

ENVIRONMENTAL LEGISLATION PROJECT
WORKSHOP ON THE NATURE CONSERVATION
ORDINANCE (4 OF 1975)



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INTRODUCTORY NOTE

This publication reflects the deliberations of a workshop held over one and a half days in November 1995. The objective of the workshop was to identify and assess problems with the Nature Conservation Ordinance (4 of 1975) with a view to replacing it with a new wildlife act appropriate for Namibia's changed needs and circumstances.

It must be emphasised that this is the first step in a lengthy process. The intention is to produce a policy paper outlining the essential elements of new legislation and draft legislation thereafter. These will be the subject of further consultations and discussions before they are finalised.

A summary of the main findings of the workshop is contained in the concluding section.

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1. BACKGROUND SPEECHES

1.1 WELCOME ADDRESS

MR S SIMENDA, DEPUTY-PERMANENT SECRETARY
MINISTRY OF ENVIRONMENT AND TOURISM,

REVIEW OF THE NATURE CONSERVATION ORDINANCE (4 OF 1975)

Ladies and Gentlemen

Since the passing of the Nature Conservation Ordinance, 4 of 1975, the central topic of this workshop, there have been many changes in Namibia. These changes can be categorised under two broad headings:

1. General changes

Here I am obviously thinking of the very different political landscape we find ourselves in. The Ordinance was formulated at a time when South Africa regarded present day Namibia as its own fifth province. At the time South Africa had its own interests at heart rather than that of the Namibian people. More specifically the Ordinance was formulated with the interests of commercial farmers in mind rather than the interests of the people as a whole.

The time is accordingly overdue to revisit the underlying philosophy of the Ordinance. A start has been made with the extension of the conservancy policy to communal areas. I believe that this workshop will be exploring other avenues as to how to redress the imbalances in wildlife management in communal and commercial areas.

2. Specific changes:

Under this head, I am thinking of changing needs and values specifically in the wildlife management sphere. These changes are evident both internationally and locally.

The Nature Conservation Ordinance was written for conservation of parks and wildlife in commercial areas. Initially separate conservation laws applies in communal areas. Later the ordinance was amended to include control over communal areas. But these changes did not always fit comfortably with the original Ordinance.

A further change is the recognition that there is a need for a more holistic approach to the management of the environment. We acknowledge that parks and wildlife are an important and vital subset of this greater whole. It is accordingly necessary to ensure that a new nature

conservation law dovetails with a framework environmental act which I believe is also necessary for Namibia. I have noted that the agenda includes an item to describe the overall environmental legislation project. I am sure you will hear more about it then.

A further change is the recognition of wildlife as a valuable economic resource not only in commercial areas but also in communal areas. It also underpins the growing tourism industry. I need hardly remind you that tourism is currently a major contributor to the GNP and is seen as one of the primary income generators of the future. But in a large respect the tourism industry is dependent on optimum management of our protected areas the reserves and wildlife resources in different regions of Namibia.

We also have to consider changed international circumstances and thinking. Namibia set the pace by referring to environmental issues in its constitution. But it needs to convert these aspirations, relating to sustainable use of resources, the conservation of biodiversity and so on, into hard law.

Namibia is also a party, or about to accede to, a number of international environmental conventions. It also wishes to form environmental partnerships at the international, regional and local levels. Its domestic legislation has to accordingly reflect these international obligations. We must now ask ourselves whether the Nature Conservation Ordinance (4 of 1975) is adequate to meet changed circumstances and modern day needs. We should be also asking ourselves what problems we experience with it in the field and how it could be improved.

You, the audience of this workshop, are exceptionally well placed to provide input as to how a new act could improve on the old. You work in the management of Namibia's natural resources. A new act will eventually have major influence on your field. So it is vital that you play a significant role in its formulation.

In short, ladies and gentlemen, the time is overdue to replace the existing Ordinance, with the Namibian act, appropriate for Namibian needs, circumstances and aspirations.

I wish you every success in this important and stimulating workshop.

1.2 OVERVIEW OF THE ENVIRONMENTAL LEGISLATION PROJECT

DR C BROWN DIRECTORATE OF ENVIRONMENTAL AFFAIRS

This particular workshop must be seen against the background of the history and purpose of the Environmental Legislation Project. Its seeds were sewn roundabout independence when discussions were held between the Ministry of Environment and Tourism and relevant authorities in Norway about the need to review and revise Namibia's environmental legislation. Since then other developments took place and ties were strengthened with Norway in a number of ways including the development of Namibia's Green Plan in 1992, the Ministry's formal request to Norway in 1992 to fund the Project, the drafting of the Project document in 1993, the signature of the Project agreement in 1994, the year when the Project finally got underway.

