



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

### MINISTRY OF LAND REFORM

No. 159

2016

#### AMENDMENT OF REGULATIONS MADE IN TERMS OF COMMUNAL LAND REFORM ACT, 2002: COMMUNAL LAND REFORM ACT, 2002

Under section 45 of the Communal Land Reform Act, 2002 (Act No. 5 of 2002), I have made the regulations set out in the Schedule.

**U. NUJOMA**  
**MINISTER OF LAND REFORM**

Windhoek, 24 June 2016

### SCHEDULE

#### Definitions

1. In these regulations “the Regulations” means the Regulations published under Government Notice No. 37 of 1 March 2003 as amended by Government Notices No. 120 of 16 June 2003, No. 15 of 21 February 2014 and No. 100 of 15 June 2015.

### **Amendment of regulation 1 of Regulations**

2. Regulation 1 of the Regulations is amended -
- (a) by the insertion after the definition of “agricultural land” of the following definition:
- “‘applicant’ means a person who is a lawful resident and identified for investments to be made on his or her leased land inside an area designated for agricultural purposes;”;
- (b) by the insertion after the definition of “chief” of the following definition:
- “‘investment plan’ means a prioritised and costed infrastructure development plan emanating through a participatory planning process;” and
- (c) by the insertion after the definition of “large livestock” of the following definitions:
- “‘Ministry’ means the Ministry responsible for land;
- “organising committee” means the committee appointed through the participatory planning process for the identification of beneficiaries for infrastructure development and to develop the investment plan;”.

### **Insertion of Part 3A and Part 3B of Regulations**

4. The Regulations are amended by the insertion after Part 3 of the following parts:

“Part IIIA

CRITERIA FOR IDENTIFYING BENEFICIARY FOR INFRASTRUCTURE  
DEVELOPMENT IN DESIGNATED AREAS

#### **Notification of intention to develop farm infrastructure in area designated for agricultural purposes**

**23A.** (1) For the purpose of developing infrastructure in an area designated for agricultural purposes, the Ministry must establish participatory planning methodologies, processes or any other means, to be used to make available information regarding the intention, procedures and available budget to develop infrastructure in the designated area.

(2) The Ministry must develop and approve participatory procedures and make the participatory procedures available to the public.

(3) The participatory procedures contemplated in subregulation (2) must -

- (a) ensure full stakeholder involvement in pursuit of the international standard known as free prior informed consent;
- (b) involve all relevant stakeholders from the regional authority, local authority and community; and
- (c) consider the participation by women and persons from vulnerable groups as crucial.

(4) Any decision made at a stakeholders meeting must be made through consent or majority voting by the stakeholders at the meeting.

(5) The stakeholders at the stakeholders meeting contemplated in subregulation (4) may elect from themselves an organising committee to investigate, plan and create proposals to be presented to the stakeholders meeting for final discussion and ratification.

(6) A meeting, inclusive of a stakeholders meeting or a meeting of the organising committee, must be in the public domain and the minutes of the meeting must be made available to the public.

(7) Any key decision and forward action from the meeting contemplated in subregulation (6) must be recorded and signed for by -

(a) the stakeholders at a stakeholder meeting; or

(b) the organising committee at a meeting of the organising committee.

(8) The decisions taken at meetings held under subregulation (6) must be validated -

(a) during consecutive meetings; and

(b) where considered necessary, through separate stakeholder meetings with local communities, traditional authorities or regional councils.

(9) Local people and local or regional institutions may participate in the participatory planning process contemplated in subregulation (1).

(10) A leaseholder over communal land who is interested in infrastructure development for the land must make the interest known to the organising committee or any other body facilitating the process, either in writing or at a meeting announced through radio or newspaper.

(11) The participatory planning process contemplated in subregulation (1) includes the assessment of the legitimacy of land claims in accordance with the Act where the land claims are not yet registered, but are deemed to be according to the Act.

