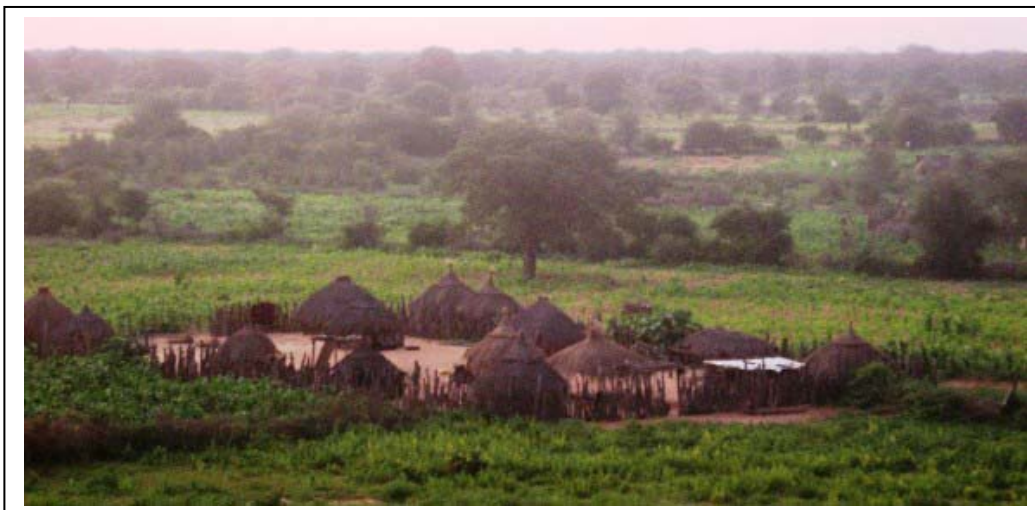




POLICY AND LEGISLATIVE REVIEW ON LAND USE PLANNING IN NAMIBIA

Prepared as a background document for the development
of a Regional Land Use Planning Framework for the
Kavango Region within the Okavango Integrated River
Basin Management Project (IRMBP)

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List of frequently used acronyms

CBNRM	Community-based natural resource management
CBO	Community-based organisation
CDC	Constituency Development Committee
CLB	Communal Land Board
EA	Environmental Assessment
IEM	Integrated Ecosystem Management
IMSCLUP	Inter-ministerial Standing Committee on Land Use Planning
IRBMP	Okavango Integrated River Basin Management Project
LUEB	Land Use and Environmental Board
LUP	Land Use Plan
MAWF	Ministry of Agriculture, Water and Forestry
MET	Ministry of Environment and Tourism
MLR	Ministry of Lands and Resettlement
MRLGHRD	Ministry of Regional and Local Government and Housing and Rural Development
NGO	Non-governmental organisation
NNF	Namibia Nature Foundation
RDCC	Regional Development Co-ordinating Committee
TA	Traditional Authority
VDC	Village Development Committee

Executive Summary

This report has been commissioned as part of background research for the development of a Land Use Planning Framework for the Kavango Region in Namibia as part of the Okavango Integrated River Basin Management (IRBM) Project. The IRBM is developing a Strategic Action Programme for the basin, to which the Kavango Regional Land Use Planning Framework will contribute.

Namibia lacks an approved National Land Use Planning Policy or set of guidelines for carrying out integrated land use planning. A number of regional land use plans have been developed but these do not consider potential conflicts between competing or incompatible forms of land use and do not prioritise land use according to spatial zoning.

National land and sectoral natural resource use policy and legislation provide a fragmented framework for land use planning and land management. National Land legislation does not adequately provide for secure group tenure on communal land, which has negative consequences for land use and management. Local communities are unable to enforce local rules or zoning when outsiders offend against these.

However, Namibia has a sound policy and legal framework for devolving authority over natural resources to local communities. Provisions for community based natural resource management (CBNRM) are contained in wildlife, tourism, forestry, water, and to a lesser extent inland fisheries policy and legislation. Decentralisation policy and legislation have led to the development of regional councils with considerable land use planning authority and a number of local level institutions involved in development planning and land management.

Throughout the natural resource policy and legal framework (including for agriculture and drought relief) there is a strong recognition of the limits placed on development by Namibia's climate and environmental conditions including low and erratic rainfall and poor soils. The policies take these constraints into account in their strategic approach.

However there are problems regarding implementation of the policy and legal framework. The policy directions regarding recognition of climatic and environmental constraints are often ignored. Various agencies and institutions take decisions on development planning without taking into account land capability and environmental constraints. Further, the plethora of institutions at different levels with some form of mandate for development and land management leads to overlapping authorities, duplication, different land uses being approved for the same piece of land, confusion and uncertainty.

The following gaps in the policy and legal framework are identified:

- a) the lack of an existing approved Land Use Planning Policy,
- b) the lack of community control and authority over common grazing lands;
- c) the lack of clarity on group tenure over communal land, and
- d) the lack of a common national policy on community-based natural resource management (CBNRM).

In terms of implementation of the policy and legal framework there are two main problems:

- 1) Insufficient integration and coordination of planning and implementation of projects and programmes due to overlapping authorities, competing institutions and a focus on sectoral agendas and priorities;
- 2) Inappropriate decision-making due to a lack of understanding of policies and legislation, a lack of technical capacity, and a lack of understanding of environmental and climatic constraints to development.

At the same time, there are opportunities for addressing these gaps and problems. The National Land Policy and draft National Land Tenure Policy potentially provide for forms of secure group tenure that have yet to be implemented. These provisions need to be clarified, strengthened and tested in practice. The Environmental Management Act provides for a coordinating body at national level called the Sustainable Development Advisory Council which is expected to advise government on land use planning. The National Land Policy makes provision for other coordinating bodies such as the Inter-ministerial Standing Committees on Land Use Planning and Land Use and Environmental Boards. These institutions need to be established with clearly defined responsibilities and links between them. At local level conservancy and community forest planning processes and the planning approaches underlying the Forum for Integrated Resource Management (FIRM) system provide platforms for integrated planning that includes other institutions and agencies.

In order to address the gaps and problems the following recommendations are made:

Policy and legal framework

- 1) Develop a national Land Use Planning Policy that incorporates guidelines for land use planning and promotes integrated and coordinated planning based on generic principles rather than sectoral agendas and priorities;
- 2) Further develop and clarify proposals for provision of secure group tenure over communal land that are sufficiently flexible to cater for the different conditions in different parts of the country and which take into account existing land management institutions such as community forests and conservancies. Such tenure arrangements should clearly enable local management and control of common grazing lands;
- 3) Develop a national CBNRM policy that provides an overall vision, set of objectives, set of common principles and common strategies across the different sectors. This policy should emphasise the need for coordination and integration of approaches and set out ways of achieving this.

Policy Implementation

- 1) As soon as possible establish the Sustainable Development Advisory Council to act as a high level inter-ministerial forum for coordination and integration on land use planning and land management.
- 2) As soon as possible establish Inter-ministerial Standing Committees on Land Use Planning (urban and rural) at Director level in order to provide coordination and integration and forums for sharing information about plans projects and

- programmes. These committees should report to the sustainable Development Advisory Council.
- 3) As soon as possible establish Land Use and Environmental Boards (LUEBs) at regional level. These bodies should bring together all regional agencies and institutions involved in land use and management. They should report to the relevant IMSCLUPs.
 - 4) Promote the use of conservancy and community forest planning processes and the FIRM approach as mechanisms to identify other local level agencies and institutions that must be involved and to involve them in the planning process, also assigning them implementation roles and responsibilities.
 - 5) Develop a training programme for institutions and agencies at all levels that a) focuses on the key aspects of land management policy and legislation; b) focuses on the roles and responsibilities of agencies and institutions; c) emphasises the environmental constraints to land management in Namibia, d) emphasises the need for land capability to be assessed, e) emphasises the need for economic, social and environmental sustainability to be assessed; and f) assists in the development of data bases and data storage and retrieval systems appropriate for each level. The impacts of the training programme on environmental and sustainability issues for CLBs should be evaluated and if appropriate repeated and also adapted and extended to other institutions.

Table of Contents

Section	Page No.
Acknowledgements	2
List of Frequently Used Acronyms	2
Executive summary	3
1. Introduction	8
1.1 Background	8
1.2 Methodology	8
1.3 Land use planning policy and land management in Namibia	8
2. Land policy and Legislation	10
2.1 National Constitution and Vision 2030	10
2.2 Land Use Policy	11
2.3 National Land Policy	14
2.4 Draft National Land Tenure Policy	15
2.5 Communal Land Reform Act	16
3. Natural Resource Policy and Legislation	18
3.1 Devolution of rights over natural resources	18
3.2 Agriculture Policy	19
3.3 National Drought Policy	20
3.4 Forestry Policy and Legislation	20
3.5 Water Policy and Legislation	21
3.6 Wildlife and Tourism Policy and Legislation	24
3.7 Inland fisheries Legislation	27
4. Environmental Policy and Legislation	28
4.1 Policy	28
4.2 Legislation	28
5. Implications of Policy and Legislation for Land use Planning and Management	32
5.1 Land Use Planning	32
5.2 River Basin Land Use Planning and Management	33
5.3 Transboundary Collaboration	33
5.4 Biodiversity and Ecosystem Conservation	34
5.5 Water Use, Management, Supply and Demand	34
5.6 Community-based Planning, Management and Development	35
5.7 Sustainable Development	36
6. Role of Regional Government, Traditional Authorities, Line Ministries, Parastatals, and other relevant organisations in Land Use Planning and Implementation	37
6.1 Regional Councils	37
6.2 Traditional Authorities and Land Allocation	39
6.3 Traditional Authorities and Sustainable Land Use	41
6.4 Communal Land Boards and Land Allocation	42
6.5 Conservancies	44
6.6 Community Forests	45
6.7 Line Ministries	47
6.8 Green Scheme and Namibia Development Corporation	49
6.9 Key Issues	50

Section	Page No.
7. Identification of Gaps and Constraints and Recommendations for addressing these	51
7.1 Policy Framework	51
7.2 Policy Implementation	54
7.3 Main Recommendations	57
References	59
Annex 1. Terms of Reference	62
 List of Tables	
Table 6.1 Institutional Mandates of Regional and Local Institutions for Land Use Planning and Land Management	46
Table 6.2 Institutional Mandates of Line Ministries and National Level Institutions for Land Use Planning and Land Management	48

1. Introduction

1.1 Background

This report has been commissioned in order to provide a review of Namibian policy and legislation relating to land use planning and land management as part of the Okavango Integrated River Basin Management Project (IRBMP). The IRBMP, through the Namibia Nature Foundation, is supporting the development of a Land Use Plan (LUP) for the Kavango Region of Namibia. As part of its Scope of Work, the IRBMP must propose a regional framework for collaborative planning and identify critical land use issues affecting the management of the overall basin. The Kavango Regional LUP will assist the IRBMP in this task. Further, the Permanent Okavango River Basin Commission (OKACOM) is preparing an integrated environment and land use plan for the basin through the development of a Strategic Action Programme (SAP). The Kavango Regional LUP will provide an important foundation for developing the basin-wide land use plan.

This report aims to review current policy on land use planning and land management in Namibia in order to assist the development of the Kavango Regional LUP and the basin-wide plan. It identifies strengths and weaknesses, identifies gaps and makes recommendations for addressing these. The full Terms of Reference are provided in Annex 1.

1.2 Methodology

The policy review was carried out by means of a desk study which covered policy documents, primary legislation and existing policy reviews of the land and natural resource sectors.

1.3 Land use planning policy and land management in Namibia

Namibia does not have an approved Land Use Planning Policy (see sub-section 2.2 below) and land management in the country is a largely uncoordinated activity. The National Planning Commission in the Office of the Prime Minister is responsible for overall development planning in the country, but does not concern itself with coordination regarding land use planning. The fledgling Division of Land Use Planning and Allocation in the Ministry of Lands and Resettlement (MLR) is responsible for land use planning nationally but has limited human resources to carry out this task. Land use plans for a few regions of the country have been completed by consultants commissioned by the MLR. However these mainly describe current land uses and do not set priorities for land uses based on land capability, nor do they address issues of potential land use conflicts and how these may be resolved through planning and zoning. At the regional level, the Regional Councils have a development coordination function

that includes land use planning (see subsection 6.1 below) but their capacity is also weak.

