

A Land for Women

Women's Rights to Communal Land in Namibia

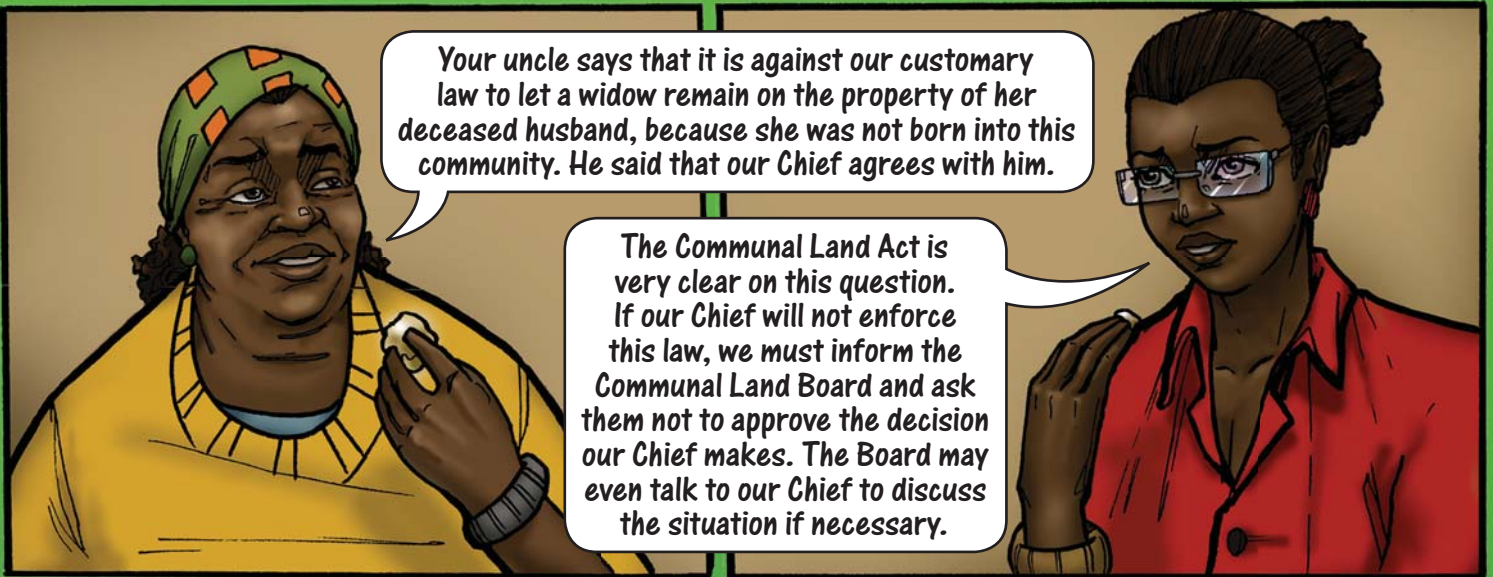
Your uncle says that this land belongs to him. He says I have no right to live here since your father passed away.

No. The law says that the customary land right of a deceased person must be allocated to the surviving spouse, unless the surviving spouse refuses this right. You do have a right to live here.



Your uncle says that it is against our customary law to let a widow remain on the property of her deceased husband, because she was not born into this community. He said that our Chief agrees with him.

The Communal Land Act is very clear on this question. If our Chief will not enforce this law, we must inform the Communal Land Board and ask them not to approve the decision our Chief makes. The Board may even talk to our Chief to discuss the situation if necessary.



