

*Argief*

BUITENGEWONE  
**OFFISIËLE KOERANT**  
VAN SUIDWES-AFRIKA.  
**OFFICIAL GAZETTE**  
EXTRAORDINARY  
OF SOUTH WEST AFRICA.



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UITGAWE OP GESAG.

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## ONTWERPORDONNANSIE

Om voorsiening te maak vir die onteining van grond en ander goed vir openbare doeleindes, om voorsiening te maak vir aangeleenthede wat daarmee in verband staan en om Ordonnansie 30 van 1963 te wysig.

Die Wetgewende Vergadering van die Gebied Suidwes-Afrika met die toestemming van die Staatspresident dermate sodanige toestemming nodig is vooraf verkreë en deur boodskap van die Administrateur aan die Wetgewende Vergadering meegedeel ooreenkomstig die bepalings van artikel 26 van die Zuidwest-Afrika Konstitutie Wet 1925 (Wet 42 van 1925) van die Republiek van Suid-Afrika, VERORDEN:—

Woordbepaling.

1. Tensy uit die samehang anders blyk, beteken in hierdie ordonnansie —

- (i) „datum van kennisgewing” die datum waarop ’n kennisgewing ingevolge subartikel (1) van artikel 4 aan iemand afgelewer of gepos of ingevolge subartikel (4) van genoemde artikel in die *Offisiële Koerant* gepubliseer word, en indien ’n kennisgewing ten opsigte van dieselfde goed aldus afgelewer of gepos en gepubliseer word, die datum waarop dit aldus gepubliseer word; (i)
- (ii) „eenaar”, met betrekking tot grond of ’n geregistreerde reg in of oor grond, die persoon op wie se naam dié grond of reg geregistreer is, en —
  - (a) indien die eenaar van enige goed oorlede is, die eksekuteur van sy boedel;
  - (b) indien die boedel van die eenaar van enige goed gesekwestreer is, die kurator van sy insolvente boedel;
  - (c) indien die eenaar van enige goed ’n maatskappy is wat gelikwieder word, die likwidateur daarvan;
  - (d) indien enige goed oorgegaan het op ’n berederaar of kurator gekies of aangestel ingevolge die Boerebystandsordonnansie 1962 (Ordonnansie 11 van 1962), daardie berederaar of kurator;
  - (e) indien die handelingsbevoegdheid van die eenaar van enige goed andersins beperk is, sy verteenwoordiger in regte;
  - (f) met betrekking tot ’n hoewe wat ingevolge die Landnedersetting Gekonsolideerde en Wysigingsproklamasie 1927 (Proklamasie 310 van 1927) van die Unie van Suid-Afrika, toegeken, verhuur, verkoop of uitgegee is, die persoon aan wie dit aldus toegeken, verhuur, verkoop of uitgegee is;
  - (g) indien die eenaar van enige goed uit die Gebied afwesig is of dit nie bekend is waar hy hom bevind nie, sy gevolmagtigde verteenwoordiger in die Gebied; (iv)
- (iii) „goed” roerende sowel as onroerende goed; (v)
- (iv) „onroerende goed” ook ’n saaklike reg in of oor grond; (ii)
- (v) „plaaslike bestuur” ’n munisipale raad of ’n dorpsbestuur; (iii).

Bevoegdheid van Administrateur om goed vir openbare doeleindes te onteien of om die reg te neem om goed vir openbare doeleindes te gebruik.

2. Behoudens die bepalings van hierdie ordonnansie kan die Administrateur, onderhewig aan ’n verpligting om vergoeding te betaal, enige goed vir openbare doeleindes onteien of die reg neem om enige goed vir openbare doeleindes tydelik te gebruik.

## DRAFT ORDINANCE

To provide for the expropriation of land and other property for public purposes, to provide for matters incidental thereto, and to amend Ordinance 30 of 1963.

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BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa, with the consent of the State President, in so far as such consent is necessary, previously obtained and communicated to the Legislative Assembly by message from the Administrator in accordance with the provisions of section 26 of the South West Africa Constitution Act, 1925, (Act 42 of 1925), of the Republic of South Africa:—

1. In this ordinance, unless the context otherwise indicates — Definitions.

- (i) "date of notice" means the date on which a notice is in terms of sub-section (1) of section 4 delivered or posted to a person or is in terms of sub-section (4) of the said section published in the *Official Gazette* and if a notice in respect of the same property is so delivered or posted and published, the date on which it is so published; (i)
- (ii) "immovable property" includes a real right in or over land; (iv)
- (iii) "local authority" means a municipal council or a village management board; (v)
- (iv) "owner" means, in relation to land or a registered right in or over land, the person in whose name such land or right is registered, and —
  - (a) if the owner of any property is deceased, the executor in his estate;
  - (b) if the estate of the owner of any property has been sequestrated, the trustee of his insolvent estate;
  - (c) if the owner of any property is a company which is being wound up, the liquidator thereof;
  - (d) if any property has vested in a liquidator or trustee elected or appointed in terms of the Farmers' Assistance Ordinance 1962 (Ordinance 11 of 1962), that liquidator or trustee;
  - (e) if the owner of any property is otherwise under legal disability, his legal representative;
  - (f) in relation to a holding allotted, leased, sold or granted in terms of the Land Settlement Consolidation and Amendment Proclamation, 1927 (Union of South Africa Proclamation 310 of 1927), the person to whom it has been so allotted, leased, sold or granted;
  - (g) if the owner of any property is absent from the Territory or his whereabouts are unknown, his authorized representative in the Territory;
- (v) "property" means both movable and immovable property; (iii)

2. Subject to the provisions of this ordinance the Administrator may, subject to an obligation to pay compensation, expropriate, or take the right to use temporarily, any property for public purposes.

Powers of Administrator to expropriate, or to take the right to use, property for public purposes.

Ondersoek van grond vir doeleindes van ontelening of neem van reg op tydelike gebruik.

