

Conservancy Needs Assessment

Final Report #8

Stakeholder Feedback on CBNRM Policies Report

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ARD Principal Contacts: Edwin Harvey
 Project Manager
 ARD, Inc.
 Burlington, Vermont
 Tel.: 802-658-3890
 EHarvey@ARDInc.com

Brenda Bergman
Project Director
ARD, Inc.
Burlington, Vermont
Tel.: 802-658-3890
BBergman@ARDInc.com

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Acronyms and Abbreviations

CBNRM	Community-based Natural Resource Management
CEO	Chief Executive Officer
CNA	Conservancy Needs Assessment
FENATA	Federation of Namibian Tourism Association
GRN	Government of the Republic of Namibia
HWC	Human-Wildlife Conflict
IRDNC	Integrated Rural Development and Nature Conservation
JV	Joint Venture
MCA-N	Millennium Challenge Account Namibia
MET	Ministry of Environment and Tourism
MLR	Ministry of Lands and Resettlement
MRLGHRD	Ministry of Regional and Local Government, Housing, and Rural Development
NGO	Nongovernmental Organisation
NPC	National Planning Commission
NRM	Natural Resource Management
NWR	Namibia Wildlife Resorts
SOS	Scope of Services
WWF	World Wildlife Fund

Executive Summary

This Stakeholder Feedback on Community-based Natural Resource Management (CBNRM) Policies Report responds to Task 7 of the Millennium Challenge Account Namibia (MCA-N) Conservancy Needs Assessment (CNA) Scope of Services (SOS): “Identify any conservancy-related policy reform needs to enhance the success of MCA Namibia’s Conservancy Support Activity”.

This report identifies required policy reforms based on stakeholder consultation (Sub-task 3.7.2.1), prioritises the required reforms (Sub-task 3.7.2.2), and recommends steps to achieve the reforms (Sub-task 3.7.2.2).

The information in this report was gathered through consultation with a cross-section of Namibian CBNRM Programme stakeholders. The ARD, Inc. Team included policy-related questions in the field-based needs assessment carried out in 27 registered conservancies and one emerging conservancy in October–December 2009, and assessed policy issues in an assessment of potentially emerging San conservancies around the Etosha National Park carried out in late 2009.

A full record of the issues raised by conservancies and CBNRM Programme stakeholders is provided in Appendices 1 and 2. The following are the most important policy reform issues identified by conservancies and CBNRM Programme stakeholders.

New Wildlife Legislation

At the time of report writing, the new Namibian Parks and Wildlife Management Bill is still outstanding. No consultation with stakeholders has taken place for almost a year, but stakeholders are aware that changes have been made to earlier versions of the bill that could diminish conservancy rights. Stakeholders are concerned that the current version may be pushed through without further consultation. If the new bill infringes upon conservancies’ rights over wildlife, it could potentially take conservation backwards in Namibia’s communal conservancies and in the country as a whole, by undermining conservancies’ incentives to manage wildlife sustainably. This in turn could present a long-term threat to JV tourism and the impact of MCA-N investments in communal area conservancies. Conservancies and stakeholders had hoped that the bill would extend conservancies’ ownership rights over species other than those included in the current category of “hunnable game”.

Tourism Rights

The current conservancy legislation is ambiguous regarding conservancy tourism rights. As a result, many tourism operators do not see the need to conclude agreements with conservancies. This is particularly a problem in the Caprivi region. In the past, the Ministry of Environment and Tourism (MET) took a strong stand on the policy that private tourism operators had to conclude agreements with conservancies; however, this policy has not been applied for some years. This issue could be a threat to the MCA-N investment, as operators may refuse to conclude deals with conservancies. The new parks and wildlife legislation needs to extend clear rights over tourism activities to conservancies.

Conservancy Land Tenure

Neither communal area communities in general nor conservancies in particular have tenure over their land. Lack of land tenure makes it difficult for conservancies to keep outsiders from using land or resources—particularly if Traditional Authorities do not cooperate with conservancy plans. Lack of land tenure thus has the potential to undermine conservancies' ability to adhere to wildlife and tourism zoning as part of conservancy land use planning and resource management.

Leases on Communal Land for Tourism Operations

The Ministry of Lands and Resettlement (MLR) has begun charging high lease fees for tourism operations on communal lands, including in conservancies. This has the similar effect of imposing a tax on tourism operations, and undermines the viability of conservancy joint ventures (JVs). High lease fees could pose a considerable threat to MCA-N proposals to increase the number of JVs in conservancies.

Another potential threat to the MCA-N investment is that Namibia has no clear policy or legislation that enables conservancies to acquire a head lease for tourism operations on communal land that allows them to sublease to a private operator. This contributes to confusion over who should hold leases for tourism operations—the conservancy or the operator—as well as to confusion over lease fees. Lack of a head lease places the a conservancy in a weak position when negotiating with the private sector, and places the private sector in a weak position with the banks when trying to secure loans. The current version of *proposed* new land legislation does provide for conservancies to acquire head leases with the right to sublease. MCA-N and the Namibian CBNRM Programme should cooperate in working with the MLR to ensure that this provision remains in the Bill.

Land Boards

The Communal Land Reform Act of 2002 provides that land boards may not allocate a lease for a purpose that defeats the objectives of a conservancy management and utilisation plan. However, land boards continue to allocate land for purposes that are contrary to conservancy management plans (for example, the Caprivi land board recently granted a leasehold for tourism purposes that is contrary to the Kasika Conservancy plan). This undermines the wildlife and tourism potential of conservancies.

