



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$12.80

WINDHOEK - 29 August 2023

No. 8188

CONTENTS

Page

GOVERNMENT NOTICE

No. 270 Regulations relating to appeals to Water Tribunal: Water Resources Management Act, 2013 1

Government Notice

MINISTRY OF AGRICULTURE, WATER AND LAND REFORM

No. 270

2023

REGULATIONS RELATING TO APPEALS TO WATER TRIBUNAL: WATER RESOURCES MANAGEMENT ACT, 2013

Under section 129(1) of the Water Resources Management Act, 2013 (Act No. 11 of 2013), I have made the regulations set out in the Schedule.

C-H. SCHLETTWEIN
MINISTER OF AGRICULTURE,
WATER AND LAND REFORM

Windhoek, 16 June 2023

SCHEDULE**ARRANGEMENT OF REGULATIONS**

1. Definitions
2. Designation of messenger of Water Tribunal
3. Manner of subpoena of persons
4. Service of subpoena
5. Service of subpoena outside Namibia
6. Designation of secretary of Water Tribunal
7. Appeal to Water Tribunal
8. Lodging of appeal to Water Tribunal
9. Opening of file and referral of notice of appeal to Water Tribunal
10. Response to notice of appeal
11. Determination of date, time and venue for hearing of appeal
12. Request for further particulars
13. Submission of main points of argument
14. Hearing of appeal by Water Tribunal
15. Calling of witnesses and submission of documents, books, objects, writings or things
16. Hearing of appeal on written submissions only
17. Findings, orders and decisions of Water Tribunal
18. Granting of extension and condonation of failure
19. Giving of notice and submission of particulars
20. Service of notices on Minister
21. Application of rules of magistrates' court
22. Costs

ANNEXURES**Definitions**

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

“messenger” means the messenger of the Water Tribunal referred to in regulation 2;

“notice of appeal” means the notice of appeal set out in Annexure 2;

“the Act” means the Water Resources Management Act, 2013 (Act No. 11 of 2013);

“secretary” means the secretary of the Water Tribunal referred to in regulation 6; and

“Water Tribunal” means the Water Tribunal established by section 117(1) of the Act.

Designation of messenger of Water Tribunal

2. The Executive Director must designate one or more of the staff members referred to in section 118(1) of the Act as the messenger of the Water Tribunal entrusted with serving any process required to be served under these regulations.

Manner of subpoena of persons

3. (1) The service of a subpoena referred to in section 119(3) of the Act on a person named in the subpoena must be effected by the messenger, in the manner set out in regulations 4 and 5, on a form which is set out in Annexure 1 and is obtainable from the offices of the Ministry.

(2) Where service of a subpoena cannot be effectively served by the messenger, it may be served, at the expense of the person requiring the witness, by the messenger of the magistrates' court who is authorised to serve process of that court in the area where the process of the Water Tribunal is to be served.

Service of subpoena

4. (1) The service of any subpoena referred to in regulation 3(1) may be effected –
- (a) by delivering a copy of the subpoena personally to the person to be served, but if that person is a minor or a person under legal disability, service must be effected on the guardian, tutor, curator or the like of the minor or person under disability;
 - (b) if personal service is not reasonably possible, by leaving, subject to subregulation (4), a copy of the subpoena at the place of residence or place of business of the person to be served, but if that person is a minor or a person under legal disability, service must be effected on the guardian, tutor, curator or the like with the person apparently in charge of the premises at the time of delivery, being a person apparently not less than 18 years of age, but if for the purposes of this paragraph a building, other than a hotel, boarding-house, hostel or similar residential building, is occupied by more than one person or family, “residence” or “place of business” means that portion of the building occupied by the person on whom service is to be effected;
 - (c) by delivering a copy of the subpoena at the place of employment of the person to be served or at the place of employment of the guardian, tutor, curator or the like to that person who is apparently not less than 18 years of age and apparently in authority over the person to be served;
 - (d) if the person to be served has chosen a *domicilium citandi*, by delivering or leaving a copy of the subpoena at the *domicilium* so chosen; or
 - (e) by delivering a copy of the subpoena to any agent who is duly authorised in writing to accept service on behalf of the person to be served.
- (2) Service of any subpoena may also be effected –
- (a) on a company, close corporation or other body corporate, by handing a copy of the subpoena to a responsible employee of the company, close corporation or body corporate at its registered offices or its principal place of business in Namibia, or if no such employee is willing to accept service, by affixing a copy to the main gate or door of the office or place of business or in any other manner provided by any law or these regulations;
 - (b) on a partnership, firm or voluntary association, by handing a copy of the subpoena to a responsible employee or official at the place of business of the partnership, firm or association, or if it has no place of business, by serving a copy of the subpoena on a partner, the owner of the firm or the chairperson or secretary of the committee or other managing body of the association in one of the manners contemplated in these regulations;

