

Communal Land Reform Act

Guide to the

Act No 5 of 2002

Land Reform

English version

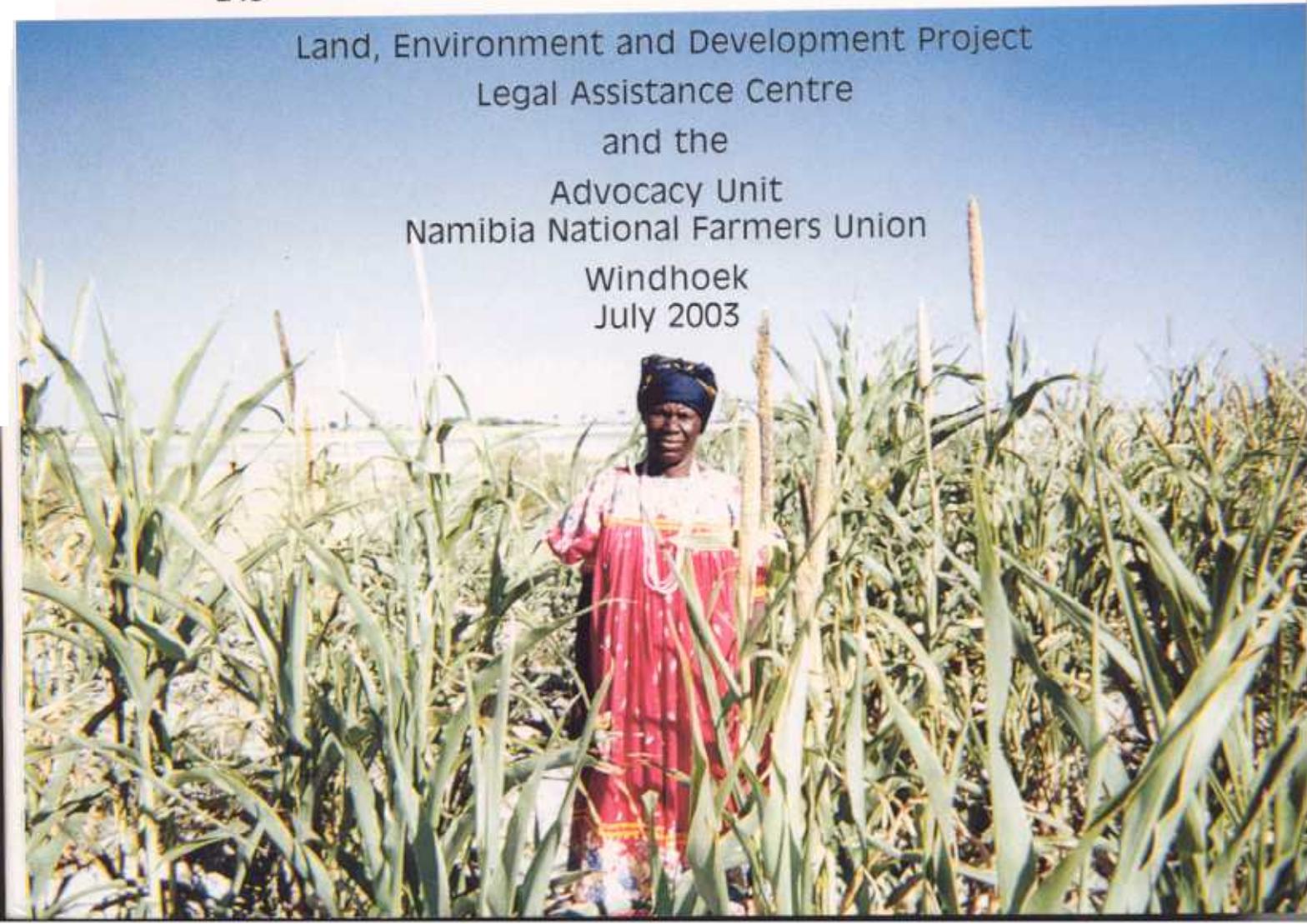


LAC



NNFU

Land, Environment and Development Project
Legal Assistance Centre
and the
Advocacy Unit
Namibia National Farmers Union
Windhoek
July 2003



Guide to the Communal Lands Reform Act, Act No 5 of 2002

Cover photograph: Meme Hilma Jonas in her mahangu field near Ondangwa.

Publishers:	Legal Assistance Centre	Namibia National Farmers Union
	P O Box 604	P O Box 3117
	Windhoek	4 Axali Doeseb St
	Namibia	Windhoek
	Telephone: 061-223356	Telephone: 061-271117
	Fax: 061-234953	Fax: 061-271155
	E-mail: info@lac.org.na	E-mail: nnfu@mweb.com.na

Written by : Johann Malan

Editing, design and layout: Caroline Cohrssen cohrrsen@mweb.com.na

© Legal Assistance Centre and Namibia National Farmers Union

This document may be freely reviewed, quoted, reproduced or translated, in part or in full, provided the source is fully acknowledged.

First edition, first impression 2003

ISBN:99916-765-8-9

Contents

Acknowledgements	v
Glossary	vii
Background	xi
Introduction	xv
Ownership of communal lands	xvi
What is communal land?	xvi
Who owns communal land?	xvii
The differences between Acts and Bills	xviii
Chapter I: PRELIMINARY	1
Section 1: Definitions	1
Chapter II: COMMUNAL LAND BOARDS	2
Section 2: Establishment of Communal Land Boards	2
Section 3: Functions of Communal Land Boards	2
Section 4: Composition of Boards	3
Section 7: Meetings of the Board	4
Section 8: Committees	5
Section 9: Disclosure of interest	5
Section 10: Remuneration (payment of Board members)	6
Section 11: Financing of Boards	6
Section 12: Performance of administrative work	6
Section 13: Annual Report	6
Section 14: Limitation of liability	6
Chapter III: COMMUNAL LAND AREAS	7
Section 15: Extent of communal land	7
Section 16: Establishment of new communal land areas and additions to or subtractions from communal land areas	7
Section 18: Prohibition against fences	9
Chapter IV: ALLOCATION OF RIGHTS IN RESPECT OF COMMUNAL LAND	9
Section 19: Rights that may be allocated	9
Part 1 – Customary land rights and grazing rights	
Section 20: Primary power to allocate and cancel customary land rights	9
Section 21: What powers does the Chief or the Traditional Authority have when considering an application?	10
Section 22: How does a person apply for a customary land right?	11
Section 23: Limitation of the size of land held under customary land rights	11
Section 24: Ratification of allocation of customary land rights	12
Section 25: Registration of customary land rights	13
Section 26: Duration of a customary land right	13
Section 27: Cancellation of customary land right	15
Section 28: Recognition of existing customary land rights	16
Section 29: Grazing rights	20
Part 2 – Right of leasehold	
Section 30: Power to grant right of leasehold	22
Section 31: Application for right of leasehold	23
Section 32: Conditions applicable to right of leasehold	24
Section 33: Registration of rights of leasehold	26
Section 34: Duration of right of leasehold	26
Section 35: Existing rights to occupy communal land	27

Chapter V:	GENERAL PROVISIONS	31
Section 37:	Preliminary investigation of a claim to existing rights	31
Section 38:	Transfer of rights	34
Section 39:	Appeals	34
Section 40:	Compensation for improvements	34
Section 41:	Survey of communal land	35
Section 42:	No consideration payable for customary land right	36
Section 43:	Unlawful occupation of communal land	36
Section 44:	Fences	36
Section 45:	Regulations	37
Section 46:	Repeal of laws	37
Section 47:	Short title and commencement	38
Annexures		
Annexure 1:	Application procedure for a customary land right	41
Annexure 2:	Application procedure for recognition and registration of existing customary land rights	42
Annexure 3:	Application procedure for right of leasehold	43
Annexure 4:	Application procedure for the recognition of existing rights to occupy communal land and for the granting of a right of leasehold	44
Contact names and addresses		45
Communal Land Reform Act, Act No. 5 of 2002		
Regulations made in terms of the Communal Land Reform Act		

Foreword

Since Independence in 1990, land allocation and administration in communal areas of Namibia have been impeded by the absence of clear and coherent communal land legislation. Providing the Namibian people with access to land was one of the top priorities of the new government.

Like many developing countries, Namibia has adopted a land redistribution programme aimed at equitable distribution of land throughout the country. However, it is clear that access to land is not an end in itself, but needs to be complemented by other factors to ensure that the land is productively used.

The initial work to develop a Communal Law Reform Act was begun in 1995. Many workshops, seminars and meetings were held and comments from the stakeholders were incorporated into the working document. From there, a series of debates on the document held both in the National Assembly and the National Council led to the enactment of the Communal Land Reform Act on 1 March 2003.

The Communal Land Reform Act deals with access to rural land in communal areas. It regulates the allocation of land rights and the establishment of Communal Land Boards in all communal areas of the country. The Act clearly states the powers of Chiefs, Traditional Authorities and Land Boards with regard to the allocation of land rights in communal areas.

Two broad categories of land rights allocations are stipulated in the Act: customary land rights and rights of leasehold. The rights that may be allocated under the first category are rights to residential units and rights to farming units. Chiefs or Traditional Authorities allocate customary land rights, with Land Boards verifying the allocations before they become legally effective. The second category of land rights allocations, being rights of leasehold for agricultural purposes, vest in the Land Boards of the designated areas.

The successful implementation of the Communal Law Reform Act will boost development in communal areas whilst in the long run enhancing food security for our rural communities and the country as a whole.

It is therefore important that the Act be translated into local languages in order to enable the people of our country to understand it. We applaud the organisations that have invested much time and effort in developing this book and offer our support for their noble effort.

Hifikepunye Pohamba MP

Minister of Lands, Resettlement and Rehabilitation

Acknowledgements

This publication was made possible with funding from Horizont3000, HIVOS, EED and the Namibia Nature Foundation, organisations that support the work of the Land, Environment and Development Project of the Legal Assistance Centre. The Ford Foundation, which supports the Namibian National Farmers' Union, also made a significant contribution to this endeavour. We express our gratitude to these donors for their generous support.

Johann Malan wrote the guide, for which we thank him very much. Caroline Cohrssen of Caroline Cohrssen & Associates did the editing and layout; she did a magnificent job. Workshop participants tested the suitability of the guide as a workshop facilitation tool at several workshops held around the country during 2002 and 2003. These participants included communal area farmers, representatives of traditional authorities, communal area conservancies, government officials and staff from several non-governmental organisations. They contributed enormously by making practical suggestions and critical comments about the contents of the guide.

Norman Tjombe, Clement Daniels, Dianne Hubbard and Gerson Narib of the Legal Assistance Centre offered invaluable comments on early drafts, as did Oloff Munjanu of the Namibian National Farmers Union. We also appreciate the persistent enquiries by Richard Diggle, Lucky Kasaona and John Kasaona of the Integrated Rural Development & Nature Conservation about the provisions of the Communal Land Reform Act, the answers to which we hope they will find in this guide.

Legal Assistance Centre

Namibia National Farmers' Union

Glossary

Allocate	Give or assign.
Allocation of land	Giving somebody the right to live or farm on a specific piece of land.
Arbitration	Settling a dispute between people by using a third person called the arbitrator, who listens to all the people involved in the dispute and then decides the matter. The decision of an arbitrator is binding on the parties.
Commercial land	Land that can be bought and sold by individuals. An example is a commercial farm.
Commonage	The common grazing area for the livestock of the members of a traditional community.
Communal land	Land that belongs to the State. Individuals cannot own communal land, but may have customary land rights or rights of leasehold with regard to certain areas of land.
Conflict of interest	When a person has different interests that conflict with each other, particularly when she/he has to act in an official and a private capacity. For example, a member of a Communal Land Board will have a conflict of interest when she has to decide about matters relating to fencing in her official capacity as member of the Board, while she (in her private capacity) has fenced off the land which has been allocated to her under a customary land right.
Deeds Registry	This is where all the title deeds of commercial land are kept. The deeds registry is used to find out who the owner of a particular portion of land is and whether it is farmland or an erf in a town or city.
Divested of a claim	When a person is divested of a claim, that person is deemed to have abandoned the claim or to have given up the claim.
Erf	The plot of land in a town or a city on which a house is built.
Expropriation	When the right to property is taken away by the State without the consent of the owner but with the payment of just compensation.
Freehold	The form of ownership under which a farmer holds commercial land. This means that the owner can sell the property or use it for his/her own benefit.
Good faith	A person acts in good faith when he/she has an honest intention in performing the particular act. For example, a magistrate acts in good faith when he/she listens carefully to all the facts of a particular case and then makes a decision based on the facts and the law.

Grantee	The person who has been given the right to use or to own something. For example, the person who has been granted the right to reside on a certain portion of communal land is called the "grantee".
Just compensation	The payment that has to be made when property or rights are expropriated by the State. This compensation should reflect the market value of the thing that is expropriated. For example, if the government expropriates commercial farmland to add to communal land, it has to pay the owner of the commercial farm a fair price for the land that is taken away.
Lease	A contract by which one person (called the lessor) allows another person (called the lessee) to use something for a specific period of time. In turn, the lessee has to pay rent for the use of the thing. For example, a person can lease a farm.
Leasehold	The form of land tenure under which leased land is held. For example, the Communal Land Board grants a right of leasehold to a person in terms of which he or she has the right to use the land for the purposes for which the land was leased.
Mortgage bond	When a person wants to borrow money from a bank, a mortgage bond is registered over his/her farm or house in favour of the bank. This provides security to the bank for the money it lends. If the person does not repay the loan within a specific period of time, the bank can sell the property to recover the money. If the loan is repaid within the specified period of time, the mortgage bond is paid off and the bank no longer has the right to sell the land.
Owner	The person who owns property, like the owner of cattle, a car or a house.
Preliminary investigation	An investigation to determine certain facts before an ultimate decision is taken. For example, if there are doubts about the an existing right to occupy land, a preliminary investigation may be held to make sure of the facts before the Communal Land Board decides whether to recognise the claim and to register the particular right.
Right of first refusal	All commercial farmland that is to be sold must first be offered to the Minister of Lands, Resettlement and Rehabilitation, who then decides whether the land should be acquired for land redistribution purposes. If the Minister does not want to acquire the land, a certificate of waiver is issued which allows the commercial farmer to sell the land to another buyer.

Security	In the context of borrowing money, security means that something, such as a house, is given as security for the repayment of a loan. If the loan is not repaid, the house can be sold to recover the money.
State land	Land that belongs to the State. This is provided for in the Constitution.
Survey of land	Measuring a particular area of land to determine the boundaries, size and shape of the area. Commercial land must be surveyed before it may be sold.
Sustainable use	Sustainable use means that land and resources are used in such a way that they provide for the needs of the people who use them now, but also for their children and their children's children.
Tenure	The right or title by which property such as land is held. Under the Communal Land Reform Act, communal land can be held under a customary land right or as leasehold.
Traditional Authority	The Chief or head of a traditional community, the senior traditional councillors and the traditional councillors may be appointed as the Traditional Authority under the Traditional Authorities Act.
Traditional community	A traditional community is a community recognised as such under the Traditional Authorities Act, Act No 25 of 2000. The definition of a traditional community in that Act is very complicated, but it basically means that members of a traditional community share a common ancestry, language, culture, customs and traditions; they recognise a common traditional authority and inhabit a common communal area. Even members residing outside the common communal area may be included in the definition of traditional community.
Vest	We say that communal land vests in the State, which means that the State has rights over the communal land and has to administer the land in trust for the benefit of the people living on that land.
Willing buyer - willing seller	The basis on which the State can acquire commercial land. A seller must be willing to sell the land at a specific price and the buyer must be willing to buy the land at that price.

Background

Access to land is one of the most pressing social issues in Namibia. Urban land is land in or near a city. Some people need land for grazing or farming purposes – these people want access to “rural” land. The Communal Land Reform Act deals with access to rural land in communal areas.

In Namibia, land is classified as **State land, communal land or commercial land**. Each of these categories gives certain rights and responsibilities to the people who have rights over the land. Both urban and rural land may fall within any of these categories.

State land is land that belongs to the State. Under the Constitution, all land, water and natural resources belong to the State, unless lawfully owned by individuals. As the owner of the land, the State can decide what to do with the land – whether to add the land to existing communal areas or to sell it so that it becomes commercial land. The State can decide to allow people to stay on a particular piece of land or to rent it out, while still remaining the owner of the land.

Communal land is vested in the State by the Constitution. The State is under a duty to administer communal lands in trust for the benefit of the traditional communities residing on these lands and for the purpose of promoting the economic and social development of the Namibian people. Communal land cannot be bought or sold.

Commercial land is the land that can be bought by private individuals, who then become the owners of the land. Under the colonial government, commercial land allocations were made on racial lines, with the result that there are long-standing grievances with regard to these lands. The Agricultural (Commercial) Land Reform Act of 1995 was enacted to address some of these concerns. In particular, this Act gives the State the right of first option to buy commercial farm land when an owner wants to sell land. The State must decide whether it wants to buy a particular farm before the farm can be sold to another buyer. This is called selling the land on a **willing buyer-willing seller** basis. The Act allows the State to acquire commercial land where the land is too big, has been abandoned or is under-utilised.

Article 100, Constitution of Namibia

Land, water and natural resources below and above the surface of the land and in the continental shelf and within the territorial waters and the exclusive economic zone of Namibia shall belong to the State if they are not otherwise lawfully owned.



While protecting the right of every person to own property in Namibia, the Constitution allows the State to expropriate property according to lawful procedures, if it is in the public interest and if just compensation is paid to the person whose property is expropriated.

In 1998, communal farmers marched to State House, Windhoek, to demand more access to land.

The government can therefore expropriate land if the land is to be used for a public purpose. An example of this sort of expropriation is where the government expropriates land in order to build a road.

Article 16: Property, Namibian Constitution

- (1) All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees: provided that Parliament may by legislation prohibit or regulate as it deems expedient the right to acquire property by persons who are not Namibian citizens.
- (2) The State or a competent body or organ authorised by law may expropriate property in the public interest subject to the payment of just compensation, in accordance with requirements and procedures to be determined by Act of Parliament.

The Agriculture (Commercial) Land Reform Act also limits the ownership of land by foreign nationals, by requiring express ministerial permission for the acquisition of land rights.

The system under which commercial land is regulated is well organised. Land is properly surveyed and is held under title deeds kept in the central deeds registry for commercial land in Windhoek. A separate deeds registry exists for property in the Rehoboth Gebiet. When a farm or an erf is sold, the transaction is recorded on the title deed of the particular piece of land. This is proof of ownership. Leases of commercial land for periods longer than ten years are also recorded on the title deed. Holders of title deeds are free to sell their land subject to the conditions of the title deed. For example, if two people are married in community of property, the Married Persons Equality Act and the accompanying Deeds Registry Amendment Act prevent the sale of commercial land by one spouse without the other spouse's consent.

Commercial ownership of land may be used as security for a bank loan. In such a situation, the bank will lend money to the owner, but the bank will register a mortgage bond over the property. This means that if the owner cannot repay the money borrowed, the bank can sell the property to recover the outstanding debt.

The situation with regard to communal land is much less clear. In fact, the National Land Policy states:

"Clear steps need to be taken to remove uncertainty about legitimate access and rights to (communal) land, and the ways in which (communal) land is administered."

These uncertainties stem from the lack of authority over communal lands and the role that traditional authorities play (with varying degrees of efficiency) over the allocation and utilisation of land. In many areas, larger communal farmers have started to fence off areas of land without authorisation, thereby limiting the rights of access of smaller communal farmers to these areas. The fencing off of communal lands by communal farmers is an example of people using communal land without considering the rights of other communal farmers. Traditional authorities have little power to order the removal of these fences.

The result of allocating a customary land right may differ from that achieved by granting a freehold title to commercial land. A communal land allocation does not give ownership of the allocated land to the right holder, with the result that the property cannot be used to

provide security to a bank for financial purposes. Furthermore, freehold tenure gives the owner the right to use natural resources on the land (such as hunting game), that does not come with the allocation of a customary land right. As a result, many Namibians view communal lands and communal land tenure systems unfavourably.

The government responded to the land issue by adopting a National Land Policy in 1998, in which a unitary land system is proposed. Under this unitary system, "*all citizens have equal rights, opportunities and security across a range of tenure and management systems.*" This proposed system would ensure that communal forms of land tenure are equally recognised and protected by the law, and that communal land is administered according to a uniform system. The National Land Policy also aims to ensure:

- Equality before the law with regard to access to land.
- That women have the same status as men with regard to all forms of land rights, whether as individuals or as members of a family. This means, for example, that women are entitled to be allocated land, and that they can bequeath and inherit land. Importantly, widows are entitled to maintain the land rights they enjoyed while their husbands were alive. This will have an impact on customary and civil law rules with regard to women's rights to land, which rules government has undertaken to reform.
- Equal access to land and security of tenure.
- Environmentally sustainable natural resource use, including the use of land.

The National Land Policy recognises the following forms of rural land tenure:

- Freehold tenure.
- Permission To Occupy (PTO) certificates, currently granted by the Ministry of Regional and Local Government and Housing, which will be phased out under the new Communal Land Reform Act and converted into rights of leasehold.



Meme Hilma Jonas in her mahangu field near Ondangwa. Women will have more secure access to land under the Communal Land Reform Act. Photograph by Norman Tjombe.

- Leasehold. A right of leasehold over communal land will be granted by Communal Land Boards under the Communal Land Reform Act, but subject to the consent of the Traditional Authority concerned.
- Customary grants of land. While providing that the primary power to allocate customary land rights over communal land will remain with the Chief or Traditional Authority, the Communal Land Reform Act requires the Communal Land Board to ratify these allocations.
- State ownership.

The Communal Land Reform Act follows the guidelines found in the National Land Policy. The Act sets out the functions of Chiefs, Traditional Authorities and Communal Land Boards with regard to the administration of communal lands.

Introduction

The Communal Land Reform Act aims to improve the system of communal land tenure by creating Communal Land Boards for specific communal areas. These Boards will control the allocation and cancellation of customary land rights by the Chief or Traditional Authority of a particular communal area.

Importantly, the Act grants women equal rights when applying for rights to communal lands. In addition, it protects the surviving spouse of a deceased holder of the customary land right by giving the surviving spouse, who may be the wife or the husband, the right to apply to the Chief or Traditional Authority for the re-allocation of the customary land right in her or his name.

Under customary law, women do not have the right to obtain land for their own purposes, nor can they own their own property, other than personal items of little value. Women are allowed to remain on the land and to farm on the land only because the land was allocated to their husbands, fathers or some other male relative. This places women in a very difficult position.

Many women are dependent on their husbands to provide for them, even though they are capable of taking care of themselves. Because such women do not have an independent source of income, they are unable to benefit from opportunities that are available to women who do not live under customary law. For example, such women cannot educate themselves or move away because they are not financially independent. They are also unable to take independent decisions about their lives, like if and when to have children. This dependence makes such women vulnerable to domestic violence, sexual abuse and HIV/AIDS infection.

Article 10 of the Namibian Constitution guarantees the equality of all people, including women, before the law. It also forbids discrimination against women on the basis of their sex. However, the drafters of the Constitution realised that this was not enough to address the injustices that women have suffered. The Constitution therefore also allows for positive action on the side of the government to address the social, economic or educational discrimination that women have suffered. In particular, Article 23 states that women should be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation.

Giving women the right to be allocated communal land in their own names, to remain on the land after the death of their spouses, and to provide for a minimum of four women on Communal Land Boards demonstrates the government's commitment to improving the position of women in society.

Section 17

(1) Subject to the provisions of this Act, all communal land areas vest in the State in trust for the benefit of the traditional communities residing in those areas and for the purpose of promoting the economic and social development of the people of Namibia, in particular the landless and those with insufficient access to land who are not in formal employment or engaged in non-agricultural business activities.

(2) No right conferring freehold ownership is capable of being granted or acquired by any person in respect of any portion of communal land.

Other legislative examples of this commitment are the Married Persons Equality Act, the Labour Act and the Affirmative Action (Employment) Act.

Some people have rights in respect of communal lands that were not granted under customary law. An example of this sort of right is the PTO (Permission-To-Occupy). The Act does away with the current system by converting such rights into rights of leasehold.

Fencing is another issue addressed by the Act. In principle, fencing of communal areas is prohibited unless permission is granted for the erection of a fence, or an existing fence is allowed to remain on the land. Regulation 26 allows fences existing at the commencement of the Act that are used to fence in homesteads, cattle pens, water troughs or crop fields to be retained. The Communal Land Boards have to begin and maintain registers of customary land rights and of rights of leasehold to control the allocation and use of communal lands.

In this guide, we will cover the Act section by section, so that the reader obtains a clear understanding of it. We have provided a copy of the Act at the back of this booklet so that the reader can compare the guide with the Act as we work through it.

i Ownership of communal lands

Before we start with the various sections of the Act, it is important to consider what communal land is as well as the question of ownership of communal land.

ii What is communal land?

Communal land is described in section 15. Communal land includes:

- The areas **described** as communal land in Schedule 1 to the Act.
- Any areas **declared** to be communal land under section 16(1)(a).



Regulation 26 allows for existing fences that are used to fence in homesteads, cattle pens, water troughs or crop fields to be retained.

- Any land **incorporated** into a communal land area under section 16(1)(b).
- **Local authority areas** within the boundaries of a communal land area do not form part of communal lands.

iii. Who owns communal land?

Section 17 makes it very clear that all communal land areas vest (belong to) in the State, which must keep the land in **trust** for the benefit of the traditional communities living in those areas. Because communal land belongs to the State, the State must put systems in place to make sure that communal lands are administered and managed in the interests of those living in those areas. The Act does this by incorporating the offices of the Chief or the Traditional Authority and by creating Communal Land Boards which will work together to ensure better communal land administration.

The Act also makes it clear that communal land cannot be sold as freehold land to any person. This means that communal land cannot be sold like commercial farmland.

As the trustee of communal lands, the State has the following **obligations** in respect of those lands:

- The State must look after the communal lands and administer the land in the **best interests** of the people.
- The State must act in a way that will **benefit** the communities living in communal areas. In other words, the people living in communal areas must get the benefits of the communal lands, not other people.
- The reason why the State holds the land in trust is to **promote** the economic and social development of the people of Namibia, particularly those people who do not have land and those who do not have other income and who rely on the land for their livelihood.



Women clearing the land in Elim constituency. Photograph by Augustus Shikomba.

iv. The differences between Acts and Bills

Before we start with a discussion of the Communal Land Reform Act, it is important to understand what an Act of Parliament (or "an Act" for short) actually is. An **Act** is a law that deals with a specific topic. It regulates matters relating to that topic. For example, the Communal Land Reform Act deals with matters relating to communal land reform.

Acts become laws in the following way:

1. A **Bill**, which is called the "draft legislation", is tabled in Parliament where the National Assembly and the National Council debate it.
2. Once both Houses accept it, we say the Bill has been **passed** by Parliament.
3. After a Bill has been passed, it is sent to the President for signature, whereafter it becomes an **Act of Parliament**. The Act usually becomes binding (legally enforceable) upon signature by the President, but many Acts state that they will commence (become operational) on a date to be announced in the Government Gazette.

The Government Gazette is an official government publication in which new legislation, notices and regulations are published. Publication in the gazette serves as proof of the existence of legislation and informs the public of its existence.

Chapter I PRELIMINARY

Section 1: Definitions

Section 1 of the Communal Land Reform Act contains the definitions of the terms used throughout the Act. If you are not sure what is meant by a particular term used in this guide, refer to this section to see if the term is described here. We have also included a glossary at the front of this guide.

If the Act talks of the **Board**, it refers to a Communal Land Board as established under the Act, and the **Board's area** is the area for which the particular Board is responsible.

A **Chief** is the person who has been recognised under the Traditional Authorities Act, Act No 25 of 2000, as the Chief of the particular traditional community.

The **commonage** is the common grazing area for the livestock of the members of a traditional community.

The **communal area** of a traditional community is that part of the communal land which is inhabited by the members of that community.

Communal land is the area of land described in Schedule 1 of the Act, plus the additions to it and withdrawals from it, which have been announced by the President.

Customary land rights include the following rights:

- The right to a farming unit.
- The right to a residential unit.
- The right to any other form of customary tenure that may be recognised and described by the Minister in the Government Gazette.

A **farming unit** is an area of land given under the Act for farming purposes. It must be of a particular size to comply with the Act.

A **leaseholder** is the person who has been granted a right of leasehold to a particular area of communal land.

Whenever the Act refers to the **Minister**, it means the Minister of Lands, Resettlement and Rehabilitation.

The **Permanent Secretary** means the Permanent Secretary for the Ministry of Lands, Resettlement and Rehabilitation.

A **Region** is one of the 13 regions in Namibia that are recognised under the Regional Councils Act, Act No 22 of 1992.

A **Regional Council** is the Council established under the Regional Councils Act that is responsible for a particular region.

A **residential unit** is a portion of land given under the Act for residential purposes. The size of the unit must comply with the size for residential units prescribed under the Act.

A **right of leasehold** is the right to lease a portion of communal land under this Act.

A **spouse** includes the spouses (husband and wife) in a civil marriage or the husband and wife in a customary marriage, regardless of whether the customary marriage is registered or not. **Marriage** for the purposes of this Act includes both civil and customary law marriages.

The **Traditional Authority** means the traditional leaders of a particular traditional community who have been recognised as traditional leaders under the Traditional Authorities Act.

A **traditional community** has the same meaning as a traditional community under the Traditional Authorities Act. This basically means that members of the community share common ancestry, language, culture, customs and traditions. They recognise a common traditional authority and inhabit a common communal area. Members residing outside the common communal area are still members of a traditional community.

Chapter II COMMUNAL LAND BOARDS

Section 2: Establishment of Communal Land Boards

Section 2 provides for the establishment of Communal Land Boards by the Minister. The Minister must establish Communal Land Boards for particular areas, but only after consultations with the Traditional Authorities that will be affected by the creation of the Communal Land Boards. Communal Land Boards can cover:

- The whole region in which the communal land is situated, for example, the whole of Omusati Region.
- A specific part of a region.
- specified areas of two or more regions.

The Minister must **consult** with the relevant Traditional Authorities when:

- establishing a Communal Land Board. or
- changing the boundaries of the area of a Communal Land Board.

Safeguards:

- The Minister must publish the establishment of every Communal Land Board and its area of operations in the Government Gazette.
- All changes in the boundaries of the area of a Communal Land Board must also be published.

Section 3: Functions of Communal Land Boards

The Act sets out the functions of Communal Land Boards. Communal Land Boards must:

- Control the allocation and cancellation of customary land rights by Chiefs or Traditional Authorities.
- Decide on applications for rights of leasehold.

- Create and maintain registers for the allocation, transfer and cancellation of customary land rights and rights of leasehold.
- Advise the Minister on regulations to be made to meet the objectives of the Act.
- Give effect to the provisions of this Act.

Important point

Communal Land Boards may only do what the Act allows them to do. Any actions that are not allowed by the Act are outside of the Board's powers, and therefore invalid.

Section 4: Composition of Boards

Who are the members of a Communal Land Board?

A Communal Land Board will have the following members:

- One representative from each Traditional Authority within the area of the Board.
- One person representing the organised farming community within the area of the Board.
- The regional officer of the particular region/s affected by the Communal Land Board.
- Four women. Two must farm in the Board's area and two must have experience relevant to the functions of a board.
- If there is a conservancy in the area, one person must be nominated by that conservancy. Where there is more than one conservancy in the Board's area, they must jointly nominate a member to represent them on the Board.
- Four staff members from the Public Service, respectively nominated by:
 - The Minister of Regional and Local Government and Housing.
 - The Minister of Lands, Resettlement and Rehabilitation.
 - The Minister of Agriculture, Rural Development and Water.
 - The Minister of Environment and Tourism.

