

**Legislation and Policies Affecting Community-Based Natural Resources
Management in Namibia**

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SUMMARY

1. This study has been undertaken to review the policy and legislative context of community-based natural resource management (“CBNRM”) in Namibia. More specifically it provides an analysis of the relevance and implications of the framework for CBNRM. Sets of all key policy statements and pertinent legislation have been deposited in accessible locations for further reference, where necessary.
2. The essential policy framework for CBNRM is found in the Ministry of Environment and Tourism (“MET”) documents relating to wildlife management and utilisation, community-based tourism and the establishment of conservancies. The policy seeks to link conservation with rural development by enabling communal area farmers to derive financial benefits from sustainable wildlife utilisation and from tourism. It seeks, furthermore, to promote the increased involvement of rural communities in the tourism industry. The policy goals are given effect to in an amendment to the Nature Conservation Ordinance which provides for the establishment of conservancies, and where no such conservancy exists, wildlife councils, in communal areas. Highly significant is the granting of rights of ownership over all huntable game, game birds and exotic game to the conservancy committee or wildlife council within the area of the conservancy or the wildlife council.
3. This process of transferring ownership of game removes the currently existing discrimination between commercial farmers who have enjoyed the right for some years and communal area farmers who have never been given this responsibility in terms of the law. It seeks further to strengthen the commonly held belief that the community through their traditional leaders owns game under customary law. Despite this significant step, the most serious obstacle to CBNRM is the absence of secure land tenure rights for inhabitants of communal lands. Illegal fencing exacerbates the situation. The most authoritative statements of government policy on communal land provide for a system of land administration through land boards which will be accountable to government and local communities, whilst sharing certain responsibilities with traditional leaders and regional and local government. Missing from the policy is a clear statement on the various land tenure options that might exist under a future system. Tenure insecurity remains a serious constraint to the development process on communal land.
4. The conservancy amendment provides for the establishment of conservancies and wildlife councils. Besides requiring that the conservancy committee be representative of people residing in the conservancy, that the conservancy committee has a constitution containing certain minimum safeguards in regard to transparency, accountability and fairness to members and a defined geographic area, the legal form that the conservancy committee must adopt is not prescribed. It is accordingly permissible for a conservancy to incorporate itself as a voluntary association, trust or a co-operative and to engage in business activities through various legal forms, including a close corporation or a partnership. The challenge exists to marry an effective natural resource management body with existing leadership and management structures with which members of the conservancy feel comfortable.
5. Ownership of game conferred by the conservancy amendment has important implications because conservancy committees and wildlife councils will enjoy the same rules in regard to hunting that owners and lessees of commercial land currently exercise under the Nature Conservation Ordinance.

6. While agriculture may impinge upon CBNRM activities it can be compatible with its goals. Forestry policy is, however, not entirely in support of CBNRM in that it directs that community benefit from the utilisation of forests must be subordinated to the principle aim of environmental stability and ecological balance. Nevertheless, more recently with the development of new forestry policy and a new Forest Act the focus has shifted towards investigating the possibility of declaring community forests over which a community management structure, such as a conservancy, would have responsibility.
7. Inland fisheries also make reference in policy documents to the need for local people in communal areas to share income generated from the resource, but place the focus more on the assistance required from traditional and local authorities in the enforcement of legislation.
8. Community-based tourism is regarded as the most important non-consumptive use of wildlife in communal areas. It is accordingly an industry which exhibits tremendous potential to generate meaningful financial returns to communities who are active in the CBNRM process. To facilitate the informal sector's involvement in tourism, legislation would have to be amended to impose more flexible standards on the industry, private sector tourism enterprises need to be encouraged to enter into joint ventures with communities, there needs to be more infrastructural investment in communal areas and community-based tourist operators need to be drawn into the planning fora set-up by the industry.
9. Governmental institutions of both the formal type, such as regional government and of a traditional sort, in the form of traditional authorities, can prove to be both a hindrance and an asset to CBNRM. Regional councils have statutory powers to plan the development of the region taking into account the sensitivity of the natural environment, but could also be an impediment to local initiatives if they attempted to hijack development project activities for their own benefit. Similarly, traditional authorities in some communal areas enjoy legitimacy and could play a constructive role in the formation of conservancies and wildlife councils, whilst in other areas where their authority is less strong, they could simply get in the way. The lack of clarity as to the government's intention concerning the future role of regional councils and traditional authorities in land boards, and the precise planning role intended for regional councils, constitutes a serious impediment to the development of a coherent policy in regard to decentralised management of natural resources.
10. A general consensus exists concerning the need for greater co-ordination of development planning in Namibia. At present, despite the efforts of the National Planning Commission, regional planning is still undertaken mostly by central government. This leads to a communications breakdown in regard to the flow of information required for proper planning. This is felt particularly in areas of land use and environmental planning. The proposed Land-Use and Environmental Board and the office of the Environmental Commissioner could provide useful models for future planning authorities in Namibia.

1. INTRODUCTION

It is anticipated that the National Assembly will in its forthcoming session pass an amendment to the Nature Conservation Ordinance, 1975 (the “conservancy amendment”),³ so as to provide for an economically based system for the sustainable management and utilisation of game and to facilitate wildlife based tourism in communal areas. This step will remove the currently prevailing discrimination in access to resources by putting communal farmers on a similar footing with commercial farmers when it comes to the utilisation of game on land they occupy. Moreover, it poses an enormous challenge to local communities, government and support agencies to ensure that community based natural resource management (“CBNRM”) can work; in other words, that it achieves not only its conservation goals but is also economically viable. The legislative amendment is accordingly only the starting point in a long developmental process requiring a great deal of commitment from all the actors, and a concerted effort in training and capacity building on the ground.

In this context an understanding of the policy and legislative framework for CBNRM is important. This is particularly so since the conservancy model being promoted by the Ministry of Environment and Tourism (“MET”), although designed for the management of game, could usefully be utilised for the management of other natural resources, such as forests and plants, water resources, inland fish and game birds. Conservancies could also form the institutional backbone of community-based tourism development. The policy and legislative framework for CBNRM is both facilitative and at times unnecessarily inhibiting. It is also confusing, particularly in the field of land tenure and land use in communal areas.

The purpose of this review of the policy and legislative context of CBNRM is then to briefly survey the most relevant sectors and issues, providing an analysis of their relevance and implications for CBNRM. Where possible reference will also be made to draft policy and legislation. A full bibliography of all pertinent legislation, policy statements and other relevant documents is attached as Appendix A. Sets of these materials have been deposited with the resource centre of the Social Sciences Division of the Multidisciplinary Research Centre of the University of Namibia, the LIFE programme office and the library at the Directorate of Environmental Affairs in the MET.

2. GENERAL POLICY AND LEGISLATIVE BACKGROUND

2.1 Policy

The essential policy framework for CBNRM is to be found in MET documents entitled “Wildlife Management, Utilisation and Tourism in Communal Areas”, “The Establishment of Conservancies in Namibia” and the “Promotion of Community Based Tourism”, all published by the Ministry in June 1995.

The objectives of the Ministry as spelt out in the first two documents are:

³ Nature Conservation Ordinance, No. 4 of 1975. The Ordinance will be amended by the Nature Conservation Ordinance Amendment Bill

- (i) to remove discriminatory provisions from the Nature Conservation Ordinance, 1975 by giving conditional rights over wildlife to communal area farmers similar to those already enjoyed by commercial farmers;
- (ii) to link conservation with rural development by enabling communal area farmers to derive direct financial benefits from the sustainable use of wildlife and from tourism;
- (iii) to provide through the establishment of conservancies both a mechanism and an incentive to rural people to conserve wildlife and other natural resources by means of shared decision-making and consequent community benefit.

The main principles of the policy on the promotion of community-based tourism are:

- (i) to actively promote the increased involvement of rural communities in the tourism industry, in the running of enterprises, tourism planning and representation on existing and future tourism fora;
- (ii) to ensure that rural communities have greater access to benefits from tourism by the creation of appropriate legal mechanisms and incentives;
- (iii) to ensure that the development of tourism on communal land is acceptable to the people living there;
- (iv) to encourage the formal tourism industry to cooperate with the informal rural based tourism sector;
- (v) to ensure that tourism development within Namibia is environmentally sustainable.

The policy framework is of great relevance to and has positive implications for CBNRM in Namibia by: firstly, expressly recognising that years of neglect by the colonial administration have resulted in the serious underdevelopment of the communal areas and their inhabitants; secondly, requiring that affirmative steps be taken to redress discrimination as it exists in both access to natural resources (particularly wildlife) and opportunities to benefit financially from its sustainable utilisation; thirdly, facilitating the involvement of rural communities in tourism enterprise development and tourism planning; and finally, combining local knowledge and MET and other scientific expertise to preserve wildlife and protect biodiversity.

2.2 Legislation

The legislation that impacts on CBNRM is wide-ranging and is contained in various statutes including those concerned with the environment, land, agriculture, forestry, fisheries, wildlife, planning, tourism, small enterprise development, regional government and traditional authorities, and by reference to customary law.

The legislative framework is at the same time both facilitative of CBNRM and a hindrance to it. Traditionally legislation in this area has had a strong ideological bias towards the politically powerful sectors of the population. This has meant in practice that legislation has focused largely on the formal commercial sector, whilst either specifically excluding rural communities

from its operation or providing them with a separate and inferior set of rights. The effect has been the further marginalisation and underdevelopment of such communities. However, the legislative framework, with appropriate modifications, could in some instances provide the legal parameters for positive development in CBNRM. An example is the amendment to the Nature Conservation Ordinance referred to earlier.

This review will accordingly focus on the sectors and issues referred to above. For the purposes of brevity, the treatment of legislation will not be comprehensive but will impart sufficient information so as to alert those involved in CBNRM to the most relevant provisions for their programmes. There are a number of important areas which impact on CBNRM and the formation of conservancies, such as the law relating to taxation, water and the general environment, which are too wide-ranging to form part of this review. For the users on the ground it might be appropriate to develop a simpler manual which will be of more practical value to them.

2.3 Customary Law

Customary, or “indigenous law” as it is sometimes called, is a source of law relevant to CBNRM in that it provides a set of legal rules, particularly for the allocation and use of land, which regulate communities living on communal land. It can be distinguished from western or general law in that it is generally unwritten and therefore survives in an oral tradition.⁴ This makes its ascertainment more difficult and its rules unsystematic and subject to diverse interpretations. It also only has authority where people are amenable to its acceptance. Consequently, its enforcement and efficacy is largely dependent upon the respect and legitimacy enjoyed by the traditional authority structures charged with its implementation. As far as CBNRM is concerned there are reasonably developed customary rules relating to land administration, hunting and forests,⁵ although the degree to which such rules are adhered to is not clear.

There is a considerable body of statutes dealing with the administration of communal land, but studies have shown that the statutory rules are ignored in practice.⁶ The Constitution states that the customary law in force at the date of independence shall remain in force to the extent it does not conflict with the Constitution or any other statutory law.⁷ Some commentators argue that chiefs and headmen have retained important powers over the allocation of land according to customary law,⁸ whilst others are of the opinion that they enjoy extremely limited authority over land administration since such customary rules have been overridden by statute.⁹

2.4 Conservancies and Wildlife Councils

2.4.1 *What are conservancies and wildlife councils?*

⁴ T.W. Bennett, *Application of Customary Law in Southern Africa* (1985). However, some communities in Namibia have attempted to codify customary law.

⁵ M. Hinz, “Customary Land Law and the Implications for Forests, Trees and Plants”, Food and Agricultural Organization, October 1995.

⁶ *Ibid.*

⁷ Namibian Constitution, Article 140(1).

⁸ *Ibid.*

⁹ P.C. van der Byl, unpublished legal opinion, October 1992.

The policy on conservancies has been set out above. It recognises the importance of granting rural communities a stake in the conservation of wildlife by giving them a mechanism to acquire increased rights over wildlife in their area. A conservancy consists of an area of communal land set aside by a community or a group of communities within a defined geographical area who are jointly accorded the right to sustainably manage, conserve and utilise wildlife and other natural resources within such area. Although the focus in CBNRM is on communal area conservancies, they have existed on commercial farms for some time.

No specific policy framework exists for the creation of wildlife councils.¹⁰ The function of such councils in terms of the conservancy amendment is to manage on a sustainable basis and to co-ordinate the utilisation of wildlife, including the benefits to be derived therefrom, in areas outside of conservancies, private farms and proclaimed conservation areas. Further purposes may be to co-ordinate wildlife and tourism planning and its integration with other land-use planning in the particular area of jurisdiction of the council; and to provide a communications forum for liaison between MET, other Ministries, regional governors, NGOs, local leaders and the private sector on wildlife and tourism issues.¹¹

The absence of policy or coherent thinking in regard to the formation of wildlife councils destines to ensure that they will not constitute effective management structures. Their general responsibility for wildlife management is understood, yet the wildlife councils' composition, powers, relationship with MET field staff, operational budget and related issues need to be spelt out. It is also unclear as to the effect on the council's jurisdiction of a conservancy being declared in its designated area. There is accordingly greater emphasis being put on conservancies as the appropriate mechanism for implementing CBNRM in communal areas.

The distinction between conservancies and wildlife councils is essentially in the fact that a conservancy is a community institution managed by a conservancy council (probably consisting chiefly of community members) whereas a wildlife council is thought to be a joint body of both community members and government not representing a particular community but acting on behalf of people in a region who have not yet formed a conservancy.

Legislative effect is given to this policy in the conservancy amendment. There is every reason to believe that during early 1996 the Bill will be passed by the National Assembly in substantially the same form as it is currently drafted.

2.4.2 *How is a conservancy declared?*

The Minister of Environment and Tourism may declare an area outside of a proclaimed conservation area to be a conservancy.¹² The purpose of such a declaration is to enable inhabitants of a conservancy to derive benefits from the management and use of wildlife

¹⁰ Wildlife Councils were included in the conservancy amendment at the insistence of the Directorate of Resource Management in the MET.

¹¹ Manual entitled "Conservancies in Namibia: Guidelines for staff of the Ministry of Environment and Tourism".

¹² Section 2 of the conservancy amendment amends section 14 of the Nature Conservation Ordinance.

in the conservancy. The use may be “consumptive”, meaning the permanent removal of wildlife from an area, such as with trophy hunting or “non-consumptive” which refers to the retention of the wildlife population in an area and includes use for recreational, educational, research, cultural, aesthetic or related purposes. The primary non-consumptive use would of course be community-based tourism.¹³

A “proclaimed conservation area” is not defined in the conservancy amendment but would presumably refer to a game park or nature reserve declared in terms of s14 of the Ordinance.

2.4.3 The requirements for registering a conservancy

The Minister may register a conservancy at the request of a community inhabiting a communal area.¹⁴ “Communal area” is defined as “a geographic area habitually inhabited by a specific traditional community. The definition of “traditional community” is taken from the Traditional Authorities Act, 1995¹⁵ and includes members of the community residing outside of the common communal area.

This has potentially negative implications for CBNRM by allowing persons who are not resident in a conservancy area to exercise control over the management of a conservancy and derive financial benefits therefrom, since it waters down the underlying principle of the link between sustainable utilisation and financial benefit.

The Minister must be satisfied of a number of factors before registering a conservancy.

Conservancy committee

The community must establish a conservancy committee representative of the people residing in the conservancy. The threat of persons not resident in the conservancy area taking control of the management of the conservancy, alluded to above, is somewhat tempered by this residence requirement.

The method by which representation is to be measured is not prescribed and it can thus be assumed that, although an election of committee members would be a clear indication of representativeness, a less formal selection process might also be sanctioned. The informal procedure takes into account the distances, undeveloped communications infrastructure and the meagre resources of people living in the rural areas.

