicant may be entitled under the provisions of this Act.

(2) In like manner, the owner or the occupier of any land may apply to the mining commissioner for an order authorizing the applicant to sink such boreholes for water on any mining commissioner or to construct or erect upon or over any mining commissioner such aqueducts, dams, roads, fencing or other works as may be necessary for the better working of his land.

(3) In like manner, any local authority may apply to the mining commissioner for an order authorizing it to construct or erect upon or over any mining location such works as may be necessary for the institution or maintenance of any public services which such local authority may lawfully institute and maintain.

(4) In like manner, the holder of any mining commissioner may apply to the mining commissioner for an order authorizing the applicant to use any existing private road for any lawful purpose in connection with such location.

(5) On receipt of any such application the mining commissioner shall forthwith give notice to the holder, owner and occupier, if any, of the land or mining commissioner on which the borehole for water is to be sunk or upon or over which such works are to be constructed or erected or on which the tunnels or boreholes are to be sunk or over which the road mentioned in subsection (4) passes, as the case may be, calling upon him to appear before the mining commissioner upon a fixed day, not being a day within thirty days of such notice, and to show cause why the order applied for should not be granted:

Provided that if both the applicant and the respondent consent the period of notice may be less than thirty days.

(6) On the day appointed, or on any other day to which the hearing of the matter may be adjourned, the mining commissioner may grant an order authorizing the applicant to do all or any of the acts or things applied for, in, upon or in respect of such land or mining location:

Provided that, before making any order authorizing the applicant to construct a road, the mining commissioner shall consult-

- (a) where any land concerned is Communal Land, any rural district council established for the area concerned;
- (b) in the case of land which is not Communal Land, the conservation and extension officer for the area concerned.

(7) No such order shall be granted unless the mining commissioner is satisfied that the use and working of any land or mining location belonging to any person other than the applicant will not be materially impeded, interfered with or obstructed by any act or thing done pursuant to such order.

(8) The mining commissioner granting any such order by such terms, conditions and restrictions as appear to him to be required for the protection of the owner, occupier or holder of such last-mentioned land or mining location, and shall include a condition requiring the holder of the mining location to maintain or contribute towards the cost of maintaining any road mentioned in subsection(4), and may at any time or due cause shown amend or cancel such order.

(9) No such order shall be deemed in any way to affect or bind any owner, occupier or holder to whom no such notice as aforesaid has been given.

(10) Nothing in this section contained shall be deemed in any way to prejudice the right of any person thereafter to recover from the applicant or any other person acting under any such order damages for any injury which he may prove to have been sustained by him in consequence of any act or thing done by the applicant pursuant to any such order by any mining commissioner.

(11) Any person who is aggrieved by any order made by the mining commissioner under this section or by the refusal of the mining commissioner to make such an order may, within ten days thereof, appeal against such order or such refusal, as the case may be, to the Administrative Court.

#### **358 How acts ordered by mining commissioner to be performed**

Whenever a mining commissioner's court or mining commissioner is empowered or required by this Act to cause any act to be performed, and the mode of performing such act is not otherwise expressly provided for, any person verbally authorized in writing by the mining commissioner, and in his presence, or any police officer authorized in writing by the mining commissioner, may perform such act, and all police officers shall, if so required, aid and assist any mining commissioner or person authorized as aforesaid in the performance of his duty under this Act.

#### **359 Penalty for contempt of mining commissioner's court**

(1) If any person wilfully insults a mining commissioner during his sittings in court, or wilfully interrupts the proceedings of any such court, or on being summoned or examined as a witness before a mining commissioner,



refuses to be sworn or to answer any lawful question, such mining commissioner may, if he thinks fit, commit such offender to prison for any period not exceeding forty-eight hours or impose on him a fine not exceeding twenty dollars for every such offence, and in default of immediate payment thereof, commit the offender to prison for any period not exceeding forty-eight hours unless the fine is sooner paid.

(2) In any case in which a mining commissioner acts in terms of subsection (1) he shall issue a warrant in the form, as nearly as material, in use in a magistrates court; such warrant shall be good and valid in law without any other order, summons or adjudication whatsoever, and the officer to whom the same is addressed shall obey the same.

(3) In every case in which a mining commissioner has acted in terms of subsection (1) he shall without delay transmit to the registrar of the High Court for the consideration of a judge in chambers a statement certified by him to be true and correct of the circumstances and reasons for having fined or imprisoned the offender, and shall likewise furnish the offender with a copy of such certified statement, and the judge may confirm, amend or cancel any committal order or sentence imposed by the mining commissioner as to him may seem in accordance with real and substantial justice.

### **360 Magistrates court procedure to be observed in mining commissioner's court**

Save as otherwise provided in this Act, the procedure to be observed by a mining commissioner's court and the fees chargeable in respect of any proceedings therein shall, so far as practicable, be in accordance with the law and rules governing procedure and fees in civil cases in magistrates courts.

### **361 Appeal from mining commissioner's court to Supreme Court**

Any party who is aggrieved by any decision of a mining commissioner's court under this Act may appeal against such decision to the Supreme Court, and that court may make such order as it deems fit on such appeal.

### **362 Magistrates may hear and decide matters in certain circumstances**

If in any matter between a miner and a farmer, which would otherwise come before the mining commissioner under this Part, the farmer states to the mining commissioner in writing that he wishes the matter decided by the provincial magistrate instead of by the mining com-

missioner, then the matter shall be heard and decided by the provincial magistrate who for that purpose shall have all the powers conferred by this Part upon the mining commissioner.

### **363 Claim holders must point out boundaries of their locations**

(1) The holder of a mining commissioner shall, when called upon by a mining commissioner or any other person duly authorized thereto by a mining commissioner, point out all notices, beacons, pegs or other landmarks defining or purporting to define in terms of this Act the boundaries of any mining location registered in his name or belonging to him.

(2) Subsection (1) shall apply to any person who was the holder of an abandoned, forfeited or cancelled mining location in respect of which a quittance certificate is required and has not been issued under section *two hundred and sixty-nine*.

(3) If the holder of the mining location fails or refuses to comply with subsection (1), the mining commissioner may by registered letter call upon him so to comply and at the same time warn him that on failure to do so within the period stated in such letter such location will become liable to forfeiture and if the address of the holder is not known the mining commissioner shall cause a notice in the like terms to be inserted in the *Gazette*.

(4) If within the period mentioned in subsection (3) such holder has not so complied, the mining commissioner may declare the mining location to be forfeited, and such forfeiture shall not relieve such holder from any other penalty to which he may be liable under this Act.

### **364 Disabilities of officials**

(1) Except on behalf of the State without personal reward or gain, no official in the Ministry responsible for mines shall directly or indirectly acquire or hold any mining location or any interest in such location, or carry on any trade or undertake any agency of any sort whatsoever, or have any share in any mining company or any mining partnership carrying on business in Zimbabwe, or in any partnership in any mining business, or be connected with any mining company as director, adviser, manager or official.

(2) Any official who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding one thousand dollars, in addition to any penalty to which he may be liable under any law relating to the Public Service.



**365 Prohibition of use of patented metallurgical process, etc.**

(1) Subject to sections 34, 35 and 36 of the Patents Act [Chapter 26:03], no official in the Ministry responsibility for mines shall, within ten years of his leaving the service of the Ministry, use for his personal reward or gain or for that of any other person any metallurgical process, prototype plant, machine or other invention produced with public funds for the service of the State, in respect of which specifications relating thereto have been lodged with the Patent Office.

(2) Subsection (1) shall apply, *mutatis mutandis*, to the reproduction, refinement or simulation of any metallurgical process, prototype plant, machine or other invention referred to in that subsection.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding twenty thousand dollars or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment.

**366 Mining commissioner may sue for and have hypothec for amounts due**

(1) The mining commissioner, or other official duly authorized thereto by him, may ask, demand, sue for, recover and receive all amounts due and payable in respect of licences, royalties, fines, transfer duties or any other fees payable on or in connection with any mining location in his mining district.

(2) For any such amounts the mining commissioner shall have a hypothec against such location and all buildings, machinery or plant thereon which are the property of the holder of the location, and against any machinery and plant thereon which are the property of a lessee of the location; such hypothec shall be preferent to any other hypothec or lien whatsoever:

Provided that where such royalty is payable by any person other than the holder of the mining location, the mining commissioner shall not have a hypothec therefor against such location or such buildings, machinery or plant which are the property of such holder.

**367 Indemnity of officials**

No action for injury or wrong shall lie in any court against any mining commissioner or other official for any act done in good faith by him in the exercise of the functions by this Act vested in him.

**XXVI****OFFENCES AND PENALTIES****368 Prospecting prohibited save in certain circumstances**

(1) Subject to subsections (2) and (3), no person shall prospect or search for any mineral, mineral oil or natural gas except in the exercise of rights granted under a prospecting licence, exclusive prospecting order of special grant or unless he is the duly authorized representative or the holder of such licence, order or special grant and acting in the exercise of such rights.

(2) No person shall prospect or search for any mineral, mineral oil or natural gas unless he is an approved prospector.

(3) No approved prospector registered for Communal Land only in terms of subparagraph (i) of paragraph (a) of subsection (3) of section *fifteen* shall prospect or search for any mineral, mineral oil or natural gas elsewhere than in Communal Land.

**369 Production of authority to prospect**

Every person prospecting or searching for any mineral, mineral oil or natural gas shall, if so requested by any official duly authorized thereto by the mining commissioner or at the request of any police officer or the owner or the occupier of the land on which he is so prospecting or searching, or of the duly authorized representative of such owner or occupier, produce his certificate of registration as an approved prospector, his prospecting licence or evidence of any other authority under which he is prospecting.

**370 Protection of open workings by prospectors**

(1) Every person digging a prospecting trench shall throw out the earth in such manner as to form as far as possible regular ridges on either side of such trench.

(2) Every person acting under and by virtue of any prospecting licence, exclusive prospecting order or special grant shall fence or enclose the mouths of all his shafts and other open surface workings and excavations sufficiently to ensure the safety of persons and stock, and he shall maintain such fencing or his work and before abandoning any prospecting area, he shall fill in such shafts, workings and excavations or shall so fence or deal with



them as permanently to ensure the safety of persons and stock, and shall restore any work previously erected or constructed for the protection of mine workings which he may have removed or interfered with, and shall notify the occupier, if any, of the land that he has completed the protection work required under the provisions of his subsection:

Provided that if any such shaft, working or excavation is within twenty metres of a public road or thoroughfare he shall not fence it, but shall fill it in.

(3) Subject to the proviso to subsection (2), the manner in which shafts, open surface workings and excavations shall be dealt with for the purposes of subsection (2) shall be prescribed by regulations and compliance with such regulations shall be sufficient compliance with that subsection.

### 371 Duties of absentee prospectors

Whenever an approved prospector, acting under and by virtue of-

- (a) a prospecting licence, proposes to be absent from the area covered by a prospecting notice; or
- (b) an exclusive prospecting order or special grant for prospecting, proposes to be absent from his area of operations;

for a continuous period of more than twenty-four hours and to leave any employees in such area during his absence, he shall appoint a suitable person to be in charge of such employees and shall provide him with written evidence of such appointment which he shall produce upon request by the owner or occupier of the land or the duly authorized representative of such owner or occupier.

### 372 Illegal pegging

- (1) No person shall intentionally peg any ground which is not open to prospecting.
- (2) No person shall post-
  - (a) a prospecting notice;
  - (b) a discovery notice; or
  - (c) a registration notice, save a registration notice applicable to the pegging of-
    - (i) a site in terms of section *forty-eight*; or
    - (ii) a secondary reef in terms of section *one hundred and seventy*;

unless he is an approved prospector and the holder of a prospecting licence or the duly authorized representative of such holder, and there is correctly stated in such notice the number of the prospecting licence under which such notice is to be posted.

(3) No person shall peg any ground, save ground to be pegged as-

- (a) a site in terms of section *forty-seven*; or
- (b) a secondary reef in terms of section *one hundred and seventy*;

unless he is an approved prospector.

(4) No person shall post a prospecting, discovery or registration notice which is incorrect in any material particular.

(5) No person shall peg a mining location in a manner other than that prescribed.

(6) No person shall wilfully peg a larger or longer mining location than he is entitled to peg or purports to peg.

(7) No person shall register or attempt to register a mining location under or by virtue of a prospecting licence other than the one under which it was pegged.

(8) No person shall register or attempt to register a mining location under or by virtue of a prospecting licence of which he was not the lawful holder at the time of pegging.

(9) The mining commissioner may refuse to register a mining location in respect of which there has been a contravention of this section.

### 373 Illegal cutting of wood

No person purporting to act under section *twenty-nine, one hundred and three, one hundred and seventy-eight or two hundred and ninety-four* shall cut, fell, remove or use any indigenous wood or timber for any other purpose than those therein authorized.

### 374 Interference with fences

(1) Save as provided in section *two hundred and seventy*, no holder of a prospecting licence, exclusive prospecting order or special grant and no miner shall cut or in any way interfere with any fence on any land, except with the consent in writing of the owner or the occupier of such land or under an order granted in terms of section *three hundred and fifty-seven*.

(2) No owner or occupier of any land shall cut or in any way interfere with any fence on any mining location erected by the holder or miner of such location, except with the consent in writing of such holder or such miner or under an order granted in terms of section *three hundred and fifty-seven*.

**375 Beacons and pegs to be maintained in good order**

(1) The holder of any mining location who fails, in terms of this Act, to erect or to keep in proper order and in their proper positions his notices, pegs, beacons or trenches of such location shall be guilty of an offence and liable to a fine not exceeding fifty dollars and, in addition, to a fine at the rate of four dollars for each day or portion of a day during which he has allowed such location to remain improperly designated or beacons after notice thereof has been given to him by the mining commissioner.

(2) Subsection (1) shall apply to any person who was the holder of an abandoned or forfeited mining location in respect of which a quittance certificate is required and has not been issued under section *two hundred and sixty-nine*.

**376 Position of beacons and pegs may not be altered**

(1) No person shall, except as provided in this Act, deface, alter the position of, remove, pull down, injure, destroy or erect or renew in any other than its proper or original position any peg, notice, beacon or landmark designating or intended to designate the position, boundary, name or other particular of any mining location, reef or deposit or designating the name of the discoverer or holder thereof.

(2) Save as otherwise provided in this Act, if the position of any one or more of the pegs or beacons of any mining location has been altered or dealt with by the holder of such location or his agent so as to make it appear that any of the original ground is cut off from or any fresh ground is added to such location, or if the holder or his agent has consented to or condoned any such action, the mining commissioner may, in addition to any other penalty attaching to such action, declare any ground so cut off to have ceased to be a portion of such location from the date of such action or from any later date and no fresh ground so added shall in any case be deemed to have become a portion of such location.

**377 Mining permitted under certain objects on certain conditions**

(1) For the purposes of this section-

"road" includes any area of land reserved for road purposes under Part III of the Roads Act [*Chapter 13:12*]

and any restricted road declared under Part IV of that Act.

(2) Save as otherwise provided in subsection (3) the holder of a mining location shall not exercise any right to carry out mining operations in respect of such location beneath any of the following-

- (a) any road, railway or railway reserve or pipeline reserve;
- (b) any electric power line;
- (c) any aqueduct, pipeline, well or borehole;
- (d) any land within the surveyed limits of any city, town, township or village referred to in paragraph (c) of subsection (1) of section *thirty-one*;
- (e) any licensed aerodrome or any State emergency landing ground or State aerodrome;
- (f) any State rifle range;
- (g) any cemetery;
- (h) any race course, public park or playground reserved under section *thirty-five*;
- (i) any kraal;
- (j) any building stand or machinery site;
- (k) any river, lake, dam, reservoir or irrigation work other than irrigated lands;
- (l) land under cultivation or land to which an approved cultivation scheme relates;
- (m) any other surface object which in the opinion of the Chief Government Mining Engineer requires protection and of which he has given written notice to the holder;

or beneath the land outside the boundaries of any such premises as aforesaid and lying within such distance of such boundaries as may be prescribed or otherwise as the mining commissioner may specify.

(3) The Chief Government Mining Engineer or other official authorized thereto by him may grant permission in writing to such holder to carry out mining operations beneath any work mentioned in subsection (2) subject to such terms and conditions as may be specified by the Chief Government Mining Engineer or such other official, as the case may be:

Provided that no such permission shall be given until the



owner of such work or other person interested therein has been given an opportunity to submit any objections which he may have.

(4) Nothing in this section contained shall be deemed in any way to prejudice the right of any person to recover from the holder of the mining location damages for any injury which he may prove to have been sustained by him in consequence of any act or thing done by such holder even though the permission mentioned in subsection (3) has been given.

### 378 Salting

(1) No person shall place or deposit or be accessory to the placing or depositing of any minerals in any spot or place with intent to mislead any person as to the payable nature of such spot or place.

(2) No person shall mingle or cause to be mingled with any sample of any valuable mineral or substance whatsoever which will increase the value of or in way change the nature of the said ore with intent to deceive, cheat or defraud.

(3) In any proceedings taken for the contravention of subsection (1), if the accused person is proved to have placed or deposited or to have been accessory to the placing or depositing of any mineral in any spot or place where the finding thereof would tend to mislead any other person as to the payable nature of such spot or place, he shall be deemed to have so placed or deposited such mineral in contravention of that subsection unless he produces satisfactory evidence to the contrary.

### 379 Theft of ore

Any person who breaks, serves or removes any mineral from any mining location, reef or deposit, or who takes, removes or conceals any mineral, slags, slimes, amalgam, residues, tailings or concentrates, the product of any mining location, reef or deposit, with intent to deprive the lawful owner or holder thereof, shall be guilty of theft and liable to be prosecuted and punished accordingly.

### 380 Fraudulent acts

Any person engaged in the business of milling, leaching, sampling concentrating, reducing, assaying, transporting or dealing in ores, metals or minerals, who keeps or uses any false or fraudulent scales or weights for weighing such ores, metals or minerals, or who keeps or uses any false or fraudulent assay scales or weights, or enriched fluxes used for ascertaining the assay value of minerals, knowing them to be false or fraudulent, shall be guilty of fraud and liable to be prosecuted and punished accordingly.

### 381 Eviction of squatters

(1) If it appears to the mining commissioner that a registered mining location occupied by any person in reliance on mining title is being occupied otherwise than for *bona fide* mining purposes in accordance with the rights conferred on the miner thereof by section *one hundred and seventy-eight*, he may serve an order upon the occupier to vacate the mining location.

(2) Subject to this section, a person upon whom an order has been served in terms of subsection 1) shall, within fourteen days of service thereof, vacate the mining location and shall not return thereto as long as the order remains in force.

(3) A person who is aggrieved by an order served upon him in terms of subsection (1) may at any time before the expiry of the period of fourteen days referred to in subsection (2) lodge an appeal in writing with the Secretary against such order, setting out his grounds of appeal, and shall at the time of noting the appeal deposit the sum of four hundred dollars with the Secretary.

(4) When an appeal has been noted in terms of subsection (3), the order appealed against shall be suspended until the Minister has given his decision on the appeal in terms of subsection (5).

(5) The Minister may confirm or set aside the order appealed against and shall give notice of his decision to the mining commissioner and the appellant.

(6) Where the Minister-

(a) confirms the order, the appellant shall comply with subsection (2) within fourteen days of the service upon him of notice of the decision of the Minister;

(b) sets aside the order, the deposit of four hundred dollars shall be refunded to the appellant.

