



WETTE
VAN
DIE REPUBLIEK VAN SUID-AFRIKA
1968

ALFABETIESE EN CHRONOLOGIESE INHOUDSOPGAWE

STATUTES
OF
THE REPUBLIC OF SOUTH AFRICA
1968

ALPHABETICAL AND CHRONOLOGICAL TABLE OF CONTENTS

ACT

To confirm that certain areas in South-West Africa are areas for the different native nations in South-West Africa and may be extended; to make provision for legislative councils, executive councils and other governing bodies for such nations and for the powers, functions and duties of such councils and bodies; to empower the State President to make laws in respect of certain areas; and to provide for matters incidental thereto.

(English text signed by the State President.)
(Assented to 6th June, 1968.)

WHEREAS it is desirable that the native nations in the territory of South-West Africa should in the realization of their right of self-determination develop in an orderly manner to self-governing nations and independence:

BE IT THEREFORE ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

1. This Act as well as any amendment thereof shall apply in the territory of South-West Africa, including that part of the said territory known as the Eastern Caprivi Zipfel and referred to in section 38 (5) of the South-West Africa Constitution Act, 1968 (Act No. 39 of 1968). Application of Act.

2. The following areas shall be areas for the different native nations:— Areas for native nations.

- (a) Damaraland, consisting of the area at Okambahe and the farms Zessfontein and Franzfontein referred to in paragraphs (3), (4) and (5), respectively, of the First Schedule to Government Notice No. 122 of 1923 of the territory of South-West Africa, and the area at Otjohorong referred to in Government Notice No. 108 of 1925 of the said territory of South-West Africa, and any other land or area which may, after the commencement of this Act, be reserved and set apart in terms of any law for the exclusive use of and occupation by Damaras;
- (b) Hereroland, consisting of the areas Otjituo and Epukiro referred to in paragraphs (4) and (5), respectively, of the Second Schedule to Government Notice No. 122 of 1923 of the territory of South-West Africa, the Waterberg East Reserve referred to in Government Notice No. 156 of 1936, and the Eastern Reserve referred to in paragraph (d) of Government Notice No. 374 of 1947, of the said territory of South-West Africa, and any other land or area which may, after the commencement of this Act, be reserved and set apart in terms of any law for the exclusive use of and occupation by Hereros;
- (c) Kaokoland, consisting of the Kaokoveld referred to in paragraph (e) (1) of Government Notice No. 374 of 1947 of the territory of South-West Africa;

- (d) Okavangoland, consisting of the Okavango area referred to in Proclamation No. 32 of 1937 of the territory of South-West Africa;
- (e) Eastern Caprivi, consisting of the Eastern Caprivi Zipfel referred to in section 38 (5) of the South-West Africa Constitution Act, 1968 (Act No. 39 of 1968);
- (f) Ovamboland, consisting of the area referred to in regulation 1 of Proclamation No. 27 of 1929 of the territory of South-West Africa;
- (g) such other land or area as may after the commencement of this Act be reserved and set apart for the exclusive use of and occupation by any native nation and recognized by the State President by proclamation in the *Gazette* as an area for such nation.

3. The State President may, after consultation with the native nation concerned and by proclamation in the *Gazette*, establish a legislative council for any area referred to in section 2. Establishment of legislative councils.

4. (1) Subject to the provisions of this Act a legislative council referred to in section 3 shall be constituted in the manner determined by the State President by proclamation in the *Gazette* after consultation with the native nation concerned. Constitution of legislative councils.

(2) Without prejudice to the generality of the power conferred by subsection (1) any proclamation in terms of that subsection may also provide for—

- (a) the election by way of voting in the territory referred to in section 1, and the designation of the members of a legislative council, the filling of vacancies, and the qualifications of voters and of candidates for such elections;
- (b) the period of office and conditions of service of such members;
- (c) the attendance of sessions of a legislative council by representatives of the Republic.

(3) A proclamation in terms of subsection (1) may be withdrawn or amended by like proclamation.

5. (1) Any legislative council referred to in section 3 may— Legislative powers of legislative councils.

- (a) for the area for which it has been established, make enactments, not inconsistent with this Act, in respect of any matter referred to in the Schedule;
- (b) with the approval of the State President previously obtained, provide in any such enactment for the enforcement thereof in respect of members of the native nation in question who are or reside outside that area but within the territory referred to in section 1,

and may make different such enactments for different regions or places and different categories or groups of persons.