The Minister must, in **writing**, request the four Ministers, the Traditional Authority (or Authorities) and the conservancy (or conservancies) concerned to nominate people to be appointed to the Board. If the Traditional Authority or the conservancy should fail to nominate someone, the Minister may appoint any suitable person.

The members of the Board must elect the **chairperson**.

Board members serve for a period of three years and may be reappointed to the Board in terms of section 6. However, members may be **removed** from the Board under the following circumstances:

- If they resign in writing.
- If they become disqualified to hold office. For example, if the member becomes a member of the National Assembly. (See the box on the next page for more details.)
- If they miss three consecutive meetings of the Board.



*Chief John Arnold,
Chief of the !Kung
consulting community
members at Aasvoëlnes.
Photograph by WIMSA.*

- If their nominating authority withdraws its nomination in writing. For example, if the conservancy nominates Lydia to be a member of the Board but later decides that it wants another representative on the Board, it must write a letter to inform the Minister of this state of affairs.
- If they become mentally or physically incapacitated to do their job.

Where a vacancy arises, another person must be appointed to fill the vacancy for the unexpired part of the term of office of the vacating member.

The chairperson may be removed from this position when two-thirds of the Board decide that this should happen.

Section 7: Meetings of the Board

This section regulates the meetings of the Board and tells us how the Board should go about taking decisions and doing its job.

The Minister must call the first meeting of the Communal Land Board. Thereafter, the Board must meet every two months. Special meetings may be called either by the Minister or by the chairperson, if the Minister agrees.

The Act gives directions on how many Board members should be present to take a legally binding decision. The Act says that the majority of Board members must be present to form a quorum².

Disqualifications

The following people may not be members of a Communal Land Board:

- A member of the National Assembly or a Regional Council.
- A Chief.
- An unrehabilitated insolvent.¹
- A person who has been found guilty of a criminal offence and sentenced to imprisonment without the option of paying a fine.

¹ A person who has been declared bankrupt by the court. A person is "rehabilitated" when such a person applies to the court to reverse their insolvent status. If the court grants the application, this person becomes rehabilitated and can be a member of the Board.

² The number of people that have to be present at a Board meeting to take legally binding decisions.

Decisions are taken by a majority of votes. In other words, a decision is taken if most of the members present vote in favour of the decision. The chairperson has a casting vote if there is no majority decision. The chairperson presides over the meetings. In the chairperson's absence, the members present at the meeting elect one of their number to be chairperson for that particular meeting.

With the approval of the Minister, the Board may invite two people with relevant knowledge and experience to assist it. These people may not vote at meetings.

Regulation 34 describes the functions of the secretary of the Board. The secretary must:

- Act as the accounting officer of the Board.
- Provide secretarial services and keep minutes of meetings.
- Implement the decisions of the Board.
- Supervise the administrative staff of the Board.

Minutes (records) must be taken at all Communal Land Board meetings.

Section 8: Committees

Communal Land Boards may establish committees consisting of members of the Board to advise the Board on specific matters.

Section 9: Disclosure of interest

The purpose of this section is to protect the Board and the people who fall under the area of the Board from the influence of a Board member who has a particular interest in a matter.

When a member has an interest in a matter that is discussed by the Board or a committee, he or she must disclose his or her interest and leave the meeting, so that the other members can decide whether there is a **conflict of interest**. If it is decided that a conflict of interest exists, the particular member may not participate in the discussion.

If it turns out that a person did not disclose her or his interest during the discussion of a particular issue, the decision of the Board or committee will be invalid and they will then have to review the decision to see if it was influenced by the member who had the interest in the matter. Deliberately failing to disclose interest is a criminal offence punishable by a fine of up to N\$8 000 or 2 years' imprisonment, or both.

Example:

Conflict of interest

The Board must decide what to do with fences that have been erected on communal lands without permission. Eliphas has fenced off his farm of 2000 hectares, which is situated in a communal area. Eliphas is also a member of the Communal Land Board.

It is clear that Eliphas has an interest in the matter because of the fence that he has erected. The Board's decision will have an impact on his fence.

Eliphas must declare his interest in the matter, namely that he has fenced off his farm, and leave the meeting so that the Board can decide on the matter.

Section 10: Remuneration (payment of Board members)

Members of the Board who are not working for the government will be paid for their services. The Minister will decide what their allowances will be. Allowances may differ according to the different positions on a Board. For example, the chairperson may get a higher allowance than an ordinary member of the Board.

Section 11: Financing of Boards

Communal Land Boards will be funded by money allocated by Parliament for this purpose.

Section 12: Performance of administrative work

The administrative work of Communal Land Boards will be performed by Public Service employees, made available by the Permanent Secretary of the Ministry of Lands, Resettlement and Rehabilitation, or by employees of the Regional Council. Either the Permanent Secretary or the Regional Council must appoint the secretary of the Board.

Section 13: Annual report

Communal Land Boards must compile reports of their activities every year and submit the reports to the Minister of Lands, Resettlement and Rehabilitation no later than 31 January of each year. The Minister must table (hand in) copies of these reports at the National Assembly within 28 days of receiving them.

What is the purpose of tabling annual reports in the National Assembly?

Tabling reports allows government to:

- determine whether the Communal Land Boards are performing their functions,
- determine whether public money is well spent,
- determine whether communal land reform is being achieved through the activities of the Communal Land Boards, and
- promote transparency, democracy and good governance by giving the public insight into the affairs of Communal Land Boards.

Section 14: Limitation of liability

Chiefs, Traditional Authorities and members of Communal Land Boards are not **personally liable** for any acts performed in good faith in the exercise of their duties under this Act.

Why limit personal liability?

Personal liability means that we are all liable for our actions. For example, if Petrus causes an accident with his car, he is responsible for the damages to the other person's car. Similarly, we are responsible for our decisions and are held accountable for them.

However, because the Chief, Traditional Authority or members of the Communal Land Board perform an official function, they are only liable in their official capacities. Limiting personal liability ensures that people can perform their functions better, because they do

not have to worry about their personal liability while performing their official functions. For example, Rosalia, a Board member, would not be personally liable if she was driving a Board vehicle when she was involved in an accident if she was on official business. The Board would be liable.

The limitation of personal liability depends on the officials acting in **good faith**. In other words, Board members must be unbiased when deciding issues and they must decide matters after having considered all relevant information. They must also be able to give reasons for their decisions.

Chapter III COMMUNAL LAND AREAS

Section 15: Extent of communal land

Section 15 states which areas form part of the communal land as described in Schedule 1 of the Act.

Section 16: Establishment of new communal land areas and additions to or subtractions from communal land areas

Under section 16, with the approval of the National Assembly, the President may by proclamation:

- **declare** any defined State land to be communal land,
- **add** any State land to an existing communal land area, or
- **withdraw** a defined area from communal land, provided that the State has:
 - acquired all the **rights** of people affected by the withdrawal (such as customary land rights and rights of leasehold), and
 - paid **just compensation** for these rights.

When land is **withdrawn**, it becomes State land and can be disposed of as State-owned land.

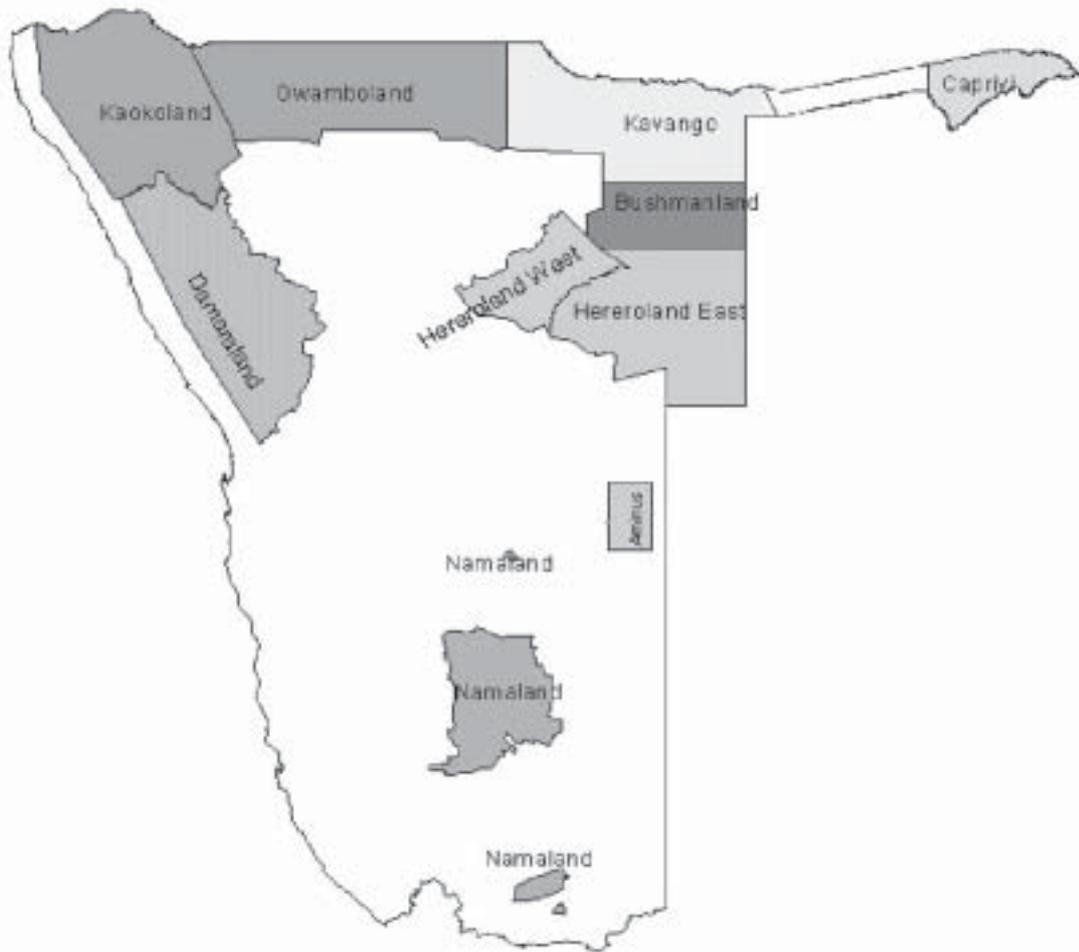
Compensation is determined either by **agreement** between the person whose rights are acquired and the Minister, or by **arbitration** under the Arbitration Act of 1965.

When new communal land is created, added or withdrawn, the changes must be made to Schedule 1 of the Act.



Fencing in of portions of communal lands will now be controlled by the Communal Land Boards. Photograph by NNFU.

Communal Areas in Namibia



Section 18: Prohibition against fences

The Act takes a strong position against the erection of fences on communal lands. No **new** fences may be erected **without proper authorisation** obtained in accordance with the Act. Similarly, fences that **exist** at the time that the Act came into operation have to be removed, unless the people who erected these fences applied for and were granted permission to keep the fences on the land. For the purposes of this section, the Act came into operation on 1 March 2003. (See Government Notice 34 of 2003.) This means that from 1 March 2003 no new fences may be erected and fences may only be retained if authorisation is sought and granted under the Act.

See sections 28 and 35 for details on how to apply for authorisation to keep an existing fence.

Chapter IV

ALLOCATION OF RIGHTS IN RESPECT OF COMMUNAL LAND

Section 19: Rights that may be allocated

The following rights may be allocated (granted) under the Act:

- Customary land rights, which cover the following rights (see section 21):
 - a right to a **farming unit**,
 - a right to a **residential unit**,
 - a right to **any other form of customary tenure** that is recognised and described by the Minister in the Government Gazette.
- Rights of leasehold.

What does a right to any other form of customary tenure mean?

At the moment, the Act only recognises two forms of customary land rights, namely the right to an area on which a person can farm (a farming unit) and an area where a person can build her or his house (a residential unit).

It may well be that in future these rights to a farming unit and to a residential unit may not be sufficient for all land use purposes, particularly if one looks at the land use requirements of the different traditional communities in Namibia. The Act therefore allows the Minister flexibility to recognise and prescribe the right to other forms of customary tenure in future.

Part 1 – Customary land rights and grazing rights

Section 20: Primary power to allocate and cancel customary land rights

The Chief of a traditional community, or if the Chief so decides, the Traditional Authority of the particular community, has the **primary power** to allocate or cancel any customary land rights. This means that the Chief or Traditional Authority first must decide whether or not



A residential unit in the Nhoma-Tsumkwe district. Photograph by Richard Paklepa.

to grant an application for a customary land right. Only once this decision has been made will the matter be referred to the Communal Land Board for ratification (acceptance) of the decision by the Chief or Traditional Authority.

Section 21: What powers does the Chief or the Traditional Authority have when considering an application?

The Chief or Traditional Authority may:

- **investigate** the matter and consult people regarding the application, or
- **hold** a hearing if a member of the community objects to the allocation of the customary land right. At this hearing, both the applicant and the objector should be given the chance to state their reasons for and against the application.

Once the Chief or Traditional Authority has considered the matter, they may either:

- **refuse** the application, or
- **grant** the application.

When the application for a **farming unit or residential unit** is granted, the Chief or Traditional Authority may:

- allocate the right to the specific area of land applied for,
- allocate the right to another area of land by agreement with the applicant,
- determine the size and boundaries of the area of land for which the right has been granted.

Section 22: How does a person apply for a customary land right?

An application for a customary land right must be made:

- in **writing**,
- on the **prescribed form**,
- and **handed** to the Chief of the traditional community where the land is situated.

This application must contain all the **relevant documentation** that the Chief or the Traditional Authority may require in order to decide the matter.

How to apply for a customary land right in a communal area:

See Annexure 1 and Regulation 2 for the prescribed application procedure.

Section 23: Limitation of the size of land held under customary land rights

The Act sets a limit on the size of the land that may be allocated and acquired as a customary land right. If the land applied for exceeds this size, the Minister must approve the allocation in writing.

The Minister may prescribe the maximum area after consultations with the Minister responsible for agricultural affairs as stated in the Act. When prescribing a maximum size, the Minister may consider the following factors:

- The **area** where the land is situated.
- The **purpose** for which the land will be used.
- The fact that the applicant holds **other lands** for similar purposes as the land applied for under a customary land right - whether communal land or not. For example, if the applicant leases 2 000 hectares of commercial land for farming purposes, this may be taken into consideration when deciding on the maximum size of the land that may be allocated to the applicant under a customary land right for a farming unit.

Under Regulation 3, the Minister has set the maximum size of the land that may be allocated under a customary land right at **20 hectares**.



Women farmers working the land for gardening. Photograph by NDT.

Section 24: Ratification of allocation of customary land rights

Bearing in mind that the Chief or the Traditional Authority has the primary power to allocate customary land rights, an allocation of a customary land right by the Chief or the Traditional Authority is not sufficient to give the applicant the right to use the land. Before the applicant may do so, the Communal Land Board in which area the traditional community is situated must **ratify** (confirm) the allocation before it is legally valid.

How is the allocation of a customary land right ratified?

1. The Chief or the Traditional Authority must, within 30 days of allocating a customary land right, **inform** the Board of the allocation and it must provide the Board with all the **information** about the allocation. See Regulation 4 for the information that should be provided to the Board.
2. The Board must **decide** whether the Chief or the Traditional Authority made the allocation in accordance with the provisions of the Act. To do this, the Board may enquire into the matter and consult with other people.

What powers does the Communal Land Board have regarding an allocated customary land right?

1. The Board must **ratify** the allocation if it is satisfied that the allocation was properly made.
2. The Board may **refer the matter back** to the Chief or Traditional Authority to decide the matter again, considering the comments made by the Board.
3. The Board must **veto** (refuse) the allocation if:
 - the right has been allocated for an area of land over which another person has rights,
 - the size of land allocated exceeds the maximum prescribed size, or
 - the right has been allocated for land that is reserved for common usage or for any other purpose in the public interest.
4. The Board must give **written reasons** to the applicant and the Chief or Traditional Authority when it vetoes an allocation of a customary land right.

Safeguard:

The Board must give **written reasons** to the applicant and the Chief or Traditional Authority when it vetoes an allocation of a customary land right. With this information, the applicant can decide whether the Board has considered all the relevant factors when it decided not to ratify the allocation. If the applicant decides to take the matter on review to the High Court, so that the Court can consider whether the Board had considered the matter fairly, the applicant must use the reasons given for the refusal to ratify the allocation as the basis for the review procedures.

Section 25: Registration of customary land rights

What happens after the Communal Land Board has ratified the allocation of a customary land right?

The Board must:

1. Ensure that the right is **registered** in the correct register in the name of the applicant. Regulation 5 describes the information that should be included in the register.
2. **Issue** a certificate of registration to the applicant. This certificate of registration must look like Form 2 in the regulations.
3. Keep a **duplicate copy** of all certificates of registration.

Section 26: Duration of a customary land right

For what period of time is a customary land right granted?

1. A customary land right lasts for the **natural life** of the person. It comes to an end only when the person dies.
2. The rights holder may, however, decide to give up the right before he or she dies. We say that the person may **relinquish** the right.

What happens if the person to whom the right was allocated dies?

1. The right immediately reverts (goes back) to the Chief or Traditional Authority for **re-allocation**.
2. The Chief or Traditional Authority must allocate the right to:
 - The **surviving spouse**. The surviving spouse must consent to the allocation of the right to her/him; or
 - A **child** of the deceased if there is no surviving spouse or if the spouse does not accept the allocation of the right.*

What happens if the right is allocated to the surviving spouse, who marries again and then dies?

1. The right reverts to the Chief or Traditional Authority for re-allocation to either:
 - The **surviving spouse** of the second or further marriage, but only if that spouse consents to the allocation of the right; or
 - If there is no surviving spouse, or if the spouse refuses the allocation, the **child** of either the first

* CAUTION

The Act states that the right should be allocated to such a child of the deceased as the Chief or Traditional Authority determines to be entitled to the allocation in accordance with customary law. This provision can work to discriminate against girls and the younger sons of the deceased, as most customary law systems follow the rule of male primogeniture, i.e. the eldest son inherits the assets of the deceased. Following customary law strictly under these circumstances will not promote gender equality, and will not improve the position of girls in traditional communities and in society. This provision may also discriminate against children born outside marriage.

or a later marriage. Again, the Chief or Traditional Authority must determine which child is entitled to the allocation of the right in accordance with customary law. (See CAUTION box on previous page.)

What happens when the surviving spouse of a second or later marriage, to whom the customary land right has been allocated as outlined above, dies?

1. The right **reverts** to the Chief or Traditional Authority who determines to whom the right must be allocated. Before allocating the right, the Chief or Traditional Authority must **consult** the members of the family or families concerned, in accordance with customary law.
2. The following people may be considered:
 - The surviving spouse of the deceased person who was allocated the right on the basis that he or she was married to the original holder of the right.
 - Any child of any of the marriages mentioned above.
 - Any other person.

Take Note:

An adopted child is regarded as a child for the purposes of allocation of a customary land right under this section. This means that an adopted child can also qualify to be allocated a customary land right in the case of the death of the rights holder.

What happens when there is no surviving spouse or any children to whom the right can be allocated, or if the surviving spouse and children refuse to accept the allocation of the customary land right?

The customary land right becomes **available** for the Chief or Traditional Authority to allocate to any person.

Example:

A customary land right was allocated to Hendrik, who is married to Liesbet. Hendrik dies. What happens to the right?

The right reverts to the Chief or Traditional Authority of the community where they live for re-allocation. The Chief offers the right to Liesbet. She can accept the allocation, in which case the customary land right must be registered in her name. If she refuses it, the Chief will see if the couple had children, and in accordance with customary law, will decide to which child the right should be allocated.

Let's say Liesbet accepts the allocation of the land right. After a few years, she marries Moses. What happens when she dies?

The right reverts to the Chief or Traditional Authority for re-allocation. The right will be offered to Moses. If he declines, the right will be offered to a child of either the first or second marriage, who, according to the Chief or Traditional Authority, is entitled to the allocation of the right in accordance with customary law.

What happens if Moses accepts the allocation of the right, marries Sophie and then dies?

The right **reverts** to the Chief or Traditional Authority who must determine to whom the right should be allocated. **Before** allocating the right, the Chief or Traditional Authority **must consult** the members of the family or families concerned, in accordance with customary law. The following people may be considered to receive the allocation of the right:

1. Moses' surviving spouse Sophie, because she was married to Moses when he held the right.
2. Any child of any of the three marriages mentioned above (Liesbet's marriage to Hendrik, her marriage to Moses or Moses' marriage to Sophie).
3. Any other person.

Section 27: Cancellation of customary land right

The Act provides that a Chief or Traditional Authority may cancel a customary land right – even a right that has existed since before the Act came into operation.

Under what circumstances may a Chief or Traditional Authority cancel a customary land right?

A Chief or Traditional Authority may cancel a customary land right under the following circumstances:

1. If the holder of the right **fails** to comply in a material respect with a condition or restriction attached to the right. For example, if it is a right to a residential unit, the holder may not use the land to build and operate a hotel.
2. If the right is used for a purpose that is **not recognised** under customary law, i.e. not for farming or residential purposes.
3. If there are **any other prescribed grounds** on which the right may be cancelled.

What safeguards does the holder of a customary land right have against the cancellation of this right?

The cancellation of a customary land right must be made in accordance with customary law.

The cancellation has no legal effect unless the Communal Land Board ratifies (confirms) it.



Regulation 6 lists further grounds for the cancellation of a customary land right:

1. If the right was obtained through fraud.

Goat farming in the Omatako Valley.

Photograph by WIMSA.

2. If the right was obtained not in accordance with the Act.
3. If the land has not been utilised for a period of three years.
4. If the right was previously allocated to another person, and this allocation has not come to an end according to the provisions of the Act.

What happens when the Chief or the Traditional Authority has cancelled the customary land right?

1. The Chief or Traditional Authority must **inform** the Communal Land Board of the cancellation immediately, providing the required information.
2. If the Board is satisfied that the cancellation was properly done, it must ratify the cancellation.
3. The Board must see to it that the cancellation is **entered** in the register.

See Regulation 6 for more information on the cancellation of customary land rights.

Section 28: Recognition of existing customary land rights

The Act does not only deal with customary land rights to be allocated once the Act has come into operation. It also deals with *existing customary land rights* which are those land rights that existed when the Act came into operation.

People holding existing rights to occupy or use communal land will continue to hold their rights, unless:

1. The person's claim to the right to occupy the particular land is **rejected** when he or she applies for recognition of the right by the Communal Land Board.
2. The land reverts to the State because the right-holder **has not applied in time** for the recognition and registration of the land right.



All land use rights, such as grazing rights, must be registered in terms of the Act.

Photograph by NNFU.

How should a person have existing customary land rights recognised under the Act?

1. The person should **apply** to the Communal Land Board of the area in which the land is situated for **recognition and registration** of the right under the Act. 1. This application must be on Form 3, which is set out in the regulations.
2. In Government Notices 35 and 36 of 2003, the Minister announced that the date from which people who hold customary land rights should start applying for recognition and registration of their existing customary land rights was 1 March 2003. (For our purposes, let's call this date the "starting date for applications".)
3. In terms of section 37, a Board may refer the matter to an investigating committee to investigate the matter before the Board makes a final decision.

Take Note:

Customary land right holders must apply for recognition and registration of their existing customary land rights within **three** years of 1 March 2003. The Minister may extend this period in a public notice.

If a person wants to apply for authorisation to keep an existing fence when the Act comes into operation, what should he or she do?

(Remember that In terms of the Act, putting up new fences and keeping existing fences must be specifically authorised in terms of the Act.)

1. **Apply** to the Communal Land Board in which area the fenced land is situated for authorisation to retain (keep) the fence using Form 3. (See the regulations.)
2. The Minister announced 1 March 2003 as the date from which people who wish to keep existing fences could start applying for authorisation to do so. (For our purposes, let's call this date the starting date for fencing applications.) See Government Notice 36 of 2003 in this regard.
3. In terms of section 37, a Board may refer the matter to an investigating committee to investigate the matter before the Board makes a final decision.

Take Note:

People wishing to apply for authorisation to keep fences must do so within **three** years of 1 March 2003. The Minister may issue a public notice extending this period.

What information should be given when applying for the recognition and registration of an existing customary land right, or for authorisation to keep fences?

1. Any **documentary evidence** supporting the application. For example, community members may write a letter saying that the applicant has been residing on the particular piece of land for a long period of time.
2. A **letter from the Chief or Traditional Authority** setting out the information that is required under regulations still to be issued by the Minister.
3. Any other documents or information that the Board may require.

What happens when a person applies for the recognition and registration of an existing customary land right after the expiry of the period mentioned above?

See Regulation 7 for further information regarding the application process.

1. If the person can show **good cause** (give good reasons) why his or her application is late, the Minister may allow the application.
2. If good reasons cannot be given, the person will be deemed (regarded) to have **relinquished** (given up) their right to the land.
3. In such a case, the land will **revert** (return) to the State and become available for allocation under this Act.

What powers does a Communal Land Board have with regard to applications for the recognition and registration of existing customary land rights?

1. The Board may **investigate** the matter and may **consult** with other people to establish the facts of the matter, such as:
 - When and how the right was acquired.
 - Whether other people claim any rights to the same land.
 - Whether the size of the land complies with the maximum size of land prescribed by the Minister.
 - The boundaries of the land.
2. If **satisfied** with the validity (correctness) of the claim to the existing customary land right, the Board must:
 - **Recognise** the applicant's right to the land.
 - Ensure that particulars of the right are **recorded** in the register in accordance with Regulation 8.
 - **Issue** a certificate of registration (Form 4 in the regulations) to the applicant.
3. If there are conflicting claims to the particular land or if the Board reasonably doubts the validity of the applicant's claim, the Board must hold a hearing. Following the hearing the Board may:
 - **Confirm** the claim.
 - **Confirm** the claim **subject to variations** determined by the Board, such as to the size and the boundaries of the claim.
 - Allocate a right to an **alternative area** of land if the applicant's claim encroaches on the commonage.
 - **Reject** the claim.
 - **Refer the matter back** to the Chief or Traditional Authority to consider whether the applicant should be allocated a customary land right, either with regard to the land to which the application relates or to an alternative portion

of land. The Chief or Traditional Authority must then decide the matter as if it were a new application for allocation of a customary land right.

Regulation 9 describes the process that must be followed when holding a hearing to determine conflicting claims with regard to existing customary land rights.



In terms of the Act, commonage, such as grazing rights, must be registered.

Photograph by NNFU.

What happens when the person who is the holder of a customary land right dies?

There are two possible situations.

1. The right holder dies during the time period, but without having applied for the recognition of the right. The Act gives the surviving spouse the right to make the application as if the surviving spouse had the right to do so (as if the surviving spouse were the actual holder of the right). If there is no surviving spouse, the Board may allow a child of the deceased to apply for the recognition of the right, after consultations with the Chief or Traditional Authority.
2. The existing holder of the right applies for recognition of the customary land right *within* the time period given by the Minister, but dies before the matter is decided. The application will then be regarded as having been made by the surviving spouse or in the absence of a surviving spouse, a child who has been approved by the Chief or Traditional Authority.

See Annexure 2 for the application procedure under section 28.

What about existing fences?

People who have existing fences must apply to the Communal Land Board for **authorisation** to keep the fences. (Regulation 7 gives more information on how to apply to retain fences.)

What powers does a Communal Land Board have regarding fences?

1. The Board **may consult** with the Chief on the question of the fence if the Board considers it necessary to do so.
2. The Board **must grant** the application for authorisation to keep the fence if the Board **is satisfied** that:
 - the fence was erected in accordance with customary law or any other statute law,
 - the fence will not unreasonably interfere with or restrict the use and enjoyment of the commonage by the other members of the community, and
 - there are reasonable grounds why the applicant should be allowed to retain the fence.
3. The Board **may impose** certain conditions when it allows the fence to remain on the land.

Section 29: Grazing rights

The Act has provisions on the grazing rights and the use of the commonage.

The **commonage** of a traditional community is available for use by the lawful residents for the grazing of their stock. This right belongs to any resident of the community and is a right that comes with no restrictions.

Grazing rights on the commonage may be **limited** or even **withdrawn** under certain situations.

Under what circumstances may grazing rights be limited?

The right to use the commonage may be limited by:

1. The **conditions** that the Chief or Traditional Authority may impose, including conditions regarding:
 - the kind and number of stock that may graze on the commonage. In terms of Regulation 10, lawful residents may not have more than 300 large livestock or more than 1800 small livestock grazing on the commonage at any time.
 - the area or areas of the commonage where the stock may be grazed, as well as the rotation of grazing over different areas.
2. The right of the Chief, Traditional Authority or the Communal Land Board to use any part of the commonage for the **allocation of a right** under this Act.
3. Regulation 10 prohibits a lawful resident of a community who owns or hires any agricultural land from grazing livestock on the commonage.
4. The right of the President to **withdraw and reserve** any portion of the commonage for any purpose in the **public interest**.

Under what circumstances may a Chief or Traditional Authority withdraw a resident's grazing rights?

A Chief or Traditional Authority may withdraw a resident's grazing rights when:

1. He or she **fails to observe** the conditions imposed regarding the use of the commonage, for example when the resident has more than the prescribed number of cattle grazing on the commonage.
2. He or she has a right to **any other land**, whether communal or not, which is of the same size or larger than the maximum size prescribed by the Minister under section 23. The Chief or Traditional Authority must also make sure that this other land has enough grazing for the person's stock.
3. He or she does any of the following **prohibited acts**, unless the Chief or Traditional Authority has given their written permission and this permission was ratified by the Communal Land Board:
 - Erects or occupies any **building or structure** on the commonage.
 - **Ploughs or cultivates** any portion of the commonage.
 - **Lives on or occupies** any part of the commonage.
 - **Obstructs the ways to any watering place** on the commonage, or somehow interferes with the use of watering places or damages them.
 - Does something other than allowing lawful grazing on the commonage that **prevents or restricts** the other residents' rights to grazing.

Take Note:

Committing any of these prohibited acts is a *criminal offence*, for which a person can be fined a maximum of N\$4 000 or imprisonment for a period not exceeding one year.

May a person who is not a resident of a traditional community be granted a grazing right?

Yes. The non-resident must **apply** for a grazing right to the Chief or Traditional Authority. Once granted, the grazing right will be subject to the conditions imposed by the Chief or Traditional Authority.

The Chief or Traditional Authority may also **withdraw** this right at any time if this is in the interests of the residents, because of drought or any other reasonable cause.

Part 2 – Right of leasehold

Section 30: Power to grant right of leasehold

Communal Land Boards have the power to grant rights of leasehold to any portion of communal land, but this right of leasehold may only be granted if the Traditional Authority of the traditional community in whose communal area the land is situated **consents** to the right of leasehold.

What happens if a Traditional Authority refuses to consent to the grant of a right of leasehold?

If the Communal Land Board believes that consent should have been given, it may submit the matter to an **arbitrator** for decision. An arbitrator is appointed to hear the dispute between the Communal Land Board and the Traditional Authority and to decide which party is correct. If the arbitrator thinks that the Traditional Authority has unreasonably refused to give consent, the arbitrator has the power to give consent in the place of the Traditional Authority. (See Regulation 29, which requires that Form 16 should be used to refer a matter to arbitration.)

How is an arbitrator appointed?

1. The Minister must appoint an arbitrator who has been approved by both the Board and the Traditional Authority to hear the dispute. The arbitrator will decide which of the parties is correct.
2. Once informed of the name and qualifications of the proposed arbitrator, the Board or the Traditional Authority has 30 days to inform the Minister of the decision. If they fail to do so, or if they disapprove of the proposed appointment more than twice, the Minister may disregard the requirement for approval by both parties. When this happens, the Minister may appoint the arbitrator without getting the required approval from either the Board or the Traditional Authority.

