



Republic of Namibia

Manual for Communal Land Boards

Powers and Procedures for Handling Land Issues



Legal Assistance Centre

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CONTENTS

Chapter 1	Introduction to the Manual	3
1.1	Purpose	3
1.2	Definitions	3
1.3	Structure of the Manual	5
1.4	Cast of characters	7
Chapter 2	Review of the Basic Application Procedures for Land Rights	14
2.1	General Questions & Answers	14
2.2	Procedures for Applying for Land Rights	17
Chapter 3	Overview of Procedures for Handling Land Disputes: For Conflicting Claims or Unclear Validity	27
3.1	What are <i>Conflicting Claims</i> ?	27
3.2	What is meant by <i>Unclear Validity</i> ?	27
3.3	What are the Types of Procedures for Handling Disputes over Land Rights?	28
3.4	What are Examples of the 'Application Procedures'?	28
3.5	What are Examples of 'Corrective' Procedures?	29
Chapter 4	'Application' Procedures for '<u>Existing</u>' Customary Rights:	31
4.1	How does the CLB know if there is a Conflicting Claim?	31
4.2	How does the CLB know if the validity of the claim is unclear?	31
4.3	What are the 'Application' Procedures for ' <i>Existing</i> ' Customary rights?	32
4.4	Must the CLB do ALL of these procedures for every application for ' <i>Existing</i> ' rights?	32
4.5	Which Procedures should be used under what circumstances?	33
4.6	What must be displayed on an application notice for an ' <i>Existing</i> ' Customary right?	35
4.7	What should the CLB do if there are conflicting claims or if they doubt the validity?	36
4.8	What are the main topics of the investigations?	36
4.9	When should the CLB establish a committee to advise it?	37
4.10	When and How should the CLB summon any person, book or document?	37
4.11	When might a Preliminary Investigation be Appropriate?	38
4.12	How should a Preliminary Investigation Proceed?	38
4.13	How is a "hearing" conducted for an ' <i>Existing</i> ' Customary right?	40
4.14	What Decision-Making Powers does the CLB have to Allocate ' <i>Existing</i> ' Customary Rights?	42
Chapter 5	'Application' Procedures for "<u>New</u>" Customary Rights	47
5.1	How does the Chief/TA know if there is a Conflicting Claim?	47
5.2	How does the Chief/TA know if the validity of the claim is unclear?	47
5.3	What are the 'Application' Procedures for ' <i>New</i> ' Customary Rights?	48
5.4	Must the Chief/TA/CLB do ALL procedures for every application for ' <i>New</i> ' rights?	48
5.5	Which Options should be used under what circumstances?	49
5.6	What must be displayed on an application notice for a ' <i>New</i> ' Customary right?	51
5.7	What should the Chief/TA do if there is an objection to the application?	52
5.8	What are the main topics of the Chief/TA's investigations?	52

5.9	When should the CLB establish a committee to advise it?	53
5.10	When and How should the CLB summon any person, book or document?	53
5.11	How is a “hearing” conducted for an ‘New’ Customary right?	54
5.12	When and How must Chief/TA notify the CLB of an allocation?	56
5.13	What Decision-Making powers does the Chief/TA have to allocate ‘New’ Customary rights?	57

Chapter 6 ‘Application’ Procedures for ‘Existing’ Leasehold Rights 61

[‘Existing’ Leasehold Rights = Permission to Occupy (PTOs)] 61

6.1	How does the CLB know if there is a Conflicting Claim?	61
6.2	How does the CLB know if the validity of the claim is unclear?	62
6.3	What are the Application Procedures for ‘Existing’ (PTO) Leasehold rights?	62
6.4	Must the CLB do ALL of these procedures for every application for ‘Existing’ rights?	63
6.5	Which Procedures should be used under what circumstances?	64
6.6	What must be displayed on an application notice for an ‘Existing’ Leasehold right?	65
6.7	What should the CLB do if there are conflicting claims or if they doubt the validity?	66
6.8	What are the main topics of the investigations?	66
6.9	When should the CLB establish a committee to advise it?	67
6.10	When and How should the CLB summon a person, book or document?	67
6.11	When might a Preliminary Investigation be Appropriate?	68
6.12	How should a Preliminary Investigation Proceed?	69
6.13	How is a ‘hearing’ conducted for an ‘Existing’ (PTO) Leasehold Right?	71
6.14	What Decision-Making powers does the CLB have to Allocate ‘Existing’ Leasehold Rights?	73

Chapter 7 ‘Application’ Procedures for ‘New’ Leasehold Rights 77

7.1	How does the CLB know if there is a Conflicting Claim?	77
7.2	How does the CLB know if the validity of the claim is unclear?	78
7.3	What are the ‘Application’ Procedures for ‘New’ Leasehold rights?	78
7.4	Must the CLB do ALL of these procedures for every application for ‘New’ rights?	78
7.5	Which Procedures should be used under what circumstances?	79
7.6	What must be displayed on an application notice for an ‘New’ Leasehold right?	80
7.7	What should the CLB do if there are conflicting claims or if they doubt the validity?	81
7.8	What are the main topics of the CLB’s investigations?	81
7.9	When should the CLB establish a committee to advise it?	82
7.10	When and How should the CLB summon a person, book or document?	82
7.11	How is a ‘hearing’ conducted for an ‘Existing’ (PTO) Leasehold Right?	83
7.12	What Decision-Making powers does the CLB have to Allocate ‘New’ Leasehold rights?	85

Chapter 8 ‘Correction’ Procedures for Both Customary and Leasehold Rights 89

8.1	What are the ‘Corrective’ Procedures?	89
8.2	When and How is the Appeal Procedure Implemented?	90
8.3	When and How may A Customary Right be cancelled?	92
8.4	When and How may A Leasehold Right be Cancelled?	94
8.5	How may a person be evicted from unlawful occupation of land?	95
8.6	How may an UNAUTHORIZED fence be removed?	95
8.7	Summary of provisions related to fences	97

Chapter 1

Introduction to the Manual

1.1 Purpose

The Communal Land Reform Act of 2002 (the Act) gives to the Communal Land Boards responsibilities to administer the allocation, cancellation, transfer and registration of Customary Land Rights and Leasehold Rights. In the course of deciding whether a person should be granted a right, or whether someone was properly granted a right in the past, the CLB may discover some dispute, or doubt, as to whether the claim is valid. The Act provides some powers and procedures for how to investigate a claim, and how persons should approach the CLB to handle a dispute. The main **Purpose** of this Manual is to provide the CLB members with an understanding of those powers and procedures, and how and when to use them.

1.2 Definitions

The following important words are frequently used within this Manual, and these simple definitions should be a useful guide to them.

Act

The Communal Land Reform Act, No 5 of 2002

Adjudication

A relatively formal process of resolving a dispute by a decision of the CLB or other body which acts as a judge.

Appeal

To apply to a higher authority to reconsider a decision

Appeal Tribunal

The person/s appointed by the Minister [under section 39 of the Act] to consider an appeal of a decision made by a Chief, TA or CLB

Applicant

The person who makes an application for a land right

Arbitrator

The person appointed by the Minister [section 30(6) of the Act] who will decide on consent in a case when the TA fails to consent to the allocation of a leasehold by the CLB.

Chief

A person who has been recognized under the Traditional Authorities Act, 2000, as the Chief of his or her traditional community.

Claim

A demand of a land right

Claimant

A person who makes a claim

CLB

Communal Land Board

CLRA

Communal Land Reform Act, No 5 of 2002 (also “the Act”)

Conflicting Claims

When more than one person claims the same right to the same land

Customary Rights

Customary rights are those traditional rights for a farming unit or a residential unit that are allocated by a Chief or Traditional Authority. Currently, these units must not exceed 20 hectares, and the CLB must ratify the right so that it has legal force.

Deed

A written document recording a transaction affecting a right such as leasehold right.

Designated Area

Area specified by Minister in Gazette, for which the Communal Land Board may grant a leasehold for agricultural purposes.

“Existing” Right

One that the person obtained before the CLRA became operational law (01 March 2003). It is the job of the CLB to consider whether that person had a true or valid right before that time, and if so, the CLB must recognize and register it.

Hearing

A formal opportunity for the CLB to listen to evidence and make a decision

Leasehold Rights

Leasehold rights are for business purposes and are allocated by the CLB. Currently a leasehold should not exceed 50 hectares (unless with the approval of the Minister), and the Chief or Traditional Authority should give its consent.

“New” Right

One that was not held before the Commencement of the CLRA (01 march 2003)

Objector

A person who lodges an objection to a notice of application

Preliminary Investigation

A formal mechanism to investigate an existing customary or leasehold right whether an application has been made or not [section 37 of the Act]. The Minister may appoint members of an Investigating Committee

PTO

A PTO, or Permission to Occupy, is the form of existing right for business purposes on communal land that was used before the commencement of the Act. Currently, PTO holders have until March 2009 to apply for conversion of their PTO into a leasehold right.

Recognize

“Recognition” of a right means that the CLB approves the right after considering the application. The CLB must approve a right before it may be registered.

Register

“Registration” of a right means entering the information about the right into the register, and then issuing a Certificate of Registration to the holder.

“Regulations”

Regulations made in terms of the Communal Land Reform Act, No 5 of 2002

Summons

A legal call to appear before the CLB, hearing or Investigating Committee [provided for in section 28 of the Act and utilizing Form 11 of the Regulations]

TA

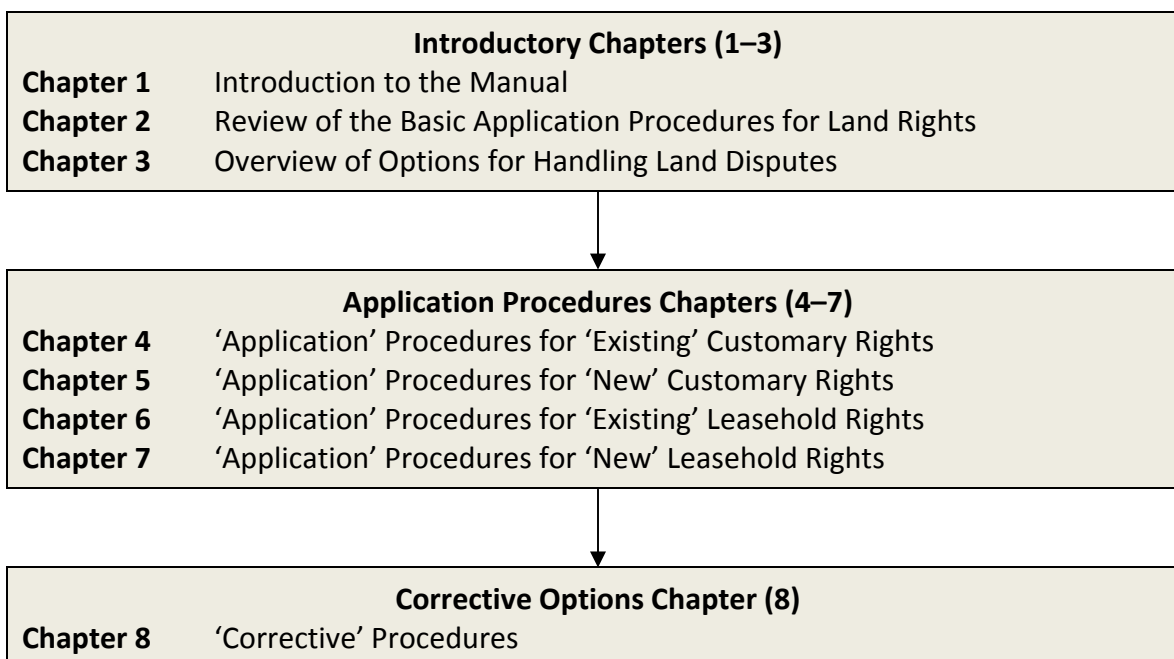
“Traditional Authority”, means a Traditional Authority of which traditional leaders have been recognized under the Traditional Authorities Act, 2000.

Unclear Validity

When there is only one person claiming a right, but there is some doubt as to whether that person was given that right properly (according to the process of law), or correctly (with complete and accurate information).

1.3 Structure of the Manual

The main approach of the Act in settling disputes is to include powers and procedures within the application process, rather than investigate a dispute outside of the application process. Consequently, to settle a dispute about an ‘existing’ or ‘new’ claim, an application must be made. If a decision by a Chief, TA or CLB on a land right has been made, an ‘aggrieved person’ has 30 days to lodge an appeal to an Appeal Tribunal (appointed by the Minister, to reconsider the decision). For a right that has not gone through an application process, or has been registered unlawfully (not following the process prescribed by law) or incorrectly (without complete and accurate information), there are mechanisms to ‘correct’ such situations. Accordingly, the Chapters are organized as follows:



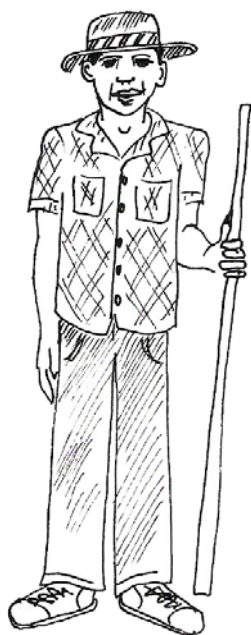
1.4 Cast of characters



Farming unit



Residential unit



Subsistence farmer



Neighbouring farmers



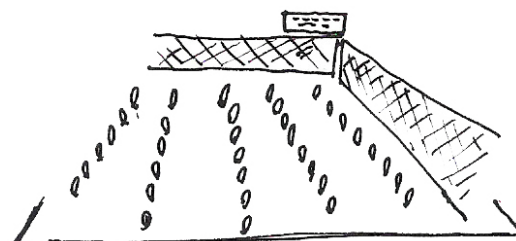
Local businessman



Chief



Lodge development



Commercial agriculture



Communal Land Board (CLB)



CLB Chairperson



CLB Secretary



Anonymous witness



CLB
notice board with
notice of application



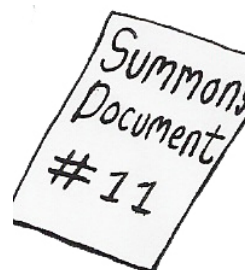
Register



Lease application form



Deed of Leasehold



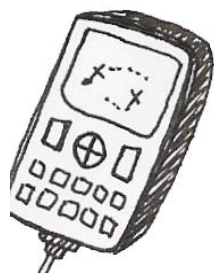
Summons to appear before
the Communal Land Board



Investigation Committee
Chairperson



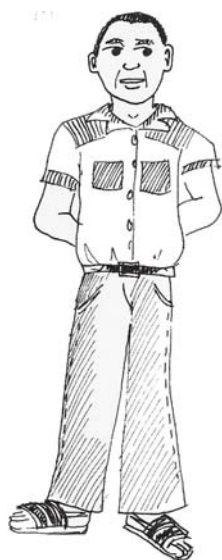
Investigation Committee



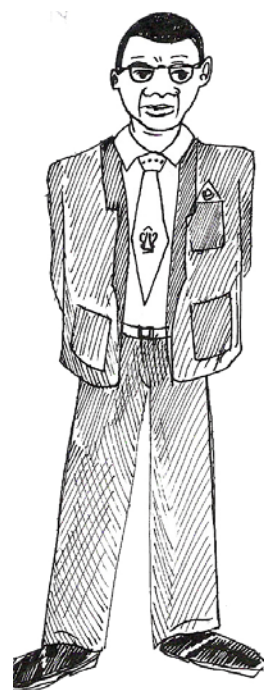
GPS unit



Boundary beacon



Objector



Minister of Lands and
Resettlement



Appeals Tribunal

Chapter 2 Review of the Basic Application Procedures for Land Rights

2.1 General Questions & Answers

2.1.1 What are the Differences between Customary and Leasehold Rights?

Customary rights are those traditional rights for a farming unit or a residential unit that are allocated by a Chief or Traditional Authority. Currently, these units must not exceed 20 hectares, and the CLB must ratify the right so that it has legal force.