Barriers to Private Sector Investment

A tenure system needs to be developed that gives investors and their financial institutions a high level of confidence without disempowering conservancies and local communities. The core of the problem is the current lease scheme that officially provides leases to conservancies or the private operator for 10 years with a possible special extension of an additional 10 years provided by the Minister of the MLR. This scheme includes no provision for subleasing. Financial institutions will not extend loans without other collateral, and most private sector investors will not invest in businesses on these conservancies. The reasons for this hesitancy to extend loans or investment include: a) investors have no surety of realising capital gains through sale of their assets (capital gain is often the greater return on an investment, not the year-on-year profit); b) the leasehold period is too short to get real returns and in which to sell; c) an investment with no lease or sublease agreement is very vulnerable; and d) there is no legal security that the lease would be transferred into the name of the investor if the conservancy should disband or be de-registered by MET.

The disadvantages resulting from the current lease arrangements are many, including:

- Few companies invest in communal areas (fewer than 5% of all tourism enterprises are on the 41% of land that comprises Namibia's communal areas);
- Companies are forced to limit the size of their investments;
- There is little incentive for long-term investment; and
- Conservancies are not always able to negotiate the best deals that would result from long and secure leases because their investor partners feel insecure.

These barriers to private sector investment in conservancies remain a considerable threat to MCA-N investment in conservancies.

Knowledge and Understanding of Conservancy and Related Policy and Legislation

CBNRM stakeholders (including conservancy committees and members, nongovernmental organisation personnel, and MET staff) lack awareness and understanding of the existing conservancy policy and legislation (such as the 1995 Policy on Wildlife Management, Utilisation in Communal Areas, and the 1996 Nature Conservation Amendment Act). This causes several problems, including confusion about the application of policy and legislation, leading to sub-optimal results in conservancy development and income generation. An incorrect understanding of conservancy policy and legislation amongst some high level politicians can even diminish support for conservancies and can undermine Namibia's conservancy programme. Certain stakeholders can also exploit this general lack of awareness and understanding of policy and legislation for their own purposes (e.g., by making false claims that people cannot raise livestock or crops in conservancies).

The following issues require priority attention from the CBNRM Programme and supporting agencies (such as MCA-N), in descending order:

1) The Parks and Wildlife Management Bill

The CBNRM Programme and MCA-N should urgently enter into dialogue with MET to ensure that conservancy rights will be protected in the new legislation, so as to maintain conservancies' incentives for conservation. In particular, the legislation should retain the rights-based approach of the current laws, and should not replace this with the provision of administrative discretion for officials. In this regard, the legislation should clearly state that conservancies **shall** gain rights over wildlife and tourism on their land, it should retain the provisions that conservancies are owners of huntable game, and it should provide for conservancies to gain rights over commercial tourism activities on their land upon registration.

2) Barriers to investment in tourism on communal land

In order to remove barriers to private sector investment in tourism on communal land, the CBNRM Programme and MCA-N should urgently enter into a dialogue with MET and MLR with the aim of resolving all issues concerning leases on conservancy land. These include the needs to speed up the processing and approval of lease applications, to ensure conservancies' rights to hold head leases from land boards under the current arrangements, to provide conservancies with leases over their land or portions of their land (e.g., the wildlife and tourism core zones), to increase the length of leases, and to reduce lease fees for

conservancies. If conservancies could acquire leases over portions of their land, they would not need to apply for individual head leases for each JV.

Also, the CBNRM Programme and MCA-N should urgently enter into a dialogue with the Ministry of Finance regarding the provision of tax incentives for investors in tourism on communal land.

3) Land tenure

The CBNRM Programme should work with other civil society organisations to engage with government on the provision of secure land rights and tenure to groups of people on communal land. This is likely to be a medium-term undertaking, while the lease issues discussed above should be addressed in the short-term.

1. Introduction and Methodology

1.1 Introduction

The Stakeholder Feedback on Community-based Natural Resource Management (CBNRM) Policies Report responds to Task 7 of the Millennium Challenge Account Namibia (MCA-N) Conservancy Needs Assessment (CNA) Scope of Services (SOS): “Identify any conservancy-related policy reform needs to enhance the success of MCA Namibia’s Conservancy Support Activity”.

This report identifies required policy reforms based on stakeholder consultation (Sub-task 3.7.2.1), prioritises the required reforms (Sub-task 3.7.2.2), and recommends steps to achieve the reforms (Sub-task 3.7.2.2).

1.2 Methodology

The information in this report was gathered through consultation with a cross-section of Namibian CBNRM Programme stakeholders. The ARD, Inc. Team conducted a field-based needs assessment in 27 registered conservancies and one emerging conservancy in October–December 2009, which included the acquisition of conservancies’ input on policy-related issues. These conservancy responses are presented in Appendix 1. The ARD Team also interviewed staff members of conservancy support agencies, government officials, and members of the tourism industry. The responses from these non-conservancy stakeholders are presented in Appendix 2, and their names and organisations are provided in Appendix 3.

2 Summary of Stakeholder Feedback¹

This section summarises stakeholder feedback on policy issues and required policy reforms, as gained through interviews and workshops conducted as part of the CNA. The conservancies and other stakeholders identified a wide range of issues when asked about policy (see Appendices 1 and 2), not all of which are necessarily policy related. This section identifies the policy-related issues identified by stakeholders that are most relevant to and most important for the success of the conservancy programme and the MCA-N support activity.

2.1 *Conservancy Policy and Legislation*

Parks and Wildlife Management Bill

Issue:

The Namibian Parks and Wildlife Management Bill has been in the development stage for approximately 10 years. MET has drafted many different versions, soliciting public consultation sporadically. No such consultation has taken place for more than a year, yet stakeholders have heard that many changes have been made to the draft bill since their last involvement. Some earlier versions of the bill reduced conservancy rights and converted them to administrative privileges that would be provided at the discretion of officials. Because of the lack of recent consultation on the bill, stakeholders are not familiar with the current provisions regarding conservancy rights. Stakeholders believe that if conservancy rights are reduced, conservation progress could potentially reverse course in the communal conservancies and the country as a whole, by reducing conservancies' incentive to manage wildlife sustainably. Conservancies and other stakeholders had hoped that the bill would increase conservancy rights by extending ownership rights over other species than the current category of "hunnable game".