Land management is therefore driven by the priorities and policies of line ministries, the agendas of the private sector and donor funded projects and the priorities of land holders in trying to make a living. Projects and activities are often developed in isolation without regard to existing or other potential land uses. The capability of the land to support a particular land use is often not taken into account.

There is some degree of integrated land use planning taking place at community level where community forests and conservancies have been established under sectoral legislation. Community forests need to develop forest management plans in terms of the forestry legislation and conservancies develop wildlife utilisation and tourism plans that include zoning areas of land for wildlife and tourism.

In order to understand the policy and legal framework relating to land use planning and management in Namibia, it is therefore necessary to consider the effect of land and natural resource management policy and legislation in general and the institutional mandates of various agencies and organisations. This report considers the relevant cross-cutting and sectoral policies and legislation and then examines their implications for land use planning and land management. It also considers the role of relevant institutions in land use planning and legislation. The report then identifies gaps and constraints in the policy and legislation and the institutional framework and makes recommendations for addressing these.

The report focuses on land use planning and management issues related to communal land as the Kavango Region falls into this category of land tenure.

2. Land Policy and Legislation

2.1 National Constitution and Vision 2030

The national constitution is the highest law of the land and Article 100 states that land, water and natural resources below and above the surface of the land belong to the State if they are not otherwise lawfully owned (GRN undated). Taken with the provisions of land legislation that vests communal land in the State on behalf of traditional communities (see subsection 2.4 below), this provides the State with strong control over land and natural resources on communal land. This control is tempered by the devolution of rights over resources such as wildlife and forests to local communities (see subsections 3.4 and 3.6 below) and the rights of traditional authorities in allocating land (see subsection 2.5 below). However, generally government ministries and their officials interpret the constitution and the Communal Land Reform Act as meaning that government *owns* communal land and may therefore control all activities on this land.

Vision 2030 is the country's policy framework for long-term sustainable development. It recognises that land degradation is being caused by a number of factors including a lack of integrated planning (GRN 2004a). The objective for the Land and Agricultural production sub-sector in Vision 2030 is (GRN 2004a:145):

To ensure that all Namibians have equitable access to land and other natural resources, and that these resources are sustainably and efficiently used, while maximising Namibia's comparative advantages.

Among the strategies to achieve this objective are (GRN 2004a:145):

- Creating economically and ecologically rational land-use plans to ensure that land is used optimally and not just for direct-use activities like agriculture
- Ensuring that all new projects, programmes and policies do not proceed without a thorough Environmental Assessment (EA)
- Securing tenure over all natural resources to be assigned to communities, and a major capacity building programme to be undertaken in order to develop community institutions capable of allocating land rights and managing natural resources sustainably.
- Recognising the interdependence between agriculture and other issues, and in particular water management and biodiversity conservation.

2.2 Land Use Planning

Land has to provide many functions, which are not only related to agricultural production. Land is required for almost every kind of development, for instance: protection of environmental resources, water conservation, waste disposal, mining, transport, settlement and housing or other social functions.

Each function requires a delineable portion of land. Land is an immovable and limited resource, which makes it difficult to combine different functions. Therefore, conflicts arise wherever people have different interests on how to use the land. The challenge is to combine as many functions on land as possible, without destroying the land and its resources. This is being achieved if the relevant “land users” and experts enter into a dialogue on planning the uses of land and eventually agree on the best land use concepts.

Thus, land use planning is understood as a process on making decisions about how to use land. A land use plan aims at shaping the future development on the land. It is an instrument to organize and regulate the utilization of land.

The process on how to prepare a land use plan can be very diverse because of the sectoral overarching character of land in general and the variation of natural and socio-economic circumstances in the area for which a land use plan is to prepare. However, based on international experiences and best practices, there are several core principles which have to be considered when formulating a land use plan (GTZ 1999, FAO 1999, Haub and Boguslawski 2000):

1. The process of land use planning is not a standardised but a uniform process, based on regional or local situational analysis.
2. Land Use Planning aims at sustainability and is balancing social, economic and environmental needs.
3. Land Use Planning promotes civic engagement and consensus building through active participation; it is based on local knowledge and involves stakeholders in the decision-making process.
4. Land Use Planning requires sectoral integration and interdisciplinary cooperation (“horizontal integration”).
5. Land use Planning integrates “bottom-up” planning with “top-down” regulations such as laws and policies (“vertical integration”).
6. Land Use Planning is future oriented. It delivers necessary and acceptable development and land use changes and provides regulations, projects and programmes to achieve the desired land use changes.

7. Land Use Planning has a “spatial orientation” and relates to spaces and places.
8. A land use plan is implementation oriented through the collaboration of all stakeholders.

Because land has many functions for the people who live on it and for the environment depending on it, the process on making land-related decisions has to involve many sectors and stakeholders. The main groups of stakeholders who should actively participate in making land-related decisions are:

- The Public Sector
- The Private Sector
- Traditional Authorities
- The Civil Society

In practice it is rather difficult to involve all those groups in the decision-making process of land use planning. However, there are various methods and instruments to engage all stakeholders in land use planning. Preferably, “bottom-up” planning approaches are applied, which start with local level planning including the civil society, and are successively integrated in superior planning levels. There are also sector plans, prepared by different Ministries and sector-organizations. Those sector plans lack the multi-sectoral perspective of a land use plan and might neglect overarching aspects. On the other hand, a land use plan has also to consider the specific sector-related views and know-how from respective experts. Thus, land use planning has to consider the integration of different stakeholders and sectors in the Integrated Land Use Planning concept.

Ideally, the process on preparing an Integrated Land Use Plan involves five major stages:

1. In an organizational stage, the body which will organize, steer and guide the planning process is being set up. This could be for instance an interdisciplinary task force under the supervision of a steering committee.
2. During an analytical stage, different kind of data are being collected and analyzed for a situational analysis.
3. A specific planning stage identifies the options and alternatives for future oriented changes through participatory involvement of all stakeholders.

4. The decision-making stage aims at participatory consensus finding among all stakeholders on the future land uses and the regulations and activities to be implemented. It includes also the approval of the plan which is crucial for getting the required commitments from the stakeholders.
5. The implementation stage coordinates and monitors the realization of the land use plan.

There are basically two kinds of plans in Namibia which are considered to steer the development in the country: Development Plans and Integrated Land Use Plans. While the task of coordinating development planning is with the National Planning Commission, the Ministry of Local and Regional Government Housing and Rural Development (MLRGHRD) and the Regional Development Councils, the mandate for coordinating Integrated Land Use Planning is with the Ministry of Lands and Resettlement. In addition, several Ministries prepare their sector plans. On the local level, different organizations support occasionally community based land use planning.

However, not only the lack of a Land Use Planning Policy but also the absence of a structured overall planning system in Namibia, conflicting and unclear policies, regulations and responsibilities lead to presently uncoordinated planning efforts. Attempts in development planning, sector planning and land use planning are not harmonized and might even contradict each other.

The mandate of the Ministry of Lands & Resettlement is prescribed in the Strategic Plan 2006 – 2010, which is approved by the Cabinet. It states the following:

“As custodian of the national land policy, MLR should primarily facilitate the effective allocation of land and create conditions, through dialogue, policies and legislation, for optimal land use in agriculture, shelter, conservancies, reserves and for the creation of strategic linkages and infrastructures that will enhance Namibia’s industrial, commercial and tourism potential and add meaningful options for the social and economic advancement and livelihood of Namibian citizens”

(MLR 2007: page VII and page 6.)

This mandate indicates a far reaching responsibility for the management of land resources in the country and aims at sector overarching cooperation through integrated mechanisms for planning coordination, implementation and monitoring of land related activities.

Although the National Land Policy is weak in laying down land use planning regulations, it gives in chapter 3.21 the responsibility for Land Use Planning to Land Use and Environmental Boards, Regional Land Boards and Regional

Councils. In praxis however, Land Use and Environmental Boards do not exist, Regional Land Boards do not initiate Land Use Planning and Regional Councils focus on the preparation of Development Plans. The capacity and resources of regional and local level institutions are insufficient for carrying out land use planning. At the same time, the prime responsibility for the implementation of the National Land Policy is with the MLR. In fact, the National Land Policy gives the MLR the duty to perform different planning activities in close consultation with other Ministries, to publish particularly land planning issues in appropriate form and to involve all stakeholders in issues of land administration (MLR 1998: page 18, chapter 4.1 and 4.2).

In addition to these legislative regulations, the National Development Plans make the MLR responsible for the preparation of Integrated Regional Land Use Plans.

Therefore, the Ministry of Lands & Resettlement in cooperation with the German Technical Cooperation (GTZ) and GTZ-CIM (Centre for International Migration) is developing and testing new tools and instruments for Integrated Land Use Planning through a 'model approach' for selected pilot regions. One of the major results of this project will be the formulation of "Land Use Planning Guidelines" to document a new strategic approach for Integrated Land Use Planning in Namibia. Among others, the new land use planning strategy will address:

- Participatory methods and stakeholder involvement as well as collaboration among relevant institutions in the planning process;
- Integration of all relevant plans, including development plans, sector plans, lower level plans and national plans;
- The integration of Strategic Environmental Assessment (SEA) for the sustainable and environmental friendly utilization of land resources;
- The use of geographical information technology to steer implementation and monitoring.

The project on "Modelling Integrated Land Use Planning" is presently ongoing for the first pilot region Karas. The development of a land use planning framework for the Kavango Region will support this learning process.

2.3 National Land Policy

The National Land Policy of 1998, among other things, aims to promote environmentally sustainable land use and states that failure to demonstrate that proposed land uses are environmentally sustainable will be grounds for Land Boards to terminate the award of title (GRN 1998). However, this policy approach has not been incorporated into land legislation governing the land boards. The

policy assigns responsibility for land use planning, natural resource management and related issues to Land Use and Environmental Boards (LUEBs), which should “ensure that land use planning, land administration, land development and environmental protection are promoted and coordinated on a national and regional basis to guarantee environmental, social and economic stability” (GRN 1998:16). The policy also refers to subordinate structures, the Inter-ministerial Standing Committees on Land Use Planning (urban and rural). However, the LUEBs have not been established and the Inter-ministerial Standing Committee on Land Use Planning (IMSCLUP) that did exist at the time of the development of the policy has fallen into disuse.

The National Land Policy also provides for various forms of land tenure and provides that “tenure rights allocated according to this policy and consequent legislation will include all renewable natural resources on the land, subject to sustainable utilisation and the details of sectoral policy and legislation. These natural resources include wildlife, tourist attractions, fish, water, forest resources and vegetation for grazing” (GRN1998:11). Provision is made for various forms of land rights: Customary grants; leasehold; freehold; licences, certificates or permits; and State ownership. Tenure rights are to be exclusive, enforcement of which will be supported by law. Among the categories of land rights holder provided for are “legally constituted bodies and institutions to exercise joint ownership rights (and) duly constituted co-operatives” (GRN 1998:3). Read with the provisions regarding leases in the Communal Land Reform Act, the policy could be interpreted to support the possibility of conservancies or community forests as “legally constituted bodies” to obtain leases over their land. So far, this approach has not been tried, as the government has been ambiguous about whether it would support such a lease application by a conservancy.

2.4 Draft National Land Tenure Policy

The Ministry of Lands and Resettlement has developed a draft National Land Tenure Policy which has yet to be approved and implemented. The policy acknowledges the environmental limitations on land use in Namibia, stating that Namibia is generally low in productivity with fragile soils water resources are limited and there is an erratic rainfall regime (MLR 2005). The policy recognises the four ecological zones described in the National Agricultural Policy of 1995:

- The desert region comprising 22% of the land, where mean annual rainfall is less than 100mm;
- The arid region comprising 33% where mean annual rainfall varies between 100mm and 300mm;
- The semi-arid region comprising 37% of the land where mean annual rainfall lies between 301 and 500mm;
- The semi-humid and sub-tropical region comprising eight percent of the land area with mean annual rainfall of between 501mm and 700mm.

