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MPhil Marine and Environmental Law

EMPOWERING COMMUNITIES:

A CRITICAL ANALYSIS OF THE LEGAL FRAMEWORK REGULATING
INDIGENOUS AND COMMUNITY CONSERVED AREAS IN NAMIBIA

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I hereby declare that I have read and understood the regulations governing the submission of MPhil Marine and Environmental Law dissertations, including those relating to length and plagiarism as contained in the rules of this University and that this dissertation paper conforms to those regulations.

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Abstract

Protected areas, formally established by governments, are one of the key methods of preventing natural resource degradation by excluding humans from accessing certain sensitive areas, or by regulating the activities within these areas. Protected areas are viewed as essential for conserving the biodiversity on which the human race depends. However, the “fine and fences” preservationist approach to conservation has proved ineffective and it has been determined that often degradation occurs due to a lack of synchronisation between communities and their environments. This has led to the development and adoption of the community-based natural resource management (CBNRM) approach to conservation. The main principle of CBNRM is that traditional knowledge be applied and user-rights be legally devolved to indigenous communities in order to sustainably manage and conserve natural resources. Indigenous and community conserved areas (ICCAs) can be viewed as a tool to promote CBNRM. Communities voluntarily establish ICCAs and if the ICCA is recognised in legislation, they are then awarded a bundle of rights to manage and use resources while simultaneously implementing conservation activities. Certain key prerequisites are required in legislation and policy to promote effective and equitable ICCAs, including rights to land tenure, management and access, use and benefits to natural resources on communal land.

Namibia has adopted a novel approach to CBNRM by the establishment of three types of ICCAs – conservancies, community forests and wildlife concessions. Different bundles of rights are awarded to communities who establish these ICCAs. Namibia has various policies and acts influencing the awarding of rights. These include the constitutional rights and freedoms, the amended Nature Conservation Ordinance, the Communal Lands Reform Act, the Traditional Authorities Act, the Forest Act and a variety of policies. Conservancies and community forests have benefit-sharing plans in place and cash revenues and non-economic benefits are shared equitably amongst members, therefore empowering the community as a whole. Communities adjacent to or within protected areas, to which concessions are granted, are able to enjoy access to resources within the protected area. One major shortcoming of Namibia’s CBNRM legislation is the lack of secure land tenure in terms of property rights awarded to ICCAs. Without property rights, conservancies are not able to exclude outsiders from the communal state-owned land on which they are situated which leads to open access issues and lack of incentive to implement efforts to conserve natural resources. Although issues are still present, the Namibian legislature contains the basics of a successful national CBNRM movement.

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List of Abbreviations

CBNRM	Community-based natural resource management
LIFE	Living in a Finite Environment
ICCA	Indigenous and Community Conserved Area
IIED	International Institute for Environment and Development
IUCN	International Union for Conservation of Nature
NACSO	Namibian Association of CBNRM Support Organisations
NGO	Non-governmental Organisation
SNV	Netherlands Development Organisation
UN	United Nations
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
USAID	United States Agency for International Development
WWF	World Wildlife Fund

1. Introduction

1.1 Understanding the Context

Protected areas are considered core elements for *in situ* conservation and these areas have a long history.¹ Conserving certain areas to maintain aesthetic values has been practiced for many centuries.² In earlier years, protected area establishment was mainly for religious reasons.³ During the Renaissance in Europe, kings and rulers set aside tracks of land as royal hunting grounds and over time these areas became open to the public, forming the basis of tourism in protected areas.⁴ By the nineteenth century, the first national parks and reserves were established and since then the number of protected areas internationally have increased as an attempt to halt the decreasing biodiversity.⁵ Now, more than ever before, protected areas are essential to conserving the biodiversity and maintaining the ecosystems that humanity depend on.⁶

Conventional protected area management approaches over the past century has viewed people and nature as separate entities, thus attempting to exclude communities and restrict their use of natural resources in these areas.⁷ Recently, conservation practices have undergone rapid changes in response to international social and economic changes as well as improvements in natural science.⁸

The science of ecology has undergone three major interrelated shifts.⁹ Firstly, there was a shift from a simplified perspective to viewing the world and ecology as an adaptive, complex system.¹⁰ Secondly, there came a shift in perception, realising that humans cannot be viewed as separate from nature,¹¹ thus allowing for the involvement of humans in the

¹ Chape S, Harrison J, Spalding M *et al.* "Measuring the extent and effectiveness of protected areas as an indicator for meeting global biodiversity targets" (2005) *Philosophical Transactions of the Royal Society* 360: 443 – 455.

² Eagles PFJ, McCool SF & Haynes CD *Sustainable Tourism in Protected Areas : Guidelines for Planning Management* (2002) IUCN Gland, Switzerland 5.

³ Eagles *et al.* *Sustainable Tourism in Protected Areas : Guidelines for Planning Management* (2002) 5-6.

⁴ *Ibid* at 5.

⁵ Chape S *et al.* (2005) *Philosophical Transactions of the Royal Society* 443 – 455.

⁶ Lausche B *Guidelines for Protected Areas Legislation* (2011) IUCN, Gland, Switzerland, 1.

⁷ Borrini-Feyerabend G, Kothari A & Oviedo G *Indigenous and local communities and protected areas. Towards Equity and Enhanced Conservation* (2004) IUCN/WCPA Best Practice Series, 11, Gland Switzerland) and Cambridge (United Kingdom) xiv.

⁸ *Ibid* at 1.

⁹ Berkes F "Rethinking community-based conservation" (2003) *Conservation Biology* 18(3): 621-630.

¹⁰ Levin SA *Fragile dominion: complexity and the commons* (1999) Perseus, New York 2-5.

¹¹ Kates RW, Clark WC, Corell R *et al.* "Sustainability science of local communities" (2001) *Science* 292: 641-642.

ecosystem.¹² Lastly, there was a realisation that local people are knowledgeable about their environment, and consequently there was a shift to participatory conservation and management.¹³

Due to capacity constraints of governments and the seemingly unsuccessful “fines and fences” conservation approach¹⁴ - an approach where strict regulations are enforced because humans are seen as incompatible with conservation efforts¹⁵ - there has been a search for approaches that could alleviate the monetary and management burden of the state in relation to the conservation and management of natural resources.¹⁶ Increased human population growth, continued habitat fragmentation and ongoing species extinction required contemporary strategies to achieve maximum conservation of the remaining pockets of land that is of high conservation value.¹⁷ This, coupled with the conceptual shifts in the ecology discourse,¹⁸ has led to the rise of community-based natural resource management approaches (CBNRM). The very definition of protected areas has simultaneously evolved to include the sustainable use of resources and the marriage of conservation with socio-economic imperatives.¹⁹

Conflicts over natural resources between protected area authorities and the local communities living adjacent to the protected areas are increasing, further compelling policy-makers to shift the conservation discourse from a state-centred approach to a more decentralised and participatory approach to conservation.²⁰ However, this shift takes time and poses challenges as governments’ role shifts from solely manager of natural resources

¹² Ingold T *The perception of the environment: essays on livelihood, dwelling and skill* (2000) Routledge, London 25.

¹³ Holling CS “Understanding the complexity of economic, ecological and social systems” (2001) *Ecosystems* 4: 726-734.

¹⁴ Babcock K “Keeping it local: improving the incentive structure in community-based natural resource management programs” (2010) *Colorado Journal of International Environmental Law and Policy* 21(1): 201-229

¹⁵ Kubo H & Supriyanto B “From fence-and-fine to participatory conservation: mechanisms of transformation in conservation governance at the Gunung Halimun-Salak National Park, Indonesia” (2010) *Biodiversity and Conservation* 19: 1785.

¹⁶ Ainslie A “When ‘community’ is not enough: managing common property natural resources in rural South Africa” (1999) *Development Southern Africa* 16(3): 375-401.

¹⁷ Lindsey PA, Romanach SS & Davies-Mostert HT “The importance of conservancies for enhancing the value of game ranch land for large mammal conservation in southern Africa” (2008) *Journal of Zoology* 277: 103.

¹⁸ Berkes (2003) *Conservation Biology* 621-630.

¹⁹ Borrini-Feyerabend *et al.* *Indigenous and local communities and protected areas. Towards Equity and Enhanced Conservation* (2004) 1.

²⁰ Ainslie (1999) *Development Southern Africa* 375-401.

through protected areas to facilitator of community-based natural resource management initiatives.²¹

In the past two decades, participatory approaches to conservation have become mainstream and policy-makers have realised the important role that local communities and institutions play in the management of natural resources.²² The shift towards participatory approaches was mainly a reaction to the failures of exclusionary conservation forms.²³ This shift from centralised government to community participation can be determined by looking at the level of control communities have over socio-economic benefits arising from natural resource management.²⁴ Community members are able to use traditional local knowledge to react to changes in the ecosystem on which their livelihoods so often depend, thus placing them in a prime position to manage these resources.²⁵

CBNRM, viewed as a partnership between communities and national government, allows for communities to manage the natural resources they depend on with advice from government institutions.²⁶ If applied successfully, CBNRM can be perceived as a more promising resource management strategy than reliance on state-centred systems²⁷ and it has the ability to contribute to rural economic empowerment through public participation in management decisions over natural resources.²⁸

In 2003, parties attending the International Union for the Conservation of Nature (IUCN) World Parks Congress called upon states to diversify protected areas governance,²⁹ and move from the nineteenth century approach of exclusionary conservation to a more practical regime that involves management categories, allowing for effective and equitable conservation inside protected areas and recognising cultural and traditional values.³⁰

²¹ Alcorn J, Kajuni A & Winterbottom B *Assessment of CBNRM Best Practices in Tanzania* (2002) Final report prepared for USAID Tanzania and USAID Africa Bureau, Office of Sustainable Development 15.

²² Ainslie (1999) *Development Southern Africa* 375-401.

²³ Berkes (2003) *Conservation Biology* 621-630.

²⁴ Alcorn *et al.* *Assessment of CBNRM Best Practices in Tanzania* (2002) 15.

²⁵ Borrini-Feyerabend G, Dudley N, Jaeger T *et al.* *Governance of Protected Areas: From understanding to action* (2013) Best Practice Protected Areas Guidelines Series No. 20, IUCN, Gland, Switzerland 39-41.

²⁶ Alcorn *et al.* *Assessment of CBNRM Best Practices in Tanzania* (2002) 14.

²⁷ Berkes F "Community conserved areas: policy issues in historic and contemporary context" (2009) *Conservation Letters* 2: 20-21.

²⁸ Alcorn *et al.* *Assessment of CBNRM Best Practices in Tanzania* (2002) 8.

²⁹ Berkes (2009) *Conservation Letters* 19-24.

³⁰ Chape S *et al.* (2005) *Philosophical Transactions of the Royal Society* 443 – 455.

Issues arise when community conservation plans are not in line with national conservation goals³¹ and open-access exploitation can occur if communities lack rights and incentives to conserve resources and government rules are not enforced.³² Therefore a diversity of governance regimes is key. Governance has two dimensions. The first dimension is the process by which decisions are made, known as good governance. The second dimension is with regards to who makes the decisions.³³ The IUCN and the Convention on Biological Diversity (CBD) has established four broad governance types. These are respectively, governance by the government, governance by rights holders and stakeholders, governance by individuals and private organisations and governance by indigenous peoples and/or local communities.³⁴ The definitions and concepts surrounding “indigenous peoples” and “local communities” are complex and it is often difficult to differentiate between the two terms. For clarity, the term “community” will be applied in this dissertation to mean indigenous people residing in a close-knit group in a rural area who have the same traditional values and culture.³⁵

Where “governance” determines who makes the decisions and who is responsible, “management” refers to what is done to achieve the objectives.³⁶ The IUCN currently identifies six protected areas management categories in the *IUCN Governance of Protected Areas*.³⁷ These include Strict Nature Reserves, Wilderness Areas, National Parks, Natural Monuments or Features, Habitat/Species Management Areas, Protected Landscapes/Seascape and Protected Areas with Sustainable Use of Natural Resources. The last category, Category VI: Protected Areas with Sustainable Use of Natural Resources, is of particular concern for CBNRM. Each of these categories serves a unique purpose and emphasises the need for a range of protected areas management approaches.³⁸

If equity and empowerment is achieved, community livelihoods will be the sole driving force behind conservation, instead of merely being compatible with it.³⁹ Indigenous and Community Conserved Areas (ICCAs) were recognised in the international sphere after the

³¹ Becker D “Protecting a *garua* forest in Ecuador: the role of institutions and ecosystem variation” (1999) *Ambio* 28: 156-161.

³² Becker D & Ostrom E “Human ecology and resource sustainability: the importance of institutional diversity” (1995) *Annual Reviews of Ecology and Systematics* 26: 113-133

³³ Lausche *Guidelines for Protected Areas Legislation* (2011) 75.

³⁴ Borrini-Feyerabend *et al. Governance of Protected Areas: From understanding to action* (2013) 12, 29-30.

³⁵ Waylen KA, Fischer A, McGowan PJK *et al.* “Deconstructing community for conservation: why simple assumptions are not sufficient” (2013) *Human Ecology* 41: 575.

³⁶ Borrini-Feyerabend *et al. Governance of Protected Areas: From understanding to action* (2013) Table 3, 11.

³⁷ *Ibid* at 8-9.

³⁸ Dudley *Guidelines for Applying Protected Area Management Categories* (2008) 3.

³⁹ Brown K “Innovations for conservation and development” (2002) *The Geographical Journal* 168: 6-17.

IUCN's Fifth World Parks Congress in 2003 and the Seventh Conference of the Parties to the CBD in 2004.⁴⁰ Both of these meetings urged states to encourage participatory conservation efforts by establishing ICCAs,⁴¹ which falls under Category VI of the above mentioned IUCN Categories. ICCAs are defined as:⁴²

natural and/or modified ecosystems containing significant biodiversity values, ecological services, and cultural values, voluntarily conserved by indigenous, mobile and local communities, through customary laws and other effective means.

Communities involved in ICCAs are the major decision makers regarding resource conservation and community institutions have the abilities to enforce regulations.⁴³ ICCAs have the potential to increase the amount of areas with conservation status⁴⁴ if legislation and policy changes allow for their establishment.⁴⁵

Namibia is an international front-runner in CBNRM practices and has adopted a contemporary and novel approach to ICCAs. Prior to 1996, all wildlife in Namibia was state owned.⁴⁶ Communities lived on state-owned land and any wildlife on the land was considered government property.⁴⁷ After Namibia gained independence in 1990, legislation pertaining to wildlife use was amended to allow for the establishment of conservancies and the devolution of natural resource management rights from the government to communities.⁴⁸

Namibia's CBNRM programme is based on successful ICCAs that are vital to the natural and wildlife tourism industry.⁴⁹ It can take the form of a conservancy, a community forest or a concession. A conservancy is a body formed by residents of a community to which

⁴⁰ Berkes (2009) *Conservation Letters* 19-24.

⁴¹ Pathak N, Bhatt S, Tasneem B *et al.* *Community conservation areas. A bold frontier for conservation* (2004) CCA Briefing Note 5. IUCN WCPA-CEESP Theme on Indigenous Local Communities, Equity and Protected Areas (TILCEPA) 1-8.

⁴² World Parks Congress *WPC Recommendation V.26* (2003) IUCN, Gland, Switzerland, 202.

⁴³ Berkes (2009) *Conservation Letters* 19-24.

⁴⁴ Kothari A "Community-conserved areas: towards ecological and livelihood security" (2006) *Parks* 16: 3-13.

⁴⁵ Oviedo G "Community-conserved areas in South America" (2006) *Parks* 16: 49-55.

⁴⁶ Ashley C *Applying livelihood approaches to natural resource management initiatives: experiences in Namibia and Kenya* (2000) ODI Working Paper 134. London: ODI 10.

⁴⁷ Boudreaux K "A new call of the wild: Community-based natural resource management in Namibia" 2008 *Georgetown International Environmental Law Review* 20: 297-335

⁴⁸ Jones B "Recognition and support of ICCAs in Namibia" In Kothari A, Corrigan C, Jonas H, Neumann A & Shrumm H (eds) *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) Secretariat of the Convention on Biological Diversity, ICCA Consortium, Kalpavriksh, and Natural Justice, Montreal, Canada. Technical Series no. 64, 6-10.

⁴⁹ Bandyopadhyay S, Humavindu MN, Shyamsundar P & Wang L *Do households gain from community-based natural resource management? An evaluation of community conservancies in Namibia* (2004) *DEA Research Discussion Paper* 68, Directorate of Environmental Affairs, Windhoek, Namibia 2.

government devolves conditional wildlife use rights.⁵⁰ It must have a clearly defined membership, a representative committee and a constitution which clarifies the wildlife management approach and the equitable distribution of benefits.⁵¹ Conservancies are voluntary, and are thus important features of biodiversity conservation, since there is a growing recognition of voluntary conserved areas and the impact these areas have on increasing the area being protected⁵² as well as forming buffers for state protected areas.⁵³ Community forests are areas in communal lands to which communities have been awarded management rights over forests, woodlands and other types of natural vegetation. The rights will be awarded after the community has entered into a written agreement with the state regarding the geographic boundaries and management plan for the proposed community forest.⁵⁴ Concessions are the rights to conduct tourism activities or use state-owned resources on state-land for a specified period of time and can take various forms in Namibia, including tourism, wildlife and plant materials.⁵⁵ These ICCAs form the focus of this dissertation.

1.2 Purpose, Methodology and Structure

The purpose of this dissertation is two-fold. Firstly, from a theoretical perspective, it seeks to explore the relationship between CBNRM and ICCAs, and distil a set of key legal prerequisites for enabling ICCAs to facilitate CBNRM. Secondly, it seeks to critically consider Namibia's legal framework that is of relevance to ICCAs with a view to assessing whether it reflects these legal prerequisites.

Namibia has been selected as a microcosm to explore the relationship between CBNRM and ICCAs, since it has successfully incorporated CBNRM into its legislation. Namibia's CBNRM programme was established in the early nineties and this programme currently has a particular focus on wildlife, tourism and veld products by legally allowing for the establishment of ICCAs.⁵⁶ Currently there is a number of growing and emerging ICCAs in the country⁵⁷ and local people are changing their attitudes toward wildlife.⁵⁸ This shift from

⁵⁰ Ashley *Applying livelihood approaches to natural resource management initiatives: experiences in Namibia and Kenya* (2000) 10.

⁵¹ Nature Conservation Amendment Act (5 of 1996), Section 3.

⁵² Lausche *Guidelines for Protected Areas Legislation* (2011) 76.

⁵³ Newmark WD & Hough JL "Conserving wildlife across Africa: Integrated conservation and development projects and beyond" (2000) *BioScience* 50(7): 585-592.

⁵⁴ Forest Act (12 of 2001), Section 15.

⁵⁵ Policy on Tourism and Wildlife Concessions on State Land (2007).

⁵⁶ Ashley *Applying livelihood approaches to natural resource management initiatives: experiences in Namibia and Kenya* (2000) 12 - 13.

⁵⁷ *Ibid* at 12.

⁵⁸ Alpert P "Integrated conservation and development projects" (1996) *Bioscience* 46(11): 845-855.

traditional conservation methods to a participatory approach is due to the post-colonial democratic government attempting to alleviate poverty and empower rural areas while encouraging conservation.⁵⁹

Namibia's legal and policy changes to allow for the establishment of conservancies and allowing the devolution of wildlife management rights have led to the adoption of a new class of property rights. These rights incentivise communities while simultaneously benefiting the community and the natural resources.⁶⁰

Several research questions will be addressed in this dissertation. Firstly it will distil what are the key features of CBNRM. This will be achieved by investigating the nature, form and value of CBNRM as well as determining the role of law – how it enables and forms CBNRM.

Secondly the dissertation will also consider how ICCAs relate to CBNRM. Factors to be considered includes the origins and rise in prominence of ICCAs and the different forms of ICCAs as well as how these forms relate to formally established protected areas. Efforts and investments in community-based conservation methods have increased,⁶¹ and the reasons for this phenomenon will be explored. A theoretical legal matrix will then be created by determining legal issues impacting on the effect of ICCAs in promoting CBNRM. This will be done by looking at land tenure, management and access, use and benefit-sharing issues. These issues will be discussed in Chapter 2.

The dissertation continues in Chapter 3 to assess the effectiveness of Namibia's legal framework pertaining to CBNRM and ICCAs. The origins of ICCAs in Namibia will be addressed, as well as a brief overview of the legal framework. The same legal matrix set out and elaborated on in Chapter 2 – land tenure issues, management issues, and access, use and benefit-sharing issues - will then be used to critically review Namibia's legal framework since conservancies, community forests and wildlife concessions depend on the legal authority delegated down to grassroots level by national legislation.⁶² The dissertation will then reach a conclusion in Chapter 4.

The research methodology for this study involves an analysis of available information and literature on the subject of Protected Areas and CBNRM legislation, especially pertaining

⁵⁹ Bandyopadhyay *et al.* *Do households gain from community-based natural resource management? An evaluation of community conservancies in Namibia* (2004) 4.

⁶⁰ Boudreaux (2008) *Georgetown International Environmental Law Review* 297-335.

⁶¹ Berkes (2003) *Conservation Biology* 621-630.

⁶² Lausche *Guidelines for Protected Areas Legislation* (2011) 84.

to the establishment of ICCAs in Namibia. It is a critical analysis of the legislation of Namibia, as well as a desktop study covering a critical reflection of the law. The types of texts that will be used include journals, government publications, relevant laws and policies, books and the internet. The *IUCN Guidelines for Protected Areas Legislation*⁶³ will be applied throughout this dissertation to aid in distilling the elements of the theoretical legal matrix.