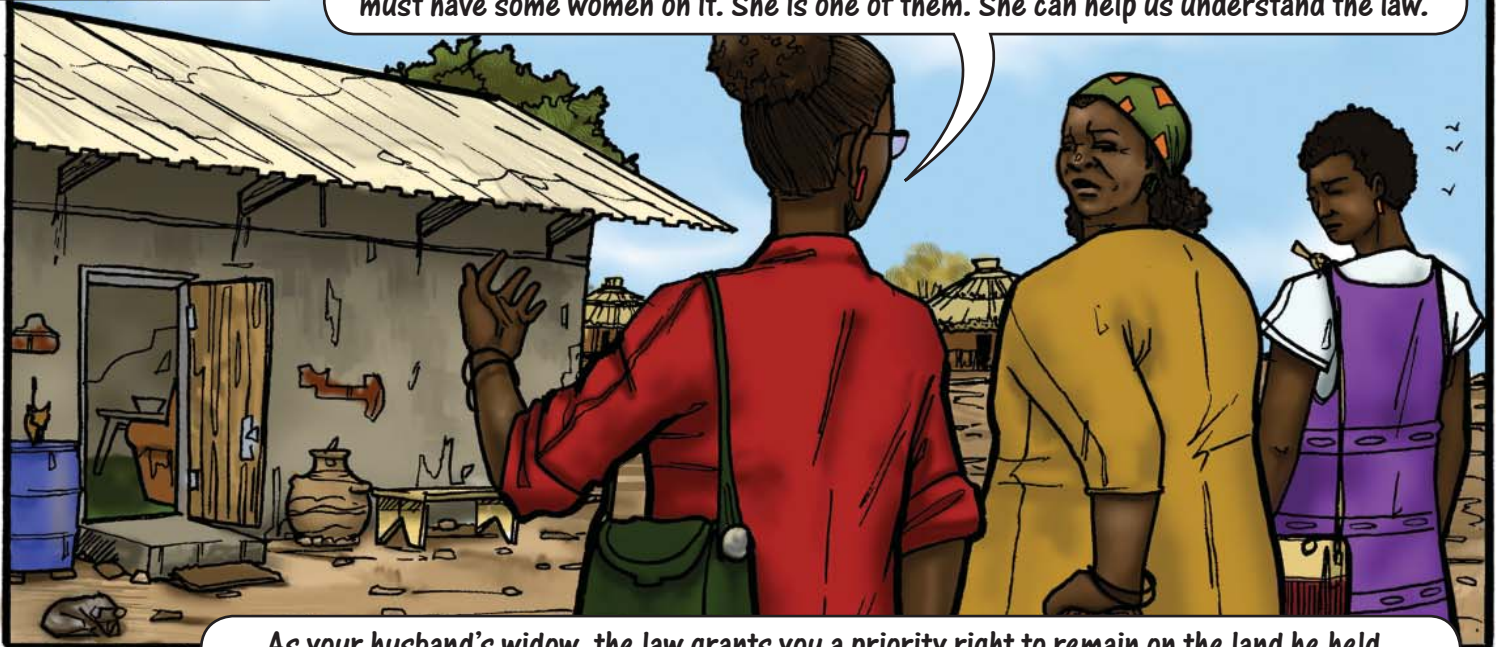
In Namibia, all communal land is kept in trust by the State for the benefit of the traditional communities living on it. The State administers this land in order to promote economic and social development of the people of Namibia, including women.

The Chief or Traditional Authority has the primary power to allocate customary land rights according to the Communal Land Reform Act.

The Communal Land Board is responsible for confirming the allocation of customary land rights by Chiefs or Traditional Authorities and deciding on applications for rights of leasehold. The members of the Communal Land Board are appointed by the Minister of Land Reform. The members are a mixture of people who represent the traditional authorities and communities in the area and people working for the government.

THE NEXT DAY ...

Meme Linda has been a member of our Communal Land Board for two years. The board must have some women on it. She is one of them. She can help us understand the law.



As your husband's widow, the law grants you a priority right to remain on the land he held. Any unlawful occupation can be reported and the offender evicted by the Chief or by the Communal Land Board. If the offender refuses to leave, the Chief or the Board can take legal action against him.



I want to stay in my home. How can I apply for re-allocation of my husband's customary land right to me?



FOR OFFICIAL USE

... is under:

... is the

Boundaries marked on files:

and/or GPS formatbook:

Certificate Number:

FORM A


APPLICATION FORM FOR LAND RIGHTS IN COMMUNAL AREAS REFERRED TO IN SECTIONS 22, 28 AND 44, READ WITH SECTION 45 AND REGULATIONS 2, 7, 24¹, 26 AND 27 OF THE COMMUNAL LAND REFORM ACT, (ACT NO. 5 OF 2002).

APPLICATION FOR REGISTRATION OF A CUSTOMARY LAND RIGHT

- To:
- ☐ The Chief
[For new customary land right (allocated on or after 1 March 2003)]
Traditional Authority of
Region
- Office Stamp
- OR
- ☐ The Chairperson
[For recognition of existing customary land right
(allocated on or before 28 February 2003)]
Communal Land Board
of
- Office Stamp
1. Application Type
- If We* hereby apply for a
- Tick the appropriate section
- ☐ New customary land right (allocated on or after 1 March 2003)
- ☐ Recognition of existing customary land right (allocated on or before 28 February 2003)
- 1,2,3,4,5,6,7,8
- Complete sections

¹ A separate application form must be completed for each land parcel.
* Delete whichever does not apply

You must make the application in writing on this form to confirm that you accept the land. Then you must give the form to the Chief. The Chief may also ask for relevant documents, such as a marriage certificate or proof that you are married under customary law. The Chief may consult the community and hold a hearing if someone in the community objects to the allocation. But the law says that as your husband's widow, you have a priority right to remain on the land.