The composition of the conservancy committee is not prescribed, except that it must include at least one traditional leader.¹⁶ Accordingly much is left to community initiative and choice.

Conservancy constitution

¹³ The legislative framework for community-based tourism is set out in paragraph 7 below.

¹⁴ Conservancy amendment, section 4.

¹⁵ Traditional Authorities Act, No. 17 of 1995.

¹⁶ Conservancy amendment, Section 28A(1)(a).

The conservancy committee must have a constitution displaying a commitment to, and strategy for, the sustainable management and utilisation of wildlife within the conservancy. Included in the constitution should be:

- operating principles showing a commitment to CBNRM;
- a procedure for determining eligibility for membership, and an application process for membership of the conservancy;
- the rights and obligations of members;
- a procedure for selecting, and the powers of the conservancy committee members
- provisions for the drawing up of a management plan (e.g. monitoring wildlife populations, determining quotas, etc.)
- a clause on financial matters; and
- a procedure for resolution of disputes between members.

Finances and benefits

The conservancy committee must have the ability to effectively manage the income and funds of the conservancy and an appropriate method for the equitable distribution of benefits to the members of such conservancy from the consumptive and non-consumptive use of wildlife. These procedures would also be set out in the constitution and include provisions ensuring that all funds of the conservancy are handled in a proper and transparent manner.

Registration

The conservancy committee must apply for registration of the conservancy in a manner prescribed by regulations (the regulations have still to be drafted).

Area of jurisdiction

The geographic area of the conservancy must be sufficiently identified by way of its physical boundaries taking into account the views of the regional council for the area. This is an important step as it determines not only the area of jurisdiction of the conservancy committee but also affects its composition.

2.4.4 Registration of wildlife councils

The Minister may register wildlife councils in respect of communal land after consultation with the communities concerned. It is anticipated that wildlife councils will consist of representatives of the MET and of local communities, although the Bill is silent on the composition of such councils. It is anticipated that their functions will be set out more fully in the forthcoming regulations. As was mentioned earlier the councils will probably not be highly significant to CBNRM and it is hoped that they will not prove to be a hindrance to it.

2.4.5 Rights of conservancies and wildlife councils

Once a conservancy or a wildlife council has been registered, the conservancy committee and the wildlife council have the right and the duty to manage wildlife resources within their area of jurisdiction. However there is a distinction drawn between the utilisation of these resources. Conservancies are entitled to sustainably utilise wildlife by hunting and enjoy the right to the proceeds generated from hunting and other non-consumptive uses, such as tourism. Councils, on the other hand are merely charged with the responsibility of managing and co-ordinating such utilisation and the proceeds generated therefrom without any right to direct financial benefit from such management. If one is of the view that the councils will not be a rallying point for CBNRM in communal areas it is not a bad approach to allow communities to benefit financially through activities such as community game hunts at the expense of the councils' coffers. However, if the lack of commitment by government to budgetary support to regional government is anything to go by, wildlife councils simply will not have the finances to carry out their intended functions.

The rights and duties of both conservancies and wildlife councils are exercised subject to the provisions of the Nature Conservation Ordinance, 1975 (with the exception that, unlike commercial farmers, conservancies and wildlife councils will not be required to erect game proof fences) and subject further to quotas agreed to by the Minister.

2.4.6 Variation or rescinding of rights

The Minister may vary, impose further conditions or rescind the registration of a conservancy or wildlife council where in the opinion of the Minister the conditions under which the conservancy or wildlife council were declared are not being met. In such a case the conservancy or wildlife council concerned is entitled to make representations to the Minister in this regard.

This would typically be where the conservancy is no longer representative of the people living in the conservancy area or the wildlife council fails to manage wildlife under its jurisdiction in a sustainable manner.

2.4.7 Ownership of game

A consequence of registration is that a conservancy committee or a wildlife council is the owner of all huntable game, huntable game birds and exotic game lawfully on such conservancy or within the area of jurisdiction of the wildlife council. Granting ownership to conservancy committees has considerable significance for CBNRM in that for the first time inhabitants of communal land are being given the right to make decisions concerning how the wildlife resources on communal land should be utilised. By giving ownership over game to conservancies the MET is effectively promoting a sense of responsibility and connection with wildlife resources which accords with the commonly held view that the community through their traditional leaders owns game under customary law.

Much work has still to be done in designing appropriate legal institutions for holding conservancy rights, determining the most effective composition for conservancy committees, a process for granting quotas and developing a management plan and so forth. Despite the many questions this policy poses, it signifies a highly significant

departure from the traditional centralised manner of managing resources and a huge opportunity to prove that CBNRM is a viable option for the future.

3. LAND

3.1 Policy on Communal Land

As virtually all CBNRM activities are located in communal areas, the policy on communal land is of crucial importance to CBNRM in Namibia. In the absence of a clear policy framework for land reform it is extremely difficult for communities, government and those working with them to devise a clear development strategy for these areas. The dilemma is felt acutely in conservancy development. On the one hand government is intent on devolving authority to communities to manage natural resources sustainably, giving them ownership over game and creating the legislative framework to facilitate this process (such as with the conservancy amendment). Yet on the other hand the land on which these communities and the natural resources are situated is not owned by them and subject to a land tenure system that accords them little certainty or security.

It is no secret that the government is presently preparing a national land policy. This policy needs to urgently address the tenure situation on communal land and the process of developing the policy must include wide consultation with the representatives of people living on communal land.

3.1.1 The National Conference on Land Reform and the Land Question

The most authoritative statement of government policy on communal land is to be derived from the resolutions of the 1991 National Conference on Land Reform and the Land Question. Although the resolutions of the Conference were never formally adopted by government, they constitute a consensus reached by major players both within and outside of government. The Conference acknowledged that communal areas sustain the great majority of Namibian farmers and that communal land should for the present be retained, developed and expanded where necessary. Of critical importance to CBNRM is the resolution on access to communal land. It provides that:

- (a) as provided for by the constitution, all Namibian citizens have the right to live wherever they choose within the national territory;
- (b) in seeking access to communal land, applicants should take account of the rights and customs of the local communities living there;
- (c) in land distribution priority should be given to the landless and those without adequate land for subsistence;

The policy on access cannot escape the constitutionally entrenched right of citizens to reside wherever they choose.¹⁷ However, the unrestrained exercise of this right could result in the undermining of preferred land-use options by local communities living on communal land. This scenario is already playing itself out in Eastern Bushmanland with the threat of Herero cattle farmers moving into the territory and destroying the livelihood of the Bushmen people, despite the fact that the consensus at the National Conference was that the San people should receive special protection for their land rights. Conservancies are also extremely vulnerable to this form of land invasion, particularly in times of drought. Safeguards must accordingly be built into policy and legislation to deal with these conflicts. The conference resolution does however seek to place limitations on the free settlement of people by requiring that in applications for land account should be taken of the rights and customs of local communities and that the poor should receive preference.

The further important implications of the resolutions of the conference are:

- (i) there is no direct reference to CBNRM or the need to diversify land use practices. However, the conflict of interest between wildlife conservation and the need of farmers to effectively protect their livestock and crops from damage and losses is emphasised.
- (ii) women are singled out for particular attention in relation to their right to own and bequeath land, receive training, low interest loans and fair representation on land boards dealing with the allocation and use of land in communal areas.
- (iii) the responsibility for land administration should be shared between traditional leaders, regional and local government and land boards. The land boards would administer the allocation of communal land and be accountable to government and their local communities.
- (iv) illegal fencing of land must be stopped and all illegal fences must be removed.
- (v) all NGOs and co-operatives active in the field of rural development should be assisted by government.

Significantly the Conference did not give guidance in its resolutions as to the options for a future land tenure system in Namibia. Security of tenure, whether it be in the form of group or individual tenure, is crucial for the development of CBNRM because without it the development options of communities are limited and their ability to attract investment capital severely constrained. A further limitation of the Conference was that the institutional arrangements for the management and allocation of land were left (probably purposely) very vague. Whilst it is envisaged that land boards will take over the allocatory role in respect of land from traditional leaders, the authority in which the ownership of communal land will vest is unclear.

3.1.2 The People's Land Conference

¹⁷ Namibian Constitution, Article 21(1)(h).

The conference organised by the NGO sector in September 1994 brought together community representatives from the various regions of the country to assess the progress of the land reform process as well as to make a positive contribution to the continuing debate on the issue. The resolutions of the conference do not have any official status but are a strong indication of the priorities for land reform identified by those people living with the issues on a day-to-day basis and hopefully will provide guidance to government in the future formulation of policy. The most significant resolutions for CBNRM were:

- (a) communal lands should not be commercialised but opportunities improved;
- (b) women should be treated as equal partners with men in all aspects of development, including natural resource management and land reform;
- (c) uncontrolled fencing must be stopped immediately and a commission of enquiry appointed to investigate the situation with a view to proposing law reform;
- (d) land should be administered through regional land boards consisting of regional government, traditional leadership, farmers unions and special interest groups;
- (e) legislation must be enacted to guarantee “appropriate ownership and control” over natural resources by communities;
- (f) decisions on land should be based on proper land use planning procedures and aim at sustainable use;
- (g) a national commission consisting of regional government, traditional leaders, community organisations and NGOs should be established to speed up land reform.

The resolutions accordingly contain a number of decisions, such as in relation to fencing, administration of land, devolution of control over resources to communities and sustainable use that are supportive of the CBNRM approach in Namibia.

3.2 Legislation on Communal Land

The law relating to land tenure on communal land is complex and not easy to ascertain. Much of it is derived from antiquated South African statutes from the apartheid era and totally inappropriate to a post-independent Namibia based on a democratic constitutional order. For the purposes of this review reference will accordingly be made only to the selected questions below with relevance to the CBNRM issue.

3.2.1 Who owns communal land?

The legislative path of the ownership of communal land prior to independence is tortuous. For the sake of completeness it is sketched in the accompanying box.

However, the Constitution clearly transfers ownership of all communal lands which previously vested in any government authority to the Government of Namibia.¹⁸

The position prior to independence was briefly as follows: in terms of the Treaty of Peace and South West Africa Act, No. 49 of 1919 land held by the German colonial administration effectively became Crown (or State) land of South West Africa with the South African Parliament retaining authority over land rights. A subsequent proclamation of the Governor-General of South Africa authorised the Administrator of South West Africa to set aside Crown lands as reserves “for the use and benefit of aboriginal natives”. In 1954 the administration of “native affairs” was transferred to the relevant South African authority and all land reserved and set aside “for the sole use and occupation of natives” was vested in the South African Native Trust established by the Native Trust and Land Act, No. 18 of 1936. Following the Odendaal Commission Report¹⁹ the Development of Self-Government for Native Nations in South West Africa Act, No. 54 of 1968 was enacted intending to assist the “native nations” in South West Africa to develop into independent self-governing nations. The Act accordingly recognised Owamboland, Okavangoland, Hereroland, Kaokoland, Damaraland and Eastern Caprivi as “native nations”.

Thereafter this Act was repealed in most regions of Namibia by the Representative Authorities Proclamation, 1980 (“AG 8”) with the exception of Bushmanland. AG 8 provides further that the ownership of communal lands which vested in the South African Development Trust (formerly the South African Native Trust) was to vest in the government of the Territory of South West Africa. Consequently the various representative authorities acquired control over communal land falling under their jurisdiction. Such land thus lost its status as an asset of a trust and became the property of the government of the Territory.

Shortly prior to independence the powers, duties and functions of the various representative authorities were transferred to the Administrator-General and AG 8 was finally repealed by the Constitution.

3.2.2 *Who administers communal land?*

Under the colonial administration magistrates and superintendents were given general control over reserves within their districts, including the making of allotments of communal land. Significantly the applicable regulations did not give the authority to allot land to traditional leaders, who were merely subordinate administrative officers carrying out the instructions of these officials.²⁰ In fact, the regulations specify that a headman shall not make any allotment of land, either to newcomers or by way of redistribution of land already occupied, nor shall he or she under any circumstances deprive any person

¹⁸ *Ibid*, Article 124 and Schedule 5(1).

¹⁹ The Report of the Commission of Enquiry into South West African Affairs, which considered policies on “native reserves” and the question of self-government for different ethnic groups.

²⁰ Regulations contained in Government Notice 60 of 1930.

of any land which such person occupies except upon the express order of the Superintendent.²¹

The practice is somewhat different, however. Traditional leaders believe that communal land is owned by the chief or king and always have been actively involved in the allotment of land in terms of customary law. Despite their formal marginalisation in the legislative framework, government defers to their advice concerning land administration, an example being the application for Permission to Occupy communal land where the opinion of the relevant traditional authority is sought prior to any decision being taken. The land allocation functions of traditional leaders is the subject of controversy and resisted by some.²² Land administration in terms of customary law is beyond the scope of this review and is the subject of a land reform process currently under way aimed at introducing a more efficient and equitable system of land tenure.

3.2.3 *How does the Permission to Occupy operate?*

The Permission to Occupy (PTO) is a type of licence granted by government in terms of regulations published under the Bantu Administration Act, 1927²³ read with the Bantu Trust and Land Act, 1936.²⁴ The PTO comes in two forms- an urban variety issued by the Ministry of Regional, Local Government and Housing and a rural version issued by the Ministry of Lands, Resettlement and Rehabilitation- the latter form being of most relevance to CBNRM.

PTOs may be granted in respect of either residential, church, school or trading allotments. They constitute the only form of title to communal land other than allotments according to customary law. Given the measure of tenure security that they offer, trading PTOs have become a mechanism for entrepreneurs to gain formal rights of access to plots situated in scenic parts of the country to build tourism establishments, such as lodges and campsites. More recently various communities have successfully applied for PTOs and embarked on tourism activities themselves or as partners in joint ventures with outside operators.

The procedure for applying for a PTO is not laid down in law but more recently a relatively simple application process has been developed by government, the steps of which are:²⁵

- (i) the applicant must complete an official application form.

The application form must be accompanied by a sketch plan identifying the site applied for. In addition the MET requires that an environmental checklist be completed for tourism related applications. The information requested includes

²¹ Regulations contained in Government Notice 68 of 1924. Since Proclamation 11 of 1922 has been repealed by the Local Authorities Act, 1992 these regulations are no longer in force.

²² It is reliably rumoured that certain headmen are making people pay for the right to reside on communal land, whilst in other areas people openly defy the authority of traditional leaders and settle where they please citing Article 21(1)(h) of the Constitution.

²³ Bantu Administration Act, No. 38 of 1927.

²⁴ Bantu Trust and Land Act, No. 18 of 1936.

²⁵ J. Howard, "The Permission to Occupy", unpublished paper, November 1995.

details as to the size, construction materials and guest activities of the proposed development, the involvement of local communities, the regional and national benefits, the effects on other users and the environmental impacts. Where any application is likely to have a significant environmental impact, the applicant may be required to conduct a full environmental impact assessment.

- (ii) the application form and sketch plan are sent to the appropriate traditional authority and regional governor for their comment or endorsement.

This is an important step as it gives local communities a chance to comment not only on the social or economic desirability of the tourism development but also on the potential environmental impacts.

- (iii) the application form and sketch plan are forwarded to the Ministry of Lands for consideration by a ministerial PTO sub-committee. Presently there are unnecessary delays in processing applications because the members of the PTO sub-committee do not have the necessary authority to make appropriate decisions concerning such applications.
- (iv) a recommendation is made by the PTO sub-committee to the Permanent Secretary in the Ministry of Lands, and if approved, a certificate entitling the holder to occupy the designated portion is signed by him or her.
- (v) a letter making an offer, together with a rental demand note for the first year's fee is sent to the applicant.
- (vi) upon payment of the fee the Ministry issues the certificate and the holder is then entitled to occupy the land.²⁶

The PTO is usually made subject to certain conditions contained in a schedule to the certificate, providing amongst other things that the allotment may not be used for purposes other than those for which it has been allotted, and that the holder may not transfer or lease the allotment without permission from the Ministry and is not entitled upon the withdrawal of the PTO to any compensation from government for improvements made on the allotment.

