

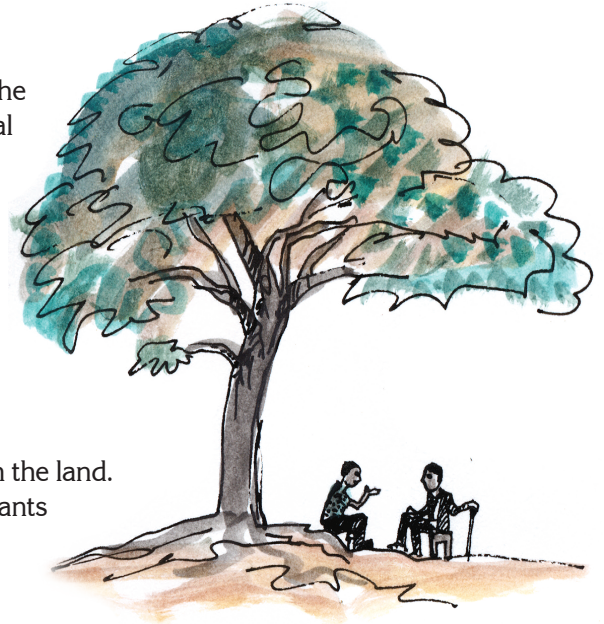
Basic Facts on Namibia's COMMUNAL LAND REFORM ACT

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 business purposes or for purposes that fall outside those that allow you to apply for a customary land right. You must pay rent for the lease of this land.



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

The rules for applying for a customary or leasehold right are contained in the Communal Land Reform Act. You must make an application in writing on the correct form depending on what type of right you are applying for.

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 an objection is made. The Act says that there will be Communal Land Boards in all communal areas in Namibia. If the Chief or Traditional Authority approves your application, it will be sent to the Communal Land Board for final approval. Until the Land Board gives final approval, you do not have a right to the land. The Board may agree with the decision, or refer it back for further consideration, or refuse the application. If your application is approved, you will be given a certificate.

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

In both types of application, if your application is refused, you can appeal to the Appeals Tribunal set up for this purpose.

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

Yes, because any adult from the community can apply. This means that men and women have equal access to communal land. However, when a customary land right is allocated, it is in the name of one person. This means that even if a husband and wife apply together for such a right, the customary land right will only be in the name of the person who signs the form. 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. When a customary land right is allocated, it is in the name of one person. When you make the application you can state that you are married, but the right itself is issued only in the name of one person. This means that if you are married and want to apply for a communal land right with your spouse, only one of you will be named the customary land right holder.

What happens if the couple get a divorce?

The law does not say what must happen with the communal land if the couple get a divorce. However, if they are married under civil law, the divorce order can specify how the couple's property will be divided.

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 the surviving spouse if there is one, and if the surviving spouse wants the land right. If he or she does not want the land right, it will be reallocated to any children of the relationship, or failing that, 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 specify that the land must be reallocated to a partner if the couple are not married. This means that if your partner dies, you will not automatically be given 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 and he has three wives, the law does not say which wife will be allocated the land if the man dies. Similarly, if the right holder is a man whose wives have died and there are many children, the law does not say which child will be allocated the land – if the child/children want to have this right.

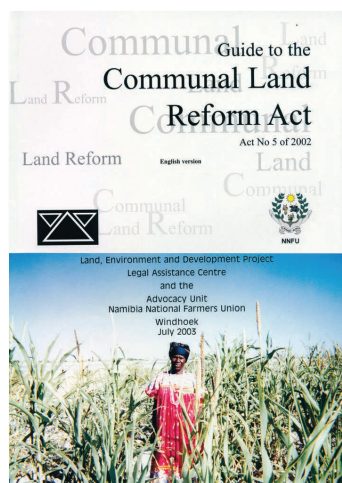
What can I do if I am in a violent relationship and I am living on communal land that is in the name of my spouse or partner?

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 provision 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 the residence has been shared;
- the accommodation needs of the victim of the abuse as well as any children or other persons in that person's care; and
- any special hardship that might result for the abuser or any other person, such as family members of the abuser who are also sharing the residence.

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 under police supervision.



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

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