

## REPUBLIC OF NAMIBIA

The Namibian Constitution highlights the principle of decentralization. One of the policy landmarks was the introduction of the National Land policy. According to this policy, all land rights have equal status before the law; a variety of tenure options should help to manage the biophysical and cultural diversity of the country; and there is a need for a decentralized administration.

In theory, communal land in southern Africa is under a common property resource regime.<sup>1</sup> However, in reality, it developed more into an open access regime because of the failure of common property resource management institutions.

Limited natural fresh water resources and desertification are some of the current environmental challenges faced by the country.

### COUNTRY DATA

#### **Population (in 2000, per 1000)<sup>2</sup>:**

*Total:* 1,726

*Rural:* 1,021

*Urban:* 705

*Natural Resource Dependent Populations:* 70%<sup>3</sup>

*Indigenous (Original Long-Term Occupants):* 50% of the population belongs to the Ovambo tribe and 9% to the Kavangos tribe. Other ethnic groups are: Herero 7%, Damara 7%, Nama 5%, Caprivian 4%, Bushmen 3%, Baster 2%, Tswana 0.5%.<sup>4</sup>

*In Classified Forest Areas:* --

*In Classified Protected Areas:* --

#### **Land Use<sup>5</sup>:**

*Permanent Crops (1000 Ha, 1998):* 4

*Permanent Pasture (1000 Ha, 1998):* 38,000

*Forests and Woodlands (1000 Ha, 1994):* 12,500

*Forest Cover (2000):* 9.8% of surface area

*Protected Areas:* 14% of surface area

*Non- Arable and Non-Permanent (1000 Ha, 1998):* 81,509

*Agricultural Area (1000 Ha, 2001):* 26,460

*Arable and Permanent Crop (1000 Ha, 1998):* 820

*Arable Land (1000 Ha, 1998):* 816

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<sup>1</sup> Elizabeth Rihoy, Brian Jones, Simon Anstey, Mike ‘Tsas Rolfes, “Tenure in Transition, A Stakeholders Guide to Natural Resource Tenure in Southern Africa”, p. 32-33 (1999).

<sup>2</sup> Food and Agricultural Organization, FAOSTAT Agriculture Data, population statistics <<http://faostat.fao.org/?alias=faostatclassic>>.

<sup>3</sup> IIASA Report (2001): International Institute for Applied Systems Analysis (IIASA) Report: Botswana’s Future, Mozambique’s Future, Namibia’s Future – Modelling Population and Sustainable Development Challenges in the Era of HIV/AIDS. Version 1.0, 2001. Viewed 09/15/2006 <[www.iiasa.ac.at/Research/POP/pde/briefs/na-econ.html](http://www.iiasa.ac.at/Research/POP/pde/briefs/na-econ.html)>.

<sup>4</sup> AllRefer.com. Namibia: People. <<http://reference.allrefer.com/world/countries/namibia/people.html>>.

<sup>5</sup> FAO, FAOSTAT, Agriculture Data, land use statistics <<http://faostat.fao.org/?alias=faostatclassic>>

**State Owned Land:** 41 % of Namibia’s total land surface are covered by communal state owned land<sup>6</sup>

**State Land Classification:**

*Forest Areas: 10%*<sup>7</sup>

*Protected Areas (1000 Ha, 2003): 4.600 (5.6% of surface area)*<sup>8</sup>

*Unclassified: --*

**Environmental and Human Rights International Agreements:**

Namibia is a Party to the following international agreements: UN Convention on Biological Biodiversity, the Convention on Climate Change, Desertification Convention, Convention on Trade in Endangered Species of Wild Fauna and Flora, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Law of the Sea Convention, Vienna Convention for the Protection of the Ozone Layer, and Wetlands.

**CONSTITUTION<sup>9</sup>**

**Article 8: Respect for Human Dignity**

- (1) The dignity of all persons shall be inviolable.
- (2) a. In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.

**Article 10: Equality and Freedom from Discrimination**

- (1) All persons shall be equal before the law.
- (2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

**Article 16: Property**

- (1) All persons shall have the right in any part on Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees: provided that Parliament may be legislation prohibit or regulate as it deems expedient the right to acquire property by persons who are not Namibian citizens.
- (2) The State or a competent body or organ authorised by law may expropriate property in the public interest subject to the payment of just compensation, in accordance with requirements and procedures to be determined by Act of Parliament.

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<sup>6</sup> Blackie and Tarr (1999): Government policies on sustainable development in Namibia. (Eds. Directorate of Environmental Affairs, Ministry of Environment and Tourism) Research Discussion Paper no. 28. Windhoek, Namibia. Viewed 09/15/2006 <<http://www.tropentag.de/2002/abstracts/full/15.pdf>>.

