

**RESOURCE ACCESS AND RANGE LAND MANAGEMENT IN THREE
COMMUNAL AREAS OF NAMIBIA**

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EXECUTIVE SUMMARY

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Resource access and range land management: issues arising from a study of three communal areas in Namibia

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Introduction

In collaboration with the Ministry of Lands, Resettlement and Rehabilitation (MLRR), and with partial funding from the Ford Foundation, SARDEP has recently commissioned a study of range land resource access and management from the Social Sciences Division (SSD), Multi-Disciplinary Research Centre, University of Namibia. This document outlines key issues arising from the discussion presented in the study report. The full report is available from SARDEP.

A state of uncertainty

The study was undertaken because of the uncertainty which still, five years after Independence, surrounds range land management legislation, institutions, and practice in the communal areas of Namibia. Although the nation's affairs are now guided by a clear and exemplary Constitution, there have been few significant initiatives regarding land access and land management for communal areas. Strong memories remain of the intricacies of colonial regulations for different parts of the country; but although there is now clearly a different political and constitutional dispensation, many people are uncertain about which laws and rules still apply on the ground. Although they suspect that some sort of pragmatic compromise functions in the field to combine elements of the old (including traditional leadership) and the new, policy makers and civil servants have inadequate information on how this blend of local political, social and economic realities operates in practice. There is a strong sense of concern about perceived land degradation and deepening poverty; as well as a fear that communal areas are sinking into institutional anarchy, where only the strong survive by further expropriating and degrading already over-utilised range lands.

The strengths of common property resource management

These are the perceptions; the facts are harder to come by. Is Namibia being ill served by perceptions from Windhoek that there is institutional anarchy in the communal areas? Better information is needed on the extent to which true open access situations have now evolved; why; and what the implications of this situation are. But it is at least as important to assess the extent to which local people do continue to manage their resources

with at least some success; and to show that, however confused the legal context may be and however grave the demographic and environmental pressures, some order does persist in the affairs of communal areas range users. Such evidence should counter the view that communal or 'traditional' land management has no place in modern Namibia, and that the only solution for communal areas livestock production is conversion to freehold. The reality is more complex.

In many parts of Africa there have long been allegations that a 'tragedy of the commons' is unfolding on its communal range lands. A more accurate understanding of communal areas range management distinguishes between true common property resource management regimes, and situations of open access. In the latter cases, there is no effective management system: perhaps because the land is not worth enough to make such a system worth while (in a barren desert, for instance); perhaps because the state has asserted ownership and management authority, but in fact lacks the resources to manage effectively; or perhaps because modern political, economic, or social trends have caused local management institutions to disintegrate. In open access situations, there is no resource management system: the individual interest of resource users prevails; some of the strong survive; and grave or even irreversible land degradation is common. **Usually, the 'tragedy of the commons' is in fact a 'tragedy of open access'. Communal institutions, governing common property resources, can be highly effective as agencies of sustainable resource management.**

Policy and programme design should recognise that they face neither ignorance nor anarchy in communal areas livestock production and range management. Whatever their leanings towards modern veterinary or botanical science, civil servants and extension workers must be aware of the often sophisticated knowledge which the current generation of rural stock owners have about animal health and nutrition, and about local ecology. This is a resource to build upon, rather than ignore.

Some key principles

The study did not find indigenous range management *systems* still functioning in the study areas. *Elements* of range management skills and systems, however, are still widespread. For instance, the concepts of rotational grazing, differential grazing and browse management, and the principle of demarcating certain range land areas for use by specific groups of stock owners, are still well known. The latter is the primary element of indigenous range management on which modern management systems for communal areas

should be built. The central foundation of order on which traditional and modern range management must operate is the twin concept of **community and territory**. There must be a specified group of stock owners linked to a specific, demarcated unit of territory.

Another key technical element of indigenous range management is already becoming hard to identify in many Namibian communal areas today. This is the principle of **mobility** in a semi-arid environment. Indigenous range management prospered on the basis of mobility and flexibility, moving livestock in accordance with the unpredictable behaviour of this country's rainfall and ecology. This principle is violated by modern commercial ranching, which is restricted by its fences to very low carrying capacities. **The challenge in building on the institutional foundation of defined groups and defined territories is to retain the flexibility that permits groups to negotiate shared grazing and stock mobility in times of stress.**

The need for legislation, and its role

There is a growing consensus that national legislation is not the best way directly to control local land access or use, particularly in communal areas. Rather, local systems and sanctions, locally endorsed and applied, are more likely to provide the social legitimacy upon which all law ultimately depends for its effectiveness. The role of national legislation and authority should be to support and validate such local systems.

