



GOVERNMENT GAZETTE
OF THE
REPUBLIC OF NAMIBIA

WINDHOEK

16 October 1997

No. 1706

CONTENTS

Page

GOVERNMENT NOTICE

No. 207 Promulgation of Council of Traditional Leaders Act, 1997

(Act 13 of 1997), of the Parliament 1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 207

1997

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 13 of 1997

Council of Traditional Leaders Act, 1997.

Act No. 13,1997 COUNCIL OF TRADITIONAL LEADERS ACT, 1997
ACT

To provide for the establishment of the Council of Traditional Leaders and to define its powers, duties and functions; and for matters incidental thereto.

(Signed by the President on 6 October 1997)

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

Definitions

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

“Council” means the Council of Traditional Leaders established by section 2;

“Minister” means the Minister of Regional and Local Government and Housing;

“Traditional Authority” means the Traditional Authority of a traditional community comprising the traditional leaders of that community who have been designated and recognised as such in accordance with the provisions of the Traditional Authorities Act, 1995 (Act 17 of 1995).

Establishment of Council

2. Pursuant to Article 102(5) of the Namibian Constitution, there is hereby established a Council of Traditional Leaders in order to advise the President on -

- (a) the control and utilization of communal land; and
- b) all such other matters as may be referred to it by the President for advice.

Members of the Council

3. (1) The Council shall be composed of such representatives of Traditional Authorities as may be designated and appointed as members of the Council under this section.

Act No. 13,1997 COUNCIL OF TRADITIONAL LEADERS ACT, 1997

(2) Every Traditional Authority may, with due regard to the provisions of section 4, designate two representatives for appointment as members of the Council, who shall include -

- (a) the chief of the Traditional Authority, as defined in section (1) of the Traditional Authorities Act, 1995 (Act 17 of 1995) or, if not the chief, any other person who has been designated and recognised under that Act as the senior traditional councillor or as a traditional councillor of the traditional community concerned; and
- (b) one other person, being either the senior traditional councillor or a traditional councillor or any other member of that traditional community.

(3) The designation of representatives in terms of subsection (2) shall be made to the Minister in writing within such period as may be determined and notified by the Minister whenever such a designation becomes necessary for purposes of constituting the Council.

(4) A notification by the Minister under subsection (3) may be made in any manner which the Minister considers appropriate to come to the attention of Traditional Authorities.

(5) The Minister shall, subject to section 4, appoint the persons designated by Traditional Authorities in terms of subsection (2) as members of the Council with effect from such date as the Minister may determine.

(6) Upon every constitution of the Council, the Minister shall, by notice in the Gazette -

- (a) announce the names of the persons who have been designated and appointed as members of the Council, with an indication in each case of the Traditional Authority by whom they have been designated; and
- (b) specify the date with effect from which they have been appointed.

Persons disqualified from being members of the Council

4. No person shall be qualified to become or remain a member of the Council if he or she -

Act No. 13,1997 COUNCIL OF TRADITIONAL LEADERS ACT, 1997

- (a) is not a Namibian citizen;
- (b) is a member of the National Assembly;
- (c) is a member of the National Council;
- (d) is a member of a Regional Council established under section 2 of the Regional Councils Act, 1992 (Act 22 of 1992); or
- (e) is a leader of any political party, whether or not such political party is registered in terms of any law.

Term of office of members

5. Subject to section 6, a member of the Council shall hold office for a period of five years, and shall be eligible for re-appointment.

Vacation of office and filling of vacancies

- 6.** (1) A member of the Council shall cease to hold office if-
- (a) he or she becomes subject to a disqualification referred to in section 4;
 - (b) he or she resigns his or her office by giving notice in writing to the Minister;
 - (c) his or her authority to act as representative of the Traditional Authority by whom he or she was designated is withdrawn by that Traditional Authority by notice in writing to the Minister; or
 - (d) his or her appointment as a member is terminated by the Minister under subsection (2).

(2) The Minister may, after consultation with the Traditional Authority concerned, terminate the appointment of any member of the Council if the Minister is satisfied that such member -

- (a) is incapacitated by physical or mental illness;
- (b) has been absent from three consecutive meetings of the Council without the consent of the Council; or

Act No. 13,1997 COUNCIL OF TRADITIONAL LEADERS ACT, 1997

- (c) is guilty of conduct which, in the opinion of the Minister, renders his or her continued membership of the Council unseemly,

but the Minister may only so terminate a member's appointment after giving notice to the member and after affording him or her an opportunity to be heard.

(3) Where the office of any member of the Council becomes vacant, such vacancy shall be filled by the appointment of another person, in accordance with the provisions of section 3, to represent the Traditional Authority concerned on the Council and any such new member shall hold office for the unexpired portion of the term of office of the person who ceased to be a member: Provided that if the unexpired portion of the vacating member's term of office is less than six months the vacancy shall not be filled, unless the Minister directs otherwise by reason of the existence of several vacancies among the members of the Council.

Temporary members

7. (1) If any member of the Council is unable to attend a meeting of the Council, the Traditional Authority by whom such member was designated may appoint another person from among the members of its traditional community to act temporarily in the place of that member at the meeting during such member's absence.

(2) Any person appointed as a temporary member under subsection (1) shall, while he or she acts as such, be deemed to be a member of the Council.

Payment to members

8. (1) There shall be paid to the members of the Council such allowances as may be determined by the Minister in consultation with the Minister of Finance.

(2) Different allowances may under subsection (1) be determined for the different Offices held by members in the Council.

(3) A person who attends a meeting of the Council in the capacity of a temporary member by virtue of the provisions of section 7(1), shall be entitled

Act No. 13,1997 COUNCIL OF TRADITIONAL LEADERS ACT, 1997

to be paid the allowance that would have been payable to the member of the Council in whose place he or she is acting, had such member attended the meeting.

Secretary and staff

9. (1) The secretary of the Council, and such other officers as are required for the proper performance of the Council's functions, shall be designated by the Minister from among staff members in the Public Service or a regional council established under section 2 of the Regional Councils Act, 1992 (Act 22 of 1992).

(2) The Minister shall, before designating any person in the employment of a regional council, consult with the chairperson of that regional council.

Chairperson and Vice-Chairperson of Council

10. (1) The members of the Council shall at their first meeting elect a Chairperson and Vice-Chairperson of the Council from their number.

(2) The Chairperson and Vice-Chairperson of the Council shall hold office until he or she -

- (a) ceases to be a member of the Council; or
- (b) resigns as Chairperson or Vice-Chairperson by giving notice in writing to the Council; or
- (c) is removed from office as Chairperson or Vice-Chairperson by resolution of the Council.

(3) In the event of any casual vacancy arising in respect of the office of the Chairperson or Vice-Chairperson, the Council shall elect a person from among their number to fill the vacancy.

Meetings of Council

11. (1) The first meeting of the Council shall be convened by the Minister in such manner, and to be held at such time and place, as the Minister

Act No. 13,1997 COUNCIL OF TRADITIONAL LEADERS ACT, 1997

may determine and thereafter meetings of the Council shall be held at the times and places determined by the Chairperson of the Council in consultation with the Minister.

(2) The Chairperson, or in his or her absence, the Vice-Chairperson, shall at the request in writing of the Minister or of at least one-tenth of the members of the Council, but subject to the consent of the Minister, convene a special meeting of the Council.

(3) The Chairperson or, in his or her absence, the Vice-Chairperson, shall preside at every meeting of the Council, and in the absence of both of them the members present shall elect one of their number to preside at that meeting.

(4) The majority of the members of the Council shall constitute a quorum for a meeting of the Council.