<sup>7</sup> “Forest Areas @ Countries of the World” Viewed 09/15/2006 <<http://www.studentsoftheworld.info/infopays/rank/forests1.html>>

<sup>8</sup> EarthTrends Country Profiles. Viewed 09/15/2006 <[http://earthtrends.wri.org/pdf\\_library/country\\_profiles/bio\\_cou\\_516.pdf](http://earthtrends.wri.org/pdf_library/country_profiles/bio_cou_516.pdf)>

<sup>9</sup> Constitution of Namibia, <<http://www.namibweb.com/const.htm>>.

**Article 19: Culture**

Every person shall be entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and further subject to the condition that the rights protected by this article do not impinge upon the rights of others or the national interest.

**Article 21: Fundamental Freedoms**

(1) All persons shall have the right to:

- a. freedom of speech and expression, which shall include freedom of the press and other media;
- b. freedom of thought, conscience and belief, which shall include academic freedom in institutions of higher learning;
- c. freedom to practice any religion and to manifest such practice;
- d. assemble peaceably and without arms;
- e. freedom of association, which shall include freedom to form and join associations or unions, including trade unions and political parties;
- f. withhold their labour {labor} without being exposed to criminal penalties;
- g. move freely throughout Namibia;
- h. reside and settle in any part of Namibia;
- i. leave and return to Namibia;
- j. practice any profession, or carry on any occupation, trade or business.

(2) The fundamental freedoms referred to in Paragraph (1) shall be exercised subject to the law of Namibia, in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said Paragraph, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

**Article 22: Limitation upon Fundamental Rights and Freedoms**

Whenever or wherever in terms of this Constitution the limitation of any fundamental rights or freedoms contemplated by this chapter is authorised, any law providing for such limitation shall:

- a. be of general application, shall not negate the essential content, and shall not be aimed at a particular individual;
- b. specify the ascertainable extent of such limitation and identify the article or articles on which authority to enact such limitation is claimed to rest.

**Article 23: Apartheid and Affirmative Action**

(1) The practice of racial discrimination and the practice and ideology of apartheid from which the majority of the people of Namibia have suffered for so long shall be prohibited and by

- Act of Parliament such practices, and the propagation of such practices, may be rendered criminally punishable by the ordinary Courts by means of such punishment as Parliament deems necessary for the purposes of expressing the revulsion of the Namibian people at such practices.
- (2) Nothing contained in Article 10 shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of past discriminatory laws or practices, or for achieving a balanced structuring of the public service, the police force, the defense force, and the prison service.
  - (3) In the enactment of legislation and the application of any policies and practices contemplated by Paragraph (2), it shall be permissible to have regard to the fact that women in Namibia have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation.

**Article 66: Customary and Common Law**

- (1) Both the customary law and the common law of Namibia in force on the date of Independence shall remain valid to the extent to which such customary or common law does not conflict with this Constitution or any other statutory law.
- (2) Subject to the terms of this Constitution, any part of such common law or customary law may be repealed or modified by Act of Parliament, and the application thereof may be confined to particular parts of Namibia or to particular periods.

**Article 95: Promotion of the Welfare of the People**

The State shall actively promote and maintain the welfare of the people by adopting, *inter alia*, policies aimed at the following:

- a. enactment of legislation to ensure equality of opportunity for women, to enable them to participate fully in all spheres of Namibian society; in particular, the Government shall ensure the implementation of the principle of non-discrimination in remuneration of men and women; further, the Government shall seek, through appropriate legislation, to provide maternity and related benefits for women;
- b. enactment of legislation to ensure that the health and strength of the workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age and strength;
- c. active encouragement of the formation of independent trade unions to protect workers' rights and interests, and to promote sound labour relations and fair employment practices;
- d. membership of the International Labour Organisation (ILO) and, where possible, adherence to and action in accordance with the international Conventions and Recommendations of the ILO;

- e. ensurance that every citizen has a right to fair and reasonable access to public facilities and services in accordance with the law;
- f. ensurance that senior citizens are entitled to and do receive a regular pension adequate for the maintenance of a decent standard of living and the enjoyment of social and cultural opportunities;
- g. enactment of legislation to ensure that the unemployed, the incapacitated, the indigent and the disadvantaged are accorded such social benefits and amenities as are determined by Parliament to be just and affordable with due regard to the resources of the State;
- h. a legal system seeking to promote justice on the basis of equal opportunity by providing free legal aid in defined cases with due regard to the resources of the State;
- i. ensurance that workers are paid a living wage adequate for the maintenance of a decent standard of living and the enjoyment of social and cultural opportunities;
- j. consistent planning to raise and maintain an acceptable level of nutrition and standard of living of the Namibian people and to improve public health;
- k. encouragement of the mass of the population through education and other activities and through their organisations to influence Government policy by debating its decisions;
- l. maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future; in particular, the Government shall provide measures against the dumping or recycling of foreign nuclear and toxic waste on Namibian territory.

