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[No. 1840

PROKLAMASIE

VAN DIE WAARNEMENDE STAATSPRESIDENT VAN DIE
REPUBLIEK VAN SUID-AFRIKA

No. R.195, 1967.]

NATALSE WETBOEK VAN BANTOEREG

KRAGTENS die bevoegdheid my verleen by artikel 24 van die Bantoe-administrasie Wet, 1927 (Wet No. 38 van 1927), verklaar ek hierby dat—

- (a) die Natalse Wetboek van Bantoereg gewysig word deur die Bylae van Wet No. 19 van 1891 (Natal) deur die Bylae van hierdie Proklamasie te vervang;
- (b) genoemde Natalse Wetboek van Bantoereg, soos by hierdie Proklamasie gewysig, is van toepassing in Zoeloeland; en
- (c) Proklamasie No. 168 van 1932, soos gewysig by Proklamasies Nos. 162 van 1933, 75 van 1934, 250 van 1934, 219 van 1944, 176 van 1952, 9 van 1954, 27 van 1955 en artikel 3 van die Wet op Onderdrukking van Toorkuns, 1957 (Wet No. 3 van 1957), word hierby herroep.

Hierdie Proklamasie tree in werking op 1 Januarie 1968.

GEGEE onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die Vierde dag van Augustus Eenduisend Negehoenderd Sewe-en-sestig.

J. F. NAUDÉ,
Waarnemende Staatspresident.

Op las van die Waarnemende Staatspresident-in-Rade.

M. C. BOTHA.

PROCLAMATION

BY THE ACTING STATE PRESIDENT OF THE REPUBLIC OF
SOUTH AFRICA

No. R.195, 1967.]

NATAL CODE OF BANTU LAW

UNDER and by virtue of the powers vested in me by section 24 of the Bantu Administration Act, 1927 (Act No. 38 of 1927), I hereby declare that—

- (a) the Natal Code of Bantu Law is amended by the substitution of the Schedule to this Proclamation for the Schedule to Law No. 19 of 1891 (Natal);
- (b) the said Natal Code of Bantu Law, as amended by this Proclamation, shall apply in Zululand; and
- (c) Proclamation No. 168 of 1932, as amended by Proclamations Nos. 162 of 1933, 75 of 1934, 250 of 1934, 219 of 1944, 176 of 1952, 9 of 1954, 27 of 1955 and section 3 of the Witchcraft Suppression Act, 1957 (Act No. 3 of 1957), is hereby repealed.

This Proclamation shall come into force on the 1st January, 1968.

GIVEN under my Hand and the Seal of the Republic of South Africa at Pretoria on this Fourth day of August, One thousand Nine hundred and Sixty-seven.

J. F. NAUDÉ,
Acting State President.

By Order of the Acting State President-in-Council.

M. C. BOTHA.

BYLAE

NATALSE WETBOEK VAN BANTOEREG

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HOOFSTUK 1

WOORDOMSKRYWING EN VERKLARENDE BEPALINGS

1. (1) In hierdie Wetboek, tensy onbestaanbaar met die sinsverband, beteken—

„affiliësie” die aanhanklikheid van een of meer junior huise aan ’n senior of superieure huis—hetsy die *indlunkulu*, die *ikhohlo* of die *iqadi*—ten einde voorsiening te maak teen ’n gebrek aan ’n erfgename in sodanige senior of superieure huis, en het „geaffilieer” ’n ooreenstemmende betekenis;

„Bantoesakekommissaris” die Bantoesakekommissaris kragtens artikel 2 van die Wet aangestel, met regsbevoegdheid, met inbegrip van ’n Addisionele en ’n Assistent-Bantoesakekommissaris;

„*ethula*”, vir sover dit by wet toepasbaar is, die gebruik waarby ’n junior huis ’n verpligting opgelê word vir die terugbetaling van *lobolo* wat van ’n senior huis mag geneem gewees het om sodanige junior huis tot stand te bring. Die *lobolo* van die oudste dogter van sodanige junior huis word gewoonlik aangedui as die bron waaruit die aanspreeklikheid gedelg moet word, maar die gebruik word nie erken as synde van toepassing op die oorhandiging van die „*ethula*”-meisie self as ’n pand vir betaling nie;

„gebruiklike verbinding” ’n gebruiklike verbinding soos omskryf in die Wet, met dien verstande dat dit aangegaan is ooreenkomstig die essensiële vereistes by hierdie Wetboek voorgeskryf;

„Hoofbantoesakekommissaris” die Hoofbantoesakekommissaris kragtens artikel 2 van die Wet, aangestel, met regsbevoegdheid;

„huis” die familie en eiendom, regte en status, wat begin met, verbonde is aan en ontstaan uit die gebruiklike verbinding van enige Bantoevrou of die huwelik van enige Bantoevrou;

„huiseiendom” die eiendom wat aan enige huis in ’n kraal begiftig is of spesiaal daaraan verbonde is. Sodanige eiendom word verkry deur donasies of toedeling en deur die ontvangs van *lobolo* ten opsigte van die meisies van die huis;

„*ikhohlo*” (*ikhohlwa*), die linkerhandse senior huis van ’n kraal wat verdeel is in afdelings soos omskryf in artikel 100 en wat met sy geaffilieerde huise die *ikhohlo* (*ikhohlwa*)-afdeling vorm; dit word gewoonlik met kraaleiendom tot stand gebring en waar ’n uitdruklike verklaring in die teendeel ontbreek, geskied geen teruggawe van sodanige eiendom nie;

SCHEDULE

NATAL CODE OF BANTU LAW

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CHAPTER 1

DEFINITIONS AND EXPLANATORY PROVISIONS

1. (1) In this Code, unless inconsistent with the context—

“Act” means the Bantu Administration Act, 1927 (Act No. 38 of 1927);

“affiliation” means the attachment of one or more junior houses to a senior or superior house—either the *indlunkulu*, the *ikhohlo* or the *iqadi*—for the purpose of providing against the failure of an heir in such senior or superior house, and “affiliated” has a corresponding meaning;

“Bantu Affairs Commissioner” means the Bantu Affairs Commissioner appointed under section 2 of the Act, having jurisdiction and includes an Additional and an Assistant Bantu Affairs Commissioner;

“Chief Bantu Affairs Commissioner” means the Chief Bantu Affairs Commissioner appointed under section 2 of the Act having jurisdiction;

“chief’s deputy” replaces the term “district headman” previously in use and means any person appointed by a chief under the provisions of section 17 to control any particular section of his tribe;

“customary union” means a customary union as defined in the Act, provided that such has been entered into in accordance with the essential requirements prescribed by this Code;

“*ethula*” in so far as it is enforceable at law means the custom whereby an obligation is imposed upon a junior house to refund *lobolo* which may have been taken from a senior house to establish such junior house. The *lobolo* of the eldest daughter of such junior house is usually indicated as the source from which the liability is to be met but the custom is not recognized as extending to the handing over of the “*ethula*” girl herself as a pledge of payment

“house” means the family and property, rights and status, which commence with, attach to and arise out of the customary union of any Bantu woman or the marriage of any Bantu woman;

“house property” means property vested in and pertaining specially to any house in a kraal. Such property is acquired by donations or apportionment and by receipt of *lobolo* in respect of the girls of the house;

„*indlunkulu*” die „groot huis”—die vernaamste huis in ’n kraal; die ligging daarvan bepaal die ligging van die ander huise en met sy geaffilieerde huise vorm dit die *indlunkulu*-afdeling van die kraal;

„*iqadi*” (*inqadi*), die regterhandse senior huis van ’n kraal wat verdeel is in afdelings soos omskryf in artikel 100 en wat met sy geaffilieerde huise die *iqadi*- (*inqadi*)-afdeling vorm; vir opvolgingsdoel-eindes volg dit in rang op die *indlunkulu*-afdeling;

„kaptein se plaasvervanger” die vervanging van die uitdrukking „distrikshoofman” wat voorheen in gebruik was, en ook iemand aangestel deur ’n kaptein kragtens die bepalings van artikel 17 om enige besondere afdeling van sy stam te beheer;

„kraal” die huislike inrigting en gewone woonplek van Bantoes en kan dit uit een of meer huise bestaan en omvat dit afsonderlike wonings bewoon deur Bantoes op sendingstasies of privaatgronde;

„kraaleiendom” al die eiendom in ’n kraal uitgesonderd (i) eiendom wat aan enige besondere huis van daardie kraal begiftig is of spesiaal daaraan verbonde is, en (ii) die persoonlike eiendom van enige mondighe kraalgenoot of van enige kraalgenoot wat nie aan die familie van die kraalhoof verwant is of tot hulle behoort nie;

„kraalgenoot” met betrekking tot ’n kraal, iemand wat gewoonlik daarin woon, en sluit die hoof van ’n familie in wat in ’n kraal onder die beheer van die kraalhoof woon;

„kraalhoof” die eienaar of persoon belas met die toesig oor ’n kraal;

„*lobolo*” beeste of ander eiendom wat die voorgenome eggenoot, sy ouer, voog of ander persoon akkoord gaan om aan die ouer of voog van die voorgenome eggenote te lewer met die oog op ’n voorgenome gebruikelike verbinding;

„*ngquthu*-bees” ’n bees wat betaalbaar is deur die eggenoot of verleier, na gelang van die geval, aan ’n vrou of aan die huis waartoe sy behoort, by die aangaan van ’n gebruikelike verbinding of by die verleiding van haar dogter;

„offisiële getuie” ’n persoon as sodanig aangestel kragtens artikel 16 om te fungeer by die viering van gebruikelike verbindings;

„Sekretaris” die Sekretaris van Bantoe-administrasie en -ontwikkeling;

„*sis*” ’n gebruik waarvolgens beeste of ander vee deur hul eienaar by iemand anders agtergelaat word met die verstandhouding dat sodanige persoon van hulle gebruik kan maak maar dat die persoon wat hulle daar plaas, die eienaar bly en die aantel vee hom toeval;

„*ukungena*” ’n verbinding met ’n weduwee wat onderneem word ten behoeve van haar oorlede eggenoot deur sy volle of halfbroer of ander manlike familielid van vaderskant vir die doel om (i) ingeval sy geen seun by haar oorlede eggenoot het nie, ’n erfgenaam te verwek om die eiendom of die eiendomsregte wat aan die huis van so ’n weduwee verbonde is, te erf, of (ii) ingeval sy sodanige seun het, die nominale nakomelinge van die oorledene te vermeerder;

„*ukuvusa*” ’n vorm van plaasvervangende verbinding wat voorkom wanneer die wettige erfgenaam of ander verantwoordelike persoon gebruik maak van eiendom wat aan ’n oorlede persoon behoort of sy eie eiendom om ’n eggenote te neem ten einde die boedel van sodanige oorlede persoon te vermeerder of te hernieu of sy naam te verewig en hom van ’n erfgenaam te voorsien;

„Wet” die Bantoe-administrasie Wet, 1927 (Wet No. 38 van 1927).

(2) In hierdie Wetboek kan uitdrukkings wat familie-verwantskappe soos „eggenoot”, „eggenote”, en soortgelyke inbegryp, benevens hul gewone betekenis, toegepas word op sodanige verwantskappe wat ontstaan uit gebruikelike verbindings, en die uitdrukkings „egskeiding”, „nietigverklaring”, „getroud” en „ongetroud” het ’n ooreenstemmende toepassing.

„*ikhohlo*” (*ikhohlwa*) is the left hand senior house of a kraal which has been divided into sections as described in section 100 and with its affiliated houses forms the *ikhohlo* (*ikhohlwa*) section; it is usually established with kraal property and does not, in the absence of an express declaration to the contrary, make any refund of such property;

„*indlunkulu*” means the “great house”—the chief house in a kraal; from it the other houses take their position and with its affiliated houses it forms the *indlunkulu* section of the kraal;

„inmate” in relation to a kraal means a person usually residing therein and includes the head of a family resident in a kraal subject to the control of the kraal head;

„*iqadi*” (*inqadi*) is the right hand senior house of a kraal which has been divided into sections as described in section 100 and with its affiliated houses forms the *iqadi* (*inqadi*) section; for purposes of succession it ranks next to the *indlunkulu* section;

„kraal” means the domestic establishment and ordinary place of residence of Bantu and may consist of one or more houses and includes individual dwellings occupied by Bantu on mission stations or private lands;

„kraal head” means the owner or the person having charge of a kraal;

„kraal property” means all the property in a kraal other than (i) property vesting in or pertaining specially to any particular house of that kraal and (ii) the personal property of any major inmate or any inmate not related to or belonging to the family of the kraal head;

„*lobolo*” means cattle or other property which in consideration of an intended customary union the intended husband, his parent or guardian or other person agrees to deliver to the parent or guardian of the intended wife;

„*ngquthu* beast” means a beast which is payable by the husband or seducer, as the case may be, to a woman or the house to which she belongs, upon the entrance into a customary union or the seduction of her daughter;

„official witness” means a person appointed as such under section 16 to officiate at the celebration of customary unions;

„Secretary” means the Secretary for Bantu Administration and Development;

„*sis*” means a custom whereby cattle or other live-stock are deposited by their owner with some other person on the understanding that such person shall enjoy the use of them, but that the ownership shall remain with and increase accrue to the depositor;

„*ukungena*” means a union with a widow undertaken on behalf of her deceased husband by his full or half-brother or other paternal male relative for the purpose (i) in the event of her having no male issue by the deceased husband of raising an heir to inherit the property or property rights attaching to the house of such widow or (ii) in the event of her having such male issue of increasing the nominal offspring of the deceased;

„*ukuvusa*” means a form of vicarious union which occurs when the heir at law or other responsible person uses property belonging to a deceased person or his own property to take a wife for the purpose of increasing or resuscitating the estate of such deceased person or to perpetuate his name and provide him with an heir.

(2) In this Code terms connoting family relationships such as “husband”, “wife” and the like in addition to their ordinary significance are applied to such relationships arising out of customary unions, and the terms “divorce”, “nullity”, “married” and “unmarried” have a corresponding application.

(3) Onderstaande uitdrukkings word nie elders in hierdie Wetboek gebruik nie maar in Bantoereg het hulle die betekenis wat aan hulle onderskeidelik hieronder toegeken is—

„*insonyama*” beteken sekere gesogte dele van ’n bees wat ’n inferieure huis ooreenkomstig een vorm van die „*ethula*”-gebruik as erkenning van status aan die hoof van ’n superieure huis in die kraal oorhandig wanneer ’n bees deur sodanige inferieure huis geslag word. Die nakoming van hierdie gebruik is van bewyswaarde by die bepaling van die status van die betrokke huise, maar is nie by wet afdwingbaar nie;

„*isizinda*” beteken die aanstelling deur ’n kraalhoof van een van sy seuns—gewoonlik die eersgebore seun—as formele hoof van die gesin in sy eie plek na sy dood. Die aanstelling gaan nie gepaard met eiendomsregte of verpligtings nie;

„*umhlabulo*” beteken sekere dele van ’n bees wat die hoof van ’n superieure huis ooreenkomstig een vorm van die „*ethula*”-gebruik oorhandig aan en wat ’n inferieure huis in die kraal toekom wanneer ’n bees deur sodanige superieure huis geslag word. Die nakoming van hierdie gebruik is van bewyswaarde by die bepaling van die status van die betrokke huise, maar is nie by wet afdwingbaar nie.

HOOFSTUK 2

DIE OPPERHOOF EN DIE OPPERHOOF SE BEVELE

2. Die Staatspresident, as Opperhoof, geniet en oefen ten opsigte van Bantoes in die Provinsie Natal alle magte, bevoegdhede, funksies, regte, vrydomme en voorregte uit wat volgens die regte, gewoontes en gebruike van Bantoes uitgeoefen en geniet word deur enige Opper- of Hoofbantoekaptein en wat geag word, onder andere, die volgende in te sluit—

- (a) die reg om kapteins te gelas om persoonlik militêre of ander diens te doen en gewapende manne of hulptroepe te verskaf vir die onderdrukking van wanorde of rebellie;
- (b) gesag by die uitoefening van sy funksies en magte om iemand wat sy bevel ongehoorsaam is of sy gesag verontagsaam te straf met ’n boete of gevangenisstraf of met sowel ’n boete as gevangenisstraf;
- (c) die funksie van Oppervoog oor alle Bantoeewekinders en wetlik minderjariges.

3. (1) Die bevel en instruksies van die Opperhoof kan uitgevoer word deur die Sekretaris, die Hoofbantoesakekommissaris, enige Bantoesakekommissaris of enige ander amptenaar wat deur die Opperhoof of deur die Minister behoorlik daartoe gemagtig is. Enige sodanige persoon word, by die uitvoering van sodanige bevel en instruksies, geag die plaasvervanger of verteenwoordiger van die Opperhoof te wees.

(2) Enige bevel of instruksie van die Opperhoof kan getelegrafeer word aan die persoon of persone wat belas is met die uitvoering daarvan, en sodanige telegram is afdoende magtiging vir sodanige persoon of persone om op sodanige bevel of instruksie te handel: Met dien verstande dat enige sodanige telegram binne ’n tydperk van hoogstens veertien dae bekragtig moet word by wyse van ’n sertifikaat onder die hand van die Sekretaris of die Hoofbantoesakekommissaris.

(3) Enige bevel of instruksie gegee deur die Opperhoof is afdoende magtiging aan die persoon of persone wat belas is met die uitvoering daarvan, en aan alle ander persone op wie die pligte, ingevolge van afkomstig daarvan, agtereenvolgens oorgaan, om alles te doen en alle sodanige instruksies te gee as wat vereis word vir die doeltreffende uitvoering van die bevel of instruksie.

(3) The following terms are not used elsewhere in this Code but in Bantu law have the meanings respectively assigned to them hereunder—

“*insonyama*” denotes certain choice portions of a beast which under one form of the “*ethula*” custom are in recognition of status handed over by an inferior house to the head of a superior house in the kraal when a beast is slaughtered by such inferior house. Observance of this custom is of evidential value in determining the status of the houses concerned but is not enforceable at law;

“*isizinda*” denotes the appointment by a kraal head of one of his sons—usually the first-born son—to be the formal head of the family in his own stead after his decease. The appointment carries with it no property rights or obligations;

“*umhlabulo*” denotes certain portions of a beast which under one form of the “*ethula*” custom are handed over by the head of a superior house to and are the perquisite of an inferior house in the kraal when a beast is slaughtered by such superior house. Observance of this custom is of evidential value in determining the status of the houses concerned but is not enforceable at law.

CHAPTER 2

THE SUPREME CHIEF AND SUPREME CHIEF'S ORDERS

2. The State President, as Supreme Chief, shall in respect of Bantu in the Province of Natal exercise and enjoy all powers, authorities, functions, rights, immunities and privileges which according to the laws, customs and usages of Bantu are exercised and enjoyed by any Supreme or Paramount Bantu Chief and which shall be deemed, *inter alia*, to include the following—

- (a) power to call upon chiefs personally to render military or other service and to supply armed men or levies for the suppression of disorder or rebellion;
- (b) authority in the exercise of his functions and powers to punish disobedience of his orders or disregard of his authority by fine or imprisonment or by both fine and imprisonment;
- (c) the function of Upper Guardian of all Bantu orphans and minors in law.

3. (1) The orders and directions of the Supreme Chief may be carried into execution by the Secretary, the Chief Bantu Affairs Commissioner, any Bantu Affairs Commissioner or any other officer duly authorized by the Supreme Chief or by the Minister. Any such person in carrying out such orders and directions shall be regarded as the deputy or representative of the Supreme Chief.

(2) Any order or direction of the Supreme Chief may be transmitted by telegram to the person or persons charged with the execution thereof and such telegram shall be sufficient authority for such person or persons to act upon such order or direction: Provided that any such telegram shall within a period not exceeding fourteen days be confirmed by certificate under the hand of the Secretary or of the Chief Bantu Affairs Commissioner.

(3) Any order made or direction given by the Supreme Chief shall be sufficient authority to the person or persons charged with the execution thereof and to all others, upon whom the duties thereunder or derive therefrom may successively devolve, to do all such things and to give all such instructions as are required for the effective carrying out of the order or direction.

4. Die gesag van administratiewe amptenare kragtens hierdie Wetboek word geag sodanige bykomende bevoegdhede in te sluit as wat nodig mag wees om te verseker dat hul administrasie nie weens gebrek aan die nodige bepaalde voorsiening daarvoor belemmer of nutteloos gemaak word nie.

5. (1) Die Opperhoof, die Minister, die Sekretaris, die Hoofbantoesaekkommissaris en die Bantoesaekkommissaris kan vir enige doel van openbare belang, openbare nut of vir die doel om die administrasie van enige wet uit te voer, die aanwesigheid van kapteins en ander Bantoes beveel op enige redelike tyd en onder redelike omstandighede en kan, ooreenkomstig sodanige doel, van hulle gehoorsaamheid, hulp en aktiewe samewerking vereis by die uitvoering van enige redelike bevel.

(2) Verontagsaming of trotsering van enige gegewe bevel kragtens die bepalings van subartikel (1) word geag 'n verontagsaming of trotsering van 'n bevel van die Opperhoof te wees, en enige Bantoe wat daaraan skuldig is of oneerbiedig is teenoor enige amptenaar in subartikel (1) vermeld, is skuldig aan 'n oortreding.

(3) Wanneer enige sodanige oortreding in subartikel (2) vermeld, begaan word onder omstandighede wat onmiddellike optrede vereis, kan enige sodanige amptenaar vermeld in subartikel (1), gelas dat die oortreder dadelik in hegtenis geneem word en van hom eis om 'n rede te verstrek waarom hy nie gestraf moet word nie. Indien hy in gebreke bly om 'n bevredigende verduideliking te gee, kan sodanige amptenaar die oortreder summier tot 'n boete van hoogstens twintig rand of tot gevangenisstraf van hoogstens twee maande veroordeel.

(4) Enige stappe deur 'n Bantoesaekkommissaris gedoen, soos in subartikel (3) bepaal, moet onmiddellik aan die Hoofbantoesaekkommissaris gerapporteer word, wat die vonnis kan bekragtig, verminder of afkeur.

(5) Behoudens die bepalings van subartikel (4) is enige straf opgelê kragtens die bepalings van subartikel (3) en skriftelik bevestig deur die amptenaar wat dit oplê, van krag en moet die Bantoesaekkommissaris van die distrik daarvolgens handel asof dit 'n vonnis is wat deur hom gevel is in die uitoefening van kriminele regs mag wat kragtens artikel 9 van die Wet aan hom verleen is.

(6) 'n Bantoe wat ingevolge subartikel (3) summier gestraf word, mag nie in enige gereghof vir dieselfde oortreding vervolg word nie, tensy die Hoofbantoesaekkommissaris die straf afkeur het.

6. (1) Wanneer enige manslag, aanranding, diefstal of ander besering van 'n persoon of beskadiging van eiendom plaasgevind het en daar tot oortuiging van die Opperhoof bewys word dat dit veroorsaak is deur Bantoes, en as daar rede bestaan om aan te neem dat daar samespanning of sameswering onder enige stam of gemeenskap of liggaam Bantoes is om getuienis betreffende sodanige misdaad te verswyg of die identiteit van die dader of daders daarvan te verberg of om deur lydelike of ander verset teen ingestelde gesag die herhaling van sodanige misdaad aan te moedig, is dit die Opperhoof geoorloof om 'n ieder of 'n elk van die volwasse manlike lede van sodanige stam, gemeenskap of liggaam, 'n boete van hoogstens veertig rand of vier stuks beeste op te lê.

(2) Die opbrengs van enige boete opgelê kragtens subartikel (1) word in 'n spesiale trustrekening gestort en die Minister kan gelas dat die fondse in sodanige rekening aangewend word—

(a) vir die betaling van vergoeding tot sodanige bedrag as wat hy billik en regmatig ag, aan enigiemand wat deur die oortreding benadeel is; of

(b) vir enige ander doel wat hy ag in belang te wees van die betrokke stam, gemeenskap of liggaam.

7. (1) Enige Bantoe wat deelneem aan 'n byeenkoms van gewapende manne byeengeroep sonder magtiging of wat sodanige byeenkoms direk of indirek bevorder of daarby help, is aan 'n oortreding skuldig, hetsy sodanige byeenkoms tot 'n verstoring van die vrede of 'n ander oortreding lei al dan nie.

4. The authority of administrative officers under this Code shall be deemed to include such incidental powers as may be necessary to ensure that their administration is not impeded or rendered nugatory for want of definite provision therefor.

5. (1) The Supreme Chief, the Minister, the Secretary, the Chief Bantu Affairs Commissioner and the Bantu Affairs Commissioner may command the attendance of chiefs and Bantu for any purpose of public interest, public utility, or for the purpose of carrying out the administration of any law, at any reasonable time and under reasonable circumstances, and in pursuance of any such purpose may require them to render obedience, assistance, and active co-operation in the execution of any reasonable order.