- (c) on a regional council or local authority council, by handing a copy of the subpoena to the chairperson or chief executive officer of the council or to any person acting on behalf of that person;
 - (d) on a statutory body, by handing a copy of the subpoena to the secretary or similar officer of that body or any person acting on behalf of that person; and
 - (e) on the State, a minister, deputy minister or other official of the State in his or her official capacity, by handing a copy of the subpoena to a responsible staff member at the offices of the Government-Attorney.
- (3) If at any premises contemplated in subregulation (1) or (2) no person is willing to accept service of the subpoena, service may be effected by affixing a copy of the subpoena –
- (a) to the main door of the premises concerned; or
 - (b) if this is not accessible, to any other place to which the public has access.
- (4) Service of a subpoena must be effected between the hours of 07h00 and 19h00 on any day except a Sunday.
- (5) The messenger or messenger of court must upon serving a subpoena –
- (a) explain the nature and contents of the subpoena to the person on whom service is being effected; and
 - (b) state in his or her return of service or on the signed receipt that he or she has explained the nature and contents of the subpoena to the person on whom service was effected.
- (6) If it is not possible to effect service of a subpoena in any manner described in this regulation the chairperson of the Water Tribunal may, on application of a party involved in the appeal to cause service to be effected, give directions in regard to the service of a subpoena.

Service of subpoena outside Namibia

5. (1) Service of a subpoena in a foreign State must be effected –
- (a) if there is no law in that State prohibiting the service or the authorities of that State have not interposed any objection to the service, by –
 - (i) the head of any Namibian diplomatic or consular mission in that foreign State authorised to serve the subpoena;
 - (ii) any foreign diplomatic or consular officer of the foreign State to Namibia who attends to the service of a subpoena on behalf of Namibia in that foreign State;
 - (iii) an official signing as or on behalf of the head of the department dealing with the administration of justice in that foreign State and is authorised under the law of that State to serve a subpoena; or
 - (b) if the foreign State is a designated State in terms of legislation which provides for the reciprocal service of civil process, in terms of that legislation.

(2) Any subpoena to be served in a foreign State must, unless the official language or one of the official languages of that foreign State concerned is English, be accompanied by a sworn translation thereof into an official language of that State or part of that State in which the subpoena is to be served together with a certified copy of the subpoena and the translation.

(3) Any subpoena to be served as provided in subregulation (1) must be delivered to the messenger.

(4) The messenger must –

(a) transmit the subpoena, together with the translation referred to in subregulation (2), to the Executive Director of the Ministry responsible for foreign affairs or to a destination indicated by the Executive Director for service in the foreign State concerned; and

(b) satisfy himself or herself that the subpoena allows a sufficient period for service to be effected in good time.

(5) Service of any subpoena in the Republic of South Africa is proved –

(a) if service has been effected by the messenger of court in the Republic of South Africa, by the return of service of that messenger; or

(b) if service has been effected by any other person, in the manner described in subregulation (6).

(6) Service of any subpoena in a foreign State, other than –

(a) a foreign State referred to in subregulation (1)(b); or

(b) the Republic of South Africa if the service has been effected by a messenger,

is proved by a certificate duly authenticated in terms of the laws of the State of the person effecting service in terms of subregulation (1) in which the person –

(i) identifies himself or herself that he or she is authorised under the law of that State to serve the subpoena therein;

(ii) states that the subpoena in question has been served as required by the law of that State and sets out the manner and the date of the service; and

(iii) affirms that the law of the State concerned permits him or her to serve the subpoena or that there is no law in that State prohibiting the service and that the authorities of that State have not interposed any objection to the service.