**Article 96: Foreign Relations**

The State shall endeavour to ensure that in its international relations it:

- b. promotes international co-operation, peace and security;
- d. fosters respect for international law and treaty obligations;

**Article 98: Principles of Economic Order**

- (1) The economic order of Namibia shall be based on the principles of a mixed economy with the objective of securing economic growth, prosperity and a life of human dignity for all Namibians.
- (2) The Namibian economy shall be based, *inter alia*, on the following forms of ownership:
  - a. public;
  - b. private;
  - c. joint public-private;
  - d. co-operative;

- e. co-ownership;
- f. small-scale family.

**Article 100: Sovereign Ownership of Natural Resources**

Land, water and natural resources below and above the surface of the land and in the continental shelf and within the territorial waters and the exclusive economic zone of Namibia shall belong to the State if they are not otherwise lawfully owned.

**Article 102: Structures of Regional and Local Government**

- (1) For purpose of regional and local government, Namibia shall be divided into regional and local units, which shall consist of such region and Local Authorities as may be determined and defined by Act of Parliament.
- (2) The delineation of the boundaries of the regions and Local Authorities referred to in Paragraph (1) shall be geographical only, without any reference to the race, colour or ethnic origin of the inhabitants of such areas.
- (3) Every organ of regional and local government shall have a Council as the principal governing body, freely elected in accordance with this Constitution and the Act of Parliament referred to in Paragraph (1), with an executive and administration which shall carry out all lawful resolutions and policies of such Council, subject to this Constitution and any other relevant laws.
- (4) For the purposes of this chapter, a Local Authority shall include all municipalities, communities, village councils and other organs of local government defined and constituted by Act of Parliament.
- (5) There shall be a Council of Traditional Leaders to be established in terms of an Act of Parliament in order to advise the President on the control and utilization of communal land and on all such other matters as may be referred to it by the President for advice.

**Article 144: International Law**

Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.

**POLICIES AND LAWS*****Nature Conservation Amendment Act* (Act 5 of 1996)**

This act is aimed to amend the Nature Conservation Ordinance (1975), by providing for an economically-based system of sustainable management and utilization of game in communal areas; to delete references to representative authorities; and to provide for matters incidental thereto.

***Communal Lands Reform Bill* (2000)**

The draft law includes the allocation of rights in respect of communal land, the establishment of Communal Land Boards and the powers of Chiefs and Traditional Authorities and boards in relation to communal land.

“It touches on issues that are sensitive among a large and powerful rural constituency, including traditional leaders and the Oshivambo-speaking people who have their roots in the relatively densely populated Communal Areas in the north and provide the bulk of SWAPO support. However, when the Communal Land Reform Bill was finally passed through the National Assembly on February 17, 2000 to the second chamber, the National Council, it was reported that the proposals from communal area farmers, particularly on the composition of the land boards, had been ignored. Elected regional councilors clearly felt that the proposed law did not deal adequately with illegal fencing already erected on communal land. Opponents of the bill argued that the legislation ran contrary to the government's decentralisation policy and CBNRM initiatives by the Ministry of Environment and Tourism.”<sup>10</sup>

### ***Traditional Authorities Act (1995)***

This act deals with the roles, duties, and powers of traditional leaders. It states that customary law, which is not consistent with provisions of the Constitution, is invalid. It also contains a list of the crimes a traditional court may deal with.<sup>11</sup>

### ***National Land Policy***<sup>12</sup>

The Directorate of Land Reform consists of two main divisions, the Division of Land Boards, Tenure and Advice, and the Division of Land Use Planning and Allocation, and one unit, *viz.*, the Valuation and Estate Management Unit. The Directorate mainly administers the Agricultural (Commercial) Land Reform Act No. 6 of 1995 and the Communal Land Reform Bill, which was recently passed by the National Assembly. The National Land Policy was also developed and is being implemented by the directorate. The objectives of the directorate are:

1. To acquire land for resettlement and developmental purposes.
2. To guide the formulation of rural land development plans to ensure optimum beneficial use of scarce and fragile natural resources.
3. To prepare plans for specific land use options and to co-ordinate future land use planning in the country.
4. To allocate communal land for farming and business purposes.
5. To determine land value and other government properties for various uses.
6. To protect the inalienable right of every citizen to have access to land.
7. To collect and keep baseline data on natural resources.