Significantly the policy aims to promote good management of land in response to the identified environmental constraints. It states that farm productivity will be enhanced through:

- Private investment in agriculture facilitated by security of tenure;
- Livestock numbers shall adhere to recommended grazing capacity of the land. No degradation of pastures shall be allowed;
- In areas of low population densities, farmers are encouraged to expand into areas which have not yet been settled, thus allowing for the exploitation of parcels of land with varied potential;
- Greater flexibility in physical planning.

The policy proposes a significant departure from the current tenure arrangements on communal land by providing for village tenure over land. It proposes that village boundaries should be demarcated, a traditional leader should be identified for each village, and a constitution for the village should be developed. Once this has been done the village would be registered with the effect that the village “becomes a juristic person in order to give better security to the land tenure of the members of the village. Members of the traditional village will be given formal rights over land and all resources in each village” (MLR 2005: 18). This will include the right to exclude others who are not members of the village. Each resident of the village will be entitled to a residential plot in the village, arable holdings and a cattle post in the communal village grazing lands. Further, residents will have the right to wood and other forest products and access to water.

2.5 Communal Land Reform Act

In terms of the Communal Land Reform Act of 2002, all communal land areas vest in the State in trust for the benefit of the traditional communities residing in those areas (GRN 2002). According to the Act, Traditional Authorities (TAs) allocate communal land to households for residential and crop growing purposes. This land is surveyed and then registered by the Communal Land Boards (CLBs) established under the Act to administer communal land. The CLBs control the allocation of leases for the commercial use of communal land for purposes such as tourism. The Minister of Lands and Resettlement must approve leases for land in excess of 50 ha. In terms of the Act specific areas of land must be designated for which the CLBs may allocate leases for agricultural purposes. The relevant TA must grant consent to any leases allocated by the CLBs.

Provision is made for residents to have access to common grazing lands subject to conditions made by a Chief or TA including limits on stock numbers or where grazing may take place. The Chief or TA may also grant grazing rights to non-residents for a specified or indefinite period.

There are no provisions in the Communal Land Reform Act or the accompanying regulations that place any specific responsibility on CLBs to take environmental issues into account when allocating land or leases. The Regulations to the Communal Land Reform Act (GRN 2003a) do place a responsibility on any person holding a customary land right or right of leasehold to manage land in accordance with the Soil Conservation Act, (No. 76 of 1969). Under the Act land holders must prevent soil erosion or any disturbance of the soil which creates conditions which could lead to erosion or pollution of water by silt or drift sand. If land held under a customary right or leasehold is being used in a way that causes soil erosion the Chief, Traditional Authority or the Land Board may, in consultation with the Minister of Agriculture, suspend or cancel that right or leasehold. The regulations also refer to the need to protect pastoral resources under the Soil Conservation Act, but do not place any responsibility on TAs or Land Boards to enforce this. At present, however, the Soil Conservation Act is not well enforced and is somewhat in abeyance (Jones and Kakujaha 2006).

3. Natural Resource Policy and Legislation

3.1 Devolution of rights over natural resources

The Namibian government has adopted a policy of devolving to residents of communal areas authority over renewable natural resources that was previously held by the central government. Such devolution was first implemented by the Ministry of Environment and Tourism with legislation in 1996 that gave local communities rights over wildlife and tourism (see subsection 3.6 below). In 2006 Cabinet approved the recommendations of the Permanent Technical Team on Land Reform that related to land and natural resource management. With regard to the policy framework on land reform, Cabinet approved that (GRN 2006):

- In the medium term, sectoral policies on natural resources management, water, land, forestry and agriculture must be revised to give decision-making and management authority to resource-users at a local level;
- In the long term, discussions are necessary to draw up a well-conceptualised, inclusive and integrated policy framework. This is essential if widely supported, unambiguous, coordinated goals for policy-making are to be achieved. It must also be supported by a cohesive institutional framework at national, regional and local levels, and followed up by a well-coordinated and effective implementation strategy.

Cabinet also approved the encouragement of integrated resource management in areas such as water, sanitation, and drought mitigation strategies and recommended collaboration between various Ministries, namely the Ministry of Environment and Tourism, Ministry of Lands and Resettlement and the Ministry of Agriculture, Water and Forestry.

On the development of communal land, Cabinet recommended the following:

- That community-based policies on resource management are expanded beyond wildlife and tourism to incorporate other natural resources like water, land and land-based economic activities;

There is therefore a clear mandate from Cabinet for a) giving local resource users decision making and management authority over natural resources and b) the integration of resource management across sectors.

3.2 Agriculture Policy

The overall objectives of the National Agricultural Policy (GRN 1995) are to achieve growth in agricultural production and profitability, ensure food security, improve living standards for farmers and farm workers, and promote sustainable use of the land and natural resources.

The policy recognises the environmental constraints to agricultural production in Namibia, pointing out that only about 34% of the country receives sufficient rainfall, more than 400mm annually for rain fed crop production and that only about 1% of the country's land area has soils with a medium to high potential for arable production. The policy states that unsustainable resource management is a feature of farming systems throughout the country.

With regard to irrigated agriculture, the policy suggests that irrigation schemes producing cereals and fodder crops rather than high-value crops are an uneconomic use of scarce water resources. As a result, irrigation schemes should focus on high value crops and should only be implemented where they are economically viable, technically feasible and environmentally sustainable (GRN 1995).

The policy aims to promote diversification of rural livelihoods and recognises that: "It is possible in some areas that the economics of wildlife production could be superior to domesticated livestock production" (GRN 1995:14).

The policy recognises that one of the important conditions for sustainable agricultural development is the development of an enabling political and macro-economic policy environment that includes appropriate land tenure. The policy states that in order to promote sustainable natural resource management, government will where possible, devolve decision-making power and resource management initiatives to the lowest possible local level. The policy expects the empowerment of local communities to administer land use and manage natural resources to be achieved through the establishment of the Communal Land Boards.

Although the policy recognises the importance of appropriate land tenure for sustainable natural resource management and rural development, it does not itself propose measures to address this. It relies on the provisions of the Communal Land Reform Act which itself does not adequately deal with the problems of "open access" to rangelands. The policy's intention to devolve decision making power and resource management initiatives to the lowest possible local level is unlikely to be achieved without addressing the issue of secure group tenure and the establishment or strengthening of local level institutions in which authority over rangeland is vested. There is a need for legislation that specifically provides decision making authority over grazing lands

to a group of people with rights to the grazing areas. This would bring the management of rangelands into line with other sectors such as forestry and wildlife in which authority is devolved to specific groups of people.

3.3 National Drought Policy

The National Drought Policy of 1997 attempted to change national thinking about drought by distinguishing between “normal” dry conditions that can be expected in a country that is characterised by low and erratic rainfall and extreme drought conditions. The policy proposes that drought assistance should only be provided during a “disaster drought” – one where drought conditions are so intense and protracted that they cannot be countered by normal risk management practices (GRN 1997a). The policy promotes the approach that farmers should adopt the main responsibility for drought management. In particular they should “manage agricultural activities in an economically and ecologically responsible manner and in a way that takes low rainfall, crop and grazing production and consequent income variation into account” (GRN 1997a: Section 28 iii).

The policy includes elements of a strategy for reducing long term vulnerability to drought. Among these elements are:

- crop diversification as part of on-farm risk management;
- development of sustainable rangeland management practices including securing exclusive grazing rights;
- strategic water development;
- diversifying income sources including new activities like wildlife management, tourism, charcoal production and small secondary industries.

The policy also emphasises the need for creating an enabling environment through the decentralisation of decision making and the use of civil society institutions. The policy also notes the need to promote the establishment of land user rights to give land-users control over their natural resources and enable the development of strategies to enable them better to withstand drought. It suggests that the role of conservancies needs to be investigated further in this regard.

3.4 Forestry Policy and Legislation

The Forest Act (No. 12 of 2001) makes provision for the establishment of various types of “classified forest”. These are: State Forest Reserves, Regional Forest Reserves and Community Forests (GRN 2001). According to the Act, the Minister of Environment and Tourism may enter into a written agreement for the establishment of a community forest covering a specific area of communal land. The agreement may be with any body that the Minister believes represents the

interests of the persons who have rights over that area of communal land. The agreement may only be entered into if the relevant chief or traditional authority which is authorised to grant rights over the land gives their consent. The Act requires community forests to develop management plans. An important provision in the Act is that the written agreement confers on the community forest rights, subject to the management plan, to manage and use forest produce and other natural resources, and to graze livestock.

Residents of community forests will be able to harvest forest produce and dispose of it as they wish without a licence, but in accordance with the management plan, in which harvest quotas will be set. Wood can be harvested for household fuel or for building purposes subject to the management plan. Subject to the relevant management plan, the Director of Forestry determines the quantity of forest produce for which a licence may be issued in any forest reserve or a community forest and the maximum quantity of produce that may be harvested. The management authority of a community forest may dispose of forest produce from the community forest or permit the grazing of animals, the carrying out of agricultural activity or the carrying out of any other lawful activity.

The hunting of wild animals in a classified forest (including community forests) may take place only in accordance with the management plan for the area, regardless of any authorisation that may have been issued under the Nature Conservation Ordinance (4 of 1975). The Act also provides for fire management and makes the setting of fires an offence in certain circumstances.

3.5 Water policy and legislation

River basin management

The Water Resources Management Act of 2004 provides for the establishment of river basin management committees and the declaration of the area over which a committee will have jurisdiction. Among the functions of basin management committees are (GRN 2004b):

- to protect, develop, conserve, manage and control water resources within its water management area;
- to promote community participation in the protection, use, developments, conservation, management and control of water resources in its water management area through education and other appropriate activities;
- to prepare a water resources plan for the basin;
- to make recommendations regarding the issuing or cancellation of licences for water use;
- to facilitate the establishment of an operational system and maintenance system of waterworks;

- to monitor and report on the effectiveness of policies and action in achieving sustainable management of water resources;
- to help resolve conflicts relating to water resources in its management area.

In terms of the Act, basin management committees must coordinate with regional planning components in the relevant regional council to ensure that water resources are effectively managed.

A new Water Resources Management Bill has been drafted by the Ministry of Agriculture, Water and Forestry (MAWF) to replace the existing Act. The Bill makes some important additions to the provisions in the Act regarding basin management committees. It replaces the concept of management 'committees' with management 'institutions' and broadens the definition of such institutions. It makes provision for the Minister to determine the financial support from the Ministry including the water resources management levies payable to the water basin management institution as part of charges for water abstraction and use and wastewater disposal charges. The institution is given the power to determine abstraction charges. The Bill also makes provision for sub-basin management committees or institutions to be formed that would address specific issues within distinct parts of the management area.

Community-based water management

In order to facilitate proper management of water points in communal areas, the Water Resources Management Act of 2004 provides for the establishment of water point user associations and local water user associations (GRN, 2004b). The Act states that any group of rural households using a particular water point may form a water point user association in order to maintain the water point and to manage water supply services at the water point. The members of the association must elect a committee to manage their affairs including financial matters. The association must have a constitution and the Act prescribes a number of provisions that must be included in the constitution.

A group of water point user associations and other persons using a particular rural water supply scheme must form a local water user association in order to coordinate the activities and management of their water points and to protect the rural water supply scheme against damage. Local water user associations must also have a constitution in terms of the Act and a management committee.

Once registered by the government in terms of the Act an association becomes a corporate bodies and legal person with the full capacity to sue and be sued, to enter into contracts and own and dispose of property.

Associations have the power to make rules for the use of the water supply scheme and to exclude any person from the water point who does not comply with the rules, regulations, and constitution of the association. They also have the power to adopt measures to prevent wastage of water. The Act also gives the associations the power “to plan and control the use of communal land in the immediate vicinity of a water point in cooperation with the communal land board and the traditional authority concerned” (Section 19). This is potentially a significant degree of power over land use although it is not clear what is meant by “control” and the “immediate vicinity” of a water point is not defined.