What if the Chief allocates the customary land right to our uncle instead?



The Chief has the primary power to allocate customary land rights, but the Chief must also act within the law. If you believe that your legal rights have not been respected by the Chief, the Communal Land Act provides for an appeal process. You can report the situation to the Communal Land Board and ask them to talk to your Chief. You can also make an appeal to the Permanent Secretary of the Ministry of Land Reform. You must do this within 30 days of the decision that was made by the Chief. The Ministry will then appoint an appeal tribunal.



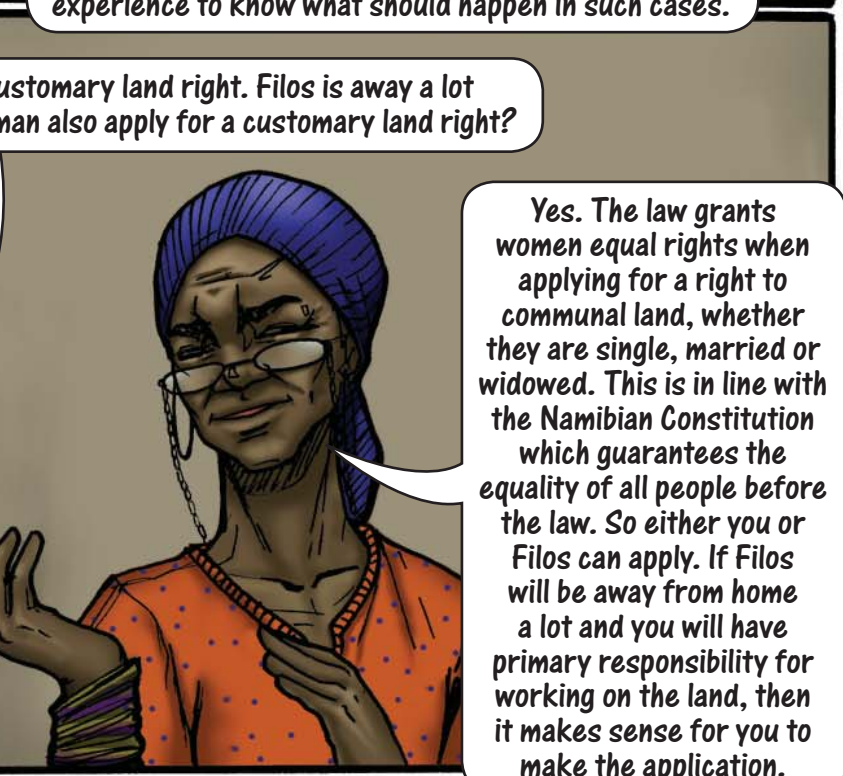
And if the Board agrees with the Chief's decision?



You can appeal the decision within 30 days to an appeal tribunal. Members of the tribunal are appointed by the Minister and have the right skills, knowledge and experience to know what should happen in such cases.



Meme, Filos and I also want to apply for a customary land right. Filos is away a lot because he is a truck driver. Can a married woman also apply for a customary land right?



Yes. The law grants women equal rights when applying for a right to communal land, whether they are single, married or widowed. This is in line with the Namibian Constitution which guarantees the equality of all people before the law. So either you or Filos can apply. If Filos will be away from home a lot and you will have primary responsibility for working on the land, then it makes sense for you to make the application.

A man wearing a green shirt, grey overalls, and a tan hat sits at a table, eating a piece of chicken. A woman with short dark hair, wearing a purple top and a white collar, sits across from him, holding a corn on the cob. There are glasses of water and plates of food on the table.

I spoke with Meme Linda today. She is a member of the Communal Land Board. She said that we can apply for a customary land right in my name.

This is good news. Some of the villagers have heard about our plans already. Yesterday, my brother said that I would be disgracing our family if I did not apply for a customary land right in my own name.

The man and woman are shown from the chest up, facing each other. The man is wearing his hat and overalls. He has his hand near his face as if listening intently. The woman is looking up at him with a slight smile.

But my brother is wrong. We are equal partners in our marriage. I am away a lot and so you will have the main responsibility for the land. You should apply in your name.

The man is hugging the woman from behind. He is wearing his hat and overalls. The woman is looking down with a tearful expression.

Oh my Filos. How lucky I am to have you in my life.

And I am lucky to have you, Ndina.

THREE WEEKS LATER ...

I am going to tell my mother and sister about my plans to lease communal land for my new business. They will be surprised that a young woman is considering such a project. But Meme Linda told me it is possible.