Natural resources are Namibia's most important asset. Their management will determine the future economic development of the country and the long term quality of life of Namibia's people. In this context it is relevant to note that environmental legislation covers a very broad field. For convenience we can consider three broad but inter-related areas covered by environmental law:

1. conservation and utilisation of natural resources;
2. pollution control and waste management;
3. land-use planning and development.

Among the reasons why there is a need to revise Namibia's current environmental legislation are:

1. that it is inherited from RSA and drafted for that countries needs, not Namibia's;
2. there is a directive principle in Namibia's constitution to the effect that environmental policy, and by implication, law will be developed for the benefit of all Namibia's people;
3. present environmental legislation is fragmented. The possibility of integrating sectoral legislation insofar as it is relevant to the environment needs to be explored;
4. similarly, the potential for integrating Namibia's administrative and enforcement mechanisms need to be explored;
5. present environmental legislation is outdated and incomplete, and;
6. uniform standards need to be developed, particularly in the pollution field where the effects on the atmosphere, fresh and sea water and land needs to be considered.

The foundation for environmental law in Namibia will be laid down in an umbrella environmental act. Currently Namibia does not have a central environmental act in contrast to many countries. The act will be administered by the MET and lay down general principles for the three areas referred to above, natural resources, pollution control and land-use planning. It will also incorporate environmental assessment provisions which have been developed for Namibia. This umbrella act will be complemented by sectoral acts administered by the relevant Ministries for each of the above areas. For example, as regards natural resources, there will more detailed acts governing fisheries, forestry, nature conservation (the latter two might be combined as a forestry, wildlife and parks act) and so on. Sectoral acts for land planning would include for example the proposed new land bill and a town and regional planning act.

In conclusion we can summarise the immediate priorities of the environmental legislation project as follows:

- firstly, the development of an umbrella environmental act which will provide for environmental impact assessments, principles relating to resource use, pollution control and waste management and land-use planning (including areas outside parks).
- Secondly, the legislative revision of the Nature Conservation Ordinance (4 of 1975) and its replacement with a new act.
- Thirdly, a review of other environmental legislation relating to freshwater fisheries, monuments, cultural resources, water and so on. Much of the content of this legislation overlaps with the environmental interests of the Ministry of Environment and Tourism.

But today the focus is on the Nature Conservation Ordinance.

1.3 BACKGROUND OVERVIEW OF THE NATURE
CONSERVATION ORDINANCE 4 of 1975

MR D GROBLER OF THE DIRECTORATE RESOURCE MANAGEMENT

1. Legislation is the principal tool with which we are entrusted to execute many of our functions. It is the 'policy' guiding us through the maze of everyday work; a maze in which we can so easily go astray.

Legislation has never been an easy subject but it must be there for us to use. I can illustrate the importance of the necessity of legislation with a short real-life story:

Many years ago the Conservation body of the Cape Province was given two large pieces of land to develop into parks - the Kalahari Gemsbok Park and the Gordonia National park. The province immediately started off with the legislation/proclamation of the Kalahari Gemsbok park and got it running - a beautiful example of a park is still there today to be appreciated by all.

A year later the province proceeded to do the same in the Gordonia National Park. They had to abandon their efforts as there was nothing left to conserve any more - there was no legislation in place to govern the park.

2. We are in a privileged position in Namibia where we have strong legislation providing protection and control over our natural resources in a big way. I will take you back only a few years to 1967 when the ownership of game was passed on to the landowner in Namibia. It is generally accepted as the most important step ever taken in Conservation in Namibia - placing a value on game to the benefit to those who hold game in trust for the people of our country. This step has directly resulted in prolific growth in the game farming industry to the lucrative levels it has reached today.

In 1975 Ordinance 31 of 1967 was replaced by Ordinance 4 of 1975 and the dynamic nature of legislation, together with the demand on more and sophisticated utilization measures resulted in many amendments to serve the needs of both conservationists and the commercial land-owner.

Conservation on communal land was previously controlled from Pretoria and only in 1980 were we given the mandate of conservation in communal areas. This caused us to review and amend a number of sections of the Ordinance to accommodate the newly acquired and

different circumstances of the communal inhabitants. A few examples of amendments provided for in this regard are: angling laws, adequate fencing to protect crops, definitions to eliminate discrimination and define communal land and population groups, powers of owners of land owned by the Government of Namibia, exemptions to the capturing and killing of game etc.

