Promoting Environmentally Sound Decision-making of Communal Land Boards

Report for the Directorate of Environmental Affairs, Ministry of Environment and Tourism

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<tr>
<td>CBNRM</td>
<td>Community-based Natural Resource Management</td>
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<td>CLB</td>
<td>Communal Land Board</td>
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<td>DEA</td>
<td>Directorate of Environmental Affairs</td>
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<td>DED</td>
<td>German Development Service</td>
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<td>DoF</td>
<td>Directorate of Forestry, MAWF</td>
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<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<td>EMP</td>
<td>Environmental Management Plan</td>
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<td>GPS</td>
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<td>HQ</td>
<td>Headquarters</td>
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<td>LAC</td>
<td>Legal Assistance Centre</td>
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<td>LUEB</td>
<td>Land Use and Environmental Board</td>
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<td>MAWF</td>
<td>Ministry of Agriculture, Water and Forestry</td>
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<td>MET</td>
<td>Ministry of Environment and Tourism</td>
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<td>MLR</td>
<td>Ministry of Lands and Resettlement</td>
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<td>NACSO</td>
<td>Namibian Association of CBNRM Support Organisations</td>
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<td>NGO</td>
<td>Non-governmental Organisation</td>
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<td>PTT</td>
<td>Permanent Technical Team on Land Reform</td>
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<td>SAIEA</td>
<td>Southern African Institute for Environmental Assessment</td>
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<td>TA</td>
<td>Traditional Authority</td>
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Executive Summary

This report considers key issues for promoting environmentally sound decision-making by Communal Land Boards (CLBs) in Namibia. This study was carried out by a team of two Namibian consultants, one an expert in CBNRM with experience of working in the Ministry of Environment and Tourism (MET) and the other an economist with experience of working with the CLBs. The team carried out a desk study of relevant documents and carried out a series of telephone and face-to-face interviews with various stakeholders.

CLBs have the responsibility for allocating communal land in conjunction with traditional authorities in accordance with the provisions of the Communal Land Reform Act of 2002. CLB decisions can affect the environment in a number of ways. The allocation of land for agricultural plots can lead to the clearing of land for crop growing which can have the cumulative effect of deforestation over large areas and of negatively affecting important natural habitats such as riverine vegetation in some northern regions. There is also potential for such habitat loss to lead to a loss of biodiversity. Tourism and other economic developments also have the potential to create localised environmental problems such as pollution, soil erosion, etc.

In general respondents believe CLB decisions do not have major negative effects on the environment in terms of deforestation or biodiversity loss, although this could be a problem in future. However, there are a number of general constraints to CLBs adequately addressing environmental issues. These include a lack of sufficient funding to conduct proper field investigations, a lack of information about existing development plans and activities, a lack of adequate office facilities, and record keeping systems, and a lack of education and literacy in English of some members (particularly from Traditional Authorities). More particularly, many CLB members do not have sufficient understanding of basic environmental principles, of land use planning, land capability and the best economic uses of land given the environmental constraints in a semi-arid/arid land such as Namibia. Most CLB members lack technical skills such as map reading and interpretation. Consideration of environmental issues tends to depend on the presence at CLB meetings of MET officials or conservancy representatives.

Conservancies and community forest committees are institutions created under sectoral legislation to provide for community management of wildlife and forest resources on communal land. CLBs interface with these institutions in a number of ways. Legally, conservancies have to be represented on CLBs and the land boards may not allocate leases in a conservancy for purposes that would be contrary to the conservancy management plan. In some cases, CLBs have taken decisions that negatively affected conservancies, but in others, the decisions
have had positive outcomes. Community forests are at a disadvantage because they are not represented on CLBS.

In order to assist land boards to promote environmentally sustainable decision-making the following is recommended:

- Develop a systematised approach to environmental decision-making by Land Boards, which links CLBs to broader land use planning systems, and includes developing clear procedures and guidelines for addressing environmental issues at land board level and within the Ministry of Lands and Resettlement (MLR). Land boards should be given a step-by-step approach for dealing with EIAs and knowledge of how to access technical assistance for assessing completed EIAs.