(5) All questions at a meeting of the Council shall be determined by a majority of votes of the members present, and where the votes are equal, the member presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(6) The Council may, and shall if the Minister thinks fit, request the attendance of any person to act as adviser at any meeting of the Council, and that person while so attending may participate in the deliberations but shall not be entitled to vote.

(7) The validity of any act or proceedings of the Council shall not be affected by any vacancy among its members or by any defect in the appointment of a member thereof.

(8) The Council may regulate the procedure at its meetings and shall cause minutes to be kept of the proceedings.

Committees of Council

12. (1) The Council may from time to time establish from among its members any committee to advise the Council on any matter in relation to its functions as it may deem necessary.

Act No. 13,1997 COUNCIL OF TRADITIONAL LEADERS ACT, 1997

(2) The Council shall designate the chairperson of a committee established under subsection (1).

Investigations by Council

13. (1) The Council may for the purpose of performing its functions, and with the approval of the Minister, conduct an investigation regarding any matter pertaining to communal land.

(2) For the purposes of any investigation by the Council in terms of subsection (1), the Commissions Act, 1947 (Act 8 of 1947) shall apply to the Council and to witnesses summoned to appear before the Council, as if the Council were a commission with reference to which the provisions of that Act had been declared to be applicable under section 2 thereof.

Report of Council

14. The Council shall prepare a full report containing its recommendations in regard to any matter investigated by it and shall submit such report through the Minister to the President for consideration.

Draft legislation pertaining to communal land

15. (1) Any draft legislation pertaining to communal land shall be laid before the Council for its consideration and recommendation before it is introduced in the National Assembly.

(2) Any comments or recommendations which the Council may wish to make in relation to any bill laid before it in terms of subsection (1), shall be submitted by the Council to the Minister within 90 days after the referral of such bill to the Council, or such extended period as the Minister may approve, failing which the introduction of the bill in the National Assembly may be proceeded with.

Short title and commencement

16. This Act shall be called the Council of Traditional Leaders Act, 1997 and shall come into Operation on a date fixed by the Minister by notice in the Gazette.



GOVERNMENT GAZETTE

OF THE REPUBLIC OF NAMIBIA

N\$2.40

WINDHOEK - 22 December 2000

No. 2456

CONTENTS

Page

GOVERNMENT NOTICE

No. 290	Promulgation of Traditional Authorities Act, 2000 (Act 25 of 2000), of the Parliament.....	1
---------	---	---

Government Notice

OFFICE OF THE PRIME MINISTER

No.290

2000

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 25 of 2000:

Traditional Authorities Act, 2000.

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000****ACT**

To provide for the establishment of traditional authorities and the designation, election, appointment and recognition of traditional leaders; to define the powers, duties and functions of traditional authorities and traditional leaders; and to provide for matters incidental thereto.

(Signed by the President on 21 December 2000)

ARRANGEMENT OF SECTIONS**Section**

1. Definitions
2. Establishment of traditional authorities
3. Powers, duties and functions of traditional authorities and members thereof
4. Designation of chief or head of traditional community
5. Prior notification of designation of chief or head of traditional community
6. Recognition of chief or head of traditional community
7. Powers, duties and functions of chief or head of traditional community
8. Removal and succession of chief or head of traditional community
9. Establishment of Chief's Council and Traditional Council, and powers, duties and functions thereof
10. Appointment of senior traditional councillors, traditional councillors and secretary, and their powers, duties and functions
11. Use of traditional titles
12. Settlement of disputes
13. Powers of investigation committee
14. Limitation of powers of traditional authorities
15. Holding of political office by chief or head of traditional community
16. Relationship of traditional authorities with government organs
17. Payment of allowances to traditional leaders
18. Assets and Trust Fund of traditional community

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000**

19. Regulations
20. Repeal of laws and savings
21. Construction of a certain expression
22. Short title and commencement

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

Definitions

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

“chief” means the supreme traditional leader of a traditional community designated in accordance with section 4(1)(a) and recognised as such under section 6;

“Chief’s Council” means a Chief’s Council established by section 9;

“communal area” means the geographic area habitually inhabited by a specific traditional community, excluding any local authority area as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);

“Community Trust Fund” means a Community Trust Fund contemplated in section 18(3);

“Council of Traditional Leaders” means the Council of Traditional Leaders established by section 2 of the Council of Traditional Leaders Act, 1997 (Act No. 13 of 1997);

“customary law” means the customary law, norms, rules of procedure, traditions and usages of a traditional community in so far as they do not conflict with the Namibian Constitution or with any other written law applicable in Namibia;

“designation”, in relation to the institution of a chief or head of a traditional community, includes the election or hereditary succession to the office of a chief or head of a traditional community, and any other method of instituting a chief or head of a traditional community recognised under customary

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000**

law;“head”, in relation to a traditional community, means the supreme traditional leader of that traditional community designated in accordance with section 4(1)(a) or (b), as the case may be, and recognised as such under section 6;

“investigation committee” means the investigation committee appointed in terms of section 12(2);

“member”, in relation to -

- (a) a traditional community, means a person either or both of whose parents belong to that traditional community, and includes any other person who by marriage to or adoption by a member of that traditional community or by any other circumstance has assimilated the culture and traditions of that traditional community and has been accepted by the traditional community as a member thereof;
- (b) a traditional authority, means a chief, a head of a traditional community, a senior traditional councillor, or a traditional councillor;

“Minister” means the Minister responsible for Regional and Local Government;

“prescribed” means prescribed by regulation made under section 19;

“repealed Act” means the Traditional Authorities Act, 1995 (Act No. 17 of 1995);

“senior traditional councillor” means a senior councillor of a traditional community appointed or elected in accordance with section 10;

“this Act” includes any regulation prescribed thereunder;

“traditional authority” means a traditional authority of a traditional community established in terms of section 2(1);

“traditional community” means an indigenous homogeneous, endogamous social grouping of persons comprising of families deriving from exogamous

Act No. 25, 2000 TRADITIONAL AUTHORITIES ACT, 2000

clans which share a common ancestry, language, cultural heritage, customs and traditions, who recognises a common traditional authority and inhabits a common communal area, and may include the members of that traditional community residing outside the common communal area;

“Traditional Council” means a Traditional Council established by section 9;

“traditional Councillor” means a councillor of a traditional community appointed or elected in accordance with section 10; and

“traditional leader” means a chief, a head of a traditional community, a senior traditional councillor, or a traditional councillor designated and recognized or appointed or elected, as the case may be, in accordance with this Act, and by whatever traditional title named.

Establishment of traditional authorities

2. (1) Subject to this Act, every traditional community may establish for such community a traditional authority consisting of-

- (a) the chief or head of that traditional community, designated and recognized in accordance with this Act; and
- (b) senior traditional councillors and traditional councillors appointed or elected in accordance with this Act.

(2) A traditional authority shall in the exercise of its powers and the execution of its duties and functions have jurisdiction over the members of the traditional community in respect of which it has been established.