The PTO system has many deficiencies, the most significant of which is the inadequate tenure security it offers. Normally the allotment is made for an indefinite period but there are various grounds on which it may be cancelled, including where the land is required for official use. The indefinite period of the allotment is controversial from the side of the community who may have difficulty ousting an unpopular holder of the PTO for a very lengthy period of time.

Should the institution of a PTO survive the land reform process it should be remodelled into a fixed term lease, subject to proper community scrutiny. A future land law should

²⁶ The document "Application for Permission to Occupy a Site" and the Schedule containing standard conditions relating to PTOs are attached as Appendix B.

permit communities to issue PTOs and benefit from the rental charged, particularly where their rights of access to grazing or water points are restricted by the development. In spite of the present lack of security surrounding PTOs, the tourism industry has made significant investments in building tourist accommodation on PTO allotments.

3.2.4 What rights do occupiers of communal land have over natural resources?

As has been discussed in the previous section the occupiers of communal land do not have secure rights of tenure, and ancillary to this is the limited rights they enjoy in relation to the utilisation of natural resources. Various statutes have accorded them further rights but these entitlements have fallen far short of ownership of resources and have thus not inspired responsible CBNRM practices. The conservancy amendment is a highly significant departure from the past approach and, as has been mentioned, could form the institutional base for the conferring of further rights over natural resources. The rights occupiers of communal land presently hold in connection with wildlife, forests and inland fish are described under separate headings below.

3.2.5 Fencing of communal land

Land enclosure or illegal fencing of communal land is a growing problem in Namibia which could pose a significant threat to CBNRM. Fields are frequently fenced to protect crops from livestock or to secure exclusive grazing areas with or without the permission of traditional authorities. This practice has been condemned and there is pressure on government to legislate to declare such practices illegal.

Currently there is no statutory authority to prevent such fencing. There are two statutes relating directly to fencing. The Fencing Proclamation, 1921²⁷ regulates the erection of dividing fences between adjoining properties but does not apply to communal areas. The other is the Native Reserves Fencing Proclamation, 1926²⁸ which authorises the erection of fences at the boundaries of communal areas, where the adjoining land vests in the State, but is silent on the issue of fencing within communal areas. Any legislative intervention would have to deal not only with curbing illegal fencing in the future but also consider strategies for the dismantling of existing illegal fences.

3.2.6 Land Reform and conservancy rights

The debate over land reform is by no means over. Whilst government has as yet to formulate a comprehensive policy and programme for land reform, pressure for legislative intervention with regard to communal land tenure continues to mount. A Bill on Communal Land has been drafted and is believed to currently be undergoing a revision, but to date government has not committed itself to opening up the process of land reform to public scrutiny and the contents of the Bill remain under wraps.

The resolutions of the 1991 National Land Conference and subsequent unofficial pronouncements by government officials would suggest that the general thrust of

²⁷ Fencing Proclamation, No 57 of 1921.

²⁸ Native Reserves Fencing Proclamation, No 12 of 1926.

government policy on communal land is to remove the authority over and rights to communal land currently enjoyed by traditional authorities on behalf of inhabitants of communal areas and to transfer this authority to regional land boards. Although the future role traditional leaders may play in support of land boards is unclear, it would be unwise not to tap into their expertise in respect of local land-use patterns and experience in the resolution of land disputes. In any event, the Constitution foresees a continuing advisory role for traditional leaders by providing for the establishment of a Council of Traditional Leaders to advise the President on the control and utilisation of communal land.²⁹

This step, if wisely implemented, could positively impact on CBNRM by creating a more equitable and effective system of land administration with the capacity to implement a more diverse land tenure regime. Further reforms which could provide a supportive framework to CBNRM are:

- (a) a flexible approach to land tenure granting recognition and protection to various forms of land rights and enabling not only individuals but also legally constituted communities and groups to exercise joint ownership rights over land. This would provide a sound legislative basis for the promotion of community conservation and tourism activities through conservancy development;
- (b) the registration of land rights with the appropriate land board to ensure legal certainty. This is important not only for the holder of rights in order to assert such rights, such as against an unlawful occupier of conservancy land or to use as collateral for obtaining loan finance, but also for outsiders such as potential investors who need certain guarantees that formal title gives before they commit significant capital into a conservancy enterprise;
- (c) the protection of group land rights from their abrogation by the uncontrolled settlement of people from outside the community. This poses a very real threat to wildlife based conservancies where, for instance cattle farmers settle in the area and radically transform the communities chosen land-use practices. On the one hand respect for the freedom of movement, residence and settlement clauses of the Constitution dictates that persons not traditionally resident in the particular community should be entitled to qualify for land rights in that community, but on the other it would be justifiable to require that land boards take into account the opinions of existing inhabitants when considering new land allocations;
- (d) the declaration of illegal fencing as an offence. This refers to the fencing of communal land in the absence of any statutory authority to do so. Unless curbed this practice could seriously affect the viability of wildlife conservancies by cutting off the migration routes of various species of game. The policy would have to be flexible enough to encompass environmentally sensible enclosure such as where a conservancy is fenced off to protect its grazing from stray cattle. The provisions would also have to provide a procedure for dealing with illegal fencing already in

²⁹ Namibian Constitution, Article 102(5).

existence, such as a time-scale for its dismantling and the consequences of a failure to do so;

- (e) a clear statement as to the composition of the regional land boards and their relationship with regional and local authorities. There have been incidents of local and regional government structures interfering with the establishment of conservancies under the erroneous assumption that they hold a monopoly over development initiatives in the rural areas;
- (f) provisions on land-use planning to ensure that effective institutional connections are made with planning bodies in existence and under contemplation, including those tasked with environmentally sustainable natural resource management. Here the proposed Environmental Commissioner contemplated by the MET and the Land Use and Environmental Boards suggested by the Ministry of Lands, Resettlement and Rehabilitation are of central importance;
- (g) the establishment of an effective, speedy and inexpensive tribunal for the adjudication of land disputes. Land allocation has under customary law always generated frequent land disputes with consequent disruption to community cohesion and harmony. This trend is likely to continue, and in the case of conservancy development perhaps intensify where communities gain increased access to financial benefits. Perhaps the most cost effective approach would be to give to the Lands Tribunal already established in terms of the Agricultural (Commercial) Land Reform Act, 1995³⁰ a wider jurisdiction to include the adjudication of disputes in terms of the new Land Act.

The uncertainty over the future of land tenure in respect of communal land represents the most significant stumbling block to the successful implementation of CBNRM in Namibia. The future is unfortunately not yet clear. It is accordingly hoped that government will take seriously the advice of those who are insisting that the Ministry of Lands initiate a major publicity and consultation campaign in all regions of the country in order to develop a national land policy based as far as it might be possible on a consensual view as to content of land reform in the future.

4. HUNTING OF GAME³¹

4.1 Introduction

The most important legislation in this area is the Nature Conservation Ordinance, 1975 because it is the basic law on game which applies to all of Namibia.³² As was stated earlier, the Ordinance is to be further amended by the Nature Conservation Ordinance Amendment Act, 1996 to permit conservancy committees, subject to the provisions of the Ordinance and further subject to quotas agreed to by the Minister, the right to hunt game and to permit trophy

³⁰ Agricultural (Commercial) Land Reform Act, No. 6 of 1995.

³¹ This section is based on a paper written for the Nyae Nyae Bushman Foundation and reproduced with the author's permission.

³² The Ordinance has been amended by Ordinance 4 of 1977, Ordinance 16 of 1980, Act 27 of 1986, Act 6 of 1988, Act 17 of 1988 and Act 31 of 1990.

hunting as a form of income generation for their members. They will also enjoy the same rights to wildlife under the Ordinance as presently enjoyed by owners and lessees of land, including the further rights to lease hunting rights, the sale of game, game meat and skins, etc.

4.2 Types of game

The Nature Conservation Ordinance differentiates between several different categories of game: specially protected game, protected game, huntable game, huntable game birds, exotic game, problem animals and other "wild animals". A list of specially protected game, protected game and huntable game birds is attached as Appendix C.

Specially protected game include giraffe, elephant, rhinoceros and hippopotamus.

Protected game include roan antelope, cheetah, leopard, tortoises and most species of birds.

Huntable game include bushpig, buffalo, eland, oryx, kudu, springbok and warthog.

Huntable game birds include guinea fowl, sandgrouse, quail and francolin.

Exotic game are defined as any vertebrates (including bird, fish or reptile) which are non-domestic species with a natural habitat that does not include South Africa or Namibia.

Problem animals include any wild animals which are declared by the Minister to be problem animals in all or a particular part of Namibia. Such declarations are to be published in the *Government Gazette*.

"Wild animals" in general are defined in two ways. With regard to the provisions on problem animals, they include any vertebrate belonging to a non-domestic species. With regard to the remainder of the Ordinance, they include any vertebrate belonging to a non-domestic species with a natural habitat that includes South Africa or Namibia.

4.3 The people on land

With regard to the people on the land, the existing Ordinance focuses on three categories: (a) the owner of the land, which in the case of communal land is defined as the executive authority of the population group concerned and should now probably refer to the President or under specific delegation of authority the Minister of Lands, Resettlement and Rehabilitation; (b) the lessee of the land, who must be a person leasing the land under a written contract with the owner and actually residing on the land, but specifically excluding the lessee of any piece of land forming part of communal land; and (c) an occupier of communal land.

Enforcement of the Ordinance is in the hands of nature conservators who include both officials appointed in terms of the Ordinance and any members of the police or defence force. The Ordinance is administered in part by a "Ministry" which is not clearly defined, but would now probably refer to the Ministry of Environment and Tourism.

4.4 Hunting rules

4.4.1 *Specially protected game and protected game*

Normally, no one is allowed to hunt specially protected game or protected game without a permit issued by the Ministry.³³ The penalty for hunting without a permit any elephant or rhinoceros is N\$200000 or imprisonment for up to twenty years, or both and for other specially protected game is a fine of up to N\$20000 or imprisonment for up to five years, or both.³⁴ The penalty for hunting protected game without a permit is a fine of up to N\$16000 or imprisonment for up to four years, or both.³⁵ A person who has been granted a permit must keep the permit in his or her possession at all times while hunting and must endorse in writing the number and species of game which was killed, the date on which it was killed, and a description of the place where it was killed before leaving the land where the kill took place.³⁶

However, the owner or lessee of any land or the occupier of communal land is allowed to kill any specially protected game or protected game (a) in defence of a human life; (b) to prevent a human being from being injured; or (c) to protect the life of any livestock, poultry or domestic animal while the life of any such animal is actually being threatened.³⁷ In other words, the predator can be killed only while it is in the process of endangering a person or an animal and cannot be chased away and killed later in order to prevent it from coming back. If a person kills specially protected game or protected game under these special circumstances, he or she must report it in writing to the nearest nature conservator or to the nearest police office within ten days.³⁸

4.4.2 *Other game*

Normally, it is illegal to hunt any hunnable game, hunnable game birds, exotic game or any other wild animal on communal land without the written permission of the Cabinet, which would now be read as the permission of the President.³⁹ The penalty for hunting any such game without a permit is a fine of up to N\$16000 or imprisonment of up to four years, or both.⁴⁰ Here again, a person who has been given written permission must carry it along while he or she is hunting.⁴¹

However, as was mentioned earlier, in terms of the conservancy amendment a conservancy committee or a wildlife council will become the owner of all hunnable game, hunnable game birds and exotic game within the area of jurisdiction of each, provided that such game and birds is lawfully in such area. Where, for instance, the game has been illegally transported into the area without a permit the conservancy council will not become the owner of such game. Any right to hunt such game will be subject to the same conditions that apply to owners or lessees under the Ordinance- in other words a permit will be required for hunting hunnable game.

³³ Sections 26(1) and 27(1).

³⁴ Section 26(3), as amended by Act 27/1986 and Act 31/1990.

³⁵ Section 27(3), as amended by Act 27/1986 and Act 31/1990.

³⁶ Sections 26(5)-(7) and 27(5)-(7), as amended by Act 27/1987.

³⁷ Sections 26(4)(a) and 27(5)(a), as amended by Act 27/1986.

³⁸ Sections 26(4)(b) and 27(5)(b).

³⁹ Section 28(1)(a)

⁴⁰ Section 28(1)(c), as amended by Act 31/1990.

⁴¹ Section 28(2)(a).

4.4.3 Killing game to protect crops and grazing

Any occupier of communal land may hunt any game, **excluding** elephant, hippopotami and rhinoceros, which is destroying or damaging crops or plants on any cultivated land on such communal land which has been laid out and is being cultivated by the occupier of the land, **provided that** the cultivated land is enclosed by a fence approved by the Director.⁴² Any person who kills game under these circumstances must report it in writing to the nearest nature conservator or to the nearest police office within ten days.⁴³

There is an illogical (and probably accidental) gap here. While specially protected game and protected game can be killed without a permit in communal areas in defence of human life or to defend livestock (as discussed above), other wild animals (which are generally less protected) can be killed without a permit in communal areas **only** to protect crops or plants. A more consistent approach would be to make it permissible for a person to kill **any** wild animal to protect human life, and perhaps in defence of livestock as well.

There is a provision with regard to the killing of game to protect grazing which appears to discriminate against the occupiers of communal land. Whenever the Ministry thinks that it is necessary to protect grazing on a farm or other land, it has the power to grant a permit to the owner or the lessee of the land authorising him or her to hunt the number and species of game described in the permit.⁴⁴ However, there is no provision giving the occupiers of communal land the right to seek permission to kill game in order to protect their grazing. This would appear to be in violation of Article 10 of the Namibian Constitution, which provides that all persons shall be equal before the law and outlaws discrimination on the basis of sex, race, colour, ethnic origin, religion, creed or social or economic status. The conservancy amendment would remove any such discrimination in respect of conservancies and wildlife councils.

It should be noted that the Ministry can instruct a nature conservator to capture or destroy any animal which (a) is destroying or damaging crops or plants on cultivated land; (b) is likely to damage the grazing on a given piece of land; or (c) which is or may possibly be a danger to human beings.⁴⁵ Thus, nature conservators have wider powers than the occupiers of communal land (outside of conservancies and the area of jurisdiction of wildlife councils) to protect crops and grazing, and so the state could be petitioned for assistance in this area if necessary.

4.4.4 Hunting at night

It is in most circumstances illegal to hunt any game or other wild animal with the aid of artificial light, or at night (measured as the period between half an hour after sunset to

⁴² Section 37(1)(a)(ii), as amended by Act 27/ 1986.

⁴³ Section 37(1)(b).

⁴⁴ Section 37(2)(a).

⁴⁵ Section 81(1)(n). The permission of the owner or lessee of the land is required before such action can be taken; with regard to communal land, this would mean the permission of the state.

half an hour before sunrise on the following day).⁴⁶ The offence for violating this rule can be a fine of up to N\$500 or imprisonment for up to six months, or both.⁴⁷ There are however some exceptions to this rule: firstly the rule does not apply to problem animals; and secondly, the rule does not apply to the killing of game on communal land in order to protect plants or crops in cultivated land.⁴⁸

4.4.5 *Other hunters and dogs*

If the occupier of land owned by the government (which would include communal land) comes across any person hunting game or any other wild animal (other than a problem animal), the occupier of the land can ask the hunter to produce his or her permit or written permission. If no such permit or written permission is produced, the hunter can be ordered to give his or her full name and address and told to leave the land immediately. If the hunter does not obey this order, the occupier of the land has the power to arrest the hunter.⁴⁹

The occupier of any land owned by the government also has the right to immediately destroy any dog chasing game or any other wild animal on the land as well as any dog which is found on the land and is not under the control of an adult. The only exception to this rule is where a dog is chasing game or any other wild animal in accordance with the provisions on problem animals.⁵⁰

4.4.6 *Weapons*

It is normally illegal to kill game or any other wild animal by any means **other than** by shooting with a firearm. (The size of firearm permissible for certain species of game is specified in the Ordinance.⁵¹) It is normally illegal to capture game or any other wild animal by means of a snare, pitfall, trap, springtrap, net, birdlime, drug, or by any other method. It is also normally illegal to keep game or any other wild animal.