(7) An order made in terms of this section which has not been set aside by the Minister in terms of subsection (5) shall remain in force until revoked by the mining commissioner on proof to his satisfaction of the intention of the person concerned to occupy the mining location for *bona fide* mining purposes.

### 382 Returns to be furnished

(1) The holder of any mining location and the miner thereof and the owner of any metallurgical establishment, or his representative, shall furnish to the mining commissioner such returns and reports of his operations thereon or therein, and such certificates or solemn declarations in respect of them, as are prescribed by or under this Act.



(2) No such holder or miner or owner or his representative shall fail to furnish such returns and reports in such forms and at such times as may be prescribed, or shall furnish false returns or shall fail to send in corrected returns after due notice that any such returns are defective.

**383 False declarations and certificates**

(1) Any person who makes any declaration, supplies any certificate or renders any return in terms of this Act which he knows to be false or which he does not know or reasonably believe to be true in any material particular shall be guilty of an offence.

(2) In addition to any other penalty which it may inflict, the court may order that any person who has been convicted of an offence in terms of subsection (1) shall forfeit his prospecting licence and all his title to or interest in any mining location to which such declaration or certificate had reference.

(3) It shall be lawful for the Minister to prohibit the issue of a prospecting licence to any person who has been convicted of an offence in terms of subsection (1) for such period and on such terms as he deems fit.

**384 Dams or reservoirs to be left intact**

On abandonment, forfeiture or cancellation of any mining location to which a dam or reservoir is attached the holder of such location shall leave such dam or reservoir intact, together with the water it contains:

Provided that-

- (i) all machinery and appliances in connection with such dam or reservoir which can be readily removed without in any way injuring, weakening or impairing such dam or reservoir, or impairing the water it contains, may be taken away by the holder within the period of three months next succeeding such abandonment, forfeiture or cancellation;
- (ii) the owner or the occupier of the land on which such machinery or appliances are situated shall not be liable for any damage done to such machinery or appliances in the due and proper exercise of his rights as owner or occupier of the land;
- (iii) the mining commissioner may, if he is satisfied that it is necessary to do so, extend the period within which the machinery or appliances or the machinery and appliances may be removed, by a further period not exceeding three months.

**385 Plans and returns of mines to be confidential**

(1) In subsection (2) "tributor" shall have the meaning

assigned thereto in section *two hundred and seventy-nine*.

(2) No person shall, without the permission in writing of the holder or tributor of the registered mining location concerned or the manager of the mine concerned, furnish to any person or allow any person to inspect any-

- (a) plan of any mine working or any copy thereof; or
- (b) return or report or any copy thereof;

which has been taken, transmitted or rendered in terms of this Act.

(3) Subsection (3) shall not apply in respect of any plan, return or report relating to any mining location which has been abandoned, forfeited or cancelled.

**386 Mining commissioner's powers of entry upon locations**

(1) The mining commissioner or other official duly authorized thereto by him may at all times enter upon any mining location or any premises or workings thereof or thereunder for the purpose of-

- (a) generally inspecting such location, premises or workings and examining the mining operations or the treatment of minerals performed thereon and any plans, books, registers or other documents relating thereto or
- (b) ascertaining whether provisions of this Act are being carried out; or
- (c) ascertaining whether previous stones have been discovered or are being mined, and determining the nature of such stones and whether the extent of the deposit of such stones warrants an application for a licence or permit to mine for precious stones and what measures, if any, are necessary for the protection of any such deposit; or
- (d) ascertaining whether any nuisance exists upon such location, premises or workings; or
- (e) giving directions and taking steps to enforce any provisions of this Act or to abate or remove any nuisance; or
- (f) taking samples or specimens of the rocks, strata or minerals situated upon such location for the purpose of determining the nature or the percentage of the minerals contained therein.

(2) Any person who fails, neglects or refuses to provide all reasonable facilities and assistance to the mining commissioner or other authorized official when acting under



subsection (1) or to comply with any direction as aforesaid of the mining commissioner or duly authorized official, or who commits a breach of any duty imposed on him thereunder, shall be guilty of an offence and liable to a fine not exceeding two hundred dollars or, in default of payment, to imprisonment for a period not exceeding three months, and the court may, in addition to imposing such fine, order him to provide such facilities and assistance or to comply with such direction or to perform such duty, as the case may be, within such period as the court may specify, and if within the period so specified he fails to comply with such order the mining commissioner may recover from him by way of penalty the sum of twenty dollars for each day or portion of a day he fails to comply with such order after the expiry of such period.

(3) The powers of entry conferred upon a mining commissioner under subsection (1) are hereby conferred upon the Director of Metallurgy, the Chief Government Mining Engineer, the Director of Geological Survey and any Government mining engineer, inspector of mines or other officer appointed in terms of section *three hundred and forty-three*, and subsection (2) shall be read as including a reference to those officials.

### 387 Geological survey

(1) The Director of Geological Survey and any person duly authorized in writing by him may for the purpose of carrying out any prospecting or exploration work on behalf of the State or a geological survey of Zimbabwe or any part thereof-

- (a) enter at all reasonable hours upon any land with such persons, animals, vehicles, appliances, instruments and materials as are necessary for such survey;
- (b) break up the surface of any part of such land for the purpose of ascertaining the rocks, strata or minerals within or under the same;
- (c) take and carry away samples and specimens of the rocks, strata or minerals found therein;
- (d) fix any post, stone, mark or object to be used in the survey in any such land;
- (e) dig up any ground for the purposes of fixing any such post, stone, mark or object;
- (f) enter into or upon any land on which it is proposed to carry out such prospecting or exploration work, or through which it may be necessary to pass for the purposes of such survey of such work:

Provided that-

- (i) it shall not be lawful to fix any object, post, stone or mark within any walled garden, orchard or pleasure ground without the consent of the owner or the occupier thereof;
- (ii) reasonable notice of the intention to exercise any of the powers conferred by this subsection shall be given to the owner or the occupier of such land unless such land is unoccupied State land;
- (iii) as little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this section and such owner or occupier shall be entitled to compensation for any damage sustained in the execution of the powers conferred by this subsection.

(2) Any prospecting or exploration work carried out in terms of subsection (1) shall be subject to the provisions of sections *thirty-one and thirty-four*, save those of paragraph (b) of subsection (1) of section *thirty-one*.

(3) No prospecting or exploration work shall be carried out on a mining location pursuant to the powers conferred by subsection (1) without prior consultation with the holder of such location.

(4) Any person who in any way whatsoever prevents, obstructs or impedes the exercise of any of the powers conferred by subsection (1) or who displaces, defaces or destroys any stone, post, mark or object set up and places for the purposes of any geological survey shall be guilty of an offence and liable to a fine not exceeding one hundred dollars.

(5) If any dispute arises as to the amount of compensation payable under this section, the matter shall be referred to the Administrative Court for determination.

### 388 Obstruction of officials

No person shall-

- (a) obstruct or resist any mining commissioner or any person duly authorized in writing by any court or mining commissioner in lawfully entering upon any mining location or land or in performing any other act authorized by this Act; or
- (b) obstruct or resist any inspector of mines or other person in the performance of this duty or in the exercise of his powers under this Act; or
- (c) after being removed under the provisions of this Act from any mining location or other place, forcibly or clandestinely retake or retain or endeavour to retake or retain possession thereof or of any portion thereof;



or

(d) after any decision that any complainant is entitled to use for mining purposes or to divert any water, obstruct or resist such complainant or his agents in such use or diversion.

**389 Payment of fine without appearing in court**

(1) Where any person has, in respect of any offence in terms of this Act committed by him, been informed by a mining commissioner or an inspector of mines that it is intended to institute criminal proceedings against him for that offence and the mining commissioner or the inspector of mines, as the case may be, has reasonable grounds for believing that the court which will try that person for that offence will, on convicting him of that offence, not impose a sentence of imprisonment or a fine exceeding five hundred dollars, that person may sign and deliver to the mining commissioner or inspector of mines, as the case may be, a document admitting that he is guilty of that offence and deposit with the mining commissioner or inspector of mines, as the case may be, such sum of money, not exceeding five hundred dollars or the maximum of the fine with which the offence is punishable, whichever is the lesser, as the mining commissioner or inspector of mines may fix.

(2) Subject to subsection (7), a person who has signed an admission of guilt and paid a deposit in terms of subsection (1) shall not be required to appear in court to answer the charge of having committed the offence concerned.

(3) An admission of guilt signed and delivered in terms of subsection (1) shall forthwith be transmitted to the clerk of the court before which the person concerned would otherwise have appeared and shall be entered by him in the records of that court.

(4) As soon as an admission of guilt has been recorded in terms of subsection (3) it shall be laid before the court and the court shall thereupon-

(a) proceed to convict the person concerned of the offence charged and forthwith sentence him to a fine not exceeding five hundred dollars in accordance with law; or

(b) by endorsement on the document signify its refusal to convict such person.

(5) If the sum deposited is not sufficient to pay the fine imposed by the court, the balance remaining due shall be recovered from the offender in the manner provided by section 348 of the Criminal Procedure and Evidence Act [Chapter 9:07].

(6) If the sum deposited is greater than the fine imposed by the court, the difference shall be refunded to the offender.

(7) Where the court has refused to convict the person concerned, as in paragraph (b) of subsection (4) provided, the sum deposited shall be refunded to him and he may be prosecuted in the ordinary course;

(8) Any magistrate of the court which will try the person concerned for the offence may advise the mining commissioner or inspector of mines, as the case may be, as to what the court is likely to consider an appropriate fine in any case and in fixing the sum of money to be deposited under subsection (1) regard shall be had to his advice.

(9) For the purpose of deciding whether to convict the person concerned in accordance with subsection (4) or determining the amount of the fine to be imposed, the court may have regard to any statements relevant to the offence charged made by the mining commissioner or inspector of mines or any other person having knowledge thereof.

(10) Where the admission of guilt signed and delivered in terms of subsection (1) purports to have been signed by a director, manager or secretary of a corporate body as the representative of that corporate body, the director, manager or secretary shall, notwithstanding proviso (i) to subsection (2) of section 385 of the Criminal Procedure and Evidence Act [Chapter 9:07], be presumed to have been authorized by that corporate body to plead guilty on its behalf, unless the contrary is proved.

(11) The magistrate who convicted a person in accordance with subsection (4) may, notwithstanding anything contained in any law, set aside the conviction and order the refund to the person concerned of the fine paid by him in respect thereof if satisfied that that person should not have been convicted.

**390 Penalty for mining secondary reef prior to pegging and registration**

Any person who mines any secondary reef before it has been pegged and registered in the manner set out in section *one hundred and twenty-nine* shall be guilty of an offence and liable to a fine not exceeding four dollars for each day or portion of a day during which he has so mined such reef.

**391 Discovery of precious stones to be notified**

Any person who discovers any precious stones shall, within ten days of the date of such discovery, give notice



thereof and of the place where such discovery has been made to the mining commissioner.

### 392 Penalties

(1) Any person who contravenes this Act shall be guilty of an offence and liable-

(a) if the contravention is of section *three hundred and seventy-eight*, to the penalties provided by law for fraud;

(b) if the contravention is of section *three hundred and seventy-six, three hundred and seventy-seven or three hundred and eighty-four*, to a fine not exceeding five thousand dollars or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;

(c) if the contravention is of section *twenty-five or twenty-seven*, subsection (1) of section *two hundred and fifty-one*, section *two hundred and fifty-three, two hundred and sixty-nine, three hundred and twelve, three hundred and seventy-two, three hundred and seventy-five, three hundred and eighty-one, three hundred and eighty-three or three hundred and eighty-eight*, to a fine not exceeding two thousand dollars or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;

(d) if the contravention is of any other section in respect of which no other penalty is prescribed, to a fine not exceeding one thousand dollars.

(2) On any contravention by any person of section *three hundred and seventy-six, three hundred and seventy-seven or three hundred and eighty-four*, the registered holder and any lessee, tributor or manager of the mining location in respect of which the contravention occurred shall be liable to prosecution and conviction for that contravention.

(3) On the conviction of any person for a contravention of subsection (2) of section *two hundred and sixty-nine* or subsection (2) of section *three hundred and seventy*, the court may order the forfeiture of any prospecting licence or licences held by such convicted person and thereupon such licence or licences shall be forfeited and no new licence shall be issued to such person until he has proved to the satisfaction of the Secretary that the shafts, workings or excavations in respect of which he was so convicted have been properly filled in, fenced or otherwise dealt with in accordance with those sections.

## PART XXVII

### MISCELLANEOUS

#### 393 Application of Cap. 20:10

Wherever it is provided in this Act that any matter relating to the payment of compensation shall be referred to or determined by the Administrative Court-

(a) at least two months before the claim is so referred the claimant shall, unless the other party agrees otherwise, submit to the other party a claim for compensation which complies with subsection (1) of section 22 of the Land Acquisition Act [*Chapter 20:10*]; and

(b) that Act shall thereafter apply, *mutatis mutandis*.

#### 394 Submission of geological information

(1) The miner of a registered mining location shall submit annually to the Director of Geological Survey any information of a geological nature, including logs and assay results of drill cores from surface diamond drill holes, and reports on any geological, geochemical and geophysical work, obtained by him during the course of his prospecting or mining operations.

(2) The Director of Geological Survey shall not, without the consent of the holder, disclose any information submitted in terms of subsection (1) to any person, or allow any person to inspect it unless the mining location to which it relates is forfeited, abandoned, or has been cancelled:

Provided that the Minister may, after consultation with the miner, disclose such information if he considers it necessary in the public interest to do so.

(3) In addition to the information specified in subsection (1), the miner of a registered mining location shall submit to the Director of Geological Survey, if called for, any representative rock samples obtained by him in the course of his prospecting and mining operations.

#### 395 Site rent

The holder of a registered mining site shall in respect of such site pay annually in advance to the mining commissioner rent calculated at the prescribed rate.

**396 Cash reward for new discovery of certain minerals**

(1) For the purposes of subsection (2)-

“prescribed mineral” means-

- (a) precious metals; or
- (b) such precious stones or other mineral as the Minister may, by statutory instrument, prescribe for the purposes of this section.

(2) If any person registers with the mining commissioner a block of claims for a prescribed mineral which-

- (a) has not been held during the previous fifteen years; and
- (b) is situated not less than twenty kilometres from any other current mining location which is or was previously registered for the same mineral;

he shall receive a cash reward for such discovery in accordance with regulations, but the onus of proving that he is so entitled to the cash reward shall be upon such person.

**397 Land surveyors to be subject to Cap. 20:12**

Any land surveyor who carries out any surface survey under this Act shall have the same duties and be subject to the same liabilities as if he were carrying out a survey in terms of the Land Survey Act [Chapter 20:12].

**398 Acquisition by President of location for public purposes**

(1) Subject to this section, the President may at any time, for the utilization of any mining location for a purpose beneficial to the public generally, or to any section thereof, acquire either the whole or any portion of such mining location, or limit the rights enjoyed by the owner thereof under this Act.

(2) The Land Acquisition Act [Chapter 20:10] shall apply, *mutatis mutandis*, to such acquisition or limitation of rights as is referred to in subsection (1).

(3) For the purpose of ascertaining the amount of compensation payable to any person for an acquisition in terms of subsection (1), the Minister may direct any person employed in his Ministry to conduct an investigation into the nature and extent of any mining operations that have been or are being conducted on the mining location that has been or is to be acquired.

(4) A person directed to conduct an investigation in terms

of subsection (3) shall have power at all reasonable times-

- (a) to enter the mining location that has been or is to be acquired; and
- (b) to require any person to supply any information or to produce any book, record or document relating to any mining operations that have been or are being conducted on the mining location that has been or is to be acquired; and
- (c) to make copies of or extracts from any book, record or document referred to in paragraph (b);

and shall make a written report to the Minister on the results of his investigation within such period as the Minister may direct.

(5) Any report prepared in terms of subsection (4) shall be admissible on its production by any person in any proceedings relating to the payment of compensation for an acquisition in terms of subsection (1), and the court concerned shall pay due regard to the contents of any report so produced.

(6) Any person who contravenes or fails to comply with any direction or requirement in terms of this section shall be guilty of an offence and liable to a fine not exceeding five thousand dollars or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

**399 Cancellation of mining rights**

(1) If a mining commissioner has reason to believe that the holder of a registered mining location is using wasteful mining methods or metallurgical processes, he shall inspect the registered mining location forthwith and report to the Board accordingly.

(2) After receiving the report referred to in subsection (1), if the Board is satisfied that the holder of a registered mining location is using wasteful mining methods or metallurgical processes, the Board shall forthwith institute an inquiry into the matter and invite the holder of the registered mining location concerned to make representations to the inquiry as to why his certificate of registered mining location should not be cancelled for using wasteful mining methods or metallurgical processes.

(3) If in the light of an inquiry held in terms of subsection (2), and after due consideration of any representations made by the holder, the Board is still satisfied that the holder has actually used wasteful mining methods or metallurgical processes, the Board shall notify the holder accordingly and request him, within such reasonable time as the Board shall specify in the notification, to remedy the situation or to show cause why his certificate of reg-



istered mining location should not be cancelled.

(4) If within the time specified in the notification referred to in subsection (3), the holder of the registered mining location fails to remedy the situation, or to satisfy the Board that he has not used wasteful mining methods or metallurgical processes, the Board shall cancel his certificate of registered mining location and notify him accordingly.

(5) A holder whose certificate of registered mining location is cancelled in terms of this section may appeal to the Minister against such cancellation within thirty days of the notification thereof.

(6) The noting of an appeal in terms of subsection (5) shall suspend the cancellation until the Minister's decision on the appeal has been given.

(7) Upon an appeal in terms of subsection (5), the Minister may confirm the cancellation or set it aside.

#### **400 Cancellation of mining rights in certain circumstances**

(1) If the Minister has reason to believe that a miner-

(a) has failed, within a reasonable period after commencing mining operations, to declare any output from his mining location, whether in terms of this Act or any other enactment; or

(b) has knowingly rendered a false return or declaration regarding the output from his mining location, whether in terms of this Act or any other enactment;

or

(c) has, in relation to his mining location or the output thereof, contravened-

(i) section 5 or 6 of the Gold Trade Act [Chapter 21:03]; or

(ii) section 5, 6 or 14 of the Precious Stones Trade Act [Chapter 21:06]; or

(iii) section 42 or 50 of the Minerals Marketing Corporation of Zimbabwe Act [Chapter 21:04] whether or not he has been convicted thereof by a court;

the Minister may do either or both of the following-

(i) by written notice served on the miner concerned, notify the miner concerned of his intention to cancel his rights in relation to the mining location concerned, and call on the miner to show cause, within such rea-

sonable period as may be specified in the notice, why such rights should not be cancelled;

(ii) direct any person employed in his Ministry to conduct an investigation into the nature and extent of any mining operations that have been conducted on the mining location concerned.

(2) A person directed to conduct an investigation in terms of paragraph (ii) of subsection (1) shall have power at all reasonable times-

(a) to enter the mining location concerned; and

(b) to require any person to supply any information or to produce any book, record or document relating to any mining operations conducted on the mining location concerned; and

(c) to make copies of or extracts from any book, record or document referred to in paragraph (b);

and shall make a written report to the Minister on the results of his investigation within such period as the Minister may direct.

