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INFORMATION ABOUT NAMIBIA'S LAW

Role of Traditional Authorities in Promoting Sustainable Use of Namibia's Natural Resources

Customary law has since pre-colonial times played a central role in the protection of Namibia's environment and communally shared natural resources. At independence, the Namibian Constitution through Article 95(l) placed a duty on the government to develop an appropriate legal framework to protect the environment and to promote the sustainable utilisation of the nation's natural resources. Namibia's current legal framework on Traditional Authorities and communal land user rights outlines the responsibilities of Traditional Authorities in achieving these goals.

For instance, the Traditional Authorities Act (TAA) states that Traditional Authorities must ensure that their traditional communities 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 TAA also stipulates that Traditional Authorities must assist the Namibian Police and other law enforcement agencies in the prevention and investigation of crime. This includes for example, assisting the Namibian Police with investigations into wildlife crime, such as the poaching of rhinos and elephants or the illegal logging of protected indigenous wood species such as teak and rosewood.

The Communal Land Reform Act (CLRA) describes the responsibilities of Traditional Authorities regarding matters such as grazing, mining, soil protection and water use.

Section 29 of the CLRA states that the commonages on communal areas are available for use by the area's lawful residents for the grazing of their stock. This is subject to conditions set out in regulations issued under the CLRA or imposed by the relevant Chief or Traditional Authority. For example, a lawful resident may not have more than 300 large livestock or 1800 small livestock grazing at once on the commonage of a communal area. In addition, no person other than a lawful resident, or a person representing such a resident, may bring any livestock onto the commonage of a communal area unless that person has been granted grazing rights by the Chief or Traditional Authority.

Subject to the Minerals Act (MA) which sets the conditions for prospecting or mining operations. Regulation 30 under the CLRA stipulates that the relevant Chief or Traditional Authority and the Land Board must be notified before any application for prospecting or mining on communal land is submitted. The Chief or Traditional Authority and the Land Board must provide their recommendations on the application, and the applicant must attach these recommendations to the application. However, if the Chief, Traditional Authority or Land Board recommends that an application should not be granted, the Minister of Mines and Energy or the Mining Commissioner may disregard this opinion if they have a different view.

Regulation 31 under the CLRA deals with the prevention of soil erosion. Subject to the Soil Conservation Act of 1969, the holder of any land right over communal land must use and manage the land so as to prevent soil erosion or any other disturbance of the soil which may cause erosion or pollution of water by silt or drift-sand. If the land use is likely to cause soil erosion, the Chief, Traditional Authority or Land Board could suspend or cancel the holder's user rights over the land. However, the suspension or cancellation of a person's user rights may take place only after the Chief, Traditional Authority or Land Board has given that person an opportunity to be make submissions, and consulted with the Minister of Agriculture.

With regard to the protection of pastoral resources, regulation 32 under the CLRA states that a communal land rights holder must use and manage communal land in accordance with accepted farming practices, and comply with any requirements of the Ministry of Agriculture and any relevant law on the utilisation, resting and burning of pasturage.

There are also responsibilities concerning roads, watercourses and woods, and the use of water, wood, clay and stone on communal land. Regulation 33 under the CLRA specifies that no road or thoroughfare which passes over communal land may be altered or closed, except by a authority with the legal power to do this. Also, no person may obstruct access to a public watering-place within any communal area, or prevent someone from drawing water or watering stock at a watering-place. Lawful residents of any communal area may, without the payment of compensation, use water, wood, sand, stone or clay on the communal area for household purposes. However, any lawful resident who wants to use these resources for any other purpose must first obtain the consent of the Chief or Traditional Authority.

The Nature Conservation Amendment Act of 1996 aims to provide for an economically-based system of sustainable management and utilisation of game in communal areas through the establishment of communal conservancies. Interestingly, this Act does not specifically mention the involvement of Chiefs or Traditional Authorities in the establishment of these conservancies. Instead, the 1996 Act invites any group of persons residing on communal land to apply to the Minister of Environment for the establishment of a communal conservancy. However, Chiefs and Traditional Authorities together with Conservancy Committees have shared responsibilities over land management. This means that a strong sense of cooperation between these various parties is essential in achieving the sustainable use of natural resources on communal land. In fact, section 31(4) of the CLRA stipulates that a Land Board may not grant a right of leasehold for any purpose that would defeat the objects of a conservancy's management and utilisation plan.

With regard to community forests, the Forest Act of 2001 directs that the Minister of Forestry may, with the consent of the Chief or Traditional Authority, grant community forest rights over communal land to any person or entity which the Minister believes represents the interests of the persons with rights over that communal area, and is willing and able to manage the land as a community forest.

From the above discussion, it is clear that Traditional Authorities are tasked with the protection of the Namibian environment and the sustainable use of natural resources on communal land. Traditional Authorities are the eyes and ears of government at

grassroots level and have a crucial role to play in assisting government with the enforcement of its laws. But perhaps more importantly, they must ensure that the traditional communities under their jurisdiction benefit equally from the natural resources available to them. The promotion and implementation of sustainable natural resource management principles in communal areas is key to achieving this objective.

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