2. CBNRM and ICCAs

This chapter covers the nature, form and value of CBNRM in an international and southern African context as well as the origin of CBNRM and the rise in prominence of ICCAs as important conservation areas for promoting CBNRM. This chapter also establishes the relationship between ICCAs and CBNRM. Lastly the chapter will look at land tenure, management and access, use and benefit-sharing as key legal prerequisites for establishing a legal framework for CBNRM and ICCAs.

2.1 Nature, Form and Value of CBNRM

One of the greatest challenges and priorities facing policy-makers today is finding ways to involve communities in biodiversity conservation and the sustainable use of natural resources.⁶⁴ These resources are not only a source of power in African countries, they are dynamic, political and rooted in social practices⁶⁵ as well as critical for rural development.⁶⁶ Protected areas are a key feature in the campaign to protect biodiversity and natural resources.⁶⁷ Protected areas currently face various threats, the main threat being population growth⁶⁸ especially with regards to the increase in communities and people that neighbour protected areas.⁶⁹ Other challenges and threats to protected areas include lack of legal support for establishing and managing protected areas, climate change, the global financial crisis, invasive species, pollution, habitat change and over-exploitation of natural resources.⁷⁰ This has led to a growing consensus that the success of protected areas will be limited if

⁶³ Ibid.

⁶⁴ McShane TO & Wells MP *Getting biodiversity projects to work: Towards more effective conservation and development* (2004) Columbia University Press, New York 321-339.

⁶⁵ Anderson J, Shaikh A, Barrett P *et al. Nature, wealth and power: Emerging best practice for revitalizing rural Africa* (2002) United States Agency for International Development (USAID), Washington D.C., USA 5.

⁶⁶ Ibid at 3.

⁶⁷ Wells MP & McShane TO "Integrating protected area management with local needs and aspirations" (2004) *Ambio* 33(8): 513.

⁶⁸ Ostrom E *Governing the commons: The evolution of institutions for collective action* (1990) Cambridge University Press 3.

⁶⁹ Babcock (2010) *Colorado Journal of International Environmental Law and Policy* 205.

⁷⁰ Borrini-Feyerabend *et al. Governance of Protected Areas: From understanding to action* (2013) 87.

exclusion of communities from these areas continues,⁷¹ since communities are either dependent on natural resources within protected areas or affected by the management of these resources.⁷²

Establishing linkages between protected area management and issues of poverty in developing countries is essential.⁷³ Participatory conservation, one such linkage, encompasses a range of initiatives, projects and programmes. These include co-management, integrated conservation and development programmes (ICDPs) and CBNRM.⁷⁴ Although CBNRM has a range of different interpretations and can mean a variety of things to different people, in southern Africa CBNRM is synonymous with nature conservation.⁷⁵ The term was originally coined in southern Africa and was used to describe community conservation projects involving large mammals and sustainable consumptive use arising from external intervention.⁷⁶ In southern Africa the aim of CBNRM is thus to incentivise conservation efforts and prevent poaching by using returns from sustainable natural resource use and wildlife activities.⁷⁷ Since the United Nations Conference on Environment and Development in Rio de Janeiro (1992), CBNRM has been viewed as a solution to the challenge of uniting conservation and socio-economic development in developing countries.⁷⁸ The key feature of CBNRM embraces the notion that rural communities will only be willing to conserve and protect natural resources if socio-economic development and local participation are campaigned for in conjunction with nature conservation.⁷⁹ Benefits of conserving resources must thus outweigh the costs of conservation and restricted use.

⁷¹ Wells & McShane (2004) *Ambio* 513.

⁷² Turner R "Communities, conservation, and tourism-based development: can community-based nature tourism live up to its promise?" (2006) *Journal of International Law and Policy* 7(3): 162.

⁷³ Scherl LM, Wilson A, Wild R *et al.* *Can protected areas contribute to poverty reduction? Opportunities and Limitations* (2004) IUCN, Gland, Switzerland and Cambridge, UK 2.

⁷⁴ Adams W & Hulme D "Changing narratives, policies and practices in African conservation" In Hulme D & Murphree M (eds.) *African wildlife and livelihoods: The promise and performance of community conservation* (2001) Oxford 13.

⁷⁵ Turner S *A crisis in CBNRM? Affirming the commons in southern Africa* (2004) Paper presented at the 10th IASCP Conference, Oaxaca 1.

⁷⁶ Sharp R *CBNRM: does it have a future?* (2013) Available at: https://www.iucn.org/about/union/commissions/sustainable_use_and_livelihoods_specialist_group/sulinews/issue_5/sn5_cbnrm/ (Accessed: 27 January 2015).

⁷⁷ Godfrey E "Peanut butter salvation: the replayed assumptions of 'community' – conservation in Zambia" (2013) *Journal of Contemporary African Studies* 31(3): 381.

⁷⁸ Wily L "Moving forward in African community forestry: trading power, not use rights" (1999) *Society and Natural Resources* 12: 49-61.

⁷⁹ Virtanen P "Community-based natural resource management in Mozambique: A critical review of the concept's applicability at local level" (2005) *Sustainable Development* 13: 1.

CBNRM is robust and adaptable, and has been described as a tool, a method, a model, a process and an approach.⁸⁰ All forms of CBNRM rest on the concept of “collective proprietorship” – a group of people enjoy authorised use rights over land and resources and the group can jointly manage it according to their own guidelines and procedure.⁸¹ Not only are CBNRM programmes linked with ecotourism and wildlife conservation, CBNRM can also relate to other sector-based approaches, for example range and pasture management,⁸² community forestry,⁸³ community fisheries⁸⁴ and water management.⁸⁵ These activities are undertaken in legally defined geographic areas and are undertaken by people who have differing interests and capabilities, but with a common interest in conservation.⁸⁶

The paradigm shift towards community participation in natural resource use must be understood in conjunction with other factors.⁸⁷ CBNRM is heavily reliant on the market, since benefits to communities arise from either government project funds or income from natural resource and protected area use.⁸⁸ This shift and reliance on market structures reflect political and economic changes and also corresponds with democratisation in developing countries.⁸⁹

In theory CBNRM would allow for sustainable development by enhancing biodiversity conservation, empowering rural communities and improved participatory approaches to conservation.⁹⁰ This is based on the hypothesis that if communities have exclusive rights to a valuable resource and is able to use and benefit from it, sustainable use of that resource will ensue.⁹¹ Therefore CBNRM programmes have the potential to enhance rural livelihoods while

⁸⁰ Soeftestad LT & Gerrard CD *The International Workshop on community-based natural resource management (CBNRM)* (1998) Workshop Report, Washington DC 1.

⁸¹ Jones BTB *CBNRM, poverty reduction and sustainable livelihoods: Developing criteria for evaluating the contribution of CBNRM to poverty reduction and alleviation in southern Africa* (2004) Commons Southern Africa Occasional Paper Series No. 7, CASS/PLAAS 4.

⁸² Vetter S *Equilibrium and non-equilibrium in rangelands: recent development in the debate* (2005) *Journal of Arid Environments* 62: 321-341.

⁸³ Wily AL “The political economy of community forestry in Africa – getting the power relations right” (2002) *Forests, Trees and People Newsletter* 46: 4-12.

⁸⁴ Turner A *A crisis in CBNRM? Affirming the commons in southern Africa* (2004) 2.

⁸⁵ Mashinini V “Consensus or conflict? Water management in rural Lesotho” (2001) *Indicator South Africa* 18(2): 78-80.

⁸⁶ Thakadu OT *The concept of community ownership and mobilization: experiences from community-based natural resources management* (2001) Community-based management of animal genetic resources: Proceedings of the workshop, Mbabane, Swaziland 121-122.

⁸⁷ Turner (2006) *Journal of International Law and Policy* 180.

⁸⁸ *Ibid* at 175.

⁸⁹ Bratton M “Second elections in Africa” (1988) *Journal of Democracy* 9: 51-66.

⁹⁰ Alpert (1996) *Bioscience* 845-855.

⁹¹ Jones *CBNRM, poverty reduction and sustainable livelihoods: Developing criteria for evaluating the contribution of CBNRM to poverty reduction and alleviation in southern Africa* (2004) 4.

delivering positive environmental outcomes.⁹² This is achieved by allowing the community to participate in managing and exploiting the natural resources.⁹³ Incorporating this notion of community involvement, although tempting on paper, has proved to be challenging in practise, particularly in developing countries.⁹⁴ The challenge is to apply reforms at all levels of government⁹⁵ and to reform park management since management authorities are often set on keeping people out, since they view human activities as incompatible with their views of conservation.⁹⁶

The implementation of CBNRM is based on certain assumptions, which include the idea that individual land tenure will improve investment into natural resources, which in turn will prevent “the tragedy of the commons”⁹⁷; that devolving resource use rights and the associated benefits will increase resource conservation; that CBNRM will allow communities to implement projects that will diversify their sources of income; and that benefits can be distributed fairly.⁹⁸ A further key assumption of CBNRM is that people living with the natural resources are best placed to conserve the resources.⁹⁹ If communities benefit from CBNRM, it is argued that they will be more likely to abide by rules and restrictions regulating natural resource use.¹⁰⁰ People involved in CBNRM include community representatives, NGOs focussed on conservation or development, government bodies, consultants and often international donors.¹⁰¹ Most CBNRM practices are initiated by national government, although there are also other paths of adoption¹⁰² such as the community voluntarily initiating a programme.¹⁰³

⁹² Ribot JC *Democratic decentralization of natural resources: institutionalizing popular participation* (2002) World Resources Institute, Washington DC 19.

⁹³ Turner (2006) *Journal of International Law and Policy* 162.

⁹⁴ Brandon K “Moving beyond integrated conservation and development projects (ICDPs) to achieve biodiversity conservation” In Lee DR & Barrett CB (eds) *Tradeoffs or Synergies?* (2001) CAB International 417-487.

⁹⁵ Alcorn *et al.* *Assessment of CBNRM Best Practices in Tanzania* (2002) 15.

⁹⁶ Wells & McShane (2004) *Ambio* 513.

⁹⁷ Blaikie P “Is small really beautiful? Community-based natural resource management in Malawi and Botswana” (2006) *World Development* 34(11): 1943.

⁹⁸ Arntzen JW, Molokomme EM, Terry EM, *et al.* *Main findings of the review of CBNRM in Botswana* (2003) CBNRM Support Programme Occasional Paper No. 14, SNV, IUCN, DFID, Gaborone 25.

⁹⁹ Thakadu *The concept of community ownership and mobilization: experiences from community-based natural resources management* (2001) 122.

¹⁰⁰ Turner (2006) *Journal of International Law and Policy* 162.

¹⁰¹ *Ibid.*

¹⁰² Barrow E & Murphree MW “Community conservation: from concept to practice” In Hulme D & Murphree MW (eds) *African Wildlife and Livelihoods: The Promise and Performance of Community Conservation* (2001) Portsmouth, Heinemann 24-37.

¹⁰³ Corrigan C & Granziera A *A handbook for the Indigenous and Community Conserved Areas Registry* (2010) UNEP-WCMC, Cambridge 4.

CBNRM provides an economic value to wildlife use rights.¹⁰⁴ The key value of CBNRM is its benefit to both communities and conservation initiatives. Income derived from CBNRM programmes improve community livelihoods, and communities are empowered to make their own decisions, maintain their traditional knowledge and manage the land and natural resources, while simultaneously conserving their environment.¹⁰⁵ It is important that CBNRM projects are designed with the project objectives in mind – benefits to the local community while lessening the threats to biodiversity and promoting sustainable use of natural resources.¹⁰⁶ CBNRM has the ability to enhance the livelihoods of communities by providing tangible benefits.¹⁰⁷ Although rural communities rarely consider conservation a priority in their day-to-day lives, they do place value on environmental services and are therefore willing to limit their use of some resources in order to maintain them.¹⁰⁸

2.2 Nature, Form and Value of ICCAs

Areas with high levels of biodiversity and endemism are often located within community territories.¹⁰⁹ The communities are intricately linked with these areas, and their traditional knowledge, practices and customary laws ensure that the areas and the natural resources within them are sustainably used and protected.¹¹⁰

ICCA might be a relatively new term, but the idea behind it is not.¹¹¹ ICCAs are the world's oldest protected areas and are finally being recognised internationally.¹¹² Traditional conservation took shape in the form of sacred forests and groves,¹¹³ and many formal protected areas have been established on the sites of former sacred areas.¹¹⁴ Community-

¹⁰⁴ Arntzen *et al.* *Main findings of the review of CBNRM in Botswana* (2003) 31.

¹⁰⁵ Sharp R *CBNRM: does it have a future?* (2013) Available at:

https://www.iucn.org/about/union/commissions/sustainable_use_and_livelihoods_specialist_group/sulinews/issue_5/sn5_cbnrm/ (Accessed: 27 January 2015).

¹⁰⁶ Wells & McShane (2004) *Ambio* 515.

¹⁰⁷ Diggle RW *A business assessment of community-based tourism in Caprivi* (2003) M.SC. Dissertation, University of Greenwich, UK 1-84.

¹⁰⁸ Virtanen (2005) *Sustainable Development* 11.

¹⁰⁹ Jonas H, Kothari A & Shrumm H *Legal and institutional aspects of recognizing and supporting conservation by indigenous peoples and local communities: an analysis of international law, national legislation, judgements, and institutions as they interrelate with territories and areas conserved by indigenous peoples and local communities* (2012) The ICCA Consortium, 5. Available at: http://www.iccaconsortium.org/wp-content/uploads/images/stories/Database/legalreviewspdfs/synthesis_lr_report_engl.pdf (Accessed: 2 February 2015)

¹¹⁰ *Ibid* at 8.

¹¹¹ Robson JP & Berkes F "Sacred nature and community conserved areas" In Pilgrim S & Pretty J (eds) *Nature and culture: rebuilding lost connections* (2010) Earthscan, London 197 – 216.

¹¹² Kothari A "Protected areas and people: the future of the past" (2008) *PARKS* 17(2): 26.

¹¹³ Berkes (2009) *Conservation Letters* 20.

¹¹⁴ Borrini-Feyerabend G, Pimbert M, Farvar MT *et al.* *Sharing power: Learning-by-doing in co-management of natural resources throughout the world.* (2004) IIED and IUCN/CEESP 37.

based conservation efforts have become the iconic feature of Africa's rural development experience,¹¹⁵ as can be seen by the establishment of ICCAs, since ICCAs have communities as a foundation and ends with communities as the main focus-point.¹¹⁶

ICCAs have only come to enjoy global recognition in the past few years,¹¹⁷ perhaps due to the customary norms and institutions that traditionally govern these areas.¹¹⁸ ICCAs are recognised in international policies and conventions, including the CBD, as well as by international organisations such as the IUCN.¹¹⁹

The true value and importance of ICCAs was recognised through two key international events. The first was the Vth World Parks Congress hosted by the IUCN in 2003, and the second was the 7th Conference of the Parties to the CBD in 2004.¹²⁰ At the World Parks Congress it was suggested for the first time that conservation approaches need to be diversified.

In 2007 the UN Declaration on the Rights of Indigenous Peoples¹²¹ (UNDRIP) was adopted. This Declaration set out international standards for the rights of communities and indigenous peoples. This was followed by the 2010 10th Conference of the Parties to the CBD which led to the development of the Strategic Plan for Biodiversity 2011-20. This Plan is a roadmap for preventing any further biodiversity loss as well as reversing some of the damage which has already been done. The Strategic Plan set out 20 "Aichi Targets"¹²² which focuses on both ecological aspects and socio-economic and political details to halting biodiversity loss.¹²³ Indigenous people and communities are central to achieving these targets, and ICCAs reflect the importance of the need for diversifying and improving governance of protected areas in order to achieve the Aichi Targets.¹²⁴

¹¹⁵ Turner *A crisis in CBNRM? Affirming the commons in southern Africa* (2004) 5.

¹¹⁶ Soeftestad & Gerrard *The International Workshop on community-based natural resource management (CBNRM)* (1998) 2.

¹¹⁷ See: Institute on governance (2002); IUCN (2003); CBD Decision VII.28 (2004); CBD Decision XI.14 & XI.24 (2010); IUCN (2012).

¹¹⁸ Scherl *et al. Can protected areas contribute to poverty reduction? Opportunities and Limitations* (2004) 35.

¹¹⁹ Kothari A "Indigenous peoples' and local community conserved territories and areas" (2014) *Conservation News, Oryx* 49(1):14.

¹²⁰ Kothari A, Camill P & Brown J "Conservation as if people also mattered: Policy and practice of community-based conservation" (2013) *Conservation and Society* 11(1): 19.

¹²¹ United Nations *GA Resolution 61/295* (2008) United Nations Declaration on the Rights of Indigenous Peoples.

¹²² Targets can be viewed at: <http://www.cbd.int/sp/targets/> (Accessed: 2 February 2015).

¹²³ ICCA Consortium *ICCAs & Aichi Targets: The contribution of indigenous peoples' and local community conserved territories and areas to the Strategic Plan for Biodiversity 2011-20 (Aichi Targets)* (2014) Policy Brief of the ICCA Consortium Issue 1, 1.

¹²⁴ *Ibid* at 2.

The establishment of ICCAs is a grassroots approach by local communities to integrate conservation strategies into their livelihoods¹²⁵ and have been found to be complementary to formal protected areas.¹²⁶ ICCAs form the base of communities' livelihoods and are also integrated into their culture.¹²⁷ Examples of ICCAs include cultural landscapes and seascapes, migration routes of indigenous peoples, indigenous protected areas, heritage areas, community fishing grounds and wildlife nesting sites.¹²⁸ Thus ICCAs have the potential ability to protect a wide range of environments,¹²⁹ and it is estimated that ICCAs cover as much or even more of the global land mass than formal protected areas.¹³⁰ 22% of the earth's surface is covered by ICCAs,¹³¹ and it is estimated that these ICCAs hold 80% of the global biodiversity.¹³² Although the types of ICCAs are broad, they generally constitute of the same three characteristics.¹³³ ICCAs firstly consist of communities that are closely linked – culturally or for survival – to the ecosystem in which they live. Secondly, the community's practices and livelihood strategies lead to conservation of the ecosystem. Lastly, the community is the main decision-maker, even in the presence of other stakeholders.

ICCAs can be managed by modern or traditional communities, and can range from one hectare to entire landscapes.¹³⁴ These conservation areas are multi-use areas and can be managed for a combination of uses, including utilitarian, cultural, religious and aesthetic purposes, but it is imperative that biodiversity conservation is always an outcome, whether directly or indirectly through the community's management of the area.¹³⁵

¹²⁵ Weaver LC & Skyer P *Conservancies: Integrating wildlife land-use options into the livelihood, development, and conservation strategies of Namibian communities* (2003) Paper presented at the Vth World Parks Congress, Durban 10.

¹²⁶ Weaver & Skyer *Conservancies: Integrating wildlife land-use options into the livelihood, development, and conservation strategies of Namibian communities* (2003) 6-7.

¹²⁷ Corrigan & Granziera *A handbook for the Indigenous and Community Conserved Areas Registry* (2010) 6.

¹²⁸ *Ibid* at 4.

¹²⁹ Borrini-Feyerabend G & Kothari A *Recognising and supporting indigenous and community conservation – ideas and experiences from the grassroots* (2008) CEESP Briefing Note 9. IUCN Commission on Economic, Environmental and Social Policy 2.

¹³⁰ Kothari (2014) *Oryx* 13-14.

¹³¹ Borrini-Feyerabend *et al. Governance of Protected Areas: From understanding to action* (2013) 41.

¹³² Sobrevilla C *The role of indigenous peoples in biodiversity conservation: the natural but often forgotten partners* (2008) The World Bank, Washington D.C xii.

¹³³ Jonas *et al. Legal and institutional aspects of recognizing and supporting conservation by indigenous peoples and local communities: an analysis of international law, national legislation, judgements, and institutions as they interrelate with territories and areas conserved by indigenous peoples and local communities* (2012) 8.

¹³⁴ Borrini-Feyerabend & Kothari *Recognising and supporting indigenous and community conservation – ideas and experiences from the grassroots* (2008) 6-7.

¹³⁵ Corrigan & Granziera *A handbook for the Indigenous and Community Conserved Areas Registry* (2010) 6.

Due to their variety, ICCAs have the ability to fit into all six of the IUCN protected areas management categories.¹³⁶ As for the IUCN Governance Types, ICCAs fall under Type D – Governance by indigenous peoples and local communities. Type D governance is defined as:¹³⁷

protected areas where the management authority and responsibility rest with indigenous peoples and/or local communities through various forms of customary or legal, formal or informal, institutions and rules.

This definition makes a clear distinction between indigenous people and local communities; however both of these elements refer to a type of commonage – land, water or natural resources – which is being managed and governed collectively by a group of people.¹³⁸

Communities are motivated to establish ICCAs due to a variety of reasons, including maintaining access to food and water resources, cultural and religious reasons, conservation of wildlife, capacity building and as a buffer to natural disasters.¹³⁹ The natural resource base of ICCAs feasibly allows communities to be protected against instances of poverty and seasonal famine.¹⁴⁰ By establishing an ICCA, the community secures access to livelihood resources, including food, medicine and building materials. These areas also sustain ecosystem services and functions that support humans and mitigate natural disasters. ICCAs are also established to protect rare or threatened faunal and floral species or to meet religious needs in sacred areas.¹⁴¹

ICCAs can be formal or informal in nature, meaning they are either recognised as part of the state's protected areas system or not. For ICCAs to be considered as part of the formal system, an agreement must be concluded between the community and the government.¹⁴² Informal ICCAs are based on arrangements that are officially unrecognised, therefore the contribution they make to the total conserved area in a country, and their true value, goes unsupported and unnoticed.¹⁴³ These informal ICCAs are often established due to community

¹³⁶ Kothari (2006) *Parks*, Table 1, 5.