(3) If, at the expiration of the period specified in a notice given in terms of paragraph (i) of subsection (1), and after considering any representations made to him by the miner concerned and any report made in terms of subsection (2), the Minister is satisfied on reasonable grounds that the miner-

(a) has failed in a respect referred to in paragraph (a) of subsection (1); or

(b) has rendered a false return or declaration referred to in paragraph (b) of subsection (1); or

(c) has contravened a provision referred to in paragraph (c) of subsection (1);

the Minister may, by notice in writing to the miner, cancel the miner's rights in relation to the mining location and make such order as he thinks fit in regard to the disposal of any output from the mining location which is in the possession of the miner or held on his behalf by any other person.

(4) Where the Minister has made an order in terms of subsection (3) in regard to the disposal of any output from a mining location, that order shall be enforced in the manner specified in the order.

(5) If a miner's rights are cancelled in terms of subsection (3) and the mining location concerned-



(a) is registered in the miner's name, the mining commissioner shall declare the mining location to be forfeited, and thereafter sections *two hundred and sixty-seven* to *two hundred and seventy-two* shall apply in relation thereto;

(b) is not registered in the miner's name, any tribute agreement between the miner and the holder of the mining location shall thereupon expire and neither the miner nor any other person shall exercise any right to mine the mining location except in accordance with the Minister's written approval.

(6) Any person who-

(a) contravenes or fails to comply with any order, direction or requirement in terms of this section; or

(b) mines any mining location in contravention of paragraph (b) of subsection (5);

shall be guilty of an offence and liable to a fine not exceeding five thousand dollars or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

**401 Minister may order holder of mining location to transfer it**

(1) The holder of any registered mining location may apply in writing to the Board for the issue of an order authorizing the transfer to him of a registered mining location held by any other person, hereinafter referred to as the other location.

(2) On receipt of such application the Board shall by registered letter notify the holder of such other location and any person to whom a duly approved tribute has been granted over such location or in whose favour any option or hypothecation over such location has been registered with the mining commissioner of such application and require them to lodge with the Board in writing within sixty days of the posting of such letter their objections, if any, to the grant of the application.

(3) If any person lodges any objection with the Board within such period, the Board shall, on a day fixed by it and notified to the applicant and every objector, hear such arguments and evidence as such persons may wish to lay before it in regard to the grant or refusal of the application.

(4) If no objection is lodged to the grant of the application, the Board shall proceed with the consideration of the application.

(5) If the Board is satisfied that-

(a) it is essential for the better working of the mining location owned by the applicant that he should have the use of the surface of the whole or a portion of such other location and that an order under section *three hundred and fifty-seven* could not lawfully be granted or, if granted, would not adequately meet the needs of the case; and

(b) the applicant has made a reasonable offer to the holder of such other location to purchase such location which such holder has refused to accept; and

(c) the applicant is able to pay any compensation likely to become payable if the order were granted; and

(d) the granting of the order would be in the national interest;

it may recommend to the Minister that an order be made by him authorizing the transfer of such other location to the applicant or, if the Board is not so satisfied, it shall refuse the application, and such refusal shall be final and without appeal.

(6) Where the Board recommends that the order be granted, it shall submit to the Minister the application, together with all relevant documents and its written report and recommendation in regard thereto, and the Minister shall submit such recommendation to the President, who may approve or refuse to approve the making of the order.

(7) Where the President has approved the making of an order, the Minister shall forthwith make an order authorizing the mining commissioner to effect transfer of such other location to the applicant, in terms of this section, and such order shall be valid for a period of three months unless the Minister for any reason which to him seems good and sufficient extends such period.

(8) The mining commissioner shall by registered post send a copy of such order to the applicant, the holder of such other location and every person who lodged objections under subsection (2) and require such holder or other person to inform him in writing, within a period of sixty days, whether he intends to claim compensation.

(9) Any person who may be adversely affected by the exercise of the rights granted under an order shall be entitled to be paid such compensation by the person in whose favour the order has been made as may be agreed upon or, failing agreement, as may be determined by arbitration:

Provided that such right shall be deemed to have lapsed unless such person has informed the mining commissioner in writing within the period of sixty days mentioned in subsection (8) of his intention to claim such compensation.



(10) The person in whose favour an order has been made under this section shall, before obtaining transfer of the other location, either pay to the person or persons entitled thereto the compensation mentioned in subsection (9), or furnish a guarantee satisfactory to the mining commissioner for the payment of such compensation.

(11) The mining commissioner shall, notwithstanding any bar to the registration of transfer under subsection (7) of section *two hundred and seventy-five* or of section *two hundred and seventy-nine*, on application made within the period of validity of the order by the person in whose favour the order has been made and on payment of the transfer duty mentioned in section *two hundred and seventy-five*, forthwith register transfer of such other location to such person by making the necessary entries in his registers and other records:

Provided that the mining commissioner shall not so register transfer unless he is satisfied that the compensation mentioned in subsection (10) has been paid or the guarantee mentioned in that subsection has been furnished.

(12) As from the date on which the holder of the other location is notified by the Board of an application made under this section and until the date on which such application is refused or, if it is granted, until the period of the validity of the order has expired, it shall not be lawful for the holder of such other location to sell, cede, assign or otherwise dispose of such location or any part thereof or interest therein, or to abandon or hypothecate such location or any part thereof or interest therein, or to grant an option or tribute over such location or any part thereof or interest therein.

(13) If the person in whose favour an order is made does not, during the period of validity of the order, apply to the mining commissioner under subsection (11) and satisfy the mining commissioner that the compensation mentioned in subsection (10) has been paid or furnish the guarantee mentioned in that subsection, the order shall be deemed to have lapsed.

#### 402 Training institutions

(1) The Minister may provide for the establishment, equipment, maintenance, administration and operation of any institution for the technical education and training of persons leading to the award of diplomas, certificates and other qualifications relevant to the mining industry.

(2) For the purpose of establishing, equipping, maintaining, administering and operating any institution referred to in subsection (1), the Minister may-

(a) enter into agreements and execute contracts or other instruments; and

(b) provide suitable premises, equipment and amenities for the institution; and

(c) with the approval of the Minister responsible for finance, make grants of money to the institution; and

(d) subject to any charter referred to in subsection (3), appoint a board of management to control, manage and administer the institution; and

(e) do all such other things as, in his opinion, are necessary or desirable for the purpose.

(3) The legal capacity, objects, autonomy and administration of an institution referred to in subsection (1) shall be provided for in a charter granted by the President by proclamation in the *Gazette*.

(4) All expenditure incurred by the Minister in terms of subsection (1) shall be met from moneys appropriated for the purpose by Act of Parliament.

#### 403 Regulations

(1) The Minister may make such regulations as he may deem expedient to give force or effect to this Act or for its better administration.

(2) Regulations may provide for the following matters-

(a) the proper and efficient management and working of all mining locations, quarries and mining operations;

(b) the submission to the Minister by miners and persons operating or managing quarries of programmes of their intended exploration development and mining operations, showing the estimated amount of minerals to be produced during any specified period and the estimated cost thereof, and the right of the Minister to recommend changes thereto;

(c) the registration of quarries and the licensing of persons who operate or manage quarries;

(d) the grading of mica and its examination by a Government inspector and the control of the sale, disposal or export of mica which has not been graded in accordance with such regulations;

(e)(i) the preparation, keeping and inspection of survey plans of mining locations and quarries, including underground workings;

(ii) the details and particulars to be shown on such plans, the manner of their preparation and the scale and size of plans;



- (iii) the limits of error allowable on surveys in connection with the preparation of such plans;
  - (iv) the preparation of survey plans by the Chief Government Mining Engineer or a person authorized by him in case of failure by any person to comply with the regulations and the recovery by the Minister of the costs of survey and preparation of such plans;
  - (f) the examination of mine surveyors and the fee payable in respect of such examination and the grant of certificates to successful candidates;
  - (g) the inspection of books and documents relating thereto;
  - (h) the regulation of works and machinery in so far as protection and safety is concerned;
  - (i) sanitation;
  - (j) establishment of burial places;
  - (k) the proper feeding and housing of labourers;
  - (l) the appointment by employers of suitable persons approved by the Minister to supervise all matters relating to the welfare of labourers and the observance of regulations affecting them;
  - (m) the safety and health of persons employed in or about any mining location, quarry or mining operations;
  - (n) the reporting of accidents and deaths occurring on any mining location or quarry;
  - (o) what works, other than those defined in this Act, may be deemed to be development work;
  - (p) any forms required for the purposes of this Act;
  - (q) search and inspection fees, fees for duplicate copies of certificates issued under this Act, and any other fees, charges, levies, sums, amounts or payments required or permitted to be prescribed for the purposes of this Act;
  - (r) the manner or procedure in regard to the hearing of any action, suit or cause arising out of this Act, other than any appeal to the Supreme Court, and the fees and charges to be taken by officers and practitioners in connection therewith;
  - (s) the amount of and manner of claiming any case reward payable under section *three hundred and ninety-six*;
  - (t) the periods for which and within which the payments prescribed in section *one hundred and eighty-eight* may be claimed and the manner of allocation of such payments in cases where a mining location is situated partly on one holding and partly on another;
  - (u) the duties and responsibilities of holders, lessees or assignees of the rights of a holder, managers and other persons engaged in or about a mine or quarry;
  - (v) the qualifications to be possessed by persons engaged in or about a mine or quarry in the capacity of mine manager, resident engineer or underground manager and the keeping of official registers of persons so engaged;
  - (w) the examination of persons wishing to be engaged in any capacity referred to in paragraph (v) and the fees payable in respect of such examination and the grant of diplomas or certificates to successful candidates;
  - (x) the making by the mine manager or other person in authority of special rules, not inconsistent with this Act, for the maintenance of order and discipline and the prevention of accidents at any mine or quarry, such rules to have the same force and effect as the regulations;
  - (y) all such matters as are by this Act required or permitted to be prescribed.
- (3) Before prescribing any tariff rate for the purposes of section *twenty-nine, one hundred and three or one hundred and seventy-eight* in respect of indigenous wood or timber taken from private land other than Communal Land, the Minister shall consult the Chamber of Mines of Zimbabwe and the Commercial Farmers' Union of Zimbabwe and any tariff rate so prescribed shall be reviewed at intervals of not more than five years after like consultation.
- (4) On non-compliance with any regulation made in the interests of safety or health, the Minister may order that work on any mine or any section thereof shall cease, save and in so far as work is necessary to remedy any defect complained of and any miner of such mine who, knowing of such order, fails to comply therewith, shall be guilty of an offence and liable to a fine not exceeding five hundred dollars for every day or portion of a day during which such non-compliance continues.
- (5) Regulations may provide for penalties for any contravention thereof:
- Provided that such penalties shall not exceed-



- (a) in the case of a regulation made in the interests of management and safety or health and sanitation, a fine not exceeding two thousand dollars or imprisonment for a period not exceeding two years or both such fine and such imprisonment;
- (b) in the case of any other regulation, a fine not exceeding five hundred dollars or, in default of payment, imprisonment for a period not exceeding six months.

#### 404 Savings or powers of Administrative Court

(1) Nothing in this Act contained shall be deemed to derogate in any way from the powers of Administrative Court exercising its jurisdiction and powers in terms of the Water Act [Chapter 20:22].

(2) Any order of a mining commissioner which-

- (a) is made in terms of this Act; and
- (b) affects public water or water works as defined in the Water Act [Chapter 20:22];

shall be provisional only and referred to the Administrative Court.

(3) The Administrative Court may confirm, vary or set aside an order referred to it in terms of subsection (2).

#### 405 Mining of limestone for agricultural operations

(1) If the Minister is satisfied that any owner or occupier of land needs limestone for his own farming purposes, he may, on application by such owner or occupier, authorize the reservation in terms of section *thirty-five* of such area of the land of such owner or occupier as he deems sufficient.

(2) Such owner or occupier may in the area so reserved search for and mine limestone solely for his own farming purposes, and this Act shall not apply to such owner or occupier in relation to such search and mining.

(3) If the Minister is satisfied that any such owner or occupier is using any limestone mined under subsection (2) or any lime derived therefrom for any purpose other than his own farming purposes, he shall order the withdrawal of any reservation authorized in terms of subsection (1), and after such withdrawal the right of such owner or occupier to search for and mine limestone under subsection (2) shall cease

#### 406 District advisory boards

(1) The Minister may establish a district advisory board for any mining district to advise him generally on mining affairs in that mining district and additionally, or al-

ternatively, on any particular matter in connection with the mining industry in that mining district, as may be specified by the Minister.

(2) The Minister shall appoint the members of a district advisory board who shall hold office during the pleasure of the Minister on such terms and conditions as the Minister may fix.

(3) The functions and duties of a district advisory board shall be to advise the Minister as required in terms of subsection (1).

(4) The powers of a district advisory board shall be as are prescribed.

#### 407 Saving of existing rights

(1) Neither-

(a) the replacement of the definition of "minerals" in section *five* by the Mines and Minerals Amendment Act, 1990; nor

(b) any declaration in terms of subsection (3) of section *five* that any substance shall be a mineral for the purposes of this Act;

shall have the effect of vesting in the President any mineral or substance which vested in some other person immediately before the 4th May, 1990, or of the declaration, as the case may be.

(2) Nothing in subsection (1) shall prevent the application of the appropriate provisions of this Act to the mining or quarrying of any mineral or substance referred to in that subsection.

### SCHEDULE (Section 208)

#### GRADING OF DEVELOPMENT WORK

##### *Dimensions*

1. None of the following shall count as development work-

- (a) any shaft, winze, rise, drive, adit or tunnel of less superficial area than 2 square metres;
- (b) any shaft which has been sunk to a total vertical or incline depth of less than 6 metres from the surface;
- (c) any borehole which has been sunk to a total vertical or incline depth of less than 20 metres from the surface;
- (d) any borehole from which a core is unobtainable and any borehole under for-blasting;

Provided that where intensive and systematic drilling of shallow boreholes has been carried out through overburden to prove the economic potentialities of mineral deposits, the Board may, notwithstanding subparagraphs (c) and (d), authorize such work to count as development work.

2. Subject to paragraph 1-

- (a) each metre of any shaft, winze or rise of 2 to 4 square metres superficial area shall count as one metre;
- (b) each metre of any shaft winze or rise of over 4 and up to 6 square metres superficial area shall count as 2 metres;
- (c) each metre of any shaft, winze or rise of over 6 square metres superficial area shall count as 3 metres;
- (d) each metre of any drive, adit or tunnel from the surface of 4 square metres superficial area and over shall count as 2 metres;

of development work.

3. Where the Board has, in terms of paragraph 1, authorized that intensive and systematic drilling of shallow boreholes shall count as development work, each metre of any such borehole shall count as one metre of development work unless the Board determines a lesser rate of calculation.

#### *Depth*

4. Each metre of any portion of a shaft, winze or rise, or any drift, the floor of which is-

- (a) not more than 20 metres below the natural surface at the working point, shall count as 1 metre;
- (b) more than 20 metres but not more than 30 metres below the natural surface at the working point, shall count as 1,5 metres;
- (c) more than 30 metres but not more than 60 metres below the natural surface at the working point, shall count as 2 metres;
- (d) more than 60 metres but not more than 90 metres below the natural surface at the working point, shall count as 3 metres;
- (e) more than 90 metres but not more than 120 metres below the natural surface at the working point, shall count as 4 metres;

(f) more than 120 metres but not more than 150 metres below the natural surface at the working point, shall count as 5 metres;

(g) more than 150 metres below the natural surface at the working point, shall count as 6 metres;

of development work.

#### *Distance from Entrance*

5. Each metre of any portion of an adit or tunnel from the surface which is 30 metres to 90 metres from a point in the centre of the roof at the entrance shall count as 1,5 metres of development work, and each metre of any portion which is 90 metres or more from that point shall count as 2 metres of development work.

#### *General*

6. All dimensions shall be taken at right angles to the line of direction of the work, and in the clear between outside timbers, if in position, or allowing for them, if they are to be put in later.

7. Depth in incline work shall be measured on the incline and the allowances for dimensions and depth or distance from entrance shall be cumulative, that is to say, each metre of any portion of a shaft of over 6 square metres superficial area which is more than 30 metres but no more than 60 metres from the surface shall count as 6 metres of development work.

#### *Allowance for Boreholes*

8. Each metre drilled below the natural surface for a distance-

- (a) of 90 metres, shall count as 1 metre;
- (b) exceeding 90 metres and up to 180 metres, shall count as 2 metres;
- (c) exceeding 180 metres and up to 270 metres, shall count as 3 metres;
- (d) exceeding 270 metres and up to 360 metres, shall count as 4 metres;
- (e) exceeding 360 metres, shall count as 5 metres;

of development work.



## Statutory Instrument 557 of 1982. [CAP. 280 Control of Goods (Import and Export) (Wild Life) Regulations, 1982

### ARRANGEMENT OF SECTIONS

<i>Section</i>	<i>Title</i>
1. Title.	1. These regulations may be cited as the Control of Goods (Import and Export) (Wild Life) Regulations, 1982.
2. Interpretation.	<i>Interpretation</i>
3. Control of import and export of wild life and trophies.	2.(1) In these regulations, and in any open general permit -
4. Open general permits.	"controlled goods" means any goods referred to in the First Schedule;
5. Permits and certificates.	"Controller" means the Controller of Customs and Excise referred to in section 4 of the Customs and Excise Act [ <i>Chapter 177</i> ];
6. Form of permits, certificates, et cetera.	"Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed at Washington on the 3rd March, 1973;
7. Period of validity of export permits.	"Director" means the Director of National Parks and Wild Life Management referred to in section 94 of the Parks and Wild Life Act, 1975 (No.14 of 1975);
8. Permits not to be transferred.	"inspector" means -
9. Amendment and revocation of permits and certificates.	(a) any officer of the Department of Customs and Excise; or
10. Delegation of powers by Director and Controller.	(b) any officer of the Department of National Parks and Wild Life Management; or
11. Inspectors.	(c) any other person appointed by the Minister as an inspector in terms of section 11;
12. Furnishing of information.	"Minister" means the Minister of Natural Resources and Tourism;
13. Powers of inspectors and representatives of Minister.	"open general permit" means an open general import permit or an open general export permit, as the case may be, issued in terms of section 4;
14. Marking of wild life and trophies.	"permit" means a permit issued in terms of paragraph (a) of subsection (1) of section 5;
15. Offences and penalties.	"trophy" means -
16. Application of other laws.	
17. Amendments and savings.	
FIRST SCHEDULE: Controlled goods.	
SECOND SCHEDULE: Wild life.	
IT is hereby notified that His Excellency the President has, in terms of section 3 of the Control of Goods Act [ <i>Chapter 280</i> ], made the following regulations:-	

- (a) any durable portion of any wild life which has been subjected to a process of manufacture; and
- (b) any manufactured or processed thing of which the durable portion of any wild life forms a part;

"wild life" means -

- (a) any organism, whether alive or dead, referred to in the Second Schedule; and
- (b) the egg or seed of any organism referred to in the Second Schedule; and
- (c) any portion whatsoever of any organism referred to in the Second Schedule, other than a trophy, whether such portion is processed or not.

(2) For the purposes of these regulations, any wild life referred to in Part I of the Second Schedule which was bred in captivity, ranched or artificially propagated, as the case may be, for commercial purposes, shall be deemed to be wild life referred to in Part II of the Second Schedule.

