

Republic of Namibia
Annotated Statutes

Roads Ordinance 17 of 1972

(OG 3268)
brought into force on 1 January 1973 by Proc. 83/1972 (OG 3292);
extended to Eastern Caprivi, Owambo, and Kavango by section 2 of the Application of laws relating to Roads in Eastern Caprivi, Owambo, Kavango and Damaraland Act 5 of 1982 (OG 4618), with effect from 1 July 1980 (section 5 of Act 5 of 1982)

Sections 2 and 3 of Act 5 of 1982 provide as follows:

"**Application of Ordinance 17 of 1972 in Eastern Caprivi, Owambo and Kavango**

2. (1) The Advertising on Roads and Ribbon Development Ordinance, 1960 (Ordinance 30 of 1960), as well as all amendments thereof shall apply also in Eastern Caprivi as defined in the Schedule to Government Notice 2429 of 1972.

(2) All amendments of the Advertising on Roads and Ribbon Development Ordinance, 1960 (Ordinance 30 of 1960), shall, notwithstanding anything to the contrary contained in any law, apply also in -

(a) Owambo as defined in Schedule C to Government Notice 2428 of 1972 as amended by Government Notice 165 of 1977;

(b) Kavango, consisting of Area I defined in Schedule D to Government Notice 2428 of 1972.

in so far as they are not already applicable in the said Owambo and Kavango.

Application of Ordinance 6 of 1980 in Damaraland

3. The Roads Amendment Ordinance, 1980 (Ordinance 6 of 1980), shall apply also in Damaraland as defined in Schedule B to Government Notice 2428 of 1972."

The Walvis Bay and Off-shore Islands Act 1 of 1994 (GG 805), brought into force on 1 March 1994 by Proc. 6/1994 (GG 806), contains a transitional provision regarding the applicability of the Ordinance in Walvis Bay, in Part IV of the Schedule:

"*Roads Ordinance, 1972 (Ordinance 17 of 1972)*

3. Any road in Walvis Bay which, immediately prior to the effective date **[the date of the reintegration of Walvis Bay into Namibia: 1 March 1994]**, was a proclaimed public road under section 3 of the Roads Ordinance, 1976 (Ordinance 19 of 1976) of the Province of the Cape of Good Hope of South Africa shall, from the said date, be deemed to be a proclaimed road under section 22 of the Roads Ordinance, 1972 (Ordinance 17 of 1972) of Namibia."

as amended by

Roads Amendment Ordinance 16 of 1973 (OG 3340)
came into force on date of publication: 26 July 1973

Roads Further Amendment Ordinance 22 of 1973 (OG 3363)
came into force on date of publication: 28 November 1973

Roads Amendment Ordinance 10 of 1974 (OG 3411)
came into force on date of publication: 16 July 1974

Roads Amendment Ordinance 18 of 1975 (OG 3496)
came into force on date of publication: 16 October 1975

Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898)
deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979)
Roads Amendment Ordinance 6 of 1980 (OG 4136)
came into force on date of publication: 2 May 1980;
applied to Damaraland by section 3 of the Application of laws relating to Roads in Eastern Caprivi, Owambo, Kavango and Damaraland Act 5 of 1982 (OG 4618), quoted above, with effect from 1 July 1980 (section 5 of Act 5 of 1982)
Roads Amendment Proclamation, AG 21 of 1984 (OG 4926)
came into force on date of publication: 11 July 1984
Roads Amendment Act 13 of 1986 (OG 5235)
came into force on date of publication: 21 July 1986
Roads Amendment Act 3 of 1993 (GG 620)
deemed to have come into force on 1 July 1992 (section 2 of Act 3 of 1993)

This Act will be repealed by the Roads Act 4 of 2025 (GG 8697), which has not yet been brought into force.

ORDINANCE

To consolidate and amend the laws relating to roads and incidental matters.

(Assented to 22 June 1972)
(Afrikaans text signed by the Administrator)

[The statements in italics above appear above the heading "ORDINANCE" and the long title in the *Official Gazette* publishing this Act, but they have been moved to the usual position here for consistency.]

CLASSIFICATION OF ORDINANCE

INTRODUCTORY

Numbers of sections

1. Definitions
1A. Application of Ordinance within urban areas
[section 1A inserted by Ord. 22 of 1973]

CHAPTER I

PROCLAIMED ROADS

2. Division of proclaimed roads
3. Width of proclaimed roads
4. Control and supervision over proclaimed roads and other roads

CHAPTER II

ROADS BOARDS

5. Establishment and constitution of roads boards

6. Qualifications and disqualifications of members
7. Vacation of office by members
8. Suspension and dismissal of members
9. Term of office of members
10. Vacancies
11. Meetings of boards
12. Remuneration, allowances and fees payable to members
13. Duties and powers of boards
14. Interested member shall not take part in proceedings of board
15. Concluding of contracts with members permissible

CHAPTER III

PROCLAIMING, CLOSING, DEVIATION AND CLASSIFICATION OF PROCLAIMED ROADS

16. Applications and requests relating to district and farm roads to be received and dealt with by board
17. Requests relating to district and farm roads by board
[heading of section 17 substituted by Ord. 18 of 1975]
18. Consideration of objections to application or request
[heading of section 18 substituted by Ord. 18 of 1975]
19. Commission of enquiry into, and decision in regard to application or request, by Executive Committee
[heading of section 19 substituted by Ord. 18 of 1975]
20. Proposals by the Director of Roads relating to proclaimed roads
[heading of section 20 substituted by Ord. 18 of 1975]
21. Applications relating to district and farm roads within the area of a local authority
[heading of section 21 substituted by Ord. 18 of 1975]
22. Proclaiming and declaration of proclaimed roads and the closing, deviation and reopening thereof by Executive Committee
[heading of section 22 substituted by Ord. 18 of 1975]
23. Classification of proclaimed roads
24. Freeways
24A. Intersection point reserves
[section 24A inserted by Ord. 10 of 1974]

CHAPTER IV

URBAN TRUNK ROADS AND MAIN ROADS

25. Powers of Executive Committee in relation to construction and maintenance of urban trunk and main roads
26. Subsidies for the maintenance of urban trunk and main roads
27. Control of traffic on urban trunk and main roads

CHAPTER V

CONSTRUCTION AND MAINTENANCE OF PROCLAIMED ROADS AND RELATED MATTERS

28. General powers of Executive Committee
29. Control of traffic on proclaimed roads at temporary closing or deviation thereof
30. Obtaining materials
31. Camping sites, water, firewood and cutting of trees and brushwood
32. Compensation for damage caused by contractors

33. Improvement and repair of farm roads
34. Deviation of farm roads after approval of applications by interested persons
35. Establishment and maintenance of pont services
36. Rails, tracks, bridges, wires, cables, subways or culverts across or under proclaimed roads
37. Infringements and obstructions on and interference with proclaimed roads

CHAPTER VI

FENCES AND GATES

38. Distance from proclaimed roads at which fences are erected
39. Fencing off of freeways
39A. Fencing off of intersection point reserves
[section 39A inserted by Ord. 10 of 1974]
40. Fencing off of trunk, main and district roads
41. Conversion and improvement of fences along trunk, main and district roads
42. Maintenance and repair of fences along proclaimed roads
43. Motor grid gates and swing gates in fences crossing proclaimed roads
44. Liability for damages by reason of the erection of motor grid gates
45. Fences with swing gates across proclaimed roads
46. Erection and maintenance of swing gates across proclaimed roads
47. Removal of motor grid gates and swing gates
48. Closing of gates across proclaimed roads
49. Shifting of gates and fences
50. Executive Committee may direct removal of gates, fences and other obstructions

CHAPTER VII

TREKKING WITH ANIMALS

51. Trekking with stock along unfenced proclaimed roads and unproclaimed roads
52. Limit on period of stay
53. Grazing and water rights for stock on trek
54. Trespassing on public grazing areas

CHAPTER VIII

ROAD ROUTE MARKERS

55. Road route markers

CHAPTER IX

FURROWS AND WATER COURSES

56. Water courses over or under proclaimed roads
57. Raising of water level
58. Draining of proclaimed roads
59. Construction and maintenance of bridges and crossings

CHAPTER X

GENERAL AND SUPPLEMENTARY PROVISIONS

60. Entering upon or taking possession of land to exercise powers or duties

61. Authorised persons may exercise powers
62. Undermining of proclaimed roads
63. Minor roads and private roads shall turn off from trunk and main roads at approved places only
64. Closing or deviation of minor roads
[heading of section 64 amended by Ord. 10 of 1974]
65. Compensation for encroachment on land
66. Regulations
67. Prohibitions
68. Offences and penalties
69. Existing roads
70. Repeal of laws
71. Short title and date of commencement

SCHEDULE

LAWS REPEALED

BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa as follows:-

[Ord. 10 of 1974 amends the Ordinance throughout to substitute "Director of Roads" for "Chief Roads Engineer".]

INTRODUCTORY

Definitions

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

"Administration" means the Administration of the Territory of South West Africa;

"advertisement" means any visible presentation of a word, name, letter, figure or object or of an abbreviation of a word or name or of any sign or symbol; or any light which is not intended solely for illumination or as a warning against any danger;

"bridge" includes a culvert and a concrete slab;

"centre line" means -

(a) in respect of a proclaimed road with one roadway, the centre line of such roadway;

(b) in respect of a proclaimed road with two roadways the median of the centre lines of such roadways;

"Director of Roads" means the officer appointed as head of the Roads Branch;

"construct" includes the surveying or beaconing-off of land, the clearing of tree stumps and all other construction work in connection with roads or in connection with bridges, ponts and ferries, drifts, concrete slabs in the course of such road or proposed road and all approaches, cuttings, embankments, subways, culverts, ditches, drains, dams, kerbs, fences, parapets and partitions, motor grid gates, swing gates as well as any alteration, deviation or improvement of such road, and any work or thing forming part of, or being connected with, road construction and "construction" has a corresponding meaning;

"district" means the area for which a road board has been established in terms of section 5 and which constitutes the area of jurisdiction of such board;

"district road" means a proclaimed road declared to be a district road in terms of the provisions of section 23;

"Executive Committee" means the Administrator-in-Executive Committee as referred to in section 6 of the South West Africa Constitution Act, 1968 (Act 39 of 1968);

[The South-West Africa Constitution Act 39 of 1968 was repealed by Article 147 of the Namibian Constitution.]

"farm" means a piece of land registered as a farm, portion of a farm or lot in the Deeds Office of the Territory, or government land, and for the purposes of Chapter VI it includes any area set aside as a nature reserve in terms of section 16 of the Native Administration Proclamation 1922 (Proclamation 11 of 1922), as amended, and areas which are areas for the different native nations in South West Africa in terms of section 2 of the Development of Self-government for Native Nations in South West Africa Act, 1968 (Act 54 of 1968), as amended;

"farm road" means a proclaimed road declared to be a farm road in terms of the provisions of section 23;

"freeway" means a trunk road declared to be a freeway in terms of section 24;

"game park" means any area declared to be a game park under section 37 or 38 of the Nature Conservation Ordinance, 1967 (Ordinance 31 of 1967);

"interchange" means a place constructed by the Executive Committee as a place where users of a freeway may enter upon or leave such freeway and which is indicated as such by such notices as may be deemed necessary or desirable by the Executive Committee;

"intersection point" means any point where two or more proclaimed roads intersect each other or where one or more proclaimed roads join another proclaimed road or roads;

[definition of "intersection point" inserted by Ord. 10 of 1974]

"intersection point reserve" means any area declared to be an intersection point reserve in terms of the provisions of section 24A;

[definition of "intersection point reserve" inserted by Ord. 10 of 1974]

"local authority" means a municipality or a village management board or the Peri-Urban Development Board, established in terms of section 2 of the Peri-Urban Development Board Ordinance, 1970 (Ordinance 19 of 1970);

[The definition of "local authority" is substituted by Ord. 10 of 1974. The Local Authorities Act 23 of 1992 repealed the Peri-Urban Development Board Ordinance 19 of 1970.]

