
GENERAL NOTICE

NOTICE 199 OF 2008

DEPARTMENT OF LAND AFFAIRS

PUBLICATION FOR GENERAL COMMENT OF –

- (A) REGULATIONS INTENDED TO BE MADE IN TERMS OF THE COMMUNAL LAND RIGHTS ACT, 2004 (ACT NO. 11 OF 2004); AND
- (B) PROPOSED AMENDMENTS TO REGULATIONS MADE IN TERMS OF THE DEEDS REGISTRIES ACT, 1937 (ACT NO. 47 OF 1937)

I, Lulama Xingwana, Minister for Agriculture and Land Affairs, intend –

- (a) making the regulations as proposed in Schedule 1 to this Notice, in terms of the Communal Land Rights Act, 2004 (Act No. 11 of 2004); and
- (b) amending certain regulations made in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), as set out in Schedule 2 to this Notice.

Comment on the proposed regulations must be submitted in writing within 60 days of the date of publication of this Notice in the *Government Gazette*, to :

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Copies of the proposed regulations in Afrikaans, isiZulu, Sesotho, Tshivenda and Xitsonga may be obtained from any office of the Department of Land Affairs, including –

- a provincial or district Land Reform Office
- a Registrar of Deeds
- a Surveyor-General
- Surveys and Mapping in Mowbray
- the Head Office in Tshwane; or
- the Chief or a Regional Land Claims Commissioner.

L XINGWANA

MINISTER FOR AGRICULTURE AND LAND AFFAIRS

TH3953

SCHEDULE 1

CD : P&LD 18.10.07 / 2

DEPARTMENT OF LAND AFFAIRS

COMMUNAL LAND RIGHTS ACT, 2004 (ACT NO. 11 OF 2004)

DRAFT REGULATIONS

The Minister of Land Affairs intends, under section 44(1) of the Communal Land Rights Act, 2004 (Act No. 11 of 2004), to make the regulations in the Schedule, and publishes them for public comment prior to making and then tabling the Regulations in Parliament in terms of section 44(2) of that Act.

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Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Communal Land Rights Act, 2004, has that meaning and, unless the context otherwise indicates –

“**committee**” means a land administration committee as defined in section 1 of the Act and, for the purposes of the exercise of the powers and the performance of the duties of a land administration committee in terms of section 21(2) of the Act, includes a recognized traditional council of a community if the community decides by means of an informed and democratic decision that those powers and duties are to be exercised by that council;

“**designated officer**” means an officer in the Department designated by the Minister in terms of regulation 21(2) to assist a community, and excludes such an officer designated as a land rights enquirer in terms of regulation 14(1)(a);

“**enquirer**” means a land rights enquirer as defined in section 1 of the Act;

“**informed and democratic decision**”, in relation to a community, means an informed and democratic decision of the majority of the members of the community who are 18 years of age or older and are present or represented by a proxy at a community meeting of which adequate notice of not less than 21 days was given;

“**land rights enquiry**” means a land rights enquiry instituted by the Minister in terms of section 14(1) of the Act, and “**enquiry**” has a corresponding meaning;

“**Minister**” means the Minister responsible for Land Affairs, but in relation to a power or duty exercised or performed by the Ingonyama Land Rights Board for KwaZulu-Natal in terms of section 34 of the Act, means the latter Board;

“**putative right**” – means an unlawful land tenure right believed by the holder thereof, in good faith, to be lawfully held by a community or person;

“**the Act**” means the Communal Land Rights Act, 2004;

“**Registration Officer**” means an officer of the Department designated by the Director-General as a Registration Officer in terms of section 19(4)(c) of the Act;

CHAPTER 1

LAND RIGHTS BOARDS

(Act, Chapter 8, sections 25 to 30)

Criteria for establishment

2. The criteria which the Minister must consider in establishing a Board and in determining its area of jurisdiction, include -

(a) the known and estimated numbers and sizes of –

(i) communities; and

(ii) communal land areas;

in an area likely to be affected;

- (b) the functions to be performed; and
- (c) the human, financial and other resources which will be required.

Nomination of candidates for membership

3. (1) On the establishment of a Board the Minister must –
- (a) determine the organs of state to be represented on that Board in terms of section 26(2)(a) of the Act; and
 - (b) give notice of that establishment as required by section 25(a) of the Act and call for nominations of candidates for appointment as members of the Board as required by section 26 of the Act, substantially in the form of Form 1 in Annexure A.
- (2) The notice contemplated in subregulation (1) must be published in at least three languages most commonly used in the area of jurisdiction of the Board –
- (a) once in the *Gazette*;
 - (b) once in each of three newspapers which circulate nationally, regionally and locally respectively;
 - (c) once in at least one television and one radio broadcast;
 - (d) by displaying the notice prominently in or on the premises of each office of the Department in the area of jurisdiction of the Board; and
 - (e) by any other additional method the Minister considers to be appropriate.

(3) The Minister may, in addition to giving the notice required by subregulations (1) and (2), use any other method of obtaining suitable nominations which she or he considers appropriate, including approaching persons and institutions directly.

Determination of seat and secretariat

4. (1) Before the Minister gives notice of the appointment of members of a Board in terms of regulation 5, the Director-General of the Department must determine the seat and secretariat of the Board and make arrangements for the accommodation, staff and other resources which will be required by the Board to be available.

(2) The Director-General may –

- (a) appoint full-time or part-time staff; and
- (b) second or instruct Departmental officials;

to perform the secretarial and administrative functions required for the effective operation of a Board.

Appointment of members

5. (1) The Minister appoints a member, the chairperson and deputy chairperson of a Board by providing her or him with a letter of appointment specifying –

- (a) the fact of appointment and its effective date;
- (b) the position of chairperson or deputy chairperson, if applicable;
- (c) the constituency which the member represents; and

- (d) the terms and conditions of service applicable to the appointment including, if the member is not a state official, the remuneration and allowances payable.

(2) The terms and conditions of service of a member who is a state official must be determined by the Minister in consultation with the head of the office in which that official serves.

(3) The notice of appointment of members in terms of section 26(6) of the Act must be substantially in the form of Form 2 in Annexure A and be published in the manner prescribed in regulation 3(2).

(4) An appointment to fill a vacancy in terms of section 26(7) of the Act must not alter the composition of the Board as set out in section 26(2) of the Act.

(5) A decision made and an action taken by a Board is not invalidated only by reason of a vacancy in the membership of that Board at any material time.

Code of conduct

6. A member of a Board must perform her or his duties which are matters of public interest in accordance with the Act, these regulations including the Code of Conduct in Annexure B and, as contemplated by section 28(1)(d) of the Act, the instructions of the Minister from time to time, failing which she or he may be removed from office in terms of section 27(2)(c) of the Act after a fair administrative process has been followed.

Disclosure by member of interest

7. A member of a Board must disclose to that Board any direct or indirect personal or private interest that the member or any spouse, life partner or close family member may have in any matter before the Board and must refrain from participating in any proceedings concerning that matter unless the Board decides that the interest of the member is trivial.

Financial and administrative year

8. The first financial and administrative year of a Board commences on the date on which the last of its chairperson, deputy chairperson or members is appointed and ends on the next ensuing 31 March, and each succeeding year commences on 1 April and ends on 31 March.

Procedures, meetings, quorum and voting

9. (1) A Board must meet –
- (a) for the first time, as convened by its chairperson within 14 days of her or his appointment as such chairperson;
 - (b) at least once in each quarter of a calendar year commencing on 1 April, the first of which will be its Annual General Meeting;
 - (c) at the request of the Minister or at least one-third of its members; and
 - (d) when convened by its chairperson;
- and may meet –
- (e) at the request of any one member approved by the chairperson; and
 - (f) at such times as the Board determines.
- (2) (a) The chairperson of a Board must convene all Board meetings on written notice to all members of not less than 21 and not more than 30 days, specifying the purpose or purposes and the date, time and venue of each meeting and such notice must be accompanied by an agenda.
- (b) A meeting requested in terms of subregulation (1)(c) must be

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convened within 14 days of the receipt of such request.

- (3) At its first meeting a Board must determine and record –
- (a) such operational procedures as it may require which are not inconsistent with the Act and these regulations; and
 - (b) a schedule of dates for its quarterly meetings to be held during its first year;

and provide copies of those procedures and schedule to the Minister and the Director-General.

(4) The quorum for a Board meeting is a majority of its members or, at a postponed meeting following one at which a quorum was not present, and provided notice of the postponed meeting was given, the number of members present.

(5) If within half an hour after the time appointed for a convened meeting a quorum is not present, the meeting must be postponed to a date to be determined by the chairperson, which date must not be earlier than 7 and not later than 21 days after the initial date of the convened meeting.

(6) A decision of the majority of the members of a Board present at any meeting constitutes a decision of such Board.

(7) In the event of a deadlock the chairperson has a casting vote in addition to a deliberative vote.

(8) The chairperson of a Board must ensure that written minutes of Board meetings are kept and certified by her or him, and that copies of such minutes and of any reports tabled at meetings or proceedings of the Board are forwarded to the Minister and the Director-General within 30 days after the conclusion of each meeting or proceeding.

Powers and Duties

10. (1) A power may be exercised and a duty performed by the Board or by a member designated by the Board or, failing the Board, its chairperson, whether in general or in cases of a specific nature or in a specific case.

(2) In performing its duties in terms of section 28 of the Act, a Board must also ensure that it continuously or from time to time as the case may be –

- (a) administers and keeps records of the financial and other affairs of the Board and the resources allocated to it;
- (b) identifies and monitors the land reform, ownership, use, development and other land related needs of communities with particular reference to vulnerable groups;
- (c) develops and advises all relevant roleplayers on strategies to meet those needs, with particular reference to the provision of –
 - (i) basic and other services;
 - (ii) infrastructural and general land development;
 - (iii) financial and technical support and expertise; and
 - (iv) agricultural and other sector employment and poverty alleviation opportunities in relation to communal land;

- (d) monitors and advises the Minister and Department on constraints to the achievement of the objects of the Act, especially with regard to –
 - (i) the roles of and interactions between communities, municipalities, other organs of state, traditional leaders, civil society and the private sector; and
 - (ii) financial assistance whether from the state, the private sector or any other source; and
- (e) monitors and plays an effective role in all –
 - (i) land rights enquiries;
 - (ii) instances concerning the development of community rules;
 - (iii) requests for the ratification of disposals of communal land; and
 - (iv) unresolved disputes concerning communal land which may lead to or which have led to litigation, whether such litigation involves the Board or not;

which are referred to the Board or of which it is aware, and make recommendations to the Minister and Department on improvements to the substantive and procedural provisions of the Act and these regulations, including the standard community rules.

Reports

11. (1) A Board must submit a report on its activities in relation to all its powers and duties to the Minister –

- (a) annually, by not later than 30 April or such extended date as agreed to by the Minister; and
- (b) when requested by her or him;

and provide a copy of each report to the Director-General.

Powers of entry, inspection and convening of meetings

12. (1) Subject to subregulation (3), the powers of entry and inspection referred to in section 28(2)(a) and (c) of the Act must not be exercised unless the consent of the occupier of the communal land or the holder of the document concerned has been obtained or the exercise is authorized by a warrant issued in terms of subregulation (2).

(2) Where, on application to a magistrate having jurisdiction, it appears to her or him from information on oath that there are reasonable grounds to believe that –

- (a) the conditions for entry or inspection described in section 28(2) of the Act exist;
- (b) entry upon land or the inspection of a document is necessary for the exercise of a power or the performance of a duty of a Board; and
- (c) such entry or inspection has been sought but not obtained, the magistrate may issue a warrant authorising a Board member named therein to enter upon the land or inspect the document subject to such conditions as may be specified in the warrant.

(3) If a Board member designated in terms of regulation 10(1) has not obtained the consent contemplated in subregulation (1) and believes on reasonable grounds that–

- (a) a warrant would be issued to her or him under subregulation (2) if she or he were to apply for such a warrant; and
- (b) a delay in obtaining such warrant would defeat the object of the entry of inspection;

she or he may without a warrant exercise the powers of entry and inspection referred to in section 28(2)(a) and (c).