3. (1) Indien grond of die tydelike gebruik van grond vir openbare doeleindes benodig is, kan die Administrateur —

- (a) ten einde vas te stel of enige bepaalde grond vir die beoogde doeleindes of gebruik geskik is, iemand magtig om —
  - (i) daardie grond met die nodige werksmense, toerusting en voertuie te betree;
  - (ii) daardie grond op te meet en die hoogtes daarvan te bepaal;
  - (iii) op of in daardie grond te grawe of te boor;
  - (iv) 'n meetdam in enige rivier of stroom te bou en in stand te hou;
  - (v) vir sover dit nodig is om toegang tot daardie grond te verkry, met die nodige werksmense, toerusting en voertuie enige ander grond te betree en daarvoor te gaan;
  - (vi) enige ander handeling te verrig wat nodig is om hom in staat te stel om tot 'n besluit daarvoor te geraak;
- (b) iemand magtig om die grense van enige grond wat vir genoemde doeleindes of gebruik benodig is, af te baken:

Met dien verstande dat so iemand nie sonder die toestemming van die eienaar of bewoner enige handeling in subparagraawe (i), (ii), (iii), (iv) en (vi) van paragraaf (a) en in paragraaf (b) van hierdie subartikel genoem, mag verrig nie tensy hy die eienaar of bewoner minstens veertien dae kennis gegee het van sy voorneme om dit te doen: Met dien verstande voorts dat indien enige sodanige handeling volgens die oordeel van die Administrateur dringend uitgevoer moet word, vier-en-twintig uur kennisgewing van sodanige voorneme voldoende is.

(2) Indien iemand skade gely het as gevolg van die uitoefening van 'n bevoegdheid ingevolge subartikel (1) verleen, moet die Administrateur vergoeding vir sodanige skade betaal.

(3) Die bedrag van sodanige vergoeding word by ontstentenis van ooreenkoms deur die hof bepaal, en die bepalinge van artikel 7, 9 en 10 is *mutatis mutandis* van toepassing in verband met die bepaling van sodanige bedrag.

Kennisgewing dat goed ontelen of tydelik gebruik gaan word.

4. (1) Indien die Administrateur besluit het om ingevolge die bepalinge van artikel 2 enige goed te onteien of die reg te neem om goed tydelik te gebruik, moet hy, behoudens die bepalinge van subartikel (4) van hierdie artikel, aan die betrokke eienaar 'n gepaste kennisgewing laat bestel deur dit aan hom te laat oorhandig of per aangetekende pos aan hom te laat stuur.

(2) Indien die goed wat onteien of gebruik gaan word, grond is, moet die Administrateur, behoudens die bepalinge van subartikel (4), 'n afskrif van sodanige kennisgewing aldus laat bestel aan iedereen wat, volgens die titelbewys van dié grond of die registers van die Registrateur van Aktes of van enige ander Staatskantoor waar regte aangeteken word wat toegestaan is ingevolge 'n Wet op prospekter- of mynbouwerkzaamhede, enige belang in daardie grond het, en, indien die grond binne die gebied van 'n plaaslike bestuur geleë is, aan dié plaaslike bestuur.

(3) Sodanige kennisgewing moet 'n duidelike en volledige beskrywing bevat van die betrokke goed of, indien 'n reg om goed te gebruik geneem word, van dié reg, moet, met inagneming van die bepalinge van subartikels (5) en (6), die datum vermeld waarop die onteiening van krag word of, na gelang, die datum vermeld van wanneer af die goed gebruik sal word, sowel as die tydperk waarin dit gebruik sal word, en moet óf die bedrag vermeld wat as vergoeding vir die goed of die gebruik daarvan aangebied word, en die eienaar aansê om die Administrateur binne dertig dae skriftelik in kennis te stel of hy dié bedrag

3. (1) If any land or the temporary use of any land is required for public purposes, the Administrator may —

Exploring of land for purposes of expropriation or taking of right to use temporarily.

- (a) for the purpose of ascertaining whether any particular land is suitable for the purposes of the use contemplated, authorize any person to —
  - (i) enter upon that land with the necessary workmen, equipment and vehicles;
  - (ii) survey and take levels of that land;
  - (iii) dig or bore on or into that land;
  - (iv) construct and maintain a measuring weir in any river or stream;
  - (v) in so far as it may be necessary to gain access to that land, enter upon and go across any other land with the necessary workmen, equipment and vehicles;
  - (vi) do any other act which may be necessary to enable him to come to a decision thereon;
- (b) authorize any person to demarcate the boundaries of any land required for the said purposes or use:

Provided that no such person shall, without the consent of the owner or occupier, perform any act referred to in sub-paragraphs (i), (ii), (iii), (iv) and (vi) of paragraph (a) and in paragraph (b) of this sub-section unless he has given the owner or occupier at least fourteen days notice of his intention to do so: Provided further that if in the opinion of the Administrator any such act is to be performed urgently, twenty-four hours notice of such intention shall be sufficient.

(2) If any person has suffered any damage as a result of the exercise of any power conferred in terms of sub-section (1), the Administrator shall pay compensation for any such damage.

(3) The amount of such compensation shall, in the absence of agreement, be determined by the court, and the provisions of sections 7, 9 and 10 shall *mutatis mutandis* apply in connection with the determination of such amount.

4. (1) If the Administrator has decided to expropriate, or to take the right to use temporarily, any property in terms of the provisions of section 2, he shall, subject to the provisions of sub-section (4) of this section, cause to be served upon the owner in question an appropriate notice by having it delivered or sent by registered post to him.

Notification that property is to be expropriated or is to be used temporarily.

(2) If the property to be expropriated or used is land, the Administrator shall, subject to the provisions of sub-section (4), cause a copy of such notice to be so served upon every person who, according to the title deed of that land or the registers of the Registrar of Deeds or of any other Government office in which rights granted in terms of any law relating to prospecting or mining are recorded, has any interest in that land, and, if such land is situated within the area of a local authority, upon such local authority.

