

Communal Land Reform

Guide to the Communal Land Reform Act

Act No 5 of 2002

Land Reform

English version

Second edition

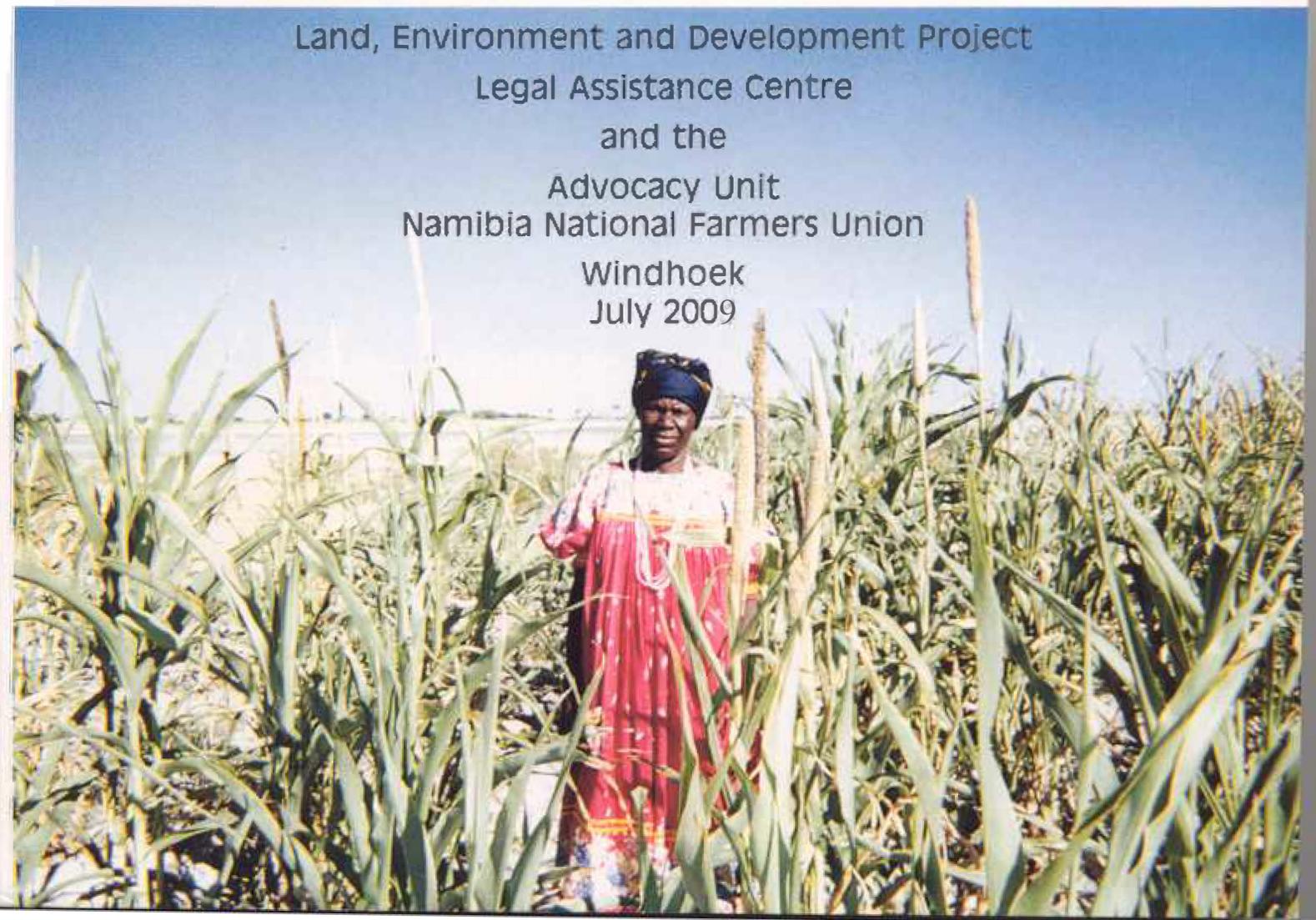


LAC



NNFU

Land, Environment and Development Project
Legal Assistance Centre
and the
Advocacy Unit
Namibia National Farmers Union
Windhoek
July 2009



Guide to the
**Communal Land
Reform Act, 2002**
(No. 5 of 2002)

English Version
SECOND EDITION

Land, Environment and Development Project
Legal Assistance Centre
and the
Advocacy Unit
Namibia National Farmers' Union
Windhoek
2009



CONTENTS

Foreword to the Second Edition..... v

Acknowledgements vi

Glossary..... vii

Background 1

Introduction 5

Ownership of communal lands..... 6

What is communal land? 6

Who owns communal land?..... 7

The differences between Acts, Bills and Regulations 8

Chapter I: Preliminary 9

Section 1: Definitions 9

Chapter II: Communal Land Boards..... 11

Section 2: Establishment of Communal Land Boards 11

Section 3: Functions of Boards..... 11

Section 4: Composition of Boards..... 12

Section 5: Disqualifications 12

Section 6: Terms of office 13

Section 7: Meetings of the Board 14

Section 8: Committees..... 14

Section 9: Disclosure of interest 14

Section 10: Remuneration..... 15

Section 11: Financing of Boards 15

Section 12: Performance of administrative work 15

Section 13: Annual report..... 15

Section 14: Limitation of liability..... 16

Chapter III: Communal land areas 17

Section 15: Extent of communal land 17

Section 16: Establishment of new communal land areas and additions to or subtractions
from communal land areas..... 17



Section 17: Vesting of communal land 18

Section 18: Prohibition against fences..... 18

Chapter IV: Allocation of rights in respect of communal land 20

 Section 19: Rights that may be allocated 20

Part 1 – Customary land rights and grazing rights 20

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

 Section 21: What are the types of customary land rights which may be allocated? 20

 Section 22: Application procedures and powers of the Chief and Traditional Authority for customary rights 21

 Section 23: Limitation of the size of land held under customary land rights..... 22

 Section 24: Ratification of allocation of customary land rights 23

 Section 25: Registration of customary land rights 24

 Section 26: Duration of a customary land right..... 24

 Section 27: Cancellation of a customary land right..... 27

 Section 28: Recognition of existing customary land rights 28

 Section 29: Grazing rights..... 33

Part 2 – Right of leasehold..... 35

 Section 30: Power to grant right of leasehold..... 35

 Section 31: Application for right of leasehold..... 36

 Section 32: Conditions applicable to right of leasehold 38

 Section 33: Registration of rights of leasehold 40

 Section 34: Duration of right of leasehold 41

 Section 35: Existing rights to occupy communal land 41

 Section 36: Cancellation of right of leasehold 44

Chapter V: General provisions..... 46

 Section 37: Preliminary investigation of a claim to existing rights 46

 Section 38: Transfer of rights 49

 Section 39: Appeals 50

 Section 40: Compensation for improvements..... 50

 Section 41: Survey of communal land..... 52

 Section 42: No consideration payable for customary land right..... 52

 Section 43: Unlawful occupation of communal land..... 53

 Section 44: Fences 53



Guide to the Communal Land Reform Act, 2002 (No. 5 of 2002)

Section 45: Regulations..... 54

Section 46: Repeal of laws..... 54

Section 47: Short title and commencement..... 54

Figures 55

Figure 1: Application procedure for a customary land right (section 22)..... 56

Figure 2: Application procedure for recognition and registration of existing customary land rights (section 28) 57

Figure 3: Application procedure for right of leasehold (section 31)..... 58

Figure 4: Application procedure for the recognition of existing rights to occupy communal land and for the granting of a right of leasehold (section 35)..... 59

Contacts 61

Contact names and addresses 62

The Communal Land Reform Act, 2002 (No. 5 of 2002) 71

Government Gazette No. 2787 of 12 August 200272

Regulations to the Communal Land Reform Act, 2002..... 107

Government Gazette No. 2926 of 1 March 2003 108

Annexure 1

Form 1: Application for customary land right..... 129

Form 2: Certificate of registration of customary land right..... 132

Form 3: Application for recognition and registration of existing customary land right referred to in section 28(1) and for authorisation for retention of fence 133

Form 4: Certificate of registration of recognition of existing customary land right referred to in section 28(1)..... 136

Form 5: Application for right of leasehold 137

Form 6: Application for right of leasehold for agricultural purposes outside a designated area..... 140

Form 7: Part A - Certificate of leasehold for any purpose other than agricultural purposes outside a designated area..... 143

Part B - Certificate of leasehold for agricultural purposes outside a designated area 144

Form 8: Application for recognition of right referred to in section 35(1) and for grant of right of leasehold..... 145

Form 9: Part A - Deed of leasehold in respect of right of leasehold for any purpose other than agricultural purposes outside a designated area 148



Part B - Deed of leasehold in respect of right of leasehold for agricultural purposes outside a designated area..... 151

Form 10: Form of notice to attend preliminary investigation..... 154

Form 11: Summons to appear before Investigating Committee/Board..... 155

Form 12: Form on notice regarding failure to attend preliminary investigation or to comply with instruction 157

Form 13: Application for transfer of customary land right 159

Form 14: Application for transfer of right of leasehold 162

Form 15: Application for erection of fence on communal land 165

Form 16: Referral of matter to arbitrator 167

Annexure 2

 Fees 168

Communal Land Reform Amendment Act, 2005 (No. 11 of 2005)..... 169

 Government Gazette No. 3550 of 8 December 2005..... 170

 Government Gazette No. 3591 of 15 February 2006..... 173

 Government Notices

 No. 44 Communal Land Reform Act, 2002: Recognition of existing rights to occupy communal land..... 175

 No. 45 Communal Land Reform Act, 2002: Recognition of existing customary land rights..... 175

 No. 46: Communal Land Reform Act, 2002: Prohibition against fences 176

Government Gazette No. 4210 of 16 February 2009..... 177

 Government Notices

 No. 18 Communal Land Reform Act, 2002: Extension of period for application for recognition of existing rights to occupy communal land 179

 No. 19 Communal Land Reform Act, 2002: Extension of period for application for recognition of existing customary land rights 179



Foreword to the Second Edition

The Communal Land Reform Act, 2002 (No. 5 of 2002), came into effect on 1 March 2003. Several consultations with stakeholders took place with the aim of incorporating as many views as possible and also to seek consensus on issues relating to communal land administration.

The Communal Land Reform Act deals with access to land in communal areas. It regulates the allocation of rights to land and provides for the establishment of Communal Land Boards in all communal areas in Namibia. The Act also stipulates the powers of the Traditional Authorities and the Land Boards in the administration of communal areas.

The updated Guide to the Communal Land Reform Act, 2002 (No. 5 of 2002) offers an annotated and simplified version of the Act. The Guide is written in user-friendly language that is easily understood by most stakeholders. The Guide's step-by-step format will also enable Traditional Authorities and Land Boards to understand this important piece of legislation in their daily work. To the rural communities who have land rights in the communal areas, the Guide will assist in comprehending the procedures to be followed in registering existing land rights.

The First Edition of the Guide is currently being used as a resource tool in the training of newly appointed Land Board Members. It is also widely used within the Ministry as a reference point when dealing with communal land issues. The Second Edition of the Guide will continue to enhance the capacity of the Ministry and other stakeholders to execute their duties and deal with contentious matters relating to communal areas.

The lead role played by the Legal Assistance Centre and the Namibia National Farmers' Union in spearheading work on the Second Edition of this Guide is an excellent example of civil society's collaboration with Government and it is highly commendable. The Guide has made this piece of legislation accessible to a wide spectrum of Namibia's population.

Pleasant reading!

Alpheus P. Naruseb, MP

MINISTER OF LANDS AND RESETTLEMENT

Acknowledgements

This publication was made possible with funding from Humanistisch Instituut Voor Ontwikkelings-samenwerking (HIVOS, Humanistic Institute for Development Cooperation), Evangelischer Entwicklungsdienst (EED), the Embassy of Finland in Namibia, and the Namibia Nature Foundation – organisations that support the work of the Land, Environment and Development Project of the Legal Assistance Centre. The Ford Foundation, which supports the Namibia National Farmers' Union (NNFU), also made a significant contribution to this endeavour. We express our gratitude to these donors for their generosity.

Johann Malan wrote the Guide, for which we thank him very much. The first edition proved so popular with decision-makers, Communal Land Boards, policymakers and even some members of the general public that the supplies have been exhausted. Therefore, rather than just reprint the first edition, we have taken the opportunity to make a few additions, corrections and some improvements to the layout to make it easier to use.

Workshop participants tested the suitability of the Guide as a workshop facilitation tool at several workshops held around the country during 2002 and 2003. These participants included communal area farmers, representatives of traditional authorities, communal area conservancies, Government officials and staff from several non-governmental organisations. They contributed enormously by making practical suggestions and critical comments about the contents of the Guide. Subsequent use of the first edition, particularly in training the Communal Land Boards, has also prompted some improvements – leading to a second edition.

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

Legal Assistance Centre

Namibia National Farmers' Union

Glossary



TERM	DEFINITION
allocate	Give or assign.
allocation of land	Giving somebody the right to live or farm on a specific piece of land.
arbitration	Settling a dispute (disagreement) between people by using a third person called the arbitrator , who listens to all the people involved in the dispute and then decides the matter. The decision of an arbitrator is binding on the parties.
commercial land	Land that can be bought and sold by individuals. An example is a commercial farm.
commonage	The common grazing area for the livestock of the members of a traditional community.
communal land	Land that belongs to the State. Individuals cannot own communal land, but may have customary land rights or rights of leasehold with regard to certain areas of land.
conflict of interest	When a person has different interests that conflict with each other, particularly when s/he has to act in both an official and a private capacity. For example, a member of a Communal Land Board will have a conflict of interest when (in his/her official capacity as a member of the Board) s/he has to decide a matter relating to fencing, while (in a private capacity) that member has fenced off land which has been allocated to him/her under a customary land right.
Deeds Registry	This is where all the title deeds of commercial land are kept. The Deeds Registry is used to find out who the owner of a particular portion of land is and whether it is farmland or an erf in a town or city.
divested of a claim	When a person is divested of a claim, that person is deemed to have abandoned the claim or to have given up the claim.



TERM	DEFINITION
erf	The plot of land in a town or a city on which a house is built.
expropriation	When the right to property is taken away by the State without the agreement of the owner, but with the payment of just compensation.
freehold	The form of ownership under which a farmer holds commercial land. This means that the owner can sell the property or use it for his/her own benefit.
fraud	When a person deceives you wrongfully or criminally so that s/he can get a personal or financial advantage from it
good faith	A person acts in good faith when their s/he has an honest intention in doing a specific thing. For example, a magistrate acts in good faith when s/he listens carefully to all the facts of a particular case and then makes a decision based on those facts and the law.
grantee	The person who has been given the right to use or to own something, for example, a person who has been granted the right to reside on a certain portion of communal land.
just compensation	The payment that has to be made when property or rights are expropriated by the State. This compensation should reflect the market value of the thing that is expropriated. For example, if the Government expropriates commercial farmland to add to communal land, it has to pay back (compensate) the owner of the commercial farm a fair (just) price for the land that is taken away.
lease	A contract by which one person (the lessor) allows another person (the lessee) to use something for a specific time. In turn, the lessee has to pay rent for the use of the thing. For example, a person can lease a farm.
leasehold	A form of land tenure under which leased land is held. For example, the Communal Land Board grants a right of leasehold to a person that allows him/her to use land under a lease for a specific purpose.



TERM	DEFINITION
mortgage bond	When a person wants to borrow money from a bank, a mortgage bond is registered over his/her farm or house in favour of the bank. This provides security to the bank for the money it lends. If the person does not repay the loan within a specific time, the bank can sell the property to recover the money needed to pay off the loan. If the loan is paid back within the specified period of time, the mortgage falls away and the bank no longer has the right to sell the property.
owner	The person who owns property, like the owner of cattle, a car or a house.
preliminary investigation	An investigation to determine certain facts first before a decision is taken. For example, if there are doubts about an existing right to occupy land, a preliminary investigation may be held to make sure of the facts before the Communal Land Board decides whether to recognise the claim and to register the particular right.
right of first refusal	All commercial farmland that is to be sold must first be offered to the Minister of Lands and Resettlement, who then decides whether the land should be acquired for land redistribution purposes. If the Minister does not want to acquire the land, a certificate of waiver is issued which allows the commercial farmer to sell the land to another buyer.
security	In the context of borrowing money, security means that something, such as a house, is given as security for the repayment of a loan. If the loan is not repaid, the house can be sold to recover the money.
State land	Land that belongs to the State. This is provided for in the Constitution of the Republic of Namibia.
land survey	Measuring a particular area of land to determine the boundaries, size and shape of the area. Commercial land must be surveyed before it may be sold.
sustainable use	Sustainable use means that land and resources are used in such a way that they provide for the needs of the people who use them now, but also for their children and their children's children.



TERM	DEFINITION
tenure	The right or title by which property such as land is held. Under the Communal Land Reform Act, communal land can be held under a customary land right or as leasehold.
Traditional Authority	The Chief or head of a traditional community, the senior traditional councillors and the traditional councillors may be appointed as the Traditional Authority under the Traditional Authorities Act, 2000 (No. 25 of 2000).
traditional community	A community recognised as such under the Traditional Authorities Act. Although the definition of traditional community in the Act is very complicated, it basically means that members of such communities share a common ancestry, language, culture, customs and traditions; they recognise a common traditional authority; and inhabit a common communal area. Even members residing outside the communal area in question may be included in the definition of traditional community .
vest	We say that communal land vests in the State, which means that the State has rights over communal land and has to administer the land in trust for the benefit of the people living on that land.
willing buyer–willing seller	The basis on which the State can acquire commercial land. A seller must be willing to sell the land at a specific price, and the buyer must be willing to buy the land at that price.



Background

Access to land is one of the most pressing social issues in Namibia.

Urban land is land in or near a city. Some people need land for grazing or farming purposes – these people want access to **rural** land. The Communal Land Reform Act deals with access to rural land in communal areas.

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

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

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

Commercial land is the land that can be bought by private individuals. These individuals then become the owners of the land. Under the colonial government, commercial land allocations were made on racial lines, with the result that there are long-standing grievances with regard to commercial land today. The Agricultural (Commercial) Land Reform Act, 1995 (No. 6 of 1995) was passed to address some of these concerns. In particular, this Act gives the State the right of first option to buy commercial farmland when

Article 100,
Namibian Constitution

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



In 1998, communal farmers marched to State House in Windhoek to demand more access to land. Photograph by LAC/NNFU.



the owner wants to sell it. The State must decide whether it wants to buy a particular farm before the farm can be sold to another buyer. This is called selling the land on a **willing buyer–willing seller** basis. The Act allows the State to acquire commercial land where the land is too big, has been abandoned, or is under-used.

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

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

Article 16, Namibian Constitution

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

The Agriculture (Commercial) Land Reform Act also limits the ownership of land by foreign nationals. The Act requires that special ministerial permission has to be obtained before a foreign national can acquire land rights.

The system under which commercial land is regulated is well organised. Land is properly surveyed and is held under title deeds kept in the Deeds Registry for commercial land in Windhoek. The Rehoboth Gebiet has a separate Deeds Registry for its property.

When a farm or an erf is sold, the transaction is recorded on the title deed of the particular piece of land. This is proof of ownership. Leases of commercial land for periods longer than ten years are also recorded on the title deed. Holders of title deeds are free to sell their land subject to the conditions of the title deed. For example, if two people are married in community of property, the Married Persons Equality Act, 1996 (No. 1 of 1996) and the complementary Deeds Registry Amendment Act, 1996 (No. 2 of 1996) prevent the sale of commercial land by one spouse without the other spouse's agreement.

Commercial ownership of land may be used as security for a bank loan. In such a situation, the bank will lend money to the owner, but it will register a mortgage bond over the property. This means that if the

owner cannot repay the outstanding debt, the bank can sell the property to recover the money that person still owes.

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

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

These uncertainties stem from the lack of authority over communal lands and the role that traditional authorities play – some more efficiently than others – in how land is allocated and used. In many areas, communal farmers with larger areas have even started to fence off areas of land without authorisation. This limits the rights of access of other communal farmers to those areas. Fencing off communal lands by communal farmers is an example of people using communal land without considering the rights of other communal farmers. Chiefs, Traditional Authorities and Communal Land Boards have the legal power to order the removal of these fences, but they may not have some of the practical resources needed to physically carry out such removals.

The result of allocating a customary land right may differ from the result of granting a freehold title to commercial land. For example, a communal land allocation does not give ownership of the allocated land to the right holder. This means that the property cannot be used to provide security to a bank for a loan, for example, like the owner of freehold land can offer. Freehold tenure also gives an owner the right to use natural resources on the land (such as hunting game), but this right does not come with a customary land right. As a result, many Namibians view communal land tenure systems more negatively than freehold systems.

The Government responded to the land issue by adopting a National Land Policy in 1998. This Policy proposed a **unitary** land system, meaning “all citizens have equal rights, opportunities and security across a range of tenure and management systems”. The National Land Policy also aims to ensure –

- equality before the law with regard to access to land.
- that women have the same status as men when it comes to all forms of land rights, whether as individuals or as members of a family. This means, for example, that women are entitled to be allocated land, and that they can bequeath and inherit land. Importantly, widows are



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



entitled to maintain the land rights they enjoyed while their husbands were alive. This will have an impact on customary and civil law rules with regard to women's rights to land. Government has undertaken to reform these rules.

- equal access to land and security of tenure, and
- environmentally sustainable natural resource use, including the use of land.

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

- Freehold tenure (in commercial areas).
- Permission to Occupy (PTO) certificates, previously granted by the Ministry of Regional and Local Government, Housing and Rural Development. These certificates are being phased out under the Communal Land Reform Act and converted into rights of leasehold.
- Leasehold. A right of leasehold over communal land is granted by Communal Land Boards under the Communal Land Reform Act, provided that the Traditional Authority concerned agrees to those rights being granted.
- Customary land rights. While the Chief or Traditional Authority has the primary power to allocate customary land rights over communal land, the Communal Land Reform Act requires the Communal Land Board to ratify these allocations (if they have been allocated procedurally) before they have legal effect and protection.
- State ownership. This type of tenure includes Protected Areas/National Parks and military bases.