It is not my function this morning to spell out the results of my study but I can inform you that amendments have been made to approximately 30 sections and sub-sections of the Ordinance to accommodate the changed needs I mentioned before.

3. About the same number of amendments have been proclaimed to streamline and confirm management principles such as utilization and stricter law-enforcement measures.
4. Ordinance 4 of 1975 as we know it today has not come about in a matter of a few weeks or months and hard work lies ahead of us to develop an Act which will provide parity nationally but also support obligations conforming to our Constitution in the regional and international conservation forums of the new world we are living in today.
5. You were invited to this workshop for a good reason - not to come and only listen to other people but to participate and to make positive contributions. You deal with the law almost every day and you know the shortcomings and loop-holes.

I urge you to make use of this opportunity. Think well and help us to put together an act that would be practical and enforceable. We do not need an unrealistic act that would not work in practice. Then it will be useless. Let us approach this issue in a positive way and let us make a success of it.

Thank you.

2. WORKSHOP FINDINGS (DAY 1)

After the above formal talks, the workshop focussed on group work and input from the delegates regarding improvements to and a replacement for the Nature Conservation Ordinance. This was done by asking all delegates to identify on cards what they perceived to be the chief areas of concern. These cards were then grouped and the delegates were then split into groups to discuss specific themes which emerged.

2.1 REPORTBACK GROUP ONE: COMMUNAL AND COMMERCIAL AREAS RAPPORTEUR: BEN BEYTELL

Issue 1: The first issue this group discussed was pollution, which will to some extent be dealt with under the umbrella legislation. According to the group, four areas need special attention:

1. control of mosquito spraying in the north;
2. tsetse control;
3. littering in general and
4. the control of chemicals and poisons.

Recommendation: To ensure that the umbrella act provides for the effective enforcement of legislation by the Ministry of Environment and Tourism.

The Chairman pointed out that various issues that fall under the Ministry of Environment and Tourism overlap with those of other ministries. For example, atmospheric pollution currently falls under the Ministry of Health; water pollution under the Ministry of Water, and so on. Various functions fall under various ministries and greater integration is needed.

Issue 2: The second issue brought up by the group is law enforcement with two areas needing special attention, namely legislation concerning:

1. freshwater fish and
2. plants.

Recommendation: According to the group, the Ordinance needs to be reviewed in this light and again particular attention needs to be paid to the Ministry of Environment and Tourism's enforcement authority and powers.

Further issues under law enforcement that would require special attention are:

1. customary laws and
2. traditional utilisation.

Recommendation: 1. The recognition of customary laws, their incorporation into legislation where possible and in appropriate circumstances (these could differ from region to region).

2. To update the legislation to provide for traditional and regional authorities to exercise powers instead of the 'representative authorities' of the past.

Issue 3: A further issue identified by the group was the conservation of heritage sites and protected areas on private land.

Recommendation: To acknowledge and give substance to the landowner or landholder rights in a specific site, and that these should be registered formally with the Ministry of Environment and Tourism (possibly even gazetted).

Issue 4: Problem causing animals, for example elephant, hippo and other predators.

Recommendation: Devolution (decentralisation) of authority to declare animals as problem-causing and to issue permits for destroying the animals. It would also be of benefit to receive compensation for the destroyed animal through money from its utilisation (which could be channelled through wildlife councils and/or conservancy committees).

It was further pointed out that certain animals are declared as problem animals by law, like the Black-backed Jackal, the Wild Dog etc, but in this context the reference was to 'problem-causing' animals generally.

Issue 5: Ownership of land and resources in communal areas. This was discussed at length in the group.

Recommendation: An amendment to the present Ordinance to provide for this in the form of conservancies or wildlife councils.

As regards ownership of wildlife resources, the Chairman mentioned that under Nambian common law which pre-dates independence, wildlife and fish were classified as *res nullius* meaning that they were owned by no-one but could be subjected to ownership if captured or brought under someone's control with the intention of doing so. The constitution however changes this by providing (art 100) that all natural resources belong to the state, "unless otherwise provided by law". This provision would have to be taken account of in drafting a new wildlife law.

2.2 REPORT BACK GROUP TWO: PARKS AND RESERVES BY
RAPPORTEUR: RUDI LOUITIT

Issue 1: An initial point raised by the group was that the present legislation administered by the Ministry of Environment and Tourism is subservient to all other laws of Ministries whose legislation overlaps with that of the Ministry of Environment and Tourism, for example:

- * fisheries (LWM/HWM - seals, Sandwich Marine Reserve),
- * Works, Transport and Communications (Möwe Bay Harbour - public proclaimed roads through parks),
- * SWAVEK/DWA (utilities, eg power lines, pipelines)
- * MAWRD (drought-relief boreholes and drought-relief schemes)
- * Mines and Energy (prospecting and mining).

