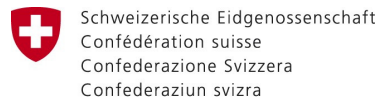


Legislation and Policies relating to Protected Areas, Wildlife Conservation, and Community Rights to Natural Resources in countries being partner in the Kavango Zambezi Transfrontier Conservation Area

FINAL REPORT

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Frequently used acronyms

CBNRM	Community-based Natural Resource Management
CBO	Community Based Organisation
CHA	Controlled Hunting Area (Botswana)
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CRB	Community Resources Board (Zambia)
DNPWLM	Department of National Parks and Wild Life Management (Zimbabwe)
DWNP	Department of Wildlife and National Parks (Botswana)
EIA	Environmental Impact Assessment
GMA	Game Management Area (Zambia)
HWC	Human Wildlife Conflict
IDF	Forestry Development Institute (Angola)
JFMA	Joint Forestry Management Area (Zambia)
KAZA	Kavango-Zambezi
MET	Ministry of Environment and Tourism (Namibia)
MEWT	Ministry of Environment, Wildlife and Tourism (Botswana)
MOU	Memorandum of Understanding
NGO	Non-governmental Organisation
PA	Protected Area
RALE	Representative and Accountable Legal Entity (Botswana)
RDC	Rural District Council (Zimbabwe)
TAC	Technical Advisory Committee (Botswana)
TFCA	Transfrontier Conservation Area
TOR	Terms of Reference
WMA	Wildlife Management Area (Botswana)
ZAWA	Zambia Wildlife Authority

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Executive Summary

This report has been commissioned in order to provide a foundation for the Kavango-Zambezi (KAZA) Transfrontier Conservation Area (TFCA) countries to consider policy and legal harmonisation regarding the management of natural resources. The KAZA participating countries are Angola, Botswana, Namibia, Zambia and Zimbabwe. The report provides a summary of the key policy and legislation of each country with a main focus on protected areas, wildlife conservation and community rights to natural resources. The report then analyses the policy and legislation in terms of the extent to which they enable or hinder achievement of the main objectives of the KAZA TFCA. It then makes recommendations for policy harmonisation in order to promote greater transboundary harmonisation regarding protected area and natural resource management and community benefits associated with such natural resources. The following is a summary of the main conclusions and recommendations of the report:

- (1) Wildlife and natural resource management
 - a) There is an enabling policy and legal framework already in place within Botswana, Namibia, Zambia and Zimbabwe that can facilitate cooperation in wildlife and natural resource management.
 - b) The vast majority of collaborative activities can be carried out jointly through developing common management goals and objectives and developing implementation from the ground up and through technical cooperation between the relevant country authorities. This can largely be achieved through the development of a management plan for KAZA and through technical working groups on specific issues.
 - c) Policy and wildlife legislation in Botswana, Namibia, Zambia and Zimbabwe enable these countries to address the problem of over population of elephants within KAZA. In order to address this issue though, the KAZA countries need to develop a common elephant management strategy that is based on a range of management strategies including sustainable use of elephants to provide community benefits. This would be helped by harmonising the status of elephants in the KAZA area by down listing Zambia's elephants from CITES Appendix I to appendix II.

- (2) Protected areas
 - a) Although each country has different designations of parks and reserves this does not constitute a major constraint to enabling cooperation within KAZA.
 - b) Protected areas form a large part of the land area of KAZA and these areas are secure in legislation and can supply neighbouring community-managed areas with wildlife for economic use.
 - c) The focus regarding protected areas should be to develop common approaches to management issues such as vegetation destruction elephants, disease control, illegal hunting, tourism control, etc and improving staff capacity, equipment and infrastructure within parks.
 - d) The role of forest reserves needs to be recognised as contributing to wildlife and habitat conservation within KAZA and to potentially providing additional benefits

to local communities. Forest authorities need to be fully integrated into the planning and implementation of KAZA.

(3) Community access to resources

- a) Botswana, Namibia, Zambia and Zimbabwe all have policies and/or legislation that makes provision for community access to and benefit from the use of natural resources, particularly wildlife.
- b) The access rights and rights to benefit are different in each country as a result of historical factors, particularly each country's political context.
- c) The existence of these use rights and community institutions to exercise them provides a foundation for community involvement in KAZA planning and management and for communities to benefit from wildlife conservation and tourism and to a lesser extent from commercial use of forest products.
- d) However, the ability of communities to play a meaningful role in KAZA would be strengthened by the provision of stronger tenure over land and resources, placing communities on a more equal footing with government in terms of the power and legitimacy to negotiate community interests.
- e) Further, increasing community land and resource rights would provide stronger incentives for communities to engage in the KAZA process and to commit themselves to the conservation objectives of the TFCA.
- f) Communities need to be able to retain the income from wildlife and tourism and use it at their own discretion, their use rights should be protected in legislation. They should be able to take basic management decisions about wildlife on their land including when and how to harvest and how much.
- g) Greater attention should be given to extending rights over forest resources to communities so that they can actively engage in forest management and in the sustainable commercial use of forest products.

(4) Angola

- a) Angolan policy and legislation requires harmonisation with that of Botswana, Namibia, Zambia and Zimbabwe.
- b) Major areas to focus on are:
 - promoting sustainable use of wildlife in areas outside protected areas;
 - providing for community involvement in protected area management;
 - devolving rights over wildlife and forests to land holders including local communities; and
 - enabling private sector engagement in the tourism industry.

1. Introduction

The governments of Angola, Botswana, Namibia, Zambia and Zimbabwe are pursuing the establishment of a Transfrontier Conservation Area (TFCA) called the Kavango-Zambezi TFCA, also known as the KAZA TFCA. The vision they share is *“to establish a world-class transfrontier conservation area and tourism destination in the Okavango and Zambezi river basin regions within the context of sustainable development”*.

In December 2006 the governments of the five countries signed a memorandum of understanding (MOU) regarding the establishment of the KAZA TFCA. The MOU commits the governments to (KAZA 2006):

- a) ensure co-operation at the national level among governmental authorities, communities, non-governmental organisations and the private sector;
- b) co-operate to develop common approaches to natural resources management and tourism development and;
- c) collaborate to achieve the objectives of relevant international agreements to which they are party.

Further, the MOU states that the objectives of the KAZA TFCA are to:

- (i) foster trans-national collaboration and co-operation among Member States in implementing ecosystems and cultural resources management through the establishment and development of the TFCA;
- (ii) promote alliances in the management of biological and cultural resources and encourage social, economic and other partnerships among the Member States and the stakeholders;
- (iii) enhance ecosystem integrity and natural ecological processes by harmonising natural resources management approaches and tourism development across international boundaries;
- (iv) develop mechanisms and strategies for local communities to participate meaningfully in, and tangibly benefit from the TFCA;
- (v) promote cross-border tourism as a means of fostering regional socio-economic development.

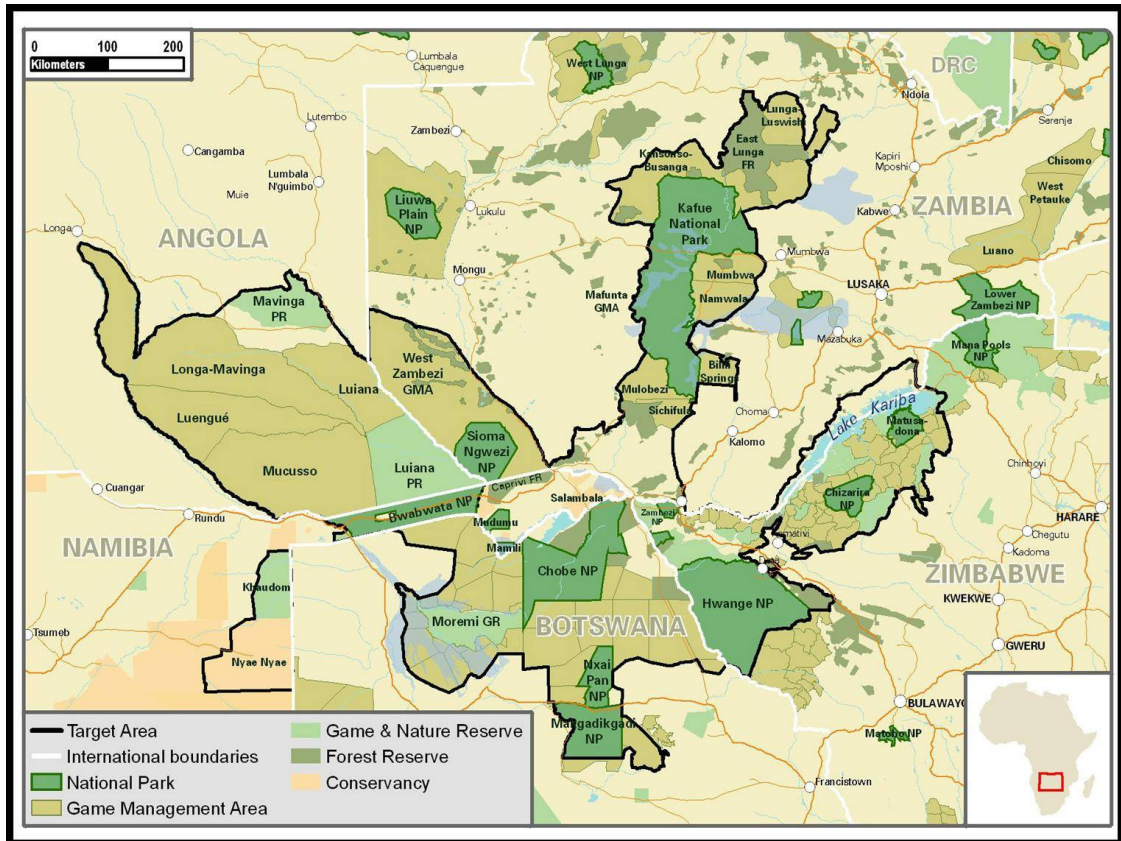
In order to achieve the envisaged collaboration between the five countries over natural resources management and tourism development there needs to be sufficient similarity in approach to these issues. This is recognised in the statements above from the MOU that commit the governments to cooperation in developing common approaches to conservation and tourism within KAZA. Clearly in order to develop common approaches, the five countries need to have a high degree of compatibility in their policies and legislation regarding natural resource management and tourism development. Griffin *et al* (1999) suggest that

developing an enabling policy and legal environment is one of the vital steps in the TFCA process and that individual countries need to harmonise their policy and legislative provisions on key issues. The importance of such harmonisation has been recognised by the KAZA countries. In July 2003, the Ministers of the participating countries signed an agreement which set out the key elements of the KAZA programme including the “Adjustment of policy and legal frameworks as required”. The final report of the KAZA pre-feasibility study also recognises the need for policy harmonisation: “Partner countries have recognized that to realize these aims it is essential to secure the voluntary participation of local communities, and the wise use of the region’s diverse natural resources base. This will only be realized by harmonizing the policies, strategies and practices of conserving and managing the resources that the five countries share” (Transfrontier Conservation Consortium 2006:11).

This report has been commissioned by Conservation International (CI) and African Wildlife Foundation (AWF) with support from the Swiss Agency for Development and Cooperation (SDC) in order to provide a foundation for the KAZA countries to consider policy and legal harmonisation regarding the management of natural resources. It provides a summary of the key policy and legislation of each country with a main focus on protected areas, wildlife conservation and community rights to natural resources as required by the Terms of Reference (TOR). Land policy and legislation are also considered where appropriate as these often provide the underlying policy and legal foundation for community rights over land and resources. Within the KAZA area there are a number of forest areas which also provide important habitat for wildlife and form part of the protected area network within the KAZA TFCA. Further, community forests have been established in some countries and these represent new management regimes for forest resources and also provide habitat for wildlife. Where appropriate and where information could be accessed, the report also considers forestry policy and legislation. As tourism forms an important part of the income generation opportunities within the TFCA, particularly for local communities, some attention is also given to tourism policy legislation where information could be accessed.

The report then analyses the policy and legislation in terms of perceived shortfalls which hinder transfrontier conservation, areas of complementarity which support transfrontier conservation and areas of policy and legislation which conflict with each other. Finally the report provides recommendations for amendments to policy and legislation and identifies areas where new policy and legislation need to be developed in order to promote greater transboundary harmonisation regarding protected area and natural resource management and community benefits associated with such natural resources. The full terms of reference are contained in Annex 1.

This review was carried out as a desk study using the original policy documents and legislation where these were accessible. In some cases use has been made of existing reviews of country legislation and these have been clearly acknowledged in the text. For the Angolan policy and legislation a separate review was commissioned and material edited and incorporated into this report.



Map 1. The KAZA TFCA (source KAZA Secretariat 2008)

2. KAZA Country Policy and Legislation on protected areas, wildlife conservation and community rights to natural resources

2.1 ANGOLA²

Angola inherited a great deal of environmental legislation (acts and decrees) and decisions, or orders (e.g. on the the establishment of protected areas) from the colonial era and its environmental legislation remained outdated until the mid-1990s, when new legislation started to be developed, adopted and enforced. Some of the colonial statutes, however, are still in place while others have been reviewed, amended, revoked or repealed.

The foundation for environmental regulation in Angola is the **Environment Framework Act (No. 5/98 of 19 June 1998)**, which draws on articles 12 and 24 of the **Angolan Constitutional Law (No. 23/92 of 16 September 1992)**³. Article 12 of the Constitutional Law states, among other things, that the State shall promote the protection and conservation of natural resources by guiding the exploitation and use thereof for the benefit of the community as a whole. Two important provisions of Article 24 are the following:

- The State shall take the requisite measures to protect the environment and national species of flora and fauna throughout the national territory and maintain ecological balance.
- Acts that damage or directly or indirectly jeopardize conservation of the environment shall be punishable by law.

Currently, the Environment Framework Act is administered by the Ministry of Urban Affairs and Environment (established at the end of 2002). The Environment Framework Act defines the concepts and the general and specific principles of protection, preservation and conservation of the environment, the promotion of the quality of life and the national use of natural resources by guiding their exploitation and the development initiatives which benefit all Angolans.

The specific principles for environmental protection, preservation and conservation include, among other things, recognition of the right to environmental education and training; participation in environmental decision-making and management; precautionary principles; environmental balance towards achieving sustainable development; and the protection and preservation of natural resources, including national genetic resources.

² This section on Angola is drawn from a review of relevant Angolan legislation prepared specifically for this report by Vladimir Russo (Russo, 2007).

³ Governo de Angola (1994) and <http://www.angola.org>

Apart from the legislation mentioned above, the Ministry of Urban Affairs and Environment has also been working towards the establishment of two important institutes, namely the Instituto Nacional de Promoção Ambiental (National Institute for Environmental Promotion) and the Instituto Nacional de Conservação da Natureza (National Institute for Nature Conservation)⁴.

Under current institutional arrangements, protected areas are administered by the Ministry of Agriculture and Rural Development although there are plans for responsibility for protected areas to be transferred to the Ministry of Urban Affairs and Environment.

Policy

The Environmental Framework Act (Ministério das Pescas e Ambiente 1999a) stipulates, in its articles 3/3 and 6, that the State should be responsible for the development and implementation of a **National Environmental Management Plan** (Plano Nacional de Gestão Ambiental – PNGA). This plan, which is still a draft, is seen as an important instrument guided by the principles of sustainable development. The draft plan gives emphasis to the need to implement an **Environmental Management Strategy** (Estratégia Nacional do Ambiente – ENA) to protect the environment and promote sustainable development. Development of this document started in 1993 and has had contributions from the Government and private institutions and civil society.

The plan describes aspects of the broader environmental context in Angola, with particular emphasis on the transition from a war situation to a more peaceful scenario, as well as the shift from a one-party to a multiparty democratic system; the destruction of social, economic and environmental infrastructure; the deficient education system and lack of skilled human resources; weaknesses in the private sector; the transition from a centralized to a market economy; and the impact of landmines, illegal hunting and game cropping.

According to Ministério do Urbanismo e Ambiente (2003) the main objectives of the national environmental management plan are:

- To establish an environmental policy and strategy
- To define national priorities for the environmental sector
- To integrate environmental aspects in development processes
- To contribute to poverty alleviation
- To promote and improve intersectoral coordination

⁴ Governo de Angola (2003).

- To elaborate and propose the concept of sustainability to increase awareness regarding environmental problems and define short, medium and long-term strategies
- To promote and develop environmental awareness and correctness at all levels
- To promote the development of relevant legislation and update the old legislation regarding conservation of fauna and flora.