¹³⁷ Dudley *Guidelines for Applying Protected Area Management Categories* (2008) 26-27.

¹³⁸ Borrini-Feyerabend *et al. Governance of Protected Areas: From understanding to action* (2013) 40.

¹³⁹ *Ibid* at 40; Berkes (2009) *Conservation Letters* 21.

¹⁴⁰ Cunningham T "Grassroots conservation: Veld products and people" (1988) *African Wildlife* 43(6): 287 – 293.

¹⁴¹ Adapted from: Berkes (2009) *Conservation Letters* 21; Kothari A "Community-conserved areas: towards ecological and livelihood security" (2006) *Parks* 16: 5.

¹⁴² Lausche *Guidelines for Protected Areas Legislation* (2011) 81.

¹⁴³ Borrini-Feyerabend G, Kothari A & Oviedo G *Indigenous and local communities and protected areas. Towards Equity and Enhanced Conservation* (2004) IUCN/WCPA Best Practice Series, 11, Gland Switzerland) and Cambridge (United Kingdom) 51-52.

norms and practices. With an increase in global recognition, ICCAs are being incorporated into national laws and policies, and as a result the majority of informal ICCAs have been incorporated either into government established formal protected areas or formally recognised ICCAs.¹⁴⁴

Despite growing international recognition and implementation, ICCAs still face multiple threats.¹⁴⁵ These include lack of secure land tenure, overexploitation of natural resources, inappropriate land uses, ethnical inequalities and the infiltration of external markets.

2.3 ICCAs as a Tool for Promoting CBNRM

The importance of communities to conservation was developed as a particular discourse for CBNRM and a means to engage local resource users into biodiversity and wildlife conservation.¹⁴⁶ The very definition of ICCAs classifies them under the umbrella definition of CBNRM, since the definitions of both terms encompass the idea of participatory conservation by communities, with ICCAs focusing particularly on communities establishing conservation areas.¹⁴⁷ The shift from the “fine and fences” preservationist approach to an integrated participatory approach to conservation focussed on empowerment of rural communities and enhancing equitable and effective conservation,¹⁴⁸ allowed for the establishment of community based conservation programmes.¹⁴⁹ Participatory approaches involving communities adopt an integrated view of the landscape and its resources.¹⁵⁰ When communities are provided with adequate tools and incentives to manage natural resources, they will effectively organise themselves and take the necessary steps to conserve these resources.¹⁵¹

Governments mainly establish protected areas for biodiversity conservation, whereas communities grasp that conservation is linked with social and economic development.¹⁵² An

¹⁴⁴ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 10.

¹⁴⁵ Kothari (2014) *Oryx* 14.

¹⁴⁶ Godfrey (2013) *Journal of Contemporary African Studies* 386.

¹⁴⁷ Berkes (2009) *Conservation Letters* 19.

¹⁴⁸ Mbaiwa JE “The successes and sustainability of community based natural resources management in the Okavango Delta, Botswana” (2004) *The South African Geographical Journal* 86(1): 44-53.

¹⁴⁹ Arntzen *et al.* *Main findings of the review of CBNRM in Botswana* (2003) 24-25.

¹⁵⁰ Turner *A crisis in CBNRM? Affirming the commons in southern Africa* (2004) 3.

¹⁵¹ Thakadu OT “Success factors in community based natural resources management in northern Botswana: Lessons from practice” (2005) *Natural Resources Forum* 29: 210.

¹⁵² Borrini-Feyerabend *et al.* *Indigenous and local communities and protected areas. Towards Equity and Enhanced Conservation* (2004) 6-7.

underlying issue of CBNRM is the social inequalities in conservation areas, and ICCAs are attempting to overcome these inequalities.¹⁵³ Where formal protected areas are established purely for conservation, ICCAs aim to enhance community well-being while simultaneously producing biodiversity conservation.¹⁵⁴ Indigenous people and communities have always played a key role in conservation¹⁵⁵ and recently many communities have launched initiatives to protect and reinstate ecosystems on which they depend.¹⁵⁶ ICCAs are areas that communities establish through community practices, rules and institutions to voluntarily conserve natural habitats and resources,¹⁵⁷ and thus they are directly related to CBNRM – which as stated above can be initiated by government adoption or other methods such as voluntary participation by communities. ICCAs are in fact the ideal example of both new and age-old approaches to biodiversity conservation.¹⁵⁸ ICCAs differ and can range from successfully conserving a single species or an entire landscape. The conservation efforts of these local inhabitants increases the overall range of protected areas and often provide guidance for implementing participatory governance and co-management in protected areas.¹⁵⁹ ICCAs are also essential to conserving large landscapes, and have aided in shifting conservation from an “island-mentality”¹⁶⁰ to a landscape scale.¹⁶¹

CBNRM conservation strategies are now a central part of global institutions and forums, such as the CBD and the IUCN.¹⁶² As mentioned in 2.3, the 2003 World Parks Congress and the 2004 Programme of Work on Protected Areas of the Convention of Biological Diversity highlighted the importance of CBNRM in the form of ICCAs for achieving sustainable resource management and use.¹⁶³ By recognising and encouraging support for ICCAs, the global approach to CBNRM programmes was also strongly emphasised.¹⁶⁴

¹⁵³ Borrini-Feyerabend *et al.* *Indigenous and local communities and protected areas. Towards Equity and Enhanced Conservation* (2004) 95.

¹⁵⁴ Robson & Berkes “Sacred nature and community conserved areas” In *Nature and culture: rebuilding lost connections* (2010) 197 – 216.

¹⁵⁵ Corrigan & Granziera *A handbook for the Indigenous and Community Conserved Areas Registry* (2010) 1.

¹⁵⁶ Borrini-Feyerabend G & Lassen B *Recognising and supporting indigenous & community conservation – ideas & experiences from the grassroots* (2008) CEESP Briefing Note 9. IUCN Commission on Economic, Environmental and Social Policy 8.

¹⁵⁷ Corrigan & Granziera *A handbook for the Indigenous and Community Conserved Areas Registry* (2010) 4.

¹⁵⁸ Kothari (2006) *Parks* 3-13.

¹⁵⁹ Corrigan & Granziera *A handbook for the Indigenous and Community Conserved Areas Registry* (2010) 7.

¹⁶⁰ An island mentality towards conservation is when small pockets of land are being conserved and converted into formal protected areas, while the surrounding landscape is continuously degraded.

¹⁶¹ Kothari *et al.* (2013) *Conservation and Society* 5.

¹⁶² *Ibid* at 1.

¹⁶³ Secretariat of the Convention on Biological Diversity *Programme of Work on Protected Areas (CBD Programmes of Work)* (2004) Montreal 3.

¹⁶⁴ Kothari *et al.* (2013) *Conservation and Society* 2.

Ecologically, ICCAs are beneficial because of their ability to conserve ecosystems, ecosystem services and species, to provide corridors and buffers along national protected areas and maintaining tradition and local knowledge of conservation.¹⁶⁵ Although the importance of ICCAs for promoting CBNRM cannot be disputed, they continue to be the least recognised type of protected area¹⁶⁶ and are often the most threatened by population growth, climate change as well as political turmoil.¹⁶⁷

A plethora of international legal instruments exist that recognise ICCAs and support the rights of communities.¹⁶⁸ At national level laws and policies are also starting to improve. Community institutions and organisations are participating increasingly with policy-making and legal processes. Countries are starting to implement land reform and restitution programmes, which significantly contribute to the rights of communities over their natural resources and land. Lastly, new protected area legislation is incorporating communities into the protected areas and their management and governance.¹⁶⁹ A paper by Kothari *et al.*¹⁷⁰, released after a symposium title *Conservation as if people mattered: Indigenous and community conserved areas around the globe and here at home* in 2008 highlighted some important lessons and principles derived from ICCA case studies, and these lessons and principles highlights how ICCAs can promote CBNRM as well as the benefits thereof. Firstly, ICCAs offer conservation benefits and are able to cover large landscapes containing a range of biodiversity. ICCAs and CBNRM also offer social, cultural, economic and political benefits that can be tangible or intangible.¹⁷¹ Therefore community participation in the form of ICCAs is critical to achieving conservation goals.

2.4 Key Legal Prerequisites for Promoting Effective and Equitable ICCAs

Field-level interventions are necessary to allow for the establishment of ICCAs, but these interventions go hand-in-hand with policy and legal changes.¹⁷² There is a range of

¹⁶⁵ Corrigan & Granziera *A handbook for the Indigenous and Community Conserved Areas Registry* (2010) 8.

¹⁶⁶ *Ibid* at 5.

¹⁶⁷ Borrini-Feyerabend & Kothari *Recognising and supporting indigenous and community conservation – ideas and experiences from the grassroots* (2008) 8.

¹⁶⁸ Borrini-Feyerabend *et al.* *Governance of Protected Areas: From understanding to action* (2013); Institute on governance (2002); IUCN (2003); CBD Decision VII.28 (2004); CBD Decision XI.14 & XI.24 (2010); IUCN (2012)

¹⁶⁹ Jonas *et al.* *Legal and institutional aspects of recognizing and supporting conservation by indigenous peoples and local communities: an analysis of international law, national legislation, judgements, and institutions as they interrelate with territories and areas conserved by indigenous peoples and local communities* (2012) 11.

¹⁷⁰ Kothari *et al.* (2013) *Conservation and Society* 11-13.

¹⁷¹ *Ibid.*

¹⁷² Wells & McShane (2004) *Ambio* 515.

binding and non-binding international legal instruments that support the rights of communities with regards to their areas and resources.¹⁷³ At the Vth World Parks Congress it was recommended that governments must make the necessary changes to policies and legislation to allow for the recognition and promotion of ICCAs,¹⁷⁴ because simply devolving management and use rights to local level users does not ensure conservation and sustainable use.¹⁷⁵ This recognition and devolution of rights allow the people whose lives are affected to directly influence the laws and policies that will impact them.¹⁷⁶ As discussed earlier, the key concept underlying CBNRM is to provide communities with incentives to sustainably manage natural resources.¹⁷⁷ This is achieved by partially transferring management and decision-making processes from government to community level¹⁷⁸ as well as allowing communities access to benefits from allocated areas.¹⁷⁹

However, decentralisation often requires amendments to the existing legal structure. The legal structure must be accountable and the balance and security of powers must be clearly defined.¹⁸⁰ Out-dated and underdeveloped legislation was identified by *the International Workshop on Community-Based Natural Resource Management* (1998) as a key policy issue requiring attention. More recently this issue was further elaborated on in the IUCN's *Governance of Protected Areas*¹⁸¹ and *Guidelines for Protected Areas Legislation*.¹⁸² . The IUCN *Guidelines for Protected Areas Legislation* also identifies key legal considerations

¹⁷³ Complete list available in the *International Law and Jurisprudence Report* (2012) Available at: http://www.iccaconsortium.org/wp-content/uploads/images/stories/Database/legalreviewspdfs/international_lr_report.pdf (Accessed: 3 February 2015).

¹⁷⁴ Extracted from Recommendation 5.26. *Vth IUCN World Parks Congress* (2003).

¹⁷⁵ Cocks M, Dold A & Grundy I "Challenges facing a community structure to implement CBNRM in the Eastern Cape, South Africa" (2001) *African Studies Quarterly* 5(3): 57-71.

¹⁷⁶ Wells & McShane (2004) *Ambio* 516.

¹⁷⁷ Painter M *An approach for monitoring and evaluating community based natural resource management activities implemented by the Department of Wildlife and National Parks (DWNP) and Natural Resource Management Project (NRMP)* (1995) DWNP Report, Gaborone (Unpublished report).

¹⁷⁸ Thakadu (2005) *Natural Resources Forum* 29: 199.

¹⁷⁹ Arntzen *et al.* *Main findings of the review of CBNRM in Botswana* (2003) 25.

¹⁸⁰ Larson AM "Decentralisation and forest management in Latin America: towards a working model" (2003) *Public Administration and Development* 23(3): 211 – 226.

¹⁸¹ Borrini-Feyerabend *et al.* *Governance of Protected Areas: From understanding to action* (2013) 1-124.

¹⁸² Lausche *Guidelines for Protected Areas Legislation* (2011) 1-370.

for voluntarily conserved areas.¹⁸³ Legislation must be developed to form a framework for community actions, including allowing for freedom of information.¹⁸⁴

Legal frameworks, backed up and supported by policy frameworks, are required to identify the responsibilities and rights of all partners and stakeholders.¹⁸⁵ In order for the legal framework to be effective, three main features must be included: clear and adequate property rights that lead to secure land tenure must be awarded; management of resources must be delegated to local level; and communities must have access to any benefits accrued from the use and conservation of natural resources.¹⁸⁶ Legal frameworks must also be flexible¹⁸⁷ to enable laws to be adapted to the ever changing conditions and needs.¹⁸⁸ There is therefore a need for adaptive management. This is a type of natural resource management which is conducted in such a way as to purposely increase knowledge as the management programme continues.¹⁸⁹ It calls for a “learn as we go” approach,¹⁹⁰ and this approach can be very applicable when developing participatory natural resource management legislation.

2.4.1 Land Tenure Issues

Land is a critical asset for communities to meet their subsistence needs, including food, water and shelter. It is a means to generate income, especially in rural households. Property rights also promote self-reliance, and strong property rights can lead to increased investments into enhancing the natural resource base.¹⁹¹ In 1995 Murphree stated:¹⁹²

¹⁸³ Actions must be voluntary; Existing institutional frameworks must be respected; requirements for inclusion; power to recognise the voluntary conservation initiative; role of voluntary conservation agreements; recording these agreements; recognising conservation values; participatory decision-making and public notice and information; Lausche *Guidelines for Protected Areas Legislation* (2011) 161-162.

¹⁸⁴ Soeffestad & Gerrard *The International Workshop on community-based natural resource management (CBNRM)* (1998) 33.

¹⁸⁵ Alcorn J, Kajuni A & Winterbottom B *Assessment of CBNRM Best Practices in Tanzania* (2002) Final report prepared for USAID Tanzania and USAID Africa Bureau, Office of Sustainable Development 15.

¹⁸⁶ Babcock (2010) *Colorado Journal of International Environmental Law and Policy* 218.

¹⁸⁷ Kothari A, Menon M & O'Reilly S *Territories and areas conserved by indigenous peoples and local communities (ICCA): How far do national laws and policies recognize them?* (2010) A revised preliminary report released at the CBD SBSTTA14, 11.

¹⁸⁸ Kuemlangan B *Creating legal space for community-based fisheries and customary marine tenure in the Pacific: issues and opportunities* (2004) Fishcode Review FAO, Rome 5.

¹⁸⁹ Rist L, Campbell BM & Frost P “Adaptive management: where are we now?” (2012) *Environmental Conservation* 1.

¹⁹⁰ Johnson BL “Introduction to the Special Feature: Adaptive management – Scientifically sound, socially challenged?” (1999) *Ecology and Society* 3(1): 1.

¹⁹¹ Aggarwal S & Elbow K *The role of property rights in natural resource management, good governance and empowerment of the rural poor* (2006) USAID. Available at: http://usaidlandtenure.net/sites/default/files/USAID_Land_Tenure_Property_Rights_and_NRM_Report.pdf (Accessed: 3 February 2015) 1.

¹⁹² Murphree MW “Optimal principles and pragmatic strategies: creating an enabling politico-legal environment for community-based natural resource management (CBNRM)” In Rihoy E (ed) *The commons without the tragedy*.

For long-term sustainability CBNRM requires a fundamental shift in national policies on tenure in communal lands. The core of the matter is strong property rights for collective communal units...over the land itself...The era of self-determined, tenurially robust communal natural resource management should be brought into being.

Property rights can be considered a *bundle of rights*.¹⁹³ This bundle includes the right to use, to manage, to transfer and to own.¹⁹⁴ Secure land tenure is determined by the enforceability of these property rights.¹⁹⁵ Although land tenure reforms are occurring on an international scale, often these programmes fail to recognise customary tenure systems.¹⁹⁶ Prior to establishing protected areas, it is important to identify the legal status of the land.¹⁹⁷ Tenure relates to who has legal ownership rights or resource use rights to the land.¹⁹⁸ It is the way in which people hold rights to land and the natural resources occurring on the land.¹⁹⁹ The prevailing tenure system in southern African countries is private/freehold property, state property, communal property and open access systems. Private and state owned property has severely limited the opportunities available to communities, and if these tenure systems continue to persist, community livelihoods will be adversely affected.²⁰⁰ Many CBNRM initiatives and ICCAs are situated adjacent to formal protected areas on state-owned land. In these areas, the declaration of the protected area resulted in loss of ownership over property.²⁰¹

Ownership is defined as “outright possession and control”, and therefore includes the competency to deny rights to outsiders.²⁰² In the most conventional understanding of the term, an owner can decide what he/she wants to possess. However with regards to CBNRM, and

Strategies for community based natural resources management in Southern Africa (1995) Proceedings of the Regional Natural Resources Management Programme Annual Conference. SADC Wildlife Technical Coordination Unit. Lilongwe, Malawi.

¹⁹³ The term was first conceptualised by Henry Main in his book *Ancient Law* (1861).

¹⁹⁴ Aggarwal & Elbow *The role of property rights in natural resource management, good governance and empowerment of the rural poor* (2006) Box 2, 4.

¹⁹⁵ *Ibid* at 8.

¹⁹⁶ Jonas *et al.* *Legal and institutional aspects of recognizing and supporting conservation by indigenous peoples and local communities: an analysis of international law, national legislation, judgements, and institutions as they interrelate with territories and areas conserved by indigenous peoples and local communities* (2012) 19.

¹⁹⁷ Lausche *Guidelines for Protected Areas Legislation* (2011) 140.

¹⁹⁸ Borrini-Feyerabend *et al.* *Governance of Protected Areas: From understanding to action* (2013) 99.

¹⁹⁹ Aggarwal & Elbow *The role of property rights in natural resource management, good governance and empowerment of the rural poor* (2006) 1.

²⁰⁰ Cousins B & Claassens A “Communal land rights, democracy and traditional leaders in post-apartheid South Africa” In Saruchera M (eds) *Securing land and resource rights in Africa: Pan-African perspectives* (2004) Programme for Land and Agrarian Studies (PLAAS) 23.

²⁰¹ Brockington D & Igoe J “Eviction for conservation: a global overview” (2006) *Conservation and Society* 4: 242.

²⁰² Cassidy L *CBNRM and legal rights to resources in Botswana* (2000) IUCN/SNV CBNRM Support Programme Occasional Paper No. 4. IUCN, Gaborone 7.

particularly ICCAs, ownership is closely managed within a legal or policy framework.²⁰³ Ownership issues in CBNRM programmes can often lead to conflicts²⁰⁴ and the threat of open-access is prevalent.²⁰⁵ If no tenure exists over the resources, then free-riders cannot be excluded and sustainable management will not be achieved.²⁰⁶ The historical prevalence of exclusion and dispossession can and does disadvantage community programmes, and the establishment of ICCAs may be promising in areas where communities have secure tenure over the land and its resources.²⁰⁷ The Vth World Parks Congress stressed the importance of tenure clarity to achieving successful conservation and equitable benefit sharing.²⁰⁸ Secure land tenure will also enhance the community's ability to interact with government bodies and private institutions with regards to decision-making.²⁰⁹

Land ownership can be established through acts, constitutions and regulations, as well as judicial decisions and customary law.²¹⁰ In ICCAs, the forms of land tenure vary. As mentioned, ICCAs are often established on government property, and the land is only managed by communities as collective property. Communities can also select co-management with either the government or private land owners.²¹¹ This mixture of tenure results in threats to ICCAs as well as a lack of formal recognition.²¹²

There are two methods of providing ICCAs with legal recognition. Firstly, a legally binding *voluntary conservation agreement* can be drafted between the community and the government. This agreement is essentially a contract that is bound to the land on which the ICCA is established.²¹³ The second method of achieving legal recognition is to specifically identify the geographic boundaries of the ICCA in legislation.²¹⁴

CBNRM is mainly asserted on communal areas²¹⁵ which have led to individuals or small interest groups closing the commons. Although policies and laws sanction this

²⁰³ Godfrey (2013) *Journal of Contemporary African Studies* 393.

²⁰⁴ Warner M & Jones P *Assessing the need to manage conflict in community-based natural resource projects* (1998) ODI Working Paper 35. London: ODI 4.

²⁰⁵ Turner *A crisis in CBNRM? Affirming the commons in southern Africa* (2004) 4.

²⁰⁶ Anderson *et al. Nature, wealth and power: Emerging best practice for revitalizing rural Africa* (2002) 10.

²⁰⁷ Turner (2006) *Journal of International Law and Policy* 161.

²⁰⁸ Recommendation 5.26, *Vth IUCN World Parks Congress* (2003)

²⁰⁹ Turner (2006) *Journal of International Law and Policy* 162.

²¹⁰ Borrini-Feyerabend *et al. Governance of Protected Areas: From understanding to action* (2013) 99.

²¹¹ *Ibid* at 99.

²¹² Lausche B, Farrier D, Verschuuren J *et al. The legal aspects of connectivity conservation, Volume 1 – A Concept Paper* (2013) IUCN, Gland, Switzerland 46.

²¹³ Borrini-Feyerabend *et al. Governance of Protected Areas: From understanding to action* (2013) 52.

²¹⁴ Lausche *et al. The legal aspects of connectivity conservation, Volume 1 – A Concept Paper* (2013) 46.