The Ministry can grant permits which make exceptions to these rules. The President can also grant exemptions from these rules to any member or all the members of a particular "population group" residing on the communal land of the "population group" concerned.⁵² The scope for exemptions here is particularly important to communal residents who practise traditional methods of hunting such as in Bushmanland, as this provision seems to be the only legal authority which would prevent hunting with bow and arrow or any other traditional weapons. However, in 1987 the Cabinet of the Interim Government of the then South West Africa authorised the inhabitants of Bushmanland to

⁴⁶ Section 38(1).

⁴⁷ Section 38(2).

⁴⁸ Section 38(1).

⁴⁹ Section 39(2), as amended by Act 27/1986.

⁵⁰ Section 39(3), as amended by Act 27/1986.

⁵¹ Section 42(1)-(2). Specifications are listed for buffalo, eland, kudu, oryx, wildebeest, hartebeest, all species of exotic game, springbok, and duiker.

⁵² Section 40(1), as amended by Act 27/1986. As noted above, the term "Cabinet" in the Ordinance should be read as President. The President can also grant exemptions to the owner or lessee of land which is enclosed with a game-proof fence and to licensed game dealers.

retain their traditional hunting methods.⁵³ The exact status of this decision is the subject of some controversy.

It is illegal in most circumstances to hunt or drive game with a moving motor vehicle or an aircraft.⁵⁴

4.4.7 *Bird eggs*

It is illegal to remove, disturb, destroy, sell or purchase the eggs of hunnable game birds or protected birds without a permit granted by the Ministry. There are exceptions which apply to the removal of eggs by the owners or lessees of land for their own use, but no exemptions for the occupiers of communal land.⁵⁵ This is arguably another discriminatory aspect of the Ordinance which violates the Constitution in respect of occupiers of communal land outside the boundaries of conservancies and wildlife councils.

4.4.8 *Game meat and skins*

The Ordinance contains prohibitions on the donation of game meat to another person, and on the sale of game, game meat and the skins of game. Although there are exemptions for the owners or lessees of land which is enclosed with game-proof fences, there are no similar exemptions for the occupiers of communal land.⁵⁶ Again this is a provision which is arguably unconstitutional outside of the boundaries of conservancies and wildlife councils.

It is illegal to remove any game which is found dead, or any part of such game, unless the person removing it is the owner or lessee of the land or a person who killed the game lawfully in accordance with the provisions of the Nature Conservation Ordinance.⁵⁷ Anyone who removes any specially protected game or protected game from the place where it is found dead must report it in writing to the Director within ten days, even if that person is authorised by the Ordinance to remove the game.⁵⁸

It is illegal for any person to be in possession of the raw skin of any specially protected game or protected game unless that person has a lawful permit specifically authorising him or her to hunt the game or to be in possession of the skin.⁵⁹

4.4.9 *Hunting of problem animals*

The Ministry is empowered to identify any wild animal as a problem animal throughout Namibia or with respect to a particular area.⁶⁰ The provisions on the hunting of problem

⁵³ Cabinet decision 1074/87.

⁵⁴ Section 43. None of the exemptions listed apply to the occupiers of communal land.

⁵⁵ Section 44.

⁵⁶ Sections 46 and 47. "Game meat" is defined as the meat of any game (fresh, salted, smoked or dried) as well as the whole carcass of any dead game (section 1).

⁵⁷ Section 50(1). There is an exemption authorising the removal of dead game from a road where it constitutes a danger to traffic. Section 50(2).

⁵⁸ Section 50(3).

⁵⁹ Section 50A, as inserted by Ord. 4/1977.

animals appear to be discriminatory, in that they authorise the owner or lessee of land to hunt problem animals at any time, but contain no such authorisation for the occupiers of communal land outside of the boundaries of conservancies and wildlife councils.⁶¹

4.5 Enforcement of the Ordinance

Enforcement of the Ordinance is in the hands of nature conservators who include both officials appointed in terms of the Ordinance and any members of the police or defence force. A nature conservator is authorised to arrest any person without a warrant⁶² and has the further power to seize anything which in his or her opinion appears to relate to an offence under the Ordinance.⁶³

If the article which is seized is perishable, the nature conservator may dispose of it "in such manner as the circumstances require", having "due regard to the interests of the persons concerned". Otherwise, the article which is seized must be delivered to a police officer, who must make arrangements to keep it in safe custody.⁶⁴

The further powers of conservators are:

- to enter land at will for the purposes of investigation;
- to order that any vehicle or other means of conveyance (which would include a horse, a donkey or a cart) be brought to a halt for a search or for investigation;
- to question any person who may have information in connection with an offence;
- to remove snares, traps and other similar devices suspected of being used in violation of the Ordinance, or to destroy such devices if removal is dangerous or difficult;
- to seize any animal, fish or plant being held in captivity without a valid permit;
- to hunt, capture or keep wild animals on state land (or on private land with the permission of the owner or lessee) for scientific purposes or to facilitate the carrying out of the functions of the Ordinance; and to carry a firearm.⁶⁵

4.6 Permit fees

The Ordinance requires that fees which are imposed for permits which are issued under the Ordinance in respect to communal lands can be set only with the concurrence of the executive authority of the population group concerned. Similarly, the conditions which could be imposed on a permit or permission required the concurrence of the appropriate executive authority, which would now be the Ministry. All fees collected in respect of communal lands were required to be paid into the revenue fund of the relevant population group, which would presently be the Central Revenue Fund.⁶⁶ This provision would have to be read subject to the conservancy amendment which will provide that revenue from the management and use of wildlife resources will accrue to members of conservancies through their conservancy

⁶⁰ Section 53.

⁶¹ Section 54.

⁶² Section 81(2)-(3).

⁶³ Section 81(1)(e).

⁶⁴ Section 81A, added by Ord. 4/1977 and amended by Act 27/1988.

⁶⁵ Section 81(1).

⁶⁶ Sections 83(2)(b), 83(3)(b), 83(4)(e) and 83(7), as amended by Act 27/1986.

committees. It is unclear whether conservancies may be required by government to pay a prescribed fee for the acquisition of such rights, but it is understood that this is not MET's approach.⁶⁷

4.7 General

The Ministry has wide powers to take whatever measures it may deem "necessary or desirable" to preserve wild animals.⁶⁸

The Ministry also has the power to exempt any person from any or all of the provisions of the Ordinance if this is "in the interests of nature conservation".⁶⁹

The Ministry is empowered to make regulations covering a wide range of issues, including "generally any matter which the Ministry may deem necessary or desirable to prescribe" in order to achieve the aims and objectives of the Ordinance or to effectively enforce it.⁷⁰ The regulations promulgated may be made applicable only to a particular part of Namibia, so long as this is made known by notice in the *Government Gazette*. The basic set of regulations under the Ordinance is contained in GN 240/1976 (*Official Gazette* 3556) and attached as Appendix D.⁷¹

The Ordinance is currently being redrafted to bring it in line with the policy developments within government. One of the priority areas would be to investigate alternative methods for the management of wildlife resources, such as encouraging the greater involvement of rural communities in the conservation of the resource and the enforcement of the law. There are already examples to build on such as the community game guards employed by an NGO operating in both the Caprivi and Kunene regions. Whilst they co-operate closely with MET officials they have no official status or statutory powers. A future law could perhaps provide for the attachment of community game guards to the proposed conservancies and wildlife councils.

5. AGRICULTURE AND FORESTRY

5.1 The National Agricultural Policy

The policy is the principal document outlining the intentions of government with regard to agricultural development in Namibia. The policy was adopted by Cabinet in October 1995 and will be tabled in the National Assembly as a white paper in due course.

The document envisages a partnership between the Ministry of Agriculture, Water and Rural Development, the private sector, community-based organisations and non-governmental organisations and agencies, to enhance agricultural productivity and development.⁷² Active support will be given to community based organisations to facilitate local initiatives, the use of

⁶⁷ Discussion with Jan Glazewski of the MET.

⁶⁸ Section 78(b).

⁶⁹ Section 82.

⁷⁰ Section 84(1).

⁷¹ Section 84(4).

⁷² p.7

indigenous resources and technology and to mobilise the rural community to participate in agricultural and rural development.

In the communal areas the government will encourage and support increased high quality crop and livestock production by providing financial support, research and extension and training services. Resources will be utilised to provide human resource development programmes in the form of non-formal and vocational agricultural education and training for both farmers and farmworkers.⁷³

The Government also supports the establishment of a national agricultural credit and savings scheme to extend credit facilities to communal farmers.⁷⁴ The improvement of rural infrastructure and the provision of marketing support services by the Government will improve production by small scale communal farmers and provide reliable markets for rural people.⁷⁵

Chapter 4 of the policy document is of particular relevance to CBNRM in that it provides guidelines for inter-ministerial co-operation to improve rural development and sustainable natural resource management.⁷⁶ The first priority will be the provision and conservation of water in the rural areas. By the establishment of regional Irrigation Boards people in communal areas will have a say in the utilisation of water in their particular regions.

The relevant ministries will consult local communities to formulate effective rural development policies, strategies and institutional arrangements to ensure a sustainable rural development process. The Ministry of Agriculture will play a significant role since agriculture and agro-industrial development is seen as the driving force behind rural development.

The Government will promote initiatives to enable rural people to have control over the identification of problems, opportunities and solutions and to have decision-making power at the lowest possible local level. A strategy will be formulated to ensure human resource management, research into ecologically sound management standards and systems and the implementation thereof.⁷⁷

The Government's policy is a clear indication of its desire to improve the standard of living of people in rural areas and to give them control over the management and utilisation of natural resources at a local level. Although broad consultation took place in the formulation of national policy the input of rural communities and non-governmental organisations will be extremely important to ensure the effective implementation of the policy. Rural people and their representatives should therefore lobby and pressurise regional councillors and local government representatives to ensure that legislation is adopted to put the policy into practice.

The establishment of local organisations and institutions to take control and responsibility over natural resources is important not only to devolve authority over the management of such resources but also to ensure effective co-ordination and consultation with Government. Such

⁷³ pp.9

⁷⁴ pp.21-23

⁷⁵ p.26

⁷⁶ p.29

⁷⁷ p.31-33

organisations will however need institutional support and information to deal with government officials and to ensure that the community uses natural resources in a sustainable manner.

5.2 Agricultural Legislation

5.2.1 General

Much of the legislation in the agricultural field focuses on the regulation of the commercial sector- such as fertilisers, meat and dairy products, agricultural credit, control of pests and stock theft - and as such is not of direct relevance to CBNRM in Namibia. However since independence there have been several enactments that have sought to address the needs of subsistence farmers and these will be referred to briefly.

5.2.2 *The Agricultural (Commercial) Land Reform Act, 1995*

The purpose of the Act is clearly outlined in its preamble, namely to provide for the acquisition of agricultural land by the State for land reform and reallocation to Namibian citizens who do not own or have the use of any or adequate agricultural land. The emphasis placed in the Act is particularly on those citizens that were previously disadvantaged by discriminatory laws and practices. Provision is also made for the establishment of a Land Reform Advisory Commission to investigate and advise the Minister of Lands on the implementation of the Act. A Lands Tribunal is created to adjudicate disputes arising out of the implementation of the Act, such as the amount of compensation offered for the expropriation of land under the Act.

As the Act deals with commercial and not communal land it is of limited relevance to CBNRM. However it could be a vehicle for the purchase of tracts of commercial land for the consolidation of the communal areas, potentially providing a larger resource base for the practice of CBNRM. Yet in reality, given the entrenched property clauses in the Constitution and the principle of just compensation the Act is not destined to make a big impact on land redistribution in Namibia.⁷⁸

5.2.3 *The Agricultural Bank Amendment Act, 1991*⁷⁹

The Land Bank Act empowers the Land and Agricultural Bank to advance credit to persons involved in farming and agricultural operations. In practice small scale and communal farmers were however excluded due to their inability to provide adequate collateral. The Amendment Act adopts a new approach to credit which seems specifically designed to assist communal farmers. A provision empowers the Minister and the Bank to provide loans at special low interest rates to persons who were previously disadvantaged by discriminatory laws or practices, and importantly for communal farmers, to anyone who occupies communal land, regardless of whether the land is the property of such person.⁸⁰

⁷⁸ Namibian Constitution: Article 16(2). "An Introduction to and Commentary on the Agricultural(Commercial) Land Reform Bill, Legal Assistance Centre, 1994.

⁷⁹ Agriculture Bank Amendment Act, No. 27 of 1991, amended the Land Bank Act, No. 13 of 1944 and repealed the Agricultural Credit Act, No. 28 of 1956.

⁸⁰ Agriculture Bank Amendment Act inserts a new section 46 in the Agricultural Bank Act, No.13 of 1944.

“Farming and agricultural operations” are not defined in the legislation and accordingly could be interpreted to include CBNRM activities such as game farming. Communities could accordingly tap into this form of financial support, but in order to benefit fully it will be necessary for government to decentralise the activities of the Bank and effectively inform communities about the credit scheme.

5.3 Forestry Policy

The National Forestry Policy was adopted by Cabinet in March 1992. It attributes the serious depletion of forests in Namibia to poverty, underdevelopment, increasing demand for fuelwood, fodder and construction timber, inadequacy of protection measures and the belief people have that forests are nothing more than a resource to be exploited.

Most of the valuable forests are found in the north of the country and are situated on communal land. Forests accordingly constitute an important resource for rural communities not only because of their more obvious wood products but also on account of the habitat they provide for a variety of flora and fauna and their potential role in providing scenic locations for community-based tourism.

The forestry policy objectives of government relevant to CBNRM are the following:

- (a) the derivation of direct economic benefit must be subordinated to the principal aim of ensuring environmental stability and ecological balance;
- (b) encouraging the efficient and sustainable utilisation of forest resources;
- (c) support must be given to encourage the participation of rural communities, and particularly women, in all forestry and conservation activities;
- (d) the rights and concessions should primarily be for the benefit of rural communities living in and around forest areas.

The policy thus identifies communities as key players in the management of the resource and in entitlement to benefits from its sustainable utilisation. However, the policy lacks any clear guidelines as to how these goals are to be achieved. Despite this omission it would appear that the Directorate of Forestry is moving in the direction of devolving more responsibility on community structures in line with the CBNRM policy of the MET to encourage the formation of conservancies. Precisely how these structures will look is an ongoing debate.

A community living in and around the Salambala forest in eastern Caprivi is in the process of constituting a conservancy committee. If a conservancy is established it will constitute the first model for the management of forests, although the primary focus is the reintroduction of wildlife. It may provide a useful model for the combination of the management of different resources within the conservancy area where forestry alone would not provide sufficient incentive to sustainable utilisation.

The policy statement contains a reference to the need to subordinate economic benefit to the principal aim of conservation. Whilst sustainable use is generally the policy of the MET on renewable natural resources, this principle goes further and contradicts the CBNRM approach by tipping the scales in favour of ecological balance..