(12) The participatory planning process contemplated in subregulation (1) is supported by the mapping of all land parcels, formal and informal land use zones, productive assets, including infrastructure and other relevant information as well as through a basic socio-economic survey of the land users in the area.

### **Minimum eligibility criteria for infrastructure development support**

**23B.** (1) The minimum eligibility criteria for a person to qualify for infrastructure development support in areas designated for agricultural purposes are as follows:

(a) the person must be -

(i) a Namibian citizen;

(ii) a previously disadvantaged Namibian in terms of the Constitution; and

(iii) at least 18 years of age;

(c) the person must not have other land rights for grazing in commercial or communal areas, other than residential customary land rights;

(d) subject to paragraph (c), the person must hold a land right certificate issued by the Board in respect of the designated area;

(e) where leasehold rights have not been issued in respect of a designated area the Board, Traditional Authority and other key stakeholders must give consent letters for the implementation of the proposed farming business or models before the investment plan is submitted to the Ministry for approval and implementation; and

(f) existing land rights over the designated areas must be free of any disputes as Traditional Authorities and Communal Land Boards must address and resolve the disputes, if any, during the planning process before the finalisation of the beneficiary selection.

(2) The investments plan contemplated in paragraph (c) of subregulation (1) actively seeks to maximise the number of beneficiaries through sharing of benefits.

(3) The Ministry, through consultation during the planning process, may agree upon stratified envelopes for infrastructure support to cater for the specific socio-economic conditions in any given area designated for agricultural production.

### **Point scoring system for selection of applicants**

**23C.** (1) A point scoring system is used to select applicants from the list of those meeting minimum eligibility criteria where -

(a) farmers meeting the minimum eligibility criteria for infrastructure development are more than the number of applicants which can be supported; or

(b) the planning process is proven to have failed to reach a consensus investment plan.

(2) A point scoring system is used for the evaluation of applicants interested in infrastructure development by the organising committee.

(3) An applicant with the highest score is considered for infrastructure development support after all points are added to give a total score.

(4) The following are the factors considered during the evaluation with the point scoring system for infrastructure development support:

(a) (i) full time farmers score five points; and

(ii) part time farmers score two points;

(b) farmers who occupied the area before the project was known in the area score five points while farmers who occupied the area after the project was known score two points and this is to ensure that people who moved into the area for the purpose of benefiting from the project are not targeted;

(c) people already farming economically in the identified area or with a proven ability to generate marketable surplus score five points while those who are not engaged in serious farming score two points;

(d) farmers with higher level of development efforts on the land score three points; and

(e) members of recognised marginalised groups such as San, Zemba, Ovahimba including people with disabilities, score two points.

(5) Where scores are equal for two or more applicants the organising committee in consultation with the Board and traditional authorities must consider other factors to determine eligibility.

### **General condition**

**23D.** The organising committee may consider any provisions contained in any relevant Act pertaining to the development of farm infrastructure that apply to persons identified for farm infrastructure development.

## **Part IIIB**

### **CRITERIA FOR ALLOCATING FARMING UNITS IN DESIGNATED AREAS**

#### **Notice for allocation of farming unit**

**23E.** (1) For the purpose of granting a person a right of leasehold for agricultural purpose on a portion of surveyed communal land as contemplated in section 30 (1) of the Act, the Board in consultation with the respective Traditional Authority, must give notice of the information regarding the available farming unit in the *Gazette*, national radio and in at least one national newspaper and in any other manner the Board and Traditional Authority where the land is situated considers expedient.

(2) The notice contemplated in subregulation (1) must invite applicants for the allotment of a farming unit available and must state -

- (a) the location of the farming unit;
- (b) the size of the farming unit;
- (c) the land use of the farming unit;
- (d) the place where the farming unit diagram may be inspected;
- (e) any special condition upon which the farming unit is offered; and
- (f) the closing date for applications.