Legislation

Protected Areas

The establishment of protected areas (national parks, nature reserves and forest reserves) was first mentioned in a **regulation (Regulamento) issued in 1936**, and the first protected area (Parque Nacional de Caça do Iona) was established in 1937. At present, national policy instruments and legislation related to protect areas are inadequate and outdated.

The first statute on nature conservation and on the establishment of protected areas for different purposes (initially for hunting purposes and later for nature conservation) was issued on 20 January 1955 through **Decree No. 40,040 (published in the Official Bulletin on 9 February 1955)**⁵. This decree covered aspects related to soil, fauna and flora protection, conservation and use of game, establishment of national parks, nature reserves and controlled hunting areas. It pioneered the establishment of an institution (Conselho de Protecção à Natureza – Nature Conservation Council) responsible for controlling the protected areas and developing important legislation for this effect. This legislative package included the **Hunting Regulations** (Regulamento de Caça), **Forestry Regulations** (Regulamento Florestal) and **National Parks Regulations** (Regulamento de Parques Nacionais). In its annexes, decree No. 40,040 included a list of mammals and bird species whose hunting was declared illegal.

Some of the above-mentioned legislation was revoked after independence by **Decree No. 43/77 of 5 May 1977**. This decree also approved the structure of the Ministry of Agriculture and defined five different categories for protected areas, namely national parks; strict nature reserves; partial reserves; regional nature parks and special reserves. This categorization does not cater for issues such as rural community use of wildlife, or the conservation of heritage sites and important monuments. The decree defines the five categories as set out below:

- (i) National Park: An area reserved for the protection, conservation and propagation of wild animal life and indigenous vegetation, for the benefit and enjoyment of the public.

⁵ Governo de Portugal (1955).

- (ii) Strict Nature Reserve: An area for the total protection of wild flora and fauna.
- (iii) Partial Reserve: An area where it is forbidden to hunt, kill or capture animals, or to collect plants, other than for authorized scientific or management purposes.
- (iv) Regional Nature Park: An area reserved for the protection and conservation of nature, in which hunting, fishing and the collection or destruction of wild animals or plants and the conduct of industrial, commercial or agricultural activities are prohibited or placed under limits.
- (v) Special Reserve: An area where the killing of certain species, whose conservation cannot be ensured in any other manner, is prohibited.

In the late 1990s, there were negotiations to transfer the management and protection of protected areas (excluding agricultural areas) from the Ministry of Agriculture and Rural Development to the former Ministry of Fisheries and Environment. Although this was agreed and the structure of the Ministry of Urban Affairs and Environment recognizes that this ministry should manage all the protected areas in Angola, the protected areas are still being managed by the Ministry of Agriculture and Rural Development. Currently, it is IDF – the Forestry Development Institute – located within the Ministry of Agriculture and Rural Development that oversees the development and enforcement of legislation on protected areas. IDF was established in 1989 through **Decree No. 41/89 of 22 July** and works on five specific areas, namely forestry; wildlife protection; control; administration; and regional centres.

Wildlife Conservation

Although there are no written reports on the status of Angolan fauna and flora, it is commonly known that Angola has a rich and varied fauna and flora both within and outside its protected areas. There are two species which have a symbolic function in Angola, namely, the desert plant *Welwitschia mirabilis* in the southern part of Angola (Namibe province) and the black giant sable, or the sable antelope (*Hippotragus niger variani*), an endemic species from Angola (Malanje and Bié provinces).

To address this situation the Ministry of Agriculture and Rural Development published a document, **Despacho No. 204/96 of November 11**, that listed, in two annexes, the animals (mammals, birds and reptiles) whose hunting was prohibited (in its annex I) and allowed during a specific period established by IDF

(in its annex II). Annex I includes 28 mammals (e.g., black giant sable, manatee, giraffe, elephant, rhino), 19 birds (e.g., eagle, penguin, crane, crow, ostrich) and four reptiles (e.g., all turtle and crocodile species). Annex II allows for the controlled hunting of a number of animals in numbers to be established by the IDF. These include mammals (e.g., impala, leopard, lion, porcupine), birds (e.g., guinea fowl, duck, wild dove) and reptiles (e.g., snakes).

This Despacho was repealed by **Combined Executive Decree No. 37/99 of 27 January 1999** (Governo de Angola 1999) issued by the Ministry of Agriculture and Rural Development and the Ministry of Finances. This decree was approved to provide an updated list of species whose hunting is prohibited and also those that are allowed. The new decree does not bring much in the way of changes, however.

Forestry

The **Decree on Forest Regulation (decree No. 44,531 of 21 August 1962)** was developed during the colonial era with the objective of regulating the use of forestry resources in Angola, Guinea Bissau and Mozambique (Coelho 2002:237-299).

Chapter I of the decree deals with generic provisions, in particular with regard to the classification of vegetation into the categories of natural vegetation (natural forest and savannah) and artificial vegetation (man-made forests with exotic and indigenous species). The norms and procedures of the forestry administration are discussed in chapter II. Chapter III focuses on the forestry reserves, emphasizing their objectives of the conservation of forests; the control of water and climate cycles; soil conservation; and the conservation of areas containing endangered species or species with scientific value. The rules designed to encourage the sustainable use of forestry resources as well as its management and reforestation are elaborated in chapter IV. The importance of nature conservation is reflected in chapter VII. In chapter X, extensive details are given of the rules relating to forestry development, including procedures for the classification of what species can be harvested, how the costs are attributed to different species and what activities do not require a forestry licence.

Recognizing the need to regulate forestry activities in Angola, particularly those relating to timber, and considering the need to establish appropriate rules for the achievement of sustainable development, the Ministry of Agriculture and Rural Development developed the Forestry development licenses (**Order No. 149/00 of 7 July 2000**). The order aims at establishing rules on forestry activities and for the conservation of forests in Angola. This is to be consistent with the provisions on the **Land Act (Act No. 21-C/92)** but will be altered by the new Land Act. According to the order, only entities in possession of licences can undertake forestry activities on Angolan soil. The order describes the process and

requirements for the issuing of forestry licences. The maximum quantity of forest area that can be developed annually is determined by the IDF.

Community rights to natural resources

The Angolan policy and legal framework does not specifically provide for devolution of rights over natural resources such as wildlife to local communities. Although the land and natural resources are controlled by the state, there are however, a number of general provisions that enable the state to allow the use of land and natural resources by other parties for various purposes. There is no specific mention though, of using land for wildlife and tourism.

Article 89 of the Angolan Constitutional Law states that the National Assembly shall have full and sole legislative powers over the following matters:

Definition of sectors reserved for the State in respect of the economy, and the basis for granting concessions for the exploitation of natural resources and alienation of State property.

The **Land Act (No. 9/04 of 9 November 2004)**⁶ considers land as the property of the State and proposes the following multiple uses for the land:

- To provide shelter and home for the inhabitants of Angola. This implies the existence of an appropriate urban planning system
- To serve as a source of natural resources which can be used for mining, agriculture, forestry and land planning
- To provide support for economic, agricultural and industrial activities

Article 3/1 provides for the land areas (both rural and urban) in which the State has control and rights. These land areas include that used for agriculture, livestock, forestry, mining, industry, commercial, housing, rural and urban planning, environmental protection and the combating of soil erosion

Article 10 states that all natural resources are State property and the State's rights over the land are not transmissible. It further notes that the State can determine new rights for the exploitation of natural resources based on appropriate legislation.

Article 14 (b) notes that the State can intervene in the management and concession of the land affected by the present Act, in harmony with a number of objectives. An important objective is the protection of the environment and economically efficient and sustainable use of the land.

⁶ Governo de Angola (1998)

Article 16/1–2 affirms that the occupation and use of the land depends on a number of norms and standards for environmental protection, particularly with respect to the protection of landscape, flora and fauna, the preservation of ecological equilibrium and the right of citizens to a healthy and non-polluted environment. It further states that the occupation and use of the land shall not compromise its regenerative capacity or its ability to produce.

Article 19/4–5 provides for land classification based on two categories, urban land (areas for construction of buildings) and rural land (areas for agriculture, livestock-raising, forestry and mining). The Government has the right to decide on the establishment of protected areas (total and partial reserves) for specific purposes, including those for environmental protection, national security, preservation of monuments and historical sites.

2.2 BOTSWANA

Botswana has a good framework of policy and legislation governing conservation, sustainable use of natural resources and tourism. The principal legislation governing wildlife conservation and protected areas is the **Wildlife Conservation and National Parks Act of 1992**, which repealed two earlier Acts: the Fauna Conservation Act and the National Parks Act. However, policy and legislation on land tenure and land use are important for providing a foundation for the allocation of access rights to wildlife and tourism. For example parts of the country have been designated as Wildlife Management Areas (WMAs) where wildlife management and utilisation are intended to be the main forms of land use. WMAs are mostly located in the west and north of the country in the areas with the most wildlife and which are marginal for most other land uses (including areas that fall within KAZA). Further the whole country is divided into Controlled Hunting Areas (CHAs) all of which are zoned for a particular form of resource management (DWNP 1997):

- Commercial multipurpose areas
- Commercial photographic areas
- Community managed wildlife utilisation in WMAs
- Community photographic areas in WMAs
- Community managed wildlife utilisation in livestock areas

Commercial CHAs are leased to the private sector for photographic or hunting safaris. Certain CHAs are zoned for community use, and this zoning guides Land Boards in awarding leases to communities instead of directly to the private sector. Communities may then sub-lease to the private sector if they wish. This is an important foundation for the allocation of resource rights to communities (see below).

Wildlife conservation and protected areas are administered by the Department of National Parks and Wildlife in the Ministry of Environment and Tourism.

Policy

Protected Areas

There is no specific policy for protected areas in Botswana, but the policy intentions can be inferred from the provisions of the **Wildlife Conservation and National Parks Act of 1992**, which combine measures for the protection of wildlife, particularly within protected areas with provisions for sustainable use, in WMAs and CHAs.

The new **CBNRM policy** approved by Parliament in 2007 (GOB 2007) makes provision for linking protected areas with neighbouring communities. It states that:

- Government will promote the involvement of communities in the management of protected areas
- The socio-economic needs of neighbouring communities will be identified and reconciled with the management objectives of the adjacent protected areas
- Where feasible, communities may be allowed to use specified natural resources and perform certain cultural practises in protected areas.

Wildlife Conservation

The **Tribal Grazing Land Policy (TGLP) of 1975** aims to control grazing land and improve management and productivity, while safeguarding the interests of those who own few or no cattle (GoB 1975). One of the results of the policy was the zoning of communal land into commercial farming areas, communal and reserved areas. The reserved areas would be set aside for the future as a safeguard for the poorest members of the population and for alternative land uses such as wildlife. These reserved areas for wildlife formed the basis of the Wildlife Management Areas (WMAs) created under the Wildlife Act.

The main aim of the **Wildlife Conservation Policy of 1986** is to “encourage the development of a commercial wildlife industry that is viable on a long-term basis. This will serve to create economic opportunities, jobs and incomes for the rural population in particular and the national economy in general” (GoB 1986:1). The policy rests on three important principles: that wildlife should contribute to rural development; that citizens should actively participate in wildlife utilisation and management; and that government should provide the necessary control of the wildlife industry.

The policy further entrenches the system of designating certain land as Wildlife Management Areas (WMA) provided for under the Tribal Grazing Land Policy of 1975. WMAs need to be approved by District Councils and District Land Boards before they can be gazetted. Once gazetted, regulations and a management plan should be developed for each WMA and a policy of sustainable utilisation appropriate for each area should be implemented. The Wildlife Conservation Policy makes provision for existing settlements and livestock grazing to be accommodated in WMAs by defining their physical extent in agreement with district authorities, which would be involved in the management of WMAs. The policy states that wildlife utilisation and management should be the primary form of land use in a WMA, and that other forms of land use should be allowed only if compatible with wildlife. WMAs should, however, only be established in areas marginal for livestock. The policy distinguishes between WMAs and CHAs explaining that some CHAs might fall within WMAs and others outside. It makes specific mention of WMAs as a tool for creating corridors which can keep open the migration routes of certain wildlife species and establishing buffer zones for protected areas, while at the same time providing economic opportunities for local people.

Tourism

The general objectives of **Tourism Policy (1990)** include the promotion of rural development and the stimulation of the provision of other services in remote areas of the country (GoB 1990). The policy appears to include wildlife viewing and hunting as part of tourism and states that, through direct and indirect benefits from tourism, rural communities will be encouraged to appreciate the value of wildlife and its conservation.

The policy sets out the approach by which leases for tourism concessions can be made available. It makes provision for lessees of concessions to transfer, cede or sub-lease, subject to the approval of the lessor, which on tribal land is the Tribal Land Board. Further, the rights conferred on the lessees are exclusive except where local people or others have traditional or legal rights to use the land. Mobile safari operators and other tourism operators are not allowed to use the leased land except with the written permission of the lessee. The policy states that each concession should be advertised and the lessor should evaluate the applications according to a set of guidelines. The lessees are required to submit operating and development plans with their applications.

Community rights to natural resources

Community use rights over wildlife and tourism are provided through a number of policy documents and laws which need to be read together. A feature of the Botswana approach to Community-based Natural Resource Management (CBNRM) is that the main foundation for community use rights is through application of government policy rather than through legislation.

The most important document setting out the government's approach to giving rights over wildlife quotas and tourism and hunting concessions to communities is the **SAVINGRAM (official government memorandum) on "Community tourism and hunting development activities" of November 20, 1995**. It is a joint directive from the Ministry of Commerce and Industry (which at the time housed the Department of Wildlife and National Parks - DWNP) and the Ministry of Local Government, Lands and Housing (GoB 1995). It sets out the minimum conditions that communities need to meet before they can be awarded a community wildlife off-take quota from the DWNP or a resource use lease for any tourism or hunting development activity from a Land Board. If the community forms a legal, representative and accountable entity with a constitution, it can gain the quota or lease itself in a community designated Controlled Hunting Area. In order to meet this condition most communities wanting to gain access to wildlife and tourism communities have formed trusts. If a community does not form such an entity, the community may request that the quota or lease be given to an approved commercial partner after going through a tender process. The document states that the Joint Venture Guidelines (see below) of the DWNP are binding on those districts that have formally adopted them. Land Boards may grant leases to communities of up to 15 years.

Although not incorporated into legislation, the **Joint Venture Guidelines** of the DWNP (revised 1999) form an important part of Botswana's policy on CBNRM. They provide a guide to communities, district authorities and the private sector of how communities may develop natural resource-based enterprises with the private sector (DWNP 1999). The guidelines explain the roles of each actor and recommend the procedure for communities selecting a joint venture partner. They emphasise the role of a Technical Committee made up of district officials, including DWNP, to advise the community on technical aspects of the tenders. The guidelines list a number of possible uses of both wildlife and other resources by joint ventures (DWNP 1999):

Consumptive uses of wildlife – safari hunting; citizen and resident hunting; game harvesting; game farming; intensive breeding of crocodile and ostrich; live capture and sale of game; processing of wildlife products.

Non-consumptive uses of wildlife – Game viewing; mekoro (dug out canoes), boat and pack animal safaris; protection and/or reintroduction of wildlife; breeding of endangered species.

Consumptive uses of other resources – Forestry; veld products for building, processing, sale; raw materials for handicraft production.

Non-consumptive uses of other resources – Photographic, cultural and adventure tourism (ecotourism)

Under the approach implemented under the SAVINGRAM of November 20, 1995, Community Trusts were able to retain all the income they received from hunting and tourism activities carried out under leases from the Land Boards. However, in response to allegations and evidence of mismanagement of funds by some trusts, government has changed the system with the adoption of a new **CBNRM Policy** by Parliament in 2007 (GoB 2007). The main change brought about by the policy is that community trusts are required to pay 65% of their income from the sublease of natural resource concessions or hunting quotas into a National Environmental Fund administered by the Ministry of Environment, Wildlife and Tourism (MEWT).

According to the new policy (GoB 2007):

- Communities may obtain a 15-year Community natural Resource Management Lease from the relevant Land Authority for the commercial use of natural resources.
- This “Head Lease” is subject to an approved Land Use and Management Plan for the area specified in the lease, and annual rental payable to the Land Authority and a resource utilisation royalty payable to the MEWT.
- Communities may sub-lease or otherwise transfer any commercial natural resource user rights to one or more joint venture partners with prior written permission of the Land Authority.
- All tendering procedures for the awarding of natural resource use concessions will be overseen by the Technical Advisory Committee (TAC) consisting of District Level officials. The community will be consulted on its preferred joint venture partner but the decision to award the tender to a particular joint venture partner will be made by the TAC.
- In order to be able to obtain natural resource user rights, a community must form a Community-based Organisation as a Representative and Accountable Legal Entity (RALE) and comply with requirements to develop and implement various plans and strategies intended to ensure the appropriate and sustainable use of land and natural resources.
- The RALE must manage the CBO and its assets for the common good of the community, be responsive to the needs of its members, inform members regarding all decisions and operate in a transparent manner and in the best interests of natural resource conservation and management.

