



- 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.

Nature Conservation Amendment Act

The Nature Conservation Amendment Act of 1996 amends the Nature Conservation Ordinance of 1975 so that the 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 as 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. The Act puts into effect MET's policy on Wildlife Management, Utilisation and Tourism in Communal Areas.

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 :

- 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 appropriate 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 and recorded the boundaries of the geographic area of the conservancy (taking into account the views of the Regional Council); and
- 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 confers on a commercial farmer in Chapter III of the Ordinance. The Act makes it clear that provisions in the Ordinance concerning fencing and the size of the land will not apply to a conservancy.

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)¹⁰, the capture and sale of game, hunting and culling, and the right to apply for permits for the use of protected and specially protected game. If a conservancy applies to become designated as a 'hunting farm', trophy hunting (including of protected and specially protected game) can take place on the conservancy.

The Nature Conservation Ordinance does not deal with tourism specifically. 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 conservancy¹¹.

The Nature Conservation Amendment Act of 1996 also makes provision for communal area residents who do not form conservancies to benefit indirectly from wildlife, through the formation of Wildlife Councils (GRN 1996). A Wildlife Council can be 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.

Rights and conditions

The formal arrangements for policy and legislation require some clarification in terms of what these mean in practice. There are essentially two aspects to the policy and associated legislation. The first is that in order to gain rights legally over wildlife and tourism communities need to form conservancies. This means that the *rights are conditional*. The second is the recognition that the rights gained on the

¹⁰ The MET intends removing buffalo and bushpig from the schedule of huntable game in new legislation. This means that only kudu and warthog are available as huntable game to conservancies in Caprivi as springbok and oryx do not occur there.

¹¹ Chapter 8 provides an overview of the legislation and policies associated with tourism in communal areas.



formation of a conservancy *are limited*. In addition, rights are only legally vested in the conservancy committees and not more broadly in the communities within conservancies.

If rights are only conditional and limited, what does this mean in practice? The legislation dictates that communities that wish to gain rights over wildlife and tourism need to form a conservancy. In order to register as a conservancy conditions for registration as set out in the legislation need to be met. In addition to meeting the conditions set out by the Act to become gazetted as a conservancy, which are fairly onerous and time-consuming, the regulations accompanying the Act stipulate that certain specific issues have to be covered by a conservancy's constitution. The legislation provides for the actions of the committee to be guided by a constitution that sets out the relationship between the committee and membership, e.g. holding AGMs, ordinary community meetings, holding committee elections, defining criteria for membership, financial management, procedure for members to decide on the equitable distribution of benefits etc.

The rights conferred on conservancies are also conditional in the sense that the Minister has the ability to withdraw the rights a conservancy gains on registration. The legislation does not specify on what grounds the rights would be withdrawn, leaving the Minister considerable discretion in this regard. The Namibian CBNRM approach can be viewed as rights based in the sense that the rights and obligations of local communities with regard to wildlife and tourism are entrenched in legislation.

The rights of conservancies are not only conditional, but limited. Although the legislation gives 'ownership' of huntable game to freehold farmers and communal area conservancies, the term is not accurate in describing the rights actually held. Ownership of huntable game only confers the right to use a limited number of defined species for own use. For any other form of utilisation of huntable game, a permit and/or a quota are required from MET. Quotas and permits are also required for the use of other categories of wildlife such as protected and specially protected species. It should be noted that the designated species of huntable game are common in the central and north-western parts of the country, but not the north-eastern areas. Two species, oryx and springbok, do not occur in the north-east. The one species of huntable game that would be a major asset for conservancies in the north-east is buffalo. MET is proposing to remove buffalo from the huntable game schedule (B. Beytell pers. comm.).

Although the use of the word 'ownership' is inaccurate in terms of the rights being conferred, it is a very useful and significant legal tool. By giving 'ownership' to farmers or conservancies, the State is alienating the wildlife from itself. This removes the need to acquire Treasury approval every

time a wild animal, i.e. state property, is used by a non-state entity. Any mechanism that removes the need for bureaucratic decisions to be taken and places decision-making as close as possible to the resource user is to be welcomed.