The Chairman pointed out that MET legislation was not really subservient to other legislation; rather where other Ministries' legislation gave specific powers to other Ministries they could act in accordance with those powers which often overrode the MET's interests. One way to deal with this is to have EA legislation in place; another is to have better and open channels of communication with these Ministries .

Issue 2: The group identified the following shortcomings in the present Naure Conservation Ordinance (4 of 1975):

- a) it contains no controls over tourism, and that with exclusive concessions in parks. Future legislation should vest such in the MET, for example control over the allocation and conditions of such concessions.
- b) Every park or conservation area should have a master or management plan. A new act should provide for the incorporation of such principles and objectives into the legislation possibly in the form of regulations.
- c) Tourism development is to be incorporated into b) above, ie into the management plan and regulations for parks and conservation areas (Etosha National Park, Skeleton Coast Park and Cape Cross master plans have proven ineffectual to date).
- d) There is currently no provision in the Ordinance to protect natural landscapes and certain resources (eg gravel, rock removal, strip mining and so on).

Issue 3: The zoning and classification of areas was also discussed by the group.

Recommendation: That the revised legislation caters for a definition of appropriate, applicable categories of

protected areas based on a recognised classification system, for example the IUCN categories. Where appropriate the legislation should cater for sub-divisions of the various categories for Namibia's needs and circumstances.

Examples of categories raised by the group included:

- a) forestry reserves;
- b) contractual parks (communal State land);
- c) private nature reserves and
- d) national heritage sites.

Issue 4: Related to the above is the need to accommodate the existence of established rural communities in certain parks, for example the Kuiseb-Topnaar community in the Namib-Naukluft Reserve.

Recommendation:

- a) The new legislation should incorporate unconventional activities to accommodate traditional people inhabiting parks. This should be coupled to the special categories for parks and allowable in certain zones only.
- b) These inhabitants should have first rights to any future concessions in such parks.

Issue 5: The new legislation should guard against having invasive prospecting and mining - except for strategic minerals only which are in the national interest. The new act should also contain a provision disallowing prospecting and development of gravel pits for roads in any exclusive zones as defined in Issue 3 above (those in the identified categories referred to above).

Issue 6: The new legislation should cater for the proclamation of coastal zone and marine parks to extend into the sea.

Issue 7: New legislation should make provision for the sharing of resources and revenue with parks' neighbours.

Recommendations:

- a) The Minister should have rights under the new legislation to 'alienate' certain resources and revenues and to allocate these resources and revenues to neighbours. This should however again be linked to the special categories of parks referred to above.
- b) Operators in proclaimed parks should pay a percentage of their concession fees to neighbours via the State (MET). This point again to be linked to the special categories of protected areas referred to above, with

particular attention being paid to protected areas in communal areas.

- c) It would be important to have a workable definition of 'neighbour'. (Leave this problem to the lawyers!).
- d) A vital issue raised in the group concerned the question of how the proposed tourism parastatal would share its income with park management? A Tourism Board should be set up and there should also be a National Tourism Board Act which should look at ways of how to get revenue back to the management of parks. The new MET legislation must also find ways to share revenue and resources where neighbours employ compatible land use.

In the light of the above the group considered the converse question, namely how the MET and the parks could benefit from neighbours. It came up with the suggestion that they could gain support from neighbours acting as buffers. They could also aid with conservation and prevention of poaching.

The group emphasised that the legislation must recognise international and national interests above local interests.

Issue 8: The new legislation must protect a broad spectrum of habitats to represent all the important elements of Namibia's biological diversity.

The Chairman rounded off the presentation of group two by mentioning that the present laws for parks and reserves are narrowly conceived and provision ought to be made for a more flexible and expansive approach to park management.

2.3 REPORTBACK GROUP THREE: WILDLIFE RESOURCES RAPPORTEUR: HOLGER KOLBERG

This group identified the following problem areas:

Problem Area No 1: The group identified the inter-relationship between tenure, jurisdiction and custodianship as a problem which new wildlife legislation needs to take into account. They overlap and there is a lack of clarity over responsibilities. A further stumbling block is the artificial separation of the MET, the MFMR and the MAWRD. It was determined that the new legislation should provide for obligatory coordination between various Ministries.

Problem area No 2: Protection of indigenous species, especially of endemics and near endemics as they are economically valuable and of international, regional or national importance or concern.