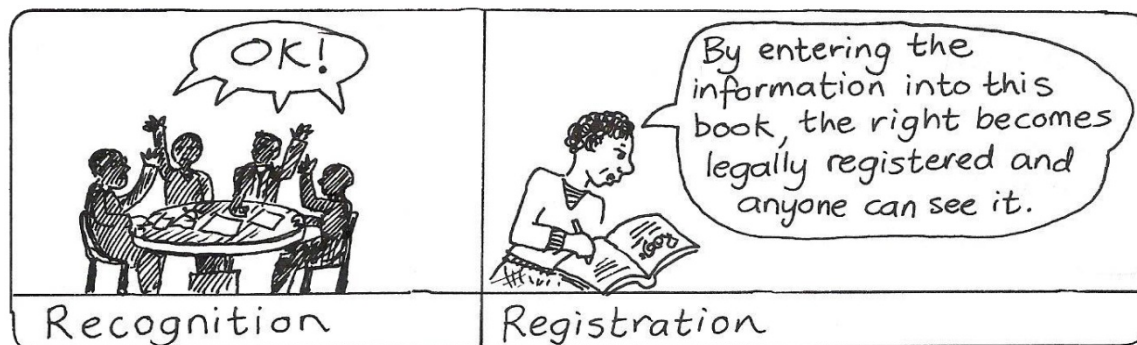
Leasehold rights are for business purposes and are allocated by the CLB. Currently a leasehold should not exceed 50 hectares (unless with the approval of the Minister), and the Chief or Traditional Authority should give its consent.



2.1.2 What does it mean to Recognize and to Register a Right?

Recognition of a right means that the CLB approves the right after considering the application. The CLB must approve a right before it may be registered.

Registration of a right means entering the information about the right into the register, and then issuing a Certificate of Registration to the holder of the right.



2.1.3 What is an 'Existing' Right?

An 'existing' right is one that the person obtained before the Communal Land Reform Act became operational law (01 March 2003). It is the job of the CLB to consider whether that person had a true or valid right before that time, and if so, the CLB should recognize and register it under the Act.



2.1.4 What is a 'New' Right?

A 'new' right is one that was not held before the commencement of the CLRA (March 2003). In order to obtain a new right, a person must make an application, which if successful, becomes recognized and registered.



2.2 Procedures for Applying for Land Rights

2.2.1 How does a person apply to register their 'Existing' Customary right?



Step 1 Completing an application form

The applicant **must** complete and submit an application on Form 3 to the CLB [currently before March 2012] to recognize and register any right to a farming unit, to a residential unit or to retain a fence on such lands



Step 2 Documents to accompany the application

The application **must** include a letter from the Chief or TA stating whether or not the application is supported by the Chief/TA, and any other information the



Chief/TA may wish to bring to the attention of the CLB., and should be accompanied by any documents which support that the applicant has the use right

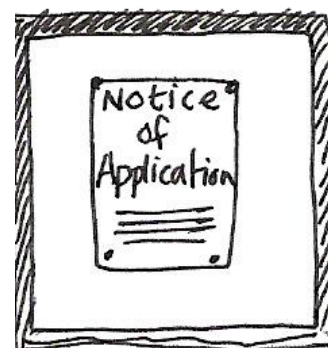
Step 3 Consideration of the application by the CLB

- a. The CLB Secretary checks that all the required information is submitted and **may** request any additional information that may be required by the CLB.
- b. The CLB **may** make investigations to establish:
 - when/how the right was acquired
 - whether any other person has a claim to the same land
 - whether the size conforms to 20 ha
 - boundaries of the land



Step 4 Displaying the application on the notice board

- a. The CLB **must** display particulars of the application on its office's notice board for at least 7 days inviting community members to lodge any objection they may have.
- b. The CLB **must** hold a hearing (in which the applicant and objector/s will have a chance to participate) if there are conflicting claims or reason to doubt the validity of a claim



Step 5 Recognition (approval) or referring the application to the TA

After thorough consideration of the application the CLB **must** either:

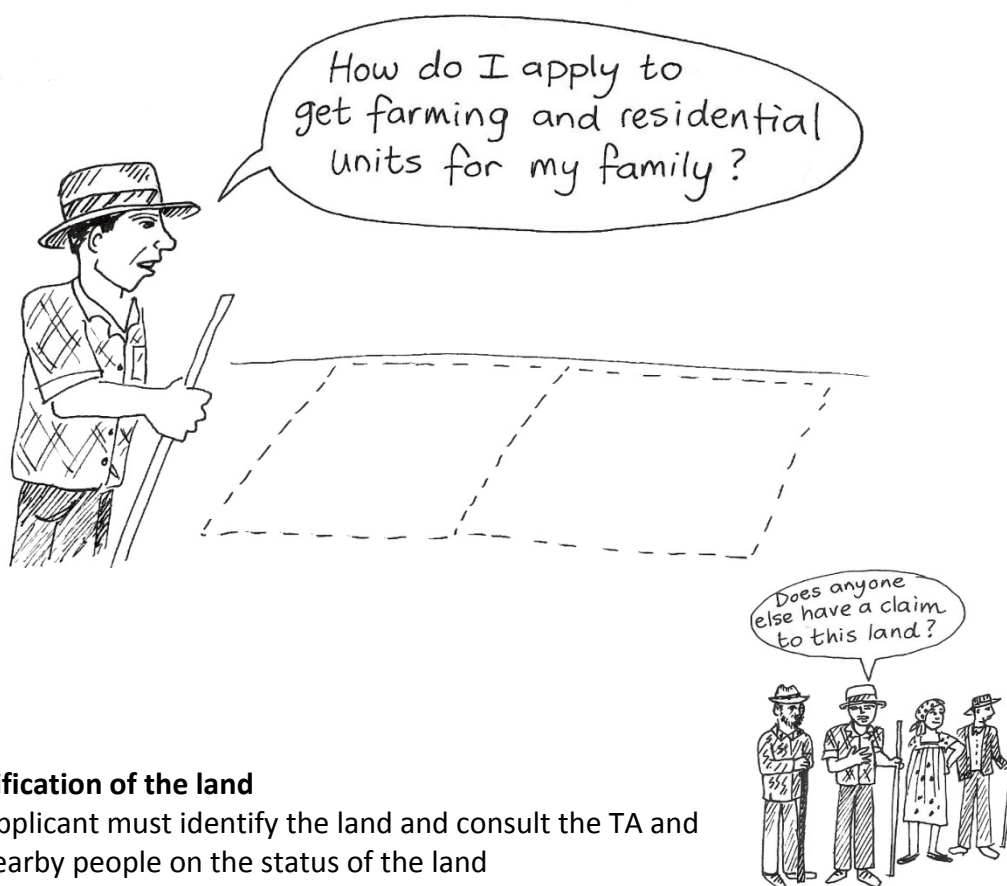
- a. Recognize (approve) the right
- b. Reject the right
- c. Grant the right but with changes, or grant to another alternative piece land
- d. Refer the matter to the Chief/TA to be treated as a new application



Step 6 Registration of existing rights

Once the CLB has recognized (approved) a right, it **must**:

- a. enter the particulars into a register
- b. issue a Certificate of Registration to the applicant

**2.2.2 How does a person apply to register a 'New' Customary right?****Step 1 Identification of the land**

The applicant must identify the land and consult the TA and the nearby people on the status of the land

Step 2 Completion of an application form

The applicant must complete and submit an application on Form 1 to the Chief/TA together with all the required information plus the application fee [currently \$25].

**Step 3 Consideration of the application by the Chief/TA**

- a. The Chief/TA will check that all the required information (including size, location and current use of land) and fee are submitted.
- b. The Chief/TA **must** display particulars of the application on its notice board for at least 7 days inviting community members to lodge any objection that they might have.
- c. The Chief/TA **may** make investigations and consult persons
- d. The Chief/TA **may** hold a hearing if a community member objects, in which the applicant and objector/s will be given a chance to participate.



Step 4 Granting or refusal of the application

After thorough consideration of the application, the Chief/TA **must** either:

- a. Approve the right;
- b. Refuse the right



Step 5 Communicating the allocation to the CLB

The allocation of customary land rights by the Chief/TA is NOT legally valid unless ratified (cross-checked) by the CLB. Therefore, the Chief/TA **must** provide to the CLB, the particulars of the allocation, including:

- a. the type of right allocated
- b. location of land allocated
- c. size of land allocated (hectares)
- d. other portions of land that the applicant has, including sizes, locality and uses)
- e. any other information the Chief/TA may wish to submit



Step 6 Ratification of the allocation by the CLB

After checking that all the required information is submitted, and after thorough consideration, the CLB either:

- a. **must** ratify if the allocation was done properly;
- b. **may** refer the allocation back to the Chief/TA with comments;
- c. **must** veto the allocation if either:



- another person already has a right to the same land
 - the land exceeds the maximum (currently 20 ha)
 - the land is reserved for common usage or any other purpose in the public interest
- d. If the allocation is vetoed, the CLB **must** inform in writing, the Chief/TA and the applicant, the reasons for its decision.

Step 7 Registration of allocated land

Once the CLB has approved a right, it **must**:

- a. enter the particulars into a register; and,
- b. issue a Certificate of Registration to the applicant.



2.2.3 How does a person apply to register their 'Existing' (PTO) Leasehold right?



Step 1 Completing an application form

The applicant **must** complete and submit an application on Form 8 to the CLB [currently before March 2012] for conversion of their PTO rights into leasehold rights.



Step 2 Documents to accompany the application

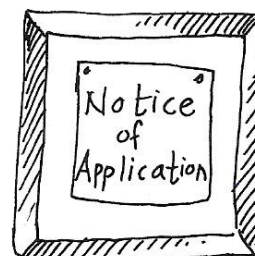
The application **must** be accompanied by any documents which support the applicant's claim, and a



letter from the Chief/TA stating whether or not the application is supported by the Chief/TA, and any other information that the Chief/TA **may** wish to bring to the attention of the CLB.

Step 3 Consideration of the application by the CLB

- a. The CLB secretary checks that all the required information is submitted
- b. The CLB **may** make investigations to establish:
 - when/how the right was acquired
 - whether the size conforms to 50 ha
 - whether any other person has a claim to the same land
 - whether the land is fenced off
 - boundaries of the land
- c. The CLB **must** display particulars of the application on its office's notice board for at least 7 days inviting community members to lodge any objection they may have.
- d. The CLB **must** hold a hearing (in which the applicant and objector/s will have a chance to participate) **if** there are conflicting claims or reason to doubt the validity of the claim



Step 4 Conversion and granting of right or refusal

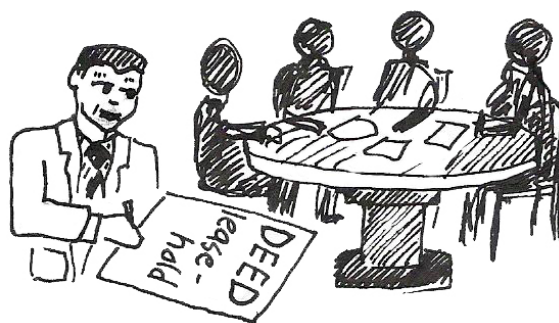
After thorough consideration of the application the CLB **must** either:

- a. **if** satisfied with the validity of the claim it **must** recognize (approve) and offer the right (stating any conditions)
- b. **if** not satisfied with validity of claim it **must** hold a hearing, at the end of which it **may**:
 - Affirm the right
 - Reject the right
 - Grant the right but with changes or grant the right to another alternative piece of land



Step 5 Signing of deed of leasehold

- a. **if** a leasehold has been granted by the CLB, a deed of leasehold **must** be signed between the applicant and the CLB [Part A, Form 9]



- b. if a leasehold has been granted for agricultural purposes outside a designated area, a deed of leasehold **must** be signed between the Minister and the applicant [Part B, Form 9]

Step 6 Registration of right of leasehold

Once the right of leasehold has been granted and the deed of leasehold has been signed, the secretary of the CLB **must**:

- a. enter the particulars into the register; and,
- b. issue a certificate of leasehold [Part A, or Part B (as applicable) Form 7] to the applicant



2.2.4 How does a person apply to register a 'New' Leasehold right?

Step 1 Identification of the land

The applicant must identify the land and consult the TA and the nearby people on the status of the land

Step 2 Completion of an application form

- a. The applicant must complete an application on Form 5.



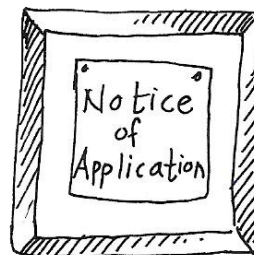
Does anyone else have a claim to this land?



- b. The applicant should attach written evidence of the consent of the TA to the leasehold. [If the TA refuses consent, the Minister may appoint an arbitrator who may grant consent if satisfied that the TA unreasonably withheld such consent]
- c. The applicant should submit the application to the CLB together with all the required information plus the application fee [currently \$25].

Step 3 Consideration of the application by the CLB

- a. The CLB will check:
 - that the size does not exceed the maximum [currently 50ha]
 - whether the applicant has another leasehold or existing right
 - whether the purposes of the leasehold might defeat the object of a management and utilization plan of a Conservancy in which it is wholly or partially situated.
- b. The CLB **must** display particulars of the application on its notice board for at least 7 days inviting community members to lodge any objection with the Chief/TA



Step 4 Granting or refusal of the application

After thorough consideration of the application, the CLB **must** either:

- a. Approve the right;
- b. Refuse the right
- c. Refer the matter to the Minister for approval **if**:
 - size exceeds maximum [currently 50 ha]
 - lease period or renewal period is greater than 10 years
 - applicant is already a leaseholder or holds an existing right



Step 5 Signing of deed of leasehold

- a. **if** a leasehold has been granted by the CLB, a deed of leasehold **must** be signed between the applicant and the CLB [Part A, Form 9]
- b. **if** a leasehold has been granted for agricultural purposes outside a designated area, a deed of leasehold **must** be signed between the



Minister and the applicant [Part B, Form 9]

Step 6 Registration of right of leasehold

Once the right of leasehold has been granted and the deed of leasehold has been signed, the secretary of the CLB **must**:

- a. enter the particulars into the register; and,
- b. issue a certificate of leasehold [Part A, or Part B as applicable, Form 7] to the applicant



2.2.5 How does a person apply for a leasehold for agricultural purposes outside a designated area?

[Applications for a leasehold wholly or partially outside a designated area, are made on Form 6 and submitted to the Minister. While the Minister may grant the application after consultation with the Traditional Authority and the CLB, neither has any further role in the allocation. There are no mechanisms for any review or appeal of the Minister's decision.]



Chapter 3 Overview of Procedures for Handling Land Disputes: For Conflicting Claims or Unclear Validity

3.1 What are *Conflicting Claims*?

That is when 2 persons each say that they were given the same right on the same piece of land. The CLB should investigate and decide which one has the true claim.



3.2 What is meant by *Unclear Validity*?

That may be when there is only one person claiming a right, but there is some doubt as to whether that person was given that right properly (according to the process of law), or correctly (with complete and accurate information). The CLB should investigate and decide if the person obtained that right properly and correctly.



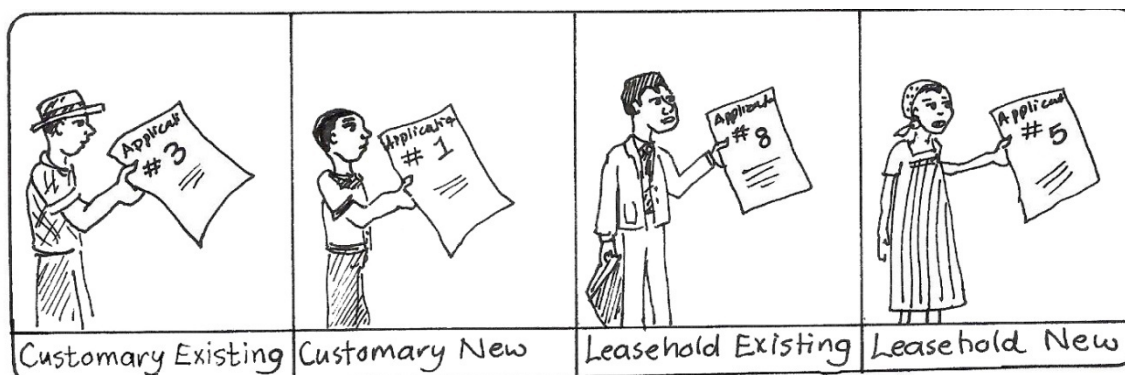
3.3 What are the Types of Procedures for Handling Disputes over Land Rights?