Powers, duties and functions of traditional authorities and members thereof

3. (1) Subject to section 16, the functions of a traditional authority, in relation to the traditional community which it leads, shall be to promote peace and welfare amongst the members of that community, supervise and ensure the observance of the customary law of that community by its members, and in particular to -

- (a) ascertain the customary law applicable in that traditional

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000**

- community after consultation with the members of that community, and assist in its codification;
- (b) administer and execute the customary law of that traditional community;
 - (c) uphold, promote, protect and preserve the culture, language, tradition and traditional values of that traditional community;
 - (d) preserve and maintain the cultural sites, works of art and literary works of that traditional community;
 - (e) perform traditional ceremonies and functions held within that traditional community;
 - (f) advise the Council of Traditional Leaders in the performance of its functions as provided under Article 102(5) of the Namibian Constitution, the Council of Traditional Leaders Act, 1997 (Act No. 13 of 1997), or under any other law;
 - (g) promote affirmative action amongst the members of that traditional community as contemplated in Article 23 of the Namibian Constitution, in particular by promoting gender equality with regard to positions of leadership; and
 - (h) perform any other function as may be conferred upon it by law or custom.
- (2) A member of a traditional authority shall in addition to the functions referred to in subsection (1) have the following duties, namely -
- (a) to assist the Namibian police and other law enforcement agencies in the prevention and investigation of crime and, subject to the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), the apprehension of offenders within their jurisdiction;
 - (b) to assist and co-operate with the Government, regional councils and local authority councils in the execution of their policies and keep the members of the traditional community informed of developmental projects in their area;

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000**

- (c) to ensure that the members of his or her traditional community use the natural resources at their disposal on a sustainable basis and in a manner that conserves the environment and maintains the ecosystems for the benefit of all persons in Namibia;
 - (d) to be ordinarily resident in the communal area of the traditional community which he or she leads, failing which such traditional leader may be removed from office, if he or she is a chief or a head of a traditional community, under section 8(1) or, if he or she is a senior traditional councillor or traditional councillor, in accordance with the applicable customary law, but a person who is not so resident at his or her designation and recognition or appointment or election as a traditional leader in terms of this Act shall not be disqualified to be so designated and recognized or appointed or elected; and
 - (e) to respect the culture, customs and language of any person who resides within the communal area of that traditional authority, but who is not a member of the traditional community which such member leads.
- (3) In the performance of its duties and functions under this Act, a traditional authority may -
- (a) in addition to any contributions contemplated in section 1&(3), raise funds on behalf of its traditional community, which funds shall be paid into the Community Trust Fund of that community;
 - (b) hear and settle disputes between the members of the traditional community in accordance with the customary law of that community;
 - (c) make customary laws; and
 - (d) use on all its correspondence an office stamp of its own design.
- (4) Where a traditional authority referred to in section 2(1) has been established for a traditional community, and a group of members of that

Act No. 25, 2000 TRADITIONAL AUTHORITIES ACT, 2000

traditional community establishes in conflict with the provisions of this Act another authority purporting to be a traditional authority for such group, and any member of such last-mentioned authority exercises or performs any of the functions contemplated in paragraphs (b) and (h) of subsection (1) and paragraphs (a) and (b) of subsection (3) of this section -

- (a) any such act shall be null and void; and
- (b) such member shall be guilty of an offence, and upon conviction be liable to a fine of N\$4 000 or to imprisonment for a period of twelve months or to both such fine and imprisonment.

Designation of chief or head of traditional community

4. (1) Subject to sections 5 and 6, members of a traditional community who are authorised thereto by the customary law of that community, may designate in accordance with that law -

- (a) one person from the royal family of that traditional community, who shall be instituted as the chief or head, as the case may be, of that traditional community; or
- (b) if such community has no royal family, any member of that traditional community, who shall be instituted as head of that traditional community.

(2) The qualifications for designation and the tenure of, removal from and succession to the office of chief or head of a traditional community shall be regulated by the customary law of the traditional community in respect of which such chief or head of a traditional community is designated.

Prior notification of designation of chief or head of traditional community

5. (1) If a traditional community intends to designate a chief or head of a traditional community in terms of this Act -

- (a) the Chief's Council or the Traditional Council of that community, as the case may be; or

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000**

- (b) if no Chief's Council or Traditional Council for that community exists, the members of that community who are authorised thereto by the customary law of that community,

shall apply on the prescribed form to the Minister for approval to make such designation, and the application shall state the following particulars:

- (i) The name of the traditional community in question;
- (ii) the communal area inhabited by that community;
- (iii) the estimated number of members comprising such community;
- (iv) the reasons for the proposed designation;
- (v) the name, office and traditional title, if any, of the candidate to be designated as chief or head of the traditional community;
- (vi) the customary law applicable in that community in respect of such designation; and
- (vii) such other information as may be prescribed or the Minister may require.

(2) On receipt of an application complying with subsection (1), the Minister shall, subject to subsection (3), in writing approve the proposed designation set out in such application.

(3) Notwithstanding subsection (2), if in respect of an application referred to in subsection (1) the Minister is of the opinion that -

- (a) (i) the person sought to be designated as a chief or head of a traditional community represents a group of persons who are members of a traditional community in respect of which a chief or head of a traditional community has been designated and recognised under this Act; or
- (ii) such group of persons do not constitute an independent traditional community inhabiting a common communal area detached from another traditional community; or

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000**

(iii) such group of persons do not comprise a sufficient number of members to warrant a traditional authority to be established in respect thereof; and

(b) that there are no reasonable grounds for recognizing such group of persons as a separate traditional community, the Minister shall advise the President accordingly.

(4) The President shall on receipt of the Minister's advice under subsection (3) refer the matter to the Council of Traditional Leaders for its consideration and recommendation.

(5) The Council of Traditional Leaders shall submit to the President any recommendation it may wish to make in respect of any matter referred to it in terms of subsection (4) not later than 12 months after the date of referral of that matter to it.

(6) On -

(a) receipt of a recommendation referred to in subsection (5); or

(b) failure of the Council of Traditional Leaders to make such recommendation within the time frame prescribed by that subsection,

the President shall in his or her discretion and in writing, either reject the proposed designation on any of the grounds mentioned in subsection (3)(a) or (b), or grant approval for such designation to the members of the traditional community in question.

(7) On receipt of any written approval granted under subsection (2) or (6), the Chief's Council or Traditional Council or, in a situation contemplated in subsection (1)(b), the members of the traditional community, as the case may be, shall in writing give the Minister prior notification of the date, time and place of the designation in question, whereupon the Minister or his or her representative shall attend that designation, and shall -

(a) witness the designation of the chief or head of the traditional community in question; and

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000**

- (b) satisfy himself or herself that such designation is in accordance with the customary law referred to in paragraph (vi) of subsection (1).

(8) The chief or head of the traditional community shall at his or her designation under subsection (7), make or subscribe to such oath or solemn affirmation with regard to his or her office as chief or head as the relevant customary law may require.

(9) If -

- (a) the provisions of subsection (1) or (7) have not been complied with; or
- (b) the designation of a chief or head of a traditional community has not been conducted in accordance with the customary law referred to in paragraph (vi) of subsection (1),

the designation of the chief or head of the traditional community concerned shall be invalid.

(10) If, in respect of a traditional community -

- (a) no customary law regarding the designation of a chief or head of a traditional community exists; or
- (b) there is uncertainty or disagreement amongst the members of that community regarding the applicable customary law,

the members of that community may elect, subject to the approval of the Minister, a chief or head of the traditional community by a majority vote in a general meeting of the members of that community who have attained the age of 18 years and who are present at that meeting.

Recognition of chief or head of traditional community

6. (1) If the Minister is satisfied that a chief or head of a traditional community has been designated in accordance with the requirements of this Act, he or she shall notify the President of such designation in writing, specifying the name, office, traditional title, if any, date of designation of such chief or head, and the name of the traditional community in respect of which such chief or head has been designated.

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000**

(2) The President shall on receipt of a notice referred to in subsection (1) recognise the designation of the chief or head of the traditional community concerned by proclamation in the Gazette, setting out in such notice the particulars referred to in subsection (1) with regard to such chief or head.

(3) Notwithstanding any other provision to the contrary in this Act contained, a chief or head of a traditional community shall be deemed not to have been designated under this Act, unless such designation has been recognized under this section.

(4) Any application in terms of section 5 of the repealed Act for the designation of a chief or a supreme traditional leader of a traditional community which does not have a chief, which has not been finalized prior to the repeal of that Act by this Act shall be dealt with and finalized in terms of the corresponding provisions of this Act.