Jones (2003b) has considered the actual rights the conservancy legislation gives to local communities through their conservancy committees. These can broadly be divided into four categories: those that relate to the use of huntable game for their own consumption; autonomy over the use of income derived from other forms of wildlife utilisation (subject to the Ministry approval) and including tourism; authority to enter into contracts with the private sector; and authority for various aspects of wildlife management. A detailed list is provided below:

- The conservancy can use huntable game (a limited number of species) as it wishes for own use.
- The conservancy can enter into a contract for a trophy hunting company to buy the conservancy's trophy hunting quota.
- The conservancy can enter into a contract for a tourism company to develop a lodge or lodges and other tourism facilities.
- The conservancy can retain all the income from these contracts and can decide how to use that income.
- The conservancy can suggest trophy hunting and other quotas to MET, but MET must approve the quota. In order to make quota proposals, the conservancy needs to monitor its wildlife and be aware of numbers and population trends.
- The conservancy (or at least individuals within the conservancy) can shoot most problem animals if necessary. This includes protected and specially protected game – in the latter case incidents must be reported within 10 days.
- If a conservancy wants to reduce wildlife numbers in order to reduce competition with livestock in time of drought, it can reduce the numbers of huntable game if the meat, hides etc. are for own use. It can also apply to MET for a permit for removal of other species because of drought.
- The conservancy can apply to MET for a permit to carry out other forms of game utilisation, such as live capture and sale of wildlife or the use of protected species.

There are other management activities that conservancies can undertake that are not provided for in the legislation:

- They can undertake land-use planning and zoning of areas for wildlife and tourism (but land legislation does not adequately provide for enforcement of such zoning).



- They can develop tourism plans and regulations (but again there is no legislation to enable enforcement by the conservancies).
- They can use water and salt licks as management tools to maintain wildlife in the conservancy or in specific areas.
- They can employ game guards to deter poaching and to monitor wildlife.
- They can negotiate with MET and holders of existing tourism concessions within the conservancy for the concession right to be vested in the conservancy and contracts with the concession holder to be renegotiated (but might not be successful in their negotiations as is the case with ≠Khoadi //Hôas Conservancy).

In summary, apart from deciding on own use of a small number of designated species, conservancies have few rights to determine the way in which wildlife can be used and the level of off-take. In all other cases a permit and quota is required from the Government. Further, even if conservancies try to undertake other management activities such as land use planning and zoning, they have no real power to enforce their decisions, particularly over people from outside the conservancy.¹²

Institutional arrangements from a legal perspective

The institutional arrangements provided for in the conservancy legislation aim to meet three specific purposes: firstly to create an institution at local-level that can manage wildlife as a common pool resource; secondly to ensure that there is a legal body that can enter into contracts with hunting and tourism companies; and thirdly to ensure that there is a ‘democratic’¹³ form of decision-making within the conservancy. Significantly, MET has devolved rights over wildlife directly to a local or ‘community’-level institution and not to some lower level in the government administrative hierarchy. The membership of this institution is defined and so is the geographical area of jurisdiction of the institution. From a common property perspective it is important for people themselves to be able to define those who have access to the resource and access to benefits from its use. Otherwise measures cannot be taken to prevent over use. Further, this local institution can retain the income generated from wildlife use and its members can decide how to use the income. Essentially, MET gives rights to a conservancy committee that is expected to be representative of the conservancy members.

While there is clearly an expectation that the committee should be accountable to the conservancy members, the legislation itself creates an important break in the chain of

accountability (Jones 2000a). This is because the *rights over wildlife are legally vested in the committee not the membership*. In a legal sense, the committee is accountable to the Government, or it may lose its rights over the wildlife. The legislation views the constitution of the conservancy as being the constitution of the committee, rather than of the conservancy members more broadly. This is important as there is no strong legal provision for conservancies to be accountable to their members except for what is provided for in the conservancy constitutions. Any legal obligation is between the committee and the Government.

Gaps between policy intent and implementation

Since the introduction of the ‘conservancy legislation’ in 1996, there have been a number of ways in which policy intent and implementation have been identified. Table 4 (overleaf) provides an analysis based on the situation in 2000 (Corbett and Jones 2001). In some regards the situation has changed. MET has since acknowledged that quotas and permits are not legally required for own use by conservancies of huntable game and there appears to be a greater willingness to allow designated problem animals to be shot as trophies (see Chapters 6 and 7).

Despite some changes, many of the same issues identified in Table 4 remained valid at the time of writing. Despite the fact that there is no legal provision for management plans as a prerequisite for being able to use wildlife, MET is still insisting that such plans should be developed. On this issue there appears to be congruence between the thinking of MET and individuals within leading CBNRM NGOs, who also support the view that wildlife utilisation by conservancies should be linked to the development of a management plan. The draft Parks and Wildlife Management Bill contains provisions for communal area and freehold conservancies to be exempt from restrictions on utilisation if they have an approved management plan.

However, in practice bureaucratic delays affect the approval of management plans, which in turn impacts a conservancy’s ability to function effectively. For example, Humphrey and Humphrey (2003) record how Torra Conservancy has developed its management plan, but because MET has yet to endorse it, the conservancy cannot enforce the plan’s provisions. The plan provides for zones for livestock grazing, wildlife, tourism and residential areas and suggests activities for monitoring and management.