(4) A designated Board member may, for the purpose of exercising a power or performing a duty, attend any meeting of a community or land administration committee in terms of section 28(2)(d) of the Act and may convene such a meeting by giving the community or land administration committee adequate notice of not less than 21 days or, where the purpose of the meeting will be defeated by giving notice for such a period, reasonable notice.

(5) For the purposes of subregulation (1) "occupier" includes a land administration committee.

CHAPTER 2

LAND RIGHTS ENQUIRY

(Act, Chapter 5, sections 14 to 18)

Application to institute enquiry

13. (1) A person, community, organ of state or other institution or body seeking to initiate a land rights enquiry required to precede a determination by the Minister in terms of the Act must apply, substantially in the form of Form 3 in Annexure A, to the Minister for such enquiry to be instituted.

(2) The Minister may call for such additional information and documents as she or he considers necessary and, if an application in terms of subregulation (1)

appears to be frivolous or vexatious, call upon the applicant to show cause by way of written representations to be submitted by a date stipulated by the Minister why the application should not be rejected.

(3) After considering an application and such further information, documents and representations that may be received, the Minister may, on such conditions as she or he may determine, in writing grant or refuse the application and must notify the applicant of her or his decision and, if the application is refused, her or his reasons.

Appointment of a land rights enquirer

14. (1) After granting an application in terms of regulation 14 the Minister must –
- (a) in writing designate a suitable officer of the Department or appoint a person who is not an officer, or both such an officer and a person jointly, as the land rights enquirer to conduct the land rights enquiry so instituted;
 - (b) provide such enquirer with a copy of the application and notification in terms of regulation 13(3); and
 - (c) stipulate the objectives, nature and scope of the enquiry to be conducted, the preferred methodology to be used (if any) and the terms and conditions applicable to the appointment of the enquirer.
- (2) For the purpose of subregulation (1) “person” includes a group or consortium of natural persons, a juristic person, an organ of state and a body, organisation or institution.
- (3) A land rights enquirer must possess or have access to the qualities, skills and knowledge required to effectively perform the functions and duties required by the Act and the particular enquiry to be conducted, including –
- (a) a high level of personal and professional integrity;
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- (b) a commitment to equity;
- (c) fluency in languages most commonly used in the area where the enquiry is to be conducted;
- (d) skills in the facilitation of community and other meetings;
- (e) proven research ability;
- (f) expertise in land, housing and agricultural reform and related matters;
- (g) a knowledge of survey demarcation and land registration;
- (h) an extensive knowledge of land use and development planning;
- (i) project management ability;
- (j) good verbal and written communication including report writing skills;
- (k) mediation and dispute resolution skills; and
- (l) legal expertise;

and may, prior to appointment as an enquirer, be required to satisfy the Minister that she or he possesses or has access to such qualities, skills and knowledge.

Code of Conduct

15. A land rights enquirer must in the exercise of her, his or its powers and the performance of her, his or its duties comply with the Code of Conduct in Annexure C and the instructions of the Minister and Director-General given from time to time.

Notice of enquiry

16. (1) The notice of a land rights enquiry in terms of section 16(a) of the Act must be substantially in the form of Form 4(a) or (b) in Annexure A.

(2) The Minister must publish the notice contemplated in subregulation (1) in the manner prescribed in regulation 3(2).

(3) The notice contemplated in subregulation (1) must –

- (a) identify the land rights enquirer and provide her, his or its contact details;
- (b) describe the land in respect of which the enquiry will be held;
- (c) briefly describe the nature and scope of the enquiry;
- (d) identify the applicant contemplated in regulation 13 and the determination sought;
- (e) mention that information regarding the enquiry may be obtained from the land rights enquirer;
- (f) invite all those who have an interest in the land to participate in the enquiry and to attend a meeting to be held by the enquirer on a specified date arranged by the Minister and the enquirer, at which –
 - (i) the purpose of the enquiry must be explained; and
 - (ii) those present must be asked to assist with the provision of information and evidence relative to any rights, interests and tenure in respect of the land.

Powers and duties of enquirer

17. (1) In enquiring into the matters required to give effect to sections 12, 13, 14(2) and 18 of the Act and subject to any unresolved dispute, the land rights enquirer must also establish and make recommendations and report on –

- (a) the outer boundaries of the land and the internal allocations of sites within the outer boundaries, and depict them in a sketch plan if any dispute exists or in an approved general plan if no dispute exists;
- (b) what rights and interests are held by the State including a municipality and a public entity as defined in section 1 of the Public Finance Management Act No. 1 of 1999;
- (c) in respect of state land, whether a certificate contemplated in item 28(1) of Schedule 6 to the Constitution has been issued and obtain a copy of such certificate;
- (d) the particulars of any claim to the subject land in terms of the Restitution of Land Rights Act, No. 22 of 1994 and the status of such claim;
- (e) what municipal rates are owing (if any);
- (f) the content of the records of the Registrar of Deeds in relation to the subject land and all registered rights in and to such land;
- (g) particulars of any disputes relating to the land and rights and interests in, or to, the land;
- (h) the determination in terms of section 18 of the Act sought to be obtained by each party having an interest in the enquiry, and the reasons for such determination;

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- (i) the nature of the community and its structures including its traditional or non-traditional leadership;
- (j) whether community rules have been made, adopted and registered and if so, obtain a copy of such rules and, if not, facilitate the making, adoption and registration of such rules or certify that such rules could not be made, adopted and registered despite diligent effort, and recommend that the standard prescribed rules must apply to such community; and
- (k) written agreements by the holders of rights, of whatever nature, in and to the land concerned, as to the determination to be made by the Minister in respect of such rights;

and obtain and submit to the Minister documentary evidence of any matter, allegation and thing relative to the enquiry whether by way of a document of title, affidavit or otherwise.

(2) For the purposes of subregulation (1), an enquirer must be given access to the records of the Department and the Commission on the Restitution of Land Rights, and may conduct a survey or hold a meeting or employ any other method, including the use of a standard questionnaire and field worker control sheet substantially in the form of Forms 5 and 6, respectively, in Annexure A in the languages most commonly used in the area affected by the enquiry.

Powers of entry, search, taking possession and convening of meetings

18. The provisions of regulation 12 apply, with the necessary changes, to the exercising of the powers of entry, search, taking possession and convening and attending meetings in terms of section 17(4)(b) and (c) of the Act.

Land rights enquiry report

19. (1) The enquirer must submit a signed copy of the land rights enquiry report contemplated in sections 14(2) and 17(3) of the Act to the Director-General prior to publication of the notice in terms of subregulation (2).

(2) A land rights enquirer must, prior to the submission of a land rights enquiry report to the Minister, give notice, substantially in the form of Form 7 in Annexure A, that the report will be available for inspection and inviting representations to be made as set out in Form 7.

(3) The notice contemplated in subregulation (2) must be published in the manner prescribed in regulation 3(2).

(4) The notice contemplated in subregulation (2) must –

- (a) describe the land in respect of which the report will be submitted;
- (b) afford an opportunity to inspect the report during the hours and at a place specified in the notice, for a period of 60 days from a date stated in the notice;
- (c) invite any interested community or person to make representations substantially in the form of Form 8 in Annexure A concerning any matter relevant to the enquiry within a period of 60 days from a date stated in the notice; and
- (d) identify the person to whom representations must be submitted and state his or her contact details.

Determination by Minister

20. (1) The Minister may call for such additional information and documents she considers necessary to amplify or clarify a land rights enquiry report submitted to her or him, before making a determination based on such report.

(2) After making a determination the Minister must publish a notice of such determination in terms of section 16(b) of the Act, substantially in the form of Form 9 (a) or (b) in Annexure A.

(3) The notice contemplated in subregulation (2) must –

- (a) describe the land in respect of which the land rights enquiry was held; and
 - (b) where applicable, contain particulars of the determinations made and conditions imposed regarding –
 - (i) land to be registered or remain registered in the names of communities or persons as contemplated in section 18(3)(a), (b) and (c)(i) of the Act;
 - (ii) land to be reserved to the State as contemplated in section 18(3)(c)(ii) and (4) of the Act;
 - (iii) the confirmation, conversion or cancellation of old order rights as contemplated in section 18(3)(d) of the Act;
 - (iv) the conferment of new order rights on women as contemplated in section 18(4)(b) of the Act;
 - (v) the validation or declaration as invalid of putative old order rights as contemplated in section 18(5) of the Act, including the conferment of new order rights;
 - (vi) particulars of any comparable address awarded; and
 - (vii) any other matter in respect of which a determination is made.
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CHAPTER 3**CONTENT, MAKING AND REGISTRATION OF COMMUNITY RULES**

(Act, Chapter 6, sections 19 to 20)

Application for assistance

21. (1) A community or person requiring assistance to give effect to the implementation of the Act, including a community wishing to make, adopt and have registered its community rules under this Act, may apply to the Minister to designate an officer of the Department to assist the community in terms of section 36 of the Act.

(2) If the Minister is satisfied that, despite the role to be played by the land rights enquirer, the community requires the assistance contemplated in subregulation (1), she or he must designate an officer in the Department to provide such assistance.

Making and adoption

22. (1) When a community wishes to make and adopt community rules, it must notify the land rights enquirer, the Board having jurisdiction and the Director-General accordingly and must convene a meeting or meetings for that purpose.

(2) The community rules must be made and adopted by means of an informed and democratic decision.

(3) The land rights enquirer must attend the meeting or meetings contemplated in subregulation (1) to take minutes of the proceedings, to witness and guide the community in the making and adoption of the community rules and to prepare a report to be submitted to the Director-General without delay, setting out her or his observations in relation to -

- (a) whether the notice of the meeting was given for a period of not less than 21 days and was otherwise effective in ensuring the presence of members of the community at the meeting;
- (b) the number of members of the community present at the meeting or validly represented at the meeting, and whether the various interest groups in the community were represented at such meeting;
- (c) the number of members of the community and their ages who voted in favour of and the number who voted against the adoption of the community rules or any specific provision thereof;
- (d) whether the interests of any person or group of persons are likely to be adversely affected as a result of the adoption of the community rules;
- (e) the views of any dissenting persons; and
- (f) any other matter which may be relevant to the exercise of the discretion of the Director-General in terms of section 19 of the Act.

(4) The community rules adopted by a community must be in writing and be signed by the chairperson of the meeting at which such rules are adopted and by the land rights enquirer and the designated officer, if any.

(5) Any person claiming to have been excluded from participation in the process of making and adopting the community rules or claiming that the process was not fair may lodge a complaint with the Director-General who may, if she or he is satisfied on reasonable grounds that the complaint is material, refuse to cause the community rules to be registered until the issue has been resolved to the satisfaction of the Director-General.

Registration

23. (1) A community must, within 14 days of the adoption of its community rules, submit such rules and the minutes of the adoption meeting compiled by the community to the Director-General and apply to her or him in terms of section 19(1) of the Act for the registration of its rules.

(2) The Director-General must in writing refer an application in terms of subregulation (1) and the minutes and report in terms of regulation 22(3) to the Board having jurisdiction for its report on the suitability of the adopted rules.

(3) The Director-General must consider an application for registration of community rules, the report of the Board in terms of section 19(4)(b) of the Act, the minutes and report of the land rights enquirer and the adopted community rules.

(4) The Director-General may request clarification of any aspect to be considered and may suggest amendments to the adopted rules in order to make them comply with the Constitution, the Act and these regulations, and must notify the community, the land rights enquirer and the applicable Board of the reasons for such suggestions.

(5) An amendment to the adopted rules initiated by the Director-General which is not merely of a minor technical nature must itself be adopted in the manner required for the adoption of community rules.

(6) If, having considered all matters required by the Act including any representations made by the community or other interested party, the Director-General is satisfied that the adopted rules, with or without amendments, and the adoption process comply with all prescribed requirements, she or he must in writing signify such satisfaction and refer the application, supporting documents and reports with the adopted community rules and her or his own written consent to the Registration Officer who must register the community rules, allocate a registration number, and issue a certificate of registration.

(7) The Director-General must establish a register of community rules registered in terms of the Act and designate at least one officer of the Department as the Registration Officer to register such rules and maintain such register.

(8) The register referred to in subregulation (7) is a public record to which any person has access in such manner, on such conditions, and on the payment of such fees of office as may be determined by the Director-General.