### ***Community-Based Tourism Policy (1995)***

The Ministry of Environment and Tourism has crafted the Community-Based Tourism Policy. The policy is supposed to explore how communities can benefit from the tourism industry to promote social and economic development and conservation in communal areas.<sup>13</sup> The main principles of this act are<sup>14</sup>:

1. Consultation of the people with tourism planning and legislation reflecting their input;
2. Demand for the informal tourism sector to organize, recognize and even represent community interests;

<sup>10</sup> Adams, Martin, 2000, “Land Reform in Namibia”,

<[http://www.oxfam.org.uk/what\\_we\\_do/issues/livelihoods/landrights/downloads/namibref.rtf](http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/namibref.rtf)>

<sup>11</sup> U.S. Department of State, Namibia Country Report on Human Rights Practices for 1998, released by the Bureau of Democracy, Human Rights, and Labor, February 2001, <<http://www.state.gov/g/drl/rls/hrrpt/2000/af/666.htm>>.

<sup>12</sup> Ministry of Lands, Resettlement and Rehabilitation, <[http://www.op.gov.na/Decade\\_peace/lands.htm](http://www.op.gov.na/Decade_peace/lands.htm)>.

<sup>13</sup> Directorate of Environmental Affairs, Ministry of Environment and Tourism, Namibia, Community Based Natural Resource Management (CBNRM): Programme Details. Viewed 09/15/2006.

<<http://www.met.gov.na/programmes/cbnrm/cbnrmHome.htm>>

<sup>14</sup> *Id.*

3. Requirement of large businesses to allow participation of local people if operating on their communal lands

## COMMUNITY MANAGEMENT AGREEMENTS

### ***“Khoadi//Hoas Conservancy”***

The first institution that benefits from Namibia’s Game Product’s Trust Fund (GPTF) is the “Khoadi//Hoas Conservancy” in the Kunene Region<sup>15</sup>. The conservancy will use a grant of about N\$ 294 000 for the reduction of conflicts between elephants and people. The GPTF which was established in 1997 as a consequence of the Game Products Trust Fund Act, collects revenue from the sale of ivory permitted by CITES, and other animal related sources. The purpose of the fund is to return funds from wildlife products and related industries directly to conservation, especially to communities who live with these animals.

### ***Communal Area Conservancies***

Communal Area Conservancies of Namibia allow a community to define itself (generally traditionally) and its territory; once their intent and institutional capacity are ascertained, they are granted wildlife use rights (not full land rights). The relationship of conservancies to local authorities has yet to be clarified.

### ***How Communities Will Benefit From Conservancies***<sup>16</sup>

Conservancies seek to increase local responsibility and ownership over wildlife. Rural residents can benefit financially from wildlife and tourism through a range of activities. These include harvesting quotas agreed to by the Ministry of Environment and Tourism (MET), trophy hunting, sale of live game and tourism concessions.

Conservancies will be able to decide how to spend income from wildlife and tourism. They can pay dividends to individual households or use income for community development projects. Conservancies give communities new economic opportunities which can help them in times of drought. All conservancy members should have equitable shares as benefits will provide incentives for people to manage the wildlife for the future.

Through conservancies, resources will be more carefully managed. Game populations, habitats, biodiversity and the environment in general stand to gain from the establishment of conservancies.

### **Rights under the New Legislation**

<sup>17</sup>

The new legislation enables conservancies to:

1. Use, manage and benefit from wildlife on communal land;
2. Propose recommendations for quotas for wildlife utilisation and decide on the form of utilisation;
3. Enter into agreements with private companies and establish tourism facilities within the conservancy boundaries.

<sup>15</sup> GPTF Donates Money to Conservancy, viewed 09/15/2006

<[http://www.grnnet.gov.na/News/Archive/2000/Nov2000/gptf\\_donate.htm](http://www.grnnet.gov.na/News/Archive/2000/Nov2000/gptf_donate.htm)>; “Best practices for the CBNRM programme to work with Regional and Local Authorities, Traditional Authorities and line ministries...”

Khoadi//Hoas case study: <[http://www.nacso.org.na/papers\\_reports/Trad%20Authorities%20Report.pdf](http://www.nacso.org.na/papers_reports/Trad%20Authorities%20Report.pdf)>

<sup>16</sup> Directorate of Environmental Affairs, Ministry of Environment and Tourism, Community Based Natural Resource Management (CBNRM): Conservancies - A Simple Guide. Viewed 09/15/2006

<[http://www.met.gov.na/programmes/cbnrm/cons\\_guide.htm](http://www.met.gov.na/programmes/cbnrm/cons_guide.htm)>.

<sup>17</sup> *Id.*



4. Registered conservancies will be given ownership over huntable game and game birds, being bushpig, buffalo, oryx, kudu, springbok and warthog. Applications can be made for permits to use protected and specially protected game. A conservancy which also registers as a hunting farm will be able to allow trophy hunting on its land.

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