(2) Disregard or defiance of any order made under the provisions of subsection (1) shall be deemed to be disregard or defiance of an order of the Supreme Chief and any Bantu guilty thereof or showing disrespect to any officer referred to in subsection (1) shall be guilty of an offence.

(3) When any such offence as is in subsection (2) referred to is committed under circumstances rendering prompt action necessary, any such officer as is specified in subsection (1) may order the immediate arrest of the offender and call upon him to show cause why he should not be punished. Should he fail to furnish a satisfactory explanation such officer may summarily punish the offender by a fine not exceeding twenty rand or by imprisonment for a period not exceeding two months.

(4) Any action taken as in subsection (3) provided by a Bantu Affairs Commissioner shall be reported immediately to the Chief Bantu Affairs Commissioner who may confirm, reduce or disallow the punishment.

(5) Any punishment imposed under the provision of subsection (3) shall, subject to the provisions of subsection (4), on a certificate under the hand of the officer who imposed it, have effect and be acted upon by the Bantu Affairs Commissioner of the district as if it were a sentence passed by him in the exercise of criminal jurisdiction conferred upon him under section 9 of the Act.

(6) A Bantu summarily punished as in subsection (3) provided shall not, unless the punishment be disallowed by the Chief Bantu Affairs Commissioner, be prosecuted in any court of law for the same offence.

6. (1) When any homicide, assault, theft or other injury to person or property has occurred and it is shown to the satisfaction of the Supreme Chief that the same was caused by Bantu and if there is reason to believe that there is a combination or conspiracy among any tribe or community or body of Bantu to suppress evidence relating to such offence or to conceal the identity of the perpetrator or perpetrators thereof, or by passive or other resistance to constituted authority to encourage the repetition of such offence, it shall be lawful for the Supreme Chief to impose a fine not exceeding forty rand or four head of cattle upon each or any of the adult male members of such tribe, community or body.

(2) The proceeds of any fine imposed under subsection (1) shall be paid into a special trust account and the Minister may order that the moneys in such account be utilized—

(a) for the payment of compensation in such an amount as he may deem equitable and just to any person injured by the offence; or

(b) for any other purpose which he may deem to be in the interest of the tribe, community or body concerned.

7. (1) Any Bantu who shall participate in an assembly of armed men held without authority or who shall directly or indirectly promote or assist in any such assembly shall be guilty of an offence, whether or not such assembly leads to a breach of the peace or other offence.

(2) Wanneer enige sodanige byeenkoms soos vermeld in subartikel (1), plaasgevind het en daar tot bevrediging van die Opperhoof bewys word dat daar 'n samespanning of sameswering onder enige stam of gemeenskap of liggaam Bantoes of tussen verskillende stamme, gemeenskappe of liggame Bantoes is om die name van diegene wat deelgeneem het aan sodanige samekoms of dit bevorder of daarby gehelp het, te verswyg of om sodanige persoon of persone te verberg of te beskerm teen die gereg, is dit die Opperhoof geoorloof om 'n ieder of 'n elk van die volwasse manlike lede van enige sodanige stam, gemeenskap of liggaam 'n boete van hoogstens veertig rand of vier stuks beeste op te lê.

(3) Die opbrengs van enige boete opgelê kragtens subartikel (2) word op 'n spesiale trustrekening gestort en die Minister kan gelas dat die fondse in sodanige rekening aangewend word vir enige doel wat hy ag in belang van die betrokke stam, gemeenskap of liggaam te wees.

8. Wanneer die Opperhoof oortuig is dat enige Bantoe gevaarlik is vir die openbare vrede as hy op vrye voet is, kan hy by proklamasie die summere inhegtenisneming en aanhouding gelas van sodanige Bantoe in sodanige plek en behoudens sodanige voorwaardes as wat hy mag bepaal: Met dien verstande dat enige Bantoe wat aldus in hegtenis geneem en aangehou word na verloop van drie maande van die datum van sy inhegtenisneming, by die Hooggeregshof om sy vrylating aansoek kan doen, wat daarop deur sodanige Hof verleen word tensy sodanige persoon dan aangehou moet word kragtens 'n wettige lasbrief en nie sodanige proklamasie nie.

9. Die Opperhoof kan te eniger tyd na goeddunke gelas dat enige Bantoe wat aan melaatsheid ly, verwyder word na, en aangehou word in, enige spesiale plek of perseel vir die doel om daar behandeling te ondergaan, en sodanige Bantoe is onderworpe aan die regulasies wat op sodanige plek of perseel van toepassing is.

10. (1) Enige vonnis, hetsy 'n boete of gevangenisstraf, opgelê deur die Opperhoof kan uitgevoer word ingevolge 'n bevel, deur die Sekretaris ten behoeve van die Opperhoof onderteken, waarin die straf en die Bantoe wat dit moet ondergaan vermeld word: Met dien verstande dat in die geval van 'n boete wat elke volwasse manlike lid van enige stam of gemeenskap opgelê word, soos in artikel 6 (1) of in artikel 7 (2) bepaal, dit nie nodig sal wees om elke Bantoe deur wie sodanige boete betaalbaar is, by naam te vermeld nie.

(2) Elke sodanige bevel, of 'n kopie daarvan gesertifiseer deur die Hoofbantoesakekommissaris, moet gestuur word aan die Bantoesakekommissaris van die distrik waarin sodanige Bantoe aangetref word. Dit is regsgeldig en die Bantoesakekommissaris moet daarvolgens handel asof dit 'n vonnis is wat deur hom gevel is by die uitoefening van kriminele regsmag kragtens artikel 9 van die Wet aan hom verleen.

(3) Die Opperhoof kan enige vonnis in die geheel of in gedeelte daarvan, hetsy 'n boete of gevangenisstraf, wat deur hom opgelê is, ophef.

11. (1) Nòg die Hooggeregshof nòg enige ander gereghof het regsmag om die geldigheid of wettigheid van enige handeling verrig, instruksie of bevel gegee, of vonnis gevel deur die Opperhoof by die uitoefening van sy magte, bevoegdhede, funksies, regte, vrydomme en voorregte, in twyfel te trek of kommentaar daaroor te lewer nie.

(2) Geen interdik of ander wetlike prosesstuk word uitgereik vir die opskorting van enige administratiewe handeling of bevel van enige amptenaar wat as die verteenwoordiger of plaasvervanger van die Opperhoof optree nie, of waarby van sodanige amptenaar geëis word om te pleit op enige geding of prosesverrigting ten opsigte van enige sodanige handeling of bevel, tensy die hof oortuig is dat die handeling of bevel *prima facie* onwettig is.

(2) When any such assembly as is referred to in subsection (1) has taken place and it is shown to the satisfaction of the Supreme Chief that there is a combination or conspiracy among any tribe or community or body of Bantu or between different tribes, communities or bodies of Bantu to suppress the names of those who participated in, promoted or otherwise assisted in such assembly or to conceal or shield any such person or persons from justice it shall be lawful for the Supreme Chief to impose a fine not exceeding forty rand or four head of cattle upon each or any of the adult male members of any such tribe, community or body.

(3) The proceeds of any fine imposed under subsection (2) shall be paid into a special trust account and the Minister may order that the moneys in such account be utilised for any purpose which he may deem to be in the interest of the tribe, community or body concerned.

8. Whenever the Supreme Chief is satisfied that any Bantu is dangerous to the public peace, if left at large, he may by proclamation authorise the summary arrest and detention of such Bantu in such place and subject to such conditions as he may determine: Provided that any Bantu so arrested and detained may after the lapse of three months from the date of his arrest apply to the Supreme Court for his release, which shall thereupon be granted by the said Court unless such person shall then be detained under lawful warrant other than such proclamation.

9. The Supreme Chief may at any time and in his discretion order any Bantu suffering from leprosy to be removed to, and be detained in, any special place or premises, for the purpose of undergoing treatment, and such Bantu shall be subject to the regulations applicable to such place or premises.

10. (1) Any punishment, whether of fine or imprisonment, imposed by the Supreme Chief may be enforced under the authority of an order signed on behalf of the Supreme Chief by the Secretary specifying the punishment and the Bantu by whom it is to be suffered: Provided that in the case of a fine imposed upon each adult male member of any tribe or community, as in section 6 (1) or in section 7 (2) provided, it shall not be necessary to specify by name each Bantu by whom such fine is payable.

(2) Every such order, or a copy thereof certified by the Chief Bantu Affairs Commissioner, shall be forwarded to the Bantu Affairs Commissioner of the district in which such Bantu may be found and shall have effect and be acted upon by the Bantu Affairs Commissioner as if it were a sentence passed by him in the exercise of criminal jurisdiction conferred upon him under section 9 of the Act.

(3) The Supreme Chief may remit the whole or any part of any punishment, whether of fine or imprisonment, imposed by him.

11. (1) Neither the Supreme Court nor any other court of law shall have jurisdiction to question or pronounce upon the validity or legality of any act done, direction or order given or punishment inflicted by the Supreme Chief in the exercise of his powers, authorities, functions, rights, immunities and privileges.

(2) No interdict or other legal process shall issue for the stay of any administrative act or order of any officer acting as the representative or deputy of the Supreme Chief or requiring any such officer to answer any suit or proceedings in respect of any such act or order unless the court be satisfied that *prima facie* the act or order is without lawful authority.

HOOFSTUK 3

STAMGRENSE

12. Stamgrense voorheen omskryf of gewysig kragtens die bepalings van enige Wet wat herroep is sal, tensy en totdat dit gewysig word kragtens artikel 5 (1) (a) van die Wet, geag word as synde omskryf of gewysig kragtens genoemde artikel.

13. (1) 'n Bantoe word geag 'n lid van die stam van die kaptein binne wie se regsgebied hy woonagtig is te wees: Met dien verstande dat wanneer 'n Bantoe as gevolg van die omskrywing van enige grens van sy eie stam of kaptein afgeskei word, sodanige Bantoe, met die goedkeuring van die Bantoesakekommissaris en behoudens die bepalings van artikel 14, binne twee jaar ná sodanige omskrywing kan trek na die streek wat vir sodanige stam of kaptein aangewys is. As hy in gebreke bly om dit te doen, word hy, ná verloop van voormelde tydperk van twee jaar, geag ingelyf te wees by die stam van en in alle opsigte onderworpe aan die kaptein in wie se regsgebied hy gebly het.

(2) Enige Bantoe wat enige behoorlik omskrewen stamgrens verontagsaam of sonder magtiging uit die gebied van enige stam na dié van 'n ander trek en hom metterwoon daar vestig, is skuldig aan 'n oortreding.

14. 'n Bantoe mag nie sonder goedkeuring van die Bantoesakekommissaris sy kraal van die een distrik na 'n ander verskuif nie.

HOOFSTUK 4

KAPTEINS EN HOOFMANNE

15. Die magte, bevoegdhede, pligte, funksies, regte en voorregte van kapteins en hoofmanne is soos bepaal in die Wet en die regulasies daarkragtens uitgevaardig gelees met hierdie Wetboek: Met dien verstande dat waar hierdie Wetboek strydig is met enige bepaling van genoemde regulasies met betrekking tot enige aanleentheid waarvoor hierin spesifiek voorsiening gemaak word, die bepalings van hierdie Wetboek geld.

16. (1) Kapteins en hoofmanne is verantwoordelik vir die aanstelling van 'n toereikende getal offisiële getuies om, wat betref die viering van gebruikelike verbindings, aan die vereistes van die stamme of gemeenskappe onder hul regsmag te voldoen, vir die behoorlike nakoming, deur die lede van sodanige stamme of gemeenskappe, van die regulasies betreffende sodanige verbindings en vir die behoorlike kennisgewing aan die Bantoesakekommissaris, deur die offisiële getuies, van alle sodanige verbindings.

(2) 'n Kaptein of hoofman kan, met die goedkeuring van die Bantoesakekommissaris, die aanstelling van enige offisiële getuie wat onder sy regsmag val, beëindig en wanneer daartoe gelas deur die Bantoesakekommissaris moet hy enige sodanige aanstelling beëindig.

17. (1) Kapteins is verantwoordelik vir die aanstelling van 'n toereikende getal kaptein se plaasvervangers vir afdelings van hul stamme. Sodanige aanstellings is onderhewig aan die goedkeuring van die Bantoesakekommissaris.

(2) 'n Kaptein kan, met die goedkeuring van die Bantoesakekommissaris, die aanstelling van enige kaptein se plaasvervanger ten opsigte van enige afdeling van sy stam beëindig en wanneer daartoe gelas deur die Bantoesakekommissaris moet hy enige sodanige aanstelling beëindig: Met dien verstande dat die aanstelling van enige kaptein se plaasvervanger, wat kragtens artikel 12 van die Wet gemagtig is om siviele sake te verhoor en uit te wys, nie beëindig kan word nie uitgesonderd met goedkeuring van die Minister.

18. (1) Kapteins en hoofmanne het die bevoegdheid om te vereis dat persone wat aan hul regsmag onderworpe is, hul pligte ingevolge Bantoreg moet nakom en kan vir dié doel bevel uitreik. Hulle het veral die bevoegdheid om gehoorsaamheid aan gesag, die plig van kinders teenoor hul ouers en die verpligtings van kraal-

CHAPTER 3

TRIBAL BOUNDARIES

12. Tribal boundaries previously defined or amended under the provisions of any law which has been repealed shall, unless and until altered in terms of section 5 (1) (a) of the Act be deemed to have been defined or amended in terms of the said section.

13. (1) A Bantu shall be deemed to be a member of the tribe of the chief within whose area of jurisdiction he resides: Provided that when the effect of the definition of any boundary is to separate a Bantu from his own tribe or chief, such Bantu may, with the approval of the Bantu Affairs Commissioner and subject to the provisions of section 14, within two years of such definition remove to the area appointed for such tribe or chief. Should he fail to do so, he shall, after the expiry of the said period of two years, be deemed to have incorporated himself in the tribe of and to be subject in all respects to the chief within whose area of jurisdiction he has remained.

(2) Any Bantu disregarding any tribal boundary duly defined or without authority removing from the area of any tribe to and taking up his abode in that of another shall be guilty of an offence.

14. No Bantu shall remove his kraal from one district to another except with the approval of the Bantu Affairs Commissioner.

CHAPTER 4

CHIEFS AND HEADMEN

15. The powers, authorities, duties, functions, rights and privileges of chiefs and headmen are as prescribed in the Act and the regulations framed thereunder read in conjunction with this Code: Provided that in the event of any conflict between this Code and any provision of the said regulations in regard to any matter specifically provided for herein this Code shall prevail.

16. (1) Chiefs and headmen are responsible for the appointment of a sufficient number of official witnesses to serve the requirements of the tribes or communities under their jurisdiction as regards the celebration of customary unions, for the due compliance by the members of such tribes or communities with the regulations relating to such unions and for the due notification to the Bantu Affairs Commissioner by the official witnesses of all such unions.

(2) A chief or headman may with the approval of the Bantu Affairs Commissioner terminate the appointment of any official witness falling under his jurisdiction and when so directed by the Bantu Affairs Commissioner shall terminate any such appointment.

17. (1) Chiefs are responsible for the appointment of a sufficient number of chief's deputies for sections of their tribes, such appointments being subject to the approval of the Bantu Affairs Commissioner.

(2) A chief may with the approval of the Bantu Affairs Commissioner terminate the appointment of any chief's deputy in respect of any section of his tribe and when so directed by the Bantu Affairs Commissioner shall terminate any such appointment: Provided that the appointment of any chief's deputy who has been authorised under section 12 of the Act to hear and determine civil claims may not be terminated except with the approval of the Minister.

18. (1) Chiefs and headmen have authority to require compliance by the people under their jurisdiction with their duties under Bantu law and may give orders for that purpose. The enforcement of obedience to authority, of the duty of children to their parents and of the obligations of inmates of kraals towards their

genote teenoor hul kraalhoofde af te dwing. Daarbenewens moet hulle enige byeenkoms van gewapende persone wat sonder magtiging in hul gebiede gehou word, of enige oproerige of onwettige vergadering of byeenkoms uiteenjaag of gelas dat sodanige vergadering of byeenkoms uiteengejaag word, en wanneer daar in hul gebiede 'n toestand van wetteloosheid of onrus bestaan, het hulle die bevoegdheid om te gelas dat al of enigeen van onderstaande handeling vir 'n tydperk van hoogstens sewe dae of sodanige langer tydperk as wat die Bantoesakekommissaris mag bepaal, verbied word—

- (a) die byeenkoms van mans in groepe, of die brou van bier by krale binne dié gebied wat hulle mag bepaal in die ongewing of nabyheid van 'n besondere kraal of krale in die algemeen waar 'n huwelik- of ander seremonie gehou of staan gehou te word;
- (b) die dra van 'n skildvel of meer as een kiere deur enige persoon;
- (c) die uitskree van oorlogskrete en die blaas van beuels of fluitjies.

(2) Kapteins en hoofmanne kan by die uitoefening van hul ampspligte ingevolge hierdie artikel, 'n boete van hoogstens vier rand ople vir die trotsering of verontagsaming van hul bevel.

19. (1) By die uitvoering of laat uitvoer van die instruksies of bevel van die Opperhoof, tree kapteins en hoofmanne op as sy ondergeskikte plaasvervangers en kan hulle, wanneer hulle aldus optree, 'n boete van hoogstens vier rand vir enige daad van trotsering van of ongehoorsaamheid aan 'n wettige bevel ople.

(2) Bantoesakekommissarisse, in hul hoedanigheid as plaasvervangers van die Opperhoof, is bevoegd om ondersoek in te stel na alle handeling van kapteins en hoofmanne in hul hoedanigheid van ondergeskikte plaasvervangers van die Opperhoof.

20. By die uitoefening van hul wetlike regterlike bevoegdhede is kapteins en hoofmanne geregtig op die voorregte van 'n geregshof ten opsigte van ongehoorsaamheid aan hul bevel of minagting van die hof en kan 'n boete van hoogstens vier rand vir sodanige misdryf ople.

21. 'n Boete opgelê deur 'n kaptein of hoofman kragtens die bepalings van hierdie Wetboek word vir die doeleindes van appèl en inordering beskou as 'n boete opgelê by die uitoefening van regsrag kragtens artikel 20 van die Wet.

22. Enige Bantoe wat in die kraal van 'n kaptein of hoofman aangetref word en nie instaat is om bevredigende rekenskap van homself te gee nie, of enige Bantoe wat die vrede in die onmiddellike omgewing van sodanige kraal verstoort, is skuldig aan 'n oortreding en kan op bevel van sodanige kaptein of hoofman gearrester en voor die Bantoesakekommissaris weens die oortreding aangekla word.

23. (1) Vir die doeleindes van algemene erfopvolging, soos omskryf in artikel 109, is die erfgenaam van 'n oorlede kaptein by erfopvolging, die persoon wat die Staatspresident kragtens artikel 2 (7) van die Wet as erfopvolger van die kapteinskap aanstel of vir aanstelling erken.

(2) Alvorens kragtens artikel 2 (7) van die Wet besluit word wie om aan te stel of vir aanstelling te erken, as kaptein, in opvolging van 'n kaptein by erfopvolging, kan die Staatspresident, indien hy as gevolg van 'n geskil of ander omstandigheid dit wenslik ag, ondersoek laat instel deur drie raadgevers deur hom aangestel. Sodanige raadgevers word uitgekies op grond van hul spesiale kennis van die taal, gebruike en wette van die Bantoe, en moet deur bemiddeling van die Hoofbantoesakekommissaris aan die Staatspresident verslag doen. Hulle besit al die magte wat by wet aan Bantoesakekommissarishowe verleen word vir die dagvaarding van getuies, hul ondervraging onder eed, en om die voorlegging van dokumente af te dwing.

24. (1) In alle gevalle van geskille oor kapteinskappe of die erfopvolging van kapteinskappe van stamtwiste of ontevredenheid en van wrywing tussen kapteins of

kraal heads shall in particular fall within the scope of their authority. In addition they shall disperse or order the dispersal of any assembly of armed persons in their areas, held without authority, or of any riotous or unlawful meeting or gathering and, where a state of lawlessness or unrest exists in their areas, shall have authority to order that all or any of the following acts shall be prohibited for a period not exceeding seven days or such longer period as the Bantu Affairs Commissioner may determine—

- (a) the gathering of men in groups, or the brewing of beer at kraals within such area as they may specify in the neighbourhood or vicinity of a particular kraal, or of kraals in general, at which a wedding or other ceremony is being or is about to be held;
- (b) the carrying by any person of a shield or of more than one stick;
- (c) the shouting of war cries and the blowing of bugles or whistles.

(2) In exercising their functions under this section chiefs and headmen may impose a fine not exceeding four rand for any defiance or disregard of their orders.

19. (1) In carrying out or causing to be carried out the directions or orders of the Supreme Chief, chiefs and headmen act as his minor deputies and when so acting may impose a fine not exceeding four rand for any act of defiance or of disobedience to a lawful order.

(2) Bantu Affairs Commissioners in their capacity as deputies of the Supreme Chief have power to enquire into all acts of chiefs and headmen in their capacity as minor deputies of the Supreme Chief.

20. In exercising their lawful judicial functions, chiefs and headmen are entitled to the privileges of a court of law in respect of disobedience of their orders or contempt of court and may impose a fine not exceeding four rand for any such offence.

21. A fine imposed by a chief or headman under the provisions of this Code shall for the purposes of appeal and recovery be regarded as a fine imposed in the exercise of jurisdiction under section 20 of the Act.

22. Any Bantu found in a chief's or headman's kraal and unable to give a satisfactory account of himself or any Bantu disturbing the peace within the precincts of such kraal shall be guilty of an offence and may be arrested by order of such chief or headman and charged with the offence before the Bantu Affairs Commissioner.

23. (1) For the purposes of general succession as in section 109 defined, the heir of a deceased hereditary chief shall be the person whom the State President appoints or recognizes for appointment, under section 2 (7) of the Act, as successor to the chieftainship.

(2) Before deciding whom to appoint or to recognise for appointment, under section 2 (7) of the Act, as chief in succession to an hereditary chief, the State President, should he by reason of any dispute or other circumstance deem it desirable, may cause inquiry to be made by three advisers to be appointed by him. Such advisers shall be selected by reason of their special knowledge of the language, customs and laws of the Bantu and shall report to the State President through the Chief Bantu Affairs Commissioner. They shall have all the powers conferred by law on a Bantu Affairs Commissioner's court for the summoning of witnesses, their examination under oath and to compel the production of documents.

24. (1) In all cases of disputed chieftainships or succession to chieftainships, of tribal quarrels or dissatisfaction and of friction between chiefs or tribes the Chief

stamme, stel die Hoofbantoesaakekommissaris persoonlik of op ander wyse, na goeddunke, ondersoek in vir die inligting van die Opperhoof.

(2) By die uitoefening van sy funksies ingevolge subartikel (1) besit die Hoofbantoesaakekommissaris of sy plaasvervanger al die bevoegdhede wat by wet aan 'n Bantoesaakekommissarishof verleen is vir die dagvaarding van getuies, hul ondervraging onder eed en om die voorlegging van dokumente af te dwing.

HOOFSTUK 5

PERSOONLIKE STATUS

25. Elke Bantoe is of 'n kraalhoof of 'n kraalgenoot onderworpe aan die kraalhoof in alle kraalsake.

26. Enige Bantoe kan eiendom verkry, maar hierdie reg is, vir sover dit vrouens, minderjarige seuns en kraalgenote betref, onderworpe aan die bepalings van artikel 35.

27. (1) 'n Manlike Bantoe word 'n wetlike meerderjarige wanneer hy trou, 'n gebruikelike verbinding aangaan of die ouderdom van een-en-twintig jaar bereik. Vir die toepassing van hierdie subartikel word ouderdom, waar bewys ontbreek, bepaal en aangeteken deur die Bantoesaakekommissaris, wie se beslissing afdoende is.

(2) Behoudens die bepalings van artikel 28 word 'n vroulike Bantoe geag 'n voortdurende wetlik minderjarige te wees en besit sy geen onafhanklike bevoegdhede nie, behalwe wat haar eie persoon betref en soos in hierdie Wetboek uitdruklik bepaal.

28. (1) Enige ongetroude vrou, weduwee of geskeie vrou wat die eienaar van vasgoed is of wat uit hoofde van goeie gedrag, opvoeding, spaarsame gewoontes of enige ander goeie en genoegsame rede geag geskik te wees om vrygestel te word, kan van die beheer van haar vader of voog bevry word ingevolge 'n bevel van die Bantoesaakekommissarishof en aan haar kan die volle bevoegdhede van 'n kraalhoof of volle eiendomsregte verleen word ten opsigte van enige eiendom wat sy mag verkry het en ook volle mag om in haar eie naam te kontrakteer, te dagvaar of gedagvaar te word. Aan enige sodanige weduwee of geskeie vrou kan, na goeddunke van die hof, die beheer oor die eiendom van haar minderjarige kinders gegee word.