(7) If the Water Tribunal is not satisfied as to the effectiveness of the service it may order such further steps to be taken as it considers practicable and reasonable.

Designation of secretary of Water Tribunal

6. The Executive Director must designate one of the staff members referred to in section 118(1) of the Act as the secretary of the Water Tribunal.

Appeal to Water Tribunal

7. A person who intends to appeal, in terms of section 120 of the Act, to the Water Tribunal must do so in the manner and form contemplated in regulation 8.

Lodging of appeal to Water Tribunal

8. (1) A person contemplated in regulation 7 must lodge with the secretary a notice of appeal in triplicate –

- (a) in a form which is substantially similar to Annexure 2; and
- (b) at the offices of the secretary during normal office hours of the secretary.

(2) The secretary or a member of staff of the secretary must acknowledge receipt of the notice of appeal contemplated in subregulation (1) by –

- (a) signing and dating a copy of the notice; and
- (b) handing a signed and dated copy referred to in paragraph (a) to the person who lodges the notice of appeal.

Opening of file and referral of notice of appeal to Water Tribunal

9. The secretary must –

- (a) open a file in respect of the appeal;
- (b) obtain a copy of the decision of the Minister appealed against; and
- (c) within 15 days after receipt of the notice of appeal refer –
 - (i) the notice of appeal to the Water Tribunal by delivering to the chairperson of the Water Tribunal –
 - (aa) a copy of the notice of appeal lodged with the secretary in accordance with regulation 8(1); and
 - (bb) a copy of the decision referred to in paragraph (b);
 - (ii) a copy of the notice of appeal to the Minister.

Response to notice of appeal

10. (1) If the Minister intends to oppose an appeal he or she must cause a written reply to be delivered to the appellant within 20 days of the date of service of the notice of appeal on the Minister.

- (2) The Minister must in such reply –
 - (a) deal with the grounds of appeal set out in the notice of appeal; and
 - (b) set out the reasons for the decision appealed against.

(3) An appellant is entitled to amend the grounds of appeal within 10 days of receipt of the reply contemplated in subregulation (2) and the Minister is entitled to reply to such amendments within 10 days of the receipt of the amended notice of appeal.

Determination of date, time and venue for hearing of appeal

11. (1) The chairperson of the Water Tribunal must determine a date, time and venue on and at which and where the hearing of the appeal is to start and must accordingly notify the secretary in writing not less than 30 days before the date of the hearing so determined.

(2) The secretary must notify the appellant and the Minister of the date, time and venue of the hearing of the appeal determined under subregulation (1), not less than 30 days before the date so determined.

Request for further particulars

12. (1) The chairperson of the Water Tribunal may request in writing, at any time after the receipt of the copies referred to in regulation 9(c)(i) –

- (a) the appellant to furnish the Water Tribunal with further particulars relating to –
 - (i) any particulars submitted with, or statement made in, his or her notice of appeal lodged with the secretary;
 - (ii) his or her grounds for appeal;
- (b) the Minister to furnish the Water Tribunal with further particulars relating to the decision delivered to the Water Tribunal in accordance with regulation 9(c)(i)(bb).

(2) The appellant or Minister must furnish the further particulars requested under subregulation (1) to the chairperson of the Water Tribunal within a period of 10 days after receipt of the request.

(3) The further particulars furnished in accordance with subregulation (2) form part of the record of the appeal heard by the Water Tribunal.

Submission of main points of argument

- 13.** (1) Not less than –
- (a) 21 days before the date of the hearing of the appeal determined under regulation 11(1) the appellant must submit to the secretary and to the Minister one copy of a concise statement of the main points, without elaboration, which he or she intends to argue on appeal, including a list of the authorities, if any, to be presented in support of each of those arguments; and
 - (b) 15 days before the date determined for the hearing of the appeal determined under regulation 11(1), the Minister must submit to the secretary and to the appellant one copy of a concise statement of the reply of the Minister, without elaboration, to the main points of argument of the appellant contemplated in paragraph (a), and the main points, without elaboration, which the Minister or his or her representative intends to argue on appeal, including a list of the authorities, if any, to be presented in support of each of those arguments.