The draft Water Resources Management Bill intended to replace the Act also makes some changes in regard to water associations. The most significant is that it enables associations to determine tariffs for water use and to collect payments for such services.

Internationally Shared Water Resources

The Water Resources Management Act of 2004 commits the Namibian Government to observing and complying with any treaty it may sign regarding internally shared water resources and to upholding the principles and rules of international law particularly as reflected in i) the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses and ii) the Southern African Development Community Protocol on Shared Water Courses (Section 53).

Further the Act gives powers to the Minister (Section 54):

- a) to participate with riparian states in the establishment and continuous development of a common database regarding the description and use of shared water resources;
 - b) to engage in the joint management, planning and development of joint projects with other basin states within the Southern Africa Development Community for the purpose of promoting economic growth, environmental integrity and common understanding;
 - c) to establish and promote institutional relationships between river basin organisations within Namibia and international river basin organisations;
 - d) to ensure the participation of interested persons in the development of Namibia’s position concerning internationally shared water resources;
 - e) to develop and improve Namibia’s capacity for participation in shared water resource consultations and international river basin organisations;
- and

- f) to establish mechanisms, or participate in the re-establishment of mechanisms, for the prevention, management and resolution of disputes relating to internationally shared water resources.

The draft Water Resources Management Bill amends the language of the above without significantly changing the substance.

3.6 Wildlife and tourism policy and legislation

Wildlife Policy for Communal Areas

A national policy document, “Wildlife, Management, Utilisation and Tourism in Communal Areas” (MET 1995a) sets out the approach that the formation of a conservancy will be the mechanism by which communal area residents can gain the same rights over wildlife and tourism as freehold farmers. It was approved by the Namibian Cabinet in March 1995. The policy sets out the conditions that must be met before the government will confer these rights to communal area residents: i.e. that the conservancy must be legally constituted, it must have clearly defined boundaries agreed by neighbouring communities, a defined membership and a committee representative of the conservancy members.

Tourism Policy

There is currently no approved national tourism policy or legislation in Namibia. The Ministry of Environment and Tourism (MET) has developed a draft tourism policy. According to the draft policy, the vision for tourism in Namibia is:

“A mature, sustainable and responsible tourism industry contributing significantly to the economic development of Namibia and the quality of life of all her people—primarily through job creation and economic growth” (MET, 2007).

The draft policy promotes the development of tourism through a strong and competitive private sector, with the government providing an enabling environment that supports enterprise development, encourages responsible tourism, and regulates the industry where appropriate. The draft policy supports hunting tourism as an important segment of the market, but aims to ensure that trophy hunting and non-hunting tourism do not take place simultaneously in the same areas.

The policy supports community-based management and states that conservancies should be the primary agency for the collection and distribution of benefits from use by tourism interests of natural resources. It provides for conservancies to be given long-term leases for all rights over tourism including the right to sub-lease and transfer, as well as control over traversing rights. The draft policy encourages synergy between tourism on communal land and adjoining State-protected areas.

The MET policy on the Promotion of Community Based Tourism (MET 1995b) provides a framework for ensuring that local communities have access to opportunities in tourism development and are able to share in the benefits of tourism activities that take place on their land. The policy recognises that where tourism is linked to wildlife and wild landscapes, the benefits to local communities can provide important incentives for conservation of these resources. The policy document states that MET will give recognised communal area conservancies the concessionary rights to lodge development within the conservancy boundaries.

Wildlife legislation

The Nature Conservation Ordinance (No. 4 of 1975) is the primary legislation providing for the proclamation of protected areas and the conservation and utilisation of wildlife in Namibia.

The Nature Conservation Amendment Act, 1996 (Act 5 of 1996) amends the Nature Conservation Ordinance so that residents of communal areas can gain the same rights over wildlife and tourism as freehold farmers. The Act puts into effect the national policy on Wildlife Management, Utilisation and Tourism on Communal Land. According to the Act any group of persons residing on communal land may apply to the Minister of Environment and Tourism to have the area they inhabit or part of that area declared a conservancy. The Minister will declare a conservancy in the Government Gazette if (GRN 1996a):

- the community applying has elected a representative committee and supplied the names of the committee members;
- the community has agreed upon a legal constitution, which provides for the sustainable management and utilisation of game in the conservancy;
- the conservancy committee has the ability to manage funds;
- the conservancy committee has an approved method for the equitable distribution to members of the community of benefits derived from the consumptive and non-consumptive use of game in the conservancy;

- the community has defined the boundaries of the geographic area of the conservancy;
- the area concerned is not subject to any lease or is not a proclaimed game reserve or nature reserve.

Regulations accompanying the Act require a conservancy committee to provide a register containing the names, identification numbers and addresses of the members of the community to be represented by the committee. The regulations also specify certain issues which must be covered by the Conservancy Constitution (GRN 1996b).

Land use planning

The MET has developed its own policy on land use planning although this is little referred to within the Ministry. The policy document, Land Use Planning: Towards Sustainable Development, sets out the ministry's approach to land use and management on communal land, freehold land, proclaimed state land, urban areas and in wetland systems, including catchments. The policy statement for communal land contained in the document is as follows (MET 1994:2).

... it is the policy of the Ministry to encourage the rational and integrated planning of land use according to ecological principles in all rural areas within Namibia and to encourage the formation of suitable participatory structures so that local communities may participate in decisions and responsibilities concerning natural resources, and enjoy maximum sustainable benefit from these resources (including wildlife and forestry products) upon which they depend.

As part of its policy for Proclaimed State Land the document states that the MET "will integrate conservation in regional and national land-use planning so that they contribute economically and culturally at the local and national levels" (MET 1994:10).

Integration of Protected Areas with neighbouring land

MET has developed a draft policy on Protected Areas, Neighbours and Resident People. Among other things the policy aims to:

- Promote the development of compatible forms of land use in areas adjoining protected areas;
- Promote the integration of protected areas into local economies;
- Promote collaborative management between protected areas and neighbouring land holders.

In order to put this into effect, the draft Parks and Wildlife Management Bill (which will replace the 1975 Ordinance) makes provision for collaborative management between protected areas and neighbouring land, and the establishment of contractual protected areas on land outside of State protected areas. The concept of Protected Landscape Conservation Areas (PCLAs) is being discussed within MET for possible inclusion in the Bill. A PCLA is a cluster of different land units/areas potentially under different tenure which have land use forms compatible with indigenous biodiversity conservation. They would be managed through a collaborative management body established by all the land holders in the area.

3.7 Inland Fisheries Legislation

The Inland Fisheries Resources Act (No. 1 of 2003) provides for the conservation and protection of aquatic ecosystems and the sustainable development of inland fisheries resources and the control and regulation of inland fishing (GRN 2003b). The Act enables the Minister to determine the general policy for the conservation and utilisation of the inland fisheries resource. It provides for the flexibility to determine the policy for a particular area. This must be done in consultation with the relevant regional council, local authorities and traditional authorities.

The Minister may declare any area of inland water to be a fisheries reserve on his/her own initiative or in response to an initiative of a regional council, local authority or traditional authority if the Minister believes that this will promote the conservation of the fisheries resource and related ecosystem. No fishing may take place in a fisheries reserve without the written permission of the Minister.

The Act does not provide explicitly for community-based fisheries. It does however enable the Minister to delegate powers to regional councils, local authorities or a person nominated by a traditional authority. The Act makes provision for regulations to be made establishing inland fisheries committees and determining their powers and functions. However, at present no such regulations have been promulgated.

4. Environmental Policy and Legislation

4.1 Policy

The Namibian Cabinet approved the Environmental Assessment (EA) Policy in August 1994 and, in 1996, work began on drafting the Environmental Management Bill. This policy recognizes that EAs seek to ensure environmental consequences of development projects and policies are considered, understood, and incorporated into the planning process, and that the term “environment” is broadly defined. The policy lists activities that require an EA (whether strategic or project-level) and defines the required steps for an Environmental Impact Assessment (EIA), the required contents of an EIA report, the need for post-implementation monitoring, and the system of appeals. All these aspects have since been taken up in the subsequent Environmental Management Act (GRN 2007).

4.2 Legislation

Principles of Environmental Management

Part 2 of the Environmental Management Act presents the 13 “Principles of Environmental Management” that apply to government institutions and private persons. They are as follows (GRN 2007: Section 3.):

1. Renewable resources shall be utilized on a sustainable basis for the benefit of current and future generations of Namibians.
2. Community involvement in natural resource management and sharing in the benefits arising therefrom shall be promoted and facilitated.
3. Public participation in decision making affecting the environment shall be promoted.
4. Fair and equitable access to natural resources shall be promoted.
5. Equitable access to sufficient water of acceptable quality and adequate sanitation shall be promoted, and the water needs of ecological systems shall be fulfilled to ensure the sustainability of such systems.
6. The precautionary principle and the principle of preventative action shall be applied.
7. There shall be prior environmental assessment of projects and proposals that may significantly affect the environment or use of natural resources.
8. Sustainable development shall be promoted in land-use planning.

9. Namibia's movable and immovable cultural and natural heritage, including its biodiversity, shall be protected and respected for the benefit of current and future generations.
10. Generators of waste and polluting substances shall adopt the best practicable environmental option to reduce such generation at the source.
11. The polluter pays principle shall be applied.
12. Reduction, reuse, and recycling of waste shall be promoted.
13. There shall be no importation of waste into Namibia.

Environmental Impact Assessment

In terms of the Act environmental impact assessment means (GRN 2007) Section 1):

the process of identifying, predicting and evaluating -

- (a) the significant effects of projects on the environment;
- (b) the risks and consequences of projects and their alternatives and options for mitigation with a view to minimise the effects of projects on the environment and to maximise the benefits and to promote compliance with the principles set out in section 3;

The Act stresses the integrated nature of an EIA, and defines *environment* as (Section 1):

the complex of natural and anthropogenic factors and elements that are mutually interrelated and affect the ecological equilibrium and the quality of life, including -

- (a) the natural environment that is the land, water and air, all organic and inorganic material and all living organisms; and
- (b) the human environment that is the landscape and natural, cultural, historical, aesthetic, economic and social heritage and values;

Sustainable Development Advisory Council

The Act makes provision for the establishment of a Sustainable Development Advisory Council with several different functions. In terms of Section 7(a) the council is expected to:

promote co-operation and co-ordination between organs of state, non-governmental organisations, community based organisations, the private sector and funding agencies, on environmental issues relating to sustainable development;

In terms of Section 7(b)(iv) the council must advise the Minister of Lands or any other organ of government on:

land use, land planning, land administration, land development and environmental protection in order to promote and coordinate and ensure environmental, social and economic sustainability;

Listed Projects

The Act contains a schedule of “listed projects” for which an Environmental Clearance Certificate must be acquired before the project may go ahead unless exemption is maintained from the Minister. The Environmental commissioner provided for in the Act will determine whether an Environmental Assessment is required for that project. The schedule of listed projects includes activities such as:

the construction of canals and channels including the diversion of the normal flow of water in a riverbed and water transfer schemes between water catchments and impoundments;

the construction of dams, reservoirs, levees and weirs;

the erection and construction of tourism facilities and associated structures including all wheel drive trails or activities related to tourism that may have a significant effect on the environment;

the erection and construction of veterinary, protected area or game proof and international boundary fences.

The following “Land use planning and development activities” are also included in the schedule:

(a) The rezoning of land from -

- (i) residential use to industrial or commercial use;
- (ii) light industrial use to heavy industrial use;
- (iii) agricultural use to industrial use;

- (iv) use for nature conservation or zoned open space to any other land-use;
- (b) reclamation of land from below or above the high-water mark of the sea or associated inland waters;
- (c) alteration of natural wetland systems;
- (d) any activity entailing a scheduled process referred to in the Atmospheric Pollution Prevention Ordinance, 1976 (Ordinance No. 11 of 1976);
- (e) the establishment of resettlement schemes; and
- (f) the declaration of an area as an aquaculture development zone in terms of section 33 of the Aquaculture Act, 2002 (Act No. 18 of 2002).