(2) Aansoek deur 'n vrou om vrystelling soos in subartikel (1) bepaal, geskied by wyse van 'n beëdigde verklaring en 'n aansoek by die Bantoesaakekommissarishof wat regsmag het en by kennisgewing aan die applikant se vader of voog, en die hof reik sy bevel ten opsigte daarvan uit.

29. 'n Minderjarige is nie bevoeg om 'n kontrak aan te gaan nie, uitgesonderd met die uitdruklike of stilswyende bystand of toestemming van sy voog. 'n Kontrak andersins deur 'n minderjarige aangegaan, is nie geldig of bindend nie tensy bewys word dat dit ten voordele is van sodanige minderjarige of van die kraal waartoe hy behoort.

30. 'n Kind gebore uit 'n ongetroude Bantoevrou word 'n lid van die huis van die moeder van sodanige vrou en is onderworpe aan die kraalhoof: Met dien verstande dat indien die vrou, terwyl sy nog ongetroud is, 'n gebruikelike verbinding met die vader van die kind aangaan, sodanige kind lid word van die huis wat deur sodanige verbinding tot stand gebring word.

31. 'n Kind gebore uit 'n getroude vrou gedurende die bestaan van 'n gebruikelike verbinding deur haar aangegaan, word gereken as 'n kind van die huis van sodanige getroude vrou.

32. (1) (a) 'n Kind gebore uit 'n weduwee word lid van die familie van so 'n weduwee se oorlede eggenoot.

(b) 'n Kind gebore uit 'n geskeie vrou binne tien maande vanaf haar egskeiding word lid van die familie van sodanige vrou se vorige eggenoot.

Bantu Affairs Commissioner shall make enquiry personally or otherwise, as he may deem best, for the information of the Supreme Chief.

(2) In exercising his functions under subsection (1), the Chief Bantu Affairs Commissioner or his deputy shall have all the powers conferred by law on a Bantu Affairs Commissioner's court for the summoning of witnesses, their examination under oath and to compel the production of documents.

CHAPTER 5

PERSONAL STATUS

25. Every Bantu is either a kraal head or a kraal inmate subject to the kraal head in all kraal matters.

26. Any Bantu may acquire property, but this right in so far as females, minor sons and kraal inmates are concerned, is subject to the provisions of section 35.

27. (1) A Bantu male becomes a major in law on marriage or upon entering into a customary union, or on attaining the age of twenty-one years. For the purposes of this subsection age may in the absence of proof be determined and recorded by the Bantu Affairs Commissioner whose decision shall be final.

(2) Subject to the provisions of section 28 a Bantu female is deemed a perpetual minor in law and has no independent powers save as to her own person and as specially provided in this Code.

28. (1) Any unmarried female, widow or divorced woman, who is the owner of immovable property or who by virtue of good character, education, thrifty habits or any other good and sufficient reason is deemed fit to be emancipated, may be freed from the control of her father or guardian by order of the Bantu Affairs Commissioner's court and vested with the full powers of a kraal head or with full rights of ownership in respect of any property she may have acquired and with full power to contract or to sue or be sued in her own name. Any such widow or divorced woman may in the discretion of the court be given control over the property of her minor children.

(2) Application by a woman for emancipation as in subsection (1) provided shall be upon affidavit and motion to the court of the Bantu Affairs Commissioner having jurisdiction and upon notice to the applicant's father or guardian and the court shall grant its order thereon.

29. A minor shall not be competent to enter into a contract except with the assistance or consent, express or implied, of his guardian. A contract otherwise entered into by a minor shall not be valid or binding unless shown to be for the benefit of such minor or of the kraal to which he belongs.

30. A child born of an unmarried Bantu woman becomes a member of the house of the mother of such woman and is subject to the kraal head: Provided that if the woman, while still unmarried, enters into a customary union with the father of the child, such child shall become a member of the house established by such union.

31. A child born of a married woman during the subsistence of a customary union entered into by her ranks as a child of the house of such married woman.

32. (1) (a) A child born of a widow becomes a member of the family of such widow's deceased husband.

(b) A child born of a divorced woman within ten months of her divorce becomes a member of the family of such woman's previous husband.

(c) 'n Kind gebore uit 'n geskeie vrou na verloop van tien maande vanaf die datum van haar egskeiding word lid van die familie van sodanige vrou se vader of voog.

(2) In geval van 'n latere gebruiklike verbinding tussen die ouers van 'n kind gebore uit 'n weduwee of geskeie vrou na verloop van tien maande vanaf die datum waarop sy weduwee geword het of van haar egskeiding, na gelang van die geval, word sodanige kind, ondanks die bepalings van subartikel (1), lid van die huis wat deur die verbinding tot stand gebring is.

HOOFSTUK 6

KRAALHOOFDE

33. Iemand is hoof van 'n kraal kragtens die feit dat hy òf—

- (a) die eienaar daarvan is; òf
- (b) die voog is gedurende die minderjarigheid van die erfgenaam ooreenkomstig die bepalings van artikel 46; òf
- (c) die voog is wat aangestel is deur die Bantoesakekommissaris of die Hoofbantoesakekommissaris onder die omstandighede in artikels 47 en 48 omskryf.

34. (1) In die geval vermeld in artikel 33 (b)—

- (a) kan die erfgenaam beheer oor die kraal aanvaar as hy ooreenkomstig die bepalings van artikel 27 mondig word of andersins op sodanige tydstip as wat die Bantoesakekommissaris of die kaptein bepaal;
- (b) beredder die kraalhoof die algemene boedel gedurende die minderjarigheid van die erfgenaam, asook sodanige huiseiendom as wat in die kraal is onderskeidelik ten voordele van die toekomstige kraalhoof en huiserfgename en is onderworpe aan die pligte en verantwoordelikhede van 'n gewone kraalhoof.

(2) In die geval vermeld in artikel 33 (c) beredder die kraalhoof gedurende die tydperk van sy aanstelling die algemene boedel asook sodanige huiseiendom as wat daar in die kraal is en is onderworpe aan die pligte en verantwoordelikhede van 'n gewone kraalhoof.

35. (1) 'n Kraalhoof is geregtig op die verdienstes van sy minderjarige kinders en op 'n redelik aandeel in die verdienstes van die ander lede van sy familie en van enige ander kraalgenote. Sodanige verdienstes moet allereers vir die onderhoud en voordeel van die huis waaruit dit afkomstig is en vir algemene kraaldoeleindes deur hom aangewend word.

(2) Hoewel 'n kraalhoof groot ruimte toegelaat word om met die verdienstes vermeld in subartikel (1) na goeddunke te handel, is dit hom nie geoorloof om een huis ten koste van 'n ander te bevoordeel nie.

(3) 'n Kraalhoof wat onbillik handel by die uitoefening van sy regte kragtens hierdie artikel kan deur die Bantoesakekommissaris of die kaptein betuel word.

36. Die kraalhoof is die eienaar van alle kraaleiendom in sy kraal. Hy beskik oor die opsig oor en bewaring en beheer van die eiendom wat aan die huise van sy verskillende vrouens verbonde is en kan dit na goeddunke vir sy persoonlike benodigdhede en behoeftes, vir algemene kraaldoeleindes of vir die onthaal van besoekers uitoefen. Hy kan sodanige eiendom gebruik, omruil, uitleen of op 'n ander wyse vervreem of daaroor beskik ten voordele of in belang van die huis waaraan dit verbonde is, maar indien hy eiendom wat aan een huis verbonde is ten voordele of ten behoeve van enige ander huis in die kraal gebruik, rus daar op sodanige ander huis 'n verpligting om dit of die gelyke waarde daarvan terug te besorg.

37. Die kraalhoof is verplig om die boedels van die verskillende huise in sy kraal afsonderlik te hou en alle geskille in verband daarmee te besleg.

(c) A child born of a divorced woman after the lapse of ten months from the date of her divorce becomes a member of the family of such woman's father or guardian.

(2) Notwithstanding anything in subsection (1) in the event of a subsequent customary union between the parents of a child born of a widow or divorced woman after the lapse of ten months from the date of her becoming a widow or of her divorce, as the case may be, such child becomes a member of the house established by the union.

CHAPTER 6

KRAAL HEADS

33. The head of a kraal is such by virtue of being either—

- (a) the owner thereof; or
- (b) the guardian during the minority of the heir in accordance with the provisions of section 46; or
- (c) the guardian appointed by the Bantu Affairs Commissioner or the Chief Bantu Affairs Commissioner under the circumstances described in sections 47 and 48.

34. (1) In the case referred to under section 33 (b)—

- (a) the heir may assume control of the kraal on attaining majority in accordance with the provisions of section 27 or otherwise at such time as the Bantu Affairs Commissioner or the chief may determine;
- (b) the kraal head administers the general estate during the minority of the heir, and also such house property as may be in the kraal for the benefit of the future kraal head and house heirs respectively and is subject to the duties and responsibilities of an ordinary kraal head.

(2) In the case referred to under section 33 (c) the kraal head during the period of his appointment administers the general estate and also such house property as there may be in the kraal and is subject to the duties and responsibilities of an ordinary kraal head.

35. (1) A kraal head is entitled to the earnings of his minor children and to a reasonable share of the earnings of the other members of his family and of any other kraal inmates. Such earnings are to be utilized by him primarily for the maintenance and benefit of the house providing them and for general kraal purposes.

(2) While a kraal head is allowed a wide discretion in disposing of the earnings referred to in subsection (1) it is not permissible for him to benefit one house at the expense of another.

(3) A kraal head acting unreasonably in the exercise of his rights under this section may be restrained by the Bantu Affairs Commissioner or the chief.

36. The kraal head is the owner of all kraal property in his kraal. He has charge, custody and control of the property attaching to the houses of his several wives and may in his discretion use the same for his personal wants and necessities, or for general kraal purposes or for the entertainment of visitors. He may use, exchange, loan or otherwise alienate or deal with such property for the benefit of or in the interests of the house to which it attaches, but should he use property attaching to one house for the benefit or on behalf of any other house in the kraal an obligation rests upon such other house to return the same or its equivalent in value.

37. It is the duty of the kraal head to keep distinct the estates of the various houses in his kraal and to settle all disputes in regard thereto.

38. Afgesien van geslag of ouderdom staan die kraalgenote onder die beheer van en is hulle gehoorsaamheid ten opsigte van alle kraalsake aan die kraalhoof verskuldig.

39. 'n Kraalhoof is aan sy kaptein en aan die Opperhoof verantwoordelik vir die goeie gedrag van sy kraalgenote, en verkry regte en is onderworpe aan verpligtings ingevolge kontrakte deur sy kraalgenote gesluit met sy uitdruklike of stilswyende magtiging.

40. Ondanks andersluidende bepalings in enige ander wet, kan 'n kraalhoof in die onmiddellike omgewing van sy kraal enige persoon summier arrester wat sy gesag trotseer of die vrede verstoort of onder redelike verdenking staan dat hy enige oortreding teenoor 'n persoon of in verband met eiendom begaan het of gepoog het om dit te begaan. Enige iemand wat aldus gearrester word, moet sonder versuim aan 'n polisie-beampte oorhandig word sodat daar volgens wet met hom gehandel kan word.

41. 'n Kraalhoof kan sy kraalgenote redelike, maar nie oormatige lyfstraf nie, toedien met die doel om hulle tereg te wys en om vrede te bewaar en orde daarin te handhaaf.

42. Die magte en voorregte van 'n kraalhoof kan op las van 'n Bantoesakekommissarishof aan 'n vrou verleen word ooreenkomstig die bepalings van artikel 28.

43. (1) 'n Kraalhoof kan 'n geskikte en bevoegde persoon aanstel om in sy afwesigheid as kraalhoof te ageer en iemand aldus aangestel, tree gedurende die tydperk van sy aanstelling in dieselfde hoedanigheid as 'n kraalhoof op vir die toepassing van hierdie Wetboek. By ontstentenis van sodanige aanstelling, moet die erfgenaam, of as die erfgenaam 'n minderjarige is, sy voog, toesig hou oor die kraal gedurende die afwesigheid van die kraalhoof.

(2) Gedurende die afwesigheid van 'n kraalhoof kan 'n vrou, nadat die skriftelike magtiging van die Bantoesakekommissaris eers vooraf verkry is, sonder die hulp van haar voog alle sodanige stappe doen, met inbegrip van die instelling van 'n aksie, as wat nodig mag wees om die eiendom van die afwesige kraalhoof of van minderjarige kraalgenote te beskerm.

HOOFSTUK 7

VOOGDYSKAP

44. (1) Ingevolge Bantoereg is 'n vader die natuurlike voog van sy egte minderjarige kinders.

(2) Die natuurlike voog van 'n onegte minderjarige kind is die hoof van die huis waartoe sodanige minderjarige behoort.

(3) Die natuurlike voog van 'n getroude vrou is haar eggenoot.

(4) Die natuurlike voog van 'n weduwee is die hoof van die kraal waartoe sy behoort.

(5) Die natuurlike voog van 'n geskeie vrou is die persoon wat haar voog sou gewees het as sy ongetroud gebly het.

45. Ingeval die natuurlike voog van 'n minderjarige oorlede of onbevoegd is, hetsy as gevolg van krank-sinningheid, idioothed, gevangenisstraf of andersins, vir 'n tydperk van meer as 'n jaar, gaan die voogdyskap van sodanige minderjarige oor op die hoof van die kraal waartoe sodanige minderjarige behoort.

46. (1) Indien die erfgenaam by die afsterwe van 'n kraalhoof, uitgesonderd 'n kaptein, te jonk is om die posisie te aanvaar, val die kraal onder die tydelike sorg van die oudste oorlewende oom of grootvader aan vaderskant van die minderjarige erfgenaam: Met dien verstande dat, indien omstandighede dit vereis, die Bantoesakekommissaris by die uitoefening van sy administratiewe funksies kragtens hierdie Wetboek enige ander geskikte persoon kan aanstel as voog van die erfgenaam en om beheer van die kraal oor te neem.

38. The inmates of a kraal irrespective of sex or age are in respect of all kraal matters under the control of and owe obedience to the kraal head.

39. A kraal head is responsible to his chief and to the Supreme Chief for the good conduct of the inmates of his kraal and acquires rights and incurs obligations under contracts entered into by the inmates of his kraal when acting with his authority express or implied.

40. Notwithstanding anything to the contrary in any other law a kraal head may within the precincts of his kraal summarily arrest any person defying his authority or disturbing the peace or committing or reasonably suspected of committing or attempting to commit any offence against person or property. Any person so arrested shall be handed over without delay to a police officer to be dealt with according to law.

41. A kraal head may inflict reasonable, but not excessive, corporal punishment upon the inmates of his kraal for the purpose of correction and to maintain peace and order therein.

42. The powers and privileges of a kraal head may by order of a Bantu Affairs Commissioner's court be vested in a woman in accordance with the provisions of section 28.

43 (1) A kraal head may appoint some fit and proper person to act as kraal head during his absence and a person so appointed shall during the period of his appointment be in the same position as a kraal head for the purposes of this Code. In default of any such appointment, the heir or should the heir be a minor, his guardian, shall take charge of the kraal during the absence of the kraal head.

(2) During the absence of a kraal head, a woman may, with the written authority of the Bantu Affairs Commissioner first had and obtained, take all such steps, including the institution of legal proceedings without the assistance of her guardian as may be necessary to protect the property of the absent kraal head or of minor inmates.

CHAPTER 7

GUARDIANSHIP

44. (1) Under Bantu law a father is the natural guardian of his legitimate minor offspring.

(2) The natural guardian of an illegitimate minor is the head of the house to which such minor belongs.

(3) The natural guardian of a married woman is her husband.

(4) The natural guardian of a widow is the head of the kraal to which she belongs.

(5) The natural guardian of a divorced woman is the person who would have been her guardian had she remained unmarried.

45. In the event of the natural guardian of any minor being dead or being incapacitated, whether by insanity, idiocy, imprisonment or otherwise for a period in excess of a year the guardianship of such minor shall devolve upon the head of the kraal to which such minor belongs.

46. (1) If upon the death of a kraal head other than a chief the heir is too young to assume the position, the kraal falls under the temporary care of the eldest surviving paternal uncle or paternal grandfather of the minor heir: Provided that should occasion require, the Bantu Affairs Commissioner may, in the exercise of his administrative functions under this Code, appoint any other suitable person to be the guardian of the heir and to take charge of the kraal.

(2) Indien die erfgenaam by die afsterwe van 'n kraalhoof wat 'n kaptein is, te jonk is om die posisie te aanvaar, kan die Hoofbantoesaakekommissaris 'n geskikte persoon aanstel as voog van die erfgenaam en om beheer van die kraal oor te neem.

(3) Voogdyskap ingevolge hierdie artikel verval sodra die erfgenaam die beheer van die kraal aanvaar, soos in artikel 34 bepaal.

47. Indien 'n kraalhoof vir 'n langer tydperk as 'n jaar tot gevangenisstraf gevonnis word of vir meer as 'n jaar uit die Provinsie afwesig is sonder om voorsiening te maak vir die bestuur van sy sake en dit nodig is om 'n voog aan te stel om beheer van sy kraal oor te neem, kan die Bantoesaakekommissaris in oorleg met die kaptein van die Bantoe wat aldus in die gevangenis of afwesig is, of as sodanige kraalhoof 'n kaptein is, die Hoofbantoesaakekommissaris, 'n voog aanstel wat verantwoordelik is vir die behoorlike en troue sorg, bewaring en algemene administrasie van die kraal.

48. 'n Kraalhoof of voog, belas met die bewaring van enige persoon of eiendom, teen wie 'n klagte ingedien word dat hy dwaas of roekeloos gehandel het ten opsigte van sodanige persoon of eiendom en wat by ondersoek deur die Bantoesaakekommissaris as ongeskik vir sy posisie bevind word, kan daaruit geskors word en sodanige persoon of eiendom kan deur die Bantoesaakekommissaris, of, as sodanige kraalhoof 'n kaptein is of sodanige voog aangestel is deur die Hoofbantoesaakekommissaris, dan deur die Hoofbantoesaakekommissaris onder die voogdyskap van 'n ander persoon geplaas word.

49. Klagtes ingevolge artikel 48 kan deur enige persoon, man of vrou, wat belang by die saak het, ingebring word, en moet administratief afgehandel word.

50. (1) Enige persoon wat die voogdyskap van 'n minderjarige aanvaar of daarin aangestel is, is verantwoordelik vir die behoorlike en getroue bereddering van sodanige minderjarige se boedel en kan van hom vereis word om sodanige sekerheid te stel as wat die Bantoesaakekommissaris nodig of raadsaam mag ag.

(2) Enige persoon wat onderworpe is aan voogdyskap ten opsigte van of sy persoon of sy eiendom kan sonder die bystand van 'n *curator ad litem* 'n saak teen sy voog instel, tensy die hof anders gelas.

51. Enige voog wat sonder voorafgaande vergunning van die Bantoesaakekommissaris 'n aksie ten behoeve van 'n persoon of boedel onder sy voogdyskap instel, kan deur die hof gelas word om die koste in verband daarmee te betaal.

52. (1) Voogde kan 'n redelike besoldiging eis vir sorg en ywer aan die dag gelê by die beheer van sake aan hul beheer toevertrou. In die geval van 'n geskil word sodanige besoldiging deur die Bantoesaakekommissaris vasgestel.

(2) As voogde op eie koste kinders moes onderhou, word daar gewoonlik 'n bees vir elke kind toegelaat, maar die Bantoesaakekommissaris kan sodanige addisionele besoldiging toelaat as wat hy redelik en billik ag.

53. Enige persoon wat as voog aanspraak maak op die bewaring van 'n minderjarige, kan daarom aansoek doen by die Bantoesaakekommissaris wat gemagtig is om, ná behoorlike ondersoek, sodanige bevel te gee as wat hy reg en billik ag.

54. Enige ouer of voog kan aan enige kind of voogdeling onder sy sorg redelike, maar nie oormatige lyfstraf nie, toedien vir die doel van teregwyding.

55. Niemand kan verplig word om die hoedanigheid van voog teen sy sin te aanvaar nie.

56. Hawelose minderjariges word gereken as voogdelinge van die Opperhoof in sy hoedanigheid van Oppervoog.

(2) If upon the death of a kraal head being a chief, the heir is too young to assume the position, the Chief Bantu Affairs Commissioner may appoint some suitable person to be the guardian of the heir and to take charge of the kraal.

(3) Guardianship under this section terminates upon the heir assuming the control of the kraal as in section 34 provided.

47. If a kraal head be sentenced to a term of imprisonment in excess of a year or be absent from the Province for longer than a year, without providing for the management of his affairs, and there be need for the appointment of a guardian to take charge of his kraal, the Bantu Affairs Commissioner, in consultation with the chief of the Bantu so imprisoned or absent, or if such kraal head is a chief the Chief Bantu Affairs Commissioner, may appoint a guardian who shall be responsible for the due and faithful care, custody and general administration of the kraal.

48. A kraal head or guardian charged with the custody of any person or property, against whom complaint is made of having acted foolishly or prodigally in respect of such person or property and who upon enquiry by the Bantu Affairs Commissioner is found to be unfitted for his position may be suspended therefrom and such person or property may be placed under the guardianship of some other person by the Bantu Affairs Commissioner, or, if such kraal head is a chief or such guardian has been appointed by the Chief Bantu Affairs Commissioner, by the Chief Bantu Affairs Commissioner.

49. Complaints under section 48 may be made by any person, male or female, who has an interest in the matter and shall be dealt with administratively.

50. (1) Any person assuming or having been appointed to the guardianship of a minor shall be responsible for the due and faithful administration of such minor's estate and may be required to furnish such security as the Bantu Affairs Commissioner may deem necessary or advisable.

(2) Any person who is subject to guardianship in respect of either his person or his property may bring an action against his guardian without the assistance of a *curator ad litem* unless the court otherwise directs.

51. Any guardian who institutes legal proceedings on behalf of a person or estate under his guardianship without the permission of the Bantu Affairs Commissioner first had and obtained may be ordered by the court to bear the costs of the proceedings.

52. (1) Guardians may claim reasonable remuneration for care and diligence exercised in the management of affairs committed to their charge. In the event of a dispute such remuneration shall be fixed by the Bantu Affairs Commissioner.

(2) When guardians have been required to maintain children at their own expense, it is usual to allow a beast for each child, but the Bantu Affairs Commissioner may allow such additional remuneration as he may consider fair and reasonable.

53. Any person claiming as guardian the custody of a minor may make application therefor to the Bantu Affairs Commissioner who is empowered, after due enquiry, to make such order as he may deem just and equitable.

54. Any parent or guardian may inflict reasonable, but not excessive, corporal punishment upon any child or ward under his care for the purpose of correction.

55. No person may be compelled to assume the position of guardian against his wish.

56. Destitute minors rank as wards of the Supreme Chief in his capacity as Upper Guardian.

HOOFSTUK 8

GEBRUIKLIKE VERBINDINGS EN VERWANTE VERBINDINGS

GEBRUIKLIKE VERBINDINGS

57. (1) 'n Gebruiklike verbinding is 'n siviele kontrak aangegaan deur en tussen voornemende deelgenote, onderhewig aan die noodsaaklike vereistes van hierdie Wetboek, en duur voort tot die oorlyde van die eers-sterwende tensy dit eerder deur 'n bevoegde hof ontbind word.

(2) Veelwywige gebruiklike verbindings word erken.

(3) Nieteenstaande enige bepalings in enige ander wet, word enige gebruiklike verbinding, soos in die Wet omskryf, wat aangegaan is tussen Bantoes in Zoeloeland, hetsy voor 1 November 1932, of daarna tot tyd en wyl die nodige offisiële getuies aangestel was, geag geldig te wees en word dit vir alle doeleindes as 'n gebruiklike verbinding kragtens die bepalings van hierdie Wetboek beskou.

(4) Niks in hierdie artikel vervat, word geag inbreuk op die krag van artikels 13, 14 en 15 van Wet No. 46 van 1887 (Natal) te maak nie.

58. 'n Gebruiklike verbinding word nie belet nie tussen—

- (a) 'n man en sy eggenote se suster; of
- (b) 'n weduwee of geskeie vrou en haar vorige eggenoot se broer.

59. (1) Die vereistes van 'n gebruiklike verbinding is—

- (a) die toestemming van die vader of voog van die voorgename eggenote, welke toestemming nie onredelik weerhou kan word nie;
- (b) die toestemming van die vader of kraalhoof van die voorgename eggenoot, indien dit wetlik nodig is;
- (c) 'n openbare verklaring deur die voorgename eggenote aan die offisiële getuie by die viering van die verbinding dat die verbinding uit eie vrye wil en met haar toestemming geskied.

