

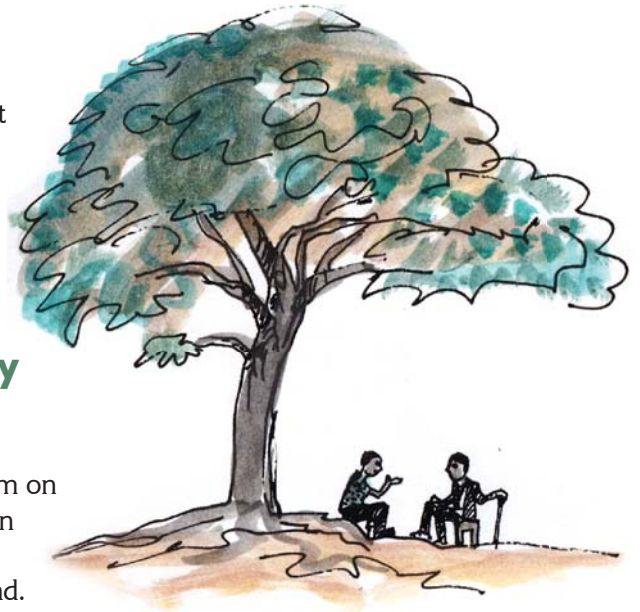
Basic Facts on Namibia's COMMUNAL LAND REFORM ACT

What is communal land?

Communal land is land that belongs to the State and is held in trust for the benefit of the traditional communities living in those areas. Communal land cannot be bought or sold, but you can be given a customary land right or right of leasehold to a part of communal land, according to the rules outlined in the Communal Land Reform Act.

What is the difference between a customary land right and a right of leasehold?

You can apply for a customary land right to live on the land or to farm on the land. An application for a right of leasehold is usually made when someone wants to use the land for another reason, such as for business purposes. You must pay rent for the lease of communal land.



How do I apply for a customary land right or a right of leasehold?

The rules for applying for a customary land right or a right of leasehold are contained in the Communal Land Reform Act. The Act provides for Communal Land Boards for every communal area in Namibia, and it also provides for an Appeals Tribunal to consider appeals. Applications for the two kinds of rights involve slightly different procedures, but both kinds of applications involve the Chief or Traditional Authority and the Communal Land Board.

In both cases, you must make an application in writing on the official form. There are different forms for the two different kinds of land rights.

If you apply for a customary land right, you give your application to the Chief or Traditional Authority. The Chief or Traditional Authority will then investigate your request and may hold a hearing, particularly if someone objects to your application. If the Chief or Traditional Authority approves your application, it will be sent to the Communal Land Board for final approval. The customary land right does not take effect until it is approved by the Communal Land Board. The Board may approve the allocation, refer the matter back to the Chief or Traditional Authority for further consideration, or refuse the allocation.

If the allocation is approved by the Communal Land Board, you will receive a certificate.

If you apply for a right of leasehold, you give your application directly to the Communal Land Board. The Board must get the consent of the Chief or Traditional Authority before it approves a request for a right of leasehold. If your application is approved, you will receive a certificate.

In both types of application, you can ask the Communal Land Board to try and mediate if there is a refusal by the Chief or Traditional Authority. You can also appeal to the Appeals Tribunal against a refusal by the Chief or Traditional Authority or a refusal by the Communal Land Board.



Can a woman have a customary land right or a right of leasehold?

Yes, any adult from the community can apply. Men and women have equal access to communal land. A single woman, divorced woman or widowed woman can have a customary land right or a right of leasehold.

If we are married, can we apply for a joint customary land right?

No. A customary land right will be allocated in the name of only one person. When you make the application you can state that you are married, and you and your spouse can complete the application form together. But only one of you will be named as the customary land right holder. The right will be registered in the name of the person who signs the form. *As of late 2016, the possibility of providing for joint registration by married couples is under discussion, but not yet provided for in the law.*

What happens if we get divorced?

The law does not say what must happen with the communal land if the couple get a divorce. If they are married under civil law, the divorce order can specify how the couple's property will be divided – and even a temporary land right or leasehold is a form of property right that can be taken into account in the divorce order.

What happens if the spouse who has the customary land right in his or her name dies?

The Chief or Traditional Authority has a duty to reallocate the customary land right to a surviving spouse if the surviving spouse wants the land right. If the surviving spouse does not want the land right, it will be reallocated to any children of the relationship. If there are no children who want the land right, it can be re-allocated to any other person.

What if we are not married and my partner, whose name is on the land right, dies?

The law does not cover the situation where a couple is not married. This means that if your informal partner dies, you will not automatically have the first option to hold the customary land right.

What if I am in a customary marriage?

The law recognises both civil and customary marriages. In a customary marriage it is possible for a man to have more than one wife. If the customary land right holder is a man with multiple wives, the law does not say which wife can stay on the land if the man dies. Similarly, if the right holder is a man whose wives have all died and there are many children, the law does not say which child has first right to the land.



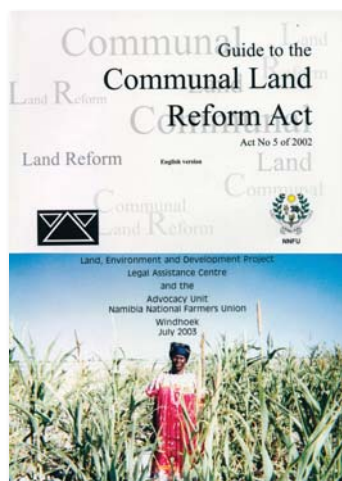
What can I do if I am in a violent relationship and I am living on communal land that is in the name of my spouse or partner?

A protection order could order the abuser to move out of a joint household on communal land, regardless of who holds the communal land right. This option is available only in cases where there has been physical violence.

The magistrate will make this order only after considering the following factors:

- how long you have shared the residence
- your accommodation needs and the needs of any children or other persons in your care
- any special hardship that might result for the abuser or any other persons who are also sharing the residence, such as family members of the abuser.

The protection order can also include an order about the use of the household contents, such as furniture. And, if necessary, it can include a provision saying that the police must remove the abuser from the home, or must go with the abuser to collect clothes and other personal belongings from the home.



See the Legal Assistance Centre's **Guide to the Communal Land Reform Act** for more information (available at www.lac.org.na).

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