5. Implications of policy and legislation for land use planning and management

5.1 Land Use Planning

The above review of policy and legislation shows that a) there is no approved policy or legislation that specifically relates to land use planning b) there is a plethora of sectoral policy and legislation that enables different ministries to promote different types of land use and to engage in informal land use planning, and c) policy and legislation promoting community-based management of natural resources enables (and in some cases requires) local resource management institutions to carry out their own local level planning regarding land use and management. In addition Government officials tend to have the perception that the State is the owner of communal land and can therefore determine what happens on this land. This approach tends to lead to top down decision making without sufficient consultation with land users. There is also a view among many officials that there is a large amount of “unused” communal land that is available for various new types of land use. Further, the lack of strong group tenure over land makes it difficult for communal area residents to control the management and use of the land and to resist government imposed projects and schemes that they may object to.

With regard to State ownership of communal land, the policy and legislation do not support the view that the State is the “owner” of the land and can therefore do what it wants. The National Land Tenure Policy for example, is quite clear on the relationship of the State to communal land. It makes it clear that communal land is vested in the State and the government administers communal land in trust for the benefit of resident communities (MLR 2005). This reflects the legal position contained in the Communal Land Reform Act (GRN 2002). If the State is to administer communal land to the benefit of resident communities, it can be argued that there is a duty of the State to consult those communities regarding the use and management of communal land.

The result of the current policy and legal framework is that land use is developed in an uncoordinated way and sectoral plans are developed and implemented in isolation. A good example of this is seen in the Caprivi Region where plans for small-scale commercial farming by individual farmers on fenced farms have been developed in existing and emerging conservancies and community forests without taking into account the existence of the conservancies and community forests. At the same time there are private sector plans for the development of a crop growing and biofuels scheme on the same areas of land with the permission of the traditional authorities. In Kavango Region small-scale commercial farms have been allocated to individuals on land that is already occupied by people who have lived on the land for many years and which is partially within a community forest. Some of these farms are almost directly adjacent to the

Kaodom Game Reserve and the result is highly likely to be increased human-wildlife conflict and a reduction in the potential for wildlife to be a productive form of land use in this area. These examples of promoting largely incompatible and competing land uses on the same area of land could be avoided if there was a clear land use planning policy and legal framework that promoted integrated and participatory planning, the setting of priorities for land use based on land capability and which established clear processes and mandates for decision-making. At the same time some of the ambiguities regarding authority over communal land resulting from the lack of secure group tenure need to be addressed.

5.2 River Basin Land Use Planning and Management

A foundation exists for the promotion of river basin land use planning and management through provisions in legislation for river basin management committees. This foundation is being strengthened in terms of the draft Water Resources Management Bill. The legislation provides for such committees to control water resources and develop a water resources plan for the basin concerned and to advise the Minister on water resources issues. However, both the Act and the draft Bill only assign *functions* to the basin management committees/institutions and not *powers*. The Minister may delegate powers to the committees/institutions but these are not specified in the legislation. Without powers to enforce plans and to exercise control over water use (i.e. apply and enforce sanctions for non compliance with plans and legislation) it is not clear how effective these basin management committees/institutions will be.

It is not clear from the legislation how river basin management institutions will be able to coordinate the plethora of institutions involved in and responsible for land management (see Section 6 below) and integrate their activities and plans into basin management plans. It is not clear how the basin management institution will enforce the basin management plan given the mandates of other government agencies.

5.3 Transboundary Collaboration

Only the water sector has legislation specifically providing for transboundary cooperation. However in other sectors such as wildlife the MET is actively involved in a number of transboundary conservation initiatives. Policy and legislation do not prevent transboundary collaboration even where there is no specific provision for it. A potential constraint to transboundary collaboration however is the lack of similarity between land and natural resource legislation in Namibia and Angola. A recent review of wildlife and protected area policy and legislation for the Kavango/Zambezi (KAZA) transfrontier conservation area found that there was general synergy between the KAZA countries except for

Angola (Jones 2008). All the countries have a similar policy and legal framework for wildlife and protected area management and although there are differences in approach, all except for Angola have a policy and legal framework for community-based management of wildlife and to a lesser extent forestry. The review concluded that there was sufficient synergy in the policy and legal frameworks of Botswana, Namibia, Zambia and Zimbabwe to enable transboundary collaboration but work needed to be done to modernise the Angolan legislation, much of which was a remnant from the colonial era.

5.4 Biodiversity and Ecosystem Conservation

The impact of the land and natural resource policy and legal framework on biodiversity and ecosystem conservation is mixed. State protected areas for wildlife or forests should, if appropriately managed, contribute to promote conservation of biodiversity and ecosystems. Recognising that often State Protected Areas are not sufficiently large in arid or semi-arid environments to adequately protect biodiversity, conservancies and community forests, if appropriately managed, should also make a contribution on land outside formal protected areas. Biodiversity and ecosystem conservation will be supported particularly where there are well functioning community conserved areas on the boundaries of State protected areas.

However, current land use and management in general in communal areas is not planned or carried out with biodiversity or ecosystem conservation in mind. As indicated above sectoral mandates and agendas lead to uncoordinated land use and land uses that often compete or conflict with others. A more coordinated and integrated approach to land use planning would provide opportunities to prioritise certain areas important for biodiversity and ecosystem conservation or to develop mechanisms such as keeping open corridors for linking protected areas.

5.5 Water use, Management, Supply and Development

Existing legislation provides a foundation for sound water use, management and development and is based to a large extent on a reduction of government subsidies and the “user pays” principle. Policy recognises the need to use water economically and to avoid heavily subsidised irrigation schemes to grow low value produce. However, the notion that regions such as Kavango and Caprivi should be the “breadbaskets” of Namibia still prevails and also tends to drive agricultural developments and water use. Land use planning needs to reinforce and put into practice the existing policies and ensure that appropriate and economic use (that includes environmental costs) is made of water resources.

In addition the community-based management approach to water management in communal areas has run into practical problems (see next sub-section). There is also overlap between the mandates of water point user associations and other local institutions regarding the use and management of communal land. Land use planning in itself will not address these problems but it can help to provide a platform for identification of problems that need to be addressed through other means. It can also be a catalyst for promoting coordination and integration if appropriately carried out.

5.6 Community-based Planning, Management and Development

The review above indicates a strong policy and legal framework for community-based natural resource management (CBNRM), particularly for wildlife, forestry and water. Although the rights provided to conservancies over wildlife are conditional and limited, so far, combined with income from sustainable use of wildlife, the conservation results have been positive. Wildlife numbers have increased in conservancies in the north east and north west of the country, several conservancies set aside land specifically for wildlife and tourism and carry out their own management activities (NACSO 2007). The rights provided to community forests are also conditional, but are wider in scope than for conservancies, including rights to control grazing and other non-timber forest products.

Again, the key problem areas are in ensuring integration and cooperation between the different institutions, particularly as they often operate in the same areas but often at different spatial scales. Thus wildlife might be managed over a larger area of land than forest resources, which in turn might be managed over a larger area than an individual water user association. A large degree of planning that affects land use and management occurs within conservancies and community forests and the extent to which this promotes and ensures integration of different resources varies. There is a need for integration at the local level and “nesting” of management institutions at different scales, but these local plans and management institutions also need to integrate with larger scale spatial planning initiatives and their associated institutions, such as river basin planning, regional development planning, sectoral ministry planning of projects and schemes (e.g small-scale commercial farming), etc.

The capacity and ability of conservancies, community forests and water point user associations varies considerably. Many conservancies have received considerable government and external support. Some of the oldest conservancies are the most advanced in terms of their ability to manage resources, manage income and provide benefits to their members. At the same time though there are governance problems in many conservancies which over time are being addressed (NACSO 2007). Experience also shows that

community institutions go through cyclical stages of institutional stability and instability. Community forests are in their infancy and do not deal with large amounts of income in the same way as conservancies. They are still developing their governance structures and management capabilities. Implementation of water point user associations and their water point committees has been problematic in many areas of the country. An important constraint has been the ability of water users to pay levies for the maintenance of infrastructure and reluctance on behalf of community members to exclude people who do not pay. Zeidler (2006) reports that the inability to contribute a user fee has led to exclusion of some members, the break down and dysfunction of water points as well as further impoverishment of the poor who are forced to sell their livestock in order to pay for water. In Kavango Region in particular it is an advantage to live near the river where water is free compared to living somewhere else where water is delivered from a borehole and in effect has to be paid for. This is perhaps one of the major drivers of settlement patterns for poor people and therefore land use along the Okavango River.

An important issue regarding community-based planning and management of land and resources is the fact that communities receive resource tenure from sectoral ministries but do not have secure group tenure over land as is provided for in the National Land Policy and the draft National Land Tenure Policy. The lack of secure land tenure arguably provides a disincentive for communities to engage in land use planning and sustainable land management as there is often little they can do to exclude outsiders from using their land and resources.

5.7 Sustainable Development

In a nutshell, the policy and legal framework provides both enabling elements for sustainable development and constraints. Considerable progress towards sustainable development could be made if existing policies were applied more rigorously and vigorously. However, this progress would be constrained by the lack of integration of sectoral policies and their implementation. Piecemeal planning and implementation based on sectoral priorities and agendas produces conflicting and competing land uses and projects that are ultimately likely to be unsustainable. On communal land there is still much to be done to address the issues of land tenure. There is a need for secure group tenure that promotes sustainable land management, particularly of grazing lands and brings together community resource rights with community land rights.

6. Role of Regional Government, Traditional Authorities, Line Ministries, Parastatals and other relevant organisations in land use planning and implementation

As a result of the policy and legal framework reviewed above a number of different organisations are involved in land use planning at different levels and in different ways. Also as indicated above, much of this planning and implementation is uncoordinated and sectorally driven. However, attempts are being made within some conservancies and community forests to adopt a more integrated approach to both land planning and management. The following provides a review of the institutional roles of the various organisations involved in land use planning and implementation. The institutional mandates of regional and local organisations are summarised in Table 6.1 and the mandates of National level organisations and Line Ministries are summarised in Table 6.2.

6.1 Regional Councils

The decentralisation policy (GRN 1997b) aims at the eventual full devolution of certain powers and functions of the central government to the regional councils. Among the functions expected to be devolved are management and control of communal land, conservation and forest development and management. The process of devolution is expected to be gradual, but ultimately regional councils will have their own budgets and staff to carry out their devolved functions. The government envisages regional councils deriving revenue from a variety of sources including livestock levies, grazing fees, taxes on commercial farmers and other land users, royalties from natural resources, forest product levies and community water management fees.

The policy does not envisage the development of any state administrative institutions below regional councils except for municipalities and village councils. In order to promote the participation of citizens in rural development a system of development committees has been established:

At the top is the **Regional Development Coordinating Committee (RDCC)** to coordinate effective regional development planning. The committee's functions include facilitating the development of an information management system in the region, preparing and evaluating development proposals for approval by the regional council, supervising and evaluating implementation of plans and proposals and monitoring implementation of projects funded by central government. This body is composed of the Regional Officer (chairperson) heads of departments of line Ministries, two members of each recognised traditional authority in the region (for annual planning purposes only), one member of each local authority in the region and one representative of NGOs and CBOs.

At the next level are the **Constituency Development Committees (CDCs)** which coordinate planning and development at the constituency level. They are among other things, expected to facilitate the development of a community-based management information system in the constituency, identify and address community needs for incorporation into constituency development proposals, prepare development proposals for submission to the regional council, promote community self-help projects, monitor the implementation of development plans approved by the regional council, serve as the communication channel between the regional councils and the people in the constituency and generally monitor projects and activities of government agencies, local authorities, NGOs and CBOs. The constituency development committees are chaired by the regional councillor for the constituency and comprise two members of the recognised traditional authorities in the area, one representative of NGOs, one representative of CBOs, a representative of government service providers, three persons with disabilities representing disabled persons, and two representatives of the youth one of whom shall be female. At least one-third of members of the committee must be female.