Content

24. (1) Community rules must provide for –

- (a) the administration and use of the communal land;
- (b) the nature, content, acquisition, exercise, disposal and administration of new order rights;
- (c) the matters referred to in Annexure D; and
- (d) any matter considered by the community to be necessary.

(2) The community rules must not be inconsistent with the Constitution, the Act and the following general principles –

- (a) fair, democratic and inclusive decision-making processes, in that –
 - (i) subject to the differentiation in the rules between the respective decision-making powers of different structures and persons within the community, all members are afforded a fair opportunity to participate in the decision-making processes of the community; and

- (ii) any decision to amend the community rules, dissolve the community, dispose of or encumber the ownership of the property of the community, terminate a membership of the community or a new order right in or to communal land, requires a decision of the full community in a general meeting;

 - (b) equality of membership, in that there is no direct or indirect discrimination against any prospective or existing member of the community and, without derogating from the generality of this provision, on one or more of the following grounds, namely race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth: Provided that community rules may provide for the age at which a member may attend and vote at meetings of the community and the age at which a member may receive an allocation of land rights;

 - (c) democratic processes, in that all members have the right –
 - (i) to receive adequate notice of all general meetings of the community, which notice must indicate the issue to be discussed and the resolution to be sought;

 - (ii) to attend, speak at and participate in the voting at any general meeting;

 - (iii) to inspect and obtain copies, upon such terms and conditions as are reasonable, of the community rules, the minutes of meetings of all community structures and community financial and other records;

 - (d) fair access to the property of the community, in that –
-

- (i) the community must administer property owned, controlled or held by it for the benefit of the members in a participatory and non-discriminatory manner;
 - (ii) a member may not be excluded from access to or the use of any part of the property of the community which has been allocated for the exclusive use of such member or for the communal use, except in terms of the Act and the community rules; and
 - (iii) the community may not seek to alienate, encumber or otherwise dispose of communal land or a right in communal land to a person who is not a community member without an informed and democratic decision of the community which is ratified in writing by the Board having jurisdiction in terms of section 24(2) of the Act;
- (e) accountability and transparency, in that –
- (i) accountability by the land administration committee to the members of the community is promoted;
 - (ii) there must be effective financial management and recording of the transactions of the community;
 - (iii) members of the land administration committee have fiduciary responsibilities in relation to the community and its members, and must exercise their powers in the best interests of all the members of the community without any advantage to themselves in comparison with other members who are similarly placed.
- (3) The community rules must be interpreted in a manner which is consistent with the spirit and objects of the principles referred to in subsection (2).

Standard rules

25. (1) If a community fails to make, adopt and have registered its community rules within a reasonable time despite having been afforded an opportunity to do so, the Minister, Director-General or land rights enquirer may in writing call on the community to comply with section 19 of the Act by not later than a date specified in such notice.

(2) The notice in terms of subregulation (1) must be in writing, be accompanied by a copy of the standard rules in Annexure E and any proposed adaptation of such rules to the known circumstances of such community, and copied to the Board having jurisdiction.

(3) If the community fails to comply with a notice in terms of subregulation (1) the Minister may, after considering any representation made by any interested party including the Director-General and the Board, in writing declare the standard rules in Annexure E as adapted by her or him to the known circumstances of the community, to be the rules of such community.

(4) Community rules declared to be those of a community in terms of subregulation (3) must, on presentation of the declaration and such rules to the Registration Officer, be registered as the rules of the community concerned.

CHAPTER 4**LAND ADMINISTRATION COMMITTEES**

(Act, Chapter 7, sections 21 to 24)

Establishment

26. (1) A community, whether it has a recognized traditional council or not, must establish a land administration committee in the manner prescribed by the Act and these regulations.

(2) A community having a recognized traditional council must take an informed and democratic decision on whether –

- (a) its recognized traditional council will perform the functions of its land administration committee; or
- (b) it will establish a land administration committee which is separate and distinct from its recognized traditional council, to perform such functions.

(3) If a community decides that its recognized traditional council will perform the functions of its land administration committee –

- (a) the community must, by way of an informed and democratic decision, designate specific members of such council to respectively –
 - (i) be the chairperson, deputy chairperson, secretary and treasurer of the committee;
 - (ii) hold such other office in the committee as the community rules require; and
 - (iii) represent the interests of vulnerable community members in terms of section 22(4) of the Act; and
- (b) the chairperson of the land administration committee must forthwith notify the persons and organs of state listed in section 22(5) of the Act of the decisions of the community in terms of this regulation, the names of the members and office bearers of the committee and its contact details, and

invite each of them to designate a person to be a non-voting member of such committee.

(4) A non-voting member of a land administration committee must be designated as such a member in writing addressed to the chairperson of such committee.

Composition

27. A land administration committee must comprise –

- (a) a total number of elected members determined by the community rules, all of whom must be community members who are 18 years of age or older and who are not disqualified in terms of regulation 28, and one half of whom must be women;
- (b) a chairperson, deputy chairperson, secretary, treasurer, the holders of such other offices as determined by the community rules, a committee member to represent the interests of vulnerable community members, and ordinary committee members, all of whom –
 - (i) make up the total number of members referred to in paragraph (a); and
 - (ii) must be elected by the community as required by these regulations; and
- (c) non-voting members designated in terms of section 22(5) of the Act and regulation 26(4), in respect of which regulation 26(3)(b) applies with the necessary changes;

and community rules may provide for permanent or temporary subcommittees, their accountability and relationships with the land administration committee and the

community, the assignment or delegation of powers and duties to a subcommittee or to a member of the land administration committee, and related matters.

Disqualification from committee membership

28. (1) A person may not be nominated as a candidate or be elected as a member of a land administration committee if she or he –

- (a) does not meet the requirements of regulation 27(a);
- (b) is an unrehabilitated insolvent;
- (c) is declared by a court of law to be mentally incompetent or is detained under the Mental Health Act, 1973 (Act No.18 of 1973), or any other applicable law;
- (d) has been removed from an office of trust on account of improper conduct;
- (e) has had her or his name removed from any professional register on account of misconduct and has not been reinstated;
- (f) has been determined by a court, tribunal or forum as contemplated by the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), to have contravened section 7 or any other provision of that Act; or
- (g) holds any traditional leadership position.

(2) An elected member of a land administration committee must vacate her or his office if she or he –

- (a) becomes disqualified in terms of subregulation (1) from being elected as a member of a land administration committee;

- (b) resigns by written notice to the chairperson of the land administration committee;
- (c) is removed from office by an informed and democratic decision taken at a general meeting of the community on reasonable grounds;
- (d) has, without the leave of the land administration committee, been absent from two or more meetings of the land administration committee during a continuous twelve-month period.

(3) Any member who vacates her or his office in terms of subregulation (2)(a),(c) or (d) must, prior to such vacation, be given a fair opportunity to present her or his case at a general meeting of the community.

Convening general election meeting.

29. (1) The land rights enquirer must give adequate notice to the community, the Director-General, the designated officer (if any) and the Board of, and convene and be or provide the chairperson of a general community meeting for the purpose of electing the members of the land administration committee of such community.

- (2) The notice in terms of subregulation (1) must –
 - (a) specify the number of office bearers and ordinary members to be elected and the designation of each office;
 - (b) provide that all community members who are 18 years of age and older may nominate any other qualifying community member as a candidate for election to any specific office in the committee or as an ordinary committee member;

- (c) invite all such community members to nominate candidates for election to the committee in the manner prescribed in regulation 30.

(3) The land rights enquirer must keep proof of the notice and of its publication.

Nomination of candidates

30. A nomination must be made by two or more nominators and be accepted by the nominee to be effective, and both the nomination and the acceptance –

- (a) must be provided to the land rights enquirer at least 7 days before the general meeting in terms of subregulation (1);
- (b) may be made in writing or verbally;
- (c) if made verbally, must be reduced to writing by the land rights enquirer and acknowledged in written form by the signature, mark or thumbprint of the enquirer, the nominators and the nominee;
- (d) must contain the physical addresses and contact details of the nominators and nominee; and
- (e) must be accompanied by written proof, to the satisfaction of the enquirer who must retain copies of such proof, of the identities of the nominators and nominee.

Election of committee members

31. (1) At the general community meeting convened in terms of regulation 29 the land rights enquirer must –

- (a) have each person present record in an attendance register her or his full names and identity number against her or his signature, mark or thumbprint;
- (b) inform the meeting of the nominations received including the names of the nominators and nominees and the offices for which the latter are nominated;
- (c) obtain confirmation from the meeting –
 - (i) that all persons present are members of the community;
 - (ii) that all nominators and nominees are qualified to nominate and be nominated respectively; and
 - (iii) which of those present are entitled to vote for the purpose of the community taking an informed and democratic decision;
- (d) conduct the election of members of the committee in a manner that is likely to ensure compliance with subregulation (2); and
- (e) keep a record of the proceedings.

(2) A community must elect the members of its committee by taking informed and democratic decisions.

Term of office and vacancy

32. (1) A land administration committee is elected for the term of office prescribed by the community rules but for no longer than a period of 5 years.

(2) If a vacancy occurs during a term of office the community must without delay elect a person to fill such vacancy for the remainder of such term.

Powers and duties

33. (1) Subject to the Act and the community rules, a land administration committee –

- (a) must establish and maintain –
 - (i) a community membership register; and
 - (ii) a land register;
- (b) may not, despite the community rules and any customary law or practice, dispose of the ownership of communal land or, subject to paragraph (c), encumber such land, whether to or in favour of a community member or a non-member, without the informed and democratic decision of the community authorizing such disposal or encumbrance in every respect;
- (c) may allocate new order rights in and to communal land which do not amount to ownership of such land, to a community member in terms of the community rules;
- (d) must record the allocation of all new order rights in the land register of the community and cause them to be registered in the deeds registry in terms of the Act; and
- (e) impose levies for the administration of communal land.

Land administration committee meetings

34. (1) A land administration committee must meet periodically as determined by the community rules, and the chairperson may convene a special meeting at any time.

(2) A special meeting of the committee must be convened by the chairperson within ten days of receipt by her or him of a written request signed by two or more committee members stipulating the purpose for which the meeting is to be convened and the resolution to be sought.

(3) The chairperson must give at least five days written notice of, and an agenda for, a meeting to all committee members.

(4) In special circumstances, where an urgent meeting is deemed necessary, a notice of the meeting may be given verbally or otherwise in a manner the chairperson considers expedient without the normal formalities.

(5) The quorum for a committee meeting is 50 percent of the elected members plus one or, at a postponed meeting following one at which a quorum was not present and provided notice of the postponed meeting was given, the number of members present.

(6) A decision must be taken by a means of agreement or by a simple majority vote of the members present.

(7) The chairperson has a casting vote as well as a deliberative vote.

(8) If the chairperson is absent or unable to act, her or his functions must be performed by the deputy chairperson or, failing that, a committee member appointed for the purpose by the committee members present.

(9) The land administration committee must keep minutes of its meetings and the following must be recorded therein –

(a) the date, time and place of the meeting;

- (b) the names of the members present and those who tendered their apologies;
 - (c) a summary of every decision taken at the meeting; and
 - (d) if a member so requests, the fact that she or he voted against any decision taken.
- (10) The minutes of a meeting of the committee must be adopted at the next meeting and signed by the chairperson upon adoption.
- (11) All minutes and other committee and community records must be available for inspection by members of the community, the Board, the Department and any person authorized by law.
- (12) Unless the contrary is proved, minutes adopted and signed in accordance with subregulation (10) or a resolution signed by a majority of the committee members present at a meeting of the committee will constitute proof of a decision of the committee.
- (13) Any delegation to a subcommittee or a member in terms of regulation 27 may be made either in general or in a particular case or in cases of a particular nature and on such conditions as may be determined by the land administration committee, and the land administration committee is not thereby divested of any power so delegated.

(14) Members of the community not serving on the land administration committee and non-voting members of the land administration committee may attend and address the meetings of the committee.

(15) Each committee member who has a direct interest in any matter on the agenda of the land administration committee is required to declare such interest and must not be present during the discussion and taking of a resolution on the matter.