- Communities and their CBOs must include provisions in their constitutions for the appropriate administrative and financial management systems to safeguard the benefits and finances and assets derived from natural resource use. Government reserves the right to intervene to protect the interests of the larger community and the nation where there is illegal or improper use of benefits, finances or assets.
- Government, as custodian of the land and its resources, retains the ultimate authority to protect natural resources, species and habitats and will set resource harvesting quotas.
- Government may take “appropriate action” if management and use of resources by communities is unsustainable and where CBNRM activities may result in “unacceptable socio-economic consequences”.
- CBOs may retain 35% of the proceeds of the sale of natural resource concessions and hunting quotas. The other 65% must be deposited in the National Environmental Fund for the financing of community-based environmental management and ecotourism projects throughout the country. The Minister may vary these percentages depending on the circumstances and needs of a particular CBO.
- Communities must ensure that all decisions regarding the use of proceeds or benefits derived from the use of natural resources shall be sanctioned by all members of the CBO or community. Communities must provide regular monitoring reports on the benefits derived from the management and sustainable use of natural resources and the use thereof to the Fund Secretariat.

Legislation

Protected Areas

The **Wildlife Conservation and National Parks Act, 1992** provides for the establishment of national parks, game reserves, sanctuaries, private game reserves, Wildlife Management Areas and Controlled Hunting Areas for purposes of managing and protecting Botswana’s wildlife resources (GoB 1992).

Commercial hunting in national parks, game reserves and sanctuaries is prohibited, but under Section 39(2) the Minister may grant a permit for the hunting or capture of any animal in these areas for scientific purposes, the protection of life or property, or in the interests of the conservation, management, control or utilisation of wildlife. Commercial hunting is allowed in WMAs and CHAs that are not within national parks and in private game reserves by the owner or with the permission of the owner, provided that such hunting is in terms of the declaration of the area or any terms or conditions approved by the Director of Wildlife and National Parks.

The State President has the power to declare any area of state land as a national park. Section 5 lays down procedural conditions which must be satisfied for such declaration to take effect. Parliament must consider and confirm any proposed declaration, and the President is obliged to consider any objections to such declaration.

The responsibility of controlling, managing and maintaining national parks is accorded to the Minister [Section 6(1)], who is also empowered to make regulations for national parks. The Minister under Section 6(1) may let sites for the erection of shops, hotels, restaurants or other buildings for tourism purposes. The Act enables the Minister to control entry into National Parks for certain purposes including tourism and research. It also prohibits various activities in National Parks that would be harmful to wildlife and/or the environment, although the killing of a dangerous animal is permitted in defence of human life or to prevent injury. Mining is prohibited in National Parks except with the written permission of the Minister.

In addition to the power to declare national parks, the President also has powers to declare any area of land to be a game reserve or sanctuary. Game reserves and sanctuaries can be declared on any area that the President deems fit, whether tribal land or freehold land and they may be declared only in respect of certain specified species, variety, specimen or sex of animal. Hunting or capturing of any animal in a game reserve or sanctuary is prohibited except under a licence or permit issued under Section 39 of the Act. This provision authorises the Director of the Department of Wildlife and National Parks to issue a permit for the killing or capturing of an animal in a national park, game reserve or sanctuary for educational, scientific or other purposes stipulated.

Any owner of an area of land who wishes to have such land declared a private game reserve may apply in writing for the President to declare it as such.

Part III of the Act provides for the declaration of Wildlife Management Areas (WMAs) and Controlled Hunting Areas (CHAs). The power to declare WMAs is vested in the President, but the power to make regulations regarding the activities permitted in these areas is given to the Minister. The Minister may make regulations regarding a wide range of activities in a WMA including construction of buildings, size of settlements, grazing of livestock (including limitations), cultivation of land, drilling of boreholes, use of vehicles, aeroplanes and boats, and the entry of persons other than residents. However, in the development of WMAs, their management plans and in their administration the Minister is required to consult with the relevant land boards and local councils. The Act provides for the Minister to declare CHAs and regulates hunting in CHAs.

Wildlife Conservation

The **Wildlife Conservation and National Parks Act of 1992** provides for the conservation and utilisation of wildlife outside protected areas (GoB 1992).

Under the legislation, the hunting and killing of elephants is strictly regulated, and rhinoceros cannot be hunted. Hunting can, however, be carried out in wildlife management areas and controlled hunting areas only if the hunter is in possession of a hunting license or permit. Five types of licence are provided for in the legislation: bird licence, small game licence, single game licence, special game licence and the Minister's licence. Of these, the small game and special game licences are available only to citizens.

The Act provides for certain species to be declared protected game which may not be hunted except with a permit issued by the Director. The Act also designates certain species as partially protected which may not be hunted except with a permit issued by the Director or a licence issued by a licensing officer. Other species are designated as game animals or birds which may be hunted under licence which can be issued by a licensing officer under delegated authority from the Director. The highest fines for hunting without a permit or licence are for protected game, then partially protected game, game animals and then game birds.

The Act provides for the owners of private land or occupiers of land leased from land boards or the State to be afforded "landholder's privileges" provided that the owners or occupiers of land are Botswana citizens or companies registered in Botswana or with a majority of citizens as shareholders (Sections 20-22). Under landholder's privileges, any animals other than protected or partially protected game may be hunted by the owner or occupier without a licence or permit. The owner or occupier may charge fees to other persons for hunting on the land with the approval of the Director. Holders of landholder's privileges must keep a record of all animals hunted and submit the record annually to a licensing officer.

The Act also provides for any owner of land or leaseholder to apply for permission to establish a game farm or game ranch (Sections 24 and 25), subject to terms and conditions laid down by the Director and regulations made by the Minister (which may relate to requirements for fencing of the land, demarcation of boundaries and payment of fees). A game farmer or rancher is entitled to farm, ranch, hunt or capture animals on his or her land for commercial purposes. If the land is enclosed by a game proof fence then the owner of the land is deemed the owner of animals enclosed within the fence.

The Act further contains provisions regarding the qualifications and licensing of professional hunters and guides, conditions under which animals may be killed or circumstances which may justify such killing, methods of hunting, the regulation

of domestic and export trade, including the removal and sale of animals and ivory and rhino horn in terms of the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Schedule 5 incorporates into the Act the entire convention. The Act also provides for the control of revenue from trophies, the powers of wildlife officers, and the prohibition of certain goods; and the establishment of criminal offences and sanctions.

Forestry

Forest resources are regulated by the **Forest Act of 1968 (consolidated in 1976)**. This legislation was enacted with the objective of protecting, administering and conserving forests and forest produce in Botswana. In terms of the Act the President may declare any area of State land to be a Forest Reserve and a local authority or land board may apply to have land under its jurisdiction declared a forest reserve (GoB 1968a). The Act enables the Minister to declare any tree or class of trees as protected which means such trees cannot be cut or removed without a licence. It also prohibits a number of activities within Forest Reserves including the grazing of livestock and the clearing of land for cultivation and makes provision for the subsistence use of forest products on State land. It provides for a system of licences to enable the cutting or removal of trees and to grant the exclusive rights to use forest products. It also provides for offences and procedures to deal with offences.

The 1976 Act provides for the declaration of the Kasane Forest Reserve and for the inhabitants of Kasane, Kazangula and Lesuma to collect firewood for their own domestic use, poles from certain trees for domestic construction purposes and the fruit and leaves from certain trees.

Hunting is allowed in the State Forest Reserves. For example in the KAZA area, the Chobe Enclave Conservation Trust has the use of the hunting quota in Controlled Hunting Area CH/2 which is the Chobe Forest Reserve.

Community rights to natural resources

There is no legislation specifically providing for community rights over wildlife and tourism. However, as noted previously land legislation is an important part of the framework for providing rights over wildlife and tourism to communities. Three categories of land exist in Botswana: state land, tribal land and freehold land. Ownership of state land vests in the State. Tribal land is owned by the relevant land board in trust for or for the benefit of the people of Botswana. Freehold land is defined as land other than state land or tribal land and which is owned fully by a person.

The **Tribal Land Act of 1968** makes provision for the creation of Tribal Land Boards to allocate and administer communal land (GoB 1968b). One of the most important aspects of the Act for community involvement in natural resource management was the introduction of common law leases. The lease system is one of the key mechanisms for communities to gain access to wildlife and tourism use rights. Leases can be to individuals or communities for certain commercial purposes, including cattle ranching, wildlife utilisation and tourism.

2.3 NAMIBIA

Namibia has a well established policy and legal framework for wildlife conservation and protected areas. It has also provided rights to communities over wildlife and tourism through legislation and has a well developed CBNRM programme supporting the communal conservancies established under the legislation. However the main law governing wildlife and protected areas, the **Nature Conservation Ordinance (No. 4 of 1975)**, is outdated and is being revised. A **draft Parks and Wildlife Management Bill** is currently under consideration by the Ministry of Environment and Tourism (MET) and it is hoped by the MET that it will be ready for Parliament towards the end of 2008. This section covers the existing legislation and briefly summarises the main points of the proposed legislation.

MET also has a number of draft policies that have been developed over the past two years which are awaiting final approval. These draft policies are also summarised in this section.

Policy

Protected Areas

Namibia has no specific policy for protected areas. However, a **draft Policy on Protected Areas, Neighbours and Resident People**, is currently under consideration by the Ministry of Environment and Tourism (MET). This draft policy sets out a new vision of how Namibia's protected areas can contribute not only to conservation, but also to other national development goals such as economic development, and how the protected areas can benefit the people who are neighbours to these areas or who are resident within them. Specific emphasis is given to the situation of communities living within protected areas such as the Bwabwata National Park in the KAZA area. The draft policy is based on a number of fundamental principles (MET 2007a):

- 1) Protected areas are the cornerstone of Namibia's conservation programme and will continue to play an important role in the conservation

- of ecosystems, essential ecological processes and biological diversity.
- 2) Protected areas also have the potential to provide important economic benefits, locally, regionally and nationally. This policy recognizes the Government's emphasis on rural development and protected areas should be managed to provide the maximum possible benefits to legal residents and neighbours within the limits of ecological and economic sustainability.
 - 3) Communities living in or adjacent to protected areas often have long-standing relationships with the land in these areas which should be acknowledged and respected.
 - 4) Protected areas cannot sustainably co-exist with resident or neighbouring communities that are hostile or uncooperative.
 - 5) Where Government provides opportunities for economic benefit and involvement in collaborative management of protected areas to park neighbours, it may give preference to people who
 - i. were removed from their land in order to establish protected areas
 - ii. are recognized as residents by the Ministry of Environment and Tourism
 - iii. voluntarily provided land for the establishment of a protected area in the past.
 - 6) Regulations and management plans for protected areas should make provision for the presence of resident people and make appropriate provision for them to carry out their every day activities, within the objectives for protected areas. Such regulations and management plans should provide for collaborative management agreements to be negotiated between these communities and the government. Any restrictions on livelihood activities and development opportunities of such communities that result from the fact of their residence within a protected area will be compensated for by the provision of appropriate and adequate economic opportunities based on wildlife and tourism.
 - 7) People legally resident in protected areas should be fully involved in the setting of the overall policies and objectives for these areas, the development of the park management plans and the planning of activities which directly affect them.
 - 8) Where it is in the overriding interests of conservation that people legally residing in a protected area should be removed from that area they should be provided with alternative access to productive land and adequate social infrastructure and support to re-establish themselves in their new locations.

The policy also emphasises the need for government to enter into contractual agreements with neighbours to protected areas regarding co-management of common resources and with communities resident in protected areas. A draft agreement between the MET and the community living within Bwabwata National Park was under consideration at the time of writing.

Wildlife Conservation

There is no general policy document on wildlife conservation in Namibia although **Article 98(I) of the country's constitution** includes sustainable use of natural resources as a conservation mechanism. A policy on Wildlife Management, Utilisation and Tourism in Communal Areas sets out the country's approach to community-based wildlife and tourism and is discussed below.

A **draft Human Wildlife Conflict Management Policy** is currently under consideration by MET. It encompasses the following main principles (MET 2007b):

- Human-Wildlife Conflict cannot be removed permanently and will always occur where people and wildlife co-exist: therefore the conflict needs to be managed
- HWC management needs to balance the needs of people with the aims of biodiversity conservation
- Government will promote self-reliance amongst farmers and other land-holders and will assist farmers who take responsibility themselves
- Government cannot provide direct compensation to farmers but can provide incentives for living with wildlife and bearing the costs
- Strategies designed to implement the policy need to be flexible, taking into account different situations in different parts of the country, recognizing that the scale and impact of Human-Wildlife Conflict changes at different times of the year, and that different methodologies are required for different species of wildlife.

Based upon the principles above, a draft policy statement has been formulated:

“To manage Human-Wildlife Conflict in a way that recognizes the rights and development needs of local communities, recognizes the need to promote biodiversity conservation, promotes self-reliance and ensures that decision-making is quick, efficient and based on the best available information. In order to achieve this, the government will devolve decision-making to the lowest appropriate institutional levels, develop appropriate mitigation and monitoring methods and develop the capacity of all stakeholders to manage Human-Wildlife Conflict”

The draft policy document includes a number of strategies for implementing the main policy statement. These include devolution of decision-making to appropriate institutions, mitigation through CBNRM, developing and implementing the best appropriate technical solutions for preventing and reducing HWC, developing appropriate monitoring and evaluation systems and data bases, and promoting self-reliance through capacity building and self insurance schemes. The policy also recognises the need for HWC to be taken

into account in land-use planning at all levels and that other Government agencies should take responsibility for considering existing and potential HWC in their planning of development projects in rural areas.

A corner stone of the policy is the development of Human Wildlife Conflict Management Plans at local and community levels that take a holistic approach to addressing HWC. The draft policy makes provision for the decentralisation of authority to identify a problem animal and authorise its lethal removal to conservancies provided that they have a local HWC Management Plan.

Tourism

A draft **National Tourism Policy** is currently under consideration by MET. According to the draft document 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 2007c).

The policy promotes the development of tourism through a strong and competitive private sector, with 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. It also aims to promote broad based black economic empowerment in the industry and to spread the benefits of tourism more equitably within Namibian society. One means to achieve this is through partnerships between the private sector, communities and individuals from within the previously disadvantaged sections of society.

In line with the Policy on Tourism and Wildlife Concessions on State Land (MET 2007d), the draft tourism policy states that new tourism developments in national parks will be in the form of concessions with the state or communities cooperating with the private sector. Concessions include hunting and non-hunting tourism. The policy supports the CBNRM approach and states that conservancies (see below) 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 2007 **Policy on Tourism and Wildlife Concessions on State Land** provides a framework and guidelines for the allocation of concessions in protected areas and other State land (MET 2007d). These include tourism concessions, harvesting of indigenous plant material and trophy hunting. The draft policy provides for an open, just, fair and competitive process for awarding concessions that also prioritises the empowerment of formerly disadvantaged Namibians. It gives discretion to the Minister to allocate concessions directly to local communities under certain conditions (see below). A concessions committee has been established in MET in terms of the policy and it oversees the concession process with day to day administration being carried out by a concessions unit in MET.

Community rights to natural resources

Community user rights over natural resources are recognised in principle in the **National Land Policy of 1998**. It provides that tenure rights allocated according to the 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 resources include wildlife, tourist attractions, fish, water, forest resources and vegetation for grazing (GRN 1998).

Provision is made for various forms of land rights: Customary grants; leasehold; freehold; licences, certificates or permits; and State ownership. Tenure rights will 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". This definition would include such bodies as wildlife conservancies and community forest management bodies.

The policy provides for the administration of communal land to be vested in Land Boards and Traditional Authorities. It makes provision for long term leases (up to 99 years) for the use of communal land primarily for business purposes. Leases include the granting of tourism concessions.

The **national Policy on Wildlife Management, Utilisation and Tourism in Communal Areas** was approved by Cabinet in March 1995. While the Nature Conservation Ordinance, (No. 4. of 1975) gave commercial farmers conditional ownership of certain species of game and rights to use others, similar rights were not extended to communal farmers. The policy on Wildlife, Management, Utilisation and Tourism in Communal Areas sets out an approach for giving communal area residents rights over wildlife and tourism, and it uses the concept of the conservancy as the mechanism to do this.