During field-based workshops and meetings with conservancies, several identified the need to assign Community Game Guards with the power of arrest and requested greater control over problem animals. Other rights that some conservancies suggested be extended to them include the right to

¹ Responds to Conservancy Needs Assessment Scope of Services Sub-task 3.7.2.1.

control tourism on their land, to hunt at night, and to control their conservancy's tourism and wildlife core areas (see Appendix 1).

Reform required:

Ideally, the Parks and Wildlife Management bill would increase conservancies' rights over wildlife. This would increase the impacts of the CBNRM Programme and the MCA-N Conservancy Support Activity by reducing transaction costs for conservancies' use of wildlife, and by providing greater incentives to manage wildlife sustainably. This in turn would lead to greater income generation opportunities. However, if the Ministry of the Environment and Tourism (MET) is not willing to increase conservancy rights, it should at the very least maintain the status quo of conservancy rights.

Parity with Freehold Land

Issue:

Although Namibia's current legislation provides the same rights over wildlife to communal area conservancies that it provides to freehold farmers, government officials often treat the implementation of communal conservancies differently. For example, for a number of years MET insisted that conservancies obtain quota approval and hunting permits for huntable game, when these conditions were not a legal requirement and were not imposed on freehold farmers. Stakeholders suggest that the rights of communal area conservancies should be equal to those on freehold land, while acknowledging the differences in land tenure. Officials should not use administrative actions to provide government with a greater say in communal area conservancy affairs than it has for freehold conservancies or freehold farmers that legally have the same rights as communal conservancies.

Reform required:

MET officials should apply the law equally to communal conservancies and freehold farmers.

Regulations for Conservancies

Issue:

Conservancies lack the power to enforce their own resource use and tourism control regulations. Stakeholders suggest that the Parks and Wildlife Management Bill should allow conservancies to make regulations which MET can endorse and gazette. MET officials, conservancy leaders, and support agency staff have discussed the possibility of using gazetted regulations with which to provide controls over self-drive tourists and mobile tour operators in conservancies. The use of such regulations would

provide an opportunity for increasing conservancy control over the use of its land by tourists and others.

Reform required:

MET should strongly consider using gazetted regulations as a means of increasing conservancy control over activities on their land. Such regulations should be enforceable by both approved conservancy staff and MET personnel.

Tourism Rights

Issue:

Namibia's current conservancy legislation is ambiguous regarding conservancy tourism rights. The legislation is worded such that it provides conservancies with consumptive and non-consumptive use rights over wildlife. The link between conservancies' rights and tourism is provided in the legislation's definition of non-consumptive use, which includes use for "recreational purposes". However, the legislation does not clearly assign conservancies rights over commercial tourism activities. As a result, many tourism businesses that are currently operating within communal conservancies do not see the need to conclude agreements with conservancies. This is particularly a problem in the Caprivi, where conservancies were formed around pre-existing lodges. In the Kunene region, conservancies lack control over self-drive tourists and mobile operators, and are calling for rights to control tourism activities on their land (see Appendix 1). In the past, MET took a strong stand on the policy that private operators had to conclude agreements with conservancies, but this policy has not been applied for some years.

This issue could significantly reduce the potential impact of MCA-N's investment, as tourism operators of some of the enterprise opportunities which have high potential to generate conservancy income may refuse to conclude deals with conservancies. In addition, conservancies will continue to lose income from self-drive tourists and mobile operators if this issue is not addressed.

Reform required:

Namibia's new parks and wildlife legislation needs to extend clear rights over tourism activities to conservancies. The legislation should stipulate that lodge and mobile operators functioning on conservancy property must conclude agreements with conservancies. The legislation should further

stipulate that conservancies can control the activities of self-drive tourists and mobile operators, and can derive income from their activities on conservancy land.²

2.2 Land and Resource Tenure; Land Boards/Leases

Conservancy Land Tenure

Issue:

Neither communal area communities in general nor conservancies in particular have clear group tenure rights over their land. Many of the issues raised by conservancies and other stakeholders in Appendices 1 and 2 stem from this problem. These include issues related to allocation of land, leases for tourism activities, the inability to exclude other people from using conservancy grazing areas, and the inability to exclude other people from moving into areas designated for wildlife and tourism.

In addition, many government officials view communal land as state-owned land, over which the government has ultimate control. As a result, government ministries develop initiatives such as the small-scale commercial farming programme of the Ministry of Lands and Resettlement (MLR) without proper consultation with the communities involved or existing land users, such as conservancies. If conservancies or local communities had clear group rights and tenure over their land, then government, the private sector, individuals, and other communities would be required to enter into agreements with the communities/conservancies for use of the land, whether for tourism, agriculture, or other purposes. Conservancies would be able to attract more investment, would have more control over their land, and would generate more income if the underlying land tenure issues were resolved.

In the absence of clear group rights and tenure over land, some existing mechanisms can be used to strengthen conservancy control over land. The National Land Policy and with the Communal Land Reform Act of 2002 appear to provide opportunities for conservancies to acquire leases over all or part of their land. Among the categories of land rights holders provided for in the policy are "legally constituted bodies and institutions to exercise joint ownership rights (and) duly constituted co-operatives" (GRN 1998:3). Read with the provisions regarding leases in the Communal Land Reform

² The reform required under "regulations for conservancies" above, suggesting that "MET should strongly consider using gazetted regulations as a means of increasing conservancy control over activities on their land," is also pertinent to the issue of need for improved tourism rights.

Act, the policy could be interpreted as enabling conservancies as “legally constituted bodies” to obtain leases over their land in order “to exercise joint ownership rights”. In addition, the Forest Act of 2001 provides for the establishment of community forests that have considerable control over resources on the land, including grazing.