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

Introduction

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

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

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

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

Article 10 of the Namibian Constitution guarantees the equality of all people before the law. This obviously includes women. It also forbids discrimination against women on the basis of their sex. However, the drafters of the Constitution realised that this was not enough to address the injustices that women have suffered. Therefore, the Constitution also allows for positive action by the Government to address the social, economic or educational discrimination that

Section 17

- "(1) Subject to the provisions of this Act, all communal land areas vest in the State in trust for the benefit of the traditional communities residing in those areas and for the purpose of promoting the economic and social development of the people of Namibia, in particular the landless and those with insufficient access to land who are not in formal employment or engaged in non-agricultural business activities.
- (2) No right conferring freehold ownership is capable of being granted or acquired by any person in respect of any portion of communal land."



women have suffered. In particular, Article 23 states that women should be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation.

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

Other legislative examples of this commitment are the Married Persons Equality Act, the Labour Act, 2004 (No. 15 of 2004) and the Affirmative Action (Employment) Act, 1998 (No. 29 of 1998).

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

Fencing is another issue addressed by the Act. In principle, fencing a communal area is prohibited unless permission is granted for the erection of a fence, or an existing fence is allowed to remain on the land. Regulation 26 allows fences to be retained if they existed when the Act commenced and if they fence in homesteads, cattle pens, water troughs or crop fields.

The Communal Land Boards have to begin and maintain registers of customary land rights and of rights of leasehold to control the allocation and use of communal lands.

In this Guide, we will cover the Act section by section, so that the reader can get a clear understanding of the legislation. We have provided a copy of the Act and the Regulations at the back of the Guide so that the reader can compare the Guide with the Act as we work through it.

Ownership of communal lands

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

What is communal land?

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

- the areas **described** as **communal land** in Schedule 1 to the Act.
- any areas **declared** to be **communal land** under section 16(1)(a).
- any land **incorporated** into a communal land area under section 16(1)(b).

Local authority areas within the boundaries of a communal land area do not form part of communal lands or a settlement area declared in terms of the Regional Councils Act, 1992. (No. 22 of 1992).



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

Who owns communal land?

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

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

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

- The State must look after the communal lands and administer the land in the **best interests** of the people.
- The State must act in a way that will **benefit** the communities living in communal areas. In other words, the people living in communal areas must get the benefits of the communal lands, not other people.
- The reason why the State holds the land in trust is to **promote** the economic and social development of the people of Namibia, particularly those people who do not have land, as well as those who have no other income and who rely on the land for their livelihood.



Farming in the Omaheke Region. Photograph by W Odendaal.

The differences between Acts, Bills and Regulations

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

Acts become laws in the following way:

- A **Bill**, which is called the **draft legislation**, is tabled in Parliament, where the National Assembly and the National Council debate it.
- Once both Houses of Parliament accept it, we say the Bill has been **passed** by Parliament.
- After a Bill has been passed, it is sent to the President for signature. Once it is signed, the Bill becomes an **Act of Parliament**.
- The Act usually becomes binding (legally enforceable) upon signature by the President, but many Acts state that they will commence (become operational) on a date to be announced in the **Government Gazette**.
- The **Government Gazette** is an official Government publication in which new legislation, notices and regulations are published. Publication in the **Gazette** serves to prove that a new law exists, and it informs the public that it exists.
- **Regulations** are in essence the rules which the Minister is empowered to make in terms of the Act so that it can be effectively implemented. These rules are also known as **bylaws**. Note that an Act can only be amended by Parliament; regulations may be amended by the Minister.



Chapter I: Preliminary

Section 1: Definitions

Section 1 of the Communal Land Reform Act contains definitions of the terms used in the Act. If you are not sure what is meant by a particular term used in this Guide, refer to this Chapter or to section 1 of the Act to see if the term is explained there. We have also included a Glossary of some unusual terms, which you will have seen at the front of this Guide.

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

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

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

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

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

Customary land rights include the following rights:

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

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

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

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

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

A **Region** is one of the 13 Regions in Namibia that are recognised under the Regional Councils Act, 1992

(No. 22 of 1992).

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

A **residential unit** is a portion of land given under the Act for residential purposes, that is, to live on the land. The size of the unit must be in line with the size for residential units prescribed under the Communal Land Reform Act.

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

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

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

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



Chapter II: Communal Land Boards

Section 2: Establishment of Communal Land Boards

Section 2 provides for the Minister to establish Communal Land Boards. The Minister must establish Communal Land Boards for particular areas, but only after consulting with the Traditional Authorities that will be affected by the creation of these Boards.

When establishing Communal Land Boards, the Minister may establish a Board for –

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

The Minister must consult with the relevant Traditional Authorities when –

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

Safeguards

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

Communal Land Boards have been established for all the Regions except Khomas, which does not have a communal area.

Section 3: Functions of Boards

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

- control the allocation and cancellation of customary land rights by Chiefs or Traditional Authorities.
- decide on applications for rights of leasehold.
- create and maintain registers for the allocation, transfer and cancellation of customary land rights and rights of leasehold.

Important point

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

- advise the Minister on regulations to be made to meet the objectives of the Act.
- give effect to the provisions of this Act.

Section 4: Composition of Boards

Who are the members of a Communal Land Board?

A Communal Land Board will have the following members:

- One representative from each Traditional Authority within the Board's area.
- One person representing the organised farming community within the Board's area.
- The regional officer of the particular Region(s) affected by the Communal Land Board.
- Four women; two must farm in the Board's area, and two must have experience that relates to the functions of a Board.
- If there is a conservancy in the Board's area, one person must be nominated by that conservancy to serve on the Board. Where there is more than one conservancy in the Board's area, they must jointly nominate a member to represent them on the Board.
- Four staff members from the Public Service, respectively nominated by –
 - the Minister responsible for regional government
 - the Minister responsible for land matters
 - the Minister responsible for environmental matters, and
 - the Minister responsible for agriculture.

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

Take note that the regional officer is not nominated: s/he is a member of the Board because of the position that s/he holds.

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

Section 5: Disqualifications

The following people are not permitted to be members of a Communal Land Board:

- A Member of Parliament or a Regional Council.
- A Chief.
- An unrehabilitated insolvent,¹ and

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



**Goat farming in the Omatjette Village, Erongo Region.
Photograph by Z Alberto.**

- A person who has been found guilty of a criminal offence and sentenced to imprisonment with no choice of paying a fine.

Section 6: Terms of office

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

- If they resign in writing.
- If they are disqualified from holding office, for example, if the member becomes a Member of Parliament. (See the box on the next page for more details.)
- If they miss three consecutive Board meetings.
- If their nominating authority withdraws its nomination in writing. For example, if the conservancy nominates Lydia to be a member of the Board but later decides that it wants another representative on the Board, it must write a letter to inform the Minister of the change.
- If they become mentally or physically unable to do their job.

If there is a vacancy on the Board, another person must be appointed to fill the vacancy for the unexpired part of the term of office of the member who has left.

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

Section 7: Meetings of the Board

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

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

The Act gives directions on how many Board members should be present to take a legally binding decision. The Act says that the majority of Board members must be present to form a quorum.²

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

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

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

- act as the accounting officer of the Board.
- provide secretarial services and keep minutes (records) of meetings.
- implement the decisions of the Board.
- supervise the administrative staff of the Board.

Minutes must be taken at all Communal Land Board meetings.

Section 8: Committees

Communal Land Boards may establish committees consisting of members of the Board to advise the Board on specific matters. These committees must be distinguished from the committee appointed by the Minister in terms of section 37 for the purpose of investigating claims relating to existing land rights.

Section 9: Disclosure of interest

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

When a member has an interest in a matter that is discussed by the Board or a committee, s/he must disclose his/her interest and leave the meeting, so that the other members can decide whether or not

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



there is a **conflict of interest**. If it is decided that a conflict of interest exists, the particular member may not take part in the discussion.

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

Example: Conflict of interest

The Board has to decide what to do with fences that have been erected on communal lands without permission. Eliphas has fenced off his farm of 2,000 hectares, which is situated in a communal area. Eliphas is also a member of the Communal Land Board. It is clear that Eliphas has an interest in the matter because of the fence that he has erected. The Board's decision will have an impact on his fence. Eliphas must declare his interest in the matter, namely that he has fenced off his farm, and leave the meeting so that the Board can decide on the matter without him.

Section 10: Remuneration

Members of the Board who are not working for the Government will be remunerated (paid for) their services. The Minister will decide what these payments – known as **allowances** – will be. Allowances may differ according to the different positions on a Board. For example, the chairperson may get a higher allowance than an ordinary member of the Board.

Section 11: Financing of Boards

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

Section 12: Performance of administrative work

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

Section 13: Annual report

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

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

Tabling reports allows Government to –

- determine whether the Communal Land Boards are performing their functions.
- determine whether public money is well spent.
- determine whether communal land reform is succeeding through the activities of the Communal Land Boards.
- promote transparency, democracy and good governance by letting the public know about the affairs of Communal Land Boards.

Section 14: Limitation of liability

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

Why limit personal liability?

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

In the case of someone performing an official function, like a Chief, Traditional Authority or member of a Communal Land Board, s/he is only liable in his/her official capacity. Limiting personal liability ensures that people can perform their official functions better, because they do not have to worry about the problem of being personally liable when something goes wrong. Take the example of Rosalia, a Board member, who is involved in an accident while she is on official business. She would not be personally liable if she was driving a Board vehicle and if she was on official business. In this case, the Board would be liable.

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



Chapter III: Communal land areas

Section 15: Extent of communal land

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

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

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

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

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



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

When land is withdrawn, it becomes State land and can be disposed of as State-owned land. Compensation is determined either by agreement between the Minister and the person whose rights are being acquired, or by arbitration under the Arbitration Act, 1965 (No. 42 of 1965).

Section 17: Vesting of communal land

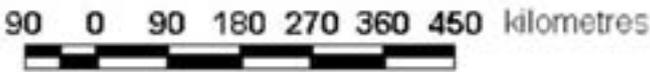
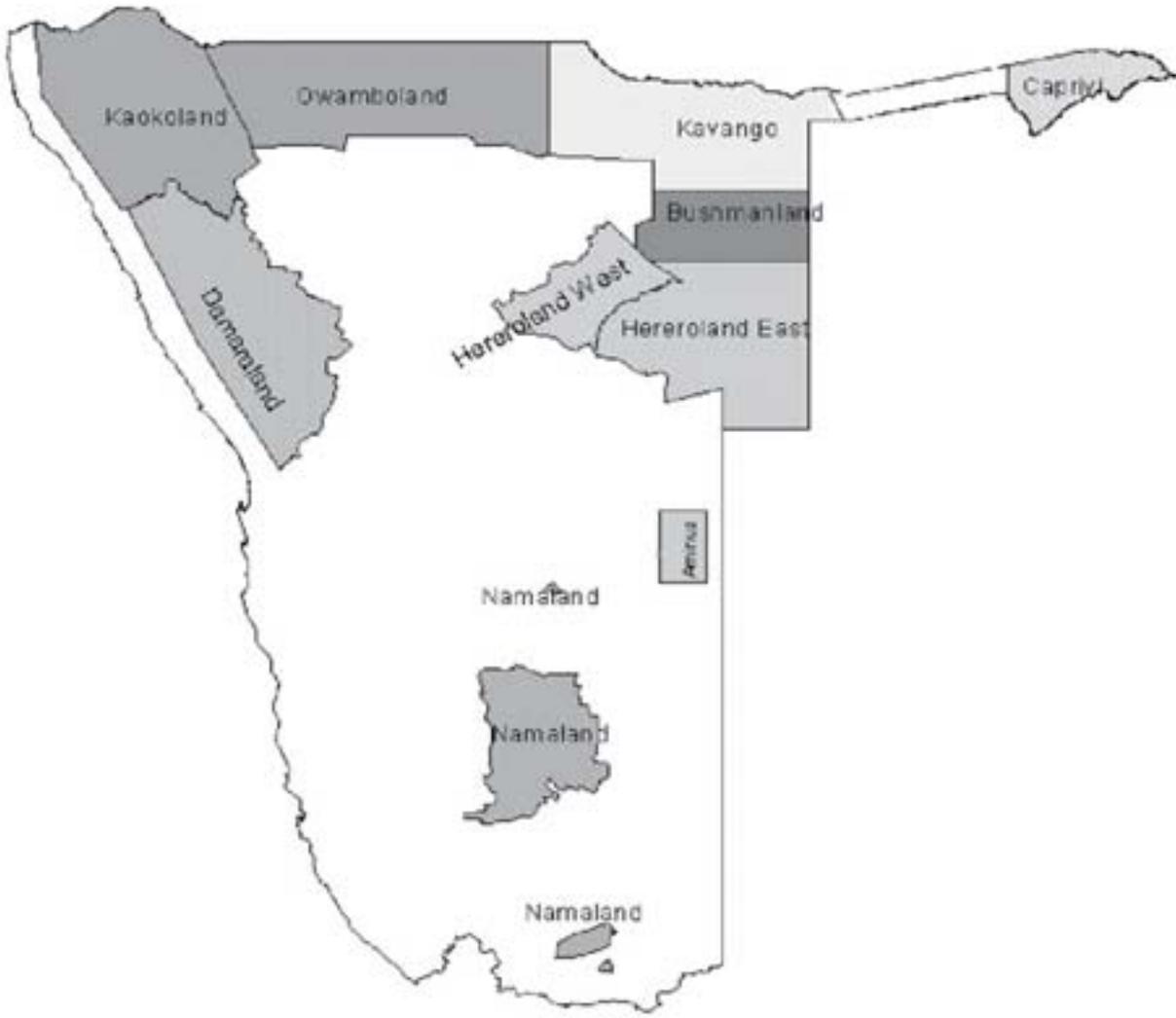
Section 17 makes it very clear that all communal land areas vest in (belong to) the State. The State must keep the land in **trust** for the benefit of the traditional communities living in those areas. Because communal land belongs to the State, the State must put systems in place to make sure that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

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

Section 18: Prohibition against fences

The Act takes a strong position against putting up (**erecting**) fences on communal lands. No **new** fences may be erected **without proper authorisation** obtained in line with the Act. Similarly, fences that **existed** at the time that the Act came into operation have to be taken down, unless the people who erected those fences applied for and were given permission to keep the fences on the land. For the purposes of this section, the Act came into operation on 1 March 2003. (See Government Notice 34 of 2003.) This means that, from 1 March 2003 onwards, no new fences were allowed to be put up, and fences could only be retained if authorisation was asked for and given under the Act.

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



Communal areas in Namibia

Chapter IV: Allocation of rights in respect of communal land

Section 19: Rights that may be allocated

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

- Customary land rights, and
- Rights of leasehold.

Part 1 – Customary land rights and grazing rights

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

The Chief of a traditional community or – if the Chief so decides – the Traditional Authority of the particular community has the **primary power** to allocate or cancel any customary land rights. This means that the Chief or Traditional Authority first must decide whether or not to grant an application for a customary land right. Only once this decision has been made will the matter be referred to the Communal Land Board for ratification (acceptance) of the decision by the Chief or Traditional Authority.

Section 21: What are the types of customary land rights which may be allocated?

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

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

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

It could happen one day that the rights to a farming unit or residential unit may not be enough for different kinds of land use. This is especially true if one looks at the land use needs of the different traditional communities in Namibia. For this reason the Act allows the Minister to be flexible in future when s/he recognises and prescribes the right to other forms of customary tenure.



Farming in the Kavango Region. Photograph by Z Alberto.

Section 22: Application procedures and powers of the Chief and Traditional Authority for customary rights

An application for a customary land right must be –

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

This application must contain all the **relevant documents** that the Chief or the Traditional Authority may need to decide the matter.

Powers of the Chief or Traditional Authority when considering an application

The Chief or Traditional Authority may –

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

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

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

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

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

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



Discussing land use rights among the San. Photograph by S Tjiramba.

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



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

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

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

See Figure 1 and Regulation 2 on how to apply for a customary land right in a communal area.

Section 24: Ratification of allocation of customary land rights

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

How is the allocation of a customary land right ratified?

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

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

1. The Board must ratify the allocation if it is satisfied that the allocation was properly made.
2. The Board may refer the matter back to the Chief or Traditional Authority to decide the matter again, considering the comments made by the Board.

3. The Board must veto (refuse) the allocation if –
 - the right has been allocated for an area of land over which another person has rights.
 - the size of land allocated exceeds the maximum prescribed size.
 - the right has been allocated for land that is reserved for common usage or for any other purpose in the public interest.
4. The Board must give **written reasons** to the applicant and the Chief or Traditional Authority when it vetoes an allocation of a customary land right.

Safeguard

The Board must give **written reasons** to the applicant and the Chief or Traditional Authority when it vetoes an allocation of a customary land right. With this information, the applicant can decide whether the Board has considered all the relevant factors when it decided not to ratify the allocation. If the applicant takes the matter to the Appeal Tribunal for it to consider whether the Board considered the matter fairly, the applicant must use the reasons given for the refusal to ratify the allocation as the basis for the Appeal Tribunal's review.

Section 25: Registration of customary land rights

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

The Board must –

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

Section 26: Duration of a customary land right

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

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

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

1. The right immediately reverts (goes back) to the Chief or Traditional Authority for **re-allocation**.
2. The Chief or Traditional Authority must allocate the right to either –
 - the **surviving spouse**, who has to agree to the allocation of the right to him/her, or
 - a **child** of the deceased if there is no surviving spouse, or if the spouse does not accept the allocation of the right.*

*** Caution**

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

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

The right reverts to the Chief or Traditional Authority for re-allocation to either –

- the **surviving spouse** of the second or further marriage, but only if that spouse consents to the allocation of the right, or
- if there is no surviving spouse or if the spouse refuses the allocation, the **child** of either the first or a later marriage. Again, the Chief or Traditional Authority must determine which child is entitled to the allocation of the right in line with customary law. (See the “Caution” box.)

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

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

Take note

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

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

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

Example

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

The right reverts to the Chief or Traditional Authority of the community where they live for re-allocation. The Chief offers the right to Liesbet. She can accept the allocation, in which case the customary land right must be registered in her name. If she does not want the right, the Chief or Traditional Authority will see if the couple had children. Then, in line with customary law, the Chief or Traditional Authority will decide which child should be allocated the right.

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

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

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

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

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



Women have rights to land use when their spouse dies. Photograph by W Odendaal.

Section 27: Cancellation of a customary land right

The Act allows a Chief or Traditional Authority to cancel a customary land right – even a right that existed before the Act came into operation.

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

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

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



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

The cancellation of a customary land right must be made in accordance with customary law. The cancellation has no legal effect unless the Communal Land Board ratifies (confirms) it.

Regulation 6 lists some other reasons for the cancellation of a customary land right:

1. If the right was obtained through fraud (cheating).
2. If the right was obtained in a way that is not in line with the Act.
3. If the land has not been used for three years or more.
4. If the right was previously allocated to another person, and this allocation has not come to an end according to the Act.

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

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

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

Section 28: Recognition of existing customary land rights

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

People holding existing rights to occupy (live on or use) communal land will continue to hold their rights, unless –

1. the person's claim to the right to occupy the particular land is **rejected** when s/he applies for that right to be recognised by the Communal Land Board.
2. the land reverts to the State because the right holder **has not applied in time** for the right to be recognised and registered.

How does someone get an existing customary land right recognised under the Act?

The person should **apply** to the Communal Land Board of the area in which the land is situated for **recognition and registration** of the right under the Act.



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

1. This application must be on Form 3, which is set out in the Regulations.
2. In Government Notices 35 and 36 of 2003, the Minister announced that the date from which people who hold customary land rights should start applying for recognition and registration of their existing customary land rights was 1 March 2003. For our purposes, let's call this date **the starting date for applications**. The deadline for these applications has been extended twice. The current deadline is the end of February 2012, as extended by Government Notice No. 19 in **Government Gazette** No. 4210 of 16 February 2009.
3. In terms of section 37, a Board may refer the matter to an investigating committee to find out whether or not the right should be recognised before the Board makes its final decision.

If a person wants to apply for authorisation to keep an existing fence, what should s/he do?

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

1. The person must **apply** to the Communal Land Board in the area where the fenced land is situated for authorisation to retain (keep) the fence. Application is made on Form 3. (See the Regulations.)
2. The Minister announced 1 March 2003 as the date from which people who wish to keep existing fences could start applying for authorisation to do so. For our purposes, let's call this date **the starting date for fencing applications**. (See Government Notice 36 of 2003.) The deadline



Some communities earn an income by registering a conservancy on communal land. Photograph by Z Alberto.

for submitting these applications has been extended twice. The current deadline is the end of February 2012, as extended by Government Notice No. 19 in **Government Gazette** No. 4210 of 16 February 2009.

3. In terms of section 37, a Board may refer the matter to an investigating committee to find out whether or not the fence should be authorised before the Board makes its final decision.

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

1. Any **documents that offer evidence** to support the application. For example, community members may write a letter saying that the applicant has been living on the particular piece of land for a long time.
2. A **letter from the Chief or Traditional Authority** setting out the information that is needed. Regulation 7 states that the letter from the Chief or Traditional Authority should indicate if the Chief or Traditional Authority does or does not support the application concerned, and should furnish any other information which the Chief or Traditional Authority may wish to bring to the attention of the Communal Land Board.
3. Any other documents or information that the Board may need.

What happens when a person applies for an existing customary land right to be recognised and registered after the expiry of the period mentioned above?

