

Namibia

Mountain Catchment Areas Act, 1970

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Republic of Namibia
Annotated Statutes

Mountain Catchment Areas Act, 1970

Act 63 of 1970

Published in [South African Government Gazette no. 2858](#) on 7 October 1970

Assented to on 23 September 1970

Commenced on 7 October 1970

[Up to date as at 10 September 2021]

[Amended by [Native Laws Amendment Proclamation, 1979 \(Proclamation AG3 of 1979\)](#) on 1 August 1978]

[APPLICABILITY TO SOUTH WEST AFRICA: Section 19 states “This Act shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.” This wording did not make amendments to the Act in South Africa automatically applicable to South West Africa, and there is no definition in the Act which would have the effect of making amendments automatically applicable to South West Africa. None of the South African amendments to the Act were made explicitly applicable to South West Africa. (The Act was amended in South Africa by section 86 of the Expropriation Act [63 of 1975](#) (RSA GG 4780), which was brought into force on 1 January 1977 by RSA Proc. 273/1976 (RSA GG 5363), and by the Mountain Catchment Areas Amendment Act [41 of 1976](#) (RSA GG 5068), which came into force on the date of publication: 7 April 1976.)]

[TRANSFER TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Forestry) Transfer Proclamation, AG 16 of 1977, dated 1 December 1977. There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence – the Mountain Catchment Areas Amendment Act [76 of 1981](#) (RSA GG 7800)– which was not applicable to South West Africa because it was not made expressly so applicable.]

To provide for the conservation, use, management and control of land situated in mountain catchment areas, and to provide for matters incidental thereto.

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

1. Definitions

In this Act, unless the context otherwise indicates -

“**advisory committee**” means any advisory committee established under section 6;

“**department**” means the Department of Forestry;

“**direction**” means any direction declared applicable with reference to land situated in a mountain catchment area under this Act;

“**fire-belt**” means any strip of land, whether under trees or not, which has been cleared of inflammable matter to prevent veld or forest fires or the spread thereof;

“**fire protection plan**” means any fire protection plan which is in operation under section 8;

“**local authority**” means any institution or body contemplated in section 84(1)(f) of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961);

[The Republic of South Africa Constitution Act 32 of 1961 was South Africa's constitution from 1961 to 1984. Although this Act had implications for South-West Africa, it does not appear to have been directly applicable as a law of South West Africa. It was repealed on 3 September 1984 by the Republic of South Africa Constitution Act, 1983, although some provisions relating to provincial government were retained under the new name of the Provincial Government Act 32 of 1961. Local authorities in Namibia are governed by the Local Authorities Act 23 of 1992.]

“**Minister**” means the Minister of Forestry;

“**mountain catchment area**” means any area declared under section 2 to be a mountain catchment area;

“**occupier**”, in relation to land, means any person who as owner, lessee or otherwise has the management, charge, control or use of any land, whether he resides on that land or not, and includes any person who has a right of cutting trees or wood on any land or of removing trees or wood from any land, and in relation to land under the control of a local authority, that local authority, but does not include any person who as a labour tenant, squatter or servant, as defined in section 49 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), or as “bywoner” or “deelsaaiër” is in occupation or has the use of any land;

[The definition of “occupier” is amended by AG 3 of 1979. The Development Trust and Land Act 18 of 1936 was repealed by the Communal Land Reform Act 5 of 2002.]

“**owner**”, in relation to any land, means -

- (a) the person in whose name the land is registered or, if such person is absent from the Republic or his whereabouts are unknown, his authorized representative in the Republic;
- (b) in the case of State land leased under a lease which contains an option in favour of the lessee to purchase the land so leased, the lessee who has exercised his option to purchase the land;
- (c) in the case of State land acquired by purchase but in respect of which title has not yet been given to the purchaser, such purchaser;
- (d) in the case of land under the control of a local authority, that local authority;
- (e) in the case of land vested in the South African Development Trust, established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), the said Development Trust;

[Paragraph (e) is amended by AG 3 of 1979. The Development Trust and Land Act 18 of 1936 was repealed by the Communal Land Reform Act 5 of 2002.]

“**prescribed**” means prescribed by regulation;

“**regulation**” means any regulation made under this Act;

“**Secretary**” means the Secretary for Forestry.

2. Declaration of mountain catchment areas

The Minister may by notice in the Gazette define any area and declare that area to be a mountain catchment area

and may from time to time by like notice alter the boundaries of any mountain catchment area or withdraw any notice whereby a mountain catchment area was established.