(3) Such notice shall contain a clear and full description of the property in question or, if a right to use property is being taken, of such right, shall, subject to the provisions of sub-sections (5) and (6), state the date on which the expropriation shall take effect or, as the case may be, the date as from which the property will be used as well as the period during which it will be used, and shall either state the amount offered as compensation for the property or the use thereof, and require the owner to notify the Administrator in writing within thirty days whether he accepts that amount, or require the owner to

aanneem, óf die eienaar aansê om die Administrateur binne dertig dae skriftelik in kennis te stel wat die bedrag is wat hy as sodanige vergoeding eis.

(4) Indien die Administrateur nie die verblyfplek van die eienaar of van iedere eienaar van die betrokke goed of van iemand in subartikel (2) vermeld, geredelik kan vasstel nie, of indien hy, vanweë die aantal eienaars of persone wat 'n belang, in genoemde subartikel beoog, in dié goed het, oortuig is dat die bestelling van 'n kennisgewing volgens voorskrif van subartikel (1) of (2) nie doenlik is nie, of indien die goed aan 'n fideikommis onderhewig is en die Administrateur nie weet wie almal fideikommissêre erfgename is of gaan wees nie, moet hy een maal in die *Offisiële Koerant* en een maal per week vir twee agtereenvolgende weke in 'n Afrikaanse en 'n Engelse nuusblad wat in omloop is in die distrik waarin die betrokke goed is of geleë is, 'n kennisgewing wat aan die bepalings van subartikel (3) voldoen, laat publiseer.

(5) Behalwe wanneer goed volgens die oordeel van die Administrateur dringend benodig is, moet daar minstens sestig dae verloop tussen die datum van kennisgewing en die datum in subartikel (3) beoog.

(6) Indien die Administrateur 'n kennisgewing ingevolge subartikel (1) laat bestel of ingevolge subartikel (4) laat publiseer het, kan hy, behoudens die bepalings van subartikels (2) en (5), die datum vermeld in dié kennisgewing vervroeg deur 'n kennisgewing in dier voege te laat bestel of te laat publiseer, na gelang volgens voorskrif van subartikel (1) of (4), en sodanige vervroegde datum word vir alle doeleindes geag die datum te wees wat ingevolge subartikel (3) in eersgenoemde kennisgewing vermeld is.

Oorgang van eiendomsreg op ontelende goed en uitoefening van reg om goed te gebruik.

5. (1) Indien goed ingevolge artikel 2 onteien word, gaan die eiendomsreg op dié goed, op die datum vermeld in die betrokke kennisgewing, op die Administrasie oor, bevry van alle verbande, as daar is, en kan die Administrasie die goed op die datum betree of in besit neem en van dié datum gebruik, maar indien sodanige goed grond is, bly dit onderhewig aan alle geregistreeerde saaklike regte (uitgesonderd verbande) ten gunste van derdes waarmee dit onmiddellik vóór genoemde datum beswaar was, tensy en totdat sodanige regte ooreenkomstig die bepalings van artikel 2 van die eienaar daarvan onteien is.

(2) Indien die Administrateur ingevolge artikel 2 die reg om goed vir die een of ander doel te gebruik, geneem het, kan die Administrasie van die datum in die betrokke kennisgewing vermeld, daardie reg uitoefen.

Pligte van eienaar van en van houer van verband oor goed wat onteien is, en van eienaar van goed wat deur Administrasie gebruik gaan word.

6. (1) 'n Eienaar wie se goed ingevolge artikel 2 onteien is, moet binne dertig dae (of die langer tydperk wat die Administrateur skriftelik toelaat) van die betrokke datum van kennisgewing aan die Administrateur lewer of laat lewer —

- (a) 'n skriftelike verklaring waarin aangedui word —
  - (i) indien vergoeding vir dié goed aangebied is, of hy daardie vergoeding aanneem of nie en, indien hy dit nie aanneem nie, wat die bedrag is wat hy as vergoeding eis; of
  - (ii) indien geen sodanige vergoeding aangebied is nie, wat die bedrag is wat hy as vergoeding eis;
- (b) indien dié goed onroerende goed is, sy titelbewys daarvan, indien dit in sy besit of onder sy beheer is;
- (c) indien sodanige titelbewys nie in sy besit of onder sy beheer is nie, skriftelike besonderhede van die naam en adres van die persoon in wie se besit of onder wie se beheer dit is.

(2) Die Administrateur kan iemand beoog in subartikel (1) (c) by skriftelike kennisgewing aansê om binne die tydperk in die kennisgewing vermeld, die betrokke titelbewys aan hom te lewer of te laat lewer.

(3) Die bepalings van subartikel (1) (a) van hierdie artikel is *mutatis mutandis* van toepassing ten opsigte van die neem, ingevolge artikel 2, van 'n reg om goed vir openbare doeleindes te gebruik.

notify the Administrator in writing within thirty days of the amount claimed by him as such compensation.

(4) If the whereabouts of the owner or of every owner of the property in question or of a person referred to in sub-section (2) is not readily ascertained by the Administrator, or, if by reason of the number of owners or persons having such an interest, as is contemplated in the said sub-section, in that property, the Administrator is satisfied that service of a notice in accordance with sub-section (1) or (2) is not practicable, or if the property is subject to a *fideicommissum* and it is not known to him who all the *fideicommissaries* are or will be, he shall cause to be published once in the *Official Gazette* and once a week during two consecutive weeks in an Afrikaans and in an English newspaper circulating in the district in which the property in question is or is situated, a notice complying with the provisions of sub-section (3).

(5) Except where property is, in the opinion of the Administrator urgently required, at least sixty days shall lapse between the date of notice and the date contemplated in sub-section (3).

(6) If the Administrator has caused a notice to be served in terms of sub-section (1) or to be published in terms of sub-section (4), he may, subject to the provisions of sub-sections (2) and (5), advance the date stated in such notice by causing to be served or published, as the case may be, a notice to that effect in accordance with sub-section (1) or (4), and such advanced date shall for all purposes be deemed to be the date stated in terms of sub-section (3) in the firstmentioned notice.