The objectives of the policy are as follows (MET 1995a):

- A. To establish ... an economically based system for the management and utilisation of wildlife and other renewable living resources on communal land so that rural communities can:
 - a) participate on a partnership basis with this (MET) and other Ministries in the management of, and benefits from, natural resources;
 - b) benefit from rural development based on wildlife, tourism and other natural resource management;
 - c) improve the conservation of natural resources by wise and sustainable resource management and the protection of ... biodiversity.
- B. To redress the past discriminatory policies and practices which gave substantial rights over wildlife to commercial farmers, but which ignored communal farmers.
- C. To amend the Nature Conservation Ordinance (4 of 1975) so that the same principles that govern rights to wildlife utilisation on commercial land are extended to communal land.
- D. To allow rural communities on state land to undertake tourism ventures, and to enter into co-operative agreements with commercial tourism organisations to develop tourism activities on state land.

Through the Nature Conservation Ordinance (No. 4 of 1975) freehold (private) farmers in Namibia were given ownership over huntable game (oryx, springbok, kudu, warthog, buffalo and bush pig) if they have a certain size farm and a certain type of fencing (SWA Administration 1975). They are able, as identified land owners, to use protected and specially protected species through a permit system. The legislation also allows trophy hunting to take place on commercial farms under certain conditions. Freehold farmers may buy and sell game on their land.

The policy on wildlife and tourism on communal land makes provision for rural communities which form a conservancy to be given the same rights over wildlife as a freehold farmer.

The policy states:

1. The right to utilise and benefit from wildlife on communal land should be devolved to a rural community that forms a conservancy in terms of the Ministry's policy on conservancies.
2. Each conservancy should have the right to utilise wildlife within the bounds of the conservancy to the benefit of the community. Once a quota for each available species has been set, the conservancy members may decide how these animals may be utilised. They may decide to allow hunting by members of the conservancy, culling of game for meat, the sale of animals for trophy hunting, or the live sale of game.

The conservancy should be able to enter into a business arrangement with private companies to carry out some or all of these activities.

The conservancy would also have the right to establish tourism facilities within its boundaries or engage in a commercial arrangement with a registered tourism operator to act on its behalf.

In order to gain the above rights the policy states that the conservancy needs to be legally constituted, it must have clearly defined boundaries agreed by neighbouring communities or conservancies, a defined membership, and a committee representative of the conservancy members.

The policy makes provision for conservancies to receive income directly through their own business transactions, to retain all of this income (unless liable to existing taxes), and to decide how to use the income.

The policy makes provision for the establishment of a natural resource or wildlife management committee in each MET region. These committees would comprise members appointed by each conservancy in the region, representatives of the MET, a representative of any NGOs assisting conservancies, and a representative of the Ministry of Agriculture, Water and Rural Development.

This committee would:

- i) Set quotas for each conservancy for the use of wildlife
- ii) Ensure that conservancies use resources sustainably
- iii) Ensure that conservancies' activities are consistent with regional and national resource policies

- iv) Provide technical information and advice on wildlife and other natural resource utilisation options
- v) Assist conservancies to gain access to technical assistance and training.

The **MET Policy on the Promotion of Community Based Tourism** was approved in 1995. It 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 recognises that in the past, local communities have had little control over tourism activities on their land and little access to direct benefits from tourism. In order to redress this, a programme of action included in the policy document states that MET will give recognised communal area conservancies the concessionary rights to lodge development within the conservancy boundaries (MET 1995b).

The **Policy on Tourism and Wildlife Concessions on State Land (2007)** enables the Minister of Environment and Tourism to allocate concessions in Protected Areas directly to local communities. It states that in awarding concessions to communities, the MET will (MET 2007d):

- Award concessions directly to communities with representative, accountable and stable community institutions that are legal entities with the right to enter into contracts on behalf of a defined community;
- Give priority to communities that are resident inside protected areas or are immediate neighbours, as these are the people who suffer most costs caused by wildlife as well as loss of access to land and resources;
- Use concessions to mitigate the costs that such communities suffer, to provide incentives for them to support the objectives of the protected area, and to stimulate local economic growth;
- Provide assistance and guidance in the negotiation of beneficial agreements with joint venture partners or investors, and technical assistance to access business management skills and resources;
- Ensure that the communities are not exploited in any sub-agreement or joint venture with other partners; and
- Ensure that community organizations or representative bodies entering into concession agreements with the State act in accordance with their mandate from their members.

The policy provides key principles and guidelines for the awarding of concessions to communities living adjacent to or in protected areas, guidelines for the management of the concessioning process and an environmental and development checklist of for concessions.

Legislation

Protected Areas

The **Nature Conservation Ordinance (No. 4 of 1975)** provides for the establishment of Protected Areas in Namibia. Section 13 provides the highest form of protection to the Etosha National Park (ENP) the boundaries of which may only be amended by legislation, and where no emergency grazing is allowed (SWA Administration 1975). Section 14 provides for the establishment of game parks or nature reserves, whose boundaries may be amended by the Minister in the government gazette. Although the Etosha National Park is provided a higher form of protection the aims and objectives of the ENP are the same as those described in the Ordinance as the reasons for which a game park or nature reserve would be established. Apart from the procedure for the amendment of boundaries and the prohibition on emergency grazing, the Ordinance makes no further distinction between a National Park, Game Reserve or Nature Reserve.

The Ordinance provides the Minister with the power to manage protected areas, including the establishment of tourism facilities and to allow other parties to provide certain tourism services within a protected area. It also enables the Minister to control entry to protected areas and charge fees to visitors, and describes activities which are prohibited in protected areas. Hunting is allowed in protected areas with the written permission of the Minister and trophy hunting takes place in a number of protected areas including those within the KAZA area.

The Ordinance provides for owners of private freehold land to apply to have their land declared as a private game reserve. No person may without the written approval of the Minister and the permission of the land owner hunt any game or any other wild animal or bird in a private game park; provided that the owner of the land concerned may at any time hunt any game or any other wild animal or bird on such land, except specially Protected and Protected game.

Namibia is currently developing new legislation governing protected areas and wildlife conservation through the **draft Parks and Wildlife Management Bill**. Part IV of the draft Bill provides for the establishment and management of protected areas (MET 2008). It provides for the establishment of protected areas by the State and provides for the powers and functions of the Ministry in such protected areas. It establishes how land may be acquired to establish a State Protected Area. The draft Bill provides for four types of protected area: National

Park, Nature Reserve, Site of Special Conservation or Scientific Importance, and a Protected Landscape, with a National Park having the highest level of protection.

A major proposed change to existing legislation is that communal and freehold land holders and other administrative authorities would be able to apply to have land designated as one of the different types of protected area except for National Park. The draft Bill therefore provides for land holders (communal and freehold), Municipalities and Regional Councils to enter into contractual agreements with the State for the establishment of protected areas. The aim is that the contract is the foundation for the establishment of the park and defines the rights and duties of the parties to the contract.

Part IV of the draft Bill also provides for the involvement of civil society on advisory boards for protected areas and it provides for collaborative management agreements to be signed with people resident in protected areas or with neighbours. Part IV also governs the regulation of mining and prospecting in State protected areas with the aim of minimising environmental damage and enabling Ministry officials to exercise control over such activities.

Wildlife Conservation

The **Nature Conservation Ordinance (No. 4 of 1975)** provides for the conservation and utilisation of wildlife outside protected areas (South West Africa Administration 1975). It provides for the declaration of hunting seasons, and different categories of game, specially protected, protected and huntable. Specially protected game receives the highest protection and may not be hunted or killed without a permit, except in defence of human life, to prevent injury or to protect livestock. Elephant, black and white rhino and hippo are among the species declared specially protected. Similar provisions exist for protected game, but the fine for offences is less. The Ordinance states that the owner or lessee of a farm enclosed with a game-proof or adequate fence or any piece of land above 1 000 ha which is enclosed with a game proof fence shall be the owner of huntable game, huntable game birds and exotic game as long as the animals or birds are legally on the land in question. Owners of huntable game are able to use these species for their own use without permit or limitation on numbers and may charge other parties a fee to hunt huntable game on their land provided the hunter has a permit from the Ministry and subject to a limit on numbers that may be hunted. Huntable game is the following: bush pig, buffalo, oryx, kudu, springbok and warthog.

The Ordinance also provides for trophy hunting and regulates the import and export of trophies and other animal products. It provides for and regulates the capture and sale of game and night culling. It prohibits certain methods of hunting and provides for the means by which problem animals may be lawfully

killed. The Ordinance regulated fishing in inland waters but these provisions have been replaced by the **Inland Fisheries Act of 2003**. The Ordinance also regulates the harvesting and commercial use of indigenous plants.

Forestry

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 (see below). With the concurrence of the Minister of Lands, the Minister of Agriculture and Forestry may declare any state land which is not communal land to be a state forest reserve. The Act provides for procedures which the Minister must follow if he/she believes that effective management of forest resources on an area of communal land cannot be achieved through a community forest. The Minister has to provide notification of the intention to declare such land as a state forest reserve (GRN 2001). Once the procedures have been followed the Minister may then enter into a written agreement with the relevant chief or traditional authority for the declaration of the land as a state forest reserve. If no agreement can be reached the Minister may declare the land as a State forest reserve. In either case the Minister must pay compensation to persons with a legal claim over the land.

Regional Councils may apply to have land declared as a regional forest reserve where they believe effective management of forest resources will not be achieved through a community forest. Again the Minister must follow a specific procedure that allows public response before declaring the area. The Minister may also enter into agreements with land holders and land authorities for the establishment of forest protected areas for the protection of the soil, water resources, protected plants and other elements of biodiversity. The Act prohibits certain uses of plant resources except by permit and provides for the commercial use of forest resources under licence. The hunting of wild animals in a classified forest 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.

Community rights to natural resources

The **Nature Conservation Amendment Act, 1996 (Act 5 of 1996)** implements the policy on Wildlife Management, Utilisation and Tourism in Communal Areas (see above). It amends the Nature Conservation Ordinance 1975 so that residents of communal areas can gain the same rights over wildlife and tourism as commercial farmers. Instead of fencing and the size of the farm being the conditions for gaining ownership over huntable game and the right to use other species, the Nature Conservation Amendment Act sets the formation of a

conservancy as the condition upon which ownership and use rights over game are given to communal area residents.

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.

Once a conservancy has been declared in the Government Gazette the Act gives the conservancy committee, on behalf of the community in the conservancy, "rights and duties" with regard to the consumptive and non-consumptive use and sustainable management of game "in order to enable the members of such community to derive benefits from such use and management" (GRN 1996a: 6). The Act then confers on a conservancy committee the same rights, privileges, duties and obligations that the Nature Conservation Ordinance (4. of 1975) confers on a commercial farmer.

The rights over wildlife conferred on a conservancy committee are for the ownership (and therefore use for own purposes) of huntable game (oryx, springbok, kudu, warthog, buffalo and bushpig), and the right to apply for permits for the capture and sale of game, trophy hunting, other forms of hunting, and the right to apply for permits for the use of protected and specially protected game.

The Nature Conservation Ordinance does not specifically deal with tourism. However, the Nature Conservation Amendment Act of 1996 gives conservancies rights over non-consumptive utilisation of game. The definition of non-consumptive utilisation contained in the Act includes use for "recreational, educational, cultural, or aesthetic purposes". Conservancies thus acquire rights over non-consumptive uses normally associated with tourism. This is intended, as far as possible within the powers of the Nature Conservation Ordinance, to give conservancies a concessionary right over commercial tourism activities within the conservancy.

The Nature Conservation Amendment Act, 1996, also makes provision for communal area residents who do not form conservancies to benefit indirectly from wildlife, through the formation of Wildlife Councils. A Wildlife Council is established by the Minister after consulting with a local community or communities on communal land. The area covered by a Wildlife Council may not include any conservancy, any land subject to a lease or any proclaimed game park or nature reserve. A Wildlife Council will gain the same rights, and obligations concerning consumptive and non-consumptive use of wildlife as a conservancy (GRN 1996a)⁷.

In order to give more precise definition to certain issues relating to the formation of conservancies and Wildlife Councils, the MET introduced new **Regulations to accompany the Nature Conservation Amendment Act, 1996**. The Regulations 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. They also specify certain issues which must be covered by the Conservancy Constitution (GRN 1996b):

- the objectives of the conservancy, including the sustainable management and utilisation of game within the conservancy in accordance with a game management and utilisation plan, and the equitable distribution of the benefits derived there from;
- the procedure for election and removal of members of the conservancy committee;
- the powers and responsibilities of the conservancy committee, including powers to enter into agreements relating to consumptive and non-consumptive use of game;
- provisions relating to the holding of meetings of the committee, annual and ordinary meetings of the conservancy and the recording of proceedings of these meetings;
- the criteria and procedure for being recognised as a member of the conservancy, provided that no-one may be excluded on the grounds of ethnicity or gender;
- the rights and obligations of members of the conservancy;
- the procedure for members of the conservancy to decide on the policy to be followed by the conservancy committee in the equitable distribution of benefits;
- provision for the management of the conservancy's finances, including the appointment of a suitably qualified person to act as treasurer, the keeping of proper accounts, and the opening of a bank account in the name of the conservancy;
- a procedure for dispute resolution;
- a procedure for the amendment of the constitution;

⁷ To date no Wildlife Councils have been formed.

- any other issues the conservancy may wish to include in its constitution.

The regulations also provide more detail about the establishment of Wildlife Councils.

The **Communal Land Reform Act (No. 5 of 2002)** provides for the establishment of Land Boards, their composition and functions (GRN 2002). A land board may be established for a whole region, a part of a region or across parts of two or more regions. Customary land rights will be allocated by a chief or Traditional Authority, but must be ratified by the land board, which will then register the grant. Provision is made for residents to have access to common grazing lands subject to conditions made by a Chief or Traditional Authority including limits on stock numbers or where grazing may take place. The Chief or Traditional Authority may also grant grazing rights to non-residents for a specified or indefinite period. These rights may be withdrawn.

The land boards control the allocation of leases for land and the Act makes provision for certain prescribed maximum sizes of land for a particular form of land use. Land boards are required to take into account any management or utilisation plans developed by conservancies, and may not grant a lease for a purpose that would defeat the purpose of such plans. There is also provision for conservancies to be represented on land boards.

The Act makes it an offence for anyone to use or occupy communal land for any purpose other than under a right acquired in accordance with the provisions of the Act. Legal action can be instituted for the eviction of illegal occupiers of land.

The **Forest Act (Act No. 12 of 2001)** provides for the establishment of community forests (GRN 2001). There are a number of community forests in Caprivi in the KAZA area. 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.

According to the legislation the written agreement shall:

- provide for the creation of a community forest;
- identify the geographical boundaries of the proposed community forest;
- include a management plan for the proposed community forest;
- confer rights, subject to the management plan, to manage and use forest produce and other natural resources, and to graze livestock;
- confer rights to authorise others to use the forest and its resources and collect and retain fees and impose conditions on such use;

- appoint the body which is to be the management authority for the community forest and require that body to manage the forest in accordance with the management plan;
- provide for equal use of the forest and equal access to the forest produce by residents of the community forest area;
- provide for adequate reinvestment of revenues of the forest and for the equitable use or distribution of the surplus;

Community forests will be declared in the Government Gazette. The Minister may revoke a notice declaring a community forest if there are reasonable grounds for believing that the management body has failed to comply with the agreement, or if there are reasonable grounds for believing that the management authority no longer represents the interests of the persons who have rights over the land of the community forest.

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 building purposes subject to the management plan.

Subject to the relevant management plan, the Director of Forestry shall determine 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.

2.4 ZAMBIA

Since the mid 1990s Zambia has undertaken an extensive review and revision of environmental policy and legislation. This has led to the development of new laws, in particular the Zambia Wildlife Act of 1998 and the Forest Act of 1999. The new legislation largely updates laws in terms of new thinking in conservation and in particular approaches to community involvement in conservation. Unfortunately some key policies and laws such as the draft National Policy on Environment and the Forest Act of 1999 remain either in draft form or not yet implemented.

Policy

Protected Areas

The **Wildlife Policy of 1998** provides for the establishment, control and management of National Parks and for the conservation, protection, and enhancement of wildlife ecosystems and biodiversity. It provides for the sustainable use of resources in National Parks and Game Management Areas (GMAs). A GMA is a protected area comprising mostly communal land that is used primarily for the sustainable utilization of wildlife through hunting or tourism but can be used for other land uses such as settlement, mining, and agriculture. The Wildlife Policy is implemented through the **Zambian Wildlife Act of 1998** (see below).