5.4 Forestry Legislation

5.4.1 General

The most important legislation concerning the protection, management and utilisation of forests is to be found in the Forest Act, 72 of 1968 and the Preservation of Trees and Forest Ordinance 37 of 1952. These statutes are complemented by the Mountain Catchment Areas Act 63 of 1970, the Soil Conservation Act 76 of 1969 and the Water Act 54 of 1956, all of which emphasise the close relationship between vegetation, soil and water conservation, whilst the Nature Conservation Ordinance 4 of 1975 and the Preservation of Bees and Honey Proclamation 1 of 1923 seek to preserve the habitat that forests provide for the variety of fauna which occur in them and for the protection of forest products.

5.4.2 The Forest Act 72 of 1968

The Act covers tenure, demarcation, protection, management and utilisation of forests; the prevention and combating of forest fires; trading in forest produce; timber levies and provides for a national hiking way system. Portions of the Act did not apply to most of the communal areas in the past, during the period that they were administered in terms of the South West African Bantu Affairs Administration Act 56 of 1954, but the entire Act is now applicable throughout Namibia This is so because the repeal of AG 8 of 1980 which created second tier authorities had the effect of transferring authority over communal areas to central government.

The Act empowers the Minister to protect any forest, tree or species of tree on any land, other than a state forest, whenever he or she deems it necessary in the public interest.⁸¹ Once the Minister has declared any such forest or tree to be protected by way of notice in the government gazette, then it is an offence to cut, injure or destroy any such tree or forest, except with the written consent of the Minister.⁸² However, this provision has to be read subject to the right of a landowner to clear firebelts on common boundaries of his or her property or the right of any fire protection committee, established in terms of the Soil Conservation Act 45 of 1946 to clear any firebelt.

Customary rights to forest produce, rights of grazing, cultivation and residents use of water may be preserved at ministerial discretion in terms of the Act.⁸³ The Minister may make regulations concerning:

- those customary rights which existed at the time of the commencement of the Act;

⁸¹ Section 5(1).

⁸² Section 5(2).

⁸³ Section 9(2).

- in respect of the kinds of forest produce and the quantities thereof which may be cut, taken or removed;
- prohibiting the grazing of stock or the cutting or taking of forest produce from any specified area for the purpose of regenerating the forest or the prevention of soil erosion;
- prescribing the particular areas over which rights of grazing or of cutting or taking or removing of forest produce may be exercised with a view to preserving young trees growing thereon;
- limiting the cutting or removal of forest produce to domestic or farm requirements and prohibiting the sale thereof;
- defining the areas on which the right of residence or camping may be exercised; requiring permits to be issued to such person who is exercising these rights;
- providing for penalties for non compliance with any such regulations.

The Act gives the Minister wide powers to regulate trade in forest produce.⁸⁴, which includes anything which is produced by trees or grows in a forest, as well as other things naturally found in a forest, such as game, birds, skins, horns, ivory, fish, honey, wax, bees, shells, earth, stones, sand, etc.⁸⁵ Moreover, a forest or police officer may on a reasonable suspicion where forest produce is suspected to have been wrongfully removed or illegally in transit from a State or private forest, seize such forest produce pending an inquiry.⁸⁶

5.4.3 *Preservation of Trees and Forests Ordinance 37 of 1952*

There is a measure of overlap between the Ordinance and the Forest Act. Moreover the Forest Act is more comprehensive and, being a statute of South African origin, is geared towards the needs of commercial forestry, whilst the Ordinance is a Namibian statute.

Certain species of trees listed in the Ordinance are especially reserved in respect of all land.⁸⁷ It is unlawful to cut, injure, take, remove, or destroy any reserved tree without a permit.⁸⁸ An owner or lawful occupier of land may apply to the Magistrate of the district on which the land is situated, or in the case of communal land to the "native commissioner", now probably the Minister of Local Government, Regional Government and Housing for permission to cut or remove any reserved tree.⁸⁹ Similarly any person other than the owner or lawful occupier of land may apply for such permission, which application must be accompanied by the written consent of the owner or occupier to the making of such application.⁹⁰

However, there is an exception to the protection of reserved trees: an owner or a lawful occupier of land may make use of any reserved tree or timber "actually and necessarily required for the bona fide domestic purposes, or as firewood or kraalwood, for the

⁸⁴ Section 10.

⁸⁵ Section 1.

⁸⁶ Section 17.

⁸⁷ Section 9.

⁸⁸ Section 10.\

⁸⁹ Section 12(1).

⁹⁰ Section 12(2).

household of any person lawfully resident thereon".⁹¹By implication inhabitants of communal land could use wood on the land occupied by them but could not take reserved wood out of the communal area.

The trees reserved under the ordinance include, amongst others, kameeldoring, baobab, mukusi, witgatboom, mucarala, mupani, wild olive, marula and tamboti (second schedule).

The Ordinance authorises the promulgation of regulations, but none have been located.

5.4.4 Future Forestry Legislation

The Forests Act in particular has as its main focus the regulation of a commercial forestry industry and is accordingly inappropriate to Namibia's forestry needs. A new forests act is currently being drafted and will have to balance the needs of communal farmers to use land for crops or grazing with the need to preserve and improve forests and trees. Given the limited capacity of the Forestry Directorate to manage the resource the future law will have to provide a basis for the declaration of community forests over which a community management structure, such as a conservancy, would have responsibility. However, another solution will have to be found where a community does not have the capacity or inclination to do so. In the long term it might make sense where there is no conservancy or similar community structure to expand the notion of wildlife councils by establishing natural resources councils with a wider mandate inclusive of forestry.

6. FISHING IN INLAND WATERS

6.1 White Paper on Inland Fisheries

The draft White Paper on Inland Fisheries sets out the government's position on the sustainable management of Namibia's fish resources. The principles relevant to CBNRM are the following:

- (a) permitting the sustainable utilisation of resources whilst protecting the biodiversity of inland fish fauna;
- (b) the protection of the interests of subsistence households by ensuring the availability of fish as a supplement to their ordinary diets and controlling the commercialisation of the resource;
- (c) the protection of resources through gear restriction and preference being given to traditional gear over modern nets;
- (d) enforcement of the legislation primarily by traditional and local authorities, in conjunction with fishery control officers, in communal areas;

⁹¹ Section 13(2).

- (e) local people in communal areas should share in the income “generated by commercialisation or use of communal resources”.

The White Paper makes several references to local communities living on communal land both taking some responsibility for the management of fish resources and the enforcement of legislation and enjoying the right to share in the financial benefits. Precisely how this is to be effected is somewhat unclear.

In terms of Article 100 of the Constitution all natural resources “shall belong to the State if they are not otherwise lawfully possessed”. Accordingly in the draft Inland Fisheries Bill, which is attached to the policy, the granting of fishing rights on communal lands vests with the Minister of Fisheries and Marine Resources. The Minister may delegate these powers to the “Regional Governor”(presumably it should read the “Regional Council”), but no mention is made of the power to delegate this function to other management bodies such as conservancies. In fact the conservancy approach taken by the MET in regard to wildlife is surprisingly not referred to at all in the policy and it is accordingly not clear whether this may be a permissible form of devolution of power over the management of inland fish resources. The policy states that the devolution of powers will be spelt out in the Bill but nowhere can a reference to this power be found in the Bill. It is hoped there is still room to persuade the policy makers to adopt an approach in line with the general direction being pursued by CBNRM in Namibia. Nevertheless, an inland fisheries policy would have to steer a course between acknowledging the existence of traditional management methods whilst recognising that these methods cannot cope with the pressure on the resource.⁹²

6.2 Legislation

The Nature Conservation Ordinance, 1975 is the only significant legislation referring to inland fisheries. In Chapter V provisions can be found dealing with the releasing of fish in inland waters, angling permits, permissible angling methods, the power to prohibit or restrict angling, a prohibition against the placing of explosives or poisonous materials in inland waters and the creation of several offences.

The White Paper states that after independence the fresh water section of the then Ministry of Wildlife, Conservation and Tourism was transferred to the Ministry of Fisheries and Marine Resources and therefore the latter Ministry is responsible for inland fisheries. This is problematic for several reasons. Firstly, no legislative authority could be found for such a transfer of responsibility; and secondly, the Nature Conservation Ordinance makes it clear that the section on inland fisheries is to be administered by the MET.

Of relevance to CBNRM is that the Nature Conservation Ordinance was amended in 1986 to permit members of communities to angle in waters situated on communal land without a permit. In addition they were not subject to the provisions restricting the fishing gear used which presumably gives them the right to use traditional methods of fishing, such as drag nets, fish funnels, fish traps, fish spears or hook and line.

⁹² I. Tvedten et al, “Freshwater Fisheries and Fish Management in Namibia”, Social Sciences Division, University of Namibia, May 1994.

There are also oblique references to inland fishing in the Forest Act, 1968 and the Water Act, 1956. The provision in the Forest Act makes it an offence for any person to fish in a State forest, but as there are at present no officially declared State forests in Namibia the provision is irrelevant. The Water Act contains provisions protecting aquatic fauna in public streams against pollution by waste water or effluent, but the penalties are entirely inadequate.⁹³

The draft Bill on Inland Fisheries is to be revised and it is reliably believed that the new draft will contain provisions which should dovetail more closely with the general policy of the MET on CBNRM and conservancies.

7. COMMUNITY BASED TOURISM

7.1 Policy

In mid-1995 the MET adopted a policy on community tourism in recognition of the fact that tourism is one of Namibia's fastest growing industries and an important means of promoting socio-economic development in communal areas. This approach follows that taken earlier in the White Paper on Tourism adopted in 1994 which states that "high priority is afforded to the involvement of local individuals and communities in the tourism process and in benefits sharing" and "it is not only the generation of economic benefits which is important, but also the dispersion of those benefits to a wider group in society". The policy was referred to in more detail above.

The policy gives firm support for the promotion of maximum benefit to communities from private sector tourism enterprises on communal land (through joint ventures, etc.), the enhancement of rights over tourism resources (through conservancies), tourism investment in communal areas and the ongoing promotion of tourism development.

7.2 Legislation

Current legislation, such as the Accommodation Establishments Ordinance, 1973, restricts the development of community-based tourism by imposing standards on the industry that cannot be easily met by community operators. The law accordingly needs to be amended to allow a more flexible approach to the grading of establishments and to incorporate the policy objectives of the MET, particularly in regard to the promotion of community involvement in tourism planning, enterprise development, sustainable practices and access generally to the benefits from tourism.

A new Tourism Act is presently being drafted which includes many of the principles contained in the policy. It will also deal with tourism planning issues and it has been proposed that this function should be performed by a body linking up with the wildlife councils to be created in terms of the conservancy amendment and to be referred to as wildlife and tourism councils. Whether it really makes sense to link regional wildlife management with regional tourism development needs to be further assessed.

⁹³ Section 21(5)(a); s 23(1)(a)(i).

Legislation should also address the confused situation surrounding the granting of tourism concessions by the MET. Concessions are granted by government in the form of a lease of a concession area (often large tracts of land such as the Skeleton Coast Park) for tourism purposes. There is no standard procedure for the granting of concessions. They are sometimes handled by the concessions committee (similar to the PTO committee) in the MET, whilst with others they are negotiated directly with the Minister. The absence of a proper procedure means that the MET might be unaware as to the existence of competing claims to a particular area, such as where a community applies for a conservancy in an area where a concession is being negotiated. It also seems strange to bypass the Ministry of Lands when such important land use decisions are being taken.

A Namibia Tourism Board Bill is also being drafted. It will make provision for the promotion of tourism, inclusive of the informal sector, a means to ensure that the benefits from the tourism industry are disseminated broadly across the industry, the encouraging of environmentally sustainable tourism, co-ordinate training and set standards for the industry. The MET is committed to the inclusion of community-based tourism operators on the Tourism Board so as to ensure that their interests are catered for. These developments are important for CBNRM as tourism constitutes a major outlet for non-consumptive use of natural resources.

8. GOVERNMENTAL INSTITUTIONS

8.1 Regional Government

8.1.1 Policy

The policy on regional government envisages that the relationship between regions and local authorities would not be exclusively “top-down” or “bottom-up” but mutually co-operative. The local authorities would provide important inputs on regional matters and budgetary assistance, and the regional authorities would assist local authorities to acquire the capacity to become more autonomous and facilitate regional co-operation between different local authorities. Overall planning for the region, inclusive of local authority areas is to be undertaken by regional councils.

8.1.2 Regional Councils Act, 1992

The Constitution provides for the establishment of Regional Councils for each region in Namibia and the Act outlines the powers, duties, functions, rights and obligations of councils. Given their broad jurisdiction councils accordingly have the potential to wield considerable power over communities living on communal land. Nevertheless, due to a variety of factors-including the absence of their own budgets with which to finance their activities-they remain ineffective in providing a viable system of decentralised government in rural areas.

The powers of regional government relevant to CBNRM include planning the development of a region for which it has been established with a view to:

- (a) the natural and other resources and economic development potential of such region;
- (b) the general land utilisation pattern;
- (c) the sensitivity of the natural environment.

Should regional councils be given a greater role in development planning in the future their decisions could impact significantly on CBNRM, particularly in regard to land use and tourism development decisions. Whether they will in the future play any role in land administration still remains to be seen.

8.2 Traditional Authorities Act, 1995

Due to the constitutional provisions relating to the customary and traditional rights of Namibians and the controversies and problems associated therewith it was important for the Government to look into this matter. In 1991 the President appointed a Commission of Inquiry into matters relating to Chiefs, Headmen and other traditional or tribal leaders, commonly known as the Kozonguizi Commission. The Commission conducted an extensive inquiry and presented its report, including a draft Bill, to the President in December 1991.

The Act seeks both to give statutory backing to the institution of traditional authorities and to regulate the appointment, functions, duties and powers of traditional leaders. Its most controversial provision prohibits a traditional leader from holding political office.

Every traditional community is entitled to have a traditional authority comprising a chief or a senior traditional councillor and a certain number of designated councillors and has jurisdiction over members of that community. A “traditional community” is defined as “an indigenous, homogeneous, endogamous social grouping of persons comprising of families deriving from exogamous clans which share a common ancestry, language, cultural heritage, customs and traditions, recognises a common traditional authority and inhabits a common communal area; and includes the members of the community residing outside the common communal area.”⁹⁴ Despite the obtuse anthropological terminology it would seem to convey a broad interpretation of the community inclusive of persons who have never inhabited the communal area of the particular community but who enjoy ancestral or family ties to that area.

In the context of CBNRM the definition of the community and the designation of a traditional leadership structure might have important ramifications for the management of natural resources and the right to benefit therefrom. In the conservancy amendment traditional authorities have a designated position on the conservancy committee and it is anticipated that they might be required to fulfil a yet to be defined role in the management and enforcement of the law in relation to forests and inland fisheries. However in terms of the amendment only

members of the community residing in the conservancy would be entitled to benefit financially from the sustainable utilisation of natural resources.

Several of the traditional authorities' statutory functions have a bearing on CBNRM, such as to:

- (a) advise the Council of Traditional Leaders (which still has to be established by statute) concerning the control and utilisation of communal land;
- (b) assist the police and other law enforcement agencies in the prevention of crime and the apprehension of offenders (this would perhaps improve the enforcement of environmental legislation on communal land);
- (c) ensure that members of the community use natural resources on a sustainable basis and in a manner that conserves the environment and maintains the ecosystems.

Given the strong statutory duty placed on traditional leaders to act as environmental guardians and uphold government policy, strategies should be devised to elicit their co-operation in the management of resources together with other representative community structures. Particularly where CBNRM produces significant financial returns to communities disputes may arise as to the allocation of benefits amongst community members and here traditional courts, which are given statutory backing in the Act could play a constructive role in resolving them.