5. (1) If any property is expropriated in terms of section 2 the ownership in such property shall, on the date stated in the notice in question, vest in the Administration, released from all mortgage bonds, if any, and the Administration may on such date enter upon or take possession of and use as from that date such property, but if such property is land, it shall remain subject to all registered real rights (except mortgage bonds), in favour of third parties, with which it was burdened immediately prior to the said date, unless and until such rights have been expropriated from the owner thereof in accordance with the provisions of section 2.

Passing of ownership in expropriated property and exercise of right to use property.

(2) If the Administrator has in terms of section 2 taken the right to use any property for any purpose, the Administration may, as from the date stated in the notice in question, exercise that right.

6. (1) An owner whose property has been expropriated in terms of section 2, shall within thirty days (or such longer period as the Administrator may in writing allow) from the date of notice in question deliver or cause to be delivered to the Administrator —

Duties of owner of, and of holder of mortgage bond over, property expropriated and of owner of property which is to be used by Administration.

- (a) a written statement indicating —
  - (i) if any compensation was offered for such property, whether or not he accepts that compensation and, if he does not accept it, the amount claimed by him as compensation; or
  - (ii) if no such compensation was offered, the amount claimed by him as compensation;
- (b) if such property is immovable property, his title deed thereof, if it is in his possession or under his control;
- (c) if such title deed is not in his possession or under his control, written particulars of the name and address of the person in whose possession or under whose control it is.

(2) The Administrator may by written notice require any person contemplated in sub-section (1) (c) to deliver or cause to be delivered to him within the period stated in the notice, the title deed in question.

(3) The provisions of sub-section (1) (a) of this section shall *mutatis mutandis* apply in respect of the taking, in terms of section 2, of a right to use any property for public purposes.

(4) Iemand wat —

- (a) versuim om te voldoen aan die bepalings van paragraaf (b) of (c) van subartikel (1);
- (b) versuim om te voldoen aan die bepalings van 'n kennisgewing kragtens subartikel (2); of
- (c) opsetlik valse besonderhede verstrek in 'n skriftelike stuk wat hy ingevolge subartikel (1) (c) aan die Administrateur moet lewer of laat lewer,

is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens tweehonderd rand of met gevangenisstraf vir 'n tydperk van hoogstens ses maande of met daardie boete sowel as daardie gevangenisstraf.

Vasstelling van vergoeding by ontstentenis van ooreenkoms.

7. (1) By ontstentenis van ooreenkoms word die vergoeding wat die Administrasie moet betaal vir goed wat deur die Administrateur onteien is of vir 'n reg om goed te gebruik wat deur die Administrateur geneem is, op aansoek van enige betrokke party vasgestel deur die landdros-hof van die distrik waarin die betrokke goed is of geleë is, indien die bedrag van die vergoeding wat aangebied is, of indien geen aanbod gedoen is nie, die bedrag van die vergoeding wat geëis word, minder as drieduisend rand is, of deur die Suidwes-Afrika-afdeling van die Hooggereshof van Suid-Afrika indien die bedrag wat aangebied is of aldus geëis word, drieduisend rand of meer bedra.

(2) Indien die Administrateur vergoeding aangebied het en so 'n aansoek nie binne ses maande (of die langer tydperk wat die Administrateur bepaal) van die datum van kennisgewing by die gepaste hof deur die betrokke eienaar ingedien word nie, word dié eienaar geag die aangebode vergoeding te aanvaar het.

(3) In 'n geding ingevolge subartikel (1) kan die landdros of regter, na gelang die hulp inroep van hoogstens twee persone wat in die saak kundig en ervare is en bereid is om as assessors in 'n raadgewende hoedanigheid sitting te neem.

(4) So 'n assessor ontvang besoldiging teen die skaal van toepassing ten opsigte van assessore in 'n landdros-hof of hooggereshof, na gelang.

Grondslag waarop vergoeding bereken moet word.

8. (1) Die bedrag van die vergoeding wat ingevolge hierdie ordonnansie aan 'n eienaar betaal moet word ten opsigte van goed wat ingevolge hierdie ordonnansie onteien is, of ten opsigte van die neem, ingevolge hierdie ordonnansie, van 'n reg om goed te gebruik, mag nie meer beloop nie as —

- (a) in die geval van ander goed as 'n reg, die som van —
  - (i) die bedrag wat vir die goed verkry sou geword het indien dit op die datum van kennisgewing op die ope mark deur 'n gewillige verkoper aan 'n gewillige koper verkoop was; en
  - (ii) 'n bedrag om enige werklike geldelike verlies of ongerief wat deur die onteiening veroorsaak word, te vergoed; en
- (b) in die geval van 'n reg, 'n bedrag om enige werklike geldelike verlies of ongerief wat deur die onteiening of die neem van die reg veroorsaak word, te vergoed.

(2) Rente teen 'n koers wat van tyd tot tyd deur die Administrateur bepaal word, moet met ingang van die datum bedoel in artikel 4 (3), of, in 'n geval beoog in artikel 12 (4), van die datum van beslegting van die geskil of verdwyning van die twyfel, maar behoudens die bepalings van subartikel (3) van hierdie artikel, betaal word op enige uitstaande bedrag wat ingevolge hierdie ordonnansie as vergoeding betaalbaar is.

(3) Indien die eienaar van goed wat onteien is, toegelaat word en instem om op die voorwaardes deur die Administrateur bepaal, daardie goed of enige gedeelte daarvan te okkupeer of te benut, word geen rente ingevolge subartikel (2) betaal nie op soveel van die uitstaande bedrag as wat, volgens die oordeel van die Administrateur, betrekking het op die goed wat aldus geokkupeer of benut word.