(2) No enactment made in terms of subsection (1) shall have any force or effect until it has been approved by the State President and made known by notice in the *Gazette*, and the State President may, before approving any enactment, refer it back to the legislative council concerned for reconsideration.

6. (1) The executive government of any area for which a legislative council has been established in terms of section 3, in regard to the matters referred to in the Schedule, shall vest in an executive council which shall be constituted from among the members of the legislative council in such manner as the State President may determine in the relevant proclamation referred to in section 4 (1). Executive government.

(2) Any executive council may with the approval of the State President establish such departments in connection with the matters referred to in subsection (1) as it may deem fit.

(3) Subject to the provisions of this Act—

- (a) an executive council shall have power to make provision for the exercise of its powers and the performance of its functions and duties in terms of subsection (1);
- (b) the members of such council shall be responsible for the administration of the departments referred to in subsection (2);

- (c) such a council shall assume a leading role in connection with matters affecting the material, spiritual, moral and social welfare of the native nation in question;
- (d) such a council shall be competent to advise the Government of the Republic on all matters in regard to the functions and duties of that council;
- (e) such a council and the members thereof shall exercise such other powers and perform such other functions and duties as may be determined in the relevant proclamation referred to in subsection (1).

(4) The Minister of Bantu Administration and Development may, subject to the laws governing the public service, designate officers and employees of the public service to assist an executive council in the administration of the departments referred to in subsection (2).

7. (1) The State President may by proclamation in the *Gazette*—

- (a) if there exists in a tribe or community a tribal or community government functioning in accordance with the law and customs observed by that tribe or community, recognize, after consultation with such tribe or community, such government as a tribal authority or a community authority in respect of that tribe or community;
- (b) if there does not exist in a tribe or community any government referred to in paragraph (a), or if there exists in any tribe or community such a government but it is considered expedient, whether or not the government in question has been recognized in terms of the said paragraph, to replace that government, establish after such consultation as is contemplated in the said paragraph, a tribal authority or a community authority in respect of that tribe or community and determine, after such consultation, the manner in which such authority is to be constituted;
- (c) in respect of—

Tribal authorities, community authorities and regional authorities.

- (i) any portion of an area referred to in section 2; or
- (ii) two or more tribal authorities or community authorities jointly, or one or more tribal authorities and one or more community authorities jointly, establish, after consultation with the people concerned, a regional authority and determine, after such consultation, the manner in which such authority is to be constituted.

(2) The provisions of subsections (2) and (3) of section 4 shall *mutatis mutandis* apply to a proclamation in terms of this section.

8. Subject to the provisions of this Act—

- (a) a tribal authority and a community authority recognized or established in terms of section 7 shall exercise such powers and perform such functions and duties (including powers, functions and duties in relation to any matter referred to in the Schedule) as the State President may by proclamation in the *Gazette* determine;
- (b) a regional authority established in terms of section 7 shall, in relation to any matter referred to in the Schedule, exercise such powers (including the power to make enactments) and perform such functions and duties as the State President may so determine;

Powers of tribal authorities, community authorities and regional authorities.

Provided that if there exists in respect of the area in question a legislative council established in terms of section 3, a determination in terms of paragraph (a) or (b) shall only be made after consultation with such council.

9. (1) An executive council referred to in section 6 shall establish a Revenue Fund and, if the Minister of Bantu Administration and Development so directs, a tribal authority, a community authority and a regional authority recognized or

Financial matters.

established in terms of section 7 shall establish a Revenue Account, into which shall be paid such amounts as are in terms of any law required to be paid into it and from which shall be defrayed all the expenses of such council or authority.

- (2) (a) If any assets, rights, liabilities or obligations of any fund passed to the South African Bantu Trust in terms of section 4 (3) of the South-West Africa Native Affairs Administration Act, 1954 (Act No. 56 of 1954), and such fund had, in the opinion of the Minister of Bantu Administration and Development, been established mainly for the people in respect of whom a legislative council, a tribal authority, a community authority or a regional authority has been established or recognized in terms of this Act, the said Minister may at any time direct that any of or all those assets, rights, liabilities and obligations still in existence shall pass to the executive council concerned referred to in section 6 or to any such authority concerned designated by the Minister.
- (b) If the said Minister has given any direction in terms of paragraph (a), any moneys which accrue in terms of any law to a fund referred to in the said paragraph, shall be paid into the Revenue Fund or Revenue Account, as the case may be, of the council or authority concerned and shall be expended for the purposes prescribed by the law by virtue of which such moneys so accrue: Provided that any moneys not immediately required for such purposes, may be used to defray any other expenses of such council or authority.