[If amendments made to the Act in South Africa prior to the date of transfer were in fact applicable to South West Africa, then Act 41 of 1976 inserts the following section after section 2:]

[2A. "Beacons]

[(1) The Secretary may, for the purposes of the definition of any area by the Minister under section 2, cause beacons to be erected on the land concerned at places designated by the Minister.]

[(2) A certificate purporting to be signed by the Secretary, in which it is stated that a beacon which has been erected under subsection (1) complies with the regulations and has been erected at a place designated by the Minister, shall on its mere production in any civil or criminal proceedings be prima facie proof that such beacon complies with the regulations and has been erected at a place so designated."]

3. Power of Minister to declare directions applicable with reference to land in mountain catchment areas

- (1) The Minister may, either by notice in the Gazette or by written notice to the owner or occupier of land which is situated within any mountain catchment area and which is mentioned in such notice, declare a direction to be applicable with reference to such land, relating to -
 - (a) the conservation, use, management and control of such land;
 - (b) the prevention of soil erosion, the protection and the treatment of the natural vegetation and the destruction of vegetation which is, in the opinion of the Minister, intruding vegetation; and
 - (c) any other matter which he considers necessary or expedient for the achievement of the objects of this Act in respect of such land.
- (2) A direction shall be binding on every owner and occupier of the land with reference to which it has been declared applicable, and their successors in title.
- (3) The Minister may withdraw, amend or, subject to such conditions as he may determine, suspend a direction.

4. Compensation payable in respect of patrimonial loss caused by complying with directions

- (1) If in terms of a direction limitations are placed on the purposes for which land may be used, the owner or occupier of such land shall be paid such compensation in respect of actual patrimonial loss suffered by him as may be determined in an agreement concluded between the Minister, in consultation with the Minister of Finance, and such owner or occupier.
- (2) In the absence of such agreement, the amount to be paid as compensation for actual patrimonial loss suffered by such owner or occupier, shall be determined by the court, and the provisions of sections 7, 9 and 10 of the Expropriation Act, 1965 (Act No. 55 of 1965), shall apply mutatis mutandis in the determination of this amount, and in the application of such provisions a reference to the Minister of Lands shall be construed as a reference to the Minister.

[The Expropriation Act 55 of 1965 was replaced in South Africa by the Expropriation Act 63 of 1975. If amendments made to the Act in South Africa prior to the date of transfer were in fact applicable to South West Africa, then Act 63 of 1975 substitutes subsection (2) as follows:]

["(2) In the absence of such agreement, the amount to be paid as compensation for actual patrimonial loss suffered by such owner or occupier, shall be determined by an appropriate court in terms of section 14 of the Expropriation Act, 1975, and the provisions of that section and section 15 of that Act shall apply mutatis mutandis in the determination of this amount, and in the application of such provisions a reference to the Minister of Agriculture shall be construed as a reference to the Minister."]

[Only section 4 of the Expropriation Act 63 of 1975 was ever directly applicable to South West Africa, and that section was repealed by the National Transport Corporation Act 21 of 1987 (SWA) (which was repealed in turn by the National Transport Services Holding Company Act 28 of 1998). Expropriation of land for public purposes is covered in general by the Expropriation Ordinance 13 of 1978 (SWA). However, section 4(2) of this Act appears to make the Expropriation Act 55 of 1965 or the Expropriation Act 63 of 1975 – depending on the interpretation of that subsection – applicable to South West Africa for certain limited purposes.]

- (3) No compensation shall be paid under the provisions of this section unless the person claiming compensation submits an application in the prescribed form to the Minister and furnishes in connection with such application the prescribed particulars.

5. Exemption of certain land situated in mountain catchment areas from certain taxes

- (1) Any land situated within any mountain catchment area upon which in terms of any direction no farming may be carried on, shall be exempt from all taxes imposed by a local authority on the value of immovable property.
- (2) The Minister of Finance shall have, in respect of land referred to in subsection (1), the same powers as those which he would have had under subsection 2(1) of the State Property (Immunity from Rating) Act, 1931 (Act No. 32 of 1931), if such property had been State property.

[The State Property (Immunity from Rating) Act 32 of 1931 was not applicable to South West Africa.]

