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## INFORMATION ABOUT NAMIBIA'S LAW

### **Administrative bodies that govern communal land use: Are they all working towards the same goals?**

When it comes to communal land people are often perplexed as to the relative powers, functions and duties of the various, seemingly competing, statutorily bodies that play a role in communal land administration, occupation and use. However, all of these bodies have a common objective that can be attained by harmonious co-operation between them.

The Namibian state, as the trustee of communal land, has an obligation to administer communal land for the public good. Section 17 of the Communal Land Reform Act 5 of 2002 sets out the overriding objective, which is to ensure that communal land is utilised to promote the economic and social development of the people of Namibia, particularly those with insufficient access to land who are not in formal employment or engaged in non-agriculture business activities.

In order to administer the multitude of interests, rights and obligations that relate to this objective, certain local and regional level bodies are tasked with specific functions in relation to communal land. Laws passed by Parliament have set up structures for Traditional Authorities and created Communal Land Boards to manage communal land. Other laws provide for community-based organisations in the form of communal conservancies and community forests which also have an important role to play in enabling rural communities who live on communal land to improve their social and economic conditions.

It is clear from the overriding objectives of the Communal Land Reform Act that all of these bodies are collectively required to play a part ensuring that communal land is used for the economic and social development of the people of Namibia.

Within this overall picture, the Communal Land Reform Act gives the Communal Land Boards in Namibia's different regions responsibilities to administer and oversee the allocation, cancellation, transfer and registration of customary land rights and leasehold rights.

In the course of deciding whether a person should be granted a right, or whether someone was properly granted a right in the past, the Communal Land Board may discover some dispute or doubt as to whether the claim is valid. The Communal Land Reform Act gives the Communal Land Boards powers and procedures for investigating claims and handling disputes. It also creates a tribunal where parties can appeal against decisions of the Communal Land Board or a Traditional Authority in the determination of rights to communal land.

The Communal Land Reform Act also extends certain powers to Traditional Authorities to manage aspects of communal land rights. Of course, "traditional authorities" find the roots of their power in customary law, the Traditional Authorities Act formalises their establishment and gives them a uniform set of powers, including the power to administer customary law in their area and the power to ensure that the members of the traditional community "use the natural resources at their disposal on a sustainable basis and in a manner that conserves the environment and maintains the ecosystems for the benefit of all persons in Namibia"..

The Communal Land Reform Act further empowers traditional authorities to allocate or consent to land and fencing rights in order to support applications for registration or authorisation by various persons to the Communal Land Board.

These two institutions of Traditional Authorities and Communal Land Boards as organs of the state are obliged to conduct themselves in accordance with the laws that create and empower them. Above all, they are obliged to act fairly and reasonably and to comply with the requirements imposed upon them by the common law (the law based on court cases decided over time) and any relevant legislation.

In contrast, Communal Conservancies and Community Forests are self-governed, democratic entities managed by local community members elected by their members., Their role is to ensure that sustainably managed natural resources can result in social development and economic growth by and for local communities.

Namibia was the first country in the world to specifically address habitat conservation and the protection of natural resources in its constitution. Article 95 of the Namibian Constitution on the principles of State policy includes a duty to maintain Namibia's ecosystems and biological diversity, and to ensure that living natural resources are utilised on a sustainable basis for the benefit of all Namibians in both the present and the future.

Article 91 gives Namibia's Ombudsman the duty to investigate complaints concerning the over-utilization of living natural resources, the irrational exploitation of non-renewable resources, the degradation and destruction of ecosystems or the failure to protect the beauty and character of Namibia.

Against this backdrop, the Government has given local communities the opportunity and right to establish Communal Conservancies and Community Forests to manage wildlife and other natural resources, and to share the related benefits.

Communal Conservancies and Community Forests also have certain powers through their constitutions to make by-laws to make and enforce management decisions and rules relating to the use of the conservancy area and its natural resources, such as rules for the protection of wildlife and for tourism ventures in the area.

This model of devolving conservation and management rights to local communities is both economically and environmentally sustainable. It has served to increase the income and improve the social conditions of rural Namibians while simultaneously leading to a major recovery of wildlife species in Namibia. It also strengthens local governance by providing opportunities for local level decision making and local participation in development planning and strategies.

Support for well-functioning Communal Conservancies and Community Forests is therefore a good indication of the commitment of any particular Traditional Authority or Communal Land Board to discharge its statutory and constitutional obligations, by using its administrative powers for the public good in the manner required by the law.

Support for Communal Conservancies and Community Forests can include making sure that they do not suffer losses from environmental predators and undesirable, unplanned human encroachment, irrational exploitation of its natural resources or illegal fencing by unlawful occupiers or unauthorised livestock farmers and economic elites.

Sadly, this is seldom the case as some Traditional Authorities seem to have lost sight of their obligations to uphold the laws and policies of Namibia; some indeed undermine the laudable efforts of Government and lawmakers by unlawfully aiding and abetting illegal settlement, environmental predators and natural resource capture at the expense of local communities. It is that administrative discord among the creatures of statute which is perplexing. It is recommended that the bodies governing communal land should do so harmoniously and with a view to benefitting the members of the communities that they are supposed to serve.

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