

**A review of environmentally sustainable land use practices  
and their benefit to Namibia's communal communities**

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*This paper mainly addresses issues concerning land use practices in communal areas. These are: Legislation pertaining to Traditional Authorities, the Communal land Boards, Community Based Natural Resource Management and Mining.*

## **1. Introduction**

Although Namibia is home to some of the world's richest biodiversity it is also home to some of the poorest communities. Trying to tackle this rather complex issue of human-natural resources relationship and poverty reduction has been a long-standing challenge for government, local communities and other stakeholders alike.

Consequently, conserving the environment and enhancing ecosystems is critical to protecting our diverse biological resources and sustaining our communities and economies that rely on their products and benefits. Without the maintenance of ecosystems, communities are unable to sustain stable and productive livelihoods. As a result, ecosystem and habitat conservation projects or initiatives must identify, protect, and restore key processes in order to achieve ecosystem goals. It is therefore essential that local communities adopt an approach that looks at the present and beyond and envisage future conditions under which ecological, economic and social factors are integrated.

## **2. Legislative support**

The Constitutional provision and government's support and recognition of customary law, alludes to its social function and by that it is making a clear statement that it embraces customary law.

In 1993 the reviewing and revision of environmental legislation became the subject of a three year programme which included the development of a National Environmental Management Bill to give support to the environmental clauses in the National Constitution, a revision of the wildlife, parks and forestry legislation, initiating legislation on pollution control and waste management and an evaluation of specific sectoral legislation. Regrettably, some of this important legislation has still not been passed yet.

## **3. The role of the Traditional Authorities in conserving the environment**

### **3.1 The Traditional Authorities Act 25 of 2000**

The Act recognises Traditional Authorities as legal entities. It provides for the establishment of such authorities and their designations, elections, appointments and recognition of traditional leaders, to define their powers, duties and functions. The primary functions of the traditional authorities are to promote peace and welfare amongst the community members, supervise and ensure the observance of the customary law of that community by its members.

Communal land is vested in the State by the Constitution. The State is under a duty to administer communal lands in trust for the benefit of the traditional communities residing on these lands and for the purpose of promoting the economic and social development of the Namibian people. The Traditional Authorities Act provides guidelines to the President on the utilization of communal land. The Act stipulates that Traditional Authorities should ensure that natural resources are used on a sustainable basis and in a manner that conserves the environment and maintain the ecosystem.

The Act requires that Traditional Authorities and their communities should engage in environmental planning to define successes and solutions to environmental issues including any underlying minerals resources.

In terms of land use practices, Traditional Authorities have the following duties with respect to sustainable land use:

- To assist and co-operate with the Government, Regional Councils and Local Authority Councils in the execution of their policies and to keep the members of the traditional community informed of developmental projects in their area;
- To ensure that the members of his/her 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 of Namibia.

Implications of this act are that Traditional authorities must be fully involved in the planning of land use and development for their areas. They must equally be sensitised about sustainable resource management and how this must be implemented within their communities. It is their duty under the law to ensure this.

### **3.2 The Communal Land Reform Act 5 of 2002**

The Communal Land Reform Act provides for the establishment of Communal Land Boards in communal areas. The function of these boards is to exercise control over the allocation of customary land rights by Chiefs or Traditional Authorities. The Act administers the entire system of granting, recording and cancelling of these rights to various applicants, upon consultation with traditional authorities. These boards comprise of representatives of the traditional authorities, farming community, regional council, women, the public service, and conservancies in their area of jurisdiction.

Rights that may be allocated under the Act in respect of communal land include:

- The right to a farming unit,

- The right to a residential unit; and
- A right to any other form of customary tenure as recognised by the Minister.

Section 23 (1) determines that customary land rights are limited in size, as prescribed by the Minister, according to the area, the purpose for which the land is to be used, or between persons according to the extent of other land held by them.