1. If the person can show **good cause** (give good reasons) why his/her application is late, the Minister may allow the application to be considered. For example, a good reason would be if John was



imprisoned for a lengthy period of time, but he may still apply – provided that he can prove to the Minister that he was unable to apply within the time frame set due to his imprisonment – or if someone was hospitalised for a lengthy period of time.

2. If good reasons cannot be given, the person will be deemed (seen) to have **relinquished** (given up) their right to the land.
3. In such a case, the land will **revert** (return) to the State and become available for re-allocation under the Act.

See Regulation 7 for more information about how to apply for these rights.

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

1. The Board may **investigate** the matter and may **consult** with other people to establish the facts of the matter, such as –
 - when and how the right was acquired.
 - whether other people claim any rights to the same land.
 - whether the size of the land complies with the maximum size of land prescribed by the Minister.
 - the boundaries of the land.
- It is important to note that the Board can only exercise such powers in the course of considering an application. The Board cannot investigate a matter if no application is submitted to them for consideration.
2. If **satisfied** with the validity (correctness) of the claim to the existing customary land right, the Board must –
 - **recognise** the applicant's right to the land.
 - ensure that the particulars of the right are **recorded** (written into) in the register in accordance with Regulation 8.
 - **issue** the applicant with a certificate of registration (Form 4 in the Regulations).
3. If there are conflicting claims to the particular land (two applications over the same piece of land) or if the Board reasonably doubts the validity of the applicant's claim, the Board must hold a hearing. Following the hearing the Board may –
 - **confirm** the claim.
 - **confirm** the claim **subject to variations** determined by the Board, for example, the size or boundaries of the claim.
 - allocate a right to an **alternative** (different) **area** of land if the applicant's claim encroaches on the commonage.
 - **reject** the claim.
 - **refer the matter back** to the Chief or Traditional Authority to consider whether the applicant should be allocated a customary land right, either with regard to the land to which the application relates or to an alternative portion of land. The Chief or Traditional Authority must then decide the matter as if it were a new application to allocate a customary land right.

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

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

There are two possible situations:

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

See Annexure 2 for more information about how to apply for these rights.

What about existing fences?

People who have existing fences must apply to the Communal Land Board for **authorisation** to keep the fences. The application should be made at the same time as the application is being made to recognise an existing right.

What powers does a Communal Land Board have when it comes to fences?

1. The Board **may consult** with the Chief, Traditional Authority, or any other person on the question of the fence if the Board feels it necessary to do so.
2. The Board **must grant** the application for authorisation to keep the fence if the Board **is satisfied** that –
 - the fence was erected in line with customary law or any other statute law.
 - the fence will not unreasonably interfere with or restrict the use and enjoyment of the commonage by other members of the community.
 - there are good reasons why the applicant should be allowed to keep the fence.
3. The Board **may set** certain conditions if it allows the fence to remain on the land.



Section 29: Grazing rights

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

But sometimes, grazing rights on the commonage can be **limited** or even **withdrawn** (taken away).

Under what circumstances can grazing rights be limited?

The right to use the commonage may be limited by –

1. the **conditions** that the Chief or Traditional Authority may impose, including conditions that affect –
 - the kind and number of livestock that may graze on the commonage. In terms of Regulation 10, lawful residents may not have more than 300 head of large stock or more than 1,800 head of small stock grazing on the commonage at any one time.
 - the area or areas of the commonage where the stock may be grazed, as well as the rotation of grazing over different areas.
2. the right of the Chief, Traditional Authority or the Communal Land Board to use any part of the commonage for the **allocation of a right** under the Act.
3. the right of the President to **withdraw and reserve** any portion of the commonage for any purpose in the **public interest**.

Take note

Regulation 10 prohibits a lawful resident of a community who owns or hires any agricultural land from grazing livestock on the commonage.

Under what circumstances can grazing rights be withdrawn?

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

1. s/he **does not observe** the conditions imposed when it comes to the use of the commonage, for example, when the resident has more than the prescribed number of cattle grazing on the commonage.
2. s/he has a right to **any other land**, whether communal or not, which is of the same size or larger than the maximum size prescribed by the Minister under section 23. The Chief or Traditional Authority must also make sure that this other land has enough grazing for the person's stock.
3. s/he does any of the following **prohibited acts**, unless the Chief or Traditional Authority has given their written permission for such an act and this permission was ratified by the Communal Land Board:

- S/he erects or occupies any **building or structure** on the commonage.
- S/he **ploughs or cultivates** any portion of the commonage.
- S/he **lives on or occupies** any part of the commonage.
- S/he **obstructs the ways to any watering place** on the commonage, or somehow interferes with the use of watering places or damages them.
- S/he does something other than allowing lawful grazing on the commonage that **prevents or restricts** the other residents' rights to grazing.

Take note

Committing any of these prohibited acts is a criminal offence, for which a person can be fined a maximum of N\$4,000 or be imprisoned for a year.

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

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

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



In terms of the Act, grazing rights on commonage, such as the fertile land above, must be registered.

Unlawful residents grazing their stock on commonage can be evicted.

Photograph by W Odendaal.



Part 2 – Right of leasehold

Section 30: Power to grant right of leasehold

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

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

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

How is an arbitrator appointed?

1. The Minister must appoint an arbitrator who has been approved by both the Board and the Traditional Authority to hear the dispute. The arbitrator will decide which of the disagreeing parties is correct.
2. Once informed of the name and qualifications of the proposed arbitrator, the Board or the Traditional Authority has 30 days to inform the Minister of their decision to approve or disapprove of the proposed arbitrator. If they do not inform the Minister in time, or if they disapprove of the proposed appointment more than twice, the Minister can disregard the need for the parties to agree to the choice of arbitrator. When this happens, the Minister can appoint the arbitrator without getting approval from either the Board or the Traditional Authority.

Rights of leasehold for agricultural purposes

Rights of leasehold generally cover situations that fall outside customary allocations of communal land for grazing or for residential or farming purposes, for example.

A right of leasehold replaces the old PTO (Permission to Occupy) system and which may be used for a lodge or a sugar project.

The Act sees rights of leasehold and rights of leasehold for agricultural purposes differently. A right of leasehold for agricultural purposes may only be granted for land that is in a **designated area**. A **designated area** is an area specified by the Minister in the **Government Gazette** in respect of which a Communal Land Board may grant rights of leasehold for agricultural purposes. This land is identified after consultations with the Traditional Authority and the Communal Land Board concerned.

The Act also allows for exceptions to the rule that rights of leasehold for agricultural purposes may only be granted for land situated in designated areas. One exception, for example, would be when a person asks to be granted a right of leasehold for agricultural purposes on land that lies completely or partly outside an area designated for agricultural purposes. In such a case, s/he may apply to the Minister for approval on Form 6 (see Regulation 12). After consulting with the Traditional Authority and the relevant Communal Land Board, the Minister may allow the application, but only if s/he is satisfied that –

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

Section 31: Application for right of leasehold

Refer to Figure 3 for the application procedure.

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

1. The application must be made to the Communal Land Board of the area in which the land is situated.
2. The application must be made on Form 5. (See Regulation 11 for further details.)
3. A right of leasehold may not be granted over land to which someone else has a customary land right. However, the holder of the customary land right may agree to give up his/her right to the land if –
 - paid an **agreed compensation**, and
 - suitable arrangements for his/her **resettlement** have been made on alternative land.
4. The Communal Land Board can grant a right of leasehold as it thinks fit, provided the Traditional Authority agrees to it. Under the following circumstances, the Minister must give written approval **before** the Board may grant a right of leasehold:
 - Where the size of the land **is larger** than what has been prescribed for a particular land use. Regulation 13 prescribes that the maximum size of land can be no larger than 50 hectares. For example, if the right of leasehold is granted for a community campsite and the area is larger than 50 hectares, the Minister must approve the application in writing before the right to leasehold can be granted.
 - Where the applicant is a leaseholder under this Act in respect of another piece of land.
 - Where the applicant has an existing right over communal land that is not held under



customary law, for example a PTO, unless that recognition of the right is refused under section 35. (See discussion under section 35.)

Defeating the aims of a conservancy management plan

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

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

In such a case, the Communal Land Board must consider any management or utilisation plan decided upon by the conservancy committee. If the land applied for will be used in a way that would **defeat** the aims of the management or utilisation plan, the Board **is not allowed to grant** the application (section 31(4)).



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

Section 32: Conditions applicable to right of leasehold

What conditions must be fulfilled before a right of leasehold is allowed to be granted?

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

How is the rent amount for a right of leasehold worked out?

According to the Act, the Minister must prescribe how the amount to be paid for the right of leasehold is to be determined, and in terms of Regulation 13, the Communal Land Board should determine the fee payable. See Regulation 13 for more details.

What happens to the money paid for rights of leaseholds?

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

Can conditions be imposed on a right of leasehold?

Yes. A right of leasehold is subject to general or specific conditions prescribed by the Minister.

The Minister has specified the following conditions in Regulation 15:

1. The land may not be used for –
 - a purpose other than the one for which the lease was granted. For example, if the lease was granted for a campsite, it may not be used to build a factory.
 - a purpose that would contravene the Liquor Act, 1998 (No. 6 of 1998).
 - a purpose that would break the laws dealing with dependence-producing drugs. For example, the leaseholder may not plant or sell dagga (marijuana) on the leased land.
2. A reasonable right of access to inspect the land and any buildings to ensure compliance with conditions.
3. The leaseholder is responsible for maintaining the beacons that show the boundaries of the land over which the leasehold is registered.



Guide to the Communal Land Reform Act, 2002 (No. 5 of 2002)

4. The leaseholder is not permitted to close roads or paths over the leased land without authorisation.
5. The leaseholder must personally run the business for which the right of leasehold was granted. This can be as a director or as a member of the company or close corporation.
6. When asked by the Chief, Traditional Authority or the Board, the leaseholder must insure buildings on the leased land against fire.
7. The leaseholder may not change any buildings or property that belongs to the Government without first getting permission from the Minister.
8. A Board can say exactly how land must be surveyed.



Where a fence has been erected, authorisation must be obtained to retain it. Photo by the LAC.

May a right of leasehold be cancelled?

Yes. The Board may cancel a right of leasehold if any of the conditions are breached (broken). The leasehold is an agreement between the Board and the applicant, and if the applicant does not comply with any of the conditions, the right of leasehold may be cancelled. A cancellation can be made if –

1. the right was granted in error (by mistake).
2. the right was obtained through fraud or misrepresentation.
3. the leaseholder does not –
 - comply with any of the conditions of the right of leasehold.
 - pay two consecutive instalments of the rent where the Board has agreed to the payment by instalment.
 - pay the rent within 30 days of receiving a written notice to pay it.



The so-called Red Line is a veterinary cordon fence where livestock from communal areas are checked for disease.
Photo by J Berndalen.

4. the land is no longer used for the purpose for which the right of leasehold was granted.
5. the leaseholder is convicted of an offence of sedition or treason.

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

See also Section 36 below.

Section 33: Registration of rights of leasehold

What happens after a right of leasehold has been granted?

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

- ensure that the right is **registered** in the prescribed register, in the name of the applicant in accordance with Regulation 16.
- issue a **certificate of leasehold** to the applicant, either in the form of Part A of Form 7 (for purposes other than agricultural purposes outside a designated area) or Part B of Form 7 (agricultural purposes in a designated area).



If the land in question has been **surveyed** under the Land Survey Act, 1993 (No. 33 of 1993), and the duration of the lease is for **ten years or more**, the right of leasehold must be **registered** under the Deeds Registries Act, 1937 (No. 47 of 1937).

Section 34: Duration of right of leasehold

For how long can one hold a leasehold right?

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

Can a right of leasehold be renewed?

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

Section 35: Existing rights to occupy communal land

This section deals with rights to communal land that –

- existed on 1 March 2003 when the Act came into operation.
- were not recognised by customary law.
- were granted under some other authority or law.

An example of this sort of right is the Permission to Occupy (PTO). (See Figure 4 for the application procedure as well as Regulation 17 for the details of the application procedure.)

How does the new Act affect these rights?

Right holders can **continue to occupy** (live on or use) the land under the same terms and conditions that applied before the Act came into operation until –

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

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

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

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

The following steps must be followed when applying for a right to be recognised:

1. The application must be made on the right form (Form 8) and way set out in the Act. (See Regulation 17 for further details.)
2. The application must be made to the Communal Land Board responsible for the area in which the land is situated and over which the right is claimed.
3. The application **must be made within a specific time**. The Minister announces the date from which right holders must apply to have their rights recognised. From that date, people will have three years to apply for their right. The Minister may extend this period by issuing a public notice to this effect. The deadline for submitting these applications has been extended twice. The current deadline is the end of February 2012, as extended by Government Notice No. 18 in **Government Gazette** No. 4210 of 16 February 2009.

What may the existing right holder apply for?

The right holder may apply for –

1. a right of leasehold to be **recognised**.
2. a right of leasehold to be **granted**.
3. permission to keep an **existing fence**.

What should be included in an application to have a right recognised under this section?

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

*** What is “prescribed information”?**

An Act can only give an outline of what is needed to fully meet its provisions. The information that a Chief or Traditional Authority may need in order to decide on an application to recognise and register a leasehold right is given in the Regulations to the Act. The Regulations say the following information is needed from an applicant:

1. The applicant’s name.
2. The approximate size of the land.
3. The communal area concerned.
4. The Region in which the communal land falls.
5. The use of the land.



What will happen if a person does not apply in time to have a claim recognised or a right of leasehold granted?

There are important consequences if a person does not apply for the recognition of a right within the set time.

1. The person **will not be allowed to apply** to have the right recognised. In such a case, the person will be seen as having **relinquished** (given up) their claim to the land.
2. The land in question will **revert** to the State. Once it has gone back to the State, it will become available for re-allocation under the Act.

Take note

The Act allows a person to apply to the Minister to extend the time that the applicant can apply to have their right to leasehold recognised, but good reasons must be given to explain why the application was late. It is up to the Minister to decide whether or not to allow the applicant extra time to apply.

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

The Communal Land Board may –

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

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

The Board must **in writing** –

1. **offer** a right of leasehold in respect of the land.
2. state the **conditions** of the proposed right of leasehold.
3. state the **time by when** the offer must be accepted, which must be more than 90 days after the offer was made.
4. inform the applicant that if s/he **turns down** the offer or **does not accept** it within the set time, his/her right to that particular piece of land will fall away.

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

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

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

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

The Board –

1. must call a **hearing** to resolve the matter. Regulation 18 prescribes the manner in which a hearing must be held.
2. can make a fair decision. Such a decision may include –
 - **affirming** (confirming) the claim.
 - **affirming** the claim subject to **variations** (changes), such as changes to the size and the boundaries of the claim.
 - **rejecting** the claim. The Board is not forced in any way to reject a claim. Even if it is not sure of the validity of a claim, the Board can decide to grant the applicant a right of leasehold, either to the same land (or part thereof) that is claimed, or to another portion of land.

What happens if someone applies for authorisation to keep an existing fence where s/he already has a right to occupy customary land?

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

1. the fence or fences were erected **lawfully or with the consent** of the authority that was empowered to make that decision.
2. the fence **will not interfere** with or restrict the use and enjoyment of the commonage by members of the traditional community.
3. there are **good reasons** why the applicant should be allowed to keep the fence. The Board can also **impose conditions** if it allows a fence to be kept.

Section 36: Cancellation of right of leasehold

Under what circumstances can a right of leasehold be cancelled?

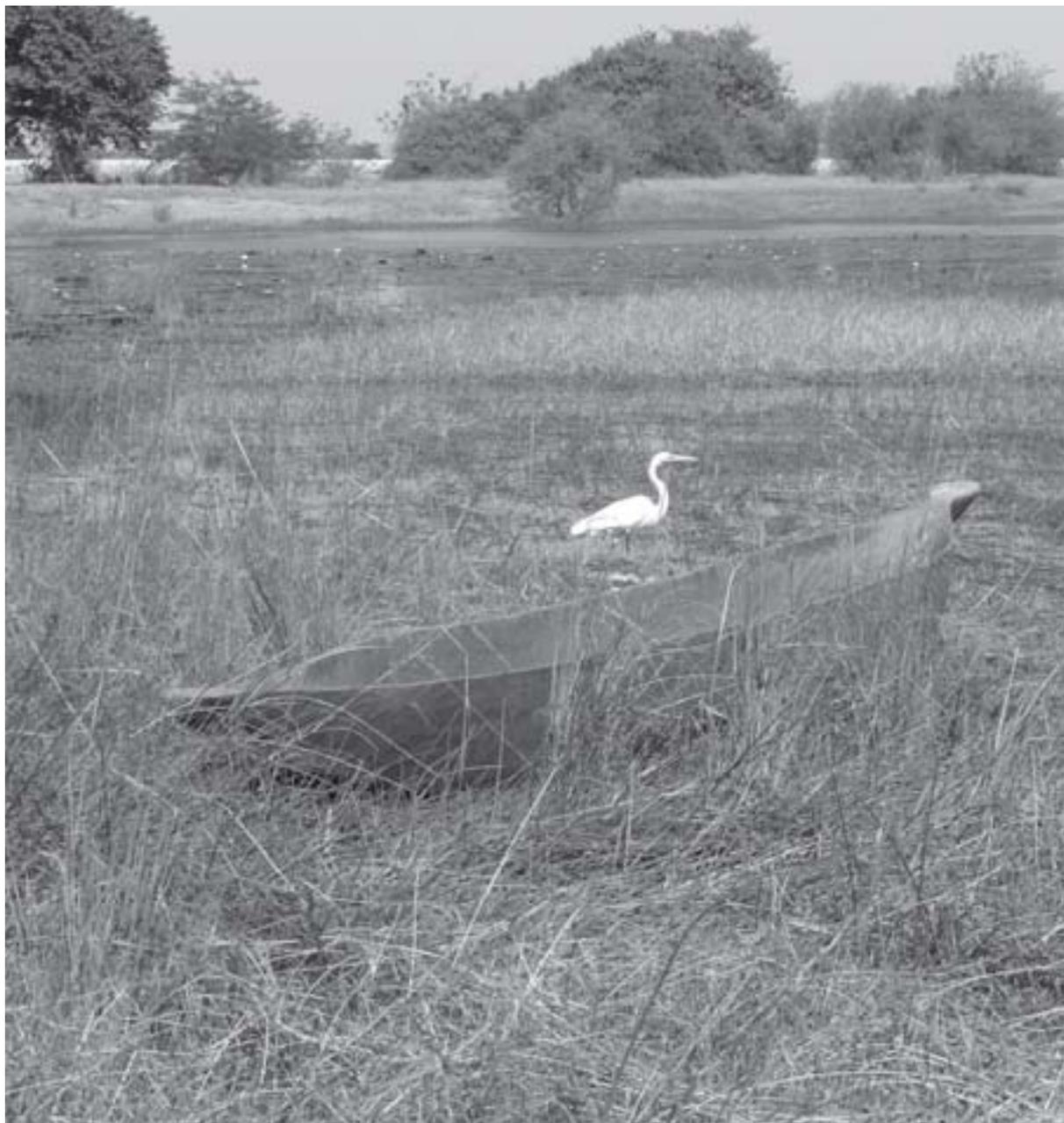
1. The reasons for cancellation will be set out in the deed of leasehold. This is the contract between the Board and the person applying for the right of leasehold.



Guide to the Communal Land Reform Act, 2002 (No. 5 of 2002)

2. The Board can also cancel the right of leasehold if the leaseholder does not comply with the requirements of the leasehold, or does not comply with the restrictions imposed regarding the use of the land.

See also the discussion under section 32 above with regard to Regulation 15, which gives additional reasons for cancelling a right of leasehold.



Water resources in communal areas are also protected. Photo by W Odendaal.

Chapter V: General provisions

This Chapter contains general provisions on how to administer and implement the Act as effectively as possible.



Improvements on the land, such as these dwellings, may be compensated for if the land rights are transferred to another person. Photograph by Z Alberto.

Section 37: Preliminary investigation of a claim to existing rights

Under section 37, the Minister can consult with a Communal Land Board for it to set up an investigating committee. This committee will carry out an investigation into a claim for existing rights, and then report its findings to the Board.

Such an investigation can be made into customary land rights and other rights to occupy communal land existing at the time the Act came into operation, no matter what sections 28 and 35 of the Act say.

A Board can ask for this type of investigation to be carried out if it has not yet decided on an application for the land occupied, used or controlled by someone, and enclosed with a fence. An investigation like this can be made even if no one has applied for existing rights to be recognised.



A preliminary investigation is carried out to find out the circumstances of –

- the occupation, use or control of land by a particular person.
- the existence of a fence on the land.
- any other matter that the Board itself may investigate under the Act or which the Board may choose.

Regulations 20 to 23 give more information about investigating committees and how their investigations are carried out.

What procedures must an investigating committee follow when carrying out an investigation?

The Act sets out the procedures to be followed in respect of a preliminary investigation, that is, an investigation into an application before the Board makes a decision about it.

1. Notice to the person who is being investigated

The chairperson of the investigating committee must let the person being investigated know about the investigation at least 30 days before it starts. This notification is done using Form 10. This notice must contain the following information:

- The time and place of the preliminary investigation.
- Notification that the person must attend the preliminary investigation so that s/he can be questioned about, for example, the occupation, use or control of the land, the existence of a fence, or any other matter that the Board may want to know about.
- Notification that s/he must bring any books or documents relating to the preliminary investigation to the hearing.

The chairperson must sign the Form 10 notice, and it must be delivered to the person being investigated in the way set out in Regulation 22. If the person does not come to the hearing, the investigating committee must state this fact in its report.

2. Summoning of witnesses

Using Form 11 in the Regulations, the chairperson of the investigating committee can summons (call) one or more of the following people to be present at the preliminary investigation:

- The Chief.
- Any traditional leader of the particular traditional community.
- Any other person who can give information on the subject of the preliminary investigation,



or who has a document or book in his/her possession or control that relates to the investigation. This book or document must be produced at the hearing.