Rights of leasehold for agricultural purposes

It seems that rights of leasehold generally cover situations that fall outside customary allocations of communal land, such as the allocation of grazing rights and the allocation of land for residential or farming purposes. This interpretation would cover aspects such as the granting of a PTO (permission-to-occupy) for a tourist camp or for the granting of a PTO for a sugar project.

The Act draws a distinction between rights of leasehold and rights of leasehold for agricultural purposes. A right of leasehold for agricultural purposes may only be granted in respect of land that is situated within a **designated area**. A designated area is an area specified by the Minister in the Government Gazette in respect of which a Communal Land Board may grant

What happens when the Traditional Authority refuses to consent to the granting of a right of leasehold?

If the Communal Land Board thinks consent should have been given, the Board may submit the matter to an arbitrator for decision. If the arbitrator is satisfied that the Traditional Authority has unreasonably refused to give consent, she or he has the power to give consent in the place of the Traditional Authority.

rights of leasehold for agricultural purposes. This land is identified after consultations with the concerned Traditional Authority and the Communal Land Board.

But the Act also provides for exceptions to the rule that rights of leasehold for agricultural purposes may only be granted with respect to lands situated in designated areas. When a person wishes to be granted a right of leasehold for agricultural purposes to land that is situated wholly or partly outside an area designated for agricultural purposes, he or she may apply to the Minister for approval on Form 6 (see Regulation 12). After consultations with the Traditional Authority and the relevant Communal Land Board, the Minister may allow the application, but only if the Minister is satisfied that:

- the granting of the right of leasehold will not *unreasonably interfere* with or restrict the use of the commonage by members of the traditional community, and
- *good reasons* exist why the application should be approved.

Section 31: Application for right of leasehold

How do you apply for a right of leasehold on communal land?

1. The application must be made to the *Communal Land Board* of the area in which the land is situated.
2. The application must be made on Form 5. (See Regulation 11 for further details.)
3. A right of leasehold may not be granted over land to which someone else has a customary land right. However, the holder of the customary land right may agree to give up his or her right to the land subject to:
 - the payment of **agreed compensation**, and
 - suitable arrangements for her or his **resettlement** on alternative land.
4. The Communal Land Board can grant a right of leasehold as it thinks fit, provided the Traditional Authority consents thereto. However, under the following circumstances the Minister must give written approval **before** the Board may grant a right of leasehold:
 - Where the land **exceeds** the maximum size prescribed for the particular use. The maximum size of land is 50 hectares, as prescribed in Regulation 13. For example, if the right of leasehold is granted for a community campsite and the area is larger than 50 hectares, the Minister must approve the application in writing before the right to leasehold is granted.

See Annexure 3 for the application procedure.

Defeating the objects of a conservancy management plan

As part of its management plan, a conservancy runs a community campsite close to a beautiful waterfall. Granting a right of leasehold to someone else over the area within which the waterfall lies would clearly defeat the objectives of the management plan, as the community would no longer get the benefits of the campsite. In such a case, the Communal Land Board may not grant an application for a right of leasehold.

- Where the applicant is a leaseholder under this Act in respect of another piece of land.
- Where the applicant has an existing right over communal land that is not held under customary law, for example a PTO, unless recognition of the right is refused under section 35. (See discussion under section 35.)

What happens when the right of leasehold relates to land that forms part of a conservancy?

In such a case, the Communal Land Board must have regard to any management or utilisation plan decided upon by the conservancy committee. If the land applied for is to be used in a way that would **defeat** the objects of the management and utilisation plan, the Board **may not grant** the application.

Section 32: Conditions applicable to right of leasehold

What conditions must be fulfilled before a right of leasehold may be granted?

1. An **amount** must be paid to the Communal Land Board for the right of leasehold and for any improvements on the land. This amount is usually called **rent**. Regulation 14 lists the factors the Board must consider when deciding on the amount of rent payable for the right of leasehold.
2. If the amount is not paid immediately, the Board must be satisfied that the applicant has given security to guarantee that he or she will pay the amount upon registration of the right of leasehold.
3. The Board may allow the amount to be paid in **instalments**. In such a case, the applicant and the Board must agree to the instalment plan and the manner in which payment will take place.

How is the amount to be paid for a right of leasehold worked out?

The Minister must prescribe how the amount to be paid for the right of leasehold is to be determined.



Local Authority areas within the boundaries of communal land areas, such as Opuwo, do not form part of communal lands.

Photograph by NNFU.

What happens to the money paid for rights of leaseholds?

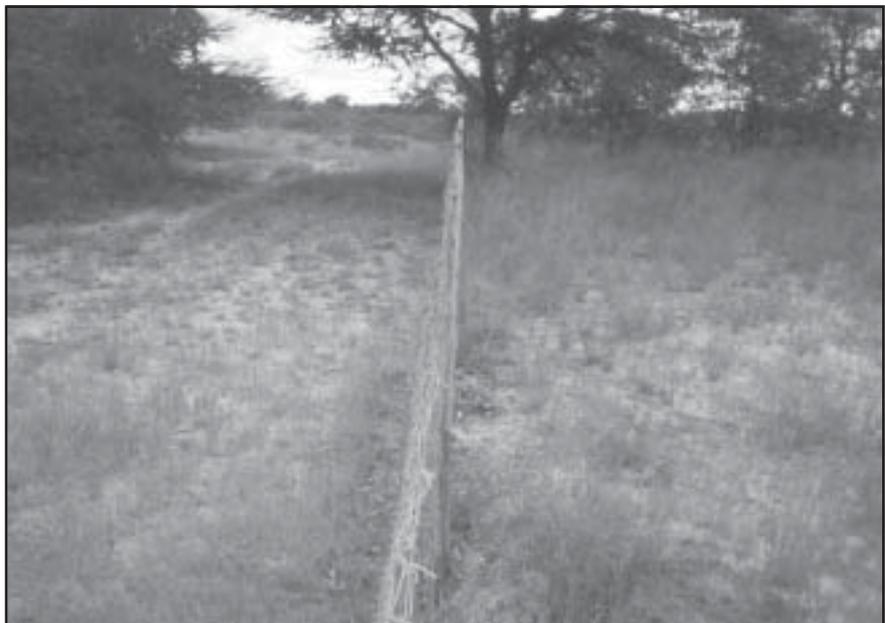
These amounts must be paid into a fund, established under law, for the purpose of regional development.

May conditions be imposed on a right of leasehold?

Yes. A right of leasehold is subject to general or specific conditions prescribed by the Minister. The Minister has specified the following conditions in Regulation 15:

1. The land may not be used for:
 - A purpose other than the one for which the lease was granted. For example, if the lease was granted for a campsite, it may not be used to build a factory.
 - A purpose that would contravene the Liquor Act, Act No 6 of 1998.
 - A purpose that would contravene laws dealing with dependence-producing drugs. For example, the leaseholder may not plant or sell dagga (marijuana) on the leased land.
2. A reasonable right of access to inspect the land and any buildings to ensure compliance with conditions.
3. The leaseholder is responsible for maintaining the beacons that show the boundaries of the land over which the leasehold is registered.
4. The leaseholder may not, without authorisation, close roads or paths over the leased land.
5. The leaseholder must personally run the business for which the right of leasehold was granted, or a director or member of the company or close corporation must run the business where a company or close corporation is the leaseholder.
6. When asked to do so by the Chief, Traditional Authority or the Board, the leaseholder must insure buildings on the leased land against fire.

Where a fence has been erected, authorisation must be obtained to retain it.



7. The leaseholder may not change any buildings or property that belong to the government without first getting permission from the Minister.
8. A Board may stipulate the way in which land must be surveyed.

May a right of leasehold be cancelled?

Yes. The Board may cancel a right of leasehold on various grounds which are set out in Regulation 15. These are:

1. Where the right was granted in error.
2. Where the right was obtained through fraud or misrepresentation.
3. If the leaseholder fails to:
 - comply with any of the conditions of the right of leasehold;
 - pay two consecutive instalments of the rent where the Board has agreed to the payment by instalment; or
 - pay the amount in rent within 30 days of receiving a written notice in this regard.
4. If the land is no longer used for the purpose for which the right of leasehold was granted
5. If the leaseholder is convicted of an offence of sedition or treason.

Under certain circumstances, the Minister may also cancel a right of leasehold for agricultural purposes where the land over which the right is granted is situated outside a designated area.

Section 33: Registration of rights of leasehold

What happens after a right of leasehold has been granted?

Once an application for a right of leasehold is granted, the Board must:

- Ensure that the right is **registered** in the prescribed register, in the name of the applicant in accordance with Regulation 16.
- Issue a **certificate of leasehold** to the applicant, either in the form of Part A of Form 7 (for purposes other than agricultural purposes outside a designated area) or Part B of Form 7 (agricultural purposes in a designated area).
- If the land in question has been **surveyed** under the Land Survey Act, Act No 33 of 1993, and the duration of the lease is for **ten years or more**, the right of leasehold must be **registered** under the Deeds Registries Act, Act No 47 of 1937.

Section 34: Duration of right of leasehold

What is the duration of a right of leasehold?

- The maximum period is 99 years, but the the person who applied for and received the right of leasehold and the Board must agree to the period.
- Leases for longer than ten years are not valid unless approved by the Minister.

Can a right of leasehold be renewed?

Yes. A Board and the leaseholder may agree to renew a right. But where the period agreed is longer than ten years, the Minister must approve the renewal.

Section 35: Existing rights to occupy communal land

This section deals with rights to communal land existing at the time of the commencement of the Act which are not recognised by customary law, but which have been granted under any other authority or law. An example of this sort of right is the PTO (Permission-to-Occupy). See Annexure 4 for the application procedure as well as Regulation 17 for the details of the application procedure.

How does the new Act affect these rights?

Right holders may **continue to occupy** the land under the same terms and conditions that applied prior to the Act until:

- the right is recognised and a right of leasehold granted,
- the person's claim to the land is rejected upon application,
- the person refuses or fails to accept an offer of a right of leasehold, or
- the land reverts to the State.

Public notifications by the Minister must be published in the Government Gazette and in any other manner considered effective by the Minister.

What should a right holder do to change an existing right under the Act?

A person who claims that he or she has an existing right must apply to the relevant Communal Land Board for recognition of the right.



Poor quality livestock is due perhaps to poor farming facilities.

The following steps must be followed when applying for recognition of the right:

1. The application must be made in the *prescribed form* (Form 8) *and manner*. (See Regulation 17 for further details.)
2. It must be made to the Communal Land Board responsible for the area in which the land is situated over which the right is claimed.
3. The application **must be made within a certain period of time**. The Minister will announce the date from which right holders must apply to have their rights recognised, from which date people will have 3 years to apply. The Minister may extend this period by issuing a public notice to this effect.

What may the existing right holder apply for?

The right holder may apply for:

1. **Recognition** of the right.
2. The **granting** of a right of leasehold.
3. Where a fence has been erected, **authorisation** to retain the fence, if the applicant so wishes.

What should be included in an application for the recognition of a right under this section?

1. **Any documentary evidence** in support of the claim, for example a letter by the Ministry saying that a person has the right to occupy the land on which a spring is situated.
2. A **letter** with the prescribed information* from the Chief or Traditional Authority of the particular traditional community where the land is situated.
3. **Any further information or documents** as the Board may require.

*** What is prescribed information?**

An Act can only give the outline of what is required to fully implement its provisions. The information required from the Chief or Traditional Authority to determine an application for recognition and registration is stated in the regulations. Regulations require the following information:

1. The name of the applicant.
2. The approximate size of the land.
3. The communal area concerned.
4. The region.
5. The use of the land.

What are the consequences of failing to apply for recognition of a claim and the granting of a right of leasehold within the prescribed time?

There are important consequences if a person fails to apply within the prescribed time for the recognition of a right.

1. The person **will not be allowed to apply** for the recognition of the right. In such a case, the person will be regarded as having **relinquished** their claim to the land.
2. The particular land will **revert** to the State. Once it has gone back to the State, it will become available for allocation under the Act.

Take Note:

The Act allows a person to apply to the Minister for an extension within which to apply for recognition, but good reasons must be given to explain why the application was late. The Minister may decide to grant this extension.

What are the powers of the Communal Land Board when considering an application under this section?

The Communal Land Board may:

1. **Consult** people.
2. **Consider** a report made by an investigating committee under section 37. (See section 37.)
3. **Investigate** the matter to establish the facts of the applicant's claim. These may include the following information:
 - The date on which the applicant acquired the right and the manner in which he or she obtained it.
 - Whether someone else claims to have a right in respect of the particular land.
 - Whether the size of the land complies with the prescribed size for the particular use of the land.
 - The position of boundaries and beacons on the land.
 - Whether the land is fenced off, and details of the fence.

What happens when the Board is satisfied with the validity of the applicant's claim?

The Board must **in writing**:

1. **Offer** a right of leasehold in respect of the land.
2. State the **conditions** of the proposed right of leasehold.
3. State the **period of time** within which the offer must be accepted, which must be more than 90 days after the offer was made.
4. Inform the applicant that if he or she **declines** the offer or **fails to accept** it within the prescribed time, the right to the particular land will come to an end.

The applicant must then enter into a **deed of leasehold** with the Board in terms of Part A of Form 9 (for a right of leasehold) and Part B of Form 9 (for agricultural purposes outside a designated area). See Regulation 19 in this regard.

What happens when a person refuses to accept an offer for leasehold or fails to accept it within the time provided?

1. The person loses the claim to the land.
2. The land reverts to the State.

What happens when the Board is not satisfied with the validity of a claim, or when there are conflicting claims to the same land?

The Board:

1. Must call **a hearing** to resolve the matter. Regulation 18 prescribes the manner in which a hearing must be conducted.
2. May make a fair decision. Such a decision may include:
 - **Affirming** the claim (confirming the claim).
 - **Affirming** the claim but subject to **variations**, such as to the size and the boundaries of the claim.
 - **Rejecting** the claim. The Board is not under an obligation to reject a claim. Even if not sure of the validity of a claim, the Board may decide to grant the applicant a right of leasehold, either to the same land (or part thereof) that is claimed, or to another portion of land.

What is the position regarding an application for authorisation to keep an existing fence when a person has an existing right to occupy customary land?

The Board must grant authorisation to keep the fence if the Board is satisfied that:

1. The fence or fences were erected **lawfully or with the consent** of the competent authority.
2. The fence **will not interfere** with or restrict the use and enjoyment of the commonage by members of the traditional community.
3. There are **good reasons** why the applicant should be allowed to keep the fence.

The Board may **impose conditions** when authorising the retention of the fence.

Under what circumstances can a right of leasehold be cancelled?

1. The grounds for cancellation will be set out in the deed of leasehold. This is the contract between the person applying for the right of leasehold and the Board.
2. The Board may also cancel the right of leasehold if the leaseholder fails to comply with the requirements, or does not comply with the restrictions imposed regarding the use of the land.
3. See also the discussion under section 32 above with regard to Regulation 15, which allows for additional grounds under which a right of leasehold may be cancelled.

Chapter V GENERAL PROVISIONS

This chapter contains general provisions to allow for the better administration and implementation of the Act.

Section 37: Preliminary investigation of a claim to existing rights

Under section 37, the Minister, in consultation with a Communal Land Board, may for the particular Board establish an investigating committee which must conduct a preliminary investigation and then report its findings to the Board.

A preliminary investigation can be conducted with regard to customary land rights and other rights to occupy communal land existing at the time that the Act came into operation, despite the provisions of sections 28 and 35.

Such a preliminary investigation can take place at the request of the Board when the Board has not yet determined an application in respect of the land occupied, used or otherwise controlled by a person and enclosed with a fence, even if no application has been made for the recognition of the existing rights.

A preliminary investigation is conducted to establish the circumstances surrounding the:

- occupation, use or control of the land by a particular person;
- the existence of a fence on the land; and
- any other matter which the Board itself may investigate under those sections or which the Board may indicate.

Regulations 20-23 provide more details regarding investigating committees and the conduct of preliminary investigations.



Improvements on the land, such as these at "Ou Poppie se plaas" near Omatako Village, may be compensated for if the land rights are transferred to another person. Photograph by WIMSA.

What procedures must an investigating committee follow with regard to a preliminary investigation?

The Act sets out the procedures to be followed in respect of a preliminary investigation.

1. *Notice to the person who is being investigated*

The chairperson of the investigating committee must give at least 30 days' notice of the preliminary investigation to the person whose claim will be investigated, using Form 10. This notice must contain the following information:

- the time and place of the preliminary investigation,
- notification that he or she must attend the preliminary investigation to be questioned on the matters mentioned above, for example the occupation, use or control of the land, the existence of a fence or any other matter which the Board may require.
- notification that he or she must bring any books or documents relating to the preliminary investigation to the hearing.

The Chairperson must sign the notice and it must be delivered to the person in the prescribed way. If the person fails to appear at the preliminary investigation, the investigating committee must state this fact in its report.

2. *Summoning of witnesses*

Using Form 11 of the Regulations, the chairperson of the investigating committee may summons the following people to appear at the preliminary investigation:

- the Chief,
- any traditional leader of the particular traditional community, or
- any other person who can give information on the subject of the preliminary investigation, or who has a document or book in her or his possession or control that relates to the investigation. This book or document must be produced at the hearing.

The Chairperson must sign the summons, and it must be delivered to the person in the prescribed way. The summons must inform the witness of the time and place of the hearing.

What offences can summonsed witnesses commit?

Witnesses are guilty of an offence if:

- They do not appear before the investigating committee at the time and place specified.
- They do not remain at the investigation until excused by the chairperson.
- They refuse to take the oath or to make an affirmation.
- After having taken the oath or having made affirmation, they:
 - fail to answer questions fully or satisfactorily.
 - fail to produce a book or document which they were told in the summons to bring.

- give false evidence.

If convicted of any of these offences, a person can be fined up to N\$1 000 or imprisonment not exceeding three months.

3. *Conduct of the hearing*

At the hearing, the following procedures are followed:

- The committee may question witnesses under oath or affirmation.
- The committee may examine or keep any books or documents for further examination or safe custody, provided a receipt is given to the person and a copy of the book or document is handed to that person.

4. *Findings of the investigating committee*

An investigating committee may find that it would be better for the Board to consider a person's claim to the land (or whether a fence can be retained on the land) as soon as possible.

If so, the investigating committee must order the person to prepare her or his application under section 28(2) or 35(2), and to hand it to the chairperson of the investigating committee within a particular period of time, who will then refer the matter to the Board.

If the person fails to comply with an instruction given by the investigating committee in this regard, the committee must state this fact in its report.

What happens when a person fails to appear at the preliminary investigation or fails to comply with the instruction to prepare and submit her or his application to the chairperson of the investigating committee?

Once the matter has been reported to the Board, the Board may use Form 12 to:

- **Inform** the person of the report by the investigating committee in this regard.
- **Order** the person to comply within a specific period of time with such requirements as are mentioned in the notice.
- Inform the person that if he or she fails (without a good reason) to comply with an instruction in the notice, the Board may declare that he or she is **divested** of the claim (no longer has a claim) over the land in question.

What are the consequences of being divested of a claim?

A person who has been declared divested of a claim:

- Is not entitled to apply for recognition and registration of his or her claims under sections 28(2) or 35(2).
- Ceases to have any claim to or in respect of that land or anything erected or installed on the land.

These consequences result even if the time for applications under sections 28(2) or 35(2) has not expired.

Section 38: Transfer of rights

This section deals with the possibility of transferring customary land rights or rights of leasehold to other people. When the person who was originally granted the customary land right wants to transfer the right to another person, she or he should follow the procedures set out in Regulation 24, using Forms 13 or 14 as required.

Who must give consent when a person wants to transfer a customary land right or a right of leasehold?

1. For the transfer of a **customary land right**, the Chief or Traditional Authority must give written consent.
2. For the transfer of a **right of leasehold**, the Communal Land Board must give written consent.

Section 39: Appeals

Sometimes people are unhappy with the decisions of the Chief, the Traditional Authority or even the Communal Land Board. If so, they have the right to appeal against those decisions. This process is regulated by Regulation 25. It is important to note that an appeal must be instituted **within 30 days** of the decision or within 30 days of becoming aware of the decision against which the person wants to appeal. An amount of N\$25.00 must be paid to institute an appeal. When a person appeals, the Minister must appoint an **appeal tribunal** to hear a particular appeal.

The appeal tribunal will consist of only one person or such number of people as the Minister may appoint. If there is more than one tribunal member, the Minister will appoint the chairperson. These members of an appeal tribunal must have adequate skills and expertise to determine an appeal.

If a tribunal member is not employed by the public service, provision is made for the payment of these members for services rendered.

All the members of the tribunal must attend the hearing to constitute a quorum and to make a valid decision. Decisions are taken by a majority vote. Where there is no clear majority, the chairperson has an additional vote to decide the matter. This is called a **casting vote**.

What are the powers of the appeal tribunal?

The appeal tribunal may:

- **Confirm** a decision.
- **Set aside** a decision.
- **Amend** a decision.
- Make **any order** it may think fit.

Section 40: Compensation for improvements

Sometimes people make improvements on the land. For example, they may build a dam or drill a borehole on the land. This section regulates the issue of improvements to land.

In general, no person has a claim against the Chief, Traditional Authority, Communal Land Board or the State for improvements on land held under a customary land right or a right of leasehold.

- No person may remove improvements, or destroy or damage any improvements when he or she vacates the land. The Board, after consultation with the Minister, may however give consent for the removal of such improvements.
- The person who is the holder of a customary land right or a right of leasehold and who wishes to transfer it to another person, may agree with the other party to pay compensation for improvements on the land.
- The Minister, after consultation with the Board, may pay compensation to a person for **necessary** improvements when the customary land right or the right to leasehold terminates. This does not apply if payment of compensation was agreed between the parties upon transfer of the right as mentioned above, or if payment is made for improvements to leased land mentioned in the next paragraph.
- Compensation for **necessary improvements** must be paid from money appropriated by Parliament.
- When the lease comes to an end and is granted to another person, the Board may impose a condition that the latter person should pay an amount for any improvements made during the lease. When the Board receives this money, it must pay an amount of compensation to the former leaseholder for the improvements made on the land. If the parties had previously agreed to the payment for improvements, this provision does not apply.
- The amount of compensation to be paid must be determined by agreement between the Communal Land Board and the person, which amount must be approved by the Minister. If there is no agreement, or the Minister does not approve the amount, the matter must be referred for arbitration.
- Where compensation has been paid for necessary improvements from the State Revenue Fund, the Act provides for a refund to the State Revenue Fund under certain situations. This will happen when the Board requires the person to whom the land is subsequently allocated to pay consideration for the improvements on the land. Once the Board has received this consideration, it must pay an amount equal to the amount originally paid by the State Revenue Fund back to the Fund. If the amount received is less than the compensation paid, the Minister may approve, with the consent of the Minister of Finance, the refund of a lesser amount.

Section 41: Survey of communal land

Section 40 allows the Communal Land Board to have communal lands surveyed and to have plans and diagrams drawn up of these areas. The survey of an area must be done in accordance with a lay-out plan which is to be prepared with the cooperation of the Traditional Authority concerned. Provision is also made for the adjustment of individual portions of land, subject to the payment of just compensation, to prepare a lay-out plan in an effective manner.

Section 42: No consideration payable for customary land right

No consideration, whether in the form of money or goods, may be claimed or received by any person as compensation for the allocation of a customary land right.

This section however does not apply to:

- Compensation for improvements that may be payable in terms of section 40.
- Any fees, charges or other moneys that are prescribed in regulations for applications for customary land rights or rights of leasehold, or for the issue of any certificate or document in terms of the Act.

Which payment is admissible under the Act?

1. Chief X says to Erastus that he will grant him a right to a residential unit, provided that Erastus gives him five head of cattle.
2. Petrus wants to transfer his right of leasehold to Hendrina Petrus and Hendrina agree that she will pay him an additional amount of N\$25 000 for the two bungalows Petrus has built on the land.
3. When Anna wishes to apply for the recognition and registration of her existing land right, the Communal Land Board tells her that the application itself will cost N\$50 and the issue of the certificate of registration another N\$100. (These amounts are just examples.

Answers:

1. Not allowed. This amounts to bribery.
2. Allowed. Section 40(2) allows the payment of amount for improvements to the land.
3. Allowed. Section 42(2) allows that fees and charges may be prescribed for applications and issuing of licences and documents.

Section 43: Unlawful occupation of communal land

Communal lands may only be occupied or used in accordance with a right granted under this Act. This includes existing customary land rights (under section 28) and other existing rights to use communal land (under section 35).

A person who occupies communal land without having the right thereto, may be **evicted**. A Chief, Traditional Authority or a Communal Land Board may institute legal action for the eviction of a person.

Section 44: Fences

The Act prohibits the erection of new fences and the retention of fences without the proper authorisation under the Act. In terms of section 44, if a person erects a new fence or retains a fence for 30 days after his or her application for permission to retain a fence has been refused, that person commits a criminal offence.

What new offences with regard to fencing are created by the Act?

1. Erecting a new fence without proper authorisation under the Act.

- 2 Retaining a fence for more than 30 days after a person's application for authorisation to keep that fence in terms of section 28(2)(b) or 35(2)(b) has been refused.

The Act provides penalties for this offence, namely a maximum fine of N\$4 000 or one year's imprisonment or both. In addition, if the person still refuses to take down the fence, even after being convicted of a crime, that person is guilty of committing a further offence, called a **continuing offence**, for which they can be fined up to N\$50 for each day that the fence remains standing.

An application for authorisation to erect a new fence must be made on Form 15 and in accordance with Regulation 27. No authorisation for the erection of a fence is needed if the holder of a customary land right or right of leasehold wishes to fence in homesteads, cattle pens, water troughs or crop fields. (See Regulation 27(3).)

What powers do the Chief, the Traditional Authority or the Communal Land Board have when there is a fence on communal land in contravention of section 44?

The Chief, Traditional Authority or Communal Land Board may, following prescribed procedures:

- have such a fence removed, and
- dispose of the materials used to construct the fence.

All costs incurred in removing a fence may be recovered from the person who, in contravention of this section, erected or retained the fence.

Section 45: Regulations

Under section 45, the Minister may make regulations about any matter required or permitted under this Act that will ensure the successful implementation of the Act. Regulations were issued, amongst others, concerning prospecting and mining operations on communal lands (see Regulation 30), the combating and prevention of soil erosion (see Regulation 31), protection of pastoral resources (see Regulation 32) and the limitation and control of grazing stock. Regulation 33 deals with matters regarding roads, watercourses, woods and the use of water, wood, clay and stone on communal land.

Section 46: Repeal of laws

These laws are no longer applicable in Namibia:

- Development Trust and Land Act, Act No 18 of 1936
- Development Trust and Land Amendment Act, Act No 17 of 1939
- Development Trust and Land Amendment Act, Act No 18 of 1954
- South West Africa Native Affairs Administration Act, Act No 56 of 1954
- Development Trust and Land Amendment Act, Act No 73 of 1956
- Development Trust and Land Amendment Act, Act No 41 of 1958

- Development Trust and Land Amendment Act, Act No 110 of 1976
- Administration of the South African Bantu Trust in South West Africa Proclamation, Proclamation No AG 19 of 1978

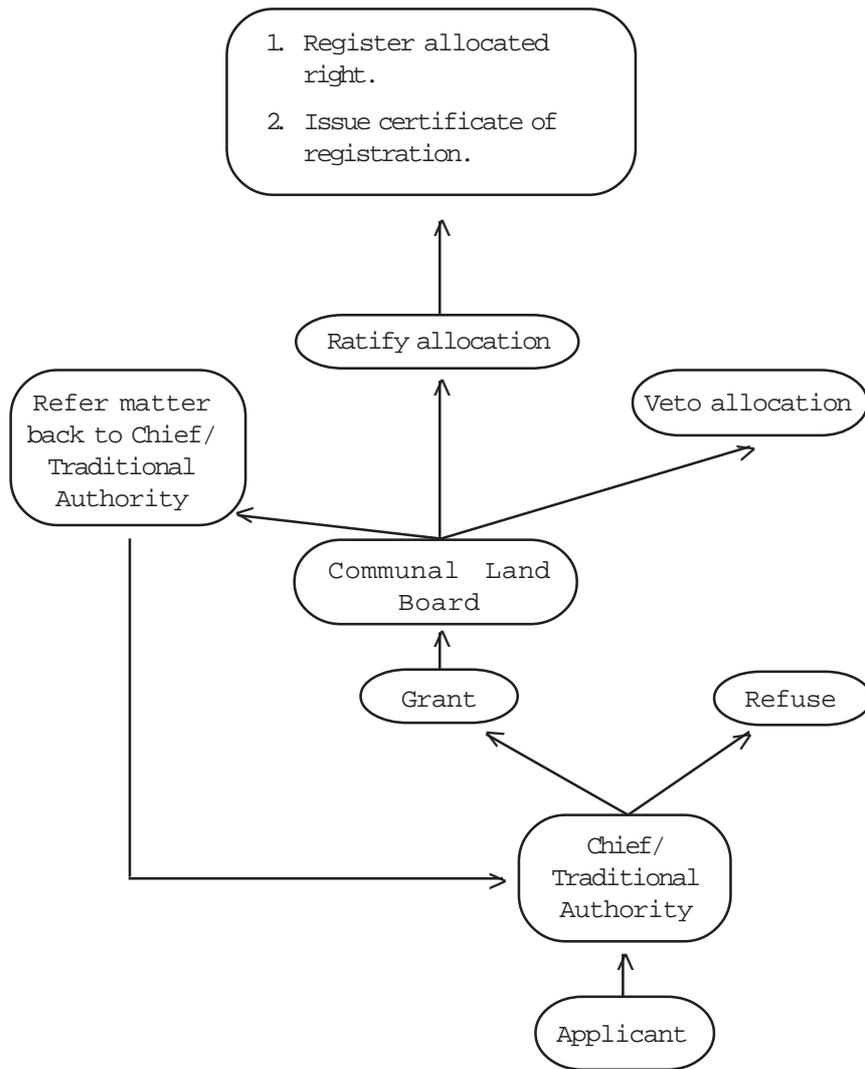
Section 47: Short title and commencement

The Act is called the Communal Land Reform Act, Act No 5 of 2002. It came into effect when it was published in the Government Gazette on 1 March 2003.

Annexures

Annexure 1

Application procedure for a customary land right (see section 22).