6. Advisory committees

- (1) The Minister may in respect of any mountain catchment area establish an advisory committee to advise him in relation to matters referred to in sections 3, 4(1) and 8.
- (2) (a) Any committee established under subsection (1) shall consist of so many members as the Minister may determine in each case.
- (b) At least two-thirds of the members of such committee shall be appointed by the Minister, while not exceeding one-third of such members shall be elected in the prescribed manner from persons nominated by owners of land situated in the mountain catchment area in question and from persons who are in the opinion of the Minister affected by directions which are applicable with reference to such land.
- (c) The Minister shall appoint one of the members of an advisory committee as chairman.
- (3) Any member of any advisory committee shall be appointed for such period, not exceeding three years, as the Minister may determine at the time of his appointment.
- (4) Whenever any member of an advisory committee vacates his office before the expiration of the period for which he was appointed, the Minister may appoint a person to fill the vacancy for the unexpired portion of the period of office of such vacating member.
- (5) Any member of any advisory committee may at any time be removed from office by the Minister.
- (6) Any person whose period of office as a member of an advisory committee has expired, shall be eligible for re-appointment or re-election as member thereof.
- (7) Any member of an advisory committee shall vacate his office -
- (a) if he resigns;
- (b) if he was, without the permission of the chairman of the advisory committee concerned, absent from two consecutive meetings of such committee; or
- (c) if he is removed from office under subsection (5).

7. Establishment of fire protection committees

The Minister may, if he deems fit, by notice in the Gazette establish a fire protection committee in respect of any mountain catchment area, and may by like notice withdraw any notice whereby a fire protection committee was established.

8. Fire protection plans

- (1) The Secretary may, after consultation with the advisory committee established in respect of any mountain catchment area, declare a fire protection plan to be applicable with reference to land situated in such mountain catchment area.
- (2) Any fire protection plan shall define the land with reference to which it applies and shall state the scope and object thereof and shall contain provisions relating to -
 - (a) the regulation or prohibition of veld burning;
 - (b) the prevention, control and extinguishing of veld and forest fires;
 - (c) the functions, powers and duties of the fire protection committee established in respect of the mountain catchment area within which the land in question is situated, in relation to the execution of the fire protection plan; and
 - (d) the date of commencement of such plan:

Provided that a fire protection plan shall not contain provisions which are inconsistent with the provisions of the Forest Act, 1968 (Act No. 72 of 1968).

[The Forest Act 72 of 1968 has been replaced by the Forest Act 12 of 2001.]

- (3) The Secretary -
 - (a) shall, at least one month prior to the date specified under subsection (2), cause particulars of the fire protection plan to be published by notice in the Gazette;
 - (b) may, if he deems fit, at any time cause to be served on every owner or occupier of land with reference to which such fire protection plan is being or is to be applied and whose name and address are known to him, a copy of the fire protection plan.
- (4) Every owner and occupier of land with reference to which a fire protection plan has been applied under this section, and their successors in title, shall be bound by the provisions of such fire protection plan.

[The "o" in the phrase "provisions of such fire protection plan" should be "of".]

9. Secretary may amend fire protection plans

The Secretary may from time to time after consultation with the advisory committee concerned, and the fire protection committee concerned (if there is one), by notice in the Gazette amend the provisions of any fire protection plan: Provided that the Minister shall cause particulars of any such amendment to be published by notice in the Gazette at least one month prior to the date upon which such amendments are to come into operation.

10. Minister may render financial aid

The Minister may, in consultation with the Minister of Finance, from moneys appropriated by Parliament for the purpose, and subject to such conditions as he may determine, render financial aid by way of grants or otherwise -

- (a) to any fire protection committee; and
- (b) to the owner and occupier of land in respect of expenses incurred by them in compliance with any provision of any fire protection plan or any direction.

11. Right of entry on or way over land

- (1) Any duly authorized officer of any department of State, any member of any advisory committee or fire protection committee or any person authorized by any fire protection committee, may enter upon any land situated in any mountain catchment area and may take with him such equipment and number of assistants as are required for the performance of any act on such land which is ordered in terms of any direction or any provision of any fire protection plan or which is authorized by the Minister under section 13.
- (2) Any officer, member or person referred to in subsection (1), shall at all reasonable times have right of way over any land for the purpose of -
 - (a) ascertaining the desirability of declaring that land to be a mountain catchment area;
 - (b) ascertaining the desirability of the construction upon that land of fire-belts or of declaring directions applicable with reference to that land;
 - (c) inspecting or maintaining any works constructed or under construction upon that land for the purpose of preventing veld or forest fires; or
 - (d) ascertaining whether the provisions of this Act, or any direction or provision of any fire protection plan which is applicable to or with reference to such land are being properly carried out or complied with.