The chairperson must sign the Form 11 summons, and it must be delivered to the person being investigated in the way set out in Regulation 22. The summons must inform the witness of the time and place of the hearing.

What offences can summonsed witnesses commit?

Witnesses are guilty of an offence if –

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

If convicted of any of these offences, a person can be fined up to N\$1,000 or be imprisoned for up to three months.

3. Conduct of the hearing

At the hearing, the following procedures are followed:

- The committee can question witnesses under oath or affirmation.
- The committee can examine or keep any books or documents for further examination or safe custody. A receipt must be given to the person for such books or documents, and a copy of the book or document must be handed to him/her.

4. Findings of the investigating committee

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

If so, the investigating committee must order the person to prepare his/her application under section 28(2) or 35(2), and to hand it to the chairperson of the investigating committee by a specified date. The committee chairperson will then refer the matter to the Board.



If the person does not follow an instruction given to him/her by the investigating committee in this regard, the committee must state this fact in its report.

What happens when a person does not come to the preliminary investigation, or does not follow the instruction to prepare and submit his/her application to the chairperson of the investigating committee?

Once the matter has been reported to the Board, the Board can use Form 12 to –

- **inform** the person of the report by the investigating committee into the claim in question.
- **order** the person to meet certain requirements that it has written in the notice within a specific time period.
- inform the person that if s/he cannot (without a good reason) comply with an instruction in the notice, the Board can declare that s/he is **divested** of the claim (no longer has a claim) over the land in question.

What are the consequences of being divested of a claim?

A person who has been declared divested of a claim –

- is not entitled to apply to have a claim recognised or registered under sections 28(2) or 35(2).
- no longer has any claim to that land or in respect of it, or to anything erected or installed on that land.

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

Section 38: Transfer of rights

This section deals with being able to transfer customary land rights or rights of leasehold to other people. When a person who was originally granted the customary land right wants to transfer that right to another person, s/he should follow the procedures set out in Regulation 24, using Forms 13 or 14 as necessary.

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

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

Why must consent be given for the transfer of rights?

This is done to enable the Communal Land Board to make the necessary changes on the Register of Land Rights in order to reflect the correct right holder and to make sure that their spouses (marriage partners) and children are protected.

Section 39: Appeals

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

The appeal tribunal will consist of at least one person, or any number of people that the Minister may appoint. If there is more than one tribunal member, the Minister will appoint the chairperson of the tribunal. The members of an appeal tribunal must have the right skills, knowledge and experience to determine an appeal.

If a tribunal member is not employed by the Public Service, they will be paid for their services to the tribunal.

All the members of the tribunal must attend the hearing in order to make up a quorum and to make a valid decision. Decisions are taken by a majority vote. Where there is no clear majority, the chairperson has the casting vote (an additional vote to decide the matter).

What are the powers of the appeal tribunal?

The appeal tribunal may –

- **confirm** a decision.
- **set aside** a decision.
- **amend** a decision.
- make **any order** it thinks fit.

Section 40: Compensation for improvements

Sometimes people make improvements on the land. For example, they may build a dam or drill a borehole on the land. This section discusses how to deal with improvements to land.



Community in the Oshivelo Village, Oshikoto Region, being made aware of how they are affected by the Communal Land Reform Act. Photograph by Z Alberto.

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

- No person is allowed to take away, destroy or damage any improvements on the land when s/he vacates it. However, the Board, after consulting with the Minister, may agree to the removal of such improvements.
- The holder of a customary land right or a right of leasehold who wants to transfer such right to another person may agree to be paid compensation by that person for improvements on the land.
- The Minister, after consulting the Board, may pay compensation to a person for **necessary** improvements when the customary land right or the right to leasehold terminates (ends). This does not apply if there was an agreement between people involved in transferring a right where compensation was paid (see the bullet point immediately above), or if payment is made for improvements to leased land (see the bullet point immediately below).
- Compensation for **necessary improvements** must be paid from money appropriated (set aside for this purpose) by Parliament.
- When the lease comes to an end and is granted to another person, the Board can make it a condition that the new leaseholder should pay an amount for any improvements made during

the lease by the previous leaseholder. When the Board receives this money, it must pay an amount of compensation to the previous leaseholder for the improvements made on the land. The Board will not get involved at all on this point of compensation if the new leaseholder had already agreed beforehand to pay the previous leaseholder for these improvements.

- The amount of compensation to be paid must be agreed between the Communal Land Board and the person holding the lease to be terminated. The amount to be paid must also be approved by the Minister. If there is no agreement, or the Minister does not approve the amount, the matter must be referred for arbitration.
- Where compensation has been paid for necessary improvements from the State Revenue Fund, the Act allows for the State Revenue Fund to be refunded in special cases. This will happen if the Board demands that a new leaseholder has to pay a contribution towards the improvements on the land. Once the Board has received this contribution, it must pay back to the State Revenue Fund the same amount that was originally paid from such Fund. If the contribution amount received from the new right holder is less than the compensation paid from the State Revenue Fund to the previous right holder, the Minister can approve the refunding of a lower amount to such Fund only if the Minister of Finance agrees to it.

Section 41: Survey of communal land

Section 40 allows the Communal Land Board to have communal lands surveyed (measured), and to have plans and diagrams drawn up of these lands. The survey of an area must be done in keeping with a lay-out plan prepared with the cooperation of the Traditional Authority concerned. The Act also allows for individual portions of land to be adjusted, subject to the payment of just compensation to the affected right holder, to prepare a lay-out plan in an effective manner.

Section 42: No consideration payable for customary land right

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

This section however does not apply to –

- compensation for improvements that may be payable in terms of section 40.
- any fees, charges or other moneys that are prescribed in Regulations when a person applies for customary land rights or rights of leasehold, or for the issue of any certificate or document in terms of the Act.

What payments are allowed by the Act?

1. Chief X says to Erastus that he will grant him a right to a residential unit, provided that Erastus gives him five head of cattle.



2. Petrus wants to transfer his right of leasehold to Hendrina. Hendrina agrees that she will pay Petrus an extra N\$25,000 for the two bungalows Petrus has built on the land.
3. Anna wants to apply to have her existing land right recognised and registered. The Communal Land Board tells her that her application will cost her N\$50. She will also have to pay another N\$100 for her certificate of registration. (These amounts are just examples.)

Answers

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

Section 43: Unlawful occupation of communal land

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

A person who occupies communal land without having the right to do it can be **evicted** (told to leave). A Chief, Traditional Authority or a Communal Land Board can also take legal action to have a person evicted.

Section 44: Fences

The Act does not allow new fences to be built. The Act also does not allow an existing fence to be kept without proper authorisation. Under section 44, if a person erects a new fence or keeps an existing fence for 30 days after his/her application for permission to keep that fence has been refused, that person has committed a crime.

What new offences does the Act create when it comes to fencing?

1. It is an offence to erect a new fence without proper authorisation under the Act.
2. It is an offence to retain a fence for more than 30 days after a person's application for authorisation to keep that fence in terms of section 28(2)(b) or 35(2)(b) has been refused.

The Act sets out penalties (punishment) for these offences, namely a maximum fine of N\$4,000 or one year's imprisonment, or both the fine and the imprisonment. If the person still refuses to take down the fence even after being convicted of a crime, that person is guilty of committing a further offence, called a **continuing offence**. The person can be fined up to N\$50 for each day that the fence remains standing.

Form 15 is used to apply for a new fence to be authorised in line with Regulation 27. A holder of a customary land right or right of leasehold does not need authorisation to erect a fence if s/he wants to fence in a homestead, cattle pen, water trough or crop field. (See Regulation 27(3).)

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

The Chief, Traditional Authority or Communal Land Board can, following prescribed procedures, –

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

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

Section 45: Regulations

Under section 45, the Minister may make regulations about any matter required or permitted under this Act that will ensure the Act is successfully implemented. Regulations were issued concerning, amongst other things, prospecting and mining operations on communal lands (see Regulation 30), the combating and prevention of soil erosion (see Regulation 31), the protection of pastoral resources (see Regulation 32), and the limitation and control of grazing stock (Regulation 10). Regulation 33 deals with matters regarding roads, watercourses, woods, and the use of water, wood, clay and stone on communal land.

Section 46: Repeal of laws

These laws are no longer applicable in Namibia:

- Development Trust and Land Act, 1936 (No. 18 of 1936).
- Development Trust and Land Amendment Act, 1939 (No. 17 of 1939).
- Development Trust and Land Amendment Act, 1954 (No. 18 of 1954).
- South West Africa Native Affairs Administration Act, 1954 (No. 56 of 1954).
- Development Trust and Land Amendment Act, 1956 (No. 73 of 1956).
- Development Trust and Land Amendment Act, 1958 (No. 41 of 1958).
- Development Trust and Land Amendment Act, 1976 (No. 110 of 1976).
- Administration of the South African Bantu Trust in South West Africa Proclamation, Proclamation No. AG 19 of 1978.

Section 47: Short title and commencement

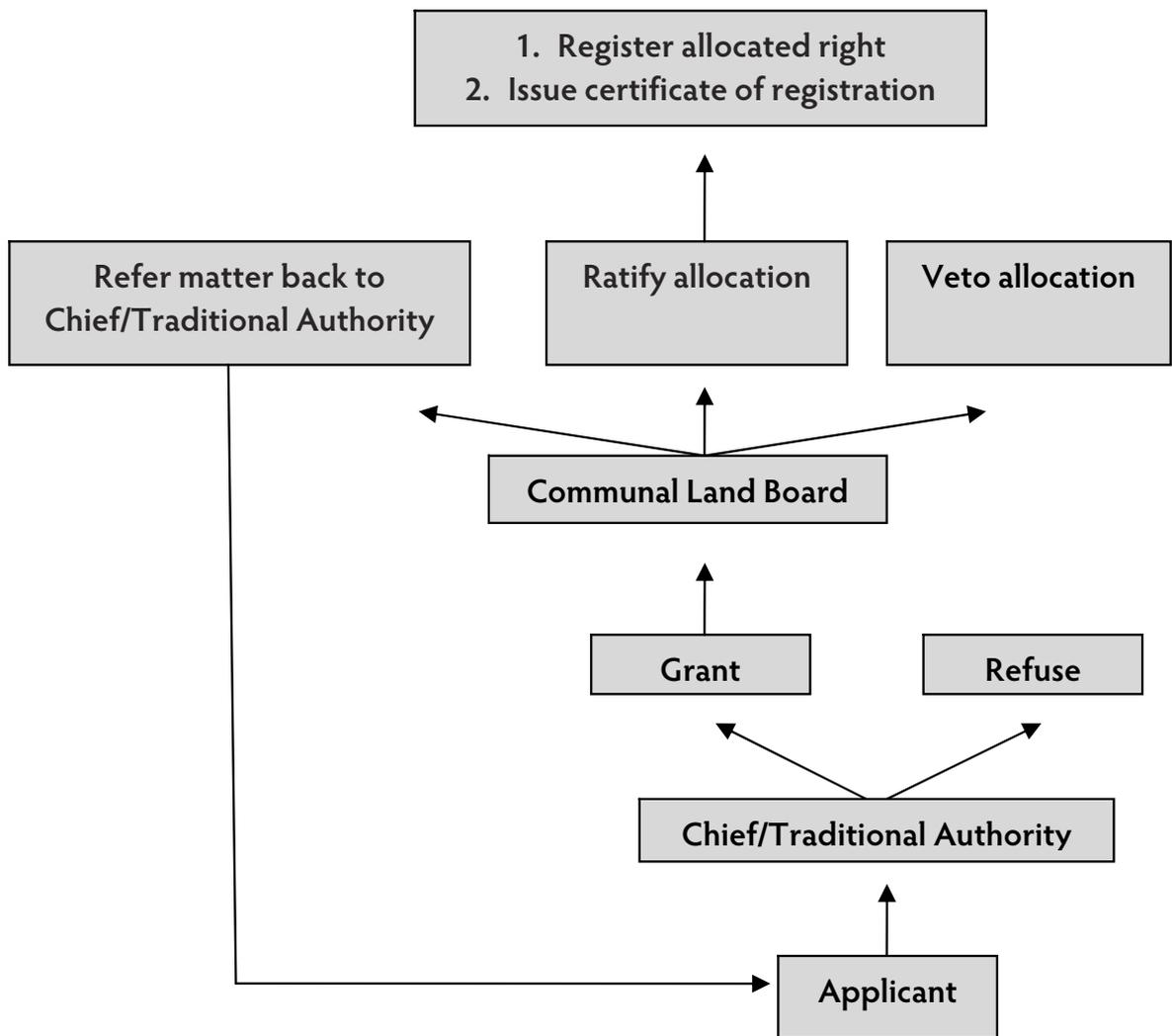
The Act is called the **Communal Land Reform Act, 2002 (No. 5 of 2002)**. It came into effect when it was published in the **Government Gazette** on 1 March 2003.



Figures

Figure 1

Application procedure for a customary land right (section 22)



FIGURES



Figure 2

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

This procedure is used when the applicant is the holder of a customary land right existing at the time the Act came into operation (1 March 2003). Existing customary land rights cover –

- a right to a farming unit
- a right to a residential unit
- a right to retain a fence
- a right to any other form of customary tenure recognised by the Minister in the **Government Gazette**.

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

Take note

1. Customary land right holders had to apply for recognition and registration of their existing customary land rights within **three** years as from 1 March 2003. The deadline for submitting these applications has been extended twice. The current deadline is the end of February 2012, as extended by Government Notice No. 19 in **Government Gazette** No. 4210 of 16 February 2009.
2. People wishing to apply for authorisation to keep fences had to do so between 1 March 2003 and 28 February 2006. The deadline for submitting these applications has been extended twice. The current deadline is the end of February 2012, as extended by Government Notice No. 19 in **Government Gazette** No. 4210 of 16 February 2009.

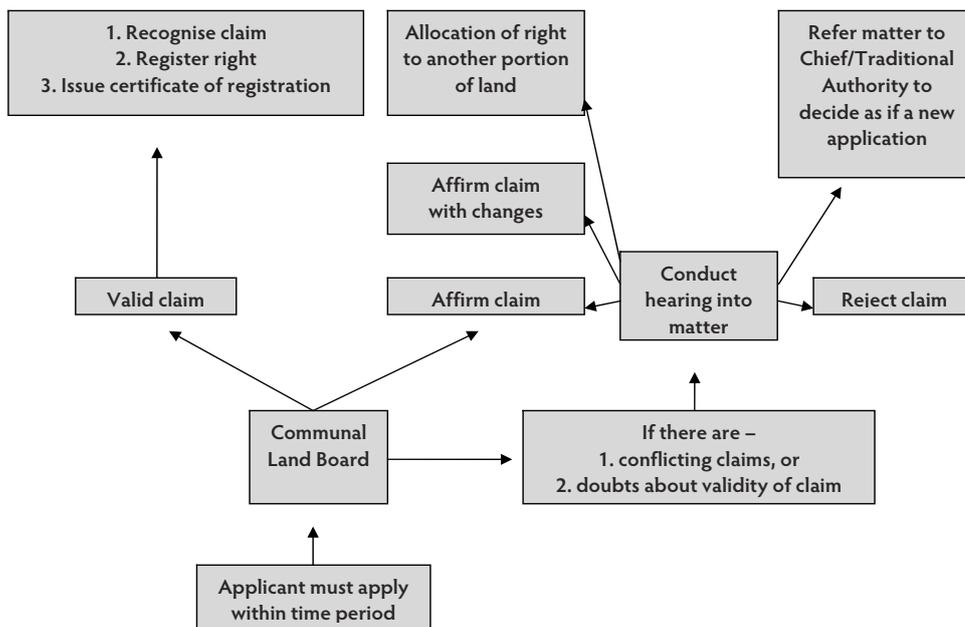


Figure 3

Application procedure for right of leasehold (section 31)

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

If the Traditional Authority withholds consent, then such Authority and the Communal Land Board should approve the appointment of the arbitrator by the Minister.

Take note

The deadline for submitting these applications has been extended twice. The current deadline is the end of February 2012, as extended by Government Notice No. 18 in **Government Gazette** No. 4210 of 16 February 2009.

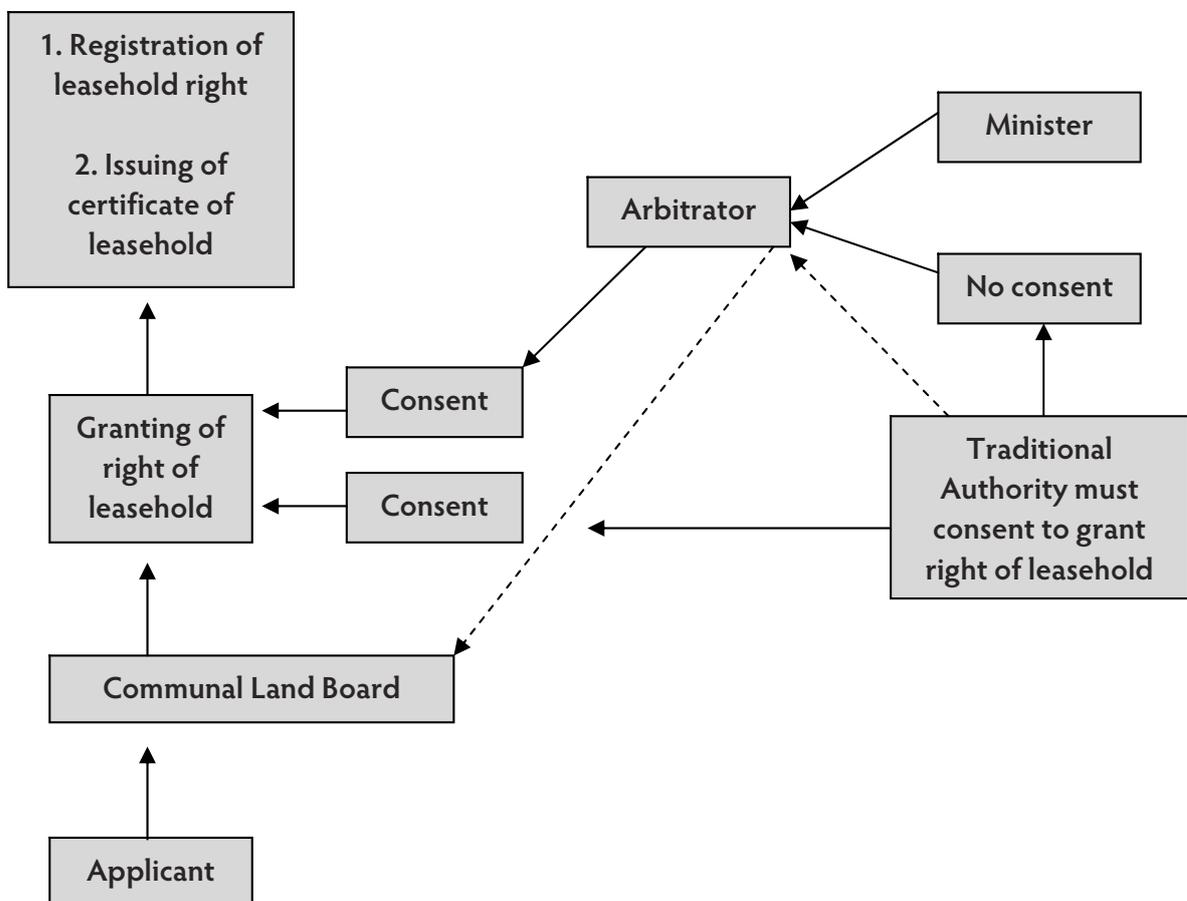
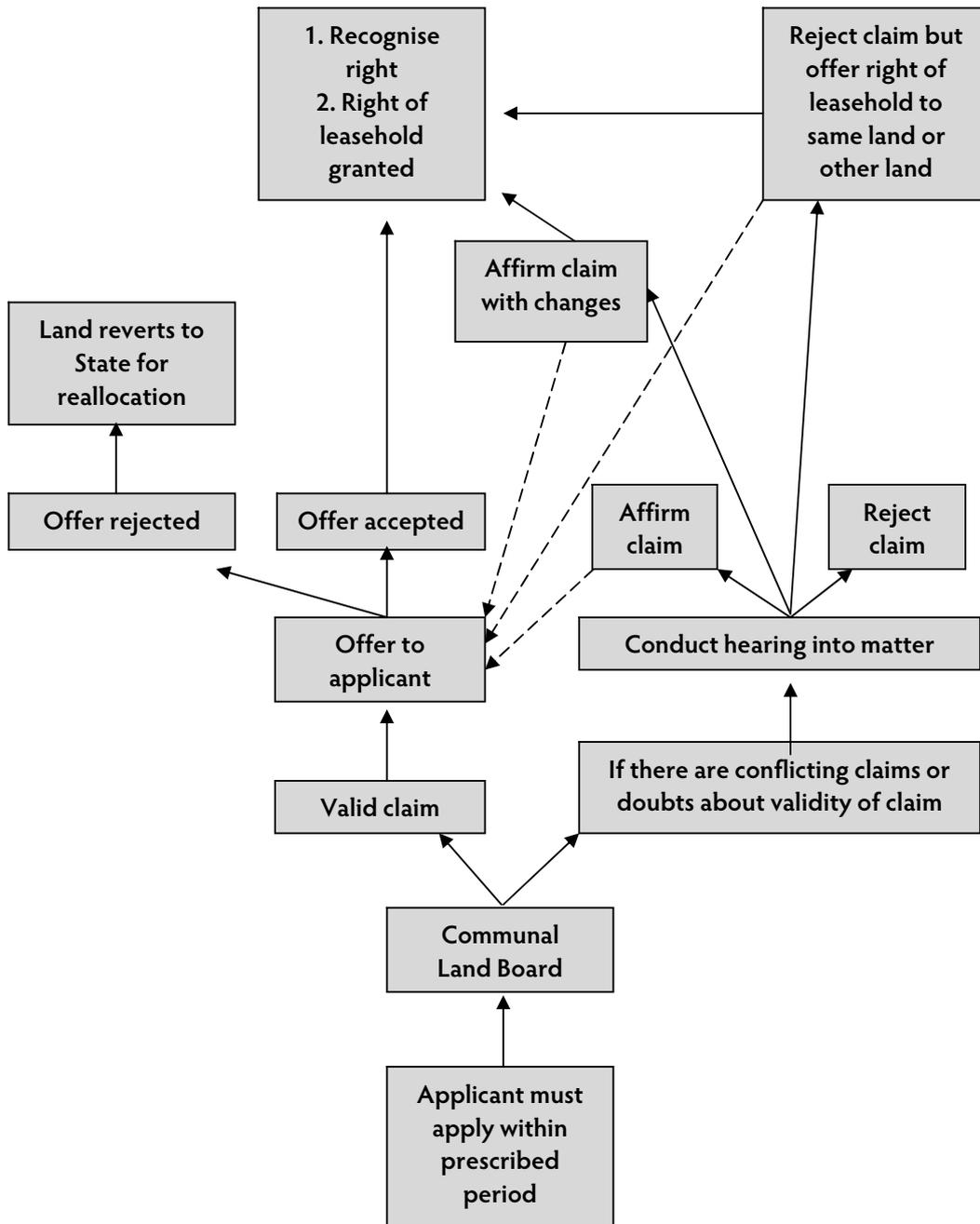




Figure 4

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

This procedure relates to rights (not rights under customary law) to occupy communal land existing at the time the Act came into operation, that is, on 1 March 2003. An application must be made within three years of a date that is announced by the Minister. The applicant also has to follow this procedure for authorisation to retain an existing fence erected on the land that relates to the existing right.