(16) A committee member must attend all meetings of the committee and of the subcommittee of which she or he is a member, except when leave of absence is granted in terms of the applicable rules or as determined by the rules and orders of the committee: Provided that where a non-voting member of the committee or subcommittee is not present at a meeting of which she or he has been notified in terms of these regulations, the meeting may proceed in her or his absence.

Financial accounts and auditing

35. (1) A land administration committee must, in accordance with generally accepted accounting practice, keep such accounting and related records as are necessary to represent the state of affairs and business of the committee fairly and to explain its transactions and financial position.

(2) Unless otherwise decided at a general meeting of a community the financial year of a committee shall run from the first day of March of each year to the last day of February of the following year.

(3) A land administration committee is charged with the responsibility of accounting for all money received and payments made by or on behalf of such committee and the community.

(4) The accounting and related records of a land administration committee must be audited annually by a registered auditor as defined in section 1 of the Auditing Profession Act, 2005 (Act No. 26 of 2005).

(5) On the application of a community member, a mortgagee holding a registered bond over communal land, a member of the Board having jurisdiction or an officer of the Department authorized thereto by the Minister or Director-General, a land administration committee must make its accounting and other records available for inspection by such member, mortgagee or officer.

(6) A land administration committee must retain –

- (a) the land and membership registers of the community indefinitely; and
- (b) all accounting and related records for six years after completion of the last of the transactions, acts or operations to which they relate.

CHAPTER 5

GENERAL PROVISIONS

Short title

36. These regulations are called the Communal Land Rights Regulations.

ANNEXURE A**FORMS****Form 1
(Regulation 3(1)(b))****DEPARTMENT OF LAND AFFAIRS****COMMUNAL LAND RIGHTS ACT, 2004 (ACT NO. 11 OF 2004): SECTIONS 25(a)
AND 26(1)****Notice of establishment of the Land Rights Board and Notice calling for
nominations**

I,, Minister for Agriculture and Land Affairs, hereby give notice that –

1. in terms of section 25(a) of the abovenamed Act I establish the Land Rights Board having jurisdiction in the area of theProvince/s; and
2. in terms of section 26(1) of that Act, I call on all interested persons and institutions for written nominations of candidates for appointment by me as members of that Board which is intended to be equally representative of both genders. I however reserve the right not to make any appointment and, in need, to recruit nominees by methods other than this notice.

Nominations must be signed by the nominator and be accompanied by a signed acceptance by, and certified copies of the identity document or passport and the *curriculum vitae* and qualifications of the candidate, signed references and any other supporting motivation and document considered relevant.

A candidate must have proven capabilities, skills, expertise and experience in the fields of land, land tenure, old and new order rights, and especially sustainable land ownership and use, land development and in working with all spheres of government and civil and other institutions.

Candidates are sought to represent the following categories within the area of jurisdiction of the Board:

- (a) one member to represent each of the following organs of State:
.....
- (b) two members nominated by each Provincial House of Traditional Leaders contemplated in section 212(2)(a) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), having jurisdiction in the area of the Board;
- (c) one member nominated by persons or institutions in the commercial or industrial sector;
- (d) seven members from the affected communities, of whom at least –
 - (i) one must represent the interests of child-headed households;
 - (ii) one must represent the interests of persons with disabilities;
 - (iii) one must represent the interests of the youth as defined in section 1 of the National Youth Commission Act, 1996 (Act No. 19 of 1996); and
 - (iv) one must represent the interests of female-headed households.

A nomination must state the category in which the candidate is nominated.

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In submitting a nomination in the category mentioned in paragraph (d) above, a community must ensure that the decision made by the community is an informed and democratic decision of the majority of the members of the community who are 18 years of age or older and are present or represented by a proxy at a general community meeting of which adequate notice of not less than 21 days was given.

The nominations must be submitted to the Department of Land Affairs, Private Bag X 833, Pretoria, 0001, for the attention of within 60 days of this notice.

Enquiries may be directed to

Telephone No.

Fax No.....

e-mail address

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**Form 2
(Regulation 5(3))**

DEPARTMENT OF LAND AFFAIRS

COMMUNAL LAND RIGHTS ACT, 2004 (ACT NO. 11 OF 2004): SECTION 26(6)

Notice of appointment of members of the Land Rights Board

I,, Minister for Agriculture and Land Affairs hereby publish, in terms of section 26(6) of the abovenamed Act, the names of the person(s) appointed as member(s) of the Land Rights Board and the related information set out in the accompanying schedule.

.....
MINISTER FOR AGRICULTURE AND LAND AFFAIRS

**Schedule
Appointed Board members**

Full names	Position	Commencement of term of office	Expiry of term of office	Constituency represented

The seat of the Board is situated at

and the contact details of its secretariat are –

Secretary (*full names*).....

Physical address

Postal address

e-mail address

Telephone no.

Fax no.

45

**Form 3
(Regulation 13(1))**

DEPARTMENT OF LAND AFFAIRS

COMMUNAL LAND RIGHTS ACT, 2004 (ACT NO. 11 OF 2004): SECTION 14(1)

Application to institute a land rights enquiry

[Note : (1) * - delete if not applicable; (2) use additional pages if a space is insufficient]

To: The Minister for Agriculture and Land Affairs
.....

1. **APPLICANT** (*full name of person or community*)

.....

2. **COMMUNITY LEADERSHIP AND STRUCTURES** (*traditional/non-traditional;
traditional council/other structure; estimated
population*).....

.....

.....

3. **CONTACT DETAILS** (*physical, postal & e-mail addresses, cell/telephone
numbers*)

.....

.....

4. **LAND IN WHICH RIGHTS ARE HELD**
(*Full Deeds Registry description of land and registered owner. Attach a
diagram/sketch/directions*).....

.....

.....

.....

.....

5. NATURE OF RIGHT/S HELD BY YOU / THE COMMUNITY

(Registered/informal; content; granted by/obtained from; attach copies of title or other deed/document evidencing the right/s)

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

6. OTHER EXISTING RIGHTS/INTERESTS IN THE LAND

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

7. SUBJECT MATTER OF ENQUIRY :

7.1 *Tenure security on existing land

7.2. *Comparable redress *(Nature and locality)*

.....
.....

8. COPIES OF DOCUMENTS ATTACHED *(Identity/title deed/other)*

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

9. APPLICATION : I, the undersigned, request the Minister to institute a land rights enquiry into the matters reflected in this application, and undertake to extend my full co-operation to the Minister, the Department and any enquirer who/which may be appointed.

Signed at on thisday of200.....

.....
(Signature and full names of applicant)

.....
(Designation, where applicable)

**Form 4(a)
(Regulation 16(1))**

DEPARTMENT OF LAND AFFAIRS

COMMUNAL LAND RIGHTS ACT, 2004 (ACT NO. 11 OF 2004): SECTION 16(a)

Notice of land rights enquiry: Minister for Agriculture and Land Affairs

I, Minister for Agriculture and Land Affairs, have instituted a land rights enquiry in respect of the land described in the Schedule.

..... has been appointed as the land rights enquirer from whom/which information regarding the enquiry can be obtained. The contact details of the land rights enquirer are:.....

All those who have an interest in the land are invited to participate in the enquiry and to attend a meeting to be held at (*venue*) on (*date*) at (*time*)when the purpose of the enquiry will be explained and those present will be asked to assist with the provision of information and evidence relative to any rights, interests and tenure in respect of the land.

The Minister, after receiving the report of the land rights enquirer, may secure an old order right in the land, transfer the land or part thereof to a community or person or determine comparable redress.

.....
MINISTER FOR AGRICULTURE AND LAND AFFAIRS

Schedule

Description of land

Description of land	Extent

Form 4(b)
(Regulation 16(1))

DEPARTMENT OF LAND AFFAIRS

COMMUNAL LAND RIGHTS ACT, 2004 (ACT NO. 11 OF 2004): SECTION 16(a)

Notice of land rights enquiry:
Ingonyama Land Rights Board for KwaZulu-Natal

The Ingonyama Land Rights Board for KwaZulu-Natal has instituted a land rights enquiry in respect of the land described in the Schedule.

..... has been appointed as the land rights enquirer from whom/which information regarding the land rights enquiry can be obtained. The contact details of the land rights enquirer are as follows:

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

All those who have an interest in the land are invited to participate in the enquiry and to attend a meeting to be held at (*venue*) on (*date*) at (*time*) when the purpose of the enquiry will be explained and those present will be asked to assist with the provision of information and evidence relative to any rights, interests and tenure in respect of the land.

The Minister, after receiving the report of the land rights enquirer, may secure an old order right in the land, transfer the land or part thereof to a community or person or determine comparable redress.

.....
**CHAIRPERSON OF THE INGONYAMA
LAND RIGHTS BOARD FOR KWAZULU-NATAL**

Schedule

Description of land in respect of which land rights enquiry will be held

Description of land	Extent

**Form 5
(Regulation 17(2))**

DEPARTMENT OF LAND AFFAIRS

COMMUNAL LAND RIGHTS ACT, 2004 (ACT NO. 11 OF 2004)

Land rights enquiry questionnaire

INSTRUCTIONS TO FIELD WORKERS

GENERAL

1. Use **additional pages** if the form does not provide sufficient space, but number each page, include a heading that links the page to the particular questionnaire, and start each item with the number of the question or item in the form – e.g. “A17” or “B6”.
2. Except for instruction 11 below, do not leave **blank spaces** – if a space or section is not applicable, insert “N/A” or draw a line through it.
3. **Delete** a word or phrase which is followed by an asterisk (*) if it is not applicable by drawing a line through it.
4. Inspect **original supporting documents** and obtain or make copies – at the interview, if possible. If not, arrange for that process to be conducted later, and explain that documents that are not produced and copied will prevent the processing of the tenure claim.
5. If an original document is permanently lost or destroyed, and an official duplicate cannot be obtained, **record** that – under part C of the questionnaire and on your copy of the occupant’s copy (if applicable).
6. Copies of supporting documents form part of the questionnaire and must be stapled to the form and initialed by both signatories (who must also initial each page of the form itself and the additional pages).

PAGE 1 – PART A : PERMANENT OCCUPANTS

7. Item A6 : Date of birth and age are necessary only if there is no identity document.
8. Item A11 and A12 : Record the deceased/divorced spouse’s names and date of death/divorce. Obtain a death certificate or divorce order.
9. Item A15 : Obtain a marriage certificate.

PAGE 2 – PART A : PERMANENT OCCUPANTS (DEPENDANTS)

10. Copy this page if more spaces are needed – and comply with instruction 2 above.

PAGE 3 – PART B : TENURE RIGHT/S PRESENTLY HELD

11. Column 4 is for office use only – leave it blank.
12. The form provides for two pieces of tenure land – because different tenure rights may be held in different pieces of land (e.g. residential and arable rights in site A, and grazing rights in site B).
13. “**Tenure land**” means a piece of land to which a particular tenure right relates. Depending on the facts, it may be either –
- 13.1 **the whole** of an existing registered “land parcel” (i.e. a piece of land which has been both surveyed and registered in a Deeds Registry, with its own separate title deed); or
- 13.2 only a **part** of a land parcel.
14. Use a **sketch plan** on an additional page if it will help to describe any piece/s of land, and comply with instruction 1 above.
15. Item B2 : Record the sizes of **both** the tenure land and the land parcel if the tenure land is only a part of a land parcel.
16. Items B3, 4 and 5 : Relate only to a (registered) land parcel, and may have to be answered by conducting research after the interview. If so, record “unknown”.
17. Item B17 : In the case of a tenure right which was agreed or granted **verbally**, record the –
- 17.1 **parties** involved;
- 17.2 **date** when and **place** where the tenure right was granted or agreed;
- 17.3 **period** of the right (e.g. permanent/indefinite [none mentioned] / definite [until a certain date or event] – and describe the event).

PAGE 4 – PART C : SCHEDULE OF SUPPORTING DOCUMENTS

18. In columns 1 to 5 : Record the **occupant’s initials and surname**.

18. In column 6 (PTOs, etc.) : Describe the document by its **name/heading** and **date**, and record the **holder's initials and surname**.