"magistrate" means the magistrate of a magisterial district and includes any other officer lawfully acting as such;

"main road" means a proclaimed road declared to be a main road in terms of the provisions of section 23;

"maintenance" includes the repair of and care for a road and each construction in the course thereof or which forms part thereof as well as any work or thing being connected with such repair or care and "maintain" has a corresponding meaning;

"minor road" means a road -

(a) which is not a proclaimed road; and

(b) which links two or more proclaimed roads with each other or which crosses the boundary or boundaries of two or more farms; and

(c) to which the public has rightful access;

"occupier'' means, in respect of land, a person who resides on such land with the permission of the owner or lessee thereof and who controls or apparently controls such land;

"Official Gazette" means the Official Gazette of the Territory;

"owner" means -

(a) in respect of land the title deeds of which have been registered in the Deeds Office of the Territory, the registered owner thereof;

(b) in respect of government land any lessee of such government land, whether or not the contract of lease by virtue of which he is in possession of the land has been registered in the Deeds Office of the Territory;

"private road" means a road to which the public has no rightful access and which is indicated to be a private road by means of clearly-shown notice boards erected at all entrances to such road;

"proclaimed road" means any road proclaimed, or declared to be a proclaimed road in terms of the provisions of section 22;

[proviso to definition of "proclaimed road" deleted by Ord. 22 of 1973]

"public grazing area" means a strip of land not more than one hundred metres wide, measured at right angles with the centre line, on each side of the roadway of an unfenced proclaimed road: Provided that -

(a) any fence which is nearer to the centre line of such proclaimed road than one hundred metres shall be deemed to be the boundary of such public grazing area;

(b) no garden or other land which is usually cultivated shall be included in such public grazing area;

"regulations" means the regulations made and in force under this Ordinance;

"road" means any road and any bridge or pont or ferry (excluding private bridges or ponts or ferries) or drift or concrete slab in the course of such road and any access to and exit from such road and any approach, cutting, embankment, subway, culvert, ditch, drain, dam, kerb, fence, parapet, partition, motor grid gate, swing gate and any other work or thing forming part of, or being connected with, such road;

"roads board" and ''board" mean a roads board established in terms of section 5;

"Roads Branch" means that Branch of the Administration charged with the execution of the provisions of this Ordinance and the regulations made and in force thereunder;

"road reserve" means the full width of a proclaimed road, including the roadside and the roadway;

"roadside" means that portion of a proclaimed road not forming the roadway;

"roadway" means, in respect of a proclaimed road, that portion of such proclaimed road improved, constructed or intended for vehicular traffic and includes those portions generally known as shoulders;

"service road" means a proclaimed road which links properties, situated along a freeway with an interchange or interchanges, which thereby provides an alternative route to such freeway and which has been approved by the Executive Committee to be a service road;

"Territory" means the Territory of South West Africa;

"this Ordinance" includes the regulations made and in force thereunder;

"tourist recreation area" means any area declared a tourist recreation area under section 48 of the Accommodation Establishments and Tourism Ordinance, 1973 (Ordinance 20 of 1973);

[definition of "tourist recreation area" inserted by Ord. 10 of 1974]

"trunk road" means a proclaimed road declared to be a trunk road in terms of the provisions of section 23;

"urban area" means that portion of the area of a local authority which has by actual survey been subdivided into erven of less than five hectares or which is surrounded by surveyed erven of less than five hectares and includes any public road abutting thereon;

"urban main road" means any proclaimed road within an urban area declared to be a main road in terms of the provisions of sections 23;

"urban trunk road" means any proclaimed road within an urban area declared to be a trunk road in terms of the provisions of section 23;

"vehicle" means a device designed or adapted principally to travel on wheels or crawler tracks but does not include any such device moving exclusively on rails.

Application of Ordinance within urban areas

1A. Only the provisions of sections 1, 3(2), 4(1), 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 36, 37, 39, 56, 57, 58, 59, 60, 61, 62, 65 and 68 of this Ordinance shall apply within an urban area: Provided that the provisions of sections 29, 36, 37, 56, 57 and 62 shall within an urban area apply only to urban trunk and main roads maintained by the Executive Committee in terms of section 25.

[section 1A inserted by Ord. 22 of 1973, substituted by Ord. 10 of 1974 and amended by Ord. 18 of 1975]

CHAPTER I

PROCLAIMED ROADS

Division of proclaimed roads

2. For the purposes of this Ordinance proclaimed roads shall be divided into the following classes:

(a) trunk roads;

(b) main roads;

(c) district roads;

(d) farm roads.

Width of proclaimed roads

3. (1) (a) The road reserve of a trunk, main or district road shall, subject to the provisions of subsections (2) and (4), be sixty metres wide.

(b) The Executive Committee shall determine where the boundaries of the road reserve of a trunk, main or district road are situated: Provided that no such boundary shall be closer to the centre line of such trunk, main or district road than fifteen metres measured at right angles with the centre line thereof.

(c) Whenever the Executive Committee has not, in terms of paragraph (b), determined where the boundaries of the road reserve of a trunk, main or district road are situated, the road reserve boundary on each side of such trunk, main or district road shall be situated thirty metres from, and measured at right angles with, the centre line of such trunk, main or district road.

(2) The provisions of subsection (1) shall not apply in respect of urban trunk and main roads, the width of which may be determined or increased by the Executive Committee after consultation with the local authority concerned.

(3) The road reserve of a farm road shall, subject to the provisions of subsection (4), be thirty metres wide and the road reserve boundary on each side of such farm road shall be situated fifteen metres from, and measured at right angles with, the centre line of such farm road.

(4) (a) The Executive Committee may at any time increase the width of the road reserve of a proclaimed road or any part thereof.

(aA) The Executive Committee may at any time decrease the width of the road reserve of a proclaimed trunk, main or district road or any part thereof: Provided that the width of such road reserve shall not be less than thirty metres.

(b) Any such increase or decrease of the width of the road reserve of a proclaimed road shall be made known by notice in the *Official Gazette.*

[subsection (4) substituted by Ord. 6 of 1980]

Control and supervision over proclaimed roads and other roads

4. (1) All roads in game parks and tourist recreation areas approved by the Executive Committee from time to time and all trunk, main and district roads within the

Territory (excluding urban trunk and main roads maintained by a local authority in terms of section 25) shall be under the control and supervision of the Executive Committee.

[subsection (1) substituted by Ord. 10 of 1974]

(2) Any person using a farm, private or minor road, does so at his own responsibility.

(3) The Executive Committee, an officer or employee of the Administration and the owner, lessee or occupier of a farm, which is crossed by a farm, private or minor road, shall in no way be liable, for any loss through possible damage or injury to any person, vehicle or stock used on such farm, private or minor road, by reason of the construction, maintenance or repair of such road.

CHAPTER II

ROADS BOARDS

Establishment and constitution of roads boards

5. (1) The Executive Committee may, from time to time by proclamation in the *Official Gazette* -

(a) establish a roads board for any area defined in such proclamation, which is situated outside the area of jurisdiction of a local authority;

(b) Increase, alter or diminish any area defined in terms of paragraph (a);

(c) dissolve or abolish any roads board established in terms of paragraph (a).

(2) (a) An officer in the Department of Transport appointed thereto by the Cabinet, shall be the chairman of such a board.

(b) If the chairman is for some or other reason unable to act as such during any period, the Cabinet may appoint another officer in the Department of Transport to act as chairman during that period.

(c) An officer appointed under paragraph (b), shall, during the period that he acts as chairman, have all the powers and perform all the duties of the chairman.

[subsection (2) substituted by Act 13 of 1986]

(3) In addition to the chairmain, the Executive Committee shall, in compliance with the provisions of section 6, appoint four other persons as members of the board.

[The word "chairman" is misspelt in the *Official Gazette*, as reproduced above.]

(4) (a) The Executive Committee may further also appoint as many other persons as he may deem necessary or expedient as *ex officio* members of such a board.

(b) An *ex officio* member of a board shall hold his office during the pleasure of the Executive Committee and shall have the right to take part in the proceedings of the board, but shall not have the right to vote.

Qualifications and disqualifications of members

6. No person may be appointed or act as a member or *ex officio* member of a board if -

(a) he has at any time been convicted of any offence for which he has been sentenced to imprisonment without the option of a fine, unless he has received a free pardon or unless the term of imprisonment expired at least three years before the date of his appointment; or

(b) he is of unsound mind or is under curatorship; or

(c) his estate is held in liquidation or in trust for his creditors; or

(d) he is an unrehabilitated insolvent; or

(e)

[paragraph (e) deleted by AG 21 of 1984]

(f) he is under the age of 21 years.

Vacation of office by members

7. A member or *ex officio* member of a board shall vacate his office -

(a) if he ceases to possess the qualifications mentioned in section 6 or becomes subject to the disqualifications mentioned therein; or

(b) if the Executive Committee relieves him of his office in terms of section 8; or

(c) if he is convicted of a contravention of section 14; or

(d) in the case of an *ex officio* member, if the Executive Committee cancels his appointment.

Suspension and dismissal of members

8. The Executive Committee may suspend a member from his office or relieve him of his office for incapacity, misconduct or any other valid reason and may cancel the appointment of an *ex officio* member at any time.

Term of office of members

9. Unless otherwise provided in this Ordinance or determined by the Executive Committee every member of a board shall hold office for a period of three years from the date of his appointment.

Vacancies

10. If any member or *ex officio* member of a board ceases to be a member of the board during his term of office the Executive Committee may appoint some other person as his successor and such person shall subject to the provisions of this Ordinance hold office for the unexpired period of the term of office of the member whose successor he is.

Meetings of boards

11. (1) The first meeting of a board shall be held at a time and place to be fixed by the Executive Committee and every meeting thereafter shall be held at a time and place fixed by the board or, if authorised thereto by the board, by the chairman.

[proviso to subsection (1) deleted by Ord. 10 of 1974]

(2) A quorum for a meeting of a board shall be three members having the right to vote, of whom one shall be the chairman.

(3) Every member of a board having the right to vote, who is present at a meeting of the board shall have one vote: Provided that in the case of equality of votes the chairman shall have a casting vote in addition to his ordinary vote.

(4) The chairman of a board may in his discretion allow any person to attend the proceedings of the board.

(5) The chairman of a board may in his discretion allow any person having an interest in any matter under consideration by the board to state his interest in that matter to the board whether personally or represented by a duly authorised representative: Provided that where a person is allowed to state his interest in a matter under consideration by the board all other persons who have an interest in that matter shall be offered equal opportunities to state their interests in that matter to the board, as well.

[subsection (5) substituted by Ord. 18 of 1975]

Remuneration, allowances and fees payable to members

12. To these members of a board, including *ex officio* members thereof, who are not officers in the public service or officers or employees in the service of the Administration shall be paid such remuneration, allowances and fees as may be determined by the Executive Committee from time to time.

Duties and powers of boards

13. A board -

(a) shall have such duties and powers as is laid down by this Ordinance;

(b) shall give assistance and advice to the Executive Committee on all matters relating to proclaimed roads within its district;

(c) shall obtain and supply to the Executive Committee all information which the Executive Committee may require from it in connection with the application of this Ordinance;

(d) shall, in general, perform all those duties which the Executive Committee determines from time to time.

Interested member shall not take part in proceedings of board

14. (1) No member of a board shall vote in connection with or in his capacity as member or *ex officio* member of the board be present at or take part in a discussion by the board of any matter in which he, or his spouse or his partner or his nearest blood relations has any direct or indirect interest.

(2) A member or *ex officio* member of a board who wilfully contravenes or fails to comply with the provisions of this section shall be guilty of an offence and on conviction he shall vacate his office *ipso facto.*

Concluding of contracts with members permissible

15. (1) No member of a board shall, by reason of his office, be prohibited from contracting with the Administration or the board either as seller, purchaser or otherwise, and no contract entered into by or on behalf of the board or the Administration in which a member of the board is in any way directly or indirectly interested, shall be void by reason thereof.

(2) Where any member of a board is interested otherwise than as a shareholder in a limited liability company in any contract with the board or the Administration or any sub-contract or subsequent contract arising from such main contract, which involves the expenditure or receipt by the board or the Administration of two hundred rand or more, such member shall immediately on becoming acquainted with such fact, disclose such fact in writing to the board and to the Executive Committee and such disclosure shall be entered in the minutes of the next succeeding meeting of the board.

(3) A member of a board, who contravenes the provisions of subsection (2) or fails to comply therewith shall be guilty of an offence and shall on conviction be liable to a fine not exceeding four hundred rand or in default of payment of such fine to imprisonment for a period not exceeding one year.

CHAPTER III

PROCLAIMING, CLOSING, DEVIATION AND CLASSIFICATION OF PROCLAIMED ROADS

Applications and requests relating to district and farm roads to be received and dealt with by board

16. (1) Whenever -

(a) at least twelve adult persons, who are the owners, lessees or occupiers of farms in a district, or a district and one or more adjoining districts, desire -

(i) a district or farm road to be proclaimed on land where no road previously existed;

(ii) a road to be declared a proclaimed district or farm road;

(iii) an existing district or farm road to be closed or deviated;

(iv) a closed road to be reopened and declared a proclaimed district or farm road;

(v) the classification of a district or farm road to be changed; or

(b) the owner, lessee or occupier of a farm desires an existing district or farm road to be closed or deviated where it crosses such farm; or

(c) the owner, lessee or occupier of a farm which does not have a farm road or minor road providing access to a proclaimed road, desires a farm road., which will provide such access, to be proclaimed,

he or they may apply therefor to the chairman of the board (hereinafter referred to as the chairman) in the district of which that road, or that portion of the road to which the application refers, is situated.