*Wildlife Conservation*⁸

One of the objectives of the **draft National Policy on Environment of 2005** is to conserve and manage wildlife resources and ecosystems within protected areas in a manner that will ensure their protection, sustainable utilisation and reduction of people and wildlife conflicts. This is informed by the principles that local communities and local government should have fair access to benefits and revenue accrued from sustainable utilisation of the wildlife resource and that there should be a fair distribution of benefits and revenue from GMA resources involving Central Government, local government and the local communities taking into account revenue and costs.

For this purpose, key strategies are to (AWF 2006a):

- strengthen the implementation of the Zambia Wildlife Act of 1998;
- improve law enforcement and the extension capability of the Zambia Wildlife Authority and provide effective support for the involvement of the local communities in order to reduce poaching and other illegal off-takes;
- provide economic incentives and enabling policy and legal frameworks to encourage investment by the private sector with full local community participation; and
- undertake appropriate programs of research and monitoring in relation to the protection, conservation and utilisation of resources so as to minimize negative impacts on wildlife and natural habitats.

The draft National Policy on Environment makes provision for the protection of ecosystems and biodiversity, economic incentives and investment by the private

⁸ The text regarding the draft national Policy on Environment of 2005 and on the Wildlife Policy of 1998 is drawn from AWF 2006a.

sector with full involvement of local communities, the sharing of benefits and revenue from GMA resources with local communities living in those areas and the promotion and encouragement of research which contributes to the conservation and sustainable use of biodiversity.

The **Wildlife Policy of 1998** provides for the establishment of a new institution to administer wildlife conservation in Zambia, the Zambia Wildlife Authority (ZAWA). It explains the role of ZAWA, which is to conserve wildlife. ZAWA promotes the sustainable use of wildlife by facilitating the active participation of local communities in the management of wildlife estates; promoting and developing tourism; educating the general public; and enhancing the recognition of the economic value of wildlife resources amongst public and private stakeholders. The policy expresses ZAWA's commitment to natural resource management and protection of the environment through, among others, EIAs, resource management planning and effective fire management. ZAWA is further committed to perpetuate native plant life as part of the natural ecosystem. Use of exotic plants in all National Parks is, therefore, prohibited.

The policy states that ZAWA will promote the conservation of and take immediate actions to intervene for the protection of all threatened or endangered species of wild flora and fauna. The policy makes provision for the control of alien species, particularly those that might negatively affect indigenous species. The Policy does not allow the modification of wetlands and flood plains situated in protected areas. High hazard flood areas are identified and actions taken to limit risks to people and property, and plans for protection and sustainable use of resources from affected floodplains and wetlands. ZAWA undertakes to protect soil resources, prevent contamination and erosion and take management measures to mitigate adverse or potentially irreversible impacts on soils. Natural drainage patterns, airflows and indigenous plants and animals will be protected in their natural conditions. ZAWA will ensure that local communities derive maximum benefits from resources in GMAs.

*Forestry*⁹

The **Forestry Policy of 1998** is based on the following principles:

- to ensure sustainable forest resources management;
- to develop capacity of all stakeholders in sustainable forest resource management and utilization;
- to promote a participatory approach to forest development by developing close partnership amongst all stakeholders;
- to facilitate private sector involvement in forestry development

⁹ Text drawn from AWF 2006a

- to promote equitable participation by women, men and children in forestry development and adopt an integrated approach, through intra and intersectoral coordination in forestry sector development.

The overall objective of the Policy is to enhance the quantitative and qualitative contributions of the sector towards the nation's socioeconomic development in a sustainable manner. The specific objectives are to ensure the integrity, productivity and the development potential of the forest reserves; ensure adequate protection of forests by empowering local communities and promoting the development and use of forest and non-wood forest products; ensure sustainable management of forest ecosystems and biodiversity application through scientific and indigenous technical knowledge; regulate exploitation and ensure efficient use of forest resources and products and to ensure gender equity in all aspects of forestry management, production and utilisation.

Key strategies to achieve the objectives are:

- i making available up-to-date information on forest management and sustainable utilization;
- ii according high priority to the preparation and implementation of community based forest management plans;
- iii assessing and consolidating the productivity of forest reserves through stakeholders participation in management, utilization, cost and benefit sharing;
- iv protecting forest resources against damage by fires, pests and diseases and against destructive harvesting;
- v revision of the legal status of the forest reserves;
- vi promoting a land-use system that ensures the protection of headwaters, river basins and terrestrial resources; and
- vii facilitating sufficient and sustainable allocation of land between major competing uses and sectors such as agriculture and energy.

The policy promotes the protection of biodiversity through in-situ conservation by declaration of protected areas (national and local forests and JFMAs) and promotes equitable participation by women, men and children in all aspects of forestry development. The policy facilitates private sector involvement in forestry development. It provides for sustainable management of forest resources, ecosystems and products and biodiversity application through scientific and indigenous technical knowledge.

*Tourism*¹⁰

According to the **Tourism Policy of 1999** the mission for the tourism sector is to contribute sustainably to the economic well being and enhanced quality of life for Zambians through Government-led, private sector driven and quality product development that are consistent with the protection of the unique natural and cultural heritage. The priority areas of the policy are, among others, to ensure that equitable growth of the tourism sector is environmentally sustainable and will be accessible to future generations and that investment in tourism will be supported by proper tourism development planning to minimize undesirable effects on tourist attractions and the environment.

Other priorities are to redistribute opportunities to participate in tourism growth, ownership and access to the benefit of Zambians, diversify the tourism product from being mainly wildlife based, raise public awareness of the national significance of investment in and promotion of tourism and promote incentives and initiatives in cultural and heritage tourism, traditional ceremonies, and community based tourism. Local communities are recognised as traditional custodians of Zambia's natural and cultural heritage of land and their specific role is, among others, to promote sustainable tourism which enhances the local environment and culture of the area and to enter into joint agreements with the private sector for supply of agricultural and forest products.

*Community rights to natural resources*¹¹

The **Wildlife Policy of 1998** recognises community participation in the management of the country's wildlife through two mechanisms. One is by providing for the involvement of local communities in the planning process for the management of parks. The policy states that throughout any planning process, local communities and the general public at the international, national, provincial and district levels will be given the opportunity to voice concerns about planning and management of parks.

The second mechanism for community involvement in wildlife management is through the establishment of community wildlife management institutions. According to the policy local communities residing in chiefdoms and geographic areas which are contiguous to any wildlife estate or any open area are encouraged and assisted to apply and register with the Zambia Wildlife Authority (ZAWA) as Integrated Resources Development Boards (IRDBs). These are referred to as Community Resource Boards (CRBs) in the Zambia Wildlife Act of 1998 (see below). The structures are established for the purpose of enhancing

¹⁰ This section is drawn from AWF, 2006b.

¹¹ The text for this section is drawn from HURID (2002) and AWF(2006a).

management and sustainable use of wildlife resources outside national parks in GMAs. The objective is to allow communities to participate in management through democratically elected representation of the local community themselves. The Zambia Wildlife Act of 1998 implements this policy approach to community involvement (see below). The Wildlife Policy does not refer to resource access rights and the sharing of benefits derived from the wildlife resource with local communities living in open areas – areas outside GMAs, National Parks or other similar protected areas.

The **Forestry Policy of 1998** encourages participatory Joint Forest Management (JFM) systems with the active involvement of local communities in the protection, management and utilization of forest resources. For instance, no area is declared a Joint Forest Management Area (JFMA) without the consultation of the local community in the area and unless the process for an EIA prior to exploration in a forest area has inherent community and public participation. It involves and recognises the traditional institutions and law as an integral part of local community participation. Chiefs are members of the Forest Management Committees, are involved in decision making processes relating to the implementation of participatory forest management approaches, the preparation of management plans for national forests, local forests and JFMAs and devising methods for the sharing of costs and benefits for forestry management.

The policy accords high priority to the preparation and implementation of community based forest management plans, costs and benefit sharing and investment and conservation incentive mechanisms for local communities, traditional authorities and other stakeholders. The application of indigenous knowledge, practices and systems, recovery plans and rehabilitation of ecosystems are part of the preparation and implementation of forest management plans. Through the JFM program, the policy envisages the promotion and facilitation of community-private sector partnerships in forestry management.

Legislation

Protected Areas

The **Zambian Wildlife Act of 1998** implements the National Parks and Wildlife Policy of the same year. Section 4 of the Act establishes the Zambia Wildlife Authority (ZAWA) as a parastatal body (GoZ 1998). Section 5 outlines the functions of the Authority which include the establishment, control and management of national parks, the conservation and enhancement of wildlife eco-systems and biodiversity and of objects of aesthetic, pre-historic, historical, geological, archaeological and scientific interest in national parks.

Section 10 of the Act makes provision for the declaration of National Parks for the conservation or protection and enhancement of wildlife, ecosystems, biodiversity and natural beauty. A National Park may be declared by the President after consultation with the Zambian Wildlife Authority (ZAWA) and the local community in the area. The procedure for acquiring land for a National Park where any person has a right to that land must be in accordance with the provisions of the **Lands Acquisition Act**.

The Act provides for mining to take place in national Parks (section 13), but subject to an environmental impact assessment in terms of the **Environmental Protection and Pollution Control Act** and subject to controls over the entry of mining personnel into the park.

The Act provides for controls over entry and residence of persons in National Parks, and the prohibition of hunting in National Parks without a permit. The Director-General of ZAWA may issue a permit for fishing in National Parks and for hunting of a wild animal if it is for the better preservation of other animal life or for other good or sufficient reason. The Act also provides for the prohibition of other activities in National Parks such as the killing or injuring of wild animals, possession of weapons and keeping of domestic animals. The Act provides for the Minister to make regulations related to the management of National Parks including the erection of buildings, entry of tourists and visitor fees. The Minister may deal differently with different National parks and categories of businesses or premises.

The Act also enables the President, after consultation with ZAWA and the relevant local community, to declare Game Management Areas for the sustainable utilisation of wildlife (Section 26). Land held under leasehold may only be included in a Game Management Area (GMA) with the consent of the leaseholder. If a leasehold is granted by government in a GMA, the terms of the lease have to be approved by ZAWA. Any person living in a GMA has to conform to the provisions of the management plan of that GMA. A management plan must be developed by the Community Resources Board for the GMA (see below under community rights to natural resources). Hunting without a licence is prohibited in GMAs.

Wildlife Conservation

The **Zambia Wildlife Act of 1998** vests the ownership of every wild animal in Zambia in the President on behalf of the country (GoZ 1998). However, absolute ownership of an animal is transferred by the state to a person who lawfully kills, captures or lawfully obtains possession of any wild animal that is not designated as a protected animal or game animal. Ownership of a game animal or protected animal, or its carcass or trophy is transferred by the State through the issuing of a licence in accordance with the Act. Where any wild animal is resident on land,

the right to harvest such animal is given to the owner of the land subject to any regulations prescribed by the Minister.

The Act provides for the Minister to declare any wild animal a game animal or a protected animal or to declare a game animal a protected animal (Section 30). A game animal may be declared a protected animal to preserve a viable population of the species when it becomes rare, threatened or endangered or for its role in the maintenance or assessment of the health of an eco-system, or for its economic significance in a local or national economy. The Minister may prohibit or regulate the hunting of any species declared as a protected animal either generally for within a specified period or in a specified area. Neither game animals nor protected animals may be hunted without a licence including in open areas, i.e. areas not designated as National Parks, GMAs or other designated land.

The Act provides that any person who has reasonable grounds to believe that any proposed action by government, private organisations or individuals may adversely affect wildlife, anywhere in the country may request ZAWA to ensure that a wildlife impact assessment is carried out that assesses existing or anticipated impacts on wildlife and any endangered or endemic species that may be affected (Section 32).

Part VII of the Act provides for a number of different types of licences to be issued including for professional hunters and tourism operators. The Minister may prescribe what species and the sex and number of animals that may be hunted under hunting licences, the method of hunting, the area for which the licence is valid and licence fees. No person may carry out business as a professional hunter without a Professional Hunter's Licence and a photographic tour operator's licence is required for a person to carry out business as a photographic tour operator.

The Act regulates the hunting of wild animals under different forms of hunting licence and prohibits certain methods of hunting such as with poison, traps, fire, motor vehicles, boats, aircraft or with dogs.

A wild animal may be killed in self-defence or in defence of another person. The Act regulates the trade in wildlife products and makes it illegal to deal in trophies or manufacture articles from trophies without a permit. It is an offence to be in possession of a trophy without a certificate of ownership issued by the Director-General of ZAWA. Possession of elephant ivory and rhino horn must be registered with ZAWA which will issue a certificate of ownership if the ivory or horn has been obtained legally. Sale of game animals or protected animals or their meat is regulated by the Act and may only take place if the seller has a certificate of ownership issued by the Director-General of ZAWA. The seller must transfer the certificate to the buyer in the prescribed manner. Import of any wild animal, meat from a wild animal or elephant ivory or rhino horn may only take

place with a permit issued by the Director-General of ZAWA. Ivory and rhino horn may only be exported with a permit approved by the Minister. The Act also provides for the powers of wildlife officers, and for specific offences such as failing to furnish information regarding use of wildlife which is required by the Act. It also sets fines and prison terms for certain offences such as illegal trade in wildlife and trophies.

*Forestry*¹²

The **Forests Act of 1974** vests the ownership of all trees from the State Lands, Customary areas, National Forests and Local Forests in the President, until lawfully transferred to another person under the Act or any other law. It provides for the establishment and management of National Forests and Local Forests, makes provision for the conservation and protection of forests and trees and the licensing and sale of forest produce. In terms of protection of species, it empowers the Minister to declare any kind or category of trees by statutory instrument, to be a protected tree in the whole or part of Zambia. It prohibits the felling, cutting, burning, injuring, taking or removing of any protected tree. The nature reserves are intended for scientific, educational and research purposes only.

The **Forests Act, No. 7 of 1999** was aimed at replacing the 1974 legislation, but has yet to be implemented. Unlike the 1974 Forests Act, the 1999 Act in line with the National Forestry Policy of 1998, makes provision for the participation of local communities, traditional institutions, NGOs and other stakeholders in forest management through joint forest management. It also provides for the establishment of the Zambia Forestry Commission comprising of key stakeholder institutions and the implementation of international instruments to promote sustainable management of forest ecosystems and biological diversity. The functions of the Commission are, among others, to:

- adopt and promote methods for the sustainability, conservation and preservation of ecosystems and biological diversity in National Forests, Local Forests and open areas;
- disseminate information on forest resources in any area and advise on areas requiring afforestation and protection of flora threatened or in danger of extinction;
- devise and implement participatory forest management approaches involving local communities, traditional institutions, nongovernmental organisations and other stakeholders which will be based on equitable gender participation;
- develop and implement public education programmes on various aspects of forestry including indigenous knowledge on sustainable use and conservation of forestry resources;

¹² Text for this section is drawn from AWF, 2006a.

- in partnership with local communities, forest management committees, traditional institutions and the private sector, develop and implement management plans for national forests, local forests and open areas;
- devise methods for the sharing of costs and benefits with local communities and traditional institutions; and
- establish and operate effective and systematic management of financial, human and natural resources for the conservation and sustainable use of forest resources and the conservation of biological diversity.

The Minister may on the recommendation of the Commission, for the purposes of conserving any species of flora, particularly having regard to its rarity, economic significance or its role in assessing the health of an ecosystem and generally for the conservation of biological diversity, declare a kind or category of flora to be protected flora. To that end, the Minister may prohibit the felling, cutting, burning, injury, taking or removal of any protected flora. The declaration may be at the initiative of any interested person. The Commission may develop and implement recovery plans for the conservation and survival of protected flora in consultation with the relevant community, traditional authority and any other stakeholders. Recovery plans are intended to promote the regeneration, growth and survival of protected flora. The Forests Act of 1999 also confers power on the Minister to issue conservation orders to the occupier of any land to undertake or adopt such measures as the Forestry Commission may deem necessary for the conservation of natural resources on land in an open area and the prevention of injury to natural resources by the occupier.

*Tourism*¹³

The main objective of the **Tourism Act**, enacted on 31st December 1979, was to provide for the establishment of the Zambia National Tourist Board for the purpose of developing and promoting tourism and to provide for the licensing of tourist enterprises. The Act has no provisions on environmental protection or management and does not compel a licensee to share any benefits from tourism operations in any local area with local communities.