Currently there appears to be no coherent policy for quota setting for the use of protected and specially protected species, and different individuals within MET have different views. Although there is an established practice of

¹² Although this might change under the new Communal Land Reform Act if conservancies gain strong recognition by land boards and work closely with traditional authorities.

¹³ ‘Democracy’ is not necessarily a neutral term. It is often associated with Western forms of governance systems based on majority rule elections, where representatives of voters speak on their behalf and there is a separation of powers between the judiciary, the law makers and the executive. In this report, unless quoting another source, democracy is taken to mean systems of governance that promote transparency and accountability in decision-making and that respect basic human rights. We do not use the term to indicate *how* these goals might be achieved.



Table 4: Comparison of policy intentions, legal provisions and implementation of Namibia's communal area conservancy approach

Policy intention	Legal provision	Implementation
Communal area conservancies should gain the same rights as freehold farmers especially the right to use huntable game for own use without permits or restrictions on numbers	Nature Conservation Amendment Act of 1996 makes provision for communal area conservancies to have same rights as freehold farmers	<i>MET officials insist on communal area conservancies receiving quotas that include huntable game for own use and that permits must be acquired</i>
Conservancies expected to develop management plans once they have been registered	No legal provision for conservancies to develop management plans	<i>Government officials starting to demand a management plan <u>before</u> a quota (for trophy hunting and own use) will be issued</i>
Conservancies expected to set own quotas to be endorsed by MET	No legal requirement for quotas to be set for own use; legal requirement for quotas for trophy hunting	<i>Government officials decide quota often arbitrarily – in at least one case the official quota far exceeded that requested</i>
Conservancies should receive concessionary rights to commercial tourism	Nature Conservation Amendment Act of 1996 gives weak tourism rights (gives rights to 'non-consumptive' use of wildlife which includes for 'recreational' purposes) No relevant tourism legislation	<i>Government officials have renewed expired concessions held by the private sector within registered conservancies</i>
Hunting concessions previously held on communal land by the private sector should be transferred to conservancies	Nature Conservation Amendment Act of 1996 gives conservancies trophy hunting rights	<i>Government officials have issued new hunting private sector concessions where there are registered and emerging conservancies</i>
Conservancies should be able to enter into joint venture partnerships and other business arrangements with the private sector	Policy on Promotion of Community-based Tourism of 1995 promotes joint venture approaches and aims to create a "supportive and enabling legal framework"	<i>Tendency by Government to interpret policy as giving it the right to approve joint venture agreements</i>
Conservancies should take over greater role in managing wildlife including problem animals	Nature Conservation Ordinance of 1975 enables citizens to shoot a predator that threatens the lives of people or livestock. Shooting of lions has to be reported within 24 hours; elephants may only be shot by special permit	<i>Officials recently refused to allow a problem lion to be shot by trophy hunters in a conservancy denying residents compensation for stock losses</i>

Source: Corbett and Jones 2000

conservancies calculating an off-take number and then requesting this as a quota from MET, the criteria for MET responses are not well-established or understood by all. To a large extent, though, off-take levels are being set by MET based on data emerging from the conservancies themselves.

There appear to be some regional variations in the way in which policy towards accompanying trophy hunters is implemented. In Caprivi, MET officials said they did not accompany hunts and left this to the CCGs. In Kunene, members of the ≠Khoadi //Hôas Conservancy say that MET officials insist on accompanying the hunt. Sometimes though, they do not appear in time and this causes the hunt to be delayed (Jones and Butterfield 2001).

A further issue relating to the gaps between the intentions of policy and its implementation relates to the issue of devolving rights and benefits to a *rural community* that forms a conservancy. The Conservation Amendment Act of 1996 builds directly on the policy, sharing the same intention (i.e. a focus on *community*, with the conservancy simply being the legal vehicle to achieve this). In view of this, and that it

has only been a few years since the first conservancies were registered, the support that has been provided by Government and NGOs has been concentrated on the registration of conservancies and subsequently to address institutional capacity to capture benefits better and improve management. Meeting the overall intention of policy is a longer-term goal, but the Namibian Government is increasingly concerned with the extent to which the efforts and investments of donors and support organisations are actually providing for the community as the original policy intended. The Government is concerned with the extent to which the conservancy approach as currently implemented can genuinely improve the living standards of rural people.

The situation varies between Caprivi and Kunene and individual conservancies, in terms of the extent to which they have been able to capture revenues and in terms of the variety of internal institutional arrangements within conservancies that link the committees to their membership and address issues of participation (see Chapter 9 for a more detailed discussion). Here the discussion looks in more detail