A National Agricultural Policy has been approved by Cabinet and will go to Parliament as a White Paper for discussion. Meanwhile, there is obviously an urgent need for Government to expedite the drafting and publication of an adequate **Communal Land Bill**. Despite the urgency of the need for this legislation, its preparation should not be rushed and must be consultative and participatory. Little if any legislation since the Constitution will be as important for the majority of Namibians as a Communal Land Act. Thorough publicity and consultation during the drafting process are prerequisites for the production of a law that will recognise the variety of the circumstances in which it will be applied, and address the full range of aspirations which rural people need it to support.

At present, there is a significant gap in Namibia between the functioning of rural civil society and the prescriptions of statute law. This gap developed because colonial laws were repugnant, irrelevant, unenforceable or simply unknown in rural Namibia. The challenge for a new land law is to close the gap between the *de jure* and the *de facto*, and create a legal framework which accords with communal areas realities and aspirations. Beyond specifying

fundamental principles and establishing needed institutions, the law must be enabling rather than prescriptive. It must recognise and facilitate local group "ownership" of, responsibility for, and financial authority over, specified land areas, their natural resources and the revenues generated from them. While "ownership" need not necessarily mean freehold tenure, it should entail proprietary rights strong enough to generate a sense of managerial responsibility, and strong enough to legitimate the exclusion of non group members from use of the land area.

Community land trusts?

This implies a law which provides for two levels of institution. At the **administrative** level, and presumably covering substantial units of territory, some sort of land board will be required to take responsibility for land allocation, record keeping, planning and dispute resolution. At the **local** level, the law should provide for community land trusts, or similar bodies, to be constituted wherever groups of land users agree to do so. By cross reference to other legislation on trusts and associations, the law should authorise such trusts, when properly constituted, to control access to, use and management of specified land areas. The trusts should be entitled to promulgate byelaws, raise local taxes and manage the funds so generated for authorised and audited land management and development purposes.

Traditional Authorities

Land legislation also needs to be explicit about the roles and responsibilities of traditional leaders with regard to land management. The recent Traditional Authorities Act has not done this adequately. Rather than generally specifying any particular function for traditional leaders within a land administration system, the land law should indicate that rural communities should determine what role, if any, such leaders will have in their land trusts or other local management bodies. Given the *de facto* prominence of traditional leaders in land access decisions, and the general strength of support they receive from the communities in which they live (see below), then some programme which provides traditional leaders with skills in making these decisions is worth consideration.

Conservancies

An important precedent for this concept of community land trusts is already being set in Namibia. This is the concept of communal areas conservancies, for which the Ministry of Environment and Tourism (MET) obtained Cabinet approval this year. The necessary amendment to the relevant legislation is currently being prepared, and MET hopes to authorise the creation of the first communal areas conservancies in 1996.

The conservancy concept was first introduced in commercial farming areas, enabling neighbouring land owners to pool their farms into a larger unit, or conservancy, for the purposes of wildlife management - primarily for hunting and other tourism activities.

A conservancy on communal land "would be formed by a community or group of communities within a defined geographical area who jointly manage, conserve and utilise the wildlife and other natural resources within the defined area."¹ The definition of such areas, particularly if they were expanded in scope to include range and agricultural lands, could in future be done in consultation with the Regional Land Boards which are likely to be created by the eventual communal areas land legislation.

The conservancy concept implies considerable flexibility with regard to the geographic extent or human population of a conservancy. The policy does specify that a conservancy council would be elected to represent the community in the management of the conservancy. This council would be given full responsibility for wildlife management in the conservancy, subject (as in the commercial conservancies) to technical monitoring of sustainability and other issues by MET. Legally constituted conservancies would be given management rights over wildlife in their areas, and to retain the hunting and tourism revenues that they would earn, for example, if they chose to enter into contracts with commercial operators. MET's policy also notes the necessity that a conservancy be clearly defined and demarcated, and that its boundaries should be accepted by neighbouring communities and conservancies. However, the conservancy concept as so far developed does not imply any absolute ownership of, or control over, the defined land area. The question of communities' right to control access to, or residence in specified areas remains to be addressed by national land policy. It is discussed further below.

