



REPUBLIC OF NAMIBIA

COMPENSATION POLICY GUIDELINES FOR COMMUNAL LAND

APPROVED IN TERMS OF CABINET DECISION NO.17TH/15.09.09/003 OF 15 SEPTEMBER 2009

PURPOSE OF THE GUIDELINE

This guideline:-

1. Explains situations that may give rise to compensation in instances where land is taken for township expansion or other public sector development projects;
2. Gives direction on how compensation shall be determined in instances where communal land is taken by any competent authority;
3. Helps the affected landowners to choose a compensation option they consider to be fair from the two options provided in Part B and C below respectively;
4. Is applicable in cases where an occupant of land within a proclaimed local authority boundary has been occupying the affected land in accordance with the customary laws of the area.

Part A: BACKGROUND

- a. The fundamental principle of compensation is to put the claimant in as near as possible to the same position as he or she was before the acquisition or displacement. This principle is applicable to situations where land and improvements are involved, whether it is communal or freehold. It is recognized that for communal land, ownership is vested in the State for the benefit of the community's use whereas in freehold; the landholder has a full legal right to acquire, own or dispose such property.
- b. These policy guidelines recognize that:-
 - (i) Article 16(1) of the Namibian Constitution guarantees all persons the right to property with paragraph 1 thereof providing everyone a right to acquire, own and dispose of property, alone or in association with others and to bequeath such property.

- (ii) Article 16 (2) of the Namibian Constitution provide for the expropriation of property by the State or any competent body authorized by law in the "public interest", subject to payment of just compensation and which compensation should be in accordance with the requirements and procedures determined by an Act of Parliament.
- (iii) Whereas Section 25 of the Agricultural (Commercial) Land Reform Act, (Act No. 6 of 1995), provides for the payment of just compensation for any commercial agricultural land expropriated or any right in such commercial agricultural land expropriated in accordance with Article 16 of the Namibian Constitution, there are no existing legal procedures to guide in the determination of compensation payable for communal landholders whose property is subject to expropriation by the State or any competent body authorized by law in the "public interest".
- (iv) Whereas the Expropriation Ordinance of 1978 (Ordinance No. 13 of 1978) provides for the expropriation of immovable property including a real right in or over immovable property by the State or any competent body authorized by law in the "public interest" and for the payment of just compensation for any such expropriated real right in or over immovable property, subsection 35(1) of the Agricultural (Commercial) Land Reform Act, No. 6 of 1995 stipulates that the provisions of the said Ordinance shall not apply to an expropriation of property for the purposes contemplated in section 14(1) of the Agricultural (Commercial) Land Reform Act, (Act No. 6 of 1995)
- (vi) However subsection 35(2) of the Agricultural (Commercial) Land Reform Act No. 6 of 1995 provides that;

"Nothing in this Act (Agricultural (Commercial) Land Reform Act No. 6 of 1995) shall be construed as preventing the expropriation of agricultural land in accordance with the provisions of the Expropriation Ordinance, 1978, for a purpose contemplated in that Ordinance."

c. These policy guidelines have been prepared bearing in mind that:-

- (i) Article 17 of the Universal Declaration of Rights and duties of Man of 1948 specifies that everyone has the right to own property alone or in association with others and that no-one may be arbitrarily deprived of property, except where the power to deprive the individual of his right is granted by law and only on justifiable grounds;
- (ii) there are currently no legal procedures determined by an Act of Parliament for assessing the amount of compensation payable to an individual deprived of his/her right to own property in communal areas or the right to utilize communal land allocated to him/her by a traditional leader or traditional authority;

- (iii) the universally accepted method for assessing the replacement cost of improvements for purpose of determining compensation is the depreciated replacement cost approach;
 - (iv) the underlying concept behind the depreciation replacement cost approach is to consider the present worth of materials used in a building minus any estimated depreciated value.
- d. Bearing in mind the fact that our various environmental legislations no longer permits the cutting down of trees, compensating our people living in communal areas for their improvements based on the reduced cost of current building materials would disadvantage the majority of our people. Many of the families may not be able to rebuild their homesteads elsewhere, again.
- e. In the light of the aforesaid, the basis for determining the amount of compensation payable for materials used to construct traditional building structures in communal areas shall disregard the element of depreciation. Therefore the prevailing replacement value of new materials shall be used instead.