(2) Nieteenstaande die bepalings van subartikel (1) is die toestemming van haar vader of voog nie nodig nie ten opsigte van die aangaan van 'n gebruiklike verbinding deur 'n vrygestelde vrou met die status van 'n kraalhoof, maar hierdie subartikel moet nie so vertolk word dat dit die aanspraak van iemand wat geregtig is op *lobolo*, betaalbaar deur haar voorgename eggenoot ten opsigte van sodanige vrygestelde vrou, benadeel nie.

(3) Die toestemming van sy vader of kraalhoof is nie nodig ten opsigte van die aangaan van 'n gebruiklike verbinding deur 'n manlike Bantoe wat meerderjarig is of wat andersins ingevolge die bepalings van hierdie Wetboek kontrakte namens homself kan aangaan nie.

60. Die Bantoesakekommissaris kan administratief 'n klagte ondersoek dat 'n vader, voog of kraalhoof sy toestemming tot 'n voorgename gebruiklike verbinding onredelik weerhou het, en indien hy, as gevolg van sodanige ondersoek, tevrede is dat daar geen regmatige beletsel in die weg is nie, kan hy magtig dat die verbinding voortgaan en sodanige bevel betreffende die betaling van *lobolo* verleen as wat hy billik ag.

61. (1) Wanneer 'n gebruiklike verbinding gereël is, moet die betrokke kraalhoof of partye aan die kaptein of die kaptein se plaasvervanger of die hoofman, wat die offisiële getuie moet gelas om op die tyd en plek van die viering aanwesig te wees, kennis gee van die dag wat vir die viering van sodanige verbinding bepaal is.

(2) Die voorgename eggenoot van elke gebruiklike verbinding moet, voor die viering daarvan, aan die kaptein of sy goedgekeurde bode 'n bedrag van 75 sent en aan die offisiële getuie 'n bedrag van 50 sent betaal ter vergoeding van hul onderskeie dienste.

CHAPTER 8

CUSTOMARY UNIONS AND COGNATE UNIONS

CUSTOMARY UNIONS

57. (1) A customary union is a civil contract entered into by and between the intending partners, subject to the essential requirements of this Code, and endures until the death of the first dying unless earlier dissolved by a competent court.

(2) Polygamous customary unions are recognised.

(3) Notwithstanding anything in any other law, any customary union as defined in the Act entered into between Bantu in Zululand either prior to the 1st November, 1932, or thereafter until such time as the requisite official witnesses had been appointed shall be deemed to be valid and shall for all purposes be regarded as a customary union under the provisions of this Code.

(4) Nothing in this section contained shall be deemed to affect the operation of sections 13, 14 and 15 of Law No. 46 of 1887 (Natal).

58. A customary union is not prohibited between—

- (a) a man and his wife's sister; or
- (b) a widow or divorced woman and her late husband's brother.

59. (1) The essentials of a customary union are—

- (a) the consent of the father or guardian of the intended wife, which consent may not be withheld unreasonably;
- (b) the consent of the father or kraal head of the intended husband should such be legally necessary;
- (c) a declaration in public by the intended wife to the official witness at the celebration of the union that the union is with her own free will and consent.

(2) Notwithstanding anything in subsection (1) the consent of her father or guardian is not required in respect of the entrance into a customary union of an emancipated female with the status of a kraal head, but this subsection shall not be construed as prejudicing the claim of any person entitled to the *lobolo* payable in respect of such emancipated female by her intended husband.

(3) The consent of his father or kraal head is not required in respect of the contracting of a customary union by a Bantu male who has attained majority or is otherwise under the provisions of this Code capable of entering into contracts on his own behalf.

60. The Bantu Affairs Commissioner may administratively investigate any complaint that a father, guardian, or kraal head has unreasonably withheld his consent to a proposed customary union and should he, as the result of such investigation, be satisfied that no just impediment exists he may authorise the union to proceed and may make such order regarding the payment of *lobolo* as he may deem just.

61. (1) When a customary union has been arranged, the kraal head or the parties concerned shall report the day fixed for the celebration of such union to the chief or the chief's deputy or the headman who shall direct the official witness to attend at the time and place of the celebration.

(2) The intended husband to every customary union shall, before the celebration thereof, pay a fee of 75 cents to the chief or his approved messenger, and a fee of 50 cents to the official witness as remuneration for their respective services.

62. Die offisiële getuie moet in 'n vroeë stadium van die plegtigheid die vrou in die openbaar vra of dit uit eie vrye wil en met haar toestemming is dat sy die gebruiklike verbinding met die voorgename eggenoot aangaan. Indien die vrou weier om haar toestemming aan te kondig, of verklaar dat sy nie instem nie, of andersins onwillig skyn te wees om die voorgename verbinding aan te gaan, moet die offisiële getuie onverwyld alle verrichtings in verband met die plegtigheid verbied en, indien nodig, die vrou onder sy beskerming neem en die saak onmiddellik aan die Bantoesakekommissaris rapporteer.

63. Op 'n geleë tydstip gedurende die plegtigheid moet die bruidegom of sy vader, of sy kraalhoof, of iemand anders wat die *lobolo* ten opsigte van die verbinding bygedra het aan die offisiële getuie in die openbaar die bron of bronne verklaar waaruit die *lobolo* geneem of verkry is, ten einde die onderstaande besonderhede daar en dan vas te stel en te bepaal met die oog daarop om dit daarna aan te teken in die register in artikel 64 vermeld—

- (a) die *lobolo* betaalbaar aan en werklik ontvang deur die party wat daarop geregtig is;
- (b) die bron waaruit die *lobolo* verkry is;
- (c) waar skuld gemaak is ten opsigte van die betaalde *lobolo*, die naam van die persoon of huis waaraan dit terugbetaal moet word en die wyse van terugbetaling;
- (d) waar enige saldo van *lobolo* nog verskuldig is, die tyd wanneer en wyse waarop dit betaal moet word;
- (e) as geen *lobolo* betaal is nie, die aard van die ooreenkomstige waarvolgens die verpligting, indien enige, nagekom moet word;
- (f) as daar 'n affiliasie van die eggenote gaan wees, die naam van die vrou aan wie se huis sy geaffilieer word en die doel van sodanige affiliasie;
- (g) as die verbinding 'n *ukuvusa* gaan wees, die naam van die oorledene en die doel waarvoor sodanige verbinding aangegaan word.

64. 'n Register van gebruiklike verbindings word in die Kantoor van die Bantoesakekommissaris bygehou in die vorm voorgeskryf in Aanhangsel No. 1 van hierdie Wetboek en is te alle paslike tye kosteloos ter insage van iedereen wat belang het by enige inskrywing daarin.

65. (1) Binne een maand ná die viering van enige gebruiklike verbinding, moet die offisiële getuie wat die viering ingevolge artikel 61 (1) bygewoon het, die deelgenote van so 'n gebruiklike verbinding, en die vaders of voogde van sodanige deelgenote of, indien nodig, die verteenwoordigers van sodanige vaders of voogde op die Kantoor van die Bantoesakekommissaris verskyn vir die registrasie van die gebruiklike verbinding, en dit is die plig van die offisiële getuie en enige iemand wat met hom op die Kantoor van die Bantoesakekommissaris verskyn, om ál die inligting te verstrek wat nodig is ten einde sodanige registrasie op 'n behoorlike en deeglike wyse te laat geskied. Van die deelgenote moet vereis word dat hulle die register onderteken nadat die inskrywings daarin aan hulle verduidelik is.

(2) Die Bantoesakekommissaris kan die registrasie van enige gebruiklike verbinding wat nog nie geregistreer is nie met of sonder die verskyning van die deelgenote of hul verteenwoordigers gelas.

66. Die deelgenote van 'n gebruiklike verbinding moet by behoorlike registrasie van die verbinding elkeen deur die registrerende beamppte gratis voorsien word van 'n sertifikaat van die verbinding in die vorm in Aanhangsel No. 2 van hierdie Wetboek voorgeskryf.

67. Enige betaling van *lobolo* ná die registrasie van 'n gebruiklike verbinding kan in teenwoordigheid van die belanghebbende partye of hul verteenwoordigers in die register vermeld in artikel 64, ingeskryf word.

62. The official witness shall at an early stage of the ceremony publicly ask the woman whether it is of her own free will and consent that she is about to enter into the customary union with the intended husband. Should the woman decline to announce her consent, declare her dissent or otherwise appear to be unwilling to proceed with the intended union, the official witness shall forthwith prohibit any further proceedings in connection with the ceremony and shall, if necessary, take the woman under his protection and shall forthwith report the matter to the Bantu Affairs Commissioner.

63. At a convenient time during the ceremony the bridegroom, or his father, or his kraal head, or other person who has contributed the *lobolo* in respect of the union shall publicly declare to the official witness the source or sources from which the *lobolo* was taken or obtained, in order then and there to ascertain and determine the following particulars with a view to their being subsequently recorded in the register referred to in section 64—

- (a) the *lobolo* payable to and actually received by the party entitled thereto;
- (b) the source from which the *lobolo* was obtained;
- (c) where liability has been incurred in respect of the *lobolo* paid, the name of the person or the house to which it is to be repaid and the manner of repayment;
- (d) where any balance of *lobolo* is still owing, the time when and the manner in which it is to be paid;
- (e) if no *lobolo* has been paid, the nature of the agreement by which the obligation, if any, is to be discharged;
- (f) if there is to be an affiliation of the wife, the name of the woman to whose house she is being affiliated and the purpose of such affiliation;
- (g) if the union is to be an *ukuvusa*, the name of the deceased and the purpose for which such union is being contracted.

64. A register of customary unions shall be kept in the office of the Bantu Affairs Commissioner in the form prescribed in Annexure No. 1 to this Code and shall be open at all convenient times for inspection, free of charge, by any person interested in any entry therein.

65. (1) Within one month after the celebration of any customary union the official witness who attended the celebration in terms of section 61 (1), the partners of such customary union and the fathers or guardians of such partners or, where necessary the representatives of such fathers or guardians, shall attend at the office of the Bantu Affairs Commissioner for the registration of the customary union; and it shall be the duty of the official witness and of any person attending with him at the office of the Bantu Affairs Commissioner to furnish all the information required to complete such registration in due and proper form. The partners shall be required to sign the register after the entries made therein have been explained to them.

(2) The Bantu Affairs Commissioner may order the registration with or without the appearance of the partners or their representatives of any customary union that has not been registered.

66. The partners to a customary union shall upon due registration of the union each be furnished by the registering officer, free of charge, with a certificate of the union in the form prescribed in Annexure No. 2 to this Code.

67. Any payment of *lobolo* made subsequently to the registration of a customary union may be recorded in the register referred to in section 64 in the presence of the parties interested or their representatives.

68. Die juistheid van 'n inskrywing in 'n register van gebruklike verbindings betreffende enige verpligting op 'n huis wat ontstaan deur of by die totstandbrenging daarvan, kan binne een jaar ná so iemand daarvan bewus word, maar nie daarna nie, voor die Bantoesake-kommissaris in teenwoordigheid van die belanghebbende partye betwis word deur iemand wat 'n direkte belang by so 'n inskrywing het.

69. Iedereen wat, met die doel om dit in die register van gebruklike verbindings te laat inskryf, enige valse bewering of verklaring maak of laat maak met betrekking tot enige saak in verband met 'n verpligting op 'n huis wat ontstaan uit of veroorsaak word deur 'n gebruklike verbinding, is skuldig aan 'n misdryf.

70. Registrasie van 'n gebruklike verbinding in 'n register van gebruklike verbindings word aanvaar as afdoende bewys van daardie verbinding, en sodanige registrasie kan bewys word deur die voorlegging van die register of van 'n afskrif van die betrokke inskrywing daarin, gesertifiseer deur die beampte in wie se bewaring sodanige register gehou word.

VERWANTE VERBINDINGS

71. Die vereistes by *ukungena* is—

- (a) dat die verbinding aangegaan word vir die een of ander van die doeleindes vermeld in die woordskrywing van *ukungena* in artikel 1;
- (b) dat die verbinding aangegaan word met die vrye toestemming van die vrou;
- (c) dat dit 'n familiereëling moet wees wat aangegaan moet word met die goedkeuring van die familiehoof, en, in die geval van 'n kaptein, waar dit gepaard gaan met die verwekking van 'n erfgenaam van die kapteinskap, met die goedkeuring van die meerderheid van die stam;
- (d) dat geen *lobolo* ten opsigte van die verbinding betaal word nie.

72. Die afstammeling uit 'n *ukungena* word gereken asof hulle werklik kinders van die oorlede eggenoot is.

73. 'n *Ukungena* kan te eniger tyd deur sowel die een as die ander party ontbind word.

74. 'n *Ukuvusa* word erken as 'n gebruklike verbinding vir die toepassing van artikels 57 tot en met 70 van hierdie Wetboek.

75. Die uitwerking van *ukuvusa* is om 'n afsonderlike en volkome onafhanklike boedel in naam van die oorledene in die lewe te roep.

HOOFSTUK 9

EGSKEIDING EN NIETIGVERKLARING VAN GEBRUKLIKE VERBINDINGS

76. (1) 'n Egskeidingsaak ten opsigte van 'n gebruklike verbinding kan deur sowel die een as die ander deelgenoot op enige van onderstaande gronde ingestel word—

- (a) owerspel deur die ander deelgenoot;
- (b) voortdurende weiering deur die ander deelgenoot om huweliksregte te verleen;
- (c) moedswillige verlating deur die ander deelgenoot;
- (d) voortdurend ernstige wangedrag deur die ander deelgenoot;
- (e) dat die ander deelgenoot 'n tydperk van gevangenisstraf van minstens vyf jaar uitdien;
- (f) dat die toestand sodanig is dat dit die voortdurende saamlewe van die deelgenote ondraaglik en gevaarlik maak.

(2) Die eggenote by gebruklike verbinding kan daarbenewens 'n egskeidingsaak teen haar eggenoot instel op grond van—

68. The accuracy of any entry in a register of customary unions relating to any obligation upon a house created by or at its establishment may be impeached before the Bantu Affairs Commissioner in the presence of the parties interested by any person having a direct interest in such entry within one year after such person becomes cognisant thereof but not thereafter.

69. Any person who makes or causes to be made, for the purpose of entry in the register of customary unions, any false statement or declaration regarding any matter relating to an obligation upon a house arising from or created by a customary union shall be guilty of an offence.

70. Registration of a customary union in a register of customary unions shall be accepted as conclusive evidence of that union and such registration may be proved by the production of the register or of a copy of the relative entry therein certified by the officer having custody of such register.

COGNATE UNIONS

71. The essentials of *ukungena* are—

- (a) that the union be contracted for one or other of the purposes specified in the definition of *ukungena* under section 1;
- (b) that the union be entered into with the free consent of the woman;
- (c) that it be a family arrangement entered into with the approval of the family head and, in the case of a chief, where the raising of an heir to the chieftainship is involved, with the sanction of the majority of the tribe;
- (d) that no *lobolo* be paid in respect of the union.

72. The offspring of an *ukungena* rank as if they were in fact children of the deceased husband.

73. An *ukungena* may at any time be dissolved by either party.

74. An *ukuvusa* is recognised as a customary union for the purposes of sections 57 to 70 inclusive of this Code.

75. The effect of *ukuvusa* is to create a separate and entirely independent estate in the name of the deceased.

CHAPTER 9

DIVORCE AND ANNULMENT OF CUSTOMARY UNIONS

76. (1) An action for divorce in respect of a customary union may be maintained by either partner on any of the following grounds—

- (a) adultery on the part of the other partner;
- (b) continued refusal on the part of the other partner to render conjugal rights;
- (c) wilful desertion on the part of the other partner;
- (d) continued gross misconduct on the part of the other partner;
- (e) that the other partner is undergoing a term of imprisonment of not less than five years;
- (f) that conditions are such as to render the continuous living together of the partners insupportable or dangerous.

(2) The wife by customary union may in addition maintain a suit for divorce from her husband by reason of—

- (a) ernstige wreedheid of mishandeling deur haar eggenoot;
- (b) aantygings van towery of ander ernstige beskuldigings deur die eggenoot teen haar inbring.

77. 'n Deklarasie van nietigverklaring ten opsigte van 'n gebruikelike verbinding kan aangevra word vir en verkry word deur of ten behoeve van sowel die een as die ander deelgenoot op enige van onderstaande gronde—

- (a) kranksinnigheid van die ander deelgenoot ten tyde van die viering van die verbinding;
- (b) impotensie of ander permanente liggaamlike gebrek by die ander deelgenoot waardeur die volvoering van die verbinding verhinder word;
- (c) die ontstentenis van enige van die vereistes van 'n gebruikelike verbinding soos in artikel 59 uiteengesit;
- (d) die feit dat die vrou ten tyde van die viering van die verbinding deur 'n huwelik die eggenote, of kragtens 'n gebruikelike verbinding, die deelgenoot van 'n ander man was:

Met dien verstande dat 'n deklarasie van nietigverklaring ten opsigte van 'n gebruikelike verbinding op grond van die kranksinnigheid van een van die deelgenote nie verkry kan word tensy die feit van sodanige kranksinnigheid onbekend was vir die ander deelgenoot ten tyde van die viering van die verbinding en tensy die saak ingestel word binne 'n redelike tyd ná die viering van die verbinding.

78. (1) 'n Eggenote wat van haar eggenoot wil skei, moet, wanneer sy haar eggenoot se kraal verlaat, dadelik die beskerming soek van haar vader of iemand anders, hieronder die „beskermer” genoem, wat haar voog sou gewees het as sy ongetroud gebly het, welke beskerming nie geweier mag word nie; en by verklaring van haar weiering om met haar eggenoot saam te leef en haar voorneme om te skei, moet haar vader of beskermer so spoedig doenlik probeer om die deelgenote met mekaar te versoen en indien die poging tot versoening misluk, moet hy die eggenote na die Kantoor van die Bantoesakekommissaris vergesel om 'n egskeidingsaak in te stel.

(2) In die geval van 'n eggenote wat wil skei en wat geen vader of beskermer het nie of wie se vader of beskermer afwesig is of weier om haar behulpsaam te wees, kan die Bantoesakekommissarishof op haar aansoek of by verwittiging van die feite 'n *curator ad litem* vir die doel van haar saak aanstel, en die aldus aangestelde persoon moet ooreenkomstig subartikel (1) handel.

(3) 'n Eggenoot wat wil skei, moet die eggenote se vader of beskermer van sy voorneme in kennis stel, wat so spoedig doenlik 'n poging moet aanwend om die deelgenote met mekaar te versoen en indien die poging tot versoening misluk, kan die eggenoot na die Kantoor van die Bantoesakekommissaris gaan om 'n egskeidingsaak in te stel.

79. 'n Vrou wat om egskeiding dagvaar, moet in die saak bygestaan word deur haar vader, beskermer of deur 'n *curator ad litem* wat kragtens artikel 78 (2) aangestel is.

80. Ondanks die bepalings in artikel 83 vervat, word geen bevel om *lobolo* terug te gee of te verbeur in enige geding vir die ontbinding van 'n gebruikelike verbinding toegestaan nie, tensy die vader of beskermer van die vrou as 'n party by die geding gedagvaar word.

81. Die ontbinding van 'n gebruikelike verbinding deur egskeiding moet, uitgesonderd in die geval van 'n uitspraak ten gunste van die eggenote op grond van onregmatige dade, wandade of nalatigheid van die eggenoot, vergesel gaan van die teruggawe aan die eggenoot van minstens een bees of die waarde daarvan deur die vader of beskermer van die vrou, waar hy gedagvaar is soos in artikel 80 bepaal word.

- (a) gross cruelty or ill-treatment on the part of the husband;
- (b) accusations of witchcraft or other serious allegations made against her by the husband.

77. A declaration of nullity in respect of a customary union may be applied for and obtained by, or on behalf of, either partner on any of the following grounds—

- (a) insanity of the other partner at the time of the celebration of the union;
- (b) impotence or other permanent physical defect on the part of the other partner preventing consummation of the union;
- (c) the absence of any of the essentials of a customary union as set forth in section 59;
- (d) the fact that the woman was at the time of the celebration of the union the wife by marriage or the partner under a customary union of another man:

Provided that a declaration of nullity in respect of a customary union on the ground of the insanity of one of the partners shall not be obtainable unless the fact of such insanity was unknown to the other partner at the time of celebration of the union and unless the action be instituted within a reasonable time after the celebration of the union.

78. (1) A wife who seeks divorce shall on leaving her husband's kraal forthwith seek the protection of her father or other person, hereinafter referred to as "the protector", who would have been her guardian had she remained unmarried, which protection may not be withheld; and upon her declaring her refusal to live with her husband and her intention to seek divorce her father or protector shall as soon as practicable attempt to reconcile the partners and should he fail to effect a reconciliation he shall accompany the wife to the office of the Bantu Affairs Commissioner to institute proceedings for a divorce.

(2) In the case of a wife seeking divorce who has no father or protector or whose father or protector is absent or refuses to assist her, the court of the Bantu Affairs Commissioner may, upon her application or upon notification of the facts, appoint a *curator ad litem* for the purposes of her case and the person so appointed shall act in accordance with subsection (1).

(3) A husband who seeks divorce must notify his intention to the father or protector of the wife who shall as soon as practicable attempt to reconcile the partners and should he fail to effect a reconciliation the husband may proceed to the office of the Bantu Affairs Commissioner to institute proceedings for a divorce.

79. A woman suing for divorce must be assisted in the action by her father, protector or by a *curator ad litem* appointed under section 78 (2).

80. Notwithstanding anything contained in section 83, no order for the return or forfeiture of *lobolo* shall be granted in any action for the dissolution of a customary union unless the father or protector of the wife is cited as a party to the action.

81. The dissolution of a customary union by divorce, except when decreed at the suit of a wife by reason of the wrongful acts, misdeeds or omissions of the husband, must be accompanied by the return of at least one beast or its equivalent by the father or protector of the woman, where he has been cited as provided for in section 80, to the husband.

82. By die ontbinding van enige gebruikelike verbinding word die kinders beskou as behorende aan die vader, maar die hof kan sodanige bevel uitreik wat betref hul bewaring en onderhoud as wat billik en dienstig is.

83. Wanneer 'n egskeidingsbevel toegestaan word, moet die hof duidelike bevels en opdragte gee wat betref onderstaande sake—

- (a) dat die vrou onder die voogdyskap van haar vader of beskermmer moet wees en dat sy in sodanige voog se kraal moet woon of op sodanige ander plek as wat die hof gelas;
- (b) die bewaring van die jong kinders van die verbinding en enige nodige voorsiening vir hul onderhoud;
- (c) die getal beeste, indien daar is wat deur die vrou se vader of voog aan die eggenoot teruggegee moet word.

84. By nietigverklaring van enige gebruikelike verbinding gelas die hof die teruggawe van die *lobolo* asook die werklike aanwas van die beeste, en reik sodanige bevel uit as wat hy mag goed vind wat betref die terugbetaling van die werklike koste, met inbegrip van die *ngquthu*-bees, wat met die verbinding gepaard gaan.

HOOFSTUK 10

LOBOLO

85. (1) By ontstentenis van 'n andersluidende ooreenkomst, is die *lobolo* ten opsigte van 'n gebruikelike verbinding op die dag van die viering van sodanige verbinding betaalbaar. Beeste wat voor daardie dag afgeweer word, word beskou as *sis*a-beeste en enige aanwas of vermindering van sodanige beeste voor die dag van die viering maak die wins of verlies uit, na die geval mag wees, van die persoon deur of ten behoeve van wie aflewering geskied het.

(2) As daar van die *lobolo*-beeste doodgaan binne veertien dae vanaf die viering van die verbinding of vanaf die aflewering, watter ookal die jongste datum is, en hul dood behoorlik gerapporteer is, moet sulke beeste vervang word deur die persoon deur of ten behoeve van wie aflewering geskied het.

86. *Lobolo* bestaan uit redelik middelslag beeste of hul ekwiwalent in ander vee of eiendom, en vir die doeleindes van enige geskil word die waarde van iedere *lobolo*-bees op tien rand vasgestel.

87. (1) Die *lobolo* vir 'n meisie of vrou wat onder voogdyskap staan, word bepaal volgens die rang of posisie van haar vader of voog en by ooreenkomst vasgestel maar mag nie die skaal in onderstaande tabel voorgeskryf te bowe gaan nie:—

Vir 'n vrou wat die dogter is van	Maksimum getal beeste as lobolo
(a) 'n kaptein	onbeperk
(b) die seun, broer of oom van 'n kaptein	15 stuks
(c) 'n kaptein se plaasvervanger, hoofman of offisiële getuie	15 stuks
(d) enige ander Bantoe	10 stuks

(2) In enige geval van twyfel moet die *lobolo* nie tien stuks beeste of die ekwiwalent daarvan te bowe gaan nie.