Section 29 describes the conditions under which the commonage in the communal areas may be used for grazing and includes kinds and numbers of livestock and sections of the commonage which may be used for grazing in rotation. These rights may be withdrawn if conditions are not adhered to.

Rights of leasehold may similarly be granted in communal areas, subject to conditions as may be determined by the Minister, upon advice by the Communal Land Boards. These are aimed particularly at business activities.

The implications of the Act on Land Use Planning and Environmental Management are as follows;

- The Communal Land Boards, in collaboration with the Traditional Authorities have a profound influence on what type of land use and in which manner it is exercised in the communal areas. They are also responsible for resource management and to control farm productivity. Traditional Authorities therefore have to be part of the entire land use planning and management process.
- The land use planning process must provide for guidelines whereby land and the use rights of it may be controlled in an integrated and sustainable way, taking cognisance of the objectives and requirements of each ministry and its various directorates. In other words, Traditional Authorities and Land Boards are making decisions that collectively determine the state of the environment in an area.

## **Community Based Natural Resource Management (CBNRM)**

With the introduction of the Nature Conservation Ordinances of 1967 and 1975 in exclusively freehold farming areas, low wildlife populations on these farms had undergone a significant recovery after this legislation was introduced. The Ordinances provided conditional ownership rights over certain species to the landowner. These ordinances, however, only applied to freehold farmers, whilst communities living in communal areas were excluded from any such benefits as having conditional ownership over certain species in the areas where they live.

Soon after Namibia gained independence, the Ministry of Environment and Tourism started to develop policies and legislation based on the successes of CBNRM in the north-west of the country and lessons learned from freehold farmers and the clear wishes of communal communities to have rights over wildlife and tourism in their respective areas. As a result, Parliament approved the Nature Conservation Amendment Act of 1996 which amended the 1975 Nature Conservation Ordinance to give communal area residents the same right over wildlife and tourism as freehold farmers.

In short, the aims of CBNRM in Namibia are to promote wise and sustainable use of natural resources: to devolve rights over and responsibilities for wildlife and tourism to rural communities – creating enterprise and income generating opportunities; and to encourage and assist communities to acquire skills to manage their areas and actively pilot their own future. Since the introduction of CBNRM legislation communities have been given an opportunity to benefit from the CBNRM policy by forming conservancies and developing high earning, low impact wildlife and tourism enterprises on their land.

Conservancies have legal status through a representative committee and a constitution. The Ministry of Environment and Tourism awards such legal status once the duly constituted committee has fulfilled a series of

requirements. The goal is for these conservancies to become self-sustainable and be in a position to manage wildlife and tourism initiatives themselves.

The Ministry of Environment and Tourism has two policy documents, which deal with the promotion of wildlife management and tourism activities by communities themselves. These are (1) "Namibia's Policy on Wildlife Management, Utilisation and Tourism in Communal Areas" of 1995, and (2) "Promotion of community based Tourism" both dealing with the Ministry's aims, objectives and strategies for promoting sustainable wildlife management and tourism activities in communal areas.

Within a relatively short period time has proven to be in many ways a success story. In particular, it has become a model for promoting the management of community based resources.

### **The Minerals (Prospecting and Mining) ACT, 1992**

In Namibia, the allocation of mineral rights is vested in the state. Article 100 of the Namibian Constitution provides that-

Land, water and natural resources below and above the surface of the land and in the continental shelf and within the territorial waters and the exclusive economic zone of Namibia shall belong to the State if they are not otherwise lawfully owned.

Since all communal land is vested in the State, the implication of Article 100 therefore is that minerals found "below and above the surface of the land and in the [communal] continental shelf" belong to the State.

The Minerals Act enables the Ministry of Mines and Energy to control the reconnaissance, prospecting and mining of all categories of minerals in Namibia. This is done through a Minerals Board, established in terms of the Act, which is responsible for maintaining policy in terms of which the

provisions of the Act are to be implemented. Applications for prospecting, reconnaissance and mining work are made to the Ministry in terms of this Act.