9. FORMS OF ASSOCIATION

9.1 General

Government policy on CBNRM, whether it be in respect of wildlife, forests, inland fisheries or community tourism envisages a legal body with the capacity to hold rights, meet obligations and enforce legal regulations. Its precise nature is not defined but reference is sometimes made to the need for it to be "representative of the community". The community itself is assumed to be self defining, but it will sometimes not be that easy and care will have to be taken not to define people out of the community on the basis of political affiliation or other irrelevant considerations. Other policy documents refer to the need to include the regional governors, regional councils or traditional leaders in such a structure. How the structure would come into being is not set out and there is no clarity as to its jurisdiction, powers and functions.

The conservancy amendment provides for the establishment of a community management structure to be the holder of resource rights, and stipulates that the traditional authority must be represented on the conservancy committee, but leaves the further composition up to community preference. The only additional constraint relating to composition is that the committee must be representative of the community. The Minister is the judge of representativeness but is given no statutory guidelines as to how his or her discretion should be exercised. The decision to make no stipulations in this regard, such as the requirement of an elected committee, is presumably to allow communities who find it difficult to mobilise their

members to attend meetings due to lack of finances, long distances and other organisational difficulties, to comply with the representativeness test according to less stringent criteria.

The conservancy committee must also have a constitution displaying a commitment to, and a strategy for, the sustainable management and utilisation of wildlife within the conservancy. This approach allows an element of flexibility as to the legal form such body should adopt. Various legal possibilities are sketched below- firstly, voluntary associations, trusts and co-operatives which could be adapted to hold conservancy rights; and secondly close corporations and partnerships, which together with trusts and co-operatives could be established to conduct business, such as community tourism, on behalf of the community. The tax consequences of each are beyond the scope of this review.

9.2 Voluntary Associations

A voluntary association is formed under common law (i.e. not derived from a law of parliament) on the basis of mutual agreement between a group of people coming together to associate for a particular purpose. This is usually done by the adoption of a written constitution. Most sport clubs, church groups or social clubs are constituted as voluntary associations but this legal form may be adapted to suit the needs of conservancy committees.

The constitution and any rules issued under it constitute the essence of an association as they determine the nature and scope of the associations' existence and activities, prescribe the powers of the executive committee and general meeting and regulate the rights of members.

The constitution must further provide for the persons who are eligible for membership; the procedures for application for membership; the rights and duties of membership; the relationship between members vis-a vis each other; a procedure for election to office of office bearers of the association; disciplinary and dispute procedures; termination of membership; powers of the management committee; convening, notice, quorum, voting procedure and conduct at meetings; the capacity to sue and be sued apart from its members; and for its dissolution and the devolution of assets.

The inhabitants of Ward 11 in the Kunene Region have established a residents association modelled on a voluntary association for the purpose of becoming involved in CBNRM and benefiting from community based tourism, which may be regarded as the forerunner of a conservancy committee. Voluntary associations provide a very adaptable legal form for the formation of representative, transparent and effective local management structures. However their drawback in the conservancy context is that no profit-making association of more than twenty persons may be formed unless it is registered under the Companies Act (which is an involved and expensive process) or a specific statute permits it. However, one way to get around this restriction is to establish a residents association together with a community trust, as has been done with Ward 11. The general affairs of the residents association are then conducted in terms of the association constitution, whilst the finances of the association are managed through the trust. The executive committee members of the association then become the trustees of the trust and the founding documents, that is the association constitution and the trust deed, mirror each other in most respects with the exception of the financial provisions.

Given the flexible nature of the voluntary association, it could be registered as a conservancy committee provided that it complied with the provisions of the conservancy amendment referred to above. As such it could hold conservancy rights on behalf of the community and be the body with which the MET would negotiate in regard to all wildlife management issues within the conservancy. Moreover, once it has been registered as a conservancy committee it would no longer be governed by the common law but be a statutory body and as such be entitled to operate as a profit generating body without any limitations from the Companies Act. The necessity of establishing a separate trust would then fall away.

9.3 Trusts

A trust can be formed under common law by one or more founders for the purpose of benefiting a particular person or class of persons, such as members of a conservancy. The assets of the trust are managed by any number of trustees, who have a duty to carry out the intentions of the founder of the trust. The trustees are not personally liable for losses to the trust unless they act negligently or fraudulently.

The "owners" of the trust assets, which in the case of conservancies would be the game found within the boundaries of the conservancy and any other assets the trust may have acquired, would be the beneficiaries of the trust, i.e the members of the conservancy, although the assets of the trust technically emanate from the founder (the person who was instrumental in establishing the trust). The trust itself is a legal "person" in many respects and can therefore hire employees, enter into contracts, etc.

The objects of the trust, the names of the founder and the trustees, and the rules governing the trust must be set forth in a deed of trust. The founders of a trust have a large degree of discretion to shape the structure of the trust. The primary requirement of a deed of trust is the inclusion of mechanisms to ensure that trustees keep adequate watch over the trust property.

Trustees are required by statute to furnish security (an amount of money as a form of assurance that they will carry out their duties responsibly), but it is fairly easy to secure an exemption from this requirement, if the trustees are persons of good standing and if adequate financial safeguards are built into the deed of trust.

All deeds of trust must be lodged with the Master of the High Court, and the court has the ultimate duty of supervision over the trust. Annual financial reports are not required, but the Master can at any time require a trustee to lodge an account showing how trust moneys have been administered and distributed. There is no registration fee.

There must be some trust property in existence at the time the trust is formed, but this can be a token amount donated by the founders, to be supplemented from other sources at a later date.⁹⁵

Although trusts have not traditionally been used for profit-making enterprises, several groups in Namibia have turned to trusts since independence as a flexible and simple structure in the absence of more appropriate legal forms. Until such time as the conservancy amendment has been passed conservancy committees will need a vehicle, such as a trust to handle their

⁹⁵ Trust Monies Protection Act, No. 34 of 1934.

financial affairs. After the amendment community trusts could still be used to hold conservancy rights on behalf of the community, but they might not be the most appropriate legal form as they generally give the trustees too much discretion over the conduct of the activities of the trust and there is accordingly less accountability towards members. The voluntary association would thus be a more appropriate legal body.

9.4 Co-operatives

The Co-operative Societies Ordinance, 1946 provides for the establishment of several types of co-operatives. The objects of each of the different co-operative groups are set forth in the statute. The law is designed primarily to cater for co-operatives which centre around agriculture and livestock, although it is possible under the existing law for seven or more persons to form a co-operative trading society with limited liability for the purpose of trading in any commodity.⁹⁶

However, a new Co-operatives Bill is to be enacted during the first half of 1996. This law will provide a fairly simple procedure for the registration of co-operatives, which may be formed by seven or more persons who are residents or citizens and are at least 18 years old. Registration must be accompanied by a register of members, a set of by-laws and a roster of officers. Co-operatives which cannot meet all the requirements for registrations can be provisionally registered for a period of one year, which can be extended.

Ownership of a co-operative is allocated amongst members through shares, with the caveat that no individual member may hold more than one-fifth of the total share capital. The liability of members is limited to the nominal value of shares held by that member, unless the by-laws of the co-operative provide otherwise.

The Bill states that a co-operative is a democratic, owner-controlled organisation with the primary aim of promoting the economic and social interests of its members, not maximising profits. However, the bill also stipulates that co-operatives must operate according to sound business principles. If one added to these goals a commitment to, and a strategy for, the sustainable utilisation of wildlife within the conservancy the co-operative could be an alternative legal form communities could use to register a conservancy committee.

General meetings of a co-operative have supreme decision-making power. Day-to-day management and administrative matters are handled by a Management Committee, and every co-operative consisting of 40 or more members is required to have an additional Supervisory Committee to monitor the operation of the Management Committee. Both of these bodies are elected by the General Meeting.

An annual audit by an external auditor is required for all co-operatives. The Registrar of Co-operatives has the power to approve a simplified accounting system for small co-operatives.

The Bill provides detailed provisions covering the rights and duties of members and officers, property and funds, the amalgamation, transfer and dissolution of co-operatives, and the settlement of disputes.

⁹⁶ Co-operative Societies Ordinance, No. 15 of 1946.

The Bill also states, without providing any detail, that certain tax benefits will be available to "closed co-operatives", which are (in the case of worker co-operatives) those co-operatives where at least 70% of the workers in the co-operative are also members of the co-operative.⁹⁷

Communities could accordingly establish a natural resources co-operative to hold conservancy rights on behalf of people residing within the conservancy area.

9.5 Close corporations

A close corporation established in terms of the Close Corporations Act is a very suitable legal approach for small enterprises. A close corporation is much cheaper to form than a company; the registration process is simple and can be accomplished without the services of an attorney; the record-keeping requirements are not burdensome; and another cost saving results from the fact that accounts can be monitored by an accounting officer who need not be an accountant.

A close corporation can be formed by one to ten persons who register a founding statement at the Close Corporations Registration Office and pay a small prescribed fee. The founding statement must include the name of the close corporation (designated by "CC"), its address, its principal business, the name of each member, the size of each member's interest in the close corporation (expressed as a percentage), the contribution of each member to the close corporation, the accounting officer and the date of the end of the financial year.

Each member of the close corporation must make some initial contribution to the enterprise (in the form of money, property, services, etc.) and profits are divided by agreement among the members. When existing members leave or new members join, the interest of the group of members in the close corporation must be adjusted accordingly, by agreement among themselves. The internal relations between the members are governed by an association agreement which they agree upon; in the absence of such an agreement, the statute sets forth basic requirements. Each member of the close corporation must be issued with a certificate reflecting his or her interest in the enterprise.

A close corporation must keep basic accounting records and compile annual financial statements. An accounting officer with qualifications described in the statute must be appointed, from outside the membership of the close corporation. The close corporation must pay an annual duty at the end of each financial year (an amount which is unlikely to be high).

Members of a close corporation have limited liability. In other words, they are not personally liable for the debts incurred by the close corporation; only the assets of the close corporation can be liquidated to pay off its debts. Members are individually liable only for losses caused by negligence, fraud, breach of fiduciary duty, etc.

A close corporation is simpler in structure than a company and therefore less expensive to administer. It might prove to be a useful model for the establishment of community enterprises, whilst still continuing to hold conservancy rights through an association or trust.⁹⁸

⁹⁷ Co-operatives Act of Namibia, Fourth Layperson's Draft, September 1992.

⁹⁸ Close Corporations Act, No. 26 of 1988.

9.6 Partnerships

A partnership is not a legal entity in itself; but merely an association of individuals, and its assets and liabilities are those of its members.

A partnership can be established by agreement between two to twenty persons for the purpose of making and dividing profits. Each partner must contribute something (money, property, labour, skill, etc.) to the partnership.

Normally, partners share both the profits and losses of the partnership (although this can be varied to a limited extent by the partnership agreement). There is no limited liability; meaning that each partner is personally liable for the debts incurred by the partnership. In a small enterprise this could be potentially devastating where, for instance, a tourist was trampled by an elephant and sued the partnership for a considerable sum of money. Profits are shared in a proportion agreed upon by the partners. Partners have a fiduciary duty to each other (meaning that they are bound to act with a strict degree of good faith). Partnerships do not have to be registered.⁹⁹

Partnerships would be a potential legal form for conservancies to attract investment capital for the development of tourist enterprises.

10. DEVELOPMENT PLANNING

10.1 Policy

The MET recognises that development and conservation can and should be compatible. In the light of this principle it is the Ministry's policy to encourage "the rational and integrated planning of land use according to ecological principles" and "the formation of suitable participatory structures so that local communities may participate in decisions and responsibilities concerning the national resources, and enjoy maximum sustainable benefit from these resources (including wildlife and forestry products) upon which they depend".¹⁰⁰ The crucial principle guiding this policy is that local communities must be "re-empowered" to make decisions about the use of land and associated natural resources.

This approach also links conservation with the critical need for rural development, particularly where few other viable development options exist. The process of identifying, prioritising and budgeting for different development initiatives involves planning decisions at different levels. Those involved in CBNRM need to be aware of the planning bodies whose decisions might impact on their activities, both in terms of restrictive measures and planning decisions that might facilitate the attainment of their goals. They also need to know how they can more effectively impact upon the planning process both by channeling information to the planners and as active participants in existing planning bodies.

⁹⁹ Partnerships are governed by common law rather than by statute.

¹⁰⁰ Ministry of Environment and Tourism Policy Document: "Land-use Planning: Towards Sustainable Development": May 1994.

Whilst the National Planning Commission has overall responsibility for national planning it does not have the capacity to effectively co-ordinate development planning in Namibia. At present planning is undertaken by various ministries, some of which have grouped together over specific issues, such as the Interministerial Sub-committee on Land Use Planning, but their status is at present informal and lacks statutory authority. There is accordingly a desperate need to create an enabling administrative and legislative framework for integrated development planning.

10.2 National Planning Commission

The office of the National Planning Commission is provided for in the Constitution and its purpose is “to plan the priorities and direction of national development”¹⁰¹. One of the principal duties of the Director-General of the Commission is to advise the President on “all matters pertaining to economic planning”.

The National Planning Commission Act stipulates that, subject to the constitutionally enshrined objectives of securing economic growth and prosperity for all Namibians, its role would include the following:¹⁰²

- (a) the orientation, design and surveillance of economic and social plans and policies in accordance with national objectives;
- (b) national and sectoral development planning;
- (c) regional and development planning, design and co-ordination.

The Commission is thus the supreme planning body charged with, amongst other things, national and regional development planning. The First National Development Plan states that, in promoting participatory development and equality, the government’s most fundamental concern is that all citizens benefit from planned socio-economic development. In this development strategy an attempt will be made to deepen government’s relationship with NGO’s. Of especial relevance to CBNRM is government’s commitment to the improved management of Namibia’s environmental assets through greater community participation, thereby raising the incomes of the rural population. As referred to earlier, the Regional Councils Act, 1992 envisages a regional development role for councils but in reality central government has shown great reluctance to entrust them with this responsibility. Therefore, despite these ambitious goals, the planning process is far removed from the people it is designed to serve and the challenge remains to give real meaning to the policy of participatory planning.

10.2 Inter-ministerial Committee on Land-use Planning

One such attempt was the establishment of a committee, known by its acronym IMSCLUP, by a resolution of Cabinet in 1993. It has as its primary objective the co-ordination of land use planning in Namibia, but in reality is no more than an interim non-statutory body necessitated

¹⁰¹ Namibian Constitution, Article 129.

¹⁰² National Planning Commission Act, No. 1994.

by the absence of a national land use plan or co-ordinating body. IMSCLUP brings together a number of key ministries which are concerned with land use practices, i.e. lands, local government, agriculture, environment, works, mines, fisheries and the National Planning Commission.

Despite its stated objectives of exchanging information in a co-ordinated manner by linking up with the National Planning Commission and strengthening the planning capacity of regional government, it has generally failed to play a significant role because of lack of commitment to its mandate from most line ministries and the absence of statutory powers to lend weight to its decisions.

10.3 Land-use and Environmental Boards

Recognising the ineffectiveness of IMSCLUP as a forum for land-use planning, Cabinet in October 1995 approved policy for the establishment of a Land Use and Environmental Board ("LUEB"). Its aims are to provide a platform for integrated land-use planning and to act as an advisory body to the National Planning Commission and Cabinet. There is acceptance that land-use planning affects most government ministries, parastatals, local government, the private sector, NGOs and local communities. All these authorities would have representation on LUEB, which would make use of a secretariat comprising the Ministry of Lands, the Ministry of Regional Government and an Environmental Commissioner, whose office would be established by the MET. LUEB would also be assisted by two technical committees, IMSCLUP rural (under the Ministry of Lands) and IMSCLUP urban (under the Ministry of Regional Government). All standing or co-ordinating committees, such as the Sustainable Animal and Rangeland Development Programme Committee ("SARDEP"), would resort under either IMSCLUP depending on their rural or urban focus. The Regional Advisory Boards will receive planning information from Local Community Development Committees and feed it into the Regional councils, or if they are ultimately created, Regional Boards. It is assumed that the latter boards are a reference to regional land boards which are destined to be created under a future communal land bill.