Problem area No 3: Communities and habitats, as they have a high risk-threat rating but are ecologically valuable, and of global, national and/or of regional importance.

Problem area No 4: Ecosystems and processes, specifically:

- their transformation
- introduction of aliens
- migration, biological and genetic corridors
- recruitment and productivity.

Problem area No 5: Special sites. The following types of special sites, which are important due to their long-term value, should be taken into consideration:

- scientific interest
- cultural/historic/pre-historic
- aesthetic and scenic
- recreational
- ecologically important
- rare features.

Recommendation: The category of protected areas needs expansion and elaboration.

Problem area No 6: The control of genetic resources. Here the MET would have to regulate imports and exports, the population integrity and population viability. Other key players are however the Ministries of Health, Agriculture, Trade, Home Affairs (Customs and Police) and Education.

The various sections that industry would have to take care of are of a biomedical/pharmaceutical nature where the following concerns need to be given special attention:

- traditional use of plants
- biodiversity prospecting
- scientific prospecting.

It was mentioned that provision should be made for the control of genetic material.

Problem area No 7: The group identified certain criteria which should be taken into account in new legislation. These relate to categorisation and prioritisation. More specifically the group emphasised the following needs:

- to have objective criteria
- to review the process and mechanisms for listing and de-listing species
- to conform to international standards
- to provide for different categories of concern with the appendices providing the details.

The following further issues that need special attention were identified:

- national collections (plants, animals)

- control and import of exotics, (a prohibited list)
- a user-friendly act
- public awareness campaigns, who is responsible for them?
- clarity on definitions particularly regarding: sustainability, natural resource, and wildlife biodiversity
- other legislation and or legislative provisions which need to be considered in developing a new wildlife act includes: water, intellectual and/or property rights, biosafety, economic incentives, national heritage, quarantine, fisheries and forestry.

2.4 REPORT BACK GROUP FOUR: GENERAL LEGAL ISSUES
RAPPORTEUR: MR DIETER MORSBACH

Issue No 1: As regards wildlife trade the group identified the import/export of wildlife and their products as priority issues. The classification of individual species, especially exotics and indigenous species, will have to be reviewed. Another important matter would be the restitution of confiscated animal products.

Issue No 2: Problem species. Invertebrates are not included in the current legislation and provision should be made for their inclusion. Other aspects of importance are:

- the need to include plant species as "problem plants" (Chair: refer to the Agricultural Pests Act, xx of 1973)
- control methods of both problem animals and plants
- problem animal ownership, especially in communal areas
- compensation should be avoided in legislation but procedures should be established whereby compensation can be paid
- the listing of problem animals needs to be reviewed

A participant raised the point that if locusts destroyed his garden, could he then claim from the State? The answer here was that the authority concerned should be devolved and decentralised, to deal with the problems locally.

Issue No 3: Fines and penalties. Here it is important that:

- Admission of guilt fines be increased;
- the problem of enforcement is dealt with (Criminal Procedures Act?);
- the problem with foreigners be dealt with ???.

Issue No 4: Revenue from game. Important aspects are:

- permit levies to cover the administrative costs borne by the Ministry
- taxation/levies on all utilisation of wildlife
- the introduction of different tiers of fiscal measures.

Issue No 5: Permit Control. The legislative provisions regarding the following should be reviewed:

- the keeping of animals;
- game birds;
- captive bred cage birds;
- the role of the MET in organised wildlife utilisation
- permits for research on natural resources

2.5. CONCLUSIONS (DAY 1)

The Chairman summarised the days deliberations by summarising the days proceedings. The general conclusions are contained in 4 below.

3. WORKSHOP FINDINGS (DAY 2)

3.1 INTRODUCTION

The proceedings on Day 2 were arranged in a similar manner to Day 1. The difference was that it was attended by outside organisations and individuals and only lasted half a day. The same background papers were presented whereafter the delegates broke up into discussion groups on the following five themes: Enforcement, Hunting, Wildlife Resources, Conservancies and Concessions. The reportbacks follow:

3.2 REPORTBACK GROUP ONE: ENFORCEMENT RAPPORTEUR: GERHARD DU PLESSIS

Issue 1: Changes to existing laws

The group pointed out that changes to the existing laws must be meaningful. Here the following issues are of prime importance:

- a) definition of saleable items;
- b) the difference between non-endemic and endemic species (endemic, indigenous, exotic);
- c) trade (import, export, keeping), which would be subject to CITES regulations.