²¹⁵ Turner *A crisis in CBNRM? Affirming the commons in southern Africa* (2004) 13.

occurrence, it still happens.²¹⁶ Farmers often close off areas for grazing on communal land and in response to this several communities have also fenced off grazing areas to protect group rights.²¹⁷

Some communities have come to the realisation that when their conservation efforts and ICCAs become nationally or internationally recognised they are awarded with a sense of security and political empowerment.²¹⁸ This sense of security will strengthen conservation incentives and can possibly lead to greater economic benefits.²¹⁹ Exclusive land rights will allow communities to have control over all the natural resources in the area, thereby allowing the community to become a fully-functional and sustainable entity.²²⁰ When a party that is separate from the community hold the formal land rights communities have to rely on that party to ensure their interests are addressed.²²¹

Some countries have started to transform communal areas by adopting new policies and evolving existing legislation. New land tenure systems must clearly outline individual rights within the existing structure of communal land ownership²²² and resource tenure arrangements must be clearly specified in policy documents.²²³ If clear communal property rights are not identified in legislation, open access issues will continue to occur which will result in natural resource degradation.²²⁴ By clarifying individual rights, stronger leasehold agreements can potentially be adopted that allows for lending and investment of land markets.²²⁵ Legal recognition of customary law and tenure will also enhance the success of CBNRM,²²⁶ because strengthening land tenure will provide incentives for ICCAs to join national protected area systems.²²⁷ Although legislation is in place in many African countries, the commons are still being eroded and exploited.²²⁸ Therefore it is imperative that policies

²¹⁶ Turner *A crisis in CBNRM? Affirming the commons in southern Africa* (2004) 15.

²¹⁷ Ibid.

²¹⁸ Corrigan & Granziera *A handbook for the Indigenous and Community Conserved Areas Registry* (2010) 7.

²¹⁹ Babcock (2010) *Colorado Journal of International Environmental Law and Policy* 217-221.

²²⁰ Brown CJ & Jones BTB "Common-property rangelands management in Namibia: the 'conservancy' model in communal areas" (1998) *Vlth International Rangeland Congress Proceedings* 1: 413.

²²¹ Turner (2006) *Journal of International Law and Policy* 19.

²²² Turner *A crisis in CBNRM? Affirming the commons in southern Africa* (2004) 13.

²²³ Tacconi L "Decentralization, forests and livelihoods: Theory and narrative" (2007) *Global Environmental Change* 17: 340

²²⁴ Babcock (2010) *Colorado Journal of International Environmental Law and Policy* 202.

²²⁵ Turner *A crisis in CBNRM? Affirming the commons in southern Africa* (2004) 14.

²²⁶ Clarke P & Jupiter SD "Law, custom and community-based natural resource management in Kunulau District (Fiji)" (2010) *Environmental Conservation* 37(1): 104.

²²⁷ Robson & Berkes *Nature and culture: rebuilding lost connections* (2010) 209.

²²⁸ Turner *A crisis in CBNRM? Affirming the commons in southern Africa* (2004) 15.

and agreements legally enshrine the communities' rights to resources, including security over tenure²²⁹ of both land and resources.²³⁰

2.4.2 Management Issues

Management is all about what is being done to achieve a certain objective.²³¹ Natural resource management is the interrelationship between resources, policies, institutions and economic skills.²³² Management rights are the rights to make decisions regarding use of natural resources and property.²³³ One of the three defining characteristics of ICCAs is that the community is actively involved in the management of natural resources as well as the decision-making process.²³⁴ In order for ICCAs to be legally recognised, these aspects need to be addressed in national legislation.

The IUCN identifies six management categories for protected areas,²³⁵ each with its own management objectives. Although it can be argued that ICCAs fit into each of these management categories,²³⁶ category VI (Protected area with sustainable use of natural resources) is most applicable. The management objective of this category is:²³⁷

Protected areas that conserve ecosystems and habitats, together with associated cultural values and traditional natural resource management systems... Low-level non-industrial use of natural resources compatible with nature conservation is seen as one of the main aims of this type of protected areas.

Protected area legislation must reflect the management objective of that area. It should therefore provide for the goal of achieving biodiversity conservation through adequate management principles.²³⁸

There are several forms of management available. These include public sector management, private sector management, open access, co-management and local

²²⁹ Simasiku P, Simwanza HI, Tembo G, Bandyopadhyay S & Pavy JM "The impact of wildlife management policies on communities and conservation game management areas in Zambia: Message to policy makers" (2008) Natural Resources Consultative Forum 3.

²³⁰ Scherl *et al.* *Can protected areas contribute to poverty reduction? Opportunities and Limitations* (2004) 37.

²³¹ Borrini-Feyerabend G, Bueno P, Hay-Edie T *et al.* *A primer on governance for protected and conserved areas* (2014) Stream on enhancing diversity and quality of governance, 2014 IUCN World Parks Congress, IUCN, Gland, Switzerland 3.

²³² Anderson *et al.* *Nature, wealth and power: Emerging best practice for revitalizing rural Africa* (2002) 4.

²³³ Cassidy *CBNRM and legal rights to resources in Botswana* (2000) 7.

²³⁴ Kothari *et al.* *Territories and areas conserved by indigenous peoples and local communities (ICCAs): How far do national laws and policies recognize them?* (2010) Box 1, 4.

²³⁵ Dudley *Guidelines for Applying Protected Area Management Categories* (2008).

²³⁶ Kothari (2006) *Parks* 5.

²³⁷ Borrini-Feyerabend *et al.* *Governance of Protected Areas: From understanding to action* (2013) Table 2, 9.

²³⁸ Lausche *Guidelines for Protected Areas Legislation* (2011) 25.

community-based management.²³⁹ Thus the scope of CBNRM is wide. On the one side of the spectrum there is full state control over resources and property with the community members employed as labourers, while at the other end of the spectrum is full community control over the resources with advice from government departments and NGOs.²⁴⁰ The latter would be the ideal management form for CBNRM in most cases.²⁴¹ The concept underlying CBNRM is allowing for the transferral of either all or part of management responsibility and decision-making to communities.²⁴² This transfer of powers from central government to lower level institutions is known as decentralisation.²⁴³ This delegation of authority also incentivises conservation.²⁴⁴ The Vth World Parks Congress called for the use of co-management and the implementation thereof into legislation.²⁴⁵ Co-management requires the cooperation between various parties in the management of the protected area.²⁴⁶ In the context of ICCAs this would require collaboration between governments and communities.

It is important that legislation identifies who is the institutional body that is responsible for the protected area, as well as the responsibility of the management institution. If the powers, functions and responsibility of the management institution are clear, accountability will be established.²⁴⁷ These management institutions are responsible for the development of protected area system plans and management plans. It is important that management plans²⁴⁸ exist for established ICCAs, and the development of these plans must be included in national legislation.²⁴⁹ Management plans are used to guide actions and direct the application and use of resources by determining access to areas, zoning of areas, the use of resources as well as including a memorandum of understanding between all rightsholders and stakeholders that is legally binding.²⁵⁰

²³⁹ Soefftestad & Gerrard *The International Workshop on community-based natural resource management (CBNRM)* (1998) 4.

²⁴⁰ Borrini-Feyerabend *et al. Indigenous and local communities and protected areas. Towards Equity and Enhanced Conservation* (2004) 32.

²⁴¹ Alcorn *et al. Assessment of CBNRM Best Practices in Tanzania* (2002) 14.

²⁴² Thakadu *The concept of community ownership and mobilization: experiences from community-based natural resources management* (2001) 122.

²⁴³ Tacconi (2007) *Global Environmental Change* 339.

²⁴⁴ Babcock (2010) *Colorado Journal of International Environmental Law and Policy* 218.

²⁴⁵ IUCN World Parks Congress (2003) Recommendation 5.25.

²⁴⁶ Lausche *Guidelines for Protected Areas Legislation* (2011) 89.

²⁴⁷ *Ibid* at 124 – 125.

²⁴⁸ Defined as “a document which sets out the management approach and goals, together with a framework for decision making, to apply in the protected area over a given period of time.” Thomas L & Middleton J *Guidelines for management planning of protected areas* (2003) WCPA Best Practice Protected Areas Guidelines Series 10, IUCN, Gland and Cambridge 1.

²⁴⁹ Lausche *Guidelines for Protected Areas Legislation* (2011) 29.

²⁵⁰ Borrini-Feyerabend *et al. Governance of Protected Areas: From understanding to action* (2013) 21.

Monitoring and assessing management of ICCAs are crucial, since it helps to establish which management strategies best fits the community's needs and traditions. It also aids in affirming the rights of the community in national legislation.²⁵¹ After a participatory assessment process²⁵², the outcome must be expressed in a report which makes management recommendations for the future.²⁵³

The main crisis for African CBNRM is the weaknesses of local governance over communal areas and natural resources.²⁵⁴ It has been emphasised that there is a need for communities to not only have access to natural resources, but also to have jurisdiction and responsibility over management of these resources.²⁵⁵ Stewardship over the resources on which communities depend is critical for enhancing the resilience of and empowering the community.²⁵⁶ Although many CBNRM management plans provide for community participation, in reality the community is often only briefly consulted with and not substantially involved in management decisions.²⁵⁷ Governments often do not transfer sufficient management power to communities.²⁵⁸ This results in open access issues, where anyone who comes upon a resource exercise control over it, which in turn leads to environmental degradation.²⁵⁹ Natural resource management approaches will only be embraced by communities if local knowledge and tradition is manifested in these approaches.²⁶⁰ Resource, economic and governance management of natural resources must be considered if management is to be successful.²⁶¹

A sense of ownership goes hand in hand with strong management rights.²⁶² To overcome the land tenure issues mentioned in 2.4.1, many governments have entrusted "bundles" of management rights to communities.²⁶³ Legislation must elevate communal

²⁵¹ Borrini-Feyerabend *et al.* *Governance of Protected Areas: From understanding to action* (2013) 65.

²⁵² This process is identified in: Borrini-Feyerabend *et al.* *Governance of Protected Areas: From understanding to action* (2013) Chapter 7-9.

²⁵³ Borrini-Feyerabend *et al.* *Governance of Protected Areas: From understanding to action* (2013) 109.

²⁵⁴ Turner *A crisis in CBNRM? Affirming the commons in southern Africa* (2004) 22.

²⁵⁵ Wily (1999) *Society and Natural Resources* 49-50.

²⁵⁶ Sanderson SE & Redford KH "Contested relationships between biodiversity conservation and poverty alleviation" (2003) *Oryx* 37(4): 389-390.

²⁵⁷ Turner (2006) *Journal of International Law and Policy* 162.

²⁵⁸ Ribot *Democratic decentralization of natural resources: institutionalizing popular participation* (2002) 4-5.

²⁵⁹ Soeffstad & Gerrard *The International Workshop on community-based natural resource management (CBNRM)* (1998) 4.

²⁶⁰ Clarke & Jupiter (2010) *Environmental Conservation* 103.

²⁶¹ Anderson *et al.* *Nature, wealth and power: Emerging best practice for revitalizing rural Africa* (2002) 4.

²⁶² Arntzen *et al.* *Main findings of the review of CBNRM in Botswana* (2003) 39.

²⁶³ Campbell BM & Shackleton SE "The organisational structures for community-based natural resources management in southern Africa" (2001) *African Studies Quarterly* 5(3): 88.

management rights to the same level enjoyed by freehold landowners.²⁶⁴ If the community obtains authority over resources within a legal framework that creates incentives for sustainable management, the community will be further encouraged to continue conserving biodiversity.²⁶⁵ Locally based resource management can take various forms, including co-management, common-pool resource based management or private property rights.²⁶⁶ This sharing of management is essential and relationships between stakeholders must be established based on the comparative advantages of the stakeholders over the natural resources.²⁶⁷ Partnerships between government institutions and communities must be established to aid with the day-to-day management of natural resources and protected areas and management agreements must be drafted.²⁶⁸

2.4.3 Access, Use and Benefit Sharing Issues

CBNRM programmes and ICCAs are often established next to formally declared protected areas. The declaration of these areas limits the access that communities have to land and resources.²⁶⁹ Historical displacement, dispossession and denied access to land due to the establishment of formal protected areas has been regarded as the main driver for poverty in rural areas and developing countries.²⁷⁰ Communities will only be willing to adopt CBNRM if it provides an attractive long-term livelihood strategy.²⁷¹ Therefore the success of CBNRM depends on whether the benefits to communities outweigh the costs of conservation.²⁷² Communities will also only attach conservation value to resources if they are allowed to access to use the resources, albeit in a sustainable manner.²⁷³ Therefore conservation without allowing use would be unsuccessful. CBNRM programmes across southern Africa have focused on establishing usufruct rights to provide financial benefits in

²⁶⁴ Turner *A crisis in CBNRM? Affirming the commons in southern Africa* (2004) 21.

²⁶⁵ Babcock (2010) *Colorado Journal of International Environmental Law and Policy* 204.

²⁶⁶ Tacconi (2007) *Global Environmental Change* 345.

²⁶⁷ Soeftestad & Gerrard *The International Workshop on community-based natural resource management (CBNRM)* (1998) Workshop 3.

²⁶⁸ Scherl *et al.* *Can protected areas contribute to poverty reduction? Opportunities and Limitations* (2004) 33.

²⁶⁹ Brandon KE & Wells M "Planning for people and parks: design dilemmas" *World Development* 20: 558.

²⁷⁰ Colchester M "Salvaging Nature: Indigenous peoples and protected areas" In Ghimire KB & Pimbert MP (eds) *Social change and conservation: environmental politics and impacts of national parks and protected areas* (1997) Earthscan, London 116.

²⁷¹ Elliot P "Wildlife, an economic resource" *In Proceedings of the National Conference on Conservation and Management of Wildlife in Botswana: Strategies for the 21st Century* (1997) Kalahari Conservation Society, Gaborone 191 – 195.

²⁷² Thakadu (2005) *Natural Resources Forum* 202.

²⁷³ Robson & Berkes *Nature and culture: rebuilding lost connections* (2010) 197 – 216

exchange for access to natural resources.²⁷⁴ The idea behind equitable benefit sharing is that the accrued benefits be used to improve the living conditions and livelihoods of families, to compensate communities who are being restricted in terms of access to resources, to re-invest in natural resources and to invest in projects and programmes that will aid in diversifying income sources of communities.²⁷⁵

Communities must only be allowed access to and benefits from natural resources if community participation is legally formalised.²⁷⁶ If communities are registered under natural resource legislation, they can be granted a legal status which in turn allows them to enter into binding agreements. Access and benefits should only be awarded if communities show proof of interest by registering as a legal entity. Therefore legislation must be developed to allow for this.²⁷⁷ Equitable distribution of benefits is crucial in ICCAs since it can lead to a change in attitudes towards conservation.²⁷⁸ Therefore benefits must be awarded to the entire community, irrespective of age and gender,²⁷⁹ and not only to local elites.²⁸⁰ Including equitable benefit-sharing mechanisms in national laws and policies will reduce local conflict over resources as well as enhancing long-term management efficiency.²⁸¹

If legislation allows it, communities that have established recognised ICCAs can apply to the relevant government department or management institution for user rights to natural resources in the form of a quota. Should communities wish to establish commercial or tourism enterprises, it is necessary that the legislation allows communities to obtain a lease as well as to enter into access agreements, known as joint venture agreements.²⁸² Often the lack of

²⁷⁴ Murombedzi JC "Agrarian social change and post-colonial natural resource management interventions in southern Africa's 'communal tenure' regimes" In Nelson F (ed) *Community rights, conservation and contested land: The politics of natural resource governance in Africa* (2010) Earthscan, New York 48.

²⁷⁵ Arntzen *et al.* *Main findings of the review of CBNRM in Botswana* (2003) 27.

²⁷⁶ Beltrán A *Indigenous and traditional peoples and protected areas: principles, guidelines and case studies* (2002) WCPA Best Practice Protected Area Guidelines Series 4, IUCN, Gland, Switzerland 4.

²⁷⁷ Simasiku *et al.* "The impact of wildlife management policies on communities and conservation game management areas in Zambia: Message to policy makers" (2008) 3.

²⁷⁸ Arntzen *et al.* *Main findings of the review of CBNRM in Botswana* (2003) 29.

²⁷⁹ Ashley C & Roe D *Enhancing community involvement in wildlife tourism: issues and challenges* (1998) Wildlife and Development Series No. 11, International Institute for Environment and Development, London 12.

²⁸⁰ Newmark & (2000) *BioScience* 589.

²⁸¹ Clarke & Jupiter (2010) *Environmental Conservation* 105.

²⁸² Rihoy L & Maguranyanga B "The politics of community-based natural resource management in Botswana" In Nelson F (ed) *Community rights, conservation and contested land: The politics of natural resource governance in Africa* (2010) Earthscan, New York 58.

granting of concessions to access wildlife and natural resources is a source of conflict for communities adjacent to formal protected areas.²⁸³

Protected areas generate costs and benefits.²⁸⁴ In the 1980s conservation organisations responded to the threats to protected areas by adopting CBNRM approaches that promised social and economic benefit sharing from biodiversity protection to the local people.²⁸⁵ The distribution of benefits is progressively becoming recognised as an indispensable part of CBNRM systems.²⁸⁶ In 1992 the CBD formalised the notion of benefit-sharing in international law with regards to genetic resources,²⁸⁷ and the principles thereof can be extracted to be applicable to ICCAs.²⁸⁸ Benefits of ICCAs include compensation to the community due to lack of access as well as providing alternative livelihood strategies and income, thereby encouraging involvement in conservation.²⁸⁹ The Millennium Ecosystem Assessment identified four categories of benefits arising from protected areas.²⁹⁰ These categories are provisional services, regulating services, cultural services and supporting services, with provisional services (e.g. ecosystem services) being of greatest importance to communities in sub-Saharan Africa.²⁹¹ But the question of how to deliver these benefits to the local people remains²⁹² and in practice equitable benefit-sharing is problematic.²⁹³ Many countries in southern Africa (e.g. Namibia, Zimbabwe and Zambia) has legislation that ensures benefits are distributed to local communities.²⁹⁴ Participatory planning and co-management can enhance benefit sharing.²⁹⁵ Experience in Africa has demonstrated that equity can be achieved to a certain extent if the entire community, and not only the traditional leaders, are involved in decision-making processes.²⁹⁶

²⁸³ Beltrán *Indigenous and traditional peoples and protected areas: principles, guidelines and case studies* (2002) 26.

²⁸⁴ Borrini-Feyerabend *et al. Indigenous and local communities and protected areas. Towards Equity and Enhanced Conservation* (2004) 42.

²⁸⁵ Wells & McShane (2004) *Ambio* 513.

²⁸⁶ Alcorn *et al. Assessment of CBNRM Best Practices in Tanzania* (2002) 14.

²⁸⁷ Convention on Biological Diversity (1992) Art 1 & 15(7).

²⁸⁸ Nkhata BA, Mosimane A, Downsborough L *et al.* "A typology of benefit sharing arrangements for the governance of social-ecological systems in developing countries" (2012) *Ecology and Society* 17(1): 18.

²⁸⁹ Wells & McShane (2004) *Ambio* 513.

²⁹⁰ Millennium Ecosystem Assessment *Ecosystems and human well-being: a framework for assessment* (2003) Island Press, Washington, DC 5.

²⁹¹ Nkhata *et al.* (2012) *Ecology and Society* 17.

²⁹² Scherl *et al. Can protected areas contribute to poverty reduction? Opportunities and Limitations* (2004) 4.

²⁹³ *Ibid* at 28.

²⁹⁴ *Ibid* at 21.

²⁹⁵ *Ibid* at 33.

²⁹⁶ *Ibid* at 28.

3. Namibia

After a brief introduction to Namibia, this chapter starts by setting out the historical context of ICCAs in Namibia, as well as the three different types – conservancies, community forests and wildlife concessions. This chapter then provides a brief overview of environmental legislation relevant to ICCAs in Namibia. Lastly, Namibia’s legislation will be reviewed against the criteria distilled in Chapter 2, and current issues in Namibia’s CBNRM legislation, as well as the impact it has on ICCAs will be discussed.

3.1 ICCAs in Namibia

Namibia is the driest country south of the Saharan desert, with a temporally and spatially erratic rainfall pattern.²⁹⁷ It is a sparsely populated country with an estimated population of 2.1 million people²⁹⁸ over a land area of approximately 82 300 00ha.²⁹⁹ Namibia’s population consist of sever major ethnic groups, each further divided into sub-groups: the Owambo, Herero, Damara, Nama, Kavango, German, Afrikaans, English, San, Few and Subia.³⁰⁰ Two thirds of the population live in rural areas and depend on ecosystem services, subsistence farming and natural resources for their livelihoods. Both income and land distribution is highly skewed.³⁰¹ Namibia has 20 National Parks³⁰² which cover approximately 18% of the country’s surface area (Appendix 1).³⁰³ Historically, the areas on which these national parks were established were used by local people and the establishment led to the subsequent removal of communities from their land.³⁰⁴

Namibia was a German colony, known as South-West Africa, up until 1915 when South Africa took over the territory. Namibia gained independence from South African colonial

²⁹⁷ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 6.

²⁹⁸ National Planning Commission *Namibia 2011 Population and Housing Census: Preliminary Results* (2012) National Planning Commission, Windhoek.

²⁹⁹ Mendelsohn J, Jarvis A, Roberts C *et al. Atlas of Namibia: A portrait of the land and its people* (2002). Sunbird Publishers, Cape Town, 1-220.

³⁰⁰ Jones BTB *An analysis of international law, national legislation, judgements, and institutions as the interrelate with territories and areas conserved by indigenous peoples and local communities: Namibia* (2012) The ICCA Consortium, Report Nr 4, 6.

³⁰¹ Jones B & Weaver LC “CBNRM in Namibia: Growth, trends, lessons and constraints” In Suich H, Child B & Spenceley A (eds) *Evolution and innovation in wildlife conservation: Parks and game ranches to transfrontier conservation areas* (2009) Earthscan/IUCN, London 223.