LAND RIGHTS ENQUIRY QUESTIONNAIRE

HOUSE NO.*/TOWN*/FARM*/DISTRICT* : _____
 MUNICIPALITY NAME _____ WARD _____
 COUNCILLOR _____

(PAGE 1) A. PERMANENT OCCUPANTS (excluding temporary visitors)			
	HEAD OF HOUSEHOLD	SPOUSE/PARTNER OF HEAD	FIRST DEPENDANT OF HEAD/SPOUSE
1. Surname			
2. Maiden name			
3. Full personal names			
4. Gender (Male/Female)			
5. Identity Number			
6. Date of birth and Age			
7. Place of birth			
8. Citizenship – RSA (Y/N)			
9. – other (which?)			
Marital status – single :			
10. never married (Y/N)			
11. widow/er (details)			
12. divorced (details)			
13. cohabiting (Y/N)			
14. partner's names			
Marital status – married :			
15. date			
16. place			
17. civil marriage; OR			
18. customary union			
19. in/out of			

community of property			
Spouse/s or partner/s -			
20. number			
21. full names of each			
22. Your relationship to Head	Self		
23. Disabled (Y/N; describe)			

(PAGE 2) A. PERMANENT OCCUPANTS (excluding temporary visitors)			
	DEPENDANT*/ OCCUPANT	DEPENDANT*/ OCCUPANT	DEPENDANT*/ OCCUPANT
1. Surname			
2. Maiden name			
3. Full personal names			
4. Gender (Male/Female)			
5. Identity Number			
6. Date of birth and Age			
7. Place of birth			
8. Citizenship – RSA (Y/N)			
9. – other (which?)			
Marital status – single :			
10. never married (Y/N)			
11. widow/er (details)			
12. divorced (details)			
13. cohabiting (Y/N)			
14. partner's names			
Marital status – married :			
15. date			
16. place			

17. civil marriage; OR			
18. customary union			
19. in/out of community of property			
Spouse/s or partner/s -			
20. number			
21. full names of each			
22. Your relationship to Head			
23. Disabled (Y/N; describe)			

(PAGE 3) B. TENURE RIGHT/S PRESENTLY HELD			
	TENURE LAND 1	TENURE LAND 2	FOR OFFICE USE ONLY
1. Land description			
2. Land size : metres/ hectares			
3. Registered owner			
4. Title Deed : No. and date			
5. Diagram/ General Plan: SG No. <u>or</u> not surveyed			
6. Is it communal land? (Y/N)			
7. Names of - community			
8. - chief			
9. - village			
10. - headman			
Traditional authority/council :			
11. - contact person			

12.	- contact details			
13.	Name of Restitution/ Labour Tenant claimant/s			
14.	Type of right/s : residential/arab le/			
	Commercial/ grazing/other (details)			
15.	Right was acquired - from whom			
16.	- on (date)			
17.	Document/s proving the right <u>or</u>			
	Right was acquired verbally (details)			
18.	Improve- ments by you - describe			
19.	- value			

(PAGE 4) C. SCHEDULE OF SUPPORTING DOCUMENTS (already provided - \sqrt ; to be provided - X)

Identity Documents	Birth Certificates	Marriage Certificates	Death Certificates	Divorce Orders	Title Deeds, PTOs, proof of tenure right	Other

--	--	--	--	--	--	--

<p>D. PREFERRED (and non-binding) FUTURE TENURE RIGHT/S</p> <p>Briefly describe the tenure right/s which the household or each occupant would like to have, indicating – (1) on what land; (2) to be held individually or communally; (3) the intended land use/s; (4) any other information.</p>	
<p>E. CONFIRMATION OF INFORMATION</p> <p>We confirm that – (1) there is a total of _____ occupants of the above property; and (2) all information recorded in this questionnaire is complete, true and correct.</p> <p>Signed by us at _____ on the _____ day of _____ 200____.</p> <p>_____</p> <p>Land Rights Enquiry field worker Representative*/Head of Household</p> <p>Name : _____ Name : _____ Employer : _____ Employer : _____ Contact details : _____ Contact details _____</p>	

**Form 7
(Regulation 19(2))**

DEPARTMENT OF LAND AFFAIRS

COMMUNAL LAND RIGHTS ACT, 2004 (ACT NO. 11 OF 2004): SECTION 17(3)(b)

Notice of land rights enquiry report available for inspection

Reference No.

I/We, land rights enquirer/s appointed to conduct a land rights enquiry in respect of the land described in Schedule 1, hereby give notice that the enquiry has been completed and that the claimants mentioned in that Schedule have claimed rights or interests in the land to the extent set out therein.

The land rights enquiry report is available for inspection during the hours from..... to..... at the office(s) mentioned in Schedule 2 for a period of 60 days from

Interested communities and persons may inspect the report and are invited to make representations, substantially in the form of Form 8 in Annexure A to the Communal Land Rights Regulations, concerning any matter relevant to the enquiry, within that period.

A copy of the form to be used for any representations (Form 8) is obtainable from the office(s) mentioned in Schedule 2. Representations must be submitted to.....
(name of person to whom representations must be submitted) at : (contact details)

.....
.....

.....
LAND RIGHTS ENQUIRER

Form 8
(Regulation 19(3)(c))

DEPARTMENT OF LAND AFFAIRS

COMMUNAL LAND RIGHTS ACT, 2004 (ACT NO. 11 OF 2004): SECTION 17(3)(b)

Representations in respect of land rights enquiry report

[Note : (1) * - delete if not applicable; (2) use additional pages if a space is insufficient]

Reference No.(Quote Reference No. stated in Notice of inspection of report)

To:
(name of person to whom representations must be submitted)
.....
.....
.....
(contact details)

1. I,(full names), the undersigned,
acting in my capacity as representative of *myself / *.....
.....
hereby submit the following representations in respect of the land rights enquiry
report published under the above reference number.

2. **Representations**
.....
.....
.....
.....
.....
.....
.....
.....
(State the objections or other representations and the relevant portion/s of the
report)

3. Reasons/basis for representations

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

4. I recommend the following amendments to the proposals made by the enquirer :

.....
.....
.....
(State the preferred outcome).

5. In support of these representations I attach the following documents:

.....
.....
.....
(List and attach any relevant supporting documents, including, where applicable, the mandate of the person/community on whose behalf the representations are being made).

6. Identity number and contact details of person making representations:

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

Signed at on the day of200..

.....
(Signature)

.....
(Designation, where applicable)

**Form 9(a)
(Regulation 20(2))**

DEPARTMENT OF LAND AFFAIRS

COMMUNAL LAND RIGHTS ACT, 2004 (ACT NO. 11 OF 2004): SECTION 16(b)

Notice by Minister of determination made

I,, Minister for Agriculture and Land Affairs have, consequent upon the completion of a land rights enquiry held in respect of the land described in Schedule 1, in terms of section 18 of the Communal Land Rights Act, 2004 (Act No. 11 of 2004), made a determination in terms of which –

- *(a) the land described in Schedule 2 must remain registered in the names of, or be transferred to, the communities or persons listed in that Schedule as contemplated in section 18(3)(a), (b) and (c)(i) of the Act;
- *(b) the land described in Schedule 3 is reserved to the organs of State listed in that Schedule as contemplated in section 18(3)(c)(ii) and (4) of the Act;
- *(c) the old order rights described in Schedule 4 are confirmed, converted or cancelled as contemplated in section 18(3)(d) of the Act;
- *(d) the new order rights described in Schedule 5 are conferred on the women listed in that Schedule as contemplated in section 18(4)(b) of the Act;
- *(e) the putative old order rights described in Schedule 6 are validated or declared invalid as contemplated in section 18(5) of the Act;

subject to the conditions set out in each Schedule.

.....
MINISTER FOR AGRICULTURE AND LAND AFFAIRS

Schedule 1

Description of land in respect of which land rights enquiry was held

Description of land	Extent

Schedule 2

Land to remain registered or be transferred

Description of land	Extent	Owners/transferees	Conditions

Schedule 3

Land reserved to the State

Description of land	Extent	Organs of State	Conditions

Schedule 4

Old order rights confirmed, converted or cancelled

Description of old order rights	Holders of old order rights	Determinations	Conditions

Schedule 5

New order rights conferred on women

Description of new order rights conferred	Holders of new order rights	Conditions

Schedule 6

Putative old order rights validated or declared invalid

Description of putative old order rights	Averred holders of putative old order rights	Determination : validated or declared invalid	Description of new order rights conferred	Holders of new order rights conferred	Conditions

*Delete if not applicable

Form 9(b)
(Regulation 20(2))

DEPARTMENT OF LAND AFFAIRS

COMMUNAL LAND RIGHTS ACT, 2004 (ACT NO. 11 OF 2004): SECTION 16(b)

**Notice by Ingonyama Land Rights Board for KwaZulu-Natal
of determination made**

The Ingonyama Land Rights Board for KwaZulu-Natal hereby gives notice that the Minister for Agriculture and Land Affairs has, consequent upon the completion of a land rights enquiry held in respect of the land described in Schedule 1, in terms of section 18 of the Communal Land Rights Act, 2004 (Act No. 11 of 2004), made a determination in terms of which –

- *(a) the land described in Schedule 2 must remain registered in the names of, or be transferred to, the communities or persons listed in that Schedule as contemplated in section 18(3)(a), (b) and (c)(i) of the Act;
- *(b) the land described in Schedule 3 is reserved to the organs of State listed in that Schedule as contemplated in section 18(3)(c)(ii) and (4) of the Act;
- *(c) the old order rights described in Schedule 4 are confirmed, converted or cancelled as contemplated in section 18(3)(d) of the Act;
- *(d) the new order rights described in Schedule 5 are conferred on the women listed in that Schedule as contemplated in section 18(4)(b) of the Act;
- *(e) the putative old order rights described in Schedule 6 are validated or declared invalid as contemplated in section 18(5) of the Act;

subject to the conditions set out in each Schedule.

.....
**CHAIRPERSON FOR THE INGONYAMA
LAND RIGHTS BOARD FOR KWAZULU-NATAL**

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Schedule 1

Description of land in respect of which land rights enquiry was held

Description of land	Extent

Schedule 2

Land to remain registered or be transferred

Description of land	Extent	Owners/transferees	Conditions

Schedule 3

Land reserved to State

Description of land	Extent	Organs of State	Conditions

Schedule 4

Old order rights confirmed, converted or cancelled

Description of old order rights	Holders of old order rights	Determinations	Conditions

Schedule 5**New order rights conferred on women**

Description of new order rights conferred	Holders of new order rights	Conditions

Schedule 6**Putative old order rights validated or declared invalid**

Description of putative old order rights	Averred holders of putative old order rights	Determination : validated or declared invalid	Description of new order rights conferred	Holders of new order rights conferred	Conditions

*Delete if not applicable

ANNEXURE B**CODE OF CONDUCT FOR BOARD MEMBERS****(Regulation 6)****1. General**

1.1. A Board member must –

1.1.1. bring to the attention of the Minister, chairperson and any other appropriate authority, any attempt by any party to unduly influence the exercise of a power or the performance of a function; and

1.1.2. report any action which may compromise the integrity of the Board.

1.2. A Board member must not –

1.2.1. disregard any reasonable instruction of the chairperson, the Minister or the Director-General;

1.2.2. enter into any agreement with any person that could compromise the exercise of her or his powers or the performance of her or his duties.

2. Impartiality

2.1. A Board member must advise and render a service to the Minister, Director-General, the Board, communities and the public objectively, impartially and without fear or favour.

2.2. A Board member and any member of its staff must not wear or display any insignia, clothing, flag, poster or picture that is representative of any political party or affiliation whilst acting in an official capacity.

3. Relationship with the public

A Board member must –

- 3.1. deal fairly, politely, impartially and equally with all members of the public and treat the public with dignity and respect;
- 3.2. be accessible to the public at all reasonable times;
- 3.3 provide the necessary informational and educational material and services to allow the public to understand her or his, and the Board's, work;
- 3.4. at all times conduct herself or himself with decorum and in a manner befitting the Board and her or his office;
- 3.5. be proactive and use her or his initiative at all times; and
- 3.6. exercise her or his powers and perform her or his duties diligently, timeously, in good faith and in a professional and transparent manner.