Reform required:

Government should amend legislation so that communities/conservancies can acquire group land rights and tenure. In the interim, conservancies and their support agencies should explore the possibility of acquiring leases over part or all of the conservancy. Where appropriate, conservancies should also become registered community forests.

Leases on Communal Land for Tourism Purposes

Issue:

The MLR has begun charging high lease fees for tourism operations on communal lands, including in conservancies. Conservancies and other stakeholders believe that this will undermine the financial viability of JV partnerships, as charging high lease fees in conservancies has an effect similar to that of imposing a tax on tourism operations.

No clear policy or legislation exists that provides specifically for conservancies to acquire a head lease for tourism operations on communal land, and then sublease to a private operator. This contributes to confusion over who should hold leases to land for tourism operations—the conservancy or the operator—and to misunderstandings over lease fees. Stakeholders point out that this also places conservancies in a weak position when negotiating with the private sector, and places the private sector in a weak position with the banks when trying to secure loans.

The ongoing problems concerning leases and lease fees for tourism operations could undermine the viability of existing JVs, and could pose a considerable threat to MCA-N proposals to increase the number of JVs in conservancies. The private sector may continue to be reluctant to invest in communal areas because of these problems.

Reform required:

Land legislation concerning leases and land boards should be reformed so that conservancies can obtain head leases with the right to sublease. The current version of *proposed* new land legislation does provide for conservancies to acquire head leases with the right to sublease. MCA-N and the Namibian CBNRM Programme should cooperate in working with the MLR to ensure that this

provision remains in the bill. Also, policy and legislation should ensure that neither conservancies nor their JV partners should pay high lease fees. Namibia should follow the approach taken by Botswana where government policy directives ensure that communities pay a nominal fee for a head lease for tourism activities.

Small-Scale Commercial Farms

Issue:

The MLR has targeted “unused” communal lands on which to carve out 2,500 small-scale livestock farms. Many of these proposed farms border national parks or are located in conservancies/ community forests, including some key conservancies targeted by MCA-N. In the process of delineating these farms, no consideration has been given to the conservancies’ wildlife or tourism plans, or to existing tourism developments within conservancies. Stakeholders and some conservancies are concerned that conservancy wildlife and tourism income-generating opportunities will be reduced by the implementation of the small-scale commercial farms.

Reform required

The designation of areas within and adjacent to conservancies for small-scale commercial farm development should be reviewed by the MLR in consultation with the conservancies, Traditional Authorities, and other relevant stakeholders, and amendments should be made as appropriate.

Land Boards

Issue:

The Communal Land Reform Act of 2002 provides that land boards may not allocate a lease for a purpose that defeats the objectives of a conservancy management and utilisation plan. However, stakeholders and conservancies point out that land boards continue to allocate land for purposes that are contrary to conservancy management plans (for example, the Caprivi land board recently granted a leasehold for tourism purposes that is contrary to the Kasika Conservancy plan). When allocating land for purposes contrary to the management plans of conservancies, land boards undermine conservancies’ conservation and tourism potentials.

In fact, no legal provision stipulates that a lease for tourism operations must be allocated to conservancies rather than directly to a private tourism operator. As a result, some land boards have given leases in conservancies to the private sector without any conservancy involvement or agreement

between the operator and the conservancy. When land boards approve leases directly to the private operator without conservancy involvement, they reduce potential conservancy income.

Further, land boards lack the capacity to process and approve lease applications quickly. Delays in processing and approving lease applications could undermine MCA-N attempts to support JV development. In addition, land boards are not consistent in the way land issues are handled from one region to another.

Land Use Planning

Issue:

Stakeholders suggest the need for a better land use planning framework that links land use planning (under MLR) with development planning (under the National Planning Commission in the Ministry of Regional and Local Government, Housing, and Rural Development), as both are concerned with land use and development. The government should be producing Land Use and Development Plans.

In addition, no overall national land use planning policy exists. Many different institutions are involved in deciding how land is used and allocated. Often, the same area of land is allocated for different purposes. For example in the Caprivi, the same area of land has been allocated for conservancies, community forests, small-scale commercial livestock farms, and a large-scale commercial crop growing scheme.

Required Reform:

A national land use planning policy should be developed that provides for institutional mechanisms and procedures that avoid overlapping designations of land uses, and that integrate land use planning with development planning.

Illegal Fencing

Issue:

Illegal fencing of communal lands is still taking place on a significant level. Illegal fencing in conservancies can negatively affect wildlife and tourism potential by reducing the amount of land available, and by cutting off movement/migration routes of some larger mammal species.

Reform required:

Existing legal provisions must be enforced. Provision of strong group land rights and tenure would legally empower conservancies to address the issue of illegal fencing.

2.3 Tourism and JV issues, Including Barriers to Private Sector Investment

Barriers to Private Sector Investment

Issue:

CBNRM stakeholders identify a number of barriers to private sector investment on communal land. They view the current lease system as the core of the problem because it provides for short-term leases for 10 years with a possible special extension of an additional 10 years provided by the Minister of MLR. As discussed above, the scheme includes no provision for subleasing by conservancies. As a result of the lease system's shortcoming, financial institutions will not extend loans without other collateral, and most private sector investors will not invest in businesses in conservancies. According to stakeholders the key reasons are that: a) investors have no surety of realising capital gains through selling their assets (capital gain is often the greater return on an investment, not the year on year profit); b) the leasehold period is too short to get real returns and to sell; c) an investment with no lease or sublease agreement is very vulnerable; and d) no legal security is provided that the lease would be transferred into the name of the investor if the conservancy should disband or be de-registered by MET.

Stakeholders state that the disadvantages resulting from this include:

- Few companies invest in communal areas (fewer than 5% of all tourism enterprises are on the 41% of land that comprises Namibia's communal areas).
- Companies are forced to limit the size of their investments.
- Companies have a short-term investment horizon and do not invest for the long-term. This limits the extent of investment, jobs, and local enterprise opportunities that could be realised.