³⁰² MET *Protected Areas* (2013) Available at: <http://www.met.gov.na/Pages/Protectedareas.aspx> (Accessed: 4 December 2014).

³⁰³ Namibian Tourism Board *National Parks* Available at: <http://www.namibiatourism.com.na/pages/National+Parks> (Accessed: 4 December 2014).

³⁰⁴ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 7.

rule in 1990. Before colonialisation, wildlife was used by rural people as a crucial resource for their livelihoods.³⁰⁵ Communities regulated use based on traditional knowledge of the environmental cycles.³⁰⁶ Colonial authorities granted white farmers the right to manage certain wildlife species.³⁰⁷ Prior to 1990, the South African government inflicted its apartheid policies and laws³⁰⁸ on the people of Namibia, particularly with regards to land ownership.³⁰⁹ During this era the State had formal control over wildlife. Legislation prevented black communities from utilising wildlife, which increased levels of illegal poaching.³¹⁰ White farmers also had no control over wildlife and viewed wildlife as competition for their livestock.³¹¹ Communities suffered crop damage, livestock loss and loss of land due to the establishment of State protected areas, yet they received no benefits or compensation for their losses.³¹² This, along with high levels of drought and poaching, led to an overall decline in wildlife populations.³¹³ This prompted government to adopt new legislation in 1967 and 1975 that provided the freehold farmers with limited ownership over certain game species. The 1975 Nature Conservation Ordinance³¹⁴ dealt with management of game, establishment of reserves and also provided freehold farmers with conditional wildlife use rights.³¹⁵ Farmers were enabled to

³⁰⁵ Murombedzi JC “Pre-colonial and colonial conservation practices in southern Africa and their legacy today” In Whande W, Kepe T & Murphree M (eds) *Local communities, equity and conservation in Southern Africa* (2003) The Programme for Land and Agrarian Studies (PLAAS) 21.

³⁰⁶ Hinz MO “Profession ‘poacher’: new strategies to accommodate indigenous rights over natural resources” (1999) *Journal of Legal Pluralism* 44: 26.

³⁰⁷ Barnes JI and De Jager JLV “Economic and financial incentives for wildlife use on private land in Namibia and the implications of policy” (1996) *South African Journal of Wildlife Research* 26(2): 37-38.

³⁰⁸ Full list of Apartheid Laws can be found at: <http://www.sahistory.org.za/politics-and-society/apartheid-legislation-1850s-1970s>

However, much of the following South African environmental legislation remains applicable in Namibia today, due to Article 140(1) of the Namibian Constitution:

“...all laws which were in force immediately before the date of Independence shall remain in force until repealed or amended by Act of Parliament or until they are declared unconstitutional by a competent Court.”

The South African environmental laws still applicable include the Water Act (54 of 1956), the Soil Conservation Act (76 of 1969), the Mountain Catchment Areas Act (63 of 1970), the Hazardous Substances Ordinance (14 of 1974), the Nature Conservation Ordinance (4 of 1975) and the Atmospheric Pollution Prevention Ordinance (11 of 1976).

³⁰⁹ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 6.

³¹⁰ *Ibid* at 7.

³¹¹ Long SA & Jones BTB “Contextualising CBNRM in Namibia” In Long SA (ed) *Livelihoods and CBNRM in Namibia: The findings of the Wild Project. Final Technical Report of the Wildlife Integration for Livelihood Diversification Project* (2004) Ministry of Environment and Tourism, Windhoek 139-160.

³¹² Richardson J “Economics of biodiversity in Namibia” In Barnard P (ed) *Biological diversity in Namibia – A country study* (1998) Namibia National Biodiversity Task Force, Windhoek 227-278.

³¹³ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 7.

³¹⁴ Nature Conservation Ordinance No 4 of 1975.

³¹⁵ Nature Conservation Ordinance.

hunt, sell and relocate game, which led to the realisation that wildlife could have commercial value.³¹⁶

CBNRM was adopted in the early 1980s as a further response to wildlife declines. It was initiated by the Namibia Wildlife Trust, who helped communities establish a system of game guards. This was followed by a pilot project to bring tourism and a form of control over wildlife to communities.³¹⁷ The aim was to conserve biodiversity while using wildlife and natural resources to enhance the livelihoods of communities.³¹⁸ Although no economic incentives were in place initially, the ability to regain some control over natural resources proved to be enough for communities to get involved in conservation programmes.³¹⁹ After independence, several social-ecological surveys were conducted and the implementation of CBNRM programmes led government to adopt policy and legislation to ensure these community-based projects were successful, as well as to allow communities to adequately benefit from conservation programmes. Namibia has adopted a rights based approach to CBNRM, since the rights and obligations of communities who have established ICCAs are entrenched in national laws.³²⁰ In 1995, the Policy on Wildlife Management, Utilisation and Tourism on Communal Land³²¹ was adopted, and this led to the approval of the 1996 Nature Conservation Amendment Act³²², which amended the 1975 Nature Conservation Ordinance. The new legislation subsequently led to decreased poaching and increases in wildlife populations, because farmers and communities alike saw the potential value of wildlife and realised that conserving game could be beneficial for their livelihoods.³²³

Namibia's CBNRM programme currently enjoys high levels of support from both the State and NGOs. ICCAs are recognised in development programmes and receive political backing.³²⁴ The MET, as well as several NGOs, have assisted in capacity building for communities and also launched technical support. USAID funded the Living in a Finite

³¹⁶ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 8.

³¹⁷ Owen-Smith G *An arid Eden: A personal account of conservation in the Kaokoveld* (2010) Jonathan Ball, Johannesburg.

³¹⁸ Ashley *Applying livelihood approaches to natural resource management initiatives: experiences in Namibia and Kenya* (2000) 7.

³¹⁹ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 9.

³²⁰ *Ibid* at 25.

³²¹ Policy on Wildlife Management, Utilisation and Tourism in Communal Areas (19 of 1995).

³²² Nature Conservation Amendment Act.

³²³ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 15.

³²⁴ NACSO *Namibia's communal conservancies: a review of progress and challenges in 2011* (2013) NACSO, Windhoek 9.

Environment (LIFE) Project from 1992 to 2008. LIFE assisted with the formation and operation of conservancies. The Wildlife Integration for Livelihood Diversification (WILD) project was also developed in 1997 with the aim to assist communities in utilising their new natural resource rights.³²⁵ MET formed the Namibian Association of CBNRM Support Organisations (NACSO) in 2000, which still remains the main institution for managing conservancies. The World Wildlife Fund (WWF) is actively raising funds to provide Namibian conservancies with technical support, and the funds are also granted to NACSO and other NGOs.³²⁶ Not only are ICCAs important to biodiversity conservation, these areas also have ecological, cultural, socio-economic and political value.³²⁷

Namibia is home to two types of ICCAs. Formal ICCAs are established under post-independence legislation in the form of conservancies, community forests and wildlife concessions. Informal ICCAs are those that are established through community traditions, however most of these have since been incorporated into either formal protected areas or communal conservancies and forests.³²⁸ The conservancy, community forest and wildlife concessions approach to ICCAs provide a formal approach recognised in legislation that provides economic incentives for natural resource management.³²⁹ These three forms of ICCAs often overlap, combining wildlife and forest management.

A conservancy can be defined as “a community body formed by residents to which the government devolves conditional wildlife use rights.”³³⁰ Conservancies are able to generate income by tourism, hunting and other activities linked to conservation.³³¹ Currently, the conservancy programme forms a multi-million rand wildlife industry³³² and increases the overall land area available to wildlife by more than 50% of the existing formal protected areas.³³³ In 2010 there were 59 conservancies, covering 16.1% of Namibia’s total land

³²⁵ Ashley *Applying livelihood approaches to natural resource management initiatives: experiences in Namibia and Kenya* (2000) 10.

³²⁶ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 24.

³²⁷ *Ibid* at 13-15.

³²⁸ *Ibid* at 10-12.

³²⁹ *Ibid* at 21.

³³⁰ Ashley *Applying livelihood approaches to natural resource management initiatives: experiences in Namibia and Kenya* (2000) 10.

³³¹ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 13.

³³² Jones B & Murphree M “The evolution of policy and community conservation in Namibia and Zimbabwe” In Hulme D & Murphree M (eds) *African livelihoods: The promise and performance of community conservation* (2001) James Currey Ltd., Oxford 38-58.

³³³ Brown J & Bird N *Namibia’s Story: Sustainable natural resource management in Namibia: Successful community-based wildlife conservation* (2010) Development Progress, ODI, London 3.

surface.³³⁴ Conservancies can only be registered by the Ministry of Environment and Tourism (MET) and published in the Government Gazette if the conservancy has a legal constitution, a representative committee, clearly defined boundaries which are agreed upon by neighbouring communities, a list of all members, and a scheme to equitably distribute benefits.³³⁵ The content of these constitutions are set out in legislation.³³⁶ Membership is defined by individual constitutions, and all members can elect people to represent the conservancy on the conservancy's committee. This committee is responsible for managing financial resources and ensuring equitable benefit sharing.³³⁷

Community forests receive rights over forest products and grazing. In 2010 there was an estimated 13 community forests, covering 0.2% of Namibia's surface area.³³⁸ Forests provide important natural resources, including fuelwood, food, traditional medicine and areas for livestock grazing, and the establishment of a community forest contributes to poverty reduction and an improvement in livelihoods. This is achieved by providing sustainable harvesting opportunities, employment and providing community members with the chance to re-enforce their traditional rights on communal land.³³⁹

The institutional arrangement for community forests are determined by legislation. It identifies members of the community forest as people who reside on the communal land where the community forest is established as well as individuals who has traditional rights to the land.³⁴⁰ Establishment of community forests are divided into three phases.³⁴¹ Firstly, there is the *initiation phase*, where a community submits a statement of intent to manage a piece of forest as well as a management plan. The second phase is the *development and investment phase*. This involves socio-economic and needs surveys, land-use mapping and development of access and benefit-sharing agreements. The last phase is the *implementation and monitoring phase*, which involves declaring the forest land as a community forest and conducting participatory monitoring.

³³⁴ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 12.

³³⁵ Nature Conservation Amendment Act, section 24A.

³³⁶ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 19.

³³⁷ *Ibid* at 20.

³³⁸ *Ibid* at 12.

³³⁹ Ministry of Agriculture, Water and Forestry *Community Forestry Guidelines* (2005) Directorate of Forestry, Windhoek 2.

³⁴⁰ Forest Act, Section 15.

³⁴¹ Ministry of Agriculture, Water and Forestry *Community Forestry Guidelines* (2005) 12.

Concessions are defined as:³⁴²

a special form of written permission, providing authorisation to carry out...habitat, forest and other resource management activities...A concession may also grant the right to undertake special kinds of activities in a protected area such as exploring or developing certain natural resources.

Their purpose is to create opportunities for development and empowerment to communities by providing access to tourism, hunting and other natural resource related industries. Communities that are adjacent to protected areas are encouraged to use concessions to gain access to resources within the protected area.³⁴³ Concessions can be granted for tourism, plant materials and trophy hunting,³⁴⁴ and can thus overlap with both conservancies and community forest.

3.2 Namibia's Legal Framework

The Namibian legal system encapsulates the concept of legal plurism – when more than one type of law operates simultaneously. The sources of law stems from statutory law, case law, customary law and Roman-Dutch and Common law.³⁴⁵ Namibia is progressive in establishing community participation in resource management as a national goal.³⁴⁶ Namibia's legislation restores some of the rights that communities enjoyed prior to colonisation.³⁴⁷ Government has adopted legislation that promotes participatory conservation and that allows for the establishment of community institutions that manage wildlife, forest and water resources.³⁴⁸ The Namibian programme provides communities with legally entrenched rights, yet these laws remain flexible and offer communities choices.³⁴⁹ Laws and policies provide incentives for community members to adopt conservation programmes by creating access to economic empowerment and development opportunities.³⁵⁰ This section identifies and briefly describes the legislation and policies that applies to the three types of ICCAs in Namibia.

³⁴² Lausche *Guidelines for Protected Areas Legislation* (2011) 179.

³⁴³ Policy on Tourism and Wildlife Concessions on State Land, Preamble.

³⁴⁴ *Ibid* at 10-11.

³⁴⁵ Ruppel OC & Ruppel-Schlichting K "Namibia and its legal setup" In Ruppel OC & Ruppel-Schlichting K (eds) *Environmental Law and Policy in Namibia* (2011) Hanns Seidel Stiftung, Windhoek 1-11.

³⁴⁶ Gujadur T *Organisations and their approaches to community based natural resource management in Botswana, Namibia, Zambia and Zimbabwe* (2000) IUCN/SNV CBNRM Support Programme Occasional Paper No1. IUCN, Gaborone 37.

³⁴⁷ Hinz (1999) *Journal of Legal Pluralism* 28.

³⁴⁸ Jones *An analysis of international law, national legislation, judgements, and institutions as they interrelate with territories and areas conserved by indigenous peoples and local communities: Namibia* (2012) 34-35.

³⁴⁹ Arntzen *et al. Main findings of the review of CBNRM in Botswana* (2003) 37.

³⁵⁰ Boudreaux (2008) *Georgetown International Environmental Law Review* 298.

3.2.1 Constitutional dispensation

The Constitution of the Republic of Namibia was adopted in 1990, amended in 1998, and is the supreme law of the land.³⁵¹ The Constitution outlines the rights of the citizens and organises the state.³⁵² It has been hailed as one of the leading democratic and liberal constitutions world-wide, with strong respect for democracy and fundamental human rights and freedoms.³⁵³ The Constitution vests all natural resources under state ownership, unless legally owned otherwise.³⁵⁴ Currently customary law is recognised in the Constitution and has the same power as statutory law if it does not conflict with constitutional statutory laws.³⁵⁵ Article 95(1)(l) of the Constitution states that the Namibian government must adopt policies to promote conservation of ecosystems and sustainable use of resources.³⁵⁶ The Constitution also strongly recognises human rights in chapter 3,³⁵⁷ which provides general support for ICCAs. Therefore the Constitution promotes conservation and sustainable use of natural resources, as well as laying the foundation for human rights and the freedom of traditional and cultural expression.³⁵⁸

3.2.2 Land reform legislation and policy

All communal areas are held in trust by the state for the benefit of communities.³⁵⁹ The Communal Land Reform Act³⁶⁰ is responsible for the allocation and administration of all communal land. This act includes the allocation of rights to communities on communal land,³⁶¹ the establishment and functions of Communal Land Boards³⁶² and allocates certain

³⁵¹ Amoo SK & Skeffers I "The rule of law in Namibia" In Horn N & Bösl A (eds) *Human rights and the rule of law in Namibia* (2008) Macmillan Education, Windhoek 17-38.

³⁵² Ambunda LN & Mugadza WT "The protection of children's rights in Namibia: Law and Policy" In Ruppel OC (ed) *Children's rights in Namibia* (2009) Macmillan Education, Windhoek 5-52.

³⁵³ Schmidt-Jortzing E "The Constitution of Namibia. An impressive example of a state emerging under close supervision and world scrutiny" *German Yearbook of International Law* 34: 71.

³⁵⁴ The Constitution of the Republic Namibia (Amended 1998) March 1990, Article 100.

³⁵⁵ *Ibid* at Article 66.

³⁵⁶ 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:

(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 Namibia territory.

³⁵⁷ Articles 5, 10, 19 and 21 being most applicable to ICCAs.

³⁵⁸ Jones *An analysis of international law, national legislation, judgements, and institutions as they interrelate with territories and areas conserved by indigenous peoples and local communities: Namibia* (2012) 34.

³⁵⁹ Bethune S & Ruppel OC "Land and agricultural laws and policies relevant for environmental protection in Namibia" In Ruppel OC & Ruppel-Schlichting KR (eds) *Environmental Law and Policy in Namibia* (2011) Hanns Seidel Foundation, Windhoek 150.

³⁶⁰ Communal Land Reform Act (5 of 2002)

³⁶¹ Communal Land Reform Act, Chapter IV.

powers and responsibilities to Chiefs and Traditional Authorities. Most important to ICCAs are the fundamental environmental provisions in the Act, which refers to the allocation of customary land rights.³⁶³ Customary land rights are either the right to a farming unit, the right to a residential unit, or the right to any other form of customary tenure recognised by the Minister.³⁶⁴ It also mandates the Minister to make regulations regarding use of natural resources, including forestry products and water, on communal land.³⁶⁵ These regulations will directly influence ICCAs, particularly community forests.

Many conservancies remain linked with traditional authorities. The Traditional Authority Act³⁶⁶ defines a traditional authority as the chief or head of the community, or traditional councillors appointed in accordance with the Act.³⁶⁷ Traditional authorities played a crucial role in the establishment of ICCAs since they are designated as custodian of natural resources,³⁶⁸ and it is often these authorities that start the process. This act covers the mandate and responsibilities of traditional leaders in a community context.³⁶⁹ It identifies customary law that contradicts with the Constitution as invalid and determines the mandate of the traditional court. Traditional Authorities are responsible for nature conservation and must ensure that community members utilise resources sustainably.³⁷⁰ This act has been described as “a kind of constitution of traditional governance”.³⁷¹ Although Traditional Authorities have no legal link to natural resource institutions, they are often elected to form part of the conservancy or community forest representative committee.³⁷²

3.2.3 Conservation legislation and policy

Prior to independence, the Nature Conservation Ordinance³⁷³ conferred certain wildlife use rights to white farmers on privately owned land. This involved hunting of game,³⁷⁴

³⁶² Communal Land Reform Act, Chapter II.

³⁶³ Communal Land Reform Act, Chapter IV.

³⁶⁴ Communal Land Reform Act, Article 21.

³⁶⁵ Communal Land Reform Act, Article 41(1)(g).

³⁶⁶ Traditional Authorities Act (Act 25 of 2000).

³⁶⁷ Traditional Authorities Act, Article 2(1).

³⁶⁸ Skyer P *Community conservancies in Namibia: An effective institutional model achieving sustainable and equitable common property resource management?* (2003) Promoting common property in Africa: Networks for Influencing Policy and Governance of Natural Resources (Co-Govern) Workshop Namibian Association of CBNRM Support Organisations (NACSO) 8.

³⁶⁹ Traditional Authorities Act, Article 3(c).

³⁷⁰ Hinz MO *Without chiefs there would be no game: Customary Law and nature conservation* (2003) Out of Africa Publishers, Windhoek 8.

³⁷¹ *Ibid* at 169-199.

³⁷² Skyer *Community conservancies in Namibia: An effective institutional model achieving sustainable and equitable common property resource management?* (2003) 8.

³⁷³ Nature Conservation Ordinance (4 of 1975)

right of ownership over huntable game,³⁷⁵ sale of game and game meat³⁷⁶, as well as dealing with problem animals.³⁷⁷ White farmers on private land were also able to establish private game or nature reserves,³⁷⁸ allowing private landholders to realise the economic value of game.³⁷⁹ The Act states that no hunting will be allowed on communal land,³⁸⁰ unless wildlife poses a threat to livestock or human lives.³⁸¹ The Nature Conservation Ordinance was amended in 1996 by the Nature Conservation Amendment Act³⁸². It provides an economic system of sustainable management of wildlife in communal areas and allows for the establishment of conservancies,³⁸³ granting of concessions, and devolving of conditional management rights.³⁸⁴ The Nature Conservation Amendment Act allows for the establishment of ICCAs that are not based on political or administrative delimitations. It grants communities with the same use rights bestowed to individuals on private farmland by the Ordinance.³⁸⁵ The Act further amends the Ordinance by making provision for Wildlife Councils.³⁸⁶ These Councils are responsible for managing wildlife on communal land where conservancies have not yet been established. Following the adoption of the Nature Conservation Amendment Act, the first communal conservancy, the Torra Conservancy, was established in 1998.³⁸⁷

The 1995 Policy on Wildlife, Management, Utilisation and Tourism in Communal Areas³⁸⁸ has the purpose of establishing an economically based system of wildlife and natural resource management on communal land by allowing for the establishment of conservancies.³⁸⁹ This Policy allowed conservancies to gain use rights over wildlife as well as endeavouring in tourism activities within its boundaries.³⁹⁰ Two important objectives of the

³⁷⁴ Nature Conservation Ordinance, Articles 26-28.

³⁷⁵ Nature Conservation Ordinance, Article 29.

³⁷⁶ Nature Conservation Ordinance, Article 47.

³⁷⁷ Nature Conservation Ordinance, Chapter 4.

³⁷⁸ Nature Conservation Ordinance, Article 22(2).

³⁷⁹ Nakamhela U "Namibia: Developing communal conservancies to redress inequalities in income and wealth" In Shen X & Sun X (eds) *Untying the Land Knot: Making equitable, efficient, and sustainable use of industrial and commercial land* (2012) The World Bank, Washington, D.C. 48.

³⁸⁰ Nature Conservation Ordinance, Article 28(1)(a).

³⁸¹ Nature Conservation Ordinance, Articles 27/28/29(b).

³⁸² Nature Conservation Amendment Act.

³⁸³ Nature Conservation Amendment Act, Section 24A.

³⁸⁴ Nature Conservation Amendment Act, Section 24A.

³⁸⁵ Jones BTB *Rights, revenue and resources: The problems and potential of conservancies as community wildlife management institutions in Namibia* (1999) Evaluating Eden Series Discussion Paper No 2, 9.

³⁸⁶ Nature Conservation Amendment Act, Section 24B.

³⁸⁷ Bandyopadhyay et al. *Do households gain from community-based natural resource management? An evaluation of community conservancies in Namibia* (2004) 4.

³⁸⁸ Policy on Wildlife Management, Utilisation and Tourism in Communal Areas (19 of 1995).