(2) Any application in terms of subsection (1) shall be done in writing on a form approved by the Executive Committee which will be provided by the Roads Branch, and such application shall be accompanied by -

(a) an amount determined by the Executive Committee from time to time in respect of the cost of the publication of the notice referred to in subsection (3); and

(b) a sketch of the area concerned which will be provided by the Roads Branch, and on which the road or portion thereof to which the application refers and other proclaimed roads are shown.

(3) Whenever the chairman receives an application in terms of subsection (1), it shall be made known by notice published in the *Official Gazette* and in at least one other newspaper circulating in the Territory.

(4) The chairman shall further make known the application by forwarding a copy of the notice referred to in subsection (3) to the owner, lessee or occupier of each farm which is or will be crossed by the road to which such application refers and whose address is known to him and, if such road terminates on the boundary of any farm, to the owner, lessee or occupier of the farm immediately adjacent to such road, and whose address is known to him.

(5) Such notice shall command every person having any objection to the application to lodge his objection in writing, with the grounds upon which it is based clearly and specifically therein stated, with the officer or person mentioned in such notice within a period of thirty days of the date mentioned in such notice.

(6) (a) Such notice shall also state the number of the sketch referred to in subsection (2)(b).

(b) A copy of such notice and sketch shall lie for inspection at the office of the Director of Roads and the local Roads Superintendent during normal office hours for the full period of thirty days referred to in subsection (5).

(7) Before the first meeting of the board to be held after the expiry of the period of thirty days referred to in subsection (5) -

(a) the Roads Branch shall submit to the chairman the sketch referred to in subsection (2)(b) (hereinafter referred to as the sketch-map), on which minor and private roads in the area in question shall then also be shown;

(b) the chairman may, if he considers it necessary, himself conduct an investigation in regard to the application and report in writing to the board thereon, or he may require another member of the board or the Roads Branch to conduct an investigation in regard to the application and report in writing to the board thereon:

Provided that failure to submit the said sketch-map or to conduct the said investigation, or to submit the said report to the board before the said first meeting, shall not invalidate any proceedings of the board.

[section 16 substituted by Ord. 18 of 1975]

Requests relating to district and farm roads by board

17. (1) Whenever a board itself requests that -

(i) a district or farm road be proclaimed on land where no road previously existed;

(ii) a road be declared a proclaimed district or farm road;

(iii) an existing district or farm road be closed or deviated;

(iv) a closed road be reopened and declared a proclaimed district or farm road;

(v) the classification of a district or farm road be changed,

the chairman shall obtain a sketch of the area concerned which will be provided by the Roads Branch, and on which the road or portion thereof to which the request refers and other proclaimed roads, are shown.

(2) Thereafter the request shall be made known by notice published in the *Official Gazette* and in at least one other newspaper circulating in the Territory.

(3) The provisions of section 16 (4), (5), (6) and (7) shall *mutatis mutandis* apply in regard to such request by the board.

[section 17 amended by Ord. 10 of 1974 and substituted by Ord. 18 of 1975]

Consideration of objections to application or request

18. (1) At the first meeting of the board held after the expiry of the period of thirty days referred to in section 16(5), the chairman shall submit to the board the application or request together with all reports, comments and recommendations and sketch-maps which refer thereto and all objections lodged against it, for consideration thereof and the making of recommendations in connection therewith: Provided that failure to submit all reports, comments, recommendations or the sketch-map referred to in this subsection at the said first meeting of the board, shall not invalidate any proceedings of the board.

(2) After the board has made its recommendations, the chairman shall forward all the papers submitted to the board in terms of subsection (1), including all objections lodged against the application or request, together with -

(a) the board's comments and recommendations and its reasons therefor;

(b) an indication whether the board favours the appointment of a commission of enquiry in terms of section 19 or not; and

(c) in any case, the names of four persons who are being proposed as possible members thereof if a commission of enquiry is appointed in terms of section 19,

to the Director of Roads who shall submit it to the Executive Committee together with his comments and recommendations thereon.

(3) The board may only propose a person who -

(a) is a member of the board of an adjoining district; and

(b) has no interest in the granting or the refusal of the application or request in question,

as a member of a commission of enquiry referred to in section 19.

[section 18 substituted by Ord. 18 of 1975]

Commission of enquiry into, and decision in regard to application or request, by Executive Committee

19. (1) Whenever an application or request is submitted to it in terms of section 18(2) the Executive Committee may -

(a) decide which road arrangement is to be made in terms of the application or request: Provided that the Executive Committee may in its discretion impose any conditions when it so decides; or

(b) appoint a commission of enquiry into the application or request.

(2) A commission of enquiry appointed in terms of subsection (1) shall consist of three members, with a fourth person to act as substitute for any member who might be unable to attend the meetings and enquiries of the commission.

(3) The members of such a commission of enquiry may be persons proposed in terms of section 18(2) or, subject to the provisions of section 18(3)(b), any other persons appointed thereto by the Executive Committee.

(4) Such a commission of enquiry -

(a) shall investigate the application or request and, if deemed necessary by the Executive Committee, any other road or possible road which the Executive Committee considers to be relevant to such application or request or which such commission may, in the course of its investigation, find to be so relevant;

(b) may visit the localities and hear the evidence which it deems necessary for the purposes of its enquiry; and

(c) shall as soon as possible after completion of its enquiry furnish the Director of Roads with a written report thereon.

(5) To those members of such a commission who are not officers in the public service or officers or employees in the service of the Administration, shall be paid such remuneration, allowances and fees as may be determined by the Executive Committee from time to time.

(6) The cost of such an enquiry shall be defrayed by the Administration out of the Territory's revenue: Provided that the Executive Committee may order that the person or persons concerned shall reimburse the Administration with such costs or such portion thereof as the Executive Committee may in its discretion determine if the application is ultimately rejected.

(7) The Director of Roads shall submit any report which has been furnished to him in terms of subsection (4)(c), together with all other documents and papers which refer to the application or request dealt with in the report, to the Executive Committee, which may thereupon decide which road arrangement shall be made in terms of the relevant application or

request: Provided that the Executive Committee may in its discretion impose any conditions when it so decides.

[section 19 substituted by Ord. 18 of 1975]

Proposals by the Director of Roads relating to proclaimed roads

20. (1) If the Director of Roads proposes that -

(a) a road be proclaimed on land where no road previously existed;

(b) a road be declared a proclaimed road;

(c) a proclaimed road be closed or deviated;

(d) a closed road be reopened and declared a proclaimed road;

(e) the classification of a proclaimed road be changed,

such proposal shall be made known by notice published in the *Official Gazelle* and in at least one other newspaper circulating in the Territory.

(2) The Roads Branch shall forward a copy of such notice to the owner, lessee or occupier of each portion of land which is registered as a separate unit in the Deeds Office of the Territory and which is or will be crossed by the road to which the proposal refers and whose address is known to that Branch, and if such road terminates on the boundary of any farm, to the owner, lessee or occupier of the farm immediately adjacent to such road and whose address is known to the Branch.

(3) Such notice shall command every person having any objection to the proposal to lodge his objection in writing, with the grounds upon which it is based clearly and specifically therein stated, with the officer or person mentioned in such notice within a period of thirty days of the date mentioned in such notice, and shall state the number of a sketch-map of the area concerned on which the road, or portion thereof, to which the proposal refers and other proclaimed minor and private roads in that area, are shown.

(4) A copy of such notice and sketch-map shall lie for inspection at the office of the Director of Roads and the local Roads Superintendent during normal office hours for the full period of thirty days referred to in subsection (3).

(5) The provisions of sections 18 and 19 shall *mutatis mutandis* apply in regard to such proposal by the Director of Roads, if the road or portion thereof to which it refers, is or will be a district or farm road.

(6) (a) If the road, or portion thereof, to which such proposal by the Director of Roads refers, is or will be a trunk or main road, the Director of Roads shall, after the expiry of the period of thirty days referred to in subsection (3), submit such proposal to the Executive Committee together with all the objections received against it, his comments and recommendations thereon and the sketch-map referred to in subsection (3).

(b) The provisions of section 19 shall *mutatis mutandis* apply in regard to a proposal submitted to the Executive Committee in terms of paragraph (a).

[section 20 amended by Ord. 10 of 1974 and substituted by Ord. 18 of 1975]

Applications relating to district and farm roads within the area of a local authority

21. (1) Whenever the owner, lessee or occupier of a farm within the area of a local authority but outside the urban area -

(a) desires that an existing district or farm road be closed or deviated where it crosses any such farm; or

(b) which does not have a farm road providing access to a district, main or trunk road, desires a farm road which will provide such access, to be proclaimed,

he may apply therefor to the Director of Roads.

(2) The provisions of sections 16(2), 20(1), (2), (3), (4) and (6) shall *mutatis mutandis* apply to an application referred to in subsection (1).

(3) If any portion of the road or portion thereof to which the application refers falls outside the area of the local authority concerned -

(a) the provisions of section 16(2)(a) shall not apply to such application; and

(b) the provisions of section 20(5) shall apply to such application.

[section 21 amended by Ord. 10 of 1974 and substituted by Ord. 18 of 1975]

Proclaiming and declaration of proclaimed roads and the closing, deviation and reopening thereof by Executive Committee

22. (1) Notwithstanding anything to the contrary contained in any law, the Executive Committee may from time to time after investigation and report by the board concerned or the Director of Roads or both the board concerned and the Director of Roads, as the case may be -

(a) proclaim a road on land where no road previously existed and define the course of a road thus proclaimed;

(b) declare any road to be a proclaimed road;

(c) close or deviate any proclaimed road;

(d) reopen any road which has been closed, declare the same to be a proclaimed road and define the course thereof:

Provided that the Executive Committee may, if it is deemed necessary or expedient, act without any such investigation and report: Provided further that the Executive Committee shall only exercise the powers granted to it in terms of this subsection within the area of a local authority after consultation with the local authority concerned.

(2) (a) Whenever the Executive Committee has in terms of subsection (1) -

(i) proclaimed a road on land where no road previously existed and defined the course of such road;

(ii) declared a road to be a proclaimed road;

(iii) closed or deviated a proclaimed road;

(iv) reopened a road which had been closed and has declared the same to be a proclaimed road and has defined the course of such road,

it shall be made known by notice in the *Official Gazette.*

(b) The proclaimed road to which such notice refers shall be described therein and the number thereof shall be stated therein.

(c) Such notice shall also state the number of a sketch-map on which that road is shown and such sketch-map shall be kept by the Roads Branch and shall at all times during normal office hours lie for inspection at the office of the Director of Roads against payment of the fees determined by the Executive Committee from time to time.

(3) The provisions of sections 16(3), (4), (5), (6) and (7), 18 and 19 shall *mutatis mutandis* apply in regard to an investigation and report by the board concerned, referred to in subsection (1).

(4) The provisions of section 20 shall *mutatis mutandis* apply in regard to an investigation and report by the Director of Roads referred to in subsection (1).

[section 22 amended by Ord. 10 of 1974 and substituted by Ord. 18 of 1975]

Classification of proclaimed roads

23. (1) The Executive Committee may -

[introductory phrase substituted by Ord. 6 of 1980]

(a) declare a proclaimed road which is or will be part of the road system connecting the Territory as a whole with surrounding territories, to be a trunk road;

(b) declare a proclaimed road which connects or will connect important centres within the Territory to be a main road;

(c) declare a proclaimed road which carries or will carry a reasonable amount of traffic to be a district road;

(d) declare a proclaimed road which it considers important enough to be a farm road;

(e) amend or repeal any such declaration.

(2)

[subsection (2) deleted by Ord. 6 of 1980]

(3) Whenever the Executive Committee has declared a proclaimed road to be a trunk, main, district or farm road in terms of the provisions of subsection (1) or has amended or repealed any such declaration, it shall be made known by notice in the *Official Gazette.*

Freeways

24. (1) (a) The Executive Committee may at any time, after consultation with the local authority concerned, and notwithstanding anything to the contrary contained in any law, declare any trunk road or any portion of any trunk road, situated within the area of such local authority, and whether situated within the urban area of such local authority or not, to be a freeway, or close or deviate any trunk road or any portion of any trunk road thus declared to be a freeway, or any access thereto or exit therefrom.

(b) The Executive Committee may at any time in its discretion declare any trunk road or any portion of any trunk road situated outside the area of a local authority to be a freeway or close or deviate any trunk road or any portion of any trunk road thus declared to be a freeway, or any access thereto or exit therefrom.