*Control of import and export of wild life and trophies*

3.(1) Notwithstanding the provisions of any other law, but subject to the provisions of this section, no person shall -

- (a) import into or export from Zimbabwe any wild life, trophy or controlled goods except in accordance with the terms and conditions of -

- (i) an open general permit; or
- (ii) a permit; or
- (iii) a certificate issued in terms of section 5;

and, where appropriate, in accordance with the terms and conditions of an open general licence or licence issued in terms of the Control of Goods (Import and Export) (Commerce) Regulations, 1974, published in Rhodesia Government Notice 766 of 1974; or

- (b) import into Zimbabwe any wild life referred to in Part I or Part II of the Second Schedule, or any trophy of such wild life, unless, in addition to complying with paragraph (a), he holds an export permit or re-export certificate granted in respect of the wild life or trophy concerned by an appropriate authority in the country from which the wild life or trophy concerned is being imported; or
- (c) import into Zimbabwe any wild life referred to in

Part III of the Second Schedule, or any trophy of such wild life, unless, in addition to complying with paragraph (a), he holds -

- (i) a certificate of origin or other document indicating the country of origin of the wild life or trophy concerned; and
- (ii) if the wild life or trophy concerned is being imported from the country specified opposite thereto in Part IH of the Second Schedule, an export permit granted in respect of the wild life or trophy concerned by an appropriate authority in that country.

(2) The provisions of subsection (1) shall not apply to the import or export of -

- (a) any wild life or trophy which was acquired by the importer or exporter before the Convention applied to it, if the importer or exporter holds a certificate to that effect -

- (i) in the case of an import, granted by an appropriate authority in the country from which the wild life or trophy concerned is being imported; or

- (ii) in the case of an export, issued by the Director; or

- (b) any wild life which was bred in captivity, ranched or artificially propagated, as the case may be, or any trophy of such wild life, if the importer or exporter holds a certificate to that effect -

- (i) in the case of an import, granted by an appropriate authority in the country in which the wild life concerned was bred or propagated; or

- (ii) in the case of an export, issued by the Director; or

- (c) herbarium specimens, other preserved, dried or embedded museum specimens, or live plant material, where -

- (i) their import or export is effected by -

A. a museum which is a national museum for the purposes of the National Museums and Monuments Act [Chapter 313]; or

B. any other museum approved by the Director; or

C. any scientist approved by the Director; and

- (ii) the specimens and material carry a label issued or approved by the Director.

(3) No permit or certificate shall be required in terms of



subsection (1) for the import or export of any wild life or trophy which is a personal or household effect, save in the following cases -

- (a) where a person who is ordinarily resident in Zimbabwe imports into Zimbabwe any wild life referred to in Part I of the Second Schedule, or any trophy of such wild life, which he acquired outside Zimbabwe; or
  - (b) where a person who is ordinarily resident in Zimbabwe imports into Zimbabwe any wild life referred to in Part II of the Second Schedule, or any trophy of such wild life, which he acquired outside Zimbabwe in the country where the wild life was removed from the wild, if that country requires the prior grant of an export permit before any export of such wild life or trophy; or
  - (c) where a person who is not ordinarily resident in Zimbabwe exports from Zimbabwe any wild life referred to in Part I of the Second Schedule, or any trophy of such wild life, which he acquired within Zimbabwe; or
  - (d) where a person who is not ordinarily resident in Zimbabwe exports from Zimbabwe any wild life referred to in Part II of the Schedule which was removed from the wild within Zimbabwe, or any trophy of such wild life, if he acquired such wild life or trophy within Zimbabwe.
- (4) The Director may, on such terms and conditions as he may fix, grant written exemption to any person from compliance with all or any of the provisions of subsection (1) in respect of the import or export of wild life or trophies which form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition, where -
- (a) the importer or exporter has provided the Director with full details of the wild life or trophies concerned; and
  - (b) the wild life or trophies concerned -
    - (i) were acquired by the importer or exporter before the provisions of the Convention applied to them; or
    - (ii) in the case of wild life, was bred in captivity, ranched or artificially propagated, as the case may be, or, in the case of trophies, were derived from such wild life;
- and
- (c) the Director is satisfied that any live wild life will be so transported and cared for as to minimize the risk of injury, damage to health or cruel treatment.

#### *Open general permits.*

4.(1) The Minister may, subject to the provisions of subsection (2), by notice in the *Gazette*, issue -

- (a) an open general import permit authorizing, subject to the provisions of any other law, the import into Zimbabwe of any controlled goods or any wild life referred to in Part III or IV of the Second Schedule, or any trophy of such wild life; or
  - (b) an open general export permit authorizing, subject to the provisions of any other law, the export from Zimbabwe of any controlled goods or any wild life referred to in Part III or IV of the Second Schedule, or any trophy of such wild life.
- (2) When issuing any open general permit in terms of subsection (1), the Minister shall have regard to the obligations of Zimbabwe under the Convention.
- (3) An open general licence may be issued in the same *Gazette* as these regulations.

#### *Permits and certificates*

5.(1) Subject to the provisions of this section, the Director may issue to any person -

- (a) a permit authorizing, subject to the provisions of any other law, the import into or export from Zimbabwe of any controlled goods, wild life or trophy;
- (b) a certificate authorizing, subject to the provisions of any other law, the import into Zimbabwe of any wild life referred to in Part I or II of the Second Schedule, or any trophy of such wild life, which has been taken from a marine environment which is not under the jurisdiction of any State;
- (c) a certificate authorizing, subject to the provisions of any other law, the re-export from Zimbabwe of any wild life referred to in Part I, II or III of the Second Schedule, or any trophy of such wild life, where such wild life or trophy has previously been imported into Zimbabwe in terms of these regulations;

as may be appropriate in the particular case.

(2) Subject to the provisions of any law and to any directions given to him by the Director, the Controller may, as appropriate, issue the permit or certificate referred to in subsection (1) in respect of the import, export of re-export or any trophy.

(3) No permit shall be issued in terms of subsection (1)



or (2) for the import into Zimbabwe of any wild life referred to in Parts I and V of the Second Schedule, or any trophy of such wild life, unless -

(a) the Director or Controller, as the case may be, is satisfied that an export permit or re-export certificate has been, or will be, granted in respect of the wild life or trophy concerned by an appropriate authority in the country from which the wild life or trophy concerned is being imported; and

(b) the Director is satisfied, or, in the case of a permit issued by the Controller, the Director has certified to the Controller, that -

(i) the import will be for purposes which are not detrimental to the survival of the species of wild life concerned; and

(ii) the wild life or trophy will not be used for primarily commercial purposes;

and

(c) in the case of an import of a live specimen of such wild life, the Director is satisfied that the proposed recipient is suitably equipped to house and care for it.

(4) No permit shall be issued in terms of subsection (1) or (2) for the export from Zimbabwe of -

(a) any wild life referred to in Part I of the Second Schedule, or any trophy of such wild life, unless -

(i) the Director or Controller, as the case may be, is satisfied that an import permit has been, or will be, granted in respect of the wild life or trophy concerned by an appropriate authority in the country to which the wild life or trophy concerned is being exported; and

(ii) the Director is satisfied, or, in the case of a permit issued by the Controller, the Director has certified to the Controller, that -

A. the export will not be detrimental to the survival of the species of wild life concerned; and

B. the wild life or trophy concerned has not been obtained in contravention of any law; and

(iii) in the case of an export of a live specimen of such wild life, the Director is satisfied that the wild life concerned will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment;

(b) any wild-life referred to in Part II of the Second Schedule, or any trophy of such wild life, unless -

(i) the Director is satisfied, or, in the case of a permit issued by the Controller, the Director has certified to the Controller, that -

A. the export will not be detrimental to the survival of the species of wild life concerned; and

B. the wild life or trophy concerned has not been obtained in contravention of any law; and

(ii) in the case of an export of a live specimen of such wild life, the Director is satisfied that the wild life concerned will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

(5) No certificate referred to in paragraph (b) of subsection (1) shall be issued in terms of subsection (1) or (2) for the import into Zimbabwe of any wild life, or trophy of any wild life, which has been taken from a marine environment not under the jurisdiction of any State, unless -

(a) in the case of such wild life referred to in Part I of the Second Schedule, or a trophy of such wild life -

(i) the Director is satisfied, or, in the case of a certificate issued by the Controller, the Director has certified to the Controller, that -

A. the import will not be detrimental to the survival of the species of wild life concerned; and

B. the wild life or trophy will not be used for primarily commercial purposes; and

(ii) in the case of an import of a live specimen of such wild life, the Director is satisfied that the proposed recipient is suitably equipped to house and care for it;

(b) in the case of such wild life referred to in Part II of the Second Schedule, or a trophy of such wild life -

(i) the Director is satisfied, or, in the case of a certificate issued by the Controller, the Director has certified to the Controller that the import will not be detrimental to the survival of the species of wild life concerned; and

(ii) in the case of an import of a live specimen of such wild life, the Director is satisfied that the wild life will be so handled as to minimize the risk of injury, damage to health or cruel treatment.



(6) No certificate referred to in paragraph (c) of subsection (1) shall be issued in terms of subsection (1) or (2) for the re-export from Zimbabwe of -

(a) any wild life referred to in Part I of the Second Schedule, or any trophy of such wild life, unless -

(i) the Director or Controller, as the case may be, is satisfied that -

A. an import permit has been, or will be, granted in respect of the wild life or trophy concerned by an appropriate authority in the country to which the wild life or trophy concerned is being re-exported; and

B. the wild life or trophy concerned was imported into Zimbabwe in accordance with the provisions of the Convention; and

(ii) in the case of a re-export of a live specimen of such wild life, the Director is satisfied that the wild life concerned will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment;

(b) any wild life referred to in Part II of the Second Schedule, or any trophy of such wild life, unless -

(i) the Director or Controller, as the case may be, is satisfied that the wild life or trophy concerned was imported into Zimbabwe in accordance with the provisions of the Convention; and

(ii) in the case of a re-export of a live specimen of such wild life, the Director is satisfied that the wild life concerned will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

(7) When issuing any permit or certificate in terms of subsection (1) or (2), the Director or the Controller, as the case may be, shall have regard to the obligations of Zimbabwe under the Convention.

(8) No permit or certificate issued in terms of subsection (1) or (2) shall authorize the import, export or re-export, as the case may be, of more than one consignment of wild life or trophies.

*Form of permits, certificates, et cetera*

6.(1) Subject to the provisions of this section, every permit and certificate issued in terms of these regulations, and every return, register, seal or stamp used to give effect to these regulations, shall be in such form as the Director may from time to time fix.

(2) Every permit or certificate issued in terms of these regulations in respect of the import, export or re-export of any wild life referred to in Part I, II or III of the Second Schedule, or any trophy or such wild life, shall bear -

(a) the title of the Convention; and

(b) the title and identifying stamp of the Director or, in the case of a certificate or permit issued by the Controller, of the Controller; and

(c) a number as signed to the permit or certificate by the Director or the Controller.

(3) A permit issued by the Director or the Controller, as the case may be, for the export of any wild life referred to in Part I, II or III of the Second Schedule, or any trophy of such wild life, shall, in addition to the matters specified in subsection (2) contain the following information -

(a) the name of the person to whom it is issued; and

(b) the name "Zimbabwe", as being the country of export; and

(c) the period of validity of the permit; and

(d) in relation to the wild life or trophy which is being exported -

(i) the species of wild life concerned; and

(ii) in the case of living specimens of wild life, the number of specimens, their sex, size and details of any identifying marks; and

(iii) in the case of parts or derivatives of wild life, their quantity and type and any identifying marks; and

(iv) the Appendix to the Convention in which the species concerned is listed; and

(v) where known, whether or not the wild life concerned was bred in captivity, ranched or cultivated in Zimbabwe; and

(c) where feasible, the name of the country to which, and the name and address of the person to whom, the wild life or trophy concerned is being consigned.

(4) Any copy of a permit or certificate issued in terms of these regulations shall be clearly marked as such, and may be used in place of the original only to the extent specified therein.

(5) Notwithstanding the provisions of subsections (2) and (3), until such time as forms which comply with the provisions of those subsections are available, permits and certificates issued in terms of this section shall be in a form fixed by the Director.

*Period of validity of export permits*

7. A permit issued by the Director or Controller for the export of any wild life or trophy shall cease to be valid six months after it was issued, unless it has been earlier revoked in terms of section 9.

*Permits not to be transferred*

8. A permit or certificate issued in terms of these regulations shall not be transferrable, and any purported transfer of a permit or certificate shall be void:

Provided that nothing in this section shall prevent the holder of a permit or certificate from appointing any other person as his agent for the purposes of importing or exporting the controlled goods, wild life or trophy concerned.

*Amendment and revocation of permits and certificates*

9.(1) The Director may at any time amend or revoke any permit or certificate issued in terms of these regulations.

(2) The Controller may at any time amend or revoke any permit or certificate issued by him in terms of these regulations.

*Delegation of powers by Director and Controller*

10.(1) The Director and the Controller may, subject to such conditions as they may fix, delegate to any officer of their respective departments all or any of their powers in respect of the issue of permits and certificates in terms of these regulations, and may at any time revoke or vary such delegation.

(2) Any permit or certificate issued by an officer of the Department of National Parks and Wild Life Management or the Department of Customs and Excise in accordance with a delegation in terms of subsection (1) shall be as valid and effective as if it had been issued by the Director or the Controller, as the case may be.

*Inspectors*

11.(1) The Minister may appoint any person to be an inspector for the purposes of these regulations, in addition to the persons specified in paragraphs (a) and (b) of the definition of "inspector" in subsection (1) of section 2.

(2) An inspector appointed in terms of subsection (1) shall be furnished with a certificate, signed by or on behalf of the Minister, which shall state that the inspector has been appointed as an inspector for the purposes of these regulations.

(3) An inspector exercising any power or performing any duty conferred or imposed upon him by these regulations, or about to exercise any such power or perform any such duty, shall, on demand by any person concerned, produce -

(a) a certificate or document identifying himself as an officer of the Department of National Parks and Wild Life Management or of the Department of Customs and Excise; or

(b) a certificate issued to him in terms of subsection (2); as the case may be.

*Furnishing of information*

12.(1) The Minister may, by notice in writing, require any person who has applied for, or been issued with, a permit or certificate in terms of these regulations to furnish to the Minister or his authorized representative or an inspector from time to time any information whatsoever available to him relating to any controlled goods, wild life or trophy to which the application or permit or certificate relates.

(2) A person whom the Minister has required to give any information in terms of this section shall -

(a) comply with such requirement; and

(b) if required to do so by the authorized representative of the Ministry or by an inspector, give any further information or explanation, whether orally or in writing which the authorized representative or the inspector may require him to give.

*Powers of inspectors and representatives of Minister*

1.3(1) An inspector or the authorized representative of the Minister specified in section 12 may -

(a) examine and make extracts from, and copies of, records relating to any controlled goods, wild life or trophy referred to in subsection (1) of section 12;

(b) demand from any person an explanation of any entries in any records referred to in paragraph (a);

(c) seize and remove any records which, in his opinion,



may afford evidence of a contravention of these regulations.

(2) An inspector or the authorized representative of the Minister referred to in section 12 may, for the purpose of examination or production as evidence, seize and remove, without payment, any sample or specimen of any controlled goods, wild life or trophy referred to in subsection (1) of section 12.

(3) An inspector or the authorized representative of the Minister referred to in section 12 shall issue a receipt in respect of any thing seized by him in terms of this section.

(4) Any thing seized in terms of this section shall, if circumstances permit, be returned to its owner at the conclusion of any proceedings taken or inquiry made in relation thereto.

#### *Marking of wild life and trophies*

14. Where appropriate and feasible, the Director or the Controller may cause any wild life or trophy which is being imported into or exported from Zimbabwe to be marked with an indelible imprint or lead seal or in some other manner so as to render its imitation by unauthorized persons as difficult as possible.

#### *Offences and penalties*

15.(1) No person shall -

- (a) contravene or fail to comply with any provision of these regulations or any request, requirement or demand lawfully made under these regulations;
- (b) furnish any information required under or for the purposes of these regulations which he knows to be false or does not know or believe to be true;
- (c) hinder, obstruct or delay an inspector or the authorized representative of the Minister referred to in section 12 in the exercise of his powers or the performance of his duties under these regulations;
- (d) refuse or fail to answer, to the best of his knowledge, any question lawfully put to him under these regulations;
- (e) fail to comply with any terms or conditions imposed by the Minister in an open general permit or by the Director or Controller in issuing a permit or certificate in terms of these regulations;
- (f) except to the Minister or to any person whose duty it is to deal with the subject-matter of the disclosure, or when required to do so by a court of law or for the

purposes of these regulations, disclose any information relating to any person or business which has been acquired in the exercise of his powers or the performance of his duties under these regulations.

(2) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence, and liable -

- (a) in the case of an offence which involves any controlled goods, wild life or trophy, to a fine of an amount equivalent to the value of such controlled goods, wild life or trophy, or a fine of five thousand dollars, whichever is the greater; or
- (b) in any other case, to a fine of five thousand dollars; or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

#### *Application of other laws*

16. Nothing contained in these regulations or in any open general permit, permit or certificate issued in terms of these regulations shall -

- (a) exempt any person to whom the open general permit, permit or certificate or any exemption relates from complying with the provisions of any other law controlling the import into or export from Zimbabwe of any controlled goods, wild life or trophy to which that open general permit, permit, certificate or exemption relates; or
- (b) affect the operation of any other law relating to the conservation and management of wild life within Zimbabwe.

#### *Amendments and savings*

17.(1) The Control of Goods (import and Export) (Commerce) Regulations, 1974, published in Rhodesia Government Notice 766 of 1974, are amended -

- (a) in section 2 by the repeal of the definitions of "Director" and "permit";
- (b) in section 3 by the repeal of subsection (2);
- (c) by the repeal of section 6;
- (d) in section 8 by the deletion of "or permit", wherever it occurs;
- (e) in section 9 by the deletion of "permit", wherever it occurs;
- (f) in section 11 -
- (i) by the repeal of subsection (2);

- (ii) in subsection (3) -
  - A. by the deletion of "or the Minister of Lands, Natural Resources and Rural Development";
  - B. in paragraph (b) by the deletion of "such Minister" and the substitution of "the Minister";
- (g) in section 12 -
- (i) in subsection (1) -
  - A. by the deletion of "a Minister" and the substitution of "the Minister";
  - B. in paragraph (a) by the deletion of "or (2)";
- (ii) in subsection (2) by the deletion of "or (2)";
- (iii) in subsection (3) by the deletion of "a Minister" and the substitution of "the Minister";
- (h) in section 13 -
- (i) in paragraph (c) by the deletion of "a Minister" and the substitution of "the Minister";
- (ii) in paragraph (e) by the deletion of "or by the Director in issuing a permit";
- (iii) in paragraph (f) by the deletion of "the Minister of Lands, Natural Resources and Rural Development";
- (i) in section 14 by the deletion from paragraph (d) of "or the Minister of Lands, Natural Resources and Rural Development";
- (j) by the repeal of the First Schedule.
- (2) Notwithstanding the provisions of subsection (1), any -
  - (a) application for a permit made before the fixed date under the amended regulations shall be deemed to be an application for a permit or certificate, as may be appropriate, issued under these regulations;
  - (b) permit issued under the amended regulations shall be deemed to be a permit or certificate, as may be appropriate, issued under these regulations, and any conditions specified thereon shall continue to have effect, and shall be deemed to be conditions imposed in terms of these regulations;
  - (c) notice issued under the amended regulations requiring any person to furnish information shall be deemed to have been issued by the Minister in terms of section 12.

