



# THE COMMUNAL LAND ACT AND GENDER EQUALITY

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

In the first show, the LAC spoke about what communal land is and how community members can apply to have a customary land right and a right of leasehold.

The LAC pointed out 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. In this show, the LAC looks at the concept of gender equality and how it affects land rights.

## WHAT IS GENDER EQUALITY?

Gender equality means that men and women have equal rights.

## BUT IN MANY CULTURES IN NAMIBIA, PEOPLE BELIEVE THAT THE MAN IS THE HEAD OF THE HOUSEHOLD. IS THAT GENDER EQUALITY?

How people decide to live in their private lives is up to them, so long as nobody is hurt or has his or her rights violated. In my household, my wife and I do still perform our “traditional roles” but that does not mean my wife is not my equal. She and I make all our important decisions together. And you know I am a very good cook I love to cook dinner for all of our family, because I think it is important to share some of our traditional roles too.

But you are right, in some cultures in Namibia, people do still believe that the man is the head of the household and that the woman should not be equal to him. It is the same for how

some people interpret their religious beliefs. But even in these cases, it is important that people understand that in the eyes of the law, men and women are equal.

## DO YOU MEAN LIKE WHETHER A WOMAN CAN APPLY FOR A COMMUNAL LAND RIGHT?

Yes, exactly. The law says that a man or a woman can apply for a communal land right. A traditional leader cannot refuse an application because it has been made by a woman and a communal land board cannot refuse an application because it has been made by a woman.

## AHHH MY FRIEND, BUT WHAT IF A TRADITIONAL LEADER DOES REFUSE AN APPLICATION?

The Communal Land Act provides for an appeal process. You must make an appeal to the permanent secretary of the Ministry of Land Reform. The ministry will then appoint an appeal tribunal. You must pay a fee of N\$25 to make an appeal.

## AND DO YOU KNOW THAT EVERY COMMUNAL LAND BOARD MUST HAVE WOMEN ON IT?

At least four of the positions must be held by women. This is a clear sign that in the eyes of the law, the rights of women are seen to be as important as the rights of men. ♀

by the Legal Assistance Centre  
Funded by the Konrad Adenauer Stiftung, Namibia & Angola Special Initiative “One World-No Hunger 2”

# ACCESS TO COMMUNAL LAND IN A DIVORCE

The Legal Assistance Centre has been given the opportunity to speak on radio about Access To Communal Land.

**D**ivorce is when a marriage is dissolved. With a civil marriage, a divorce order must be granted by the High Court. With a customary marriage, the rules of that particular customary law will be followed. Often this will mean that the traditional leader is able to dissolve the marriage. In some communities, it can be that there are no official procedures for the customary marriage or divorce.

When a couple divorce, the property they had is divided.

- If the couple were married under civil law, in community of property, this means that all of their property, which was pooled together at the time of the marriage, is divided in half equally, even if at the time of the marriage one of the couple brought more, or if during the marriage, one of them financially contributed more.
- If the couple were married under civil law, out of community of property, this means that the property they had before their marriage remains their own individually and the property which they each accumulated during the marriage remains their own individually. Anything accumulated together is divided equally.
- If the couple are married under customary law, the rules of how the property is to be divided will vary.

## WHAT HAPPENS TO A CUSTOMARY LAND RIGHT WHEN A COUPLE DIVORCE?

In the eyes of the law, when a customary land right or right of leasehold is issued, it is issued in the name of one person only. A divorce will not change this. So if Johanna is married to Thomas and the land right is in the name of Thomas, when they divorce, the land right stays in his name unless they apply to change this.

However if Johanna and Thomas are married under civil law, to divorce they will need a divorce order from the High Court. If they have a lot of property, the divorce order may specify how the property must be divided. If Thomas and Jessica have improved their portion of customary land, for example they built a brick house on it, it could be that they have to sell this property (but not the land because they do not own the land) in order to divide the value of their assets. To do this,

Thomas would also have to give up his customary land right.

If Johanna and Thomas are married under customary law, how the property is divided will depend on the law of their community. It might be that Johanna returns to her community without taking any assets from the marriage.

The LAC discussed this issue in a focus group a few years ago. The participants said that if a man divorces his wife, he has to leave the common homestead and she retains the land rights, whereas if the wife divorces her husband, she has to leave without anything. It may be that who retains the land right is decided on an individual basis.

## WHAT IF MY HUSBAND WANTS TO DIVORCE ME AND THE LAND RIGHT IS IN HIS NAME BUT WE DECIDE THAT I WILL REMAIN IN THE COMMON HOMESTEAD?

It is possible to transfer a customary land right. To do this the chief or traditional authority must give written consent.

## WHAT IF MY HUSBAND WANTS TO DIVORCE ME AND THE LAND RIGHT IS IN HIS NAME AND HE INTENDS TO REMAIN IN THE COMMON HOMESTEAD? HE SAYS THAT I MUST LEAVE. WHAT DO I DO?

If you are married under civil law, you will get a divorce order from the High Court. If you have assets, the court may order how these assets are divided. If you have made improvements together on the communal land, for example, if you have built a house together, the order might say that this house must be sold (but the land cannot be sold because it does not belong to the right holder). In this instance, the customary land right would probably be transferred as well.

## WHAT IF WE MARRY – AND DIVORCE- UNDER CUSTOMARY LAW?

The laws of your community will apply. If you feel that you have not been treated fairly under this process, you can still apply to a magistrate's court for assistance. ♀

by the Legal Assistance Centre

The production of this show is funded by the Konrad Adenauer Stiftung, Namibia & Angola Special Initiative "One World-No Hunger 2".