Powers, duties and functions of chief or head of traditional community

7. A chief or head of a traditional community -

- (a) shall be the custodian of the customary law of the traditional community which he or she leads;
- (b) shall exercise his or her powers and perform his or her duties and functions and in accordance with that customary law;
- (c) may, subject to sections 8(2) and 15(5), appoint any other member of his or her traditional community to act in his or her place, when he or she is for any reason unable to act as chief or head of that traditional community;
- (d) shall perform such other powers and exercise such other duties or functions as may be conferred upon him or her by statutory law or the applicable customary law;
- (e) shall assign one or two senior traditional councillors to assist him or her in the administering of the affairs of the Chief's Council or the Traditional Council, as the case may be.

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000****Removal and succession of chief or head of traditional community**

8. (1) If there is sufficient reason to warrant the removal of a chief or head of a traditional community from office, such chief or head may be removed from office by the members of his or her traditional community in accordance with the customary law of that community.

(2) If, by reason of removal from office as contemplated in subsection (1) or death, a chief or head of a traditional community ceases to perform the functions of his or her office, the members of that traditional community, who are authorized thereto by customary law, may designate in accordance with this Act a member of that traditional community to replace such chief or head.

(3) If a chief or head of a traditional community has been removed from office as contemplated in subsection (1), the Minister shall notify the President of such removal in writing, specifying the name, office, traditional title, if any, date of removal of the chief or head concerned, and the name of the traditional community in respect of which such chief or head has been removed from office.

(4) The President shall on receipt of a notice referred to in subsection (3) recognize the removal from office of the chief or head of the traditional community concerned by proclamation in the Gazette, setting out in such notice the particulars referred to in that subsection with regard to such chief or head of the traditional community.

Establishment of Chief's Council and Traditional Council, and powers, duties and functions thereof

9. (1) There is hereby established -

- (a) for every traditional community which has a chief, a Chief's Council;
- (b) for every traditional community which has a head of a traditional community, a Traditional Council.

(2) A Chief's Council or Traditional Council shall comprise -

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000**

- (a) such number of members of the traditional authority of the traditional community in question as the chief or head of that traditional community, as the case may be, may appoint to serve as members of the Council in question; and
- (b) in addition to the members referred to in paragraph (a), such number of members of the traditional community in question as the chief or head of that traditional community, as the case may be, may co-opt to serve as members of the Council in question.

(3) The chief or the head of a traditional community shall be the chairperson of the Chief's Council or Traditional Council which has been established for his or her traditional community, as the case may be, and such chairperson may appoint such other office-bearers of the Council in question as he or she may deem necessary.

(4) The Chief's Council or Traditional Council shall be responsible for the day-to-day administration of the affairs of the traditional authority of the traditional community in respect of which it has been established.

(5) The chairperson of the Chief's Council or Traditional Council, as the case may be, shall cause a written record to be kept of the proceedings of the meetings of that Chief's Council or Traditional Council, as the case may be.

Appointment of senior traditional councillors, traditional councillors and secretary, and their powers, duties, and functions

10. (1) A chief or head of a traditional community shall appoint from amongst the members of his or her traditional community or cause to be elected by such members from amongst their number -

- (a) senior traditional councillors, who shall assist such chief or head in the performance of his or her functions, and exercise or perform such other powers, duties or functions as may be delegated or assigned to any of them by such chief or head; and
- (b) traditional councillors, who shall advise such chief or head and the senior traditional councillors of that community with regard to the

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000**

performance of their functions, and exercise or perform such other powers, duties or functions as may be delegated or assigned to any of them by such chief or head.

(2) The qualifications for appointment or election and the tenure of, and removal from, office of a senior traditional councillor or traditional councillor shall be regulated by the customary law of the traditional community in respect of which such councillor is appointed or elected.

(3) A chief or head of a traditional community shall from time to time appoint from amongst the members of his or her traditional community one person as secretary, and such secretary shall perform such duties and functions as may be assigned to him or her by that chief or head.

(4) Any chief or head of a traditional community who has in accordance with this section appointed a senior traditional councillor or traditional councillor or caused any such councillor to be elected shall notify the Minister of such appointment or election in writing, specifying the name, office, traditional title, if any, date of appointment or election of the senior traditional councillor or traditional councillor concerned, and the name of the traditional community in respect of which such senior traditional councillor or traditional councillor has been appointed or elected.

(5) The Minister shall on receipt of a notice referred to in subsection (4) make the appointment or election of a senior traditional councillor or traditional councillor known by notice in the Gazette, setting out in such notice the particulars referred to in that subsection with regard to such senior traditional councillor or traditional councillor.

Use of traditional titles

11. Nothing in this Act contained shall be construed as precluding the members of a traditional community from addressing a traditional leader by the traditional title accorded to that office, but such traditional title shall not derogate from, or add to, the status, powers, duties and functions associated with the office of a traditional leader as provided for in this Act.

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000****Settlement of disputes**

12. (1) If a dispute arises amongst the members of a traditional community as to whether or not a person to be designated as -

- (a) chief for head of the traditional community in terms of section 4 is the rightful or a fit and proper person under the customary law of that community to be so designated; or
- (b) successor in terms of section 8 is the rightful or a fit and proper successor to the office of chief or head of the traditional community under the customary law of that community,

and the members of that traditional community fail to resolve that dispute in accordance with such customary law, they may submit to the Minister a written petition, signed by the parties to the dispute, stating the nature of the dispute.

(2) On receipt of a petition referred to in subsection (1), the Minister may appoint an investigation committee consisting of such number of persons as he or she may determine, to investigate the dispute in question and to report to the Minister concerning its findings and recommendations.

(3) The Minister shall on receipt of the report referred to in subsection (2) take such decision as he or she may deem expedient for the resolutions of the dispute in question.

(4) In the investigation or resolution of a dispute under this section regard shall be had to the relevant customary law and traditional practices of the traditional community within which the dispute has arisen.

Powers of investigation committee

13. (1) An investigation committee, or any member thereof authorized by such committee for the purpose, may, in the investigation of a dispute contemplated in section 12(2) -

- (a) in its or his or her discretion determine the nature and extent of the investigation in question;

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000**

- (b) have access to all books, minutes of meetings, or other documents which the investigation committee or the member concerned deems necessary to investigate in connection with that investigation;
 - (c) request particulars and information from any person which the investigation committee or the member concerned deems necessary in connection with the investigation in question;
 - (d) without payment of any fees, make enquiries into and extracts from, or copies of, any such books, minutes or other documents which the investigation committee or the member concerned deems necessary in connection with that investigation;
 - (e) by notice in writing request any person to appear before it or him or her in relation to that investigation at a date, time and place specified in such notice and to submit all such books, minutes or other documents or things in the possession or under the control of that person which the investigation committee or the member concerned deems necessary in connection with that investigation.
- (2) Any person appearing under subsection (1), before an investigation committee or any member thereof, may be requested -
- (a) to co-operate with the investigation committee or the member concerned and to disclose truthfully and frankly any information within his or her knowledge relevant to the investigation in question;
 - (b) to produce any book, minutes, other documents or thing to the investigation committee or the member concerned which the investigation committee or that member deems necessary in connection with that investigation.
- (3) The provisions of subsection (1) and (2), in so far as they provide for a limitation on the fundamental right to privacy contemplated in Article 13 of the Namibian Constitution by authorizing interference with such privacy, are enacted upon the authority conferred by the said Article.