FIGURES



Contacts

Contact names and addresses

The following Government Departments and non-governmental organisations provide services and assistance related to the Communal Land Reform Act.

Centre for Research Information Action in Africa – Southern Africa Development and Consulting (CRIA SA-DC)

PO Box 23778
Johann Albrecht Street
Windhoek West
Windhoek
Tel.: (+264 61) 220 117 / 225 009
Fax: (+264 61) 232 293
E-mail: criaawhk@iafrica.com.na
Website: www.criaasadc.org

Desert Research Foundation of Namibia (DRFN)

PO Box 20232
7 Rossini Street
Windhoek
Tel.: (+264 61) 377 500
Fax: (+264 61) 230 172
E-mail: drfn@drfn.org.na
Website: www.drfn.org.na

Gesellschaft für Technische Zusammenarbeit (GTZ)/German Development Cooperation

PO Box 8016
88 John Meinert Street
Windhoek
Tel.: (+264 61) 222 447
Fax: (+264 61) 222 427

Integrated Rural Development and Nature Conservation (IRDNC)

CAPRIVI OFFICE
Private Bag 1050
Ngweze, Katima Mulilo
Tel.: (+264 66) 252 666
Fax: (+264 66) 252 518
E-mail: irdncc@iafrica.com.na



Guide to the Communal Land Reform Act, 2002 (No. 5 of 2002)

IRDNC – WÊRELDSEND OFFICE

PO Box 24050

Windhoek

Wêreldsend Environmental Centre

Kunene Region

Tel.: (+264 67) 697 055

Fax: (+264 67) 697 054

E-mail: irdncwe@mweb.com.na

IRDNC – WINDHOEK OFFICE

PO Box 24050

3rd Floor, Office Block

Maerua Park

Centaurus Road

Windhoek

Tel.: (+264 61) 228 506 / 228 509

Fax: (+264 61) 228 530

E-mail: irdnc@iafrica.com.na

Legal Assistance Centre (LAC)

KEETMANSHOOP REGIONAL OFFICE

PO Box 180

Wake Centre

Tseib Avenue

Keetmanshoop

Tel.: (+264 63) 223 187 / 223 736

Fax: (+264 63) 222 048

E-mail: south@lac.org.na

Website: www.lac.org.na

ONGWEDIVA REGIONAL OFFICE

Private Bag X5534

Oshakati

ELCIN Centre

Ongwediva

Tel.: (+264 65) 230 178

Fax: (+264 65) 230 443

E-mail: north@lac.org.na

Website: www.lac.org.na

WINDHOEK OFFICE

PO Box 604

4 Körner Street

Windhoek

Tel.: (+264 61) 223 356

Fax: (+264 61) 234 953

E-mail: info@lac.org.na
Website: www.lac.org.na

Millennium Challenge Account Namibia

Atlas House
117 Sam Nujoma Drive
Windhoek
Tel.: (+264 61) 410 400
Fax: (+264 61) 410 415

Ministry of Agriculture, Water and Forestry

Private Bag 13184
Government Office Park
Luther Street
Windhoek
Tel.: (+264 61) 208 7111
Fax: (+264 61) 221 733

Ministry of Environment and Tourism

Private Bag 13346
FGI Building
Post Street Mall
Windhoek
Tel.: (+264 61) 284 2111
Fax: (+264 61) 229 936

Ministry of Lands and Resettlement

Private Bag 13343
Block A
Brendan Simbwaye Square
Windhoek
Tel.: (+264 61) 296 5000
Fax: (+264 61) 228 240

Ministry of Regional and Local Government, Housing and Rural Development

Private Bag 13289
Government Office Park
Cluster D1 West
Luther Street
Windhoek
Tel.: (+264 61) 297 5111
Fax: (+264 61) 258 131

**Multi-disciplinary Research Centre (MRC)**

University of Namibia
Private Bag 13301
Mandume Ndemufayo Avenue
Pionierspark, Windhoek
Tel.: (+264 61) 206 3051/2
Fax: (+264 61) 206 3050 / 206 3684
E-mail: amosimane@unam.na
Website: www.unam.org

**Namibian Association of Community-based Natural Resource Management (CBNRM)
Support Organisations (NACSO)**

PO Box 98353
Pelican Square
57 Pasteur Street
Windhoek West, Windhoek
Tel.: (+264 61) 230 888
Fax: (+264 61) 237 036
E-mail: maxi@nacso.org.na / nacso@iway.na
Website: www.nacso.org.na

Namibia Community-based Tourism Association (NACOBTA)

PO Box 86099
Eros
Johann Albrecht Street
Windhoek West, Windhoek
Tel.: (+264 61) 250 558
Fax: (+264 61) 222 647
E-mail: office@nacobta.com.na
Website: www.nacobta.com.na

Namibia Development Trust (NDT)

NORTHERN OFFICE
PO Box 19089
Omuthiya
Tel.: (+264 65) 285 312
Fax: (+264 65) 285 315
E-mail: ndtokashana@iway.na

SOUTHERN OFFICE

PO Box 14
Mittel Street
Keetmanshoop

Tel.: (+264 63) 223 572
Fax: (+264 63) 224 211
E-mail: ndtsouth@iway.na

WINDHOEK OFFICE

PO Box 8226

Bachbrecht

57 Pasteur Street

Windhoek West

Windhoek

Tel.: (+264 61) 238 002/3

Fax: (+264 61) 233 261

E-mail: info@ndt.org.na

Website: www.ndt.org.na

Namibia National Farmers' Union (NNFU)

PO Box 3117

House No. 4

Axali Doëseb Street

Windhoek

Tel.: (+264 61) 271 117

Fax: (+264 61) 271 155

E-mail: info@nnfu.org.na

Website: www.nnfu.org.na

Namibia Nature Foundation (NNF)

PO Box 245

76-78 Frans Indongo Street

Windhoek

Tel.: (+264 61) 248 345

Fax: (+264 61) 248 344

E-mail: info@nnf.org.na

Website: www.nnf.org.na

Namibia Non-governmental Organisations Forum (NANGOF) Trust

PO Box 70433

Khomasdal

9 Strauss Street

Windhoek West

Windhoek

Tel.: (+264 61) 212 503

Fax: (+264 61) 211 306

E-mail: info@nangoftrust.org.na

Website: www.nangoftrust.org.na

**Namibia Rural Development Project (NRDP)**

PO Box 24886
Oponganda Community Centre
2716 Abraham Mashego Street
Wanaheda
Windhoek
Tel.: (+264 61) 237 279
Fax: (+264 61) 234 378
E-mail: nrdp@iafrica.com.na

Nyae-Nyae Development Foundation of Namibia (NNDFN)

PO Box 9026
Eros
9 Delius Street
Windhoek West
Windhoek
Tel.: (+264 61) 236 327
Fax: (+264 61) 225 997
E-mail: nndfn@iafrica.com.na

Omaheke San Trust (OST)

PO Box 1017
32 Roosevelt Street
Gobabis
Tel.: (+264 62) 564 073
Fax: (+264 62) 564 737
E-mail: ost@africaonline.com.na

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

PO Box 50155
Bachbrecht
18 Axali Doëseb Street
Windhoek West
Windhoek
Tel.: (+264 61) 236 029
Fax: (+264 61) 232 597

Southern African Institute for Environmental Assessment (SAIEA)

HEAD OFFICE
PO Box 6322
Windhoek
Tel.: (+264 61) 220 579
Fax: (+264 61) 259 183

The Rössing Foundation

Private Bag 13214
360 Sam Nujoma Drive
Klein Windhoek
Windhoek
Tel.: (+264 61) 211 721
Fax: (+264 61) 233 637
E-mail: jtjiho@rossing.com.na

Women's Action for Development (WAD)

PO Box 370
Swabou Building
25 Schönlein Street
Windhoek
Tel.: (+264 61) 227 630
Fax: (+264 61) 236 372
E-mail: wad@mweb.com.na
Website: www.wad.org.na

Working Group of Indigenous Minorities in Southern Africa (WIMSA)

PO Box 80733
8 Bach Street
Windhoek West
Windhoek
Tel.: (+264 61) 244 909
Fax: (+264 61) 272 806
E-mail: wimsareg@iafrica.com.na

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

PO Box 9681
Eros
19 Lossen Street
Ausspannplatz
Windhoek
Tel.: (+264 61) 239 945
Fax: (+264 61) 239 799
E-mail: cweaver@wwf.na

Regional Unions

KAVANGO REGIONAL FARMERS' UNION

PO Box 449

Rundu

Tel.: (066) 255 104

LIKWAMA FARMERS' COOPERATIVE UNION

PO Box 179

Katima Mulilo

Tel.: (066) 253 561

Fax: (066) 253 561

ERONGO REGIONAL FARMERS' UNION

PO Box 174

Omaruru

Tel.: (064) 570 172

Fax: (064) 571 043

MANDUME FARMERS' COOPERATIVE

PO Box 5

Ohangwena

Tel.: (065) 262 491

Fax: (065) 264 401

NGATUJANE REGIONAL FARMERS' UNION

PO Box 179

Opuwo

Tel.: (065) 273 487

Fax: (065) 273 139

OMAHEKE REGIONAL FARMERS' UNION

PO Box 1595

Gobabis

Tel.: (062) 565 181

OMUSATI FARMERS' COOPERATIVE

PO Box 1053

Oshakati

Tel.: (065) 256 517

Fax: (065) 256 502



ONGUSHU FARMERS' COOPERATIVE

PO Box 684

Oshakati

Tel.: (065) 240 689

Fax: (065) 256 502

OTJOZONDJUPA COMMUNAL FARMERS' UNION

PO Box 133

Okakarara

Tel.: (067) 317 786

Fax: (067) 317 008

SOUTHERN NAMIBIA FARMERS' UNION

Tel.: (063) 224 243

Fax: (063) 225 251

UUKUMWE FARMERS' COOPERATIVE

PO Box 2797

Ondangwa

Tel.: 081 243 3821

Fax: (065) 240 566

WELWITSCHIA REGIONAL FARMERS' UNION

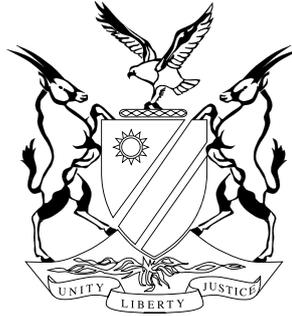
PO Box 25

Khorixas

Tel.: (065) 331 350



The Communal Land Reform Act, 2002



GOVERNMENT GAZETTE OF THE REPUBLIC OF NAMIBIA

N\$7.00

WINDHOEK - 12 August 2002

No.2787

CONTENTS

Page

GOVERNMENT NOTICE

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

Government Notice

OFFICE OF THE PRIME MINISTER

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

PROMULGATION OF ACT OF PARLIAMENT

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

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

ACT

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

(Signed by the President on 25 July 2002)

ARRANGEMENT OF SECTIONS

CHAPTER I - PRELIMINARY

1. Definitions

CHAPTER II - COMMUNAL LAND BOARDS

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

CHAPTER III - COMMUNAL LAND AREAS

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

CHAPTER IV - ALLOCATION OF RIGHTS IN RESPECT OF COMMUNAL LAND

19. Rights that may be allocated

Part 1 - Customary land rights

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



Part 2 - Right of leasehold

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

CHAPTER V - GENERAL

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

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

**CHAPTER I
PRELIMINARY**

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

“prescribed” means prescribed by regulation under this Act;

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

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

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

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

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

“this Act” includes regulations made thereunder;

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

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

Chapter II COMMUNAL LAND BOARDS

Establishment of Communal Land Boards

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

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

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

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

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

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

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



Functions of boards

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

Composition of Boards

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

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

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

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

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

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

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

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

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

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

Disqualifications

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

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

Term of office

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



Act No. 5, 2002 COMMUNAL LAND REFORM ACT, 2002

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

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

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

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

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

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

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

Meetings of boards

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

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

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

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

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

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

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

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

Committees

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

(2) A committee may regulate its own procedure.

Disclosure of interest

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

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

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

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

Remuneration

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

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



Financing of boards

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

Performance of administrative work

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

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

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

Annual report

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

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

Limitation of liability

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

CHAPTER III

COMMUNAL LAND AREAS

Extent of communal land

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

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

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

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

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

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

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

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

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

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

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

Vesting of communal land

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

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

Prohibition against fences

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

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



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

CHAPTER IV

ALLOCATION OF RIGHTS IN RESPECT OF COMMUNAL LAND

Rights that may be allocated

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

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

Part 1 - Customary land rights and grazing right

Power to allocate and cancel customary land rights

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

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

Customary land rights that may be allocated

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

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

Application for customary land right

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

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

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

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

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

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

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

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

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

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

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

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

Ratification of allocation of customary land right

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

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

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

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

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



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

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

Registration of customary land right

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

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

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

Duration of customary land right

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

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

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

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

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

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

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

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

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

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

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

Cancellation of customary land right

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

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

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

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



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

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

Recognition of existing customary land rights

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

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

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

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

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

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

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

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

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

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

Act No. 5, 2002

COMMUNAL LAND REFORM ACT, 2002

- (b) whether any other person claims to possess any right in relation to the land in question;
 - (c) whether the area of the land conforms to the prescribed size;
 - (d) the position of the boundaries or any beacons of the land.
- (7) If the board is satisfied as to the validity of the applicant's claim to the right, it must -
- (a) recognise the applicant's right to the land concerned and cause particulars of that right to be entered in the prescribed register; and
 - (b) issue to the applicant a certificate of registration.
- (8) If the applicant has, in terms of subsection (2)(b), applied for authorisation to retain any fence or fences which exist on the land in question and the board is satisfied that -
- (a) the fence or fences were erected in accordance with customary law or the provisions of any statutory law;
 - (b) the fence will not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community; and
 - (c) in the circumstances of the particular case, reasonable grounds exist to allow the applicant to retain the fence or fences concerned,

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

- (9) If, in respect of any application in terms of subsection (2), the board is of the opinion -
- (a) that there are conflicting claims in relation to the land; or
 - (b) that reasonable grounds exist to doubt the validity of the applicant's claim,

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

(10) Without prejudice to the generality of the power conferred by subsection (9), a decision under that subsection may include -

- (a) affirmation of the claim;
- (b) subject to subsection (11), rejection of the claim;
- (c) affirmation of the claim subject to any variations as the board may determine, including variation in respect of the area or the position of the boundaries of the land if the board determines that the area of the land exceeds the prescribed size or that the position of the boundaries are not in accordance with customary law; or
- (d) the allocation of a right in respect of an alternative portion of land if the land to which the applicant's claim relates encroaches on the commonage.



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

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

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

- (a) the person holding the land shall be deemed to have relinquished his or her claim to that land; and
 - (b) such land shall revert to the State and become available for the allocation of any right under this Act.
- (14) If the person who holds a right referred to in subsection (1) dies -
- (a) before the expiry of the period referred to in subsection (3) and without such person having made the application contemplated in subsection (2), the surviving spouse or, in the absence of such a spouse, such child of that person as the board, in consultation with the Chief or Traditional Authority concerned may approve, may make that application as if the right held by the deceased person vested in such spouse or such child, as the case may be; or
 - (b) after he or she has duly made the application contemplated in subsection (2), but before the determination of the application, that application shall be deemed to have been made by the surviving spouse or, in the absence of such a spouse, by a child referred to in paragraph (a), unless such spouse or such child, as the case may be, indicates otherwise.

Grazing rights

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

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

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

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

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

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

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

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

Part 2 - Right of leasehold

Power to grant right of leasehold

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

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



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

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

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

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

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

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

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

Application for right of leasehold

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

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

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

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

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

Conditions applicable to right of leasehold

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

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

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

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

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

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

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

Registration of right of leasehold

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

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

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



Duration of right of leasehold

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

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

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

Existing rights to occupy communal land

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

Cancellation of right of leasehold

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

CHAPTER V GENERAL

Preliminary investigation of claim to existing rights

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

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

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

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



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

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

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

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

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

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

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

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

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

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

Transfer of rights

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

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

Appeals

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

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

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

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

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

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

(6) An appeal tribunal may -

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

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

Compensation for improvements

40.(1) No person -

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



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

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

(4) If -

- (a) a right of leasehold has terminated in respect of land on which any improvement exists which was effected by the leaseholder during the currency of the lease; and
- (b) upon a subsequent grant of a further right of leasehold in respect of that land to another person, that person is required by the board in terms section 32(1) to pay any consideration in respect of that improvement,

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

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

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

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

Survey of communal land

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

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

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

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

No consideration payable for customary land right

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

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

Unlawful occupation of communal land

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

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

Fences

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

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

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

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

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

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



Regulations

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

Repeal of laws

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

Short title and commencement

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

SCHEDULE 1

DESCRIPTION OF COMMUNAL LAND AREAS

KAOKOLAND

Area 1

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

Area 2

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

DAMARALAND

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



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

OWAMBOLAND

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

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

KAVANGO

Area 1

From the point where meridian of longitude 18E east intersects the parallel of latitude 17E 23' 23,73" south; thence eastward along the said parallel up to a point where it intersects the middle of the Okavango River; thence generally south-eastwards along the said middle up to point where it intersects the boundary common to Namibia and Botswana; thence generally westwards along the said boundary up to a point where it joins meridian of longitude 21(east; thence southwards along the said meridian of longitude up to a point where it intersects the parallel of latitude 19(10' south; thence westwards along the said parallel of latitude to a point where it intersects the eastern boundary of the farm Talitha 1006; thence northwards along the boundaries of but excluding the following farms: Talitha 1006, Hero 1007, Verskyn 1012, Farm 1013, Wildgrund 1018 and Wildhagen 1019, to the north-eastern corner beacon of the last-mentioned farm; thence westwards along the boundaries of but excluding the following farms: Wildhagen 1019, Farm 1020, Farm 1021, Tiervlei 1166, Na-Oes 1027, Onreg 1028, Tranedal 1033, Farm 1034, Farm 1039, Farm 1040, Wag-'n-Bietjie 1046, Farm 1047, Farm 1052, Farm 1164, Farm 1058, Farm 1059, Farm 1061, Randeier 1062, the Remaining Extent of Wildernis 882 and Last Hope 880, to a point where the meridian of longitude 18(east intersects the northern boundary of the farm Last Hope 880; thence northwards along the meridian of longitude 18(east to a point where it intersect the parallel of latitude 17E 23' 23,73" south, the point of beginning.

Area 2

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

CAPRIVI

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

BUSHMANLAND

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



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

HEREROLAND WEST

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

HEREROLAND EAST

Area 1

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

Area 2

Aminuis Native Reserve 330 Registration Division L.

Area 3

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

NAMALAND

Area 1

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

Area 2

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

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

Area 3

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

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

Area 4

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



No.2787

Government Gazette 12 August 2002

35

Act No. 5, 2002

COMMUNAL LAND REFORM ACT, 2002

Area 5

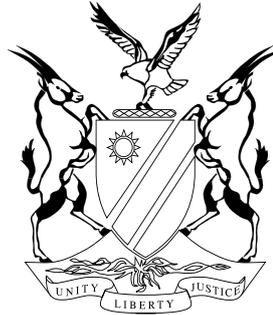
Certain Farm Hoachanas No. 120, registration division M, situate in the magisterial district of Mariental, measuring 14252,5049 hectares.

SCHEDULE 2
Laws Repealed
(section 45)

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



Regulations to the Communal Land Reform Act, 2002



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$12.40

WINDHOEK - 1 March 2003

No. 2926

CONTENTS

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

Government Notices

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

No. 33 2003

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

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

H. POHAMB
MINISTER OF LANDS, RESETTLEMENT
AND REHABILITATION

Windhoek, 24 February 2003



No. 2926 Government Gazette 1 March 2003 2

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

No. 34 2003

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

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

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

Windhoek, 24 February 2003

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

No. 35 2003

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

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

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

Windhoek, 24 February 2003

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

No. 36 2003

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

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

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

Windhoek, 24 February 2003

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

No. 37

2003

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

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

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

Windhoek, 24 February 2003

SCHEDULE

**ARRANGEMENT OF REGULATIONS
PRELIMINARY**

1. Definitions

**PART 1
CUSTOMARY LAND RIGHTS**

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

**PART II
RIGHTS OF LEASEHOLD**

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

**PART III
PRELIMINARY INVESTIGATION OF CLAIM TO EXISTING RIGHTS**

20. Form of notice regarding holding of preliminary investigation and form of summons
21. Service of notice and summons regarding holding of investigating committee

22. Conducting of preliminary investigation
23. Service of notice by board regarding report of investigating committee

PART IV GENERAL

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

PRELIMINARY

Definitions

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

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

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

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

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

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

“writing” excludes handwriting.