Dispute procedures could be placed into 2 arbitrary groups. One group uses the application process, while the other does not, rather it uses mechanisms to 'correct' current situations. For convenience sake, the 2 groups of dispute adjudication procedures could be called, the 'Application' Procedures, and the 'Corrective' Procedures.

DISPUTE PROCEDURES

Application Procedures	Corrective Procedures
• 'Existing' Customary Rights	• Appeal Tribunal
• 'New' Customary Rights	• Cancellation of Land Rights
• 'Existing' Leasehold Rights (PTOs)	• Eviction from Land
• 'New' Leasehold Rights	• Removal of Fence

3.4 What are Examples of the 'Application Procedures'?



Any person who wants to register a land right in Namibia (whether it is for a customary land right, a leasehold land right, or the right for a fence) must put in an application to the CLB. The application process for any of these rights includes procedures which variously give powers to Chief/TAs and CLBs:

- to make investigations;
- to summon persons and documents,
- to invite applicants and objectors to a hearing; and
- for the Minister to appoint an Investigating Committee to advise the CLB.

Most potential land disputes can therefore be handled **through the application processes**, by the CLBs in reaching their final decision on the application.

3.5 What are Examples of ‘Corrective’ Procedures?

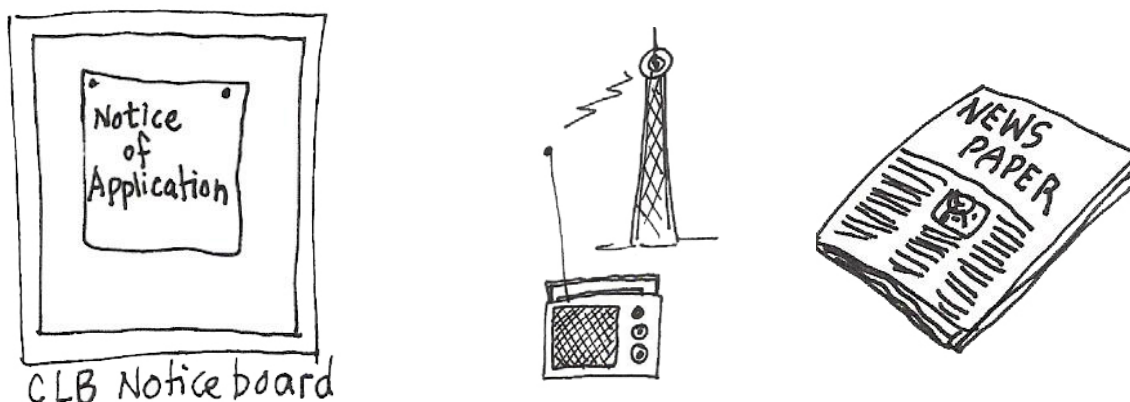


A number of mechanisms deal with land disputes where land rights have already been decided (perhaps unlawfully or incorrectly), rather than with claims that have not yet been decided (through the application process). For example, perhaps a person was granted a land right for one purpose (e.g., agriculture) but has used it for another (e.g., tourism). Also, any person aggrieved by a decision of a Chief, TA or CLB, has 30 days in which to appeal the decision to an Appeal tribunal. “Corrective Options” include mechanisms that largely deal with trying to correct an ‘old’ situation, and may involve the courts or an Appeal Tribunal adjudicating a dispute rather than the CLBs. Examples are:

- to appeal any decision made by a Chief, TA, or CLB
- to cancel a land right
- to evict a person unlawfully occupying land
- to remove an illegal fence

Chapter 4 'Application' Procedures for 'Existing' Customary Rights:

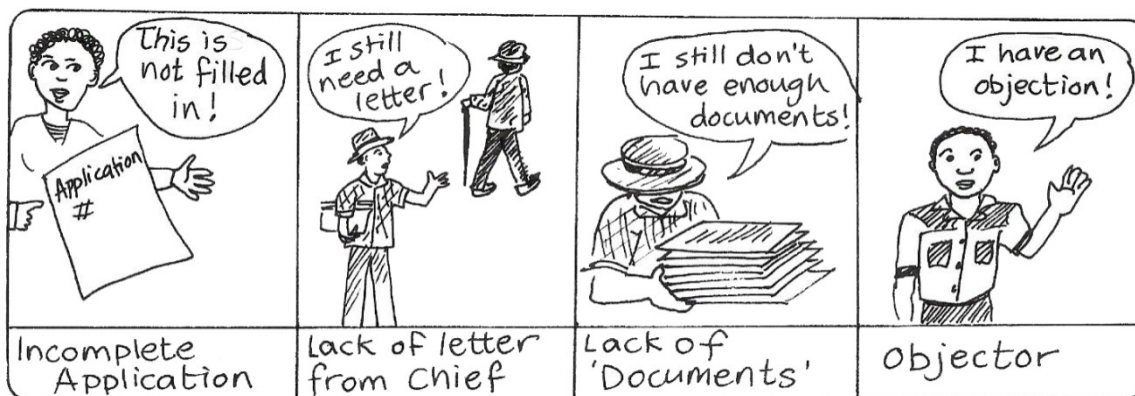
4.1 How does the CLB know if there is a Conflicting Claim?



The CLB **must** display for at least 7 days on a notice board at its offices, a notice stating the particulars of the application (name, size of land, location, and type of right), and inviting interested parties to lodge with the CLB (within 7 days) any objections regarding the application. The CLB **may** also publish in any newspaper or broadcast on any radio station that reaches the region, the same information as in the notice (as well as the letter from the Chief or Traditional Authority accompanying the application). Local languages may also be used. Some person who sees or hears the notice, may claim the same right or have information that casts doubt on the validity of the applicant's claim.

4.2 How does the CLB know if the validity of the claim is unclear?

Every application for recognition and registration should include (a) all the information required on Form 3, (b) a letter from the Chief or TA stating whether it supports the application or not, and any other information they want to present to the CLB, (c) any supporting documentary evidence if available, and (d) any further information or documents as the CLB may require. When the CLB checks the application, they may find some of the information is incomplete, vague or may conflict with other information. Also, a person who sees or hears the application notice, may know that some of the information is incorrect or incomplete, and may notify the CLB.



4.3 What are the 'Application' Procedures for 'Existing' Customary rights?

The CLB has been given powers so that it:

- must** display an application notice & invite any objections to the CLB
- may** make investigations, inquiries and consult persons about the claim
- may** establish a committee of CLB members to advise it
- may** summon any person, book or document related to the application
- may** direct an Investigating Committee **if** appointed by Minister
- must** conduct a hearing **if** there are conflicting claims or doubtful validity

4.4 Must the CLB do ALL of these procedures for every application for 'Existing' rights?

No. But when the law says "**must**", then that is a legal requirement. The CLB has NO Choice. For instance, the law requires the CLB to **(a)** display the application notice for at least 7 days. If the CLB fails to display the notice, or only does so for 6 days, then it is not following the law, and any land allocation made on the basis of that application, might be determined invalid by a court or Appeal Tribunal. However, sometimes there is a condition attached to the "**must**". For instance, **(f)** conducting a hearing is only "**required**", **IF** there are "conflicting claims or doubtful validity".

APPLICATION PROCEDURES FOR 'EXISTING' CUSTOMARY RIGHTS

"MUST"	"MAY"
CLB:	CLB:
a display a notice of application for at least 7 days & invite any objections to the CLB	a or use other means such as radio and newspapers, may also use local languages and may publicize notice for more than 7 days
	b make investigation, inquiries & consult persons
	c establish committee of CLB members
	d summon person, books, documents
	e direct Investigative Committee IF appointed by Minister
f conduct a hearing IF conflicting claims or unclear validity	

When the law says **may**, the CLB is given the power to decide whether to do it or not to do it. For instance, for procedures **(b)**, **(c)**, **(d)**, and **(e)**, the CLB may decide to do all 4 of them, none of them, or just 1, 2 or 3 of them. The CLB has been given the power to do these options, but they are not required to do them.

4.5 Which Procedures should be used under what circumstances?

Following is general guidance on when and how to use the different "Application" Procedures (a-f) for 'Existing' Customary rights listed above.

- a. [**must** display an application notice & invite any objections to the CLB]
*This is a **must**. The CLB **must** display an application notice for every application.*
- b. [**may** make investigations, inquiries and consult persons about the claim]

These are the general powers that the CLB uses every time it considers an application, and it is part of every other procedures. Investigation means the careful study of the application and evidence; Inquiries means formally seeking information; and Consulting means seeking information from relevant people.

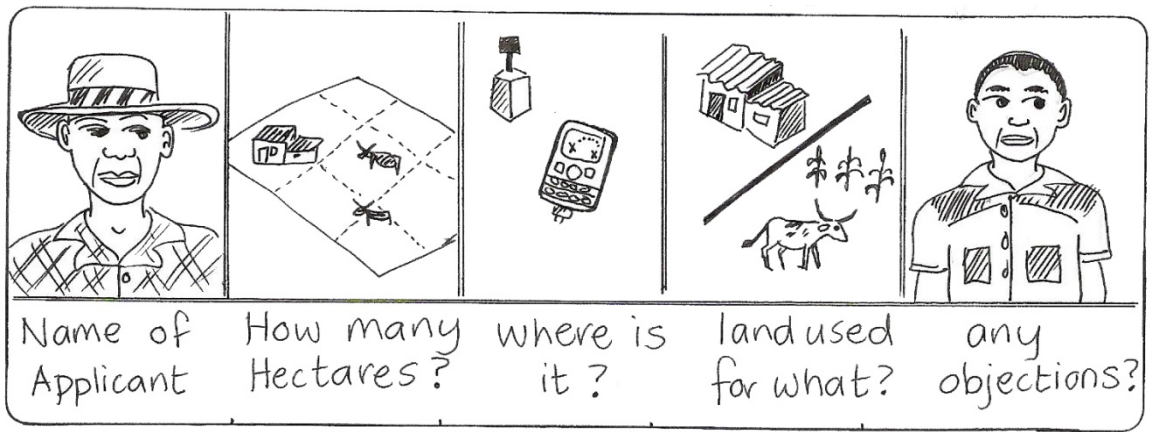
- c. **[may establish a committee of CLB members to advise it]**
This procedure allows the CLB to appoint a few members to make investigations on specific applications and then advise the full CLB. This procedure is flexible in that the committee itself can regulate (establish) its own procedures (rules). This procedure may be an efficient way to handle lots of applications or complicated ones.

If there are lots of applications, a committee might separate those applications where there are conflicting claims or unclear validity from the others. In the case of complicated applications, a committee might investigate and advise the full CLB on the key issues and a way forward.
- d. **[may summon any person, book or document related to the application]**
This is a specific power that gives legal force behind the general powers of (a) because it carries penalties of a fine or imprisonment. The CLB may use this power (through Form 11) when it wishes to examine a person, book or documents related to an application. In the case of a Preliminary Investigation, Form 11 may be used if a person, book or document is to be examined by an Investigating Committee.]
- e. **[may direct an Investigating Committee if appointed by Minister]**
This procedure can only be used to investigate “existing rights” where land is currently occupied, used or controlled; or where there is a fence. A special feature is that the Preliminary Investigation may be initiated without the CLB having received an application. Therefore, this procedure may be appropriate when a person is occupying land, has started or completed construction of a building, or has put up a fence without making an application. This procedure permits the CLB to take up the issue in a timely manner.
- f. **[must conduct a hearing if there are conflicting claims or doubtful validity]**
*Every time there is a conflicting claim or unclear validity, the CLB **must** conduct a hearing.*

4.6 What must be displayed on an application notice for an ‘Existing’ Customary right?

The CLB **must** display on its notice board at its offices for a period of at least 7 days, a notice which states:

- a. the name of the applicant
- b. the approximate size of the land being applied for;
- c. the geographical location
- d. the type of customary land right being applied for
- e. and invites interested parties to lodge any objections with the CLB, within 7 days



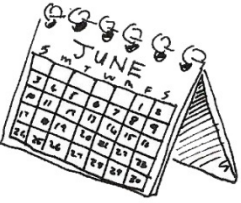

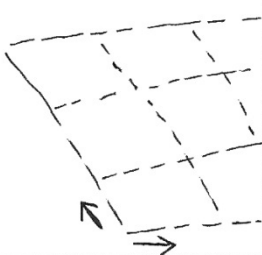

The CLB **may** also publish in any newspaper or broadcast on any radio station that reaches the region, the same information as in the notice (as well as the letter accompanying the application from the Chief or Traditional Authority). Local languages may also be used and the notice may be publicized for more than 7 days.

4.7 What should the CLB do if there are conflicting claims or if they doubt the validity?



The CLB **must** conduct a hearing if there are conflicting claims or unclear validity. If anyone has objected, casting doubt on the validity of the claim, or claiming the same right for themselves, the CLB **must** conduct a hearing.

4.8 What are the main topics of the investigations?

			
Date?	Other claimant?	Size?	Where is it?

In considering an application, the CLB should establish the facts relevant to the claim, including:

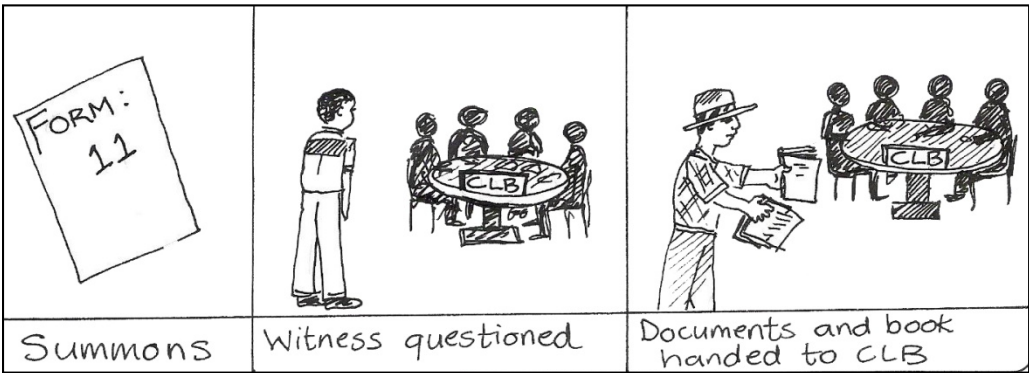
- the date and manner in which the applicant acquired the right
- whether any other person claims any right to the same land
- whether the area of the land conforms to the prescribed size
- the position of the boundaries or any beacons

4.9 When should the CLB establish a committee to advise it?

This procedure may be an efficient way to handle lots of applications or complicated ones. If there are lots of applications, a committee might separate those applications where there are conflicting claims or unclear validity from the others. In the case of complicated applications, a committee might investigate and advise the full CLB on the key issues and a way forward.

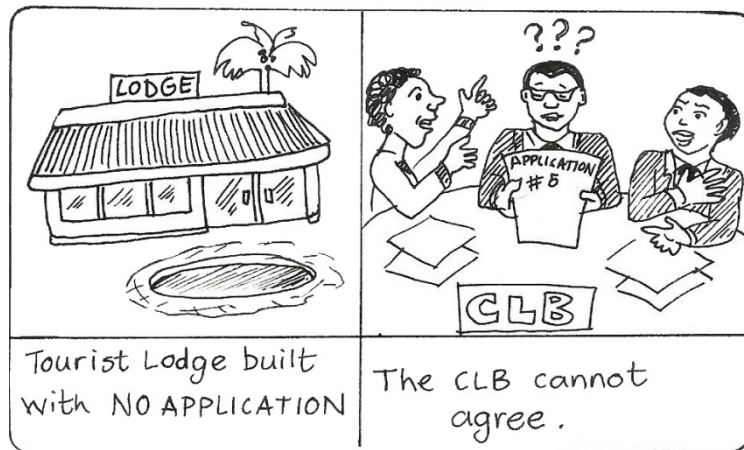


4.10 When and How should the CLB summon any person, book or document?



The CLB **may** consult with and seek advice from any person who may have information, or any book or document which may be relevant to the application. To do so, the CLB must fill out Form 11 (signed by the CLB chairperson) and should deliver it to the person at least 30 days before the date of the meeting. While the CLB may use a summons anytime it is considering an application, it may be most appropriate to use it in cases where the person has previously failed a request to appear before the CLB, or if the person has indicated an unwillingness to do so.