4. Exercise of powers and performance of duties.

A Board member must –

- 4.1. ensure that she or he is aware of, and complies with, this Code of Conduct and the Communal Land Rights Act and Regulations and other relevant legislation and prescripts;
- 4.2. actively seek to acquire all factual knowledge and information which has a bearing on the functions of the Board and which is required for the proper exercise of any discretion or judgment;

- 4.3. verify the validity of any information and document acquired by her or him, where appropriate and necessary;
- 4.4. identify constraints, difficulties and problems encountered in the performance of the functions of the Board, and develop management and procedural strategies to deal therewith, and report thereon to the Board, the Minister and Director-General; and
- 4.5. when required, provide a comprehensive and clear report which includes the reasons for any recommendations made.

5. Disclosure of interest.

5.1. A Board member must –

- 5.1.1. disclose to the Board any direct or indirect interest she or he or a close family member may have which may impact on the functions of the Board; and
- 5.1.2. recuse herself or himself from any meeting, process or activity of the Board if there is any real or perceived conflict of interest or if her or his objectivity has been compromised.

- 5.2. A Board member may not use her or his position or confidential information obtained in consequence thereof, to obtain any fee, reward, gift, token or other benefit, or to improperly benefit another.

6. Official records and confidentiality

A Board member must –

- 6.1. keep accurate and comprehensive records of her or his activities concerning the work of the Board including interviews, community and other meetings, field trips

and financial transactions;

6.2. treat all information and records concerning the work of the Board as confidential, except –

6.2.1. information and records of a public nature; and

6.2.2. where authorized by the Minister or the Board to allow access to that information and those records.

7. Accountability and due process.

7.1. A Board member must –

7.1.1. attend all meetings which she or he is scheduled to attend or has been invited to attend or has arranged unless her or his absence is unavoidable, in which event she or he must provide good reason for such absence;

7.1.2. ensure that sufficient and effective notice is given of any meeting or interview arranged by her or him.

7.2. A Board member must not –

7.2.1. unduly delay any meeting, interview or other process;

7.2.2. spend official funds for unauthorized purposes; and

7.2.3. use official vehicles and equipment for unauthorized purposes.

ANNEXURE C**CODE OF CONDUCT FOR LAND RIGHTS ENQUIRERS
(Regulation 15)****1. General****1.1 The land rights enquirer must -**

- 1.1.1 bring to the attention of the Minister or relevant authority any attempt made by any party to unduly influence her, his or its investigation; and,
- 1.1.2 report any action, which may compromise the land rights enquiry.

1.2 The land rights enquirer must not -

- 1.2.1 disregard any reasonable instruction given to her or him by the Minister or the Director-General in respect of the land rights enquiry;
- 1.2.2 enter into any agreement with a third party that could compromise the exercise of her, his or its powers or the performance of her, his or its duties.

2. Political affiliation

- 2.1 The land rights enquirer must render an impartial service and must not regard herself, himself or itself as a party political appointment.
- 2.2 The land rights enquirer and any member of her, his or its staff must not wear or display any insignia, clothing, flag, poster or picture that is representative of any political party or affiliation.

3. Relationship with the public

The land rights enquirer must-

- 3.1 deal fairly, politely, impartially and equally with all members of the public;
- 3.2 indicate clearly the days and times at which the office of the land rights enquirer will be open for the public; and,
- 3.3 provide the necessary educational documents and services to allow the public to understand her, his or its work.

4. Exercise of powers and performance of duties

The land rights enquirer must -

- 4.1 ensure that she, he or it is aware of and has advised the members of her, his or its team of her, his or its role and this Code of Conduct;
- 4.2 actively seek to acquire all relevant information which has a bearing on the land rights enquiry;
- 4.3 verify, where appropriate and necessary, the validity of records or information relevant to the investigation;
- 4.4 conduct herself, himself or itself in an appropriate manner incumbent upon the importance of her, his or its appointment or office;
- 4.5 identify any difficulties or problems encountered during land rights investigation cases that may require additional management strategies;
- 4.6 provide a comprehensive and clear report for each enquiry undertaken which includes the reasons why recommendations have been made; and

- 4.7 exercise her, his or its powers and perform her, his or its duties diligently, in good faith and in a transparent manner.

5. Disclosure of interest by land rights enquirer

- 5.1 The land rights enquirer must –

5.1.1 disclose to the Minister any direct or indirect interest that she, he or it may have if it has relevance or has an impact on the land rights enquiry;

5.1.2 recuse herself, himself or itself from the enquiry if it becomes apparent that there is a conflict of interest or her, his or its objectivity has been compromised.

5.2 The land rights enquirer may not use her, his or its position or confidential information obtained because of her, his or its position to obtain any fee, reward, gift, token or other benefit or in order to improperly benefit another.

6. Recording of official information

The land rights enquirer -

6.1 must ensure that the appropriate managerial and financial systems are set up to allow for accurate record keeping;

6.2 must keep accurate records of all interviews, meetings, field trips and documentation pertinent to the land rights enquiry;

6.3 is accountable for all monies spent during the course of the enquiry;

- 6.4 must keep financial records using software programmes approved by the Director-General and other software programmes adaptable to those used by the Department; and
- 6.5 must ensure that digital records are backed up and secured in an appropriate locked office

7. Confidentiality

The land rights enquirer must treat as confidential all information and records related to the execution of her, his or its powers and the performance of her, his or its duties, except –

- 7.1 information and records of a public nature;
- 7.2 where authorised to allow access by the Minister.

8. Accountability and due process

- 8.1 The land rights enquirer must -
 - 8.1.1 provide reasons for the cancellation of any meeting or interview related to the land rights enquiry;
 - 8.1.2 ensure that arrangements for public or community meetings have been well advertised;
 - 8.1.3 exercise her, his or its powers and perform her, his or its duties in a professional and timeous manner;
- 8.2 The land rights enquirer must not -

- 8.2.1 spend money allocated by the Department for unauthorised purposes;
- 8.2.2 unduly delay any meeting or interview related to the enquiry; and
- 8.2.3 use any equipment or vehicle provided for work for another purpose.

9. Skills Development

The land rights enquirer must promote the transfer of professional, financial, managerial, technical and other skills to persons or categories of persons disadvantaged by unfair discrimination.

ANNEXURE D**MATTERS WHICH MUST BE ADDRESSED IN COMMUNITY RULES****(Regulation 24(1)(c))****1. Community membership**

1.1 The criteria and procedures for –

1.1.1 the acquisition; and

1.1.2 the termination,

of community membership.

1.2 The land administration committee's –

1.2.1 composition, including –

1.2.1.1 the criteria and procedure for electing members;

1.2.1.2 the number of members;

1.2.1.3 the criteria and procedure for appointing or electing office bearers;

1.2.1.4 the designation of offices to be held;

1.2.1.5 the terms of office of members and office bearers;

1.2.1.6 the right of the community to remove members and office bearers;
and

1.2.1.7 the remuneration, if any, payable to members and office bearers;

- 1.2.2 powers and duties; and
- 1.2.3 procedural rules, including –
 - 1.2.3.1 the calling, holding, frequency and minuting of meetings;
 - 1.2.3.2 the attendance of and quorum at meetings;
 - 1.2.3.3 voting; and
 - 1.2.3.4 rights of access to attend meetings and to records and minutes held by community members and other persons.

2. Community general meetings

Procedural matters relating to community general meetings, including –

- 1.1 by whom, for what purposes and in what manner such meetings may or must be called;
- 1.2 how such meetings are held and chaired;
- 1.3 attendance, voting and rights of representation at such meetings;
- 1.4 the minuting of proceedings and particularly decisions made; and
- 1.5 the rights of community members and other persons of access to the records and minutes of such meetings.

3. Community representatives

The criteria and procedure for the election or appointment of community representatives to the Board and other institutions or entities.

4. Decision making

The decisions or categories of decisions which may or must be made by –

- 4.1 the community;
- 4.2 the land administration committee; or
- 4.3 one or more holders of new order rights,

and where applicable, the voting majorities required to make a decision and the method or methods of voting.

5. New order rights

The community's land tenure system, including –

- 5.1 the designation, nature, content, duration and purpose (by type of land use) of shared and exclusive new order rights and categories of rights capable of being held;
- 5.2 the conditions, if any, to which different rights are or may be held and by whom such conditions may be stipulated;
- 5.3 the criteria and procedures for the allocation, acquisition and termination of different new order rights;

- 5.4 whether and to what extent, with whom and on what conditions the holders of different new order rights may sell or otherwise deal with their rights;
- 5.5 the succession to, or other disposal of, a new order right of a deceased holder of such right;
- 5.6 the grounds and procedure for the deprivation or termination of a new order right; and
- 5.7 in the case of rights held by a group of persons -
 - 5.7.1 the land, voting and other rights, if any, of each member of such group; and
 - 5.7.2 the representation of the group.

6. Land identification

The criteria and procedures for the allocation of specific areas of land, including the determination, implementation and monitoring of –

- 6.1 the location and size of a specific area;
- 6.2 the use to which such area may be put and any limitations stipulated;
- 6.3 the allocation of such area, in whole or in part, for shared or exclusive use; and
- 6.4 the method or methods of demarcating such areas and maintaining and recording such demarcations.

7. Finances

The community's financial management system, including the mechanisms, roles and responsibilities for –

- 7.1 the payment, collection, banking and safeguarding of levies, fees and other capital and revenue payments to the community from whatever source;
- 7.2 the allocation of capital and revenue to development, administration and other expenditure;
- 7.3 systematic budgeting and financial planning;
- 7.4 the disbursement of funds and the distribution and retention of funds, including profits;
- 7.5 the keeping of financial records and the provision for their independent verification; and
- 7.6 the provision of access to financial records and information by community members and other persons.

ANNEXURE E**STANDARD COMMUNITY RULES****(Regulation 25(3))****1. Identification of the community and the land****1.1 The community**

1.1.1 Name of the community:

1.1.2 Address:.....
..... (Indicate both
physical and postal addresses).1.1.3 Full names of the contact person(s) and her or his identity
number:.....

1.1.4 Reference to the register of members.

1.2 Identification of land1.2.1 Location: (State
the name of the Municipality, Municipal Ward and traditional authority area where
the land is located).1.2.2 Property
description:.....
..... (Include the name of the farm, where applicable).

2. Membership

2.1 Community Members

A member of the community is each and every person who belongs to the community, and includes:

- 2.1.1 members of households who reside and occupy communal land represented by a head of household whose name appears on the communal land register;
- 2.1.2 descendents of community members whose names appear on the communal land register;
- 2.1.3 children who, by virtue of being orphans or otherwise, serve as heads of households; and
- 2.1.4 such other persons whom, after application by such persons or because of their potential contribution to the welfare and development of the community, the land administration committee in its sole discretion decides to grant membership.

2.2 Membership Register

- 2.2.1 The names of all household heads and their identity numbers must, at all times, be reflected in the communal land register and updated on a continuous basis by the land administration committee.
- 2.2.2 In the event of a dispute regarding the right of a person to be a member of the community, the matter must be resolved by way of an informed and democratic decision of the community.
- 2.2.3 Each holder of a new order right must be issued with a deed of communal land right.

2.3 Conditions of membership

2.3.1 Each member of the community is expected to be familiar with and to observe these rules and to respect decisions taken in terms thereof.

2.3.2 The land administration committee is entitled to impose and enforce reasonable qualifying conditions of membership provided these are in accordance with the community rules, the Communal Land Rights Act, 2004 (Act No. 11 of 2004), and the Constitution.

3. Land rights

3.1 General membership rights

3.1.1 A member of the community is entitled to participate in decision-making and general management of communal land subject to the provisions of these rules, particularly the requirements related to rights in land, drawing benefits from the land, resources and development projects of the community.

3.1.2 Every member of the community has, by virtue of her or his membership the following rights:

3.1.2.1 to attend and speak at community meetings;

3.1.2.2 to stand for elections for any position in the community;

3.1.2.3 to receive sufficient notice of community meetings as determined in these rules; and

3.1.2.4 to have reasonable access to the records of the community dealing with the allocation and management of land rights, including minutes of community meetings, the communal land register and these rules.