Mineral agreements are made with applicants applying for minerals licences for which applicants must prepare environmental assessments indicating the extent of pollution. An environmental management plan is also prescribed indicating the steps to be taken to minimise or prevent the pollution of the environment because of the proposed prospecting or mining operations.

There must be an agreement between the owner of the land, which in the case of communal land is the state, and the applicant (usually the prospector), stating the terms and conditions of compensation before the mining or prospecting activating may commence. Certain land may not be used for prospecting and mining activities. This includes towns, villages, proclaimed roads and other public transport facilities, land used or reserved for any governmental or public purpose, cultivated land, a 100m strip from springs, wells, boreholes, perennial streams, waterworks, and other water bodies, kraal or any other structure, a 300m strip from any subdivided erf, localities which will interfere with fishing or marine activities, and others.

After abandonment of reconnaissance, prospecting or mining areas, provisions are made in the Act for the rehabilitation of these areas. Persons causing pollution because of prospecting, reconnaissance or mining, are held liable to clean up the spills. Implications for land use planning are as follows:

- For each region, suitable areas for mining should be identified in collaboration with the Mining Commissioner. Where there are conflicts with other proposed land uses or with sensitive environmental areas, these must be ironed out between the various stakeholders before proposals are put forward in the regional land use plan.
- Environmentally sensitive areas must be agreed upon with the Ministry of Environmental and Tourism and the Mining

Commissioner where prospecting and mining activities will not be allowed.

#### **4. Conclusion**

Given the widespread existence of degraded pasture and farming lands in many communal parts of Namibia, it may be necessary for the government to build its own capacity to restore degraded communal farmland. Obviously, land with little carrying capacity cannot provide meaningful livelihoods to communities living in communal areas. In addition, it is recommended that the National Assembly passes the following legislation as soon as possible:

- Environmental Management and Assessment Bill
- Parks and Wildlife Management Bill
- Pollution Control and Waste Management Bill
- Bio safety Bill
- Access to Biological Resources and Associated Traditional Knowledge Bill

In the absence of a comprehensive collective environmental policy framework, existing Acts pertaining to the environment are too fragmented to be of any use in sustainable land use planning and land development. It is thus recommended that the above-mentioned laws be passed to complement the existing land use management policies and legislation.

Land use management policy should form part of the broader policy on agricultural, land reform and rural development. Thus, greater emphasis should be placed on environmental and land reform policies so as to provide for the rehabilitation of overgrazed and bush-encroached land that has environmentally degraded the land's value.

Financial assistance in the form of an environmental reconstruction fund should be given priority to help with rehabilitating degraded communal land.



Land with little carrying capacity cannot provide meaningful employment for hundreds of communities. It is thus recommended that the Communal Land Reform Act be amended to include provisions that support the rehabilitation of degraded communal land.

Sustainability of environments relies on collaborative approaches that are essential when developing ecosystem and habitat conservation initiatives or projects. Conserving and maintaining the environment depends, to some degree, on successful partnering and collaboration with government and other stakeholders. Partners should work together to determine resource needs at a landscape scale and identify ways in which all parties can contribute to and benefit from achieving ecosystem objectives. Mitigation and enhancement activities can then be targeted to help advance conservation goals.

Despite the slow movement on implementing key environmental legislation, great potential exists for Namibia to achieve a healthy environment and development of its people. The aim remains for local communities to manage the land and natural resources so they are profitable and ultimately self-supportive.

Ladies and gentlemen allow me to conclude with words by a famous writer Vincent Cosmao who once said. ***“Everything has been said about development, but almost everything remains to be said and therefore to be explored or rediscovered because incontestably, almost everything remains to be done.”***

**This remarks correlates with a popular saying that says; don't ask what my government can do for me but rather what I can do for MY government.**