4.11 When might a Preliminary Investigation be Appropriate?



Preliminary Investigations may only be used to investigate ‘Existing’ Customary and Leasehold rights, and only **if** the Minister, in consultation with the CLB, establishes an Investigating Committee. Therefore, the CLB could bring a potential case to the attention of the Minister for his consideration. A Preliminary Investigation might be especially appropriate:

- if a person is currently occupying, using or controlling land; using a fence; or constructing a building or fence; but without submitting an application either to convert an “existing” right or be granted a “new” right

Or, it may possibly be appropriate:

- if special expertise is needed to investigate
- if there is a potential conflict of interest with CLB member/s
- if there is a division within the CLB on the way forward

4.12 How should a Preliminary Investigation Proceed?

- A. The Minister **may** appoint an Investigating Committee (and designate the chairperson) to:
- conduct a Preliminary investigation;
 - report to the CLB thereon.



- B. The Chairperson **must** write a notice (on Form 10) to inform the person being investigated (at least 30 days in advance):

- of the time and place of the Preliminary Investigation
- that s/he is required to attend the Preliminary Investigation to be questioned about matters [specified in the notice]
- that s/he must produce at the scheduled Preliminary Investigation, any book or document s/he may wish to submit to the Investigating Committee



- C. The Chairperson **may**:

- summon to appear before the Investigating Committee; the Chief or any other traditional leader or any other person who might be able to furnish relevant information, OR, to have in his/her possession any book or document which relates to the subject [See section on summons, Form 11], so that such person may be questioned or book/document examined administer an oath or other affirmation to a person appearing before the IC.



- D. The Investigating Committee **may**:

- question a person appearing before it under oath
- examine or keep for further examination or safe custody, any book or document, (provided that a receipt is issued to the person, and that person is allowed to make a keep a copy of the book/document)



- E. If at the end of the Preliminary Investigation, the IC thinks that the CLB should consider the person's claim without delay, the Investigating Committee **must** instruct the person to prepare and submit to the Chairperson of the IC, within the time set by the IC, an application (for referral to the CLB) for the investigated right.



- F. The Investigating Committee, **must** state in its report to the CLB, if the investigated person has failed:

- to attend the Preliminary Investigation; or
- to submit an application within the set time (if so instructed by the IC)



- G. If the IC reports to the CLB, any failure [see F, above], the CLB by notice (using Form 12, signed by the CLB Chairperson, served by the CLB Secretary or by a person authorized in writing by the Secretary, to the person), **may**:
- inform the person of the report from the IC of his/her failure,
 - direct him/her to comply within the specified time and with any such requirements as the CLB may specify,
 - inform the person that the consequences of failing to comply (without reasonable cause) with any requirement specified in the notice, are that the CLB **may** declare the person to be divested of their claim, which means:

- that that person is not entitled to make an application for an existing right in respect of the land concerned;
- that that person ceases to have any claim to or in respect of that land or anything erected or installed on the land.



4.13 How is a “hearing” conducted for an ‘Existing’ Customary right?

1. The CLB secretary **must** inform the applicant in writing:

- the reason for holding the hearing
- the date, time, and place where the hearing will be held
- 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 s/he intends to call in support of claim, attends
2. The CLB secretary should also invite and inform in writing any objector or interested party whom the CLB might wish to call to produce evidence or to testify
- (a) the reason for the holding of the hearing
- (b) the date, time and place where the hearing will be held
- (c) to produce of the hearing any documentary or verbal evidence
- (d) To ensure that any witness s/he intends to call to support his/her evidence, attends

3. At the hearing, the chairperson of the CLB:
- (a) **must** give particulars of conflicting claims, or reasons for doubtful validity
- (b) **may** produce documentary evidence or call witnesses to testify
- (c) **may** administer an oath or affirmation to any witness appearing before the CLB



4. At the hearing, the applicant:
- (a) **may** interrogate any person who has given verbal evidence or who has submitted documentary evidence;
- (b) **may** give and lead evidence, including documentary evidence, in support of a claim, or in rebuttal of any document or evidence presented



5. At the hearing, the chairperson (and other members of the CLB with his/her permission), may put questions to any person giving evidence.



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



7. Upon conclusion of the hearing, the CLB **must** make a decision (in accordance with section **28(10)** of the Act), which **must** be:
- put in writing
 - signed by the Chairperson of the CLB
 - made known at the hearing



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



4.14 What Decision-Making Powers does the CLB have to Allocate '*Existing*' Customary Rights?

Affirm the claim	Affirm with variations	Reject Claim	Reject claim but allocate other land	chairperson gives application to chief.

The CLB:

- must** recognize and register the claim if it is satisfied that the land claim is valid
- must** authorize the retention of a fence if it is satisfied that the claim is valid
- may** in the case of a hearing (held due to conflicting claims or unclear validity):
 - affirm the claim
 - reject the claim

- affirm the claim with variations (including area or position of boundaries) if the CLB determines that the land area exceeds the maximum [currently 20 hectares], or that the boundaries are not in accordance with customary law
- allocate an alternative portion of land if the applicant's claim encroaches on the commonage
- refer the matter to the Chief/TA to be treated as a new application, if it is NOT satisfied with the validity of the claim (i.e., if the CLB is NOT satisfied with the validity of the claim, it may either reject the claim [as above] or refer it to the Chief/TA)

**Mechanisms for Handling Land Issues Contained in
Communal Land Reform Act No 5 of 2002 & Regulations made in terms of CLRA**
[for numbered citations of legislation, **A**=the Act (above); **R**=the Regulations (above)]

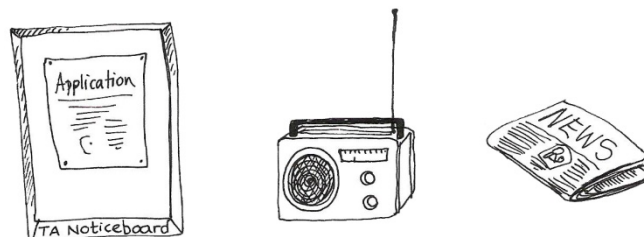
‘Existing’ CUSTOMARY RIGHTS

Category	Available Mechanisms	Available Procedures	Available Powers
‘Existing’ Rights [28]A [claim of land right existing before the commencement of the CLRA (01 March 2003)]	1. Application [28(2)]A + [7]R, Form 3 to CLB for recognition & registration of existing rights: <ul style="list-style-type: none"> for a <u>farming unit</u> for a <u>residential unit</u> for <u>retention of a fence</u>* *[no application is needed to authorize retention of a fence which existed before the commencement of the Act and which is used to fence in homesteads, cattle pens, water troughs or crop fields on the portion of land concerned [26]R]	CLB: a. must display application notice & invite lodging of objections with CLB [7(4)]R b. may make investigations, inquiries & consult, (including whether any other claims) [28(6)]A c. may establish committee of CLB members to advise it [8]A d. may summon any person, book or documents [28]R e. must conduct hearing [28(9)]A if there are conflicting claims or unclear validity; [9]R (procedures) f. may refer to Chief/TA, as a new application, rather than reject it, (if unsatisfied with validity [28(11)]A)	CLB a. must recognize & register if satisfied to validity of right [28(7)]A b. must authorize retention of fence if satisfied with [28(8)]A c. may (in case of hearing [28(10)]A) (i) affirm; (ii) reject; (iii) affirm with variations; (iv) allocate alternative land if encroachment on commonage d. may refer to Chief/TA, to be treated as a new application, rather than be obliged to reject it, if unsatisfied with validity [28(11-12)]A

Category	Available Mechanisms	Available Procedures	Available Powers
	<p>2. Preliminary Investigation [37]A + [22]R [may be done without application from claimant, or as part of Application (1 above). May only be done in respect of land occupied, used or otherwise controlled by a person or enclosed with a fence]</p>	<p><u>Minister</u>: may appoint investigating committee (IC) [37(1)]A</p> <p><u>CLB</u> : directs IC to conduct investigation [37(2)]A</p> <p><u>IC</u>: reports to CLB [see [20-23]R for details on PI, especially [22]R for conduct of PI]</p>	<p><u>Investigating Committee</u>:</p> <p>a. must inform person being investigated [37(30)]A, Form 10</p> <p>b. may summon persons & documents [37(4)]A, Form 11</p> <p>c. if expedient, may instruct person to submit application to chair of IC [37(7)]A</p> <p>d. must submit report to CLB [37(1)(b)]A</p> <p><u>CLB may [37)]A</u>:</p> <p>a. direct the person to comply with requirements related to a compliance failure reported by the IC (9)(b)</p> <p>b. (if person fails to comply) (10-11), divest person of: (i) claim to that land or anything erected/installed on it; or (ii) the right to apply in terms of [28(2)]A</p>

Chapter 5 ‘Application’ Procedures for “New” Customary Rights

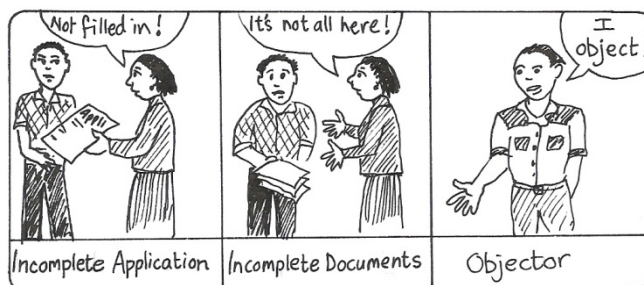
5.1 How does the Chief/TA know if there is a Conflicting Claim?



The Chief/TA **must** display for at least 7 days on a notice board at the offices of the TA, a notice stating the particulars of the application (name, size of land, location, and type of right), and inviting interested parties to lodge with the Chief/TA (within 7 days) any objections regarding the application. The Chief/TA **may** also publish in any newspaper or broadcast on any radio station that reaches the region, the same information as in the notice. Some person who sees or hears the notice, may claim the same right or have information that casts doubt on the validity of the applicant’s claim. Local languages may also be used.

5.2 How does the Chief/TA know if the validity of the claim is unclear?

Every application for allocation should include (a) all the information required on Form 1; and, (b) any other information or documents as the Chief/TA may require. When the Chief/TA checks the application, they may find some of the information is incomplete, vague or may conflict with other information. Also, a person who sees or hears the application notice, may know that some of the information is incorrect or incomplete, and may notify the Chief/TA.



5.3 What are the ‘Application’ Procedures for ‘New’ Customary Rights?

The Chief/TA has been given powers so that it:

- a. **must** display an application notice & invite any objections to Chief/TA
- b. **may** make relevant investigations & consult persons
- c. **may** require relevant information & documents
- d. **may** conduct a hearing **if** a community member objects
- e. **must** notify CLB of particulars upon allocation

The CLB has been given powers so that it:

- a. **may** establish a committee of CLB members to advise it
- b. **may** summon any person, book, or documents
- c. **may** make enquiries & consult persons [for ratification purposes]

5.4 Must the Chief/TA/CLB do ALL procedures for every application for ‘New’ rights?

No. But when the law says “**must**”, then that is a legal requirement. The Chief/TA/CLB has NO Choice. For instance, the law requires the Chief/TA to **(a)** display the application notice for at least 7 days. If the Chief/TA fails to display the notice, or only does so for 6 days, then it is not following the law, and any land allocation made on the basis of that application, might be determined invalid by a court or Appeal Tribunal. However, sometimes there is a condition attached. For instance, **(e)** conducting a hearing is only required **IF** a member of the traditional community objects.

When the law says **may**, the Chief/TA/CLB is given the power to decide whether to do it, or not to do it. For instance, for procedures **(b)**, **(c)** and **(d)**, the Chief/TA may decide to do all 3 of them, none of them, or just 1 or 2 of them. In this instance, the Chief/TA has been given the power to do these procedures, but they are not required to do them.

APPLICATION PROCEDURES FOR 'NEW' CUSTOMARY RIGHTS

"MUST"	"MAY"
Chief/TA:	Chief/TA:
a display a notice of application for at least 7 days & invite any objections to Chief/TA	a use other means such as radio and newspapers; may also use local languages, and may publicize notice for more than 7 days
	b make relevant investigations & consult persons
	c require relevant information & documents
	d conduct a hearing IF a community member objects
e notify CLB of particulars upon allocation	
	CLB:
	a establish a committee of CLB members to advise it
	b summon any person, book, or documents
	c make enquiries & consult persons

5.5 Which Options should be used under what circumstances?

Following is general guidance on when and how to use the different "Application" Procedures (a-e) for 'New' Customary rights listed above.

The Chief/TA:

- a. [**must** display an application notice & invite any objections to the Chief/TA]
*This is a **must**. The CLB **must** display an application notice for every application.*
- b. [**may** require relevant information and documents from the applicant]
These are general powers that the Chief/TA may use to gather the information that it needs from the applicant to consider the application
- c. [**may** make relevant investigations and consult persons about the claim]
These are the general powers that the Chief/TA uses every time it considers an application, and it is part of every other procedures. Investigation means the careful study of the application and evidence; and Consulting means seeking information from relevant people.
- d. [**may** conduct a hearing **if** a community member objects]
*This is a specific power that a Chief/TA **may** choose to do or not, but only **if** a member of the traditional community objects. It would be advisable to conduct a hearing **if** a community member objects **and** there are conflicting claims or unclear validity.*
- e. [**must** notify CLB of particulars upon allocation]
*This is a conditional **must**, that is, only **if** the Chief/TA grants an allocation, **must** they notify the CLB (who must review it and ratify it before it has any legal effect). On the other hand, if the Chief/TA do not grant an allocation, they do not need to notify the CLB. Therefore, the CLB is not given the power to review a decision by the Chief/TA to reject an application for a 'new' right. That means that an applicant who has been rejected by the Chief/TA, has only one other procedure open to it, the "Corrective" Procedure of "Appeal".*

The CLB:

- a. [**may** summon any person, book or document related to the application]
This is a specific power that gives legal force behind the general powers of (a) because it carries penalties of a fine or imprisonment. The CLB may use this power (through Form 11) when it wishes to examine a person, book or documents related to an application. [In the case of a hearing when the CLB secretary must write to the applicant, Form 11 may be attached.

- b. [**may** establish a committee of CLB members to advise it]
This procedure allows the CLB to appoint a few members to make investigations on specific applications and then advise the full CLB. This procedure is flexible in that the committee itself can regulate (establish) its own procedures (rules). This procedure may be an efficient way to handle lots of applications or complicated ones.

If there are lots of applications, a committee might separate those applications where there are conflicting claims or unclear validity from the others. In the case of complicated applications, a committee might investigate and advise the full CLB on the key issues and a way forward.