(4) Any person who —

- (a) fails to comply with the provisions of paragraph (b) or (c) of sub-section (1);
- (b) fails to comply with the provisions of a notice under sub-section (2); or
- (c) wilfully furnishes false particulars, in any written instrument which he is in terms of sub-section (1) (c) required to deliver or cause to be delivered to the Administrator,

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

7. (1) In the absence of agreement the compensation to be paid by the Administration for property expropriated by the Administrator, or for a right to use any property taken by the Administrator, shall on the application of any party in question be determined by the magistrate's court of the district in which the property in question is or is situated, if the amount of compensation offered or, if no offer was made, the amount of compensation claimed is less than three thousand rand, or by the South West Africa Division of the Supreme Court of South Africa if the amount offered or so claimed is three thousand rand or more.

Determination of compensation in absence of agreement.

(2) If the Administrator has offered compensation and no such application is filed with the proper court by the owner in question within six months (or such longer period as the Administrator may determine) from the date of notice, such owner shall be deemed to have accepted the compensation offered.

(3) In any proceeding in terms of sub-section (1) the magistrate or judge, as the case may be, may invoke the assistance of not more than two persons who are skilled and experienced in the matter and are prepared to sit as assessors in an advisory capacity.

(4) Any such assessor shall receive remuneration at the rate applicable in respect of assessors in a magistrate's court or a superior court, as the case may be.

8. (1) The amount of the compensation to be paid in terms of this ordinance to an owner in respect of property expropriated in terms of this ordinance, or in respect of the taking, in terms of this ordinance, of a right to use property, shall not exceed —

Basis on which compensation is to be determined.

- (a) in the case of any property other than a right, the aggregate of —
  - (i) the amount which the property would have realized if sold on the date of notice in the open market by a willing seller to a willing buyer; and
  - (ii) an amount to make good any actual financial loss or inconvenience caused by the expropriation; and
- (b) in the case of a right, an amount to make good any actual financial loss or inconvenience caused by the expropriation or the taking of the right.

(2) Interest at a rate determined from time to time by the Administrator shall, with effect from the date referred to in section 4 (3) or, in a case contemplated in section 12 (4), from the date of the settlement of the dispute or the resolution of the doubt, but subject to the provisions of sub-section (3) of this section, be paid on any outstanding amount payable as compensation in terms of this ordinance.

(3) If the owner of property which has been expropriated is permitted and agrees to occupy or utilize that property or any portion thereof on such conditions as the Administrator may determine, no interest shall in terms of sub-section (2) be paid on so much of the outstanding amount as, in the opinion of the Administrator, relates to the property so occupied or utilized.

(4) By die vasstelling van die bedrag van die vergoeding wat ingevolge hierdie ordonnansie betaal moet word, geld die volgende reëls vir sover hulle ter sake is —

- (a) die feit dat die goed of die reg op die gebruik van die goed sonder die toestemming van die betrokke eienaar geneem is, word buite rekening gelaat;
- (b) die besondere geskiktheid of bruikbaarheid van die betrokke goed vir die doel waarvoor dit deur die Administrasie benodig is, word nie in aanmerking geneem nie, indien dit onwaarskynlik is dat die goed vir daardie doel, of die reg om die goed vir daardie doel te gebruik, op die ope mark gekoop sou geword het;
- (c) indien die waarde van die goed verhoog is ten gevolge van die gebruik daarvan op 'n wyse wat onwettig is of skadelik is vir die gesondheid van iemand wat daarop woon of dit benut, of vir die openbare gesondheid, word geen rekening met sodanige verhoging gehou nie;
- (d) verbeterings wat na die datum van kennisgewing op of aan die betrokke goed aangebring is (behalwe waar dit nodig was om bestaande verbeterings behoorlik in stand te hou of waar dit onderneem is ingevolge verpligtings wat vóór genoemde datum aangegaan is), word nie in aanmerking geneem nie;
- (e) 'n ongeregistreerde reg ten opsigte van ander goed, of indirekte skade of winsderwing of enigiets wat gedoen is met die oogmerk om vergoeding daarvoor te verkry, word buite rekening gelaat;
- (f) enige verhoging vóór of ná die datum van kennisgewing in die waarde van die betrokke goed wat toe te skryf is aan die doel waarvoor of in verband waarmee die goed onteien of gebruik gaan word, of wat die gevolg is van enige werk of handeling wat die Administrasie in verband met sodanige doel uitvoer of verrig of voornemens is om uit te voer of te verrig, word nie in aanmerking geneem nie;
- (g) rekening word gehou met —
  - (i) die koste van enige werke wat die Administrasie gebou het of onderneem het om te bou ten bate van die persoon wat vergoed moet word, met die oog op vermindering van sy skade;
  - (ii) enige voordeel wat deur sodanige persoon behaal sal word as gevolg van die onteiening van die goed of die gebruik daarvan vir die doel waarvoor dit onteien is of, na gelang, die betrokke reg geneem is.

Procedure.

9. (1) 'n Geding beoog in artikel 7 (1) word by wyse van aksie ingestel en gevoer.

(2) Die prosesreg wat geld in siviele gedinge in die hof waarin so 'n geding gevoer word, geld, *mutatis mutandis* en behoudens die bepalings van hierdie Ordonnansie en enige regulasies daarkragtens uitgevaardig, ten opsigte van so 'n geding, en 'n toekenning van vergoeding word beskou asof dit 'n siviele vonnis van daardie hof was.

Koste.

10. (1) Koste in 'n geding beoog in artikel 7 (1) word bereken volgens die tabel van koste van toepassing in die betrokke hof.