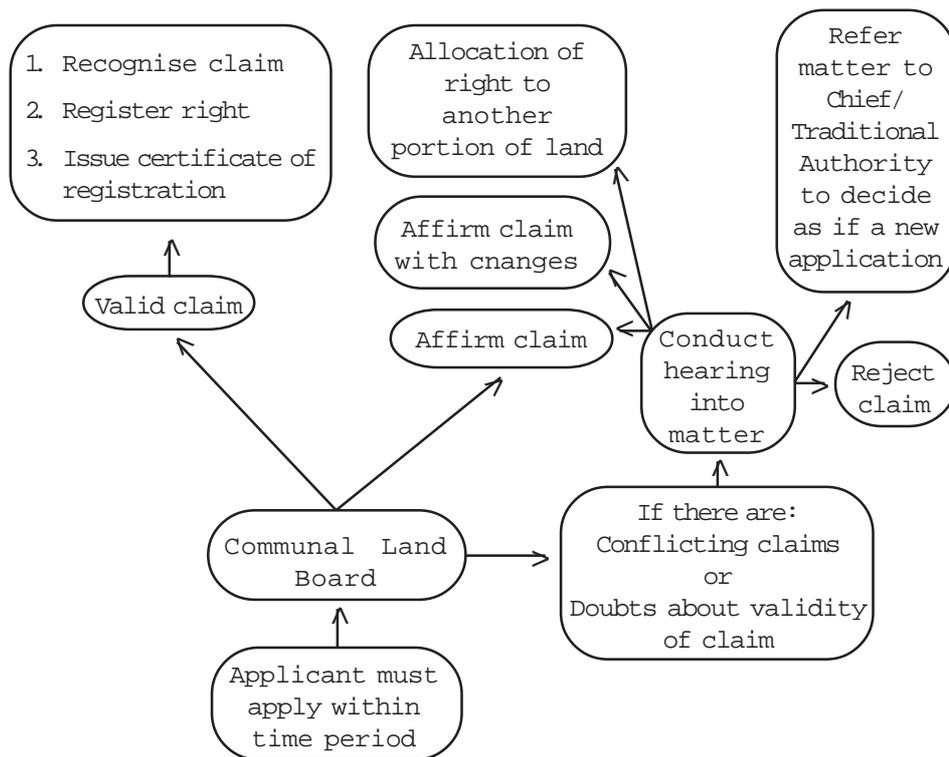
Annexure 2

Application procedure for recognition and registration of existing customary land rights (see section 28).

This procedure applies when the applicant is the holder of a customary land right existing at the time the Act comes into operation. Existing customary land rights cover:

- A right to a farming unit
- A right to a residential unit
- A right to any other form of customary tenure recognised by the minister in the Government Gazette.

This procedure is also used to apply for authorisation to retain existing fences erected on land held under a customary land right.



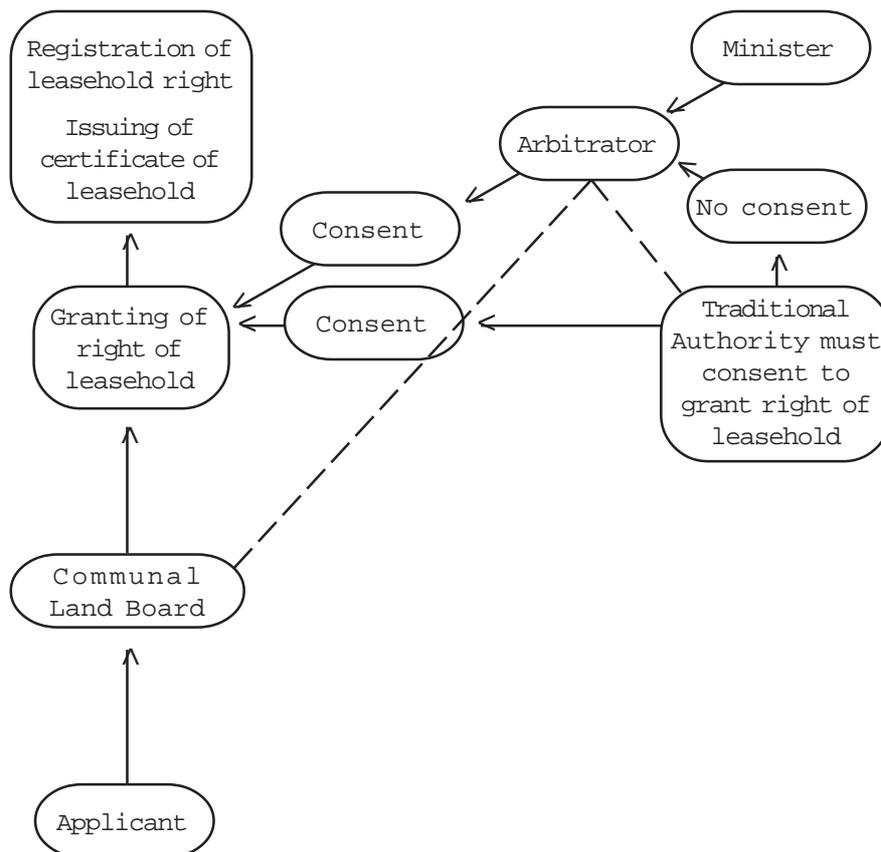
Annexure 3

Application procedure for right of leasehold (see section 31)

Application for leasehold rights must be made to the Communal Land Board. The Board may only grant a right of leasehold if the Chief or Traditional Authority consents to the granting of the right. A right to leasehold for agricultural purposes may only be granted within a designated area, but there are exceptions to this rule.

The Traditional Authority and the Communal Land Board must approve the appointment of the arbitrator by the Minister.

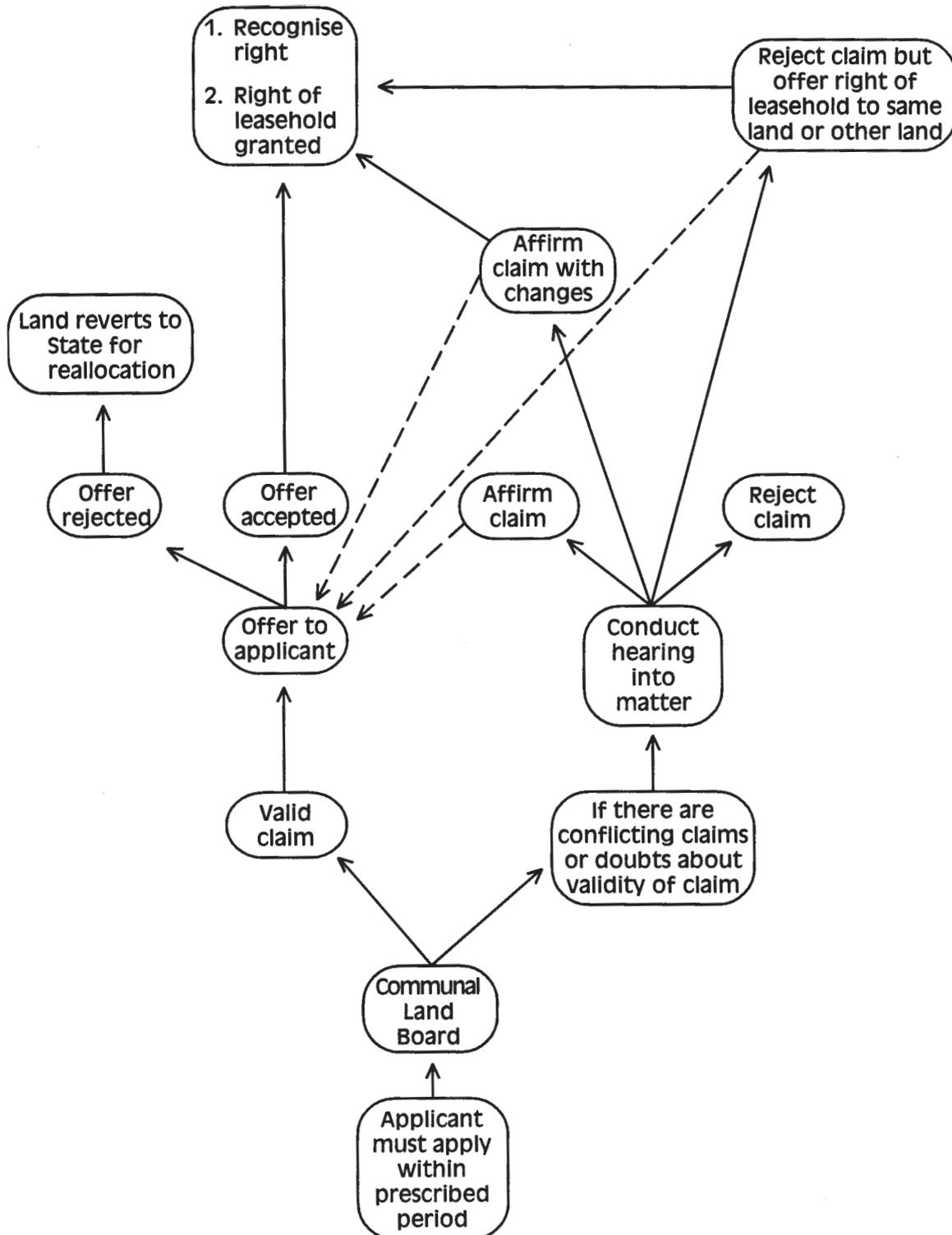
It is not clear whether the same procedures, namely an offer and acceptance or rejection thereof should be made to an applicant after a hearing into the matter has been conducted because of doubt regarding the validity of a claim. If the same procedures were followed, the process would follow the channels indicated by the broken arrows.



Annexure 4

Application procedure for the recognition of existing rights to occupy communal land and for the granting of a right of leasehold (see section 35).

This procedure relates to rights (not rights under customary law) to occupy communal land existing at the time the Act comes into operation. An application must be made within three years of a date still to be announced by the Minister. The applicant also has to follow this procedure for authorisation to retain an existing fence, which has been erected on the land to which the existing right relates.



Contact names and addresses

The following government departments and non-governmental organisations provide services and assistance related to the Communal Land Reform Act:

Centre for Research Information Action in Africa-Southern Africa Development & Consulting (CRIAA SA-DC)

P O Box 23778
Windhoek
Johan Albrecht Street, Windhoek West
Windhoek
Tel: (+264 61) 220117 / 225009
Fax: (+264 61) 232293
E-mail: criaawhk@iafrica.com.na
Web site: www.criaasadc.org

Desert Research Foundation of Namibia (DRFN)

P O Box 20232
Windhoek
7 Rossimi Street
Windhoek
NAMIBIA
Tel: (+264 61) 229855
Fax: (+264 61) 230172
E-mail: drfn@drfn.org.na
Web site: www.drfn.org.na

Integrated Rural Development & Nature Conservation (IRDNC) - Caprivi Office

Private Bag 1050
Ngweze, Katima Mulilo
Tel: (+264 66) 252518
Fax: (+264 66) 252108
E-mail: irdncc@iafrica.com.na

Integrated Rural Development & Nature Conservation (IRDNC) - Wêreldsend Office

P O Box 24050
Windhoek
Wêreldsend Environmental Centre
Kunene region
Radio telephone: (+264 64) 203581 x 2547
Tel: (+264 67) 697055
Fax: (+264 67) 697054
E-mail: irdncwe@mweb.com.na

Integrated Rural Development & Nature Conservation (IRDNC) - Windhoek Office

P O Box 24050
Windhoek
2nd Floor Kenya House
Robert Mugabe Avenue
Windhoek
Tel: (+264 61) 228506/9
Fax: (+264 61) 228530
E-mail: irdnc@iafrica.com.na

Legal Assistance Centre (LAC) - Katutura Office

P O Box 604
Windhoek
Red Cross Community Centre
Katutura Windhoek
Tel: (+264 61) 264641 / 262333
Fax: (+264 61) 262297
E-mail: info@lac.org.na
Web site: www.lac.org.na

Legal Assistance Centre (LAC) - Keetmanshoop Office

P O Box 180
Keetmanshoop
Corner of Suider Road & Hoog Street
Keetmanshoop
Tel: (+264 63) 223187 / 223736
Fax: (+264 63) 223758
E-mail: khpao@iafrica.com.na
Web site: www.lac.org.na

Legal Assistance Centre (LAC) - Ongwediva Office

Private Bag X5534
Oshakati
Human Rights Centre
Ongwediva
Tel: (+264 65) 230178 / 230444
Fax (+264 65) 230443
E-mail: hrcosh@iway.na
Web site: www.lac.org.na

Legal Assistance Centre (LAC) - Windhoek Office

P O Box 604
Windhoek
4 Körner Street
Windhoek
Tel: (+264 61) 223356
Fax: (+264 61) 234953
E-mail: info@lac.org.na
Web site: www.lac.org.na

Ministry of Agriculture, Water & Rural Development

Government Office Park
Luther Street
Private Bag 13184
Windhoek
Tel: (+264 61) 208 7111
Fax: (+264 61) 229961

Ministry of Environment & Tourism

F G I Building
Post Street Arcade
Private Bag 13346
Windhoek
Tel: (+264 61) 284 2111
Fax: (+264 61) 229936

Ministry of Lands, Resettlement & Rehabilitation

Brendan Simbwaye Square
Block A
Private Bag 13343
Windhoek
Tel: (+264 61) 285 2111
Fax: (+264 61) 228240 / 247107

Ministry of Regional and Local Government & Housing

Government Office Park
Cluster D1 West
Luther Street
Private Bag 13289
Windhoek
Tel: (+264 61) 297 5111
Fax: (+264 61) 226049

Multi-disciplinary Research and Consultancy Centre (MRCC)

University of Namibia
Private Bag 13301
Windhoek
Mandume Ndemufayo Avenue
Pionierspark
Windhoek
Tel: (+264 61) 2063051/2
Fax: (+264 61) 2063030
E-mail: amosimane@unam.na
Web site: www.unam.org

Namibian Association of CBNRM Support Organisations (NACSO)

P O Box 98353
Pelican Square, Windhoek
57 Pasteur Street, Windhoek West
Windhoek
Tel: (+264 61) 230888/796
Fax: (+264 61) 230863
E-mail: patskyer.nacso@iafrica.com.na

Namibia Community-Based Tourism Association (NACOBTA) - Ondangwa office

P O Box 2941
Ondangwa
Main Street
Rössing Foundation Centre
Ondangwa
Tel: (+264 65) 241327
Fax: (+264 65) 241458
E-mail: erica.nacobta@iway.na
Web site: www.nacobta.com.na

Namibia Community-Based Tourism Association (NACOBTA) - Windhoek

P O Box 86099
Eros, Windhoek
Weber Street
Windhoek West, Windhoek
Tel: (+264 61) 250558
Fax: (+264 61) 222647
E-mail: office.nacobta@iway.na
Web site: www.nacobta.com.na

Namibia Development Trust (NDT) - Eastern Office

P O Box
Okakarara
MET Office
Okakarara
Tel: (+264 67) 317132
Fax: (+264 67) 317134
E-mail: ndtoka@iway.na

Namibia Development Trust (NDT) - Northern Office

P O Box 425
Oshakati
Human Rights Centre
Ongwediva
Tel: (+264 65) 231622
Fax: (+264 65) 231692
E-mail: ndtosh@iway.na

Namibia Development Trust (NDT) - Southern Office

P O Box 14
Keetmanshoop
Mittel Street
Keetmanshoop
Tel: (+264 63) 223572
Fax: (+264 63) 224211
E-mail: ndtsouth@iway.na

Namibia Development Trust (NDT) - Windhoek Office

P O Box 8226
Bachbrecht, Windhoek
57 Pasteur Street
Windhoek West
Windhoek
Tel: (+264 61) 238002/3
Fax: (+264 61) 233261
E-mail: ndtwhk@iway.na

Namibia National Farmers' Union (NNFU)

P O Box 3117
Windhoek
Axali Doëseb Street
Windhoek
Tel: (+264 61) 271117
Fax: (+264 61) 271155
E-mail: nnfu@mweb.com.na

Namibia Nature Foundation (NNF)

P O Box 245
Windhoek
4th Floor Kenya House
Robert Mugabe Avenue
Windhoek
Tel: (+264 61) 248345
Fax: (+264 61) 248344
E-mail: info@nnf.org.na
Web site: www.nnf.org.na

Namibia Non-Governmental Organisation Forum (NANGOF)

P O Box 70433
Khomasdal, Windhoek
196 Ceaser Street
Wanaheda, Katutura
Windhoek
Tel: (+264 61) 239469
Fax: (+264 61) 239471
E-mail: nangof@iafrica.com.na

Namibia Rural Development Project (NRDP)

P O Box 24886
Windhoek
2716 Abraham Mashego Street
Oponganda Community Centre
Wanaheda
Windhoek

Nyae-Nyae Development Foundation of Namibia (NNDFN)

P O Box 9026
Eros, Windhoek
9 Delius Street
Windhoek-West
Windhoek
Tel: (+264 61) 236327
Fax: (+264 61) 225997
E-mail: nndfn@iafrica.com.na

Omaheke San Trust (OST)

P O Box 1017
Gobabis
32 Rossevelt Street
Gobabis
Tel: (+264 62) 564073
Fax: (+264 62) 564073
E-mail: ost@iafrica.com.na

Rössing Foundation (RF)

Private Bag 13214
Windhoek
Rand Street
Khomasdal, Windhoek
Tel: (+264 61) 211721
Fax: (+264 61) 211273
E-mail: lleroux@rf.org.na
Web site: www@rf.org.na

Rural Institute for Social Empowerment of Namibia (RISE-Namibia)

P O Box 50155
Bachbrecht, Windhoek
Axali Doëseb Street
Windhoek West
Windhoek
Tel: (+264 61) 236029
Fax: (+264 61) 232597
E-mail: rise-ww@iafrica.com.na

Women's Action for Development (WAD)

P O Box 370
Windhoek
25 Schönlein Street
Swabou Building
Windhoek
Tel: (+264 61) 227630
Fax: (+264 61) 236372
E-mail: wad@mweb.com.na

Working Group of Indigenous Minorities in Southern Africa (WIMSA)

P O Box 80733
Windhoek
8 Bach Street
Windhoek
Tel: (+264 61) 244909
Fax: (+264 61) 272806
E-mail: wimsareg@iafrica.com.na

World Wildlife Fund - Living in a Finite Environment (WWF-LIFE)

P O Box 9681
Eros, Windhoek
5th Floor Kenya House
Robert Mugabe Avenue
Windhoek
Tel: (+264 61) 239945
Fax: (+264 61) 239799
E-mail: cweaver@iafrica.com.na

Regional Unions

Southern Namibia Farmers' Union
Tel: (063) 224243
Fax: (063) 225251

Kavango Regional Farmers Union
P O Box 449
Rundu
Tel: (066) 255104

Likwama Farmers Cooperative Union
P O Box 179
Katima Mulilo
Tel: (066) 253561
Fax: (066) 253561

Omaheke Regional Farmers Union
P O Box 1595
Gobabis
Tel: (062) 565181

Welwitchia Regional Farmers Union
P O Box 25
Khorixas
Tel: (065) 331350

Otjozondjupa Communal Farmers Union
P O Box 133
Okakarara
Tel: (067) 317786
Fax: (067) 317008

Erongo Regional Farmers Union
P O Box 174
Omaruru
Tel: (064) 570172
Fax: (064) 571043

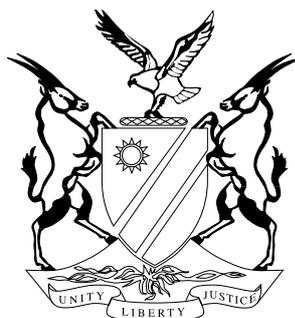
Mandume Farmers Cooperative
P O Box 5
Ohangwena
Tel: (065) 262491
Fax: (065) 264401

Ongushu Farmers Cooperative
P O Box 684
Oshakati
Tel: (065) 240689
Fax: (065) 256502

Uukumwe Farmers Cooperative
P O Box 2797
Ondangwa
Tel: 0812433821
Fax: (065) 240566

Omusati Farmers cooperative
P O Box 1053
Oshakati
Tel: (065) 256517
Fax: (065) 256502

Ngatuuane Regional Farmers Union
P O Box 179
Opuwo
Tel: (065) 273487
Fax: (065) 273139



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$7.00

WINDHOEK - 12 August 2002

No.2787

CONTENTS

Page

GOVERNMENT NOTICE

No. 137	Promulgation of Communal Land Reform Act, 2002 (Act No. 5 of 2002), of the Parliament	1
---------	---	---

Government Notice

OFFICE OF THE PRIME MINISTER

No. 137	2002
---------	------

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 5 of 2002: Communal Land Reform Act, 2002.

ACT

To provide for the allocation of rights in respect of communal land; to establish Communal Land Boards; to provide for the powers of Chiefs and Traditional Authorities and boards in relation to communal land; and to make provision for incidental matters.

(Signed by the President on 25 July 2002)

ARRANGEMENT OF SECTIONS

CHAPTER I - PRELIMINARY

1. Definitions

CHAPTER II - COMMUNAL LAND BOARDS

2. Establishment of Communal Land Boards
3. Functions of boards
4. Composition of boards
5. Disqualifications
6. Term of office
7. Meetings of boards
8. Committees
9. Disclosure of interest
10. Remuneration
11. Financing of boards
12. Performance of administrative work
13. Annual report
14. Limitation of liability

CHAPTER III - COMMUNAL LAND AREAS

15. Extent of communal land
16. Establishment of new communal land areas and additions to or subtractions from communal land areas
17. Vesting of communal land
18. Prohibition against fences

CHAPTER IV - ALLOCATION OF RIGHTS IN RESPECT OF COMMUNAL LAND

19. Rights that may be allocated

Part 1 - Customary land rights

20. Power to allocate and cancel customary land rights
21. Customary land rights that may be allocated
22. Application for customary land right
23. Limitation on size of land that may be held under customary land rights
24. Ratification of allocation of customary land right
25. Registration of customary land right
26. Duration of customary land right
27. Cancellation of customary land right
28. Recognition of existing customary land rights
29. Grazing rights

Part 2 - Right of leasehold

30. Power to grant right of leasehold
31. Application for right of leasehold
32. Conditions applicable to right of leasehold
33. Registration of right of leasehold
34. Duration of right of leasehold
35. Existing rights to occupy communal land
36. Cancellation of right of leasehold

CHAPTER V - GENERAL

37. Preliminary investigation of claim to existing rights
38. Transfer of rights
39. Appeals
40. Compensation for improvements
41. Survey of communal land
42. No consideration payable for customary land right
43. Unlawful occupation of communal land
44. Fences
45. Regulations
46. Repeal of laws
47. Short title and commencement

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:

**CHAPTER I
PRELIMINARY****Definitions**

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

“board” means a Communal Land Board established under section 2;

“board’s area” means the area described in a notice under section 2(5) in respect of a board;

“Chief” means a person who has been recognised under the Traditional Authorities Act, 2000 (Act No. 25 of 2000) as the Chief of his or her traditional community;

“commonage” means that portion of the communal area of a traditional community which is traditionally used for the common grazing of stock;

“communal area”, in relation to a traditional community, means the area comprising the communal land inhabited by the members of that community;

“communal land” means land referred to in section 15;

“customary land right” means any of the rights referred to in paragraphs (a), (b) and (c) of section 21;

“farming unit” means a portion of land allocated for farming purposes and conforming to the size prescribed under this Act for such purpose;

“leaseholder” means a person to whom a right of leasehold has been granted under this Act;

Act No. 5, 2002

COMMUNAL LAND REFORM ACT, 2002

“Minister” means the Minister of Lands, Resettlement and Rehabilitation;

“Permanent Secretary” means the Permanent Secretary: Lands, Resettlement and Rehabilitation;

“prescribed” means prescribed by regulation under this Act;

“region” means a region as defined in the Regional Councils Act, 1992 (Act No. 22 of 1992);

“regional council” means a regional council established under section 2 of the Regional Councils Act, 1992;

“residential unit” means a portion of land allocated for residential purposes and conforming to the size prescribed under this Act for such purpose;

“right of leasehold” means a right of leasehold granted under this Act;

“spouse” includes the spouse or partner in a customary union, whether or not such customary union has been registered, and “marriage” shall be construed accordingly;

“this Act” includes regulations made thereunder;

“Traditional Authority” means a Traditional Authority of which the traditional leaders have been recognised under the Traditional Authorities Act, 2000;

“traditional community” means a traditional community as defined in the Traditional Authorities Act, 2000.

Chapter II COMMUNAL LAND BOARDS

Establishment of Communal Land Boards

2.(1) Subject to subsection (4), the Minister must establish Communal Land Boards to perform the functions conferred on a board by this Act within the area for which each board is established in accordance with subsection (2).

(2) A board may under subsection (1) be established in respect of -

- (a) the whole of any region in which communal land is situated;
- (b) a defined part of such a region; or
- (c) an area comprising defined parts of two or more of such regions.

(3) Subject to subsection (4) the Minister may alter the boundaries of any area determined in respect of a board under subsection (1).

(4) The powers conferred by subsections (1) and (3) may be exercised by the Minister only after consultation with the traditional authorities which will be affected thereby.

(5) The Minister must give notice in the *Gazette* -

- (a) of every board established under subsection (1), with a description of the area for which the board is established;
- (b) of any alteration of the boundaries of the area of any board under subsection (3).

Functions of boards

3. Subject to the provisions of this Act, the functions of a board are -
- (a) to exercise control over the allocation and the cancellation of customary land rights by Chiefs or Traditional Authorities under this Act;
 - (b) to consider and decide on applications for a right of leasehold under this Act;
 - (c) to establish and maintain a register and a system of registration for recording the allocation, transfer and cancellation of customary land rights and rights of leasehold under this Act;
 - (d) to advise the Minister, either of its own motion or at the request of the Minister, in connection with the making of regulations or any other matter pertaining to the objectives of this Act; and
 - (e) to perform such other functions as are assigned to a board by this Act.

Composition of Boards

4. (1) Subject to section 5, a board consists of the following members to be appointed by the Minister -

- (a) one representative from each of the Traditional Authorities within the board's area, nominated by each such Authority;
- (b) one person to represent the organised farming community within the board's area;
- (c) the regional officer of the regional council concerned, and, if the board's area extends over the boundaries of two or more regions, the regional officer of each such region;
- (d) four women, of whom -
 - (i) two are women engaged in farming operations in the board's area; and
 - (ii) two are women who have expertise relevant to the functions of a board;
- (e) four staff members in the Public Service, of whom -
 - (i) one must be nominated by the Minister responsible for regional government;
 - (ii) one must be nominated by the Minister responsible for land matters;
 - (iii) one must be nominated by the Minister responsible for environmental matters; and
 - (iv) one must be nominated by the Minister responsible for agriculture; and
- (f) if any conservancy or conservancies, declared under section 24A of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975), exist within the board's area, one person nominated by the conservancy concerned or, where applicable, by the conservancies concerned jointly.

(2) For the purpose of seeking nominations as contemplated in paragraphs (a), (e) and (f) of subsection (1), the Minister must in writing request -

- (a) the Traditional Authorities in the board's area;
- (b) the Ministers referred to in paragraph (e) of that subsection; and
- (c) the relevant conservancy or conservancies referred to in paragraph (f),

to nominate, subject to section 5, a person for appointment to the board within the period specified by the Minister in such written request.

(3) The Minister may, for the purpose of appointing a member -

- (a) referred to in paragraph (b) of subsection (1), consult with any body or organization engaged in activities for furthering the interests of the farming community in the board's area and which the Minister recognises as being representative of that farming community; or
- (b) referred to in paragraph (d) of subsection (1), consult with any Chief or Traditional Authority or any other person whom the Minister may consider expedient.

(4) The Minister may, in respect of any member being a regional officer referred to in subsection (1)(c), and after consultation with the regional officer concerned, appoint any other person to attend on behalf of the regional officer a meeting of the board or any committee thereof during the absence of the regional officer, and a person so appointed, when so attending a meeting, shall be deemed to be a member of the board concerned.

(5) If a Traditional Authority or any conservancy or conservancies fail to nominate a person for appointment following a request of the Minister under subsection (2), the Minister may appoint any person whom the Minister thinks fit and the person so appointed holds office as if he or she had been nominated by the Traditional Authority or by the conservancy or conservancies concerned, as the case may be.

(6) The members of a board must elect the chairperson of the board from amongst their number.

Disqualifications

5. A person does not qualify to be appointed to, or to remain a member of, a board if he or she -

- (a) is a member of the National Assembly or a regional council;
- (b) is a Chief;
- (c) is an unrehabilitated insolvent, whether his or her estate was sequestrated in Namibia or elsewhere; or
- (d) has been sentenced to imprisonment without the option of a fine for any offence, whether in Namibia or elsewhere.

Term of office

6. (1) The members of a board holds office for a period of three years and are eligible for re-appointment.

Act No. 5, 2002

COMMUNAL LAND REFORM ACT, 2002

(2) The office of a member, other than a member referred to in section 4(1)(c), becomes vacant if -

- (a) he or she ceases to be qualified to hold office in terms of section 5;
- (b) he or she resigns as a member by notice in writing delivered to the Minister;
- (c) the person or authority by whom he or she was nominated for appointment as member, withdraws such nomination by written notice to the Minister; or
- (d) is removed from office under subsection (3).

(3) The Minister may by notice in writing remove a member from office if the Minister, after giving the member a reasonable opportunity to be heard, is satisfied that such member -

- (a) has been absent from three consecutive meetings of the board without the prior permission of the board and without good cause; or
- (b) is incapacitated by physical or mental illness or for any other cause is unable or unfit to efficiently discharge the functions of a member.

(4) The chairperson of a board holds office in that capacity for the period of his or her term of office as a member of the board, but shall vacate the office of chairperson if at least two-thirds of the members of the board adopt a resolution whereby he or she is removed from that office.

(5) A board must elect one of its members, other than the chairperson, to preside at a meeting of the board when a motion for a resolution contemplated in subsection (4) is discussed and voted on.

(6) If the office of a member of a board becomes vacant, the vacancy must be filled by the appointment of another person, with due regard to the provisions of section 4(1), for the unexpired term of office of the person who ceased to be a member.

Meetings of boards

7. (1) The first meeting of a board must be convened by the Minister, and thereafter a board must meet once every two months at such time and place as the board determines.

(2) A special meeting of the board -

- (a) may be convened by the chairperson if the prior approval in writing of the Minister is obtained for such meeting;
- (b) must be convened by the chairperson if he or she is in writing requested by the Minister to do so for the purpose of the transacting of any business stipulated by the Minister.

(3) A majority of the members of a board shall constitute a quorum for a meeting of the board.

(4) Subject to section 6(5), the chairperson of a board, or in the absence of the chairperson, the person elected by the members present from amongst their number, must preside at a meeting of the board.

(5) A board may, with the approval of the Minister, invite not more than two persons with appropriate expert knowledge or experience to assist the board, or any committee of the board, in the discharge of any of its functions, but no such person is qualified to exercise a vote at a meeting attended by him or her.

(6) Subject to section 6(4), questions at a meeting of a board must be decided by a majority of votes of the members present and voting, and in the event of an equality of votes, the person presiding at the meeting has a casting vote.

(7) A decision of the board or an act performed under the authority of the board shall not be rendered invalid merely by reason of a vacancy in the membership of the board or the fact that a person not entitled to sit as a member of the board was present at a meeting thereof when such decision was taken or such act was authorized, if the decision was taken or the act was authorised by a majority of the members present and entitled to vote at the meeting.

(8) A board must cause minutes to be kept of the proceedings at its meetings.

Committees

8. (1) A board may establish any committee consisting of members of the board for the purpose of advising the board on any matter which the board refers to the committee for investigation and advice.

(2) A committee may regulate its own procedure.

Disclosure of interest

9. (1) If at any stage during the course of proceedings at any meeting of a board or a committee thereof it appears that a member has or may have an interest in a matter relating to the functions of the board or such committee which may cause a conflict of interests in the performance of his or her duties as a member of the board or such committee -

- (a) that member must forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining members to discuss the matter and determine whether the member is precluded from participating in such meeting by reason of a conflict of interests; and
- (b) such disclosure and the decision taken by the remaining members must be recorded in the minutes of the relevant meeting.

(2) If a member fails to disclose a conflict of interest as required by subsection (1) and is present at a meeting of the board or a committee, or in any manner participates in the proceedings, such proceedings in relation to the relevant matter shall, as soon as such non-disclosure is discovered, be rendered invalid and thereafter be reviewed by the board or the committee, as the case may be, in the absence of the member concerned.

(3) A member of the board who knowingly fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Remuneration

10. (1) The members of a board and persons referred to in section 7(5) who are not in the full-time employment of the Public Service must be paid such allowances in respect of their services as the Minister may determine with the concurrence of the Minister of Finance.