10. The books and accounts of any executive council referred to in section 6 and of any tribal authority, community authority or regional authority in respect of which a Revenue Account has been established in terms of section 9 (1), shall be audited by the Controller and Auditor-General unless, in any particular case, he decides otherwise after consultation with the Secretary for Bantu Administration and Development, and he shall transmit a copy of his report to the Minister of Bantu Administration and Development and, in the case of the books and accounts of—

Auditing of books and accounts of executive councils, tribal authorities, community authorities and regional authorities.

- (a) such an executive council, to the council concerned; and
- (b) a tribal authority, a community authority or a regional authority, to the authority concerned and the executive council concerned referred to in section 6, if any.

11. (1) An executive council referred to in section 6 may in consultation with the Minister of Bantu Administration and Development and subject to the approval of the State President, nominate a member of the native nation in question to represent it in the area or areas of one or more urban local authorities as defined in section 1 of the Natives (Urban Areas) Proclamation, 1951 (Proclamation No. 56 of 1951 of the territory of South-West Africa), or in such other area as the said Minister may approve, with that portion of the community in such area or areas which belongs to that native nation.

Representatives of executive councils in urban areas.

(2) A nominee approved by the State President in terms of subsection (1) shall be recognized as the representative of the executive council in question in the area or areas in respect of which he has been nominated.

(3) The State President may withdraw the recognition of any such representative at the request of, or after consultation by the Minister of Bantu Administration and Development with, the executive council by whom such representative was nominated.

11— 12. A representative recognized in accordance with section

Powers, functions and duties of representatives.

- (a) shall advise the executive council in question in connection with matters affecting the general interests of the native nation in question in the area in respect of which he has been recognized;

(b) whether any such authority or any member of any such authority acted in respect of any particular matter in accordance with the law or customs observed by the tribe or community concerned, any document purporting to be an affidavit by any person who in that affidavit alleges—

- (i) that he is in the service of the State in a capacity, specified in the affidavit, connected with the administration of native affairs;
- (ii) that he has knowledge of the law and customs observed by the tribe or community concerned and that in consequence thereof he knows that the person concerned is or has been a member of the tribal authority, community authority or regional authority concerned or, as the case may be, that the law and customs concerned were observed in respect of the said matter, shall on its mere production in the said proceedings be *prima facie* evidence that the person concerned is or has been a member of the authority in question or, as the case may be, that the law and customs concerned were observed in respect of the said matter.

17. (1) Where a native nation, a group of persons, a tribe or a community is required to be consulted in terms of this Act, such consultation shall take place in a manner which the State President may either generally or in any particular case determine and by means of which, in his opinion, a representative view on the matter concerned may best be obtained.

Manner in which consultation is to take place.

(2) In determining the manner of consultation in terms of subsection (1) the State President shall have regard to the powers, functions and duties of legislative councils, executive councils and authorities referred to in this Act, and of chiefs, headmen and other recognized leaders.

18. (1) Section 38 of the South-West Africa Constitution Act, 1968, is hereby amended—

Amendment of section 38 of Act 39 of 1968.

(a) by the deletion of subsections (3) and (4);

(b) by the substitution for subsection (5) of the following subsection:

“(5) No Act of Parliament and no ordinance of the Assembly passed on or after the first day of November, 1951, shall apply in the territory known as the Eastern Caprivi Zipfel and defined in the Eastern Caprivi Zipfel Administration Proclamation, 1939 (Proclamation No. 147 of 1939 of the Republic), unless it is expressly declared so to apply.”; and

(c) by the deletion in subsection (6) of the expression “or (3)”.

(2) Any proclamation issued under section 38 (3) of the South-West Africa Constitution Act, 1968, prior to the repeal thereof by subsection (1) of this section, or deemed to have been issued thereunder, shall be deemed to have been issued under section 14 of this Act.

19. This Act shall be called the Development of Self-government for Native Nations in South-West Africa Act, 1968.

Short title.

Schedule.