- Pursue the establishment of the Land Use and Environmental Boards (LUEBs) as proposed in the National Land Policy, in order to provide proper coordination of land administration, allocation, and planning across different sectors, to provide integration between national and regional levels, and to promote environmental sustainability as envisaged by the National Land Policy.

- MLR should work with MET and the Ministry of Agriculture, Water and Forestry (MAWF) to identify the steps needed to harmonise sectoral legislation with the National Land Policy and identify steps required to implement the natural resource tenure provisions of the policy.

- The recommendations concerning conservancies and environmental issues of the 2005 conference to propose amendments to the Communal Land Reform Act should be implemented. In addition, representatives of community forests should also be included in the Act as mandatory members of CLBs in the same way as representatives of conservancies.

- MET and MLR should adopt and disseminate to CLBs a joint policy decision that leases for major tourism activities such as lodge development should be in the name of the conservancy.

- Develop the capacity of the MET and MLR to provide increased and improved technical support to land boards on environmental issues. MET should appoint a focal person to deal with land and related issues, to liaise with MLR and to coordinate technical support to MET and conservancy land board representatives.

- Develop training programmes for land board members that cover basic land use planning, basic environmental principles, economic potential of different land uses, EIAs and EMPs, other relevant sectoral legislation, and principles of Community-based Natural Resource Management (CBNRM), including community forests.

- Provide land boards with the appropriate data, documentation and maps that will enable them to make informed decisions, including existing development plans, tourism plans, and information about the size, location and purpose of existing agricultural schemes and other relevant land use activities/developments.
1. Introduction

1.1 Background

This report considers key issues for promoting environmentally sound decision-making by Communal Land Boards. It has been commissioned by the Directorate of Environmental Affairs (DEA) in the Ministry of Environment and Tourism (MET) with support from the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ). The MET is receiving assistance from GTZ aimed at strengthening the ministry’s technical and organisational capacity to plan and implement integrated sustainable natural resource management. One component of this assistance is to reinforce MET’s role as a service provider supporting environmentally sound land use planning and land use decisions. MET is one of the line ministries represented on Communal Land Boards (CLBs) and the decisions of the CLBs have the potential to positively or negatively affect the environment, and have implications for biodiversity conservation, land degradation and the Ministry’s Community-based Natural Resource Management Programme (CBNRM). Communal Area Conservancies and Community Forests have been promoted by the Namibian Government as local level institutions for natural resource management. The decisions of the CLBs can also have significant impacts on the activities of conservancies and community forests. It is important therefore that MET should identify the areas in which CLBs can impact on the environment and CBNRM, and identify the areas in which its own involvement and support to land boards can be strengthened.

The objectives of this report are therefore to:

- Capture and document the experiences of representatives of MET, conservancies (and communal forests) in CLBs
- Identify, describe and categorise the environmental dimensions of CLB decisions – ideally based on real cases
- Identify capacity building needs and sensitisation issues for all CLB members, and propose specific training and capacity building activities for MET and conservancy representatives
- Identify critical issues beyond the CLB’s control which affect the environmental sustainability of their decisions

The full Terms of Reference (TOR) for the report are contained in Annex 1. The results of this report will be presented at the National Induction Conference for New Communal Land board Members and Staff planned for May 8th to 12th 2006, organised by the Ministry of Lands and Resettlement (MLR).
1.2 Methodology

This study was carried out by a team of two Namibian consultants, one an expert in CBNRM with experience of working in the MET and the other an economist with experience of working with the CLBs.

The team reviewed relevant documents in order to synthesise existing work that identifies key issues regarding the environmental dimensions of the activities of CLBs and the role of MET in the land boards. A series of telephone interviews was conducted with conservancy and MET representatives on CLBs in order to capture their experiences regarding the interface between land boards, environmental issues and CBNRM. Interviews were also carried out with members of organisations that are involved either with CBNRM in Namibia or with CLBs. A list of persons consulted during the interviews is contained in Annex 2. Checklists of the questions used in the interviews are contained in Annex 3. The checklists were used as a guideline for interviews not as a formal questionnaire. In total 20 people were interviewed, consisting of 7 MET representatives on land boards, 3 conservancy representatives on land boards and 10 representatives of stakeholder organisations. It had been intended to interview several more respondents, particularly conservancy representatives, but a number of people proved difficult to trace. For example one former MET Land Board representative is studying in South Africa and some conservancy representatives are difficult to contact by telephone as they live in remote areas.