USE OF COMMUNAL LAND

- f. The right to use communal land can be equated to a usufruct which is a personal servitude that entitles one person to use another person's property in such a way as to preserve its substantial character and to enjoy the fruits therefrom for a defined period or for the lifetime of the user.
- g. The relevant traditional authorities and the community in general have control over the allocation and use of the land, but it is recognized that they do not own it; neither do they enjoy leasehold rights over the land.

In essence therefore, the communal farmer has the right to administer the land for his own benefit until that right ceases or is extinguished by the death of the user.

Part B: COMPENSATION IN MONEY AND ERVEN

AIM

The purpose of this option is to allow a communal landholder whose land is incorporated into a town land jurisdiction or has been taken for other public sector development purposes, the choice to either:-

- a) own a residential erf in the proclaimed town; or
- b) subject to availability, be given alternative land of similar size as the one which has been taken away from them in order to continue with their farming activities.
- c) In cases where no land of similar size is available, the landholder shall be provided with reasonable land.

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|---|---|
| Option 1 | <i>Applicable to affected communal land of more than 500m² on which there is a homestead, cultivated land, uncultivated land and any other improvements.</i> |
| <ul style="list-style-type: none">1. Two residential erven measuring at least 500m² in size to be transferred to the occupant's name free of charge.2. One of the erf shall be where the present homestead is located.3. The other erf shall be adjacent to the first erf indicated in (2) above or any other available erf which the owner can sell ("voetstoots")4. The acquiring authority to provide both erven with municipal services i.e. water supply and or electricity free of charge, where applicable, and the owner of the erven shall pay for use of the services provided.5. Other improvements affected by the acquisition or displacement shall be compensated in terms of Part D below, but shall exclude the improvements remaining on the 500m² erf with a homestead.6. In case the area where one or both of the erven indicated in (1) above is not zoned for residential use, the affected occupant shall be given alternative residential land, accordingly. In addition, any improvements on the homestead shall be compensated in terms of Part D below.7. Should a person elect this option, the acquiring authority or any other relevant ministry, line ministries or traditional authority shall not be compelled to provide the beneficiary with any alternative land elsewhere, in addition to the one granted under this option. | |

PART C: PROVISION OF ALTERNATIVE LAND IN THE COMMUNAL AREAS FOR FARMING PURPOSES

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|---|---|
| Option 2 | <i>Applicable to affected communal land of less than 500m² on which the improvements are of a permanent or temporary nature which are utilized for other purpose including dwelling.</i> |
| <ol style="list-style-type: none"> 1. For structures constructed of corrugated iron materials which are not of a permanent nature, a cash amount of N\$ 10 000.00 and the acquiring authority shall provide transportation. 2. For conventional buildings (Brick walls, IBR roof, grano or tiled floors) N\$3; 000/m² to be adjusted depending on the quality, condition and workmanship of the building structure as determined by a Government Valuer and the acquiring authority shall provide transportation. 3. The Government Valuer shall adjust the amount indicated in 1 and 2 above, accordingly, to reflect the prevailing market rates at the time of assessment and shall recommend the adjustment value to the line Ministry. 4. If there are fruit-bearing trees or cultivated land in addition to permanent or temporary structures the amount of compensation shall be determined in terms of Part D below. | |

Where the affected person opts to be given alternative land elsewhere in order to continue with their farming activities.

1. The government shall strive to provide the affected person with alternative land of similar size as the one which has been taken away from him, but subject to availability.
2. Ideally, the government shall strive to provide the alternative land within the same traditional authority jurisdiction. However should the land be insufficient or not be available, the affected person may be relocated to other traditional authority area where there is land in consultation with the relevant Traditional Authorities.
3. In addition, the affected person shall be compensated for being deprived of the right of use of the land and other improvements in terms of Part D below.

**PART D: DETERMINATION OF COMPENSATION FOR LAND, IMPROVEMENTS
AND DISTURBANCE**

1. CULTIVATED LAND

| Land | Current amount (N\$) | Proposed amount (N\$) |
|-----------------|----------------------|-----------------------|
| Cultivated land | N\$600.00/ha | N\$5 000.00/ha |

- a. Government recognizes the extent to which prior preparation of land is necessary before it can be rendered ready for cultivation. Physical obstacles where they exist have to be removed, de-bushing done and the surface soil levelled and prepared, where necessary.
- b. Compensation on cultivated land shall be based on the cost of preparing virgin land per hectare to the point where it is ready to have crops planted. The estimated average cost of preparing land for cultivation is roughly the same per hectare for both commercial and communal farming land.
- c. As the current rate for land preparation in commercial farming areas is pegged at N\$5 000.00/ha as indicated in the table above. The same rate per hectare shall be applied for communal farming land.
- d. A Government Valuer shall review the amounts indicated above on a regular basis to reflect prevailing market rates for purposes of determining the amount of compensation payable to an affected person.

