

CHAPTER 20:04

COMMUNAL LAND ACT

Acts 20/1982, 8/1985, 21/1985, 8/1988, 18/1989 (s. 32), 3/1992, 25/1998 (s. 53), 22/2001 (s. 4), 13/2002 (s. 142).

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AN ACT to provide for the classification of land in Zimbabwe as Communal Land and for the alteration of such classification; to alter and regulate the occupation and use of Communal Land; and to provide for matters incidental to or connected with the foregoing.

[Date of commencement: 1st February, 1983.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Communal Land Act [*Chapter 20:04*].

2 Interpretation

In this Act—

“Communal Land” means land referred to as Communal Land in section *three*;

“inhabitant”, in relation to any Communal Land or part thereof, means a person who is entitled, in terms of this Act, to reside in that Communal Land or part thereof;

“Minister” means the Minister of Local Government, Rural and Urban Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“use”, in relation to Communal Land, includes the erection of any building or enclosure, ploughing, hoeing, the cutting of vegetation, the depasturing of animals or the taking of sand, stone or other materials therefrom.

PART II
COMMUNAL LAND

3 Extent of Communal Land

Communal Land shall consist of land which, immediately before the 1st February, 1983, was Tribal Trust Land in terms of the Tribal Trust Land Act, 1979 (No.6 of 1979), subject to any additions thereto or subtractions therefrom made in terms of section *six*.

4 Vesting of Communal Land

Communal Land shall be vested in the President, who shall permit it to be occupied and used in accordance with this Act.

5 Description of Communal Land

(1) The Minister shall, by statutory instrument, publish a description of the area of Communal Land.

(2) The Minister may from time to time, by statutory instrument, amend any instrument published in terms of subsection (1), or any replacement of such instrument, in order—

- (a) more clearly to describe the area of Communal Land; or
- (b) to change the name or other designation of any Communal Land; or
- (c) to correct any error in the description of any Communal Land.

(3) If the instrument referred to in subsection (1) has been amended in terms of subsection (2) or in terms of subsection (2) of section *six*, the Minister may, by statutory instrument, repeal and replace such instrument with a further instrument describing the area of Communal Land as at the date of such replacement and may thereafter, from time to time, likewise repeal and replace any instrument published in terms of this subsection.

(4) No statutory instrument published in terms of this section shall have the effect of transferring any land to or from Communal Land.

6 Additions to and subtractions from Communal Land

(1) Subject to this Act, the Forest Act [*Chapter 19:05*] and the Parks and Wild Life Act [*Chapter 20:14*], the President may, by statutory instrument—

- (a) declare that any State Land shall form part of Communal Land;
- (b) after consultation with any rural district council established for the area concerned, declare that any land within Communal Land shall cease to form part of Communal land

(2) Whenever the President has published a declaration in terms of subsection (1), the Minister shall, by statutory instrument, amend the instrument published in terms of subsection (1) or (3) of section *five*, as the case may be, to reflect such declaration.

(3) Whenever any land ceases to form part of Communal Land in terms of a declaration published in terms of subsection (1), such land shall thereupon become State land until it is granted, sold or otherwise disposed of in terms of this Act or any other law.

PART III
OCCUPATION AND USE OF COMMUNAL LAND

7 Restriction on right to occupy or use Communal Land

(1) Subject to sections *ten* and *eleven*, no person shall occupy or use any portion of Communal Land—

- (a) except in the exercise of any previously acquired right subsisting on the 1st February, 1983, or
- (b) except in accordance with the terms and conditions of any right, consent or permit granted or issued, as the case may be, in terms of this Act or any other enactment; or
- (c) unless he or she is a spouse, dependent relative, guest or employee of a person who occupies or uses Communal Land in terms of paragraph (a) or (b).

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

8 Occupation and use of Communal Land for agricultural or residential purposes

(1) Subject to this Act and the Regional, Town and Country Planning Act [*Chapter 29:12*] and any order issued in terms thereof, a person may occupy and use Communal Land for agricultural or residential purposes with the consent of the rural district council established for the area concerned.