(3) In die geval van 'n geskil word die *lobolo* betaalbaar ten opsigte van 'n geskeie vrou of weduwee, as sy 'n gebruikelike verbinding aangaan, bepaal deur die Bantoesakekommissaris, maar mag nie ten aansien van 'n geskeie vrou vyf stuks beeste of die ekwiwalent daarvan te bowe gaan nie indien op grond van die wandade van haar vorige eggenoot by die egskeiding geen beeste teruggegee is nie.

82. Upon the dissolution of any customary union the children are regarded as belonging to the father, but the court may make such order as to their custody and maintenance as may be just and expedient.

83. When granting any decree of divorce the court shall give clear and explicit orders and directions as to the matters following—

- (a) that the woman shall be under the guardianship of her father or protector and that she reside at such guardian's kraal or at such other place as the court may direct;
- (b) the custody of the young children of the union, and any necessary provision for their maintenance;
- (c) the number of cattle, if any, to be returned by the woman's father or guardian to the husband.

84. In decreeing the nullity of any customary union, the court shall order the return of the *lobolo*, together with the actual increase of the cattle, and shall make such order as to the refund of the actual expenses, including the *ngquthu* beast, incurred in connection with the union, as it may deem fit.

CHAPTER 10

LOBOLO

85. (1) In the absence of any agreement to the contrary, the *lobolo* in respect of a customary union is payable on the day of the celebration of such union. Any cattle delivered before that day shall be regarded as *sis*a cattle and any increase or decrease of such cattle prior to the day of celebration shall be to the profit or loss, as the case may be, of the person by whom or on whose behalf delivery was effected.

(2) Should any of the *lobolo* cattle die within fourteen days of the celebration of the union or of delivery, whichever be the later date, such cattle shall if their death be duly reported, be replaced by the person by whom or on whose behalf delivery was effected.

86. *Lobolo* shall consist of fair average cattle or their equivalent in other stock or property and for the purposes of any dispute the value of each head of *lobolo* cattle shall be regarded as ten rand.

87. (1) The *lobolo* for a girl or woman who is a ward is determined according to the rank or position of her father or guardian and is determined by agreement, but shall not be in excess of the scale prescribed in the following table:—

For a woman who is the daughter of	Maximum number of cattle as lobolo
(a) a chief	no limit
(b) the son, brother or uncle of a chief	15 head
(c) a chief's deputy, headman or official witness	15 head
(d) any other Bantu	10 head

(2) In any case of doubt the *lobolo* must not exceed ten head of cattle or their equivalent.

(3) The *lobolo* payable in respect of a divorced woman or widow upon her entering into a customary union shall in case of dispute be determined by the Bantu Affairs Commissioner but shall not exceed five head of cattle or their equivalent in the case of a divorced woman if by reason of the misdeeds of her former husband no cattle were returned upon the divorce.

(4) Die *lobolo* waaromtrent ooreengekom is en die wyse van betaling moet in die register van gebruiklike verbindings aangeteken word.

88. Iedereen wat meer *lobolo* ontvang as die wat bepaal is in die skaal in artikel 87 voorgeskryf, is skuldig aan 'n misdryf.

89. Wanneer 'n weduwee 'n gebruiklike verbinding aangaan, moet die *lobolo* ten opsigte van die verbinding betaal word aan die huis waartoe sy behoort het in die kraal van haar oorlede eggenoot.

90. Die persoon aan wie *lobolo* gelewer word of, ingeval van sy dood, die erfgenaam van die huis wat die *lobolo* in ontvangs neem, is verbonde om ingevolge die ontvangs daarvan as daar gegronde rede voor bestaan, die vrou ten opsigte van wie sodanige *lobolo* afgelewer is asiel te verleen.

91. (1) Met die betaling van *lobolo* vir hul eerste eggenote word jonger seuns gewoonlik deur die kraalhoof en jonger broers gewoonlik deur die oudste broer of die erfgenaam van hul huis, met goedkeuring van die kraalhoof, bygestaan.

(2) Die verlening van sodanige hulp, soos vermeld in subartikel (1), kan nie by wet afgedwing word nie, maar waar bewys kan word dat 'n jonger seun of broer gereeld bygedra het tot die onderhoud van sy huis ingevolge 'n ooreenkoms dat hy voorsien sou word van *lobolo* of 'n deel daarvan vir 'n eggenote, word aan hom die reg verleen om 'n redelike gedeelte van die verdienstes aldus deur hom bygedra, te verhaal as die kraalhoof, die oudste broer of erfgenaam, na gelang van die geval, weier of versuim om so 'n ooreenkoms na te kom.

92. (1) Hulp wat 'n kraalhoof uit kraaleiendom aan enige seun verleen het om 'n eggenote te verkry deur die geheel of 'n gedeelte van die *lobolo* by te dra, is 'n skenking en lê geen verpligting op die *indlunkulu* nie tensy die teendeel duidelik ten tyde van die viering van die verbinding gestipuleer is.

(2) Waar huiseiendom gebruik word vir die doel vermeld in subartikel (1) rus daar 'n verpligting op die huis wat deur die verbinding tot stand gebring word om 'n terugbetaling te doen.

(3) Waar 'n kraalhoof kraaleiendom vir *lobolo* gebruik met die doel om 'n huis in sy kraal tot stand te bring, rus daar geen verpligting op die huis aldus tot stand gebring vir die teruggawe van sodanige eiendom nie tensy die teendeel duidelik ten tyde van die viering van die verbinding gestipuleer is.

(4) Waar huiseiendom gebruik word vir die doel aangedui in subartikel (3), rus daar 'n verpligting op die huis aldus tot stand gebring om 'n terugbetaling te doen.

(5) Enige sodanige stipulasie waarna in subartikel (1) of (3) verwys word, kan in die register van gebruiklike verbindings aangeteken word.

(6) 'n Verpligting wat ontstaan ingevolge die omstandighede vermeld in hierdie artikel moet, by ontstentenis van 'n uitdruklike strydige ooreenkoms, verleen word uit die *lobolo* van die dogters van die huis wat tot stand gebring is deur die betrokke gebruiklike verbinding, en die erfgenaam van sodanige huis bly aanspreeklik tot die skuld betaal is.

93. (1) Vorderings vir die betaling van *lobolo* word in Natal en Zoeloeland erken: Met dien verstande egter dat sodanige erkenning nie op 'n vordering wat ontstaan uit 'n gebruiklike verbinding aangegaan in Natal as sodanig voor die derde dag van November 1909, van toepassing is nie.

(2) Enige ooreenkoms getref vir die betaling van *lobolo* volgens die skaal voorgeskryf by artikel 87 ten opsigte van die dogter van 'n kaptein se plaasvervanger en wat aangegaan is voor 1 November 1932, word, niesteenstaande die bepalings van die Bantowetboek van 1878, as geldig en bindend beskou en enige betalings dienooreenkomstig gedoen, mag nie verstoort word nie.

(4) The *lobolo* agreed upon and the manner of payment shall be entered in the register of customary unions.

88. Any person receiving *lobolo* in excess of the scale prescribed in section 87 shall be guilty of an offence.

89. When a widow enters into a customary union, the *lobolo* in respect of the union is payable to the house to which she belonged in the kraal of her deceased husband.

90. The person to whom *lobolo* is delivered, or in case of his death the heir of the house receiving the *lobolo*, is bound, by the receipt thereof, should just occasion require, to protect and give asylum to the woman in respect of whom such *lobolo* was delivered.

91. (1) Younger sons are usually assisted by the kraal head in paying the *lobolo* for their first wife and younger brothers are usually assisted by the eldest brother or heir to their house with approval of the kraal head.

(2) The rendering of such assistance as is referred to in subsection (1) is not enforceable at law but where it can be shown that a younger son or brother has consistently contributed towards the support of his house under an agreement that he would be provided with *lobolo* or a portion thereof for a wife, the refusal or failure of the kraal head, eldest brother or heir, as the case may be, to implement such agreement will entitle such younger son or brother to recover a reasonable portion of the earnings so contributed by him.

92. (1) Assistance rendered by a kraal head from kraal property to any son in obtaining a wife by contributing the whole or portion of the *lobolo* is a gift and creates no liability to the *indlunkulu* unless it be clearly stipulated to the contrary at the time of the celebration of the union.

(2) Where house property is used for the purpose indicated in subsection (1) an obligation rests upon the house established by the union to make a refund.

(3) Where kraal property is used for *lobolo* by a kraal head for the purpose of establishing a house in his kraal, no liability rests upon the house so established for the return of such property unless it be clearly stipulated to the contrary at the time of the celebration of the union.

(4) Where house property is used for the purpose indicated in subsection (3) an obligation rests upon the house so established to make a refund.

(5) Any such stipulation as is referred to in subsection (1) or (3) may be recorded in the register of customary unions.

(6) Any liability arising under the circumstances referred to in this section shall, in the absence of any express agreement to the contrary, be liquidated from the *lobolos* of the daughters of the house established by the relative customary union and the heir of such house continues to be liable until the debt is discharged.

93. (1) Claims for the recovery of *lobolo* shall be recognized in Natal and Zululand: Provided, however, that such recognition shall not extend to any claim arising out of a customary union contracted in Natal proper prior to the third day of November, 1909.

(2) Any agreement made for the payment of *lobolo* in respect of the daughter of a chief's deputy being within the scale prescribed by section 87 and entered into prior to the 1st November, 1932, shall notwithstanding anything in the Bantu Code of 1878, be regarded as valid and binding and any payments made thereunder shall not be disturbed.

94. (1) Indien 'n vrou binne twaalf maande vanaf die datum waarop sy 'n gebruikelike verbinding aangegaan het, sterf sonder dat sy 'n oorlewende nakomeling uit die verbinding nalaat, kan 'n gedeelte van die *lobolo* wat die helfte van die getal beeste wat afgelewer is ten opsigte van die verbinding nie te bowe gaan nie, na goëddunke van die Bantoesakekommissaris verhaal word. Indien daar 'n oorlewende nakomeling uit die verbinding is, is geen *lobolo* verhaalbaar nie.

(2) Geen eis ingevolge subartikel (1) wat voor 1 November 1932 in Zoeloeland ontstaan het, word erken nie.

95. (1) Geen eis op betalings onderskeidelik bekend as *invulamlo*, *ubikibiki*, *inhlawulo*, *umnyobo*, *ingqamazinyo*, *isikwehlela* en dergelike, ten opsigte van enige voorgenome gebruikelike verbinding word erken nie en waar sodanige betalings geskied het, kan die Bantoesakekommissaris gelas dat dit beskou word as deel van die *lobolo* of dat dit aan die party of partye deur wie dit betaal is, terugbetaal moet word.

(2) Sodanige betalings waarna in subartikel (1) verwys word kan, indien die voorgenome verbinding nie plaasvind nie, verhaal word deur die party wat dit betaal het.

96. (1) As 'n vrou vir die eerste maal 'n gebruikelike verbinding aangaan, kan, behalwe *lobolo*, die *ngquthu*-bees geëis word tensy dit reeds betaal is ten opsigte van die vrou se verleiding deur die eggenoot of tensy die vrou voorheen deur 'n ander persoon as die eggenoot verlei was.

(2) Die *ngquthu*-bees moet aan die moeder van die vrou, as sy nog lewe, betaal word, en tesame met die aanwas daarvan word dit haar eiendom om deur haar aangewend te word ten voordele van haar huis of na goëddunke en uitgesonderd vir haar persoonlike skulde mag daarop nie beslag gelê word nie.

(3) As die moeder van die vrou geskei is ingevolge 'n saak deur haar eggenoot ingestel of as sy, sonder dat haar eggenoot daaraan skuld het, sy kraal opsetlik verlaat of opgee, verval en hou haar reg op om te bestaan in en op die *ngquthu*-bees, wat die eiendom word van die huis waartoe sy behoort het.

(4) As die vrou se moeder nie meer leef nie, is die *ngquthu*-bees betaalbaar aan die huis waartoe sy behoort het en tesame met die aanwas daarvan word dit die eiendom van daardie huis.

(5) Die *ngquthu*-bees word vir die toepassing van artikel 87 nie as *lobolo* beskou nie en is nie by ontbinding, deur oorlyde of egskedding, van die gebruikelike verbinding ten opsigte waarvan dit betaal is, verhaalbaar nie.

HOOFSTUK 11

DIE KRAAL-FAMILIESTELSEL

97. (1) (a) Wanneer ook al 'n gebruikelike verbinding aangegaan word deur 'n kraalhoof, word 'n huis wat, behoudens die bepalinge van paragrawe (b) en (c), of 'n senior of 'n geaffilieerde huis is, vir die eggenote van die verbinding tot stand gebring.

(b) Behoudens die bepalinge van paragraaf (c) is daar nie meer as twee senior huise in 'n kraal nie en die ander huise is met die een of ander daarvan geaffilieer, hetsy deur die outomatiese uitwerking van die grondbeginsels waarvolgens affilasie kan plaasvind, naamlik dat 'n junior huis geaffilieer word met die senior huis wat die *lobolo* verskaf vir die eggenote van sodanige junior huis of by openbare verklaring deur die kraalhoof ten tyde van die viering van die verbinding.

(c) In die krale van kapteins en ander persone met rang, invloed of rykdom kan daar drie senior huise wees en die ander huise in die kraal is met die een of ander daarvan geaffilieer, soos in paragraaf (b) aangedui.

94. (1) Should a woman die within twelve months of her having entered into a customary union without having surviving issue of the union, a portion of the *lobolo* not exceeding one half of the number of cattle delivered in respect of the union may, in the discretion of the Bantu Affairs Commissioner, be recovered. Should there be surviving issue of the union no *lobolo* shall be recoverable.

(2) No claim under subsection (1) which arose in Zululand prior to 1st November, 1932, shall be recognized.

95. (1) No claim to payments known variously as *invulamlo*, *ubikibiki*, *inhlawulo*, *umnyobo*, *ingqamazinyo*, *isikwehlela* and the like in respect of any proposed customary union shall be recognized and where such payments have been made the Bantu Affairs Commissioner may direct that they be included as part of the *lobolo* or that they be refunded to the party or parties who made them.

(2) Such payments as are referred to in subsection (1) may, if the proposed union does not take place, be recovered by the party making them.

96. (1) Upon a woman entering into a customary union for the first time, the *ngquthu* beast may, in addition to *lobolo*, be claimed, unless it has already been paid by the husband in respect of the woman's seduction or unless the woman has previously been seduced by some person other than the husband.

(2) The *ngquthu* beast is payable to the woman's mother, if alive, and together with its increase, becomes her property, to be dealt with by her for the benefit of her house or as she may deem fit, and may not be attached except for her personal debts.

(3) If the woman's mother is divorced at the suit of her husband or through no fault on the part of her husband wilfully deserts or abandons his kraal, her right in and to the *ngquthu* beast ceases and determines and it becomes the property of the house to which she belonged.

(4) If the woman's mother be not alive the *ngquthu* beast is payable to the house to which she belonged and together with its increase becomes the property of that house.

(5) The *ngquthu* beast is not regarded as *lobolo* for the purposes of section 87 and is not recoverable upon dissolution by death or divorce of the customary union in respect of which it was paid.

CHAPTER 11

THE KRAAL FAMILY SYSTEM

97. (1) (a) Whenever a customary union is contracted by a kraal head a house which, subject to the provisions of paragraphs (b) and (c), is either a senior or an affiliated house, is established for the wife of the union.

(b) Except as provided in paragraph (c), there are not more than two senior houses in a kraal, to one or other of which the remaining houses are affiliated either by the automatic operation of the essential principle governing affiliation, namely, that a junior house becomes affiliated to the senior house which provides the *lobolo* for the wife of such junior house, or by public declaration by the kraal head at the time of the celebration of the union.

(c) In the kraals of chiefs and others of rank, influence or wealth there may be three senior houses, to one or other of which the remaining houses in the kraal are affiliated, as indicated under paragraph (b).

(2) Behalwe uit die huise van die kraalhoof se verskillende vrouens, van 'n kraal uit die huise van familiebetrekkings van die kraalhoof asook uit dié van nie-verwantes wat daar geduld word, bestaan. 'n Arm familielid hetsy getroud of ongetroud kan sy huis en eiendom in die kraal hê. 'n Behoeftige Bantoe kan, vir dienste aan die kraal gelewer, as teenprestasie die reg vir die gebruik van 'n sekere getal beste ontvang asook die reg om 'n huis in die kraal te bewoon. Die huis van enige sodanige Bantoe neem 'n ondergeskikte plek in die kraal in.

(3) By ontstentenis van affiliasie, is die verskillende huise in 'n kraal afsonderlik en onafhanklik van mekaar en kan elkeen sy eie eiendom en eiendomsregte verkry.

98. Met ander Bantoes as kapteins by erfopvolging is die eerste eggenote die vernaamste eggenote en haar huis is die *indlunkulu*: Met dien verstande dat die Opperhoof verlof kan verleen aan 'n kaptein wat nie 'n kaptein by erfopvolging is nie om 'n vernaamste eggenote aan te neem ná enige voorafgaande gebruikelike verbinding, en by die toekenning van sodanige verlof verloor enige vrou by sodanige voorafgaande gebruikelike verbinding die status wat sy gehad het ingevolge die krag van hierdie artikel of artikels 99, 100, 101 of 102 en ook alle regte wat haar of haar kinders ingevolge sodanige status toekom, en daarna is die bepalinge van artikel 104 (1), (2) en (3), *mutatis mutandis* op sodanige geval van toepassing.

99. (1) Die status van sowel vrouens wat geneem is deur 'n gewone Bantoe ná die eerste vrou en dié van hul huise is afhanklik van die feit of daar enige formele aankondiging of verklaring van status deur die kraalhoof ten tyde van die viering van die gebruikelike verbinding gemaak word, al dan nie.

(2) As geen sodanige formele aankondiging gemaak word nie, volg die tweede eggenote in rang op die vernaamste eggenote en word haar huis 'n senior huis met rang onmiddellik naas die *indlunkulu*; huise deur later gebruikelike verbindings tot stand gebring, word geaffilieer met die *indlunkulu* of die ander senior huis soos in artikel 97 (1) (b) aangedui.

100. (1) 'n Formele aankondiging of verklaring van status ten tyde van die viering van 'n gebruikelike verbinding word gemaak ingevolge die voorneme van die kraalhoof om sy kraal in afdelings te verdeel, waarvan daar vier kan wees, ofskoon daar werklik in die praktyk maar selde meer as twee is, behalwe in die geval van kapteins en ander persone met rang, invloed of rykdom.

Hierdie afdelings is—

- (a) die *indlunkulu*-afdeling—bestaande uit die *indlunkulu* met sy geaffilieerde huise;
- (b) die *ikhohlo*-afdeling—bestaande uit die *ikhohlo* met sy geaffilieerde huise;
- (c) die *iqadi*-afdeling—bestaande uit die *iqadi* met sy geaffilieerde huise;
- (d) 'n ondergeskikte afdeling—bestaande uit die huise van arm familielide en nie-verwantes, wat gewoonlik 'n ondergeskikte plek in die kraal inneem.

(2) Die kinders van enige vrou wie se status formeel aangekondig of verklaar is, soos vermeld in subartikel (1), word nie in hul status of regte deur die latere egskieding of oorlyde van sodanige vrou benadeel nie.

101. (1) Wanneer 'n kraalhoof 'n tweede eggenote neem en by die viering van sodanige gebruikelike verbinding 'n formele aankondiging of verklaring maak betreffende haar status en dié van haar huis, word sy gewoonlik die vernaamste *khohlo*-eggenote verklaar en word die *ikhohlo* tot stand gebring.

(2) Die huise tot stand gebring deur gebruikelike verbindings aangegaan deur die kraalhoof ná die totstandbrenging van die *ikhohlo* word gewoonlik of met die *indlunkulu* of die *ikhohlo* geaffilieer, ooreenkomstig die grondbeginsel waarop affiliasie kan plaasvind of by openbare verklaring deur die kraalhoof ten tyde van die viering van die verbinding.

(2) A kraal may in addition to the houses of the kraal head's various wives contain those of relatives of the kraal head and also houses of non-relatives on sufferance. A poor relation married or single may have his house and property in the kraal. A destitute Bantu may, for services rendered to the kraal, receive in return the use of a certain number of cattle and the right to occupy a house in the kraal. The house of any such Bantu would occupy an inferior position in the kraal.

(3) In the absence of affiliation, the various houses in a kraal are distinct from and independent of each other and each may acquire its own property and property rights.

98. With Bantu other than hereditary chiefs the first wife is the chief wife and her house is the *indlunkulu*: Provided that the Supreme Chief may grant permission to a chief, other than an hereditary chief, to assume a chief wife subsequent to any prior customary union and upon the granting of such permission, any wife by such prior customary union shall lose the status which she held by virtue of the operation of this section or sections 99, 100, 101 or 102, and all rights flowing to herself or her children from such status; and thereupon the provisions of section 104 (1), (2) and (3) shall *mutatis mutandis* apply in such case.

99. (1) As regards wives taken by a commoner subsequent to the first their status and that of their houses depend upon whether or not any formal pronouncement or declaration of status is made by the kraal head at the time of the celebration of the customary union.

(2) If no such formal pronouncement is made, the second wife ranks next to the chief wife and her house becomes a senior house ranking next to the *indlunkulu*, houses established by subsequent customary unions becoming affiliated to the *indlunkulu* or the other senior house as indicated in section 97 (1) (b).

100. (1) A formal pronouncement or declaration of status at the time of the celebration of a customary union is made in pursuance of the intention of the kraal head to divide his kraal into sections, of which there may be four, though in actual practice, except in the case of chiefs and others of rank, influence or wealth, there are seldom more than two.

These sections are—

- (a) the *indlunkulu* section—composed of the *indlunkulu* with its affiliated houses;
- (b) the *ikhohlo* section—composed of the *ikhohlo* with its affiliated houses;
- (c) the *iqadi* section—composed of the *iqadi* with its affiliated houses;
- (d) an inferior section—composed of the houses of poor relations and non-relatives which are usually placed in an inferior position in the kraal.

(2) The children of any woman whose status has been formally pronounced or declared as indicated in subsection (1) shall not be affected in their status or rights by the subsequent divorce or death of such woman.

101. (1) When the kraal head takes a second wife and upon the celebration of such customary union makes a formal pronouncement or declaration as to her status and that of her house, such usually takes the form of declaring her the chief *khohlo* wife and establishing the *ikhohlo*.

(2) The houses established by customary unions contracted by the kraal head subsequent to establishment of the *ikhohlo* are usually affiliated either to the *indlunkulu* or the *ikhohlo*, in accordance with the essential principle governing affiliation or by public declaration by the kraal head at the time of celebration of the union.

102. 'n Kraalhoof kan by die neem van sy derde of enige daaropvolgende eggenote die totstandbrenging van die *iqadi* met die vrou as vernaamste *qadi*-eggenote aankondig en in hierdie geval moet huise, tot stand gebring by later gebruiklike verbindings aangegaan deur die kraalhoof, of met die *indlunkulu* of die *ikhohlo* of die *iqadi* geaffilieer word ooreenkomstig die grondbeginsel waarop affilasie kan plaasvind of by openbare verklaring deur die kraalhoof ten tyde van die viering van die verbinding.

103. (1) 'n Geaffilieerde junior huis word geïdentifiseer en gegroepeer met die senior huis waarmee dit geaffilieer is, maar affilasie op sigself raak nie die eiendom en eiendomsregte van die geaffilieerde huis nie.

(2) 'n Geaffilieerde huis *ethula* aan die senior huis waarmee dit geaffilieer is.

104. (1) Die status van die vrouens van 'n kaptein by erfopvolging belas met die toesig oor 'n stam, word nie verklaar nie tot ná die kaptein sy vernaamste eggenote geneem het, wat gewoonlik later in die lewe as die eerste en tweede eggenotes geneem word.

(2) Die *lobolo* van die vernaamste eggenote van 'n kaptein by erfopvolging word gewoonlik geheel en al of gedeeltelik deur die stam bygedra en haar status word in die openbaar aangekondig.

(3) (a) Van 'n kaptein word vereis, wanneer hy sy vernaamste vrou tot hom neem, om aan die Hoofbantoesakekommissaris of die Bantoesakekommissaris die name van sy verskillende vrouens asook die status van elkeen te rapporteer.

(b) Van 'n kaptein word vereis om aan die Hoofbantoesakekommissaris of die Bantoesakekommissaris stiptelik die geboorte van die eersgebore seun van sy vernaamste vrou te rapporteer en, ingeval sodanige seun voor hom sterf, sy dood.