2. GRAZING LAND/UNCULTIVATED LAND

| Land | Current amount (N\$) | Proposed amount (N\$) |
|---|----------------------|-----------------------|
| Uncultivated land (Land with cultivation potential) | N\$250.00/ha | N\$2 500.00/ha |

- a. In cases where grazing land shared by the communal farmers is affected, no compensation shall be paid to any person.
- b. Where uncultivated land with the potential for cultivation is demarcated within a homestead in terms of the appropriate statutes, and is utilized for grazing purposes, a rate of N\$2 500/ha shall be paid.

- c. A Government Valuer shall review the amount of N\$2500/ha indicated above on a regular basis to reflect prevailing market rates for purposes of determining the amount of compensation payable to an affected person.

3. STRUCTURES

- a. The following amounts shall apply in respect of structures

| Structure | Current Rate (N\$) | Proposed Rate (N\$) |
|---|--------------------------|--|
| Homestead enclosures with strand wire, poles and droppers | N\$70/m | N\$105/m |
| Home stead enclosed with wooden poles only | N\$60.00/m | N\$90.00/m |
| Huts with pole walls, grass roof and earth floor | N\$100.00/m ² | N\$150.00/m ² |
| Huts with mud-brick walls, grass roof and earth floor | N\$150.00/m ² | N\$225.00/m ² |
| Huts with cement brick walls, grass roof and earth floor | N\$180.00/m ² | N\$260.00/m ² |
| Huts with cement brick walls, grass roof and concrete floor | N\$200/m ² | N\$300.00/m ² |
| Corrugated structures | N\$50.00/m ² | N\$75.00/m ² |
| Conventional building (brick wall, IBR roofing, concrete floor) | N\$400/m ² | N\$3 000/m ² depending on the quality of finishes, condition and workmanship of the building structures as determined by a Government Valuer. |
| Cattle kraals, goat pens, pig pens made of with strands, poles with or without droppers | N\$70.00/m | N\$105/m |
| Cattle kraals, goat pens, pig pens made of wooden poles only | N\$60.00/m | N\$90.00/m |
| Enclosure fencing of the entire property | N\$50.00/m | N\$75.00/m |
| Well (Located in soft soils) | N\$0.00 | N\$20/m |
| Well (Located in hard soils) | N\$0.00 | N\$50/m |
| Other structures, Boreholes, Water tanks, etc | N\$0.00 | Amount payable to be assessed and determined by a Government Valuer. |

- b. The above amounts shall be subject to changes in line with inflation. Therefore the Government Valuer shall review these amounts on a regular basis using the Consumer Price Index (CPI) rate to reflect prevailing market prices. (i.e. Apply a time and inflation adjustment to these amounts).
- c. In determining the replacement value of materials used to construct traditional building structures in communal areas, the Valuer shall disregard the element of depreciation.

4. FRUIT-BEARING TREES

- a. Compensation for fruit-bearing tree shall be calculated as follows:

Value of tree at maturity = Estimated fruits per season (or litres) X Unit price X Maturity Period

| Local/ Common name | Scientific/ Botanical name | Estimated Fruits per season per tree | Estimated Quantity sold | | N\$/ Fruit or per litre of a drink | Total price per season (N\$) | Estimated Maturity period in years | Tree value at maturity (N\$) | Main product |
|--------------------------|----------------------------------|---|-------------------------------|-------|---|--|---|---------------------------------------|-----------------------------|
| | | | KG | Litre | | | | | |
| Mango | Mangifera indica | 150 | | | 5 | 750 | 5 | 3,750 | Fruit |
| Lemon | | 180 | | | 4 | 720 | 5 | 3,600 | Fruit |
| Omukuyu / Fig tree | Ficus sycomorous | | | 25 | 10 | 250 | 10 | 2,500 | Liquor/ Ombike |
| Orange | | 180 | | | 6 | 1,080 | 5 | 5,400 | Fruit |
| Marula | Sclerocarya birrea | | 30 0 | 150 | 10 | 1,500 | 10 | 15,000 | Wine (Omaongo) |
| Omwandi | Diospyros mespiliformis | | 80 | 25 | 60 | 1,500 | 10 | 15,000 | Liquor/ Ombike |
| Omulunga | Hyphaene petersiana | | | 25 | 60 | 1,500 | 10 | 15,000 | Liquor/ Ombike/ Fruit |
| Guava | Psidium guajava | 200 | | | 1 | 200 | 5 | 1,000 | Fruit |
| Omuve | Berchemia discolor | | | 30 | 60 | 1,800 | 7 | 12,600 | Liquor/ Ombike |
| Paw paw | Carica papaya | 20 | | | 10 | 200 | 5 | 1,000 | Fruit |