(2) Subject to subsection (3) and the Regional, Town and Country Planning Act [*Chapter 29:12*] and any order issued in terms thereof, when granting consent in terms of subsection (1), a rural district council shall—

- (a) where appropriate, have regard to customary law relating to the allocation, occupation and use of land in the area concerned; and

(a1) consult and co-operate with the chief appointed to preside over the community concerned in terms of the Traditional Leaders Act [*Chapter 29:17*]; and

[Subsection inserted by section 53 of Act 25 of 1998]

- (b) grant consent only to persons who, according to the customary law of the community that has traditionally and continuously occupied and used land in the area concerned, are regarded as forming part of such community or who, according to such customary law, may be permitted to occupy and use such land:

Provided that, if no community has traditionally and continuously occupied and used land in the area concerned, the district council shall grant consent only to such class of persons as the Minister, by notice in writing to the district council, may specify.

(3) Officers and employees of a rural district council may, with the consent of the council, occupy and use Communal Land within the council area for the purposes of their employment, notwithstanding that they could not, by virtue of paragraph (b) of subsection (2), be permitted to occupy and use such land.

(4) Any person who is aggrieved by a refusal by a rural district council to grant consent in terms of subsection (1) may appeal to the President within such time and in such manner as may be prescribed by regulation.

(5) In any appeal in terms of subsection (4) the President may confirm, vary, set aside or reverse the refusal appealed against or make such other order in the matter as he thinks just.

(6) Where a rural district council is established for any area of Communal Land or any area of Communal Land is incorporated within the area of a rural district council, any person lawfully occupying or using land in such area for agricultural or residential purposes on the date of such establishment or incorporation, as the case may be, shall be deemed to have obtained the consent of such rural district council for the purposes of subsection (1).

9 Permits to occupy and use Communal Land

(1) A rural district council may, with the approval of the Minister, issue a permit authorizing any person or class of persons to occupy and use, subject to the Regional, Town and Country Planning Act [*Chapter 29:12*] and any order issued in terms thereof, any portion of Communal Land within the area of such rural district council, where such occupation or use is for any of the following purposes—

- (a) administrative purposes of the State or a local or like authority;
- (b) religious or educational purposes in the interests of inhabitants of the area concerned;
- (c) hospitals, clinics or other such establishments for the benefit of inhabitants of the area concerned;
- (d) hotels, shops or other business premises;
- (e) any other purpose whatsoever which, in the opinion of the rural district council, is in the interests of inhabitants of the area concerned;

(2) A rural district council may, with the approval of the Minister—

- (a) impose such conditions upon the issue of a permit in terms of subsection (1) as may be specified in the permit; and
- (b) at any time, by notice in writing to the person to whom the permit was issued, cancel or vary a permit issued in terms of subsection (1) or any of the conditions subject to which it was issued.

(3) Any person who is aggrieved by—

- (a) a refusal by a rural district council to issue a permit in terms of subsection (1) or to vary any permit or any condition thereof in terms of subsection (2); or
- (b) the cancellation or variation of a permit or any condition thereof in terms of subsection (2);

may appeal to the Minister within such time and in such manner as may be prescribed by regulation.

(4) In any appeal in terms of subsection (3) the Minister may confirm, vary, set aside or reverse the refusal, cancellation or variation appealed against or make such other order in the matter as he thinks just.

10 Setting aside of Communal Land for certain purposes

(1) Subject to this section, the Minister shall set aside land contained within Communal Land for the establishment of—

- (a) a township, village, business centre or industrial area, where such land is—
 - (i) designated for any such purpose in terms of a rural development plan approved by him and the Minister responsible for lands after consultation with the Director of Physical Planning and any rural district council established for the area concerned; or
 - (ii) the subject of a layout approved in terms of section 43 of the Regional, Town and Country Farming Act [*Chapter 29:12*];

or

- (b) an irrigation scheme, where such land is designated for such purpose in terms of a rural development plan approved by him and the Minister responsible for lands after consultation with the Secretary as defined in section 2 of the Environmental Management Act [*Chapter 20:26*] and any rural district council established for the area concerned.

[Paragraph amended by section 4 of Act 22 of 2001]

(2) Subject to this section, after consultation with any rural district council established for the area concerned, the Minister may set aside any land contained within Communal Land, other than land referred to in subsection (1), for any purpose whatsoever, including a purpose referred to in subsection (1), which he considers is in the interests of

inhabitants of the area concerned or in the public interest or which he considers will promote the development of Communal Land generally or of the area concerned.