(3) In subsection (2) -

"amended regulations" means the Control of Goods (Import and Export) (Commerce) Regulations, 1974, published in Rhodesia Government Notice 766 of 1974;

"fixed date" means the date of commencement of these regulations.

#### FIRST SCHEDULE (Section 2)

##### CONTROLLED GOODS

1. Game-traps of metal construction, operated by springs.

#### SECOND SCHEDULE (Sections 2, 3, 4, 5 and 6)

##### WILD LIFE

##### PRELIMINARY

##### Notes

1. Parts I, II and III of this Schedule are equivalent to Appendices I, II and III, respectively, of the Convention. Part I lists species which are considered to be threatened with extinction generally, though not necessarily within Zimbabwe; Part II lists species which are not considered to be threatened yet, but which could become endangered if trade is not controlled, again not necessarily within Zimbabwe; and Part III lists species which are protected from exploitation within particular countries.

2. For ease of reference, Parts I and II of this Schedule have each been divided into Parts A and B. Part A lists species which occur, or which might occur, within Zimbabwe, while Part B lists all species contained in the relevant Appendix of the Convention, whether the species occur within or outside Zimbabwe.

3. Species included in Parts I, II, III and V of this Schedule are referred to -

- (a) by the name of the species; or
- (b) as being all of the species included in a higher taxon or designated part thereof.

4. The abbreviation "spp." is used to denote all species of a higher taxon.

5. Other references to taxa higher than species are for the purposes of information or classification only.

6. Again for ease of reference, the common names of species are set out in the third column of Parts I, II, III and V of this Schedule. Such common names of wild life may be used in permits and certificates in conjunc-



tion with the specific names of the wild life concerned, but it should be noted that only the names of wild life listed in column two are acceptable internationally for positive identification purposes. Common names may differ from country to country,

7. The abbreviation "p.e" is used to denote species which are possibly extinct.

8. An asterisk (\*) placed in Part II or III of this Schedule against the name of a species or higher taxon indicates that one or more geographically separate populations, subspecies or species of that species or taxon are included in Part I and that these populations, subspecies or species are excluded from Part II or III.

9. A dagger (†) place in Part I or III of this Schedule against the name of a species or higher taxon indicates that one or more geographically separate populations, subspecies or species of that species or taxon are included in Part II, and that these populations, subspecies or species are excluded from Part I or III.

10. A double dagger (‡) followed by a number placed against the name of a species or higher taxon denotes that only designated geographically separate populations, subspecies or species of that species or taxon are included in the Part concerned, as follows:

- ‡201 Population of South America.
- ‡202 Population of Bhutan, India, Nepal and Pakistan.
- ‡203 Italian population.
- ‡204 All North American subspecies.
- ‡205 Asian population.
- ‡206 Indian population.
- ‡207 Australian population.
- ‡208 Himalayan population.
- ‡209 All New Zealand species.

‡210 Population of Chile.

‡211 All species of the family in the Americas.

‡212 Australian populations.

11. A section mark (§) followed by a number placed against the name of a species or higher taxon denotes that designated geographically separate populations, subspecies, species, groups of species or families of that species or taxon are excluded from the Part concerned, as follows:

§101 Populations of Bhutan, India, Nepal and Pakistan.

§102 *Panthera tigris altaica* (=amurensis).

§103 Australian population.

§104 *Cathartidae*.

§105 Populations of North America, except Greenland.

§106 Population of the United States of America.

§107 *Melopsittacus undulatus*, *Nymphicus hollandicus*, and *Psittacula krameri*.

§108 Population of Papua New Guinea.

§109 Population of Chile.

§110 All species which are not succulent.

12. In Part II of this Schedule, the parallel mark (∟) placed against the name of a species or taxon of a plant denotes that only the plant, whether alive or dead, and the parts or derivatives, designated as follows, are covered by the provisions of these regulations:

- 1 designates roots;
- 2 designates timber;
- 3 designates trunks.

**PART I**  
(Appendix I to the Convention)

**ENDANGERED SPECIES OF WILD LIFE**

**PART A**  
**WILD LIFE WHICH OCCURS, OR WHICH MIGHT OCCUR WITHIN ZIMBABWE FAUNA**

**MAMMALIA - MAMMALS**

<i>Family</i>	<i>Specific name (including genus)</i>	<i>Common name</i>
<b>PHOLIDOTA</b>		
<b>Manidæ</b>	<i>Manis temmincki</i>	Zimbabwean pangolin
<b>CARNIVORA</b>		
<b>Hyaenidæ</b>	<i>Hyæna brunnea</i>	Brown hyæna
<b>Felidæ</b>	<i>Acinonyx jubatus</i> <i>Panthera pardus</i>	Cheetah Leopard
<b>PERISSODACTYLA</b>		
<b>Rhinocerotidæ</b>	<i>Rhinocerotidæ spp</i>	Rhinoceroses

**AVES - BIRDS**

<i>Family</i>	<i>Specific name (including genus)</i>	<i>Common name</i>
<b>CICONIIFORMES</b>		
<b>Ciconiidæ</b>	<i>Ciconia ciconia</i>	White stork
<b>FALCONIFORMES</b>		
<b>Falconidæ</b>	<i>Falco peregrinus</i>	Peregrine falcon

**REPTILIA - REPTILES**

<i>Family</i>	<i>Specific name (including genus)</i>	<i>Common name</i>
<b>CROCODYLIA</b>		
<b>Crocodylidæ</b>	<i>Crocodylus niloticus</i>	Nile crocodile

**FLORA**

<i>Family</i>	<i>Specific name (including genus)</i>	<i>Common name</i>
<b>ZAMIACEÆ</b>	<i>Encephalartos spp</i>	Cycads



## PART B

## WILD LIFE OCCURRING WITHIN AND OUTSIDE ZIMBABWE

## FAUNA

## MAMMALIA - MAMMALS

Family	Specific name	Common name
<b>MARSUPIALIA</b>		
<b>Macropodidæ</b>	<i>Bettongia</i> spp.	Rat-kangaroo
	<i>Caloprymnus campestris</i> p.e.	Desert rat-kangaroo
	<i>Lagorchestes hirsutus</i>	Western hare-wallaby
	<i>Lagostrophus fasciatus</i>	Banded hare-wallaby
	<i>Onychogalea frenata</i>	Merrin
	<i>Onychogalea lunata</i>	Wurrung
<b>Vombatidæ</b>	<i>Lasiorhinus krefftii</i>	Queensland hairy-nosed wombat
<b>Peramelidæ</b>	<i>Chæropus ecaudatus</i> p.e.	Pig-footed bandicoot
	<i>Macrotis lagotis</i>	Bilby
	<i>Macrotis leucura</i>	Yallara
	<i>Perameles bougainville</i>	Marl
<b>Dasyuridæ</b>	<i>Sminthopsis longicaudata</i>	Long-tailed dunnart
	<i>Sminthopsis psammophila</i>	Sandhill dunnart
<b>Thylacinidæ</b>	<i>Thylacinus cynocephalus</i> p.e.	Thylacine
<b>PRIMATES</b>		
<b>Lemuridæ</b>	<i>Allocebus</i> spp.	Hairy-eared dwarf lemurs
	<i>Cheirogaleus</i> spp.	Fat-tailed dwarf lemurs
	<i>Haplemur</i> spp.	Gentle Lemurs
	<i>Lemur</i> spp.	Lemurs
	<i>Lepilemur</i> spp.	Sportive lemurs
	<i>Microcebus</i> spp.	Mouse lemurs
	<i>Phaner</i> spp.	Fork-marked mouse-lemurs
<b>Indriidæ</b>	<i>Avahi</i> spp.	Woolly indris
	<i>Indri</i> spp.	Indris
	<i>Propithecus</i> spp.	Sifakas
<b>Daubentoniidæ</b>	<i>Daubentonia madagascariensis</i>	Aye-aye
<b>Callitrichidæ</b>	<i>Callimico gældii</i>	Goeldi's marmoset
	<i>Callithrix aurita</i>	White-eared marmoset
	<i>Callithrix flaviceps</i>	Bull-headed marmoset
	<i>Leontopithecus (=Leontideus)</i> spp.	Golden tamarins
	<i>Saguinus bicolor</i>	Bare-faced tamarin
	<i>Saguinus leucopus</i>	White-footed tamarin
	<i>Saguinus ædipus (geoffroyi)</i>	Cotton-headed tamarin
<b>Cebidæ</b>	<i>Alouatta palliata (villosa)</i>	Mantled howler
	<i>Ateles geoffroyi frontatus</i>	Black-browed spider monkey
	<i>Ateles geoffroyi panamensis</i>	Red spider monkey
	<i>Brachyteles arachnoides</i>	Woolly spider monkey
	<i>Cacajao</i> spp.	Uakaris

	<i>Chiropotes albinasus</i>	White-nosed saki
	<i>Saimiri ærstedii</i>	Red-backed squirrel-monkey
<b>Cercopithecidae</b>	<i>Cercocebus galeritus galeritus</i>	Tana River mangabey
	<i>Cercopithecus diana (roloway)</i>	Liberian Diana monkey
	<i>Colobus badius kirkii</i>	Zanzibar red colobus
	<i>Colobus badius rufomitratu</i>	Tana River Red Colobus
	<i>Macaca silenus</i>	Lion-tailed macaque
	<i>Nasalis larvatus</i>	Proboscis monkey
	<i>Papio (=Mandrillus) leucophaeus</i>	Drill monkey
	<i>Papio (=Mandrillus) sphinx</i>	Mandrill monkey
	<i>Presbytis entellus</i>	Entellus langur
	<i>Presbytis geei</i>	Golden langur
	<i>Presbytis pileatus</i>	Capped langur
	<i>Presbytis potenziani</i>	Mentawai leaf monkey
	<i>Pygathrix nemæus</i>	Douc langur
	<i>Simias concolor</i>	Pig-tailed langur
<b>Hylobatidae</b>	<i>Hylobates</i> spp.	Gibbons
	<i>Symphalangus syndactylus</i>	Siamang
<b>Pongidae</b>	<b>Pongidae</b> spp.	Gorillas/Orang-utan/Chimpanzees
<b>EDENTATA</b>		
<b>Dasypodidae</b>	<i>Priodontes giganteus (=maximus)</i>	Giant armadillo
<b>PHOLIDOTA</b>		
<b>Manidae</b>	<i>Manis temmincki</i>	Zimbabwean pangolin
<b>LAGOMORPHA</b>		
<b>Leporidae</b>	<i>Caprolagus hispidus</i>	Hispid hare
	<i>Romerolagus diazi</i>	Volcano rabbit
<b>RODENTIA</b>		
<b>Sciuridae</b>	<i>Cynomys mexicanus</i>	Mexican prairie dog
<b>Muridae</b>	<i>Leporillus conditor</i>	Stick-nest rat
	<i>Pseudomys fumeus</i>	Smoky mouse
	<i>Pseudomys præconis</i>	Shark Bay mouse
	<i>Xeromys myoides</i>	False water-rat
	<i>Zyzomys pedunculatus</i>	Macdonnell Range rock-rat
<b>Chinchillidae</b>	<i>Chinchilla</i> spp. ‡201	Chinchillas
<b>CETACEA</b>		
<b>Platanistidae</b>	<i>Lipotes vexillifer</i>	White flag dolphin
	<i>Platanista</i> spp.	Ganges susu/Indus susu
<b>Physeteridae</b>	<i>Physeter catodon (=macrocephalus)</i>	Sperm whale
<b>Delphinidae</b>	<i>Sotalia</i> spp.	South American river-dolphins
	<i>Sousa</i> spp.	Hump-backed dolphins



<b>Phocænidaë</b>	<i>Neophocæna phocænoides</i> <i>Phocæna sinus</i>	Finless porpoise Cochito
<b>Eschrichtidaë</b>	<i>Eschrichtius robustus</i> (=glaucus)	Grey whale
<b>Balænopteraidaë</b>	<i>Balænoptera borealis</i> <i>Balænoptera musculus</i> <i>Balænoptera physalus</i> <i>Megaptera novængliæ</i>	Sei whale Blue whale Fin whale Hump-back whale
<b>Balænidaë</b>	<i>Balæna mysticetus</i> <i>Eubalæna</i> spp.	Bow-head whale Right whales
<b>CARNIVORA</b>		
<b>Canidaë</b>	<i>Canis lupus</i> †‡202 <i>Speothos venaticus</i> <i>Vulpes velox hebes</i>	Grey wolf Bush-dog Northern swift fox
<b>Ursidaë</b>	<i>Helarctos malayanus</i> <i>Selenarctos thibetanus</i> <i>Tremarctos ornatus</i> <i>Ursus arctos</i> †‡203 <i>Ursus arctos isabellinus</i> <i>Ursus arctos nelsoni</i> <i>Ursus arctos pruinosus</i>	Sun-bear Asiatic black bear Spectacled bear  Himalayan brown bear Mexican grizzly bear Tibetan brown bear
<b>Mustelidaë</b>	<i>Aonyx microdon</i>  <i>Enhydra lutris nereis</i> <i>Lutra felina</i> <i>Lutra longicaudis</i> ( <i>platensis/annectens</i> ) <i>Lutra lutra</i> <i>Lutra provocax</i> <i>Mustela nigripes</i> <i>Pteronura brasiliensis</i>	Cameroon clawless otter  Southern sea-otter Marine otter La Plata otter European otter Southern river-otter Black-footed ferret Giant otter
<b>Viverridaë</b>	<i>Prionodon pardicolor</i>	Spotted linsang
<b>Hyænidaë</b>	<i>Hyæna brunnea</i>	Brown hyæna
<b>Felidaë</b>	<i>Acinonyx jubatus</i> <i>FELIS bengalensis bengalensis</i> <i>FELIS caracal</i> †‡205 <i>FELIS concolor coryi</i> <i>FELIS concolor costaricensis</i> <i>FELIS concolor cougar</i> <i>FELIS jacobita</i> <i>FELIS marmorata</i> <i>FELIS nigripes</i> <i>FELIS pardalis mearnsi</i> <i>FELIS pardalis mitis</i> <i>FELIS planiceps</i> <i>FELIS rubiginosa</i> †‡206 <i>FELIS</i> (=Lynx) <i>rufa escuinapæ</i> <i>FELIS temmincki</i> <i>FELIS tigrina oncilla</i> <i>FELIS wiedii nicarague</i> <i>FELIS wiedii salvinia</i> <i>FELIS yagouaroundi cacomitli</i>	Cheetah Indian leopard-cat Caracal Florida puma Costa Rican puma Eastern puma Mountain cat Marbled cat Black-footed cat Costa Rican ocelot Brazilian ocelot Flat-headed cat Rusty-spotted cat  Asiatic golden cat Costa Rican tiger-cat Nicaraguan margay Guatemalan margay Tamaulipas jaguarundi

	<i>FELIS yagouarounds fossata</i>	Yucatan jaguarundi
	<i>FELIS yagouarounds panamensis</i>	Panama jaguarundi
	<i>FELIS yagouarounds tolteca</i>	Sinaloa jaguarundi
	<i>NeoFELIS nebulosa</i>	Clouded leopard
	<i>Panthera leo persica</i>	Asiatic lion
	<i>Panthera onca</i>	Jaguar
	<i>Panthera pardus</i>	Leopard
	<i>Panthera tigris</i> † §102	Tiger
	<i>Panthera uncia</i>	Snow-leopard
<b>PINNIPEDIA</b>		
<b>Otariidæ</b>	<i>Arctocephalus townsendi</i>	Guadalupe fur seal
<b>Phocidæ</b>	<i>Monachus</i> spp.	Monk seals
<b>PROBOSCIDEA</b>		
<b>Elephantidæ</b>	<i>Elephas maximus</i>	Asian elephant
<b>SIRENIA</b>		
<b>Dugongidæ</b>	<i>Dugong dugon</i> † §103	Dugong
<b>Trichechidæ</b>	<i>Trichechus inunguis</i>	South American manatee
	<i>Trichechus manatus</i>	North American manatee
<b>PERISSODACTYLA</b>		
<b>Equidæ</b>	<i>Equus grevyi</i>	Grevy's zebra
	<i>Equus hemionus hemionus</i>	Mongolian wild ass
	<i>Equus hemionus khur</i>	Indian wild ass
	<i>Equus przewalskii</i>	Przewalski's horse
	<i>Equus zebra zebra</i>	Cape mountain zebra
<b>Tapiridæ</b>	<i>Tapirus bairdii</i>	Central American Tapir
	<i>Tapirus indicus</i>	Malayan tapir
	<i>Tapirus pinchaque</i>	Mountain tapir
<b>Rhinocerotidæ</b>	<b>Rhinocerotidæ</b>	Rhinoceroses
<b>ARTIODACTYLA</b>		
<b>Suidæ</b>	<i>Babyrousa babyrussa</i>	Babirusa
	<i>Sus salvanius</i>	Pygmy hog
<b>Camelidæ</b>	<i>Vicugna vicugna</i>	Vicuna
<b>Cervidæ</b>	<i>Axis (=Hyelaphus) calamianensis</i>	Calamian deer
	<i>Axis (=Hyelaphus) kuhli</i>	Khul's deer
	<i>Axis (=Hyelaphus) porcinus annamiticus</i>	Ganges hog deer
	<i>Blastocerus dichotomus</i>	Marsh deer
	<i>Cervus duvauceli</i>	Swamp deer
	<i>Cervus elaphus hanglu</i>	Kashmir red deer
	<i>Cervus eldi</i>	Brow-antlered deer
	<i>Dama mesopotamica</i>	Persian fallow deer
	<i>Hippocamelus antisensis</i>	North Andean huemal
	<i>Hippocamelus bisulcus</i>	South Andean huemal
	<i>Moschus moschiferus</i> † ‡208	Himalayan musk deer
	<i>Ozotoceros bezoarticus</i>	Pampas deer
	<i>Pudu pudu</i>	Southern pudu