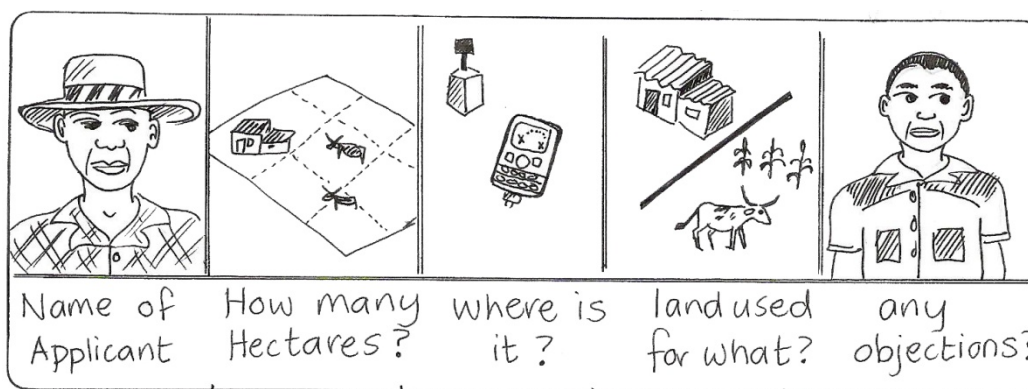
- c. [**may** make enquiries and consult persons (for ratification purposes)]
These are general powers that the CLB uses every time it considers an application. Enquiries means formally seeking information, and Consulting means seeking information from relevant people

5.6 What must be displayed on an application notice for a 'New' Customary right?

The Chief/TA **must** display on its notice board at its offices for a period of at least 7 days, a notice which states:

- the name of the applicant
- the approximate size of the land being applied for;
- the geographical location
- the type of customary land right being applied for
- and invites interested parties to lodge any objections with the chief/TA, within 7 days

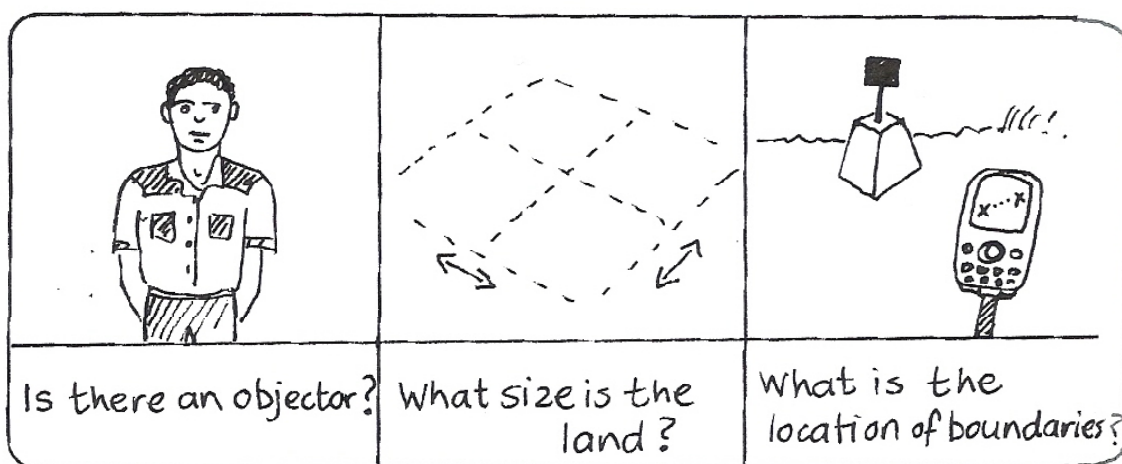
The Chief/TA **may** also publish in any newspaper or broadcast on any radio station that reaches the region, the same information as in the notice. Local languages may also be used and the notice may be publicized for more than 7 days.



5.7 What should the Chief/TA do if there is an objection to the application?

If the 'objector' is a member of the traditional community, the Chief/TA **may choose** either to conduct a hearing or not. Generally it is advisable to conduct a hearing of there is any objection, conflicting claim or unclear validity.

5.8 What are the main topics of the Chief/TA's investigations?



In considering the application the Chief/TA should establish the facts relevant to application, including:

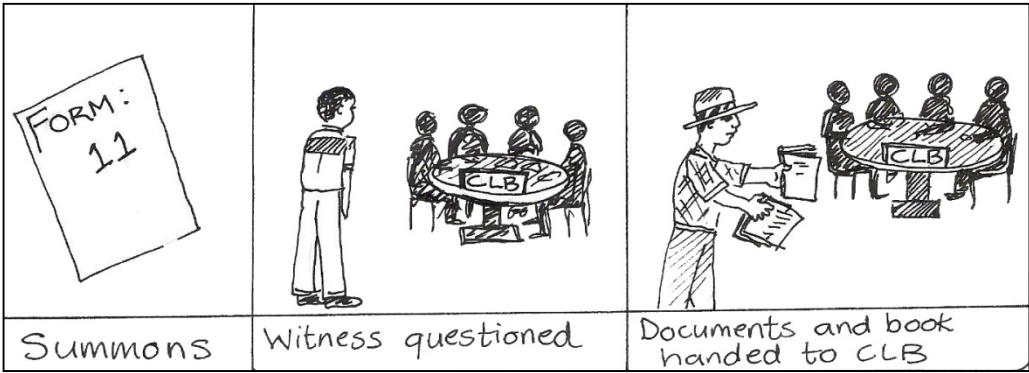
- whether any other person claims a right to the same land
- whether the area of the land conforms to the prescribed size
- the location of the boundaries and any beacons

5.9 When should the CLB establish a committee to advise it?

This procedure may be an efficient way to handle lots of applications or complicated ones. If there are lots of applications, a committee might separate those applications where there are conflicting claims or unclear validity from the others. In the case of complicated applications, a committee might investigate and advise the full CLB on the key issues and a way forward.



5.10 When and How should the CLB summon any person, book or document?



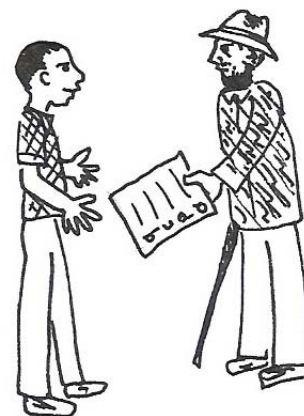
The CLB **may** consult with and seek advice from any person who may have information, or any book or document which may be relevant to the application. To do so, the CLB must fill out Form 11 (signed by the CLB chairperson) and should deliver it to the person at least 30 days before the date of the meeting. While the CLB may use a summons anytime it is considering an application, it may be most appropriate to use it in cases where the person has previously failed a request to appear before the CLB, or if the person has indicated an unwillingness to do so.

5.11 How is a “hearing” conducted for an ‘New’ Customary right?

[The hearing should be conducted similar to the hearing for an ‘existing’ Customary right, except the Chief/TA must select 2 persons to perform the roles of the “Chairperson” and the “Secretary”. For example, the senior Traditional Councillor for the area of the dispute might be selected as the “Chairperson”, while the secretary of the Traditional Authority might be selected as the “Secretary”.

1. The “Secretary” **must** inform the applicant in writing:

- (a) the reason for holding 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 s/he intends to call in support of claim, attends



2. The “Secretary” should also invite and inform any objector or interested party whom the Chief/TA might wish to call to produce evidence or to testify:

- (a) the reason for holding the hearing
- (b) the date, time and place where the hearing will be held
- (c) to produce at the hearing any documentary or verbal evidence
- (d) to ensure that any witness s/he intends to call to support his/her evidence, attends

3. At the hearing, the “Chairperson”:

- (a) **must** give particulars of conflicting claims, or reasons for doubtful validity
- (b) **may** produce documentary evidence or call witnesses to testify
- (c) **may** administer an oath or affirmation to any witness appearing before the Chief/TA



4. At the hearing, the applicant:

- (a) **may** interrogate any person who has given verbal evidence or who has submitted documentary evidence;
- (b) **may** give and lead evidence, including documentary evidence, in support of the claim or in rebuttal of any document or evidence presented



5. At the hearing, the *Chairperson (and other members of the Traditional Authority with his/her permission)* may put questions to any person giving evidence.



6. After all the evidence has been given, the applicant **must** be given the opportunity to address the “*Chairperson*” on the evidence and whether or not the application must be granted.



7. Upon conclusion of the hearing, the *Chief/TA* **must** make a decision, which **must** be:

- (a) put in writing
- (b) signed by the *Chief/TA*
- (c) made known at the hearing



8. The “Chairperson” **may** at any time adjourn the hearing to be resumed at such date, time and place as the “Chairperson” may determine, or as the “Secretary” **may** by registered post communicate to all parties concerned



5.12 When and How must Chief/TA notify the CLB of an allocation?

Within 30 Days	What type of Land Right?	Where is it?	What size is it?	What other land are they using?

If the Chief/TA grants an allocation, they **must** send to the CLB, within 30 days:

- a copy of the application form
- the following particulars:
 - the type of customary land right allocated
 - the geographical location of the land allocated
 - the size of the land area in square metres or hectares
 - whether the applicant has beneficial use of any other land (communal or otherwise), and if so, the size, location and purpose of use of such land

5.13 What Decision-Making powers does the Chief/TA have to allocate 'New' Customary rights?



The Chief/TA may:

- refuse
- grant (for that portion of land; or for an alternative portion by mutual agreement with the applicant)

Please Note that

- any allocation of land in excess of the maximum size (currently 20 hectares) is not valid unless with the written approval of the Minister
- No allocation of a customary land right has any legal effect unless ratified by the CLB

The CLB:

- must ratify if the allocation was made in accordance with the Act;
- **may** refer matter with comments, back to Chief/TA;
- must veto if:
 - another person already has a right to that land
 - the size of the land exceeds the prescribed maximum
 - the land is reserved for common usage or another purpose in the public interest.

Please note that:

If the CLB vetoes the allocation it must inform the Chief/TA and the applicant in writing of the reasons for its decision.

**Mechanisms for Handling Land Issues Contained in
Communal Land Reform Act No 5 of 2002 & Regulations made in terms of CLRA**
[for numbered citations of legislation, A=the Act (above); R=the Regulations (above)]

'New' CUSTOMARY RIGHTS

Category	Available Mechanisms	Available Procedures	Available Powers
'New' Rights [22]A [claim of land right originating after commencement of CLRA (01 March 2003)]	1. Application [22]A & [2]R, Form 1 to Chief/TA for recognition & registration of new rights: <ul style="list-style-type: none"> • for a <u>farming unit</u> • for a <u>residential unit</u> 	<u>Chief/TA:</u> <ol style="list-style-type: none"> must display notice of application & invite lodging of objections with Chief/TA [2(3)]R may require relevant information & documents [22(2)]A may make relevant investigations & consult persons [22(3)]A may conduct hearing if community member objects [22(3)]A must notify CLB & furnish particulars upon allocation [24(2)]A & [4]R <u>CLB:</u> <ol style="list-style-type: none"> may summon any person, book or documents [28]R may establish committee of CLB members to advise it [8]A may make enquiries & consult persons (for purposes of ratification) [24(4)]A 	<u>Chief/TA may:</u> <ol style="list-style-type: none"> refuse [22(3)]A grant specified land or alternative portion of land [22(4)]A; [no allocation by Chief/TA has any legal effect unless ratified by CLB [24(1)]A] <u>CLB [24(4)]A:</u> <ol style="list-style-type: none"> must ratify if allocation made according to Act (a) may refer matter with comments to Chief/TA for reconsideration (b) must veto if (c): <ol style="list-style-type: none"> another person has right land exceeds maximum land is reserved for common usage or any other purpose in the public interest [if vetoes, must notify Chief/TA & applicant in writing – [24(5)]A] <u>Minister's</u> approval needed for any land in excess of prescribed maximum size [23]A, [3]R

Category	Available Mechanisms	Available Procedures	Available Powers
<p>'New' Rights [22]A [claim of land right originating after commencement of CLRA (01 March 2003)]</p>	<p>2. Application [27]R, Form 15</p> <p>to Chief, Traditional Community for recognition & registration of new rights:</p> <ul style="list-style-type: none"> • for <u>erection of a fence</u>* <p>*[no authorization 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 [27]R]</p>	<p><u>Chief/TA:</u></p> <ol style="list-style-type: none"> must display notice of application & invite lodging of objections with Chief/TA [2(3)]R may require relevant information & documents [22(2)]A may make relevant investigations & consult persons [22(3)]A may conduct hearing if community member objects [22(3)]A must notify CLB & furnish particulars upon allocation [24(2)]A & [4]R <p><u>CLB:</u></p> <ol style="list-style-type: none"> may summon any person, book or documents [28]R may establish committee of CLB members to advise it [8]A may make enquiries & consult persons (for purposes of ratification) [24(4)]A 	<p><u>Chief/TA may:</u></p> <ol style="list-style-type: none"> grant or refuse [22(3)]A should consider whether the fence will not unreasonably interfere with or curtail use of and enjoyment of the commonage by members of the traditional community [28(8)(b)]A [no allocation by Chief/TA has any legal effect unless ratified by CLB [24(1)]A] <p><u>CLB [24(4)]A:</u></p> <ol style="list-style-type: none"> must ratify if allocation made according to Act (a) may refer matter with comments to Chief/TA for reconsideration (b) must veto if (c): (i) another person has right (ii) land exceeds maximum (iii) land is reserved for common usage or any other purpose in the public interest [if vetoes, must notify Chief/TA & applicant in writing – [24(5)]A] <p><u>Minister's</u> approval needed for any land in excess of prescribed maximum size [23]A, [3]R</p>

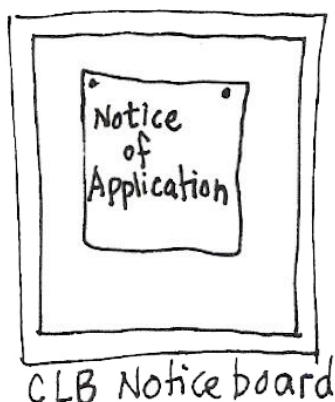
Chapter 6

'Application' Procedures for '*Existing*' Leasehold Rights

['Existing' Leasehold Rights = Permission to Occupy (PTOs)]

6.1 How does the CLB know if there is a Conflicting Claim?

The CLB **must** display for at least 7 days on a notice board at its offices, a notice stating the particulars of the application (name, size of land, location, and type of right), and inviting interested parties to lodge with the CLB (within 7 days) any objections regarding the application. The CLB **may** also publish in any newspaper or broadcast on any radio station that reaches the region, the letter accompanying the application from the Chief/TA stating whether or not they support the application and any other information which the Chief/TA wish to bring to the attention of the CLB. Local languages may also be used. Some person who sees or hears the notice, may claim the same right or have information that casts doubt on the validity of the applicant's claim.



6.2 How does the CLB know if the validity of the claim is unclear?



Every application for recognition and registration should include (a) all the information required on Form 8, (b) a letter from the Chief /TA stating whether it supports the application or not, and any other information they want to present to the CLB, (c) any supporting documentary evidence if available, and (d) any further information or documents as the CLB may require. When the CLB checks the application, they may find some of the information is incomplete, vague, or may conflict with other information. Also, a person who sees or hears the application notice, may know that some of the information is incorrect or incomplete, and may notify the CLB.

6.3 What are the Application Procedures for 'Existing' (PTO) Leasehold rights?

The CLB has been given powers so that it:

- must** display an application notice & invite any objections to the CLB
- may** make investigations, inquiries and consult persons about the claim
- may** establish a committee of CLB members to advise it
- may** summon any person, book or document related to the application
- may** direct an Investigating Committee **if** appointed by Minister
- must** conduct a hearing **if** there are conflicting claims or doubtful validity

6.4 Must the CLB do ALL of these procedures for every application for '*Existing*' rights?

No. But when the law says "**must**", then that is a legal requirement. The CLB has NO Choice. For instance, the law requires the CLB to **(a)** display the application notice for at least 7 days. If the CLB fails to display the notice, or only does so for 6 days, then it is not following the law, and any land allocation made on the basis of that application, might be determined invalid by a court or Appeal Tribunal. However, sometimes there is a condition attached to the "**must**". For instance, **(f)** conducting a hearing is only a "**must**", **IF** there are "conflicting claims or doubtful validity".

When the law says **may**, the CLB is given the power to decide whether to do it or not to do it. For instance, for procedures **(b), (c), (d)** and **(e)**, the CLB may decide to do all 4 of them, none of them, or just 1, 2 or 3 of them. The CLB has been given the power to do these procedures, but they are not required to do them

APPLICATION OPTIONS FOR 'EXISTING' LEASEHOLD RIGHTS

"MUST"	"MAY"
CLB:	CLB:
a display a notice of application for at least 7 days & invite objections to the CLB	
	b make investigations, inquiries or consult persons
	c establish a committee of CLB members to advise it
	d summon any person, book or documents
	e direct Investigative Committee IF appointed my Ministries
e conduct a hearing IF conflicting claims or unclear validity	

6.5 Which Procedures should be used under what circumstances?

Following is general guidance on when and how to use the different “Application” Procedures Adjudication options (a-f) for ‘Existing’ Leasehold rights listed above.

