

INTRODUCTION TO THE COMMUNAL LAND ACT

The Legal Assistance Centre has been given the opportunity to speak on radio about access to Communal Land. Herewith a transcript of their first show.

WHAT IS COMMUNAL LAND?

Communal land is land that belongs to the State and 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 business purposes. 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 of the community, or the traditional authority if the chief has decided that the traditional authority will be involved in this process. The chief or traditional authority may then investigate your request or hold a hearing. 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 approval. The board may agree with the decision, or refer it back for further consideration, or disapprove the application. You must have approval from both parties. If your application is approved by both, 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 not ap-

proved, 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 land right or right of leasehold 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 certificate will only be in the name of the person who signs the form.

HOW LONG DOES THE CUSTOMARY LAND RIGHT OR A RIGHT OF LEASEHOLD LAST?

A customary land right lasts for 99 years or the lifetime of the person. If this person dies, the chief will reallocate the land right to the surviving spouse or any children if there is no spouse or the spouse does not accept the land right.

In the next show we will talk more about what happens when a customary land right is transferred when someone dies.

CAN A SINGLE WOMAN HAVE A CUSTOMARY LAND RIGHT OR A RIGHT OF LEASEHOLD?

Yes, a single woman, a divorced woman or widowed woman can have a customary land right or a right of leasehold.

SOMETIMES WHAT THE LAW SAYS AND WHAT HAPPENS IN REALITY CAN BE DIFFERENT. IN REALITY, ARE THERE BARRIERS THAT PREVENT SOME PEOPLE, FOR EXAMPLE WOMEN, FROM HAVING ACCESS TO COMMUNAL LAND?

Yes, we do know that sometimes for various reasons, such as culture and stereotypes, some people may feel that they do not have the same access to apply for a right to communal land as others. That is one of the reasons we are doing these shows, to talk about what the law says to make sure that the law and reality are the same. ♀

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