*Community rights to natural resources*¹⁴

Under the **Zambia Wildlife Act of 1998** (Section 6), a local community along geographic boundaries contiguous to a to a chiefdom in a GMA or an open area or a particular chiefdom with common interest in the wildlife and natural resources in that areas may apply to ZAWA for registration as a Community Resources Board (CRB).

¹³ This section drawn from AWF 2006b

¹⁴ The text on community forestry rights under the 1974 and 1999 Forest Acts is drawn from AWF, 2006a.

According to the Act once a CRB has been registered ZAWA will, in consultation with the CRB, develop management plans for the GMA, open area or any part thereof.

CRBs must comprise the following:

- a) no more than ten but not less than 7 elected representatives from the local community
- b) one representative of the local authority in the area; and
- c) a representative of a chief in whose area a board is established

The functions of the CRBs are to promote and develop an integrated approach to the management of human and natural resources in a GMA or open area falling within its jurisdiction.

The powers of the CRBs are as follows (Section 7):

- a) negotiate, in conjunction with ZAWA, co-management agreements with hunting outfitters and photographic tour operators;
- b) manage the wildlife under its jurisdiction, within quotas specified by ZAWA;
- c) appoint village scouts to exercise and perform the duties of a wildlife police officer under the supervision of a wildlife police officer in the area falling under the board's jurisdiction;
- d) in consultation with ZAWA, develop and implement management plans which reconcile the various uses of land in areas falling under the board's jurisdiction;
- e) perform such other functions as ZAWA or ZAWA's Director-General may direct or delegate to it.

The Act provides for CRBs to establish a fund to enhance the economic and social well-being of the local community in the area of the board. CRBs may receive grants and donations from any source inside Zambia with the approval of ZAWA and any grants and donations from outside Zambia with the approval of the Minister. Section 5(1)(o) of the Act provides for ZAWA to pay into the fund a portion of any income from licences, concessions and services rendered for the use of wildlife within the area of the board.

The Act provides for CRBs to provide proper accounts of income and expenditure and to make these available as part of an annual report to ZAWA. The accounts of CRBs must be audited annually by independent auditors.

The **Forestry Act of 1974** provides for the Minister to appoint honorary forest officers as an attempt to include ordinary local people in the protection of forest reserves, but these do not play a direct role in the decision making processes

relating to the control and management or the exploitation of forest produce. The Forests Act does not contain any provision empowering local communities or authorities to issue any license or order for the management of the forest or exploitation of forest produce or to obtain any benefit from the forests.

The new **Forests Act, (No. 7 of 1999)**, which has yet to be implemented enables the Minister to declare any local forest, forest plantation or open area a Joint Forest Management Area on the recommendation of the Forestry Commission, local community or owners or occupiers of an area in a forest. Any area proposed to be declared a JFMA is not so declared unless the local community in the relevant area consents to the declaration. The Act permits the constitution of Forest Management Committees responsible for, among others, the development and implementation of management plans for the JFMAs with the purpose of reconciling the various uses of land in the area and negotiating co-management agreements with other stakeholders.

The Act obliges the Forestry Commission to conduct national and local public inquiries during the preparation and implementation of any management plan so as to obtain representations from all stakeholders, including communities and traditional authorities. The Commission must also consult holders of any right, title or interest in the local forest or JFMA and publish the management plan in the Gazette to allow the submission of any objections. If no objections are lodged with the Commission, the Minister registers the management plan which becomes binding from the date of publication of the registration.

In the absence of the implementation of the new Act, and in order to start to involve local people in forest management, the Minister of Tourism, Environment and Natural Resources passed a statutory instrument declaring selected local forest areas in some districts as joint forest management areas (JFMAs). The **Local Forests (Control and Management) Regulations, 200629** declares Lukangaba, Dambwa, Ndoni, Mwewa and Katanino Local Forests as JFMAs. This means that local communities in these areas will participate in the management of the forests areas through forest committees and registered Forest trusts. However, no direct financial benefit is to accrue to the communities because the main legislative framework under which the instrument was formulated – the Forests Act of 1974 – does not have enabling provisions to permit the sharing of benefits from forest management between the State and local communities.

2.5 ZIMBABWE

Zimbabwe has a well developed set of policies and laws providing for protected areas and wildlife conservation. The policy and legislation explicitly view wildlife as an economic resource which can be used sustainably for the benefit of the nation, private farmers and local communities.

Policy

Protected Areas

The **Policy for Wild Life of 1992** (GoZim 1992) provides for Government to maintain a protected area network known as the Parks and Wild Life Estate for the conservation of the nation's wild resources and biological diversity. According to the policy, government will use the Estate to promote a rurally based wild life industry and will harmonise the management of the Estate with the efforts of neighbouring communities that are developing wild life as a sustainable form of land use. The policy vests executive responsibility for the Parks and Wildlife Estate in the Department of National Parks and Wild Life Management (DNPWLM). It provides for the following categories of protected area: National Park; Safari Area; Sanctuary; Recreational Park, Botanic Reserve and Botanic Garden. The objectives of the Parks and Wild Life estate will be to:

- Preserve representative samples of Zimbabwe's aquatic and terrestrial flora and fauna and their physical environments;
- Protect areas of scenic beauty and special interest;
- Preserve rare, endangered and endemic species;
- Conserve water catchments;
- Provide opportunities for public education and the advancement of scientific knowledge;

and, without prejudice to any of the above –

- Encourage public use related to the enjoyment and appreciation of these areas; and
- Generate economic activity within the Estate and surrounding areas to enhance rural development.

The policy commits the DNPWLM to an adaptive management strategy in which research and monitoring are incorporated as integral components of management. It states that where sport hunting is an objective in a protected area, quotas will be set to the maximum sustainable level at which trophy quality can be maintained and the hunting can be marketed. In terms of the policy the emphasis of tourism in parks should be low density and high quality tourism. An

EIA must be carried out for major developments such as construction of roads powerlines, buildings or dams.

Wildlife Conservation

The **Policy for Wild Life of 1992** (GoZim 1992) states that the Government of Zimbabwe aims to encourage the conservation of wild animals and their habitats outside the Parks and Wild Life Estate recognising that this is only likely to be successful if wild life can be used profitably and the primary benefits accrue to people with wild life on their land. "Recognising that much of Zimbabwe does not consist of good arable land, Government regards wild life management in all its diverse forms as a legitimate land use which may be the most appropriate or highest-valued form of development in many areas". The policy also states that Government will take the necessary legal and enforcement measures to prevent the illegal use of wildlife.

Community rights to natural resources

The **Policy for Wild Life of 1992** (GoZim 1992) states that government intends to "transform land use in remote communal areas through its Communal Areas Management Programme for Indigenous Resources (CAMPFIRE), under which rural peoples have the authority to manage their wild life and other natural resources and benefit directly from so doing". Further government will "ensure that wildlife is not undervalued to the people living with it by permitting them to use it sustainably for their own gain as they are able to do with other natural resources and agricultural products".

The policy states that the mechanism for communities to gain rights over wild life will be through the granting of Appropriate Authority to Rural District Councils (under the Parks and Wildlife Management Act of 1975). For this authority to be granted, the Minister will require:

- (1) An acceptable management plan from councils in which objectives for wild life are stated and preliminary intentions for achieving these objectives are outlined;
- (2) An acceptable institutional plan which outlines clearly the methods by which councils intend a) to involve wild life producer communities in district level management and b) to devolve the decision-taking process in local wild life management and the distribution of wild life benefits to producer communities;
- (3) The department to assist councils in managing their wild life and to coordinate the activities of NGOs who are assisting councils'

- (4) The approval by the department of all annual quotas of wild life killed or sold in communal lands during the interim period while councils develop their management capacity;
- (5) And the presentation of annual reports from Councils to the Director and to their constituents detailing the year's performance in wild life management in their district.

The policy provides for the Minister to withdraw Appropriate Authority from a council not conforming to conditions and objectives under which it was granted.

Legislation

Protected Areas

The **Parks and Wildlife Act of 1975** states that the purposes of National Parks are (GoZim 1975):

- a) To preserve and protect the natural landscape and scenery
- b) To preserve and protect wild life and plants and the natural ecological stability of wild life and plant communities for the enjoyment, education and inspiration of the public.

The Act enables the President to declare National Parks on State land or Trust Land if the trustees give their consent (Section 22). The Act enables the Minister acting on the authorisation of the President to acquire land for the Parks and Wild Life Estate either compulsorily or by agreement in terms of the procedures contained in the Communal Land Act and the Land Acquisition Act.

The Act gives the Minister the power to manage National Parks, control entry and authorise or restrict certain activities and carry out various conservation measures. The Act provides for the provision of facilities and services for tourists in National Parks or to lease out such facilities or services. The Act allows the Minister to issue a permit for hunting in National Parks.

The Act makes provision for the establishment of Botanical Reserves and Botanical Gardens (Section 26) on State Land or Trust Land for the preservation and protection of rare or endangered indigenous plants or representative plant communities for the enjoyment, education and benefit of the public.

A third category of protected area is a Sanctuary which may be established by the President on State Land or Trust Land (Section 31) to afford special protection to all animals or a particular species of animal in the sanctuary for the enjoyment and benefit of the public. The Minister may provide tourism facilities and services in a Sanctuary or lease facilities or services. The Minister may also

issue permits for hunting or the removal of game from a sanctuary for certain purposes.

In terms of the Act the President may establish Safari Areas on State Land or Trust Land as part of the Parks and Wild Life Estate (Section 36) for the preservation and protection of the natural habitat and the wild life in these areas in order that facilities and opportunities may be afforded to the public for camping, hunting, fishing, photography, viewing of animals, bird watching and similar activities. The Minister may lease sites in safari areas for various purposes and may grant hunting or other rights. Hunting or removal of wildlife in a safari area may only take place with a permit.

The fifth category of protected area provided for by the Act is a Recreational Park (Section 41), which may be established by the President for the purpose of preserving and protecting the natural features for the enjoyment, benefit and recreation of the public. The Minister may designate areas within Recreational Parks which can be alienated or leased for the provision of tourism facilities and services.

Prospecting and mining are prohibited in National Parks, Botanical Reserves, Botanical Gardens, Sanctuaries or Recreational Parks without a permit issued by the Minister and with the consent of the Minister of Mines (Section 119).

The **Environmental Management Act of 2002** also makes provision for land to be acquired by the State for conservation purposes (GoZim 2002). According to Section 109 the President may acquire land or set land aside for the improvement or proper management of the environment. In the absence of an agreement with the land owner the President may acquire the land in accordance with the procedures under the Land Acquisition Act. The President may set aside any area of Communal Land for the conservation or improvement of natural resources or for the protection of irrigation works or sources of water supplies provided that no such area shall be set aside until the Minister responsible for the administration of the Communal Land Act is satisfied that suitable provision has been made elsewhere for the inhabitants who will be affected by the setting aside of the area (Section 110).

Wildlife Conservation

The **Parks and Wildlife Act of 1975** makes provision for the Minister to declare certain animals as specially protected (Section 44). In terms of the Act, no-one may hunt, have in their possession, or sell a live specially protected animal or the meat or trophy from such an animal without a permit (GoZim 1975). The trophy of any specially protected animal must be surrendered to the state if not obtained by a permit. The Act specifies the purposes for which the Minister may issue a permit for use of specially protected animals (Section 46), but provides the

Minister with some flexibility as he/she may issue a permit for any purpose which in the opinion of the Minister is in the interests of the conservation of animals.

The Act also makes provision for the declaration of specially protected indigenous plants (Section 49). No person may pick a specially protected plant without a permit, although the owners or occupiers of land or a person acting under their authority may pick a specially protected plant for cultivation, forestry, building construction or the construction of roads and other infrastructure. No person may sell a specially protected plant without a permit unless the person is a recognised dealer in specially protected indigenous plants or a member of a recognised horticultural society and the purchase is from a member of the same or other recognised society. The Act specifies the purposes for which the Minister may issue permits for the picking or sale of specially protected indigenous plants. The Act also stipulates that no person may pick or sell indigenous plants without a permit (Section 55) provided that the appropriate authority for any land may pick or sell or authorise others to pick or sell indigenous plants (Section 56). If the Minister deems it necessary for the conservation of a particular indigenous plant, the Minister may prohibit the picking or selling of that plant (Section 57).

The Act prohibits hunting, removal of an animal or any part of an animal or the sale of an animal without a permit unless by an appropriate authority for the land (Section 59), which is the owner of freehold land, a Rural District Council on communal land, the Forestry Commission on state forests and the DNPWLM on the parks and Wildlife Estate. The appropriate authority for the land may issue permits to others to use the wild life (except for specially protected species). If the Minister deems it necessary for the conservation of a particular animal, he/she may prohibit the hunting or removal of such animals in a specific area (Section 60) and may serve a notice to prohibit a specific person from hunting, conducting photographic tourism, or being in the possession of a weapon used for hunting save for self defence. The Minister does not have to give reasons for such prohibitions. The Act enables the killing of an animal without a permit for self defence (Section 61).

The Act prohibits anyone from conducting of hunting or photographic safaris within the parks and wild life estate or on forest land without holding a professional hunter's licence or a professional guide's licence (Section 65). No person may manufacture an article from a trophy, process a trophy or sell or otherwise dispose of a trophy or an article manufactured from a trophy from an animal that has been hunted in contravention of the Act (Section 73).

If the Minister believes it in the interests of conservation he/she may declare any animal that is not a specially protected animal as a protected animal and any indigenous plant that is not a specially protected plant as a protected plant (Section 77) on alienated land within the area of an environment committee established in terms of the **Environmental Management Act of 2002** and the **Rural District Councils Act of 1988**. No person may, without a permit, hunt an

animal or pick an indigenous plant that has been declared protected. The Minister may also restrict the extent of hunting animals or picking of indigenous plants on alienated (private freehold) land in the area of an environment committee if the Minister believes that the hunting of animals or picking of plants is unsustainable. The Minister may authorise an environment committee to reduce the numbers of problems animals on any alienated land within its area if the number of such animals is sufficient to cause excessive damage or nuisance. Section 79 gives environment committees the power to restrict hunting on alienated land if it believes that hunting is unsustainable.

The Minister may declare any person to be the appropriate authority for any waters (Section 83) and may declare controlled fishing waters (Section 84) for which the Minister may make regulations for the control, regulation, restriction or prohibition of fishing. Unless the Minister designates areas of water where a permit is not required, no-one except the appropriate authority for that water may fish in any water without a permit. Section 87 regulates the means of fishing by prohibiting the use of explosives, firearms and poisons. Section 88 controls the introduction into any water of fish and plants that are not native to that water. No-one except the appropriate authority for a water may fish commercially and sell the fish without a permit (Section 90). The minister may ban fishing by specific persons in any area in the interests of conservation (Section 96).

The Act provides for the powers of conservation officials, and police officers in relation to enforcing the Act. It provides for penalties for various offences and for the Minister to make regulations on a wide range of issues and activities. The Act provides for the highest penalties to be awarded for the unlawful killing of a rhinoceros or other specially protected game specified by the Minister in an official notice and for the unlawful possession or trade in rhino horn, ivory or the trophy of any other specially protected animal specified by the Minister in an official notice (Section 128).

The **Environmental Management Act of 2002** provides the Minister responsible for the Environment to regulate the use of wetlands (GoZim 2002). In terms of Section 113 of the Act the Minister may declare any wetland to be an ecologically sensitive area and may impose limitations on development in or around such area. Further, no person may without authorisation in terms of the Act:

- a) reclaim or drain any wetland;
- b) disturb any wetland by drilling or tunnelling in a manner that has or is likely to have an adverse impact on any wetland or adversely affect any animal or plant life therein;
- c) introduce any exotic animal or plant species into the wetland.

Section 114 enables the Minister to serve an order on the owner, occupier or user of land under which they must take measures, construct such works or refrain from specific activities in order to protect the environment.

Further the Act enables the Minister to take such measures as may be necessary for the conservation of biological diversity and the implementation of Zimbabwe's obligations under the United Nations Convention on Biological Diversity adopted in 1992 and may, in so doing (Section 116):

- a) identify the components of the biological diversity of Zimbabwe;
- b) determine the components of biological diversity which are threatened with extinction;
- c) prepare and maintain an inventory of the biological diversity of Zimbabwe;
- d) determine actual and potential threats to the biological diversity and devise such measures as are necessary for preventing, removing or mitigating the effect of those threats;
- e) devise measures for better protection and conservation of rare and endemic species of wild fauna and flora;
- f) develop national strategies, plans and programmes for the conservation of the biological diversity of Zimbabwe;
- g) promote the integration of conservation and sustainable use of biological diversity into relevant sectoral policies, plans and programmes;
- h) require in writing any developer, including the government, to integrate the conservation and sustainable utilisation of the biological diversity in any project the implementation of which has or is likely to have detrimental effects to the biological diversity of Zimbabwe;
- i) protect indigenous property rights of local communities in respect of biological diversity with scientific knowledge;
- j) support the integration of traditional knowledge on conservation of biological diversity with scientific knowledge;
- k) prohibit or restrict access by any person to or the exportation of any component of the biological diversity of Zimbabwe.