- a. **[must display an application notice & invite any objections to the CLB]**
*This is a **must**. The CLB **must** display an application notice for every application.*

- b. **[may make investigations, inquiries and consult persons about the claim]**
These are the general powers that the CLB uses every time it considers an application, and it is part of every other procedure. Investigation means the careful study of the application and evidence; Inquiries means formally seeking information; and Consulting means seeking information from relevant people.



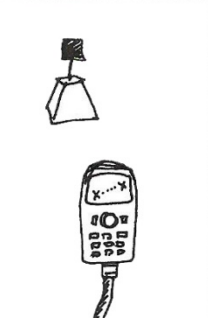
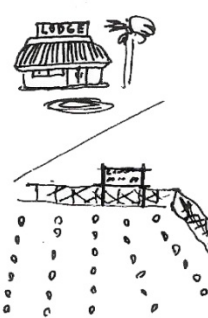

- c. **[may establish a committee of CLB members to advise it]**
This procedure allows the CLB to appoint a few members to make investigations on specific applications and then advise the full CLB. This procedure is flexible in that the committee itself can regulate (establish) its own procedures (rules). This procedure may be an efficient way to handle lots of applications or complicated ones.

If there are lots of applications, a committee might separate those applications where there are conflicting claims or unclear validity from the others. In the case of complicated applications, a committee might investigate and advise the full CLB on the key issues and a way forward.

- d. **[may summon any person, book or document related to the application]**
This is a specific power that gives legal force behind the general powers of (a) because it carries penalties of a fine or imprisonment. The CLB may use this power (through Form 11) when it wishes to examine a person, book or documents related to an application. In the case of a Preliminary Investigation, Form 11 may be used if a person, book or document is to be examined by an Investigating Committee]

- e. [**may** direct an Investigating Committee **if** appointed by Minister]
This procedure can only be used to investigate “existing rights” where land is currently occupied, used or controlled; or where there is a fence. A special feature is that the Preliminary Investigation may be initiated without the CLB having received an application. Therefore, this procedure may be appropriate when a person is occupying land, has started or completed construction of a building, or has put up a fence without making an application. This procedure permits the CLB to take up the issue in a timely manner.
- f. [**must** conduct a hearing **if** there are conflicting claims or doubtful validity]
*Every time there is a conflicting claim or unclear validity, the CLB **must** conduct a hearing.*

6.6 What must be displayed on an application notice for an ‘Existing’ Leasehold right?

				
Name of Applicant?	size of land?	Location?	type of business?	objections?

The CLB **must** display on its notice board at its offices for a period on at least 7 days, a notice which states:

- the name of the applicant
- the approximate size of the land being applied for
- the geographical location
- the type of leasehold land right being applied for
- and invites interested parties to lodge any objections regarding the application with the CLB, within 7 days

The CLB **may** also publish in any newspaper or broadcast on any radio station that reaches the region, the same information contained in the notice as well as the letter accompanying the application from the Chief/TA stating whether or not they support the application and any other information which the Chief/TA wish to bring to the



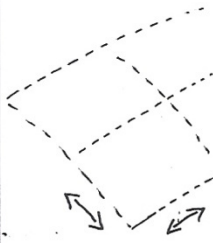
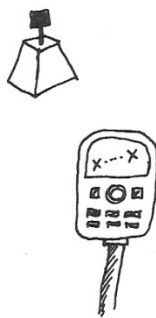

attention of the CLB. Local languages may also be used and the notice may be publicized for more than 7 days.

6.7 What should the CLB do if there are conflicting claims or if they doubt the validity?

The CLB **must** conduct a hearing if there are conflicting claims or unclear validity. If anyone has objected, casting doubt on the validity of the claim or claiming the same right for themselves, the CLB **must** conduct a hearing.



6.8 What are the main topics of the investigations?

				
When and how did they acquire land?	Who else has a right to the land?	Size?	Location?	Is it fenced?

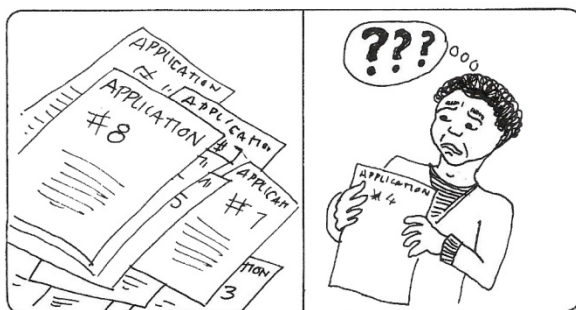
In considering an application, the CLB should establish the facts relevant to the claim, including:

- the date and manner in which the applicant acquired the right
- whether any other person claims any right to the same land
- whether the area of the land conforms to the prescribed size

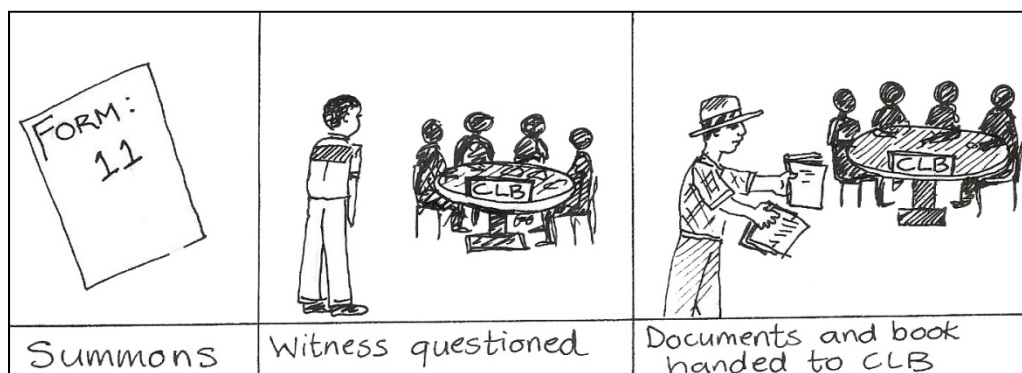
- the position of the boundaries or any beacons
- whether the land is fenced off and the nature, extent and date of erection of the fence

6.9 When should the CLB establish a committee to advise it?

This procedure may be an efficient way to handle lots of applications or complicated ones. If there are lots of applications, a committee might separate those applications where there are conflicting claims or unclear validity from the others. In the case of complicated applications, a committee might investigate and advise the full CLB on the key issues and a way forward.



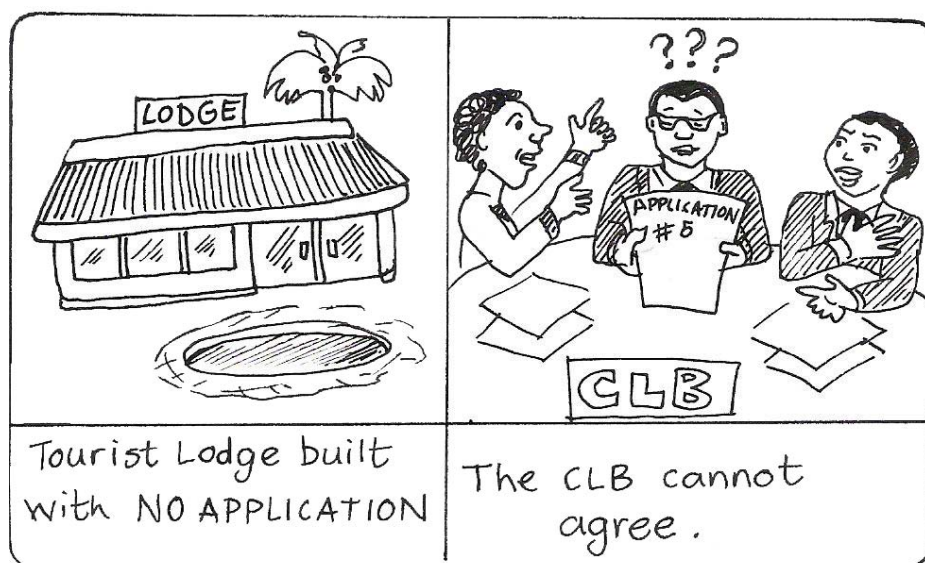
6.10 When and How should the CLB summon a person, book or document?



The CLB **may** consult with and seek advice from any person who may have information, or any book or document which may be relevant to the application. To do so, the CLB must fill out Form 11 (signed by the CLB chairperson) and should deliver it to the person at least 30 days before the date of the meeting. While the CLB may use a summons anytime it is considering an application, it may be most appropriate to use it in cases

where the person has previously failed a request to appear before the CLB, or if the person has indicated an unwillingness to do so.

6.11 When might a Preliminary Investigation be Appropriate?



Preliminary Investigations may only be used to investigate ‘Existing’ Customary and Leasehold rights, and only **if** the Minister, in consultation with the CLB, establishes an Investigating Committee. Therefore, the CLB could bring a potential case to the attention of the Minister for his consideration. A Preliminary Investigation might be especially appropriate:

- if a person is currently occupying, using or controlling land; using a fence; or constructing a building or fence; but without submitting an application either to convert an “existing” right or be granted a “new” right

Or, it may possibly be appropriate:

- if special expertise is needed to investigate
- if there is a potential conflict of interest with CLB member/s
- if there is a division within the CLB on the way forward

6.12 How should a Preliminary Investigation Proceed?

- A. The Minister **may** appoint an Investigating Committee (and designate the chairperson) to:
- conduct a Preliminary investigation;
 - report to the CLB thereon.



- B. The Chairperson must write a notice (on Form 10) to inform the person being investigated (at least 30 days in advance):
- of the time and place of the Preliminary Investigation
 - that s/he is required to attend the Preliminary Investigation to be questioned about matters [specified in the notice]
 - that s/he must produce at the scheduled Preliminary Investigation, any book or document s/he may wish to submit to the Investigating Committee



- C. The Chairperson **may**:
- summon to appear before the Investigating Committee; the Chief or any other traditional leader or any other person who might be able to furnish relevant information, OR, to have in his/her possession any book or document which relates to the subject [See section on summons, Form 11], so that such person may be questioned or book/document examined
 - administer an oath or other affirmation to a person appearing before the IC



- D. The Investigating Committee **may**:
- question a person appearing before it under oath
 - examine or keep for further examination or safe custody, any book or document, (provided that a receipt is issued to the person, and that person



is allowed to make a keep a copy of the book/document)

- E. If at the end of the Preliminary Investigation, the IC thinks that the CLB should consider the person's claim without delay, the Investigating Committee **must** instruct the person to prepare and submit to the Chairperson of the IC, within the time set by the IC, an application (for referral to the CLB) for the investigated right.



- F. The Investigating Committee, **must** state in its report to the CLB, if the investigated person has failed:
- to attend the Preliminary Investigation; or
 - to submit an application within the set time (if so instructed by the IC)



- G. If the IC reports to the CLB, any failure [see F, above], the CLB by notice (using Form 12, signed by the CLB Chairperson, served by the CLB Secretary or by a person authorized in writing by the Secretary, to the person), **may**:
- inform the person of the report from the IC of his/her failure,
 - direct him/her to comply within the specified time and with any such requirements as the CLB may specify,
 - inform the person that the consequences of failing to comply (without reasonable cause) with any requirement specified in the notice, are that the CLB **may** declare the person to be divested of their claim, which means:
 - that that person is not entitled to make an application for an existing right in respect of the land concerned;
 - that that person ceases to have any claim to or in respect of that land or anything erected or installed on the land.



6.13 How is a 'hearing' conducted for an '*Existing*' (PTO) Leasehold Right?

1. The CLB secretary **must** inform the applicant in writing:

- (a) the reason for holding 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 s/he intends to call in support of claim, attends



2. The CLB Secretary should also invite and inform any objector or interested party whom the CLB might wish to call to produce evidence or to testify:

- (a) the reason for holding the hearing
- (b) the date, time and place where the hearing will be held
- (c) to produce at the hearing any documentary or verbal evidence
- (d) to ensure that any witness s/he intends to call to support his/her evidence, attends

3. At the hearing, the chairperson of the CLB:

- (a) **must** give particulars of conflicting claims, or reasons for doubtful validity
- (b) **may** produce documentary evidence or call witnesses to testify
- (c) **may** administer an oath or affirmation to any witness appearing before the CLB



4. At the hearing, the applicant:

- (a) **may** interrogate any person who has given verbal evidence, or who has submitted documentary evidence;



- (b) **may** give and lead evidence, including documentary evidence, in support of a claim or in rebuttal of any document or evidence presented

5. At the hearing, the chairperson and other members of the CLB, **may** put questions to any person giving evidence.



6. After all the evidence has been given, the applicant **must** be given the opportunity to address the CLB on the evidence and whether or not the application must be granted.



7. Upon conclusion of the hearing, the CLB **must** make a decision (in accordance with section **35(11)** of the Act), which **must** be:

- (a) put in writing
- (b) signed by the chairperson of the CLB
- (c) made known at the hearing



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



6.14 What Decision-Making powers does the CLB have to Allocate '*Existing*' Leasehold Rights?

The CLB:

- **must** offer leasehold and state any conditions **if** satisfied with validity
- **must** authorize retention of fences subject to any conditions **if** satisfied with validity

Affirm ✓	Affirm <u>with</u> additions ✓+	Reject ✗	Reject but offer other land ✗ ✓
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- **may** (in the case of a hearing)
 - affirm the claim
 - reject the claim
 - affirm the claim with variations (including area or position of boundaries) if the CLB determines that the land area exceeds the maximum [currently 50 hectares] or that the boundaries are not in accordance with customary law
 - rather than reject the claim if the CLB is not satisfied with the validity, it **may** instead, offer the right to the person for the land applied for or an alternative piece of land

**Mechanisms for Handling Land Issues Contained in
Communal Land Reform Act No 5 of 2002 & Regulations made in terms of CLRA**
[for numbered citations of legislation, A=the Act (above); R=the Regulations (above)]

‘Existing’ LEASEHOLD RIGHTS

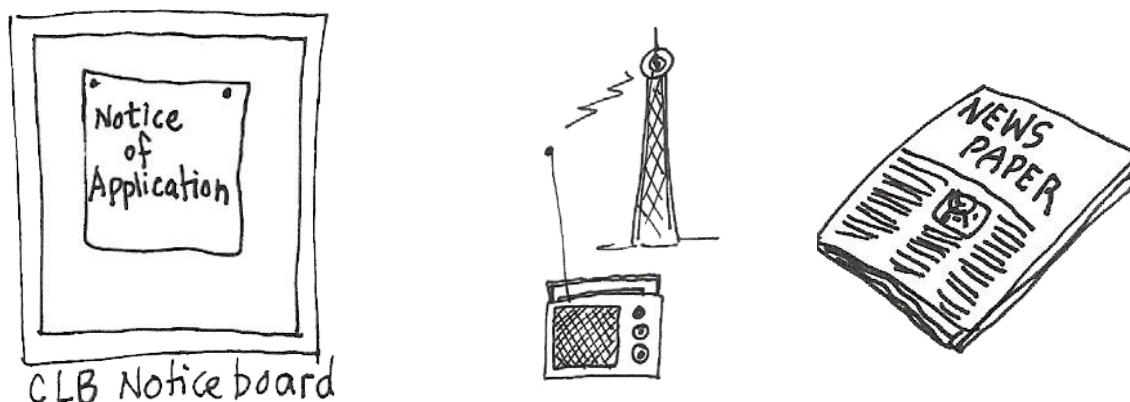
Category	Available Mechanisms	Available Procedures	Available Powers
Existing Rights [35]A [claim of right existing before the commencement of the CLRA (01 March 2003)]	1. Application [35(3)A + [17]R, Form 8 to CLB for recognition and registration of existing rights: <ul style="list-style-type: none"> • for <u>‘business’ purposes</u> • for <u>retention of a fence</u>* *[no application is needed to authorize retention of a fence which existed before the commencement of the Act and which is used to fence in homesteads, cattle pens, water troughs or crop fields on the portion of land concerned [26]R]	<u>CLB:</u> a. must display <u>application notice</u> & <u>invite lodging of objections</u> with CLB [17(4)]R b. may make <u>investigations, inquiries or consult persons</u> including whether any other claims [35(6)]A c. may establish <u>committee</u> of CLB members to advise it [8]A d. may summon any person, book or documents [28]R e. must conduct a hearing [35(10)]A if there are conflicting claims/unclear validity; [18]R (procedures)	<u>CLB</u> a. must offer leasehold & state any conditions if satisfied with validity [35(7)]A b. must authorize retention of fence subject to any conditions, if satisfied with [35(9)]A c. may in case of hearing [35(11)]A (i) affirm; (ii) reject; (iii) affirm with variations d. may grant leasehold to same or alternative piece of land [as if a new application] instead of rejecting it, if CLB is not satisfied with validity [35(12)]A <u>TA’s</u> consent is necessary for CLB to grant leasehold [30(4)]A. If TA refuses consent, Minister may appoint an arbitrator [30(5)]A, [29]R, Form 16 <u>Minister’s</u> approval needed for any leasehold, or renewal of, in excess of 10 years [34(2-3)]A