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000****Limitation of powers of traditional authorities**

14. In the exercise of the powers or the performance of the duties and functions referred to in section 3 by a traditional authority or a member thereof-

- (a) any custom, tradition, practice, or usage which is discriminatory or which detracts from or violates the rights of any person as guaranteed by the Namibian Constitution or any other statutory law, or which prejudices the national interest, shall cease to apply;
- (b) the customary law of a traditional community shall only apply to the members of that traditional community and to any person who is not a member of that traditional community, but who by his or her conduct or consent submits himself or herself to the customary law of that traditional community; and
- (c) a traditional leader shall not permit his or her political opinions or allegiance to influence -
 - (i) the functions of his or her office as traditional leader; or
 - (ii) the members of the traditional community in respect of which he or she was designated and recognized, or appointed or elected, as the case may be.

Holding of political office by chief or head of traditional community

15. (1) Every chief or head of a traditional community elected or appointed to a political office shall -

- (a) upon such election or acceptance of such appointment be considered to have taken leave of absence from the office of chief or head of a traditional community for the duration that he or she holds such political office; and
- (b) forthwith notify the Minister in writing of the date with effect from which he or she holds such political office.

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000**

(2) The Minister shall cause notice to be given in the Gazette of the election or appointment of any chief or head of a traditional community to a political office and of the date from which such election or appointment is offered.

(3) Any person holding a political office who becomes a chief or head of a traditional community shall with effect from the date that he or she is recognised as such under section 6, be considered to have taken leave of absence from the office of chief or head of the traditional community for the duration of the period that he or she holds such political office.

(4) A chief or head of a traditional community who by virtue of subsection (1)(a) or (3) is considered to have taken leave of absence from the office of chief or head of a traditional community shall, during that period of leave of absence, not be entitled to be accorded the status of chief or head of a traditional community and to receive the allowance payable to a chief or head of a traditional community under this Act.

(5) Where a chief or head of a traditional community is considered to have taken leave of absence under subsection (1)(a) or (3), the members of that traditional community who are authorized thereto by customary law may designate, in accordance with section 4 and subject to sections 5 and 6, a member of that traditional community to act as chief or head of the traditional community for the duration of that period of leave of absence.

(6) A person duly designated and recognized to act as chief or head of a traditional community as contemplated in this section shall during the period that he or she acts as chief or head of the traditional community exercise the powers and perform the duties and functions of chief or head of that traditional community and receive allowances payable to a chief or head of a traditional community under this Act.

(7) For purposes of this section “political office” means the President of the Republic of Namibia, a member of the National Assembly, National Council or a Regional Council, and includes a leader of a political party registered under section 39 of the Electoral Act, 1992 (Act No. 24 of 1992).

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000**

(8) To the extent that this section authorises a limitation upon the right of a chief or head of a traditional community to hold a political office or the holder of a political office to hold the office of chief or head of a traditional community, such limitation is authorised on grounds of public interest as contemplated in Article 17(3) of the Namibian Constitution.

(9) Nothing in this section contained shall be construed as derogating from section 8.

Relationship of traditional authorities with government organs

16. A traditional authority shall in the exercise of its powers and the performance of its duties and functions under customary law or as specified in this Act give support to the policies of the Government, regional councils and local authority councils and refrain from any act which undermines the authority of those institutions.

Payment of allowances to traditional leaders

17. (1) Subject to subsection (2), there shall be paid from moneys appropriated by Parliament for such purpose allowances -

- (a) to the following traditional leaders of a traditional community, namely:
- (i) One chief or head of a traditional community, as the case may be;
 - (ii) not more than six senior traditional councillors; and (iii) not more than six traditional councillors,

designated and recognised, or appointed or elected, as the case may be, in accordance with this Act, notwithstanding the fact that more than six senior traditional councillors and more than six traditional councillors may have been appointed or elected in respect of a particular traditional community under this Act; and

- (b) to the secretary of a traditional community appointed under section 10(3).

- (2) (a) The Minister, in consultation with the Minister responsible for

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000**

Finance, may prescribe allowances payable in respect of the traditional leaders, and the secretary, referred to in subsection (1).

- (b) Different allowances may be prescribed under paragraph (a), regard being had to the status, duties and responsibilities of each office referred to in that paragraph.

(3) Every traditional community in respect of whom more than six persons have been appointed or elected as senior traditional councillors and more than six persons have been appointed or elected as traditional councillors, shall notify the Minister in writing of the names of those senior traditional councillors and traditional councillors who shall be entitled to receive allowances under this Act.

(4) Subsections (1) and (3) shall not be construed as preventing a traditional community from paying allowances to senior traditional councillors and traditional councillors who are not under those subsections entitled to allowances.

Assets and Trust Fund of traditional community

18. (1) A traditional authority may with the consent of the members of its traditional community acquire, purchase, lease, sell, or otherwise hold or dispose of movable and immovable property in trust for that traditional community, and shall have such rights in respect of the acquisition and disposal of such property as may reasonably be necessary or expedient for the carrying out of its functions under this Act.

(2) Any immovable property acquired as contemplated in subsection (1) shall be registered in the name of the traditional authority concerned in accordance with the provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937) or the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976).

(3) A traditional authority may with the consent of the members of its traditional community establish a Community Trust Fund, to be held in trust for the members of that traditional community, and towards which such members may contribute for the purposes of-

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000**

- (a) financing projects in that community which promote and uplift the culture, preserve cultural sites, works of art and literary works of that community;
- (b) meeting the administrative costs of running the office of the traditional authority;
- (c) meeting the costs of performing any of the functions and duties of a traditional authority under this Act; and
- (d) meeting any other costs that the traditional community may agree upon.

(4) A traditional authority shall with the consent of the members of its traditional community determine the manner in which and the persons by whom the contribution contemplated in subsection (3) shall be made, as well as the amount of that contribution.

Regulations

19. The Minister may make regulations relating to -

- (a) the establishment and composition of a Board of Trustees to manage and control a Community Trust Fund;
- (b) the duties, functions, and powers of a Board of Trustees;
- (c) the tenure and vacation of office of members of a Board of Trustees;
- (d) the meetings of a Board of Trustees and the election of office-bearers of such a Board;
- (e) the establishment of committees for a Community Trust Fund by a Board of Trustees, and the composition of a committee;
- (f) the duties, functions and powers of a committee referred to in paragraph (e);
- (g) the keeping of accounting records of a Community Trust Fund and the auditing of that records;
- (h) the financial year of a Community Trust Fund;

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000**

- (i) the method by which the number of persons comprising a traditional community may be determined; and
- (j) generally all other matters which are by this Act required or permitted to be prescribed, or which are necessary or expedient to be prescribed in order to achieve the purposes of this Act.

Repeal of laws and savings

20. (1) Subject to subsection (2), the Traditional Authorities Act, 1995 (Act No. 17 of 1995), and the Traditional Authorities Amendment Act, 1997 (Act No. 8 of 1997), are hereby repealed.

(2) A traditional authority which was established under any law repealed by subsection (1) and which existed immediately before the commencement of this Act shall from such commencement continue to function as such and the provisions of this Act shall apply to such traditional authority as if it were a traditional authority established under this Act, and any person who immediately before such commencement was a member or office-bearer of such traditional authority by virtue of his or her designation and recognition or appointment under any such repealed law -

- (a) as a chief or supreme traditional leader shall from such commencement be a chief or, in the case of the supreme traditional leader, be a head of a traditional community as if he or she were designated and recognized under this Act; and
- (b) as a senior traditional councillor, traditional councillor or secretary shall from such commencement respectively be a senior traditional councillor, traditional councillor or secretary as if he or she were appointed or elected under this Act.

(3) Anything done under a provision of a law repealed by subsection (1) shall, in so far as it is not inconsistent with any provision of this Act, be deemed to have been done under the corresponding or related provision, if any, of this Act.

Act No. 25, 2000**TRADITIONAL AUTHORITIES ACT, 2000****Construction of a certain expression**

21. Any reference to the chief of a traditional community in any other law shall be construed as to include a reference to the head of a traditional community.