2. Legal status and functions of Communal Land Boards, Conservancies and Community Forests

2.1 Communal Land Boards
2.1.1 Legal status and general responsibilities

Communal Land Boards are established under the Communal Land Reform Act (No. 5 of 2002). The Act places communal land under the administration of the CLBs and Traditional Authorities (TAs) and defines the rights and duties of the land boards, their composition and functions. A land board may be established for a whole region, a part of a region or across parts of two or more regions (RoN 2002).

Customary land rights will be allocated by a chief or Traditional Authority, but must be ratified by the land board, which will then register the grant. Provision is made for residents to have access to common grazing lands subject to conditions made by a Chief or Traditional Authority including limits on stock numbers or where grazing may take place. The Chief or Traditional Authority may also grant grazing rights to non-residents for a specified or indefinite period. These rights may be withdrawn by the Chief or TA.
The land boards control the allocation of leases for land and the Act makes provision for certain prescribed maximum sizes of land for a particular form of land use. The CLBs are also responsible for creating and maintaining a register where the allocation, transfer and cancellation of customary land rights and leasehold rights are recorded and kept up to date. Membership of the Communal Land Boards is as follows:

- One representative from each Recognized Traditional Authority within the Board’s area.
- One member from the organized farming community in the Board’s area representing the interests of farmers.
- A regional officer of a regional council in the Board’s area.
- Two women engaged in farming activities within the Board’s area.
- Two women with expert knowledge relevant to the functions of the Board.
- One person representing a conservancy(s) jointly.
- One representative from each of the following ministries:
  (a) Lands, Resettlement and Rehabilitation
  (b) Agriculture, Water and Rural Development
  (c) Regional and Local Government and Housing
  (d) Environment and Tourism

The procedures for applications for customary land rights and leasehold rights are contained in the Communal Land Reform Act and the accompanying regulations. The regulations provide for a specific form to be filled in by applicants for customary land rights (RoN 2003). The information requested on the form relates to the applicant, the nature of the right applied for, the size and location of the land, current use of the land, whether any other person has a customary right to the land, and whether the applicant has any other land rights under the Act. The form must be submitted to the Chief of the area who must publicly display details of the application for a period of at least seven days and invite any objections. According to the Act, the Chief may make investigations or consult relevant persons in connection with the application and if there are objections can conduct a hearing to deal with the objections. The Operational Manual for Communal Land Boards indicates that among the details that Chiefs should check is whether the application is in accordance with the zoning of the area in terms of any land use plans (Sikopo et al 2005).

Once the right over the land has been allocated by the Chief, all particulars must be furnished to the Land Board, which according to the Act, must ratify the application. The Board must determine whether the allocation of the right was made in accordance with the provisions of the Act. In order to do this, the Board may consult relevant persons or make investigations. If the Board is satisfied that the allocation was made in accordance with the Act, it must ratify the allocation. If it is not satisfied, then it may refer the matter back to the chief or Traditional Authority for reconsideration in terms of any comments made by the Board. The
Land Board must veto the allocation if someone else already has a right over the land, if the size of the land exceeds the prescribed size or the right has been allocated for land that has been reserved for common usage or any other purpose in the public interest. Once an allocation of customary rights has been ratified, the Board must register the allocation and issue the applicant with a certificate.

The regulations also provide for a specific form to be filled in and a specific procedure to be followed regarding the recognition of existing customary land rights.