(2) The secretary must, not less than 12 days before the date determined under regulation 11(1) for the hearing of the appeal, deliver a copy of each of the statements submitted to him or her in terms of subregulation (1) to the chairperson and to every member of the Water Tribunal hearing the appeal.

Hearing of appeal by Water Tribunal

14. (1) In this regulation and in regulations 15, 16 and 17 the –

- (a) “appellant” includes the person contemplated in section 120(4) of the Act representing the appellant;
- (b) “representative of the Minister” means a person appointed by the Minister for the purpose of representing the Minister at the hearing of the appeal, and includes the person contemplated in section 120(4) of the Act representing the Minister.

(2) The chairperson of the Water Tribunal must preside at the hearing of an appeal in accordance with section 120 of the Act and these regulations.

(3) The –

- (a) appellant may address the Water Tribunal on the main points of argument submitted to the secretary in terms of regulation 13(1)(a);
- (b) representative of the Minister may address the Water Tribunal on the reply of the Minister and on the main points of argument submitted to the secretary and the appellant in terms of regulation 13(1)(b).

(4) Despite subregulation (3), the appellant or the representative of the Minister may address the Water Tribunal, with the consent of the Water Tribunal, on any matter relevant to the appeal but not specified in the statements contemplated in regulation 13(1).

(5) The representative of the Minister or the appellant may reply to the address of the appellant or the representative of the Minister, be made in terms of subregulation (4).

Calling of witnesses and submission of documents, books, objects, writings or things

15. (1) Subject to section 119(2) of the Act and regulation 16, the Water Tribunal may, after consultation with the parties involved in the appeal who are present or represented –

- (a) instruct the appellant or the Minister, at any time during the hearing of the appeal, to call witnesses to give evidence before the Water Tribunal on any issue relevant to the appeal to be determined by the Water Tribunal;
- (b) allow, on the application by any party to the appeal, that party to call a witness or submit to the Water Tribunal a copy of any document, book, object, writing or thing not submitted to the Council, if the Water Tribunal is satisfied that –
 - (i) the party making the application was not aware, and could not reasonably have been aware, of the existence of that witness, document, book, object, writing or thing at the time when the Minister made the decision appealed against; and
 - (ii) it would not be reasonable, under the circumstances relating to the appeal, to deny that party the opportunity to call that witness or submit that document, book, object, writing or thing to the Water Tribunal for consideration.

- (2) If a party calls a witness to testify in accordance with subregulation (1) –
 - (a) the other party and the chairperson may cross-examine that witness; and
 - (b) that witness is entitled to all the privileges that a witness giving evidence in the magistrates' court is entitled to.

Hearing of appeal on written submissions only

16. (1) For the purposes of this regulation, “written submission” means a written submission by a party as contemplated in subregulation (4).

(2) Despite regulations 14 and 15, but subject to this regulation, the Water Tribunal may decide, after consultation with the parties involved in the appeal who are present or represented, to hear the appeal by means of written submissions by the parties only, if the Water Tribunal is satisfied that it is appropriate and fair to both parties, in the circumstances of the case, to so hear the appeal.

(3) If the Water Tribunal decides under subregulation (2) to hear the appeal on written submissions by the parties only, the chairperson thereof must –

- (a) determine a reasonable period of time within which the parties must lodge their written submissions with the Water Tribunal;
- (b) postpone the hearing to a date agreed between the Water Tribunal and the parties; and
- (c) accordingly inform the parties thereof at the hearing.

(4) A written submission by a party to the Water Tribunal contemplated in this regulation must –

- (a) set out the arguments of that party relating to the appeal, with an elaboration on each one of those arguments, including a list of the authorities, if any, in support of the arguments; and
- (b) be lodged with the secretary within the period of time determined under subregulation (3)(a) for the lodging of the submissions.