**PART I
CUSTOMARY LAND RIGHTS**

Application for customary land right

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

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

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

(a) stating -

(i) the name of the applicant;

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

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

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

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

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

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

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

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

Particulars pertaining to allocation of customary land right

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

(a) the type of customary land right allocated;

(b) the geographical location of the portion of land allocated;

(c) the size in square metres or hectares of the portion of land allocated; and

- (d) whether the applicant has the beneficial use of any other land, whether communal land or otherwise, and the size, location and purpose of use by the applicant of such land.

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

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

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

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

Cancellation of customary land right

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

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

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

- (a) the name, sex, nationality and date of birth of the person whose right has been cancelled;
- (b) the names of the spouse and any other dependants of the person referred to in paragraph (a);
- (c) the type of customary land right cancelled;



- (d) the geographical location of the portion of land held under such cancelled right;
- (e) the size in square metres or hectares of such portion of land;
- (f) the name of the communal area and the region in which the land is situated;
- (g) the date on which the customary land right has been cancelled; and
- (h) the reason for the cancellation of the right.

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

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

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

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

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

- (a) whether or not the application is supported by the Chief or Traditional Authority; and
- (b) any other information which the Chief or Traditional Authority may wish to bring to the attention of the board.

(4) Before the recognition and registration of a right referred to in subregulation (1) the board must display for a period of at least seven days on a notice board at its offices a notice -

- (a) stating -
 - (i) the name of the applicant;
 - (ii) the approximate size of the land in respect of which the recognition of the right is applied for;
 - (iii) the geographical location of the land in respect of which the recognition of the right is applied for; and
 - (iv) the type of customary land right applied for to be recognised, and
- (b) inviting interested parties to lodge with the board within a period of seven days any objections regarding the application.

(5) A board may cause the information contained in the notice referred to in subregulation (3) to be published in any newspaper circulating in its region or to be broadcasted on any radio station broadcasting in its region.

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

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

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

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

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

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

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

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

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

(3) The applicant concerned -

- (a) may interrogate any person who has given verbal evidence or who has submitted documentary evidence as referred to in subregulation (2)(b); and



- (b) may give and lead evidence, including documentary evidence, in support of his or her claim or in rebuttal of any document or evidence referred to in paragraph (a).
- (4) The chairperson of the Board may administer an oath or affirmation to any witness appearing before the board.
- (5) The chairperson and other members of the board with his or her permission, may put questions to any person giving evidence.
- (6) After all evidence has been given, the applicant must be afforded the opportunity to address the board on the evidence and whether or not the application must be granted.
- (7) Upon conclusion of the hearing, the Board must make a decision in accordance with section 28(10) of the Act, which must be -
 - (a) reduced to writing;
 - (b) signed by the chairperson of the board; and
 - (c) made known at the hearing.
- (8) The board may at any time adjourn the hearing to be resumed at such date, time and place as the board may determine or as the secretary of the board may by registered post communicate to all parties concerned.

Conditions regarding grazing of stock of lawful residents on commonage

- 10.** (1) Subject to subregulation (2), a lawful resident referred to in section 29(1) of the Act may not allow more than 300 large livestock or more than 1800 small livestock to graze at any given time on the commonage of a communal area.
- (2) A lawful resident referred to in subregulation (1) who is the owner of or hires any agricultural land may not allow any livestock to graze on the commonage of a communal area concerned.
- (3) No person, other than a lawful resident referred to in subregulation (1), or a person representing such a resident, may bring or cause to be brought any livestock onto the commonage of a communal area, unless such person has been granted grazing rights by the Chief or Traditional Authority in terms of section 29(3).
- (4) Any person who contravenes subregulations (1), and (2) and (3) is guilty of an offence.

**PART II
RIGHTS OF LEASEHOLD**

Application for right of leasehold

- 11.** (1) Every application in terms of section 31(1) of the Act for a right of leasehold must be made in the form of Form 5 set out in Annexure 1 and must be submitted in triplicate.
- (2) All the information required in Form 5 must be furnished fully therein or be attached thereto.
- (3) Before the granting of any right of leasehold the board must display for a period of at least seven days on a notice board at its offices a notice -



- (a) stating -
 - (i) the name of the applicant;
 - (ii) the approximate size of the land applied for;
 - (iii) the geographical location of the land applied for; and
 - (iv) the type of right of leasehold applied for, and
 - (b) inviting interested parties to lodge with the Chief or Traditional Authority within a period of seven days any objections regarding the application.
- (4) A board may cause the information contained in the notice referred to in subregulation (3) to be published in any newspaper circulating in its region or to be broadcasted on any radio station broadcasting in its region.

Application for right of leasehold for agricultural purposes outside designated area

- 12.** (1) Every application referred to in section 30(3) of the Act for approval for a right of leasehold for agricultural purposes outside a designated area must be made in the form of Form 6 set out in Annexure 1 and must be submitted in triplicate.
- (2) All the information required in Form 6 must be furnished fully therein or be attached thereto.

Maximum size of land that may be granted under a right of leasehold

- 13.** (1) Subject to section 31(3) of the Act and subregulation (2), the size of land in respect of which a right of leasehold may be granted may not exceed 50 hectares.
- (2) If an applicant applies for a size of land that exceeds the size referred to in subregulation (1), the Board must refer the matter to the Minister for his or her written approval as contemplated in section 31(3) of the Act.

Determination of amount payable in respect of right of leasehold and improvements

- 14.** (1) An amount payable in respect of a right of leasehold and improvements, if any, on a portion of land as contemplated in section 32(2) of the Act, must be determined by the Board with regard to -
- (a) the particular use or purpose for which the right is required;
 - (b) the value of the improvements, if any, on the portion of the land;
 - (c) the size of the portion of land in respect of which the right has been granted; and
 - (d) the period for which the right of leasehold has been granted.
- (2) A board may in the determination of the amount referred to in subregulation (1) use the services of valuers.
- (3) For purposes of this regulation “valuator” means -
- (a) any estate agent registered as such under the Estate Agents Act, 1976 (Act No. 112 of 1976);



- (b) any quantity surveyor or architect, as the case may be, registered respectively as such under the Quantity Surveyors' and Architects' Act, 1979 (Act No. 13 of 1979); or
- (c) any other person appointed by the Minister in writing for such purpose.

Conditions applicable to right of leasehold

- 15.** (1) The following conditions apply to a right of leasehold -
- (a) the holder of a right of leasehold or any person in his or her employment may not use the land for any purpose -
 - (i) other than that for which its occupation is authorised, without the prior written approval of the Board;
 - (ii) in contravention of the Liquor Act, 1998 (Act No. 6 of 1998) or any regulations made in terms thereof;
 - (iii) in contravention of any law relating to the cultivation, possession, disposal of or dealing in dependence-producing drugs;
 - (b) the Minister or any person duly authorised by him or her in writing may at any reasonable time enter upon and inspect the land and any buildings thereon for the purpose of ensuring compliance by the holder with any regulation or condition, or to determine or re-determine the boundaries of the land;
 - (c) the holder of a right of leasehold must preserve and maintain the beacons by which the land is demarcated and is liable for the cost of repairing or rebuilding any such beacon which has become dilapidated or damaged, and for replacing any such beacon which has been demolished, lost or misplaced, in such position as the Chief or Traditional Authority, as the case may be, directs;
 - (d) no roads or thoroughfares which exists on or over the land may be closed or otherwise obstructed to prevent free passage of persons, animals or traffic, unless such closure or obstruction is authorised by a competent authority;
 - (e) the Board may cancel any right of leasehold if -
 - (i) the right was granted in error;
 - (ii) the right of leasehold was obtained by fraud or misrepresentation;
 - (iii) the holder of that right -
 - (aa) fails to comply with any of the conditions subject to which that right was granted; or
 - (bb) fails to pay two consecutive instalments referred to in section 32(1)(c) of the Act in respect of the land;
 - (cc) defaults in paying an amount in respect of the periodical rental payable in terms of the deed of leasehold, within 30 days after having been given a written demand for such payment by the Board;
 - (iv) upon proof to the satisfaction of the Board -

- (aa) that the land is no longer used for the purpose for which it has been granted; or
 - (v) if the holder of a right of leasehold has been convicted of an offence of treason or sedition;
 - (f) the Minister may cancel a right of leasehold granted in respect of land for agricultural purposes outside a designated area in accordance with section 30(3);
 - (g) any business for the purpose of which a right of leasehold is granted must be personally conducted by the holder of a right of leasehold, or in the case of a company or a close corporation, by a director or a member thereof, unless the Board or the Minister has in writing approved that any other person may so conduct the business;
 - (h) when requested to do so by a Chief, a Traditional Authority or a board, the holder of a right of leasehold must in respect of any building on the land -
 - (i) before occupying any such building, insure that building against fire for such sum as the Minister may notify in writing and cede the insurance policy to the Government;
 - (ii) pay the initial premium on such policy and promptly on due date pay any renewal premium thereon and furnish proof of compliance with this condition to the Minister;
 - (iii) maintain any such building to the satisfaction of the Minister;
 - (i) the holder of a right of leasehold or any person in his or her employment may not demolish or effect any alteration or addition to any building or other property of the Government without the prior written approval of the Minister.
- (2) If a board has determined that the portion of land in respect of which a right of leasehold has been granted, must be surveyed, that board may determine the manner of survey that should be done in the particular case.

Register of right of leasehold and certificate of leasehold

- 16.** (1) A board must keep a register, referred to in section 33(1)(a) of the Act, in respect of allocated rights of leasehold which are ratified by the Board and enter the following particulars in respect of each such right of leasehold -
- (a) the name, sex, nationality and date of birth of the person to whom the right has been granted;
 - (b) the names of the spouse and other dependants of the person referred to in paragraph (a);
 - (c) the type of right of leasehold granted;
 - (d) the geographical location of the portion of land in respect of which the right of leasehold has been granted;
 - (e) the size in square metres or hectares of the portion of land in respect of which the right of leasehold has been granted;



- (f) the period for which the right of leasehold has been granted;
- (g) the name of the communal area and the region in which the land is situated; and
- (h) the particulars of every mortgage bond, servitude or similar right registered over the land in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), or any other law;
- (2) A -
 - (a) certificate of leasehold for any purpose other than agricultural purposes outside a designated area must be in the form of Part A of Form 7 set out in Annexure 1;
 - (b) certificate of leasehold for agricultural purposes outside a designated area must be in the form of Part B of Form 7 set out in Annexure 1,

and the original certificate must be issued to the holder at the time of the registration of the right of leasehold.

Application for recognition of right referred to in section 35(1) of the Act and for the grant of a right of leasehold under the Act

17. (1) Every application in terms of section 35(2) of the Act for the recognition of a right referred to in section 35(1) of the Act and for the grant of a right of leasehold under the Act and, where applicable, for authorisation for the retention of any fence on the land, must be made in the form of Form 8 set out in Annexure 1 and must be submitted in triplicate.

(2) All the information required in Form 8 must be furnished fully therein or be attached thereto.

(3) The letter of the Chief or Traditional authority referred to in section 35(5) of the Act should contain information relating to -

- (a) whether or not the application is supported by the Chief or Traditional Authority; and
- (b) any other information which the Chief or Traditional Authority wish to bring to the attention of the board.

(4) Before the recognition and granting of right of leasehold referred to in subregulation (1) the board must display for a period of at least seven days on a notice board at its offices a notice -

- (a) stating -
 - (i) the name of the applicant;
 - (ii) the approximate size of the land in respect of which the recognition of the right is applied for;
 - (iii) the geographical location of the land in respect of which the recognition of the right is applied for; and
 - (iv) the type of right of leasehold to be recognised and granted, and
- (b) inviting interested parties to lodge with the board within a period of seven days any objections regarding the application.

(5) A board may cause the information contained in the notice referred to in subregulation (3) to be published in any newspaper circulating in its region or to be broadcasted on any radio station broadcasting in its region.

(6) If an application referred to in subregulation (1) has been granted, the secretary of the board must issue to the applicant a certificate of leasehold in the form of Part A of Form 7 set out in Annexure 1 and enter into the register referred to in regulation 16(1) the particulars referred to in regulation 16(1).

Hearing regarding application for recognition of right referred to in section 35(1) of the Act

18. (1) If the Board in terms of section 35(10) of the Act determines that a hearing referred to in that section must be held, the secretary of the Board must in writing inform the applicant -

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

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

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

(3) The applicant -

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

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

(5) The chairperson and other members of the board may put questions to any person giving evidence.

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

(7) Upon conclusion of the hearing, the Board must make a decision in accordance with section 35(11) of the Act, which must be -

- (a) reduced to writing;
- (b) signed by the chairperson of the board; and



(c) made known at the hearing.

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

Deed of leasehold

19. If -

(a) a right of leasehold, except a right of leasehold for agricultural purposes outside a designated area, has been granted to an applicant, that applicant must in respect of that right enter into a deed of leasehold with the board in the form of Part A of Form 9 set out in Annexure 1;

(b) a right of leasehold for agricultural purposes outside a designated area has been granted to an applicant, that applicant must in respect of that right enter into a deed of leasehold with the Minister in the form of Part B of Form 9 set out in Annexure 1.

PART III

PRELIMINARY INVESTIGATION OF CLAIM TO EXISTING RIGHTS

Form of notice regarding holding of preliminary investigation and form of summons

20. (1) A notice referred to in section 37(3) of the Act must be given in the form of Form 10 set out in Annexure 1.

(2) A summons referred to in section 37(4) of the Act must be issued in the form of Form 11 set out in Annexure 1.

Service of notice and summons regarding holding of investigating committee

21. (1) A notice referred to in section 37(3) of the Act and a summons referred to in section 37(4) of the Act must be served by the chairperson of the investigating committee -

(a) by delivering it to the person named therein; or

(b) if he or she cannot be found, by delivering it at his or her residence or place of employment or business to a person apparently over the age of 16 years and apparently residing or employed there.

(2) A return by the person who served the notice or summons referred to in subregulation (1) that the service thereof has been effected may, upon the failure of the person so served to attend the preliminary investigation, be handed in at the investigation and will be *prima facie* proof of such service.

(3) A notice or a summons referred to in subregulation (1) must be served on the person concerned so that he or she is in possession thereof at least 30 days before the date determined for the preliminary investigation.

Conducting of preliminary investigation

22. (1) At the preliminary investigation, the chairperson of the investigating committee -

- (a) must read out to the person in respect of whom the investigation is held or to the person who has been summoned as contemplated section 37(4) of the Act, as the case may be, any evidence, including documentary evidence, which the investigating committee may have regarding -
 - (i) the occupation, use or control of the land by the person in respect of whom the investigation is held;
 - (ii) the existence of any fence on the land concerned; or
 - (iii) any other matter contemplated in section 37(2)(c) of the Act,as the case may be, and may lead verbal evidence in this regard;
 - (b) must at the preliminary investigation put the questions of the investigating committee to the person; and
 - (c) must request the person, if applicable, to produce to the investigating committee the book or document which that person was informed or summoned to produce.
- (2) After the applicant has answered any questions put to him or her or has produced any book or document, as the case may be, that applicant -
- (a) may interrogate any person who has given verbal evidence or who has submitted documentary evidence; and
 - (b) may give and lead evidence, including documentary evidence, in support of his or her claim or in rebuttal of any document or evidence referred to in subregulation (1)(a)(i) to (iii).
- (3) The chairperson and other members of the investigating committee may put questions to any person giving evidence.
- (4) After all evidence has been given, the applicant must be afforded the opportunity to address the investigating committee on the evidence regarding his or her claim to the land in question or to his or her entitlement to the fence on the land.
- (5) Upon conclusion of the investigation, the investigating committee must make a decision, which must be -
- (a) reduced to writing;
 - (b) signed by the chairperson of the investigating committee; and
 - (c) made known at the investigation.
- (6) After deliberating in committee the investigating committee may at any time adjourn any investigation to be resumed at such date, time and place as the investigating committee may determine or as the chairperson thereof may by registered post communicate to all parties concerned.

Service of notice by board regarding report of investigating committee

23. A notice referred to in section 37(9) of the Act -



- (a) must be given in the form of Form 12 set out in Annexure 1; and
- (b) must be served by the secretary of the Board or a person authorized in writing by the secretary -
 - (i) by delivering it to the person named therein; or
 - (ii) if he or she cannot be found, by delivering it at his or her residence or place of employment or business to a person apparently over the age of 16 years and apparently residing or employed there.

**PART IV
GENERAL**

Application for transfer of customary land right or right of leasehold

- 24.** (1) Every application for -
- (a) the transfer of a customary land right must be made in the form of Form 13 set out in the Annexure;
 - (b) the transfer of a right of leasehold must be made in the form of Form 14 set out in the Annexure,

and must be submitted in triplicate.

(2) All the information required in Forms 12 and 13 must be furnished fully therein or be attached thereto.

(3) The holder of a customary land right or a right of leasehold who wants to transfer that right, must attach the original certificate of his or her right to the application.

(4) If a customary land right has been transferred as contemplated in subregulation (1)(a), the board -

- (a) must enter the particulars referred to in regulation 5(1) in respect of the transferee in the register referred to therein, and
- (b) must issue, at the time of the transfer, to the transferee a certificate of registration of a customary land right in the form of Form 2 set out in Annexure 1.

(5) If a right of leasehold has been transferred as contemplated in subregulation (1)(b), the board -

- (a) must enter the particulars referred to in regulation 16(1) in respect of the transferee in the register referred to therein, and
- (b) must issue, at the time of the transfer, to the transferee a certificate of leasehold in the form of Part A of Form 7 set out in Annexure 1.

Appeal against decision of Chief, Traditional Authority or board

25. (1) Any person who wishes to appeal against a decision of a Chief, a Traditional Authority or a board, as the case may be, must lodge the appeal with the Permanent Secretary within 30 days after the decision has been made known or otherwise brought to his or her notice.

- (2) The Permanent Secretary must as soon as is practicable -
 - (a) after he or she has received an appeal in terms of subregulation (1), notify the Minister thereof for the purposes of the appointment of an appeal tribunal by the Minister as contemplated in section 39(1) of the Act;
 - (b) after the Minister has appointed an appeal tribunal, submit the appeal to the appeal tribunal.
- (3) An appeal referred to in subregulation (1) must be in writing and must set out -
 - (a) particulars of the decision appealed against;
 - (b) the grounds for the appeal; and
 - (c) any representations the appellant wishes to be taken into account in the hearing of the appeal.
- (4) The fee set out in Annexure 2 in respect of an appeal must accompany the appeal.
- (5) An appeal tribunal must hear an appeal within 30 days after the date from which it has received the appeal.
- (6) Any decision of an appeal tribunal in terms of section 39(6) of the Act is conclusive and binding on the parties.

Exemptions regarding retention of fences on communal land

26. Any fence which at the commencement of the Act exists on communal land and which is used to fence in homesteads, cattle pens, water troughs or crop fields may be retained on the portion of land concerned.

Procedure for application for authorisation for erection of a fence on communal land and circumstances in which such authorisation is not required

27. (1) Every application for the erection of a fence on communal land must be made in the form of Form 15 set out in Annexure 1 and must be made in triplicate.

(2) All the information required in Form 15 must be furnished fully therein or be attached thereto.

(3) No authorisation for the erection of a fence is required if the holder of a customary land right or a right of leasehold wants to fence in homesteads, cattle pens, water troughs or crop fields.

(4) If any fence is found on communal land in contravention of section 44(1) of the Act, the Chief, Traditional Authority or board, as the case may be, may in writing notify the holder of the customary land right or right of leasehold -

- (a) to remove such fence or to cause it to be removed, within a period, not exceeding 30 days, as the Chief, Traditional Authority or board, as the case may be, may determine, and such period must be specified in the notification;
- (b) that, if the fence is not removed within the period referred to in paragraph (a), that the Chief, Traditional Authority or board will remove the fence or cause the fence to be removed, and that any costs relating thereto may be recovered from the holder.



(5) If a holder referred to in subregulation (4) fails to remove the fence or to cause it to be removed within the period referred to in that subregulation, the Chief, Traditional Authority or board itself may remove the fence or cause it to be removed.

(6) A Chief, Traditional Authority or board that has removed or caused to be removed a fence as contemplated in subregulation (5), may sell the material used for the erection of the fence in order to cover any costs incurred by the Chief, Traditional Authority or board.

(7) The holder of a customary land right or a right of leasehold who has applied for authorisation for the erection of a fence as contemplated in subregulation (1) must attach a copy of the certificate of his or her right to the application.

Procedure for investigation to be conducted by board for purpose of considering an application, including the summoning of witnesses

28. (1) A board may, when considering any application under the Act, consult with, and seek advice from, any person who in the opinion of the Board may have any information or any book or document which may be relevant to the application.

(2) A board may, in order to obtain -

- (a) the presence of any person referred to in subregulation (1); or
- (b) any book or document referred to in subregulation (1) which may be relevant to the application,

summon, in the form of Form 11 set out in Annexure 1, any person to appear before the Board to be questioned or to produce the book or document.

Procedure for referral of a matter to an arbitrator

29. A board referred to in section 30(5) of the Act who wishes to submit a matter to an arbitrator, must submit the matter in the form of Form 16 set out in Annexure 1, and must attach a copy of the application to that Form.

