

A Land for Women

Women's rights to land in the Communal Land Reform Act

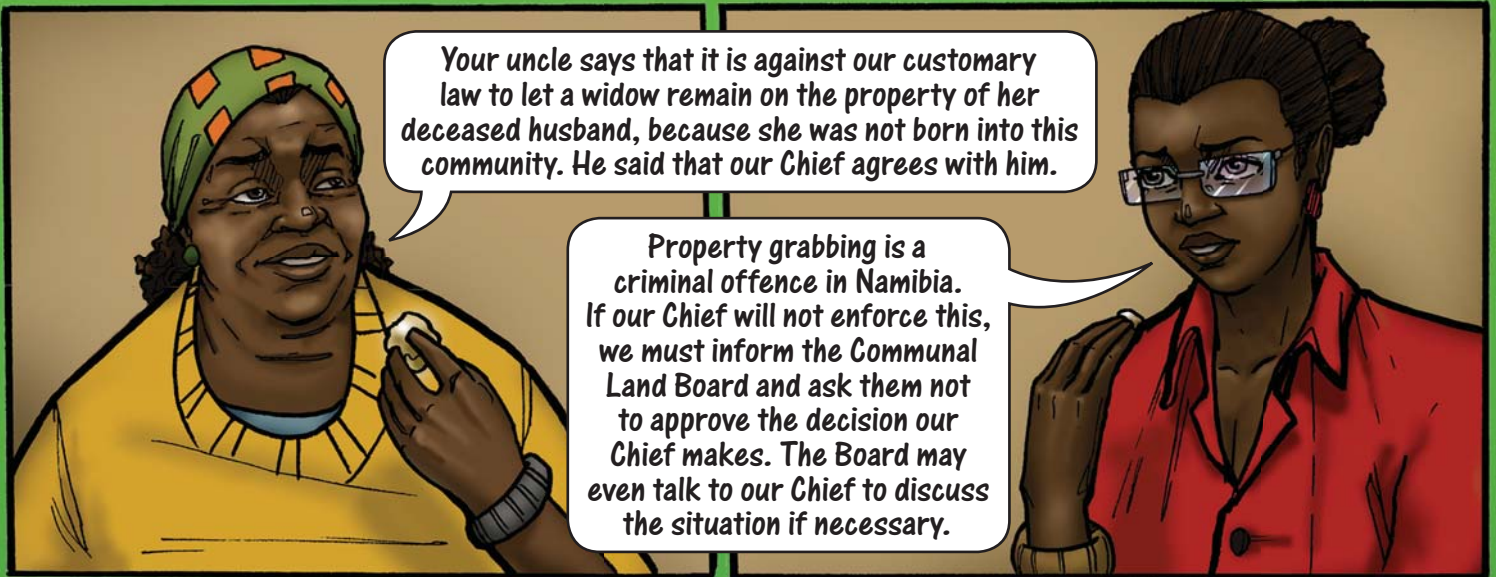
Your uncle says that this land belongs to him. He says I have no right to live here since your father passed away.

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.

Property grabbing is a criminal offence in Namibia. If our Chief will not enforce this, 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.