The Minister may also take such action or measures as may be necessary for the conservation of the biological diversity of a specific locality and may:

- a) promote such land use methods as are compatible with the conservation of the biological diversity of that locality;
- b) select and manage environmental protection areas for the conservation of the various terrestrial and aquatic ecological systems;
- c) establish and manage buffer zones near environmental protection areas;
- d) prohibit or control the importation of and introduction into the wild of exotic animal and plant species;
- e) identify, promote and integrate traditional knowledge into the conservation and sustainable utilisation of the biological diversity of that locality; and
- f) determine special measures for the protection of species, ecosystems and habitats faced with extinction.

Forestry

The **Forest Act of 1948** establishes the Forestry Commission and places demarcated forests under its control (GoZim 1948). The commission is responsible for the control, management and exploitation of state forests including the leasing of timber harvesting rights. The Act also gives the Minister the power to regulate the commercial use of timber from indigenous trees on other land.

Community rights to natural resources

The **Parks and Wildlife Act of 1975** provides for land holders to acquire rights over wildlife through the granting of “appropriate authority” status (GoZim 1975). Thus the owners of private freehold land are deemed to be the appropriate authority over wildlife on their land (Section 2). Communities acquire rights over wildlife through Rural District Councils (RDCs). A 1982 amendment to the Act provides for the Minister to appoint an RDC as the appropriate authority for wild life on the communal land within the jurisdiction of the RDC (Section 108). The Act states that no person may hunt any animal on any land or remove any animal or part of an animal except in term of a permit issued by the appropriate authority for that land [Section 59(2)]. The appropriate authority may hunt any animal on the land, remove any animal or part of an animal from the land and may issue permits to others to hunt or remove animals from the land. RDCs are then expected to apply the guidelines contained in the 1992 Wildlife Policy to devolve the decision-taking process in local wild life management and the distribution of wild life benefits to producer communities (i.e smaller and more localised groups of people with wildlife on their land). Further policy guidelines state that RDCs are expected to distribute a percentage of income derived from wildlife use to producer communities and to allow these communities to be responsible for a number of wildlife management activities. Because of the existing administrative system of local government, producer communities had to be represented by Ward Development Committees (WADCOs) and Village Development Committees (VIDCOs) which are advisory bodies to Councils.

The **Rural District Council Act of 1988** gives the councils power to take measures to conserve natural resources, permit grazing and cultivation, develop land use plans and make bylaws for the protection of natural resources. The councils may issue permits for catching fish, hunting, cutting firewood, cutting grass and collecting honey (Chitsike 2000). There is no legislation to provide for RDCs to share income from tourism fees with local communities.

According to Chitsike (2000) the **Forest Act of 1948** allocates large areas of former communal land to the Forestry Commission, which leases timber, hunting and photographic tourism concessions. The Commission has adopted the policy

of encouraging RDCs to share 15% of their income from timber royalties with local communities. The **Communal Land Forest Produce Act (1928)** restricts the use of forest products to “own use” and excludes use of products from protected forest areas and areas where a license to cut trees has been granted to others. The use of certain trees is restricted. According to Chitsike (2000:11) under the Act, “without a permit or license, virtually any use of woodland is illegal”.

3. Review of policy and legislation in the countries being partners in the KAZA TFCA

3.1 Introduction

This chapter provides findings from a review of the policy and legislation of the KAZA partner countries with particular reference to protected areas, wildlife conservation and community rights to natural resources. Some findings are also presented regarding forest resources and other issues regarded as important for KAZA. The review focused on the following three issues as provided for in the TOR in Annexe 1:

- a) perceived shortfalls in legislation in one or more countries
- b) complementarity between the policy and legislation of the five countries
- c) any conflicting policies or legislation

3.2 Findings of the review

With the exception of Angola there is a considerable degree of complementarity between the policy and legislation of the KAZA partner countries and no major areas of conflict. In a number of key areas the countries take a similar policy approach and have developed legal provisions to implement these. The exception is Angola, which still has a legacy of colonial legislation and is currently reviewing and revising most of its legislation that governs wildlife conservation and national parks.

Botswana, Namibia, Zambia and Zimbabwe all share a similar policy approach which is based on the premise that wildlife and wildlife-based tourism should contribute to the economic well-being of citizens in general and that local communities living with wildlife or close to protected areas should benefit in particular. The underlying approach to wildlife conservation is to combine protection in parks and game reserves with sustainable use of wildlife on land outside protected areas. Tables 1, 2, and 3 below highlight the key areas of similarity and difference on key issues.

Protected Area Management

In general there is a large degree of complementarity regarding legislation for protected areas. For example Botswana, Namibia, Zambia and Zimbabwe all provide for the establishment of different categories of protected area with National Parks generally enjoying the highest level of protection. They also provide for government to manage protected areas and for government to allow and to prohibit certain activities in the interests of conservation. The activities that may or may not take place in protected areas are similar with some minor differences, although penalties for offences differ. Interestingly the legislation of all four countries allows for hunting in protected areas including National Parks. Such hunting is for specified scientific or management purposes, but legislation allows the minister to use his/her discretion in allowing hunting for other purposes that meet park objectives or conservation objectives. In Namibia, commercial trophy hunting takes in protected areas including National Parks in Caprivi.

All four countries allow tourism in protected areas. While the legislation provides for government conservation or parastatal agencies to provide tourism facilities and services, the legislation in each country also enables the leasing of concessions or specific sites to the private sector for tourism activities.

There are however, some differences in the way that the countries approach issues such as community access to resources inside protected areas and community involvement in protected area management. The CBNRM policy of Botswana for example provides for communities to be given access to use some resources in protected areas and to enter parks and game reserves for cultural purposes. Management plans for parks in Botswana have in the past made provision for advisory committees for protected areas made up of park staff and local stakeholders. The new parks and wildlife legislation being developed in Namibia is expected to make specific provision for such advisory committees, and one is already being established for the Bwabwata National Park in the KAZA area. No specific legal provision or policy directive for such approaches could be found for Zambia and Zimbabwe, although all stakeholders are expected to be consulted in park planning in Zambia.

Although legislation provides for owners of private freehold land to have their land declared as a private game reserve there are no provisions for communities to have areas of communal land declared as some form of protected area in the same way. In Zambia and Botswana some communal land gains additional conservation protection because of its status as a Game Management Area (Zambia) or Wildlife Management Area (Botswana). There are no similar designations in Zimbabwe or Namibia, although there are provisions for areas of communal land to be set aside by different levels of government in Zimbabwe. Namibia is taking a new approach to this in its draft legislation for parks and wildlife management by making provision for the establishment of contractual

parks where a community or private land owner could enter into an agreement with the government for the declaration and management of their land as a protected area. The contractual agreement would form the basis for establishing the park and would determine the rights, obligations, roles and responsibilities of the parties to the agreement.

None of the countries allow communities to legally reside in protected areas. However, in Namibia, Angola and Zambia there are people living within protected areas that fall within the KAZA area. The Bwabwata National Park in Namibia was first declared as a protected area in 1963 with people residing in the area. This has remained the case up to the present, partly as a result of the area being used by the South African military before Namibia's independence in 1990. The re-proclaimed Bwabwata National Park has been zoned to provide for multiple use zones where people live and a contractual agreement is being developed between the Ministry of Environment and Tourism and park residents for the co-management of the multiple use areas. The draft parks and wildlife legislation for Namibia makes specific provision for such agreements.

Table 1 below highlights some key areas of similarity and difference between the KAZA countries regarding protected areas.

Wildlife Conservation

Again in general, there is considerable similarity of approach between Botswana, Namibia, Zambia and Zimbabwe with regard to wildlife conservation. The legislation provides for and regulates use of wildlife outside of protected areas including private and communal land. Each country makes provision for different categories of wildlife so that certain species can be afforded a higher level of protection, although the categories used in each country are different. These differences reflect the relative abundance of various species in each country. For example, oryx and bat eared fox are specially protected in Zimbabwe because they occur only marginally in certain parts of the country. In Namibia, however, they are common and oryx are a huntable species which may be hunted by farmers for own use without a permit. Each country provides for land holders to gain some use rights over wildlife, within an overall system that is based on government conservation agencies issuing permits for most forms of use. Again, some of the details of the use rights provided to land holders and the types and form of permits differ from country to country.

All four countries provide a higher level of protection to rhino and elephant, but with differences in approach. All four regulate and control the trade in ivory and rhino horn and follow CITES principles. All four countries enable the shooting of wildlife (including specially protected species such as elephant) in self defence or in defence of someone else's life. While the offences for illegal use of wildlife are fairly similar, the penalties differ from country to country. Trophy hunting is

allowed in each country and is regulated. Professional hunters have to be licensed according to legislation in all four. Botswana, Zambia and Zimbabwe require the licensing of tourism guides, but this is not a requirement in Namibia which is still awaiting new tourism legislation which should provide for this.

Table 2 below summarises some of the key similarities and differences between the KAZA countries regarding wildlife conservation.

Community access to resources

Botswana, Namibia, Zambia and Zimbabwe all provide some form of use rights over wildlife to local communities, although again, the details of the approaches differ. Namibian legislation affords communities that form a conservancy the same rights as private freehold farmers. This means that communities may use huntable game for own use without quotas or permits and may apply for permits for use of protected and specially protected game and to capture and sell wildlife. They also gain a form of concession over tourism in their areas and may enter into joint ventures with tourism companies. The communities keep all the income that they earn from wildlife and tourism and decide how to spend it. In Botswana community use rights are provided through policy rather than legislation. The policy changed recently so that communities have to place a large part of their income into a government trust fund, to which they and other communities may apply for funds to use for projects. In Zambia community use rights are ill-defined although provided for in legislation, and in essence government shares the income from trophy hunting with local groups called community resource boards. In Zimbabwe legislation provides use rights to Rural District Councils which are government bodies, and the councils are expected by policy to devolve decision-making to lower community levels and to share income with them. In all four countries policy and legislation provide resource rights to groups of people on communal land but not strong and secure land tenure, which undermines the ability of communities to establish full control over the use of their land and to establish strong natural resource management regimes.

Namibia and Zambia have developed policy and legislation to provide communities with rights over forest resources. In Namibia in the KAZA area, several communities (and some conservancies) have formed community forests under forestry legislation. This enables them to manage and use forest resources. According to forestry legislation the use of wildlife in a community forest must be subject to the community forest management plan.

Table 3 below summarises some of the main areas of similarity and differences in the community-based approaches of the KAZA countries.

Forestry

This report has also considered forestry legislation because there are forest reserves within the KAZA area which need to be integrated in the overall management of the TFCA. Forestry legislation in all five countries of KAZA is mainly concerned with the regulation and control of forest resources but does not seem to prevent the use of wildlife in forest reserves. CHAs in Botswana also cover forest reserves and in the KAZA area the community run Chobe Enclave Conservation Trust has a hunting concession in the neighbouring forest reserve. Forest legislation provides for the commercial use of forests under government regulation and control.

4. Analysis and Recommendations

4.1 Introduction

The TOR for this report require recommendations for legislative or policy amendment or development to achieve greater harmonisation of protected area and natural resource management and community benefits within KAZA in keeping with the objectives for the TFCA (Annexe 1). In many respects it would have been useful to carry out this review based on a set of management objectives for the TFCA as contained in a management plan for the area. This could have provided the framework for analysing the policy and legislation in order to assess whether they enabled or constrained the achievement of the management objectives. In the absence of a specific set of questions related to management objectives, the analysis regarding harmonisation has been carried out in relation to the broad objectives contained in the MOU between the five countries and with reference to the activities for the TFCA proposed in the pre-feasibility study (Transfrontier Consortium 2006).

4.2 Meeting the main objectives of KAZA

The most specific and relevant of the objectives stated in the KAZA MOU are the following:

- (vi) enhance ecosystem integrity and natural ecological processes by harmonising natural resources management approaches and tourism development across international boundaries;
- (vii) develop mechanisms and strategies for local communities to participate meaningfully in, and tangibly benefit from the TFCA;

Objective (vi)

With regard to objective (vi) the prefeasibility study identifies a number of wildlife and natural resource management issues and components that are important for development of a Management Plan for the KAZA TFCA. Most of these issues can be addressed through the development of common goals and objectives and common management strategies that do not require changes in high level policy or legislation. To a very large extent there is an enabling policy and legal framework already in place within Botswana, Namibia, Zambia and Zimbabwe that can facilitate cooperation in wildlife and natural resource management. The vast majority of collaborative activities can be developed jointly through developing common management goals and objectives and developing implementation from the ground up and through technical cooperation between the relevant country authorities. This can largely be achieved through the development of a management plan for KAZA and through technical working groups on specific issues.

For example the pre-feasibility study highlights the need for the development of strategies for addressing Human Wildlife Conflict (HWC). There are currently no major policy or legal impediments to developing strategies to address HWC and in particular human-elephant conflicts. Most of the activities envisaged within KAZA are management-related and focus on prevention, reduction and mitigation. As indicated by the pre-feasibility report what is mostly required is the political will to develop a regional strategy for the management of elephants based on the recognition that “total protection for elephants will result in their available range being reduced to designated protected areas, resulting in a probable decrease in their numbers, whereas a policy of sustainable use in appropriate areas (based on the fundamental premise that all wildlife products should have value and that legal trade is beneficial for conservation) should encourage and maintain an expansion of the range available to elephant and an increase in their numbers” (Transfrontier Consortium 2006:53). The legislation in Botswana, Namibia, Zimbabwe and Zambia would allow culling of elephants as a conservation measure to address over population. However, this would depend on developing a common elephant management strategy and whether governments would show the necessary political will to embark on a culling programme.

Although different countries have different approaches to problem animal control there is sufficient flexibility in policy and legislation to allow for a common approach to be developed and applied throughout KAZA. One of the constraints in some countries (such as Namibia) has been the time it takes for government to declare and deal with a problem elephant. This has now been addressed through the policy of giving regional staff the decision-making authority as well as the authority to delegate decision-making to conservancies in certain circumstances.

However, it would be useful to harmonise the status of elephants within the KAZA area. For example, according to Mwape (2003) Zambia's elephants are under Appendix I of CITES (meaning that no commercial utilisation of elephants, and therefore no benefits going to communities) while those elephants in Namibia, Botswana and Zimbabwe fall under Appendix II (limited exploitation of elephants for commercial purposes, and therefore some benefits go to local communities). In the "four-corners" area, this means that from the same elephants that cross state boundaries communities from neighbouring countries benefit from animals while Zambia's communities, just across the Zambezi River who also help conserve these animals, do not. The international instruments should provide enough incentives for all communities in the same ecosystem, but found in different countries, to benefit from their conservation efforts (Mwape 2003).

It could be argued that it would be useful for all countries to have the same offences and fines for contravention of wildlife legislation. By and large there is considerable similarity and the differences do not necessarily warrant changes in national legislation. The key elements are present such as the designation of some species as specially protected and a high degree of protection for elephant and rhino. What would make a bigger difference on the ground would be adequate law enforcement and the provision of sufficient financial and human resources to carry out law enforcement in each country.

Another example is the designation of protected areas. Although each country has different designations for parks and reserves, this does not constitute a major constraint to enabling cooperation across the KAZA area. The key point is that protected areas have already been proclaimed, are secure in legislation, and can provide core areas of protection for wildlife and broader biodiversity and at the same time supply community-managed areas on their borders with wildlife for economic use. Again, it would be more useful to apply time and resources to management issues within the parks and developing common approaches to issues such as illegal hunting, vegetation destruction by elephants, disease control, tourism control, etc and improving staff capacity, equipment and infrastructure within parks. The role of forest reserves needs to be recognised as contributing to wildlife and habitat conservation within KAZA and to potentially providing additional benefits to local communities. Forest authorities need to be fully integrated into the planning and implementation of KAZA.

Objective (vii)

With regard to objective (vii) there are clearly differences within Botswana, Namibia, Zambia and Zimbabwe in the way their policy and legislation address community access to resources and to benefits from sustainable use of resources. Table 3 below summarises the key similarities and differences. The question for the implementation of the KAZA TFCA is to what extent these

differences provide constraints to promoting community benefit and involvement in the management of KAZA?