| | | | | | | | | | |
|-------------------|----------------|-------|----|--|------|--------|--|-------|------------------|
| Grape | Vitis vinifera | | 40 | | | N\$304 | 3 | 912 | Wine/Fruit Drink |
| Banana | Musa acuminata | 40 kg | 40 | | 8.50 | N\$340 | 3 | 1,020 | Fruit |
| Peach | Prunus persica | | | | | N\$344 | 5 | 1,720 | Fruit |
| Other Fruit Trees | | | | | | | Amount payable to be assessed at the time of determination | | |

- b. On commencement of these guidelines, the quantities and rates indicated hereunder shall be applied:-
- c. The above amounts shall be subject to changes in line with inflation. Therefore the Government Valuer shall review these amounts on a regular basis either using the prevailing Consumer Price Index (CPI) rate to adjustment to these amounts or the prevailing market price of the fruits.
- d. In determining the value of fruit-bearing trees, only the value of the edible fruits derived thereof shall be considered.

5. DISTURBANCE ALLOWANCE

- a. There shall be additional allowance added to the total amount payable in terms of this policy guideline which shall equal to 15 per cent of such total amount, but shall not be more than N\$15 000, calculated in accordance with the following formula:

Total Compensation X 15 % of Total Compensation = Disturbance Allowance

if;

- [i] the total compensation amount payable does not exceed N\$100 000;
plus
- [ii] five per cent of the amount by which it exceeds N\$100 000, if it does not exceed N\$500 000;
plus
- [iii] three per cent of the amount by which it exceeds N\$500 000, if it does not exceed N\$1 000 000;
plus
- [iv] one per cent (but not amounting to more than N\$15 000) of the amount by which it exceeds N\$1 000 000.

- b. In determining the amount of compensation to be paid for property affected and or expropriated, the following considerations shall apply, namely-
- [i] if the value of the property was enhanced in consequence of the use thereof in a manner which is unlawful such enhancement shall not be taken into account;
 - [ii] improvements made after the date of notice on or to the property in question, except where they were necessary for the proper maintenance of existing improvements or where they were undertaken in pursuance of obligations entered into before that date, shall not be taken into account;
 - [iii] any enhancement or depreciation, before or after the date of notice, in the value of the property in question, which may be due to the purpose for which or in connection with which the property is being expropriated, or which is a consequence of any work or act which the State may carry out or perform or already has carried out or performed or intends to carry out or perform in connection with such purpose, shall not be taken into account;

6. MATTERS INCIDENTAL

1. The Ministry of Lands and Resettlement, Regional Councils & Local Authorities and the Traditional Authorities be requested to assist in the identification of available land for the relocation of people where necessary, especially those people who want cultivated land.
2. Local Authorities are also cautioned to control land users in their Local Authority areas to prevent illegal settlement problems.
3. Local Authorities should enter into rental agreements with small farmers in their areas on the basis of payment for the use of land and termination of contracts as and when needed for development purposes, provided the claimants had been fully compensated before.
4. Traditional Authorities should not allocate land in any Local Authority Area because this is exclusively the right of the Local Authority to administer for the benefit of the town and its inhabitants.
5. As a principle, where possible, affected people should be offered an equal size of land elsewhere to continue producing their food. This should be done in consultation with line ministries, Regional Councils and Traditional Authorities.

6. Councils to consult the Ministry of Regional & Local Government, Housing & Rural Development, Ministries of Lands and Resettlement, Agriculture, Water and Forestry and other relevant line ministries on the provision of basic services such as water and other necessities to ensure that those relocated are not adversely affected by the process.
7. Cabinet approves that O/M/As make budgetary provisions in order to implement the new policy and Councils are requested to provide accurate estimate of funds required.
8. Cabinet further approves that negotiation and consultation with the affected families or land occupants should be the primary guideline in the process of determining the compensation amount(s).
9. Cabinet approves that this policy be applied with effect from 1st April 2008.