The lowest level in rural areas are the **Village Development Committees (VDCs)**. The functions of the VDCs include to facilitate the establishment of a community-based management information system in the area, identify and assess community needs for incorporation into development proposals by the village council and the constituency development committee, promote community self-help projects, serve as a communication channel between the regional council and local people, general monitor the delivery of services in the area and report to the regional council. Village development committees are chaired by the chairperson of the village council and comprise the constituency councillor, one member of the recognised traditional authorities in the area where applicable, one representative of each line ministry in the area where applicable, not more than five members from the community.

In terms of the Regional Councils Act of 1992 the Regional Councils are given a number of powers that relate directly to land use planning. In terms of Section 28 of the Act a regional council shall have the power to undertake development planning with a view to (GRN 1992):

- (i) the physical, social and economic characteristics of such region and, in so far as any neighbouring region has or is likely to have any effect on the physical development of that region, the physical, social and economic characteristics of any such neighbouring region;
- (ii) the distribution, increase and movement and the urbanisation of the population in such region;
- (ii) the natural and other resources and the economic development potential of such region;

- (iv) the existing and the planned infrastructure, such as water, electricity communication networks and transport systems, in such region;
- (v) the general land utilisation pattern;
- (vi) the sensitivity of the natural environment;

These are considerable powers relating to land and physical planning that overlap considerably with the functions and powers of the Ministry of Lands and Resettlement, which views itself as responsible for land use planning within Namibia. Generally the capacity of the regional councils to implement these powers is weak due to a lack of human and financial resources. Few RDCCs meet regularly which leads to missed opportunities for coordination and integration in planning and implementation. The CDCs and VDCs lack the finances to be very effective and their powers are mostly advisory. They do also provide platforms for more local coordination if they meet regularly and draw in representatives from other institutions such as community forests, conservancies, water point committees, farmers' associations etc. The Local Authorities Act of 1992 provides for Village Councils in areas demarcated as villages. Although the Decentralisation Policy provides that VDCs should be chaired by the chair of the Village Council, other links between the two institutions are not clear.

6.2 Traditional Authorities and land allocation²

The Communal Land Reform Act (No. 5 of 2002) formalises the role of Chiefs and Traditional Authorities in the allocation and cancellation of customary land rights and prescribes their role in the allocation of leases on communal land (GRN 2002). In providing for the roles of Chiefs and Traditional Authorities, the Act fails to recognise and give legal expression to the fact that the system of traditional authority is a tiered system with different responsibilities allocated to each tier. The Chief or King is at the top with ultimate jurisdiction over a particular area. The next tier consists of Senior Headmen or Traditional Councillors who are in control of specific districts or sub-divisions of the Chief's area. Each Senior Headman is in charge of a number of village headmen.

It is the village headmen who are responsible for the day-to-day administration of communal land. Rights to arable and residential land are obtained from village headmen, who are also dealing with land and other disputes. Only if a dispute can not be solved at the local level is it referred to a Senior Headman or ultimately to the Chief. Despite their central role in communal land administration, the Communal Land Reform Act does not provide headmen with any legal

² Drawn from material provided by Dr Wolfgang Werner for: ARD. 2008. Millenium Challenge Account Namibia Compact: Phase 1 Social and Environmental Assessments to inform Project Design, Namibia Strategic Environmental Assessment. Associates in Rural Development. Washington.

powers and village headmen are prohibited from receiving any payment for services provided. In some instances headmen have ceased to perform customary land administration functions as a result of the prohibition on payments and where this happens the Communal Land Reform Act is gradually undermining local land administration institutions. This is likely to impact negatively on customary land rights holders.

There appear to be no provisions in the Act that seek to make Kings and Chiefs accountable to their subjects for decisions taken with regard to land. The Communal Land Reform Act thus appears to shift the balance of power away from individuals and households and local authority structures to the Traditional Authority and the Minister. The danger of this situation lies in the fact that ownership at the level of Traditional Authorities could override the rights that exist at lower levels, such as household and individual rights to residential and arable land. This is particularly serious in view of the fact that the content of customary land rights is not spelled out in the Act or its regulations.

This situation may be satisfactory for as long as there is sufficient land available. However, as competition for land increases, ordinary customary land rights holders are likely to become more vulnerable. The designation of communal land for agricultural development, for example, needs the approval of Traditional Authorities. Similarly, Communal Land Boards can only grant rights of leasehold to communal land with the consent of the Traditional Authority concerned. The Act does not oblige Chiefs and Traditional Authorities to consult with their subjects on the designation of land and provides little protection from arbitrary decisions taken by those who wield authority over land allocation and land use.

The Act also provides traditional authorities with powers to manage commonages and impose conditions on the use of communal grazing areas. These include the kinds and numbers of livestock that may be grazed and the section of the area under their jurisdiction which may be grazed, i.e. they may introduce rotational grazing. Should land rights holders not observe these conditions, a Chief or Traditional Authority may cancel their rights. The same sanctions apply if a land right holder engages in the following activities without the written consent of the Traditional Authority and subsequent ratification by the Communal Land Board:

- erects or occupies any building or structure on a commonage
- ploughs or cultivates any portion of the commonage
- obstructs the ways to any watering place on the commonage, or somehow interferes with the use of watering places or damages them
- does something other than lawful grazing on the commonage that prevents or restricts the other residents' rights to grazing (Legal Assistance Centre 2003: 20-21).

Customary land rights may also be cancelled if 'the land is being used predominantly for a purpose not recognised under customary law' (Section 27(1)(b)). In addition, the Regulations empower the Chief, Traditional Authority and/or Communal Land Board to cancel the land rights of a person who utilises land in such a manner that it causes soil erosion. Land rights holders are also compelled to manage their land in accordance with accepted farming practices in the area concerned, but have to comply with provisions of the Soil Conservation Act of 1969 and any requirements of the Ministry of Agriculture, Water and Forestry. But the Regulations do not specify any sanctions for transgressing these general provisions and do not place any authority on either Communal Land Boards or traditional authorities to enforce them (Jones and Kakujaha 2006: 11).

Furthermore, the Operational Manual for Communal Land Boards states that in checking applications for existing or new customary land rights, Traditional Authorities have to ascertain whether the location of the proposed land use is in conformity with the zoning of the area (MLR 2006: 23).

Powers and responsibilities of Chiefs and Traditional Authorities are not limited to the control of land, but also include certain powers to protect access to water. In terms of Regulation 33(2) it is an offence to obstruct approaches to watering places on the commonage or prevent a person from drawing water from or water livestock at such a watering place, for example. These provisions potentially conflict with the powers given under the Water Resources management Act of 2004 to water user associations and water point committees to refuse certain persons access to water and the powers to control the communal land around a water point (see subsection 3.5 above).

6.3 Traditional authorities and sustainable land use

The Traditional Authorities Act 25 of 2000 recognises Traditional Authorities as legal entities. It contains some general provisions regarding use of land and natural resources but does not describe or prescribe how these environmental duties of traditional authorities will be carried out (GRN 2000). In the past under customary law, traditional authorities exercised control over natural resources in various ways. The extent to which this still takes place effectively varies from place to place and region to region.

In terms of the Act, Traditional Authorities should ensure that natural resources are used on a sustainable basis and in a manner that conserves the environment and maintain the ecosystem. The Act requires that Traditional Authorities and their communities should engage in environmental planning to define successes and solutions to environmental issues including any underlying mineral resources (Tjiramba and Odendaal 2005).

In terms of land use practices, Traditional Authorities have the following duties with respect to sustainable land use (Tjiramba and Odendaal 2005: 2)

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

To ensure that the members of his/her traditional community use the natural resources at their disposal on a sustainable basis and in a manner that conserves the environment and maintains the ecosystems for the benefit of all persons of Namibia.

According to Tjiramba and Odendaal (2005) the implications of the Act for land use and management are that:

- a) Traditional authorities must be fully involved in the planning of land use and development for their areas.
- b) They must also be sensitised about sustainable resource management and how this must be implemented within their communities.

In practice Traditional Authorities often allocate the same areas of land for competing purposes. In the examples of competing and overlapping land allocations in Caprivi and Kavango regions given in Subsection 5.1 above, it was the traditional authorities concerned that gave initial approval for the various schemes without taking into consideration the potential conflicts. Given the role that the Traditional Authorities have in land allocation described above, it is crucial that they receive more training in land use planning and in recognising the need to avoid conflicting and competing land uses on the same areas of land or in close proximity.

6.4 Communal Land Boards and land allocation³

The Communal Land Reform Act provides for Communal Land Boards (CLBs) to assist in the administration of communal land. Such boards have been established in all regions with communal areas. The roles and functions of CLBs are as follows (GRN 2002):

- Exercise control over the allocation and cancellation of customary land rights;

³ Drawn from material provided by Dr Wolfgang Werner for: ARD. 2008. Millenium Challenge Account Namibia Compact: Phase 1 Social and Environmental Assessments to inform Project Design, Namibia Strategic Environmental Assessment. Associates in Rural Development. Washington.

- Consider and decide on applications for a right of leasehold;
- Establish and maintain a land register for customary land rights and leasehold rights;
- Advise the minister.

CLBs therefore have no powers to allocate land. This function remains in the hands of traditional authorities. Instead, the central role of Communal Land Boards is to *oversee* and ratify customary land allocations. The Regulations to the Communal Land Reform Act provide criteria that need to be considered when ratifying allocations. These include limitations on the size of land applied for and the numbers of livestock that any lawful resident may graze on communal land. With regard to the former, the regulations stipulate that a livestock owner may not graze more than 300 large stock or 1,800 small stock on the commonage of a communal area. Customary land rights may also not exceed an area of 20 hectares.

The powers of CLBs are equally limited with regard to the development of 'unutilised' communal land for agricultural purposes. Although the Communal Land Reform Act provides CLBs with the powers to survey any area of communal land and cause diagrams and plans to be prepared, this can only happen with the approval of the Minister (Section 41). Their jurisdiction is further curtailed by provisions in the regulations that they may grant leaseholds only to areas not exceeding 50 hectares. Applications for larger areas must be approved by the Minister (Regulation 13). It would therefore appear that CLBs have no jurisdiction with regard to the development of communal land for agricultural purposes. In the case of agricultural land and leaseholds above 50ha the CLBs administer decisions taken about land use at higher political level. They do not have any powers to make such decisions. Further, CLBs do not have the power to plan and control the use of communal land. As indicated above, these powers are located to a large extent with the Regional Council.

In a study of the extent to which CLBs carry out environmentally sound decision-making, Jones and Kakujaha-Matundu (2006) found that the capacity of land boards was weak. There were a number of general constraints to CLBs adequately addressing environmental issues and carrying out sound land use planning:

- Lack of sufficient funding to conduct proper field investigations;
- Lack of information about existing development plans and activities;
- Lack of adequate office facilities, and record keeping systems;
- Lack of education and literacy in English of some members (particularly from Traditional Authorities);
- Many CLB members do not have sufficient understanding of basic environmental principles, of land use planning, land capability and the best economic uses of land given Namibia's environmental constraints;

- Most CLB members lack technical skills such as map reading and interpretation.

Based on the findings of this report a training programme for CLBs was developed to address these and other issues. It would be useful to assess the results of the training programme and identify ongoing support needs of the CLBs with regard to land use planning and environmental issues. As indicated above, the land boards take few direct decisions regarding land allocation, but when ratifying the decisions of traditional authorities and considering lease applications the CLBs should apply sound land use planning and environmental conservation principles.

6.5 Conservancies

Conservancies in the exercise of their rights over wildlife and tourism engage in the development of a number of plans that involve planning for resource and land use. MET expects conservancies to develop their own game management and utilisation plan which sets out how they will use their wildlife and their management activities. Several have expanded this to include spatial planning such as the zoning of areas exclusively for wildlife and tourism in which settlement is not allowed and only emergency grazing may take place. Several conservancies also have tourism development plans that identify key areas suitable for different types of tourism development. More recently MET has encouraged conservancies to develop an Integrated Ecosystem Management (IEM) approach to planning which includes the development of a conservancy vision and management framework, strategies for integrating the management of important resources, zonation maps, and plans for managing specific resources such as wildlife, water, forestry and high value indigenous plants.