From a theoretical perspective the community-based approaches of all four countries have their limitations and shortcomings. There is a wide body of literature that stresses the importance of tenure and property rights or “proprietorship” for sustainable natural resource management (e.g. Barrow and Murphree 2001, Cousins 2000, SASUSG 1996, Lynch and Alcorn 1994, IFAD 1994). In its document on “Sustainable Use Issues and Principles” SASUSG (1996) suggests that tenure and pricing mechanisms have the greatest influence on biodiversity conservation.

The term tenure includes the concept of proprietorship, which Murphree (1994) defines as “sanctioned use rights, including the right to determine the mode and extent of management and use, rights of access and inclusion, and the right to benefit fully from use and management.” From this perspective none of the four countries provides communities with strong proprietorship – in most cases the state decides when and how wildlife can be used and shares income with communities.

Further, the communities have weak land tenure. This is important within the KAZA context. According to AWF (2006a:11-12): “Land rights, including the right to negotiate resource use agreements with the private sector, need to be invested in communities. Giving local people tenure (conferring custodianship or ownership over resources they live with) is often the essential first step in creating incentives for efficient and sustainable use. Secure property rights and competition are essential ingredients for a well-functioning market leading to efficiency and encourages long-term thinking, which in turn encourages sustainable management practices. If any person is going to invest in a piece of land, that person wants to be sure that this will entitle him to certain rights: the right to use the land for his benefit, the right to prevent others from using it or arbitrary possessing it or selling it. Without these rights, the land has much less value and the person will tend to exploit whatever benefits they can get from it without investing anything”.

Further, it is important to recognize power imbalances when crafting institutional arrangements for TFCAs. In most co-management arrangements between the state and communities such as in the KAZA TFCA, the state will be the more powerful partner institutionally, economically and technically. Jones and Murphree (2004) suggest that what is required to partially address the imbalance of power is negotiated contractual agreements between parties with legal persona, holding rights to veto or withdrawal. In the KAZA context communities do not share equality with the state as land holders because communal land is usually owned by the state. As a result communities tend to lose out in negotiations with the State and private sector over distribution of benefits from wildlife and tourism.

Based on this analysis, all countries within the KAZA region should be aiming to provide greater proprietorship over land and natural resources to local communities in order to provide them with the appropriate incentives to manage resources sustainably and to enable them to negotiate as strong partners in the TFCA process. This should include use rights entrenched in legislation, the right to retain all income from use and the right to use that income as the community wishes, and the right to decide when and how to use the wildlife and how much to use. All countries should also be aiming to provide communities with rights over forest resources similar to those currently enjoyed by communities over wildlife.

At the same time it is recognised that the community-based conservation approaches in each country have grown out of the historical and political contexts of each country and it will take time to effect change. Further, much is possible within the current policy and legal framework. Within the four countries, community institutions exist which have various forms of resource user rights and which can be used as building blocks for community involvement in the TFCA. Various mechanisms do exist in each country to channel benefits to communities and there are models for promoting improved community interaction with protected areas. The conclusion regarding community involvement and benefit, is that much can be done to improve the current policy and legal framework in individual countries, but the existing framework does not provide fundamental constraints to reaching KAZA objectives.

4.3 Angolan policy and legislation

Clearly one of the main priorities for promoting policy and legislative harmonisation within KAZA is the further review and revision of Angolan policy and legislation to bring it in line with the four other countries. Areas to focus on will be promoting sustainable use of wildlife in areas outside protected areas, providing for community involvement in protected area management, devolving rights over wildlife to land holders and enabling private sector engagement in the tourism industry.

4.4 Summary of conclusions and recommendations

The following is a summary of the main conclusions and recommendations of this report:

- (1) Wildlife and natural resource management

- d) There is an enabling policy and legal framework already in place within Botswana, Namibia, Zambia and Zimbabwe that can facilitate cooperation in wildlife and natural resource management.
- e) The vast majority of collaborative activities can be carried out jointly through developing common management goals and objectives and developing implementation from the ground up and through technical cooperation between the relevant country authorities. This can largely be achieved through the development of a management plan for KAZA and through technical working groups on specific issues.
- f) Policy and wildlife legislation in Botswana, Namibia, Zambia and Zimbabwe enable these countries to address the problem of over population of elephants within KAZA. In order to address this issue though, the KAZA countries need to develop a common elephant management strategy that is based on a range of management strategies including sustainable use of elephants to provide community benefits. This would be helped by harmonising the status of elephants in the KAZA area by down listing Zambia's elephants from CITES Appendix I to appendix II.

(2) Protected areas

- e) Although each country has different designations of parks and reserves this does not constitute a major constraint to enabling cooperation within KAZA.
- f) Protected areas form a large part of the land area of KAZA and these areas are secure in legislation and can supply neighbouring community-managed areas with wildlife for economic use.
- g) The focus regarding protected areas should be to develop common approaches to management issues such as vegetation destruction elephants, disease control, illegal hunting, tourism control, etc and improving staff capacity, equipment and infrastructure within parks.
- h) The role of forest reserves needs to be recognised as contributing to wildlife and habitat conservation within KAZA and to potentially providing additional benefits to local communities. Forest authorities need to be fully integrated into the planning and implementation of KAZA.

(3) Community access to resources

- h) Botswana, Namibia, Zambia and Zimbabwe all have policies and/or legislation that makes provision for community access to and benefit from the use of natural resources, particularly wildlife.
- i) The access rights and rights to benefit are different in each country as a result of historical factors, particularly each country's political context.
- j) The existence of these use rights and community institutions to exercise them provides a foundation for community involvement in KAZA planning and management and for communities to benefit from wildlife conservation and tourism and to a lesser extent from commercial use of forest products.

- k) However, the ability of communities to play a meaningful role in KAZA would be strengthened by the provision of stronger tenure over land and resources, placing communities on a more equal footing with government in terms of the power and legitimacy to negotiate community interests.
- l) Further, increasing community land and resource rights would provide stronger incentives for communities to engage in the KAZA process and to commit themselves to the conservation objectives of the TFCA.
- m) Communities need to be able to retain the income from wildlife and tourism and use it at their own discretion, their use rights should be protected in legislation. They should be able to take basic management decisions about wildlife on their land including when and how to harvest and how much.
- n) Greater attention should be given to extending rights over forest resources to communities so that they can actively engage in forest management and in the sustainable commercial use of forest products.

(4) Angola

- c) Angolan policy and legislation requires harmonisation with that of Botswana, Namibia, Zambia and Zimbabwe.
- d) Major areas to focus on are:
 - promoting sustainable use of wildlife in areas outside protected areas;
 - providing for community involvement in protected area management;
 - devolving rights over wildlife and forests to land holders including local communities; and
 - enabling private sector engagement in the tourism industry.

Table 1. Comparison of country approaches to protected area management

Issue	Angola	Botswana	Namibia	Zambia	Zimbabwe
<i>Provision for establishment of PAs</i>	Yes	Yes	Yes	Yes	Yes
<i>Categories of PA</i>	National Park, Strict Nature Reserve, Partial Reserve, Regional Nature Park, Special Reserves	National Park, Game Reserve, Sanctuaries, Private Game Reserves, Wildlife Management Areas and Controlled Hunting Areas	National Parks, Game Parks, Nature Reserves, Private Game Reserve, Recreational Areas (Planned: National Park, Nature Reserve, Site of Special Conservation or Scientific Importance, Protected Landscape	National Parks, Game Management Areas	National Parks, Botanical Reserves, Sanctuary, Safari Area, Recreational Park
<i>Governance</i>	State ownership	State ownership but Private Game Reserves are privately owned; WMAs in effect co-managed between different levels of government & other stakeholders; CHAs managed by concession holders (including communities)	State ownership but Private Game Reserves are privately owned, wildlife in communal area conservancies is co-managed between state and communities. (Planned: contractual parks co-managed by state and land holder)	State through parastatal (ZAWA), though WMAs co-managed with communities	State ownership, though no specific provision in legislation, private game parks or conservancies can be established on private land
<i>Mining in Parks</i>	No data	Prohibited in National Parks except with the permission of the Minister	Not prohibited, but EIA required	Allowed in National Parks subject to EIA and control over entry of mining personnel	No prospecting or mining in parks without permission of Minister and Minister of Mines
<i>Hunting in parks</i>	No hunting allowed in PAs	Commercial hunting prohibited in PAs,	Hunting possible in all PAs	Hunting allowed in National Parks	Hunting allowed only by permit and for

		permits may be granted for hunting for specific purposes. Hunting allowed WMAs, some CHAs, and private game reserves		through permit for specific purposes. Commercial hunting allowed in GMAs with permit.	specific purposes (scientific, management purposes, etc.) but not commercially
<i>Private sector tourism</i>	No data	Private sector may lease sites in PAs to provide tourism facilities and services	State can allocate concessions to private sector in all PAs	Concessions can be allocated to the private sector in National Parks	Minister may lease sites to private sector for tourism
<i>Community access to resources in PAs</i>	No provision in legislation	CBNRM policy provides for access to use some resources and for cultural purposes	No provision for community access (Planned: co-management agreements could enable access)	No provision for community access National Parks, but communities can use resources in GMAs	No provision in legislation
<i>People living in parks</i>	No legal provision for people to live in parks	Prohibited except in Central Kalahari Game Reserve	People live within Bwabwata National Park – no proper legal provision (Planned: Co-management agreement with residents, new legislation to accommodate presence of people)	No legal provision for people to live in parks	No legal provision for people to live in parks
<i>Provision for co-management</i>	No provision for co-management	CBNRM policy provides for community involvement in PA management	Not in current legislation (Planned: new legislation will allow for co-management agreements with resident and neighbouring communities).	No legal provision for co-management of National Parks, co-management provided for in GMAs	No legal provision for co-management of PAs
<i>Management Plans</i>	No data	No specific provision	No specific provision	ZAWA is authorised	No specific provision

		in legislation	in legislation (Planned: new legislation will require management plans for PAs and indicate what must be covered in a management plan)	by legislation to prepare management plans for National Parks and GMAs.	in legislation

Table 2. Comparison of country approaches to Wildlife Conservation

Issue	Angola	Botswana	Namibia	Zambia	Zimbabwe
<i>Categories of wildlife</i>	No hunting of certain species	Protected game, partially protected game, game animals	Specially protected, protected, huntable game (will change with new legislation)	Protected animal, game animal	Specially protected
<i>Protection of rhino and elephant</i>	Among the species for which hunting is prohibited	Rhino may not be hunted, hunting of and killing of elephant controlled. The highest penalty is for illegal killing of rhino	Rhino and elephant may be hunted, but highest penalties are for illegal killing of rhino and elephant	Highest penalties are for illegal killing or trade in ivory or rhino horn (jail with no option of a fine)	Highest penalty is for illegal killing of rhino, or other specially protected game specified by the Minister or for illegal trade in ivory or rhino horn, ivory or the trophy of any other specially protected animal specified by the Minister.
<i>Trade in ivory and rhino horn</i>	No data	Strict provisions regarding trade in line with CITES	Strict provisions regarding trade in line with CITES	Strict provisions regarding trade in line with CITES	Strict provisions regarding trade in line with CITES
<i>Use of wildlife</i>	Provision for controlled hunting of certain species	Policy: Wildlife should be used sustainably to contribute to the economy. Legislation: Controlled use of	Policy: Use of wildlife should benefit society. Legislation: Controlled use of wildlife such as hunting, capture and	Policy: Use of wildlife should benefit communities. Legislation: provides for controlled use of	Policy: wildlife should be a legitimate and economic form of land use: Legislation: provides for controlled

		wildlife such as hunting and sale	sale	wildlife such as hunting and sale	use of wildlife such as hunting, capture and sale
<i>Prohibition of certain means of hunting</i>	Yes	Yes	Yes	Yes	Yes
<i>Licensing of hunters and guides</i>		Licensing of professional hunters and hunting guides under wildlife legislation and tourism guides under tourism legislation	Licensing of professional hunters and hunting guides but not tourism guides	Licensing of professional hunters, apprentice professional hunters and professional tourism guides and apprentice tourism guides under the Wildlife Act.	Licensing of professional hunters, learner professional hunters and professional tourism guides under Wildlife Act.
<i>Killing in self-defence</i>	No data	Yes	Yes	Yes	Yes

Table 3. Comparison of country approaches to community rights to resources

Issue	Angola	Botswana	Namibia	Zambia	Zimbabwe
<i>Legal rights</i>	No provision for community rights	Provision for community use of resources through policy. Community receives a hunting quota and a lease for tourism activities	Rights entrenched in legislation. Community may use huntable game for own use without permits or quotas. May apply to use other game. Receives tourism rights.	Rights entrenched in legislation	Rights entrenched in legislation, given to RDC (a government body), which must devolve to lower levels).
<i>Resources</i>		Wildlife, tourism, veld products	Wildlife under wildlife legislation, forest resources under forest legislation	Wildlife under wildlife legislation, forestry under forestry policy/legislation	Wildlife and some veld products.
<i>CBO</i>		Communities in CHAs	Self-defining	Community	Ward wildlife

		designated for community use form Trust	community forms a Conservancy for wildlife and a Community Forest for forestry	Resources Board (usually for the area of a chiefdom)	committees developed under RDCs.
<i>Income</i>		Communities retain 35%, 65% paid into government trust fund for use by communities	Community retains all income	CRB receives percentage of income from government from trophy hunting fees	RDCs share income with local community.
<i>Decision-making</i>		Government sets quotas and provides permits. Government helps community choose its tourism or hunting partner	Government approves quotas and gives permits for use of protected or specially protected game. Communities choose own private sector partners.	Government chooses hunter for the area of the CRB.	Where RDCs devolve to lower levels, communities can choose their partner and decide how to use their income. Government approves quotas.
<i>Management</i>		Community does some game monitoring. Hunting or tourism partner draws up management plan	Community chooses how to use quotas (own hunting for meat, live sale, or trophy or other commercial hunting). Communities develop own management plans, monitor wildlife.	Government helps community develop a management plan.	Communities develop own management plans, monitor wildlife.

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ANNEX 1 TERMS OF REFERENCE

Consultancy:

Legislation and policies relating to Protected Areas, wildlife conservation, and community rights to natural resources in countries being partner in the KAZA TFCA.

Background

Whereas the scope of work as outlined below was discussed and agreed upon by Leo Braack (Director: Southern Africa Wilderness & Transfrontier Conservation Programme, Conservation International, Cape Town, South Africa) and Nesbert Samu (Director, Kazangula Heartlands, African Wildlife Foundation, Livingstone, Zambia), it is hereby indicated as background that Conservation International (CI) and African Wildlife Foundation (AWF) share common interest and desire to develop the consultancy products as described below, and towards achieving such common objective have agreed to work together and share resources and materials.

TERMS OF REFERENCE & KEY DELIVERABLES

The Terms of Reference and Key Deliverables for the consultancy are summarized as follows:

1. Consultant will search and collect all key legislation and policies relating to
 - (a) protected areas (i.e. national parks, game reserves, wildlife management areas, game management areas etc)
 - (b) wildlife conservation, and
 - (c) community rights to natural resourceswithin the five countries Angola, Botswana, Namibia, Zambia and Zimbabwe which are partners in the Kavango-Zambezi Transfrontier Conservation Area (KAZA TFCA) initiative.
2. Consultant will collate all such collected materials into one or more logically synthesized document(s), available in electronic format on Compact Disk and also five printed hard copies.
3. Consultant will study the collected material and compile a Review which will summarize for lay readers the key issues around legislation and policy affecting protected areas, wildlife conservation, and community rights to natural resources in the five countries, specifically identifying
 - (a) perceived shortfalls in legislation in one or more countries
 - (b) legislation/policies of complementarity which lend themselves to easing transboundary natural resource management, trade, tourism or cultural access
 - (c) legislation/policies which conflict with each other, either within a particular country or between adjoining countries, and which should be considered for amendment in order to better achieve the conservation and development objectives of the KAZA TFCA
4. Consultant will develop clear and concise legal recommendations for legislative or policy amendment or development that will achieve greater transboundary harmonization between adjoining countries relating to protected area and natural resource management, and community benefits associated with such natural resources, in keeping with the objectives for KAZA TFCA as formulated by the five participating governments.

5. Consultant will make himself available at a time suitable to AWF, CI and Consultant, within a reasonable period after submission of the Final documentation, to present the key findings, answer relevant questions and make appropriate recommendations. Costs for this specific trip shall be borne by CI and/or AWF.