(5) The secretary must deliver a copy of a written submission lodged with him or her by a party in accordance with subregulation (4)(b) to the other party within a period of seven days after the receipt of the written submission.

(6) A party may lodge with the secretary, within a period of 14 days after receipt of the copy of the written submission delivered to him or her by the secretary in accordance with subregulation (5), a written reply to the written submission.

(7) The secretary must, within a period of three days after the expiry of the period referred to in subregulation (6), deliver to the chairperson and to every member of the Water Tribunal, a copy of every written submission, and of every reply to a written submission, lodged with him or her in accordance with this regulation.

(8) The Water Tribunal may hear and take a decision on the appeal on the contents of the notice of appeal, decision, documents, books, objects, writings or things delivered to it in accordance with regulation 7, and the arguments raised in the submissions delivered to it in

accordance with subregulation (7) of this regulation, without requiring the parties to submit to the Water Tribunal their main points of argument in accordance with regulation 13 or to address the Water Tribunal in accordance with regulation 14.

Findings, orders and decisions of Water Tribunal

17. (1) After having heard an appeal in accordance with section 120 of the Act and these regulations –

- (a) the Water Tribunal may make the findings and orders and take the decisions it considers appropriate;
- (b) the chairperson of the Water Tribunal may –
 - (i) make known the findings, orders and decisions of the Water Tribunal relating to the appeal; or
 - (ii) may postpone the announcement of those findings, orders and decisions until a date and time determined by the Water Tribunal.
- (2) The chairperson of the Water Tribunal must make known in writing –
 - (a) the findings of; and
 - (b) any orders made or decisions taken by,

the Water Tribunal as contemplated in this regulation, and must submit a copy of the findings, orders and decisions to the secretary.

(3) The secretary must deliver a copy of the findings, orders and decisions contemplated in subregulation (2) to the appellant and to the Minister.

Granting of extension and condonation of failure

18. Despite any provision of these regulations, the Water Tribunal may, on good cause shown and subject to the conditions as the Water Tribunal may determine, grant to any of the parties to the appeal an extension of time for the lodging of any notice of appeal, document, book, object, writing or thing in terms of, or condone any failure by a party to comply with any of, these regulations.

Giving of notice and submission of particulars

19. Any notice or particulars that must be given or submitted in accordance with these regulations –

- (a) by or to the appellant must be given or submitted by or to the appellant or, if the appellant has appointed a person to represent him or her as contemplated in section 120(4) of the Act, by or to that person;
- (b) by or to the Minister must be given or submitted by or to the secretary or, if the Minister has appointed a representative, by or to that representative;
- (c) to the Water Tribunal must be given or submitted to the secretary.

Service of notices on Minister

20. A notice to the Minister in terms of these regulations must be served upon the secretary or a member of his or her staff at the offices of the secretary.

Application of rules of magistrates' court

21. When hearing an appeal in accordance with section 120 of the act and these regulations, the Water Tribunal may apply any of the rules of the magistrates' court as it may determine and with the necessary changes, to any matter not provided for in the Act or these regulations, provided that the rules so applied are not inconsistent with the Act or these regulations.

Costs

22. The Water Tribunal or any court of law hearing any matter regarding the Act or these regulations may not make an order for costs in favour of or against any party to an appeal under the Act or these regulations unless that party has acted in a frivolous or vexatious manner by instituting, proceeding with or defending the appeal.

ANNEXURE 1

SUBPOENA IN HEARING OF EVIDENCE BY WATER TRIBUNAL
(Regulation 3(1))

In the appeal by to the Water Tribunal against a decision of the Minister responsible for water affairs as contemplated in section 120(1) of the Water Resources Management Act, 2013.

TO THE MESSENGER:

INFORM THE FOLLOWING PERSON:

.....
(Full names and surname)

..... (Gender) (Occupation)

.....
(Place of business)

.....
(Place of residence)

That he or she is hereby required to appear in person before the Water Tribunal at
(place) on the day of 20 at o'clock and thereafter to remain in attendance until excused by the chairperson of the Water Tribunal, in order to testify on behalf of the above-named appellant / the Water Tribunal in regard to all matters within his or her knowledge relating to an appeal by hearing of evidence now pending before the Water Tribunal and wherein the appellant appeals against the decision(s) of the Minister responsible for water affairs to:

1.