With regard to applications for leasehold rights, specific forms are prescribed by the regulations for general applications and for applications for agricultural land outside designated agricultural areas. The application must provide the details of the applicant, the nature of the purpose of the leasehold, the size of land applied for, the location of the land, any current land uses, whether the Traditional Authority endorses the application, whether any other person has a right over the land, whether the applicant holds rights to any other portions of communal land, whether the land is situated within a conservancy and the period for which the lease is applied for. Applications are made to the Land Board which must then publicly display the details of the application for a period of seven days and invite objections, which should be submitted to the Chief or Traditional Authority. If the application is for an area of land greater than 50 ha, the duration of the lease exceeds 10 years or the land will be used for agricultural purposes outside a designated area, it must be referred to the Minister of Lands for written approval. If the leasehold application is approved by the Land Board, it must set a lease fee, based on the particular use for which the leasehold was approved, the value of any improvements on the land, the size of the land, and the period of the lease. Provision is made for the Land Board to use external expertise in order to make a valuation. Once a lease is approved, the Board must enter the details into a register and must issue a certificate of leasehold to the holder. The leaseholder must then enter into a deed of leasehold with the Board.

2.1.2 Environmental responsibilities

There are no provisions in the Communal Land Reform Act or the accompanying regulations that place any specific responsibility on CLBs to take environmental issues into account when allocating land or leases. There is, however a general responsibility for CLBs to adhere to the national Environmental Assessment Policy (RoN 1994), which describes the activities for which environmental assessments should be carried out. In addition, the regulations to the Communal Land Reform Act (RoN 2003) do place a responsibility on any person holding a customary land right or right of leasehold to manage land in accordance with the Soil Conservation Act, (No. 76 of 1969). Under the Act land holders must prevent soil erosion or any disturbance of the soil which creates conditions which
could lead to erosion or pollution of water by silt or drift sand. If land held under a customary right or leasehold is being used in a way that causes soil erosion the Chief, Traditional Authority or the Land Board may, in consultation with the Minister of Agriculture, suspend or cancel that right or leasehold. The regulations also refer to the need to protect pastoral resources under the Soil Conservation Act, but do not place any responsibility on Traditional Authorities or Land Boards to enforce this. At present, however, the Soil Conservation Act is not well enforced and is somewhat in abeyance. According to the Director of Agricultural Extension and Engineering Services, Mr Stony Steenkamp, the Ministry of Agriculture, Water and Forestry (MAWF), is planning to review and update the Act as it is South African legislation that applied to Namibia before independence.

The Communal Land Reform Act requires CLBs to take into account any management or utilisation plans developed by conservancies (see next subsection), and may not grant a lease for a purpose that would defeat the purpose of such plans. Conservancies, as indicated above, should also be represented on land boards. No provision is made for similar community-based natural resource management institutions such as community forest committees to be represented on land boards.

2.2 Conservancies

Communal area conservancies in Namibia are institutional mechanisms to enable group management of natural resources in a sustainable manner to provide a range of benefits for conservancy members. There are 44 registered communal area conservancies covering more than 10.5 million ha. Conservancies cover a range of habitats from desert and semi-desert in the west, to broadleaf woodland, riverine forests and floodplains in the north east.

Communal area conservancies are established under the Nature Conservation Amendment Act, 1996 (No. 5 of 1996). According to the Act any group of persons residing on communal land may apply to the Minister of Environment and Tourism to have the area they inhabit or part of that area declared a conservancy. The Minister will declare a conservancy in the Government Gazette if:

i. the community applying has elected a representative committee and supplied the names of the committee members
ii. the community has agreed upon a legal constitution, which provides for the sustainable management and utilisation of game in the conservancy
iii. the conservancy committee has the ability to manage funds
iv. the conservancy committee has an approved method for the equitable distribution to members of the community of benefits derived from the consumptive and non-consumptive use of game in the conservancy.
v. the community has defined the boundaries of the geographic area of the conservancy

vi. the area concerned is not subject to any lease or is not a proclaimed game reserve or nature reserve.

Once a conservancy has been declared in the Government Gazette the Act gives the conservancy committee, on behalf of the community in the conservancy, "rights and duties" with regard to the consumptive and non-consumptive use and sustainable management of game "in order to enable the members of such community to derive benefits from such use and management" (RoN 1996).