(2) Allowances referred to in subsection (1) may differ according to the different offices held by members or the different functions performed by them.

Financing of boards

11. All expenditure in connection with the performance of the functions of a board must be defrayed from moneys appropriated by Parliament for the purpose.

Performance of administrative work

12. (1) The administrative work, including the payment and receipt of money, in connection with the performance of the functions of a board must be performed -

- (a) by staff members in the Public Service made available by the Permanent Secretary for the purpose; or
- (b) by staff members of a regional council designated by such council upon agreement between the Minister and the regional council.

(2) The Permanent Secretary or the Regional Council, as the case may be, must appoint, in respect of each board, a staff member referred to in subsection (1) to act as the secretary of the board, who shall perform such functions as may be prescribed or as may be assigned to him or her by the chairperson of the board.

Annual report

13. (1) Every board must submit to the Minister, not later than 31 January of each year, a report on the functions performed by the board during the preceding year.

(2) The Minister must lay a copy of every report received in terms of subsection (1) on the table of the National Assembly within 28 days after receipt thereof if the National Assembly is in ordinary session, or if the National Assembly is not in ordinary session, within 28 days after the commencement of its first ensuing session.

Limitation of liability

14. A Chief or a Traditional Authority or a member of a board or a person referred to in section 12 is not personally liable for anything done in good faith in the performance of any function under this Act.

CHAPTER III**COMMUNAL LAND AREAS****Extent of communal land**

15. (1) Subject to subsection (2), communal land consists of -

- (a) the areas described in Schedule 1 to this Act;
- (b) any area which is declared to be communal land under section 16(1)(a); and
- (c) any land which is incorporated under section 16(1)(b) into a communal land area referred to in paragraph (a) or (b).

(2) Where a local authority area is situated or established within the boundaries of any communal land area the land comprising such local authority area shall not form part of that communal land area and shall not be communal land.

Establishment of new communal land areas and additions to or subtractions from communal land areas

16. (1) The President, with the approval of the National Assembly, may by proclamation in the *Gazette*, -

- (a) declare any defined portion of unalienated State land to be a communal land area;
- (b) incorporate as part of any existing communal land area any defined portion of unalienated State land; or
- (c) withdraw from any communal land area, subject to the provisions of subsection (2), any defined portion thereof which is required for any purpose in the public interest,

and in such proclamation make appropriate amendments to Schedule 1 to this Act so as to include the description of any new communal land area declared under paragraph (a) or to redefine any communal land area affected by any change under paragraph (b) or (c).

(2) Land may not be withdrawn from any communal land area under subsection (1)(c), unless all rights held by persons under this Act in respect of such land or any portion thereof have first been acquired by the State and just compensation for the acquisition of such rights is paid to the persons concerned.

(3) The compensation payable to a person in terms of subsection (2) must be determined -

- (a) by agreement between the Minister and the person concerned; or
- (b) failing such agreement, by arbitration in accordance with the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965).

(4) Any portion of a communal land area withdrawn under subsection (1)(c) ceases to be communal land and becomes available for disposal as State-owned land.

Vesting of communal land

17.(1) Subject to the provisions of this Act, all communal land areas vest in the State in trust for the benefit of the traditional communities residing in those areas and for the purpose of promoting the economic and social development of the people of Namibia, in particular the landless and those with insufficient access to land who are not in formal employment or engaged in non-agriculture business activities.

(2) No right conferring freehold ownership is capable of being granted or acquired by any person in respect of any portion of communal land.

Prohibition against fences

18. Subject to such exemptions as may be prescribed, no fence of any nature -

- (a) shall, after the commencement of this Act, be erected or caused to be erected by any person on any portion of land situated within a communal land area; or
- (b) which, upon the commencement of this Act, exists on any portion of such land, by whomsoever erected, shall after such date as may be notified by the Minister by notice in the *Gazette*, be retained on such land,

unless authorisation for such erection or retention has been granted in accordance with the provisions of this Act.

CHAPTER IV

ALLOCATION OF RIGHTS IN RESPECT OF COMMUNAL LAND

Rights that may be allocated

19. The rights that may be allocated in respect of communal land under this Act are divided into -

- (a) customary land rights; and
- (b) rights of leasehold.

Part 1 - Customary land rights and grazing right

Power to allocate and cancel customary land rights

20. Subject to the provisions of this Act, the primary power to allocate or cancel any customary land right in respect of any portion of land in the communal area of a traditional community vests -

- (a) in the Chief of that traditional community; or
- (b) where the Chief so determines, in the Traditional Authority of that traditional community.

Customary land rights that may be allocated

21. The following customary land rights may be allocated in respect of communal land -

- (a) a right to a farming unit;
- (b) a right to a residential unit;
- (c) a right to any other form of customary tenure that may be recognised and described by the Minister by notice in the *Gazette* for the purposes of this Act.

Application for customary land right

22. (1) An application for the allocation of a customary land right in respect of communal land must -

- (a) be made in writing in the prescribed form; and
- (b) be submitted to the Chief of the traditional community within whose communal area the land in question is situated.

(2) An applicant referred to in subsection (1) must furnish such information and submit such documents as the Chief or the Traditional Authority may require for purpose of consideration of the application.

(3) When considering an application made in terms of subsection (1), a Chief or Traditional Authority may -

Act No. 5, 2002

COMMUNAL LAND REFORM ACT, 2002

- (a) make investigations and consult persons in connection with the application;
- (b) if any member of the traditional community objects to the allocation of the right, conduct a hearing to afford the applicant and such objector the opportunity to make representations in connection with the application,

and may refuse or, subject to subsection (4) and section 23, grant the application.

(4) In granting an application for a right to a farming unit or a residential unit the Chief or Traditional Authority may -

- (a) allocate the right in respect of the specific portion of land being applied for or, by agreement with the applicant, any other portion of land; and
- (b) subject to section 23, determine the size and the boundaries of the portion of land in respect of which the right is allocated.

Limitation on size of land that may be held under customary land rights

23.(1) After the commencement of this Act, no person shall, without the written approval of the Minister, be entitled to be allocated and to acquire any customary land right in respect of communal land which exceeds the maximum size which the Minister, in consultation with the Minister responsible for agricultural affairs, may prescribe for the purposes of this subsection.

(2) In prescribing a maximum size under subsection (1), the Minister may differentiate -

- (a) according to the area where land is situated;
- (b) according to the purpose for which land is to be used; or
- (c) between persons according to the total extent of other land, whether communal land or otherwise, held by them under any right which permits the beneficial use of such land for a purpose similar to which land held under a customary land right may be used.

Ratification of allocation of customary land right

24.(1) Any allocation of a customary land right made by a Chief or a Traditional Authority under section 22 has no legal effect unless the allocation is ratified by the relevant board in accordance with the provisions of this section.

(2) Upon the allocation of a customary land right the Chief or Traditional Authority by whom it is allocated must forthwith notify the relevant board thereof and furnish to the board the prescribed particulars pertaining to the allocation.

(3) Upon receipt of a notification and the particulars referred to in subsection (2), the board must determine whether the allocation of the right in the particular case was properly made in accordance with the provisions of this Act.

(4) In exercising its function under subsection (3), a board may make such enquiries and consult such persons as it may consider necessary or expedient for that purpose and -

- (a) must ratify the allocation of the right if it is satisfied that such allocation was made in accordance with the provisions of this Act;

Act No. 5, 2002

COMMUNAL LAND REFORM ACT, 2002

- (b) may refer the matter back to the Chief or Traditional Authority concerned for reconsideration in the light of any comments which the board may make; or
- (c) must veto the allocation of the right, if -
 - (i) the right has been allocated in respect of land in which another person has a right;
 - (ii) the size of the land concerned exceeds the maximum prescribed size; or
 - (iii) the right has been allocated in respect of land which is reserved for common usage or any other purpose in the public interest.

(5) If a board vetoes the allocation of a right under subsection (4)(c) it must inform the Chief or Traditional Authority and the applicant concerned in writing of the reasons for its decision.

Registration of customary land right

25. (1) If a board ratifies the allocation of a customary land right under section 24(4)(a) it must -

- (a) cause such right to be registered in the prescribed register in the name of the person to whom it was allocated; and
- (b) issue to that person a certificate of registration in the prescribed form and manner.

(2) The board must keep a duplicate copy of every certificate of registration issued under subsection (1).

Duration of customary land right

26.(1) Subject to section 27, and unless the right is relinquished by the holder thereof, a customary land right allocated under this Act endures for the natural life of the person to whom it is allocated.

(2) Upon the death of the holder of a right referred to in subsection (1) such right reverts to the Chief or Traditional Authority for re-allocation forthwith -

- (a) to the surviving spouse of the deceased person, if such spouse consents to such allocation; or
- (b) in the absence of a surviving spouse, or should he or she not consent as contemplated in paragraph (a), to such child of the deceased person as the Chief or Traditional Authority determines to be entitled to the allocation of the right in accordance with customary law.

(3) If, after the allocation of a customary land right to a surviving spouse referred to in subsection (2), such spouse enters into a second or subsequent marriage, then, upon the death of such surviving spouse, the right in question reverts to the Chief or Traditional Authority for re-allocation of such right forthwith -

- (a) to the surviving spouse, if any, of such second or subsequent marriage, if he or she consents to such allocation; or

- (b) in the absence of a surviving spouse from such second or subsequent marriage, or should he or she not consent as contemplated in paragraph (a), to such child, either from the first or such second marriage or any such subsequent marriage, as the Chief or Traditional Authority determines to be entitled to the allocation of the right in accordance with customary law.

(4) Upon the death of a surviving spouse of a second or subsequent marriage contemplated in subsection (3) to whom a customary land right has been allocated in terms of that subsection, such right reverts to the Chief or Traditional Authority, who then, subject to subsection (5), must determine the person to whom the right must be allocated, who may include -

- (a) a surviving spouse of a further marriage which the deceased person referred to in this subsection has entered into subsequent to the allocation of the right to him or her in terms of subsection (3);
- (b) any child from any of the marriages contemplated in the provisions of this section; or
- (c) any other person.

(5) For the purpose of determining the person to whom a customary land right must be allocated in the circumstances contemplated in subsection (4), the Chief or Traditional Authority concerned must first consult with such members of the family or families concerned as the Chief or Traditional Authority considers necessary or expedient to consult in accordance with customary law.

(6) Any reference in this section to a child must be construed as including an adopted child.

(7) If, in any of the circumstances provided for in the preceding provisions of this section, no surviving spouse or any children can be found to whom a customary land right can be allocated, or should the surviving spouse and such children decline to accept such allocation of a right, the Chief or Traditional Authority may allocate the right in question to any person as the Chief or Traditional Authority thinks fit.

Cancellation of customary land right

27.(1) Subject to subsection (2), a Chief or Traditional Authority may, in accordance with customary law, cancel a customary land right, including a right referred to in section 28(1) -

- (a) if the holder of the right fails to observe in a material respect any condition or restriction attached to the right under this Act;
- (b) if the land is being used predominantly for a purpose not recognised under customary law; or
- (c) on any other ground as may be prescribed.

(2) Any cancellation of a customary land right by a Chief or a Traditional Authority under subsection (1) has no legal effect unless the cancellation is ratified by the relevant board.

(3) Upon the cancellation of a customary land right under subsection (1), the Chief or Traditional Authority by whom it was cancelled must forthwith notify the relevant board thereof and furnish to the board the prescribed particulars pertaining to the cancellation.

(4) A board must ratify the cancellation of a customary land right in terms of subsection (1) if it is satisfied that such cancellation was properly effected in accordance with the provisions of this Act.

(5) The board must cause to be entered in the prescribed register any cancellation of a customary land right in terms of this section.

Recognition of existing customary land rights

28. (1) Subject to subsection (2), any person who immediately before the commencement of this Act held a right in respect of the occupation or use of communal land, being a right of a nature referred to in section 21, and which was granted to or acquired by such person in terms of any law or otherwise, shall continue to hold that right, unless -

- (a) such person's claim to the right to such land is rejected upon an application contemplated in subsection (2); or
- (b) such land reverts to the State by virtue of the provisions of subsection (13).

(2) With effect from a date to be publicly notified by the Minister, either generally or with respect to an area specified in the notice, every person who claims to hold a right referred to in subsection (1) in respect of land situated in the area to which the notice relates, shall be required, subject to subsection (3), to apply in the prescribed form and manner to the relevant board -

- (a) for the recognition and registration of such right under this Act; and
- (b) where applicable, for authorisation for the retention of any fence or fences existing on the land, if the applicant wishes to retain such fence or fences.

(3) Subject to section 37, an application in terms of subsection (2) must be made within a period of three years of the date notified under that subsection, but the Minister may by public notification extend that period by such further period or periods as the Minister may determine.

(4) A notification under subsection (2) or (3) must be published in the *Gazette* and be given in any other manner which the Minister considers expedient.

- (5) An application in terms of subsection (2) must be accompanied by -
 - (a) any documentary evidence, if available, which the applicant can submit in support of his or her claim;
 - (b) a letter from the Chief or Traditional Authority of the traditional community within whose communal area the land in question is situated, furnishing the prescribed information;
 - (c) any further information or documents as the board may require.

(6) In considering an application in terms of subsection (2), and notwithstanding a report by an investigating committee in terms of section 37 in a particular case, a board may make such investigations or inquiries and consult such persons as it may consider necessary or expedient to establish any fact relevant to the applicant's claim, including -

- (a) the date when and manner in which the applicant acquired the right in question;

Act No. 5, 2002

COMMUNAL LAND REFORM ACT, 2002

- (b) whether any other person claims to possess any right in relation to the land in question;
 - (c) whether the area of the land conforms to the prescribed size;
 - (d) the position of the boundaries or any beacons of the land.
- (7) If the board is satisfied as to the validity of the applicant's claim to the right, it must -
- (a) recognise the applicant's right to the land concerned and cause particulars of that right to be entered in the prescribed register; and
 - (b) issue to the applicant a certificate of registration.
- (8) If the applicant has, in terms of subsection (2)(b), applied for authorisation to retain any fence or fences which exist on the land in question and the board is satisfied that -
- (a) the fence or fences were erected in accordance with customary law or the provisions of any statutory law;
 - (b) the fence will not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community; and
 - (c) in the circumstances of the particular case, reasonable grounds exist to allow the applicant to retain the fence or fences concerned,
- the board must grant to the applicant authorisation for the retention thereof, subject to any conditions which it may consider expedient to impose.
- (9) If, in respect of any application in terms of subsection (2), the board is of the opinion -
- (a) that there are conflicting claims in relation to the land; or
 - (b) that reasonable grounds exist to doubt the validity of the applicant's claim,
- it must cause a hearing to be conducted in the prescribed manner to resolve the matter, and may make such decision in relation to the claim as it thinks just.
- (10) Without prejudice to the generality of the power conferred by subsection (9), a decision under that subsection may include -
- (a) affirmation of the claim;
 - (b) subject to subsection (11), rejection of the claim;
 - (c) affirmation of the claim subject to any variations as the board may determine, including variation in respect of the area or the position of the boundaries of the land if the board determines that the area of the land exceeds the prescribed size or that the position of the boundaries are not in accordance with customary law; or
 - (d) the allocation of a right in respect of an alternative portion of land if the land to which the applicant's claim relates encroaches on the commonage.

(11) If a board is not satisfied as to the validity of an applicant's claim to the right in question, it is not obliged to reject such claim but may instead refer the matter to the Chief or Traditional Authority concerned for consideration whether the applicant should be allocated a customary land right under this Act, whether in respect of the land to which the applicant's claim relates or to an alternative portion of land.

(12) Upon referral of a claim in terms of subsection (11), the Chief or Traditional Authority must consider and determine the claim as if it were a new application for the allocation of the right in question.

(13) Except if the Minister on good cause shown directs otherwise, no person shall on expiry of the period allowed for applications in terms of subsection (3) be entitled to apply for the recognition and registration of any right referred to in subsection (1), in which event -

- (a) the person holding the land shall be deemed to have relinquished his or her claim to that land; and
- (b) such land shall revert to the State and become available for the allocation of any right under this Act.

(14) If the person who holds a right referred to in subsection (1) dies -

- (a) before the expiry of the period referred to in subsection (3) and without such person having made the application contemplated in subsection (2), the surviving spouse or, in the absence of such a spouse, such child of that person as the board, in consultation with the Chief or Traditional Authority concerned may approve, may make that application as if the right held by the deceased person vested in such spouse or such child, as the case may be; or
- (b) after he or she has duly made the application contemplated in subsection (2), but before the determination of the application, that application shall be deemed to have been made by the surviving spouse or, in the absence of such a spouse, by a child referred to in paragraph (a), unless such spouse or such child, as the case may be, indicates otherwise.

Grazing rights

29.(1) Subject to the provisions of this section, the commonage in the communal area of a traditional community is available for use by the lawful residents of such area for the grazing of their stock, subject to -

- (a) such conditions as may be prescribed or as the Chief or Traditional Authority concerned may impose, including conditions relating to -
 - (i) the kinds and number of stock that may be grazed; and
 - (ii) the section or sections of the commonage where stock may be grazed and the grazing in rotation on different sections.
- (b) the right of the Chief or Traditional Authority or the relevant board to utilise any portion of the commonage which is required for the allocation of a right under this Act; and
- (c) the right of the President under section 16(1)(c) to withdraw and reserve any portion of the commonage for any purpose in the public interest.

(2) Notwithstanding subsection (1), the Chief or Traditional Authority may withdraw the grazing right of any resident who -

- (a) fails to observe in a material respect any condition referred to in subsection (1)(a);
- (b) contravenes any provision of subsection (4); or
- (c) has access to other land, whether communal land or otherwise, held by such resident under any right the total extent of which is equal to or more than the maximum size prescribed by the Minister under section 23 and which the Chief or Traditional Authority considers to offer sufficient grazing for the stock of such resident.

(3) Notwithstanding subsection (1), the Chief or Traditional Authority may upon application of any person who is not a resident referred to in that subsection, grant a grazing right to such person, either for a specified or an indefinite period, and any such person shall exercise such right subject to the conditions referred to in subsection (1)(a): Provided that the Chief or Traditional Authority may at any time withdraw a grazing right granted under this subsection if, due to drought or any other reasonable cause, the Chief or Traditional Authority considers such cancellation in the interest of the residents of the traditional community concerned.

(4) Except with the written authority of the Chief or Traditional Authority, and ratification by the board concerned, no person shall -

- (a) erect or occupy any building or other structure on the commonage;
- (b) plough or cultivate any portion of the commonage;
- (c) take up his or her abode on or occupy any portion of the commonage; or
- (d) obstruct the approaches to any watering place on the commonage, or prevent or attempt to prevent any person from drawing water from, or watering stock at, such a watering place, or pollute the water at such watering place or interfere with the operation of any windmill, water-pump, water-pipe, dam or storage tank or other appurtenance installed or constructed at such a watering place;
- (e) carry on any activity on the commonage, other than the lawful grazing of stock, which may prevent or restrict the residents of the traditional community concerned from a reasonable exercise of their grazing rights.

(5) A person who contravenes any provision of subsection (4) is guilty of an offence and liable on conviction to a fine not exceeding N\$4 000 or imprisonment for a period not exceeding one year.

Part 2 - Right of leasehold

Power to grant right of leasehold

30. (1) Subject to subsections (3) and (4) and section 31, a board may, upon application, grant to a person a right of leasehold in respect of a portion of communal land, but a right of leasehold for agricultural purposes may be granted only in respect of land which is situated within a designated area referred to in subsection (2).

(2) The Minister, after consultation with the Traditional Authority and the board concerned, must designate by notice in the *Gazette*, in respect of the communal area of each traditional community, an area within which that board may grant rights of leasehold for agricultural purposes.

(3) Notwithstanding subsection (1) a person may apply to the Minister for approval for the grant of a right of leasehold in respect of land which is wholly or partly situated outside a designated area, and the Minister may grant the application if the Minister, after consultation with the Traditional Authority and the board concerned, is satisfied that -

- (a) the grant of the right of leasehold will not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community; and
- (b) in the circumstances of the particular case, reasonable grounds exist for the grant of approval.

(4) Subject to subsection (5), a board may grant a right of leasehold only if the Traditional Authority of the traditional community in whose communal area the land is situated consents to the grant of the right.

(5) If a Traditional Authority refuses to grant consent in terms of subsection (4) when in the opinion of the board consent ought to be given, the board may submit the matter to an arbitrator referred to in subsection (6) for decision, who may grant consent in the place of the Traditional Authority if he or she is satisfied that the Traditional Authority is withholding consent unreasonably.

(6) The Minister must appoint as arbitrator under subsection (5) a person approved by the board and by the Traditional Authority concerned and, if either the board or the Traditional Authority or both -

- (a) fail to communicate its or their decision to the Minister with respect to a person proposed for appointment within 30 days of being notified by the Minister of the person's name, address and qualifications; or
- (b) on a third occasion communicate disapproval of a person proposed for the particular appointment;

the Minister may disregard the requirement of approval stipulated by this subsection in so far as it concerns the board or the Traditional Authority or both, as the case may be.

Application for right of leasehold

31. (1) An application for a right of leasehold in respect of communal land must be made in the prescribed manner to the board in whose area the land in question is situated.

(2) A right of leasehold may not be granted in respect of a portion of land which another person holds under a customary land right, unless such person agrees to relinquish his or her right in respect of the land, subject to the payment of compensation as agreed to by such person and suitable arrangements for his or her resettlement on alternative land.

(3) A board may not, without the prior written approval of the Minister, grant a right of leasehold in respect of any land -

- (a) which exceeds the maximum size prescribed for the particular use for which the right is required; or
- (b) if the applicant is a leaseholder in respect of another portion of land granted under this Act or occupies any communal land under a right referred to in section 35(1), unless recognition of such right is refused in accordance with that section.

(4) Before granting a right of leasehold in terms of subsection (1) in respect of land which is wholly or partly situated in an area which has been declared a conservancy in terms of section 24A of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975), a board must have due regard to any management and utilization plan framed by the conservancy committee concerned in relation to that conservancy, and such board may not grant the right of leasehold if the purpose for which the land in question is proposed to be used under such right would defeat the objects of such management and utilization plan.

Conditions applicable to right of leasehold

32. (1) A right of leasehold may be granted by a board only -

- (a) if an amount in respect of that right and any improvements on the land in question is paid to that board;
- (b) if security is furnished to the satisfaction of the board for the payment of the said amount upon registration of the right of leasehold; or
- (c) if the board allows such amount to be paid by way of instalments in a manner agreed upon between the board and the person to whom the right is granted.

(2) The amount referred to in subsection (1) must be determined in the manner prescribed.

(3) A right of leasehold is subject to such further conditions as may be prescribed by the Minister generally or as may be approved by the Minister in a particular case.

(4) Conditions referred to in subsection (3) may include conditions prescribing the circumstances in which the grantee of the right of leasehold -

- (a) may be required to cause the land in question to be surveyed, at his or her own expense, before the registration of such right in his or her name is effected; or
- (b) may be granted permission to cause the land in question to be surveyed at his or her own expense.

(5) Moneys paid in respect of the amount referred to in subsection (1) must be deposited in the fund established by or under any law for the purpose of regional development.

Registration of right of leasehold

33. (1) Subject to subsection (2), if an application for a right of leasehold is granted by a board, the board must -

- (a) cause such right to be registered in the prescribed register in the name of the applicant; and
- (b) issue to the applicant a certificate of leasehold in the prescribed form and manner.

(2) If the land in respect of which the right of leasehold is granted is surveyed land which is shown on a diagram as defined in section 1 of the Land Survey Act, 1993 (Act No. 33 of 1993) and the term of lease is for a period of 10 years or more, the leasehold must be registered in accordance with the provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

Duration of right of leasehold

34. (1) Subject to subsection (2), a right of leasehold may be granted for such period, not exceeding 99 years, as the board and the grantee of the right may agree.

(2) A right of leasehold granted for a period exceeding ten years is not valid unless it is approved by the Minister.

(3) A right of leasehold may be renewed by agreement between the board and the leaseholder, but subject to the approval of the Minister in a case referred to in subsection (2).

Existing rights to occupy communal land

35. (1) Subject to subsection (2), any person who immediately before the commencement of this Act held a right, not being right under customary law, to occupy any communal land, whether by virtue of any authority granted under any law or otherwise, may continue to occupy such land under that right, subject to the same terms and conditions on which the land was occupied immediately before the commencement of this Act, until -

- (a) such right is recognised and a right of leasehold is granted to such person in respect of the land upon acceptance of an offer made in terms of subsection (7);
- (b) such person's claim to the right to such land is rejected upon an application contemplated in subsection (2);
- (c) such person declines or fails to accept an offer of a right of leasehold made in terms of subsection (7); or
- (d) such land reverts to the State by virtue of the provisions of subsection (13).

(2) With effect from a date to be publicly notified by the Minister, either generally or with respect to an area specified in the notice, every person who claims to hold a right referred to in subsection (1) in respect of land situated in the area to which the notice relates, shall be required to apply in the prescribed form and manner to the relevant board -

- (a) for the recognition of such right and the grant of a right of leasehold under this Act; and
- (b) where applicable, for authorisation for the retention of any fence or fences existing on the land, if the applicant wishes to retain such fence or fences.

(3) Subject to section 37 an application in terms of subsection (2) must be made within a period of three years of the date notified under that subsection, but the Minister may by public notification extend that period by such further period or periods as the Minister may determine.

(4) A notification under subsection (2) or (3) must be published in the *Gazette* and be given in any other manner which the Minister considers expedient.

(5) An application in terms of subsection (2) must be accompanied by -

- (a) any documentary evidence, if available, which the applicant can submit in support of his or her claim;
- (b) a letter from the Chief or Traditional Authority of the traditional community within whose communal area the land in question is situated, furnishing the prescribed information;

(c) any further information or documents as the board may require.

(6) In considering an application in terms of subsection (2), and notwithstanding a report by an investigating committee in terms of section 37 in a particular case, a board may make such investigations or inquiries and consult such persons as it may consider necessary or expedient to establish any fact relevant to the applicant's claim, including -

- (a) the date when and manner in which the applicant acquired the right in question;
- (b) whether any other person claims to possess any right in relation to the land in question;
- (c) whether the land to which the claim relates conforms to the prescribed size for the particular use for which the land is held;
- (d) the position of the boundaries or any beacons on the land;
- (e) whether the land is fenced-off and the nature, extent and date of erection of the fence.

(7) If the board is satisfied as to the validity of the applicant's claim, the board must in writing -

- (a) offer to grant to the applicant a right of leasehold in respect of the land;
- (b) state the conditions subject to which the leasehold is offered;
- (c) specify the time, not being less than 90 days after the date on which the offer is made, within which the offer may be accepted; and
- (d) inform such person that if he or she declines the offer or fails to accept it within the specified time, he or she shall cease to have any claim to the land in question.

(8) A person who refuses or fails to accept an offer made in accordance with subsection (7) shall cease to have any claim to the land in question, in which event the land shall revert to the State for the allocation of any right under this Act.

(9) If the applicant has, in terms of subsection (2)(b), applied for authorisation to retain any fence or fences which exist on the land in question and the board is satisfied that -

- (a) the fence or fences were erected in accordance with the provisions of any law or with the consent of a competent authority;
- (b) the fence will not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community; and
- (c) in the circumstances of the particular case reasonable grounds exist for allowing the applicant to retain the fence or fences concerned,

the board must grant to the applicant authorisation for the retention thereof, subject to such conditions as it may consider expedient to impose.

(10) If, in respect of any application in terms of subsection (2), the board is of the opinion -

- (a) that there are conflicting claims in relation to the land; or

- (b) that reasonable grounds exist to doubt the validity of the applicant's claim,

it must cause a hearing to be conducted in the prescribed manner to resolve the matter, and may make such decision in relation to the claim as it thinks just.

(11) Without prejudice to the generality of the power conferred by subsection (10), a decision under that subsection may include -

- (a) affirmation of the claim;
- (b) subject to subsection (12), rejection of the claim; or
- (c) affirmation of the claim subject to any variations as determined by the board, including variation in respect of the area or the position of the boundaries of the land if the board determines that the area of the land exceeds the prescribed size or that the position of the boundaries are not valid.

(12) Where a board is not satisfied as to the validity of an applicant's claim to the right in question, it is not obliged to reject such claim but may instead offer to the claimant the grant of a right of leasehold under this Act, either in respect of the piece of land to which the claimant's claim relates or a portion thereof or in respect of any other piece of land as the board may determine.

(13) Except if the Minister on good cause shown directs otherwise, no person shall, on expiry of the period allowed for applications in terms of subsection (3), be entitled to apply for the recognition of any right referred to in subsection (1) and the grant of a right of leasehold under this Act, in which event -

- (a) the person holding the land shall be deemed to have relinquished his or her claim to that land; and
- (b) such land shall revert to the State and become available for the allocation of a right under this Act.

Cancellation of right of leasehold

36. In addition to the grounds for cancellation set out in a deed of leasehold, a right of leasehold may be cancelled by a board if the leaseholder fails to comply with the requirements or to adhere to any restrictions imposed by or under any other law pertaining to the utilisation of the land to which the right relates.

CHAPTER V GENERAL

Preliminary investigation of claim to existing rights

37. (1) The Minister, in consultation with a board, may establish for that board an investigating committee, comprising such members as the Minister may appoint, to -

- (a) conduct a preliminary investigation referred to in subsection (2); and
- (b) report to the board thereon.

(2) Notwithstanding sections 28 and 35 and the period allowed for applications referred to in subsection (2) of both those sections, if a board has not yet determined an application in respect of land occupied, used or otherwise controlled by a person and enclosed with a fence, irrespective whether an application has been made, the board may at any time direct an investigating committee referred to in subsection (1) to conduct a preliminary investigation to establish the circumstances concerning -

Act No. 5, 2002

COMMUNAL LAND REFORM ACT, 2002

- (a) the occupation, use or control of the land by that person;
 - (b) the existence of the fence on the land; and
 - (c) any other matter which the board itself may investigate in terms of either of those sections or which may be indicated by the board.
- (3) The person designated by the Minister as chairperson of the investigating committee must give at least 30 days' notice to the person in respect of whom the preliminary investigation is to be held, informing him or her -
- (a) of the time and place of the preliminary investigation;
 - (b) that he or she is required to attend the preliminary investigation to be questioned on the matters mentioned in subsection (2); and
 - (c) that any book or document relevant to the subject of the preliminary investigation which he or she may wish to submit to the investigating committee must be produced at his or her appearance before that committee.
- (4) For the purposes of a preliminary investigation -
- (a) the chairperson of the investigating committee may summon the Chief or any other traditional leader of the traditional community concerned and any other person who is believed to be able to furnish information on the subject of the preliminary investigation or to have in his or her possession or under his or her control a book or document which relates to that subject, to appear before the investigating committee at the time and place specified in the summons to be questioned or to produce that book or document;
 - (b) the committee may question a person appearing before it under oath or affirmation administered by the chairperson, and examine or retain for further examination or safe custody any such book or document, provided a receipt therefor is issued to the person and he or she is allowed to make and retain a copy of the book or document.
- (5) The notice referred to in subsection (3) and a summons referred to in subsection (4) must be signed by the chairperson of the investigating committee and be served in the manner prescribed.
- (6) A person summoned in terms of subsection (4) is guilty of an offence if he or she -
- (a) without sufficient cause fails to appear before the investigating committee at the time and place specified in the summons or to remain in attendance until excused by the chairperson from further attendance;
 - (b) at his or her appearance before the investigating committee refuses to be sworn in or to make an affirmation when requested to do so by the chairperson;
 - (c) having taken the oath or having made affirmation -
 - (i) fails to answer fully and satisfactorily any question lawfully put to him or her;
 - (ii) fails to produce a book, document or other object in his or her possession or under his or her control which he or she has been summoned to produce;

- (iii) gives false evidence knowing it to be false or not knowing or believing it to be true,

and a person convicted of any such offence is liable on conviction to a fine not exceeding N\$1 000 or imprisonment for a period not exceeding 3 months.