There might rightly be some scepticism as to the basis upon which LUEB is believed to be able to achieve what IMSCLUP was largely unable to do. By giving LUEB statutory authority means that its decisions would carry more weight, but that alone is not enough. More thought will have to be given to how the planning process can effectively be taken to the regions, perhaps by concentrating particularly on the regional planning advisory committees. In regard to environmental planning the MET presently is of the view that the Environmental Commissioner should no longer resort under LUEB, but should be set up as a separate institution whilst ensuring that it could slot into the overall planning structure co-ordinated by LUEB, should the latter become a reality. At present the Ministry of Lands is drafting legislation to establish LUEB.

10.4 Environmental Assessment Policy

Namibia's Environmental Assessment ("EA") Policy was approved by Cabinet in August 1994. The policy aims to promote sustainable development and economic growth while protecting the environment in the long term. It seeks further to ensure that environmental consequences of development projects and policies are considered, understood and

incorporated into the planning process. Provision is made for the drafting of an Environmental Assessment Act in terms of which an Environmental Commissioner will be appointed by the MET and housed in the offices of the National Planning Commission. It will be the responsibility of the Environmental Commissioner to administer the EA process. The Commissioner reports to an Environmental Board consisting of the relevant line ministries involved in the planning process. A fuller discussion of the EA policy is beyond the scope of this review.

At present no legislation exists for the implementation of EA policy, but in reality many companies have voluntarily agreed to comply with the procedure. The procedure is also used in applications for Permissions to Occupy where the application is likely to have a significant environmental impact. At present an Environmental Assessment Act is being drafted to give statutory effect to the EA policy. As it has been stated in the discussion concerning LUEB, the MET is no longer considering housing the Environmental Board and the Commissioner within the LUEB structures.

Until such time as the LUEB or EA legislation has been passed into law, reliance will have to be made upon the non-statutory development planning bodies. However, with the process of land reform accelerating and the establishment of regional land boards anticipated, it has become even more urgent to establish a competent body with statutory powers to co-ordinate development planning, particularly in the rural areas.

11. CONCLUSION: POLICY PRIORITIES FOR CBNRM IN THE FUTURE

The policy framework is generally supportive of CBNRM in Namibia. The process whereby the policy is effectively implemented so as to reach rural communities is unfortunately less helpful. The approach in developing future policy affecting CBNRM should accordingly be tackled from the point of view of the immediate needs of communities living in rural areas, and often remote parts of Namibia. Whereas many of the problems of underdevelopment in the rural areas are too complex to be directly affected by CBNRM policies - particularly where the concerns relate to the inadequate development of infrastructure, educational and health facilities and access to agricultural extension programmes - others are more manageable and CBNRM presents a very viable opportunity to derive financial benefit from sustainable natural resource management practices. In this context, when taking a bottom-up approach to development the most pressing need for rural communities is tenure security. The protection of individual and joint ownership rights over communal land would go a long way to opening up development opportunities for such communities. This is particularly appropriate for community-based tourism development where capital investment into tourism enterprises is hindered by the insecure tenure system.

The second step is to grant rural communities rights over the natural resources found on such land. The conservancy amendment thus constitutes a very significant step in granting people a stake in the management and sustainable utilisation of wildlife. In spite of the present tenure insecurity, the conservancy amendment recognises that the natural resources people have lived with for centuries belong to the community through its traditional leadership structures according to customary law. By giving ownership of huntable game to communities either through a conservancy committee or a wildlife council constitutes the re-empowerment of

communities in thinking of themselves as holders of rights and the bearers of responsibility as to how such rights are exercised. There is, however, a long way still to go in granting secure tenure rights over land which forms the backbone of meaningful development options. Without such security communities' rights to land and to exercise development options on the land are dependent upon the whim of traditional authorities or the decisions of politicians as to the best land use options. The situation becomes more extreme with the illegal fencing off of communal land and the consequent cutting off of grazing and access to other natural resources.

Thirdly, simultaneously with the development of secure systems of land tenure, there is a need to develop policy as to the best structures communities could adopt for the management and sustainable utilisation of natural resources. The establishment of various regional administrative and planning bodies, such as regional land boards, conservancy and wildlife councils, and local community development committees raise a number of policy issues demanding clarity. These relate to the composition of these administrative bodies (and in particular the role of traditional authorities in them), the form they take (whether it be a voluntary association, trust or close corporation), the content of their rights and duties (including the area of jurisdiction, the level at which they may be involved in planning decisions, the effect of decisions reached by them, etc.) and finally how such bodies are to be financed (i.e. whether it be through direct taxation in the form of a user fee for those involved in both consumptive and non-consumptive use of natural resources or by central government appropriations) The institutional form that these various bodies may take has deep implications concerning the future of democratic practices in those particular areas. On the one hand government is devolving authority and responsibility to specific communities, but on the other hand those communities need to establish a democratic and accountable way of managing the resources at their disposal and to plan the various development activities undertaken by them. This requires not only adaptable and appropriate legal forms but mature and responsible leadership.

Fourthly, policies have to be developed to cater for the human resource development required for a successful CBNRM programme. Here policies should be developed requiring not only government but other bodies such as the Namibia Tourism Board, which is currently being established, to actively support the training needs of community-based tourism operators. It is also essential that communities who are working on the ground with CBNRM issues should receive proper training concerning not only the development of appropriate legal structures but also skills in negotiating over issues such as joint venture agreements, the democratic holding of meetings, the keeping of books of accounts, ect.

Finally, the future policy framework must provide entry points for those working with CBNRM in the rural areas through the national, regional and local planning processes. Community-based CBNRM practitioners must accordingly be drawn into this process and be given particular assistance to enable them to participate fully in the activities of the various development planning bodies. It is hoped that existing bodies charged with regional planning functions, such as regional councils, will co-operate with communities in this process and not see it as a threat to their statutory mandate to co-ordinate development planning in the regions. Central government should also see this process as an opportunity to learn more about the development needs of rural communities and a chance to facilitate their advancement.

APPENDIX A

1 M. Hinz, "Customary Land Law and the Implications for Forests, Trees and Plants", Food and Agricultural
 1 Organization, October 1995.

1 Nature Conservation Ordinance, No. 4 of 1975. The Ordinance will be amended by the Nature Conservation
 1 Ordinance Amendment Bill

1 P.C. van der Byl, unpublished legal opinion, October 1992.

1 T.W. Bennett, Application of Customary Law in Southern Africa (1985). However, some communities in Namibia
 1 have attempted to codify customary law.

1 Wildlife Councils were included in the conservancy amendment at the insistence of the Directorate of Resource
 1 Management in the MET.

1 Manual entitled "Conservancies in Namibia: Guidelines for staff of the Ministry of Environment and Tourism".
 1 Section 2 of the conservancy amendment amends section 14 of the Nature Conservation Ordinance.

1 The legislative framework for community-based tourism is set out in paragraph 7 below.

1 Traditional Authorities Act, No. 17 of 1995.

1 Conservancy amendment, Section 28A(1)(a).

1 Namibian Constitution, Article 21(1)(h).

1 *Ibid*, Article 124 and Schedule 5(1).

1 The Report of the Commission of Enquiry into South West African Affairs, which considered policies on "native
 1 reserves" and the question of self-government for different ethnic groups.

1 Regulations contained in Government Notice 60 of 1930.

1 Regulations contained in Government Notice 68 of 1924. Since Proclamation 11 of 1922 has been repealed by the
 1 Local Authorities Act, 1992 these regulations are no longer in force.

1 It is reliably rumoured that certain headmen are making people pay for the right to reside on communal land, whilst
 1 in other areas people openly defy the authority of traditional leaders and settle where they please citing Article
 1 21(1)(h) of the Constitution.

1 Bantu Administration Act, No. 38 of 1927.

1 Bantu Trust and Land Act, No. 18 of 1936.

1 J. Howard, "The Permission to Occupy", unpublished paper, November 1995.

1 The document "Application for Permission to Occupy a Site" and the Schedule containing standard conditions
 1 relating to PTOs are attached as Appendix B.

1 The Ordinance has been amended by Ordinance 4 of 1977, Ordinance 16 of 1980, Act 27 of 1986, Act 6 of 1988,
 1 Act 17 of 1988 and Act 31 of 1990.

1 Sections 26(1) and 27(1).

1 Section 26(3), as amended by Act 27/1986.

1 Section 27(3), as amended by Act 27/1986.

1 Sections 26(5)-(7) and 27(5)-(7), as amended by Act 27/1987.

1 Sections 26(4)(a) and 27(5)(a), as amended by Act 27/1986.

1 Sections 26(4)(b) and 27(5)(b).

1 Section 28(1)(a)

1 Section 28(1)(c).

1 Section 28(2)(a).

1 Section 37(1)(a)(ii), as amended by Act 27/ 1986.

1 Section 37(1)(b).

1 Section 37(2)(a).

1 Section 81(1)(n). The permission of the owner or lessee of the land is required before such action can be taken;
 1 with regard to communal land, this would mean the permission of the state.

1 Section 38(1).

1 Section 38(2).

1 Section 38(1).

1 Section 39(2), as amended by Act 27/1986.

1 Section 39(3), as amended by Act 27/1986.

1 Section 42(1)-(2). Specifications are listed for buffalo, eland, kudu, oryx, wildebeest, hartebeest, all species of
 1 exotic game, springbok, and duiker.

1 Section 40(1), as amended by Act 27/1986. As noted above, the term "Cabinet" in the Ordinance should be read
 1 as President. The President can also grant exemptions to the owner or lessee of land which is enclosed with a
 1 game-proof fence and to licensed game dealers.

1 Section 43. None of the exemptions listed apply to the occupiers of communal land.

1 Section 44.

Sections 46 and 47. "Game meat" is defined as the meat of any game (fresh, salted, smoked or dried) as well as the whole carcass of any dead game (section 1).

Section 50(1). There is an exemption authorising the removal of dead game from a road where it constitutes a danger to traffic. Section 50(2).

Section 50(3).

Section 50A, as inserted by Ord. 4/1977.

Section 53.

Section 54.

Section 81(2)-(3).

Section 81(1)(e).

Section 81A, added by Ord. 4/1977 and amended by Act 27/1988.

Section 81(1).

Sections 83(2)(b), 83(3)(b), 83(4)(e) and 83(7), as amended by Act 27/1986.

Section 78(b).

Section 82.

Section 84(1).

Section 84(4).

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pp.21-23

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p.31-33

Namibian Constitution: Article 16(2). "An Introduction to and Commentary on the Agricultural(Commercial) Land Reform Bill, Legal Assistance Centre, 1994.

Act No. 27 of 1991, amended the Land Bank Act, No. 13 of 1944 and repealed the Agricultural Credit Act, No. 28 of 1956.

Section 1

Trust Monies Protection Act, No. 34 of 1934.

Co-operative Societies Ordinance, No. 15 of 1946.

Co-operatives Act of Namibia, Fourth Layperson's Draft, September 1992.

Close Corporations Act, No. 26 of 1988.

Partnerships are governed by common law rather than by statute.

Ministry of Environment and Tourism Policy Document: "Land-use Planning: Towards Sustainable Development": May 1994.

Namibian Constitution, Article 129.

National Planning Commission Act, No. 1994.

The Nature Conservation in Certain Native Areas of South West Africa Proclamation, SA Proc. R.188 of 1976 was repealed by Act 27/1988, along with other nature conservation laws applicable only to Ovamboland and the Kavango (the Ovamboland Nature Conservation Enactment, SA Proc. R.1023 of 1973 and the Kavango Nature Conservation Act, Act No. 4 of 1974 of the Kavango Legislative Council).

The applicability of these regulations to Bushmanland is discussed fully in Memorandum: Legal Rights of Residents of Bushmanland, submitted to JBDF in March 1990. To summarise, the regulations on their face apply to all native reserves established pursuant to section 16 of Proclamation 11/1922. However, none of the laws which set aside Bushmanland as an area for "Natives" or later on as an area for members of the "Bushman Nation" make any reference to Proclamation 11/1922. On the other hand, two court cases in Namibia have commented *obiter dictum* that the regulations are applicable to all native reserves in Namibia.

Regulation 17.

Regulation 34.

Regulations 18-19.

Regulation 34.

Regulation 21.

Regulation 34.

The applicable laws are the Native Administration Proclamation (Proc. 11/1922), the Native Reserve Regulations (GN 68/1924) and the Native Administration Proclamation (Proc. 15/1928). Regulation 3 of the Native Reserve Regulations (GN 68/1924) charges the Superintendent of the reserve with, among other things, "generally controlling the reserve", but, given the overall context of the regulations, it would be an extremely strained interpretation if this were read to include the power to make rules regarding hunting.

APPENDIX C

Specialty protected game include the following:

mountain zebra
giraffe
klipspringer
elephant
rhinoceros
impala
hippopotamus
black-faced impala
zebra (*Equus Burchelli* species)

Protected game include the following:

aardwolf
bat-eared fox
roan antelope
tsesseby
dikdik
blue wildebeest
bushbuck
duiker
antbear
clawless otter
scaly anteater
cheetah
spotted-necked otter
hedgehog
monitor
leopard
pythons
bush baby
oribi
honey badger
reedbuck
red hartebeest
silver jackal
tortoises
steenbok
sable antelope
waterbuck
sitatunga
lechwe
crocodile
puku
Sharpe's grysbok

all species of birds **except** the hunnable game birds **and** the following birds: weavers, sparrows, mousebirds, redheaded quelea, bulbul, and pied crow.

Hunnable game birds include the following:

guinea fowl
Namaqua sandgrouse
kurrichane buttonquail
common quail
harlequin quail
crested francolin
redbilled francolin
Swainson's francolin
Orange River francolin
white-faced duck
Egyptian goose
Cape teal
Hottentot teal
redbilled teal
turtledove
laughing dove
rock pigeon
Burchell's sandgrouse
doublebanded sandgrouse.

