

CONTENTS

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

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

No. 33

2003

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

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

H. POHAMBA
MINISTER OF LANDS, RESETTLEMENT
AND REHABILITATION

Windhoek, 24 February 2003

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

No. 34

2003

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

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

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

Windhoek, 24 February 2003

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

No. 35

2003

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

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

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

Windhoek, 24 February 2003

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

No. 36

2003

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

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

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

Windhoek, 24 February 2003

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

No. 37

2003

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

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

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

Windhoek, 24 February 2003

SCHEDULE

**ARRANGEMENT OF REGULATIONS
PRELIMINARY**

1. Definitions

**PART I
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.

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

.....

Date

* Delete whichever is not applicable.

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 4

**CERTIFICATE OF REGISTRATION OF RECOGNITION OF EXISTING CUSTOMARY
LAND RIGHT REFERRED TO IN SECTION 28(1)
(Section 28 and regulation 8)**

IT IS HEREBY CERTIFIED THAT

.....
(description of customary land right which has been recognised)

in respect of

.....
(portion of land in respect of which customary land right has been allocated)

measuring

.....
has been recognised to be held by

.....
(full names of person to whom the right concerned has been allocated)

of

.....
(residential address of person to whom right has been allocated)

.....
Signature of Chairperson/Secretary
of the Board

.....
Date

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

.....

.....

of

.....

(state residential address)

.....

(state postal address),

hereby apply for a right of leasehold for

.....
(state the purposes of the right of leasehold)

in respect of:

(a) Approximate size of land applied for

(b) Communal area of traditional community in which land is situated:

.....
.....

(c) Region in which communal area is situated:

The land is currently being used for

.....

Has the Traditional Authority to the grant of the right of leasehold?

Yes No (Attach documentary evidence in this regard).

Does any other person hold a right of leasehold in respect of the portion of land ?

Yes No

If the answer to the question above is "Yes":

(a) State the name and address of the holder concerned, as well as the type of right:

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

(Attach a separate list if this space is not enough)

(b) Has the holder agreed to relinquish his or her right in respect of the portion of land? Yes No

(c) Is any compensation payable in this regard? Yes No

(d) Have suitable arrangements been made for the resettlement of the holder on alternative land? Yes No Not applicable

Is the applicant a leaseholder in respect of another portion of land granted under the Act or does the applicant occupy any communal land under a right referred to in section 35(1) of the Act?

Yes No

If the answer to the question above is "Yes", give a description of the portion of land:

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

and of the right:

.....

Is the portion of land situated within an area which has been declared a in terms of section 24A of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975)?

Yes No

If the answer to the question above is "Yes", provide the name of the conservancy:

.....

Period for which right of leasehold is applied for:

I hereby declare that the information submitted in this Form is true and correct. The

fees, namely N\$....., has been paid, for which receipt no. dated was issued.

.....
Signature of applicant

.....
Date

MINISTRY OF LANDS, RESETTLEMENT AND REHABILITATION

FORM 6

APPLICATION FOR RIGHT OF LEASEHOLD FOR AGRICULTURAL
PURPOSES OUTSIDE A DESIGNATED AREA
(Section 30 and regulation 12)

To: The Minister of Lands, Resettlement and Rehabilitation
Private Bag 13343
WINDHOEK

I,

the undersigned, identity number sex

nationality name of spouse

.....

names of other dependants

.....

.....

of

.....

(state residential address)

.....

(state postal address),

hereby apply for a right of leasehold for agricultural purposes in respect of land which is wholly/partly* situated outside a designated area in respect of:

(a) Approximate size of land applied for

(b) Communal area of traditional community in which land is situated:

.....
.....

(c) Region in which communal area is situated:

The land is currently being used for

.....

Does any other person hold a right of leasehold in respect of the portion of land?

Yes No

If the answer to the question above is "Yes":

(a) State the name and address of the holder concerned, as well as the type of right:

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

(attach a separate list if this space is not enough)

(b) Has the holder concerned agreed to relinquish his or her right in respect of the portion of land? Yes No

(c) Is any compensation payable in this regard? Yes No

(d) Have suitable arrangements been made for the resettlement of the holder on alternative land? Yes No Not applicable

Is the applicant a leaseholder in respect of another portion of land granted under the Act or does the applicant occupy any communal land under a right referred to in section 35(1) of the Act? Yes

No

If the answer to the question above is "Yes", give a description of the portion of land:

.....
.....
.....,

and of the right:
.....

Is the portion of land situated within an area which has been declared a conservancy in terms of section 24A of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975)? Yes

No

If the answer to the question above is “Yes”, provide the name of the conservancy:

.....

Period for which right of leasehold is applied for:

I hereby declare that the information submitted in this Form is true and correct. The

fees concerned, namely N\$....., has been paid, for which receipt no.
dated was issued.

.....
Signature of applicant

.....
Date

Delete whichever is not applicable.

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 Office stamp:
Communal Land Board
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 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* Office stamp:
Communal Land Board/Traditional Community*
of
Region:
Constituency:

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:

.....

.....

.....

.....

.....

.....

Your decision in this regard is appreciated.

.....
Signature of secretary of board

.....
Date

Note: Please attach a copy of the application.

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.