(7) If at the conclusion of the preliminary investigation the investigating committee thinks it expedient that the board should forthwith consider the person's claim to the land in question or to his or her entitlement to the fence on the land, the investigating committee must instruct that person to prepare and submit to the chairperson of the committee, within the time stipulated by the committee, his or her application in terms of section 28(2) or 35(2), as the case may be, in respect of the land and the fence for referral to the board.

- (8) If the person in respect of whom a preliminary investigation is held -
 - (a) fails to attend the preliminary investigation; or
 - (b) fails to comply with an instruction of the investigating committee in terms of subsection (7),

the investigating committee must state that fact in its report to the board.

(9) If the investigating committee reports to the board any failure on the part of the person as contemplated in subsection (8), the board may, by notice in writing served on that person in the prescribed manner -

- (a) inform him or her of the report of the investigating committee concerning his or her failure;
- (b) direct him or her to comply, within the time specified in the notice, with such requirements as the board may stipulate in the notice in connection with that failure; and
- (c) inform him or her of the provisions of subsection (10).

(10) If the person without reasonable cause fails to comply with a requirement stipulated in the notice referred to in subsection (9), the board may declare the person to be divested of any claim in respect of the land in question.

- (11) A person declared to be divested of a claim under subsection (10) -
 - (a) is not entitled to make an application in terms of section 28(2) or 35(2) in respect of the land concerned; and
 - (b) ceases to have any claim to or in respect of that land or anything erected or installed on the land,

notwithstanding that the period for applications in terms of either of those sections have not expired.

Transfer of rights

38. Subject to such exemptions as may be prescribed, or unless any condition attaching to a customary land right or a right of leasehold under this Act provides otherwise -

- (a) a customary land right may be transferred only with the written consent of the Chief or Traditional Authority concerned;
- (b) a right of leasehold may be transferred only with the written consent of the board concerned.

Appeals

39. (1) Any person aggrieved by a decision of a Chief or a Traditional Authority or any board under this Act, may appeal in the prescribed manner against that decision to an appeal tribunal appointed by the Minister for the purpose of the appeal concerned.

(2) An appeal tribunal consists of such person or number of persons as the Minister may appoint, who must be a person or persons with adequate skills and expertise to determine the appeal concerned,

(3) If two or more persons are appointed under subsection (2) the Minister must designate one of them to act as chairperson of the appeal tribunal.

(4) All the members of an appeal tribunal constitute a quorum for a meeting of that tribunal.

(5) If the tribunal consists of more than one member -

- (a) the decision of the majority of the members thereof shall be the decision of the appeal tribunal; and
- (b) the chairperson of the appeal tribunal has a casting vote in addition to a deliberative vote in the case of an equality of votes.

(6) An appeal tribunal may -

- (a) confirm, set aside or amend the decision which is the subject of the appeal;
- (b) make any order in connection therewith as it may think fit.

(7) A member of the appeal tribunal who is not a staff member in the Public Service must be paid from money appropriated by Parliament for the purpose such remuneration and allowances as the Minister determines with the concurrence of the Minister of Finance.

Compensation for improvements

40.(1) No person -

- (a) has any claim against a Chief, a Traditional Authority, a board or the State for compensation in respect of any improvement effected by him or her or any other person on land in respect of which such person holds or held a customary land right or a right of leasehold under this Act, including a right referred to in section 28(1) or 35(1); or
- (b) may remove or cause to be removed from such land, or destroy or damage or cause to be destroyed or damaged on such land, any improvement when he or she vacates or intends to vacate the land, whether such improvement was effected by such person or any other person, but the board concerned, after consultation with the Minister, may grant consent for the removal of any such improvement.

(2) Subsection (1) is not to be construed as precluding the holder of a customary land right or a right of leasehold who proposes to transfer his or her customary land right or right of leasehold to another person in accordance with the provisions of this Act from accepting, in accordance with an agreement entered into between such holder and that person, payment of compensation for any improvement on the land in respect of which the right is to be transferred.

(3) Notwithstanding subsection (1), and except if compensation is paid in the circumstances referred to in subsection (2) or in terms of subsection (4), the Minister, after consultation with the board concerned, may, upon the termination of a customary land right or a right of leasehold, pay to the person whose right has terminated compensation in respect of any necessary improvement effected by that person on the land concerned.

(4) If -

(a) a right of leasehold has terminated in respect of land on which any improvement exists which was effected by the leaseholder during the currency of the lease; and

(b) upon a subsequent grant of a further right of leasehold in respect of that land to another person, that person is required by the board in terms section 32(1) to pay any consideration in respect of that improvement,

the board must, from the moneys so recovered in respect of that improvement, pay compensation to the former leaseholder in such amount as may be determined in terms of subsection (5), except to the extent that any compensation has been paid to that leaseholder in terms of subsection (3).

(5) The amount of compensation payable to a person in terms of subsection (3) or (4) must be determined by agreement between the board concerned and such person, subject to the approval of the Minister, and failing such agreement or approval, by arbitration in accordance with the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965).

(6) Compensation payable to a person in terms of subsection (3) must be paid from moneys appropriated by Parliament for the purpose.

(7) If compensation in respect of any improvement has been paid from the State Revenue Fund in terms of subsection (3), and on a subsequent allocation of a customary land right or a right of leasehold in respect of the land concerned, the grantee is required to pay, and pays, to the board any consideration in respect of that improvement, the board must, from the moneys so received by it, make a refund to the State Revenue Fund equal to the amount of the compensation paid therefrom, or, if the consideration received by the board is insufficient, such lesser amount as the Minister, with the consent of the Minister of Finance, may approve.

Survey of communal land

41. (1) A board may, with the prior approval of the Minister, but subject to subsection (2), cause any area of communal land within its region to be surveyed and a diagram and plan to be prepared in respect of the surveyed area.

(2) The survey of any area of land and preparation of a diagram and general plan in accordance with subsection (1), must be carried out in accordance with a lay-out plan which the board must cause to be prepared with the co-operation of the Traditional Authority concerned.

(3) Where the area to be surveyed comprises individual portions of land occupied or used by persons under a customary land right or a right of leasehold granted under this

Act, including a right referred to in section 28(1) or 35(1), a board may, with the consent of the Traditional Authority concerned and of any other person who will be affected thereby, and subject to the payment of just compensation by the State to such person, cause such adjustments to be effected to the layout of such individual pieces of land, as may be necessary for the purpose of preparing the lay-out plan in an effective manner.

No consideration payable for customary land right

42.(1) Except where, and to the extent to which, compensation for any improvement is payable in any of the circumstances contemplated in section 40, no consideration of any nature, whether money or goods or any other benefit of an economic value, may be paid or delivered or given, or may be claimed or received, by any person as compensation for the allocation of any customary land right under this Act.

(2) Subsection (1) does not apply to any fees, charges or other moneys which are prescribed to be paid in respect of any application or the issue of any certificate or document or for any other purpose in terms of this Act.

Unlawful occupation of communal land

43. (1) No person may occupy or use for any purpose any communal land other than under a right acquired in accordance with the provisions of this Act, including a right referred to in section 28(1) or 35(1).

(2) A Chief or a Traditional Authority or the board concerned may institute legal action for the eviction of any person who occupies any communal land in contravention of subsection (1).

Fences

44.(1) Any person who, without the required authorisation granted under this Act, and subject to such exemptions as may be prescribed -

- (a) erects or causes to be erected on any communal land any fence of whatever nature; or
- (b) being a person referred to in section 28(1) or 35(1), retains any fence on any communal land after the expiry of a period of 30 days after his or her application for such authorisation in terms of section 28(2)(b) or 35(2)(b) has been refused,

is guilty of an offence and on conviction liable to a fine not exceeding N\$ 4000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) If the offence for which a person is convicted in terms of subsection (1) is continued after the conviction, such person is guilty of a further offence and on conviction liable to a fine not exceeding N\$50 for every day on which the offence is continued.

(3) If any fence is found to be on any communal land in contravention of subsection (1), the Chief or Traditional Authority or the board concerned may, in accordance with the prescribed procedure, cause such fence to be removed and may dispose of the material used for the erection of the fence in such manner as may be prescribed.

(4) Any costs incurred in connection with the removal of a fence in terms of subsection (3) may be recovered from the person who erected or retained such fence in contravention of subsection (1).

Regulations

- 45. (1)** The Minister may make regulations in relation to -
- (a) any matter which in terms of this Act is required or permitted to be prescribed;
 - (b) the procedure for investigations to be conducted by a board for the purpose of considering an application under this Act, including the summoning of witnesses;
 - (c) the fees payable for any application or the issue of any certificate or other document in terms of this Act;
 - (d) the procedure for referral of a matter to an arbitrator in terms of section 30(5);
 - (e) the procedure for applications for authorisation for the erection of a fence on communal land and the circumstances in which such authorisation is not required;
 - (f) the procedure and period for the lodging of appeals in terms of section 39 and the fee payable in respect thereof;
 - (g) matters relating to roads, fences, pounds, watercourses, woods and the use of water, wood, clay and stone on communal land;
 - (h) the conditions, in addition to conditions imposed by or under any other law, under which prospecting or mining operations may be carried out on communal land;
 - (i) the combating and prevention of soil erosion, the protection of the pastoral resources and the limitation and control of the grazing of stock;
 - (j) the payment of compensation to persons whose rights to the occupation or use of communal land, granted or acquired under this Act, including a right referred to in section 28(1) or 35(1), are terminated on account of the withdrawal of any land from a communal land area for a purpose in the public interest under this Act: and
 - (k) any other matter as the Minister may consider necessary or expedient for giving effect to this Act and for its administration.
- (2)** Regulations made under subsection (1) may -
- (a) be declared to be applicable only in a specified area or areas or in respect of a specified category or categories of persons and different regulations may be made for different areas or different categories of persons;
 - (b) prescribe penalties for a contravention of or failure to comply with any provision thereof, but not exceeding a fine of N\$4 000 or imprisonment for a period exceeding one year, or to both such fine and such imprisonment.

Repeal of laws

46. The laws mentioned in Schedule 2 to this Act are repealed to the extent set out in the third column of that Schedule.

Short title and commencement

47. This Act is called the Communal Land Reform Act, 2002 and comes into operation on a date determined by the Minister by notice in the *Gazette*.

SCHEDULE 1

DESCRIPTION OF COMMUNAL LAND AREAS

KAOKOLAND

Area 1

From a point where the +100 600 metre y-co-ordinate line on the LO 22/13-trigonometrical survey system intersects the middle of the Kunene River; thence eastwards along the said middle to a point where it intersects the meridian of longitude 14E 00' 00" east; thence south-eastward along a straight line to a point where the meridian of longitude 14E 32' 00" east intersects the parallel of latitude 18E 30' 00" south; thence along a straight line to the south-eastern corner beacon of the Omatambo Maowe Quarantine Camp 740; thence south-eastward along a straight line to a point five kilometres due east of the water-hole Onaiso; thence south-westwards along a straight line to a point where the western boundary of the road reserve of Main Road 67 intersects the northern boundary of the farm Kowares 276; thence south-eastward along the western boundary of the said road reserve to a point where it intersects the northern boundary of the Remaining Extent of Tevere 643; thence generally westwards and southwards along the boundaries of the following farms so as to exclude them from this area: The Remaining Extent of Tevere 643, Westend 642, Marenphil 641, De Ville 638, Portion 1 and the Remaining Extent of Kamdescha 624 and Farm 621, to a point where the middle of the Ombonde River intersects the north-western boundary of the last-mentioned farm (approximately 2 000 metres from the westernmost corner beacon thereof); thence generally north-westward along the middle of said Ombonde River up to its confluence with the Hoanib River; thence generally north-westwards along the middle of the Hoanib river to a point where it intersects the south-eastern boundary of Sesfontein 207; thence along the boundary of the said Sesfontein 207, so as to exclude it from this area, to a point where the middle of the Hoanib River intersects the south-western boundary of Sesfontein 207; thence south-westwards along the middle of the Hoanib River to a point where it intersects the meridian of longitude 13E 07' 02" east; thence northwards along the said meridian to a point where it intersects the parallel of latitude 19E 21' 57" south on the northern bank of the Hoanib River; thence south-westwards with the said bank to a point where it intersects the -5 300 metre y-co-ordinate line on the LO 22/13-trigonometrical survey system, thence north-westwards in a straight line to a point where the +92 200 metre y-co-ordinate line on the said system intersects the parallel of latitude 18E 00' 00" south; thence in a straight line to a point where the +100 600 metre y-co-ordinate line on the said system intersects the middle of the Kunene River, the point of beginning.

Area 2

From a point where the middle of the Kunene River meets the coast line of the Atlantic Ocean; thence Eastwards along the middle of the said river to a point where it intersects the + 100 600 metre y-co-ordinate line on the LO 22/13-trigonometrical survey system; thence in a straight line to a point where the +92 200 metre y-co-ordinate line on the said system intersects the parallel of latitude 18E 00' 00" south; thence south-eastward in a straight line to a point where the northern bank of the Hoanib River intersects the -5300 metre y-co-ordinate line on the said system, thence south-westwards along the said northern bank to a point where it intersects the meridian of longitude 13E east; thence south-westwards in a straight line to a point where the parallel of latitude 19E 32' 00" south intersects the coast line of the Atlantic Ocean; thence generally north-westwards along the said coast line to the point of beginning.

DAMARALAND

From the point where the meridian of longitude 13E 07' 02" East intersects the middle of the Hoanib River; thence north-eastward along the middle of that river to a point where it intersects the south-western boundary of Sesfontein 207; thence along the boundary of the said Sesfontein 207, so as to include it in this area, to a point where the south-eastern

boundary thereof intersects the middle of the Hoanib River; thence generally south-eastward along the middle of the Hoanib River up to its confluence with the Ombonde River; thence along the middle of the Ombonde River to a point where it intersects the north-western boundary of Farm 621 (approximately 2 000 metres from its westernmost corner beacon); thence generally northwards and eastward along the boundaries of the following farms so as to include them in this area: Farm 621, the Remaining Extent and Portion 1 of Kamdescha 624, De Ville 638, Marenphil 641, Westend 642 and the Remaining Extent of Tevrede 643, to a point where the western boundary of the road reserve of Main Road 67 intersects the northern boundary of the last-mentioned farm; thence along the western boundary of the said road reserve to a point where it intersects the eastern boundary of the Remaining Extent of Marienhohe 639; so as to include the following farms in this area: The Remaining Extent of Tevrede 643, Portion 1 of Khoabendes 645, Portion 6 of Kaross 237, the Remaining Extent of Swartskamp 640, Portion 2 and the Remaining Extent of Marienhohe 639; thence south-eastward along the eastern boundary of the last-mentioned farm to its south-eastern corner beacon; thence generally southwards and south-westwards along the boundaries of the following farms so as to include them in this area: The Remaining Extent of Marienhohe 639, Quo Vadis 625, Waterbron 623, Condor 617, Emmanuel 613, Deo Volento 610, Dwars - Trek 611, Anker 602, Kakatswa Onguati 236, Portion 2 and Portion 1 of Amkarub 269, Portion 1 and the Remaining Extent of Brambach 271, the Remaining Extent and Portion 1 of Engelbrecht 272, Annabis 677, Spitskop 678, Rokeys 682, Portion 1 and the Remaining Extent of Aub 683, Smalruggens 684, Fransfontein 6, Waterval 384, Stille Woning 386, Braunfels 387, the Farm 388, Renosterkop 389, Löwenfontein 84, Otjiwarongo 150, Okombahe 139, Springbock-fontein 21, Tsumib 20, Kudubis 19, the Remaining Extent of Pforte 65, Sandamap - Noord 115, Sandamap 64, Eureka 99, Sukses 90, Hakskeen 89 and Portion 2 of Trekkoppe 120, to the most southern corner beacon of the last-mentioned farm, approximately 1 600 metres north of the Usakos-Swakopmund railway line; thence generally south-westwards along a line approximately 1 600 metres from and parallel to the said railway line to a point where it intersects the eastern boundary of Arandis Townlands 170, with geographic co-ordinate values 14E 59N 39O East and 22E 23N 25O South, thence generally northwards, westwards and southwards along the boundaries of the last-mentioned property, to a point with geographic co-ordinate values 14E 46N 55O East and 22E 26N 49O South, approximately 1 600 metres north of the Usakos B Swakopmund railway line, so as to exclude Arandis Townlands 170 from this area, thence generally south-westwards along a line approximately 1 600 metres from and parallel to the said railway line to a point where the meridian of longitude 14E 53' 33" East intersects the parallel of latitude 22E 29' 08" South; thence north-westwards along a straight line to a point with geographic co-ordinate values 14E 31N 58O East and 21E 55N 05O South, on the southern boundary of Desert Water South 219, thence eastward, north-eastward, northwards, westwards and southwards, along the boundaries of Desert Water South 219 and Desert Water North 218, to a point with geographic co-ordinate values 14E 31N 33O East and 21E 54N 25O South on the western boundary of Desert Water South 219; so as to exclude these two properties from this area: thence north-westwards along a straight line to a point where the meridian of longitude 13E 57'33" East intersects the parallel of latitude 21E 00' 09" South; thence north-westwards along a straight line to the point of beginning.

OWAMBOLAND

From the point where the meridian of longitude 14E East intersects the middle of the Kunene River; thence eastward along the middle of that river to a point at the Ruacana Falls above the crest or lip where the said middle intersects the parallel of latitude 17E 23' 23,73" South; thence eastward along the said parallel of latitude to a point where it intersects the meridian of longitude 18E east; thence southwards along the said meridian of longitude 18° east to the point where it intersects the northern boundary of the farm Last Hope 880; thence westwards to the north-western corner beacon of the farm Tsintsabis 881; thence southwards along the western boundary of the last-mentioned farm to the north-eastern corner beacon of the Farm 878; thence westwards along the northern boundaries of the following farms: Farm 878, the Remaining Extent and Portion 1 of Concordia 876, Vaalwater 875, the Remaining of Pietersburg 1347, Mankettifeld 1074, Gutwohne Nord 1073, Kumewa 1072, Stofdraai 1071, Grenspas 1070, Geluksanker 1279

Act No. 5, 2002

COMMUNAL LAND REFORM ACT, 2002

and Operet 1260, to a point where the south-western road reserve boundary of Trunk Road 1, Section 10, intersects the northern boundary of Operet 1260; thence north-westwards along the north-eastern road reserve boundary of Trunk Road 1, Section 10, to a point where the north-eastern road reserve boundary intersects the parallel of latitude 18E 30N 00O South; thence westwards along the parallel of latitude 18E 30N 00O South to a point where the said parallel of latitude is intersected by a straight line drawn generally north-eastward from a point south-east of Otjivalunda East Salt Pan, so that the said salt pan is included; thence generally south-westwards along the said straight line to a point south-east of the said Otjivalunda East Salt Pan; thence generally westwards to the south-eastern corner beacon of the farm Quarantine Station 742; thence westwards along the southern boundary of the said farm Quarantine Station 742 to its south-western corner beacon; thence north-westwards in a straight line to a point where the parallel of latitude 18E 30N 00O South intersects the meridian of longitude 14E 32N 00O East; thence north-westwards in a straight line to a point where the meridian of longitude 14E East intersects the middle of the Kunene River, the point of beginning.

KAVANGO*Area 1*

From the point where meridian of longitude 18E east intersects the parallel of latitude 17E 23' 23,73" south; thence eastward along the said parallel up to a point where it intersects the middle of the Okavango River; thence generally south-eastwards along the said middle up to point where it intersects the boundary common to Namibia and Botswana; thence generally westwards along the said boundary up to a point where it joins meridian of longitude 21(east; thence southwards along the said meridian of longitude up to a point where it intersects the parallel of latitude 19(10' south; thence westwards along the said parallel of latitude to a point where it intersects the eastern boundary of the farm Talitha 1006; thence northwards along the boundaries of but excluding the following farms: Talitha 1006, Hero 1007, Verskyn 1012, Farm 1013, Wildgrund 1018 and Wildhagen 1019, to the north-eastern corner beacon of the last-mentioned farm; thence westwards along the boundaries of but excluding t? following farms: Wildhagen 1019, Farm 1020, Farm 1021, Tiervlei 1166, Na-Oes 1027, Onreg 1028, Tranedal 1033, Farm 1034, Farm 1039, Farm 1040, Wag-'n-Bietjie 1046, Farm 1047, Farm 1052, Farm 1164, Farm 1058, Farm 1059, Farm 1061, Randeier 1062, the Remaining Extent of Wildernis 882 and Last Hope 880, to a point where the meridian of longitude 18(east intersects the northern boundary of the farm Last Hope 880; thence northwards along the meridian of longitude 18(east to a point where it intersect the parallel of latitude 17E 23' 23,73" south, the point of beginning.

Area 2

From a point at the northern extremity of Sibana Island in the Okavango River; thence north-eastward in a straight line up to Beacon 22 where meridian of longitude 23E 18' 00" east intersects the parallel of latitude 17E 40' 00" south; thence southwards along the said meridian of longitude up to a point where it intersects the boundary common to Namibia and Botswana; thence generally westwards along said boundary up to point where it intersects the middle of the Okavango River; thence generally north-westwards along the said middle to the point of beginning.

CAPRIVI

That part of Namibia lying east of the meridian of longitude 23E 18' 00".

BUSHMANLAND

From a point where the eastern boundary of the farm Talitha 1006 is intersected by the parallel of latitude 19E 10N south; thence eastward along the said parallel of latitude 19E 10N south to a point where the said parallel of latitude intersects the boundary common to Namibia and Botswana; thence southwards along the said common boundary

Act No. 5, 2002

COMMUNAL LAND REFORM ACT, 2002

to point where it intersects the parallel of latitude 20E south; thence westwards along the said parallel of latitude 20E south-eastern corner beacon of the Otjitou Native Reserve 235; thence north-westwards along the boundary of the said Otjituo Native Reserve to the south-eastern corner beacon of the farm Sandveld Game Ranch 1265; thence in a northerly, north-easterly and northerly direction along the boundary, of but excluding the following farms: Sandveld Game Ranch 1265, Oorkant 953, Onjama 952, Simondeum 991, Rumara 993, Farm 1124, the Remaining Extent and Portion 1 of Horabe Wes 1139, Hieromtrent 995, Vreugde 1000, Rooidag 1001 and Talitha 1006, to a point where the eastern boundary of the last-named farm is intersected by the parallel of latitude 19E 10N south, being the point of beginning.

HEREROLAND WEST

From a point where the middle of the Otjosondjou Omuramba intersects the southern boundary of the Eastern Native Reserve 792; thence generally north-westwards along the boundary of the Eastern Native Reserve 792 to where it meets the Waterberg East Native Reserve 341; thence north-westwards, north-eastward and south-eastward along the boundaries of and including the said Waterberg East Native Reserve 341 and the Otjituo Native Reserve 235, to the corner beacon common to the Otjituo Native Reserve 235 and the Eastern Native Reserve 792 on the parallel of latitude 20E south; thence in a south-easterly direction along the boundary of the Eastern Native Reserve 792 to a point where the said boundary intersect the middle of the Otjosondjou Omuramba; thence generally westwards and south-westwards along the middle of the Otjosondjou Omuramba to a point where is intersects the southern boundary of the Eastern Native Reserve 792, being the point of the beginning.

HEREROLAND EAST*Area 1*

From the corner beacon common to the Otjituuo Native Reserve 235 and the Eastern Native Reserve 792 on the parallel of latitude 20E south; thence eastward in a straight line along the said parallel of latitude 20E south to a point where it intersects the boundary common to Namibia and Botswana; thence southwards along the said common boundary to a point where it intersects the parallel of latitude 22E south; thence westwards along the said parallel to a point where it intersects the meridian of longitude 20E east; thence in a straight line south to the south-western corner beacon of the farm 855; thence northwards along the boundaries of and including the following farms: Farm 855, Farm 854, Farm 849, Farm 848, Farm 843, Farm 842, Farm 837 and Farm 836, to the north-western corner beacon of the last-mentioned farm; thence south-westwards, northwards and generally westwards along the boundaries of an including the Epukiro Native Reserve 329 and the Eastern Native Reserve 792 to a point where the boundary of the last-mentioned Reserve intersects the middle of the Otjosondjou Omuramba; thence northwards and north-eastward along the middle of the said Omuramba to a point where it intersects the north-eastern boundary of the Eastern Native Reserve 792; thence north-westwards along the north-eastern boundary of the last-mentioned Reserve to the corner beacon common to the Otjituuo Native Reserve 235 and the Eastern Native Reserve 792, being the point of beginning.

Area 2

Aminuis Native Reserve 330 Registration Division L.

Area 3

Beginning at the north-eastern beacon of farm 949, Registration Division L; thence clockwise along the boundaries of the following farms so as to include them in this area; The said Farm 949, Farms 951, 953, 955, 957, 959, 961, 963, 965, 967, 969, 968, 966, 964, 962, 960, 958, 956, 954, 952, 950, 948 and 949, to the north-eastern beacon of the last-mentioned farm, the point of beginning.

NAMALAND*Area 1*

Starting at a point, the most western corner beacon of the farm Uibis 34, then generally eastwards, along the boundaries of the following farms, so as to include them in to this area: Uibis 34, portion A of farm Fleyfeld 33, portion B of Fleyfeld 33, Ubians 32, Ganaus 27, the Remaining Extent of Hatzum II 28, Rosenhof 97, Anis-kubab 96, Gibeon Reserve 76, Portion 1 of New Castle 218, Glencoe 78, Portion 1 of Kriess 219, Portion 1 of Verloorveld 220, to the north-eastern corner beacon of the last-mentioned farm, thence southwards along the boundaries of the following farms so as to include them in this area: Portion 1 and the Remaining Extent of Verloorveld 220, Portion A of Goamus 70, Goamus Ost 69, the Remaining Extent and Portion 2 of Ventershoop 164, the Remaining Extent of Springbokvlei 237, Portion 1, the Remaining Extent and Portion 2 of Zoekmakar 236, Portion 1 of Gross Daberas 17, Portion 1, the Remaining Extent and Portion 2 of Daberas Ost 18, the Remaining Extent of Klein Daberas 19, Tses Reserve 169, Blaukehl-Nord 141, Blaukehl-Sud 142, to the most south-eastern corner beacon of the last-mentioned farm, thence westwards along the boundaries of the following farms so as to include them in to this area: Blaukehl-Sud 142, Portion 1 of Blau Ost 144, Bloemhof 311, the Remaining Extent, Portion 4 and Portion 1 of Itzawisis 9, to a point common to the last-mentioned farm, Paradies 8 and Berseba Reserve 170, thence eastwards along the boundaries of the following farms so as to include them in to this area: Berseba Reserve 170, the Remaining Extent and Portion 1 of Nabaos 7, the Remaining Extent and Portion 1 of Gellap-West 4, Berseba Reserve 170, to the most southern corner beacon (Neck, Trigonometric Beacon) of the last-mentioned farm, thence westwards along the boundaries of the following farms so as to include them into this area: Berseba Reserve 170, Garis 74, Schnepfenrivier 73, Kosis 72, Isaaksbrunn 71, Soromaas Reserve 40, to the south-western corner beacon of the last-mentioned farm; thence northwards, eastwards and northwards along the boundaries of the following farms so as to include them into this area, Soromaas Reserve 40, the Remaining Extent and Portion 1 of Florsheim 69, Nugoais 65, Pfalz 61, Doachas 57, Landshut 58, Berseba Reserve 170, Eidsamub 51, Liebenstein 50, Portion 2 and Portion 1 of Ou Tempelhof 583, Teschenbrugge 48, Kinachas I 37, Vergelee 380, Portion A of Kosis 36, Kamagams 35, Uibis 34, to the most western corner beacon of the last-mentioned farm, the point of beginning.

Area 2

Certain portion of the remaining extent of the farm Bondelswarts Reserve No. 134, Registration Division V, situate in the magisterial district of Karasburg, held under certificate of registered title No. 1800/1967; and

Certain portion 23 (a portion of portion 8 of portion A) of the farm Kalkfontein West No. 48, Registration Division V, situate in the magisterial district of Karasburg, held under deed of transfer No. 1801/1967;

Area 3

Certain portion of the remaining extent of the farm Warmbad West No. 305, Registration Division V, situate in the magisterial district of Karasburg, held under certificate of registered government title No. 1534/1973;

Certain portion 1 of the farm Warmbad West No. 305, Registration Division V, situate in the magisterial district of Karasburg, held under grant of land T1783/1977; and

Area 4

The farms Gainatseb No. 67, Eastwood No. 73, Tsumamas No. 74, and Kranspoort No. 475, Registration Division A, situate in the magisterial district of Outjo.

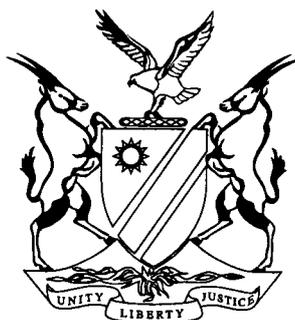
Act No. 5, 2002

COMMUNAL LAND REFORM ACT, 2002*Area 5*

Certain Farm Hoachanas No. 120, registration division M, situate in the magisterial district of Mariental, measuring 14252,5049 hectares.

SCHEDULE 2
Laws Repealed
(section 45)

No. and year of law	Short title	Extent of repeal
Act No. 18 of 1936	Development Trust and Land Act, 1936	The whole
Act No. 17 of 1939	Development Trust and Land Amendment Act, 1939	The whole
Act No. 18 of 1954	Development Trust and Land Amendment Act, 1954	The whole
Act No. 56 of 1954	South West Africa Native Affairs Administration Act, 1954	The whole
Act No. 73 of 1956	Development Trust and Land Amendment Act, 1956	The whole
Act No. 41 of 1958	Development Trust and Land Amendment Act, 1958	The whole
Act No. 110 of 1976	Development Trust and Land Amendment Act, 1976	The whole
Proclamation No. AG. 19 of 1978	Administration of the South African Bantu Trust in South West Africa Proclamation, 1978	The whole



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$12.80

WINDHOEK - 1 March 2003

No. 2926

GOVERNMENT NOTICES

		<i>Page</i>
No. 33	Commencement of Communal Land Reform Act, 2002 (Act No.5 of 2002)	1
No. 34	Communal Land Reform Act, 2002 (Act No.5 of 2002): Commencement of Section 18	2
No. 35	Communal Land Reform Act, 2002 (Act No.5 of 2002): Commencement of Section 28(3)	2
No. 36	Communal Land Reform Act, 2002 (Act No.5 of 2002): Commencement of Section 28(2)	2
No. 37	Regulations made in terms of the Communal Land Reform Act, 2002 (Act No.5 of 2002)	2

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

No. 33

2003

COMMENCEMENT OF COMMUNAL LAND REFORM ACT, 2002 (ACT NO.5 OF 2002)

In terms of Section 47 of the Communal Land Reform Act, 2002 (Act No.5 of 2002), I hereby determine that the said Act will come into operation on the date of publication of this Notice in the *Gazette*.

H. POHAMBA

MINISTER OF LANDS, RESETTLEMENT AND REHABILITATION

Windhoek, 24 February 2003

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

No. 34

2003

**COMMUNAL LAND REFORM ACT, 2002 (ACT NO.5 OF 2002):
COMMENCEMENT OF SECTION 18**

In terms of Section 18 of the Communal Land Reform Act, 2002 (Act No.5 of 2002), I hereby determine that the said Act will come into operation on the date of publication of this Notice in the *Gazette*.