A number of issues regarding legal definitions, terminology and interpretation were identified as problematic and needing revision. These included the following:

- a) ivory and other "controlled game products";
- b) "possession" and "dealing";

More generally legal issues which require particular attention include the use of legal presumptions, the extent of forfeitures and confiscation and so on. A new act should also use clear and understandable language.

Another issue to be looked at is the export of rhino horn, which, despite CITES regulation to the contrary, does take place. The group also requested that the specially protected game (Schedule 3) be revised, like for example Pangolin and Red Hartebeest (downlisting).

Issue No 2: Enforcement of laws

Here the following issues are of prime importance:

- a) cooperation with authorities;
- b) Provision should be made to complement Resource Management staff with volunteers with appropriate powers
- c) realistic fines.

Issue No 3: General

Some general issues identified by the group which bodies should give representations to the authorities included:

- a) The definition of 'sensitive areas' should be revised and a permit system (for what?) should be put in place.
- b) The use of poison is to be addressed.
- c) (Over) Exploitation of natural resources is to be addressed.
- d) A tag system for game utilisation is to be introduced.

Lastly, the group pointed out that notice of this workshop should have been given months in advance to enable participants to prepare themselves and to make proper representations.

The Chairman rounds off the presentation by Group One explaining the term 'presumptions' in law by using the example of 'lobster catching'. If someone gets caught with more than five lobsters, then it is presumed in favour of the State that this person has caught them and it is up to the accused to disprove this fact rather than the state having to prove it. Since the coming into force of the new constitution at independence the use of presumptions in law has become questionable however.

As regards enforcement generally a NAMPOL representative pointed out the following salient points:

- a) Dealing: Not allowed to a set trap with ivory in contrast to the position with diamonds and drugs.
- b) Possession: Not defined properly in the Nature Conservation Ordinance as is the case with drugs and diamonds. It was suggested that the new legislation should address this problem.
- c) Provision should be made for the forfeiture to the state of vehicles and rifles used for illegal hunting.
- d) The definition of ivory (rough/processed) needs urgent revision.

General points:

- The Chairman suggests that specialists submit their contributions in writing.
- The question was raised: what if there is a complaint and the authorities do nothing about it? Here it was suggested that there should be a provision in the new Ordinance to institute legal action. The Ombudsman potentially plays an important role here; possibly also the Environmental commissioner which has been mooted.

3.3 REPORTBACK GROUP TWO: HUNTING
RAPPORTEUR MR D METZGER

The group identified the following issues:

Issue 1: A priority was to amend the existing ordinance to modify the qualifications of the professional hunters.

According to the group there should be:

- * no two-year apprenticeship anymore, and
- * no infrastructural requirements.

Issue 2: Hunting guides should be allowed to hunt on neighbouring farms (??). The question of qualifications of existing hunting guides should be reviewed.

Issue 3: The hunting of non-trophy animals. Here the following points need special attention:

- * falconry (not recommended)
- * bow hunting, which should be legalised (high-priority in the group)
- * game bird hunting should be allowed but subject to breeding seasons, (and the quality should be regulated by the landowner??).

Issue 4: As regards the ethics of hunting, there are provisions in the present legislation for killing animals in the most humane way. It was further stated that putting traps or poisoning has nothing to do with hunting, which is defined as ethical fair chase. The definition of hunting is shooting with minimum requirements as laid down by the Ordinance. In this regard hunting should be adequately defined in the new Ordinance.

Issue 5: A further issue to be investigated is the number of rounds of ammunition that can be brought into the country. Currently this is regulated by Customs and Excise.

Issue 6: Related to the above, it was emphasised that at present one can legally have as many rounds of ammunition in ones possession as one wants. The Customs and Excise regulation limiting the amount of rounds to be brought into the country exists merely to prevent smuggling.

Issue 7: Some other important general issues identified by the group included:

- * baiting (should be allowed, especially in the case of leopard)
- * night-hunting (not allowed at present)
- * hunting guides should be tested regularly.

3.4 REPORTBACK GROUP THREE: WILDLIFE RESOURCES
RAPPORTEUR: JORIS KOMEN

The group made the following proposals:

1. The freeing of indigenous natural resources (outside State-owned land). State-owned land includes national parks, wilderness areas and other proclaimed areas. It was questioned whether the government ought to retain the overall right to control resources. This would also entail defining categories of resources and the term 'use'.
2. Special protection should be given to endangered and precious resources.
3. A value system for use of natural resources should be applied.
4. A re-assessment of known data with respect to natural resources should be undertaken.
5. Categories of resources should be defined. Working categories for animals, but also habitats for plants etc should also be developed.
6. Ownership must be re-defined, (distinguishing between birds, mammals, fish, plants, and so on), by categories of resource and land types, that is state land, communal land and privately owned land.
7. Further issues needing special attention include:
 - International migrants (ducks etc).
 - Threatened, rare species (eg rhino etc).
 - Resident species (doves, dassie).
8. A participant mentioned that the whole planet is a farm subject to human management and that attention should be given to what is a natural park and what is not.