(3) Before any land is set aside in terms of subsection (1) or (2) the Minister shall publish a statutory instrument—

- (a) describing the land concerned; and
- (b) specifying the purpose for which the land concerned is to be set aside; and
- (c) specifying the date with effect from which the land concerned will be set aside; and
- (d) ordering all persons, or such class of persons as the Minister may specify in the notice, who are occupying or using the land concerned, otherwise than by virtue of a right held in terms of the Mines and Minerals Act [Chapter 21:05], to depart permanently with all their property from the land concerned within such reasonable period as the Minister shall specify in the notice;

and the Minister shall ensure that such steps are taken as appear to him sufficient to disseminate the terms of the notice within the area of the land concerned.

(4) Where any land is set aside in terms of subsection (1) or (2), the Minister may in regulations made in terms of section *fifteen*, provide for—

- (a) charges and deposits to be made for any services, amenities or facilities provided by the State within or for any such land, whether or not any such service is used or not;
- (b) supplementary charges in respect of immovable property within any such land, to cover the expenses incurred by the State in the maintenance and administration of such land;
- (c) delegating to any rural district council within whose area the land is situated responsibility for collecting any rents, charges, deposits or supplementary charges on behalf of the State;
- (d) generally, the terms and conditions subject to which any person may lease, occupy or use any such land.

(5) Regulations providing for charges, deposits or supplementary charges in terms of subsection (4)—

- (a) may provide that the charges and supplementary charges shall be included in rents or charged separately; and
- (b) may divide the persons who are liable to pay the charges, deposits or supplementary charges into classes and fix different amounts for different classes; and
- (c) may vary any charges and deposits according to the use to which the premises concerned are put; and
- (d) shall base every such supplementary charge upon a unit of land and additionally, or alternatively, a unit of residential or business accommodation, as the case may be, determined by the Minister and may vary such supplementary charge according to any or all of the following—
 - (i) the type of tenure under which the property is held;
 - (ii) the value of the property, whether based upon the value of the land or the improvements, or both;
 - (iii) the area of the property, being either that of the land or of the improvements;
 - (iv) the use to which the property is put.

(6) Any land set aside in terms of subsection (1) or (2) shall remain part of Communal Land unless the President, in terms of subsection (1) of section *six*, declares that it shall cease to form part of Communal Land.

(7) Any person who, without just cause, fails to depart permanently from any land in accordance with a statutory instrument published in terms of subsection (3) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

11 Servitudes relating to water rights over Communal Land

Where any person has applied to the Administrative Court in terms of the Water Act [Chapter 20:22], for—

- (a) a servitude of storage as defined in section 87 of that Act, and the exercise of such servitude would cause the inundation of any area of Communal Land, the Administrative Court may grant such servitude and, if necessary, any servitude of abutment, purification or passage as defined in section 78 of that Act; or
- (b) a servitude of passage as defined in section 78 of that Act for the passage of water over any area of Communal Land, the Administrative Court may grant such servitude;

if the Minister, after consultation with any rural district council established for the area concerned, has consented to the grant of such servitude or servitudes, as the case may be, and any conditions fixed by him in giving his consent are made binding on the person to whom the servitude has been or the servitudes have been, as the case may be, granted.

PART IV

GENERAL

12 Compensation

(1) Where as a result of—

- (a) a declaration in terms of section *six*; or
- (b) the setting aside of any land in terms of section *ten*; or

- (c) the grant of any servitude in terms of section *eleven*;
any person is dispossessed of or suffers any diminution of his right to occupy or use any land—
- (i) he shall, so far as is reasonable and practicable, be given a right to occupy or use alternative land; or
 - (ii) if no alternative land is available and no agreement has been reached as to compensation, Parts V and VIII of the Land Acquisition Act [*Chapter 20:10*], shall apply, *mutatis mutandis*, in respect of such dispossession or diminution.

(2) Any compensation payable in terms of subsection (1) shall be paid from the Consolidated Revenue Fund, which is hereby appropriated to the purpose.

13 By-laws of rural district councils

(1) A rural district council may, in accordance with Part XI of the Rural District Councils Act [*Chapter 29:13*], make by-laws relating to the functions conferred or imposed upon it in terms of this Act and generally for the control and regulation of the occupation and use of Communal Land within the area for which such council has been established:

Provided that no such by-law shall—

- (a) be inconsistent with this Act or any other enactment in force within the area for which such by-laws are made; or
- (b) fix a penalty for any contravention thereof in excess of a fine of level four or imprisonment for a period of three months or both such fine and such imprisonment.