**H. POHAMBA
MINISTER OF LANDS, RESETTLEMENT AND REHABILITATION**

Windhoek, 24 February 2003

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

No. 35

2003

**COMMUNAL LAND REFORM ACT, 2002 (ACT NO.5 OF 2002):
COMMENCEMENT OF SECTION 28(3)**

In terms of Section 28(4) of the Communal Land Reform Act, 2002 (Act No.5 of 2002), I hereby determine that section 28(3) of the said Act will come into operation on the date of publication of this Notice in the *Gazette*.

**H. POHAMBA
MINISTER OF LANDS, RESETTLEMENT AND REHABILITATION**

Windhoek, 24 February 2003

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

No. 36

2003

**COMMUNAL LAND REFORM ACT, 2002 (ACT NO.5 OF 2002):
COMMENCEMENT OF SECTION 28(2)**

In terms of Section 28(4) of the Communal Land Reform Act, 2002 (Act No.5 of 2002), I hereby determine that section 28(2) of the said Act will come into operation on the date of publication of this Notice in the *Gazette*.

**H. POHAMBA
MINISTER OF LANDS, RESETTLEMENT AND REHABILITATION**

Windhoek, 24 February 2003

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

No. 37

2003

**REGULATIONS MADE IN TERMS OF THE COMMUNAL LAND REFORM ACT, 2002 (ACT
NO. 5 OF 2002)**

The Minister of Lands, Resettlement and Rehabilitation has under section 45 of the Communal Land Reform Act, 2002 (Act No. 5 of 2002), made the regulations set out in the Schedule.

H. POHAMBA

**MINISTER OF LANDS, RESETTLEMENT
AND REHABILITATION**

Windhoek, 24 February 2003

SCHEDULE

**ARRANGEMENT OF REGULATIONS
PRELIMINARY**

1. Definitions

PART 1

CUSTOMARY LAND RIGHTS

2. Application for customary land right
3. Maximum size of land that may be held under customary land right
4. Particulars pertaining to allocation of customary land right
5. Register of customary land rights and certificate of registration of customary land right
6. Cancellation of customary land right
7. Application for recognition and registration of right referred to in section 28(1) of the Act
8. Register of recognition of right referred to in section 28(1) of the Act and certificate of registration of that right
9. Hearing regarding application for recognition and registration of right referred to in section 28(1) of the Act
10. Conditions regarding grazing of stock of lawful residents on commonage

PART II

RIGHTS OF LEASEHOLD

11. Application for right of leasehold
12. Application for right of leasehold for agricultural purposes outside designated area
13. Maximum size of land that may be granted under a right of leasehold
14. Determination of amount payable in respect of right of leasehold and improvements
15. Conditions applicable to right of leasehold
16. Register of right of leasehold and certificate of leasehold
17. Application for recognition of right referred to in section 35(1) of the Act and for the grant of a right of leasehold under the Act
18. Hearing regarding application for recognition of right referred to in section 35(1) of the Act
19. Deed of leasehold

PART III
PRELIMINARY INVESTIGATION OF CLAIM TO EXISTING RIGHTS

20. Form of notice regarding holding of preliminary investigation and form of summons
21. Service of notice and summons regarding holding of investigating committee
22. Conducting of preliminary investigation
23. Service of notice by board regarding report of investigating committee

PART IV
GENERAL

24. Application for transfer of customary land right or right of leasehold
 25. Appeal against decision of Chief, Traditional Authority or board
 26. Exemptions regarding retention of fences on communal land
 27. Procedure for application for authorisation for erection of a fence on communal land and circumstances in which such authorisation is not required
 28. Procedure for investigation to be conducted by board for purpose of considering an application, including the summoning of witnesses
 29. Procedure for referral of a matter to an arbitrator
 30. Conditions under which prospecting or mining operations may be carried out on communal land
 31. Combating and prevention of soil erosion
 32. Protection of pastoral resources
 33. Matters relating to roads, watercourses, woods and the use of water, wood, clay and stone on communal land
 34. Functions of secretary of a board
 35. Eviction of persons occupying communal land
 36. Offences and penalties
 37. Fees payable
 38. Repeal of regulations
- Annexure 1
- Annexure 2

PRELIMINARY

Definitions

1. In these regulations, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Act bears that meaning, and -

“Act” means the Communal Land Reform Act, 2002 (Act No. 5 of 2002);

“agricultural land” means agricultural land as defined in section 1 of the Agricultural (Commercial) Land Reform Act, 1995 (Act No. 6 of 1995);

“chief” includes the head of a traditional community as defined in section 1 of the Traditional Authorities Act, 2000 (Act No. 25 of 2000);

“large livestock” means any adult cattle, horse, ass or mule;

“small livestock” means any adult sheep, goat or pig; and

PART I CUSTOMARY LAND RIGHTS

Application for customary land right

2. (1) Every application in terms of section 22(1) of the Act for the allocation of a customary land right must be made in the form of Form 1 set out in Annexure 1 and must be submitted in triplicate to the Chief.

(2) All the information required in Form 1 must be furnished fully therein.

(3) Before the allocation of any customary land right a Chief or a Traditional Authority must display for a period of at least seven days on a notice board at the offices of the Traditional Authority a notice -

(a) stating -

(i) the name of the applicant;

(ii) the approximate size of the land applied for;

(iii) the geographical location of the land applied for; and

(iv) the type of customary land right applied for, and

(b) inviting interested parties to lodge with the Chief or Traditional Authority within a period of seven days any objections regarding the application.

(4) A Chief or a Traditional Authority may cause the information contained in the notice referred to in subregulation (3) to be published in any newspaper circulating in its communal area or to be broadcasted on any radio station broadcasting in its communal area.

Maximum size of land that may be held under customary land right

3. (1) Subject to section 23(1) of the Act and subregulation (2), the size of land which may be allocated under a customary land right may not exceed 20 hectares.

(2) If an applicant applies for a size of land that exceeds the size referred to in subregulation (1), the Chief or Traditional Authority must refer the matter, together with adequate reasons and motivations by the applicant and the Chief or Traditional Authority, to the Minister for his or her written approval as contemplated in section 23(1) of the Act.

Particulars pertaining to allocation of customary land right

4. A Chief or Traditional Authority who has allocated a customary land right under section 22 of the Act must, within a period of 30 days after allocating the customary land right, furnish to the board a copy of the application form, as well as the following particulars pertaining to the allocation of the right -

- (a) the type of customary land right allocated;
- (b) the geographical location of the portion of land allocated;
- (c) the size in square metres or hectares of the portion of land allocated; and
- (d) whether the applicant has the beneficial use of any other land, whether communal land or otherwise, and the size, location and purpose of use by the applicant of such land.

Register of customary land rights and certificate of registration of customary land right

5. (1) A board must keep a register in respect of allocated customary land rights which are ratified by the board and enter the following particulars in respect of each customary land right into the register -

- (a) the name, sex, nationality and date of birth of the person to whom the customary land right has been allocated;
- (b) the names of the spouse and other dependants of the person referred to in paragraph (a);
- (c) the type of customary land right allocated;
- (d) the geographical location of the portion of land allocated;
- (e) the size in square metres or hectares of the portion of land allocated; and
- (f) the name of the communal area and the region in which the land is situated.

(2) A certificate of registration of a customary land right referred to in section 25(1)(b) must be issued to the holder of the right in the form of Form 2 set out in Annexure 1.

Cancellation of customary land right

6. (1) In addition to the grounds mentioned in section 27(1)(a) and (b) of the Act a Chief or Traditional Authority may cancel a customary land right, including a right referred to in section 28(1) of the Act, -

- (a) if the land is being used for a purpose other than the purpose for which it has been allocated;
- (b) if the land has been kept dormant for three consecutive years;
- (c) if the customary land right has been obtained through fraud or not in accordance with the Act; and
- (d) if a customary land right in respect of the land has previously been allocated to another person under this Act and such right has not terminated in accordance with any provision of the Act.

(2) A Chief or Traditional Authority who has cancelled a customary land right must furnish to the board the following particulars pertaining to such cancellation -

- (a) the name, sex, nationality and date of birth of the person whose right has been cancelled;
- (b) the names of the spouse and any other dependants of the person referred to in paragraph (a);
- (c) the type of customary land right cancelled;
- (d) the geographical location of the portion of land held under such cancelled right;
- (e) the size in square metres or hectares of such portion of land;
- (f) the name of the communal area and the region in which the land is situated;
- (g) the date on which the customary land right has been cancelled; and
- (h) the reason for the cancellation of the right.

(3) The board must enter the cancellation of a customary land right in the register referred to in regulation 5(1).

Application for recognition and registration of right referred to in section 28(1) of the Act

7. (1) Every application in terms of section 28(2) of the Act for the recognition and registration of an existing customary land right referred to in section 28(1) of the Act and, where applicable, for authorisation for the retention of any fence on the land concerned, must be made in the form of Form 3 set out in Annexure 1 and must be submitted in triplicate.

(2) All the information required in Form 3 must be furnished fully therein or be attached thereto.

(3) The letter of the Chief or Traditional authority referred to in section 28(5) of the Act must contain information relating to -

- (a) whether or not the application is supported by the Chief or Traditional Authority; and
 - (b) any other information which the Chief or Traditional Authority may wish to bring to the attention of the board.
- (4) Before the recognition and registration of a right referred to in subregulation (1) the board must display for a period of at least seven days on a notice board at its offices a notice -
- (a) stating -
 - (i) the name of the applicant;
 - (ii) the approximate size of the land in respect of which the recognition of the right is applied for;
 - (iii) the geographical location of the land in respect of which the recognition of the right is applied for; and
 - (iv) the type of customary land right applied for to be recognised, and
 - (b) inviting interested parties to lodge with the board within a period of seven days any objections regarding the application.
- (5) A board may cause the information contained in the notice referred to in subregulation (3) to be published in any newspaper circulating in its region or to be broadcasted on any radio station broadcasting in its region.

Register of recognition of right referred to in section 28(1) of the Act and certificate of registration of that right

8. (1) The register in which a board must enter the recognition of a customary land right referred to in section 28(1) of the Act as contemplated in section 28(7) thereof, must contain the following particulars -

- (a) the name, sex, nationality and date of birth of the person whose right has been recognised;
- (b) the names of the spouse and any other dependants of the person referred to in paragraph (a);
- (c) the type of customary land right recognised;
- (d) the geographical location of the portion of land in respect of which the right has been recognised;
- (e) the size in square metres or hectares of the portion of land in respect of which the right has been recognised; and
- (f) if the retention of any fence on the land has been authorised, the nature of such fence and its dimensions or the area of land enclosed by the fence.

(2) A certificate of registration for the recognition of an existing customary land right referred to in section 28(1) of the Act must be issued to the holder of the right in the form of Form 4 set out in Annexure 1.

Hearing regarding application for recognition and registration of existing customary land right referred to in section 28(1) of the Act

9. (1) If the board in terms of section 28(9) of the Act determines that a hearing referred to in that section must be held, the secretary of the board must in writing inform the applicant -

- (a) the reason for the holding of the hearing;
- (b) the date, time and place where the hearing will be held;
- (c) to produce at the hearing any documentary evidence or to lead any verbal evidence in support of his or her claim;
- (d) to ensure that any witness he or she intends to call in support of his or her claim, will be present at the hearing.

(2) At the hearing the chairperson of the Board –

- (a) must give particulars of any conflicting claims in relation to the land or the reason why the validity of the applicant's claim is doubted, and
- (b) may produce documentary evidence or call witnesses to testify on any matter relevant to the subject matter of the hearing.

(3) The applicant concerned -

- (a) may interrogate any person who has given verbal evidence or who has submitted documentary evidence as referred to in subregulation (2)(b); and
- (b) may give and lead evidence, including documentary evidence, in support of his or her claim or in rebuttal of any document or evidence referred to in paragraph (a).

(4) The chairperson of the Board may administer an oath or affirmation to any witness appearing before the board.

(5) The chairperson and other members of the board with his or her permission, may put questions to any person giving evidence.

(6) After all evidence has been given, the applicant must be afforded the opportunity to address the board on the evidence and whether or not the application must be granted.

(7) Upon conclusion of the hearing, the Board must make a decision in accordance with section 28(10) of the Act, which must be -

- (a) reduced to writing;
- (b) signed by the chairperson of the board; and
- (c) made known at the hearing.

(8) The board may at any time adjourn the hearing to be resumed at such date, time and place as the board may determine or as the secretary of the board may by registered post communicate to all parties concerned.

Conditions regarding grazing of stock of lawful residents on commonage

10. (1) Subject to subregulation (2), a lawful resident referred to in section 29(1) of the Act may not allow more than 300 large livestock or more than 1800 small livestock to graze at any given time on the commonage of a communal area.

(2) A lawful resident referred to in subregulation (1) who is the owner of or hires any agricultural land may not allow any livestock to graze on the commonage of a communal area concerned.

(3) No person, other than a lawful resident referred to in subregulation (1), or a person representing such a resident, may bring or cause to be brought any livestock onto the commonage of a communal area, unless such person has been granted grazing rights by the Chief or Traditional Authority in terms of section 29(3).

(4) Any person who contravenes subregulations (1), and (2) and (3) is guilty of an offence.

PART II RIGHTS OF LEASEHOLD

Application for right of leasehold

11. (1) Every application in terms of section 31(1) of the Act for a right of leasehold must be made in the form of Form 5 set out in Annexure 1 and must be submitted in triplicate.

(2) All the information required in Form 5 must be furnished fully therein or be attached thereto.

(3) Before the granting of any right of leasehold the board must display for a period of at least seven days on a notice board at its offices a notice -

(a) stating -

(i) the name of the applicant;

(ii) the approximate size of the land applied for;

(iii) the geographical location of the land applied for; and

(iv) the type of right of leasehold applied for, and

(b) inviting interested parties to lodge with the Chief or Traditional Authority within a period of seven days any objections regarding the application.

(4) A board may cause the information contained in the notice referred to in subregulation (3) to be published in any newspaper circulating in its region or to be broadcasted on any radio station broadcasting in its region.

Application for right of leasehold for agricultural purposes outside designated area

12. (1) Every application referred to in section 30(3) of the Act for approval for a right of leasehold for agricultural purposes outside a designated area must be made in the form of Form 6 set out in Annexure 1 and must be submitted in triplicate.

(2) All the information required in Form 6 must be furnished fully therein or be attached thereto.

Maximum size of land that may be granted under a right of leasehold

13. (1) Subject to section 31(3) of the Act and subregulation (2), the size of land in respect of which a right of leasehold may be granted may not exceed 50 hectares.

(2) If an applicant applies for a size of land that exceeds the size referred to in subregulation (1), the Board must refer the matter to the Minister for his or her written approval as contemplated in section 31(3) of the Act.

Determination of amount payable in respect of right of leasehold and improvements

14. (1) An amount payable in respect of a right of leasehold and improvements, if any, on a portion of land as contemplated in section 32(2) of the Act, must be determined by the Board with regard to -

- (a) the particular use or purpose for which the right is required;
- (b) the value of the improvements, if any, on the portion of the land;
- (c) the size of the portion of land in respect of which the right has been granted; and
- (d) the period for which the right of leasehold has been granted.

(2) A board may in the determination of the amount referred to in subregulation (1) use the services of valuers.

(3) For purposes of this regulation “valuator” means -

- (a) any estate agent registered as such under the Estate Agents Act, 1976 (Act No. 112 of 1976);
- (b) any quantity surveyor or architect, as the case may be, registered respectively as such under the Quantity Surveyors’ and Architects’ Act, 1979 (Act No. 13 of 1979); or
- (c) any other person appointed by the Minister in writing for such purpose.

Conditions applicable to right of leasehold

15. (1) The following conditions apply to a right of leasehold -

- (a) the holder of a right of leasehold or any person in his or her employment may not use the land for

any purpose -

- (i) other than that for which its occupation is authorised, without the prior written approval of the Board;
 - (ii) in contravention of the Liquor Act, 1998 (Act No. 6 of 1998) or any regulations made in terms thereof;
 - (iii) in contravention of any law relating to the cultivation, possession, disposal of or dealing in dependence-producing drugs;
- (b) the Minister or any person duly authorised by him or her in writing may at any reasonable time enter upon and inspect the land and any buildings thereon for the purpose of ensuring compliance by the holder with any regulation or condition, or to determine or re-determine the boundaries of the land;
- (c) the holder of a right of leasehold must preserve and maintain the beacons by which the land is demarcated and is liable for the cost of repairing or rebuilding any such beacon which has become dilapidated or damaged, and for replacing any such beacon which has been demolished, lost or misplaced, in such position as the Chief or Traditional Authority, as the case may be, directs;
- (d) no roads or thoroughfares which exists on or over the land may be closed or otherwise obstructed to prevent free passage of persons, animals or traffic, unless such closure or obstruction is authorised by a competent authority;
- (e) the Board may cancel any right of leasehold if -
- (i) the right was granted in error;
 - (ii) the right of leasehold was obtained by fraud or misrepresentation;
 - (iii) the holder of that right -
 - (aa) fails to comply with any of the conditions subject to which that right was granted;
or
 - (bb) fails to pay two consecutive instalments referred to in section 32(1)(c) of the Act in respect of the land;
 - (cc) defaults in paying an amount in respect of the periodical rental payable in terms of the deed of leasehold, within 30 days after having been given a written demand for such payment by the Board;
 - (iv) upon proof to the satisfaction of the Board -
 - (aa) that the land is no longer used for the purpose for which it has been granted; or
 - (v) if the holder of a right of leasehold has been convicted of an offence of treason or sedition;

- (f) the Minister may cancel a right of leasehold granted in respect of land for agricultural purposes outside a designated area in accordance with section 30(3);
- (g) any business for the purpose of which a right of leasehold is granted must be personally conducted by the holder of a right of leasehold, or in the case of a company or a close corporation, by a director or a member thereof, unless the Board or the Minister has in writing approved that any other person may so conduct the business;
- (h) when requested to do so by a Chief, a Traditional Authority or a board, the holder of a right of leasehold must in respect of any building on the land -
 - (i) before occupying any such building, insure that building against fire for such sum as the Minister may notify in writing and cede the insurance policy to the Government;
 - (ii) pay the initial premium on such policy and promptly on due date pay any renewal premium thereon and furnish proof of compliance with this condition to the Minister;
 - (iii) maintain any such building to the satisfaction of the Minister;
- (i) the holder of a right of leasehold or any person in his or her employment may not demolish or effect any alteration or addition to any building or other property of the Government without the prior written approval of the Minister.

(2) If a board has determined that the portion of land in respect of which a right of leasehold has been granted, must be surveyed, that board may determine the manner of survey that should be done in the particular case.

Register of right of leasehold and certificate of leasehold

16. (1) A board must keep a register, referred to in section 33(1)(a) of the Act, in respect of allocated rights of leasehold which are ratified by the Board and enter the following particulars in respect of each such right of leasehold -

- (a) the name, sex, nationality and date of birth of the person to whom the right has been granted;
- (b) the names of the spouse and other dependants of the person referred to in paragraph (a);
- (c) the type of right of leasehold granted;
- (d) the geographical location of the portion of land in respect of which the right of leasehold has been granted;
- (e) the size in square metres or hectares of the portion of land in respect of which the right of leasehold has been granted;
- (f) the period for which the right of leasehold has been granted;
- (g) the name of the communal area and the region in which the land is situated; and
- (h) the particulars of every mortgage bond, servitude or similar right registered over the land in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), or any other law;

- (2) A -
 - (a) certificate of leasehold for any purpose other than agricultural purposes outside a designated area must be in the form of Part A of Form 7 set out in Annexure 1;
 - (b) certificate of leasehold for agricultural purposes outside a designated area must be in the form of Part B of Form 7 set out in Annexure 1,

and the original certificate must be issued to the holder at the time of the registration of the right of leasehold.

Application for recognition of right referred to in section 35(1) of the Act and for the grant of a right of leasehold under the Act

17. (1) Every application in terms of section 35(2) of the Act for the recognition of a right referred to in section 35(1) of the Act and for the grant of a right of leasehold under the Act and, where applicable, for authorisation for the retention of any fence on the land, must be made in the form of Form 8 set out in Annexure 1 and must be submitted in triplicate.

- (2) All the information required in Form 8 must be furnished fully therein or be attached thereto.

(3) The letter of the Chief or Traditional authority referred to in section 35(5) of the Act should contain information relating to -

- (a) whether or not the application is supported by the Chief or Traditional Authority; and
- (b) any other information which the Chief or Traditional Authority wish to bring to the attention of the board.

(4) Before the recognition and granting of right of leasehold referred to in subregulation (1) the board must display for a period of at least seven days on a notice board at its offices a notice -

- (a) stating -
 - (i) the name of the applicant;
 - (ii) the approximate size of the land in respect of which the recognition of the right is applied for;
 - (iii) the geographical location of the land in respect of which the recognition of the right is applied for; and
 - (iv) the type of right of leasehold to be recognised and granted, and
- (b) inviting interested parties to lodge with the board within a period of seven days any objections regarding the application.

(5) A board may cause the information contained in the notice referred to in subregulation (3) to be published in any newspaper circulating in its region or to be broadcasted on any radio station broadcasting in its region.

(6) If an application referred to in subregulation (1) has been granted, the secretary of the board must issue to the applicant a certificate of leasehold in the form of Part A of Form 7 set out in Annexure 1 and enter into the register referred to in regulation 16(1) the particulars referred to in regulation 16(1).

Hearing regarding application for recognition of right referred to in section 35(1) of the Act

18. (1) If the Board in terms of section 35(10) of the Act determines that a hearing referred to in that section must be held, the secretary of the Board must in writing inform the applicant -

- (a) the reason for the holding of the hearing;
- (b) of the date, time and place of the hearing;
- (c) to produce at the hearing any documentary evidence or to lead any verbal evidence in support of his or her claim; and
- (d) to ensure that any witness he or she intends to call in support of his or her claim, will be present at the hearing.

(2) At the hearing the chairperson of the Board -

- (a) must give particulars of any conflicting claims in relation to the land or the reason why the applicant's claim is doubted, as the case may be, and
- (b) may produce documentary evidence or call witnesses to testify on any matter relevant to the subject matter of the hearing.

(3) The applicant -

- (a) may interrogate any person who has given verbal evidence or who has submitted documentary evidence as referred to in subregulation (2)(b); and
- (b) may give and lead evidence, including documentary evidence, in support of his or her claim or in rebuttal of any document or evidence referred to in paragraph (a).

(4) The chairperson of the Board may administer an oath or affirmation to any witness appearing before the board.

(5) The chairperson and other members of the board may put questions to any person giving evidence.

(6) After all evidence has been given, the applicant must be afforded the opportunity to address the board on the evidence and whether or not the application must be granted.

(7) Upon conclusion of the hearing, the Board must make a decision in accordance with section 35(11) of the Act, which must be -

- (a) reduced to writing;
- (b) signed by the chairperson of the board; and
- (c) made known at the hearing.

(8) The Board may at any time adjourn any hearing to be resumed at such date, time and place as the board may determine or as the secretary of the board may by registered post communicate to all parties.

Deed of leasehold

19. If -

- (a) a right of leasehold, except a right of leasehold for agricultural purposes outside a designated area, has been granted to an applicant, that applicant must in respect of that right enter into a deed of leasehold with the board in the form of Part A of Form 9 set out in Annexure 1;
- (b) a right of leasehold for agricultural purposes outside a designated area has been granted to an applicant, that applicant must in respect of that right enter into a deed of leasehold with the Minister in the form of Part B of Form 9 set out in Annexure 1.

PART III

PRELIMINARY INVESTIGATION OF CLAIM TO EXISTING RIGHTS

Form of notice regarding holding of preliminary investigation and form of summons

20. (1) A notice referred to in section 37(3) of the Act must be given in the form of Form 10 set out in Annexure 1.

(2) A summons referred to in section 37(4) of the Act must be issued in the form of Form 11 set out in Annexure 1.

Service of notice and summons regarding holding of investigating committee

21. (1) A notice referred to in section 37(3) of the Act and a summons referred to in section 37(4) of the Act must be served by the chairperson of the investigating committee -

- (a) by delivering it to the person named therein; or
- (b) if he or she cannot be found, by delivering it at his or her residence or place of employment or business to a person apparently over the age of 16 years and apparently residing or employed there.

(2) A return by the person who served the notice or summons referred to in subregulation (1) that the service thereof has been effected may, upon the failure of the person so served to attend the preliminary investigation, be handed in at the investigation and will be *prima facie* proof of such service.

(3) A notice or a summons referred to in subregulation (1) must be served on the person concerned so that he or she is in possession thereof at least 30 days before the date determined for the preliminary investigation.

Conducting of preliminary investigation

22. (1) At the preliminary investigation, the chairperson of the investigating committee -

- (a) must read out to the person in respect of whom the investigation is held or to the person who has been summoned as contemplated section 37(4) of the Act, as the case may be, any evidence, including documentary evidence, which the investigating committee may have regarding -

- (i) the occupation, use or control of the land by the person in respect of whom the investigation is held;
 - (ii) the existence of any fence on the land concerned; or
 - (iii) any other matter contemplated in section 37(2)(c) of the Act,
- as the case may be, and may lead verbal evidence in this regard;
- (b) must at the preliminary investigation put the questions of the investigating committee to the person; and
 - (c) must request the person, if applicable, to produce to the investigating committee the book or document which that person was informed or summoned to produce.
- (2) After the applicant has answered any questions put to him or her or has produced any book or document, as the case may be, that applicant -
- (a) may interrogate any person who has given verbal evidence or who has submitted documentary evidence; and
 - (b) may give and lead evidence, including documentary evidence, in support of his or her claim or in rebuttal of any document or evidence referred to in subregulation (1)(a)(i) to (iii).
- (3) The chairperson and other members of the investigating committee may put questions to any person giving evidence.
- (4) After all evidence has been given, the applicant must be afforded the opportunity to address the investigating committee on the evidence regarding his or her claim to the land in question or to his or her entitlement to the fence on the land.
- (5) Upon conclusion of the investigation, the investigating committee must make a decision, which must be -
- (a) reduced to writing;
 - (b) signed by the chairperson of the investigating committee; and
 - (c) made known at the investigation.
- (6) After deliberating in committee the investigating committee may at any time adjourn any investigation to be resumed at such date, time and place as the investigating committee may determine or as the chairperson thereof may by registered post communicate to all parties concerned.

Service of notice by board regarding report of investigating committee

23. A notice referred to in section 37(9) of the Act -

- (a) must be given in the form of Form 12 set out in Annexure 1; and
- (b) must be served by the secretary of the Board or a person authorized in writing by the secretary -
 - (i) by delivering it to the person named therein; or

- (ii) if he or she cannot be found, by delivering it at his or her residence or place of employment or business to a person apparently over the age of 16 years and apparently residing or employed there.

PART IV GENERAL

Application for transfer of customary land right or right of leasehold

- 24.** (1) Every application for -
- (a) the transfer of a customary land right must be made in the form of Form 13 set out in the Annexure;
 - (b) the transfer of a right of leasehold must be made in the form of Form 14 set out in the Annexure,
- and must be submitted in triplicate.
- (2) All the information required in Forms 12 and 13 must be furnished fully therein or be attached thereto.
- (3) The holder of a customary land right or a right of leasehold who wants to transfer that right, must attach the original certificate of his or her right to the application.
- (4) If a customary land right has been transferred as contemplated in subregulation (1)(a), the board -
- (a) must enter the particulars referred to in regulation 5(1) in respect of the transferee in the register referred to therein, and
 - (b) must issue, at the time of the transfer, to the transferee a certificate of registration of a customary land right in the form of Form 2 set out in Annexure 1.
- (5) If a right of leasehold has been transferred as contemplated in subregulation (1)(b), the board -
- (a) must enter the particulars referred to in regulation 16(1) in respect of the transferee in the register referred to therein, and
 - (b) must issue, at the time of the transfer, to the transferee a certificate of leasehold in the form of Part A of Form 7 set out in Annexure 1.

Appeal against decision of Chief, Traditional Authority or board

- 25.** (1) Any person who wishes to appeal against a decision of a Chief, a Traditional Authority or a board, as the case may be, must lodge the appeal with the Permanent Secretary within 30 days after the decision has been made known or otherwise brought to his or her notice.
- (2) The Permanent Secretary must as soon as is practicable -

- (a) after he or she has received an appeal in terms of subregulation (1), notify the Minister thereof for the purposes of the appointment of an appeal tribunal by the Minister as contemplated in section 39(1) of the Act;
- (b) after the Minister has appointed an appeal tribunal, submit the appeal to the appeal tribunal.
- (3) An appeal referred to in subregulation (1) must be in writing and must set out -
 - (a) particulars of the decision appealed against;
 - (b) the grounds for the appeal; and
 - (c) any representations the appellant wishes to be taken into account in the hearing of the appeal.
- (4) The fee set out in Annexure 2 in respect of an appeal must accompany the appeal.
- (5) An appeal tribunal must hear an appeal within 30 days after the date from which it has received the appeal.
- (6) Any decision of an appeal tribunal in terms of section 39(6) of the Act is conclusive and binding on the parties.

Exemptions regarding retention of fences on communal land

26. Any fence which at the commencement of the Act exists on communal land and which is used to fence in homesteads, cattle pens, water troughs or crop fields may be retained on the portion of land concerned.

Procedure for application for authorisation for erection of a fence on communal land and circumstances in which such authorisation is not required

27. (1) Every application for the erection of a fence on communal land must be made in the form of Form 15 set out in Annexure 1 and must be made in triplicate.

(2) All the information required in Form 15 must be furnished fully therein or be attached thereto.

(3) No authorisation for the erection of a fence is required if the holder of a customary land right or a right of leasehold wants to fence in homesteads, cattle pens, water troughs or crop fields.

(4) If any fence is found on communal land in contravention of section 44(1) of the Act, the Chief, Traditional Authority or board, as the case may be, may in writing notify the holder of the customary land right or right of leasehold -

- (a) to remove such fence or to cause it to be removed, within a period, not exceeding 30 days, as the Chief, Traditional Authority or board, as the case may be, may determine, and such period must be specified in the notification;
- (b) that, if the fence is not removed within the period referred to in paragraph (a), that the Chief, Traditional Authority or board will remove the fence or cause the fence to be removed, and that

any costs relating thereto may be recovered from the holder.

(5) If a holder referred to in subregulation (4) fails to remove the fence or to cause it to be removed within the period referred to in that subregulation, the Chief, Traditional Authority or board itself may remove the fence or cause it to be removed.

(6) A Chief, Traditional Authority or board that has removed or caused to be removed a fence as contemplated in subregulation (5), may sell the material used for the erection of the fence in order to cover any costs incurred by the Chief, Traditional Authority or board.

(7) The holder of a customary land right or a right of leasehold who has applied for authorisation for the erection of a fence as contemplated in subregulation (1) must attach a copy of the certificate of his or her right to the application.

Procedure for investigation to be conducted by board for purpose of considering an application , including the summoning of witnesses

28. (1) A board may, when considering any application under the Act, consult with, and seek advice from, any person who in the opinion of the Board may have any information or any book or document which may be relevant to the application.

(2) A board may, in order to obtain -

(a) the presence of any person referred to in subregulation (1); or

(b) any book or document referred to in subregulation (1) which may be relevant to the application,

summon, in the form of Form 11 set out in Annexure 1, any person to appear before the Board to be questioned or to produce the book or document.