In conclusion the Chairman pointed out that it is important to regulate access to resources in an equitable way. One of the reasons for reviewing the Ordinance is to redress inequity. But the intrinsic value of natural resources would have to be taken into consideration and one should not jump to conclusions about ownership without taking other factors into consideration.

3.5 REPORTBACK GROUP FOUR: CONSERVANCIES AND CONCESSIONS RAPPORTEUR: JURGEN MATTHAEI

1. The group took cognisance of the fact that an amendment to the Ordinance regarding conservancies was currently going through various committees and would be before Parliament shortly. Its focus was the establishment of Wildlife Councils and Conservancies in communal areas.

Nevertheless the group felt that conservancies should be proclaimed like game parks. It was pointed out that communal conservancies are different to commercial ones and should be treated separately. The IUCN categories should be adapted. There should be categories of land that should be protected, and private parks and conservancies should not have different status (which raised a heated debate among the participants).

Other salient points regarding conservancies included:

- the review and revision of the working of conservancies before including them in the new act;
- the legislation should differentiate between commercial and communal conservancies;
- they should enjoy a high legal status, perhaps higher than reserves (along with private game parks);
- they should be coordinated with other legislation for example, the Communal Lands Act (currently a draft bill), the Traditional Authorities Act, Agricultural legislation and land use legislation generally.
- Law enforcement aspects need to be reviewed, for example the legal powers of game guards.

2. The group also considered salient points with regard to concessions and noted the following:

- Currently there were conflicts with concessions in the same area.
- The legislation to make consultation and negotiation essential prior to granting concessions.
- The recognition of rights of concession holders (contract sufficient?)
- the equitable sharing of benefits from concessions.

4. CONCLUSIONS AND THE WAY FORWARD

JAN GLAZEWSKI, DIRECTORATE OF ENVIRONMENTAL AFFAIRS

4.1 INTRODUCTION

The workshop deliberated for one and a half days about existing problems with the Nature Conservation Ordinance (4 of 1975) and the general features and direction of a new wildlife act. Day 1 was in-house, that is, it was attended mainly by government officials, largely from the Directorate Resource Management but not exclusively so; day 2 was attended by certain outside bodies which have an interest in the contents of a new wildlife act, for example the Namibian Professional Hunters Association.

Three introductory points need to be made at the outset:

- this was very much a preliminary and exploratory workshop and its findings are by no means definitive. The intention is to produce a draft policy paper outlining the essential elements of a new act and to have further consultations around these.
- A number of parties and organisations which should have been present on day two were not represented. There was no malevolent intention here - it was simply because the primary target group of this particular workshop was government officials. A more representative workshop will be held in due course.
- The purpose of the workshop was to establish broad consensus as to the general direction and focus of new legislation, rather than to discuss the detailed nuances of particular sections of the existing ordinance. This will be more appropriate at a later stage when draft legislation has been prepared.

A final general point which needs to be made is that we are dealing here with wildlife legislation administered by the Ministry of Environment and Tourism. While the conservation of wildlife resources depends on broader issues such as soil, water, land-use planning and so on, these issues belong in other legislation. In an ideal world we would aim for one consolidated environmental or resource act. But this is not feasible practically - for one, legislation is administered sectorally so that, for example soil falls under the Ministry of Agriculture and Water Affairs (the Soil Conservation Act), land-use under the Ministry of Lands and so on.

Some strengthening and integration of the legislation is possible however. As regards integration the aim is to incorporate forestry legislation which is currently being

re-written as a chapter of a new wildlife resources act. Furthermore, as pointed out in Dr Brown's talk, we aim to put in place a framework Environmental Act which will at the very least lay down environmental criteria to which all Ministries will have to adhere. It will contain a chapter on environmental assessment - a classic tool for ensuring that environmental considerations are taken into account in development decisions.

Finally there was general consensus that the existing Ordinance is outmoded and in need of an overhaul. A new act is necessary. It needs to strengthen, streamline and simplify existing legislation.