(2) Indien die vergoeding wat in so 'n geding deur die hof toegeken word —

- (a) gelyk is aan of meer is as die bedrag wat deur die betrokke eienaar laas vóór die aanvang van die geding geëis is, word koste teen die Administrateur toegeken;
- (b) gelyk is aan of minder is as die bedrag wat deur die Administrateur laas vóór die aanvang van die geding aangebied is, word koste teen die betrokke eienaar toegeken;

(4) In determining the amount of the compensation to be paid in terms of this ordinance the following rules shall apply in so far as they may be relevant —

- (a) No allowance shall be made for the fact that the property or the right to use the property has been taken without the consent of the owner in question;
- (b) the special suitability or usefulness of the property in question for the purpose for which it is required by the Administration, shall not be taken into account if it is unlikely that the property would have been purchased for that purpose in the open market or that the right to use the property for that purpose would have been so purchased;
- (c) if the value of the property has been enhanced in consequence of the use thereof in a manner which is unlawful or detrimental to the health of a person living thereon or utilizing it, or to the public health, such enhancement shall not be taken into account;
- (d) improvements made after the date of notice on or to the property in question (except where they were necessary for the proper maintenance of existing improvements or where they were undertaken in pursuance of obligations entered into before that date); shall not be taken into account;
- (e) no allowance shall be made for any unregistered right in respect of any other property, or any indirect damage or loss of profit or anything done with the object of obtaining compensation therefor;
- (f) any enhancement, before or after the date of notice, in the value of the goods in question, which may be due to the purpose for which or in connection with which the property is being expropriated or is to be used, or which is a consequence of any work or act which the Administration may carry out or perform or intends to carry out or perform in connection with such purpose, shall not be taken into account;
- (g) account shall be taken of —
  - (i) the cost of any works which the Administration may have constructed or undertaken to construct for the benefit of the person to be compensated, with a view to mitigating his damage;
  - (ii) any benefit which will enure to such person in consequence, of the expropriation of the property or the use thereof for the purpose for which it was expropriated or, as the case may be, the right in question was taken.

9. (1) Proceedings contemplated in section 7 (1) shall be instituted and conducted by way of action. Procedure.

(2) The law of procedure applicable in civil proceedings in the court in which such proceedings are conducted shall, subject to the provisions of this ordinance and any regulations made thereunder, apply *mutatis mutandis* in respect of such proceedings, and any award or compensation shall be regarded as if it were a civil judgment of that court.

10. (1) Costs in any proceedings contemplated in section 7 (1) shall be calculated in accordance with the table of costs applicable in the court in question. Costs.

(2) If the compensation awarded by the court in any proceedings —

- (a) is equal to or exceeds the amount last claimed by the owner in question before the commencement of the proceedings, costs shall be awarded against the Administrator;
- (b) is equal to or less than the amount last offered by the Administrator before the commencement of the proceedings, costs shall be awarded against the owner in question; or

- (c) minder is as die bedrag wat laas deur die betrokke eienaar aldus geëis is, maar meer is as die bedrag wat laas deur die Administrateur aldus aangebied is, word soveel van die koste van die eienaar teen die Administrateur toegeken as wat tot sodanige koste in dieselfde verhouding staan as wat die verskil tussen die vergoeding aldus toegeken en die bedrag aldus aangebied, staan tot die verskil tussen die bedrag aldus aangebied en die bedrag aldus geëis.

(3) In enige geval nie in subartikel (2) vermeld nie, beslis die hof na goeëdunke oor koste.

(4) Die aanspreeklikheid van 'n party wat vergoed moet word, vir koste en taksasiegelde is 'n preferente vordering teen die geld wat ingevolge die hofbevel aan hom betaal moet word, en daardie geld word vir sover nodig ter vereffening van daardie koste en gelde aangewend.

Delging van skuld verseker deur verband oor grond.

11. (1) Indien grond wat ingevolge hierdie Ordonnansie onteien is, onmiddellik vóór die onteiening met 'n geregistreerde verband beswaar was, mag die Administrateur geen gedeelte van die betrokke vergoedingsgeld uitbetaal nie, behalwe aan die persoon op wie, en op die voorwaardes waarop, tussen die eienaar van daardie grond en die verbandhouer ooreengekom is en van wie en waarvan hulle die Administrateur skriftelik in kennis gestel het.

(2) Indien die betrokke eienaar en verbandhouer nie aldus oor die uitbetaling van die vergoedingsgeld kan ooreenkom nie, kan die Administrateur, na skriftelike kennisgewing aan dié eienaar en verbandhouer, aansoek doen by die hof wat ingevolge artikel 7 (1) bevoeg sou gewees het om 'n geskil met betrekking tot die vergoeding betaalbaar deur die Administrateur ten opsigte van die onteiening te besleg, om 'n opdrag omtrent hoe daar oor die vergoedingsgeld beskik moet word, en dié hof kan aan die hand van die aansoek die bevel uitreik wat hy goevind.

(3) Die hof kan bevel dat die koste wat deur die Administrasie in verband met die aansoek aangegaan is, betaal word deur die eienaar of die verbandhouer of deur hulle gesamentlik in die verhouding wat die hof goevind, en enige bedrag wat aldus deur enigeen van hulle betaalbaar word, maak 'n preferente vordering uit teen enige gedeelte van die vergoedingsgeld wat ingevolge die bevel van die hof aan hom betaal moet word.

(4) Enige bevel deur 'n hof ingevolge hierdie artikel uitgereik, word geag 'n bevel te wees wat in 'n siviele geding uitgereik is.

Inbetaling van vergoedingsgeld by Meester en terughouding daarvan deur Administrateur, in sekere gevalle.

12. (1) Indien goed wat kragtens hierdie ordonnansie onteien is, met 'n fideikommis belas was, of indien vergoeding ingevolge hierdie ordonnansie betaalbaar is aan iemand wie se verblyfplek onbekend is, kan die Administrateur die bedrag van die vergoeding wat ingevolge hierdie ordonnansie betaalbaar is, inbetaal by die Meester van die Hooggeregshof en ná sodanige inbetaling is die Administrateur nie verder ten opsigte van daardie bedrag aanspreeklik nie.

(2) Geld wat ingevolge subartikel (1) deur die Meester ontvang word —

(a) is, indien die betrokke goed met 'n fideikommis belas was, *mutatis mutandis* onderhewig aan al die bepalings en voorwaardes wat vervat is in die testament of ander geskrif waardeur dié fideikommis geskep is; en

(b) word, behoudens die bepalings van paragraaf (a) ten voordele van die persone wat daarop geregtig is of word, in die Voogdyfonds vermeld in artikel 91 van die Boedelwet, 1913 (Wet 24 van 1913) soos op die Gebied toegepas by die Betere Rechtsbedeling Proklamasie 1921 (Proklamasie 52 van 1921) gestort, en dra rente teen 'n koers wat die Administrateur van tyd tot tyd bepaal.

