



Land, Environment and Development Project

LEGAL ASSISTANCE CENTRE | 2019

**ILLEGAL
FENCING**

on

**COMMUNAL
LAND**

in

NAMIBIA

**THE LAW
IN BRIEF**

1

It is an offence ...

to erect a fence on communal land without the authorisation required by the Communal Land Reform Act, 2002 (Act 5 of 2002).

to retain a fence for more than 30 days after a person's application for this authorisation has been refused.

2

What are the penalties for these offences?

For a first offence:

- a maximum fine of N\$4000
- or one year's imprisonment
- or both the fine and the imprisonment.

For a continuing offence: a fine of N\$50 for each day that the fence remains standing.

3

What happens with a fence on communal land in contravention of No. 1 above?

1. The Chief, the Traditional Authority or the Communal Land Board can:
 - have the fence removed
 - and dispose of the materials used for constructing the fence.
2. The costs of removing can be recovered from the person who erected or retained the fence.

4

A fence ...

applied for after the Act came into operation (1 March 2003) may not be erected without the proper authorisation being obtained.

that already existed when the Act came into operation:

- has to be taken down
- and then must be legalised by a permission which the people who erected the fence have to apply for.

Exception

The holders of a customary land right or a right of leasehold do not need authorisation to erect a fence if the purpose is to fence in a homestead, cattle pen, water trough or crop field.

5

How to apply for authorisation to keep an existing fence

1. Apply to the Communal Land Board in the area where the fenced land is situated.
2. The starting date for fencing applications is 1 March 2003, and the current deadline for submitting the application is the end of February 2014.
3. In terms of section 37 of the Act, a board may refer the matter to an investigating committee before deciding whether or not to authorise the fence.

Illegal fencing ...

increases inequality between Namibians
– those who can afford fencing materials
and those fenced out.

increases grazing pressure and degrades
the remaining commonage.

prohibits poor people from accessing firewood, thatching
grass and even veld food on which the poorest members
of traditional communities depend for their livelihood.

interferes with the movement of wildlife, causing increased
human-wildlife conflict.

is effectively rewarded if it is ignored and leads others to
fence off areas to ensure that they have access to some
part of the commonage – it is a vicious cycle.

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