3.2 Members' rights in land

Subject to these rules, household decisions, the land use planning of the municipality having jurisdiction and the law, a member of the community may –

- 3.2.1 build a house or effect other improvements on the allocated site;
- 3.2.2 plough and cultivate on the allocated land;
- 3.2.3 open and run a business on the allocated site;
- 3.2.4 permit relatives to live on any allocated site;
- 3.2.5 benefit from the natural resources found on the communal land, including thatching grass, firewood and herbs;
- 3.2.6 participate and benefit from community projects;
- 3.2.7 bequeath, lease and sell improvements on the allocated site;
- 3.2.8 enter into written or verbal agreement with any other member of the community to use part of her or his allocated site for an agreed period of time; and
- 3.2.9 appeal against a decision of the community or the land administration committee relating to –
 - 3.2.9.1 membership of the community;
 - 3.2.9.2 the land of the community or a right or interest in, or to such land,

to a subcommittee of the Board in terms of section.....of the Act.

3.3 Allocation and reallocation of household residential sites

3.3.1 Each household is entitled to one residential site.

3.3.2 The sizes of household residential sites may vary depending on the customs of the community and the manner in which sites were allocated originally.

3.3.3 A member of the community or a person who is not a member may apply to the land administration committee for the allocation of a residential site or the reallocation of a vacated residential site: Provided that she or he -

3.3.3.1 is an adult who is 18 years of age or above;

3.3.3.2 is a South African citizen or has permanent residency; and

3.3.3.3 is prepared to comply with these rules.

3.3.4 In evaluating applications from non-members, the land administration committee must consider:

3.3.4.1 the reasons of the applicant for leaving the area where she or he resides at the time of the application;

3.3.4.2 a report on the behaviour of the applicant from either a neighbour, traditional council or municipal ward councilor;

3.3.4.3 the availability of land; and

3.3.4.4 the extent of land need amongst the community members who have not been allocated residential sites.

3.3.5 Residential sites vacated by members must revert to the community.

3.3.6 If a residential site remains unoccupied or unused for a period of more than two years, the land administration committee may reallocate such site.

3.4 Access to grazing land

3.4.1 Subject to availability, all community members have equal access to grazing land.

3.4.2 The number of livestock each household may keep shall be determined on the basis of in accordance with the policy of the Department of Agriculture.

3.4.3 Households may trade with grazing rights among themselves on condition that they notify the land administration committee in writing of such an arrangement.

3.4.4 A land administration committee may require households to make contributions towards the maintenance of grazing land, livestock handling facilities, camps and any other land, buildings and facilities.

3.5 Access to arable land

3.5.1 Subject to availability of unallocated land, each household is entitled to a portion of arable land.

3.5.2 The provisions of rule 3.3.4 and 3.3.5, subject to the necessary changes, apply to the allocation or reallocation of arable land.

3.5.3 Arable land becomes communal grazing land during fallow seasons unless or otherwise it is used for winter crop production.

3.6 Entitlement to land rights and benefits

- 3.6.1 A member of the community is entitled to rights in and benefits accruing from the community's land and assets.
- 3.6.2 A member of the community can be excluded from access to or the use of any part of the community's property which is assigned for that member's exclusive use or for that member's shared use, in accordance with the provisions of these rules only.
- 3.6.3 The community may, at a community meeting, take an informed and democratic decision to encumber the property of the community.

3.7 Disposal of rights in land

- 3.7.1 Any holder of a new order right may, subject to the written ratification by the community at a community meeting where an informed and democratic decision was taken, and by the Board, alienate, transfer, encumber, sublet, bequeath or otherwise dispose of her or his right.
- 3.7.2 Any disposal contrary to rule 3.7.1 is null and void.
- 3.7.3 Any member who intends to exercise a right in terms of rule 3.7.1, must disclose to the land administration committee and the Board the benefits that may accrue to the member and the impact this may have on the communal property.
- 3.7.4 Where the holder of a new order right intends to dispose of her or his right, the community by way of an informed and democratic decision has a right of first refusal to acquire the right for the community.

- 3.7.5 The community may either determine the value on a case-by-case basis or use an agreed formula or appoint an independent appraiser to determine compensation and advise the community accordingly.
- 3.7.6 Compensation payable to the holder of the new order right in the event of a disposal of the right to the community in terms of rule 3.7.4 must be determined either by agreement or by a court in accordance with section 25(3) of the Constitution.
- 3.7.7 Where the holder of a new order right holder has effected improvements on the land in respect of which the right is held, such a holder is entitled to just and equitable compensation as contemplated in section 25(3) of the Constitution for the improvements so effected.

3.8 Suspension and termination of membership

- 3.8.1 The community, on reasonable grounds, by way of an informed and democratic decision at a community meeting, at which a member was given a fair opportunity to present her or his case, is entitled to suspend certain or all of the membership rights of that member for a reasonable period not exceeding one year.
- 3.8.2 The membership of any person is terminated –
- 3.8.2.1 when she or he decides to leave the area or disappears without trace;
 - 3.8.2.2 through her or his written resignation;
 - 3.8.2.3 by the community, by way of an informed and democratic decision, on reasonable grounds where other sanctions are not appropriate and after the matter has been considered at a community meeting at which the member was given a fair opportunity to present her or his case.

3.8.3 Suspension of membership rights or termination of membership in terms of rule 3.8.1 and 3.8.2 is subject to written ratification by the Board having jurisdiction in the area and for that purpose, the community must submit a written report to the Board, containing the following information:

3.8.3.1 the minutes of the meeting contemplated in that rule;

3.8.3.2 reasons for suspension or termination;

3.8.3.3 the manner in which the meeting was convened and conducted, including information on the witnesses called, the chairperson of the meeting, and the names of persons who made representations; and

3.8.3.4 other sanctions considered, where applicable.

3.9 Duties of community members

3.9.1 Each household must make contributions towards the community funds provided members consented to such contributions at a general meeting where an informed and democratic decision was taken to impose such contributions.

3.9.2 Each household must nominate in writing a representative for the purpose of liaising with the land administration committee and must inform in writing the land administration committee if there is a change in the representation of the household.

3.9.3 The household representative must inform in writing the land administration committee –

3.9.3.1 of any proposed use of the land allocated to the household;

- 3.9.3.2 by way of a written notice of at least two months if it plans to vacate permanently the land allocated to the household or if it plans to discontinue its membership of the community;
- 3.9.3.3 if the household plans to allocate a portion of its land to any person;
- 3.9.3.4 of any agreement allowing a person who is not a member of the community to use the land allocated to the household or to guard the household.

4. Land administration committee

4.1 Traditional council acting as land administration committee

A community –

- 4.1.1 must by means of an informed and democratic decision in accordance with section 21(1) of the Act establish a land administration committee;
- 4.1.2 may, if it has a recognized traditional council, decide by means of an informed and democratic decision that the powers and duties of the land administration committee of such community may be exercised and performed by such council

4.2 Management of affairs of community

- 4.2.1 The management of the affairs of the community for the benefit of the members must be undertaken by a land administration committee.
- 4.2.2 The land administration committee is responsible for implementing the provisions of these rules in accordance with the objects thereof, and subject to any instructions of the members in the form of a resolution adopted at a general meeting.

4.3 Composition

4.3.1 All members of the land administration committee must be members of the community.

4.3.2 The total number of members of the land administration committee elected by the community must not be less than six members and not more than ten members.

4.3.3 The community must prior to the first meeting of the land administration committee by means of an informed and democratic decision –

4.3.3.1 designate a member of the land administration committee to represent the interests of vulnerable community members as contemplated in section 22(4) of the Act; and

4.3.3.2 invite in writing the persons or bodies mentioned in section 22(5) of the Act to designate in writing the non-voting members of the land administration committee.

4.3.4 A member of the land administration committee must vacate her or his office if she or he –

4.3.4.1 is no longer permanently resident within the community where the elections will be conducted;

4.3.4.2 is disqualified in terms of regulation 32 of the Communal Land Rights Act Regulations from participating in the election of a land administration committee;

4.3.4.3 becomes an unrehabilitated insolvent;

- 4.3.4.4 is declared by a court of law to be mentally incompetent or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973), or any other applicable law;
- 4.3.4.5 has been removed from an office of trust on account of improper conduct;
- 4.3.4.6 has had her or his name removed from any professional register on account of misconduct and has not been reinstated;
- 4.3.4.7 has been determined by a court, tribunal or forum as contemplated by the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), to have contravened section 7 or any other provision of that Act;
- 4.3.4.8 resigns by written notice to the chairperson of the land administration committee;
- 4.3.4.9 is removed from office by an informed and democratic decision taken at a general meeting of the community on reasonable grounds, after consultation with the land administration committee;
- 4.3.4.10 has, without the leave of the land administration committee, been absent from two or more meetings of the land administration committee during a continuous twelve-month period;
- 4.3.4.11 terminates her or his membership of the community or if such membership is terminated by the community in accordance with rule 3.8.
- 4.3.5 The membership of a member of the land administration committee must be suspended for the period of her or his suspension as a member in terms of rule 3.8.1.

4.3.6 Any member who vacates her or his office in terms of rule 4.3.4 or a member whose membership is suspended in terms of rule 4.3.5, must prior to such vacation or suspension, be given a fair opportunity to present her or his case at a general meeting of the community.

4.4 Chairperson and deputy chairperson

4.4.1 At its first meeting after it has been established under section 21(1) of the Act, the land administration committee must by agreement -

4.4.1.1 designate one of its members to be the chairperson of the land administration committee; and

4.4.1.2 thereafter designate another of its members to be the deputy-chairperson of the land administration committee.

4.4.2 In the event that the land administration committee is unable to reach agreement as contemplated in rule 4.4.1, the members must vote for the person to be elected as a chairperson and thereafter for the person to be elected as deputy chairperson: Provided that in the event of an equality of votes the matter must be referred to the Department for intervention.

4.4.3 In the absence of the chairperson or if the chairperson is for any reason unable to act as chairperson, the deputy-chairperson must perform the functions of the chairperson.

4.4.4 If both the chairperson and deputy-chairperson are absent from any meeting, the members must by agreement or by a vote in accordance with rule 4.4.2 elect one of their members to preside and, until the chairperson or deputy-chairperson resumes duty, to perform all the functions of the chairperson.

4.5 Election

The election of the members of the land administration committee or the election of a member in the event of a vacancy must take place in accordance with the Communal Land Rights Act Regulations.

4.6 Term of Office

4.6.1 Members of the land administration committee must remain in office for a period of five years.

4.6.2 A member of the land administration committee may serve only two successive terms of office.

4.7 Powers and Duties

In addition to the powers and duties conferred upon a land administration committee in terms of the Act, a land administration committee may –

4.7.1 subject to section 24(2) of the Act and the written ratification by the community by means of an informed and democratic decision, dispose of land not allocated to members of the community;

4.7.2 impose levies for the administration of the land in respect of which it has jurisdiction.

4.8 Land administration committee meetings

4.8.1 The chairperson may convene a general meeting at any time.

4.8.2 A special meeting of the land administration committee must be convened by the chairperson within ten days of receipt by her or him of a written request signed by

two or more committee members, which request must stipulate the purpose for which the meeting is to be convened and the place and time of the meeting.

- 4.8.3 The chairperson must give at least five days written notice of a meeting to all committee members and such a notice must be accompanied by an agenda.
- 4.8.4 In special circumstances, where an urgent meeting is deemed necessary, a notice of the meeting may be given verbally or otherwise in the manner the chairperson deems desirable and expedient without the normal formalities.
- 4.8.5 The quorum for dealing with the agenda of a committee meeting is 50 percent of the members present in such meeting plus one.
- 4.8.6 Decision-making happens by means of agreement or putting the members to the vote.
- 4.8.7 In the event of an equality of votes, the chairperson has a casting vote.
- 4.8.8 The land administration committee must keep minutes of its meetings and the following must be recorded therein –
- 4.8.8.1 the date, time and place of the meeting;
- 4.8.8.2 the names of the members present;
- 4.8.8.3 a summary of every decision taken at the meeting; and
- 4.8.8.4 if a member so requests, the fact that she or he voted against any decision taken.
- 4.9 The minutes of a meeting of the land administration committee must be adopted at the next meeting and signed by the chairperson upon adoption.