Conditions under which prospecting or mining operations may be carried out on communal land

30. (1) Subject to the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992), every person who wants to carry out any prospecting or mining operations as contemplated in that Act on communal land must notify, prior to the making of any application in terms of that Act, the Chief or Traditional Authority of the traditional community and the board, of his or her intention to apply as aforementioned.

(2) The Chief or Traditional Authority and the board referred to in subregulation (1) must provide its recommendation regarding the application to the person referred to in that subregulation, and that person must attach that recommendation to the application.

(3) If the Chief, Traditional Authority or board referred to in subregulation (1) recommends that an application referred to in subregulation (1) not be granted, the Minister of Mines and Energy or the Mining Commissioner, as the case may be, may disregard, if he or she is of the opinion that the application ought to be granted, the recommendation of the Chief, Traditional Authority or the board that the application not be granted.

Combating and prevention of soil erosion

31. (1) Subject to the Soil Conservation Act, 1969 (Act No. 76 of 1969), the holder of any customary land right or right of leasehold must use and manage the land so as to prevent -

- (a) erosion of the soil; or
- (b) any other disturbance of the soil which creates or may create conditions which cause or may cause any form of erosion or pollution of water by silt or drift-sand,

and must in this regard at all times comply with any requirements of the Department of Agriculture and any provision of law with regard to the combating and prevention of soil erosion on land.

(2) Subject to subregulation (3), if any land referred to in subregulation (1) or any portion thereof is being so used or cultivated as to cause or is likely to cause erosion of the soil, the Chief, Traditional Authority or the board, as the case may be, may suspend or cancel in writing, addressed to the holder, any or all of the rights of the holder in or to such land.

(3) Any suspension or cancellation referred to in subregulation (2) may only be done after the Chief, Traditional Authority or board, as the case may be, -

- (a) has afforded the holder the opportunity to be heard regarding the suspension or cancellation; and
- (b) has consulted with the Minister responsible for agriculture.

Protection of pastoral resources

32. Subject to the Soil Conservation Act, 1969, the holder of any customary land right or right of leasehold must use and manage the land concerned in accordance with accepted farming practises in the area concerned and must at all times comply with any requirements of the Department of Agriculture and any provision of law with regard to the utilisation, resting and burning of pasturage.

Matters relating to roads, watercourses, woods and the use of water, wood, clay and stone on communal land

33. (1) No road or thoroughfare which at the commencement of these regulations, or which after that commencement is lawfully made, passes over communal land may be altered or closed, except by competent authority.

(2) No person may in any manner obstruct the approaches to any public watering place within any communal area, or prevent or attempt to prevent any person from drawing water from or watering stock at such watering place, or foul or defile the water at or in such watering place or interfere with the operation of any windmill, water-pump, water-pipe, dam or water storage tank or other appurtenance installed or constructed and maintained in such communal area for domestic or other water supplies.

- (3) The lawful residents of any communal area may without the payment of compensation -
 - (a) take out water from any watercourse on the communal area; and
 - (b) use wood, sand, stone or clay on the communal area,

for household purposes.



(4) Any lawful resident of any communal area who wants to take out water from any watercourse on communal land or use wood, sand, stone or clay on communal land for any purpose other than for household purposes, must obtain the consent of the Chief or Traditional Authority therefor.

Functions of secretary of a board

34. In addition to any function imposed upon the secretary of a board by or under the Act or these regulations, the secretary of a Board must -

- (a) act as accounting officer of the board;
- (b) provide secretarial services to the board and keep records of meetings of the board;
- (c) execute decisions of the board; and
- (d) supervise the staff members performing the administrative work of the board.

Eviction of persons occupying communal land

35. Any person other than a Chief, a Traditional Authority or a board who evicts any person occupying communal land from communal land which he or she legally occupies, is guilty of an offence.

Offences and penalties

36. Any person who has been convicted of an offence in terms of these regulations is liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) Any person who has been convicted of an offence in terms of these regulations and who after such conviction continues with the conduct in respect of which he or she has so been convicted, is guilty of a continuing offence and on conviction liable to a fine not exceeding N\$50 in respect of each day on which he or she so continues the conduct concerned or allows that it be continued.

Fees payable

37. The fees set out in Annexure 2 are payable in respect of the act, matter or thing mentioned therein.

Repeal of regulations

38. The regulations promulgated by Proclamation No. R.188 of 11 July 1969 are repealed.

ANNEXURE 1

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 1

**APPLICATION FOR CUSTOMARY LAND RIGHT
(Section 22 and regulation 2)**

To: The Chief
Traditional community
of
Region:
Constituency:

Office stamp:

I,

the undersigned, identity number sex

nationality name of spouse

.....

names of other dependants

.....

.....

of

.....

(state residential address)

.....

(state postal address),

hereby apply for a right to

.....

.....

(state a right to a farming unit or a right to a residential unit or such other right to any other form of customary tenure which the Minister has recognised and prescribed by notice in the *Gazette*)

in respect of:

(a) Approximate size of land applied for

(b) Communal area of traditional community in which land is situated:

.....

.....





(c) Region in which communal area is situated:

The land is currently being used for

Does any other person hold a customary land right in respect of the portion of land?

Yes No

If the answer to the question above is "Yes":

(a) State the name and address of the holder concerned, as well as the type of right:

.....
.....
.....
.....

(attach a separate list if this space is not enough)

(b) Has the holder agreed to relinquish his or her right in respect of the portion of land?

Yes No

(c) Is any compensation payable in this regard? Yes No

(d) Have suitable arrangements been made for the resettlement of the holder on alternative land?

Yes No

Is the applicant a holder in respect of any other portion of land granted under the Act or does the applicant occupy any communal land under a right referred to in section 28(1) of the Act?

Yes No

If the answer to the question above is "Yes", give a description of the portion of land:

.....
.....

and of the right:

.....

I hereby declare that the information submitted in this Form is true and correct. The fees,

namely N\$....., has been paid, for which receipt no.....

dated was issued.

.....
Signature of applicant

.....
Date





MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 2

CERTIFICATE OF REGISTRATION OF CUSTOMARY LAND RIGHT
(Section 25 and regulation 5)

IT IS HEREBY CERTIFIED THAT

.....
(description of customary land right which has been allocated)

has been allocated to

.....
(full names of person to whom the right has been allocated)

of

.....
(residential address of person to whom right has been allocated)

in respect of

.....
(portion of land in respect of which customary land right has been allocated)

measuring

.....

.....
Signature of Chairperson/Secretary
of the Board

.....
Date

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 3

**APPLICATION FOR RECOGNITION AND REGISTRATION OF EXISTING CUSTOMARY
LAND RIGHT REFERRED TO IN SECTION 28(1) AND FOR AUTHORISATION FOR
RETENTION OF FENCE
(Section 28 and regulation 7)**

To: The Chairperson
Communal Land Board
of
Region:
Constituency:

Office stamp:

I,

the undersigned, identity number sex

nationality name of spouse

.....

names of other dependants

.....

.....

of

.....

(state residential address)

.....

(state postal address)

hereby apply for recognition of the existing

.....

.....

(state a right to a farming unit or a right to a residential unit)

which was allocated to me onin respect of:

(a) Approximate size of land applied for

(b) Communal area of traditional community in which land is situated:

.....

.....

(c) Region in which communal area is situated:





What is the current use of the land?

.....

Does any other person hold a customary land right in respect of the portion of land?

Yes No

If the answer to the question above is "Yes":

(a) State the name and address of the holder concerned, as well as the type of right:

.....
.....
.....
.....

(attach a separate list if this space is not enough)

(b) Has the holder agreed to relinquish his or her right in respect of the portion of land?

Yes No

(c) Is any compensation payable in this regard? Yes No

(d) Have suitable arrangements been made for the resettlement of the holder on alternative land?

Yes No Not applicable

* I hereby attach the following documentary evidence in support of my claim

.....
.....
.....
.....

Attached please find a letter from the Chief or Traditional Authority of the traditional community, furnishing the prescribed information.

The land has been fenced as follows:

.....
.....
.....
.....
.....

(state how the land is fenced, if any)

* I hereby apply for authorisation to retain the whole fence or any part of the fence concerned:

*
.....
.....
.....
.....

I hereby declare that the information submitted in this Form is true and correct. The fees concerned, namely N\$....., has been paid, for which receipt no. dated was issued.

.....
Signature of applicant
* Delete whichever is not applicable.

.....
Date





MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 4

**CERTIFICATE OF REGISTRATION OF RECOGNITION OF EXISTING CUSTOMARY LAND
RIGHT REFERRED TO IN SECTION 28(1)
(Section 28 and regulation 8)**

IT IS HEREBY CERTIFIED THAT

.....
(description of customary land right which has been recognised)

in respect of

.....
(portion of land in respect of which customary land right has been allocated)

measuring

.....
has been recognised to be held by

.....
(full names of person to whom the right concerned has been allocated)

of

.....
(residential address of person to whom right has been allocated)

.....
Signature of Chairperson/Secretary
of the Board

.....
Date

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 5

APPLICATION FOR RIGHT OF LEASEHOLD
(Section 31 and regulation 11)

To: The Chairperson
Communal Land Board
of
Region:
Constituency:

Office stamp:

I,

the undersigned, identity number sex

nationality name of spouse

.....

names of other dependants

.....

.....

.....

.....

(state residential address)

.....

(state postal address),

hereby apply for a right of leasehold for

.....

(state the purposes of the right of leasehold)

in respect of:

(a) Approximate size of land applied for

(b) Communal area of traditional community in which land is situated:

.....

.....

(c) Region in which communal area is situated:

The land is currently being used for

.....





Has the Traditional Authority to the grant of the right of leasehold?

Yes No (Attach documentary evidence in this regard).

Does any other person hold a right of leasehold in respect of the portion of land ?

Yes No

If the answer to the question above is "Yes":

(a) State the name and address of the holder concerned, as well as the type of right:

.....
.....
.....
.....

(attach a separate list if this space is not enough)

(b) Has the holder agreed to relinquish his or her right in respect of the portion of land?

Yes No

(c) Is any compensation payable in this regard? Yes No

(d) Have suitable arrangements been made for the resettlement of the holder on alternative land?

Yes No Not applicable

Is the applicant a leaseholder in respect of another portion of land granted under the Act or does the applicant occupy any communal land under a right referred to in section 35(1) of the Act?

Yes No

If the answer to the question above is "Yes", give a description of the portion of land :

.....
.....
.....

and of the right:

.....

Is the portion of land situated within an area which has been declared a in terms of section 24A of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975)?

Yes No

If the answer to the question above is "Yes", provide the name of the conservancy:

.....

Period for which right of leasehold is applied for:

I hereby declare that the information submitted in this Form is true and correct. The fees, namely N\$....., has been paid, for which receipt no. dated was issued.

.....
Signature of applicant

.....
Date





MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 6

**APPLICATION FOR RIGHT OF LEASEHOLD FOR AGRICULTURAL
PURPOSES OUTSIDE A DESIGNATED AREA
(Section 30 and regulation 12)**

To: The Minister of Lands, Resettlement and Rehabilitation
Private Bag 13343
WINDHOEK

I,

the undersigned, identity number sex

nationality name of spouse

.....

names of other dependants

.....

.....

of

.....

(state residential address)

.....

(state postal address),

hereby apply for a right of leasehold for agricultural purposes in respect of land which is wholly/partly*
situated outside a designated area in respect of:

(a) Approximate size of land applied for

(b) Communal area of traditional community in which land is situated:
.....
.....

(c) Region in which communal area is situated:

The land is currently being used for

Does any other person hold a right of leasehold in respect of the portion of land?

Yes No



If the answer to the question above is "Yes":

(a) State the name and address of the holder concerned, as well as the type of right:

.....
.....
.....
.....

(attach a separate list if this space is not enough)

(b) Has the holder concerned agreed to relinquish his or her right in respect of the portion of land? Yes No

(c) Is any compensation payable in this regard? Yes No

(d) Have suitable arrangements been made for the resettlement of the holder on alternative land? Yes No Not applicable

Is the applicant a leaseholder in respect of another portion of land granted under the Act or does the applicant occupy any communal land under a right referred to in section 35(1) of the Act?

Yes No

If the answer to the question above is "Yes", give a description of the portion of land:

.....
.....
.....

and of the right:

.....

Is the portion of land situated within an area which has been declared a conservancy in terms of section 24A of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975)?

Yes No

If the answer to the question above is "Yes", provide the name of the conservancy:

.....

Period for which right of leasehold is applied for:

I hereby declare that the information submitted in this Form is true and correct. The

fees concerned, namely N\$....., has been paid, for which receipt no.

dated was issued.



.....
Signature of applicant

.....
Date

* Delete whichever is not applicable.

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 7

PART A

CERTIFICATE OF LEASEHOLD FOR ANY PURPOSE OTHER THAN
AGRICULTURAL PURPOSES OUTSIDE A DESIGNATED AREA
(Section 33 and regulation 16)

IT IS HEREBY CERTIFIED THAT

.....

(description of right of leasehold which has been granted)

has been granted to

.....

(full names of person to whom the right has been granted)

of

.....

(residential address of person to whom right has been granted)

.....

(postal address of person to whom right has been granted)

in respect of

.....

(portion of land in respect of which right of leasehold has been granted)

measuring

.....

(approximate size of land)

for

.....

(period for which right of leasehold has been granted)

The approval of the Minister is required and has been obtained */is not required.*

.....
Signature of Chairperson/Secretary
of the Board

.....
Date

* Delete whichever is not applicable.





MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 7

PART B

CERTIFICATE OF LEASEHOLD FOR AGRICULTURAL PURPOSES
OUTSIDE A DESIGNATED AREA
(Section 33 and regulation 16)

IT IS HEREBY CERTIFIED THAT

A right of leasehold for agricultural purposes has been granted to

.....
(full names of person to whom the right has been granted)

of

.....
(residential address of person to whom right has been granted)

.....
(postal address of person to whom right has been granted)

in respect of

.....
(portion of land in respect of which the right of leasehold has been granted)

situated wholly outside a designated area/situated partly inside the designated area of *

.....
measuring

.....
(approximate size of land)

for

.....
(period for which right of leasehold has been granted)

.....
Minister of Lands, Resettlement and Rehabilitation

.....
Date

* Delete whichever is not applicable

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 8

**APPLICATION FOR RECOGNITION OF RIGHT REFERRED TO IN SECTION 35(1) AND
FOR GRANT OF RIGHT OF LEASEHOLD
(Section 35 and regulation 17)**

To: The Chairperson
Communal Land Board
of
Region:
Constituency:

Office stamp:

I,

the undersigned, identity number sex

nationality name of spouse

.....

names of other dependants

.....

.....

of

.....

(state residential address)

.....

(state postal address),

hereby apply for recognition of the existing

.....

.....

.....

(state right which applicant holds to occupy communal land)

which was allocated to me on in respect of:

(a) Approximate size of land applied for

(b) Communal area of traditional community in which land is situated:

.....

(c) Region in which communal area is situated:





and for the grant of the following right of leasehold under the Act:

.....

What is the current use of the land?

.....

Has the Traditional Authority consented to the recognition of the right of leasehold? Yes No (Attach documentary evidence in this regard)

Does any other person hold a right of leasehold in respect of the portion of land ?

Yes No

If the answer to the question above is "Yes":

(a) State the name and address of the holder concerned, as well as the type of right:

.....

.....

.....

.....

(attach a separate list if this space is not enough)

(b) Has the holder agreed to relinquish his or her right in respect of the portion of land? Yes No

(c) Is any compensation payable in this regard? Yes No

(d) Have suitable arrangements been made for the resettlement of the holder on alternative land? Yes No Not applicable

(e) Are the fees or any other amount payable in respect of the occupation of the land, paid up to date? Yes No

If the answer to the question above is "Yes", please provide proof of the original receipt in respect thereof or such other proof acceptable to the board.

Is the applicant a leaseholder in respect of another portion of land granted under the Act or does the applicant occupy any communal land under a right referred to in section 35(1) of the Act?

Yes No

If the answer to the question above is "Yes", give a description of the portion of land:

.....

.....

and of the right:

.....

Is the portion of land situated within an area which has been declared a conservancy in terms of section 24A of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975)? Yes
No

If the answer to the question above is "Yes", provide the name of the conservancy:

.....

* I attach hereby the following documentary evidence in support of my claim

.....

.....

.....

.....

Attached please find a letter from the Chief or Traditional Authority of the traditional community, furnishing the prescribed information.

The land has been fenced as follows:

.....

.....

.....

.....

(state how the land is fenced, if any)

Period for which right of leasehold is applied for:

If the application is for recognition of a right of leasehold for agricultural purposes, is the land situated within a designated area as contemplated in section 30(2)?

Yes No

I hereby apply for authorisation to retain the whole fence or any part of the fence

concerned: *

.....

.....

I hereby declare that the information submitted in this Form is true and correct. The fees concerned, namely N\$....., has been paid, for which receipt no.

dated was issued.

.....

Signature of applicant

.....

Date

* Delete whichever is not applicable.





MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 9

PART A

DEED OF LEASEHOLD IN RESPECT OF RIGHT OF LEASEHOLD FOR ANY PURPOSE
OTHER THAN AGRICULTURAL PURPOSES OUTSIDE A DESIGNATED AREA
(Section 45, read with section 36 and regulation 19)

MEMORANDUM OF LEASE BETWEEN

the COMMUNAL LAND BOARD of

.....

Herein duly represented by
in his or her capacity as chairperson/secretary* of the said board (hereafter referred to as the "board",
on the one hand;

and

.....

(name of holder of right of leasehold)

.....

(identity number)

.....

(residential address)

(hereafter referred to as the "holder"), on the other hand.

WHEREAS the holder has applied for a right of leasehold/recognition of a right
referred to in section 35(1) of the Act* for

.....

(state purposes of right of leasehold)

in respect of

.....

(portion of land)

situated in the

(communal area of) the

(traditional community) in the region.

measuring

(size of land)

AND WHEREAS the board has granted a right of leasehold as applied for, or for

.....

in respect of

.....

(portion of land)

situated in

.....

(state communal area of traditional community and region in which land is situated

measuring*

(size of land)

to the holder subject to certain terms;

NOW THEREFORE the parties hereby agree as follows:

1. This leasehold will commence from the date of signing and will continue for a period of years from that date.
2. The amount payable by the holder in respect of the right of leasehold is
N\$..... (..... Namibia dollar) upon
registration of the right of leasehold/per month.*
3. If the holder fails to comply with any of the terms of this agreement and fail to remedy such breach within 30 (thirty) days after the date of written notification from the board to do so, the board may cancel this agreement with immediate effect, and all outstanding amounts owing to the board in respect of this Lease will immediately become payable upon such cancellation.
4. The holder must observe and adhere to all relevant statutory provisions in force from time to time.
5. The holder may not sub-lease his or her right of leasehold or transfer, cede or assign any of his or her rights or obligations in terms of this Lease without the written consent of the board concerned.
6. The parties choose as their respective *domicilia citandi et executandi* the following addresses:

The Holder
.....

The board:
.....





- 7. This agreement constitutes the whole agreement between the parties and no amendment, addition or omission hereto will be binding upon the parties, unless put in writing and signed by both parties.
- 8. Any indulgence granted by either party to the other party will not be constructed as a waiver or novation of this Lease by that party.
- 9. The parties agree to the jurisdiction of the Magistrate's Court in respect of any action which may arise from this Lease, the cancellation thereof or any other related matter.
- 10. Authorisation for the retention of the fences on the land as applied

for, or for the retention of

.....

.....

.....

.....

.....

.....

.....

has been granted/not been granted.*

(state in respect of which fences authorisation has been granted for retention, if authorisation has not been granted for retention of all the fences)

Signed at on this day of 2

AS WITNESSES:

- 1.
- 2.
On behalf of the board

Signed at on this day of 2

AS WITNESSES:

- 1.
- 2.
Holder

* Delete whichever is not applicable.

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 9

PART B

**DEED OF LEASEHOLD IN RESPECT OF RIGHT OF LEASEHOLD FOR AGRICULTURAL
PURPOSES OUTSIDE A DESIGNATED AREA
(Section 45, read with section 36 and regulation 19)**

MEMORANDUM OF LEASE BETWEEN

the **MINISTER OF LANDS, RESETTLEMENT AND REHABILITATION**

and

.....
(name of holder of right of leasehold)

.....
(identity number)

.....
(residential address)
(hereafter referred to as the "holder"), on the other hand.

WHEREAS the holder has applied for a right of leasehold for agricultural purposes in respect of land which is wholly or partly* situated outside a designated area */recognition of a right referred to in section 35(1) of the Act* for agricultural purposes in respect of land which is wholly or partly situated outside a designated area in respect of

.....
.....
.....
(portion of land)

situated in the
(communal area of) the
(traditional community in the region
and wholly outside a designated area/* partly inside the designated area of

.....
measuring
(size of land)

AND WHEREAS the Minister has granted a right of leasehold as applied for, or for

.....
in respect of



.....
(portion of land)

situated in the

(communal area of) the

(traditional community in the region

and wholly outside a designated area/* partly inside the designated area of

measuring*

(size of land)

to the holder subject to certain terms;

NOW THEREFORE the parties hereby agree as follows:

1. This leasehold will commence from the date of signing and will continue for a period of years from that date.
2. The amount payable by the holder in respect of the right of leasehold is
N\$..... (.....Namibia dollar) upon registration
of the right of leasehold/per month.*
3. If the holder fails to comply with any of the terms of this agreement and fail to remedy such breach within 30 (thirty) days after the date of written notification from the Minister to do so, the Minister may cancel this agreement with immediate effect, and all outstanding amounts due in respect of this Lease will immediately become payable upon such cancellation.
4. The holder must observe and adhere to all relevant statutory provisions in force from time to time.
5. The holder may not sub-lease his or her right of leasehold or transfer, cede or assign any of his or her rights or obligations in terms of this Lease without the written consent of the Minister.
6. The parties choose as their respective *domicilia citandi et executandi* the following addresses:

The Holder

.....