³⁸⁹ Policy on Wildlife Management, Utilisation and Tourism in Communal Areas, Section 3.

³⁹⁰ Jones *An analysis of international law, national legislation, judgements, and institutions as they interrelate with territories and areas conserved by indigenous peoples and local communities: Namibia* (2012) 19.

Policy was firstly to ensure the principles that govern wildlife use on freehold land are extended to communal land, and secondly that rural communities can undertake tourism ventures on communal land.³⁹¹ Freehold land is considered “commercial” land held under freehold title by individuals or registered organisations, while communal land is state owned.³⁹² The 1995 Policy was subsequently implemented by the Nature Conservation Amendment Act of 1996.

The Forest Act³⁹³ regulates use and management of forests and forest resources³⁹⁴. It identifies criteria that must be met before a community forest can be established.³⁹⁵ The geographic boundaries of the forest must be clearly defined. A management plan³⁹⁶ must be prepared, and a representative body must be established. Next, an authority must approve of the management plan and grant rights of access and use to the community who wishes to establish the community forest. The committee must also provide some form of equitable access and benefit sharing agreement.

3.2.4 Tourism legislation and policy

The Promotion of Community-Based Tourism Policy³⁹⁷ recognises that tourism can provide social and economic benefits to communities.³⁹⁸ It determines how communities can benefit from tourism ventures on communal land in order to promote conservation as well as social and economic development. It is a framework document which ensures communities have access to tourism activities and the benefits derived from these activities on communal land.³⁹⁹ It further allows conservancies to lodge development inside the conservancy boundaries.⁴⁰⁰ The Revised Draft Tourism Policy 2001-2010⁴⁰¹ was issued in 2001 and this document stated that tourism development in ICCAs must not be at the cost of biodiversity.⁴⁰²

³⁹¹ Jones *Rights, revenue and resources: The problems and potential of conservancies as community wildlife management institutions in Namibia* (1999) 9.

³⁹² *Ibid* at 14.

³⁹³ Forest Act (12 of 2001).

³⁹⁴ Bethune & Ruppel *Environmental Law and Policy in Namibia* (2011) 91.

³⁹⁵ Extracted from Forest Act, Section 15.

³⁹⁶ Forest Act, Section 12.

³⁹⁷ Policy on Community-Based Tourism Development (20 of 1995).

³⁹⁸ Policy on Community-Based Tourism Development, Preamble.

³⁹⁹ Policy on Community-based Tourism Development, Section 2.

⁴⁰⁰ Policy on Community-based Tourism Development, Section 4.

⁴⁰¹ Revised Draft Tourism Policy 2001-2010 (2001).

⁴⁰² Ruppel OC “Foundations, sources and implications of national environmental law” In Ruppel OC & Ruppel-Schlichting K (eds) *Environmental Law and Policy in Namibia* (2011) Hanns Seidel Stiftung, Windhoek 104.

The Policy on Tourism and Wildlife Concession on State Land⁴⁰³ allows for the allocation of wildlife concessions in protected areas to communities. Concessions will be granted to communities with representative, legal institutions.⁴⁰⁴ Concessions will be awarded to communities residing either inside or adjacent to protected areas. The Policy further identifies the guidelines for the concessioning process.⁴⁰⁵ It empowers communities while simultaneously preventing environmental degradation, and lays the foundations for the future Parks and Wildlife Management Bill.⁴⁰⁶

3.3 Critical Analysis of the Law

This section of the Chapter compares the legislation identified in 3.2 with the criteria for a legal framework distilled in Chapter 2. Although the Namibian legislation delegates authority down to a local level, it is still incomplete.⁴⁰⁷

3.3.1 Land Tenure Issues

It can be argued that the greater the bundle of rights that ICCAs enjoy, the more likely it is that CBNRM will be successful.⁴⁰⁸ In Namibia communal land⁴⁰⁹ is held in a public trust by the state, managed by Traditional Authorities and Communal Land Boards,⁴¹⁰ and communities have usufruct rights over both the land and the natural resources.⁴¹¹ The Constitution explicitly states that land belongs to the State if it is not otherwise owned.⁴¹² It is reiterated in the Communal Land Reform Act, which states⁴¹³

⁴⁰³ Policy on Tourism and Wildlife Concessions on State Land (2007).

⁴⁰⁴ Policy on Tourism and Wildlife Concessions on State Land, Section 4.1.3.

⁴⁰⁵ Jones *An analysis of international law, national legislation, judgements, and institutions as they interrelate with territories and areas conserved by indigenous peoples and local communities: Namibia* (2012) 20.

⁴⁰⁶ Weidlich B *Namibia: New policy for tourism and wildlife concessions* (2007) African Conservation Foundation. Available at: <http://www.africanconservation.org/in-focus/namibia-new-policy-for-tourism-and-wildlife-concessions> (Accessed: 9 February 2015).

⁴⁰⁷ Babcock (2010) *Colorado Journal of International Environmental Law and Policy* 216-217.

⁴⁰⁸ *Ibid* at 224.

⁴⁰⁹ Defined in the Nature Conservation Ordinance as:

...land which, in terms the constitution of the representative authority of a population group, or any other law, is communal land of population group concerned...

⁴¹⁰ Jones *An analysis of international law, national legislation, judgements, and institutions as they interrelate with territories and areas conserved by indigenous peoples and local communities: Namibia* (2012) 17.

⁴¹¹ Bethune S & Ruppel OC "Water and fisheries related statutory law and policy in Namibia: An overview" In Ruppel OC & Ruppel-Schlichting KR (eds) *Environmental Law and Policy in Namibia* (2011) Hanns Seidel Foundation, Windhoek 136.

⁴¹² The Constitution of the Republic Namibia, Article 100:

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

⁴¹³ Communal Land Reform Act, section 17.

All communal land areas vest in the State in trust for the benefit of the traditional communities residing in those areas and for the purpose of promoting the economic and social development of the people of Namibia, in particular the landless and those with insufficient access to land who are not in formal employment or engaged in non-agriculture business activities.

The Communal Land Reform Act governs the allocation of two types of rights on communal land: rights of leasehold and customary land rights.⁴¹⁴ The allocation of these rights falls under the powers of the Communal Land Boards.⁴¹⁵ Although chiefs and traditional authorities are allowed to allocate land use planning and zoning under customary law, these rights are subject to the scrutiny of the Communal Land Board.⁴¹⁶ Established and recognised conservancies are able to zone land within their borders, as part of their management plan, but Communal Land Boards are able to override these decisions.⁴¹⁷ The Board is further responsible for deciding on leaseholds for commercial activities on communal land⁴¹⁸ and maintaining a register of customary land rights and leasehold rights.⁴¹⁹ In terms of Article 31 of the Communal Land Reform Act, any conservancy can apply to a right of leasehold from the Board, but this right will only be granted once the Board has determined the granting of the right will not be detrimental to the objectives of the conservancy's management plan.⁴²⁰ An impairment to ICCAs is that no laws or policies exist for the arrangement that private tourism accommodation establishments need permission from conservancies. Therefore private investors can apply for right of leasehold from the Communal Land Board, and if the right is granted the conservancy will not benefit from the economic activities occurring in its area.⁴²¹

The State recognises traditional authorities and these authorities are able to allocate customary land rights for the purpose of residential and agricultural crop purposes.⁴²² The State, with consent from the relevant Traditional Authority, may enter into an agreement with a community falling under the jurisdiction of that Traditional Authority who has customary land rights to a certain communal area, and grant the community the rights to establish and

⁴¹⁴ Communal Land Reform Act, Article 19.

⁴¹⁵ Communal Land Reform Act, Chapter II.

⁴¹⁶ Communal Land Reform Act, Article 3(a).

⁴¹⁷ Boudreaux (2008) *Georgetown International Environmental Law Review* 323.

⁴¹⁸ Communal Land Reform Act, Article 3(b).

⁴¹⁹ Communal Land Reform Act, Article 3(c).

⁴²⁰ Communal Land Reform Act, Article 31(4).

⁴²¹ Tjombe N *Draft memorandum on the rights of leasehold under the Communal Land Reform Act and communal area conservancies* (2003) Legal Assistance Centre 2.

⁴²² Communal Land Reform Act, Article 20 & 21.

manage a community forest on communal land.⁴²³ Under customary law traditional authorities are able to allocate land use, however their authority can be trumped by statutory law.⁴²⁴ However these land-uses need to be approved by Communal Land Boards.⁴²⁵ Due to customary land rights, Traditional Authorities can refuse persons access to common grazing lands.⁴²⁶ Rare cases of exclusion from land can occur where government is willing to back particularly strong traditional authorities and their land allocations.⁴²⁷

Although the Communal Land Reform Act designates specific areas as communal land to be used by communities, it does not provide for group tenure over the land. Although the Namibian government views communal land as state land and the state can determine the land use, it is not policing and monitoring the land effectively.⁴²⁸ With national government owning the land and communities using the land, conflicts and insecurities arise. Therefore communities have a lack of secure land tenure when establishing ICCAs.⁴²⁹ This lack of secure tenure leads to open access issues since communities are not able to prevent others from using the resources and the land.⁴³⁰ While conservancy members are using the land within the conservancy boundaries according to the approved management plan, outsiders are able to bring their livestock into the conservancy.⁴³¹ The Namibian Constitution allows citizens the right to “move freely”,⁴³² which further impairs the control that conservancies have over access to property. Therefore incentives for managing and conserving natural resources are diminished.⁴³³ This is the main gap in Namibia’s CBNRM legislation.⁴³⁴ A silver lining to the land tenure issue in Namibia’s CBNRM is that a new class of property rights are developed by devolving management rights. Local people are now able to pursue tourism opportunities which in turn present employment opportunities.⁴³⁵ The MET has also

⁴²³ Forest Act, Article 15.

⁴²⁴ Boudreaux (2008) *Georgetown International Environmental Law Review* 322.

⁴²⁵ Communal Land Reform Act, Article 20.

⁴²⁶ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 6.

⁴²⁷ Jones *Rights, revenue and resources: The problems and potential of conservancies as community wildlife management institutions in Namibia* (1999) 225.

⁴²⁸ Boudreaux (2008) *Georgetown International Environmental Law Review* 323.

⁴²⁹ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 6.

⁴³⁰ *Ibid.*

⁴³¹ Jones *Rights, revenue and resources: The problems and potential of conservancies as community wildlife management institutions in Namibia* (1999) 25.

⁴³² The Constitution of the Republic Namibia, Article 21(g).

⁴³³ Babcock (2010) *Colorado Journal of International Environmental Law and Policy* 217.

⁴³⁴ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 26.

⁴³⁵ Boudreaux (2008) *Georgetown International Environmental Law Review* 300.

recognised the lack of property rights and how it impairs conservancy's ability to adequately manage natural resources within their boundaries. In 1998 a clause was approved in the National Land Policy which makes provision for "legally constituted bodies and institutions to exercise joint ownership rights"⁴³⁶ over property. Therefore it is theoretically able for conservancies and other similar institutions to become landowners. However, it still remains that the biggest shortcoming to Namibia's well-developed community-based natural resource management framework for both conservancies and community forests remains the lack of secure land tenure and property rights.

3.2.2 Management Issues

According to the amended Nature Conservation Ordinance, communities must form conservancies in order to be awarded use-right over certain wildlife species.⁴³⁷ Conservancies are essentially institutions that increase communities' management over their resources and land,⁴³⁸ and can be viewed as a partnership between the government and people on communal land.⁴³⁹ Conservancy committees are elected by the community and the legal rights are vested in the committee and not in the individual members of the conservancy. The committee is responsible for the drafting of management plans, dispute resolution mechanisms as well as reporting back to the conservancy members

Once a conservancy is registered and published in the Government Gazette it is awarded management and use rights over wildlife.⁴⁴⁰ It allows permitting and quota systems as well as the right to sell and hunt certain game species, both for personal use and trophy hunting ventures.⁴⁴¹ Conservancies further manage small-scale tourism ventures and grass and veld products.⁴⁴² According to the Policy on Wildlife, Management and Utilisation, conservancies are free to decide if it wishes to enter into a business agreement with a private company, to either conduct all of some of the management rights bestowed to it.⁴⁴³

⁴³⁶ National Land Policy 1998.

⁴³⁷ Nature Conservation Amendment Act, Section 24A.

⁴³⁸ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 14.

⁴³⁹ Policy on Wildlife Management, Utilisation and Tourism.

⁴⁴⁰ Nature Conservation Amendment Act, 24A(4).

⁴⁴¹ The same rights that previously applied to landowners on private farmland apply to conservancies following the amendment of the Nature Conservation Ordinance.

⁴⁴² Ashley *Applying livelihood approaches to natural resource management initiatives: experiences in Namibia and Kenya* (2000) 12.

⁴⁴³ Policy on Wildlife Management, Utilisation and Tourism, Section 6.

The Nature Conservation Ordinance also allows for the establishment of Wildlife Councils.⁴⁴⁴ These councils are government-community co-managed institutions which allow joint management of wildlife on communal lands where conservancies are not established. The Regulations accompanying the amended Nature Conservation Ordinance provides precise definitions for issues relating to conservancies and Wildlife Councils.⁴⁴⁵

In forestry legislation, management rights over forest products can be awarded to a community forest if all the criteria in the Forest Act is met.⁴⁴⁶ By the decentralisation of natural resource management rights, communities are able to establish a direct link between conservation actions and tangible benefits, thereby increasing the success of the CBNRM programme.⁴⁴⁷

Communities residing on communal lands (conservancies and community forests) are able to make decisions regarding the management of resources, subject to the provisions in policy and regulatory frameworks administered by the departmental ministers. The ministers in turn must consult with Traditional Authorities and Communal Land Boards before making these provisions.⁴⁴⁸

The amended Nature Conservation Ordinance requires applying conservancies to include in their constitution how it provides for the sustainable management and use of wildlife.⁴⁴⁹ The Forest Act also calls on communities who wish to establish a community forest to submit a management plan to the Minister on how forest resources will be sustainably utilised.⁴⁵⁰

The lack of secure land tenure mentioned in 3.2.1 inhibits communities to adequately apply their management rights over natural resources.⁴⁵¹ Rights over wildlife are also limited since the MET is mandated with the power to set hunting quotas⁴⁵² and conservancies often

⁴⁴⁴ Nature Conservation Amendment Act, Section 24B.

⁴⁴⁵ GRN *Amendment of Regulations Relating to Nature Conservation* (1996) Government Gazette No 1446. Government of the Republic of Namibia, Windhoek.

⁴⁴⁶ Forest Act, Article 15(2)(d).

⁴⁴⁷ Babcock (2010) *Colorado Journal of International Environmental Law and Policy* 218.

⁴⁴⁸ Policy on Tourism and Wildlife Concessions on State Land.

⁴⁴⁹ Nature Conservation Amendment Act, Section 24A(2)(b).

⁴⁵⁰ Forest Act, Article 15(2)(c).

⁴⁵¹ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 17.

⁴⁵² Babcock (2010) *Colorado Journal of International Environmental Law and Policy* 216-217.

lack the legal abilities to deal with human-wildlife conflict, especially when the wildlife is threatened or endangered.⁴⁵³

Communities do not only use the resources that they are awarded rights over, they also develop management measures which include anti-poaching approaches, monitoring of resources, land zoning and human-wildlife conflict management.⁴⁵⁴ Constitutions adopted by conservancies go beyond the requirements of the amended Nature Conservation Ordinance. Where the act only provides for wildlife management, conservancy constitutions often incorporate other natural resources as well.⁴⁵⁵ Conservancies adopt management plans to comply with government requirements.⁴⁵⁶ To enhance the community management, governments must do away with unnecessary permitting schemes. This in turn will strengthen the communal rights over wildlife and tourism.⁴⁵⁷

3.2.3 Access, Use and Benefit Sharing Issues

Prior to colonial domination, community level institutions freely enjoyed authority over wildlife, and the rights to use wildlife and have access to benefits of use.⁴⁵⁸ Namibia's post-independence policy and legal changes re-established equity, participation and benefit sharing.⁴⁵⁹ The amended Nature Conservation Ordinance allows communities to establish conservancies and gain access and use rights over wildlife.⁴⁶⁰ Living within close range to wildlife comes at a cost for communities, including livestock and crop damage, and therefore it is imperative that conservancy members benefit directly from conserving game species.⁴⁶¹

The Traditional Authorities Act can be seen as writing customary law into statutory law. With regards to use of natural resources and environmental responsibility it states:⁴⁶²

⁴⁵³ Boudreaux (2008) *Georgetown International Environmental Law Review* 324-325.

⁴⁵⁴ Jones BTB *Does national or sub-national law or policy recognize terrestrial, riparian or marine Indigenous and Community Conserved Areas (ICCAs)?* (2008) Ministry of Environment and Tourism, Strengthening Protected Areas Network (SPAN) Project, 1-6.

⁴⁵⁵ Hinz "Customary law and the environment" In *Environmental Law and Policy in Namibia* (2011) 169-199

⁴⁵⁶ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 20.

⁴⁵⁷ ⁴⁵⁷ Ibid at 36.

⁴⁵⁸ Jones *Rights, revenue and resources: The problems and potential of conservancies as community wildlife management institutions in Namibia* (1999) 6.

⁴⁵⁹ Brown & Bird *Namibia's Story: Sustainable natural resource management in Namibia: Successful community-based wildlife conservation* (2010) 4.

⁴⁶⁰ Nature Conservation Amendment Act, Section 24A.

⁴⁶¹ Bandyopadhyay *et al. Do households gain from community-based natural resource management? An evaluation of community conservancies in Namibia* (2004) 15-16.

⁴⁶² Traditional Authorities Act, Section 3(2c)

[The members of the traditional authority] shall ensure that the members of his or her traditional authority use the natural resources at their disposal on a sustainable basis and in a manner that conserves the environment and maintain the ecosystem for the benefit of all persons in Namibia.

The lack of secure land tenure mentioned in 3.2.1 indirectly affects the access that communities have to natural resources. Due to lack of tenure and the incapability of excluding others from the land, open access issues arise and threaten the conservancy approach.⁴⁶³

As for most CBNRM programmes, it is essential for conservancies that the benefits of maintaining wildlife and other natural resources outweighs the costs of restricted use.⁴⁶⁴

Conservancies are tourism opportunities and provide employment for members of the community. The Policy on Wildlife Management, Utilisation and Tourism proposes that conservancies must have the right to utilise wildlife within the conservancy boundaries, to the benefit of the entire community. The Government sets the quotas of wildlife that may be used, and the conservancy is allowed to freely decide how these animals can be utilised.⁴⁶⁵

Conservancy members are able to negotiate contracts with tourism agencies to establish joint-venture tourism programmes and consequently benefit from the income from these tourism ventures.⁴⁶⁶ Conservancies generate substantial amounts of economic income which is distributed amongst members or households.⁴⁶⁷ No revenues are shared with the state, and conservancies are able to keep all the income generated from tourism and wildlife activities⁴⁶⁸ as well as decide about uses of the generated revenues.⁴⁶⁹ Conservancy committees are responsible for deciding how benefits will be equitably shared. This is provided for in the 1995 Policy on the Promotion of Community Based Tourism, since one of the main aims of this policy document is to ensure that communities are able to gain access to the benefits from tourism endeavours that occur on their land.⁴⁷⁰ Conservancy committee members must host annual meetings at which benefit sharing plans be presented and discussed by the

⁴⁶³ Holden P, Grossman D & Jones BTB "Community conserved areas in some southern African countries" (2006) *Parks* 16(1): 70.

⁴⁶⁴ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 18.

⁴⁶⁵ Policy on Wildlife Management, Utilisation and Tourism, Section 6.

⁴⁶⁶ Bandyopadhyay *et al.* *Do households gain from community-based natural resource management? An evaluation of community conservancies in Namibia* (2004) 2.

⁴⁶⁷ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 13.

⁴⁶⁸ *Ibid* at 19.

⁴⁶⁹ Bandyopadhyay *et al.* *Do households gain from community-based natural resource management? An evaluation of community conservancies in Namibia* (2004) 2.

⁴⁷⁰ Policy on Community-Based Tourism.

community.⁴⁷¹ The Forest Act states that any community who wishes to establish a community forest must include in their agreement with the Minister that equal use of and access to forest products will be provided for.⁴⁷²

The 1996 Amendment Act also allows communities to benefit from the non-consumptive use of wildlife.⁴⁷³ The Policy on Promotion of Community-Based Tourism aims to ensure that communities have greater access to benefits arising from tourism on their land.⁴⁷⁴ Cash revenues for conservancies have risen dramatically and many conservancies are able to become independent from financial support programmes. Monetary benefits are arising from tourism, sale of animals and trophy hunting.⁴⁷⁵ Tourism opportunities are allowing cash payouts to be made to conservancy members after operational costs are covered,⁴⁷⁶ as well as allowing for some of the income to be spent on community projects.⁴⁷⁷ Overall four manners of cash payouts have been developed. Cash can be payed out to individual conservancy members, a “social fund” can be established from which payouts can be made as needed, payouts can be made on a village basis, or money can be spent on social services and infrastructure in the conservancy.⁴⁷⁸

Non-cash benefits are a big element of conservancies, and communities are able to enjoy game hunting for their own use or access to meat from trophy hunting.⁴⁷⁹ Social benefits also play a big role, and members are able to enjoy employment opportunities close to home and learn various skills related to management, financial skills and resource monitoring.⁴⁸⁰

⁴⁷¹ Nature Conservation Amendment Act, Section 24A(4).

⁴⁷² Forest Act, Article 15(2)(f).

⁴⁷³ Babcock (2010) *Colorado Journal of International Environmental Law and Policy* 215.

⁴⁷⁴ Policy on Promotion of Community-Based Tourism, Section 2(b).