Short title and commencement

22. (1) This Act shall be called the Traditional Authorities Act, 2001, and shall come into operation on a date to be determined by the Minister by notice in the Gazette.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.



GOVERNMENT GAZETTE

OF THE REPUBLIC OF NAMIBIA

N\$1.00

WINDHOEK - 28 December 2000

No. 2462

CONTENTS

Page

GOVERNMENT NOTICE

- No. 296 Promulgation of Council of Traditional Leaders Amendment Act, 2000
(Act 31 of 2000), of the Parliament..... 1

Government Notice

OFFICE OF THE PRIME MINISTER

No.296

2000

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 31 of 2000: Council of Traditional Leaders Amendment Act, 2000.

Act No. 31, 2000

**COUNCIL OF TRADITIONAL LEADERS
AMENDMENT ACT, 2000**

EXPLANATORY NOTE:

- _____ Words underlined with a solid line indicate insertions in existing provisions.
- [] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the Council of Traditional Leaders Act, 1997, so as to amend the definition of Traditional Authority; to insert a definition of traditional community; to amend references to the Traditional Authorities Act; to amend the provisions relating to the members of the Council; to insert provisions relating to committees of the Council; to further provide for the powers of the President relating to a matter submitted to the Council; and to provide for matters incidental thereto.

(Signed by the President on 21 December 2000)

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

Amendment of section 1 of Act No. 13 of 1997

1. Section 1 of the Council of Traditional Leaders Act, 1997 (hereinafter referred to as the “principal Act”), is amended -

- (a) by the insertion of the following definition before the definition of “Council”:

“‘committee’ means a committee established in terms of section 12(1);”;

- (b) by the substitution for the definition of “Traditional Authority” of the following definition:

“‘Traditional Authority’ means a traditional authority as defined in section 1 of the Traditional Authorities Act, 2000;” and

Act No. 31, 2000**COUNCIL OF TRADITIONAL LEADERS
AMENDMENT ACT, 2000**

(c) by the addition of the following definition:

“‘traditional community’ means a traditional community as defined in section 1 of the Traditional Authorities Act, 2000;”.

Amendment of section 3 of Act No. 13 of 1997

2. Section 3 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) Every Traditional Authority may, with due regard to the provisions of section 4, designate two representatives for appointment as members of the Council, who shall include -

- (a) the chief or head of that traditional community as defined in section 1 of the Traditional Authorities Act, 2000; and
- (b) one other person, being either [the] a senior traditional councillor or a traditional councillor or any other member of that traditional community.”.

Substitution of section 12 of Act No. 13 of 1997

3. The following section is substituted for section 12 of the principal Act:

“Committees of Council

12. (1) The Council may from time to time establish from amongst its members any committee to advise it on any matter in relation to its functions as it may deem necessary.

(2) The Council shall designate the chairperson of a committee.

(3) In the event of the chairperson of a committee being absent from, or unable to perform the functions of the chairperson at, a meeting, the members of the committee present at that meeting shall elect one of their number to act as chairperson at that meeting and such acting chairperson shall, while so acting, have all the powers and perform all the duties and functions of the chairperson of a committee.

Act No. 31, 2000**COUNCIL OF TRADITIONAL LEADERS
AMENDMENT ACT, 2000**

(4) The chairperson or any other person who acts as chairperson shall determine the procedure of the meeting over which he or she presides, and cause minutes to be kept of the proceedings.

(5) The majority of the members of a committee shall constitute a quorum for a meeting of that committee.

(6) The decision of the majority of the members of a committee present at a meeting thereof shall constitute a decision of that committee, and, in the event of an equality of votes relating to any matter, the member presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(7) A committee may request the attendance of any person to act as adviser at any meeting thereof, and that person while so attending may participate in the deliberations, but shall not be entitled to vote.

(8) The validity of any act or proceedings of a committee shall not be affected by any vacancy amongst its members or by any defect in the appointment of a member thereof.

(9) The meetings of a committee shall be held at the times and places determined by the chairperson thereof”.

Amendment of section 14 of Act No. 13 of 1997

4. Section 14 of the principal Act is amended by the addition of the following subsection, the existing section becoming subsection (I):

“(2) The President may in respect of any report which has been submitted to him or her in terms of subsection (1) give the Council such instructions regarding further steps to be taken relating to any matter in respect thereof as he or she may deem expedient.”.

Short title

5. This Act shall be called the Council of Traditional Leaders Amendment Act, 2000.



GOVERNMENT GAZETTE

OF THE REPUBLIC OF NAMIBIA

N\$2.24

WINDHOEK - 17 May 2001

No. 2532

CONTENTS

Page

GOVERNMENT NOTICES

No. 93	Commencement of the Traditional Authorities Act, 2000 (Act No. 25 of 2000).....	1
No. 94	Regulations made under the Traditional Authorities Act, 2000	1

Government Notices

MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING

No. 9 2001

COMMENCEMENT OF THE TRADITIONAL AUTHORITIES ACT, 2000
(ACT NO. 25 OF 2000)

In terms of section 22 of the Traditional Authorities Act, 2000 (Act No. 25 of 2000), I hereby determine that the said Act comes into operation on the date of publication of this notice in the Gazette.

N. IYAMBO

**MINISTER OF REGIONAL AND LOCAL
GOVERNMENT AND HOUSING**

Windhoek, 23 April 2001

**MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND
HOUSING**

**REGULATIONS MADE UNDER THE TRADITIONAL AUTHORITIES
ACT, 2000**

No. 94

2001

The Minister of Regional and Local Government and Housing has under section 19 of the Traditional Authorities Act, 2000 (Act No. 25 of 2000), made the regulations set out in the Schedule.

SCHEDULE**ARRANGEMENT OF REGULATIONS****PART I****PRELIMINARY**

1. Definitions

PART II**PROVISIONS RELATING TO DESIGNATION AND APPOINTMENT
OF TRADITIONAL LEADERS**

2. Application for approval to designate a chief or head of a traditional community
3. Notification of appointment of senior traditional councillors, traditional councillors and secretary

PART III**MANAGEMENT OF COMMUNITY TRUST FUND**

4. Moneys of Community Trust Fund
5. Establishment and composition of Board of Trustees
6. Persons disqualified from being members of Board of Trustees
7. Tenure and vacation of office of members of Board of Trustees
8. Voluntary service by members of Board of Trustees and of committees
9. Meetings of Board of Trustees and election of office-bearers
10. Powers and duties of Board of Trustees
11. Committees of Board of Trustees
12. Administrative work
13. Auditor

ANNEXURE A**APPLICATION FOR APPROVAL TO DESIGNATE A CHIEF OR
HEAD OF A TRADITIONAL COMMUNITY****ANNEXURE B****NOTIFICATION OF APPOINTMENT OR ELECTION OF SENIOR
TRADITIONAL COUNCILLOR OR TRADITIONAL COUNCILLOR****ANNEXURE C****NOTIFICATION OF APPOINTMENT OF SECRETARY OF
TRADITIONAL AUTHORITY**

PART I PRELIMINARY

Definitions

1. In these regulations, unless the context otherwise indicates, any word or expression defined in the Traditional Authorities Act, 2000, shall have that meaning, and-

“Board of Trustees” means the Board of Trustees established in terms of regulation 5;

“committee” means a committee established under regulation 11;

“financial year” means the financial year referred to in regulation 4(3);

“local authority council” means a local authority council as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);

“secretary of the Board” means the person designated as secretary of the Board of Trustees under regulation 5(l)(g);

“the Act” means the Traditional Authorities Act, 2000 (Act No. 25 of 2000).