[If amendments made to the Act in South Africa prior to the date of transfer were in fact applicable to South West Africa, then Act 41 of 1976 inserts subsection (3) as follows:]

["(3) Any person duly authorized thereto by the Secretary may enter upon any land at all reasonable times, subject to prior notification of the landowner, occupier or manager concerned, and shall for that purpose have right of way over any other land, with such equipment and number of assistants as are required for the performance on that land of any act connected with -]

[(a) the exercise by the Minister of any power conferred on him in terms of section 2 or 2A;]

[(b) the exercise by the Secretary of any power conferred on him in terms of section 2A; and]

[(c) the construction, erection, marking, maintenance and repair of any beacon referred to in section 2A(1)."]

12. Minister may perform certain acts

The Minister may, from moneys appropriated by Parliament for the purpose, perform or cause to be performed on any land situated in a mountain catchment area any act which he deems necessary in order to achieve any object of this Act, including any act which has been ordered in terms of any direction or any provision of any fire protection plan, and shall for that purpose also have the powers conferred by section 11 on persons mentioned in that section.

13. Regulations

- (1) The Minister may make regulations relating to
 - (a) the constitution of any fire protection committee;
 - (b) the calling of and the procedure and quorum at meetings of any advisory committee or fire protection committee;
 - (c) the allowances payable to any member of any advisory committee or fire protection committee;

[If amendments made to the Act in South Africa prior to the date of transfer were in fact applicable to South West Africa, then Act 41 of 1976 inserts paragraph (cA) as follows:]

["(cA) the form and dimensions of beacons referred to in section 2A(1), and the manner of their construction,

erection, marking for identification, maintenance and repair;”]

- (d) the conditions subject to which and the rates at which financial aid by way of grants or otherwise shall be rendered under this Act; and
 - (e) all matters which he deems it necessary or expedient to prescribe in order to achieve the objects of this Act.
- (2) Any regulation relating to State revenue or expenses shall be made in consultation with the Minister of Finance.

14. Penalties

Any person who -

- (a) contravenes or fails to comply with any provision of this Act or any regulation;
- (b) refuses or fails to comply with any direction;
- (c) obstructs or hinders any person referred to in section 11 in the execution of his duties or the performance of his functions;
- (d) damages, or without the permission of the Secretary alters, any fire-belt or any other works constructed under this Act; or
- (e) contravenes or fails to comply with any provision of a fire protection plan,

[If amendments made to the Act in South Africa prior to the date of transfer were in fact applicable to South West Africa, then Act 41 of 1976 deletes the word “or” at the end of paragraph (d) and inserts paragraph (f) as follows:]

[“(f) alters, moves, disturbs or wilfully damages or destroys any beacon erected under section 2A(1),”]

shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

15. Service of notices

Service of any notice under this Act may be effected—

- (a) by delivering a copy thereof personally to the person upon whom it is to be served; or
- (b) by leaving such copy at the usual or last known place of residence or business of such person; or
- (c) by sending such copy by registered post to the usual or last known place of residence or business of such person.

16. Jurisdiction of magistrate’s court

Notwithstanding anything to the contrary in any other law contained, a magistrate’s court shall have jurisdiction to impose any penalty prescribed by this Act.

17. Delegation of powers

The Minister or the Secretary, as the case may be, may delegate to any officer in any department of State all or any of the powers conferred upon him by this Act, other than the powers referred to in sections 2 and 13.

[If amendments made to the Act in South Africa prior to the date of transfer were in fact applicable to South West Africa, then Act 41 of 1976 substitutes section 17 as follows:]

[“17. The Minister or the Secretary, as the case may be, may delegate to any officer in any department of State all or any of the powers conferred upon him by this Act, other than the powers referred to in sections 2, 2A and 13.”]

18. Limitation on liability of State, Minister, etc.

The State, the Minister, any officer in any department of State or any member of any advisory committee or fire protection committee or any person authorized under this Act, shall not be liable in respect of anything done in good faith under the provisions of this Act.

19. Application of Act in South-West Africa

This Act shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel.

20. Transitional provisions

- (1) As from the commencement of this Act, no direction shall in terms of the Soil Conservation Act, 1969 (Act [No. 76 of 1969](#)), be declared applicable with reference to land situated in a mountain catchment area, and as from the said commencement land situated in a mountain catchment area shall not be declared to be a fire protection area in terms of the last-mentioned Act.
- (2) Any direction or provision of any fire protection scheme which has prior to the commencement of this Act been applied under the Soil Conservation Act, 1969, with reference to land in respect of which any mountain catchment area is declared under the provisions of this Act, shall remain in force until withdrawn by the Minister.

21. Short title

This Act shall be called the Mountain Catchment Areas Act, 1970.