(2) Whenever the Executive Committee has declared a trunk road or portion of a trunk road to be a freeway in terms of the provisions of subsection (1) or has closed or deviated a freeway or access thereto or exit therefrom in terms of the provisions of subsection (1) it shall be made known by notice in the *Official Gazette.*

(3) No person shall without the permission of the Executive Committee enter upon or leave a freeway at any place other than an interchange.

(4) Any person who contravenes or fails to comply with the provisions of subsection (3) shall be guilty of an offence.

Intersection point reserves

24A. (1) The Executive Committee may at any time in its discretion declare any area within which an intersection point is situated to be an intersection point reserve and determine the boundaries of such an intersection point reserve: Provided that the powers granted to the Executive Committee in terms of this subsection shall only be exercised after consultation with the owner, lessee or occupier of each portion of land -

(a) which is registered as a separate unit in the Deeds Office of the Territory; and

(b) upon which the intersection point reserve, or any portion thereof, is or will be situated,

unless the address of such owner, lessee or occupier is unknown to the Executive Committee: Provided further that the powers granted to the Executive Committee in terms of this subsection shall only be exercised within the area of a local authority after consultation with the local authority concerned.

(2) (a) Whenever the Executive Committee has in terms of subsection (1) declared an area to be an intersection point reserve and determined the area of such an intersection point reserve, it shall be made known by notice in the *Official Gazette* together with such information as the Executive Committee deems necessary.

(b) Such notice shall also state the number of a sketch-map on which the boundaries of that intersection point reserve are shown and such sketch-map shall be kept by the Roads Branch and shall, at all times during normal office hours lie open to inspection at the office of the Director of Roads against payment of the fees determined by the Executive Committee from time to time.

(3) (a) The Executive Committee may -

(i) from time to time amend the boundaries of an intersection point reserve;

(ii) at any time withdraw the declaration of an area as an intersection point reserve.

(b) The provisions of subsection (2) shall *mutatis mutandis* apply in regard to -

(i) any amendment of the boundaries of an intersection point reserve; and

(ii) any withdrawal of the declaration of an area as an intersection point reserve.

(4) Notwithstanding anything to the contrary contained in this Ordinance any intersection point reserve shall for the purposes of this Ordinance be part of the road reserve of the proclaimed roads concerned: Provided that whenever the width of the road reserve of any proclaimed road is increased as a result of the declaration of any area as an intersection point reserve no person shall be entitled to any compensation in terms of section 65 until such time as all roads which are contemplated within such intersection point reserve have been proclaimed and the Executive Committee has determined where the boundaries of the road reserves of such proclaimed road are situated.

[section 24A inserted by Ord. 10 of 1974]

CHAPTER IV

URBAN TRUNK ROADS AND MAIN ROADS

Powers of Executive Committee in relation to construction and maintenance of urban trunk and main roads

25. (1) Notwithstanding anything to the contrary contained in any law the Executive Committee may, after consultation with the local authority concerned, construct or maintain or construct and maintain any urban trunk or main road: Provided that the construction or maintenance of such a road by the Executive Committee in terms of the provisions of this subsection shall not exempt the local authority concerned from any obligation imposed upon it in respect of the construction and maintenance of and control over such a road in terms of any law.

(2) After consultation with the local authority concerned the Executive Committee may, on such condition; as may be determined by it, hand over any urban trunk or main road, constructed by the Executive Committee, to such local authority to be maintained by it if the Executive Committee is of the opinion that such local authority is capable of maintaining such road properly.

Subsidies for the maintenance of urban trunk and main roads

26. Whenever an urban trunk or main road is being maintained to the satisfaction of the Executive Committee, by the local authority concerned, the Executive Committee may in its discretion and on such basis and conditions as it may determine, pay a subsidy to such local authority for the maintenance of such trunk or main road.

Control of traffic on urban trunk and main roads

27. (1) Notwithstanding anything to the contrary contained in any law a local authority which intends controlling the traffic on any urban trunk or main road by the institution of permanent stop streets, traffic islands, traffic lights, parking spaces, one-way streets or accesses to or exits from such urban trunk or main road or in any other way whatsoever, shall,

before putting such intention into effect apply in writing to the Executive Committee for approval thereof.

(2) The Executive Committee may grant or refuse any such approval and may, if it grants such approval, impose such conditions as it may deem fit.

CHAPTER V

CONSTRUCTION AND MAINTENANCE OF PROCLAIMED ROADS AND RELATED MATTERS

General powers of Executive Committee

28. (1) Subject to the provisions of this Ordinance and the Road Traffic Ordinance, 1967 (Ordinance 30 of 1967), as amended, the Executive Committee shall have power and authority in respect of the following matters:

(a) the construction, maintenance and control of all freeways and all trunk, main and district roads and the road reserve of all proclaimed roads;

(b) the acquisition, erection and maintenance of all road route markers, road traffic signs and other signs which may be necessary for the regulation and protection of traffic on proclaimed roads;

(c) the establishment and maintenance of wells, watering places and other facilities for public use on proclaimed roads;

(d) the erection and maintenance of dwellings and other buildings, in the road reserve or elsewhere, for the execution of the provisions of this Ordinance;

(e) the planting of trees within the road reserve of a proclaimed road or making other improvements therein;

(f) the granting of approval to the owner, lessee or occupier of a farm crossed by a proclaimed road to cut grass in the road reserve of such proclaimed road and imposing conditions in relation thereto;

(g) the erection and maintenance of any fence, wall, gate, ditch, furrow or similar obstruction, or beacon of stone, concrete, iron or other permanent material, on the centre line or along or near the boundaries of the road reserve of a proclaimed road to indicate the location of such road on the land, whether such road has been constructed or not;

(h) the construction of any road which gives access to any proclaimed road when, in its opinion it becomes necessary, because of the construction and maintenance or deviation of such proclaimed road, to construct a road to give access to such proclaimed road:

Provided that the powers granted to the Executive Committee in terms of this subsection shall only be exercised within the area of a local authority in consultation with the local authority concerned.

[The proviso is added to subsection (1) by Ord. 10 of 1974; the full stop at the end of paragraph (h) has accordingly been changed to a colon.]

(2) Any person who -

(a) damages a dwelling or other building erected in the road reserve of a proclaimed road or elsewhere in terms of subsection (1); or

(b) damages a tree or other improvement planted or effected in the road reserve of a proclaimed road or elsewhere in terms of subsection (1) or a natural tree in the road reserve of a proclaimed road; or

(c) cuts grass in the road reserve of a proclaimed road without the approval of the Executive Committee or contrary to the conditions imposed by the Executive Committee when such approval was granted; or

(d) damages or removes any fence, wall, gate, ditch, furrow or similar beacon or any beacon erected or effected in, or along or near the boundary of the road reserve of a proclaimed road,

shall be guilty of an offence.

Control of traffic on proclaimed roads at temporary closing or deviation thereof

29. (1) Subject to the provisions of the Road Traffic Ordinance, 1967 (Ordinance 30 of 1967), as amended, the Executive Committee may in its discretion -

(a) at any time after the expiry of a period of fourteen days from the date stated in a notice published in the *Official Gazette* and in at least one other newspaper circulating in the Territory, and in which the intention thus to close such proclaimed road, is made known, temporarily close a proclaimed road for all traffic or temporarily or permanently close it for that particular kind of traffic mentioned in such notice;

(b) without any notice temporarily deviate a proclaimed road and control the traffic thereon for the duration of construction, maintenance or repairs to such road.

(2) Whenever the Executive Committee closes or deviates a proclaimed road in terms of the provisions of this section, it shall, notwithstanding anything to the contrary contained in any law, erect such signs as it may deem necessary and suitable to indicate that that road has thus been closed or deviated: Provided that the kind of traffic for which it has been so closed, shall be clearly indicated on such signs if the road concerned has been closed in terms of subsection (1) for a particular kind of traffic.

(3) Any person who uses a proclaimed road which has been closed or deviated in terms of the provisions of subsection (1) while it is thus closed or deviated, or who contravenes or falls to comply with or to obey the prohibition or order indicated on a sign erected in terms of the provisions of subsection (2) shall be guilty of an offence.

(4) The Executive Committee shall in no way be liable to any person who uses a proclaimed road which has been closed or deviated in terms of the provisions of subsection (1) while it is thus closed or deviated, or who uses such a proclaimed road contrary to a prohibition or order indicated on a sign erected in terms of the provisions of subsection (2), for any loss through possible damage or injury to any person, vehicle or stock or anything whatsoever, but such person shall be liable for any loss through possible damage or injury caused to the road, or the staff or equipment of the Roads Branch, during such use.

Obtaining materials

30. For the purpose of the construction, maintenance or repair of a proclaimed road the Executive Committee may through its representatives, officers or contractors enter upon any land with any vehicle, tool, material or animal and after the expiry of a period of fourteen days after a written notice of its intention to do so -

(i) has been handed to the owner, lessee or occupier of such land; or

(ii) has been sent to the last-known address of such owner, lessee or occupier by registered post; or

(iii) has been left at a conspicious place on such land,

[The word "conspicuous" is misspelt in the *Official Gazette*, as reproduced above.]

it may without any compensation to the owner, lessee or occupier of the land, remove any material which may be necessary for such construction, maintenance or repair from such land or process it on such land and thereafter remove it therefrom and for this purpose it may build and maintain any access roads which it may consider necessary: Provided that -

(a) nothing shall be removed from any garden or other land usually cultivated, nor within two hundred and fifty metres of any house nor within fifty metres of any kraal;

(b) every excavation, including an excavation for a sample and an experimental pit, shall as soon as possible be filled up or fenced off or shall otherwise be made safe for human beings and animals again to the satisfaction of the owner, lessee or occupier of such land or as the Executive Committee directs;

[paragraph (b) substituted by Ord. 10 of 1974]

(c) any road provided for this purpose shall be ripped up in such a way that it cannot be washed away should the owner, lessee or occupier so desire;

(d) the Executive Committee, its representatives, officers or contractors shall, in exercising these powers take every care to prevent damage, injury, loss or inconvenience to the owner, lessee or occupier concerned:

Provided further that the powers granted to the Executive Committee in terms of this section shall only be exercised within the area of a local authority in consultation with the local authority concerned.

[The additional proviso is added to section 30 by Ord. 10 of 1974; the full stop at the end of paragraph (d) has accordingly been changed to a colon.]

Camping sites, water, firewood and cutting of trees and brushwood

31. (1) The Executive Committee may through its representatives, officers or contractors -

(a) where no other opportunity is available, erect temporarily dwellings for roadworkers and their families on private land and select or, where necessary, erect places of storage for their equipment and material at a place on such private land determined in consultation with the owner, lessee or occupier of the land: Provided that when no agreement in regard to such place can be reached at such consultation, the Executive Committee shall determine such place;

(b) take water at a tariff determined by the Executive Committee from time to time, or take measures for obtaining water where the construction or maintenance of a proclaimed road so demands: Provided that no water shall be taken from any artificial dam, well or borehole without the consent of the owner, lessee or occupier concerned, except where such artificial dam, well or borehole has been provided by and at the expense of the Executive Committee for road purposes;

(c) take firewood for the use of roadworkers and their families: Provided that where large quantities are taken it shall only be taken with the consent of the owner, lessee or occupier concerned and at a tariff determined by the Executive Committee from time to time;

(d) cut down trees or brushwood and remove the same from the road reserve where the construction or maintenance of a proclaimed road or the safety of traffic so demands: Provided that such trees or brushwood shall, when cut down, belong to the owner, lessee or occupier concerned:

Provided that the powers granted to the Executive Committee in terms of this subsection shall only be exercised within the area of a local authority in consultation with the local authority concerned.

[The proviso is added to subsection (1) by Ord. 10 of 1974; the full stop at the end of paragraph (d) has accordingly been changed to a colon.]

(2) No compensation shall be payable to the owner, lessee or occupier of the land concerned in respect of any temporary dwellings and places of storage erected or selected on such land in terms of subsection (1)(a).

Compensation for damage caused by contractors

32. Where a contractor, in exercising any of the rights and powers granted to him in terms of sections 30 and 31, causes any damage, compensation for it may be recovered from the Executive Committee in terms of the provisions of this Ordinance and the Executive Committee may in turn claim indemnity from such contractor.

Improvement and repair of farm roads

33. (1) (a) Where interested persons desire that a farm road or a portion thereof should be improved or repaired by means of a grader of the Administration, they may apply to the board in the district of which such farm road or such portion thereof is situated for the required improvements or repairs.

(b) The board shall then have the cost of such improvements or repairs estimated by the Roads Branch and inform the interested persons accordingly.