PART II PROVISIONS RELATING TO DESIGNATION AND APPOINTMENT OF TRADITIONAL LEADERS

Application for approval to designate a chief or head of a traditional community

2. An application for approval to designate a chief or head of a traditional community as contemplated in section 5 of the Act shall be made on the Form set out in Annexure A, and shall -

- (a) in the case of an application by a Chief’s Council or a Traditional Council, as the case may be, be signed by any member thereof authorised by the Chief’s Council or the Traditional Council in question;
- (b) in the case of an application by the members of a traditional community, be signed by any member thereof authorised thereto by the customary law that traditional community,

and in verification of the information contained in such application, be signed by the Governor of the regional council of the region in which the traditional community is situated.

Notification of appointment of senior traditional councillors, traditional councillors and secretary

3. Where a chief or head of a traditional community -
 - (a) appoints or causes to be elected under subsection (1) of section 10 of the Act a senior traditional councillor or traditional councillor, he or she shall notify the Minister as required by subsection (4) of that section in the form prescribed by Annexure B;
 - (b) appoints under section 10(3) of the Act a secretary of the traditional authority, he or she shall notify the Minister thereof in the form prescribed by Annexure C.

PART III

MANAGEMENT OF COMMUNITY TRUST FUND

Moneys of Community Trust Fund

4. (1) A Community Trust Fund shall consist of -
 - (a) moneys raised (whether by means of donations, grants or otherwise) as contemplated in section 3(3)(a) of the Act;
 - (b) contributions made in terms section 18(3) of the Act;
 - (c) interest derived from investments made in terms of regulation 10.
- (2) The moneys of a Community Trust Fund shall be utilized by its Board of Trustees in accordance with estimates of expenditure approved by the Board, but any moneys raised as donations or grants under section 3(3)(a) of the Act or received as contributions made under section 18(3) of the Act shall be utilized, in the case of-
 - (a) a donation or grant, in accordance with the conditions of the donation or grant;
 - (b) a contribution, for any of the purposes contemplated in section 18(3) of the Act.
- (3) The financial year of a Community Trust Fund shall end on 31 March in each year.

Establishment and composition of Boards of Trustees

5. (1) If a traditional authority of a traditional community has established a Community Trust Fund as contemplated in section 18(3) of the Act, that traditional authority shall for the purpose of managing and controlling the affairs of the Fund establish a Board of Trustees, comprising-

- (a) the chief or head leading the traditional community in respect of which the Fund has been established, who shall be the chairperson;
- (b) two senior traditional councillors of that traditional community, designated by its traditional authority;
- (c) the person appointed as secretary of that traditional authority in terms of section 10(3) of the Act;
- (d) the regional council member elected as contemplated in section 4 of the Regional Councils Act, 1992 (Act No. 22 of 1992) in respect of the constituency in which the area of the traditional community concerned is situated;
- (e) one member of the local authority council of the local authority area situated in the communal area of that traditional community, designated by that local authority council;
- (f) one church leader who is ordinarily resident in the communal area of such traditional community, designated by the relevant church authority;
- (g) one person who has in the opinion of that traditional authority knowledge and experience in a financial sphere, designated by the traditional authority, to be the secretary of the Board; and
- (h) not more than three other persons representing the residents (inclusive of the professional and business people) in the communal area of that traditional authority, designated by that traditional authority.

(2) Before the first occasion on which a designation of a person is to be made in terms of subregulation(1)(e) or (f), and on each later occasion when an office of a person so designated becomes vacant, the traditional authority concerned shall in writing request the local authority council or church authority, as the case may be, to designate a person as required by that sub regulation.

Persons disqualified from being members of Board of Trustees

6. A person shall not be appointed as a member of the Board of Trustees if he or she -

- (a) has been convicted of an offence of which dishonesty is an element and for which he or she has been sentenced to imprisonment for a period exceeding 12 months without the option of a fine;
- (b) has been removed from an office of trust on account of improper conduct;
- (c) is an unrehabilitated insolvent;
- (d) is considered a mentally ill person under the Mental Health Act, 1973 (Act No. 18 of 1973).

Tenure and vacation of office of members of Board of Trustees

7. (1) A member of a Board of Trustees -

- (a) referred to in paragraphs (a), (b), (c), (d) and (e) of regulation 5(1) shall hold office as member of that Board for such period as he or she is the incumbent of the post referred to in the applicable paragraph;
- (b) referred to in paragraphs (f), (g) and (h) of regulation 5(1) shall, subject to sub regulations (3) and (4) of this regulation, hold office for such period, but not exceeding three years, as the traditional authority in question may determine at the time of designation of the member concerned.

(2) A member of a Board of Trustees referred to in sub regulation (1)(b) whose period of office has expired shall be eligible for re-designation.

(3) A traditional authority may, upon reasonable grounds and after having given the member concerned an opportunity to be heard, remove a member of a Board of Trustees referred to in sub regulation (1)(b) at any time before the expiration of such member's period of office.

(4) A member of a Board of Trustees shall vacate his or her office, if he or she -

- (a) ceases to hold the office by virtue of which he or she became a member or is no longer a member of the body which designated him or her to be a member;
- (b) has been absent from more than three consecutive meetings of that Board of Trustees without the leave of that Board; or

- (c) is a member referred to in sub regulation (1)(f), (g) or (h) and he or she by a written notice under his or her hand, addressed and delivered to the chairperson of that Board, resigns as member thereof;
- (d) is removed from office in terms of sub regulation (3);
- (e) becomes subject to a disqualification referred to in regulation 6.

(5) Any vacancy on the Board of Trustees arising from any circumstance referred to in sub regulation (4), or caused by the death of a member of the Board of Trustees shall be filled by the appointment of another person in accordance with regulation 5, and every member so appointed shall hold office for the unexpired portion of the period of office of the member who has vacated his or her office or who has died.

Voluntary service by members of Board of Trustees and of committees

8. No remuneration or allowances shall be payable to a member of the Board of Trustees or to a member of a committee of the Board for any service rendered in terms of these regulations.

Meetings of Board of Trustees and election of office-bearers

9. (1) The relevant traditional authority shall determine the date, time, place of, and agenda to be discussed at, the first meeting of the Board of Trustees, and the chairperson of that Board shall determine the date, time, place of, and agenda to be discussed at, successive meetings of that Board.

(2) A Board of Trustees shall at its first meeting elect from amongst its members a vice-chairperson and one other office-bearer.

(3) The chairperson of a Board of Trustees or, in his or her absence, the vice-chairperson thereof, shall preside at the meetings of the Board, and if both the chairperson or the vice-chairperson are absent from, or for any other reason unable to preside at, any meeting of the Board, the members present there at shall elect one of their number to act as chairperson at that meeting, and the member so elected may during that meeting perform all the functions and exercise all the powers of the chairperson.

(4) The chairperson of a Board of Trustees shall on the written request of at least one third of the members of the Board or of the Minister, convene a special meeting of the Board.

(5) Subject to any rule made under sub regulation (10), the chairperson

or any other person who acts as chairperson shall determine the procedure of the meeting over which he or she presides.

(6) The majority of the members constituting a Board of Trustees shall form a quorum for a meeting thereof.

(7) A decision of a majority of members present at any meeting of a Board of Trustees shall be a decision of the Board and, in the event of an equality of votes, the chairperson shall have a casting vote in addition to his or her deliberative vote.

(8) The chairperson at any meeting of a Board of Trustees shall cause a written record to be kept of the proceedings at such meeting.

(9) No decision taken by a Board of Trustees or act performed under the authority of such a Board shall be invalid merely by reason of-

- (a) a vacancy on that Board; or
- (b) the fact that any person who is not entitled to sit as a member of that Board was in attendance when the decision was taken or the act was authorised,

if the decision was taken or the act was authorised by the required majority of the members of that Board then present and entitled to sit as members.

(10) A Board of Trustees may make rules determining the procedure to be followed at its meetings and at the meetings of any of its committees.