¹ Jones, B.T.B., 1995. *Wildlife Management, Utilisation, and Tourism in Communal Areas: Benefits to Communities and Improved Resource Management*. Windhoek, Directorate of Environmental Affairs, Ministry of Environment and Tourism: Research Discussion Paper. P. 5

Building on the conservancy concept

What is needed now is for land legislation to adapt the concept pioneered by MET and develop a more general model of a community land management body with the right to generate and use revenue from the resources in its management area. There would be important differences between a community land trust in, say, a stock raising area, and a communal areas conservancy as envisaged by MET: notably, the primary income generating resource in the former case would continue to be individually owned and managed, while in the conservancy case the wildlife is communally owned. Furthermore, the revenues in a conservancy would often come from contracts with outsiders, whereas a community land trust's revenues might come mainly from a tax on members using the area's resources. MET itself recognises that its conservancy concept is weak without clear Government policy and legislation on communal areas land tenure. **MLRR, MAWRD and the Ministry of Regional and Local Government and Housing should now work closely with MET to integrate these early ideas into a broader legal and institutional framework for community land ownership and management.**

Rights of residence and resource use

There is an important need to demarcate communal areas land management units clearly - be they for livestock and range management, or for broader community management purposes. **It is equally important to define who the members of a land managing community are.** A related issue which Namibians must tackle head on concerns local communities' right to local control and the exclusion of outsiders - keys to successful common property resource management - and all citizens' right to move and live where they choose in the country. The latter is a hard won right which cannot reasonably be infringed; yet, if it means that rich people or large stock owners can move into new areas and displace already resident, poorer people or exacerbate local land degradation, it is a right that can be abused. This is one of the land legislation issues on which national, participatory consultation is needed. A compromise might be along the Zimbabwean lines: that a citizen is free to live anywhere, but is not free to use local community resources until he/she has met locally determined requirements as to length of residence, environmentally responsible behaviour, local carrying capacities, participation in local institutions, and so on. This implies **a clear distinction between residence rights and resource use rights.** If enforced, it should avert the problems experienced in Botswana - and starting to emerge in Namibia - of large herd owners overgrazing their private commercial ranches and then turning their

stock onto communal grazing lands, to which - under current arrangements - they retain rights.

Grazing fees

In many (not all) areas of Namibia, the concept of grazing fees is still familiar, the collection of these fees having been abandoned only five or six years ago. If local land management bodies are instituted as recommended above, these bodies should be authorised to raise local taxes in respect of natural resource use, and to retain and use the funds so generated. Whether and how they raise such funds, or at what rates, should be left to local discretion. A grazing fee or stock tax might be more acceptable in some parts of the country than in others. The processes of revenue generation and management of these funds by local land trusts should be monitored and audited by an appropriate body within the Government and should take place in terms of approved constitutions and byelaws of the local land management authorities.

Fencing

The rapid and accelerating fencing of communal grazing areas is an issue which has been evaded for too long. It needs to be tackled soon, and constructively. There has been a great deal of negative commentary on "illegal" fencing of range lands. Much of this criticism is justified. However, it would be naive to suppose that these fences are going to be removed. Legislation to this effect is hard to imagine; its enforcement, still more so. The only effective measures at this stage would be to recognise the fencing that has already take place, and to take urgent steps to recognise and codify the remaining communal grazing rights - for example, through the community trusts suggested above - on the remaining areas not yet subjected to this effective privatisation. The *de facto* private tenure that the illegal fencers have appropriated should also be codified and rationalised. As in Botswana, such land holders might be awarded communal area leases by a local communal area land board.

These suggestions are not meant to exonerate the land grab that appears to be taking place in some communal areas of Namibia at present. They are made in a spirit of realism about what can still be done to retrieve the remaining rights of the poorer communal areas residents. Similar realism is being shown by the communities which are now engaged in "defensive" fencing in Okakarara and other areas. The areas defensively fenced in this way

might form the basis for future community land trusts, and for further camp demarcation as part of range management plans.

Conclusion

The above is a summary of some of the key discussion points raised in the SSD report on research into resource access and range land management in the communal areas. SARDEP is circulating these points, as well as the full report, in the hope of stimulating further policy debate and action to enhance the sustainable development of range land and other resources in the communal areas of Namibia.