2.

3.

AND INFORM THE PERSON that he or she is further required to bring with him or her and to produce to the chairperson of the Water Tribunal:

1.

2.

3.

4.

(describe accurately each document, book, object, writing or thing to be produced)

AND FURTHER -

(a) DIRECT the attention of the person to the extract of section 119(10)** of the Water Resources Management Act, 2013, at the bottom of this Subpoena, relating to actions or conduct which constitutes contempt of the Water Tribunal.

(b) INFORM THE PERSON that any contempt of the Water Tribunal constitutes an offence contemplated in section 127(1) of the Water Resources Management Act, 2013, in respect of which he or she, if convicted, is liable to a fine not exceeding N\$50 000 or imprisonment

for a period not exceeding two years, or to both the fine and the imprisonment and, in the case of a second conviction, to a fine not exceeding N\$500 000 or imprisonment for a period not exceeding 10 years, or to both the fine and the imprisonment.

DATED at on this day of 20

.....
Chairperson of the Water Tribunal

If:

- (a) The appeal is against more decisions, attach a separate sheet containing the other decisions concerned.
- (b) If more documents, books, objects, writing or things are required to be brought and to be produced to the Water Tribunal, attach a separate sheet containing the other documents, books, objects, writing or things to be brought and to be produced.

** Section 119(10):

A person who –

- (a) having been subpoenaed to appear before the Water Tribunal, without good cause fails to attend;
- (b) without good cause, fails to produce any book, document or object specified in a subpoena;
- (c) having appeared in response to a subpoena, fails to remain in attendance until excused by the Water Tribunal;
- (d) refuses to take the oath or to make an affirmation as a witness when required to do so by the Water Tribunal;
- (e) subject to section 119(4), refuses to answer any question fully and to the best of the person's knowledge and belief;
- (f) during proceedings before the Water Tribunal, behaves improperly or insults a member of the Water Tribunal or interrupts the proceedings; or
- (g) prejudices or improperly influences the proceedings of the Water Tribunal,

commits contempt of the Water Tribunal.

ANNEXURE 2

NOTICE OF APPEAL TO WATER TRIBUNAL
(Regulation 8)

In the appeal by to the Water Tribunal,
against a decision of the Minister responsible for water affairs as contemplated in article 120(1)(a)
to (l) of the Water Resources Management Act, 2013.

TO:

The Secretary
Water Tribunal

Room, Floor

..... Building

..... Street

WINDHOEK

In accordance with section 120(1) of the Water Resources Management Act, 2013, the Appellant
appeals to the –

WATER TRIBUNAL

against the decision, conduct or act of the Minister contemplated in section 120(1)(a) to (l) of the
Water Resources Management Act, 2013, of which particulars appear on the second page of this
Annexure. #

Dated at this day of 20

Signature of Appellant
or of the person appointed to represent him or her.

Physical address of Appellant or of person appointed to represent him or her for service of notices
and documents:

.....
.....

(This address for service must be located within a distance of ten kilometres from the office of
the secretary.)

Full names and surname, identity number and profession of the Appellant:

.....
.....
.....

Received this Notice of Appeal:

Signature of recipient

For and on behalf of the secretary of the Water Tribunal.

Date: _____ Time: _____

PARTICULARS OF DECISION, CONDUCT OR ACT OF THE MINISTER CONTEMPLATED IN SECTION 120(1) APPEALED AGAINST: #

#(a) Date of decision, conduct or act concerned, if applicable:

- 1.
- 2.
- 3.

#(b) Particulars of decision, conduct or act concerned:

- 1.
.....
.....
- 2.
.....
.....
- 3.
.....
.....

(If this space is insufficient, add a schedule setting out particulars.)

GROUND(S) THAT APPEAL IS BASED ON:

Set out in full the grounds that the appeal is based on:

.....
.....