<b>Antilocapridæ</b>	<i>Antilocapra americana peninsularis</i>	Sonoran pronghorn
	<i>Antilocapra americana Sonoriensis</i>	Lower California pronghorn
<b>Bovidæ</b>	<i>Bison bison athabasca</i>	Wood bison
	<i>Bos gaurus</i>	Gaur
	<i>Bos (grunniens) mutus</i>	Wild yak
	<i>Bubalus (=Anoa) depressicornis</i>	Lowland anoa
	<i>Bubalus (=Anoa) mindorensis</i>	Tamaraw
	<i>Bubalus (=Anoa) quarlesi</i>	Mountain anoa
<b>Bovidæ</b>	<i>Capra falconeri chiltanensis</i>	Chiltan markhor
	<i>Capra falconeri jerdoni</i>	Straight-horned markhor
	<i>Capra falconeri megaceros</i>	Kabul markhor
	<i>Capricornis sumatrænsis</i>	Serow
	<i>Hippotragus niger variani</i>	Giant sable antelope
	<i>Nemorhædus goral</i>	Goral
	<i>Novibos (=Bos) sauveli</i>	Kouprey
	<i>Oryx leucoryx</i>	Arabian oryx
	<i>Ovis ammon hodgsoni</i>	Nyan
	<i>Ovis orientalis ophion</i>	Cyprus mouflon
	<i>Ovis vignei</i>	Urial
	<i>Pantholops hodgsoni</i>	Chiru
	<i>Rupicapra rupicapra ornata</i>	Abruzzi chamois
AVEIS - BIRDS		
<b>RHEIFORMES</b>		
<b>Rheidæ</b>	<i>Pterocnemia pennata</i>	Lesser rhea
<b>TINAMIFORMES</b>		
<b>Tinamidæ</b>	<i>Tinamus solitarius</i>	Solitary tinamou
<b>SPHENISCIFORMES</b>		
<b>Spheniscidæ</b>	<i>Spheniscus humboldti</i>	Peruvian penguin
<b>PODICIPEDIFORMES</b>		
<b>Podicipedidæ</b>	<i>Podilymbus gigas</i>	Atilan grebe
<b>PROCELLARIIFORMES</b>		
<b>Diomedeidæ</b>	<i>Diomedea albatrus</i>	Short-tailed albatross
<b>PELECANIFORMES</b>		
<b>Sulidæ</b>	<i>Sula abbotti</i>	Abbott's booby
<b>Fregatidæ</b>	<i>Fregata andrewsi</i>	Christmas Island frigate bird
<b>CICONIIFORMES</b>		
<b>Ciconiidæ</b>	<i>Ciconia ciconia boyciana</i>	Oriental white stork
<b>Threskiornithidæ</b>	<i>Geronticus eremita</i>	Northern bald ibis
	<i>Nipponia nippon</i>	Japanese crested ibis
<b>ANSERIFORMES</b>		
<b>Anatidæ</b>	<i>Anas aucklandica nesiotis</i>	Campbell Island brown teal
	<i>Anas laysanensis</i>	Laysan duck
	<i>Anas oustaleti</i>	Marianas duck
	<i>Branta canadensis leucopareia</i>	Aleutian Canada goose
<b>Anatidæ</b>	<i>Branta sandvicensis</i>	Hawaiian goose
	<i>Cairina scutulata</i>	White-winged wood-duck
	<i>Rhodonessa caryophyllacea</i> p.e	

**FALCONIFORMES**

<b>Cathartidæ</b>	<i>Gymnogyps californianus</i> <i>Vultur gryphus</i>	California condor Andean condor
<b>Accipitridæ</b>	<i>Aquila heliaca</i> <i>Chondrohierax wilsonii</i> <i>Halioetus albicilla</i> <i>Halioetus leucocephalus</i> <i>Harpia harpyja</i> <i>Pithecophaga jefferyi</i>	Imperial eagle Cuban hook-billed kite White-tailed eagle Bald eagle South American harpy eagle Philippine eagle
<b>Falconidæ</b>	<i>Falco aroea</i> <i>Falco newtoni aldabranus</i> <i>Falco peregrinus (pelegrinoides/babylonicus)</i> <i>Falco punctatus</i> <i>Falco rusticolus</i> † § 105	Seychelles Kestrel Aldabra kestrel Peregrine falcon Mauritius kestrel Gyr falcon

**GALLIFORMES**

<b>Megapodiidæ</b> <b>Cracidæ</b>	<i>Macrocephalon maleo</i> <i>Crax blumenbachii</i> <i>Mitu mitu mitu</i> <i>Oreophasis derbianus</i> <i>Penelope albipennis</i> <i>Pipile jacutinga</i> <i>Pipile pipile pipile</i>	Maleo fowl Red-billed curassow Greater razor-billed Horned guan White-winged guan Black-fronted piping guan Trinidad blue-throated curassow
<b>Tetraonidæ</b> <b>Phasianidæ</b>	<i>Tympanuchus cupido attwateri</i> <i>Catreus wallichii</i> <i>Colinus virginianus ridgwayi</i> <i>Crossoptilon crossoptilon</i> <i>Crossoptilon mantchuricum</i> <i>Lophophorus impejanus</i> <i>Lophophorus lhuysii</i> <i>Lophophorus sclateri</i> <i>Lophura edwardsi</i> <i>Lophura imperialis</i> <i>Lophura swinhoii</i> <i>Polyplectron emphanum</i> <i>Syrmaticus ellioti</i> <i>Syrmaticus humiæ</i> <i>Syrmaticus mikado</i>	Attwater's prairie-chicken Cheer pheasant Masked bobwhite White-eared pheasant Brown-eared pheasant Himalayan monal Chinese monal Sclater's monal Edward's pheasant Imperial pheasant Swinhoe's pheasant Palawan peacock-pheasant Elliot's pheasant Hume's pheasant Mikado pheasant
<b>Phasianidæ</b>	<i>Tetraogallus caspius</i> <i>Tetraogallus tibetanus</i> <i>Tragopan blythii</i> <i>Tragopan caboti</i> <i>Tragopan melanocephalus</i>	Caspian snowcock Tibetan snowcock Blyth's tragopan Cabot's tragopan Western tragopan

**GRUIFORMES**

<b>Gruidæ</b>	<i>Grus americana</i> <i>Grus canadensis nesiotés</i> <i>Grus canadensis pulla</i> <i>Grus japonensis</i> <i>Grus leucogeranus</i> <i>Grus monacha</i>	Whooping crane Cuban sandhill crane Mississippi sandhill crane Red-crowned crane Siberian white crane Hooded crane
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	<i>Grus nigricollis</i>	Black-necked crane
	<i>Grus vipio</i>	White-naped crane
<b>Rallidæ</b>	<i>Tricholimnas sylvestris</i>	Lord Howe wood rail
<b>Rhynochetidæ</b>	<i>Rhynochetos jubatus</i>	Kagu
<b>Otididæ</b>	<i>Chlamydotis undulata</i>	Houbara bustard
	<i>Choriotis nigriceps</i>	Great Indian bustard
	<i>Eupodotis bengalensis</i>	Bengal florican
<b>CHARADRIIFORMES</b>		
<b>Scolopacidæ</b>	<i>Numenius borealis</i>	Eskimo curlew
	<i>Tringa guttifer</i>	Spotted greenshank
<b>Laridæ</b>	<i>Larus relictus</i>	Relict gull
<b>COLUMBIFORMES</b>		
<b>Columbidæ</b>	<i>Calenas nicobarica</i>	Nicobar pigeon
	<i>Ducula mindorensis</i>	Mindoro imperial pigeon
<b>PSITTACIFORMES</b>		
<b>Psittacidæ</b>	<i>Amazona arausiaca</i>	Red-necked parrot
	<i>Amazona barbadensis</i>	Yellow-shouldered parrot
	<i>Amazona brasiliensis</i>	Red-tailed parrot
	<i>Amazona guildingii</i>	St. Vincent Amazon parrot
	<i>Amazona imperialis</i>	Imperial Amazon parrot
	<i>Amazona leucocephala</i>	Caribbean Amazon parrot
	<i>Amazona pretrei pretrei</i>	Red-spectaled Amazon parrot
	<i>Amazona rhodocorytha</i>	Red-crowned Amazon parrot
	<i>Amazon versicolor</i>	St. Lucia Amazon parrot
	<i>Amazon vinacea</i>	Vinaceous Amazon parrot
	<i>Amazona vittata</i>	Red-fronted Amazon Parrot
	<i>Anodorhynchus glaucus</i> p.e	Glaucous macaw
	<i>Anodorhynchus leari</i>	Indigo macaw
	<i>Aratinga guaruba</i>	Golden conure
	<i>Cyanopsitta spixii</i>	Little blue macaw
<b>Psittacidæ</b>	<i>Cyanoramphus auriceps forbesi</i>	Forbe's yellow-fronted parakeet
	<i>Cyanoramphus novæzelandiæ</i>	Red-fronted parakeet
	<i>Cyclopsitta (=Opopsitta) diophthalma coxeni</i>	Double-eyed fig-parrot
	<i>Geopsittacus occidentalis</i> p.e.	Night-parrot
	<i>Neophema chrysogaster</i>	Orange-bellied parrot
	<i>Pezoporus wallicus</i>	Ground-parrot
	<i>Pionopsitta pileata</i>	Brazilian pileated parrot
	<i>Psephotus chrysopterygius</i>	Golden-shouldered parrot
	<i>Psephotus pulcherrimus</i> p.e.	Paradise parrot
	<i>Psittacula krameri echo</i>	Mauritius parakeet
	<i>Psittacus erithacus princeps</i>	Principe grey parrot
	<i>Pyrrhura cruentata</i>	Blue-throated conure
	<i>Rhynchopsitta</i> spp.	Thick-billed parrots
	<i>Strigops habroptilus</i>	Kakapo

**STRIGIFORMES**

<b>Tytonidæ</b>	<i>Tyto soumagnei</i>	Madagascar owl
<b>Strigidæ</b>	<i>Athene blewitti</i> <i>Ninox novoeseelandiæ royana</i> boobook owl <i>Ninox squamipila natalis</i> <i>Otus gurneyi</i>	Forest spotted owl Norfolk Island Christmas Island hawk owl Giant scops owl

**APODIFORMES**

<b>Trochilidæ</b>	<i>Ramphodon dohrnii</i>	Hook-billed hermit
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**TROGONIFORMES**

<b>Trogonidæ</b>	<i>Pharomachus mocinno costaricensis</i> <i>Pharomachus mocinno mocinno</i>	Costa Rican resplendent quetzal Mexican resplendent quetzal
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**CORACIIFORMES**

<b>Bucerotidæ</b>	<i>Buceros bicornis homrai</i> <i>Rhinoplax vigil</i>	Northern great pied hornbill Helmeted hornbill
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**PICIFORMES**

<b>Picidæ</b>	<i>Campephilus imperialis</i> <i>Dryocopus javensis richardsi</i>	Imperial woodpecker Tristram's white-bellied black woodpecker
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**PASSERIFORMES**

<b>Pittidæ</b>	<i>Pitta kochi</i>	Koch's pitta
<b>Cotingidæ</b>	<i>Cotinga maculata</i> <i>Xipholena atropurpurea</i>	Banded cotinga White-winged cotinga
<b>Atrichornithidæ</b>	<i>Atrichornis clamosa</i>	Noisy scrub-bird
<b>Muscicapidæ</b>	<i>Dasyornis brachypterus longirostris</i> <i>Dasyornis broadbenti littoralis</i> p.e. <i>Picathartes gymnocephalus</i> <i>Picathartes oreas</i>	Western bristle-bird Western rufous bristlebird White-necked rock-fowl Grey-necked rock fowl
<b>Zosteropidæ</b>	<i>Zosterops albogularis</i>	White-breasted silver-eye
<b>Meliphagidæ</b>	<i>Meliphaga cassidix</i>	Helmeted honey-eater
<b>Fringillidæ</b>	<i>Spinus cucullatus</i>	Red siskin
<b>Sturnidæ</b>	<i>Leucopsar rothschildi</i>	Rothschild's mynah

**REPTILIA - REPTILES**

**TESTUDINATA**

<b>Emydidæ</b>	<i>Batagur baska</i> <i>Geoclemys (=Damonina) hamiltonii</i> <i>Geoemyda (=Nicoria) tricarinata</i> <i>Kachuga tecta tecta</i> <i>Morenia ocellata</i> <i>Terrapene coahuila</i>	Common batagur Black pond-turtle Three-keeled land turtle Indian tent-turtle Burmese swamp-turtle Aquatic box-turtle
<b>Testudinidæ</b>	<i>Geochelone (=Testudo) elephantopus</i> <i>Geochelone (=Testudo) radiata</i>	Galapagos giant tortoise Radiated tortoise



	<i>Geochelone (=Testudo) yniphora</i>	Madagascar tortoise
	<i>Gopherus flavomarginatus</i>	Bolson tortoise
	<i>Psammobates (=Testudo) geometricus</i>	Geometric tortoise
<b>Cheloniidæ</b>	<i>Cheloniidæ</i> spp.	Sea-turtles
<b>Dermochelyidæ</b>	<i>Dermochelys coriacea</i>	Leatherback turtle
<b>Trionychidæ</b>	<i>Lissemys punctata punctata</i>	Indian soft-shelled turtle
	<i>Trionyx ater</i>	Black soft-shelled turtle
	<i>Trionyx gangeticus</i>	Ganges soft-shelled turtle
	<i>Trionyx hurum</i>	Peacock-marked soft-shell turtle
	<i>Trionyx nigricans</i>	Dark soft-shelled turtle
<b>Chelidæ</b>	<i>Pseudemydura umbrina</i>	Western swamp-turtle
<b>CROCODYLIA</b>		
<b>Alligatoridæ</b>	<i>Alligator sinensis</i>	Chinese alligator
	<i>Caiman crocodilus apaporiensis</i>	Rio Apaporis caiman
	<i>Caiman latirostris</i>	Broad-nosed caiman
<b>Crocodylidæ</b>	<i>Melanosuchus niger</i>	Black caiman
	<i>Crocodylus acutus</i>	American crocodile
	<i>Crocodylus cataphractus</i>	Slender-snouted crocodile
	<i>Crocodylus intermedius</i>	Orinoco crocodile
	<i>Crocodylus moreletii</i>	Morelet's crocodile
	<i>Crocodylus niloticus</i>	Nile crocodile
	<i>Crocodylus novoeguineoe mindorensis</i>	Mindoro crocodile
	<i>Crocodylus palustris</i>	Mugger crocodile
	<i>Crocodylus porosus</i> †	Cuban crocodile
	<i>Crocodylus siamensis</i>	Siamese crocodile
	<i>Osteoloemus tetraspis</i>	Dwarf crocodile
	<i>Tomistoma schlegelii</i>	False gavial
<b>Gavialidæ</b>	<i>Gavialis gangeticus</i>	Gavial
<b>SHYNCHOCEPHALIA</b>		
<b>Sphenodontidæ</b>	<i>Sphenodon punctatus</i>	Tuatara
<b>Iguanidæ</b>	<i>Brachylophus</i> spp.	Fijian iguana
	<i>Cyclura</i> spp.	Ground iguana
	<i>Sauromalus varius</i>	Chuckwala
<b>Varanidæ</b>	<i>Varanus bengalensis</i>	Bengal monitor
	<i>Varanus flavescens</i>	Yellow monitor
	<i>Varanus griseus</i>	Desert monitor
	<i>Varanus komodoensis</i>	Komodo dragon
<b>SERPENTES</b>		
<b>Boidæ</b>	<i>Acrantophis</i> spp.	Madagascar boas
	<i>Bolyeria</i> spp.	Round Island boa
	<i>Casarea</i> spp.	Keel-scaled boa
	<i>Epicrates inornatus</i>	Puerto Rican boa
	<i>Epicrates subflavus</i>	Jamaican boa
	<i>Python molurus molurus</i>	Indian python
	<i>Sanzinia madagascariensis</i>	Madagascar tree-boas

AMPHIBIA - AMPHIBIANS

URODELA

<b>Cryptobranchidæ</b>	<i>Andrias (=Megalobatrachus) davidianus</i> <i>Andrias (=Megalobatrachus) japonicus</i>	Chinese giant salamander Japanese giant salamander
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SALIENTIA

<b>Bufo</b>	<i>Bufo periglenes</i> <i>Bufo superciliaris</i> <i>Nectophrynoides</i> spp.	Orange toad Cameroon toad Viviparous African toads
<b>Atelopodidæ</b>	<i>Atelopus varius zeteki</i>	Zetek's golden frog

PISCES - FISH

ACIPENSERIFORMES

<b>Acipenseridæ</b>	<i>Acipenser brevirostrum</i>	Short-nose sturgeon
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OSTEOGLOSSIFORMES

<b>Osteoglossidæ</b>	<i>Scleropages formosus</i>	Asian bony-tongue
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SALMONIFORMES

<b>Salmonidæ</b>	<i>Coregonus alpenæ</i>	Long-jaw cisco
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CYPRINIFORMES

<b>Cyprinidæ</b> <b>Catostomidæ</b>	<i>Probarbus jullieni</i> <i>Chasmistes cujus</i>	Ikan temoleh Cui ni
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SILURIFORMES

<b>Schilbeidæ</b>	<i>Pangasianodon gigas</i>	Giant cat-fish
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PERCIFORMES

<b>Percidæ</b> <b>Sciænidæ</b>	<i>Stizostedion vitreum glaucum</i> <i>Cynoscion macdonaldi</i>	Blue wall-eye Totoaba
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MOLLUSCA - MOLLUSCS

NAIADOIDA

<b>Unionidæ</b>	<i>Conradilla coelata</i> <i>Dromus dromas</i> <i>Epioblasma (=Dysnomia) florentina curtisi</i> <i>Epioblasma (=Dysnomia) florentina florentina</i> <i>Epioblasma (=Dysnomia) sampsoni</i> <i>Epioblasma (=Dysnomia) sulcata perobliqua</i> <i>Epioblasma (=Dysnomia) torulosa gubernaculum</i>	Bird-wing pearly mussel Dromedary pearly mussel Curtis pearly mussel Yellow-blossom pearly mussel Sampson's pearly mussel White cat's-paw mussel Green blossom pearly mussel
<b>Unionidæ</b>	<i>Epioblasma (=Dysnomia) torulosa torulosa</i> <i>Epioblasma (=Dysnomia) turgidula</i> <i>Epioblasma (=Dysnomia) walkeri</i> <i>Fusconaia cuneolus</i> <i>Fusconaia edgariana</i> <i>Lampsilis higginsi</i>	Tubercled blossom pearly mussel Turgid blossom pearly mussel Brown blossom pearly mussel Fine-rayed pigtoe pearly mussel Shiny pigtoe pearly mussel Higgin's eye pearly mussel



	<i>Lampsilis orbiculata orbiculata</i>	Pink mucket pearly mussel
	<i>Lampsilis satura</i>	Plain pocketbook pearly mussel
	<i>Lampsilis virescens</i>	Alabama lamp pearly mussel
	<i>Plethobasus cicatricosus</i>	White warty-back pearly mussel
	<i>Plethobasus cooperianus</i>	Orange-footed pimple-back
	<i>Pleurobema plenum</i>	Rough pig-toe pearly mussel
	<i>Potamilus (=Proptera) capax</i>	Fat pocketbook pearly mussel
	<i>Quadrula intermedia</i>	Cumberland monkey-face pearly mussel
	<i>Quadrula sparsa</i>	Appalachian monkey-face pearly mussel
	<i>Toxolasma (=Carunculina) cylindrella</i>	Pale Lilliput pearly mussel
	<i>Unio (Megaloniaias [?]) nickliniana</i>	Nicklin's pearly mussel
	<i>Unio (Lampsilis [?]) tampicoensis</i>	
	<i>tecomatensis</i>	Tampico pearly mussel
	<i>Villosa (=Micromya) trabalis</i>	Cumberland bean pearly mussel
<b>APOCYNACEÆ</b>	<i>Pachypodium namaquanum</i>	Elephant's trunk, or Halfmens
<b>ARACEÆ</b>	<i>Alocasia sanderana</i>	An elephant's-ear plant
	<i>Alocasia zebrina</i>	An elephant's-ear plant
<b>ARAUCARIACEÆ</b>	<i>Araucaria araucana</i> † ‡210	Monkey-puzzle tree, or Chile pine
<b>CACTACEÆ</b>	<i>Ariocarpus agovoides</i>	A cactus (Mexican)
	<i>Ariocarpus scapharostrus</i>	A cactus (north Mexico)
	<i>Aztekium ritteri</i>	A cactus (north-east Mexico)
	<i>Echinocereus lindsayi</i>	A hedgehog cactus
	<i>Obregonia denegrii</i>	A cactus (north-east Mexico)
	<i>Pelecyphora aselliformis</i>	A hatchet cactus (central Mexico)
	<i>Pelecyphora strobiliformis</i>	A hatchet cactus (north Mexico).
<b>CARYOCARACEÆ</b>	<i>Caryocar costaricense</i>	
<b>CARYOPHYLLACEÆ</b>	<i>Gymnocarpos przewalskii</i>	A pink
	<i>Melandrium mongolicus</i>	A pink
	<i>Silene mongolica</i>	A pink
	<i>Stellaria pulvinata</i>	A chickweed or starwort
<b>CUPRESSACEÆ</b>	<i>Fitzroya cupressoides</i>	Fitzroy's cypress
	<i>Pilgerodendron uviferum</i>	A cypress
<b>CYCADACEÆ</b>	<i>Microcycas calocoma</i>	Palma corcho
<b>GENTIANACEÆ</b>	<i>Prepusa hookeriana</i>	A gentian
<b>HUMIRIACEÆ</b>	<i>Vantanea barbourii</i>	
<b>JUGLANDACEÆ</b>	<i>Engelhardtia pterocarpa</i>	
<b>LEGUMINOSEÆ</b>	<i>Ammopiptanthus mongolicum</i>	A legume
<b>(FABACEÆ)</b>	<i>Cynometra hemitomophylla</i>	A legume
	<i>Platymiscium pleiostachyum</i>	A legume
	<i>Tachigalia versicolor</i>	A legume
<b>LILIACEÆ</b>	<i>Aloe albida</i>	A grass aloe
	<i>Aloe pillansii</i>	Bastard quiver-tree
	<i>Aloe polyphylla</i>	Spiral aloe