Procedure for referral of a matter to an arbitrator

29. A board referred to in section 30(5) of the Act who wishes to submit a matter to an arbitrator, must submit the matter in the form of Form 16 set out in Annexure 1, and must attach a copy of the application to that Form.

Conditions under which prospecting or mining operations may be carried out on communal land

30. (1) Subject to the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992), every person who wants to carry out any prospecting or mining operations as contemplated in that Act on communal land must notify, prior to the making of any application in terms of that Act, the Chief or Traditional Authority of the traditional community and the board, of his or her intention to apply as aforementioned.

(2) The Chief or Traditional Authority and the board referred to in subregulation (1) must provide its recommendation regarding the application to the person referred to in that subregulation, and that person must attach that recommendation to the application.

(3) If the Chief, Traditional Authority or board referred to in subregulation (1) recommends that an application referred to in subregulation (1) not be granted, the Minister of Mines and Energy or the Mining Commissioner, as the case may be, may disregard, if he or she is of the opinion that the application ought to be granted, the recommendation of the Chief, Traditional Authority or the board that the application not be granted.

Combating and prevention of soil erosion

31. (1) Subject to the Soil Conservation Act, 1969 (Act No. 76 of 1969), the holder of any customary land right or right of leasehold must use and manage the land so as to prevent -

- (a) erosion of the soil; or
- (b) any other disturbance of the soil which creates or may create conditions which cause or may cause any form of erosion or pollution of water by silt or drift-sand,

and must in this regard at all times comply with any requirements of the Department of Agriculture and any provision of law with regard to the combating and prevention of soil erosion on land.

(2) Subject to subregulation (3), if any land referred to in subregulation (1) or any portion thereof is being so used or cultivated as to cause or is likely to cause erosion of the soil, the Chief, Traditional Authority or the board, as the case may be, may suspend or cancel in writing, addressed to the holder, any or all of the rights of the holder in or to such land.

(3) Any suspension or cancellation referred to in subregulation (2) may only be done after the Chief, Traditional Authority or board, as the case may be, -

- (a) has afforded the holder the opportunity to be heard regarding the suspension or cancellation; and
- (b) has consulted with the Minister responsible for agriculture.

Protection of pastoral resources

32. Subject to the Soil Conservation Act, 1969, the holder of any customary land right or right of leasehold must use and manage the land concerned in accordance with accepted farming practises in the area concerned and must at all times comply with any requirements of the Department of Agriculture and any provision of law with regard to the utilisation, resting and burning of pasturage.

Matters relating to roads, watercourses, woods and the use of water, wood, clay and stone on communal land

33. (1) No road or thoroughfare which at the commencement of these regulations, or which after that commencement is lawfully made, passes over communal land may be altered or closed, except by competent authority.

(2) No person may in any manner obstruct the approaches to any public watering place within any communal area, or prevent or attempt to prevent any person from drawing water from or watering stock at such watering place, or foul or defile the water at or in such watering place or interfere with the operation of any windmill, water-pump, water-pipe, dam or water storage tank or other appurtenance installed or constructed and maintained in such communal area for domestic or other water supplies.

- (3) The lawful residents of any communal area may without the payment of compensation -
 - (a) take out water from any watercourse on the communal area; and
 - (b) use wood, sand, stone or clay on the communal area,

for household purposes.

(4) Any lawful resident of any communal area who wants to take out water from any watercourse on communal land or use wood, sand, stone or clay on communal land for any purpose other than for household purposes, must obtain the consent of the Chief or Traditional Authority therefor.

Functions of secretary of a board

34. In addition to any function imposed upon the secretary of a board by or under the Act or these regulations, the secretary of a Board must -

- (a) act as accounting officer of the board;
- (b) provide secretarial services to the board and keep records of meetings of the board;
- (c) execute decisions of the board; and
- (d) supervise the staff members performing the administrative work of the board.

Eviction of persons occupying communal land

35. Any person other than a Chief, a Traditional Authority or a board who evicts any person occupying communal land from communal land which he or she legally occupies, is guilty of an offence.

Offences and penalties

36. Any person who has been convicted of an offence in terms of these regulations is liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) Any person who has been convicted of an offence in terms of these regulations and who after such conviction continues with the conduct in respect of which he or she has so been convicted, is guilty of a continuing offence and on conviction liable to a fine not exceeding N\$50 in respect of each day on which he or she so continues the conduct concerned or allows that it be continued.

Fees payable

37. The fees set out in Annexure 2 are payable in respect of the act, matter or thing mentioned therein.

Repeal of regulations

38. The regulations promulgated by Proclamation No. R.188 of 11 July 1969 are repealed.

ANNEXURE 1

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 1

APPLICATION FOR CUSTOMARY LAND RIGHT
(Section 22 and regulation 2)

To: The Chief Office stamp:
Traditional community
of
Region:
Constituency:

I,

the undersigned, identity number sex

nationality name of spouse

.....

names of other dependants

.....

.....

of

.....

(state residential address)

.....

(state postal address),

hereby apply for a right to

.....

FORM 1

.....

(state a right to a farming unit or a right to a residential unit or such other right to any other form of customary tenure which the Minister has recognised and prescribed by notice in the *Gazette*)

in respect of:

(a) Approximate size of land applied for

(b) Communal area of traditional community in which land is situated:

.....
.....

(c) Region in which communal area is situated:

The land is currently being used for

.....

Does any other person hold a customary land right in respect of the portion of land?

Yes No

If the answer to the question above is “Yes”:

(a) State the name and address of the holder concerned, as well as the type of right:

.....
.....
.....
.....

(attach a separate list if this space is not enough)

(b) Has the holder agreed to relinquish his or her right in respect of the portion of land? Yes No

(c) Is any compensation payable in this regard? Yes No

(d) Have suitable arrangements been made for the resettlement of the holder on alternative land?
Yes No

Is the applicant a holder in respect of any other portion of land granted under the Act or does the applicant occupy any communal land under a right referred to in section 28(1) of the Act? Yes No

If the answer to the question above is “Yes”, give a description of the portion of land:

.....

.....,

and of the right:

.....

I hereby declare that the information submitted in this Form is true and correct. The fees,
namely N\$....., has been paid, for which receipt no.....
dated was issued.

.....
Signature of applicant

.....
Date

CERTIFICATE OF REGISTRATION OF CUSTOMARY LAND RIGHT
(Section 25 and regulation 5)

IT IS HEREBY CERTIFIED THAT

.....
(description of customary land right which has been allocated)

has been allocated to

.....
(full names of person to whom the right has been allocated)

of

.....
(residential address of person to whom right has been allocated)

in respect of

.....
(portion of land in respect of which customary land right has been allocated)

measuring

.....

.....
Signature of Chairperson/Secretary
of the Board

.....
Date

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 3

**APPLICATION FOR RECOGNITION AND REGISTRATION OF EXISTING CUSTOMARY LAND
RIGHT REFERRED TO IN SECTION 28(1) AND FOR AUTHORISATION FOR RETENTION OF
FENCE**

(Section 28 and regulation 7)

To: The Chairperson
Communal Land Board
of
Region:
Constituency:

Office stamp:

I,,

the undersigned, identity number sex

nationality name of spouse

.....

names of other dependants

.....

.....

of

.....

(state residential address)

.....

(state postal address)

hereby apply for recognition of the existing

.....

.....

(state a right to a farming unit or a right to a residential unit)

which was allocated to me onin respect of:

(a) Approximate size of land applied for

(b) Communal area of traditional community in which land is situated:

.....
.....

(c) Region in which communal area is situated:

What is the current use of the land?

.....

Does any other person hold a customary land right in respect of the portion of land?

Yes No

If the answer to the question above is "Yes":

(a) State the name and address of the holder concerned, as well as the type of right:

.....
.....
.....
.....

(attach a separate list if this space is not enough)

(b) Has the holder agreed to relinquish his or her right in respect of the portion of land? Yes No

(c) Is any compensation payable in this regard? Yes No

(d) Have suitable arrangements been made for the resettlement of the holder on alternative land? Yes No Not applicable

* I hereby attach the following documentary evidence in support of my claim

.....
.....
.....

.....

Attached please find a letter from the Chief or Traditional Authority of the traditional community, furnishing the prescribed information.

The land has been fenced as follows:

.....
.....
.....
.....
.....

(state how the land is fenced, if any)

* I hereby apply for authorisation to retain the whole fence or any part of the fence

concerned: *.....
.....
.....
.....
.....

I hereby declare that the information submitted in this Form is true and correct. The fees concerned, namely N\$....., has been paid, for which receipt no. dated was issued.

.....
Signature of applicant

.....
Date

* Delete whichever is not applicable.

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 4

**CERTIFICATE OF REGISTRATION OF RECOGNITION OF EXISTING CUSTOMARY LAND
RIGHT REFERRED TO IN SECTION 28(1)
(Section 28 and regulation 8)**

IT IS HEREBY CERTIFIED THAT

.....
(description of customary land right which has been recognised)

in respect of

.....
(portion of land in respect of which customary land right has been allocated)

measuring

.....
has been recognised to be held by

.....
(full names of person to whom the right concerned has been allocated)

of

.....
(residential address of person to whom right has been allocated)

.....
Signature of Chairperson/Secretary
of the Board

.....
Date

APPLICATION FOR RIGHT OF LEASEHOLD
(Section 31 and regulation 11)

To: The Chairperson
Communal Land Board Office stamp:
of
Region:
Constituency:

I,,

the undersigned, identity number sex

nationality name of spouse

.....

names of other dependants

.....

.....

of

.....

(state residential address)

.....

(state postal address),

hereby apply for a right of leasehold for

.....

(state the purposes of the right of leasehold)

in respect of:

(a) Approximate size of land applied for

(b) Communal area of traditional community in which land is situated:

.....
.....

(c) Region in which communal area is situated:
The land is currently being used for

.....

Has the Traditional Authority to the grant of the right of leasehold?

Yes No (Attach documentary evidence in this regard).

Does any other person hold a right of leasehold in respect of the portion of land ?

Yes No

If the answer to the question above is “Yes”:

(a) State the name and address of the holder concerned, as well as the type of right:

.....
.....
.....
.....

(attach a separate list if this space is not enough)

(b) Has the holder agreed to relinquish his or her right in respect of the portion of land? Yes No

(c) Is any compensation payable in this regard? Yes No

(d) Have suitable arrangements been made for the resettlement of the holder on alternative land? Yes No Not applicable

Is the applicant a leaseholder in respect of another portion of land granted under the Act or does the applicant occupy any communal land under a right referred to in section 35(1) of the Act?

Yes No

If the answer to the question above is “Yes”, give a description of the portion of land :

.....

.....
.....

and of the right:

.....

Is the portion of land situated within an area which has been declared a in terms of section 24A of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975)?

Yes No

If the answer to the question above is “Yes”, provide the name of the conservancy:

.....

Period for which right of leasehold is applied for:

I hereby declare that the information submitted in this Form is true and correct. The

fees, namely N\$......, has been paid, for which receipt no.
dated was issued.

.....
Signature of applicant

.....
Date

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 6

**APPLICATION FOR RIGHT OF LEASEHOLD FOR AGRICULTURAL
PURPOSES OUTSIDE A DESIGNATED AREA**

(Section 30 and regulation 12)

To: The Minister of Lands, Resettlement and Rehabilitation
Private Bag 13343
WINDHOEK

I,

the undersigned, identity number sex

nationality name of spouse

.....

names of other dependants

.....

.....

of

.....

(state residential address)

.....

(state postal address),

hereby apply for a right of leasehold for agricultural purposes in respect of land which is wholly/partly*
situated outside a designated area in respect of:

(a) Approximate size of land applied for

(b) Communal area of traditional community in which land is situated:

.....

.....

(c) Region in which communal area is situated:

The land is currently being used for

.....

Does any other person hold a right of leasehold in respect of the portion of land?

Yes No

If the answer to the question above is “Yes”:

(a) State the name and address of the holder concerned, as well as the type of right:

.....

.....

.....

.....

(attach a separate list if this space is not enough)

(b) Has the holder concerned agreed to relinquish his or her right in respect of the portion of land? Yes No

(c) Is any compensation payable in this regard? Yes No

(d) Have suitable arrangements been made for the resettlement of the holder on alternative land? Yes No Not applicable

Is the applicant a leaseholder in respect of another portion of land granted under the Act or does the applicant occupy any communal land under a right referred to in section 35(1) of the Act? Yes No

If the answer to the question above is “Yes”, give a description of the portion of land:

.....

.....

.....,

and of the right:

.....

Is the portion of land situated within an area which has been declared a conservancy in terms of section 24A of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975)? Yes No

If the answer to the question above is “Yes”, provide the name of the conservancy:

.....

Period for which right of leasehold is applied for:

I hereby declare that the information submitted in this Form is true and correct. The

fees concerned, namely N\$....., has been paid, for which receipt no.
dated was issued.

.....

Signature of applicant

.....

Date

- Delete whichever is not applicable.

PART A

CERTIFICATE OF LEASEHOLD FOR ANY PURPOSE OTHER THAN
AGRICULTURAL PURPOSES OUTSIDE A DESIGNATED AREA
(Section 33 and regulation 16)

IT IS HEREBY CERTIFIED THAT

.....

.....

(description of right of leasehold which has been granted)

has been granted to

.....

(full names of person to whom the right has been granted)

of

.....

(residential address of person to whom right has been granted)

.....

(postal address of person to whom right has been granted)

in respect of

.....

(portion of land in respect of which right of leasehold has been granted)

measuring

.....

(approximate size of land)

for

.....

(period for which right of leasehold has been granted)

The approval of the Minister is required and has been obtained */is not required.*

.....
Chairperson/Secretary
of the Board

Date

..... Signature of

* Delete whichever is not applicable.

PART B

CERTIFICATE OF LEASEHOLD FOR AGRICULTURAL PURPOSES
OUTSIDE A DESIGNATED AREA
(Section 33 and regulation 16)

IT IS HEREBY CERTIFIED THAT

A right of leasehold for agricultural purposes has been granted to

.....
(full names of person to whom the right has been granted)

of

.....
(residential address of person to whom right has been granted)

.....
(postal address of person to whom right has been granted)

in respect of

.....
(portion of land in respect of which the right of leasehold has been granted)

situated wholly outside a designated area/situated partly inside the designated area of *

.....
measuring

.....
(approximate size of land)
for

.....
(period for which right of leasehold has been granted)

.....
Minister of Lands, Resettlement and Rehabilitation

.....
Date

* Delete whichever is not applicable

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 8

**APPLICATION FOR RECOGNITION OF RIGHT REFERRED TO IN SECTION 35(1) AND FOR
GRANT OF RIGHT OF LEASEHOLD**

(Section 35 and regulation 17)

To: The Chairperson
Communal Land Board
of
Region:
Constituency:

Office stamp:

I,

the undersigned, identity number sex

nationality name of spouse

.....

names of other dependants

.....

.....

of

.....

(state residential address)

.....

(state postal address),

hereby apply for recognition of the existing

.....

.....

.....

(state right which applicant holds to occupy communal land)

which was allocated to me on in respect of:

(a) Approximate size of land applied for

(b) Communal area of traditional community in which land is situated:

.....

(c) Region in which communal area is situated:

and for the grant of the following right of leasehold under the Act:

.....

What is the current use of the land?

.....

Has the Traditional Authority consented to the recognition of the right of leasehold? Yes No (Attach documentary evidence in this regard)

Does any other person hold a right of leasehold in respect of the portion of land ?

Yes No

If the answer to the question above is “Yes”:

(a) State the name and address of the holder concerned, as well as the type of right:

.....

.....

.....

.....

(attach a separate list if this space is not enough)

(b) Has the holder agreed to relinquish his or her right in respect of the portion of land? Yes No

(c) Is any compensation payable in this regard? Yes No

(d) Have suitable arrangements been made for the resettlement of the holder on alternative land? Yes No Not applicable

(e) Are the fees or any other amount payable in respect of the occupation of the land, paid up to date? Yes No

If the answer to the question above is “Yes”, please provide proof of the original receipt in respect thereof or such other proof acceptable to the board.

Is the applicant a leaseholder in respect of another portion of land granted under the Act or does the applicant

occupy any communal land under a right referred to in section 35(1) of the Act? Yes No

If the answer to the question above is “Yes”, give a description of the portion of land:

.....
.....,

and of the right:

.....

Is the portion of land situated within an area which has been declared a conservancy in terms of section 24A of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975)? Yes No

If the answer to the question above is “Yes”, provide the name of the conservancy:

.....

* I attach hereby the following documentary evidence in support of my claim

.....
.....
.....
.....

Attached please find a letter from the Chief or Traditional Authority of the traditional community, furnishing the prescribed information.

The land has been fenced as follows:

.....
.....
.....
.....

(state how the land is fenced, if any)

Period for which right of leasehold is applied for:

If the application is for recognition of a right of leasehold for agricultural purposes, is the land situated within a designated area as contemplated in section 30(2)?

Yes No

I hereby apply for authorisation to retain the whole fence or any part of the fence

concerned: *.....
.....
.....

I hereby declare that the information submitted in this Form is true and correct. The fees concerned, namely N\$....., has been paid, for which receipt no. dated was issued.

.....
Signature of applicant

.....
Date

* Delete whichever is not applicable.

PART A

DEED OF LEASEHOLD IN RESPECT OF RIGHT OF LEASEHOLD FOR ANY PURPOSE OTHER THAN AGRICULTURAL PURPOSES OUTSIDE A DESIGNATED AREA

(Section 45, read with section 36 and regulation 19)

MEMORANDUM OF LEASE BETWEEN

the COMMUNAL LAND BOARD of

.....

Herein duly represented by in his or her capacity as chairperson/secretary* of the said board (hereafter referred to as the "board", on the one hand;

and

..... (name of holder of right of leasehold)

..... (identity number)

..... (residential address)

(hereafter referred to as the "holder"), on the other hand.

WHEREAS the holder has applied for a right of leasehold/recognition of a right referred to in section 35(1) of the Act* for

..... (state purposes of right of leasehold)

in respect of

..... (portion of land)

situated in the

(communal area of) the

(traditional community) in the region.

measuring (size of land)

AND WHEREAS the board has granted a right of leasehold as applied for, or for

.....
in respect of

.....*
(portion of land)

situated in
.....*

(state communal area of traditional community and region in which land is situated

measuring*
(size of land)

to the holder subject to certain terms;

NOW THEREFORE the parties hereby agree as follows:

1. This leasehold will commence from the date of signing and will continue for a period of years from that date.
2. The amount payable by the holder in respect of the right of leasehold is
N\$...... (..... Namibia dollar) upon registration of the right of leasehold/per month.*
3. If the holder fails to comply with any of the terms of this agreement and fail to remedy such breach within 30 (thirty) days after the date of written notification from the board to do so, the board may cancel this agreement with immediate effect, and all outstanding amounts owing to the board in respect of this Lease will immediately become payable upon such cancellation.
4. The holder must observe and adhere to all relevant statutory provisions in force from time to time.
5. The holder may not sub-lease his or her right of leasehold or transfer, cede or assign any of his or her rights or obligations in terms of this Lease without the written consent of the board concerned.
6. The parties choose as their respective *domicilia citandi et executandi* the following addresses:

The Holder
.....

The board:
.....

7. This agreement constitutes the whole agreement between the parties and no amendment, addition or omission hereto will be binding upon the parties, unless put in writing and signed by both parties.

- 8. Any indulgence granted by either party to the other party will not be constructed as a waiver or novation of this Lease by that party.
- 9. The parties agree to the jurisdiction of the Magistrate's Court in respect of any action which may arise from this Lease, the cancellation thereof or any other related matter.

10. Authorisation for the retention of the fences on the land as applied

for, or for the retention of

.....

.....

.....

.....

.....

.....

has been granted/not been granted.*

(state in respect of which fences authorisation has been granted for retention, if authorisation has not been granted for retention of all the fences)

Signed at on this day of 2

AS WITNESSES:

- 1.
- 2.
On behalf of the board

Signed at on this day of 2

AS WITNESSES:

- 1.
- 2.
Holder

* Delete whichever is not applicable.

PART B

DEED OF LEASEHOLD IN RESPECT OF RIGHT OF LEASEHOLD FOR AGRICULTURAL PURPOSES OUTSIDE A DESIGNATED AREA (Section 45, read with section 36 and regulation 19)

MEMORANDUM OF LEASE BETWEEN

the MINISTER OF LANDS, RESETTLEMENT AND REHABILITATION

and

..... (name of holder of right of leasehold)

..... (identity number)

..... (residential address) (hereafter referred to as the "holder"), on the other hand.

WHEREAS the holder has applied for a right of leasehold for agricultural purposes in respect of land which is wholly or partly* situated outside a designated area */recognition of a right referred to in section 35(1) of the Act* for agricultural purposes in respect of land which is wholly or partly situated outside a designated area in respect of

..... (portion of land)

situated in the

(communal area of) the

(traditional community in the region

and wholly outside a designated area/* partly inside the designated area of

..... measuring (size of land)

AND WHEREAS the Minister has granted a right of leasehold as applied for, or for

.....
in respect of

.....*
(portion of land)

situated in the

(communal area of) the

(traditional community in the region

and wholly outside a designated area/* partly inside the designated area of

.....
measuring*
(size of land)

to the holder subject to certain terms;

NOW THEREFORE the parties hereby agree as follows:

1. This leasehold will commence from the date of signing and will continue for a period of years from that date.
2. The amount payable by the holder in respect of the right of leasehold is
N\$..... (.....Namibia dollar) upon registration
of the right of leasehold/per month.*
3. If the holder fails to comply with any of the terms of this agreement and fail to remedy such breach within 30 (thirty) days after the date of written notification from the Minister to do so, the Minister may cancel this agreement with immediate effect, and all outstanding amounts due in respect of this Lease will immediately become payable upon such cancellation.
4. The holder must observe and adhere to all relevant statutory provisions in force from time to time.
5. The holder may not sub-lease his or her right of leasehold or transfer, cede or assign any of his or her rights or obligations in terms of this Lease without the written consent of the Minister.
6. The parties choose as their respective *domicilia citandi et executandi* the following addresses:

The Holder
.....

The Minister:
.....

7. This agreement constitutes the whole agreement between the parties and no amendment, addition or omission hereto will be binding upon the parties, unless put in writing and signed by both parties.
8. Any indulgence granted by either party to the other party will not be constructed as a waiver or novation of this Lease by that party.
9. The parties agree to the jurisdiction of the Magistrate's Court in respect of any action which may arise from this Lease, the cancellation thereof or any other related matter.

10. Authorisation for the retention of the fences on the land as applied

for, or for the retention of

.....

.....

.....

.....

.....

.....

.....

.....

has been granted/not been granted.*

(state in respect of which fences authorisation has been granted for retention, if authorisation has not been granted for retention of all the fences)

Signed at on this day of 2

AS WITNESSES:

1.
2.
The Minister

Signed at on this day of 2

AS WITNESSES:

1.
2.
Holder

* Delete whichever is not applicable.

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 10

FORM OF NOTICE TO ATTEND PRELIMINARY INVESTIGATION
(Section 37 and regulation 20(1))

Dear Mr/Mrs/Miss/Ms*

.....

.....

You are hereby notified that a preliminary investigation to establish the circumstances concerning:

(a) the occupation, use or control of the following land by you:

.....

.....

.....

.....*

(give particulars of the land)

(b) the existence of the fence on the land;*

(c)

.....

.....

.....

(state any other matter which the board itself may investigate)*

will be conducted at (place) on the
day of 2..... at (time), and -

- (a) you are required to attend the preliminary investigation to be questioned on the matters mentioned in paragraphs (a), (b) or (c); and
- (b) you must at your appearance before the investigating committee submit any book or document relevant to the subject of the preliminary investigation which you may wish to submit to the investigating committee.

.....
Signature of Chairperson: Investigating Committee

.....
Date

* Delete whichever is not applicable.

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 11

SUMMONS TO APPEAR BEFORE INVESTIGATING COMMITTEE/BOARD*
(Section 37 and regulations 20(2) and 28(2))

You, (name)

of (business address)

..... (residential address)

are hereby summoned to appear at (place) on the

day of 2....., at(time) before the investigating

committee/Board of*

to be questioned regarding

.....

.....

.....

.....

.....

.....

.....

(state the matter of the investigation or application, as the case may be)

and you are directed to bring with you and then produce at the time and place as aforesaid any books or document listed below, and then and there to testify all and singular things you know in relation to the said inquiry/application.*

Given under the hand of the Chairperson of the Investigating Committee/Board* this

..... day of 2

.....

Signature of Chairperson: Investigating Committee/Board*

List of books or documents to be produced:*

.....

.....

.....

.....
.....
.....
.....

Note: Your attention is directed to section 37(6) of the Act which reads as follows:

- “(6) A person summoned in terms of subsection (4) is guilty of an offence if he or she -
- (a) without sufficient cause fails to appear before the investigating committee at the time and place specified in the summons or to remain in attendance until excused by the chairperson from further attendance;
 - (b) at his or her appearance before the investigating committee refuses to be sworn in or to make an affirmation when requested to do so by the chairperson;
 - (c) having taken the oath or having made affirmation -
 - (i) fails to answer fully and satisfactorily any question lawfully put to him or her;
 - (ii) fails to produce a book, document or other object in his or her possession or under his or her control which he or she has been summoned to produce;
 - (iii) gives false evidence knowing it to be false or not knowing or believing it to be true.

And a person convicted of any such offence is liable on conviction to a fine not exceeding N\$1 000 or imprisonment for a period not exceeding 3 months.”.

* Delete whichever is not applicable.

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 12

**FORM OF NOTICE REGARDING FAILURE TO ATTEND PRELIMINARY INVESTIGATION OR
TO COMPLY WITH INSTRUCTION
(Section 37 and regulation 23)**

Dear Mr/Mrs/Miss/Ms*

.....

.....

You are hereby notified that the investigating committee of

..... has reported that you failed to attend the preliminary investigation which was held on/failed to comply with an

instruction of the investigating committee to*

.....

.....

.....

.....

.....

.....

.....

.....

.....

(state the instruction(s) given by investigating committee, if any)

You are hereby directed to comply, within days from the date of this notice, with the following requirements:

.....

.....

.....

.....

.....

.....

.....

.....

Your attention is directed to section 37(10) of the Act which reads as follows:

“(10) If the person without reasonable cause fails to comply with a requirement stipulated in the notice referred to in subsection (9), the board may declare the person to be divested of any claim in respect of the land in question.”.

.....
Signature of chairperson of the board

.....
Date

* Delete whichever is not applicable.

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 13

APPLICATION FOR TRANSFER OF CUSTOMARY LAND RIGHT
(Section 45, read with section 38 and regulation 24)

To: The Chief Office stamp:
Traditional community
of
Region:
Constituency:

I,

the undersigned, identity number sex

nationality name of spouse

.....

names of other dependants

.....

.....

of

.....

(state residential address)

.....

(state postal address)

hereby apply that the right to

.....

(state a right to a farming unit or a right to a residential unit or such other right to any other form of customary tenure which the Minister has recognised and prescribed by notice in the *Gazette*)

which has been allocated to me onin respect of:

(a) Approximate size of land applied for

(b) Communal area of traditional community in which land is situated:

.....
.....
(c) Region in which communal area is situated:,

be transferred to

.....
.....
.....
.....
.....
.....
.....
.....
.....

(state full names, identity number, sex, nationality, name of spouse, names of other dependants, residential and postal address of proposed transferee)

Does any other person hold a customary land right in respect of the portion of land?

Yes No

If the answer to the question above is "Yes":

(a) State the name and address of the holder concerned, as well as the type of right:

.....
.....
.....
.....

(attach a separate list if this space is not enough)

(b) Has the holder agreed to relinquish his or her right in respect of the portion of land? Yes No

(c) Is any compensation payable in this regard? Yes No

(d) Have suitable arrangements been made for the resettlement of the holder on alternative land? Yes No Not applicable

Is the proposed transferee a holder in respect of any other portion of land granted under the Act or does he or she occupy any communal land under a right referred to in section 28(1) of the Act? Yes No

If the answer to the question above is "Yes", give a description of the portion of land:

.....
.....,

and of the right:

.....

I hereby declare that the information submitted in this Form is true and correct. The

fees, namely N\$....., has been paid, for which receipt no.

dated was issued.

.....
Signature of holder

.....
Date

I,
(full names of proposed transferee)

hereby consent to the transfer of the customary land right to me.

.....
Signature of proposed transferee

.....
Date

Note: Please attach a copy of the certificate of registration of the customary land right.

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 14

APPLICATION FOR TRANSFER OF RIGHT OF LEASEHOLD
(Section 45, read with section 38 and regulation 24)

To: The Chairperson
Communal Land Board
of
Region:
Constituency:

Office stamp:

I,

the undersigned, identity number sex

nationality name of spouse

.....

names of other dependants

.....

.....

of

.....

(state residential address)

.....

(state postal address)

hereby apply that the right of leasehold for

.....

(state the purposes of the right of leasehold)

which has been granted to me on in respect of:

(a) Approximate size of land applied for

(b) Communal area of traditional community in which land is situated:

.....

.....
(c) Region in which communal area is situated:

be transferred to

.....
.....
.....
.....
.....
.....
.....
.....
.....

(state full names, identity number, sex, nationality, name of spouse, names of other dependants, residential and postal address of proposed transferee)

Has the Traditional Authority consented to the transfer of the right of leasehold? Yes No (Attach documentary evidence in this regard)

Does any other person hold a right of leasehold in respect of the portion of land ?

Yes No

If the answer to the question above is “Yes”:

(a) State the name and address of the holder concerned, as well as the type of right:

.....
.....
.....
.....
.....

(attach a separate list if this space is not enough)

(b) Has the holder agreed to relinquish his or her right in respect of the portion of land? Yes No

- (c) Is any compensation payable in this regard? Yes No

- (d) Have suitable arrangements been made for the resettlement of the holder on alternative land? Yes No Not applicable

- (e) Are the fees or any other amount payable in respect of the occupation of the land, paid up to date? Yes No

If the answer to the question above is “Yes”, please provide proof of the original receipt in respect thereof or such other proof acceptable to the board.

Is the proposed transferee a leaseholder in respect of another portion of land granted under the Act or does he or she occupy any communal land under a right referred to in section 35(1) of the Act? Yes No

If the answer to the question above is “Yes”, give a description of the portion of land:

.....
,

and of the right:

.....

Is the portion of land situated within an area which has been declared a conservancy in terms of section 24A of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975)? Yes No

If the answer to the question above is “Yes”, provide the name of the conservancy:

.....

Period for which right of leasehold is applied for:

**Legal Assistance Centre
Mission statement**

The Legal Assistance Centre, being a public interest law centre, strives to make the law accessible to those with the least access, through education, law reform, research, litigation, legal advice, representation, and lobbying, with the ultimate aim of creating and maintaining a human rights culture in Namibia.

**Namibia National Farmers Union
Objectives**

NNFU runs an advocacy and lobby programme that aims to influence national policy on land reform, marketing, credit, government extension services and regional trade. It also facilitates the launching of tangible grassroots level projects.

All its activities are aimed at enhancing chances for:

- Increased food production for household food security
- smooth marketing of farming produce to increase household income
- increased participation of women in farming support programmes
- environmental protection and sustainable utilisation of natural resources

Legal Assistance Centre
P O Box 604
Windhoek
Namibia
Telephone: 061-223356
Fax: 061-234953
E-mail: info@lac.org.na

Namibia National Farmers Union
P O Box 3117
4 Axali Doeseb St
Windhoek
Telephone: 061-271117
Fax: 061-271155
E-mail: nnfu@mweb.com.na

Land, Environment and Development Project
Legal Assistance Centre
and the
Advocacy Unit
Namibia National Farmers Union
Windhoek



NNFU



LAC