4.2 MAIN SPECIFIC WORKSHOP FINDINGS

The chief findings of the workshop can be summarised under the following headings:

General

- The question of ownership of wildlife resources needs to be considered in the light of the common law and art 100 of Namibia's constitution which states: "Land, water and natural resources below and above the surface of the land... shall belong to the State if they are not otherwise lawfully owned."
- New legislation needs to accommodate Namibia's rights and obligations under the Biodiversity Convention which Namibia is about to ratify.

Reserves

- Need to put in place a comprehensive system of classifying protected areas. This should cater for a spectrum of needs ranging from wilderness areas on the one hand, to multiple use on the other, for example accommodating local communities in resource utilisation activities. The intention is to follow the IUCN classification system and adapt it to Namibia's needs where necessary.

Outside Reserves

The policy behind the granting of hunting permits needs to be reviewed; the policy towards problem animals needs to be addressed.

The policy behind the schedules needs to be reviewed

Communal Lands

Current moves to develop new legislation for communal lands needs to be monitored to ensure harmony with this

legislation. Consideration should be given to regulating the system of concessions in legislation.

Plants

Greater controls are necessary regarding plant protection and genetic material.

Hunting

The rules relating to (non) trophy hunting of wild animals and game birds need to be reviewed. The term "trophy" is not used in the Ordinance but forms a cornerstone of the hunting system.

Enforcement

Greater support and training needs to be given to enforcement officials.

Particular attention needs to be paid to the export of species in contravention of CITES and to the enforcement of CITES regulations.

4.4 CONCLUDING REMARK

It must be emphasised that a new act will be administered and enforced by officials within the Directorate Resource Management in the first instance. The success of any new legislation therefore depends on the active support and participation of the Directorate Resource Management.

ATTENDANCE REGISTER: DAY 1

HV Alphen	MET - Resource Management, Keetmanshoop
J Angula	WPS - Etosha
Phoebe Barnard	MET - DEA
H Barry	MET - Resource Management
N Berriman	MET - Resource Management, Tsumkwe
Shirley Bethunie	DWA
B Beytell	MET - Resource Management
Chris Brown	MET - DEA
AI Burger	MET - Resource Management
P Burger	MET - Resource Management
EJ Coleman	MET - Resource Management
P Craven	NBRI
R Davis	MET - Resource Management, Swakopmund
M de Jager	MET - Resource Management
Eske	MET - Resource Management
A Esterhuizen	MET - Resource Management
D Grobler	MET - Resource Management
THA Hall	MET - Resource Management, Luderitz
G Hoveka	NMC
N Howosek	MET - Resource Management
B Jones	DEA
R Kahengutji	MET - Resource Management, Kavango
JC Karsten	MET - Resource Management
H Kolberg	MET - Resource Management
H Kolberg	NBRI
BJ Kruger	MET - Resource Management
J Lenssen	MET - Resource Management
H Le Roux	MET - Resource Management
HB Le Roux	MET - Resource Management
HC Le Roux	MET - Resource Management
M Lindeque	MET - RMR
AL Losper	MET - Resource Management, Keetmanshoop
R Loutit	MET - Resource Management
Maketo	MET
Eugene Marais	National Museum
D Marlack	MET
G Masilo	MET Ondangwa
D Morsbach	MET
W Mukena	MET - Resource Management, Kavango
EK Nepembe	Customs and Excise
Joris Komen	National Museum
S Oesterle	MET - Resource Management, Hardap
J Patterson	MET - Resource Management
T Petersen	MET - Resource Management
Kevin Roberts	DWA
M Strohbach-Fricke	NBRI
U Tjipepa	MET - Resource Management
A Uchain	MET - Resource Management
G Ureb	MET - Resource Management
C van Niekerk	MET - Resource Management
L van Rooyen	MET - Resource Management

ATTENDANCE REGISTER: DAY 2

Danie Grobler	Resource Management
Leon van Rooyen	Resource Management
Ben Beytel	Resource Management
Chris Brown	DEAT
Brian Jones	DEAT
Sharon Montgomery	SRT
Blythe Loutit	SRT
Gerhard du Plessis	
Joris Komen	AGRED
Peter Jackson	AGRED
Johann Vaatz	NAPHA
Diethelm Metzger	NAPHA
Ken Morris	NAPHA
G Garbade	
H Schneider-Waterberg	
Jurgen Matthaei	
Clackie Mckay	NAMPOL
Shirley Bethunie	Wildlife Society
F Gleuck	
R Gleuck	
Henning Snyman; Mr Roux	Namibia Agricultural Union

Note: This list may not be complete as the attendance register was mislaid. If you are aware of any omissions please let the compilers know to enable us to send copies to all who were present.