(c) Enige rapport uitgebring ingevolge paragraaf (a) moet aangeteken en geattesteer word deur die amptenaar aan wie dit gedoen is en moet onderteken word deur die kaptein of sy behoorlik gemagtigde verteenwoordiger in die teenwoordigheid van minstens twee getuies. Enige sodanige mededeling moet as streng konfidentieel behandel word maar as dit aan die Bantoesakekommissaris gedoen word, moet hy dit aan die Hoofbantoesakekommissaris deurstuur.

(4) In geval 'n kaptein by erfopvolging wat die eggenoot van verskillende eggenotes is, sterf sonder dat hy sy vernaamste vrou geneem het, is dit die plig van die oudstes van die stam om te vergader en status aan die weduwees toe te ken, die vernaamste eggenote aan te stel en die *ikhohlo*, die *iqadi* en junior huise te bepaal of op ander gebruiklike en wettige wyse die rang van iedere huis vas te stel.

105. (1) 'n Kraalhoof kan te eniger tyd, behoudens enige regulasies betreffende die toekenning van persele vir die oprigting van krale of geboue, die verskillende afdelings van sy kraal in subkrale afskei en verdeel.

(2) Enige sodanige afskeiding of verdeling waarna in subartikel (1) verwys word, maak in geen geval inbreuk op die beheer, bevel, regte en gesag van die kraalhoof nie, wat gedurende sy lewe die verantwoordelike hoof en enigste gesag is sowel in sy kraal as in die subkrale deur sodanige afskeiding of verdeling daar gestel.

106. (1) Enige mondighe kraalgenoot kan, ná kennisgewing aan die kraalhoof en die kaptein, die kraal verlaat en, behoudens enige regulasies betreffende verwyderings en die toekenning van persele vir die oprigting van krale of geboue, sy eie afsonderlike en onafhanklike kraal in dieselfde of enige ander distrik stig of hy kan hom aansluit by en 'n kraalgenoot word van 'n ander kraal.

(2) 'n Ontferfde manspersoon kan sy eie kraal stig of met die goedkeuring van die hoof van sodanige kraal, hom aansluit by en 'n kraalgenoot word van 'n ander kraal as dié van die kraalhoof wat hom ontferf het.

102. A kraal head upon taking his third or any subsequent wife may declare the establishment of the *iqadi* with the woman as chief *qadi* wife and in this event houses established by subsequent customary unions contracted by the kraal head must be affiliated to either the *indlunkulu*, the *ikhohlo* or the *iqadi* in accordance with the essential principle governing affiliation or by public declaration by the kraal head at the time of celebration of the union.

103. (1) An affiliated junior house is identified and grouped with the senior house to which it is affiliated, but affiliation of itself does not affect the property and property rights of the affiliated house.

(2) An affiliated house *ethulas* to the senior house to which it is affiliated.

104. (1) The status of the wives of an hereditary chief in charge of a tribe is not declared until after the assumption by the chief of his chief wife who is usually taken later in life than the first and second wives.

(2) The *lobolo* of the chief wife of an hereditary chief is usually contributed wholly or in part by the tribe and her status is publicly announced.

(3) (a) A chief is required, upon the assumption of his chief wife, to report to the Chief Bantu Affairs Commissioner or to the Bantu Affairs Commissioner the names of his various wives and the status of each.

(b) A chief is required promptly to report to the Chief Bantu Affairs Commissioner or to the Bantu Affairs Commissioner the birth of the first-born son of his chief wife, and, in the event of such son predeceasing him, his death.

(c) Any report made under paragraph (a) must be recorded and attested by the officer to whom it is made and must be subscribed to by the chief or his duly authorized representative in the presence of at least two witnesses. Any such report must be treated as strictly confidential but if made to the Bantu Affairs Commissioner shall be transmitted by him to the Chief Bantu Affairs Commissioner.

(4) In the event of an hereditary chief who is the husband of several wives dying without having taken his chief wife, it is the duty of the elders of the tribe to assemble and confer status upon the widows, appointing the chief wife and determining the *ikhohlo*, the *iqadi* and junior houses or in other customary and lawful manner fixing the rank of each house.

105. (1) A kraal head may at any time, subject to any regulations regarding the allotment of sites for the erection of kraals or buildings, separate and divide the various sections of his kraal into sub-kraals.

(2) Any such separation or division as is in subsection (1) referred to in no way impairs the control, direction, rights or authority of the kraal head, who during his lifetime is the responsible head and sole authority equally in his kraal or in the sub-kraals created by such separation or division.

106. (1) Any major inmate of a kraal may, after notifying the kraal head and the chief, leave the kraal, and, subject to any regulations regarding removals and the allotment of sites for the erection of kraals or buildings, establish his own separate and independent kraal in the same or any other district or may attach himself to and become an inmate of some other kraal.

(2) A disinherited male may establish his own kraal or with the approval of the head of such kraal attach himself to and become an inmate of some kraal other than that of the kraal head who disinherited him.

107. Wanneer 'n meisie 'n gebruklike verbinding aangaan, kan haar vader haar goed of beeste gee en dit word dan die eiendom van en behoort aan die huis wat deur sodanige verbinding tot stand gebring is.

HOOFSTUK 12

ERFENIS EN ERFOPVOLGING

108. (1) Oor kraaleiendom en persoonlike eiendom kan by testament beskik word.

(2) Oor huiseiendom kan nie by testament beskik word nie en by oorlyde van die kraalhoof moet enige sodanige eiendom ingevolge Bantoereg oorgaan en be-redder word.

109. Ingevolge Bantoereg volg erfopvolging, behou-dens die bepalings van artikels 23 en 117, wat òf al-gemeen kan wees, d.w.s. erfopvolging van die status en posisie van kraalhoof en sodanige kraaleiendom as wat nie by testament oor beskik is nie, òf spesiaal, d.w.s. erfopvolging van huiseiendom, die reël van eersge-boortereg en gaan dit slegs op en deur tussenkoms van manspersone oor.

110. Behoudens die bepalings van artikel 23 word, by die oorlyde van 'n kraalhoof wie se kraal in af-delings verdeel is soos in artikel 100 omskryf, die erf-genaam van sy posisie as hoof van die vernaamste kraal, van die kraaleiendom, as dit nie by testament bemaak is nie en andersins ingevolge artikel 23 van die Wet en die regulasies daarkragtens uitgevaardig ingevolge Bantoereg beredder moet word, en van die eiendom van die *indlunkulu*, ooreenkomstig die volgende tabel be-paal—

- (a) die oudste seun van die *indlunkulu* of, as hy dood is, sodanige oudste seun se manlike senior afstammeling;
- (b) by ontstentenis van sodanige oudste seun of enige manlike afstammeling deur hom, die tweede seun van die *indlunkulu*, of, as hy dood is, sy manlike senior afstammeling, ensovoorts, deur die seuns van die *indlunkulu* en hul manlike afstammeling in behoorlike volgorde van senioriteit;
- (c) as daar geen seun of manlike afstammeling van enige seun van die *indlunkulu* is nie, die oudste seun van die huis wat die eerste geaffilieer is met die *indlunkulu* of sy manlike senior afstammeling, ensovoorts, deur die seuns van sodanige eerste geaffilieerde huis en hul manlike afstammeling in behoorlike volgorde van senioriteit;
- (d) as daar geen seun of manlike afstammeling is van enige seun van die huis wat eerste met die *indlunkulu* geaffilieer is nie, die oudste seun van die huis wat die tweede met die *indlunkulu* ge-affilieer is of sy manlike senior afstammeling, ensovoorts, deur die seuns van sodanige huis en hul manlike afstammeling in behoorlike volgorde van senioriteit en deur die verskillende geaffilieerde huise in die volgorde van hul affilia-sie;
- (e) as daar geen erfgenaam in die *indlunkulu* of in enige huis daarmee geaffilieer, is nie, word toe-vlug geneem tot die *iqadi* vir 'n algemene erf-genaam en daarna tot die geaffilieerde *qadi*-huise, in die volgorde van hul affilasie met die *iqadi*. As daar geen erfgenaam in enige *qadi*-huis is nie, word toevlug geneem tot die *ikhohlo* en later tot die geaffilieerde *khohlo*-huise, in die volgorde van hul affilasie;
- (f) as daar nie 'n erfgenaam in die *qadi*- of *khohlo*-afdelings van die kraal is nie, die vader van die oorledene of, as hy dood is, die kraalhoof se oudste broer van dieselfde huis of sy manlike senior afstammeling, ensovoorts, deur die broers van daardie huis en hul manlike afstammeling in die volgorde van senioriteit;

107. When a girl enters into a customary union her father may give her goods or cattle and such become the property of and belong to the house established by such union.

CHAPTER 12

INHERITANCE AND SUCCESSION

108. (1) Kraal property and personal property may be devised by will.

(2) House property may not be devised by will and upon the death of the kraal head any such property must devolve and be administered under Bantu law.

109. Subject to the provisions of sections 23 and 117, under Bantu law succession, which may be either general, that is succession to the status and position of kraal head and to such kraal property as has not been devised by will, or special that is succession to house property, follows the rule of primogeniture and devolves upon and through males only.

110. Subject to the provisions of section 23 upon the death of a kraal head, whose kraal has been divided into sections as in section 100 described, the heir to his position as head of the main kraal, to the kraal property, if such has not been devised by will and otherwise falls in terms of section 23 of the Act and the regulations framed thereunder to be administered under Bantu law, and to the property of the *indlunkulu* shall be determined in accordance with the following table—

- (a) the eldest son of the *indlunkulu* or if he be dead such eldest son's senior male descendant;
- (b) failing such eldest son or any male descendant through him, the second son of the *indlunkulu*, or if he be dead his senior male descendant and so on through the sons of the *indlunkulu* and their male descendants in due order of seniority;
- (c) if there be no son or male descendant of any son of the *indlunkulu* the eldest son of the house first affiliated to the *indlunkulu* or his senior male descendant and so on through the sons of such first affiliated house and their male descendants in due order of seniority;
- (d) if there be no son or male descendant of any son of the house first affiliated to the *indlunkulu* the eldest son of the house second affiliated to the *indlunkulu* or his senior male descendant and so on through the sons of such house and their male descendants in due order of seniority and through the various affiliated houses in the order of their affiliation;
- (e) if there be no heir in the *indlunkulu* or in any house affiliated thereto, recourse will be had to the *iqadi* for a general heir and thereafter to the affiliated *qadi* houses in order of their affiliation to the *iqadi*. If there be no heir in any *qadi* house, recourse will be had to the *ikhohlo* with subsequent recourse to the affiliated *khohlo* houses in the order of their affiliation;
- (f) if there be no heir in the *iqadi* or *ikhohlo* sections of the kraal, the father of the deceased, or if he be dead, the kraal head's eldest brother of the same house or his senior male descendant and so on through the brothers of that house and their male descendants in order of seniority;

- (g) as daar nie 'n broer van die oorledene van dieselfde huis of manlike afstammeling van enige sodanige broer is nie, die oorledene se oudste broer van die aanverwante of geaffilieerde huis van hoër rang of die volgende rang, na gelang van die geval, of sy manlike senior afstammeling, ensovoorts, deur die broers van sodanige aanverwante of geaffilieerde huis en hul manlike afstammelinge, in volgorde van senioriteit, en daarna deur die broers van die oorblywende huise in volgorde van rang, en hul manlike afstammelinge;
- (h) as daar geen broer van die oorledene of manlike afstammeling van enige broer van enige huis is nie, die grootvader van vaderskant en waar dié ontbreek, moet die voorafgaande beginsels op dergelike wyse toegepas word totdat die manlike linies van naasbestaandes sowel bloedverwante in die sylinie as regtelinie, uitgeput is.

111. By die oorlyde van 'n kraalhoof wie se kraal nie in afdelings verdeel is soos in artikel 100 omskryf nie, word die erfgenaam van sy posisie as sodanig, van die kraaleiendom, as dit nie by testament bemaak is nie en andersins ingevolge artikel 23 van die Wet en die regulasies daarkragtens uitgevaardig, ingevolge Bantoereg beredder moet word, en van die eiendom van die *indlunkulu*, bepaal ooreenkomstig die beginsels voorgeskryf in artikel 110, uitgesonderd dat daar in sodanige geval geen *iqadi* of *ikhohlo* is nie en die senior huise die rangvolgorde inneem ooreenkomstig die prioriteit van hul totstandkoming, met die gevolg dat as daar geen erfgenaam in die *indlunkulu* of in enige huis daarmee geaffilieer, is nie, toevlug tot die volgende senior huis en sy geaffilieerde huise in die volgorde van hul affilasie, ensovoorts, geneem moet word.

112. (1) By die oorlyde van 'n kraalhoof bly en berus die eiendom, regte en aansprake van die verskillende huise by die onderskeie erfgename daarvan.

(2) Erfopvolging tot die eiendomsregte en aansprake van enige ander huis as die *indlunkulu* word beheer deur die beginsels voorgeskryf in artikels 110 en 111, uitgesonderd dat by die bepaling van die erfgenaam die bepaalde betrokke huis eers uitgewin moet word en daarna die aanverwante of geaffilieerde huise, indien daar is, in volgorde van rang of affilasie alvorens toevlug tot die *indlunkulu*-erfgenaam geneem word.

(3) As die afdelings van 'n kraal geskei is in subkrale, soos in artikel 105 voorgeskryf, word die erfgenaam van die verskillende huise by oorlyde van die kraalhoof die kraalhoofde van die onderskeie subkrale.

113. Wanneer persoonlike eiendom ingevolge artikel 23 van die Wet en die regulasies daarkragtens uitgevaardig, volgens Bantoereg moet oorgaan, word erfopvolging tot sodanige eiendom beheer deur die beginsels voorgeskryf in artikels 110 en 111, uitgesonderd dat by die bepaling van die erfgenaam die naaste familie van die oorledene eers uitgewin moet word, dan die huis waartoe die oorledene behoort het en daarna die aanverwante of geaffilieerde huise, indien daar is, in volgorde van rang of affilasie alvorens toevlug tot die *indlunkulu*-erfgenaam geneem word.

114. Ingeval daar geen manlike erfgenaam is nie, val enige eiendom, hetsy kraal-, huis- of persoonlike eiendom wat ingevolge artikel 23 van die Wet en regulasies daarkragtens uitgevaardig volgens Bantoereg moet oorgaan, terug aan die Opperhoof, en die vroulike persone van die kraal of familie kom onder die voogdyskap van die Opperhoof of sodanige Bantoeersoon as wat hy mag aanstel.

115. Nieteenstaande die bepalings van artikels 110, 111 en 112 kan 'n aangebore idioot nie die rang van 'n erfgenaam aanneem nie. Die onderhoud van so 'n persoon is ten laste van die huis waartoe hy behoort.

116. 'n Erfgenaam wat eiendom erf, hetsy kraal-, huis- of persoonlike eiendom word aanspreeklik gehou vir skulde ten aansien daarvan slegs ten bedrae van die bates wat hy erf.

- (g) if there be no brother of the deceased of the same house or male descendant of any such brother, the deceased's eldest brother of the allied or affiliated house of higher rank or the next rank as the case may be or his senior male descendant and so on through the brothers of such allied or affiliated house and their male descendants in order of seniority and thereafter through the brothers of the remaining houses in order of rank and their male descendants;
- (h) if there be no brother of the deceased or male descendant of any brother of any house, the paternal grandfather and failing such the foregoing principles shall in like manner be applied until the male lines of next-of-kin, both collaterals and ascendants, are exhausted.

111. Upon the death of a kraal head whose kraal has not been divided into sections as in section 100 described, the heir to his position as such, to the kraal property, if such has not been devised by will and otherwise falls in terms of section 23 of the Act and the regulations framed thereunder to be administered under Bantu law, and to the property of the *indlunkulu*, is determined in accordance with the principles laid down in section 110 save that in such a case there is no *iqadi* or *ikhohlo* and the senior houses rank according to priority of their establishment with the result that if there be no heir in the *indlunkulu* or in any house affiliated thereto, recourse is had to the next senior house and its affiliated houses in the order of their affiliation and so on.

112. (1) Upon the death of a kraal head the property, rights and claims of the various houses remain with the respective heirs thereof.

(2) Succession to the property rights and claims of any house other than the *indlunkulu* is governed by the principles laid down in sections 110 and 111 save that in determining the heir the particular house concerned is first excused and thereafter the allied and affiliated houses, if any, in order of rank or affiliation before recourse is had to the *indlunkulu* heir.

(3) When the sections of a kraal have been separated into sub-kraals as in section 105 provided, the heirs of the various houses upon the death of the kraal head become the kraal heads of the respective sub-kraals.

113. Succession to personal property, whenever in terms of section 23 of the Act and the regulations framed thereunder such property must devolve according to Bantu law, is governed by the principles laid down in sections 110 and 111 save that in determining the heir the immediate family of the deceased is first excused, then the house to which the deceased belonged and thereafter the allied or affiliated houses, if any, in order of rank or affiliation before recourse is had to the *indlunkulu* heir.

114. In the event of there being no male heir, any property, whether kraal, house or personal property, which must in terms of section 23 of the Act and the regulations framed thereunder, devolve according to Bantu law, reverts to the Supreme Chief and the females of the kraal or family fall under the guardianship of the Supreme Chief or of such person, being a Bantu, as he may appoint.

115. Notwithstanding anything in sections 110, 111 and 112 a congenital idiot cannot rank as an heir. The support of such a person is a charge upon the house to which he belongs.

116. An heir succeeding to property, whether kraal, house or personal, becomes liable for debts in respect thereof only to the extent of the assets to which he succeeds.

117. Nieteenstaande die bepalings van enige ander wet, wanneer 'n vrou wat vrygestel is kragtens die bepalings van artikel 28 en wat nie 'n huwelik of 'n gebruikelike verbinding ná sodanige vrystelling aangegaan het nie, sonder testament of gedeeltelik intestaat en sonder ander kinders as dogters of onegte seuns sterf, moet sóveel van die eiendom in haar boedel as waaroor sy nie by testament beskik het nie, in gelyke dele onder sodanige kinders verdeel word.

118. (1) (a) 'n Seun kan, op aansoek by die kaptein, deur sy vader onterf word weens die feit dat hy weier om onder sy vader se beheer te staan of as hy deur ernstige wangedrag sy familie in die skande gestee het of weier om op redelike wyse by te dra tot die onderhoud van die familie, of weens 'n ander goeie en genoegsame rede.

(b) Sodanige aansoek moet deur die kaptein ondersoek word, met behoorlike kennisgewing aan die seun, wat die reg van appèl teen dié beslissing van die kaptein tot die Bantoesakekommissaris het, wie se beslissing afdoende is.

(c) Waar die applikant 'n kaptein is, word die aansoek aan die Opperhoof gerig, wat daaroor na goed-dunke beslis.

(2) Die status, stem of aanspraak van 'n seun ten aansien van die familie of eiendom van sy huis of vader se kraal vervel geheel en al by sy onterwing.

HOOFSTUK 13

GENEES- EN KRUIEKUNDIGES

119. Bantoe genees- en -kruiekundiges is onderskeidelik bekend as *izinyanga zokwelapha* (diegene wat bedrewe is in gesondmaking) en *izinyanga zemithi* (kruiekundiges) en kan vir wins praktiseer as hulle behoorlik as sodanig gelisensieer is, maar nie andersins nie.

120. (1) 'n Bantoesakekommissaris kan na goeddunke aan enige Bantoe 'n lisensie uitreik om as 'n genees- of kruiekundige te praktiseer as sodanige uitreiking 'n hernuwing is van 'n lisensie wat vroeër aan so 'n persoon uitgereik is, en aansoek daarom gedoen word binne drie maande na die vervaldatum van die vorige lisensie.

(2) Behoudens die bepalings van subartikel (1) kan geen lisensie om te praktiseer as 'n genees- of kruiekundige ooreenkomstig artikel 98 (2) van die Wet op Geneesher, Tandartse en Aptekers, 1928 (Wet No. 13 van 1928), uitgereik word nie behalwe by lasgewing van die Minister van Gesondheid.

121. (1) Die bedrag betaalbaar vir 'n lisensie om as 'n genees- of kruiekundige te praktiseer, is ses rand en die houer van sodanige lisensie kan as sowel 'n geneeskundige as 'n kruiekundige of as die een of die ander praktiseer in die hele distrik waarin sodanige lisensie uitgereik is en wel vir 'n tydperk van een jaar vanaf die datum waarop dit uitgereik is: Met dien verstande egter dat as die houer van sodanige lisensie 'n bedrag van twee rand betaal, 'n Bantoesakekommissaris van enige ander distrik in die Provinsie Natal na goeddunke sodanige lisensie ook vir daardie distrik geldig kan maak deur 'n aantekening te dien effekte op sodanige lisensie, en die houer kan daarna ook in daardie distrik praktiseer.

(2) Ondanks die bepalings van subartikel (1) kan enigiemand wat 'n lisensie hou om as 'n genees- of kruiekundige dwarsdeur die Provinsie Natal te praktiseer, voortgaan om gedurende die geldigheidsduur van sy bestaande lisensie of hernuwing daarvan aldus te praktiseer.

122. (1) 'n Behoorlik gelisensieerde genees- of kruiekundige kan by konsultasie 'n honorarium (*ulugxa*) eis. Indien genesing volg kan nog 'n geld geëis word, maar as die behandeling misluk, kan alleen die *ulugxa* gevorder word.

117. Notwithstanding anything in any other law, when a woman, who has been emancipated under the provision of section 28 and who has not contracted a marriage or a customary union subsequent to such emancipation, dies intestate or partly intestate and without issue other than daughters or illegitimate sons, so much of the property in her estate as she has not disposed of by will shall be divided equally among such children.

118. (1) (a) A son may be disinherited by his father on application to the chief by reason of the fact that he refuses to be controlled by his father or has by gross misconduct disgraced the family or refuses to make reasonable contribution towards the maintenance of the family, or for other good and sufficient cause.

(b) Such application shall form the subject of an enquiry by the chief, with due notice to the son, and an appeal shall lie from the decision of the chief to the Bantu Affairs Commissioner, whose decision shall be final.

(c) Where the applicant is a chief, the application shall be made to the Supreme Chief who shall deal with the application as he may deem fit.

(2) A son who is disinherited becomes absolutely without status, voice or claim in regard to the family or property of his house or father's kraal.

CHAPTER 13

MEDICINE MEN AND HERBALISTS

119. Bantu medicine men and herbalists are known as *izinyanga zokwelapha* (those skilled in healing) and *izinyanga zemithi* (herbalists) respectively and may practise for gain if duly licensed as such but not otherwise.

120. (1) A Bantu Affairs Commissioner may in his discretion issue to any Bantu a licence to practise as a medicine man or herbalist when such issue is by way of renewal of a licence previously held by such person and application therefor is made within three months after the date of expiry of the previous licence.

(2) Save as provided in subsection (1) no licence to practise as a medicine man or herbalist may, in terms of section 98 (2) of the Medical, Dental and Pharmacy Act, 1928 (Act No. 13 of 1928), be issued except on the order of the Minister of Health.

121. (1) The fee payable for a licence to practise as a medicine man or herbalist is six rand and the holder of such licence may practise as both a medicine man and a herbalist or as one or the other throughout the district in which such licence is issued for the period of one year from the date of its issue: Provided however that upon payment by the holder of such licence of a fee of two rand a Bantu Affairs Commissioner of any other district in the Province of Natal may at his discretion by endorsing such licence extend the validity thereof to that district and thereupon the holder may also practise in that district.

(2) Notwithstanding the provisions of subsection (1) any person holding a licence to practise as a medicine man or herbalist throughout the Province of Natal may continue so to practise during the currency of his existing licence or any renewal thereof.

122. (1) A duly licensed medicine man or herbalist may upon being consulted claim a retaining fee (*ulugxa*). Should a cure result a further fee is claimable but should the treatment be ineffective nothing more than the *ulugxa* may be demanded.

(2) 'n Eis ten opsigte van dienste gelewer deur 'n genees- of kruiekundige word nie in 'n geregshof erken nie tensy bewys van die uitreiking van 'n lisensie aan sodanige persoon gelewer word.

(3) 'n Nie-gelisensieerde genees- of kruiekundige kan geen geld of vergoeding eis ten opsigte van dienste deur hom gelewer nie.

123. As 'n genees- of kruiekundige growwe of strafbare foute begaan of hom skuldig maak aan nalatigheid wat slegte resultate tot gevolg het, kan hy siviël gedagvaar word vir skade afgesien van enige kriminele aanklag wat teen hom ingebring kan word.

124. Enige Bantoe wat strydig met die bepalings van artikel 119 as 'n genees- of kruiekundige praktiseer is skuldig aan 'n misdryf.