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EPT Number: _____
Legal Entity Number: _____
Boundaries marked on this: _____
and/or GPS formbook: _____
Certificate Number: _____

FORM B

APPLICATION FORM FOR LAND RIGHTS IN COMMUNAL AREAS REFERRED TO IN SECTIONS 30, 31, 35, 44 READ WITH SECTION 45 AND REGULATIONS 11, 12, 17, 24, 26 AND 27 OF THE COMMUNAL LAND REFORM ACT.

APPLICATION FOR REGISTRATION OF A RIGHT OF LEASEHOLD

To: The
☐ The
Conversion Office Stamp
(Household Land Rights OR Conversion of Permission to Occupy (PTO)
into Right of Leasehold Land Right)
Land Board

Conversion Office Stamp
for Agricultural purposes outside a designated area)
Reg 13(43)

Application Type

Apply for a right of leasehold (appropriate selection below)

Occupancy (PTO) into right of leasehold

purposes outside a designated area

☐ Group/Family ☐ Married Couple ☐ Legal entity

Complete sections
1,2,3,4,6,7,8,9,10
1,2,3,4,5,7,8,9,10
1,2,3,4,6,7,8,9,10

Nelly, your mother and I are going to the hearing. Please join us.

I am coming!

Have you and Filos decided which one of you will apply for the customary land right?

Yes, we decided together that the land right should be in my name. Every couple needs to decide this for themselves. In our case, Filos is often away and I will be doing the majority of the work. So we decided that I should make the application.

NOTE: When this story was written, the possibility of providing for joint registration by married couples was being discussed.

AT THE HEARING FOR MEME ANNA'S CUSTOMARY LAND RIGHT ...

We are here today to discuss the allocation of the late Tate's land right. Meme Anna has applied to remain on her late husband's land, but Tate Ingo objects. Tate, please explain.

Chief, a woman cannot possibly own my brother's land. Our traditions do not allow it.

What must a widow do? It is my home.

You can remarry or live with your children. That is the traditional way.

With all due respect, Tate Ingo has not informed himself. The Communal Land Reform Act says that when a person dies, his customary land right will be allocated to the surviving spouse, if the surviving spouse wants this. This law was passed by the Parliament which represents us all. Customary law applies as long as it does not conflict with the Constitution or a law passed by Parliament. But if there is a conflict, then we must follow the Constitution and the laws made by our representatives in Parliament.

Meme Anna, the law gives you priority to take over your deceased husband's customary land right. I will allocate this land right to you. I will send your application with my decision to the Board for their approval.

Our Constitution guarantees that all people are considered equal. So I have decided to apply to the Communal Land Board to lease communal land for my new business!

≡GASP!≡



An unmarried woman with land?!

Tate Ingo, you have said enough! It is important to uphold tradition, but we must also respect our Constitution as the supreme law of our land. These women have every right to apply for communal land.

Thank you Chief Petrus.



Nelly, why didn't you tell us you were applying for a leasehold right for your business?



I was worried that you would think I am crazy.

The land is for all of us, Nelly. I can't wait to get home and hear about your plans for your business. And Filos and I are going to discuss how we will farm our land. It is a new day for Namibian women!



Who can apply for a customary land right?

Anyone can apply for a customary land right, including single, married, divorced or widowed women.

What rights do customary land rights include?

A customary land right can include the right to a farming unit (a farm) or the right to a residential unit (a home).

How can you apply for a customary land right?

1. An application for a customary land right must be made in writing, on the official form (Form A). You must give three copies of your application to your Chief.
2. The Chief will display a notice on a board in front of the offices of the Traditional Authority. This notice will give the details of the application, such as the name of the applicant and a description of the land. At this point, interested parties are invited to lodge any objections. This notice must stay up for 7 days.
3. The Chief may want to hold an investigation into the application, especially if there are any objections.
4. If the Chief approves your application, the Chief will send the application along with the details of the land to the Board for approval (ratification). The Chief may also refuse the application.
5. If the Chief approved the application, the Board must then decide whether the Chief made the allocation in line with the Act. It may decide to enquire further into the matter and consult with other people.
6. The Board may confirm or refuse the allocation. If the Board approves the allocation, the right is registered in the name of the applicant.
7. Once an allocation is made, a certificate of registration of the customary land right will be issued to the holder of the land right.
8. If there is a refusal by the Chief or Traditional Authority, you can ask the Communal Land Board to try and mediate. 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.

**If you have a comment or question about this comic,
contact the Legal Assistance Centre:**

SMS: 081 600 0098
Email: comic@lac.org.na
Post: P.O. Box 604 Windhoek

**We would like to hear your
feedback about this comic.**

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