[Paragraph amended by section 4 of Act 22 of 2001]

(2) Notwithstanding the Rural District Councils Act [*Chapter 29:13*], the Minister may, by by-laws published in the *Gazette* and after consultation with the rural district council concerned, amend or repeal any by-laws made in terms of subsection (1).

14 Model by-laws

(1) The Minister may publish in the *Gazette* model by-laws providing for any of the matters for which a rural district council may, in terms of section *thirteen*, make by-laws and may at any time thereafter in like manner amend or repeal any such model by-laws.

(2) A rural district council may, in accordance with Part XI of the Rural District Councils Act [*Chapter 29:13*], make by-laws adopting by reference, wholly or in part and with or without modifications, any model by-laws made in terms of subsection (1), and the model by-laws so adopted shall have effect as if they were by-laws made by the rural district council.

(3) Any model by-laws or part thereof adopted by a rural district council in terms of subsection (2) shall, notwithstanding the repeal of such model by-laws by the Minister in terms of subsection (1), remain in effect within the area to which they applied on such adoption.

(4) Any amendment to model by-laws made by the Minister in terms of subsection (1) shall not have effect within the area of a rural district council which has in terms of subsection (2) adopted such model by-laws, until such amendment has in terms of subsection (2) been adopted by that rural district council.

(5) Notwithstanding the Rural District Councils Act [*Chapter 29:13*], the Minister may, by by-laws published in the *Gazette* and after consultation with the rural district council concerned, amend or repeal any by-laws made by a rural district council in terms of subsection (2).

15 Regulations

(1) The Minister may make regulations prescribing all matters which by this Act are required or permitted to be prescribed by regulation or which, in his opinion, are necessary or convenient to be so prescribed for the better carrying out of or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide penalties for contraventions thereof, but no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

16 Penalties and orders of ejectment

(1)

[Subsection repealed by section 4 of Act 22 of 2001]

(2) The court convicting any person on a charge of occupying any land in contravention of this Act may, in addition to any penalty imposed—

- (a) make an order for the ejectment from such land of such person and of any other person proved to be living with him, whether permanently or otherwise; and
- (b) make such order, give such instructions and confer upon any person such authority as it may consider reasonably necessary to give effect to the said order of ejectment and for the removal from such land of the possessions of any person to be ejected.

(3) An order may be made in terms of subsection (2) against any person proved to be living with the convicted person without prior notice having been given to such first-mentioned person.

(4) Any person ejected from any land in terms of an order made in terms of subsection (2) who is at any time found to be on such land without lawful excuse, the onus of proof whereof shall lie upon him, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(5) Notwithstanding anything to the contrary contained in any enactment, a magistrates court shall have jurisdiction to impose any penalty prescribed by this Act and to make any order in terms of subsection (2).

[Subsection amended by section 4 of Act 22 of 2001]

(6) Any expense incurred by the State in ejecting a person in terms of an order made under subsection (2) may be recovered by the Minister by proceedings in a competent court from any of the persons ejected in terms of that order.

17 Savings

(1) Notwithstanding the repeal of the Tribal Trust Land Act, 1979 (No. 6 of 1979)—

- (a) any permit or consent relating to the occupation of Tribal Trust Land which was issued or given or was deemed to have been issued or given in terms of that Act and which was in force immediately before the 1st February, 1983, shall, on and after that date, continue in force as though it had been issued or given in respect of Communal Land in terms of the corresponding provisions of this Act;
 - (b) any part of Communal Land which was set aside for any purpose in terms of that Act shall be deemed to have been set aside in terms of the corresponding provision of this Act;
 - (c) any by-laws made by a tribal authority established or deemed to have been established in terms of that Act which were in force within any part of the area of a rural district council immediately before the 1st February, 1983, shall, on and after that date, continue in force within the same area as though they were by-laws made in terms of this Act by such rural district council, and may be amended or repealed as though they had been so made;
 - (d) any model by-laws published or deemed to have been published by the Minister in terms of that Act shall, on and after the 1st February, 1983, have effect as though they were model by-laws published in terms of this Act;
 - (e) any regulations made or deemed to have been made by the Minister in terms of that Act which were in force immediately before the 1st February, 1983, shall, on and after such date, continue in force as though they had been made in terms of this Act.
- (2) Any reference in any enactment or document to—
- (a) Tribal Trust Land shall be construed as a reference to Communal Land;
 - (b) a tribal authority or tribal land authority shall be construed as a reference to a rural district council established for the area concerned.