⁴⁷⁵ Boudreaux (2008) *Georgetown International Environmental Law Review* 317.

⁴⁷⁶ Jones BTB “Community management of natural resources in Namibia” (1999) *Scandinavian Seminar College’s Africa Project* 37(5): 39-45.

⁴⁷⁷ Arntzen *et al.* *Main findings of the review of CBNRM in Botswana* (2003) 37.

⁴⁷⁸ Murphy C & Roe D “Livelihoods and tourism in communal area conservancies” In Long SA (ed) *Livelihoods and CBNRM in Namibia: the findings of the WILD Project* (2004) Ministry of Environment and Tourism, Windhoek 119-120.

⁴⁷⁹ Jones *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) 14.

⁴⁸⁰ Arntzen *et al.* *Main findings of the review of CBNRM in Botswana* (2003) 38.

4. Conclusion

People have depended on biological diversity to meet basic needs for millennia and biological resources form the basis of food security and powerful global economies.⁴⁸¹ Many African countries are considered to be developing countries, although the sub-Saharan countries are rife with natural resources, minerals and fisheries.⁴⁸² It is indisputable that human activities cause environmental degradation. Overexploitation, overconsumption, pollution and even economic activities have detrimental impacts on the environment. Namibia is especially affected by unsustainable harvesting and use of native flora and fauna, soil erosion due to overuse, water pollution and the creeping presence of alien invasive organisms.⁴⁸³

Most countries have made efforts to establish protected areas to conserve biological diversity and almost all of these areas are legally protected.⁴⁸⁴ Despite the significant growth of state-owned protected areas world-wide, it is being recognised that these areas are not sufficient to decrease the rates of biodiversity extinction⁴⁸⁵ and degradation of ecosystem services.⁴⁸⁶ New protected areas governance systems are being implemented alongside state-controlled areas. This is of particular importance in countries where voluntary conservation areas are being integrated into the formal protected areas system.⁴⁸⁷

CBNRM has become an important strategy in African countries.⁴⁸⁸ It rests on the notion that communities must be provided with full land tenure and use and benefit rights over natural resources so these resources can be valued and used sustainably.⁴⁸⁹ ICCAs, as a form of CBNRM, are innovative and novel approaches to conservation, aimed at achieving sustainable economic development and empowerment while encouraging biodiversity

⁴⁸¹ Hinz MO & Ruppel OC "Selected sectoral aspects of environmental law in Namibia: Legal protection of biodiversity in Namibia" In Ruppel OC & Ruppel-Schlichting K (eds) *Environmental Law and Policy in Namibia* (2011) Hanns Seidel Stiftung, Windhoek 117-129.

⁴⁸² Sands P *Principles of international environmental law* (2003) 2nd Edition, Cambridge University Press, Cambridge 263.

⁴⁸³ Ruppel *Environmental Law and Policy in Namibia* (2011) 79-106.

⁴⁸⁴ Lausche B *Guidelines for Protected Areas Legislation* (2011) 1.

⁴⁸⁵ Barber CV, Miller KR & Boness M *Securing protected areas in the face of global climate change: Issues and strategies* (2004) IUCN, Gland and Cambridge 30.

⁴⁸⁶ Lausche *Guidelines for Protected Areas Legislation* (2011) 1.

⁴⁸⁷ Lausche *Guidelines for Protected Areas Legislation* (2011) 3-4.

⁴⁸⁸ Bandyopadhyay *Do households gain from community-based natural resource management? An evaluation of community conservancies in Namibia* (2004) 1.

⁴⁸⁹ Gujadur *Organisations and their approaches to community based natural resource management in Botswana, Namibia, Zambia and Zimbabwe* (2000) 13.

preservation.⁴⁹⁰ The implementation of ICCAs requires legal and policy changes if these conservation areas are to achieve their conservation aims and objectives.⁴⁹¹ These changes need to consider the rights of land tenure, management and access, use and benefit of natural resources awarded to communities who have established legal entities on communal land.

Namibian environmental law is complex and is formed by a plethora of statutes, policies, treaties, common, customary and case law, with the Constitution reigning as the supreme law of the land.⁴⁹² Customary law functions differently than modern statutory law, and therefore many African countries have adopted a dual legal system.⁴⁹³ CBNRM in Namibia has greatly expanded in the last decade. This is due to the introduction of legislation which allows for the establishment of ICCAs and provides communities with rights over wildlife, water and forests, as well as allowing for natural resource management institutions such as conservancies.⁴⁹⁴ The aim of CBNRM in Namibia, as elsewhere, is to empower communities to care for and sustainably manage natural resources while deriving benefits from these resources.

Changes to legislation allows for communities to voluntarily establish conservancies, community forests and be awarded concessions inside and adjacent to protected areas. Namibia's approach to formally recognising ICCAs in the protected areas programme has attempted to create incentives for conservation and sustainable use of natural resources. This market-based approach to conservation has provided tangible benefits to rural people.⁴⁹⁵ Namibia's ICCAs has achieved several successes but there are still some issues that need to be resolved. The rights devolved to conservancies and community forests are conditional and it can often take years before the requirements are met to become registered and publicised in the Government Gazette.⁴⁹⁶ National departments consider vesting property rights in conservancies and community forests as a greater loss of power and authority than devolving a bundle of management rights,⁴⁹⁷ therefore land tenure for ICCAs on communal land remains

⁴⁹⁰ Babcock (2010) *Colorado Journal of International Environmental Law and Policy* 299.

⁴⁹¹ Oviedo (2006) *Parks* 49-50.

⁴⁹² Hinz & Ruppel *Environmental Law and Policy in Namibia* (2011) 117-129.

⁴⁹³ Hinz *Environmental Law and Policy in Namibia* (2011) 169-199.

⁴⁹⁴ Jones BTB, Wahome J & Araseb N *Development of a five-year strategic vision for CBNRM in Namibia* (2001) Report of a consultancy carried out for the Namibian Association of CBNRM Support Organisations (NACSO) Windhoek 10.

⁴⁹⁵ Barnes JI & Macgregor J "Economic efficiency and incentives for change within Namibia's community wildlife use initiatives" (2002) *World Development* 30: 667-681.

⁴⁹⁶ Boudreaux (2008) *Georgetown International Environmental Law Review* 308 – 309.

⁴⁹⁷ Babcock (2010) *Colorado Journal of International Environmental Law and Policy* 228.

insecure. Murphree⁴⁹⁸ has clearly expressed the importance of secure land tenure for CBNRM programmes:

For long-term sustainability CBNRM requires a fundamental shift in national policies on tenure in communal lands. The core of the matter is strong property rights for collective communal units, not only over wildlife and other natural resources, but over the land itself.

Namibia's government wishes to conserve the country's natural resources by implementing CBNRM programmes, but this will only be successful if additional rights are delegated down to community level. Conservancies and community forests still lack legally enshrined property rights, as well as full management rights over wildlife and the right to exclude outsiders from their land.⁴⁹⁹ There is also a loss of traditional management capabilities and traditional authority.⁵⁰⁰ If these issues are addressed in policy changes, incentives for conservation would be enhanced.

The Namibian Constitution states that all land will be held in trust by the state. It further provides citizens with great freedom of movement, but this can come at a cost to ICCAs since it can further infringe on their lack of property rights and lead to open-access issues and natural resource degradation. The national government should amend the current legislation applicable to communal land to clearly define which rights of access outsiders hold.⁵⁰¹

As ICCAs continue to adapt and grow, more households are likely to enjoy benefits from the programme.⁵⁰² Conservancies encourage tourism, and tourism creates the link between economic benefits and natural resource conservation.⁵⁰³ Animals are returning to previously degraded areas as local people are adapting and changing their attitudes toward wildlife.⁵⁰⁴ Poaching in communal areas has significantly been reduced following the implementation of conservancies.⁵⁰⁵ Even animals that were previously considered problem

⁴⁹⁸ Murphree *The commons without the tragedy. Strategies for community based natural resources management in Southern Africa* (1995) 50.

⁴⁹⁹ Babcock (2010) *Colorado Journal of International Environmental Law and Policy* 229.

⁵⁰⁰ Berkes (2009) *Conservation Letters* 22.

⁵⁰¹ Boudreaux (2008) *Georgetown International Environmental Law Review* 331.

⁵⁰² Bandyopadhyay et al. *Do households gain from community-based natural resource management? An evaluation of community conservancies in Namibia* (2004) 15.

⁵⁰³ Quesenberry L "Ecotourism: A hyperbolic sustainable development technique" (2001) *Dickinson Journal of Environmental Law and Policy* 9: 483.

⁵⁰⁴ Alpert (1996) *Bioscience* 845, 852.

⁵⁰⁵ Bandyopadhyay et al. *Do households gain from community-based natural resource management? An evaluation of community conservancies in Namibia* (2004) 4.

animals, such as elephants, are being celebrated as tourism opportunities.⁵⁰⁶ Tourists visit Namibia's conservancies, bringing money and trade opportunities along,⁵⁰⁷ thereby empowering the communities and expanding the economy. Community forests allow communities to benefit from using forest produce and managing the land on which the community forest is established. Wildlife concessions allow communities residing either within protected areas or adjacent to it to sustainably use natural resources within the protected area.

Namibia has become a pioneer in CBNRM through sustainable use and management of wildlife as a natural resource. This has been achieved through community empowerment and changes to post-independence legislation that connects economic development with environmental protection.⁵⁰⁸ Namibia has proved that conservation has the potential to generate economic wealth and social benefits for previously disadvantaged groups.⁵⁰⁹ CBNRM programmes are providing the building blocks for development and empowerment at a local level, and further legal rights will increase the sense of empowerment.⁵¹⁰ The Namibian Water sector is also devolving rights to local level, based on the wildlife and forestry model. The only hurdle to the successful integration of management of all natural resources is the continued sectoral approach of government. The various CBNRM-related policies are governed by separate departments⁵¹¹ which lead to a highly fragmented policy system.

This dissertation has distilled elements necessary to create a legal framework for governing and recognising ICCAs. It has further analysed the issues arising with CBNRM programmes and the Namibian legal approach to implementing and recognising ICCAs. Legal tools that clearly define rights are necessary for voluntarily conserved areas. Legislation should provide land tenure rights that are recognised in statutory law to ensure long-term conservation.⁵¹² Although the Namibian environmental legislation is progressive, it is considered to not be comprehensive enough since it does not translate well into action and there is a lack of communication from government agencies. Although these problems are present and more advice from NGOs could be necessary, the Namibian legislature contains

⁵⁰⁶ Boudreaux (2008) *Georgetown International Environmental Law Review* 300.

⁵⁰⁷ Quesenberry (2001) *Dickinson Journal of Environmental Law and Policy* 478.

⁵⁰⁸ Brown & Bird *Namibia's Story: Sustainable natural resource management in Namibia: Successful community-based wildlife conservation* (2010) 3.

⁵⁰⁹ *Ibid* at 6.

⁵¹⁰ Jones *Rights, revenue and resources: The problems and potential of conservancies as community wildlife management institutions in Namibia* (1999) 30.

⁵¹¹ *Ibid* at 31.

⁵¹² Lausche *Guidelines for Protected Areas Legislation* (2011) 18-19.

the basics of a successful national CBNRM movement which is beneficial to both the communities and the natural resources of Namibia.

5. Bibliography

5.1 Primary Resources

The Constitution of the Republic Namibia (Amended 1998) March 1990.

Convention on Biological Diversity (1992)

GRN *Amendment of Regulations Relating to Nature Conservation* (1996) Government Gazette No 1446. Government of the Republic of Namibia, Windhoek.

Nature Conservation Ordinance No 4 of 1975.

Policy on Wildlife Management, Utilisation and Tourism in Communal Areas No 19 of 1995.

Policy on Community-based Tourism Development No 20 of 1995.

Nature Conservation Amendment Act 5 of 1996.

Traditional Authorities Act 25 of 2000.

Forest Act 12 of 2001

Revised Draft Tourism Policy 2001-2010 (2001)

Communal Land Reform Act 5 of 2002

Policy on Tourism and Wildlife Concessions on State Land of 2007

5.2 Secondary Resources

5.2.1 Journals

Ainslie A "When 'community' is not enough: managing common property natural resources in rural South Africa" (1999) *Development Southern Africa* 16(3): 375-401.

Alpert P "Integrated conservation and development projects" (1996) *Bioscience* 46(11): 845-855.

Babcock K "Keeping it local: improving the incentive structure in community-based natural resource management programs" (2010) *Colorado Journal of International Environmental Law and Policy* 21(1): 201-229.

Barnes JI and De Jager JLV "Economic and financial incentives for wildlife use on private land in Namibia and the implications of policy" (1996) *South African Journal of Wildlife Research* 26(2): 37-46.

- Barnes JI & Macgregor J "Economic efficiency and incentives for change within Namibia's community wildlife use initiatives" (2002) *World Development* 30: 667-681.
- Becker D "Protecting a *garua* forest in Ecuador: the role of institutions and ecosystem variation" (1999) *Ambio* 28: 156-161.
- Becker D & Ostrom E "Human ecology and resource sustainability: the importance of institutional diversity" (1995) *Annual Reviews of Ecology and Systematics* 26: 113-133.
- Berkes F "Rethinking community-based conservation" (2003) *Conservation Biology* 18(3): 621-630.
- Berkes F "Community conserved areas: policy issues in historic and contemporary context" (2009) *Conservation Letters* 2: 19-24.
- Blaikie P "Is small really beautiful? Community-based natural resource management in Malawi and Botswana" (2006) *World Development* 34(11): 1942-1957.
- Boudreaux K "A new call of the wild: Community-based natural resource management in Namibia" (2008) *Georgetown International Environmental Law Review* 20: 297-335.
- Brandon KE & Wells M "Planning for people and parks: design dilemmas" *World Development* 20: 557-570.
- Bratton M "Second elections in Africa" (1988) *Journal of Democracy* 9: 51-66.
- Brockington D & Igoe J "Eviction for conservation: a global overview" (2006) *Conservation and Society* 4: 424-470.
- Brown K "Innovations for conservation and development" (2002) *The Geographical Journal* 168: 6-17.
- Brown CJ & Jones BTB "Common-property rangelands management in Namibia: the 'conservancy' model in communal areas" (1998) *Vlth International Rangeland Congress Proceedings* 1: 411-413.
- Campbell BM & Shackleton SE "The organisational structures for community-based natural resources management in southern Africa" (2001) *African Studies Quarterly* 5(3): 73-86.

- Chape S, Harrison J, Spalding M *et al.* "Measuring the extent and effectiveness of protected areas as an indicator for meeting global biodiversity targets" (2005) *Philosophical Transactions of the Royal Society* 360: 443 – 455.
- Clarke P & Jupiter SD "Law, custom and community-based natural resource management in Kunulau District (Fiji)" (2010) *Environmental Conservation* 37(1): 98-106.
- Cocks M, Dold A & Grundy I "Challenges facing a community structure to implement CBNRM in the Eastern Cape, South Africa" (2001) *African Studies Quarterly* 5(3): 57-71.
- Cunningham T "Grassroots conservation: Veld products and people" (1988) *African Wildlife* 43(6): 287 – 293.
- Godfrey E "Peanut butter salvation: the replayed assumptions of 'community' – conservation in Zambia" (2013) *Journal of Contemporary African Studies* 31(3): 380-398.
- Hinz MO "Profession 'poacher': new strategies to accommodate indigenous rights over natural resources" (1999) *Journal of Legal Pluralism* 44: 15-31.
- Holden P, Grossman D & Jones BTB "Community conserved areas in some southern African countries" (2006) *Parks* 16(1): 68-73.
- Holling CS "Understanding the complexity of economic, ecological and social systems" (2001) *Ecosystems* 4: 726-734.
- Jones BTB "Community management of natural resources in Namibia" (1999) *Scandinavian Seminar College's Africa Project* 37(5): 37-45.
- Johnson BL "Introduction to the Special Feature: Adaptive management – Scientifically sound, socially challenged?" (1999) *Ecology and Society* 3(1): 1-5.
- Kates RW, Clark WC, Corell R *et al.* "Sustainability science of local communities" (2001) *Science* 292: 641-642.
- Kothari A "Community-conserved areas: towards ecological and livelihood security" (2006) *Parks* 16: 3-13.
- Kothari A "Protected areas and people: the future of the past" (2008) *PARKS* 17(2): 23-34.
- Kothari A "Indigenous peoples' and local community conserved territories and areas" (2014) *Conservation News, Oryx* 49(1): 13-16.
- Kothari A, Camill P & Brown J "Conservation as if people also mattered: Policy and practice of community-based conservation" (2013) *Conservation and Society* 11(1): 1-15.

- Kubo H & Supriyanto B "From fence-and-fine to participatory conservation: mechanisms of transformation in conservation governance at the Gunung Halimun-Salak National Park, Indonesia" (2010) *Biodiversity and Conservation* 19: 1785 – 1803.
- Larson AM "Decentralisation and forest management in Latin America: towards a working model" (2003) *Public Administration and Development* 23(3): 211 – 226.
- Lindsey PA, Romanach SS & Davies-Mostert HT "The importance of conservancies for enhancing the value of game ranch land for large mammal conservation in southern Africa" (2008) *Journal of Zoology* 277: 99-105.
- Mashinini V "Consensus or conflict? Water management in rural Lesotho" (2001) *Indicator South Africa* 18(2): 78-80.
- Mbaiwa JE "The successes and sustainability of community based natural resources management in the Okavango Delta, Botswana" (2004) *The South African Geographical Journal* 86(1): 44-53.
- Newmark WD & Hough JL "Conserving wildlife across Africa: Integrated conservation and development projects and beyond" (2000) *BioScience* 50(7): 585-592.
- Nkhata BA, Mosimane A, Downsborough L *et al.* "A typology of benefit sharing arrangements for the governance of social-ecological systems in developing countries" (2012) *Ecology and Society* 17(1): 17-25.
- Oviedo G "Community-conserved areas in South America" (2006) *Parks* 16: 49-55.
- Quesenberry L "Ecotourism: A hyperbolic sustainable development technique" (2001) *Dickinson Journal of Environmental Law and Policy* 9: 473.
- Rist L, Campbell BM & Frost P "Adaptive management: where are we now?" (2012) *Environmental Conservation* 1-14.
- Sanderson SE & Redford KH "Contested relationships between biodiversity conservation and poverty alleviation" (2003) *Oryx* 37(4): 389-390.
- Schmidt-Jortzing E "The Constitution of Namibia. An impressive example of a state emerging under close supervision and world scrutiny" *German Yearbook of International Law* 34: 71.
- Tacconi L "Decentralization, forests and livelihoods: Theory and narrative" (2007) *Global Environmental Change* 17: 338-348.

- Thakadu OT "Success factors in community based natural resources management in northern Botswana: Lessons from practice" (2005) *Natural Resources Forum* 29: 199-212.
- Turner R "Communities, conservation, and tourism-based development: can community-based nature tourism live up to its promise?" (2006) *Journal of International Law and Policy* 7(3): 161-182.
- Vetter S *Equilibrium and non-equilibrium in rangelands: recent development in the debate* (2005) *Journal of Arid Environments* 62: 321-341.
- Virtanen P "Community-based natural resource management in Mozambique: A critical review of the concept's applicability at local level" (2005) *Sustainable Development* 13: 1-12.
- Waylen KA, Fischer A, McGowan PJK *et al.* "Deconstructing community for conservation: why simple assumptions are not sufficient" (2013) *Human Ecology* 41: 575-585.
- Wells MP & McShane TO "Integrating protected area management with local needs and aspirations" (2004) *Ambio* 33(8): 513-519.
- Wily AL "Moving forward in African community forestry: trading power, not use rights" (1999) *Society and Natural Resources* 12: 49-61.
- Wily AL "The political economy of community forestry in Africa – getting the power relations right" (2002) *Forests, Trees and People Newsletter* 46: 4-12.

5.2.2 Books

- Adams W & Hulme D "Changing narratives, policies and practices in African conservation" In Hulme D & Murphree M (eds.) *African wildlife and livelihoods: The promise and performance of community conservation* (2001) Oxford.
- Ambunda LN & Mugadza WT "The protection of children's rights in Namibia: Law and Policy" In Ruppel OC (ed) *Children's rights in Namibia* (2009) Macmillan Education, Windhoek 5-52.
- Amoo SK & Skeffers I "The rule of law in Namibia" In Horn N & Bösl A (eds) *Human rights and the rule of law in Namibia* (2008) Macmillan Education, Windhoek 17-38.
- Ashley C & Roe D *Enhancing community involvement in wildlife tourism: issues and challenges* (1998) Wildlife and Development Series No. 11, International Institute for Environment and Development, London 1-42.