125. (1) 'n Bantoe wat as 'n genees- of kruiekundige gelisensieer is, mag nie die titel van „dokter” of „apteker” of enige ander benaming genoem in artikel 37 (b) van die Wet op Geneesher, Tandartse en Aptekers, 1928 (Wet No. 13 van 1928) aanneem nie, en mag ook nie sy dienste aanbied of verhuur nie aan, of voorskrifte gee vir, of enige operasie doen op iemand anders as 'n Bantoe nie.

(2) 'n Bantoe wat as 'n genees- of kruiekundige gelisensieer is, kan slegs Bantoemedisyne voorskryf, daar-in handel dryf of dit verkoop en wel slegs aan 'n Bantoe wat sy *bona fide*-pasient is en wat onder sy persoonlike behandeling is.

(3) Geen Bantoe mag in enige koerant, boek, pamflet omsendbrief, plakkaat, brief of ander dokument 'n advertensie publiseer of laat publiseer of aan enigiemand stuur of aflewer of oordra, of toesien dat dit aan enigiemand gestuur of afgelewer of oorgedra word, wat 'n verwysing na of 'n beskrywing van Bantoe geneesmiddels bevat, of wat meld dat hy as 'n genees- of kruiekundige praktiseer of daartoe geregtig is om as sulks te praktiseer nie, of waarin hy enigiemand nooi om hom te kom raadpleeg of sy medisyne te koop of van sy dienste op hoegenaamd enige manier gebruik te maak nie; ook mag sodanige advertensie nie deur middel van visuele of klankproses geskied nie.

(4) Vir die toepassing van subartikel (3) beteken „Bantoe geneesmiddels” 'n vloeistof of stof wat geneeskundige waarde sou hê en wat gemeng, voorberei of vervaardig is, of gemeng, voorberei of vervaardig sou wees deur 'n Bantoe wat nie 'n geregistreerde apteker en drogis of 'n geregistreerde mediese praktisyn is nie en wat—

(a) na bewering in staat is om vir enigiemand rykdom of sukses in enige onderneming of besigheid te kan besorg of as 'n liefdesdrank gebruik sou kan word, of bedoel is om in 'n menslike wese kenmerke te verwerk soos moed, vrees, wanhoop, krag, swaakheid, aangetrokkenheid tot of afkeer van 'n ander persoon of 'n soortgelyke kenmerk, of immuniteit of weerstand teen of vatbaarheid vir vyandelike magte, bonatuurlike magte, toordery of onnatuurlike siektes; of

(b) wat werklik of na bewering verkry is van of bestaan uit die vet of enige ander liggaamsdeel of ingewande van 'n mens, dier, insek, reptiel of enige ander ding of 'n bonatuurlike, legendariese of mitiese wese, of dit werklik of na bewering bevat.

126. Geen sterk drank, van watter aard ook al, mag deur 'n Bantoe op 'n voorskrif of opdrag van 'n Bantoe genees- of kruiekundige verkry word nie, uitgesonderd met die skriftelike goedkeuring van 'n landdros of Bantoesakekommissaris. As die bepalings van hierdie artikel oortree word, begaan die oortreder 'n misdryf.

127. 'n Bantoevrou kan sonder lisensie as 'n vroedvrou vir vrouens van haar eie ras praktiseer en vir haar dienste sodanige redelike vordering hef soos ooreengekom of wat as gebruiklik erken word.

(2) No claim in respect of services rendered by a medicine man or herbalist shall be recognised in a court of law unless proof of the issue of a licence to such person be adduced.

(3) No unlicensed medicine man or herbalist may claim any fee or reward in respect of services rendered by him.

123. Gross or culpable blunders or negligence entailing bad results renders a medicine man or herbalist liable to a civil action for damages apart from any criminal charge which may be laid against him.

124. Any Bantu who practises as a medicine man or herbalist in contravention of the provisions of section 119 shall be guilty of an offence.

125. (1) A Bantu licensed as a medicine man or herbalist may not assume the European title of “doctor” or “chemist” or any other designation mentioned in section 37 (b) of the Medical, Dental and Pharmacy Act, 1928 (Act No. 13 of 1928), and may not offer or hire his services to or prescribe for or perform any operation upon a person other than a Bantu.

(2) A Bantu licensed as a medicine man or herbalist may prescribe, deal in or sell Bantu medicines only and only to a Bantu who is his *bona fide* patient and on whom he is in personal attendance.

(3) No Bantu may publish or cause to be published or send or deliver or transmit or cause to be sent or delivered or transmitted to any person any advertisement in any newspaper, book, pamphlet, circular, poster, letter or other document referring to or describing Bantu medicines or stating the fact that he is practising or is entitled to practise as a medicine man or herbalist or inviting any person to consult him or purchase his remedies or make use of his services in any way whatsoever, nor may any such advertisement be made through the medium of visual or sound process.

(4) For the purpose of subsection (3) “Bantu medicines” means any liquid or substance which purports to have medicinal value, mixed, prepared or manufactured or purported to have been mixed, prepared or manufactured, by a Bantu who is not a registered chemist and druggist or a registered medical practitioner and which—

(a) is alleged to be capable of procuring for any person wealth or success in any undertaking or occupation or which is stated to be for use as a love potion or to produce in a human being such attributes as courage, fear, despair, strength, weakness, attraction to or revulsion from another being or such like attribute, or immunity from or resistance against or susceptibility to hostile agencies, supernatural powers, witchcraft or unnatural diseases; or

(b) is derived from or contains or consists of, or is alleged to be derived from or to contain or to consist of the fat or any other part of the body or entrails of a human being, animal, insect, reptile or any other thing or a supernatural, legendary or mythical being.

126. No intoxicating liquor of any kind may be obtained by a Bantu under a prescription or direction of a Bantu medicine man or herbalist, except with the written approval of a magistrate or Bantu Affairs Commissioner. Any contravention of this section shall constitute an offence.

127. A Bantu woman may without a licence practise as a midwife for women of her own race and may make such reasonable charges for her services as may be agreed upon or as are recognized as customary.

128. Die gelde en verdienstes van 'n vrouegeneeskundige of vroedvrou behoort aan haar huis en sy kan alleen met behulp van haar eggenoot of voog 'n aksie vir die verhalings daarvan instel.

129. (1) Enige Bantoe wat enige van die bepalings van hierdie Hoofstuk oortree of versuim om daaraan te voldoen, is skuldig aan 'n misdryf en kan by skuldigebevinding gevonnissen word tot 'n boete van hoogstens honderd rand of by wanbetaling, tot gevangenisstraf vir 'n tydperk van hoogstens ses maande of tot sowel sodanige boete as gevangenisstraf.

(2) Die hof wat enige Bantoe genees- of -kruiekkundige van 'n oortreding van die bepalings van subartikel (1) of van die Wet op Onderdrukking van Toorkuns, 1957 (Wet No. 3 van 1957), skuldig bevind, kan, benevens enige ander straf wat sodanige hof kan opleë, die lisensie van sodanige Bantoe om as 'n genees- of kruiekkundige te praktiseer, intrek.

HOOFSTUK 14

ONREGMATIGE DADE

130. Behoudens die uitdruklike andersluidende bepalings van hierdie Hoofstuk, fundeer die pleging van 'n onregmatige daad teen enige Bantoe 'n aksie deur sodanige Bantoe vir skadevergoeding teen die oortreder, en by die instelling van sodanige aksie hoef die eiser nie deur sy kraalhoof, vader of voog bygestaan te word nie, tensy hy 'n minderjarige is.

131. In 'n aksie vir skadevergoeding weens laster of 'n ander onregmatige daad hoef die eiser geen spesifieke bedrag te eis nie; dit word aan die hof oorgelaat om die bedrag ten opsigte daarvan te bepaal.

132. (1) Eerskennis is 'n onregmatige daad.

(2) Iedere kwaadwillige bewering waarby kwade gedrag aan enige persoon toegeskryf word, is laster. Met dien verstande dat as iemand die karakter van 'n ander beswadder in die loop van 'n hewige twis en binne 'n kort tydjie daarna in die openbaar terugtrek wat hy gesê het en in die openbaar om verskoning vra, geen aksie om skadevergoeding daardeur gefundeerd word nie. Voorts met dien verstande dat geen aksie vir laster gefundeerd word nie as die gebesigde woorde ten aansien van die eiser of klaer te goeder trou en nie met voorbedagte kwaadwilligheid nie tot enige gesaghebbende persoon gerig was.

(3) In 'n aksie vir skadevergoeding weens eerskennis moet die gewraakte bewerings wesenlik in die dagvaarding of verklaring uiteengesit word, maar 'n vertaling van die woorde hoef nie noodwendig by te gaan nie.

133. Enige ongetroude meisie, wie se kuisheid deur iemand in die openbaar ontken, bespot of in twyfel getrek is, is geregtig op skadevergoeding weens laster.

134. 'n Aksie vir skadevergoeding teen die eienaar van beeste of ander vee of die persoon wat sodanige vee in sy bewaring en beheer het, word gefundeerd deur die vernieling van kultuurgewasse deur sodanige vee, tensy sodanige skade veroorsaak is deur die bydraende nalatigheid van die eienaar van die kultuurgewasse.

135. Wanneer as gevolg van nalatigheid aan die kant van enige persoon, 'n veldbrand gestig of nie behoorlik beheer word nie skade deur enigiemand anders gely word, kan 'n aksie vir skadevergoeding teen die persoon wat vir sodanige brand verantwoordelik was, ingestel word.

136. Onregmatige betreding van bewerkte lande fundeer nie 'n aksie vir skadevergoeding nie, tensy sodanige betreding met spesiale skade gepaard gaan.

128. The fees and earnings of a medicine woman or midwife belong to her house and she may institute action for the recovery thereof only with the assistance of her husband or guardian.

129. (1) Any Bantu who contravenes or fails to comply with any provisions of this Chapter shall be guilty of an offence, and liable on conviction to a fine not exceeding one hundred rand or in default of payment to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

(2) The court convicting any Bantu medicine man or herbalist of an offence under subsection (1) or under the Suppression of Witchcraft Act, 1957 (Act No. 3 of 1957), may, in addition to any other penalty which such court may impose, cancel any licence held by such Bantu to practise as a medicine man or herbalist.

CHAPTER 14

ACTIONABLE WRONGS

130. Except as is expressly in this Chapter otherwise provided, a wrongful act committed against any Bantu founds an action on the part of such Bantu for damages against the transgressor and in instituting such action the plaintiff need not be assisted by his kraal head, father or guardian unless he is a minor.

131. In an action for damages for slander or other injury, it is not essential for the plaintiff to claim any specific sum, the court being left to assess the amount thereof.

132. (1) Defamation of character is an actionable wrong.

(2) Every malicious statement alleging evil conduct on the part of any person constitutes defamation: Provided that should any person cast an aspersion upon the character of another in the course of a heated quarrel, and within a short period thereafter publicly withdraw and publicly apologise for the same, no claim in damages will lie: Provided, further, that no action for defamation will lie if the words used were addressed to any person in authority, with reference to the plaintiff or complainant, in good faith, and not with express malice.

(3) In an action for damages for defamation of character the allegations complained of shall substantially be embodied in the summons or statement of claim but the words need not necessarily include a translation.

133. Any unmarried girl whose chastity has been publicly denied, scoffed at, or impeached by any person, is entitled to damages for the slander.

134. The destruction of crops by cattle or other stock will found an action for damages against the owner or person having the custody and control of such stock, unless such damage has been caused by the contributory negligence of the owner of the crops.

135. When by reason of negligence on the part of any person in starting or failing properly to control a grass fire loss is sustained by any other person, an action for damages lies against the person responsible for such fire.

136. Trespass on cultivated land does not found an action for damages unless the trespass is accompanied by special damage.

137. (1) Die verleiding van 'n ongetroude vrou gee aanleiding tot 'n aksie teen die verleider vir 'n *ngquthu*-bees as skadevergoeding. Bo en behalwe sodanige bees kan nog 'n bees toegeken word as skadevergoeding ten opsigte van iedere en elke kind gebore uit gemeenskap tussen sodanige vrou en die verleier: Met dien verstande dat indien sodanige kind of kinders gebore word gedurende die bestaan van 'n verlowing geen aksie vir skadevergoeding erken sal word nie, tensy die huwelik nie plaasvind nie: Voorts met dien verstande dat indien die verleier met die vrou trou, ander betalings as die *ngquthu*-bees ten aansien van haar verleiding as deel van die *lobolo* beskou moet word.

(2) Iedereen wat onwettige gemeenskap het met 'n geskeie vrou of weduwee as gevolg waarvan 'n kind gebore word, staan bloot aan betaling van skadevergoeding aan haar vader of voog; sodanige skadevergoeding moet, ten opsigte van iedere kind wat op dié wyse gebore word, hoogstens een bees wees. In die geval van 'n latere gebruikelike verbinding tussen die partye, word enige betaling van skadevergoeding as deel van die *lobolo* beskou.

(3) Enige eis om skadevergoeding ten opsigte van die verleiding van of onwettige gemeenskap met 'n meisie of vrou verval by die dood van sodanige meisie of vrou, tensy haar dood te wyte is aan die bevalling wat op sodanige verleiding of onwettige gemeenskap volg.

138. Enige Bantoe wat owerspel pleeg met 'n vrou wat met haar eggenoot saamleef, is aanspreeklik vir betaling van skadevergoeding aan die eggenoot ondanks enige kriminele strafbepaling: Met dien verstande dat geen aksie vir skadevergoeding ontvanklik sal wees in die geval van oogluikende toelating deur die eggenoot of indien die vrou en haar man tydens die owerspel nie as man en vrou saamgeleef het nie.

139. Enige Bantoe wat sy vrou met wie hy 'n gebruikelike verbinding aangegaan het, dagvaar vir egskedding op grond van haar owerspel, kan, as die ander party in die owerspel bekend is, tegelykertyd en in dieselfde aksie skadevergoeding van sodanige party eis.

140. Iedereen wat die eggenote, kind of voogdelling van 'n ander ontvoer of die eggenote, kind of voogdelling van 'n ander oorhaal om haar kraal te verlaat sonder toestemming van haar eggenoot, vader of voog, is aanspreeklik vir die betaling van skadevergoeding aan sodanige vrou se eggenoot, kraalhoof of voog, na gelang van die geval: Met dien verstande dat geen aksie ontvanklik sal wees nie as die afwesigheid alleen in verband staan met die verlowingsbesoek van 'n meisie aan die kraal van 'n voorgename eggenoot.

141. (1) 'n Voog is aanspreeklik ten opsigte van die onregmatige daad deur sy voogdelling gepleeg solank sodanige voogdelling in dieselfde kraal as hy woon.

(2) Ondanks die bepalinge van artikel 27 of enige ander bepaling in hierdie Wetboek—

(a) is 'n vader aanspreeklik ten opsigte van die onregmatige daad gepleeg deur sy kinders solank hulle in dieselfde kraal as hy woon;

(b) is 'n kraalhoof aanspreeklik ten opsigte van die onregmatige daad gepleeg deur enige ongetroude kraalgenoot van sy kraal solank sodanige kraalgenoot in die kraal woon.

(3) Regsgedinge wat ontstaan uit 'n onregmatige daad waarna in subartikel (1) of (2) verwys word kan ingestel word teen of die persoon wat die onregmatige daad pleeg of sodanige persoon gesamentlik met sy vader, voog of kraalhoof, na gelang van die geval.

142. 'n Kraalgenoot kan nie die kraalhoof vir skadevergoeding weens 'n onregmatige daad van die kraalhoof dagvaar nie, maar hy kan by die Bantoesakekommissaris aansoek doen om bevry te word van die beheer van die kraalhoof of kan aansoek doen om beskerming ten opsigte van sy persoonlike eiendom of om sodanige ander verligting as wat nodig mag wees.

137 (1) The seduction of an unmarried female gives rise to an action against the seducer in damages for the *ngquthu* beast. In addition to such beast a further beast may be awarded as damages in respect of each and every child which such woman bears to the seducer: Provided that should such child or children be born during the subsistence of an engagement no claim to damages shall be recognised unless the marriage does not take place: Provided further that should the seducer marry the woman, payments other than the *ngquthu* beast made in respect of her seduction shall be regarded as forming part of the *lobolo*.

(2) Any person having illicit intercourse with a divorced woman or widow as the result of which a child is born shall be liable in damages to her father or guardian, such damages not to exceed one beast in respect of each child so born. In the event of a subsequent customary union between the parties, any payment of damages shall be regarded as forming part of the *lobolo*.

(3) Any claim for damages in respect of the seduction of or illicit intercourse with a girl or woman is extinguished by the death of such girl or woman unless her death is due to child-birth consequent upon such seduction or illicit intercourse.

138. Any Bantu committing adultery with a woman living with her husband shall, irrespective of any criminal penalty, be liable in damages to the husband: Provided that no action for damages shall lie in the case of connivance on the part of the husband or if at the time of the adultery the woman and her husband were not living together as man and wife.

139. Any Bantu suing his wife under a customary union for divorce on the grounds of her adultery may, when the other party to the adultery is known, simultaneously and in the same action sue such party for damages.

140. Any person abducting the wife, child, or ward of another or inducing the wife, child, or ward of another to leave her kraal without the consent of her husband, father or guardian, shall be liable in damages to such female's husband, kraal head or guardian, as the case may be: Provided that no action will lie if the absence is only in connection with the betrothal visit of a girl to the kraal of a proposed future husband.

141. (1) A guardian is liable in respect of delicts committed by his ward while in residence at the same kraal as himself.

(2) Notwithstanding anything in section 27 or in any other provision of this Code—

(a) a father is liable in respect of delicts committed by his children while in residence at the same kraal as himself;

(b) a kraal head is liable in respect of delicts committed by any unmarried inmate of his kraal while in residence at the kraal.

(3) Legal proceedings arising out of any delict such as is referred to in subsection (1) or (2) may be instituted against either the person committing the delict or such person jointly with his father, guardian or kraal head as the case may be.

142. No inmate of a kraal may sue the kraal head for damages by reason of a delict of the kraal head, but he may apply to the Bantu Affairs Commissioner to be removed from the control of the kraal head or may apply for protection in respect of his individual property or for such other relief as may be necessary.

143. As 'n kaptein, hoofman, kaptein se plaasvervanger of ander Bantoebeampte onwettige of onregmatige dade pleeg, stel hy hom bloot aan die betaling van skadevergoeding aan die veronregte persoon wat hom vir sodanige vergoeding in die hof van die Bantoesakekommissaris met regsmag, maar nie in die hof van 'n kaptein nie, kan dagvaar.

HOOFSTUK 15

SIVIELE PROSEDURE EN DIVERSE BEPALINGS

144. (1) Die regsmag en prosedure van enige hof wat Bantoreg toepas, is soos bepaal in die Wet en die regulasies daarkragtens uitgevaardig.

(2) Die bepalings van hierdie Wetboek word nie geag die werking van artikel 11 van die Wet op enige wyse te raak of daarop inbreuk te maak nie.

(3) Waar Bantoreg toegepas word in enige sodanige saak waarna in artikel 11 van die Wet verwys word, kan die hof kennis neem van 'n toepaslike Bantoegebruik wat nie met die beginsels van openbare beleid of natuurlike geregtigheid strydig is nie hetsy sodanige gebruik in hierdie Wetboek omskryf en behandel is al dan nie: Met dien verstande dat waar sodanige gebruik aldus omskryf en behandel is, die bepalings van hierdie Wetboek deurslaggewend is.

145. Goeie Bantoe maniere en hul ontsag vir die owerheid vereis die nakoming van onderstaande reëls—

- (a) iedere Bantoe behoort sodra hy 'n hof betree of in die teenwoordigheid van 'n kaptein of amptenaar kom, of as hy homself onttrek, met die regterhand omhoog en blootshoof die senior amptenaar daar teenwoordig saluer;
- (b) persone wat kieres of wapens in 'n hof bring, of in die onmiddellike teenwoordigheid van kapteins of senior amptenare, word geag aan onwettige gedrag skuldig te wees en is weens minagting strafbaar;
- (c) ondergeskiktes moet altyd eerste saluer en die meerdere erken die saluut;
- (d) terwyl 'n regter, staatsamptenaar of kaptein besig is om te praat, mag niemand hom in die rede val nie, maar sodra hy klaar gepraat het, kan iemand by uitnodiging of vergunning kortliks 'n mening uitspreek omtrent enige punt onder bespreking. Geen sodanige mening mag uitgespreek of enige opmerking gemaak word nadat uitspraak finaal gegee is nie;
- (e) wanneer uitspraak gegee is, moet die partye die hof saluer en verlaat.

146. (1) Bantoevroue mag in geen geval as eiendom of goedere beskou of behandel word nie, ondanks enige eiendomsregte wat in verband mag staan met of ontstaan uit gebruikelike verbindings wat deur hulle aangegaan is.

(2) Die blote aanduiding van 'n vrou of meisie as 'n bron waaruit, deur haar *lobolo*, 'n skuld of verpligting betaal of nagekom moet word, maak nie 'n kontrak wat op suiwer Bantoreg en gebruik gebaseer is, ongeldig nie, maar dit is nie op enige ander kontrak van toepassing nie.

147. (1) Lewering geskied en moet geneem word by die plek van die party wat die goedere verkoop, verhuur of moet lewer, tensy 'n spesiale andersluidende vereiste gestel word.

(2) Konstruktiewe lewering word kragtens Bantoreg erken.

148. As eiendom gesteel en deur die dief aan 'n koper te goeder trou vir waarde geleyer is, het die regmatige eienaar die reg om sy eiendom van die besitter terug te vorder.

149. (1) Daar word stilswygend aangeneem dat as beeste of goedere deur een Bantoe aan 'n ander Bantoe verkoop word, die verkoper teen kontant geskied, tensy 'n spesiale ooreenkoms vir krediet getref word.

143. The illegal or wrongful acts of a chief, headman, chief's deputy or other Bantu official render him liable in damages to the aggrieved party who may sue upon such claim in the court of the Bantu Affairs Commissioner having jurisdiction, but not in the court of any chief.

CHAPTER 15

CIVIL PROCEDURE AND MISCELLANEOUS PROVISIONS

144. (1) The jurisdiction and procedure of any court administering Bantu Law shall be as prescribed in the Act and the regulations framed thereunder.

(2) Nothing in this Code shall be deemed in any way to affect or impair the operation of section 11 of the Act.

(3) Where Bantu law is applied in any such matter as is referred to in section 11 of the Act, the court may take cognisance of any relevant Bantu custom which is not opposed to the principles of public policy or natural justice, whether or not such custom is defined and dealt with under this Code: Provided that where such custom is so defined and dealt with the provisions of this Code shall prevail.

145. Bantu good manners and respect to authority require the observance of the following rules—

- (a) Every Bantu, on entering a court or into the presence of a chief or officer, should salute the superior officer present with uplifted right hand and uncovered head, and likewise on leaving he should salute in a similar manner;
- (b) persons bringing sticks or weapons into court, or into the immediate presence of chiefs or superior officers, are deemed guilty of unbecoming behaviour and may be punished for contempt;
- (c) inferiors always salute first, and the superior acknowledges the salute;
- (d) while a judge or officer of the Government or chief is speaking no one may interrupt, but on conclusion of such speech any person, by invitation or permission may shortly give an opinion on any point at issue. No such opinion may be given or remark made after judgment has been finally pronounced;
- (e) upon judgment being given the parties salute the court and retire.

146. (1) Bantu females are not to be deemed or treated in any way as property or chattels, notwithstanding any property rights which may be connected with or arise out of customary unions entered into by them.

(2) The mere indication of a woman or girl as the source from which, through her *lobolo*, a debt or obligation is to be met shall not invalidate a contract based purely on Bantu law and custom but this shall not apply to any other contract.

147. (1) Delivery is given and taken at the place of the party who sells, barter or is to deliver the property, unless a special stipulation to the contrary is made.

(2) Constructive delivery is recognised under Bantu law.

148. When property has been stolen and delivered by the thief to an innocent purchaser for value, the true owner is entitled to vindicate his property against the possessor.

149. (1) Cattle or things sold by one Bantu to another Bantu are understood to be sold for cash, unless there is a special contract for credit.

(2) Waar daar teen kontant verkoop is, kan die verkoper, as die koper versuim om te betaal, te eniger tyd binne een maand vanaf die dag van lewering, die terugbesorging van die verkoopte eiendom eis van iemand asdan in besit daarvan, afgesien van enige regte van sodanige persoon. Na een maand het die verkoper slegs die reg om vir die verkoopprijs te dagvaar.

(3) Die vermoede is dat as daar geen spesiale ooreenkoms tot die teendeel is nie, beeste of ander vee wat verkoop of verruil word, gewaarborg is om geen siekte onderlede te hê nie, en dat goedere wat verkoop of verruil word ook gewaarborg is om vry van enige onsigbare fout of gebrek te wees.