MATTERS REFERRED TO IN SECTIONS 5 AND 8.

1. The administration and control of departments established in terms of section 6 (2).

2. Matters having as their object the advancement of education, including the establishment, maintenance, management and control of educational institutions and hostels.

3. Welfare services, including child welfare and social benefit schemes for and the payment of allowances to aged, blind and indigent persons, and persons suffering from mental or physical disabilities.

4. The establishment, maintenance, management and control of clinics and other institutions in connection with services and schemes referred to in item 3.

5. The control of business and trading undertakings of, and the issue of licences for the carrying on thereof to, members of the native nation in question, excluding the issue of licences to them in connection with trading in arms and ammunition and explosives.

6. The planning, establishment, financing, co-ordination, execution and carrying on of industrial, trading, finance, mining and other business undertakings and projects having as their object the economic progress of the native nation concerned, whether in co-operation with any corporation or other body established by any law or otherwise.

7. The construction and maintenance of roads, bridges, furrows, dams and any works considered necessary for purposes of sanitation or of securing a satisfactory water supply or of preventing or combating soil erosion.

8. Farming and agricultural methods in general, including the combating of stock diseases.

9. Afforestation.

10. Markets and pounds.

11. The administration of justice, including the exercise of civil and criminal jurisdiction in accordance with the law and customs observed by tribes and communities, and the trial by persons and bodies acting in terms of such law and customs of contraventions of or failure to comply with enactments of the legislative council or regional authority.

12. The establishment, management and control of labour bureaux, and the registration and placing in employment of workseekers by means of such bureaux.

13. The registration of members of the native nation in question, whether they are or reside in or outside the area for which the legislative council or regional authority has been established, excluding such members who are or reside outside the territory referred to in section 1, and the issue of documents in connection with such registration to such members.

14. The erection and maintenance of buildings and other structures by members of the native nation in question, and the erection and maintenance of such other buildings and structures as the legislative council or the regional authority may deem necessary for the exercise of its powers and the powers of the executive council (if any) and the performance of its functions and duties and the functions and duties of the executive council (if any).

15. A direct tax—

(a) on—

(i) members of the native nation in question or any particular category or group of such members;

(ii) the income of members of the native nation in question or any particular category or group of such members, whether the members concerned are or reside in or outside the area for which the legislative council or the regional authority has been established, provided they are or reside within the territory referred to in section 1;

(b) on property situate in the area for which the legislative council or the regional authority has been established.

16. Fees payable for services rendered by a department referred to in section 6 (2) or a tribal authority, a community authority or a regional authority recognized or established in terms of section 7, and taxes payable by a specified category or group of persons in respect of services made available by any such department or authority.

17. The exercise of powers and the performance of functions and duties in relation to any fund referred to in section 9 (2) which are in terms of any law vested in any other person and which the State President may determine.

18. Subject to the provisions of sections 9 and 10, the collection of and the control over all revenue and fees assigned by the State President by proclamation in the *Gazette* to, or which otherwise accrue to, an executive council referred to in section 6, or to a tribal authority, a community authority or a regional authority recognized or established in terms of section 7.

19. Subject to the provisions of any proclamation issued in terms of section 4—

(a) the conditions of service of the members of the legislative council or the regional authority;

(b) the convening of a session of the legislative council or the regional authority, and the quorum for and the procedure at such a session, including the procedure in the case of the absence of the person who is required to preside at such a session, the method according to which voting takes place at such a session and the exercise of a casting vote by any person presiding at such a session.

20. The appointment, conditions of service, discipline, retirement, discharge and pensioning of officers and employees employed in connection with the departments referred to in section 6 (2).

Act No. 54, 1968

21. The imposition of penalties for a contravention of or failure to comply with any enactment made by the legislative council or the regional authority, by way of a fine not exceeding fifty rand, or, in default of payment of the fine, imprisonment for a period not exceeding six months, or such fine as well as such imprisonment, or the imposition of such other penalties for such contravention or failure as may be imposed under the law and customs observed by the tribe or community concerned, and the payment of such fine or a fine imposed in accordance with such law and customs, including the payment thereof by way of the delivery of livestock or other property.

22. Any matter declared by both the Senate and the House of Assembly by resolution passed in the same session to fall within the powers of a particular legislative council or regional authority, including any matter in respect of which the State President or the Minister of Bantu Administration and Development may in terms of any law make regulations.