(c) If the interested persons furnish documentary proof to the board that they have contributed half of the estimated cost of such improvements and repairs, and have supplied a written undertaking to the satisfaction of the board to pay half of the ultimate actual cost of such improvements and repairs calculated at a tariff determined by the Executive Committee from time to time, the board may, with due allowance for the graders and funds at the disposal of the board, approve -

(i) the improvements or repairs desired to be done by a grader of the Administration; and

(ii) to contribute up to half of the costs thereof.

(2) (a) Whenever interested persons wish to improve or repair a farm road or any portion thereof themselves and desire that the Executive Committee should make a contribution to the cost of the improvements or repairs they shall, before such work is being done, apply to the Executive Committee for the contribution desired.

(b) Such application shall be lodged with the Roads Superintendent in whose area such farm road or portion thereof is situated, and after the cost of such improvements or repairs have been estimated by the Roads Branch it shall be submitted to the Executive Committee which may approve or reject the application.

(c) If the application is approved the interested persons shall be informed of the estimated cost and if they complete the improvements or repairs to which the application refers to the satisfaction of the Executive Committee, the Executive Committee may, upon submission to it of documentary proof of the cost incurred in making such improvements or repairs, consent to contribute up to half of the actual cost thereof.

Deviation of farm roads after approval of applications by interested persons

34. (1) Whenever any person has applied in terms of section 16 for the deviation of a farm road and the Executive Committee has decided in terms of the provisions of sections 19 and 22 that such farm road shall be deviated, the applicant shall deviate such farm road or cause it to be deviated himself and at his own expense.

[subsection (1) amended by Ord. 18 of 1975]

(2) (a) Such deviation shall be built within a period of three months after publication in terms of section 22 of the notice that the farm road concerned is to be deviated: Provided that the Executive Committee may extend such period by a further period not exceeding three months.

(b) if such deviation is not built and opened for use by the public within the period mentioned in paragraph (a) the approval of the deviation lapses and the notice referring thereto shall be deemed to have been repealed.

(c) All work on fences, motor grid gates or swing gates which have to be changed or moved as a result of such deviation shall, subject to the provisions of section 49, be carried out by or at the expense of the applicant and no existing road shall be closed to the public before the new road has been opened to the public in the place thereof.

Establishment and maintenance of pont services

35. The Executive Committee may -

(a) establish pont services across rivers and construct anchorages and landings and the necessary approaches both within and beyond the road limits;

(b) charge a pont tariff for the conveyance of travellers, vehicles and stock, and may determine such tariff from time to time: Provided that no tariff shall be charged for any transport in respect of Administration services;

(c) enter into contracts for the construction and maintenance, the hiring and the letting of ponts on such conditions regarding tariffs as he may think fit;

(d) co-operate with the administrations of neighbouring territories for the establishment of pont services across rivers along the Territory's borders, and may enter into any agreements with such administrations in regard to the control, management and maintenance of such services.

Rails, tracks, bridges, wires, cables, subways or culverts across or under proclaimed roads

36. (1) Without the written permission of the Executive Committee, granted on such conditions as it may in its discretion impose, no person shall -

(a) construct any railway, tramway, trolley or cocopan line or track across any proclaimed road;

(b) build any bridge across or any subway or culvert under a proclaimed road;

(c) construct any electric or other wires or cables or any pipeline on, across or under any proclaimed ·road.

[paragraph (c) substituted by Ord. 18 of 1975]

(2) Any person who contravenes or refuses or fails to comply with the provisions of this section or any condition imposed in terms of subsection (1) shall be guilty of an offence.

(3) The Executive Committee may without notice remove anything constructed or built contrary to the provisions of subsection (1), or have such thing removed and may recover the costs thereof from the person who constructed or built it.

(4) For every permission granted in terms of this section the Executive Committee may charge an annual fee which it may determine in each case.

Infringements and obstructions on and interference with proclaimed roads

37. (1) Unless this Ordinance or any other law authorises it, no person shall -

(a) infringe any proclaimed road by erecting or introducing any building or structure, advertisement, fence, furrow, canal, ditches or other obstructions on, across or under such proclaimed road or by wilfully or negligently causing water to run over it;

[paragraph (a) substituted by Ord. 18 of 1975]

(b) wilfully or unnecessarily obstruct, impede, hinder or endanger the free flow of traffic on a proclaimed road or introduce or leave any rubbish or debris on a proclaimed road or within sight thereof;

[paragraph (b) substituted by Ord. 10 of 1974]

(c) leave any vehicle or any part of a vehicle on a proclaimed road or within sight thereof;

(d) interfere in any way with the roadway of a proclaimed road or with anything erected or introduced within the road reserve of a proclaimed road, in terms of this Ordinance, or with any cuttings, banks or drains of a proclaimed road;

(e) erect or introduce anything whatsoever within the road reserve of a proclaimed road.

(2) The Executive Committee may instruct any person who has caused, erected, introduced or left any damage, infringement, hindrance, obstruction or anything else whatsoever contrary to the provisions of subsection (1), on a proclaimed road or within the road reserve of a proclaimed road, without delay to repair or remove such damage, infringement, hindrance or obstruction or any such thing or itself repair or remove it or have it repaired or removed without delay, and recover the costs of such repair or removal from the person who has caused, erected, introduced or left such damage, infringement, hindrance, obstruction or any such thing.

(3) Any person who contravenes the provisions of subsection (1) or refuses or fails to comply therewith or with any instruction given to him in terms of the provisions of subsection (2) shall be guilty of an offence and shall on conviction be liable 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.

(4) If satisfied that it will not be prejudicial to any public interest the Executive Committee may, in writing and upon such conditions as it may in its discretion impose, authorise anything prohibited by this section.

CHAPTER VI

FENCES AND GATES

Distance from proclaimed roads at which fences are erected

38. (1) Subject to the provisions of subsection (2) no fence shall be erected nearer to the centre line of a proclaimed road than the boundary of the road reserve thereof as determined in terms of section 3.

(2) Without in any way affecting the road reserve of such proclaimed road thereby, the Executive Committee may, in its discretion and on such conditions as it may from time to time determine -

(a) on written application by the owner of a farm crossed by a proclaimed road, excluding a farm road, approve that a fence or fences may be erected nearer to the centre line of such road than the boundary of the road reserve thereof and at such distance from the centre line thereof as it may determine; or

(b) erect a fence or fences, or cause it to be erected, nearer to the centre line of a proclaimed road, excluding a farm road, than the boundary of the road reserve thereof:

Provided that no such fence shall be erected nearer to the centre line of such road than fifteen metres.

Fencing off of freeways

39. The Executive Committee may, for any reason that it deems fit, decide that a freeway shall be fenced off on both sides in accordance with the standards determined by it and

when it so decides it shall erect the fence or fences or cause them to be erected at the expense of the Administration and according to the standards determined by it.

Fencing off of intersection point reserves

39A. The Executive Committee may for any reason that it deems fit decide that an intersection point reserve shall be fenced off and when it so decides it shall fence off such intersection point reserve or cause it to be fenced off at the expense of the Administration and in accordance with the standards determined by it: Provided that notwithstanding anything to the contrary in this Ordinance contained no person shall as a result of such fencing off be entitled to any compensation in terms of this Ordinance until such time as all roads which are contemplated within such intersection point reserve have been proclaimed and fenced off.

[section 39A inserted by Ord. 10 of 1974]

Fencing off of trunk, main and district roads

40. (1) The owner, lessee or occupier of a farm who wishes to fence off on both sides a trunk, main or district road that crosses such farm and that has not been fenced off in accordance with the standards prescribed by regulation, whether such road has already been built or not, shall apply in writing, to the Minister of Works, Transport and Communication for approval to do so.

[subsection (1) substituted by Ord. 10 of 1974 and amended by Act 3 of 1993]

(2) Such application shall be accompanied by a certificate issued by an officer of the Department of Agricultural Technical Services stating whether the fence or fences to which the application refers, qualify or did qualify for a grant or not, and if so, what the value of such grant is.

(3) The Minister of Works, Transport and Communication may grant or refuse the approval referred to in subsection (1) and may when granting it -

(a) determine that the fence or fences concerned shall comply with a standard prescribed by regulation;

(b) impose such conditions as he or she may in his or her discretion determine.

(4) Whenever the Minister of Works, Transport and Communication has approved such application he or she may make a contribution to the applicant consisting of -

(a) the material that is needed to fence off the road concerned on both sides in accordance with the standards prescribed by regulation; or

(b) where the applicant has fenced off the road concerned or caused it to be fenced off, on both sides in accordance with the standards prescribed by regulation, the cost, calculated at a tariff determined by the Minister of Works, Transport and Communication from time to time, of the material that is needed to fence it off in that way: Provided that -

(i) if the Minister of Works, Transport and Communication when granting such approval imposes a condition that until such time as the building of the road concerned has been completed across the farm concerned, the road concerned need be fenced off on one side only, a *pro rata* portion of the

contribution in terms of this subsection may be made at the erection of the fence with which the road is so fenced off on one side; and

(ii) any contribution in terms of this subsection shall be reduced by the value of any grant for which the fence or fences concerned qualify or did qualify; and

(iii) no compensation shall be paid to the owner, lessee or occupier concerned in respect of loss of grazing or any cost of providing water as a result of the erection of such fence or fences.

[subsection (4) substituted by Ord. 10 of 1974 and amended by Act 3 of 1993]

(5) The Minister of Works, Transport and Communication may, for any reason which he or she deems fit, decide that a trunk, main or district road, or any portion thereof, shall be fenced off on both sides in accordance with the standards prescribed by regulation, and, when he or she so decides he or she may make a contribution to the owner, lessee or occupier of the farm crossed by the road concerned, consisting of -

[introductory phrase of subsection (5) substituted by Ord. 18 of 1975 and amended by Act 3 of 1993]

(a) the material that is needed to fence off the road concerned on both sides in accordance with the standards prescribed by regulation; or

(b) where the owner, lessee or occupier of any farm crossed by the road concerned has fenced off such road or caused it to be fenced off, on both sides in accordance with the standards prescribed by regulation, the cost, calculated at a tariff determined by the Minister of Works, Transport and Communication from time to time of the material that is needed to fence it off in that way; and

[paragraph (b) substituted by Ord. 10 of 1974 and amended by Act 3 of 1993]

(c) where the owner lessee or occupier of a farm has so fenced off or caused it to be so fenced off, on both sides, the cost, calculated at a tariff determined by the Minister of Works, Transport and Communication of the transport and labour incurred in connection with such fencing off:

[paragraph (c) inserted by Act 3 of 1993]

Provided that any contribution in terms of this subsection shall be reduced by the value of any grant for which the fence or fences concerned qualify or did qualify.

(5A) Whenever the Minister of Works, Transport and Communication has decided in terms of subsection (5) that a trunk, main or district road, or any portion thereof, shall be fenced off in accordance with the standards prescribed by regulation, the owner, lessee or occupier of the farm crossed by the road concerned shall complete the erection of such fence or fences within six months from the date determined by the said Minister or within such other period as the said Minister may determine: Provided that the said Minister may at any time extend such period on such conditions as he or she may determine.

[subsection (5A) inserted by Ord. 18 of 1975 and amended by Act 3 of 1993]

(6) Whenever the Minister of Works, Transport and Communication has supplied any fencing material to the owner, lessee or occupier of a farm in terms of subsection (4) or (5) for the fencing off of a trunk, main or district road crossing such farm in accordance with the standards prescribed by regulation, such owner, lessee or occupier shall -

(a) use the material thus supplied to him or her solely for the erection of the fence or fences for which it had been supplied; and

(b) except as provided in subsection (5)(c), at his or her own expense erect the said fence or fences or cause it to be erected in accordance with the standards prescribed by regulation; and

(c) complete the erection of such fence or fences within six months from the date on which the material has been supplied to him or her or within such other period as the said Minister may determine: Provided that the said Minister may at any time extend such period on such conditions as he or she may determine.

[subsection (6) amended by Ord. 10 of 1974, Ord. 18 of 1975 and Act 3 of 1993]

(7) Should the erection of such fences not be completed within the period referred to in subsection (5A) or (6)(c) or, if the period has been extended, within such extended period, the Minister of Works, Transport and Communication may complete the erection thereof or cause it to be completed and, where the erection of such fences has been approved in terms of subsection (1), recover the cost incurred in such completion from the person who had to erect the fence or cause it to be erected

[subsection (7) substituted by Ord. 18 of 1975 and amended by Act 3 of 1993]

(8) For the purposes of this section "grant" means any grant or subsidy made or paid or which may be made or paid in terms of the Soil Conservation Act, 1969 (Act 76 of 1969) or the regulations made thereunder and includes any subsidies and grants paid or made or which could have been paid or made in terms of the Soil Conservation Ordinance, 1952 (Ordinance 28 of 1952) or the regulations made thereunder and any grants of money that has been or could have been made in terms of the Promotion of Farming Interests Ordinance, 1952 (Ordinance 29 of 1952).