(3) Die bepalings van subartikels (1) en (2) raak nie die bevoegdheid van 'n hof om ten opsigte van sodanige geld 'n bevel uit te reik nie.

- (c) is less than the amount last so claimed by the owner in question, but exceeds the amount last so offered by the Administrator, so much of the costs of the owner shall be awarded against the Administrator as bears to such costs the same proportion as the difference between the compensation so awarded and the amount so offered bears to the difference between the amount so offered and the amount so claimed.

(3) In any case not referred to in sub-section (2) the court shall in its discretion decide as to costs.

(4) The liability for costs and taxation fees of a party to be compensated shall be a first charge against the money which, in terms of the order of court, is to be paid to him, and that money shall be applied as far as it may be required towards the payment of those costs and fees.

11. (1) If any land expropriated in terms of this ordinance was encumbered by a registered mortgage bond immediately prior to such expropriation, the Administrator shall not pay out any portion of the compensation money in question, except to such person and on such terms as may have been agreed upon between the owner of that land and the mortgagee and as the Administrator may have been notified of in writing by them.

Discharge of debt secured by mortgage bond over land.

(2) If the owner and mortgagee in question cannot so come to an agreement as to the payment of the compensation money, the Administrator may, after written notice to such owner and mortgagee, apply to the court which would, in terms of section 7 (1), have been competent to determine a dispute with regard to the compensation payable by the Administrator in respect of the expropriation, for directions as to disposal of the compensation money, and the court may make such order on the application as it may deem fit.

(3) The court may order the costs incurred by the Administration in connection with such application to be paid by the owner or the mortgagee, or by them jointly, in such proportion as it may deem fit, and any amount so becoming payable by either of them shall form a first charge against any portion of the compensation money which, in terms of the order of the court, is to be paid to him.

(4) Any order made by a court in terms of this section shall be deemed to be an order made in civil proceedings.

12. (1) If property expropriated under this ordinance was burdened with a *fideicommissum* or if compensation is payable in terms of this ordinance to a person whose place of residence is not known, the Administrator may pay the amount of the compensation payable in terms of this ordinance to the Master of the Supreme Court and after such payment the Administrator shall cease to be liable in respect of that amount.

Payment of compensation money to Master, and retention thereof by Administrator in certain cases.

(2) Any moneys received by the Master in terms of sub-section (1) shall —

- (a) if the property in question was burdened with a *fideicommissum*, *mutatis mutandis* be subject to all the terms and conditions contained in the will or other instrument by which such *fideicommissum* was constituted; and
- (b) subject to the provisions of paragraph (a), be paid into the Guardian's Fund referred to in section 91 of the Administration of Estates Act, 1913 (Act 24 of 1913), as applied to the Territory by the Better Administration of Justice Proclamation, 1921 (Proclamation 52 of 1921), for the benefit of the persons who are or may become entitled thereto, and bear interest at a rate determined from time to time by the Administrator.

(3) The provisions of sub-sections (1) and (2) shall not affect the jurisdiction of any court to make an order in respect of any such moneys.

(4) In die geval van geskil of twyfel oor wie enige vergoeding moet ontvang wat ingevolge hierdie ordonnansie betaalbaar is, of in die geval van die uitreiking van 'n interdik ten opsigte van die uitbetaling van sodanige vergoeding, hou die Administrateur die bedrag van sodanige vergoeding totdat die geskil besleg is of die twyfel verdwyn het.

Beëindiging van ongeregisteerde regte ten opsigte van onteienende grond.

13. Indien 'n kennisgewing ingevolge subartikel (1) of (4) van artikel 4 op die onteiening van grond betrekking het, word alle regte ten opsigte van dié grond wat nie teen die titelbewys daarvan of in 'n kantoor bedoel in subartikel (2) van genoemde artikel geregistreer is nie, beëindig op die datum bedoel in artikel 5 (1) en die Administrasie is nie verplig om enige vergoeding vir sodanige regte te betaal nie.

Oordrag van bevoegdheids en pligte.

14. Die Administrateur kan 'n bevoegdheid of plig by of ingevolge hierdie ordonnansie aan hom verleen of ogedra, aan 'n beampste in diens van die Administrasie in die algemeen of met betrekking tot bepaalde goed of in 'n bepaalde geval oordra.

Verlening deur die Administrateur aan 'n plaaslike bestuur van dieselfde bevoegdheid as wat hy ingevolge hierdie ordonnansie met betrekking tot grond besit.

15. Die Administrateur kan aan 'n plaaslike bestuur wat by ordonnansie gemagtig is om grond te onteien, in die algemeen of met betrekking tot bepaalde grond of in 'n bepaalde geval enige bevoegdheid verleen soos dié wat hy ingevolge hierdie ordonnansie met betrekking tot grond of 'n reg in, oor of ten opsigte van grond besit, uitgesonderd die bevoegdheid by artikel 14 aan hom verleen, en by die uitoefening van so 'n bevoegdheid deur so 'n plaaslike bestuur geld die bepalings van hierdie ordonnansie en word enige verwysing daarin na die Administrateur en die Administrasie as 'n verwysing na sodanige plaaslike bestuur uitgelê.

Regulasies.

16. Die Administrateur kan die regulasies uitvaardig wat hy nodig of dienstig ag vir die verwesenliking van die oogmerke en doeleindes van hierdie ordonnansie.

Herroeping van Ordonnansie 13 van 1927.

17. Die Grondonteieningsoordonnansie 1927 (Ordonnansie 13 van 1927) word hierby herroep.

Toepassing van Ordonnansie.

18. (1) Die bepalings van hierdie ordonnansie word nie uitgelê asof hulle enige wetsbepalings op onteiening vervang nie, en enige sodanige wetsbepaling bly, ondanks die bepalings van hierdie ordonnansie, ten volle van krag.