The Minister:

.....

7. This agreement constitutes the whole agreement between the parties and no amendment, addition or omission hereto will be binding upon the parties, unless put in writing and signed by both parties.

- 8. Any indulgence granted by either party to the other party will not be constructed as a waiver or novation of this Lease by that party.
- 9. The parties agree to the jurisdiction of the Magistrate’s Court in respect of any action which may arise from this Lease, the cancellation thereof or any other related matter.
- 10. Authorisation for the retention of the fences on the land as applied
for, or for the retention of

has been granted/not been granted.*

(state in respect of which fences authorisation has been granted for retention, if authorisation has not been granted for retention of all the fences)

Signed at on this day of 2

AS WITNESSES:

- 1.
- 2.
The Minister

Signed at on this day of 2

AS WITNESSES:

- 1.
- 2.
Holder

* Delete whichever is not applicable.





MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 10

**FORM OF NOTICE TO ATTEND PRELIMINARY INVESTIGATION
(Section 37 and regulation 20(1))**

Dear Mr/Mrs/Miss/Ms*
.....
.....

You are hereby notified that a preliminary investigation to establish the circumstances concerning:

(a) the occupation, use or control of the following land by you:
.....
.....
.....
.....
(give particulars of the land)

(b) the existence of the fence on the land;*

(c)
.....
.....
.....
(state any other matter which the board itself may investigate)*

will be conducted at (place) on the
day of 2..... at (time), and -

- (a) you are required to attend the preliminary investigation to be questioned on the matters mentioned in paragraphs (a), (b) or (c); and
- (b) you must at your appearance before the investigating committee submit any book or document relevant to the subject of the preliminary investigation which you may wish to submit to the investigating committee.

.....
Signature of Chairperson: Investigating Committee Date

* Delete whichever is not applicable.

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 11

SUMMONS TO APPEAR BEFORE INVESTIGATING COMMITTEE/BOARD*
(Section 37 and regulations 20(2) and 28(2))

You, (name)
of (business address)
..... (residential address)
are hereby summoned to appear at (place) on the
day of 2....., at(time) before the investigating
committee/Board of*
to be questioned regarding

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

(state the matter of the investigation or application, as the case may be)

and you are directed to bring with you and then produce at the time and place as aforesaid any books or document listed below, and then and there to testify all and singular things you know in relation to the said inquiry/application.*

Given under the hand of the Chairperson of the Investigating Committee/Board* this
..... day of 2

.....
Signature of Chairperson: Investigating Committee/Board*

List of books or documents to be produced:*

.....
.....
.....



.....
.....
.....
.....

Note: Your attention is directed to section 37(6) of the Act which reads as follows:

- “(6) A person summoned in terms of subsection (4) is guilty of an offence if he or she -
- (a) without sufficient cause fails to appear before the investigating committee at the time and place specified in the summons or to remain in attendance until excused by the chairperson from further attendance;
 - (b) at his or her appearance before the investigating committee refuses to be sworn in or to make an affirmation when requested to do so by the chairperson;
 - (c) having taken the oath or having made affirmation -
 - (i) fails to answer fully and satisfactorily any question lawfully put to him or her;
 - (ii) fails to produce a book, document or other object in his or her possession or under his or her control which he or she has been summoned to produce;
 - (iii) gives false evidence knowing it to be false or not knowing or believing it to be true.

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

* Delete whichever is not applicable.

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 12

**FORM OF NOTICE REGARDING FAILURE TO ATTEND PRELIMINARY INVESTIGATION
OR TO COMPLY WITH INSTRUCTION
(Section 37 and regulation 23)**

Dear Mr/Mrs/Miss/Ms*
.....
.....

You are hereby notified that the investigating committee of
..... has reported that you failed to attend the preliminary investigation
which was held on/failed to comply with an
instruction of the investigating committee to*

.....
.....
.....
.....
.....
.....
.....

(state the instruction(s) given by investigating committee, if any)

You are hereby directed to comply, within days from the date of this notice,
with the following requirements:

.....
.....
.....
.....
.....
.....
.....
.....

Your attention is directed to section 37(10) of the Act which reads as follows:

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





.....
Signature of chairperson of the board

.....
Date

* Delete whichever is not applicable.

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 13

APPLICATION FOR TRANSFER OF CUSTOMARY LAND RIGHT
(Section 45, read with section 38 and regulation 24)

To: The Chief Office stamp:
Traditional community
of
Region:
Constituency:

I,

the undersigned, identity number sex

nationality name of spouse

.....

names of other dependants

.....

.....

of

.....

(state residential address)

.....

(state postal address)

hereby apply that the right to

.....

(state a right to a farming unit or a right to a residential unit or such other right to any other form of customary tenure which the Minister has recognised and prescribed by notice in the *Gazette*)

which has been allocated to me onin respect of:

(a) Approximate size of land applied for

(b) Communal area of traditional community in which land is situated:

.....

.....

(c) Region in which communal area is situated:

be transferred to



.....

.....

.....

.....

.....

.....

.....

.....

(state full names, identity number, sex, nationality, name of spouse, names of other dependants, residential and postal address of proposed transferee)

Does any other person hold a customary land right in respect of the portion of land?

Yes No

If the answer to the question above is "Yes":

(a) State the name and address of the holder concerned, as well as the type of right:

.....

.....

.....

.....

(attach a separate list if this space is not enough)

(b) Has the holder agreed to relinquish his or her right in respect of the portion of land?

Yes No

(c) Is any compensation payable in this regard? Yes No

(d) Have suitable arrangements been made for the resettlement of the holder on alternative land? Yes No Not applicable

Is the proposed transferee a holder in respect of any other portion of land granted under the Act or does he or she occupy any communal land under a right referred to in section 28(1) of the Act?

Yes No

If the answer to the question above is "Yes", give a description of the portion of land:

.....

.....

and of the right:

.....



I hereby declare that the information submitted in this Form is true and correct. The fees, namely N\$....., has been paid, for which receipt no. dated was issued.

.....
Signature of holder Date

I,
(full names of proposed transferee)

hereby consent to the transfer of the customary land right to me.

.....
Signature of proposed transferee Date

Note: Please attach a copy of the certificate of registration of the customary land right.





MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 14

APPLICATION FOR TRANSFER OF RIGHT OF LEASEHOLD
(Section 45, read with section 38 and regulation 24)

To: The Chairperson
Communal Land Board
of
Region:
Constituency:

Office stamp:

I,

the undersigned, identity number sex

nationality name of spouse

.....

names of other dependants

.....

.....

of

.....

(state residential address)

.....

(state postal address)

hereby apply that the right of leasehold for

.....

(state the purposes of the right of leasehold)

which has been granted to me on in respect of:

(a) Approximate size of land applied for

(b) Communal area of traditional community in which land is situated:

.....

.....

(c) Region in which communal area is situated:

be transferred to

.....



.....
.....
.....
.....
.....

(state full names, identity number, sex, nationality, name of spouse, names of other dependants, residential and postal address of proposed transferee)

Has the Traditional Authority consented to the transfer of the right of leasehold? Yes No (Attach documentary evidence in this regard)

Does any other person hold a right of leasehold in respect of the portion of land ?

Yes No

If the answer to the question above is “Yes”:

(a) State the name and address of the holder concerned, as well as the type of right:

.....
.....
.....
.....
.....

(attach a separate list if this space is not enough)

(b) Has the holder agreed to relinquish his or her right in respect of the portion of land? Yes No

(c) Is any compensation payable in this regard? Yes No

(d) Have suitable arrangements been made for the resettlement of the holder on alternative land? Yes No Not applicable

(e) Are the fees or any other amount payable in respect of the occupation of the land, paid up to date? Yes No

If the answer to the question above is “Yes”, please provide proof of the original receipt in respect thereof or such other proof acceptable to the board.

Is the proposed transferee a leaseholder in respect of another portion of land granted under the Act or does he or she occupy any communal land under a right referred to in section 35(1) of the Act?

Yes No

If the answer to the question above is “Yes”, give a description of the portion of land:

.....
.....

and of the right:

.....

Is the portion of land situated within an area which has been declared a conservancy in terms of section 24A of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975)? Yes

No

If the answer to the question above is “Yes”, provide the name of the conservancy:

.....

Period for which right of leasehold is applied for:

I hereby declare that the information submitted in this Form is true and correct. The

fees, namely N\$....., has been paid, for which receipt no.

dated was issued.

.....
Signature of applicant

.....
Date

I,
(full names of proposed transferee)

hereby consent to the transfer of the right of leasehold to me.

.....
Signature of proposed transferee

.....
Date

Note: Please attach a copy of the certificate of leasehold.



MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 15

APPLICATION FOR ERECTION OF FENCE ON COMMUNAL LAND
(Section 45, read with section 44 and regulation 27)

To: The Chairperson/Chief*
Communal Land Board/Traditional Community*
of
Region:
Constituency:

Office stamp:

I,

the undersigned, identity number of

.....

.....
(state residential address)

.....
(state postal address),

holder of a customary land right/right of leasehold *

.....

for
(state the purposes for or use of the right)

in respect of:

(a) Approximate size of land applied for:

(b) Communal area of traditional community in which portion of land is situated:

.....

.....

(c) Region in which communal area is situated:

hereby apply for the erection of a fence/fences* on the portion of land as set out in the attached description/sketchplan.

Is the portion of land situated within an area which has been declared a conservancy in terms of section 24A of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975)?

Yes No

If the answer to the question above is "Yes", provide the name of the conservancy

concerned:





I hereby declare that the information submitted in this Form is true and correct. The fees concerned, namely N\$....., has been paid, for which receipt no dated was issued.

.....
Signature of applicant

.....
Date

* Delete whichever is not applicable.

Note: Please attach a copy of the certificate of registration of the customary land right or of the certificate of leasehold, as the case may be.

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 16

REFERRAL OF MATTER TO ARBITRATOR
(Section 45 read with section 30 and regulation 29)

To:
.....
.....
(name and address of arbitrator)

Application has been made to the board of
.....
by
.....
.....
(state name and address of applicant)

for the granting of a right of leasehold in respect of

- (a) Portion of land:
- (b) Communal area of traditional community in which portion of land is situated:
.....
.....
- (c) Size of land applied for
- (d) Region in which communal area is situated:

to be used for

The portion of land is currently being used for
.....

The Traditional Authority refuses to grant consent for the right of leasehold, but the board is of the opinion that consent ought to be given for the following reasons:

.....
.....
.....
.....





No. 2926

Government Gazette 1 March 2003

61

.....

.....

Your decision in this regard is appreciated.

.....

Signature of secretary of board

.....

Date

Note: Please attach a copy of the application.

No. 2926

Government Gazette 1 March 2003

62

ANNEXURE 2

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FEES

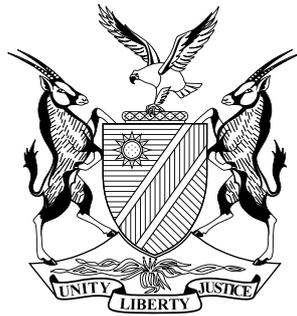
(Section 45 and regulation 38)

- | | | |
|----|--|-----------|
| 1. | Fee payable for any application in terms of the Act: | N\$25-00. |
| 2. | Fee payable for the issue of any certificate or other document in terms of the Act | N\$50-00. |
| 3. | Fee payable for an appeal in terms of the Act: | N\$25-00. |



**Communal Land
Reform Amendment
Act, 2005**
Government Gazette No. 3550

AMENDMENT ACT
Gazette No. 3550



GOVERNMENT GAZETTE OF THE REPUBLIC OF NAMIBIA

N\$2.00

WINDHOEK - 8 December 2005

No. 3550

CONTENTS

	<i>Page</i>
GOVERNMENT NOTICE	
No. 176 Promulgation of Communal Land Reform Amendment Act, 2005 (Act No. 11 of 2005), of the Parliament	1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 176 2005

PROMULGATION OF ACT OF PARLIAMENT

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

No. 11 of 2005: Communal Land Reform Amendment Act, 2005.

Act No. 11, 2005 COMMUNAL LAND REFORM AMENDMENT ACT, 2005

EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing provisions.

[] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the Communal Land Reform Act, 2002, so as to define or redefine certain expressions; to incorporate certain portions of unalienated State land as part of existing communal land areas; to replace an incorrect reference in the description of the Damaraland Communal Land Area; and to provide for incidental matters.

(Signed by the President on 21 November 2005)

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

Amendment of section 1 of Act No. 5 of 2002

1. Section 1 of the Communal Land Reform Act, 2002 (Act No. 5 of 2002) is amended -

(a) by the insertion after the definition of “leasehold” of the following definition:

“ ‘local authority area’ means -

- (a) an area declared or deemed to have been declared under section 3 of the Local Authorities Act, 1992 (Act No. 23 of 1992), to be a municipality, town or village;
- (b) an area declared under section 31 of the Regional Councils Act, 1992 (Act No. 22 of 1992), to be a settlement;”;

(b) by the substitution for the definition of “Minister” of the following definition:

“ ‘Minister’ means the Minister responsible for affairs relating to land matters;”;

(c) by the substitution for the definition of “Permanent Secretary” of the following definition:

“ ‘Permanent Secretary’ means the Permanent Secretary of the Ministry charged with the administration of affairs relating to land matters;”.

Amendment of Schedule 1 to Act No. 5 of 2002

2. Schedule 1 to the Communal Land Reform Act, 2002, is amended -

(a) by the insertion under the heading “DAMARALAND” of the sub-heading “Area 1”;



Act No. 11, 2005 COMMUNAL LAND REFORM AMENDMENT ACT, 2005

- (b) by the substitution in Area 1 of the description of the communal land area of Damaraland for the expression “Otjiwarongo 150” of the expression “Otjohorongongo 150”;
- (c) by the addition to the description of the communal land area of Damaraland of the following:

“Area 2

Otjimbingwe 104, Registration Division H.”;

- (d) by the insertion under the heading “HEREROLAND WEST” of the sub-heading “*Area I*”; and
- (e) by the addition to the description of the communal land area of Hereroland West of the following:

“Area 2

Ovitoto 55, Registration Division J.”.

Short title

- 3. This Act is called the Communal Land Reform Amendment Act, 2005.



Communal Land Reform Amendment Act (Continued)

Government Gazette No. 3591

AMENDMENT ACT (Cont.)
Gazette No. 3591



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$2.80

WINDHOEK - 15 February 2006

No. 3591

CONTENTS

GOVERNMENT NOTICES

Page

No. 43	Assignment of certain powers of the Master of the High Court to Magistrates: Administration of Estates Act, 1965	2
No. 44	Communal Land Reform Act, 2002: Recognition of existing rights to occupy communal land	3
No. 45	Communal Land Reform Act, 2002: Recognition of existing customary land rights	3
No. 46	Communal Land Reform Act, 2002: Prohibition against fences	4
No. 47	Notification of farming units offered for allotment: Agricultural (Commercial) Land Reform Act, 1995	4
No. 48	Klein Windhoek: Extension of boundaries	8
No. 49	Amendment of tariff of consulting fees chargeable by professional engineers or incorporated engineers: Engineering Profession Act, 1986	8

GENERAL NOTICES

No. 19	Establishment of the township: Sangwali: Caprivi Regional Council	9
No. 20	Establishment of the township: Okahao Extension 2: Omusati Regional Council	9
No. 21	Establishment of the township: Tsandi Extension 1: Omusati Regional Council	10
No. 22	Establishment of the township: Walvis Bay Extension 13: Municipality of Walvis Bay	10
No. 23	Establishment of the township: Walvis Bay Extension 14: Municipality of Walvis Bay	10
No. 24	Village Council Berseba: General valuation of rateable and non-rateable properties situated within the Berseba Local Authority Area	11
No. 25	Oshikuku Village Council: General valuation of rateable and non-rateable properties situated within the Oshikuku Local Authority Area	11

MINISTRY OF LANDS AND RESETTLEMENT

No. 44

2006

**COMMUNAL LAND REFORM ACT, 2002: RECOGNITION OF
EXISTING RIGHTS TO OCCUPY COMMUNAL LAND**

In terms of subsection (2) of section 35 of the Communal Land Reform Act, 2002 (Act No. 5 of 2002), I make known that with effect from the date of publication of this notice in the *Gazette* every person who claims to hold a right referred to in subsection (1) of that section, not being a right under customary law, to occupy any communal land, whether by virtue of any authority granted under any law or otherwise, shall be required to apply in the prescribed form and manner to the relevant Communal Land Board established under section 2 of that Act -

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

An application in terms of subsection (2) of section 35 of the Communal Land Reform Act, 2002, must be made within three years from the date of publication of this notice in the *Gazette*.

**J. EKANDJO
MINISTER OF LANDS AND
RESETTLEMENT**

Windhoek, 12 January 2006

MINISTRY OF LANDS AND RESETTLEMENT

No. 45

2006

**COMMUNAL LAND REFORM ACT, 2002:
RECOGNITION OF EXISTING CUSTOMARY LAND RIGHTS**

In terms of subsection (2) of section 28 of the Communal Land Reform Act, 2002 (Act No. 5 of 2002), I make known that with effect from the date of publication of this notice in the *Gazette* every person who claims to hold a right referred to in subsection (1) of that section in respect of the occupation or use of any communal land, being a right of a nature referred to in section 21 of that Act, and which was granted to or acquired by such person in terms of any law or otherwise, shall be required to apply in the prescribed form and manner to the relevant Communal Land Board established under section 2 of that Act -

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

An application in terms of the subsection (2) of section 28 of the Communal Land Reform Act, 2002, must be made within three years from the date of publication of this notice in the *Gazette*.



**J. EKANDJO
MINISTER OF LANDS AND
RESETTLEMENT**

Windhoek, 12 January 2006

MINISTRY OF LANDS AND RESETTLEMENT

No. 46

2006

COMMUNAL LAND REFORM ACT, 2002: PROHIBITION AGAINST FENCES

Subject to any exemptions prescribed under section 18 of the Communal Land Reform Act, 2002 (Act No. 5 of 2002), I make known in terms of paragraph (b) of that section that no fence of any nature which existed upon the commencement of that Act on any portion of land situated within a communal land area shall be retained on such land after 28 February 2006, unless authorisation for the erection or retention of any such fence has been granted in accordance with the provisions of the said Act.

**J. EKANDJO
MINISTER OF LANDS AND
RESETTLEMENT**

Windhoek, 16 January 2006



**Communal Land
Reform Amendment Act
(Continued)**
Government Gazette No. 4210



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$2.80

WINDHOEK - 16 February 2009

No. 4210

CONTENTS

Page

GOVERNMENT NOTICES

No. 9	Request for submission of names of Legal Practitioners for nomination for appointment as member of Namibia Medicines Regulatory Council: Medicines and related Substances Control Act, 2003	2
No. 10	Notification of appointment of members and alternate members to National Council for Higher Education: Higher Education Act, 2003	2
No. 11	Notice of appointment of persons as members of Boards of Namibia Airports Company; Namibia Ports Authority; Roads Authority; Roads Contractor Company; and Transnamib Holdings Ltd: State-Owned Enterprises Governance Act, 2006	3
No. 12	Exemption from the provisions of Section 11 and 13 of the Architects' and Quantity Surveyors Act, 1979	4
No. 13	Exemption from the provisions of Section 11, 12, 13, 16 and 17 of the Engineering Professions Act, 1986	5
No. 14	Deviation of a portion of Trunk Road 6/1, Proclamation of a portion of District Road 1521, reclassification of a portion of Trunk Road 6/1, Proclamation of a portion of main road 81, proclamation of a portion of trunk road 6/1, closing of a portion of trunk road 6/1 and the renumbering of a portion of trunk road 9/1: District of Windhoek	6
No. 15	Application and proposal that a portion of farm road 807 be closed: District of Maltahöhe	10
No. 16	Amendment of Government Notice No. 141 of 2007	10
No. 17	Declaration of Namibian Islands and Marine Reserve: Marine Resources Act, 2000	11
No. 18	Extension of period for application for recognition of existing rights to occupy Communal Land: Communal Land Reform Act, 2002	13
No. 19	Extension of period for application for recognition of existing Customary Land Rights: Communal Land Reform Act, 2002	13

GENERAL NOTICES

No. 18	Permanent closure of Portion A of Erf 413, Outjo (Measuring ± 7500 m ² in extent) as a street	13
--------	--	----

No. 4210 Government Gazette 16 February 2009 13

MINISTRY OF LANDS AND RESETTLEMENT

No. 18 2009

**EXTENSION OF PERIOD FOR APPLICATION FOR RECOGNITION
OF EXISTING RIGHTS TO OCCUPY COMMUNAL LAND:
COMMUNAL LAND REFORM ACT, 2002**

Under subsection (3) of section 35 of the Communal Land Reform Act, 2002 (Act No. 5 of 2002), I, with effect from 1 March 2009, extend the period within which an application for recognition of existing rights to occupy communal land in terms of subsection (2) of that section as referred to in Government Notice No. 44 of 15 February 2006 to the end of February 2012.

A.G. !NARUSEB

MINISTER OF LANDS AND RESETTLEMENT

Windhoek, 22 January 2009

MINISTRY OF LANDS AND RESETTLEMENT

No. 19 2009

**EXTENSION OF PERIOD FOR APPLICATION FOR RECOGNITION OF EXISTING
CUSTOMARY LAND RIGHTS: COMMUNAL LAND REFORM ACT, 2002**

Under subsection (3) of section 28 of the Communal Land Reform Act, 2002 (Act No. 5 of 2002), I, with effect from 1 March 2009, extend the period within which an application for recognition of existing customary land rights in terms of subsection (2) of that section as referred to in the Government Notice No. 45 of 15 February 2006 to the end of February 2012.

A.G. !NARUSEB

MINISTER OF LANDS AND RESETTLEMENT

Windhoek, 22 January 2009