[The Soil Conservation Ordinance 28 of 1952 was repealed by the Second Soil Conservation Amendment Act 38 of 1971 (RSA GG 3108), which made the Soil Conservation Act 76 of 1969 applicable to South West Africa. The Promotion of Farming Interests Ordinance 29 of 1952 was repealed by the Agricultural Credit Amendment Act 66 of 1970 (RSA GG 2861), which applied the Agricultural Credit Act 28 of 1966 to South West Africa. The Agricultural Credit Act 28 of 1966 was repealed by the Agricultural Bank Amendment Act 27 of 1991 (GG 329). The analogous law is now presumably the Agricultural Bank of Namibia Act 5 of 2003.]

Conversion and improvement of fences along trunk, main and district roads

41. (1) Whenever the owner, lessee or occupier of a farm applies in writing, through the Director of Roads, to the Executive Committee to convert a fence erected in terms of section 40, or any fence along the whole distance of a trunk, main or district road crossing such farm into a jackal-proof fence, the Executive Committee may refuse such application or approve it, either unconditionally or on such conditions as it may deem fit, and should the said owner, lessee or occupier have converted such fence or caused it to be converted into a jackal-proof fence complying with the standard prescribed by regulation, the Executive Committee may pay the cost, calculated at a tariff determined by the Executive Committee from time to time, of the material used so to convert such fence, to such owner, lessee or occupier.

(2) Whenever the owner, lessee or occupier of a farm applies in writing, through the Director of Roads, to the Executive Committee to improve a standard stock-proof fence along the whole distance of a trunk, main or district road crossing such farm, into a fence complying with a higher prescribed standard, the Executive Committee may refuse such application or

approve it, either unconditionally or on such conditions as it may deem fit, and should such owner, lessee or occupier have improved such fence or caused it to be improved into a fence complying with the higher prescribed standard stated in the application and approved by the Executive Committee, the Executive Committee may pay the cost, calculated at a tariff determined by the Executive Committee from time to time, of the material used so to improve such fence, to the said owner, lessee or occupier.

Maintenance and repair of fences along proclaimed roads

42. (1) (a) (i) Any fence erected in accordance with or in terms of the provisions of this Chapter and any other fence erected along or across a proclaimed road, shall, subject to the provisions of subparagraph (ii), be maintained properly, to the satisfaction of the Executive Committee, by the owner, lessee or occupier of the farm on which or along the boundary of which such fence has been erected.

(ii) The provisions of this subsection shall not apply in respect of any fence erected along a freeway which fence shall be maintained by the Executive Committee.

(b) If the owner, lessee or occupier of the farm concerned falls to maintain such fence properly, the Executive Committee may cause a written notice in which he is commanded to repair such fence to the satisfaction of the Executive Committee within the time stipulated in the notice to be served on him and if the fence is not so repaired within the time thus stipulated, the Executive Committee may itself repair such fence or cause it to be repaired and recover the cost thereof from the owner, lessee or occupier of the farm concerned.

(c) Whenever it is deemed necessary or expedient by it, or whenever the owner, lessee or occupier of the farm concerned, cannot be traced, the Executive Committee may repair such fence or cause it to be repaired without the notice referred to in paragraph (b) and recover the cost thereof from the owner, lessee or occupier of the farm concerned.

(d) For the purposes of this subsection “fence” also includes any swing gate forming part of such fence.

(2) (a) The Executive Committee may for such purposes as it may deem necessary attach or cause to be attached, at the place and in the manner deemed fit by it, any metal plate to any fence referred to in subsection (1) and remove it or have it removed.

(b) Without the written approval of tile Executive Committee no person shall remove such metal plate or interfere with it.

(3) Subject to the provisions of this section and of section 45, no person shall in any way whatsoever interfere with any fence referred to in subsection (1).

(4) Any person who contravenes or falls to comply with the provisions of this section, shall be guilty of an offence.

Motor grid gates and swing gates in fences crossing proclaimed roads

43. (1) No person -

(a) except the Executive Committee shall erect or cause to be erected any motor grid gate in any fence crossing a proclaimed road excluding a farm road;

(b) shall erect or cause to be erected a motor grid gate in any fence crossing a farm road without having obtained the approval of the Executive Committee therefor:

Provided that whenever any motor grid gate is erected in any fence crossing a proclaimed road in terms of the provisions of this subsection, a swing gate shall, unless the Executive Committee determines otherwise, also be erected in the road reserve of such proclaimed road in such fence.

[proviso to subsection (1) substituted by Ord. 16 of 1973]

(2) The Executive Committee may at any time erect a motor grid gate at any place where only a swing gate has been or will be erected in any fence across a trunk, main or district road, if the Executive Committee considers such a road to be important enough to erect a motor grid gate therein.

(3) (a) All motor grid gates in boundary fences crossing trunk, main and district roads shall be erected at the expense of the Administration.

(b) Whenever a motor grid gate is erected in a camp fence crossing a trunk, main or district road which crosses a farm, the owner, lessee or occupier of such farm shall pay half of the cost of erection thereof, calculated at a tariff as determined by the Executive Committee from time to time.

(4) (a) Whenever the owner, lessee or occupier of a farm crossed by a farm road, wishes to erect a motor grid gate or cause it to be erected, in any fence across such road, he shall apply, through the Director of Roads, to the Executive Committee for approval to do so.

(b) The Executive Committee may grant or refuse such approval and may when granting it impose such conditions as it may in its discretion determine.

(c) After approval therefor has been granted, the applicant shall erect such motor grid gate or cause it to be erected, at his own expense and in accordance with the specifications prescribed by regulation by the Executive Committee and the conditions imposed by the Executive Committee in terms of paragraph (b).

Liability for damages by reason of the erection of motor grid gates

44. The Executive Committee or the owner of a fence shall in no way by reason of the construction, maintenance or repair of any motor grid gate in such fence in terms of the provisions of this Ordinance be liable for any loss through possible damage or injury to any person, vehicle or stock passing or attempting to pass through any motor grid gate: Provided that this section shall not exempt the Executive Committee from liability for any loss through negligence in the construction, maintenance or repair of such motor grid gate in a trunk, main or district road.

Fences with swing gates across proclaimed roads

45. (1) No person shall without the approval of the Executive Committee erect a fence with only a swing gate across a trunk or main road.

(2) Subject to the provisions of section 27 of the Fencing Proclamation 1921 (Proclamation 57 of 1921), as amended, and of this Ordinance, any owner, lessee or occupier of a farm may erect a fence with a swing gate across a district or farm road crossing such farm:

Provided that where the road concerned is a district road a swing gate may be erected across it only with the written approval of the Executive Committee and in accordance with the conditions imposed by the Executive Committee when granting such approval.

Erection and maintenance of swing gates across proclaimed roads

46. (1) Notwithstanding the provisions of the Fencing Proclamation 1921 (Proclamation 57 of 1921), as amended, every person who is responsible for the erection and maintenance of a swing gate across any proclaimed road in terms of the provisions of this Ordinance shall -

(a) fasten in the centre of such swing gate a plate not less than sixty centimetres by sixty centimetres in size, painted white or any other colour approved by the Executive Committee on such conditions as it may in its discretion determine and which shall, in the case of boundary gates, also give the names and numbers of the two farms concerned, and shall repaint it whenever it becomes necessary: Provided that every owner, lessee or occupier shall be responsible for the plate on which the name and number of his farm is to be given;

(b) ensure that the swing gate is erected in such a way that vehicles can stop on both sides thereof;

(c) ensure that such swing gate can swing freely above the ground in both directions;

(d) ensure that no pegs or other projections which, in the opinion of the Executive Committee, are dangerous or injurious to persons, animals or anything whatsoever, are attached to such swing gate;

(e) ensure that the swing gate conforms to a standard type of swing gate, is at least 4,26 metres wide and is not a concertina gate, nor a gate of which certain parts can swing away separately, nor a gate which in the opinion of the Executive Committee may in any way be dangerous or injurious to persons, animals or anything whatsoever;

(f) erect the swing gate, or cause it to be erected, at right angles with the roadway of the road and in the case of trunk, main and district roads at a place approved by the Executive Committee.

(2) Any person who contravenes the provisions of this section or falls to comply therewith shall be guilty of an offence.

Removal of motor grid gates and swing gates

47. Whenever a trunk, main or district road has been fenced off on both sides in accordance with the standards prescribed by regulation and the fences are of the same prescribed standard, the Executive Committee may remove all motor grid gates and swing gates between the fences on either side thereof or cause it to be removed.

Closing of gates across proclaimed roads

48. (1) Without the consent of the Executive Committee no person shall close or otherwise bar any motor grid gate in or swing gate across a proclaimed road against passage.

(2) Any person who contravenes or falls to comply with the provisions of this section shall be guilty of an offence.

Shifting of gates and fences

49. (1) Whenever the deviation of a proclaimed road necessitates the shifting of swing or motor grid gates, the Executive Committee shall shift such swing or motor grid gates, or cause it to be shifted, at Administration cost: Provided that the Executive Committee may recover the cost of the shifting of such swing or motor grid gates -

(a) from the interested persons who applied for the deviation of such road in terms of section 16(1)(a); or

(b) from the owner, lessee or occupier of a farm, who applied for the deviation of such road in terms of section 16(1)(b),

if the road thus deviated is a farm road.

(2) Whenever the construction of a new proclaimed road necessitates the erection of swing or motor grid gates in fences crossing such new proclaimed road or the shifting of existing swing or motor grid gates to such new proclaimed road, the Executive Committee may erect or shift such swing or motor grid gates, or cause it to be erected or shifted at Administration cost: Provided that the Executive Committee may recover the cost of the erection or shifting of such swing or motor grid gates and the material used therefor -

(a) from the interested persons who applied for the proclamation of such new road in terms of section 16(1)(a); or

(b) from the owner, lessee or occupier of a farm who applied for the proclamation of such new road in terms of section 16(1)(c),

if the new road thus proclaimed is or will be a farm road.

(3) Whenever the owner, lessee or occupier of a farm has, as far as it crosses such farm, entirely fenced off a proclaimed road on one side or on both sides and a new proclaimed road is constructed across such farm, the Executive Committee may, if such owner, lessee or occupier requests that the fence or fences with which the existing proclaimed road has so been fenced off, should be shifted and erected along the new proclaimed road, in its discretion at Administration cost entirely fence off such new proclaimed road or cause it to be so fenced off, as far as it crosses such farm, on one side or on both sides in accordance with the standards prescribed by regulation with a fence or fences of the same prescribed standard as the fence or fences with which the existing proclaimed road was fenced off or with a fence or fences of a higher prescribed standard: Provided that -

[portion of introductory phrase preceding proviso substituted by Ord. 10 of 1974]

(a) the Executive Committee may recover the cost of the erection of the fences with which such new proclaimed road has thus been fenced off, and the material used therefor -

(i) from the interested persons who applied for the proclamation of such new road in terms of section 16(1)(a); or

(ii) from the owner, lessee or occupier of a farm who applied for the proclamation of such new road in terms of section 16(1)(c),

if the new road thus proclaimed is or will be a farm road;

(b) no compensation will be paid to the said owner, lessee or occupier for the demolition of a fence or fences along such existing proclaimed road;

(c) any material which the Executive Committee supplies to the said owner, lessee or occupier to erect such fence or fences or cause such fence or fences to be erected along such new proclaimed road, shall be used solely for that purpose.

Executive Committee may direct removal of gates, fences and other obstructions

50. (1) The Executive Committee may direct the owner or erector thereof, within seven days thereafter to remove -

(a) any fences, swing gates, motor grid gates or other obstructions erected on, across or along a proclaimed road contrary to the provisions of this Ordinance or the Fencing Proclamation 1921 (Proclamation 57 of 1921), as amended; or

(b) any swing gate which, in its opinion has been erected on or across a proclaimed road at an unsuitable place.

(2) If such direction is not complied with within the period of seven days referred to in subsection (1), the Executive Committee may itself remove such fence, swing gate, motor grid gate or other obstruction, or cause it to be removed, and recover the cost thereof from the owner or erector thereof, who in addition thereto, shall be guilty of an offence.

CHAPTER VII

TREKKING WITH ANIMALS

Trekking with stock along unfenced proclaimed roads and unproclaimed roads

51. (1) Where an unfenced proclaimed road crosses a farm no person shall drive or graze any animal, whether inspanned to a vehicle or not, across or on such farm, outside the public grazing area.