The rights and interests of conservancies in terms of land use are protected in the Communal Land Reform Act. Firstly the act provides for conservancies to be represented on land boards, and secondly the land boards may not allocate leases within a conservancy that would defeat the objectives of a conservancy management and utilization plan (GRN, 2002). These provisions do not apply to community forests.

There are currently many different types of conservancy plans with different names and approaches and some of the tourism plans for example are outdated. Some conservancies are better at implementing their plans than others. There is a need to a) update some of the plans; b) rationalise and standardised the plans and c) provide increased support and training to conservancies for using the plans. In addition traditional authorities and land boards need to be more aware of conservancy plans and the importance of consulting them when allocating land and ratifying land allocations.

6.6 Community Forests

Community Forests exercise their rights over forestry products mainly through the implementation of a Forest Management Plan (see subsection 3.4 above). The Community Forest Guidelines which provide the directions for implementing community forests includes an outline of an Integrated Forest Management Plan (DoF 2005). The plan includes:

- A description of the area of the community forest, including a map of the boundaries and details of the number of households and overall population;
- A description of existing forest resources
- A land-use plan for the community forest including a land-use and zonation map
- Schedule of activities by zone
- Management objectives, and trade-offs and/or compatibility of objectives
- Sustainable harvest levels
- Control of resource use
- Grazing management and fire control

As with the IEM Plans of conservancies, the forest management plans provide a platform for the integration and coordination of local land and natural resource planning and use. Such integration is occurring most effectively where conservancies and community forests cooperate well together where they cover the same land area or where they have merged into one management body. There is a need for such integrated bodies to carry this cooperation further by developing institutional links with water user associations and water point committees.

Table 6.1 Institutional Mandates of Regional and Local Institutions for land use planning and land management

Institution & parent ministry	Level of responsibility	Membership	Powers/Management activities	Status
Communal Land boards (MLR)	Regional	Appointees, including CBO reps.	Ratify land allocations by traditional authorities. Final approval of leases over land for commercial activities	Established in all regions
Regional Councils (MRLGHRD)	Regional	Elected politicians	Existing: Development planning, land use planning. Planned: Take over of many central govt. functions	Established. No revenue raising powers as yet
Regional Development Coordinating Committee (MRLGHRD)	Regional	Regional Officer, Govt. officials, reps. of traditional leaders, NGOs, & CBOs	Co-ordinate regional development planning, advisory functions	Established, some functioning regularly
Constituency Development Committee (MRLGHRD)	Constituency (smaller than region, larger than community)	Regional Councillor, traditional leaders, Govt. officials, reps. of NGOs, & CBOs	Co-ordinate constituency development planning, no revenue raising powers, advisory functions	Established, some functioning regularly
Village Development Committee (MRLGHRD)	Village	Chair of Village Council, constituency councillor, TA representative, line ministry representatives, community representatives	Coordinate local village development planning, no revenue raising powers, advisory functions	Established, some functioning regularly
Village Council (MRLGHRD)	Demarcated Village Areas	Elected councillors	Management of village area and provision of basic services. May charge fees for services.	Established
Basin Management Committee (MAWF)	River basin catchment areas	Appointed representatives of stakeholders	Planning and management of use of water resources	Some pilot committees established
Community Forest	Community	Community reps.	Development of	13 registered

Body (MAWF)			Forest Management and Land Use Plans; Management of natural resources in local forest	
Communal Area Conservancies (MET)	Community	Local residents with elected committee	Wildlife & tourism planning and management, zonation of use areas	53 gazetted, several more being established
Rural Water Use Associations/ Committees (MAWF)	Community	Local residents/water users with elected committee	Water point mgt. and maintenance, community must raise funds itself; control of communal land around the water point.	Many committees established, but lack capacity
Traditional Authorities (MRLGHRD)	Varies from overall Chief to local headmen and councillors	Elected/appointed through customary law & ratified by Govt.	Undefined responsibility for NRM. Land allocation by Customary Grant and endorse lease allocations.	Powers & legitimacy stronger in some regions than others
Farmers' associations/ unions	Community	Elected officers representing local livestock farmers	Represent interests of local livestock farmers	Many established and affiliated to Namibia National Farmers' Union

(Adapted from Blackie and Tarr 1999)

6.7 Line Ministries

A number of Line Ministries are involved in different ways in some form of land use planning and land management. Table 6.2 provides a summary of the various institutional mandates and roles of these Ministries as well as other National Level organisations.

Table 6.2. Institutional Mandates of Line Ministries and National Level Institutions for land use planning and land management

Institution	Land use planning	Land management
OKACOM	Development of an Integrated Management Plan for the Okavango Basin	Coordinate regional water resources development
Sustainable Development Advisory Council (planned under Environmental Management Act)	<p>Advise the Minister of Lands or any other organ of government on land use, land planning, land administration, land development and environmental protection in order to promote and coordinate and ensure environmental, social and economic sustainability;</p> <p>Promote co-operation and co-ordination between organs of state, non-governmental organisations, community based organisations, the private sector and funding agencies, on environmental issues relating to sustainable development;</p>	
Land Use and Environmental Boards (provided for by National Land Policy but not implemented)	Ensure that land use planning, land administration, land development and environmental protection are promoted and coordinated on a national and regional basis to guarantee environmental, social and economic stability	
Ministry of Lands & Resettlement	Assess the suitability of the land, incorporating farmers' needs and aspirations and putting conservation measures into place through development of Regional Integrated Land Use Plans.	<p>Create conditions for optimal land use in agriculture, shelter, conservancies and reserves; ensure land is efficiently managed and responsibly used.</p> <p>Promotion and development of small-scale commercial farms on communal land.</p>

	Approval of commercial leases for areas of more than 50ha	
Ministry of Agriculture, Water and Forestry	Promotion, development, approval of agricultural (including irrigation) schemes Proclamation and planning of State Forest Areas. Support to community forests and development of Forest Management Plans	Support and extension to farmers and agricultural schemes. Management of State Forest Areas and regulation of use of forest produce outside of protected areas. Support to management of community forests including fire management
Ministry of Regional & Local Government & Housing & Rural Development	Support to Regional Councils, and Local Authorities in development planning	
Ministry of Environment & Tourism	Proclamation and planning of protected areas	Management of protected areas and promotion of links with neighbouring communities. Regulation of wildlife and tourism outside protected areas. Support to wildlife and tourism management in conservancies.

6.8 Green Scheme and Namibia Development Corporation

The Green Scheme is an initiative of the Ministry of Agriculture, Water and Forestry (MAWF) to encourage the development of irrigation-based agronomic production with the aim of increasing the contribution of agriculture to GDP, uplifting local communities and promoting the human resources and skills development within the irrigation sub-sector to possibly enhance cross-border investment and the exchange of resources with neighbouring countries (MAWF undated).

The scheme works through enabling a commercial irrigation farming enterprise to be established on communal land in areas optimally suited for irrigated farming. In return for access to land and various incentives (including financial) the farmer has to facilitate the transfer of skills and capacity to a number of small-scale irrigation farmers on land equal to the size of the commercial unit. The farmer also has to provide certain agricultural support services to the small-scale irrigation farmers on a cost recovery basis. The commercial farmer is also encouraged to initiate a profit sharing scheme with the local community to account for the opportunity costs of the land being released for the enterprise. The overall scheme is administered by the parastatal Green Scheme Agency.

The Namibia Development Corporation (NDC) supports a number of irrigated farming schemes along the Okavango River which were started by the former First National Development Corporation with the aim of producing crops and vegetables for local markets and training local people in agricultural skills.

6.9 Key issues

The results of this review of institutional mandates for land use planning and land management mirror the findings resulting from the review of land and natural resource policy and legislation: There is a plethora of institutions with overlapping mandates and responsibilities, which leads to duplication, confusion and a lack of implementation. In a review of the policy and institutional framework for integrated sustainable land management Zeidler (2006) drew the following conclusions:

- The biggest challenge to integrated and sustainable land use management is perhaps posed by the universal tendency amongst all government sectors to replicate their sectorally segregated structures and approaches down at the regional and local levels;
- There is a worrying absence of coordination, merger or consolidation of what are obviously complimentary and at times overlapping responsibilities of these many statutory bodies;
- These bodies are planted on top of and supersede pre-existing social arrangements and traditional authorities;
- Little consideration seems to have been given to the relations of such bodies to each other within sectors and across the sectoral divide;
- Many government officials manning regional offices and the people serving on new structures such as CLB's, VDCs and others have little understanding of their roles, duties and responsibilities while many misinterpret their roles and functions.

Overall Zeidler found that “a confusing sequence of vertical roles, functions, interrelations and lines of accountability emerges from the creation of many sectoral as well as multidisciplinary statutory bodies and organs especially around natural resource use, management and regulation. Such jumbled institutional arrangements do not only lead to possible overlaps and duplications of duties, it also creates uncertainties amongst those serving on the institutions as to their mandates and remits. Inability amongst members of new statutory structures to read and understand policy and legal provisions governing their roles added to an absence of training and capacity building, creates a lot of uncertainties amongst such members concerning their roles, powers and functions. Moreover, questions about the relationship of new structures to other institutions and jurisdiction remain unresolved. Such uncertainties give rise to shifting of responsibilities and failure to act in implementing mandates” (Zeidler 2006:49).

Unfortunately this negative analysis remains valid three years on. The next section summarises the main gaps and constraints in the policy, legal and institutional frameworks, and then considers positive aspects that can be built upon to improve land use planning and management that would support the development of a Regional Land Use Plan for Kavango.

7. Identification of Gaps and Constraints and Recommendations for addressing these

7.1 Policy Framework

In terms of content and direction, Namibia has a sound policy framework for land and resource management. Since Independence in 1990, there is a consistent thread woven through new policies and legislation that recognises a) the need for sustainable use and management of the land, b) the need to take environmental issues into account in land use and c) the need to devolve decision-making and management authority to the land and resource users. The need for some form of tenure reform on communal land is also recognised in such diverse policies as the National Agricultural Policy and the National Drought Policy. The National Land Policy and the draft National Land Tenure Policy contain proposals that begin to address the problems of lack of secure group tenure on communal land.

There are four main gaps in the policy framework relating to land use planning and land management. One is the lack of an existing approved Land Use Planning Policy, the second is the lack of control and authority over common grazing lands, the third (related strongly to the second) is the lack of clarity on group tenure over communal land and the fourth is the lack of a common national policy on community-based natural resource management (CBNRM).

Land Use Planning Policy

As described in sub-section 2.2, the absence of a structured planning system in general and a land use planning system in specific hampers the required integration of sectors and other stakeholders in planning efforts. This is resulting in conflicting land uses especially with regards to conservation, mining and farming or other agricultural land uses in different parts of the country. Regulations on responsibilities and strategies for coordinated land use planning and its linkage to other planning efforts such as sector planning and development planning are required.

A land use planning system is one the most sophisticated form of economic, social and environmental regulations. "Land Use Planning" is considered as a tool for the systematic creation and implementation of a regulatory framework for the sustainable use and development of land in the planning area. A National Land Use Planning Policy determines how the use and protection of land and natural resources on the land are being planned and how the plans are being implemented. It defines also regulatory methods and responsibilities. Land Use Planning Policies can be developed for all levels of government: national, regional, local.

The formulation of a Land Use Planning Policy is relevant in the overall aim of securing the productivity of land as a natural resource. An appropriate Land Use Planning Policy regulates the planning procedure, defines responsibilities for the planning and implementation process and fosters sector integration and civic participation. It concerns also the quality and extent of planning the use of land resources.

Clear land use regulations are advocated in a policy and can include zoning, differential taxation and land use legislation. Zoning is commonly used to regulate land uses. Differential taxation is used by governments to keep prime land under agricultural production and land use laws are the tool used by states to protect fragile areas.

Experiences show that the formulation of a National Land Use Planning Policy is a task which has to involve all sectors, organizations and stakeholders who are involved in any kind of planning. Ideally, the formulation of such a policy needs to be coordinated by a multi-sectoral body or group, which will be appointed accordingly.

The first step in formulating a Land Use Planning Policy should be the definition of the objectives of the policy. Generally, major objectives of a Land Use Planning Policy should aim at defining the planning system and hierarchies as well as purpose and contents of land use plans.