	<i>Aloe thornicroftii</i>	An aloe
	<i>Aloe vassii</i>	An aloe
<b>MELASTOMATACEÆ</b>	<i>Lavoisiera itambana</i>	
<b>MELIACEÆ</b>	<i>Guarea longipetiola</i>	A mahogany
<b>MORACEÆ</b>	<i>Batocarpus costaricensis</i>	
<b>NEPENTHACEÆ</b>	<i>Nepenthes rajah</i>	Pitcher plant
<b>ORCHIDACEÆ</b>	<i>Cattleya skinneri</i>	
	<i>Cattleya trinæ</i>	Christmas orchid, or winter cattleya
	<i>Didiciea cunninghamii</i>	
	<i>Loelia jongheana</i>	
	<i>Loelia lobata</i>	
	<i>Lycaste virginalis</i> var. <i>alba</i>	White nun orchid
	<i>Peristeria elata</i>	Holy Ghost or dove orchid
	<i>Renanthera imschootiana</i>	Scorpion orchid
	<i>Vanda coerulea</i>	Blue vanda
<b>PINACEÆ</b>	<i>Abies guatemalensis</i>	A Guatemalan fir-tree
	<i>Abies nebrodensis</i>	A fir-tree
<b>PODOCARPACEÆ</b>	<i>Podocarpus costalis</i>	A yellow-wood
	<i>Podocarpus parlatorei</i>	A yellow-wood
<b>PROTEACEÆ</b>	<i>Orothamnus zeyheri</i>	Marsh rose
	<i>Protea odorata</i>	
<b>RUBIACEÆ</b>	<i>Balmea stormoe</i>	
<b>SARRACENIACEÆ</b>	<i>Sarracenia alabamensis alabamensis</i>	Pitcher plant
	<i>Sarracenia jonesii</i>	Sweet pitcher plant
	<i>Sarracenia oreophila</i>	Pitcher plant
<b>SAXIFRAGACEÆ</b> <b>(GROSSULARIACEÆ)</b>	<i>Ribes sardoum</i>	A currant or gooseberry
<b>STANGERIACEÆ</b>	<i>Stangeria eriopus</i>	Grass cycad
<b>ULMACEÆ</b>	<i>Celtis oetnensis</i>	A hackberry
<b>WELWITSCHIACEÆ</b>	<i>Welwitschia mirabilis</i>	Welwitschia
<b>ZAMIACEÆ</b>	<i>Encephalartos</i> spp.	Cycads
<b>ZINGIBERACEÆ</b>	<i>Hedychium philippinense</i>	Ginger lily or flowering ginger



PART II  
(Appendix II to the Convention)

SPECIES OF WILD LIFE WHICH MAY BECOME ENDANGERED.

PART A  
WILD LIFE WHICH OCCURS, OR WHICH MIGHT OCCUR, WITHIN ZIMBABWE

FAUNA

MAMMALIA - MAMMALS

Family	Specific name (including genus)	Common name
<b>INSECTIVORA</b>		
Erinaceidæ	<i>Erinaceus frontalis</i>	Zimbabwean hedgehog
PRIMATES	PRIMATES spp.	All primate species
<b>CARNIVORA</b>		
Mustelidæ	<i>Lutrinæ</i> spp.	Otters
Felidæ	Felidæ spp.	Cats
<b>TUBULIDENTATA</b>		
Orycteropodidæ	<i>Orycteropus afer</i>	Ant-bear
<b>PROBOSCIDEA</b>		
Elephantidæ	<i>Loxodonta africana</i>	African elephant
<b>ARTIODACTYLA</b>		
Bovidæ	<i>Cephalophus monticola</i> <i>Hippotragus equinus</i>	Blue duiker Roan antelope

AVES - BIRDS

<b>CICONIIFORMES</b>		
Ciconiidæ	<i>Ciconia nigra</i>	Black stork
Phoenicopteridæ	<i>Phoenicopterus ruber</i>	Greater flamingo
<b>ANSERIFORMES</b>		
Anatidæ	<i>Sarkidiornis melanotos</i>	Knob-billed duck
<b>FALCONIFORMES</b>		
	FALCONIFORMES spp.* §104	Birds of prey
<b>GRUIFORMES</b>		
Gruidæ	<i>Balearica regulorum</i>	Crowned crane
<b>PSITTACIFORMES</b>		
	PSITTACIFORMES spp.* §107	All parrot-like birds

**CUCULIFORMES**

<b>Musophagidæ</b>	<i>Tauraco porphyreolophus</i> (Vigors) <i>Tauraco corythaix</i>	Purple-crested loerie Knysna loerie
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**STRIGIFORMES STRIGIFORMES SPP.\*** Owls and owl-like birds

**REPTILIA - REPTILES**

**SAURIA**

<b>Chamæleonidæ</b>	<i>Chamoeleo</i> spp.	Chameleons
<b>Cordylidæ</b>	<i>Cordylus</i> spp.	Girdle-tailed lizards
<b>Varanidæ</b>	<i>Varanus</i> spp.	Monitors

**SERPENTES**

<b>Boidæ</b>	<b>Boidæ</b> spp.	Pythons
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**FLORA**

<b>ASCLEPIADACEÆ</b>	<i>Ceropegia</i> spp.	Rosary vines (and numerous others)
<b>CYATHEACEÆ</b>	<b>CYATHEACEÆ</b> SPP. 3	Tree-ferns
<b>EUPHORBIACEÆ</b>	<i>Euphorbia</i> spp. §110	Euphorbias (succulent)
<b>LILIACEÆ</b>	<i>Aloe</i> spp.*	Aloes
<b>ORCHIDACEÆ</b>	<b>ORCHIDACEÆ</b> spp.*	Orchids
<b>PORTULACACEÆ</b>	<i>Anacampseros</i> spp.	Quilika or tirika
<b>ZAMIACEÆ</b>	<b>ZAMIACEÆ</b> spp.*	Cyads

**PART B**  
**WILD LIFE OCCURRING WITHIN AND OUTSIDE ZIMBABWE**

**FAUNA**

**MAMMALIA - MAMMALS**

**MONOTREMATA**

<b>Tachyglossidæ</b>	<i>Zaglossus</i> spp.	New Guinea echidnas
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**MARSUPIALIA**

<b>Macropodidæ</b>	<i>Dendrolagus bennettianus</i> <i>Dendrolagus lumholtzi</i> <i>Dendrolagus inustus</i> <i>Dendrolagus ursinus</i>	Bennett's tree-kangaroo Lumholtz's tree-kangaroo Grizzled tree-kangaroo Black tree-kangaroo
<b>Phalangeridæ</b>	<i>Phalanger maculatus</i> <i>Phalanger orientalis</i>	Spotted cuscus Grey cuscus
<b>Burramyidæ</b>	<i>Burramys parvus</i>	Mountain pygmy possum



## INSECTIVORA

**Erinaceidæ** *Erinaceus frontalis* Zimbabwean hedgehog

**PRIMATES** **PRIMATES** spp.\* All primate species

## EDENTATA

**Myrmecophagidæ** *Myrmecophaga tridactyla* Giant ant-eater

*Tamandua tetradactyla chapadensis* Mato Grosso tamandua

**Bradypodidæ**

*Bradypus boliviensis* Bolivian three-toed sloth

## PHOLIDOTA

**Manidæ** *Manis crassicaudata* Indian pangolin  
*Manis javanica* Malayan pangolin  
*Manis pentadactyla* Chinese pangolin

## LAGOMORPHA

**Leporidae** *Nesolagus netscheri* Sumatra short-eared rabbit

## RODENTIA

**Sciuridæ** *Lariscus hosei* Four-striped ground-squirrel  
*Ratufa* spp. Giant squirrels

**Heteromyidæ** *Dipodomys phillipsii phillipsii* Phillips' kangaroo-rat

**Muridæ** *Notomys* spp. Hopping mice  
*Pseudomys shortridgei* Shortridge's native mouse

**CETACEA** **CETACEA** spp.\* Whales, dolphins, porpoises

## CARNIVORA

**Canidæ** *Canis lupus*\* §101 Grey wolf  
*Chrysocyon brachyurus* Maned wolf  
*Cuon alpinus* Dhole  
*Dusicyon culpoeus* Culpeo fox  
*Dusicyon fulvipes* Chiloe fox  
*Dusicyon griseus* Chico grey fox  
*Vulpes cana* Afghan fox

**Ursidæ** *Ursus arctos*\* ‡204 Polar bear  
*Ursus (=Thalarctos) maritimus*

**Procyonidæ** *Ailurus fulgens* Lesser panda  
**Mustelidæ** *Conepatus humboldti* Patagonian skunk  
*Lutrinæ* spp.\* Otters

**Viverridæ** *Cryptoprocta ferox* Fossa  
*Cynogale bennetti* Otter civet  
*Eupleres goudotti* Falanouc  
*Eupleres major* Malagasy mongoose  
*Fossa fossa* Malagasy civet  
*Hemigalus derbyanus* Banded palm civet  
*Prionodon linsang* Banded linsang

<b>Felidæ</b>	<b>Felidæ spp.*</b>	Cats
<b>PINNIPEDIA</b>		
<b>Otariidæ</b>	<i>Arctocephalus spp.*</i>	Fur seals
<b>Phocidæ</b>	<i>Mirounga angustirostris</i>	Northern elephant seal
	<i>Mirounga leonina</i>	Southern elephant seal
<b>TUBULIDENTATA</b>		
<b>Orycteropodidæ</b>	<i>Orycteropus afer</i>	Ant-bear
<b>PROBOSCIDEA</b>		
<b>Elephantidæ</b>	<i>Loxodonta africana</i>	African elephant
<b>SIRENIA</b>		
<b>Dugongidæ</b>	<i>Dugong dugon* ‡207</i>	Dugong
<b>Trichechidæ</b>	<i>Trichechus senegalensis</i>	West African manatee
<b>PERISSODACTYLA</b>		
<b>Equidæ</b>	<i>Equus hemionus*</i>	Asiatic wild ass
	<i>Equus zebra hartmannæ</i>	Hartmann's mountain zebra
<b>Tapiridæ</b>	<i>Tapirus terrestris</i>	South American tapir
<b>ARTIODACTYLA</b>		
<b>Hippopotamidæ</b>	<i>Choeropsis liberiensis</i>	Pygmy hippopotamus
<b>Camelidæ</b>	<i>Lama guanicoe</i>	Guanaco
<b>Cervidæ</b>	<i>Cervus elaphus bactrianus</i>	Bactrian red deer
	<i>Moschus spp.*</i>	Musk deer
	<i>Pudu mephistophiles</i>	Northern pudu
<b>Antilocapridæ</b>	<i>Antilocapra americana mexicana</i>	Mexican pronghorn
<b>Bovidæ</b>	<i>Addax nasomaculatus</i>	Addax
	<i>Capra falconeri*</i>	Markhor
	<i>Cephalophus monticola</i>	Blue duiker
	<i>Damaliscus dorcas dorcas</i>	Bontebok
	<i>Hippotragus equinus</i>	Roan antelope
	<i>Kobus leche</i>	Red lechwe
	<i>Oryx (tao) dammah</i>	Scimitar-horned oryx
	<i>Ovis ammon*</i>	Argali
	<i>Ovis canadensis</i>	Big-horn sheep
<b>AVES - BIRDS</b>		
<b>RHEIFORMES</b>		
<b>Rheidæ</b>	<i>Rhea americana albescens</i>	Argentine greater rhea
<b>TINAMIFORMES</b>		
<b>Tinamidæ</b>	<i>Rhynchotus rufescens maculicollis</i>	Bolivian rufous tinamou
	<i>Rhynchotus rufescens pallescens</i>	Argentine rufous tinamou
	<i>Rhynchotus rufescens rufescens</i>	Brazilian rufous tinamou



## SPHENISCIFORMES

<b>Spheniscidæ</b>	<i>Spheniscus demersus</i>	Black-footed penguin, or African jackass penguin
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## PELECANIFORMES

<b>Pelecanidæ</b>	<i>Pelecanus crispus</i>	Dalmatian pelican
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## CICONIFORMES

<b>Ciconiidæ</b>	<i>Ciconia nigra</i>	Black stork
<b>Threskiornithidæ</b>	<i>Geronticus calvus</i>	Bald ibis
	<i>Platalea leucorodia</i>	White spoonbill

<b>Phoenicopteridæ</b>	<i>Phoenicoparrus andinus</i>	Andean flamingo
	<i>Phoenicoparrus jamesi</i>	James' flamingo
	<i>Phoenicopterus ruber chilensis</i>	Chilean flamingo
	<i>Phoenicopterus ruber ruber</i>	Caribbean flamingo

## ANSERIFORMES

<b>Anatidæ</b>	<i>Anas aucklandica aucklandica</i>	Auckland Island brown teal
	<i>Anas aucklandica chlorotis</i>	New Zealand brown teal
	<i>Anas bernieri</i>	Madagascar teal
	<i>Anser albifrons gambelli</i>	Tule white-fronted goose
	<i>Branta ruficollis</i>	Red-breasted goose
	<i>Coscoroba coscoroba</i>	Coscoroba swan
	<i>Cygnus bewickii jankowskii</i>	Eastern Bewick's swan
	<i>Cygnus melancoryphus</i>	Black-necked swan
	<i>Dendrocygna arborea</i>	Black-billed whistling duck
	<i>Sarkidiornis melanotos</i>	Knob-billed duck

## FALCONIFORMES

<b>FALCONIFORMES</b>	spp.* §104	Birds of prey
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## GALLIFORMES

<b>Megapodiidæ</b>	<i>Megapodius freycinet abbotti</i>	Abbott's scrub fowl
	<i>Megapodius freycinet nicobariensis</i>	Nicobar scrub fowl
<b>Tetraonidæ</b>	<i>Lyrurus mlokosiewiczii</i>	Caucasian black grouse
<b>Phasianidæ</b>	<i>Argusianus argus</i>	Great argus pheasant
	<i>Crytonyx montezumæ mearnsi</i> §106	Mearns' montezuma quail
	<i>Crytonyx montezumæ montezumæ</i>	Montezuma quail
	<i>Francolinus ochropectus</i>	Pale-bellied francolin
	<i>Francolinus swierstrai</i>	Swierstra's francolin
	<i>Gallus sonneratii</i>	Grey jungle fowl
	<i>Ithaginis cruentus</i>	Blood pheasant
	<i>Pavo muticus</i>	Green peafowl
	<i>Polypletron bicalcaratum</i>	Grey peacock-pheasant
	<i>Polypletron germani</i>	German's peacock-pheasant
	<i>Polypletron malacense</i>	Malay peacock-pheasant

## GRUIFORMES

<b>Turnicidæ</b>	<i>Turnix melanogaster</i>	Black-breasted button quail
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<b>Pedionomidae</b>	<i>Pedionomus torquatus</i>	Plains wanderer
<b>Gruidae</b>	<i>Balearica regulorum</i>	Crowned crane
	<i>Grus canadensis pratensis</i>	Florida sandhill crane
<b>Rallidae</b>	<i>Gallirallus australis hectori</i>	Eastern weka
<b>Otididae</b>	<i>Otis tarda</i>	Great bustard
<b>CHARADRIIFORMES</b>		
<b>Scolopacidae</b>	<i>Numenius minutus</i>	Little curlew
	<i>Numenius tenuirostris</i>	Slender-billed curlew
<b>Laridae</b>	<i>Larus brunnicephalus</i>	Brown-headed gull
<b>COLUMBIFORMES</b>		
<b>Columbidae</b>	<i>Gallicolumba luzonica</i>	Bleeding-heart pigeon
	<i>Goura cristata</i>	Blue-crowned pigeon
	<i>Goura scheepmakeri</i>	Maroon-breasted crowned pigeon
	<i>Goura victoria</i>	Victoria crowned pigeon
<b>PSITTACIFORMES</b>	<b>PSITTACIFORMES</b> spp. *§107	All parrot-like birds
<b>CUCULIFORMES</b>		
<b>Musophagidae</b>	<i>Tauraco porphyreolophus</i>	Purple-crested loerie
	<i>Tauraco corythaix</i>	Knysna loerie
<b>STRIGIFORMES</b>	<b>STRIGIFORMES</b> spp.*	Owls and owl-like birds
<b>CORACIIFORMES</b>		
<b>Bucerotidae</b>	<i>Aceros narcondami</i>	Narcondam hornbill
	<i>Buceros bicornis</i> *	Great pied hornbill
	<i>Buceros hydrocorax hydrocorax</i>	Luzon rufous hornbill
	<i>Buceros rhinoceros rhinoceros</i>	Malayan rhinoceros hornbill
<b>PICIFORMES</b>		
<b>Picidae</b>	<i>Picus squamatus flavirostris</i>	Western scaly-bellied green woodpecker
<b>PASSERIFORMES</b>		
<b>Pittidae</b>	<i>Pitta brachyura nympha</i>	Fairy pitta
<b>Cotingidae</b>	<i>Rupicola peruviana</i>	Andean cock-of-the-rock
	<i>Rupicola rupicola</i>	Guianan cock-of-the-rock
<b>Hirundinidae</b>	<i>Pseudochelidon sirintaroe</i>	White-eyed river-martin
<b>Muscicapidae</b>	<i>Muscicapa ruecki</i>	Rueck's blue fly-catcher
	<i>Psophodes nigrogularis</i>	Western whip-bird
<b>Fringillidae</b>	<i>Spinus yarrellii</i>	Yellow-faced siskin
<b>Estrildidae</b>	<i>Emblema oculata</i>	Red-eared fire-tail
	<i>Poephila cincta cincta</i>	Parson finch
<b>Paradisæidae</b>	<b>Paradisæidae</b> spp.	Birds of paradise