- Conservancies are not always able to negotiate the best deals that would result from long and secure leases, because their investor partners feel insecure, vulnerable, and are forced into an in-and-out investment business framework.

These barriers to private sector investment in conservancies could impede upon the ability to achieve MCA-N targets for JV development.

Reform required:

A tenure system is needed that gives investors and their financial institutions a high level of confidence, without disempowering conservancies and local communities. Secure group land rights and tenure for conservancies, alongside the ability of conservancies to issue long-term leases to private operators (as discussed in Section 2.2 above), would go a long way to achieving this. The issue of capital gains could be addressed by the conservancy enabling an operator to sell its sublease with approval of the conservancy. Under the current system, government should allow longer-term leases for tourism activities, and should provide appropriate tax incentives for investment in communal area conservancies.

Concessions in Parks

Issue:

Stakeholders expressed concern that the provisions of the National Policy on Tourism and Wildlife Concessions on State Land regarding the allocation of concessions to local communities are not being implemented fully. For example, the policy enables the Minister of MET to directly allocate concessions in protected areas to neighbouring communities that have claims over the land within the protected area (e.g., that were removed from the park in the past). However, Namibia Wildlife Resorts (NWR) does not want to see competing concessions in major parks such as Etosha. As a result, MET is considering providing traversing rights to conservancies that neighbour Etosha, rather than concessions to operate lodges or tented camps. If conservancies are limited to traversing rights inside of parks, the potential to maximise returns to conservancies and to MET from tourism concessions in parks will be undermined.

Reform required:

A review is needed of the MET approach of not allowing concessions in parks that compete with NWR operations. MET should also consider the possibility that NWR enter into partnerships with conservancies.

2.4 Integrated Natural Resource Management by Communities

Issue:

Conservancies and other stakeholders observe that while progress has been made toward the integration of conservancies and community forests, ministries generally still resist policy harmonisation and integration of resource management at the community level. Inter-ministerial barriers to integrated resource management need to be removed, so that community institutions can integrate wildlife, tourism, forestry, grazing, inland fisheries and water management, and determine for themselves at which scales within the conservancy (or indeed across conservancies) these resources should be managed. Conservancy performance will be enhanced if other resources within the conservancy are managed so as to integrate with wildlife and tourism. This will lead to better implementation of conservancy land use planning, and improved income generation opportunities for conservancies (e.g., from indigenous natural products, thatching grass, timber, and non-timber forest products).

Reform required:

Better cooperation is needed amongst ministries toward supporting integrated natural resource management approaches. A national CBNRM policy that promotes an integrated approach to natural resource management at all levels should be developed.

2.5 Awareness among Conservancies and Support Agencies of Existing Policy and Legislation

Issue:

The results of the field-based Conservancy Needs Assessment and interviews with stakeholders indicate that throughout the CBNRM Programme, many people involved (including conservancy committee members, MET staff, and nongovernmental organisation personnel) do not have a sound understanding of conservancy-related policies and legislation, including as the new concessions policy and the national human wildlife conflict management policy. In addition, stakeholders have little

knowledge or understanding of legislation in related sectors that affect conservancies, such as land, water, and forestry. This lack of legal understanding causes several problems, including the misapplication of policy and legislation, which lead to sub-optimal results in conservancy development and income generation.³ This general lack of awareness and understanding can also be exploited by certain stakeholders for their own purposes, including by high level politicians who are opposed to conservancies (e.g., through claims that people cannot grow livestock or crops in conservancies). In particular, stakeholders need better awareness of the following:

- Cabinet-approved conservancy policy: Wildlife Management, Utilisation and Tourism in Communal Areas, 1995
- MET policy document: Promotion of Community-Based Tourism, 1995
- Conservancy legislation: Nature Conservation Amendment Act, 1996, and accompanying regulations
- Provisions related to conservancies, lease allocations, land boards, and control of grazing land in the 2002 Communal Land Reform Act
- Provisions related to community forests in the Forest Act of 2001
- Cabinet-approved Policy on Tourism and Wildlife Concessions on State Land, 2007
- Cabinet-approved National Policy on Human-Wildlife Conflict Management, 2009.

Reform required:

This issue does not require policy reform. However materials and training modules need to be offered to relevant stakeholders so that they may acquire an appropriate level of knowledge and understanding of the policies and legislation related to conservancies.

³ For example, MET staff adamantly stated at a Caprivi Land Board training that conservancies had rights over land to the rest of the land board members. This created a furor, because conservancies do not actually have these rights.

3 **Prioritisation of Reforms and Recommended Steps to Achieve Reforms**

The following issues require priority attention from the CBNRM Programme and supporting agencies (such as MCA-N), in descending order:

1) The Parks and Wildlife Management Bill

The CBNRM Programme and MCA-N should urgently enter into dialogue with MET to ensure that conservancy rights will be protected in the new legislation, so as to maintain conservancies' incentives for conservation. In particular, the legislation should retain the rights-based approach of the current laws, and should not replace this with the provision of administrative discretion for officials. In this regard, the legislation should clearly state that conservancies **shall** gain rights over wildlife and tourism on their land, it should retain the provisions that conservancies are owners of huntable game, and it should provide for conservancies to gain rights over commercial tourism activities on their land upon registration.

2) Barriers to investment in tourism on communal land

The CBNRM Programme and MCA-N should urgently enter into a dialogue with the MET and MLR to resolve all issues concerning leases, i.e., the needs to speed up the processing and approval of lease applications, to ensure conservancies' rights to hold head leases from land boards under the current arrangements, to increase the length of leases, and to reduce lease fees for conservancies.

Also, The CBNRM Programme and MCA-N should urgently enter into a dialogue with the Ministry of Finance regarding the provision of tax incentives for investors in tourism on communal land.