(2) (a) No person except a licensed butcher or speculator in stock, or the owner, lessee or occupier of a farm in the Territory, or an authorised representative or employee of such butcher, speculator in stock, owner, lessee or occupier may trek or stay on any public grazing area with stock, unless he is the holder of a permit issued by a magistrate or, in the case of Natives, by a magistrate, Commissioner, Assistant Commissioner or superintendent of a Native reserve authorising him thereto.

[paragraph (a) amended by AG 3 of 1979 to substitute certain terms]

(b) Such permit shall state the number, type and destination of the stock concerned, the route to be followed, as well as the period for which it shall be valid.

(3) The holder of a permit issued in terms of subsection (2) shall on demand produce it to the owner, lessee or occupier of the farm on which he is found with his stock.

(4) (a) Where an unproclaimed road crosses a farm, no person shall, without the written consent of the owner, lessee or occupier of such farm, trek or remain on such road with stock.

(b) The owner, lessee or occupier of a farm or his authorised representative, or the Executive Committee or its authorised representative may act in accordance with the provisions of the Trespass of Animals Ordinance, 1939 (Ordinance 16 of 1939), as amended, in respect of any animals with which any person treks or stays contrary to the provisions of paragraph (a) or which may be allowed to trek or stay contrary to the provisions of paragraph (a).

(5) Any person who contravenes or fails to comply with the provisions of this section, shall be guilty of an offence.

Limit on period of stay

52. (1) Any person trekking with stock across a public grazing area shall continue to trek in the same direction from a point of beginning to a destination and shall cover a distance of at least fifteen kilometres per twenty-four hours, unless he has obtained the written consent of the owner, lessee or occupier of the farm on which such public grazing area is situated to cover a shorter distance or unless he is delayed by adversity, floods or other unforeseen circumstances.

(2) The time limit imposed in subsection (1) shall not include Sundays.

(3) Any person who contravenes or fails to comply with the provisions of this section shall be guilty of an offence.

Grazing and water rights for stock on trek

53. (1) Any traveller on an unfenced proclaimed road may graze and water his stock within the public grazing area along such road.

(2) (a) If such public grazing area does not have adequate water supplies available the Executive Committee may take any reasonable steps to supply water thereon and until such time as this happens, a traveller may, after having previously handed a written notice of his intention to do so to the owner, lessee or occupier of the farm concerned or after having left it in a conspicuous place on the farm it he could not trace such owner, lessee or occupier, water his stock at the water nearest to such public grazing area, provided sufficient water is left for the normal requirements of such owner, lessee or occupier.

(b) Any traveller who waters his stock in that way without having notified the owner, lessee or occupier of the farm concerned in accordance with the provisions of paragraph (a), and every such owner, lessee or occupier who refuses to allow a traveller who has, in accordance with paragraph (a), notified him of his intention to water his stock, so to water his stock when sufficient water is available for that purpose and for his own normal requirements, or who in any way prohibits any such traveller from using such water, shall be guilty of an offence.

(3) Any such owner, lessee or occupier may charge fees at a tariff, which may from time to time be prescribed by the Executive Committee by regulation, for the consumption of water and the provision of kraal facilities: Provided that no such fees shall be charged for any water from a running stream thus consumed or for the consumption of water by or the provision of kraal facilities for the riding or trekking animals of the officers or employees of the Administration, the Department of Plural Relations and Development or the South African Police who act in the exercise of their powers or in the execution of their duties, or for any animals - but not more than twenty-five - being under the supervision of such officers or employees.

[Subsection (3) is amended by AG 3 of 1979. The References to Plural Relations and Development Act 10 of 1979 (OG 4023), which came into force on 1 July 1979 (section 2 of Act 10 of 1979), provides that a reference in any law to the Department of Plural Relations and Development shall be construed as a reference to the Department of Co-operation and Development, without technically amending any laws.]

(4) (a) If a proclaimed road is fenced off, whether in accordance with the standards prescribed by regulation or not, and no sufficient supply of water is available within the fences thereof, the Executive Committee may provide a gate to be erected in such fence to give access to the nearest available watering-place.

(b) Such gate shall be erected by the owner, lessee or occupier of the farm crossed or bounded by such fence, at a place determined by the Executive Committee after consultation with such owner, lessee or occupier and the access to a watering-place given in that way, shall not be obstructed.

Trespassing on public grazing areas

54. (1) Excluding any stock of the owner, lessee or occupier of the farm concerned all stock being on any proclaimed road or on any public grazing area on such farm, shall be subject to the provisions of the Trespass of Animals Ordinance, 1939 (Ordinance 16 of 1939).

(2) For the purposes of this section all stock being in the possession of any person who is required in terms of section 51(2) to hold a permit, but who does not hold such permit, on such proclaimed road or public grazing area, shall be deemed to trespass on such proclaimed road or public grazing area, and all stock, being in the possession of any person who, contrary to the provisions of section 52, covers a distance of less than fifteen kilometres per twenty-four hours along such proclaimed road or across such public grazing area with such stock, shall be deemed to trespass on such proclaimed road or public grazing area.

CHAPTER VIII

ROAD ROUTE MARKERS

Road route markers

55. (1) Subject to the provisions of the Road Traffic Ordinance, 1967 (Ordinance 30 of 1967), as amended, and any regulations made and in force thereunder, the Executive Committee may -

(a) erect a road route marker, on which the names of the centres to which such roads lead are indicated where -

(i) one trunk road turns off from another trunk road;

(ii) a main road turns off from a trunk road;

(iii) one main road turns off from another main road;

(b) erect a road route marker on which the number of the district road concerned, and if such district road leads to a centre or centres which is considered by the Executive Committee to be important enough, also the name or names of such centre or centres, are indicated, where a district road turns off from a trunk or main road or from another district road;

(c) erect a road route marker on which the number of such farm road and the name of the first farm the homestead of which is served such farm road, are indicated where a farm road turns off from a trunk, main or district road;

(d) whenever the owner, lessee or occupier of the first farm the homestead of which is served by a minor road, has applied in writing through the Director of Roads to the Executive Committee for the erection thereof erect a road route marker on which the name of such farm is indicated where such minor road turns off from a trunk, main or district road.

(2) Any one or more owners, lessees or occupiers of farms served by a farm or minor road, may erect a road route marker on which the name or names of his or their farms are indicated, or cause the same to be erected, where such farm road turns off from another farm road or where such minor road turns off from a farm road or another minor road: Provided that such road route marker shall be erected in such a manner that it does not or will not constitute a danger or hindrance to traffic on any such road.

CHAPTER IX

FURROWS AND WATER COURSES

Water courses over or under proclaimed roads

56. (1) Any person wishing to lead water over or under a proclaimed road, shall do so at his own expense after having obtained the approval of the Executive Committee which may determine the type of culvert or other conduit to be used and the conditions on which it will be permitted.

(2) Whenever any person leads water over or under a proclaimed road -

(a) without having obtained the approval of the Executive Committee to do so; or

(b) In a type of culvert or other conduit other than that determined by the Executive Committee in terms of subsection (1); or

(c) contrary to the conditions determined by the Executive Committee in terms of subsection (1),

be shall be guilty of an offence and the Executive Committee may require him to remove any culvert or other conduit erected without such permission or contrary to such determination or may remove it itself and recover the cost thereof from him.

Raising of water level

57. (1) No person shall, without the approval of the Executive Committee, raise the water level of a river, stream or spruit at a proclaimed road, bridge or drift.

(2) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence.

Draining of proclaimed roads

58. (1) The Executive Committee may, in consultation with the owner, lessee or occupier of land, divert storm water from or from under any proclaimed roads onto such land, provided no buildings, orchards, gardens or other improvements have been erected or laid out

on such land and the Executive Committee shall not be liable for any damage caused by the diversion of such storm water.

(2) The Executive Committee may, in consultation with the owner, lessee or occupier of land, erect, lay out and maintain, outside proclaimed roads, retaining walls or other structures which it may deem necessary for the diversion of water onto such land, provided that no buildings, orchards or gardens or other improvements are erected or laid out on such land and the Executive Committee shall not be liable for damage caused by the diversion of such water.

(3) Should it however become necessary to divert water to land on which buildings, orchards, gardens or other improvements have been erected or laid out and damage is caused thereby the Executive Committee shall be liable to the owner, lessee or occupier of the land, for damages, the amount of which shall be determined by agreement between the parties, or falling such agreement, by arbitration in terms of the provisions of the Arbitration Act, 1965 (Act 42 of 1965).

Construction and maintenance of bridges and crossings

59. The Executive Committee shall not be responsible for the construction or maintenance of bridges or crossings of any kind whatsoever over drains or water courses outside such roads, which have been made for the diversion of storm water or otherwise for the protection of proclaimed roads and shall not be liable in connection therewith.

CHAPTER X

GENERAL AND SUPPLEMENTARY PROVISIONS

Entering upon or taking possession of land to exercise powers or duties

60. Subject to the provisions of section 65(1) the Executive Committee or any person authorised thereto by it may, in the exercise or execution of the powers or duties granted to it or him or imposed upon it or him by this Ordinance, at any time enter upon or take possession of any land after having handed a written notice of its or his intention to do so to the owner, lessee or occupier of such land or, should the owner, lessee or occupier of such land not be found thereon, without any notice whatsoever.

Authorised persons may exercise powers

61. Wherever any rights or powers are granted to the Executive Committee in this Ordinance such rights and powers shall also be given to every person duly authorised by the Executive Committee or lawfully acting on its behalf.

Undermining of proclaimed roads

62. Wherever public safety necessitates the deviation or reconstruction of a proclaimed road because the ground has been undermined subsequent to the construction thereof, the Executive Committee may, after consultation with the mine owner, mining company or underminer concerned, reconstruct or repair the original road or, if necessary, deviate it and recover the cost of such reconstruction, repair or deviation from the mine owner, mining company or underminer concerned.

Minor roads and private roads shall turn off from trunk and main roads at approved places only

63. (1) No minor road or private road shall turn off from a trunk or main road at any place other than a place approved by the Executive Committee.

(2) Any person who constructs a minor road or a private road contrary to the provisions of subsection (1) or causes it thus to be constructed and any person who maintains a minor road or a private road so constructed, or causes it to be maintained, shall be guilty of an offence.

Closing or deviation of minor roads

64. (1) (a) Whenever the owner, lessee or occupier of a farm desires the closing or deviation of a minor road crossing such farm, or a portion thereof, he shall in writing apply therefor to the chairman of the board (hereinafter referred to as the chairman) in the district of which that road or that portion of the road to which the application refers, is situated.

(b) When submitting such application the applicant shall furnish the chairman with -

(i) a sketch of the area concerned on which the road concerned and all other roads in the area are shown; and

(ii) the names of the other farms crossed by the road concerned; and

(iii) the names and addresses of the owners, lessees or occupiers of such farms.

(2) (a) The chairman shall then, at the applicant's cost, make known the application by notice published in at least one newspaper circulating in that area and shall send a copy of such notice by registered post to the owner, lessee or occupier of every farm crossed by such road, whose name and address have been furnished to him.

(b) Such notice shall command every person having any objection to the proposed closing or deviation of the road, or portion thereof, concerned to lodge his objection in writing with the officer or person mentioned in such notice within a period of thirty days of the date mentioned in such notice.

(3) Should no objections to the closing or deviation of the road, or portion thereof, concerned be lodged within the said period of thirty days, the chairman shall notify the applicant in writing that he may close or deviate such road or such portion of the road.

(4) (a) Should objections to the closing or deviation of the road, or portion thereof, concerned however be received, the chairman shall submit the application together with all the objections so received, to the board as soon as possible thereafter for consideration thereof and a decision in connection therewith.

(b) All decisions by the board in connection with such an application and the reasons for such decisions shall be recorded.

(c) Should the board decide that the road, or portion thereof, concerned may be closed or deviated, the chairman shall notify the applicant and all persons who lodged objections to it in writing of the board's decision and he shall at the same time inform the applicant that the road, or portion thereof, concerned shall not be closed or deviated before he has received a written notice authorising him to do so from the chairman.

(5) (a) Any person who has lodged an objection to the closing or deviation of the road, or portion thereof, concerned with the board, may, within a period of thirty days of the date mentioned in the notice referred to in subsection (4)(c) appeal to the Executive Committee against the decision of the board that the road may be closed or deviated.

(b) Such appeal shall be noted by sending a written notice in which the grounds of the appeal are stated to the chairman by registered post.

(6) Should no such notice of appeal be lodged with the chairman within the period of thirty days referred to in subsection (5)(a) he shall notify the applicant in writing that he may close or deviate the road, or portion thereof, concerned.