REPTILIA - REPTILES

TESTUNDINATA

<b>Dermatemydidæ</b>	<i>Dermatemys mawii</i>	Central American river-turtle
<b>Emydidæ</b>	<i>Clemmys muhlenbergi</i>	Bog-turtle



Testudinidæ Pelomedusidæ	Testudinidæ spp. <i>Podocnemis</i> spp.	Tortoises South American river-turtles
<b>CROCODYLIA</b>		
Alligatoridæ Crocodylidæ	Alligatoridæ spp.* Crocodylidæ spp.*	Alligators Crocodiles
<b>SAURIA</b>		
Gekkonidæ	<i>Cytodactylus serpensinsula</i> <i>Phelsuma</i> spp.	Serpent Island gecko Day geckos
Agamidæ Chamæleonidæ Iguanidæ	<i>Paracelima orientalis</i> <i>Chamoeleo</i> spp. <i>Amblyrhynchus cristatus</i> <i>Conolophus</i> spp. <i>Iguana</i> spp. <i>Phrynosoma coronatum blainvillei</i>	Queensland snake-lizard Chameleons Galapagos marine iguana Land iguanas Iguanas San Diego horned lizard
Cordylidæ	<i>Cordylus</i> spp. <i>Pseudocordylus</i> spp.	Girdle-tailed lizards Crag-lizards
Teiidæ	<i>Cnemidophorus hyperythrus</i> <i>Crocodylurus lacertinus</i> <i>Dracoena guianensis</i> <i>Tupinambis</i> spp.	Orange-throated whip tail Dragon lizardet Caiman lizard Telus
Helodermatidæ Varanidæ	<i>Heloderma</i> spp. <i>Varanus</i> spp.*	Gila monster and beaded lizard Monitors
<b>SERPENTES</b>		
Boidæ Colubridæ	Boidæ spp* <i>Cyclagras gigas</i> <i>Elachistodon westermanni</i> <i>Pseudoboa cloelia</i> <i>Thamnophis elegans hammondi</i>	Boas and pythons False cobra Indian egg-eating snake Mussurana Two-striped garter-snake
<b>AMPHIBIA - AMPHIBIANS</b>		
<b>URODELA</b>		
Ambystomidæ	<i>Ambystoma dumerilii</i> <i>Ambystoma lermoensis</i>	Lake Patzcuaro salamander Lake Lerma salamander Axolotl
<b>SALIENTIA</b>		
Buфонidæ	<i>Bufo retiformis</i>	Sonoran green toad
<b>COELACANTHIFORMES</b>		
Coelacanthidæ	<i>Latimeria chalumnae</i>	Coelacanth
<b>CERATODIFORMES</b>		
Ceratodidæ	<i>Neoceratodus forsteri</i>	Australian lung-fish
<b>ACIPENSERIFORMES</b>		
Acipenseridæ	<i>Acipenser fulvescens</i> <i>Acipenser oxyrhynchus</i> <i>Acipenser sturio</i>	Lake sturgeon Atlantic sturgeon Common sturgeon

**OSTEOGLOSSIFORMES**

**Osteoglossidæ** *Arapaima gigas* Arapaima

**SALMONIFORMES**

**Salmonidæ** *Salmo chrysogaster* Mexican golden trout  
*Stenodus leucichthys leucichthys* Bolonbitsa

**CYPRINIFORMES**

**Cyprinidæ** *Coecobarbus geertsi*  
*Plagopterus argentissimus*  
*Ptychocheilus lucius* Colorado River squaw-fish

**ATHERINIFORMES**

**Cyprinodontidæ** *Cynolebias constancioe* Pearl-fish  
*Cynolebias marmoratus* Ginger pearl-fish  
*Cynolebias minimus* Minute pearl-fish  
*Cynolebias opalescens* Opalescent pearl-fish  
*Cynolebias spendens* Splendid pearl-fish  
**Poeciliidæ** *Xiphophorus couchianus* Monterey platyfish

**MOLLUSCA - MOLLUSCS**

**ANISOMYARIA**

**Mytilidæ** *Mytilus chorus* Marine mussels

**NAIADOIDA**

**Unionidæ** *Cyprogenia aberti* Edible pearly mussel  
*Epioblasma (=Dysnomia) torulosa rangiana* Tan-blossom pearly mussel  
*Fusconaia subrotunda* Long solid mussel  
*Lampsilis brevicula* Ozark-lamp pearly mussel  
*Lexingtonia dolabelloides*  
*Pleurobema clava* Club pearly mussel

**STYLOMMATOPHORA**

**Camænidæ** *Papustyla (=Papuina) pulcherrima* Manus Island tree-snail

**Paryphantidæ** *Paryphanta* spp. ‡209 New Zealand amber snail

**PROSOBRANCHIA**

**Hydrobiidæ** *Coahuilix hubbsi* Fresh-water snail  
*Cochliopina milleri* Fresh-water snail  
*Durangonella coahuiloe* Fresh-water snail  
*Mexipyrgus carranzoe* Fresh-water snail  
*Mexipyrgus churinceanus* Fresh-water snail  
*Mexipyrgus escobedoe* Fresh-water snail  
*Mexipyrgus lugoi* Fresh-water snail  
*Mexipyrgus mojarralis* Fresh-water snail  
*Mexithauma quadripaludium* Fresh-water snail  
*Nymphophilus minckleyi* Fresh-water snail



*Paludiscala caramba*

Fresh-water snail

## INSECTA - INSECTS

## LEPIDOPTERA

## Papilionida

*Ornithoptera* spp. (sensu d'Abbrera)  
*Parnassius apollo*  
*Trogonoptera* spp. (sensu d'Abbrera)  
*Troides* spp. (sensu d'Abbrera)

Bird-wing butterflies  
 Apollo butterfly  
 Bird-wing butterflies  
 Bird-wing butterflies

## ANTHOZOA

## ANTIPATHARIA

ANTIPATHARIA spp.

## FLORA

## APOCYNACEÆ

*Pachypodium* spp.\*

Elephant's trunk, or Half-mens

## ARALIACEÆ

*Panax quinquefolius* \_1

American ginseng

## ARAUCARIACEÆ

*Araucaria araucana*\* §109

Chile pine, or monkey-puzzle tree

## ASCLEPIADACEÆ

*Ceropegia* spp.  
*Frerea indica*

Rosary vines (and numerous others)  
 A milkweed

## BYBLIDACEÆ

*Byblis* spp.

Byblises

## CACTACEÆ

CACTACEÆ spp.\* ‡211  
*Rhipsalis* spp.

Cacti  
 Wickerware cacti

## CEPHALOTACEÆ

*Cephalotus follicularis*

Albany pitcher plant

## CHLOANTHACEÆ

CHLOANTHACEÆ spp. ‡212

Lamb's-tails

## COMPOSITÆ

*Saussurea lappa* \_1

Kuth or Costus

## CYATHEACEÆ

CYATHEACEÆ spp. \_3

Tree-ferns

## CYCADACEÆ

CYCADACEÆ spp.\*

Cycads

## DICKSONIACEÆ

DICKSONIACEÆ spp.

Tree-ferns

## DIDIEREACEÆ

DIDIEREACEÆ spp.

Tree-ferns

## DIOSCOREACEÆ

*Dioscorea deltoidea* \_1

An edible yam

## EUPHORBIACEÆ

*Euphorbia* spp. §110

Euphorbias (succulent)

## FAGACEÆ

*Quercus copeyensis* \_2

Copey oak

## HEMODORACEÆ

*Anigozanthos* spp.  
*Macropidia fuliginosa*

Kangaroo-paws  
 Black kangaroo-paws

## LEGUMINOSÆ

*Thermopsis mongolica*

Mongolian false lupin

## LILIACEÆ

*Aloe* spp.\*

Aloes

<b>MELIACEÆ</b>	<i>Swietenia humilis</i> _2	Mexican mahogany
<b>MYRTACEÆ</b>	<i>Verticordia</i> spp.	Orchids
<b>PALMÆ</b>	<i>Areca ipot</i> <i>Chrysalidocarpus decipiens</i> <i>Neodypsis decaryi</i> <i>Phoenix hanceana</i> var <i>philippinensis</i> <i>Zalacca clemensiana</i>	Dwarf betel palm A palm Butterfly palm A palm  A palm
<b>PORTULACACEÆ</b>	<i>Anacampseros</i> spp.	Quilka or tirika (Zimbabwe)
<b>PRIMULACEÆ</b>	<i>Cyclamen</i> spp.	Cyclamens
<b>PROTEACEÆ</b>	<i>Banksia</i> spp. <i>Conospermum</i> spp. <i>Dryandra formosa</i> <i>Dryandra polycephala</i> <i>Xylomelum</i> spp.	Banksias Smoke bushes Showy dryandra A dryandra Woody pears
<b>RUTACEÆ</b>	<i>Boronia</i> spp.  <i>Crowea</i> spp. <i>Geleznovia verrucosa</i>	Boronias  Croweas
<b>SARRACENIACEÆ</b>	<i>Darlingtonia californica</i>	California pitcher plant or cobra plant
<b>SOLANACEÆ</b>	<i>Solanum sylvestre</i>	A nightshade
<b>STANGERIACEÆ</b>	<b>STANGERIACEÆ</b> spp.*	Grass cycads
<b>STERCULIACEÆ</b>	<i>Basiloxylon excelsum</i> _2	
<b>THYMELÆACEÆ</b>	<i>Pimelea physodes</i>	A rice flower
<b>VERBENACEÆ</b>	<i>Caryopteris mongolica</i>	Mongolian bluebeard
<b>WELWITSCHIACEÆ</b>	<b>WELWITSCHIACEÆ</b> spp.*	Welwitschia
<b>ZAMIACEÆ</b>	<b>ZAMIACEÆ</b> spp.*	Cycads
<b>ZYGOPHYLLACEÆ</b>	<i>Guaiacum sanctum</i> _2	Lignum-vitæ



## PART III

(Appendix III to the Convention)

## SPECIES OF WILD LIFE PROTECTED IN PARTICULAR COUNTRIES

## FAUNA

## MAMMALIA - MAMMALS

Family	Specific name (including genus)	Common name	Country
<b>CHIROPTERA</b>			
<b>Phyllostomatidæ</b>	<i>Vampyrops lineatus</i>	White-lined bat	Uruguay
<b>EDENTATA</b>			
<b>Myrmecophagidæ</b>	<i>Tamandua tetradactyla</i> †	Collared ant-eater	Guatemala
<b>Bradypodidæ</b>	<i>Bradypus griseus</i>	Grey three-toed sloth	Costa Rica
	<i>Choloepus hoffmanni</i>	Hoffmann's sloth	Costa Rica
<b>Dasypodidæ</b>	<i>Cabassous centralis</i>	Naked-tailed armadillo	Costa Rica
	<i>Cabassous gymnurus</i> (tatouay)	Naked-tailed armadillo	Uruguay
<b>PHOLIDOTA</b>			
<b>Manidæ</b>	<i>Manis gigantea</i>	Giant pangolin	Ghana
	<i>Manis longicaudata</i>	Long-tailed tree pangolin	Ghana
	<i>Manis tricuspis</i>	Tree pangolin	Ghana
<b>RODENTIA</b>			
<b>Sciuridæ</b>	<i>Epixerus ebii</i>	Red-headed forest-squirrel	Ghana
	<i>Sciurus deppei</i>	Deppe's squirrel	Costa Rica
<b>Anomaluridæ</b>	<i>Anomalurus</i> spp.	Scaly-tailed squirrel	Ghana
	<i>Idiurus</i> spp.	Pygmy scaly-tailed squirrels	Ghana
<b>Hystriidæ</b>	<i>Hystrix</i> spp.	Old World large porcupines	Ghana
<b>Erethizontidæ</b>	<i>Coendou spinosus</i>	Spiny tree-porcupine	Uruguay
<b>CARNIVORA</b>			
<b>Canidæ</b>	<i>Fennecus zerda</i>	Fennec fox	Tunisia
<b>Procyonidæ</b>	<i>Bassaricyon gabbii</i>	Bushy-tailed olingo	Costa Rica
	<i>Bassariscus sumichrasti</i>	Central American cacomistle	Costa Rica
	<i>Nasua nasua solitaria</i>	Uruguay coati	Uruguay
<b>Mustelidæ</b>	<i>Galictis allamandi</i>	Allamand's grison	Costa Rica
	<i>Mellivora capensis</i>	Honey-badger	Ghana and Botswana
<b>Viverridæ</b>	<i>Viverra civetta</i>	African civet	Botswana
<b>Protelidæ</b>	<i>Proteles cristatus</i>	Aardwolf	Botswana
<b>PINNIPEDIA</b>			
<b>Odobenidæ</b>	<i>Odobenus rosmarus</i>	Walrus	Canada
<b>ARTIODACTYLA</b>			
<b>Tayassuidæ</b>	<i>Tayassu tajacu</i>	Collared peccary	Guatemala

<b>Hippopotamidæ</b>	<i>Hippopotamus amphibius</i>	Hippopotamus	Ghana
<b>Tragulidæ</b>	<i>Hyemoschus aquaticus</i>	Water chevrotain	Ghana
<b>Cervidæ</b>	<i>Cervus elaphus barbarus</i>	Barbary red deer	Tunisia
	<i>Mazama americana cerasina</i>	Brocket deer	Guatemala
	<i>Odocoileus virginianus mayensis</i>	White-tailed, or Virginia, deer	Guatemala
<b>Bovidæ</b>	<i>Ammotragus lervia</i>	Barbary sheep	Tunisia
	<i>Antilope cervicapra</i>	Blackbuck	Nepal
	<i>Boocerus (Taurotragus) euryceros</i>	Bongo	Ghana
	<i>Bubalus bubalis</i>	Asiatic buffalo	Nepal
	<i>Damaliscus lunatus</i>	Tsessebe	Ghana
	<i>Gazella dorcas</i>	Dorcas gazelle	Tunisia
	<i>Gazella gazella cuvieri</i>	Edmi	Tunisia
	<i>Gazella leptoceros</i>	Rhim	Tunisia
	<i>Tetracerus quadricornis</i>	Four-horned antelope	Nepal
	<i>Tragelaphus spekei</i>	Sitatunga	Ghana

AVES - BIRDS

RHEIFORMES

<b>Rheidæ</b>	<i>Rhea americana</i> †	Greater rhea	Uruguay
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CICONIIFORMES

<b>Ardeidæ</b>	<i>Ardea goliath</i>	Goliath heron	Ghana
	<i>Bubulcus ibis</i>	Cattle egret	Ghana
	<i>Casmerodius albus</i>	Great white egret	Ghana
	<i>Egretta garzetta</i>	Little egret	Ghana

<b>Ciconiidæ</b>	<i>Ephippiorhynchus senegalensis</i>	Saddle-bill stork	Ghana
	<i>Leptoptilos crumeniferus</i>	Marabou stork	Ghana

<b>Threskiornithidæ</b>	<i>Hagedashia hagedash</i>	Hadada ibis	Ghana
	<i>Lampribus rara</i>	Spot-breasted ibis	Ghana
	<i>Threskiornis aethiopica</i>	Sacred ibis	Ghana

ANSERIFORMES

<b>Anatidæ</b>	Anatidæ spp.*†	Ducks, geese, swans	Ghana
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GALLIFORMES

<b>Cracidæ</b>	<i>Crax rubra</i>	Great curassow	Costa Rica and Guatemala
	<i>Ortalis vetula</i>	Plain chachalaca	Guatemala
	<i>Penelopina nigra</i>	Black guan	Guatemala

<b>Phasianidæ</b>	<i>Agelastes meleagrides</i>	White-breasted guinea-fowl	Ghana
	<i>Tragopan satyra</i>	Satyr tragopan	Nepal

<b>Meleagrididæ</b>	<i>Agriocharis ocellata</i>	Ocellated turkey	Guatemala
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CHARADRIIFORMES

<b>Burhinidæ</b>	<i>Burhinus bistriatus</i>	Double-striped thick-knee	Guatemala
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## COLUMBIFORMES

<b>Columbidae</b>	<b>Columbidae</b> spp.*†	Doves, pigeons	Ghana
	<i>Nesoenas mayeri</i>	Pink pigeon	Mauritius

## PSITTACIFORMES

<b>Psittacidae</b>	<i>Psittacula krameri</i> *	Ring-necked parakeet	Ghana
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## CUCULIFORMES

<b>Musophagidae</b>	<b>Musophagidae</b> spp.†	Turacos	Ghana
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## PICIFORMES

<b>Rhamphastidae</b>	<i>Rhamphastos sulphuratus</i>	Rainbow-billed toucan	Guatemala
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## PASSERIFORMES

<b>Muscicapidae</b>	<i>Bebrornis rodericanus</i>	Rodriguez warbler	Mauritius
	<i>Tchitrea (Terpsiphone) bourbonnensis</i>	Mascarene paradise fly-catcher	Mauritius
<b>Emberizidae</b>	<i>Gubernatrix cristata</i>	Yellow cardinal	Uruguay
<b>Icteridae</b>	<i>Xanthopsar flavus</i>	Saffron-cowled blackbird	Uruguay
<b>Fringillidae</b>	<b>Fringillidae</b> spp.*_	Finches	Ghana
<b>Ploceidae</b>	<b>Ploceidae</b> spp.	Weavers	Ghana

## REPTILIA - REPTILES

## TESTUDINATA

<b>Trionychidae</b>	<i>Trionyx triunguis</i>	Nile soft-shelled turtle	Ghana
<b>Pelomedusidae</b>	<i>Pelomedusa subrufa</i>	Helmeted turtle	Ghana
	<i>Pelusios</i> spp.	Side-necked turtles	Ghana

<b>GNETACEÆ</b>	<i>Gnetum montanum</i>	Mameilet	Nepal
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<b>MAGNOLIACEÆ</b>	<i>Talauma hodgsonii</i>	A magnolia	Nepal
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<b>PAPAVERACEÆ</b>	<i>Meconopsis regia</i>	A poppy	Nepal
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<b>PODOCARPACEÆ</b>	<i>Podocarpus nerifolius</i>	A yellow-wood	Nepal
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<b>TETRACENTRACEÆ</b>	<i>Tetracentron</i> spp.	Nepal	
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**PART IV**

**WILD LIFE NOT SPECIFIED ELSEWHERE, BUT IN WHICH TRADE IS CONTROLLED**

1. All vertebrates and invertebrates, other than fish or crustaceans, of species normally existing in a wild state within Zimbabwe and not specified in Part I, Part II or Part III of this Schedule.
2. Live fish and live crustaceans which are not specified in Part I, Part II or Part III of this Schedule.
3. All specially protected indigenous plants, as defined in the Parks and Wild Life Act, 1975, and trophies of such plants, where such plants -
  - (a) are not specified in Part I, Part II or Part III of this Schedule; and
  - (b) have not been artificially propagated.



## PART V

WILD LIFE WHICH IS TREATED AS WILD LIFE SPECIFIED IN ART I FOR THE PURPOSE OF  
IMPORT INTO ZIMBABWE

<i>Family</i>	<i>Specific name (including genus)</i>	<i>Common name</i>
<b>CARNIVORA</b>		
<b>Felidæ</b>	<i>Panthera leo leo</i>	African lion
<b>PROBOSCIDEA</b>		
<b>Elephantidæ</b>	<i>Loxodonta africana</i>	African elephant
<b>SERPENTES</b>		
<b>Boidæ</b>	<i>Boidæ</i> spp.	Pythons

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