150. (1) By ontstentenis van 'n andersluidende ooreenkoms word 'n dragtige koei as een bees gereken.

(2) Vorderings ten opsigte van aanteevee en ander vee word nie toegestaan nie, uitgesonderd in onderstaande gevalle—

- (a) waar bewys word dat die verweerder ingestem het dat aanteevee toegestaan sou word of waar hy erken het dat hy verplig was om daarvan rekenskap te gee;
- (b) waar beeste of ander vee in bewaring gegee of agtergelaat is, soos in gevalle van *sis*;
- (c) waar voogde die beeste of ander vee van hul voogdelinge vir hul eie doeleindes gebruik het;
- (d) waar, ná werklike of konstruktiewe lewering van teelbeeste of ander vee, hulle toegelaat is om by die verweerder te bly; in sodanige gevalle word vorderings ten aansien van aanteevee wat ten tyde van die aksie leef, toegelaat.

(3) By vorderings wat uit *sis* ontstaan, moet die persoon, aan wie die beeste gegee is ooreenkomstig *sis*, op bevredigende wyse verantwoording doen van die oorspronklike getal asook van alle aanwas wanneer hy versoek word om dit te doen; vee wat dood is, mag nie verreken word nie, tensy hy bewys kan lewer dat hy die eienaar van die beeste kennis gegee het van die dood of andersins behoorlik daarvoor verantwoording gedoen het. Die persoon by wie *sis*-beeste agtergelaat word, is slegs tot die gebruik daarvan geregtig. Dit is egter gebruikelik dat die eienaar van die beeste af en toe 'n bees uit die aanwas aan die ander party present gee, maar geen aksie kan ingevolge die wet vir lewering van sodanige bees ingestel word sonder bewys van 'n bepaalde ooreenkoms om sodanige present te gee nie.

151. (1) Nieteenstaande die bepalings van Wet No. 41 van 1908 (Natal), is lenings tussen Bantoe en Bantoe in enige bevoegde hof verhaalbaar.

(2) Rente is onbekend in Bantoereg en partye wat rente eis wat in verband met enige skuld of eis sou opgeloopt het moet 'n duidelike ooreenkoms vir die betaling daarvan bewys.

(3) 'n Eis ten opsigte van rente mag in geen geval meer bedra as die hoofsom ten opsigte waarvan rente geëis word nie.

(4) Wanneer die opbrengs van 'n geregtelike verkoping nie toereikend is om 'n vonnis skuld te vereffen nie, moet op die saldo van sodanige skuld, totdat dit betaal is, rente teen die koers van ses persent per jaar op die waarde daarvan betaal word.

152. (1) 'n Bantoe kan nie gebruik maak nie van, of ooreenkomstig 'n insolvensiewet of regulasie ten nadele van vorderings teen hom deur enige ander Bantoe, behandel word nie, tensy hy 'n handelaar is soos omskryf by die Insolvensie Wet, 1936 (Wet No. 24 van 1936).

(2) Behoudens andersluidende bepalings in die Wet of in hierdie Wetboek, is verjaring in Bantoereg onbekend, en geen vordering wat uit Bantoereg ontstaan kan geraak word deur die werking van enige wet op die beperking of verjaring van aksie nie.

(2) Where the sale has been for cash the seller, upon failure of the buyer to pay may, at any time within one month from delivery, claim the return of the property sold from any person then in possession, irrespective of any rights such person may have. After one month the seller has merely a right of action for the price.

(3) In the absence of any special agreement to the contrary, cattle or other stock sold or bartered are taken as guaranteed to be free from latent disease, and articles sold or bartered are taken to be guaranteed to be free from latent flaw or defect.

150. (1) In the absence of any agreement to the contrary, a cow in calf is reckoned as one beast.

(2) Claims for increase of cattle and other stock shall not be allowed except in the following cases—

- (a) where it is proved that the defendant has agreed to allow increase, or admitted his liability to account for same;
- (b) where there has been a deposit or placing of cattle, or other stock, as in cases of *sis*;
- (c) where guardians have used for their own purposes the cattle or other stock of their wards;
- (d) where, after actual or constructive delivery of breeding cattle or other stock, such have been allowed to remain with the defendant; in such cases claims in respect of progeny living at the date of the action will be allowed.

(3) In claims arising out of *sis*, the party to whom the cattle were given under *sis* must satisfactorily account for the original number and all increase, when called upon to do so; he may not set off any deaths, unless he has proof that he notified the deaths to the owner of the cattle or otherwise duly accounted for the same. The person with whom *sis* cattle are placed is entitled only to the use thereof. It is customary, however, for the owner of the cattle occasionally to donate a beast from the increase to the other party, but no claim at law can be made for this without proof of a specific contract so to donate.

151. (1) Notwithstanding anything in Act No. 41 of 1908 (Natal), loans as between Bantu and Bantu shall be recoverable in any competent court.

(2) Interest is unknown in Bantu law and parties claiming interest as having accrued upon any debt or claim will have to prove a distinct contract to pay the same.

(3) No claim for interest may in any case amount to more than the principal sum in respect of which interest is claimed.

(4) When execution upon a judgment debt fails to satisfy that debt, the balance of such debt shall, till paid, bear interest at the rate of six per cent per annum upon the value thereof.

152. (1) No Bantu may avail himself of or be brought under the operation of any insolvency law or regulation, to the prejudice of claims against him by any other Bantu, unless he is a trader as defined under the Insolvency Act, 1936 (Act No. 24 of 1936).

(2) Save as otherwise in the Act or in this Code provided, prescription is unknown in Bantu law and no claim arising out of Bantu law shall be affected by the operation of any law of limitation or prescription of action.

153. (1) Bedrae wat die Staat aan kapteins of hoofmanne by wyse van salaris, bonus of besoldiging verskuldig is of betaal, is gevrywaar en daar kan nie by wyse van 'n hofproses vir skuld daarop beslag gelê word nie.

(2) Betaling van sodanige salaris, bonus of besoldiging waarna in subartikel (1) verwys word kan deur die Minister as 'n dissiplinêre maatregel in die geval van wangedrag van 'n kaptein of hoofman vir 'n bepaalde tydperk gestaak, opgeskort of verminder word.

154. Bantowonings, algemeen bekend as hutte, word geag roerende goedere te wees.

HOOFSTUK 16

MISDRYWE EN ALGEMENE STRAFBEPALING

MISDRYWE TEEN OPENBARE ORDE, GESAG, FATSOENLIKHEID EN SEDES

155. Iedereen wat die gesag of enige bevel van die Opperhoof verontagsaam of trotseer, is skuldig aan 'n misdryf.

156. Enige kaptein wat 'n gewapende byeenkoms van sy stam belê of wat die manlike persone van sy stam in kompanjies of regimente indeel of laat indeel sonder voorafgaande verlof van die Opperhoof, is skuldig aan 'n misdryf.

157. Enige kaptein wat deur die Opperhoof of direk, of deur 'n plaasvervanger of bode van die Opperhoof gelas word om 'n openbare handeling of handelings te verrig of hom daarvan te weerhou en wat deur sy optrede sodanige bevel trotseer of in gebreke bly om dit dadelik te gehoorsaam, is skuldig aan 'n misdryf.

158. Iedereen wat valse gerugte versprei wat van sodanige aard is dat daardeur onrus of vrees veroorsaak of die Regering en sy optrede daardeur geraak word, is skuldig aan 'n misdryf.

159. Wanneer meer as vyf persone byeenkom as gevolg van wie se gedrag 'n verstoring van die vrede gevrees word, kan die kraalhoof of ander gesaghebbende persoon hulle gebied om uitmekaar te gaan en as hulle weier om gehoor te gee, is elkeen en almal van hulle skuldig aan 'n misdryf.

160. (1) Iedereen wat die gesag van 'n kraalhoof trotseer, of 'n kraal binnegaan wanneer verlof om dit te doen geweier is, of in of naby 'n kraal bly nadat hy versoek is om dit te verlaat, is skuldig aan 'n misdryf.

(2) Iedereen wat tussen sononder en sonop gevind word dat hy in 'n kraal versteek is of daarin of in die onmiddellike omgewing daarvan bespied en nie behoorlik rekenskap van homself kan gee nie, is skuldig aan 'n misdryf.

161. (1) Iedereen, uitgesonderd 'n lid van die polisie, of iemand wat nie andersins daartoe gemagtig is nie en wat assegaie, byle, knopkieries of ander gevaarlike wapens na enige fees, dansparty of ander samekoms by hom dra, is skuldig aan 'n misdryf en benewens enige ander straf waaraan hy blootgestel is, moet die wapens wat hy dra gekonfiskeer word.

(2) Straf kan opgelê word vir enige sodanige misdryf waarna in subartikel (1) verwys word, afgesien daarvan dat die persoon wat sodanige misdryf begaan, vervolgd kan word weens deelneming aan enige stamgeveg of oproer.

162. (1) Onderstaande dade is misdrywe—

- (a) die verleiding van 'n ongetroude meisie;
- (b) die ontvoering van 'n ongetroude meisie;
- (c) uitlokking van enige vrou om haar te onttrek aan die beheer of bewaring van haar vader, eggenoot of voog, of onwettige gemeenskap of poging daartoe met enige vrou;

153. (1) Sums due from or paid by the State to chiefs and headmen by way of salary, bonus or stipend are privileged and may not be attached for debt by the process of any court.

(2) Any such salary, bonus or stipend as is referred to in subsection (1) may be stopped, suspended or reduced for a stated period by the Minister as a disciplinary measure in the event of wrongful behaviour on the part of a chief or headman.

154. Bantu dwellings, commonly called huts, are deemed to be moveable property.

CHAPTER 16

OFFENCES AND GENERAL PENALTY

OFFENCES AGAINST PUBLIC ORDER, AUTHORITY, DECENCY AND MORALS

155. Any person who disregards or defies the authority or any order of the Supreme Chief shall be guilty of an offence.

156. Any chief who summons an armed assembly of his tribe or who classes or causes the men of his tribe to be classed into companies or regiments without the permission of the Supreme Chief first had and obtained shall be guilty of an offence.

157. Any chief who is required by the Supreme Chief either directly or by a deputy or messenger of the Supreme Chief to do or refrain from doing any public act or acts, and who acts in defiance of or neglects promptly to obey such order, shall be guilty of an offence.

158. Any person who spreads any false report of a nature calculated to cause disquiet or anxiety, or affecting the Government and its acts, shall be guilty of an offence.

159. Whenever more than five persons are assembled together, from whose conduct a breach of the peace may be apprehended, the kraal head or other person in authority may command them to disperse and upon their refusal so to do each and all of them shall be guilty of an offence.

160. (1) Any person who defies the authority of a kraal head, or enters a kraal when permission to do so has been refused, or remains in or about any kraal after being requested to withdraw, shall be guilty of an offence.

(2) Any person found concealed in or watching in or about the precincts of any kraal between sunset and sunrise and not being able to give a good account of himself shall be guilty of an offence.

161. (1) Any person, not being a member of the police, or not otherwise authorized thereto, who carries assegais, axes, knobkerries or other dangerous weapons to any feast, dance or other gathering, shall be guilty of an offence, and, in addition to any other punishment to which he may be liable, the weapons carried by him shall be confiscated.

(2) Punishment may be inflicted for any such offence as is referred to in subsection (1) irrespective of any liability on the part of the person so offending to prosecution for taking part in any faction fight or riot.

162. (1) The following acts constitute offences—

- (a) the seduction of an unmarried girl;
- (b) the abduction of an unmarried girl;
- (c) enticing any female from the control or custody of her father, husband or guardian, or attempting to have or having illicit intercourse with any female;

- (d) owerspel ten opsigte van sowel manlike as vroulike persone;
- (e) opsetlik skuilplek gee aan die vrou, dogter of voogdeling van 'n ander persoon sonder billike of redelike oorsaak, nadat geëis is dat sy terugbesorg word.

(2) Geen vrywillige, *bona fide*- en tydelike besoek van 'n meisie aan die kraal van haar minnaar met die oog op verloofskap, is 'n misdryf deur sodanige minnaar nie.

(3) Gemeenskap wat op *ukungena* volg, is nóg owerspel nóg onwettig.

163. (1) Enige Bantoevrou wat 'n onsedelike lewe lei of elders aangetref word as in haar kraal en nie in staat is om behoorlik rekenskap omtrent haarself te gee nie, kan gearresteer en voor die Bantoesakekommissaris gebring word en as sy nie 'n bevredigende verduideliking van haar lewenswyse of 'n goeie en gegronde rede vir haar afwesigheid van haar kraal kan verstrek nie, kan die Bantoesakekommissaris gelas dat sy na haar kraal terugkeer en daar bly. Die hoof van sodanige kraal is verplig om vir haar voorsiening te maak en haar te onderhou.

(2) Enige vrou wat versuim om 'n bevel kragtens subartikel (1) te gehoorsaam of in weerwil daarvan haar kraal verlaat, is skuldig aan 'n misdryf.

OORTREDINGS VAN DIE REGULASIES BETREFFENDE GE- BRUIKLIKE EN VERWANTE VERBINDINGS.

164. Enige kraalhoof of voog van enige deelgenoot van 'n gebruiklike verbinding wat sodanige verbinding vier of die viering daarvan toelaat, uitgesonderd in die teenwoordigheid van 'n offisiële getuie, of wat sodanige verbinding vier of die viering daarvan toelaat nadat die offisiële getuie sodanige viering stopgesit het of die opskorting daarvan gelas het, is skuldig aan 'n misdryf.

165. Enige kraalhoof of ander persoon wat enige meisie of vrou tot die aangaan van 'n verbinding teen haar wil dwing of poog om te dwing, is skuldig aan 'n misdryf.

166. Enige wangedrag of pligsversuim deur 'n offisiële getuie, wat 'n oortreding van enige bepaling van hierdie Wetboek uitmaak, is 'n misdryf en kan sodanige offisiële getuie, benewens enige ander straf wat hom opgelê kan word, deur die Bantoesakekommissaris summier uit sy pos ontslaan word.

DIVERSE MISDRYWE.

167. Enige Bantoe wat enige plig, verpligting, bevel of verbod hom deur hierdie Wetboek opgelê, verontagsaam of in gebreke bly om dit na te kom, is skuldig aan 'n misdryf.

168. Iedereen wie se natuurlike plig dit is om iemand anders behoorlik van lewensbehoefte te voorsien en wat versuim of nalaat om sodanige lewensbehoefte te verskaf, is skuldig aan 'n misdryf.

169. (1) Enige Bantoe wat 'n assegaai, degenstok (*intshumentshu*), strydbyl, stok met yster beslaan, staf of wandelstok (*ubhoko*) of enige ander gevaarlike wapen by hom dra, is, tensy hy besig is met die uitvoering van die een of ander openbare plig of 'n lid is van die polisie, of deur 'n Bantoesakekommissaris skriftelik daartoe gemagtig is, of op jag of *bona fide*-nagreis buitekant 'n dorpsgebied is of, ingeval hy 'n staf of 'n wandelstok (*ubhoko*) dra, 'n bejaarde of swak persoon is wat sodanige staf of stok *bona fide* gebruik om hom te steun wanneer hy loop, skuldig aan 'n misdryf, en by skuldigbevinding, benewens enige ander straf waaraan hy blootgestel is, kan die hof die wapen of wapens konfiskeer.

- (d) adultery in respect of both males and females;
- (e) knowingly harbouring without just or reasonable cause the wife, daughter or ward of another after demand has been made for her return.

(2) No voluntary and *bona fide* temporary visit of any girl to the kraal of her lover with a view to betrothal constitutes an offence on the part of such lover.

(3) Intercourse arising out of *ukungena* is neither adulterous nor illicit.

163. (1) Any Bantu female who leads an immoral life, or is found elsewhere than at her kraal and is unable to give a good account of herself, may be arrested and brought before the Bantu Affairs Commissioner and upon her failure satisfactorily to explain her way of living or to give a good or valid reason for her absence from her kraal, the Bantu Affairs Commissioner may order that she return to and remain at her kraal, the kraal head of which shall be bound to provide for and maintain her.

(2) Any female who neglects to obey or leaves her kraal in defiance of an order under subsection (1) shall be guilty of an offence.

OFFENCES AGAINST THE REGULATIONS REGARDING CUSTOMARY AND COGNATE UNIONS

164. Any kraal head or guardian of any party to a customary union who celebrates or permits the celebration of such a union save in the presence of an official witness, or who celebrates or permits the celebration of such union after the official witness has stopped or directed the suspension of such celebration, shall be guilty of an offence.

165. Any kraal head or other person who coerces or attempts to coerce any girl or woman to enter into a union against her will shall be guilty of an offence.

166. Any misconduct or breach of duty on the part of an official witness in contravention of any provision of this Code constitutes an offence, and in addition to any other punishment to which he may be liable such official witness may be summarily dismissed from his office by the Bantu Affairs Commissioner.

MISCELLANEOUS OFFENCES

167. Any Bantu who disregards or fails to comply with any duty, obligation, direction or prohibition imposed upon him by this Code shall be guilty of an offence.

168. Any person who by natural duty is responsible for due provision of the necessities of life for any other person and fails or neglects to provide those necessities shall be guilty of an offence.

169. (1) Any Bantu who carries an assegaai, sword-stick (*intshumentshu*), battle axe, stick shod with iron, staff or walking-stick (*ubhoko*) or any other dangerous weapon shall, unless he is engaged upon some public duty or is a member of the police, or has been authorized in writing by a Bantu Affairs Commissioner so to do, or is engaged in hunting or in *bona fide* night travelling outside an urban area, or, in the case of a staff or walking-stick (*ubhoko*), is an aged or infirm person who *bona fide* uses such staff or stick to support him when walking, shall be guilty of an offence and upon conviction, in addition to any other penalty to which he may be liable, the weapon or weapons may be confiscated by the court.

(2) Die skriftelike magtiging van 'n Bantoesakekommissaris kan vir die toepassing van subartikel (1) toegestaan word ten opsigte van 'n besondere streek of vir die hele Provinsie, of kan tot 'n gespesifiseerde tydperk of 'n besondere diens, plig of werk beperk word.

170. (1) 'n Kraalhoof moet onmiddellik die voorval van enige ernstige misdaad of die dood van enige persoon onder verdagte omstandighede by of naby sy kraal, aangee by sy kaptein of hoofman of, as dié deel van die stam waartoe hy behoort onder die toesig van 'n kaptein se plaasvervanger is, by daardie plaasvervanger, tensy dit vir hom geriefliker of gouer is om dit regstreeks by sy kaptein aan te gee, wat hy moet doen as dit die geval is, en die ontvanger van enige sodanige verslag, as dit 'n kaptein, hoofman of 'n kaptein se plaasvervanger is, moet dit sonder versuim aan die Bantoesakekommissaris of naaste polisiebeampte deurstuur: Met dien verstande dat as die ontvanger 'n kaptein se plaasvervanger is wat nie toesig oor 'n afgesonderde deel van 'n stam hou nie en wat nie kragtens artikel 12 van die Wet gemagtig is om siviele gedinge wat voortspruit uit Bantoreg en -gebruik te verhoor en te beslis nie, hy die verslag by sy kaptein en, op las van laasgenoemde, by die Bantoesakekommissaris moet aangee.

(2) 'n Kraalhoof, kaptein, hoofman of kaptein se plaasvervanger wat nalaat of in gebreke bly om aan die bepalings van subartikel (1) te voldoen, is skuldig aan 'n misdryf.

171. Enige Bantoe wat weet van, of goeie rede het om die bestaan van 'n aansteeklike of besmetlike siekte onder beeste onder sy toesig te vermoed en versuim om sy bure en ander belanghebbendes behoorlik te waarsku teen sodanige siekte of wat, na hy siek beeste gekoop of verkry het, hulle in of deur enige lokasie of ander plek aanja wat deur ander gebruik word vir die weiding van beeste is, afgesien van sy siviele aanspreeklikheid vir enige skade of verlies aldus veroorsaak, skuldig aan 'n misdryf.

ALGEMENE STRAFBEPALING.

172. By ontstentenis van 'n spesifieke strafbepaling vir enige misdryf ingevolge hierdie Wetboek, kan die hof wat enige persoon skuldig bevind aan sodanige misdryf hom 'n boete van hoogstens honderd rand ople of hom, by wanbetaling, tot gevangenisstraf van hoogstens ses maande veroordeel.

AANHANGSEL NO. 1

B.A. 3

VORM VAN REGISTER INGEVOLE ARTIKEL 64

REGISTER VAN GEBRUIKLIKE VERBINDINGS AANGEGAAN Kragtens DIE BEPALINGS VAN DIE NATALSE WETBOEK VAN BANTOREG IN DIE DISTRIK

1. No.
2. Datum van registrasie
3. Naam en familienaam van eggenoot
4. Persoonsnommer van eggenoot
5. Naam van eggenoot se vader
6. Kaptein
7. Naam en familienaam van eggenote
8. Persoonsnommer van eggenote
9. Naam van eggenote se vader
10. Staat, Indien geskei, naam van vorige eggenoot
11. Rang van eggenote se vader
12. Sy kaptein
13. No. en rang van eggenote in haar eggenoot se kraal
14. Indien geaffilieer, naam van huis waarmee sy geaffilieer is en doel van sodanige affilasie
15. Indien 'n ukuvusa-verbinding, die naam van die oorledene en die doel waarvoor verbinding aangegaan is

(2) The written authority of a Bantu Affairs Commissioner for the purposes of subsection (1) may be granted in respect of a particular area or for the whole Province, or may be limited to a specified period or to a particular service, duty or employment.

170. (1) A kraal head shall report immediately the occurrence of any serious crime or the death of any person under suspicious circumstances at or near his kraal to his chief or headman or, if the section of the tribe to which he belongs is under the charge of a chief's deputy to that chief's deputy unless it be more convenient or expeditious for him to report direct to his chief, in which event he shall take that course and the recipient of any such report if he be a chief, headman or chief's deputy shall transmit it without delay to the Bantu Affairs Commissioner or nearest police officer: Provided that if the recipient be a chief's deputy who is not in charge of a detached section of a tribe and who has not been authorized under section 12 of the Act to hear and determine civil claims arising out of Bantu law and custom he shall transmit the report to his chief and, on the latter's instruction, to the Bantu Affairs Commissioner.

(2) A kraalhead, chief, headman or chief's deputy who neglects or fails to comply with the provisions of subsection (1) shall be guilty of an offence.

171. Any Bantu who, knowing or having good reason to suspect the presence of a contagious or infectious disease among cattle under his control, fails to give proper warning of such disease to his neighbours and others interested, or who, having bought or acquired diseased cattle, drives them into or through any location or other place used by others for the grazing of cattle shall, irrespective of his civil liability for any damage or loss so caused, be guilty of an offence.

GENERAL PENALTY

172. In the absence of any specific penalty for any offence under this Code, the court convicting any person of such offence may impose upon him a fine not exceeding one hundred rand or in default of payment imprisonment for a period not exceeding six months.

ANNEXURE NO. 1

B.A. 3

FORM OF REGISTER UNDER SECTION 64

REGISTER OF CUSTOMARY UNIONS CONTRACTED UNDER THE PROVISIONS OF THE NATAL CODE OF BANTU LAW IN THE DISTRICT OF

1. No.
2. Date of registration
3. Name and surname of husband
4. Identity No. of husband
5. Name of husband's father
6. Chief
7. Name and surname of wife
8. Identity No. of wife
9. Name of wife's father
10. Condition. If divorced, name of former husband
11. Rank of wife's father
12. His chief
13. No. and rank of wife in her husband's kraal
14. If affiliated, name of house to which she is affiliated and object of such affiliation
15. If an ukuvusa union, the name of the deceased and purpose for which union contracted

16. *Lobolo* actually paid over on date of registration of union—
Lobolo cattle delivered
Cash paid in lieu of cattle R..... representing head of cattle.
Other payments in lieu of cattle
17. Balance of *lobolo* due and conditions as to payment
18. Source from which *lobolo* obtained
19. If a liability incurred in securing such *lobolo*, manner of repayment and to whom due
20. Signature of official witness
21. Signature of woman's father or guardian
22. Signatures of partners:
(a) (b)
23. Date of celebration of customary union

Bantu Affairs Commissioner

RECORD OF SUBSEQUENT *LOBOLO* PAYMENTS—

ANNEXURE NO. 2

B.A. 4

CERTIFICATE OF CUSTOMARY UNION ISSUED IN
TERMS OF SECTION 66 OF THE NATAL CODE OF
BANTU LAW

This is to certify that a customary union between

Identity No.

en

and

Identity No.

die dogter van

the daughter of

was registered at the office of the Bantu Affairs Commissioner
for the district of on
Register of Customary Unions folio number

Date Stamp.

Bantoesakekommissaris

Bantu Affairs Commissioner

INHOUD.

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