(2) Die feit dat sodanige wetsbepaling vir die onteiening van enige goed of 'n reg of belang in of oor enige goed voorsiening maak, belet, behoudens die bepalings van subartikel (3), nie dat sodanige goed, reg of belang ooreenkomstig die bepalings van hierdie ordonnansie onteien word nie.

(3) 'n Doel waarvoor die Administrasie van die Suid-Afrikaanse Spoorweë en Hawens enige goed nodig het of wil gebruik, word by die toepassing van hierdie ordonnansie nie as 'n openbare doel beskou nie.

Vervanging van artikel 73 van Ordonnansie 30 van 1963.

19. Artikel 73 van die Posordonnansie 1963 word hierby deur die volgende artikel vervang:—

„Direkteur kan private lyne na kennisgewing oorneem.

73. Die Direkteur kan onderhewig aan 'n verpligting om vergoeding te betaal, wat by ontstentenis van ooreenkoms, *mutatis mutandis*, deur die hof, ooreenkomstig die bepalings van artikels 7, 8, 9 en 10 van die Onteieningsoordonnansie 1967 bepaal word, en na ses maande kennisgewing van sy voorname om dit te doen, 'n telegraaflyn of -stelsel (of deel daarvan) hetsy voor of na die inwerkingtreding van hierdie ordonnansie en hetsy ingevolge spesiale of algemene wetgewende gesag of andersins opgerig, in stand gehou of geëksploiteer, uitgesonderd 'n kommunikasiestelsel wat deur die Suid-Afrikaanse Spoorweg- en Hawensadministrasie opgerig is en in stand gehou word, oorneem.”

Wysiging van artikel 76 van Ordonnansie 30 van 1963.

20. Artikel 76 van die Posordonnansie 1963 word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang —

(4) In the event of a dispute or doubt as to the person who is to receive any compensation payable in terms of this ordinance, or in the event of the issue of an interdict in respect of the payment of any such compensation, the Administrator shall retain the amount of such compensation until the dispute has been settled or the doubt has been resolved.

13. If a notice in terms of sub-section (1) or (4) of section 4 relates to the expropriation of any land, all rights in respect of such land not registered against the title deed thereof or in any office referred to in sub-section (2) of the said section, shall terminate on the date referred to in section 5 (1), and the Administration shall not be obliged to pay any compensation for such rights.

Termination of unregistered rights in respect of expropriated land.

14. The Administrator may either generally or in relation to particular property or in any particular case assign to an officer in the employment of the Administration any power or duty conferred or imposed on him by or in terms of this ordinance.

Assignment of powers and duties.

15. The Administrator may either generally or in relation to particular land or in a particular case confer on a local authority which is by ordinance empowered to expropriate land, any such power as he has in terms of this ordinance in relation to land or any right in, over or in respect of land, other than the power conferred upon him by section 14, and in the exercise of such power by such local authority the provisions of this ordinance shall apply and any reference therein to the Administrator and the Administration shall be construed as a reference to such local authority.

Conferring by the Administrator on a local authority of the same powers that he has in terms of this ordinance in relation to land.

16. The Administrator may make such regulations as he may deem necessary or expedient for achieving the objects and purposes of this ordinance.

Regulations.

17. The Expropriation of Lands Ordinance, 1927 (Ordinance 13 of 1927) is hereby repealed.

Ordinance 13 of 1927 repealed.

18. (1) The provisions of this ordinance shall not be construed as if they supersede the provisions of any law relating to expropriation, and any provision of any such law shall, notwithstanding those provisions, remain of full force and effect.

Application of Ordinance.

(2) The fact that any such law makes provision for the expropriation of any property, or any right or interest in or over any property shall, subject to the provisions of sub-section (3), not be a bar to such property, right or interest being expropriated in terms of the provisions of this ordinance.

(3) Any purpose for which the South African Railways and Harbours Administration requires or intends to use any property, shall for the purpose of this ordinance not be regarded as a public purpose.

19. The following section is hereby substituted for section 73 of the Post Office Ordinance, 1963 —

Substitution of section 73 of Ordinance 30 of 1963.

"Director may take over private lines after notice.

73. The Director may, subject to an obligation to pay such compensation as may, in the absence of agreement, be determined by the court, *mutatis mutandis*, in accordance with the provisions of sections 7, 8, 9 and 10 of the Expropriation Ordinance, after giving six months' notice of his intention to do so, take over the whole or any part of any telegraph line or system, not being a system of communication constructed and maintained by the South African Railways and Harbours Administration, whether constructed before or after the commencement of this ordinance, and whether constructed, maintained or operated under any special or general legislative authority or otherwise."

20. Section 76 of the Post Office Ordinance, 1963, is hereby amended by the substitution for sub-section (2) of the following sub-section —

Amendment of section 76 of Ordinance 30 of 1963.

„(2) Die skadevergoeding in die geval van skade soos voormeld aan enige werk, eiendom of op die land staande ooste veroorsaak, word, indien die bedrag nie by skikking bepaal kan word nie, *mutatis mutandis* deur die hof ooreenkomstig die bepalinge van artikels 7, 8, 9 en 10 van die Onteieningsordonnansie 1967, vasgestel.”.

Vorbehoud.

21. Onteieningsverrigtinge en verrigtinge ter vasstelling van vergoeding waarmee voor die inwerkingtrekking van hierdie ordonnansie begin is, word voltooi asof hierdie ordonnansie nie aangeneem was nie.

Kort titel.

22. Hierdie Ordonnansie heet die Onteieningsordonnansie 1967.

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“(2) The compensation in the case of injury aforesaid being caused to any work, property or standing crops shall, if the amount cannot be otherwise agreed upon, be settled by the court, *mutatis mutandis*, in accordance with the provisions of sections 7, 8, 9 and 10 of the Expropriation Ordinance, 1967.”.

21. Expropriation proceedings and proceedings for the determination of compensation commenced before the commencement of this ordinance, shall be concluded as if this ordinance had not been passed. Savings.

22. This ordinance shall be called the Expropriation Ordinance, 1967. Short title.

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