(3) Applications for a farming unit must be submitted to the Board through the Secretary of the Board within the region where the particular farming unit is situated.

- (4) The Secretary of the Board must -
  - (a) register, conduct an administrative compliance check and refer all applications received to the respective Traditional Authority for evaluation and recommendations to the Board for allocation; and
  - (b) on request by the Traditional Authority, support the evaluation process.

#### **Minimum eligibility criteria for allocation of farming unit**

**23F.** (1) The minimum eligibility criteria for the allocation of a farming unit to a person is as follows:

- (a) the person must be -

- (i) a Namibian citizen;
  - (ii) a previously disadvantaged Namibian in terms of the Constitution; and
  - (iii) at least 18 years of age; and
- (b) the person must not have other exclusive land rights for grazing in commercial or communal areas, other than customary land rights, except in special cases like group holdings or occupation of uneconomical farming unit.
- (2) Where more than five farming units are available in an area the available land may be divided amongst the three following groups as follows:
- (a) 10% for the applicants with 20 to 50 large livestock units or equivalent small livestock units or proof of guaranteed access to finance to procure equivalent number of livestock;
  - (b) 40% for the applicants with 51 to 100 large livestock units or equivalent small livestock units or proof of guaranteed access to finance to procure equivalent number of livestock; and
  - (c) 50% for the applicants with 101 or more large livestock units or equivalent small livestock units or proof of guaranteed access to finance to procure equivalent number of livestock.

#### **Point scoring system for allocation purposes**

**23G.** (1) On receipt of applications from the Secretary of the Board pursuant to regulation 23E(4)(a), the Traditional Authority must -

- (a) apply the eligibility criteria contemplated in regulation 23F; and
- (b) use the point scoring system set out in subregulations (3), (9) and (10) to evaluate applicants for the purpose of recommending the applicants for allocation by the Board.

(2) The Traditional Authority may request the assistance of the Secretary of the Board when the Traditional Authority applies the selection criteria or evaluates applicants as contemplated in subregulation (1).

(3) The Traditional Authority must use the following factors and associated point scoring system when evaluating, and recommending applications -

- (a) experience in relevant agricultural activities are applied as follows:
  - (i) two points for applicants with one to five years experience;
  - (ii) three points for six to 10 years experience;
  - (iii) four points for 11 to 14 years experience; and
  - (iv) five points for 15 years and above experience;
- (b) age category is applied as follows:

- (i) one point for 18 – 25 years;
  - (ii) five points for 26 – 72 years; and
  - (ii) two points for 73 years and above;
- (c) lawful local residents of the traditional authority area in which the advertised farming unit is located get points as follows:
- (i) five points for the lawful local residents; and
  - (ii) two points for all other Namibian citizens;
- (d) all applicants engaged in formal agricultural farming activities in communal areas score five points; and
- (e) members of recognised marginalised groups such as San, Zemba, Ovahimba including people with disabilities score two points.
- (4) The Traditional Authority must determine for each application the points given and these points are added together to give a total score.
- (5) Despite subregulation (4), applicants must take note that scoring the highest total score may not automatically translate into allocation of a farming unit.
- (6) The Traditional Authority concerned must submit their recommendations together with all applications and a written report to the Secretary of the Board.
- (7) The Board -
- (a) must verify the recommendations submitted under subregulation (6) to ensure that the Traditional Authority has applied the selection criteria correctly; and
  - (b) may consult the Traditional Authority for clarity on any matter relating to the recommendations contemplated in subregulation (6).
- (8) If the Board is satisfied that the Traditional Authority has applied the selection criteria correctly the Board may allocate the farming unit to the successful applicant in accordance with the Act.
- (9) The Traditional Authority or Board may use other factors at their discretion where the scores are equal for two or more applicants.
- (10) The Traditional Authority or Board must exercise its discretion contemplated in subregulation (9) within the confines of the law.”
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