- Barber CV, Miller KR & Boness M *Securing protected areas in the face of global climate change: Issues and strategies* (2004) IUCN, Gland and Cambridge.
- Barrow E & Murphree MW "Community conservation: from concept to practice" In Hulme D & Murphree MW (eds) *African Wildlife and Livelihoods: The Promise and Performance of Community Conservation* (2001) Portsmouth, Heinemann 24-37.
- Bethune S & Ruppel OC "Land and agricultural laws and policies relevant for environmental protection in Namibia" In Ruppel OC & Ruppel-Schlichting KR (eds) *Environmental Law and Policy in Namibia* (2011) Hanns Seidel Foundation, Windhoek 147-152.
- Bethune S & Ruppel OC "Water and fisheries related statutory law and policy in Namibia: An overview" In Ruppel OC & Ruppel-Schlichting KR (eds) *Environmental Law and Policy in Namibia* (2011) Hanns Seidel Foundation, Windhoek 130-142.
- Borrini-Feyerabend G, Dudley N, Jaeger T *et al.* *Governance of Protected Areas: From understanding to action* (2013) Best Practice Protected Areas Guidelines Series No. 20, IUCN, Gland, Switzerland 1-124.
- Brandon K "Moving beyond integrated conservation and development projects (ICDPs) to achieve biodiversity conservation" In Lee DR & Barrett CB (eds) *Tradeoffs or Synergies?* (2001) CAB International.
- Colchester M "Salvaging Nature: Indigenous peoples and protected areas" In Ghimire KB & Pimbert MP (eds) *Social change and conservation: environmental politics and impacts of national parks and protected areas* (1997) Earthscan, London 97-130.
- Cousins B & Claassens A "Communal land rights, democracy and traditional leaders in post-apartheid South Africa" In Saruchera M (eds) *Securing land and resource rights in Africa: Pan-African perspectives* (2004) Programme for Land and Agrarian Studies (PLAAS) 139-154.
- Dudley N *Guidelines for Applying Protected Area Management Categories* (2008) IUCN, Gland, Switzerland.
- Eagles PFJ, McCool SF & Haynes CD *Sustainable Tourism in Protected Areas : Guidelines for Planning Management* (2002) IUCN Gland, Switzerland 1-191.
- Elliot P "Wildlife, an economic resource" *In Proceedings of the National Conference on Conservation and Management of Wildlife in Botswana: Strategies for the 21st Century* (1997) Kalahari Conservation Society, Gaborone 191 – 195.

- Hinz MO *Without chiefs there would be no game: Customary Law and nature conservation* (2003) Out of Africa Publishers, Windhoek.
- Hinz MO "Customary law and the environment" In Ruppel OC & Ruppel-Schlichting K (eds) *Environmental Law and Policy in Namibia* (2011) Hanns Seidel Stiftung, Windhoek 169-199.
- Hinz MO & Ruppel OC "Selected sectoral aspects of environmental law in Namibia: Legal protection of biodiversity in Namibia" In Ruppel OC & Ruppel-Schlichting K (eds) *Environmental Law and Policy in Namibia* (2011) Hanns Seidel Stiftung, Windhoek 117-129.
- Ingold T *The perception of the environment: essays on livelihood, dwelling and skill* (2000) Routledge, London 1-465.
- Jones B "Recognition and support of ICCAs in Namibia" In Kothari A, Corrigan C, Jonas H, Neumann A & Shrumm H (eds) *Recognising and supporting territories and areas conserved by indigenous peoples and local communities: Global overview and national case studies* (2012) Secretariat of the Convention on Biological Diversity, ICCA Consortium, Kalpavriksh, and Natural Justice, Montreal, Canada. Technical Series no. 64, 1-43.
- Jones B & Murphree M "The evolution of policy and community conservation in Namibia and Zimbabwe" In Hulme D & Murphree M (eds) *African livelihoods: The promise and performance of community conservation* (2001) James Currey Ltd., Oxford 38-58.
- Jones B & Weaver LC "CBNRM in Namibia: Growth, trends, lessons and constraints" In Suich H, Child B & Spenceley A (eds) *Evolution and innovation in wildlife conservation: Parks and game ranches to transfronteir conservation areas* (2009) Earthscan/IUCN, London 223-242.
- Lausche B *Guidelines for Protected Areas Legislation* (2011) IUCN, Gland, Switzerland 1-370.
- Levin SA *Fragile dominion: complexity and the commons* (1999) Perseus, New York.
- Long SA & Jones BTB "Contextualising CBNRM in Namibia" In Long SA (ed) *Livelihoods and CBNRM in Namibia: The findings of the Wild Project. Final Technical Report of the Wildlife Integration for Livelihood Diversification Project* (2004) Ministry of Environment and Tourism, Windhoek 139-160.

- McShane TO & Wells MP *Getting biodiversity projects to work: Towards more effective conservation and development* (2004) Columbia University Press, New York.
- Millennium Ecosystem Assessment *Ecosystems and human well-being: a framework for assessment* (2003) Island Press, Washington, DC.
- Murombedzi JC "Pre-colonial and colonial conservation practices in southern Africa and their legacy today" In Whande W, Kepe T & Murphree M (eds) *Local communities, equity and conservation in Southern Africa* (2003) The Programme for Land and Agrarian Studies (PLAAS) 21-32.
- Murombedzi JC "Agrarian social change and post-colonial natural resource management interventions in southern Africa's 'communal tenure' regimes" In Nelson F (ed) *Community rights, conservation and contested land: The politics of natural resource governance in Africa* (2010) Earthscan, New York 32-51.
- Murphy C & Roe D "Livelihoods and tourism in communal area conservancies" In Long SA (ed) *Livelihoods and CBNRM in Namibia: the findings of the WILD Project* (2004) Ministry of Environment and Tourism, Windhoek 119 - 138.
- Nakamhela U "Namibia: Developing communal conservancies to redress inequalities in income and wealth" In Shen X & Sun X (eds) *Untying the Land Knot: Making equitable, efficient, and sustainable use of industrial and commercial land* (2012) The World Bank, Washington, D.C. 47-56.
- Ostrom E *Governing the commons: The evolution of institutions for collective action* (1990) Cambridge University Press.
- Owen-Smith G *An arid Eden: A personal account of conservation in the Kaokoveld* (2010) Jonathan Ball, Johannesburg.
- Richardson J "Economics of biodiversity in Namibia" In Barnard P (ed) *Biological diversity in Namibia – A country study* (1998) Namibia National Biodiversity Task Force, Windhoek 227-278.
- Rihoy L & Maguranyanga B "The politics of community-based natural resource management in Botswana" In Nelson F (ed) *Community rights, conservation and contested land: The politics of natural resource governance in Africa* (2010) Earthscan, New York 55-78.

- Robson JP & Berkes F “Sacred nature and community conserved areas” In Pilgrim S & Pretty J (eds) *Nature and culture: rebuilding lost connections* (2010) Earthscan, London 197 - 216.
- Ruppel OC “Foundations, sources and implications of national environmental law” In Ruppel OC & Ruppel-Schlichting K (eds) *Environmental Law and Policy in Namibia* (2011) Hanns Seidel Stiftung, Windhoek 79-106.
- Ruppel OC & Ruppel-Schlichting K “Namibia and its legal setup” In Ruppel OC & Ruppel-Schlichting K (eds) *Environmental Law and Policy in Namibia* (2011) Hanns Seidel Stiftung, Windhoek 1-11.
- Sands P *Principles of international environmental law* (2003) 2nd Edition, Cambridge University Press, Cambridge.
- Sobrevila C *The role of indigenous peoples in biodiversity conservation: the natural but often forgotten partners* (2008) The World Bank, Washington D.C.
- Thomas L & Middleton J *Guidelines for management planning of protected areas* (2003) WCPA Best Practice Protected Areas Guidelines Series 10, IUCN, Gland and Cambridge.

5.2.3 Websites

- ICCA Consortium *Indigenous peoples’ and community conserved territories and areas (ICCAs): A bold frontier for conservation, sustainable livelihoods and the respect of collective rights* (2013) Available at: <http://www.iccaconsortium.org/> (Accessed: 4 February 2015).
- MET *Protected Areas* (2013) Available at: <http://www.met.gov.na/Pages/Protectedareas.aspx> (Accessed: 4 December 2014).
- Namibian Tourism Board *National Parks* Available at: <http://www.namibiatourism.com.na/pages/National+Parks> (Accessed: 4 December 2014).
- Sharp R *CBNRM: does it have a future?* (2013) Available at: https://www.iucn.org/about/union/commissions/sustainable_use_and_livelihoods_specialist_group/sulinews/issue_5/sn5_cbnrm/ (Accessed: 27 January 2015).

Weidlich B *Namibia: New policy for tourism and wildlife concessions* (2007) African Conservation Foundation. Available at: <http://www.africanconservation.org/in-focus/namibia-new-policy-for-tourism-and-wildlife-concessions> (Accessed: 9 February 2015).

5.2.4 Reports, Working Papers, Policy Papers and Other

Aggarwal S & Elbow K *The role of property rights in natural resource management, good governance and empowerment of the rural poor* (2006) USAID. Available at: http://usaidlandtenure.net/sites/default/files/USAID_Land_Tenure_Property_Rights_and_NRM_Report.pdf (Accessed: 3 February 2015).

Alcorn J, Kajuni A & Winterbottom B *Assessment of CBNRM Best Practices in Tanzania* (2002) Final report prepared for USAID Tanzania and USAID Africa Bureau, Office of Sustainable Development 1-49.

Anderson J, Shaikh A, Barrett P *et al. Nature, wealth and power: Emerging best practice for revitalizing rural Africa* (2002) United States Agency for International Development (USAID), Washington D.C., USA.

Arntzen JW, Molokomme EM, Terry EM, Moleele N, Tshosa O & Mazambani D *Main findings of the review of CBNRM in Botswana* (2003) CBNRM Support Programme Occasional Paper No. 14, SNV, IUCN, DFID, Gaborone 1-44.

Ashley C *Applying livelihood approaches to natural resource management initiatives: experiences in Namibia and Kenya* (2000) ODI Working Paper 134. London: ODI 1-30.

Bandyopadhyay S, Humavindu MN, Shyamsundar P *et al. Do households gain from community-based natural resource management? An evaluation of community conservancies in Namibia* (2004) DEA Research Discussion Paper 68, Directorate of Environmental Affairs, Windhoek, Namibia 1-25.

Beltrán A *Indigenous and traditional peoples and protected areas: principles, guidelines and case studies* (2002) WCPA Best Practice Protected Area Guidelines Series 4, IUCN, Gland, Switzerland.

Borrini-Feyerabend G, Bueno P, Hay-Edie T *et al. A primer on governance for protected and conserved areas* (2014) Stream on enhancing diversity and quality of governance, 2014 IUCN World Parks Congress, IUCN, Gland, Switzerland.

- Borrini-Feyerabend G & Kothari A *Recognising and supporting indigenous and community conservation – ideas and experiences from the grassroots* (2008) CEESP Briefing Note 9. IUCN Commission on Economic, Environmental and Social Policy 1-28.
- Borrini-Feyerabend G, Kothari A & Oviedo G *Indigenous and local communities and protected areas. Towards Equity and Enhanced Conservation* (2004) IUCN/WCPA Best Practice Series, 11, Gland Switzerland) and Cambridge (United Kingdom) 1-139.
- Borrini-Feyerabend G, Pimbert M, Farvar MT *et al. Sharing power: Learning-by-doing in co-management of natural resources throughout the world.* (2004) IIED and IUCN/CEESP.
- Brown J & Bird N *Namibia's Story: Sustainable natural resource management in Namibia: Successful community-based wildlife conservation* (2010) Development Progress, ODI, London 1-6.
- Cassidy L *CBNRM and legal rights to resources in Botswana* (2000) IUCN/SNV CBNRM Support Programme Occasional Paper No. 4. IUCN, Gaborone 1-48.
- Corrigan C & Granziera A *A handbook for the Indigenous and Community Conserved Areas Registry* (2010) UNEP-WCMC, Cambridge 1-24.
- Diggle RW *A business assessment of community-based tourism in Caprivi* (2003) M.SC. Dissertation, University of Greenwich, UK 1-84.
- Gujadur T *Organisations and their approaches to community based natural resource management in Botswana, Namibia, Zambia and Zimbabwe* (2000) IUCN/SNV CBNRM Support Programme Occasional Paper No1. IUCN, Gaborone 1-71.
- ICCA Consortium *ICCAs & Aichi Targets: The contribution of indigenous peoples' and local community conserved territories and areas to the Strategic Plan for Biodiversity 2011-20 (Aichi Targets)* (2014) Policy Brief of the ICCA Consortium Issue 1.
- Institute on Governance *Governance principles for protected areas in the 21st century* (2002) Discussion paper for Parks Canada, Parks Canada, Ottawa.
- IUCN *Durban Accord* (2003) IUCN Vth World Parks Congress, Gland, Switzerland.
- IUCN *Resolution 5.094 on respecting, recognising and supporting indigenous peoples' and community conserved territories* (2012) Adopted at Vth World Conservation Congress, Korea.

- Jonas H, Kothari A & Shrumm H *Legal and institutional aspects of recognizing and supporting conservation by indigenous peoples and local communities: an analysis of international law, national legislation, judgements, and institutions as they interrelate with territories and areas conserved by indigenous peoples and local communities* (2012) The ICCA Consortium, Available at: http://www.iccaconsortium.org/wp-content/uploads/images/stories/Database/legalreviewspdfs/synthesis_lr_report_engl.pdf (Accessed: 2 February 2015).
- Jones BTB *Rights, revenue and resources: The problems and potential of conservancies as community wildlife management institutions in Namibia* (1999) Evaluating Eden Series Discussion Paper No 2, 1-43.
- Jones BTB, Wahome J & Araseb N *Development of a five-year strategic vision for CBNRM in Namibia* (2001) Report of a consultancy carried out for the Namibian Association of CBNRM Support Organisations (NACSO) Windhoek 1-90.
- Jones BTB *Does national or sub-national law or policy recognize terrestrial, riparian or marine Indigenous and Community Conserved Areas (ICCAs)?* (2008) Ministry of Environment and Tourism, Strengthening Protected Areas Network (SPAN) Project, 1-6.
- Jones BTB *CBNRM, poverty reduction and sustainable livelihoods: Developing criteria for evaluating the contribution of CBNRM to poverty reduction and alleviation in southern Africa* (2004) Commons Southern Africa Occasional Paper Series No. 7, CASS/PLAAS 1 – 41.
- Jones BTB *An analysis of international law, national legislation, judgements, and institutions as they interrelate with territories and areas conserved by indigenous peoples and local communities: Namibia* (2012) The ICCA Consortium, Report Nr 4.
- Kothari A, Menon M & O'Reilly S *Territories and areas conserved by indigenous peoples and local communities (ICCAs): How far do national laws and policies recognize them?* (2010) A revised preliminary report released at the CBD SBSTTA14.
- Kuemplangan B *Creating legal space for community-based fisheries and customary marine tenure in the Pacific: issues and opportunities* (2004) Fishcode Review FAO, Rome 1-65.

- Lausche B, Farrier D, Verschuuren J *et al.* *The legal aspects of connectivity conservation, Volume 1 – A Concept Paper* (2013) IUCN, Gland, Switzerland.
- Mendelsohn J, Jarvis A, Roberts C *et al.* *Atlas of Namibia: A portrait of the land and its people* (2002). Sunbird Publishers, Cape Town, 1-220.
- Ministry of Agriculture, Water and Forestry *Community Forestry Guidelines* (2005) Directorate of Forestry, Windhoek.
- Murphree MW "Optimal principles and pragmatic strategies: creating an enabling politico-legal environment for community-based natural resource management (CBNRM)" In Rihoy E (ed) *The commons without the tragedy. Strategies for community based natural resources management in Southern Africa* (1995) Proceedings of the Regional Natural Resources Management Programme Annual Conference. SADC Wildlife Technical Coordination Unit. Lilongwe, Malawi.
- NACSO *Namibia's communal conservancies: a review of progress and challenges in 2011* (2013) NACSO, Windhoek 1-59.
- National Planning Commission *Namibia 2011 Population and Housing Census: Preliminary Results* (2012) National Planning Commission, Windhoek.
- Painter M *An approach for monitoring and evaluating community based natural resource management activities implemented by the Department of Wildlife and National Parks (DWNP) and Natural Resource Management Project (NRMP)* (1995) DWNP Report, Gaborone (Unpublished report).
- Pathak N, Bhatt S, Tasneem B *et al.* *Community conservation areas. A bold frontier for conservation* (2004) CCA Briefing Note 5. IUCN WCPA-CEESP Theme on Indigenous Local Communities, Equity and Protected Areas (TILCEPA) 1-8.
- Ribot JC *Democratic decentralization of natural resources: institutionalizing popular participation* (2002) World Resources Institute, Washington DC 1-272.
- Secretariat of the Convention on Biological Diversity *Programme of Work on Protected Areas (CBD Programmes of Work)* (2004) Montreal 1-31.
- Scherl LM, Wilson A, Wild R *et al.* *Can protected areas contribute to poverty reduction? Opportunities and Limitations* (2004) IUCN, Gland, Switzerland and Cambridge, UK 1-60.

- Skyer P *Community conservancies in Namibia: An effective institutional model achieving sustainable and equitable common property resource management?* (2003) Promoting common property in Africa: Networks for Influencing Policy and Governance of Natural Resources (Co-Govern) Workshop Namibian Association of CBNRM Support Organisations (NACSO).
- Soeftestad LT & Gerrard CD *The International Workshop on community-based natural resource management (CBNRM)* (1998) Workshop Report, Washington DC 1-36.
- Thakadu OT *The concept of community ownership and mobilization: experiences from community-based natural resources management* (2001) Community-based management of animal genetic resources: Proceedings of the workshop, Mbabane, Swaziland 121-125.
- Tjombe N *Draft memorandum on the rights of leasehold under the Communal Land Reform Act and communal area conservancies* (2003) Legal Assistance Centre.
- Turner S *A crisis in CBNRM? Affirming the commons in southern Africa* (2004) Paper presented at the 10th IASCP Conference, Oaxaca 1-30.
- United Nations *GA Resolution 61/295* (2008) United Nations Declaration on the Rights of Indigenous Peoples.
- Warner M & Jones P *Assessing the need to manage conflict in community-based natural resource projects* (1998) ODI Working Paper 35. London: ODI.
- Weaver LC & Skyer P *Conservancies: Integrating wildlife land-use options into the livelihood, development, and conservation strategies of Namibian communities* (2003) Paper presented at the Vth World Parks Congress, Durban.
- World Parks Congress *WPC Recommendation V.26* (2003) IUCN, Gland, Switzerland, 202.

Appendix 1

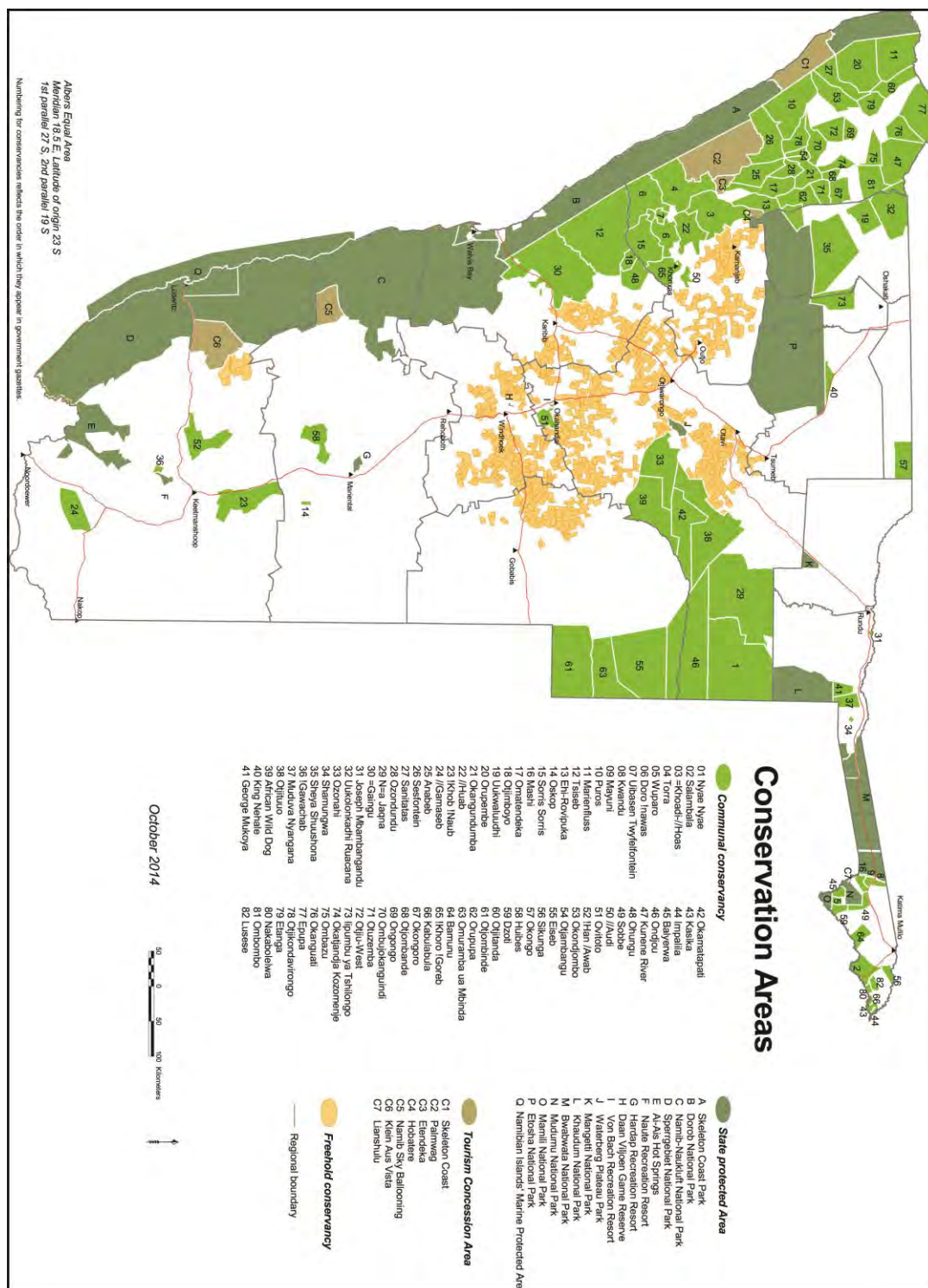


Figure 1 - Map of Namibia's protected areas. The numbered areas are communal conservancies (<http://www.naco.org.na/dwnlds/refs/Protected%20areas.jpg>)