Category	Available Mechanisms	Available Procedures	Available Powers
	<p>2. Preliminary Investigation [37]A + [22]R [may be done without application from claimant, or as part of Application (1 above). May only be done in respect of land occupied, used or otherwise controlled by a person or enclosed with a fence]</p>	<p><u>Minister</u>: may appoint investigating committee (IC) [37(1)]A</p> <p><u>CLB</u> : directs IC to conduct investigation [37(2)]A</p> <p><u>IC</u>: reports to CLB [see [20-23]R for details on PI, especially [22]R for conduct of PI]</p>	<p><u>Investigating Committee</u>:</p> <ul style="list-style-type: none"> a. must inform person being investigated [37(3)]A, Form 10 b. may summon persons & documents [37(4)]A, Form 11 c. if expedient, may instruct person to submit application to chair of IC [37(7)]A d. must submit report to CLB [37(1)(b)]A <p><u>CLB may [37)]A</u>:</p> <ul style="list-style-type: none"> a. direct the person to comply with requirements related to a compliance failure reported by the IC (9)(b) b. (if person fails to comply) (10-11), divest person of: (i) claim to that land or anything erected/installed on it; or (ii) the right to apply in terms of [28(2)]A

Chapter 7

'Application' Procedures for 'New' Leasehold Rights

7.1 How does the CLB know if there is a Conflicting Claim?



The CLB **must** display for at least 7 days on a notice board at its offices, a notice stating the particulars of the application (name, size of land, location, and type of right), and inviting interested parties to lodge with the Chief/TA (within 7 days) any objections regarding the application. The CLB **may** also publish in any newspaper or broadcast on any radio station that reaches the region, the same information as in the notice. Some person who sees or hears the notice, may claim the same right or have information that casts doubt on the validity of the applicant's claim. Local languages may also be used.

7.2 How does the CLB know if the validity of the claim is unclear?



Every application for recognition and registration should include all of the information required on Form 5. When the CLB checks the application, they may find some of the information is incomplete, vague or may conflict with other information. Also, a person who sees or hears the application notice, may know that some of the information is incorrect or incomplete, and may notify the CLB.

7.3 What are the 'Application' Procedures for 'New' Leasehold rights?

The CLB has been given powers so that it:

- must** display an application notice & invite any objections to Chief/TA
- may** establish a committee of CLB members to advise it
- may** summon any person, book or document related to the application

7.4 Must the CLB do ALL of these procedures for every application for 'New' rights?

No. But when the law says "**must**", then that is a legal requirement. The CLB has NO Choice. For instance, the law requires the CLB to **(a)** display the application notice for at least 7 days. If the CLB fails to display the notice, or only does so for 6 days, then it is not following the law, and any land allocation made on the basis of that application, might be determined invalid by a court or Appeal Tribunal. However, sometimes there is a condition attached to the "**must**".

When the law says **may**, the CLB is given the power to decide whether to do it or not to do it. For instance, for procedures **(b)**, **(c)** and **(d)**, the CLB may decide to do all of them, none of them, or just 1 or 2 of them. The CLB has been given the power to do these procedures, but they are not required to do them

APPLICATION OPTIONS FOR 'NEW' LEASEHOLD RIGHTS

"MUST"	"MAY"
CLB:	CLB:
a display a notice of application for at least 7 days & invite objections to the Chief/TA	
	b establish a committee of CLB members to advise it
	c summon any person, book or documents
	d conduct a hearing if an objection, conflicting claim or unclear validity

7.5 Which Procedures should be used under what circumstances?

Following is general guidance on when and how to use the different "Application Adjudication options (a-c) for 'New' Leasehold rights listed above.


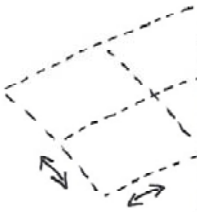



- a. **[must]** display an application notice & invite any objections to the Chief/TA
*This is a **must**. The CLB **must** display an application notice for every application.*

- b. [**may** establish a committee of CLB members to advise it]
This procedure allows the CLB to appoint a few members to make investigations on specific applications and then advise the full CLB. This procedure is flexible in that the committee itself can regulate (establish) its own procedures (rules). This procedure may be an efficient way to handle lots of applications or complicated ones.

If there are lots of applications, a committee might separate those applications where there are conflicting claims or unclear validity from the others. In the case of complicated applications, a committee might investigate and advise the full CLB on the key issues and a way forward.

- c. [**may** summon any person, book or document related to the application]
This is a specific power that gives legal force behind the general powers of (a) because it carries penalties of a fine or imprisonment. The CLB may use this power (through Form 11) when it wishes to examine a person, book or documents related to an application.

7.6 What must be displayed on an application notice for an 'New' Leasehold right?

				
Name of Applicant?	size of land?	Location?	type of business?	objections?

The CLB **must** display on its notice board at its offices for a period on at least 7 days, a notice which states:

- the name of the applicant
- the approximate size of the land being applied for;
- the geographical location

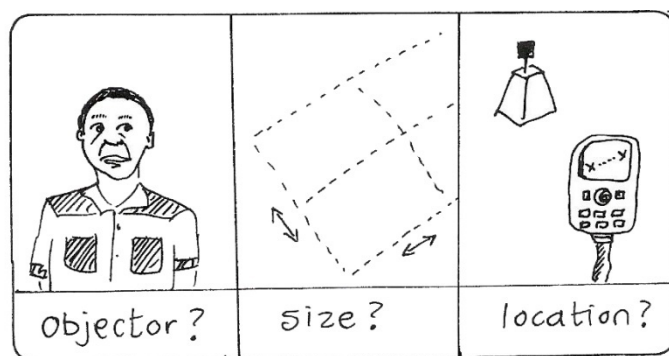
- d. the type of leasehold right being applied for
- e. and invites interested parties to lodge any objections regarding the application with the Chief/TA, within 7 days,

The CLB may also publish in any newspaper or broadcast on any radio station that reaches the region, the same information as in the notice. Local languages may also be used and the notice may be publicized for more than 7 days.

7.7 What should the CLB do if there are conflicting claims or if they doubt the validity?

Although the Communal Land Reform Act does not explicitly refer to hearings in the case of applications for new leaseholds, it does not prohibit them either. Therefore, if there is an objection, conflicting claim of unclear validity, the CLB should conduct a hearing in order to be consistent and afford the same rights and opportunities as have been afforded to other applicants and objectors.

7.8 What are the main topics of the CLB's investigations?



In considering the application the CLB should establish the facts, including:

- whether any other person claims a right to the same land
- whether the area of the land conforms to the prescribed size
- the position of the boundaries or any beacons of the land

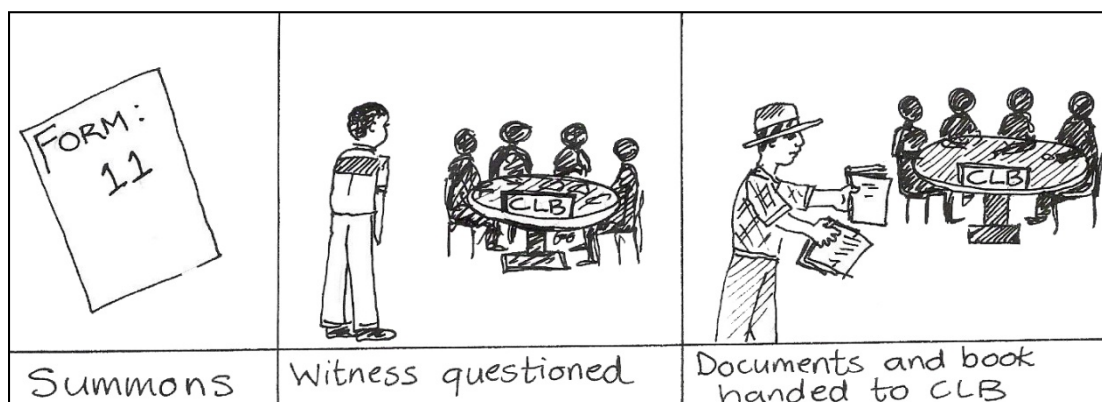
7.9 When should the CLB establish a committee to advise it?

This procedure may be an efficient way to handle lots of applications or complicated ones. If there are lots of applications, a committee might separate those applications where there are conflicting claims or unclear validity from the others. In the case of complicated applications, a committee might investigate and advise the full CLB on the key issues and a way forward.



7.10 When and How should the CLB summon a person, book or document?

The CLB **may** consult with and seek advice from any person who may have information, or any book or document which may be relevant to the application. To do so, the CLB must fill out Form 11 (signed by the CLB chairperson) and should deliver it to the person at least 30 days before the date of the meeting. While the CLB may use a summons anytime it is considering an application, it may be most appropriate to use it in cases where the person has previously failed a request to appear before the CLB, or if the person has indicated an unwillingness to do so.



7.11 How is a 'hearing' conducted for a 'New' Leasehold Right?

1. The CLB secretary **must** inform the applicant in writing:

- (a) the reason for holding 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 s/he intends to call in support of claim, attends



2. The CLB Secretary should also invite and inform any objector or interested party whom the CLB might wish to call to produce evidence or to testify:

- (a) the reason for holding the hearing
- (b) the date, time and place where the hearing will be held
- (c) to produce at the hearing any documentary or verbal evidence
- (d) to ensure that any witness s/he intends to call to support his/her evidence, attends

3. At the hearing, the chairperson of the CLB:

- (a) **must** give particulars of conflicting claims, or reasons for doubtful validity
- (b) **may** produce documentary evidence or call witnesses to testify
- (c) **may** administer an oath or affirmation to any witness appearing before the CLB



4. At the hearing, the applicant:

- (a) **may** interrogate any person who has given verbal evidence, or who has submitted documentary evidence;
- (b) **may** give and lead evidence, including documentary evidence, in support of a claim or in rebuttal of any document or evidence presented



5. At the hearing, the chairperson and other members of the CLB, **may** put questions to any person giving evidence.



6. After all the evidence has been given, the applicant **must** be given the opportunity to address the CLB on the evidence and whether or not the application must be granted.



7. Upon conclusion of the hearing, the CLB **must** make a decision (in accordance with section **35(11)** of the Act), which **must** be:
- (a) put in writing
 - (b) signed by the chairperson of the CLB
 - (c) made known at the hearing



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







7.12 What Decision-Making powers does the CLB have to Allocate 'New' Leasehold rights?

The CLB **may** grant a leasehold, **but**:

- **not** without the consent of the TA
[if the TA refuses consent, the Minister may appoint an arbitrator, who may grant consent if satisfied that the TA withheld consent unreasonably.]
- **not** where persons hold a customary land right
- **not** if the purpose of the leasehold would defeat the objects of a Conservancy 'management and utilization' plan.

The Minister's additional approval is needed if:

- the land area exceeds the prescribed maximum
- if the applicant is already a leaseholder of claims a land right
- if the lease period exceeds 10 years, or
- if a renewal will exceed 10 years

				10+ years
Chief Affirms claim	Chief rejects claim	Minister approval if claim is over 50 hectares,	or if claimant has other leases	or if lease period is more than 10 years

**Mechanisms for Handling Land Issues Contained in
Communal Land Reform Act No 5 of 2002 & Regulations made in terms of CLRA**
[for numbered citations of legislation, **A**=the Act (above); **R**=the Regulations (above)]

‘New’ LEASEHOLD RIGHTS

Category	Available Mechanisms	Available Procedures	Available Powers
New Rights [31]A [claim of right originating <u>after</u> commencement of CLRA (01 March 2003)]	1. Application [31(1)]A + [11]R, Form 5 to CLB for recognition & registration of new rights: <ul style="list-style-type: none"> • for ‘<u>business</u>’ <u>purposes</u> *[but if for agricultural purposes on land partially or wholly <u>outside</u> a designated agricultural area [30(2)]A , must apply to Minister [30(3)]A , see Mechanism 2 below]	CLB: <ol style="list-style-type: none"> must display application notice & invite lodging of objections with Chief/TA [11(4)]R may establish a committee of CLB members to advise it [8]A may summon any person, book or documents [procedure for investigation of <u>any application</u> [28]R] should conduct a hearing if conflicting claims or unclear validity 	CLB may grant leasehold, but <ol style="list-style-type: none"> not w/o consent of T/A [30(4)]A not where persons hold a customary land right [31(2)]A not if purpose of leasehold would defeat objects of a Conservancy management and utilization plan [31(4)]A <u>TA’s</u> consent is necessary for CLB to grant leasehold [30(4)]A . If TA refuses consent, Minister may appoint an arbitrator [30(5)]A, [29]R, Form 16 <u>Minister’s</u> additional approval needed <ol style="list-style-type: none"> for areas exceeding maximum size [31(3)]A, [13]R if applicant is already a leaseholder or claims a land right under [35(1)]A, [31(3)(b)]A if lease period >10 years [34(2)]A if renewal >10 yrs [34(2)]A <u>Minister</u> may prescribe further conditions to leasehold granted by CLB [32(3)]A

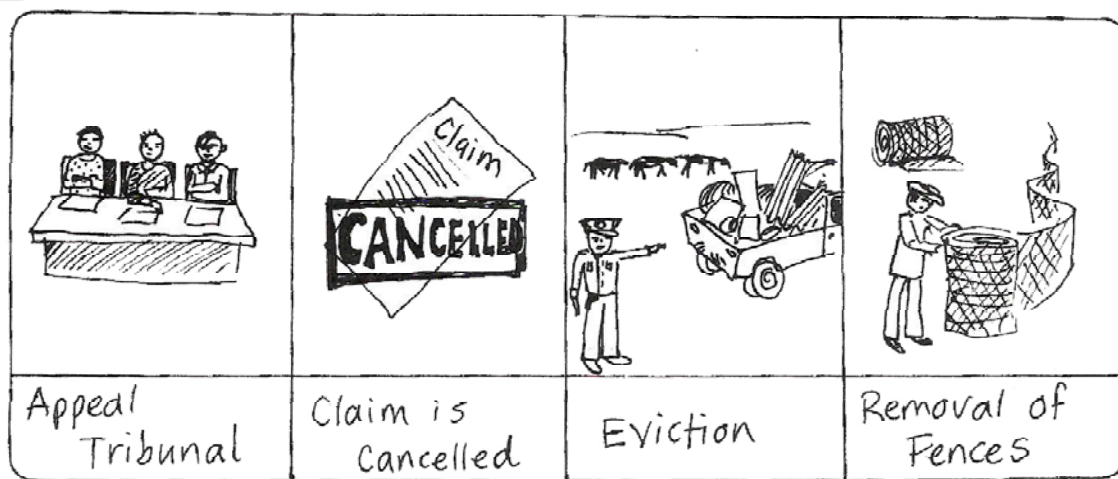
Category	Available Mechanisms	Available Procedures	Available Powers
	<p>2. Application [30(3)]A, [12]R, Form 6</p> <p>to Minister for land for <u>agricultural purposes</u> partially or wholly <u>outside a designated agricultural area</u> [30(2)]A</p> <p>[other than consulting the TA & LB, the powers of the Minister here are discretionary and there is no prescribed 'appeal' process under the Act]</p>		<p><u>Minister</u> may grant application after consultation with TA & CLB if satisfied that [30(3)]A:</p> <ol style="list-style-type: none"> leasehold does not interfere with use of commonage by community reasonable grounds exist in this particular case
	<p>3. Application [27]R, Form 15</p> <p>to Chairperson, CLB for recognition & registration of new right:</p> <ul style="list-style-type: none"> for <u>erection of a fence</u>* <p>*[no authorization 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 [27]R]</p>	<p><u>CLB</u>:</p> <ol style="list-style-type: none"> must display application notice & invite lodging of objections with CLB [11(4)]R may establish a committee of CLB members to advise it [8]A may summon any person, book or documents [procedure for investigation of any application [28]R] should conduct a hearing if conflicting claims or unclear validity 	<p><u>CLB</u> may grant leasehold right, but:</p> <ol style="list-style-type: none"> should consider whether the fence will unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community [35(9)(b)]A not w/o consent of T/A [30(4)]A not where persons hold a customary land right [31(2)]A not if purpose of leasehold would defeat objects of a Conservancy management and utilization plan [31(4)]A <p><u>TA's</u> consent is necessary for CLB to grant leasehold right [30(4)]A. If TA refuses consent, Minister may appoint an arbitrator [30(5)]A, [29]R, Form 16</p> <p><u>Minister's</u> additional approval needed</p> <ol style="list-style-type: none"> for areas exceeding maximum size [31(3)]A & [13]R
Category	Available Mechanisms	Available Procedures	Available Powers