3) Land tenure

The CBNRM Programme should work with other civil society organisations to engage with government on the provision of secure land rights and tenure to groups of people on communal land. This is likely to be a medium-term undertaking. In the short-term, the CBNRM Programme and MCA-N should engage with the MLR and the MET regarding the

provision of leases to conservancies over their land or portions of their land (e.g., the wildlife and tourism core zones).

References

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Government of the Republic of Namibia. 1998. *Republic of Namibia, National Land Policy*. Windhoek: Ministry of Lands, Resettlement and Rehabilitation.

Appendix 1: Key Policy Issues from Conservancies

Issue	# of conservancies that raised the issue	Comment
Conservancy Rights		
Conservancies need rights to control tourism activities (game drives by lodge operators/self drives/mobile operators). Conservancies can't enforce exclusive areas around lodges.	6	Major issue for Kunene conservancies
Conservancy Game Guards should be given powers of arrest, which they currently do not have.	6	
Conservancy should be allowed to hunt at night (particularly for crocodile and bushpig).	3	An issue particularly for Caprivi conservancies
Traditional Authorities have too much power over the land needed and used by the conservancy. The conservancy should have equal power over land as Traditional Authority. Customary land rights undermine conservancy zoning and management plans.	2	
Conservancy needs rights to sell disease-free buffalo across the red line, wants veterinary policy changed.	1	In Nyae Nyae Conservancy, disease-free buffalo are held in a special camp. Issues: 1) Ownership of the buffalo (hunnable game based on the ordinance, but not recognised by MET; 2) Veterinary permission must be obtained.
Conservancies should get exclusive rights, e.g., over core wildlife areas, to be able to limit access to rhino areas.	1	
Lack of conservancy mining rights creates confusion and conflict between prospectors and the conservancy committee.	1	
Lack of conservancy land rights makes it difficult to use land as collateral.	1	

Issue	# of conservancies that raised the issue	Comment
Conservancies should be able to issue permits for harvesting devil's claw and keep the permit fees.	1	
Conservancies should have rights over fisheries.	1	
Heritage Act/World Heritage Site undermines conservancy authority, through parallel planning and zoning.	1	At Uibasen Conservancy, World Heritage Site planning and zoning have been carried out without consultation with conservancy. A buffer zone has been created where most tourism developments are currently situated.
Land Board Issues		
Conservancies should be exempted from lease fees or should pay reduced fees.	2	
The lease application process takes too long.	2	
The change from Permission To Occupy to leasehold causes delays in application processing.	1	
Change in board members leads to delays; process takes too long.	1	
Land board members do not understand conservancy issues and give leaseholds to the wrong people or in wrong areas of the conservancy.	1	
Human Wildlife Conflict (HWC)		
Need compensation/increased compensation for loss of property and lives caused by problem animals; need compensation for injury.	5	
Need stronger rights to deal with problem-causing animals. Game guards and management committee should have power to investigate problems.	5	This should be addressed by the new HWC policy
In the new HWC policy, the legal period for reporting the killing of a problem animal is too short given the remoteness of many conservancies.	5	

Issue	# of conservancies that raised the issue	Comment
Benefits from Wildlife Management		
Need to compensate conservancies for rhino translocation. Currently, conservancies receive no benefits for translocation of non-hunttable game from the conservancy. More consultation is needed when translocation takes place. Conservancies manage/protect the rhino but don't benefit from their translocation.	3	An issue in Kunene conservancies, where MET has moved rhino to other locations. Also relates to ownership of wildlife: conservancies protect rhinos, but the government owns them.
Conservancies spend their own resources on monitoring wildlife, but fines go to the government.	1	
Benefits from Parks		
Tourists should not be allowed to camp inside national parks. If they were not allowed to do so, tourists would instead stay in conservancy campsites.	1	Wuparo does not benefit from tourism inside parks and would gain from new park concessions.
Restriction on tourism activities inside Bwabwata National Park should be revised to allow conservancies access and to allow them to generate more tourism income.	1	
Entry fee charged by the park for visitors to Kwando Conservancy's Bum Hill Campsite in Bwabwata National Park should be a one-time, not daily, payment.	1	Conservancy may believe that paying daily park fees discourages visitors from using the campsite in the park.
Conservancies should be given rights to sustainably use resources in the parks	1	
Policy Awareness/Understanding		
Conservancies claim lack of knowledge on policies/policies and that these should be simplified/translated for easier understanding.	5	Additionally, conservancies need layman's versions of all relevant policies and laws (e.g., land laws and community forests).
Concessions		
Concessions (in most cases) do not benefit conservancies—they are private property.	1	Puros does not gain much from current Skeleton Coast concession. This should change under the new concessions policy.

Issue	# of conservancies that raised the issue	Comment
Concession awards under the concessions policy are not conducted fairly. The conservancy is not given a chance to apply for concession while others can.	1	Mashi will be a beneficiary of new Caprivi National Park concessions.
Due to problems from lions and elephants from Etosha, the conservancy should get concession rights to benefit from the national park.	1	Traversing rights for Ehrovipuka Conservancy in Etosha str under discussion by MET.
Transfer of concession to the conservancy is taking too long, or the policy is not clear on the rights of the conservancy.	1	Omatendeka Conservancy is waiting for signing of s head lease by the Minister.
Palmwag concession was renewed with a boundary that extends into Sesfontein Conservancy.	1	This should be dealt with when a new concession is awarded.
Conservancies and Community Forests		
The community forest gazetting process should be speeded up to start generating income.	1	Muduva Nyangana Conservancy is waiting for its application for community forest status to be processed and approved.
MET and Directorate of Forestry should integrate policies so that one policy governs resource use.	1	
Other		
There is no clear empowerment policy on investors in conservancy and "everything is left to the committee to negotiate with these big giants".	1	
A law is needed to prevent cash benefit distributions and to only allow community projects.	1	This is not a national policy issue, but it probably reflects some conflicts within the Balyerwa Conservancy over how income is used.
Proposed small-scale farming scheme might undermine conservancy initiatives.	1	
No development strategy exists to strengthen the conservancy policy (e.g., building roads to make the conservancy accessible to tourists).	1	

Issue	# of conservancies that raised the issue	Comment
The issuing of tourist visas to enter Namibia should be decentralised, and short stay visas should be cheaper.	1	In Impalila Conservancy, problems obtaining visas, and the cost of visas limits visitors from Botswana.