APPENDIX D

REGULATIONS UNDER THE ORDINANCE

The basic set of regulations under the Ordinance is contained in GN 240/1976 (*Official Gazette* 3556). These regulations are amended by:

| | |
|---|----------------|
| GN 256/1976 (Regs 4(1)-(2)) | <i>OG</i> 3563 |
| GN 112/1977 (Regs 4,36A-E) | <i>OG</i> 3599 |
| GN 302/1977 (Reg 1) | <i>OG</i> 3644 |
| GN 314/1977 (Reg 4(1)) | <i>OG</i> 3647 |
| GN 330/1977 (Reg 152(b)) | <i>OG</i> 3653 |
| GN 364/1977 (Regs 8,73) | <i>OG</i> 3659 |
| GN 32/1978 (Reg 1) | <i>OG</i> 3705 |
| GN 114/1978 (Reg 1) | <i>OG</i> 3741 |
| GN 190/1978 (Regs 9,26) | <i>OG</i> 3798 |
| GN 247/1978 (Reg 1, Chpt 12) | <i>OG</i> 3845 |
| GN 50/1979 (Regs 36,104,114-16, Chpt 17A) | <i>OG</i> 3916 |
| GN 56/1979 (Reg 103) | <i>OG</i> 3916 |
| GN AG. 8/1981 (Regs 1,4) | <i>OG</i> 4368 |
| GN AG. 41/1982 (Chpt 11A-11B) | <i>OG</i> 4609 |
| GN AG. 23/1983 (Chpt 11) | <i>OG</i> 4741 |
| GN AG. 49/1983 (Reg 115) | <i>OG</i> 4752 |
| GN AG. 61/1983 (Regs 1,4-7) | <i>OG</i> 4757 |
| GN AG. 72/1984 (Reg 4) | <i>OG</i> 4901 |
| GN AG. 36/1985 (Reg 122) | <i>OG</i> 5019 |
| GN 3/1985 (Reg 31) | <i>OG</i> 5064 |
| GN 101/1985 (Reg 25A) | <i>OG</i> 5125 |
| GN 121/1985 (Reg 4) | <i>OG</i> 5134 |
| GN 122/1986 (Reg 125) | <i>OG</i> 5219 |
| GN 242/1986 (definitions, Regs 28,36) | <i>OG</i> 5297 |
| GN 81/1987 (Reg 27) | <i>OG</i> 5365 |
| GN 89/1988 (definitions, Regs 60,101, 106-111,114-115,117-118, 125,147-148, Chpt 12A) | <i>OG</i> 5547 |
| GN AG. 37/1989 (Reg 128A) | <i>OG</i> 5733 |
| GN AG. 44/1989 (Reg 118K, Schedule C) | <i>OG</i> 5751 |

The basic set of regulations as amended covers the following topics:

1. TARIFFS (game parks)
2. REGULATIONS RELATING TO GAME PARKS
3. SWIMMING BATHS IN GAME PARKS
4. USE OF BOATS ON DAMS IN GAME PARKS
5. INLAND FISHERIES
6. GAME AND OTHER WILD ANIMALS (keeping them in captivity)
7. GAME DEALERS
8. GAME SKINS
9. PROTECTED PLANTS AND PERMITS (regarding permits)
10. REGULATION OF CAGE BIRD SOCIETIES
11. HUNTING OF GAME FOR THE SAKE OF TROPHIES
- 11A. TROPHY MANUFACTURING AND TROPHY DEALERS' LICENCES
- 11B. CONDITIONS FOR EXPORT OF TROPHIES
12. HUNTING AT NIGHT FOR COMMERCIAL PURPOSES
- 12A. HUNTING OF HUNTABLE GAME AND EXPORT OF GAME AND GAME MEAT
(primarily details regarding permits and permit fees)
13. SEA BIRD GUANO
14. DECLARATION OF PRIVATE GAME PARKS AND NATURE RESERVES
15. REGULATION OF SUCCULENT SOCIETIES
16. GAME-PROOF FENCES
17. RECOGNITION AND REGULATION OF ASSOCIATIONS
- 17A. REGISTERS RELATING TO COYOTE GETTERS
18. REPEAL OF REGULATIONS

As most of these regulations are orientated towards commercial enterprises, they do not seem to have any direct implications for Bushmanland at present.

Other regulations promulgated under the Ordinance and their subject matters are as follows:

| | |
|--|---------|
| GN 148/1975 (hunting seasons) | OG 3470 |
| GN 199/1975 (Naukluft boundaries) | OG 3483 |
| GN 321/1975 (private game parks) | OG 3502 |
| GN 14/1976 (private game parks) | OG 3509 |
| GN 117/1976 (hunting seasons) | OG 3535 |
| GN 122/1976 (private game parks) | OG 3536 |
| GN 326/1976 (private game parks) | OG 3571 |
| GN 10/1977 (game park boundaries) | OG 3590 |
| GN 67/1977 (private game parks) | OG 3593 |
| GN 68/1977 (private game parks) | OG 3593 |
| GN 136/1977 (hunting seasons) | OG 3614 |
| GN 146/1977 (private game parks) | OG 3614 |
| GN 205/1977 (professional hunters & guides) | OG 3632 |
| GN 231/1977 (private game parks) | OG 3636 |
| GN 232/1977 (private game parks) | OG 3636 |
| GN 233/1977 (private game parks) | OG 3636 |
| GN 234/1977 (private game parks) | OG 3636 |
| GN 246/1977 (export-leopard & cheetah skins) | OG 3638 |
| GN 262/1977 (private game parks) | OG 3639 |
| GN 271/1977 (private game parks) | OG 3639 |
| GN 336/1977 (private game parks) | OG 3653 |
| GN 354/1977 (private game parks) | OG 3659 |
| GN 355/1977 (private game parks) | OG 3659 |
| GN 372/1977 (private game parks) | OG 3662 |
| GN 377/1977 (private game parks) | OG 3667 |
| GN 407/1977 (private game parks) | OG 3679 |
| GN 3/1978 (private game parks) | OG 3684 |
| GN 8/1978 (honorary nature conservators) | OG 3684 |

| | |
|--|---------|
| GN 51/1978 (private game parks) | OG 3716 |
| GN 115/1978 (white rhinos) | OG 3741 |
| GN 130/1978 (private game parks) | OG 3748 |
| GN 136/1978 (hunting seasons) | OG 3753 |
| GN 138/1978 (private game parks) | OG 3755 |
| GN 141/1978 (private game parks) | OG 3755 |
| GN 161/1978 (honorary nature conservators) | OG 3773 |
| GN 163/1978 (private game parks) | OG 3773 |
| GN 164/1978 (hunting seasons) | OG 3773 |
| GN 168/1978 (private game parks) | OG 3789 |
| GN 198/1978 (private game parks) | OG 3798 |
| GN 204/1978 (private game parks) | OG 3806 |
| GN 218/1978 (private game parks) | OG 3818 |
| GN 246/1978 (private game parks) | OG 3838 |
| GN 253/1978 (private game parks) | OG 3848 |
| GN 12/1979 (honorary nature conservators) | OG 3894 |
| GN 13/1979 (private game parks) | OG 3900 |
| GN 30/1979 (nature conservators) | OG 3900 |
| GN 48/1979 (private game parks) | OG 3916 |
| GN 54/1979 (private game parks) | OG 3916 |
| GN 70/1979 (nature conservators) | OG 3939 |
| GN 72/1979 (honorary nature conservators) | OG 3939 |
| GN 77/1979 (hunting seasons) | OG 3954 |
| GN 79/1979 (private game parks) | OG 3970 |
| GN 96/1979 (private game parks) | OG 3975 |
| GN 97/1979 (private game parks) | OG 3975 |
| GN 118/1979 (Namib-Naukluft) | OG 4003 |
| GN 156/1979 (nature conservators) | OG 4007 |
| GN 157/1979 (honorary nature conservators) | OG 4007 |
| GN 161/1979 (private game parks) | OG 4012 |
| GN 166/1979 (private game parks) | OG 4012 |
| GN 23/1980 (private game parks) | OG 4077 |
| GN 66/1980 (private game parks) | OG 4099 |
| GN 67/1980 (private game parks) | OG 4099 |
| GN 88/1980 (private game parks) | OG 4115 |
| GN 89/1980 (private game parks) | OG 4115 |
| GN 90/1980 (nature conservators) | OG 4115 |
| GN 108/1980 (hunting seasons) | OG 4143 |
| GN AG. 81/1980 (private game parks) | OG 4220 |
| GN AG. 82/1980 (private game parks) | OG 4220 |
| GN AG. 83/1980 (private game parks) | OG 4220 |
| GN AG. 84/1980 (private game parks) | OG 4220 |
| GN AG. 85/1980 (private game parks) | OG 4220 |
| GN AG. 99/1980 (private game parks) | OG 4231 |
| GN AG. 100/1980 (private game parks) | OG 4231 |
| GN AG. 101/1980 (private game parks) | OG 4231 |
| GN AG. 102/1980 (private game parks) | OG 4231 |
| GN AG. 113/1980 (private game parks) | OG 4255 |
| GN AG. 63/1981 (hunting seasons) | OG 4470 |
| GN AG. 80/1982 (hunting seasons) | OG 4632 |
| GN AG. 84/1982 (private game parks) | OG 4636 |
| GN AG. 85/1982 (private game parks) | OG 4636 |
| GN AG. 95/1983 (hunting seasons) | OG 4781 |
| GN AG. 152/1983 (private game parks) | OG 4828 |
| GN AG. 153/1983 (private game parks) | OG 4828 |
| GN AG. 3/1984 (private game parks) | OG 4856 |
| GN AG. 37/1984 (private game parks) | OG 4887 |
| GN AG. 64/1984 (hunting seasons) | OG 4901 |
| GN AG. 80/1984 (private game parks) | OG 4912 |
| GN AG. 138/1984 (private game parks) | OG 4977 |

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| GN AG. 151/1984 (private game parks) | OG 4988 |
| GN AG. 31/1985 (private game parks) | OG 5014 |
| GN AG. 77/1985 (hunting seasons) | OG 5045 |
| GN AG. 83/1985 (private game parks) | OG 5048 |
| GN AG. 84/1985 (private game parks) | OG 5048 |
| GN AG. 85/1985 (private game parks) | OG 5048 |
| GN AG. 86/1985 (private game parks) | OG 5048 |
| GN 1/1985 (Namib-Naukluft boundaries) | OG 5064 |
| GN 2/1985 (private game parks) | OG 5064 |
| GN 26/1985 (private game parks) | OG 5078 |
| GN 27/1985 (private game parks) | OG 5078 |
| GN 33/1985 (private game parks) | OG 5084 |
| GN 34/1985 (private game parks) | OG 5084 |
| GN 56/1985 (private game parks) | OG 5098 |
| GN 119/1985 (private game parks) | OG 5134 |
| GN 120/1985 (private game parks) | OG 5134 |
| GN 26/1986 (registration-cage bird society) | OG 5171 |
| GN 27/1986 (registration-cage bird society) | OG 5171 |
| GN 59/1986 (private game parks) | OG 5187 |
| GN 97/1986 (hunting seasons) | OG 5212 |
| GN 180/1986 (Namib-Naukluft boundaries) | OG 5258 |
| GN 233/1986 (private game parks) | OG 5296 |
| GN 32/1987 (private game parks) | OG 5326 |
| GN 75/1987 (hunting seasons) | OG 5364 |
| GN 77/1987 (private game parks) | OG 5365 |
| GN 141/1987 (private game parks) | OG 5427 |
| GN 142/1987 (private game parks) | OG 5427 |
| GN 197/1987 (private game parks) | OG 5468 |
| GN 90/1988 (hunting seasons) | OG 5547 |
| GN 169/1988 (private game parks) | OG 5622 |
| GN 170/1988 (private game parks) | OG 5622 |
| GN 171/1988 (private game parks) | OG 5622 |
| GN 176/1988 (private game parks) | OG 5627 |
| GN 184/1988 (game park: Naute) | OG 5633 |
| GN 15/1989 (Popa, Mahango, Khaudom) | OG 5667 |
| GN 16/1989 (Namib-Naukluft boundaries) | OG 5667 |
| GN 38/1989 (private game parks) | OG 5684 |
| GN AG. 5/1989 (private game parks) | OG 5697 |
| GN AG. 29/1989 (hunting seasons) | OG 5714 |
| GN AG. 53/1989 (private game parks) | OG 5766 |
| GN AG. 123/1989 (private game parks) | OG 5875 |
| GN AG. 124/1989 (private game parks) | OG 5875 |
| GN AG. 125/1989 (private game parks) | OG 5875 |
| GN AG. 1/1990 (private game parks) | OG 5883 |
| GN AG. 2/1990 (private game parks) | OG 5883 |
| GN AG. 3/1990 (private game parks) | OG 5887 |
| GN AG. 4/1990 (private game parks) | OG 5887 |
| GN AG. 9/1990 (Waterberg Plateau Park) | OG 5895 |
| GN AG. 18/1990 (Mudumu & Mamili Reserves) | OG 5904 |
| GN AG. 28/1990 (private game parks) | OG 5921 |
| GN AG. 29/1990 (private game parks) | OG 5921 |
| GN 5/1990 (hunting seasons) | GG 24 |
| GN 14/1990 (Namib-Naukluft boundaries) | GG 33 |
| (up to 15 September 1990) | |

It should be noted that although the Nature Conservation Ordinance authorises the promulgation of regulations which are applicable only to a particular part of Namibia, there do not appear to be any regulations applying only to Bushmanland, or to any other communal area. (There were once special nature

conservation rules for some of the different communal areas, but none of these remain in force today.¹⁰³) If anyone claims to be applying rules which differ from the general ones discussed above, it would be advisable to ask what statutory authority is the basis for such rules.

C. NATIVE RESERVE REGULATIONS, GN 68/1924

The Native Reserve Regulations, GN 68/1924, were promulgated pursuant to section 20 of the Native Administration Proclamation 11/1922 and are still in force. These regulations may be applicable to Bushmanland, although this is not entirely clear.¹⁰⁴ If the regulations are applicable, they cover two areas which are related to nature conservation.

The regulations make it an offence to "cut, break, injure, uproot or destroy" any tree or bush, or to collect wood on reserve land without a permit from the Superintendent of the reserve (or the magistrate of the District). There is one exception to this general rule: residents of the reserve may collect "head loads" or dry wood for their own use without a permit so long as the removal of this wood does no damage to growing trees, and so long as no axe or saw is used to collect the wood.¹⁰⁵ The penalty for violating this regulation is a fine of up to £5 or imprisonment for up to one month for a first offence, or a fine of up to £10 or imprisonment for up to two months for subsequent convictions.¹⁰⁶

The Regulations also make it an offence to set fire to the grass on any reserve, except as a protective measure against a fire where the Superintendent (or Magistrate) has given permission for this protective measure. Anyone who observes or hears of a grass fire in the reserve has a duty to try to extinguish it, and, if this is not possible, to report the fire to the Superintendent (or Magistrate).¹⁰⁷ The penalties here are the same as those noted in the paragraph above.¹⁰⁸

With regard to hunting, it might also be relevant to note that the regulations make it an offence to keep any dog in a native reserve without the written permission of the Superintendent, who has the power to fix the number of dogs which may be kept by each person.¹⁰⁹ The penalties here are the same as those for the offences discussed above.¹¹⁰

None of the laws or regulations which are generally applicable to "native reserves" authorise any government official to make laws or rules regarding the hunting of game in the reserves.¹¹¹

¹⁰³ The Nature Conservation in Certain Native Areas of South West Africa Proclamation, SA Proc. R.188 of 1976 was repealed by Act 27/1988, along with other nature conservation laws applicable only to Ovamboland and the Kavango (the Ovamboland Nature Conservation Enactment, SA Proc. R.1023 of 1973 and the Kavango Nature Conservation Act, Act No. 4 of 1974 of the Kavango Legislative Council).

¹⁰⁴ The applicability of these regulations to Bushmanland is discussed fully in Memorandum: Legal Rights of Residents of Bushmanland, submitted to JBDF in March 1990. To summarise, the regulations on their face apply to all native reserves established pursuant to section 16 of Proclamation 11/1922. However, none of the laws which set aside Bushmanland as an area for "Natives" or later on as an area for members of the "Bushman Nation" make any reference to Proclamation 11/1922. On the other hand, two court cases in Namibia have commented *obiter dictum* that the regulations are applicable to all native reserves in Namibia.

¹⁰⁵ Regulation 17.

¹⁰⁶ Regulation 34.

¹⁰⁷ Regulations 18-19.

¹⁰⁸ Regulation 34.

¹⁰⁹ Regulation 21.

¹¹⁰ Regulation 34.

¹¹¹ The applicable laws are the Native Administration Proclamation (Proc. 11/1922), the Native Reserve Regulations (GN 68/1924) and the Native Administration Proclamation (Proc. 15/1928). Regulation 3 of the Native Reserve Regulations (GN 68/1924) charges the Superintendent of the reserve with, among other things, "generally controlling the reserve", but, given the overall context of the regulations, it would be a extremely strained interpretation if this were read to include the power to make rules regarding hunting.