(7) (a) Upon receipt of a notice of appeal against the decision of the board that the road, or portion thereof, concerned may be closed or deviated, the chairman shall forward it together with the minutes of the proceedings of the board, as far as they may refer to the application concerned and the objections lodged to it, to the Director of Roads if it has not already been forwarded to him and the Director of Roads shall submit it to the Executive Committee.

(b) The Executive Committee may in its discretion decide which road arrangement shall be made in terms of the application and should it decide that the road, or portion thereof, concerned may be closed or deviated, the chairman shall communicate the decision of the Executive Committee to the appellant and the chairman shall notify the applicant in writing that he may close or deviate such road or portion thereof.

(8) When the applicant has closed the road, or portion thereof, concerned in terms of the provisions of this section, whether by the erection of a fence across it or in any other way whatsoever, he shall immediately, in accordance with the provisions of the Road Traffic Ordinance, 1967 (Ordinance 30 of 1967) and the regulations made and in force thereunder, erect a road traffic sign indicating that such road has been closed to traffic at the place or places where the road, or portion thereof, concerned has been closed and he shall properly maintain such road traffic sign for a period of at least six months.

(8A) When the applicant has deviated the road, or portion thereof concerned in terms of the provisions of this section, he shall immediately -

(a) close, whether by the erection of a fence across it or in any other way whatsoever, the road or portion thereof which was previously used as road but as a result of the deviation thereof will no longer be used as road; and

(b) in accordance with the provisions of the Road Traffic Ordinance, 1967 (Ordinance 30 of 1967), and the regulations made and in force thereunder, erect a road traffic sign indicating that such road has been closed to traffic at the place or places where the road, or portion thereof concerned has been closed as a result of the deviation and he shall properly maintain such road traffic sign for a period of at least six months.

[Subsection (8A) is inserted by Ord. 10 of 1974. Although Ord. 10 of 1974 directs substitutions of the phrases "close or deviate" and "closed or deviated" for the words "close" and "closed", respectively, wherever they occur in section 64 except in subsection (8), this directive does not seem applicable to this subsection, which was inserted by the same amending Ordinance – and would create an absurdity if so applied.]

(9) Any person who -

(a) closes a minor road without having been notified in writing in terms of the provisions of this section that he may do so;

[Although Ord. 10 of 1974 directs substitutions for the words "closing", "close" and "closed" wherever they occur in section 64, except in subsection (8), there is no corresponding directive regarding the substitution of the expression "closes or deviates" for the word "closes".]

(b) fails to erect or maintain a road traffic sign in accordance with the provisions of subsection (8) where a minor road has been closed or deviated

shall be guilty of an offence.

[Section 64 is amended by Ord. 10 of 1974 to substitute the expressions "closing or deviation", "close or deviate" and "closed or deviated" for the words "closing", "close" and "closed", respectively, wherever they occur in section 64, except in subsection (8).]

Compensation for encroachment on land

65. (1) Whenever any direct damage is caused to any improvements in the course of the opening, construction, maintenance or widening of a proclaimed road, or the establishment of a pont service by or on behalf of the Executive Committee, but in no other case, the owner concerned shall be entitled to damages, the amount of which shall be determined by agreement between the parties, or falling such agreement, by arbitration in terms of the provisions of the Arbitration Act, 1965 (Act 42 of 1965).

(2) When the Executive Committee -

(a) across a portion of land within an urban area which is registered as a separate unit in the Deeds Office of the Territory or across a farm of fifty hectares or smaller, proclaims a road where no road previously existed or re-opens a road which has been closed and declares it to be a proclaimed road; and

[paragraph (a) substituted by Ord. 10 of 1974]

(b) determines the course of a road thus proclaimed; and

(c) declares such road in terms of section 23 to be a trunk, main or district road,

the owner of the land across which such road has been so proclaimed shall, notwithstanding the provisions of subsection (1) and over and above any damages to which he shall be entitled in terms of subsection (1) be entitled to compensation for the land covered by such road.

(3) Whenever the Executive Committee has increased the width of the road reserve of a proclaimed road in terms of section 3 the owner of the land concerned shall, notwithstanding the provisions of subsection (1) and over and above any damages to which he shall be entitled in terms of subsection (1), be entitled to compensation for the land covered by such increase of the width of the road reserve.

(4) When in the course of the construction of a trunk road land remains on both sides or on one side of such road -

(a) the area of which is smaller than the area of the land taken up by such road and the land which so remains is of no use to the owner thereof; or

(b) on which the owner shall in terms of the provisions of any law be prohibited from erecting any building; or

(c) to which no access may be given,

the owner of the land thus remaining, may require the Executive Committee to increase the width of the road reserve of such proclaimed road in such a way that it includes the land thus remaining, in which case the Executive Committee shall be compelled thus to widen the road reserve, and the owner of the land concerned shall, notwithstanding the provisions of subsection (1) and over and above any damages to which he shall be entitled in terms of subsection (1), be entitled to compensation for the land thus remaining.

(5) The amount of any compensation to which the owner of land may be entitled in terms of this section shall be determined by agreement between the parties, or failing such agreement by arbitration in terms of the provisions of the Arbitration Act, 1965 (Act 42 of 1965).

(6) Notwithstanding anything to the contrary contained in this Ordinance the Executive Committee may in its discretion, by way of reasonable relief, authorise the payment of an amount fixed by it, if it is, in any case where no payment of compensation is claimable, of the opinion that damage has been or will be done by the exercising of any power in terms of this Ordinance.

Regulations

66. The Executive Committee may make regulations not inconsistent with the provisions of this Ordinance in respect of any of the following matters:

(a) the powers, duties and functions of boards established in terms of section 5;

(b) the control, management and operation of ponts and ponts services;

(c) subject to the provisions of the Public Service Act, 1957 (Act 54 of 1957), and the Administration Employees Ordinance, 1957 (Ordinance 17 of 1957), the duties and conditions of service of Administration officers or employees charged with the administration or execution of the provisions of this Ordinance;

[The "Administration of South West Africa" and the "Secretary for South West Africa" were removed from the coverage of the Public Service Act 54 of 1957 by RSA Proc. R 112/1980 (RSA GG 7097). The public service in South West Africa was then governed by the Government Service Act 2 of 1980 (OG 4116), which was re-named the Public Service Act 2 of 1980 and replaced by the Public Service Act 13 of 1995. The Administration Employees Ordinance 17 of 1957 (OG 2087), which covered only certain categories of employees, was apparently repealed by Ord. 6/1982 (Whites) (*Official Gazette 20 of the Representative Authority of the Whites*, dated 1 July 1982); this *Gazette* has not been located in any of Namibia's libraries.]

(d) the protection from damage or interference of Administration property or works, including trees, boreholes, wells and improvements within the road reserve of, under or over proclaimed roads;

(e) the junction of unproclaimed roads with proclaimed roads and control thereof;

(f) fences on road reserve boundaries or across road reserves and motor grid gates;

(g) anything which has to be or may be prescribed in terms of this Ordinance;

(h) generally for the better and more efficacious carrying out of the provisions and objects of this Ordinance.

Prohibitions

67. (1) No person shall -

(a) make use of any vehicle fitted with metal tracks on any tarred proclaimed road;

(b) dig out any bogged down vehicle on any proclaimed road unless he repairs the road to the best of his ability immediately thereafter.

(2) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence.

Offences and penalties

68. (1) Any person who contravenes any provision of this Ordinance or falls to comply with any provision thereof with which it is his duty to comply, or with a condition imposed in terms thereof or with a notice, direction or order given or issued in terms thereof, shall be guilty of an offence.

(2) Any person convicted of any offence in terms of this Ordinance for which no penalty is expressly provided shall be liable to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding six months.

Existing roads

69. Notwithstanding the provisions of this Ordinance all roads constructed in terms of existing laws, shall be deemed to have been constructed in terms of this Ordinance.

Repeal of laws

70. (1) Subject to the provisions of subsections (2) and (3) the laws specified in the schedule are hereby repealed to the extent set out in the third column thereof.

(2) All proclamations, notices and regulations made, promulgated or framed in terms of the provisions of any law repealed by this Ordinance shall, if not inconsistent with the provisions hereof, remain in force until revoked or amended in terms of the provisions of this Ordinance: Provided that every proclaimed road proclaimed in terms of the provisions of any law prior to the commencement of this Ordinance shall continue to exist as it has thus been proclaimed and shall retain the classification and number allocated to it.

[The proviso to subsection (2) is substituted by Ord. 16 of 1973, with the substitution deemed to have come into operation on 1 January 1973 (section 2(2) of Ord. 16 of 1973).]

(3) Any proclamation made in regard to any law repealed by this Ordinance, shall remain in force as if it had been made in regard to this Ordinance and shall be deemed to have been made in regard to this Ordinance.

Short title and date of commencement

71. This Ordinance shall be called the Roads Ordinance, 1972, and shall come into operation on a date determined by the Executive Committee and made known by proclamation in the *Official Gazette.*

SCHEDULE

LAWS REPEALED

No. and Year of Law.	Short Title.	Extent Repealed.
Ordinance 28 of 1962.	Roads Ordinance, 1962.	The whole: Provided that section 35 thereof shall, notwithstanding the provisions of section 70 of this Ordinance, be repealed with effect from 1 April 1973.
Ordinance 16 of 1963.	Roads Amendment Ordinance, 1963.	The whole.
Ordinance 6 of 1964.	Roads Amendment Ordinance, 1964.	The whole.
Ordinance 37 of 1965.	Roads Amendment Ordinance, 1965.	The whole.
Ordinance 6 of 1966.	Roads Amendment Ordinance, 1966.	The whole.
Ordinance 4 of 1967.	Roads Amendment Ordinance, 1967.	The whole.
Ordinance 21 of 1967.	Roads Further Amendment Ordinance, 1967.	The whole.
Ordinance 12 of 1968.	Roads Amendment Ordinance, 1968.	The whole.
Ordinance 26 of 1969.	Roads Amendment Ordinance, 1969.	The whole.
Ordinance 9 of 1971.	Roads Amendment Ordinance, 1971.	The whole: Provided that section 3 thereof shall, notwithstanding the provisions of section 70 of this Ordinance, be repealed with effect from 1 April 1973.
Ordinance 4 of 1972.	Roads Ordinance, 1962.	The whole: Provided that section 1 thereof shall, notwithstanding the provisions of section 70 of this Ordinance, be repealed with effect from 1 April 1973.

[The Application of laws relating to Roads in Eastern Caprivi, Owambo, Kavango and Damaraland Act 5 of 1982 (OG 4618), which extended this Ordinance to the named areas, provided for some additional repeals of laws in respect of those areas:

"Repeals of laws

4. (1) Subject to the provisions of subsection (2), the laws -

(a) specified in Schedule I are hereby repealed in so far as the said laws are still in force in Eastern Caprivi as defined in the Schedule to Government Notice 2429 of 1972;

(b) specified in Schedule 2 are hereby repealed in so far as the said laws are still in force in -

(i) Owambo as defined in Schedule C to Government Notice 2428 of 1972 as amended by Government Notice 165 of 1977;

(ii) Kavango, consisting of Area I defined in Schedule D to Government Notice 2428 of 1972.

(2) Anything done under or in terms of any provision of any law repealed by subsection (1)(b) shall, if not contrary to or inconsistent with the provisions of the Roads Ordinance, 1972 (Ordinance 17 of 1972), be deemed to have been done under or in terms of the corresponding provision of the said Ordinance."

SCHEDULE 1

LAWS REPEALED IN SO FAR AS THEY ARE STILL IN FORCE IN EASTERN CAPRIVI

No. and year of law	Short Title
Ordinance 13 of 1931	Roads (Motor By-Passes) Ordinance, 1931
Ordinance 7 of 1937	Roads and Outspans Ordinance, 1937
Ordinance 8 of 1942	Roads and Outspans Amendment Ordinance, 1942
Ordinance 7 of 1945	Roads and Outspans Amendment Ordinance, 1945

SCHEDULE 2

LAWS REPEALED IN SO FAR AS THEY ARE STILL IN FORCE IN EASTERN CAPRIVI

This heading appears to be in error; it should refer to Ovambo and Kavango to accord with section 4(1) of Act 5 of 1982, quoted above.

No. and year of law	Short Title
Ordinance 28 of 1962	Roads Ordinance, 1962
Ordinance 16 of 1963	Roads Amendment Ordinance, 1963
Ordinance 6 of 1964	Roads Amendment Ordinance, 1964
Ordinance 37 of 1965	Roads Amendment Ordinance, 1965
Ordinance 6 of 1966	Roads Amendment Ordinance, 1966
Ordinance 4 of 1967	Roads Amendment Ordinance, 1967
Ordinance 21 of 1967	Roads Further Amendment Ordinance, 1967
Ordinance 12 of 1968	Roads Amendment Ordinance, 1968

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