Appendix 2: Key Policy Issues from other Stakeholders

Issue	Comment
Conservancy Policy & Legislation	
<ul style="list-style-type: none"> • Fear that new Protected Areas and Wildlife Bill will reduce conservancy rights over wildlife. • Concern that the bill will take conservation backwards in conservancies if their rights are diminished. 	Some earlier versions of the bill reduced conservancy rights and converted them to administrative privileges that would be provided at the discretion of officials. The lack of recent consultation on the bill means that stakeholders are not aware of the current status of conservancy rights.
<ul style="list-style-type: none"> • Lack of consultation on latest changes to the bill raises concern about the nature of the changes. • Current version of the bill needs more consultation. 	The bill has been in the development stage for about 10 years. There have been many different versions, with public consultation taking place sporadically. No such consultation has taken place for more than a year, yet stakeholders have heard that many changes have taken place since their last involvement.
<ul style="list-style-type: none"> • Rights should be devolved to conservancies over all wildlife, including Red Data species. 	Current legislation provides “ownership” of “huntable game”, i.e., common species, but not of protected and specially protected species.
<ul style="list-style-type: none"> • Policy and legislation should encourage cooperation between conservancies, protected areas, and freehold conservation areas through co-management agreements. 	Provisions in earlier versions of the bill for co-management agreements are reported to have been removed.
<ul style="list-style-type: none"> • The rights of conservancies should be equal to those of freehold farmers (laws are often interpreted differently for communal area conservancies). 	
<ul style="list-style-type: none"> • Devolution of rights to conservancies should extend to problem animals. 	
<ul style="list-style-type: none"> • People resident in Bwabwata National Park should be allowed to form a conservancy and to acquire full conservancy rights, including over the core wildlife areas in the park. 	Current legislation specifically forbids conservancy formation inside a proclaimed protected area.
<ul style="list-style-type: none"> • Need to establish regulations for conservancies agreed to by MET and the conservancy, and implemented by Community Game Guards (CGGs) and MET staff. CGGs should be appointed as Honorary Wardens and appropriately trained. 	

Issue	Comment
Conservancy Tourism Rights	
<ul style="list-style-type: none"> • Need for strengthened tourism rights in conservancies so they can choose who may or may not operate in their area and under what conditions. 	<p>Current legislation is ambiguous regarding conservancy tourism rights.</p>
Tourism JVs and Leases	
<ul style="list-style-type: none"> • Current land tenure system is a disincentive to investment. No one owns the land or can get long-term leases, thus banks will not provide collateral and investors cannot realise capital gains on the land value. • Banks will not give out loans unless the private sector can show the leasehold in their name. 	
<ul style="list-style-type: none"> • Government has conflicting policies: MET wants conservancies to benefit from tourism, but MLR is charging lease fees. Lease fees and conservancy fees therefore place a double payment burden on the operator. • MLR is charging the lodge operator not the leaseholder (conservancy) for lease fees, which is inappropriate. • Lease fees should be payable to the conservancies and not to the land boards. • As MLR tries to collect lease fees, the interpretation and implementation of the Communal Land Reform Act becomes an increasing threat to the CBNRM Programme. • Leasehold fee payments to the land boards should be kept at a low level where operators have entered into an agreement with the conservancy. 	
<ul style="list-style-type: none"> • Ownership of leases should be vested in the conservancy (head lease) with the option to transfer this to the JV partner, and such transfer should be spelled out in the contract with the JV partner. • Conservancies should have the right to acquire head leases and the ability to provide subleases to the operator. • Land boards should allocate tourism leases to the conservancy only, not direct to operators. • The leasehold application process should speed up to ensure that developments can move forwards at required pace. 	

Issue	Comment
<ul style="list-style-type: none"> No incentives (tax rebates/deferrals/holidays) have been created to attract private sector involvement in communal conservancies. 	
<ul style="list-style-type: none"> There are incidences of the private sector paying individuals and/or the Traditional Authorities for tourism rights on communal land instead of the conservancy. Although legal reviews suggest that this is illegal, this needs more clarification at the policy level. MET needs to enforce the policy/develop legislation so that an existing lodge operator in a conservancy is obliged to negotiate with the conservancy. MET must provide conservancies with clear rights to enforce exclusive areas around JV lodges. These rights must be upheld by the land boards, which should approve exclusive areas for JV lodges. Conservancies should be empowered with the rights to provide exclusive tourism areas for lodge and activity operations. This will increase the value of the resource on offer, and should increase returns to the conservancy. 	
Land Tenure	
<ul style="list-style-type: none"> Need for strengthened land tenure for conservancies. Alternatively, enhance conservancies' awareness of how to obtain broader rights (including over grazing) through the community forest legislation. Conservancies need to be able to exclude other livestock farmers that move into the conservancy from elsewhere. 	<p>Clear land rights and tenure for conservancies would address many of the lease issues and problems surrounding the use of land for collateral.</p>
Land Boards	
<ul style="list-style-type: none"> Need for increased conservancy representation on land boards, i.e., one representative for every five registered conservancies, instead of 1 representative per region. 	
<ul style="list-style-type: none"> Need for better legal priority for conservancies with regard to allocation of land by land boards and MLR. 	
<ul style="list-style-type: none"> Land boards remain poorly trained, and no government-sponsored training system has been created to help the boards acquire the necessary knowledge and competencies. "This is a recipe for chaos in years to come". 	