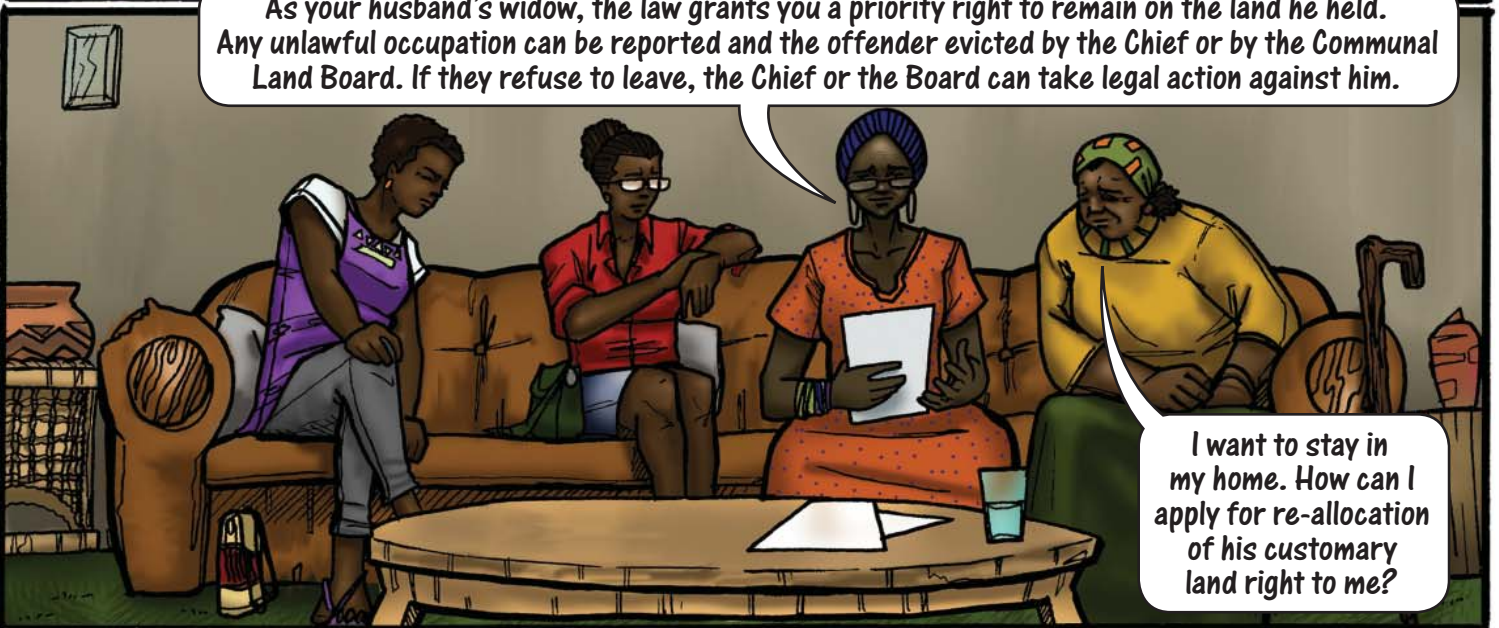
The Communal Land Board is responsible for confirming the allocation of customary land rights by Chiefs or Traditional Authorities and deciding on applications for rights of leasehold. The members of the Communal Land Board are appointed by the Minister of Land Reform. The members are a mixture of people 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 four 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 they refuse 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 his customary land right to me?



FOR OFFICIAL USE

... & under: _____

... in the ... _____

Boundaries marked on sites: _____

and/or GPS format/book: _____

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 Complete sections

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

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, and hand it to the Chief. He may also require relevant documents, such as a marriage certificate or proof that you are married under customary law, to decide on the matter. He could 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 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.

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.



We are 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.



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

And I am lucky to have you.



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.

FOR OFFICIAL USE

EPP Number: _____
 Legal Entity Number: _____
 Boundaries marked on file: _____
 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 Commission Office Stamp (Leasehold Land Rights OR Conversion of Permission to Occupy (PTO) into Right of Leasehold Land Right) Land Board

Commission Office Stamp (Right of Leasehold Land Right for Agricultural purposes outside a designated areas) (Reg 13343)

Application Type: _____

Appropriate selection below

Occupy (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!

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.

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



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 placed her application and documents, 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. In cases where customary law is in conflict with the Constitution or any other statutory law, these prevail. When customary law and the Constitution or any other statutory law do not conflict, the different forms of law may apply.

Anna, the law gives you priority to take over your deceased husband's customary land right, and 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 their rights.

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 the plans you have for your business.



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 (as a farm) or the right to a residential unit (as 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 prescribed 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 stating the particulars of the application, such as the name of the applicant. At this point, interested parties are invited to lodge any objections. This notice must be up for 7 days.
3. If there are no objections and the Chief approves your application, the Chief will send the application along with the details of the land to be allocated to the Board for approval (ratification). The Chief may want to hold an investigation into the application. The Chief may also refuse the application.
4. If the Chief approves 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. The Board may also refuse the application.
5. If the Board approves the allocation, the right is registered in the correct register in the name of the applicant.
6. A certificate of registration of the customary land right will be issued to the holder of the right.

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

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feedback about this comic.**

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