Powers and duties of Board of Trustees

10. (1) A Board of Trustees shall, with due regard to regulation 4(2), manage and control a Community Trust Fund in respect of which it was established and for that purpose the Board -

- (a) shall receive all moneys due to the Fund and administer and apply the moneys of the Fund;
- (b) shall in the name of the Fund, open and maintain with a banking institution, authorised to conduct banking business under the Banking Institutions Act, 1998 (Act No. 2 of 1998), or a building society finally registered in terms of the Building Societies Act, 1986 (Act No. 2 of 1986), one or more accounts into which all moneys received on behalf of the Fund shall be deposited;

- (c) shall invest the moneys of the Fund which is not required for immediate use;
- (d) shall keep or cause to be kept such accounting and related records as are necessary to fairly represent the transactions and financial position of the Fund;
- (e) shall not later than three months after the end of each financial year cause the accounting and related records of the Fund to be audited by any person registered in terms of the Public Accountants' and Auditors Act, 1951 (Act No. 51 of 1951), as an accountant and auditor, and appointed by the Board;
- (f) shall within six months after the end of any financial year of the Fund submit the auditor's report as well as a report on the activities of the Board and of any committee of the Board during that financial year to the traditional authority concerned;
- (g) may, on behalf of the Fund, sign any document relating to the Fund;
- (h)
 - (i) may subject to such conditions as the Board of Trustees may determine, delegate or assign any of the Board's powers or duties to the secretary of the Board, an office-bearer elected in terms of regulation 9(3) or a committee established under regulation 11 and may withdraw or vary any delegation or assignment, but shall not be \ divested of any power or duty so delegated or assigned;
 - (ii) may vary or set aside any decision so taken by the secretary of the Board, an office-bearer or any committee in the exercise of any power so delegated to him or her or it;
- (i) shall, generally, take such steps as are necessary for the attainment of the purposes for which the Fund was established.

Committees of Board of Trustees

- 11.** (1) A Board of Trustees may -
- (a) from time to time establish any committee to assist or advise that Board in the exercise of any of its powers or the performance of any of its duties, and may, for such period as the Board may determine, appoint such members of the Board or other persons thereon as it

may think fit to be members of such committee;

- (b) designate any member of such committee to be chairperson thereof;
- (c) during the absence of the chairperson, designate any member of such committee to be the acting chairperson;
- (d) do any other act which is necessary to enable such committee to perform its functions.

(2) The chairperson of a Board of Trustees shall be a member of any committee.

(3) A committee shall, subject to the directions of the Board of Trustees, perform its functions.

(4) A committee shall at the end of every financial year submit to the Board of Trustees concerned a report on its activities during the financial year in question.

Administrative work

12. The secretary of the Board shall, subject to the directions of the Board of Trustees, perform the administrative work connected with the performance of the functions of the Board.

Auditor

13. (1) A person appointed under regulation 10(1)(e) as an auditor shall carry out an audit in accordance with the provisions of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951).

(2) On completion of an audit contemplated in sub regulation (1) an auditor shall submit his or her report thereon to the Board of Trustees.

(3) No person shall be appointed as an auditor if-

- (a) he or she is, or at any time during the financial year in question, was a member of the Board of Trustees in question;
- (b) he or she is related in the first degree of consanguinity or affinity to a member of the Board of Trustees.

ANNEXURE A

APPLICATION FOR APPROVAL TO DESIGNATE A CHIEF OR HEAD OF A TRADITIONAL COMMUNITY

PART A

THE FOLLOWING HAS TO BE COMPLETED BY CHIEF'S COUNCIL/TRADITIONAL COUNCIL/AUTHORISED MEMBERS OF TRADITIONAL COMMUNITY:

1. Name of Traditional Authority:

.....

2. Address of Traditional Authority:

.....

.....

.....

3. Name of Traditional Community represented:

.....

4. State or give a description of the communal area inhabited by the above-mentioned Traditional Community:

.....

.....

5. Give the estimated number of members comprising the -above-mentioned Traditional Community:

6. Give the following particulars of the person in respect of whom this application is made for designation as *Chief/Head of Traditional Community:

Surname:First Name:.....

Citizenship:Id.:

Date of birth:Sex:

Office and traditional title (if any).....

7. Give the reason for the proposed designation:.....

8. Give a summary of the customary law applicable in the Traditional Community in respect of the designation of a *Chief/Head of the Traditional Community:

.....

.....

I.....declare that the above information is, to the best of my knowledge and belief, correct.

Signed this dayofat.....

.....
Signature of applicant

.....
Title of applicant

**Delete whichever is not applicable.*

PART B

THE FOLLOWING HAS TO BE COMPLETED BY THE ABOVE-MENTIONED CANDIDATE:

1. Are you related to any recognised chief and/or head of a traditional community? Yes/No:

2. If the answer is Yes, give the name or names of any such chief and/or head and the Traditional Authority which he or she leads:

3. Do your culture, tradition, customs and languages differ from the above-mentioned traditional authority/authorities? Yes /No

4. If answer to question 3 is Yes, state in what respect it is different:

Ideclare that the above information is, to the best of my knowledge and belief, correct.

Signed this day.....ofat.

.....
*Signature/Thumb print of candidate

*Delete whichever is not applicable

PART C

THE FOLLOWING MUST BE COMPLETED AND SIGNED BY THE GOVERNOR OF THE REGIONAL COUNCIL OF THE REGION IN WHICH THE TRADITIONAL COMMUNITY IS SITUATED:

I.....verify that the above information is correct.

Signed this dayofat

.....
Signature of Governor

.....
Region

ANNEXURE B

NOTIFICATION OF APPOINTMENT OR ELECTION OF SENIOR TRADITIONAL COUNCILLOR OR TRADITIONAL COUNCILLOR

I *Chief/Head of the Traditional Community of..... on.....at.....

have under section 10(1) of the Traditional Authorities Act, 2000, *appointed / caused to be elected as *Senior Traditional Councillor/Traditional Councillor:

Surname:First Name:

Citizenship: Id.:

Date of birth:..... Sex:

Office and traditional title (if any).....

Address of Traditional Authority
.....
.....
.....
.....

I declare that the above information is, to the best of my knowledge and belief correct.

.....
**Signature/Thumb print of *Chief/Head of the Traditional Community*
**Delete whichever is not applicable*

ANNEXURE C

NOTIFICATION OF APPOINTMENT OF SECRETARY OF
TRADITIONAL AUTHORITY

I*Chief/Head
of the Traditional Community of.....

onat

have under section 10(3) of the Traditional Authorities Act, 2000, appointed as
Secretary of the traditional Authority:

Surname:First Name:.....

Citizenship:Id.:.....

Date of birth:Sex:.....

Office and traditional title (if any).

Address of Traditional Authority

.....

.....

.....

.....

Ideclare that the above information is, to
the best of my knowledge and belief correct.

.....
*Signature/Thumb print of *Chief/Head of the Traditional Community
Delete whichever is not applicable

ACKNOWLEDGEMENT

This booklet is available in the following languages: Oshikwanyama, Otjiherero, Khoekhoegowab, Afrikaans, Rukwangali, Silozi and Setswana. Please note that the only valid text of the Acts is the official English version.

This publication was made possible with the financial support of the Konrad-Adenauer-Stiftung, the Ford Foundation and the Embassy of the Federal Republic of Germany.

© July 2002, Ministry of Regional and Local Government and Housing and the Namibia Institute for Democracy.



Namibia Institute for Democracy
POBox 11956
Windhoek
Namibia
Tel. (061)229117/8
Fax (061)229119
nid@nid.org.na
www.nid.org.na



Ministry of Regional and
Local Government and Housing
Private Bag 13289
Windhoek
Namibia
Tel. (061)297 5111
Fax (061)226049