- 4.10 All minutes adopted and signed in accordance with rule 4.9 must be available for inspection by members of the community, the Board, the Department and any person authorised by law.
- 4.11 Unless the contrary is proved minutes adopted and signed in accordance with rule 4.9 or a resolution signed by a majority of the committee members present at a meeting of the land administration committee will constitute proof of a decision taken at that meeting.
- 4.12 The land administration committee may delegate any power which has been conferred upon it in terms of the Act to a subcommittee of the land administration committee or to a committee member.
- 4.13 Any delegation to a subcommittee or a member in terms of paragraph 4.12 may be made either in general or in a particular case or in cases of a particular nature and on such conditions as may be determined by the land administration committee, and the land administration committee is not thereby divested of any power so delegated.
- 4.14 Members of the community not serving on the land administration committee and non-voting members of the land administration committee may attend and address the meetings of the committee.
- 4.15 Each committee member who has a direct interest in any matter on the agenda of the land administration committee is required to declare such interest and must not be present during the discussion and taking of a resolution on the matter.
- 4.16 A committee member must attend all meetings of the committee and of the subcommittee of which she or he is a member, except when leave of absence is granted in terms of the applicable rules or as determined by the rules and orders of the committee: Provided that where a non-voting member of the committee or

subcommittee is not present a meeting of which she or he has been notified in terms of these rules, the meeting may proceed in her or his absence.

- 4.17 If the chairperson is not present or unable to exercise her or his powers or to perform her or his duties, the deputy-chairperson serves as the chairperson for the land administration committee.

5. Community meetings

5.1 Matters to be dealt with at general meetings

General meetings of the community are convened when necessary to deal with the business of the community, including –

- 5.1.1 the election, removal and replacement of land administration committee members;
- 5.1.2 guidance of the land administration committee members;
- 5.1.3 the making, adoption, amendment or revocation of these rules;
- 5.1.4 the ratification of the disposal of land by the land administration committee;
- 5.1.5 the approval or rejection of an application for the conversion of a registered new order right into freehold ownership;
- 5.1.6 the granting of any loan or guarantee by the community in favour of any person;
- 5.1.7 other matters as required by law.

5.2 Procedures at general meetings

- 5.2.1 At least one general meeting must be held every year.

- 5.2.2 The chairperson, deputy chairperson or any two members of the land administration committee may convene a general meeting at any time.
- 5.2.3 A special meeting of the community must be convened by the chairperson within ten days of receipt by her or him of a written request signed by 10 or more community members, which request must stipulate the purpose for which the meeting is to be convened and the place and time of the meeting.
- 5.2.4 The chairperson must give at least 21 days notice, in the language or languages used by the community, by making use of any appropriate media or measure contemplated in regulation 3(1)(a) of the Communal Land Rights Act Regulations, of a meeting to all community members and such a notice must be accompanied by an agenda.
- 5.2.5 A decision taken at a community meeting or meetings may only be taken by a majority of the members of the community present or represented at that meeting or meetings in which they had reasonable opportunity to participate.
- 5.2.5 Decision-making happens by means of agreement or putting the members to the vote.
- 5.2.6 In the event of an equality of votes, the chairperson has a casting vote.
- 5.2.7 If the chairperson is not present or unable to exercise her or his powers or to perform her or his duties, the deputy-chairperson serves as the chairperson for the land administration committee.

5.3 Matters to be dealt with at special meetings

A special meeting convened in terms of rule 5.2.3 may deal with any matter mentioned in rule 5.1

SCHEDULE 2**GOVERNMENT NOTICE****DEPARTMENT OF LAND AFFAIRS**

No. R. , 2007

DEEDS REGISTRIES ACT, 1937 (ACT NO. 47 OF 1937) : AMENDMENT OF REGULATIONS

In terms of section 9(9) of the Deeds Registries Act, 1937 (Act No. 47 of 1937), I, Lulama Xingwana, Minister for Agriculture and Land Affairs, approve the regulations contained in the Schedule, made by the Deeds Registries Regulations Board under section 10 of the said Act. The regulations will come into operation one month from the date of publication hereof in the *Gazette*.

L XINGWANA

MINISTER FOR AGRICULTURE AND LAND AFFAIRS

SCHEDULE**Definitions**

1. In this Schedule "the Regulations" means the regulations promulgated by Government Notice No. R. 474 of 29 March 1963, as amended.

Amendment of Regulation 44A

2. The following regulation is hereby substituted for regulation 44A of the Regulations:

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"44A. The person who signs the preparation certificates prescribed by regulations 43 and 44 (1) of the Regulations accepts, in terms of section 15A (1) and (2) of the Act, to the extent provided for in this regulation, responsibility for the correctness of the undermentioned facts stated in the deeds or documents concerned or which are relevant in connection with the registration or filing thereof, namely:

(a) that all copies of the deeds or documents intended for execution or registration are identical at the date of lodgment;

(b) that, in the case of a deed of transfer or certificate of title to land, all the applicable conditions of title contained in or endorsed upon the owner's copy of the title deed, together with any applicable proclaimed township conditions have been correctly brought forward in that deed of transfer or certificate of title to land;

(c) that, in the case of a document referred to in regulation 44(1) signed by a person in his or her capacity as executor, trustee, tutor, curator, liquidator, judicial manager or a person in a representative capacity from perusal of the documents evidencing such appointment exhibited to him or her, such person has in fact been appointed in that capacity and acts in accordance with the powers granted to him or her and that any security required has been furnished to the Master of the High Court;

(d) that, to the best of his or her knowledge and belief and after due enquiry has been made, including but not limited to the examination of supporting documents -

(i) the names, identity number or date of birth and marital status of any natural person being a party to a deed or document is correctly disclosed in any such deed or document and in the case of any other person, its name and registered number, if any, are correctly disclosed in that deed or document;

(ii) in the case of a document referred to in regulation 44 (1)-

(aa) that subject to the provisions of regulation 65, the necessary authority has been obtained for the signing of such document in a representative capacity on behalf of a company, close corporation, church, association, society, trust or other body of persons or an institution whether created by statute or otherwise;

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(bb) that the transaction as disclosed therein is authorized by and in accordance with the constitution, regulations, or founding statement or trust instrument of a trust, or registered community rules **and the determination made by the Minister** in terms of the Communal Land Rights Act, No. 11 of 2004, as the case may be, of any church, association, close corporation, society, trust, or other body of persons, or any institution, whether created by statute or otherwise, other than a company, except a share block company as defined in the Share Blocks Control Act, 1980 (Act 59 of 1980), being a party to such document;”.

(cc) that the person, entity, body of persons, whether created by statute or otherwise, is entitled to and contractually capable of concluding the transaction disclosed in the deed or document lodged for registration; and

(e) that, in the case where a conveyancer signs the preparation certificate on a deed of transfer, certificate of title, other deed conveying ownership in land or a mortgage bond, he or she accepts responsibility that the particulars in the deed mentioned in paragraph (d) (i), have been brought forward correctly from the special power of attorney or application relating thereto.”.

Insertion of regulations 70A, 70B and 70C

3. The following regulations are hereby inserted after regulation 70 of the Regulations:

“Vesting of communal land

70A. (1) The endorsement of a title deed, mortgage bond or other deed to reflect the vesting of land in the name of a community, as contemplated in section 5(2)(a) of the Communal Land Rights Act, No. 11 of 2004, must be effected upon the lodgement of an application together with the relevant title deed, mortgage bond or other deed.

(2) If a certificate has been submitted by a conveyancer or official to the effect that the relevant title deed, mortgage bond or other deed to such land is not available, the registrar must endorse the registry duplicate of such title deed,

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mortgage bond or other deed, and if the original title deed, mortgage bond or other deed is at any time lodged with the registrar for any purpose, the registrar must make a similar endorsement thereon.

(3) The application referred to in subregulation (1) must be made by the Minister and drafted in the format of Form III.

Cancellation of old order rights

70B. (1) An endorsement to reflect the cancellation of a document evidencing an older order right, as contemplated in section 5(3)(a) of the Communal Land Rights Act, 2004, must be effected upon the lodgement of an application together with the relevant document evidencing such old order right.

(2) If the document referred to in subregulation (1) is not available, a conveyancer or official must lodge an affidavit as contemplated in section 5(3)(b) of the Communal Land Rights Act, 2004, describing the document and stating that it has not been pledged and is not being detained by any one as security for debt or otherwise, but that it has actually been lost or destroyed and cannot be found though diligent search has been made therefore and further describing, where possible, the circumstances under which it was lost or destroyed.

(3) The application referred to in subregulation (1) must be made by the holder of the right or the Minister and drafted in the format of Form JJJ.

Conversion of registered new order right into freehold ownership

70C. (1) An endorsement to reflect the conversion of a registered new order right into ownership, as contemplated in section 9 of the Communal Land Rights Act, 2004, must be effected upon the lodgement of an application by the holder of such registered new order right together with the approval by the community, ratification by the Land Rights Board established by the said Act, and the relevant title deed and mortgage bond.

(2) Any relevant title conditions imposed or rights reserved by a community upon approval of a conversion of a registered new order right, must be incorporated into the application referred to in subregulation (1).

(3) The application referred to in subregulation 1 must be drafted in the format of Form KKK.”.

Addition of Forms

4. The Regulations are hereby amended by the addition of the following Forms III, JJJ, KKK and LLL.

FORM III

Prepared by me

.....

*CONVEYANCER / OFFICIAL

.....

(State surname and initials in block letters)

APPLICATION FOR ENDORSEMENT IN TERMS OF SECTION 5(2)(c) OF THE COMMUNAL LAND RIGHTS ACT, No. 11 OF 2004

I, the undersigned, do hereby apply to the Registrar of Deeds at for the endorsement of (here insert the nature of the title deed/mortgage bond/other deed and the number of the title deed/mortgage bond/other deed) in order to reflect the vesting of ownership of (here insert the description of the land including the name, number, registration division and province) in the name of

(here insert the name and the registration number of the community), subject to the following conditions :

**
.....
.....

Dated at this day of

.....
Minister/Duly appointed
Delegate

*Delete which is not applicable.

**Insert conditions where applicable.

FORM JJJ

Prepared by me
.....
*CONVEYANCER / OFFICIAL
.....
(State surname and
initials in block letters)

APPLICATION IN TERMS OF SECTION 5(3)(a) OF THE COMMUNAL LAND RIGHTS ACT, No. 11 OF 2004

I, , hereby apply for the cancellation of
(here insert the nature and number of the document) in respect of
.....
(here insert the description of the land including the name, number, registration division and province).

Dated at this day of

.....
*Minister / Duly appointed
Delegate/Legal holder

*Omit whichever is not applicable.

FORM KKK

Prepared by me
.....
CONVEYANCER
.....

(State surname and
initials in block letters)

**APPLICATION IN TERMS OF SECTION 9(4) OF THE
COMMUNAL LAND RIGHTS ACT, No. 11 OF 2004**

I, hereby apply for the conversion of my registered new
order right in respect of
(here insert the description of the land including the name, number, registration
division and province) held under
(here insert the number of the deed of communal land rights) into ownership, subject
to the following conditions
*

Dated at this day of

.....
Legal holder

*Insert conditions where applicable.

FORM LLL

Prepared by me

.....

*CONVEYANCER/OFFICER

.....

(State surname and initials in
block letters)

DEED OF COMMUNAL LAND RIGHTS

[In terms of the provisions of section 6(b)(iii) / 8 of the Communal Land Rights Act,
2004 (Act No. 11 of 2004)]*

Whereas I,

(insert particulars of transferor or duly authorized agent)

.....

(here insert an appropriate recital of the nature and date of the transaction or the
circumstances necessitating transfer as well as the compensation).

Now, therefore, I hereby cede and transfer, the State, however, reserving its rights,
to and on behalf of

(insert particulars of transferee) the new order rights in and to -

.....

(insert the description of the land, stating name, number, registration division or
administrative district, province and area, and comply with the regulations with
reference to extending clause and conditions).

Signed at on

.....

Transferor/duly authorized agent

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Before me

*Conveyancer/Official

Registered at on

Registrar of Deeds

Seal of Office

*Omit what is not applicable.

5. These regulations shall be known as the Deeds Registries Amendment Regulations, 2007.