Issue	Comment
Land Use and Planning	
<ul style="list-style-type: none"> Need for a better land use planning framework that links land use planning (under MLR) with development planning (under NPC/MLGHRD), as both are concerned with land use and development. Government should be producing Land Use and Development Plans. 	
<ul style="list-style-type: none"> MLR has targeted “unused” communal land for developing small-scale commercial livestock farms, with many of these farms adjacent to protected areas or within conservancies/community forests. 	
<ul style="list-style-type: none"> Need conservancy involvement in the granting of mining and exploration licenses within their areas, and for conservancies to legally benefit from these instead of depending on goodwill of mining companies. 	
<ul style="list-style-type: none"> Illegal fencing of communal land is still taking place in some conservancies— affecting wildlife and tourism as land uses by closing off areas of land for use by individuals. 	
Integrated NRM	
<ul style="list-style-type: none"> Need for better harmonisation of layers of rights: wildlife and tourism, with forestry, rangelands, fisheries, and water. 	
<ul style="list-style-type: none"> Need to break down the barriers between ministries in order to enable conservancies to be viewed as integrated resource management institutions. 	
<ul style="list-style-type: none"> Need to change mindsets of support agencies that are single resource-focused. 	
<ul style="list-style-type: none"> Policy and legislation should enable conservancies to manage different resources at different scales (e.g., wildlife at the overall conservancy level, forestry at the village or cluster of village level, water at the village/water point committee level, and fisheries at the local fish reserve level). 	

Issue	Comment
Concessions	
<ul style="list-style-type: none"> MET concession policy is not being implemented as stated in the concessions policy document (e.g., MET says the Bwabwata National Park hunting concession will be put out to tender, defeating the purpose of the policy and disempowering the community. 	
<ul style="list-style-type: none"> Tourism concessions for conservancies in parks are still being undermined by NWR, which views the concession policy as a threat to its dominance in parks. 	
Environmental Management Act	
<ul style="list-style-type: none"> Need for enhanced conservancy awareness and involvement with the Environmental Management Act, especially with the environmental assessment process. 	
<ul style="list-style-type: none"> The Environmental Management Act is still not being implemented. It is important to implement it because of the convoluted and competitive nature of land use in Namibia. 	
Awareness and Understanding of Existing Policy and Legislation	
<ul style="list-style-type: none"> This awareness does not exist, even among government staff. 	
<ul style="list-style-type: none"> There appears to be often purposeful misinterpretation of conservancy legislation by some stakeholders who claim that people cannot grow crops or have livestock in conservancies. 	
<ul style="list-style-type: none"> Awareness on relevant policies and legislation should be provided to traditional leaders at all levels. This should include awareness of how land allocations can undermine the aims and objectives of conservancies. 	
CBNRM Implementation	
<ul style="list-style-type: none"> The conservancy as a mechanism for common property management of natural resources and, as a social institution, is not the right mechanism for running a business. A company model should be adopted in parallel with the conservancy, in which all residents are shareholders who appoint a board of directors (external and internal to the conservancy) to drive the conservancy's business activities. 	

Issue	Comment
<ul style="list-style-type: none"> Is the conservancy committee the best mechanism for managing the increasingly complex tasks of the conservancy? Can we continually train new committee members to carry out such complex management responsibilities? Dedicated conservancy managers and staff are needed with these skills, and roles of the committee should be those of an oversight board. 	
<ul style="list-style-type: none"> There needs to be an intermediary organisation to link between the private sector tourism operators and the business arm of conservancies. Most NGOs are part of the problem as they also have no business experience—they keep more useful partners out and hold conservancies back. 	
Other	
<ul style="list-style-type: none"> The Protected Areas and Wildlife Bill needs to include provisions for allowing the creation of “People’s Parks”, for legal recognition of private game reserves, and for the outsourcing of the management of parks to different agencies and the private sector. 	<ul style="list-style-type: none"> Such provisions in earlier versions of the bill are reported to have been removed.

Appendix 3: List of Non-conservancy Stakeholders Consulted

Jackie Asheeke	Chief Executive Officer (CEO), Federation of Namibian Tourism Association (FENATA)
Chris Brown	Director, Namibia Nature Foundation, and Shareholder, Gondwana Lodges
Richard Diggle	Business and Tourism Advisor, World Wildlife Fund (WWF) in Namibia/ Integrated Rural Development and Nature Conservation (IRDNC)
Angela Howells	Kunene Conservancy Safaris
Ed Humphrey	Independent Tourism Consultant
Olga Katjiuongua	Deputy Director, Tourism, MET
Maxi Louis	Namibian Association of CBNRM Support Organisations, Secretariat
Peter Muteyauli	Economist, Directorate of Environmental Affairs, MET
Elvis Mwilima	CBNRM Support Division, Caprivi, MET
Uda Nakamhela	Lawyer advising CBNRM NGOs and Conservancies
Usiel Ndjavera	Tourism Advisor, WWF in Namibia
Colin Nott	Assistant Director, IRDNC
Garth Owen-Smith	Co-Director, IRDNC
Colgar Sikopo	Deputy Director, Parks and Wildlife, MET
Bruce Simpson	CEO, Wilderness Safaris Namibia

Patricia Skyer	Coordinator, Regional CBNRM Support Programme, WWF in Namibia
Keith Sproule	Tourism and Business Advisor, WWF in Namibia
Merrow Thaniseb	Directorate of Tourism, MET
Shareen Thude	Marketing Executive, Namibia Tourism Board
Chris Weaver	Director, WWF in Namibia
Martin Webb Bowen	Past President, FENATA
Willem de Wet	General Manager, Namibia Country Lodges