			<p>b. if applicant is already a leaseholder or claims a land right under [35(1)]A, [31(3)(b)]A</p> <p>c. if lease period >10 years [34(2)]A</p> <p>d. if renewal >10 yrs [34(2)]A <u>Minister</u> may prescribe further conditions to leasehold granted by CLB [32(3)]A</p>

Chapter 8

'Correction' Procedures for Both Customary and Leasehold Rights

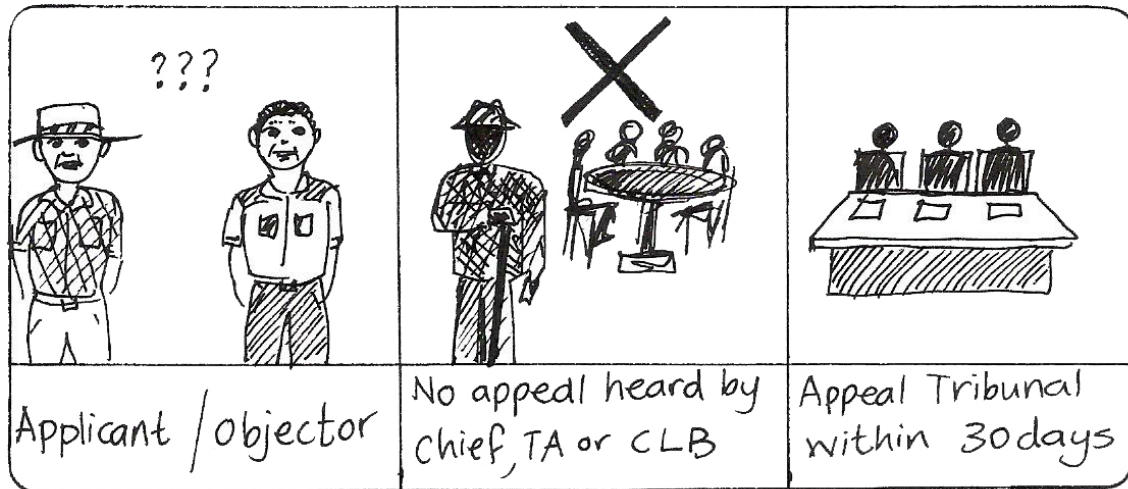
8.1 What are the 'Corrective' Procedures?



The previous procedures are all linked to application processes, and, as such, deal with considering conflicting claims or unclear validity before a decision is made by a Chief, TA, or CLB to allocate a land right. The following procedures are for (a) after such a decision has been made; or (b) when a right is being exercised without lawful authorization.

- Appeals
- Cancellation
- Eviction from unlawful occupation of Land
- Removal of UNAUTHORISED fence

8.2 When and How is the Appeal Procedure Implemented?



The Chief, TA, or CLB do not hear the appeal, rather an Appeal Tribunal appointed by the Minister hears the appeal. However, any Chief, TA, and CLB should not only be aware of the process below, but should advise the person aggrieved by a decision, of the procedure open to them and, particularly, that they have only 30 days to lodge the appeal.

1. Any person aggrieved by a decision of a Chief, TA or CLB may lodge an 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 appeal must be in writing and must include:
 - particulars of the decision appealed against
 - the grounds for the appeal; and
 - any facts the person wishes to be taken into account



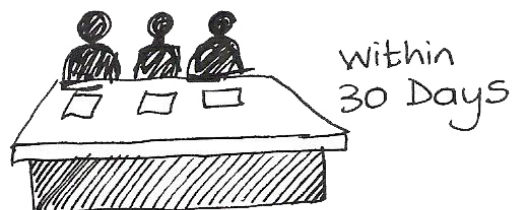
3. The Permanent Secretary must notify the Minister as soon as is practicable so that the Minister may appoint an Appeal Tribunal



4. The Minister must submit the appeal to the Appeal Tribunal



5. The Appeal Tribunal must hear the appeal within 30 days of receiving the appeal.



6. Any decision by the Appeal Tribunal is binding and final



8.3 When and How may A Customary Right be cancelled?

1. The Chief/TA **may** cancel a customary land right [including 'existing right']:
 - if holder fails to observe any attached conditions or restrictions
 - if the land is being used predominantly for a purpose not recognized under customary law
 - on any other prescribed grounds [currently]
 - if land is being used for other purpose than allocated
 - if the land has been kept dormant for 3 consecutive years
 - if the right was obtained through fraud or not in accordance with the Act
 - if another person already has a right to the land which has not been terminated in accordance with the Act.



2. The Chief/TA, upon cancellation **must** send to the CLB the following details:

- name, sex, nationality and date of birth of the person whose right has been cancelled
- names of the spouse and any other dependants of the person
- type of customary land right cancelled
- geographical location of the land
- size in square metres or hectares of

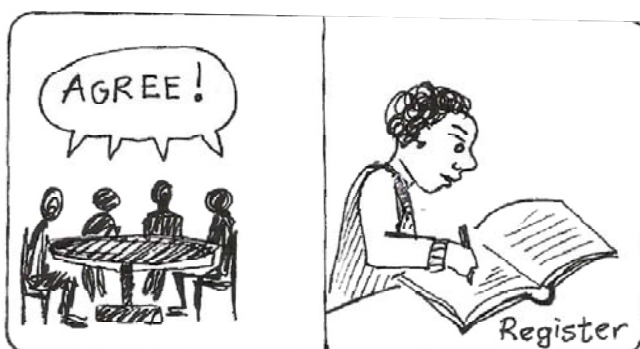


the land

- name of communal area and region that land is situated in
- date on which the customary land right has been cancelled
- reason for cancellation of the right

3. The CLB

- **must** ratify the cancellation **if** done according to the Act [Cancellation by Chief/TA has no legal effect unless ratified by the CLB]
- **must** enter the cancellation in the register if ratified



8.4 When and How may A Leasehold Right be Cancelled?



The CLB **may** cancel:

- on grounds set out in the deed
- **if** leaseholder fails to comply with requirements or restriction imposed by or under any law relating to that land
- **if** the right was granted in error
- **if** the right was obtained through fraud or misrepresentation
- **if** leaseholder fails to comply with any attached condition
- **if** leaseholder fails to pay 2 consecutive instalments as agreed with CLB
- **if** the leaseholder defaults in paying periodic rental within 30 days after having been given a written demand by the CLB
- upon proof that the land is not being used for the purpose granted
- **if** the leaseholder has been convicted of treason or sedition

8.5 How may a person be evicted from unlawful occupation of land?

The Chief, TA or CLB may institute legal action for the eviction of any person who occupies any communal land (whether a customary or leasehold right) in contravention of this Act (including 'existing' rights). "Instituting legal action" means requesting the local Magistrate Court to issue an eviction order.



8.6 How may an UNAUTHORIZED fence be removed?

1. If a fence has been erected without authorization under this Act, the Chief, TA, or CLB may:
 - cause such fence to be removed, and
 - dispose of the fence material.



2. Any person guilty of erecting a fence without authorization, or retaining a fence after a period of 30 days after the application to retain the fence has been refused, is guilty of an offence.
 - upon conviction that person is liable to a fine not exceeding \$4000, or to imprisonment for a period not to exceed 1 year, or to both fine and imprisonment
 - if the offence continues after conviction, such person is guilty of another offence and on conviction is liable to a fine not to exceed \$50 for every day that the offence is continued.
3. Any costs incurred in the removal of a fence may be recovered from that person

8.7 Summary of provisions related to fences

8.7.1 Prohibition against fences [18]A

Subject to exemptions...no fence of and nature – shall, after the commencement of this Act, be erected... or which upon commencement of this Act, exists, shall...be retained...unless authorization for such erection or retention has been granted in accordance with the provisions of this Act.

8.7.2 Exemption [26, 27]R

No authorization is needed for the retention or erection of a fence which is used to fence in “homesteads, cattle pens, water troughs or crop fields on a portion of land”.

8.7.3 Application for authorization of fences

Form 3 for retention of a fence held as a customary right before commencement of the Act [28(8)]. The CLB must be satisfied that the fence will not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community.

Form 8 for retention of a fence held as a leasehold right before the commencement of the Act [35(9)]. The CLB must be satisfied that the fence will not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community.

Form 15 for the erection of a fence associated either with a certified customary or leasehold right [27]R. The TA/CLB should be satisfied that the fence will not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community.

8.7.4 Available mechanisms & procedures for investigating authorization of fences

Where applications have been made for either retention or erection of a fence, all of the mechanisms and procedures associated with that category of land right (i.e., existing customary and leasehold rights, new customary and leasehold rights) are available. See the respective Chapters for details.

Where a fence exists, but no application has been made, a Preliminary Investigation may be conducted [37]A, [22]R.

8.7.5 Removal of fences [44]A, [27(4)]R

If any unauthorized fence is on communal land, the Chief/TA/CLB should notify in writing, the holder of the land right to remove the fence or cause it to be removed, within a period not exceeding 30 days.

If the fence is not removed within the specified period, the Chief/TA/CLB may remove or cause the fence to be removed, and any related costs may be recovered from the holder.

The chief/TA/CLB that has removed a fence may sell the material used for erection of the fence in order to cover any costs incurred.

8.7.6 Offence and penalties [44]A

Any person who retains or erects a fence without authorisation granted under this Act, is guilty of an offence and on conviction liable to a fine not exceeding \$4000 or to imprisonment for a period not exceeding 1 year or to both fine and imprisonment.

If the offence for which the person was convicted continues after the conviction, such person is guilty of a further offence and on conviction is liable to a fine not exceeding \$50 for every day on which the offence is continued.

**Mechanisms for Handling Land Issues Contained in
Communal Land Reform Act No 5 of 2002 & Regulations made in terms of CLRA**
[for numbered citations of legislation, A=the Act (above); R=the Regulations (above)]

CORRECTIVE PROCEDURES

Category	Available Mechanisms	Available Procedures	Available Powers
A. Within 30 days of decision by a Chief, TA or CLB	Appeal [39]A: any person aggrieved by a decision of a Chief, TA or CLB, may appeal [within 30 days after the decision has been made known or otherwise brought to the notice of appellant [25]R	<p><u>Aggrieved person</u> (appellant) must lodge appeal with Permanent Secretary within 30 days [25(1)]R</p> <p><u>Permanent Secretary</u> must as soon as is practicable [25(2)]R:</p> <ol style="list-style-type: none"> notify the Minister thereof submit the appeal to the appeal tribunal after it has been appointed by the Minister <p><u>Minister</u> must: appoint appeal tribunal & designate chair [39(2-3)]A</p> <p><u>Appeal Tribunal</u> must hear appeal within 30 days of receiving appeal [25(5)]R</p>	<p><u>Appeal Tribunal</u> may [39(6)]A:</p> <ol style="list-style-type: none"> confirm, set aside or amend the decision make any order in connection therewith <p>Any decision by the AT is conclusive & binding [25(6)]R</p>
B. After 30 day 'appeal' period	1. Cancellation of Customary Rights [27]A & [6]R	<p><u>Chief/TA:</u></p> <ol style="list-style-type: none"> may cancel a customary land right [27(1)]A, in accordance with customary law (including an 'existing' right referred to in [28(1)]A) must notify CLB & furnish particulars [27(3)]A 	<p><u>Chief/TA</u> may cancel if: [27(1)]A</p> <ol style="list-style-type: none"> holder fails to observe conditions land used for purposes not recognized by customary law or on any other prescribed grounds <p>or if [6]R:</p> <ol style="list-style-type: none"> land used for non-allocated purpose land dormant for 3 consecutive yrs

Category	Available Mechanisms	Available Procedures	Available Powers
		CLB must ratify in order to give cancellation legal effect [27(2)]A	<p>c. right was obtained through fraud or not according to Act</p> <p>d. right was allocated to other person & not terminated under this Act</p> <p>CLB</p> <p>a. must ratify if done according to Act [27(4)]A</p> <p>b. Cancellation by Chief /TA has no legal effect unless ratified by CLB [27(2)]A</p>
	2. Cancellation of rights of Leasehold [36]A & [15(1)(e)]R	<p>CLB:</p> <p>a. may cancel a right of leasehold [36]A:</p> <ul style="list-style-type: none"> • on grounds set out in deed, • or, if leaseholder fails to comply with the requirements or to adhere to any restrictions imposed by or under any other law pertaining to the utilization of the land to which the right relates [see [15(1)(a)]R]; or <p>b. may cancel a right of leasehold if [15(1)(e) (i-v)]R</p> <ul style="list-style-type: none"> ☐ right granted in error ☐ right obtained through fraud ☐ holder fails to comply with conditions ☐ fails to pay consecutive installments ☐ in paying periodic rental ☐ land not used for purposes granted 	<p>CLB</p> <p>a. may cancel a right of leasehold [36]A:</p> <ul style="list-style-type: none"> • on grounds set out in deed • or if leaseholder fails to comply with the requirements or to adhere to any restrictions imposed by or under any other law pertaining to the utilization of the land to which the right relates <p>b. may cancel a right of leasehold if [15(1)(i-v)]R</p> <p>Minister [15(1)(f)]R: may cancel leasehold granted for agricultural purposes outside a designated area</p>

Category	Available Mechanisms	Available Procedures	Available Powers
		<p>☐ holder convicted of treason/sedition</p> <p><u>Minister:</u> may cancel leasehold granted for agricultural purposes outside a designated area [15(1)(f)]R</p>	
	<p>3. Eviction from unlawful occupation of land [43]A, [35]R</p> <p>No person may occupy or use for any purpose any communal land other than a right acquired through this Act, including rights under [28 & 35]A ('existing' rights)</p>	<p><u>Chief, TA or CLB may:</u> institute legal action for the eviction of any person so contravening section [43(1)]A [43(2)]A [i.e., may request an eviction order from the local magistrate court]</p>	<p><u>Chief, TA or CLB may:</u> institute legal action for the eviction of any person so contravening section [43(1)]A [43(2)]A</p>
	<p>4. Removal of unauthorized fences [44]A & [27]R</p> <p>*[18]A prohibits any fences on communal land unless authorized or exempted by the Act [for exemptions see [26 & 27(3)]R]</p> <p>**[44 (1-2)]A makes it an offence punishable by fine and/or imprisonment to erect or retain an unauthorized fence on communal land, and specifies penalties</p>	<p><u>Chief/TA/CLB:</u> a. may notify in writing the land right holder relevant to the unauthorized fence [27(4)(a-b)]R ☐ to remove such fence within a specified period of not more than 30 days ☐ and that if the fence is not removed within that period, that the Chief/TA/CLB will remove the fence, and that any costs incurred will be recovered from the holder</p>	<p><u>Chief/TA/CLB:</u> a. may cause unauthorized fence to be removed & fence material disposed of [43(3)]A b. may recover from the persons who erected or retained such fences, the costs incurred in removal of fence [43(4)]A c. may sell the material used for the erection of the fence in order to recover any costs [27(6)]R</p>