Given the importance of land use planning, it should be a priority of the Ministry of Lands and Resettlement to initiate and coordinate the formulation of a Land Use Planning Policy, in accordance with its mandate.

Control over common grazing lands and group land tenure

Although the National Agriculture Policy recognises the need for management and control of communal grazing lands and tenure reform on communal land, the policy itself does not address these issues. At the time it was written, it was assumed that they would be appropriately addressed by the Communal Land Reform Act. However, the Act itself does not adequately deal with control of common grazing land nor does it provide specifically for group tenure over communal land. The National Land Policy describes categories of land rights holders and includes 'legally constituted bodies and institutions to exercise joint ownership rights'. Combined with the provisions for leasehold in the Communal Land Reform Act the possibility would therefore seem open for legally constituted bodies such as conservancies or community forests or a community land trust to apply for leasehold over communal land. Such an approach would clearly strengthen community rights over the land not only *vis a vis* outsiders wishing to use their resources but also *vis a vis* the State and private sector.

However, the draft National land Tenure Policy seems to take a more narrow view of how group tenure over communal land can be applied. It seems to confine this option to registered and demarcated “villages”. There are a number of problems with this approach. One is that in the arid parts of the country in the north west, people are not concentrated in close knit villages, but are mostly scattered across the landscape in small settlements more akin to cattle posts than villages. Further, in many parts of the country neither households nor villages remain for long in exactly the same place. In the north west there is considerable movement of pastoralists looking for grazing and in the north east people move to find more fertile land for crop growing. Although more sedentary than in the past, San people in the Tsumkwe District and in the Bwabwata National Park often move their settlements.

Another problem is the definition of the area of the village. The draft policy envisages that the boundaries of each village will be defined and demarcated. Experience with conservancies and community forests indicates that once communities are asked to define their boundaries this often opens up existing but relatively dormant land disputes. Often such disputes are in abeyance because there have been few recent causes for conflict, but defining a boundary linked to legal rights over land or resources provides a new cause for conflict and stimulates people to re-state their claims. There are many more villages than conservancies and community forests and it is highly likely that there will be many boundary disputes between villages that will take a long time to settle.

A further problem is that many villages or communities have areas of land that are not necessarily settled or permanently used, but are viewed as part of the community land available for seasonal or emergency grazing areas in times of drought or for further expansion of crop fields in future. In addition, particularly in the north west and north central, land often has multiple uses and multiple users who are not necessarily permanently resident on the land and who do not necessarily claim ownership of the land but shared rights of use and access. It is necessary to recognise these multiple access rights in any tenure reform proposals.

These issues suggest that the issues of scale and recognising multiple access rights to land in some circumstances are important and that there needs to be considerable flexibility in the application of the definition of a village and its area of land. Further there should be sufficient flexibility in the approach for clusters of villages or a larger community than one village to combine to claim tenure rights. Such flexibility would enable community forests and conservancies to gain land rights through this approach. Using existing conservancies and community forests would be a way of addressing some of the issues raised above. It would also serve to bring together communal land rights with already devolved rights over forests, wildlife and tourism over the same areas of land. Making provision for villages or several small settlements to cluster into community land trusts

where there are no conservancies or community forests would be an additional option.

National CBNRM Policy

The policy of devolving management rights over resources to communities of resource users has been accepted throughout the natural resource sector in Namibia and has been endorsed by Cabinet (see Section 3). There are community-based management programmes for forestry, wildlife, tourism, and water, and inland fisheries legislation provides for some limited community involvement in management. The existence of such sectoral policies and programmes need not be a problem in itself (see discussion in 7.2 below). However it would be useful for the various sectors to cooperate to develop an overall national CBNRM policy which would provide an umbrella approach. Such a policy could contain a common vision for CBNRM, common CBNRM principles across the resources and sectors, and common strategies for CBNRM implementation. There could be a strong focus on cooperation and coordination between the sectors which could help address some of the issues discussed in the next subsection.

7.2 Policy Implementation

Even if the policy gaps mentioned above were not addressed, the Namibian policy and legal framework still provides a sound foundation for sustainable land and resource management. The implementation results from conservancies and some community forests indicate that CBNRM is an appropriate approach at local level. There is sufficient recognition in the framework of the need for appropriate land use planning and of the need for environmental sustainability to be taken into account in development and land use planning. The main constraints to effective land use planning and land management lie not so much in the policy and legal framework itself, but in the means and manner of implementation. There are two key issues:

- 3) Insufficient integration and coordination of planning and implementation of projects and programmes
- 4) Inappropriate decision-making

Integration and coordination

Attention has been focused in this review and others (e.g. Zeidler 2006) on the plethora of policies, laws and institutions that affect land use and land management. This situation has led to the planning of land use schemes and programmes based on sectoral agendas and priorities and has resulted in

competing and conflicting land uses being planned for the same areas. There is a clear need to provide more overall coordination and integration in planning and implementation of policy and legislation. This coordination and integration needs to take place at different levels: national, regional and local.

At the national level two things are required to ensure that the appropriate levels of coordination and integration are achieved. One is the political will to break out of the existing sectoral boundaries and pursue the principle of promoting optimal use of the land according to its capabilities and according to environmental, social and economic sustainability. The second is the creation of an appropriate institutional framework that can bring together the various institutions involved in order to promote this principle.

The existing policy and legal framework already makes provision for national level coordinating institutions. The National Land Policy provides for Land Use and Environmental Boards (LUEBs) and for Inter-ministerial Standing Committees on Land Use Planning (IMSCCLUPs) for urban and rural areas (see sub-section 2.3). The Environmental Management Act provides for a Sustainable Development Advisory Council that would also advise government on land use planning issues. Although there would appear to be overlap in their functions there are ways in which these coordinating institutions could interact and form a useful link across sectors and administrative levels. The Sustainable Development Advisory Council should form the overall national high level institution for ensuring coordination and integration. This should be supported by the two IMSCCLUPs, which should meet more regularly and provide a platform for all relevant sectors and agencies to discuss programmes and projects and plan coordination of implementation. The IMSCCLUPs should be supported at the regional level by the LUEBs which should be responsible for regional level coordination. The LUEBs should bring together all relevant regional agencies and organisations including representatives of institutions that operate at a more local level such as river basin management institutions, conservancies, community forests, CDCs and VDCs, etc.

At the local level there is a need for greater coordination and integration of the existing land and resource management institutions. Again sectoral priorities have led to unnecessary overlaps and duplications. Thus in the past in some areas community forests have been established within conservancies with little integration or in some cases part of a community forest, but not all, falls within a conservancy. Initially there were few attempts to formally link community forests, conservancies and water user associations even where they all operate on the same land. This situation has been changing to some extent with the wildlife and forestry sectors cooperating to assist conservancies and community forests to merge in some cases and in others for one community to gain status as a conservancy and community forest simultaneously. However, at the local level this still leaves the need for cooperation between conservancies/community

forests and other institutions such as water user associations, village development committees and village councils.

There are different ways in which greater local level coordination and integration can be achieved. One is for more integration of conservancies and community forests to take place. Another is for existing community forests and conservancies to proactively engage with other institutions such as VDCs, village councils, and water point user associations and committees. The planning processes used to develop community forest management plans and conservancy plans are opportunities for drawing in other agencies and institutions, identifying links and synergies, and assigning them roles in planning and management activities.

Another platform for integrated planning at community level is the Forum for Integrated Resource Management (FIRM). The FIRM approach was initiated in 1996 by the Directorate of Environmental Affairs in MET in partnership with a number of other organisations to coordinate the support being provided by different government departments, NGOs and projects to the #Khoadi //hoas Conservancy and Grootberg Farmers' Union (GFU). The aim was to assist the community in identifying its own development objectives and a programme of action and then coordinate the activities of service providers through collaborative action in support of the community vision and action plan. A system evolved where detailed annual work plans were developed at the start of the year jointly by the GFU and the conservancy; service providers would attend a meeting to indicate where they could assist; and additional meetings were held during the year to assess progress and adjust work plans if needed (Kruger *et al* 2003). The approach has subsequently been adopted in several other parts of the country. In adapted form this approach could provide an important mechanism for supporting local level integrated land and resource use planning and implementation.

Inappropriate decision-making

Although sectoral policy documents recognise the constraints to land management imposed by Namibia's climate and soils, the implementation of the policies often ignores these parameters. Assumptions are made that certain forms of land use are appropriate without sufficient technical consideration of the land capability. In other cases decisions are taken without sufficient information or based on political rather than technical considerations. Inappropriate decision-making of this nature takes place at all three levels: national, regional and local.

Also, as suggested by Zeidler (2006) one of the causes of inappropriate decision making is a lack of understanding of policies and legislation and the roles of different agencies. These constraints could be addressed through a targeted training programme similar to that provided for Communal Land Boards

regarding environmental issues and sustainable land management. Such a programme should be directed at institutions and agencies at all levels. It should emphasise the need to consider environmental constraints and land capability in development and land use planning and should focus on the key aspects of existing policy and legislation along with institutional roles and responsibilities.

The establishment of an interlinked set of institutions at different levels responsible for land use planning coordination and integration as suggested above, would also provide appropriate platforms for the dissemination of information necessary for coordinated planning.

7.3 Main recommendations

The main recommendations of this report are as follows:

Policy and legal framework

- 4) Develop a national Land Use Planning Policy that incorporates guidelines for land use planning and promotes integrated and coordinated planning based on generic principles rather than sectoral agendas and priorities;
- 5) Further develop and clarify proposals for provision of secure group tenure over communal land that are sufficiently flexible to cater for the different conditions in different parts of the country and which take into account existing land management institutions such as community forests and conservancies. Such tenure arrangements should clearly enable local management and control of common grazing lands;
- 6) Develop a national CBNRM policy that provides an overall vision, set of objectives, set of common principles and common strategies across the different sectors. This policy should emphasise the need for coordination and integration of approaches and set out ways of achieving this.

Policy Implementation

- 6) As soon as possible establish the Sustainable Development Advisory Council to act as a high level inter-ministerial forum for coordination and integration on land use planning and land management.
- 7) As soon as possible establish Inter-ministerial Standing Committees on Land Use Planning (urban and rural) at Director level in order to provide coordination and integration and forums for sharing information about plans projects and programmes. These committees should report to the sustainable Development Advisory Council.
- 8) As soon as possible establish Land Use and Environmental Boards (LUEBs) at regional level. These bodies should bring together all regional

- agencies and institutions involved in land use and management. They should report to the relevant IMSCLUPs.
- 9) Promote the use of conservancy and community forest planning processes and the FIRM approach as mechanisms to identify other local level agencies and institutions that must be involved and to involve them in the planning process, also assigning them implementation roles and responsibilities.
 - 10) Develop a training programme for institutions and agencies at all levels that a) focuses on the key aspects of land management policy and legislation; b) focuses on the roles and responsibilities of agencies and institutions; c) emphasises the environmental constraints to land management in Namibia, d) emphasises the need for land capability to be assessed, e) emphasises the need for economic, social and environmental sustainability to be assessed; and f) assists in the development of data bases and data storage and retrieval systems appropriate for each level. The impacts of the training programme on environmental and sustainability issues for CLBs should be evaluated and if appropriate repeated and also adapted and extended to other institutions.

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ANNEX 1

TERMS OF REFERENCE

Prepare a concise report that reviews current policy and legislation on land use planning in Namibia, at local, regional, national and transboundary levels and links between them. The report should draw out the emphasis and direction that the policy and legislation is intending. It should identify the strengths and weaknesses and highlight any gaps.

The review should specifically look at policy and legislative implications for (a) river basin land use planning and management, (b) transboundary collaboration, (c) biodiversity and ecosystem conservation, (d) water use, management, supply and development (e) community-based planning, management and development, (e) sustainable development generally, and (f) the role of regional government, traditional authorities, line ministries, parastatals and other relevant organisations in land use planning and implementation. This work should be undertaken in close collaboration with the Ministry of Lands & Resettlement, and these TOR should be discussed with the contact person in the MLR and amended as necessary.