Regulations to the Act give more precise definition to certain issues relating to the formation of conservancies. For example, the regulations specify certain issues which must be covered by the Conservancy Constitution.

2.3 Community Forests

Community Forests are established under the Forestry Act (No. 12 of 2001). According to the Act (RoN 2001 Section 15):

"The Minister may, with the consent of the chief or traditional authority for an area which is part of communal land or such other authority which is authorized to grant rights over that communal land enter into a written agreement with any body which the Minister reasonably believes represents the interests of the persons who have rights over that communal land and is willing to and able to manage that communal land as a community forest"

The written agreement with the Minister is the main mechanism by which rights to use forest resources are afforded to the community forest. However, these rights are further defined by a management plan which must be included in the agreement.

The agreement shall (RoN 2001 Section 15):

i. Identify the geographical boundaries of the proposed community forest

ii. Include a management plan for the proposed community forest

iii. Confer rights, subject to the management plan, to manage and use forest produce and other natural resources of the forest, to graze animals and to authorize others to exercise those rights and to collect and retain fees and impose conditions for the use of forest produce or natural resources.

iv. Appoint the body which is party to the written agreement to be the management authority to manage the community forest in accordance with the management plan

v. Provide for equal use of the forest and equal access to the forest produce by members of the communal land where the forest is situated
vi. Provide for adequate reinvestment of the revenues of the forest and for the equitable use or distribution of the surplus.

More details about the functioning of community forests are provided in the Community Forestry Guidelines published by the MAWF. Although the legislation does not require a community forest to have a constitution, the development of a constitution for the community forestry management body is one of the steps in formation of the community forest detailed in the Guidelines (MAWF 2005).

The Forest Act implies that a community forest may not be approved by government without the endorsement of the relevant Regional Land Board as it requires the "consent of the chief or traditional authority for an area which is part of communal land or such other authority which is authorized to grant rights over that communal land" [RoN 2001 Section 15 (1)]. The Guidelines make it clear that before applying for recognition as a community forest, the community must "get an opinion from the Communal Land Board for establishing a Community Forest" (MAWF 2005: 33).

The responsibility for forestry was previously with the Ministry of Environment and Tourism, but the Directorate of Forestry was moved to the Ministry of Agriculture in 2005.

2.4 Interface between conservancies/community forests and land boards

There are a number of areas of interface between land boards and conservancies and community forests. As indicated above, the Communal Land Reform Act makes provision for conservancies to be represented on CLBs, giving conservancies an opportunity to ensure that their interests are taken into account in land board decision-making. Further, the legislation provides that CLBs must take into account conservancy management and utilisation plans in granting leases and must not grant a lease if the land use under the lease would defeat the objects of the conservancy management and utilisation plan. This provision gives a clear indication that government views wildlife and tourism as important land uses in their own right and that conservancy rights must be recognised when other land uses are being proposed in a conservancy area. This is particularly important where conservancies set land aside specifically for tourism and wildlife and need to protect these zoned areas from outsiders using that land for other purposes.

Apart from these specific provisions regarding conservancies in the Act, there are several ways in which the operation of CLBs impacts on conservancies. The conservancy legislation is intended to provide conservancies with a form of concession right over tourism on communal land. The intention is that conservancies should have the right to operate lodges and associated activities within the conservancy. Where conservancies do not have the capital and
capacity to develop and operate tourism facilities and activities they should have right to enter into contracts with the private sector. This approach was in operation before the introduction of CLBs. Under the Communal Land Reform Act, Land Boards allocate leases for various land uses including tourism. Potentially a CLB could issue a tourism lease within an emerging conservancy, or even within an existing conservancy, directly to the private sector rather than to the conservancy in contradiction to the intentions of the conservancy legislation. Such an action would considerably undermine the position of conservancies, create tenure uncertainty regarding tourism activities, remove income generating opportunities for communities and undermine the intentions of the Nature Conservation Amendment Act (No. 5 of 1996). Under Namibia’s CBNRM approach, the income from wildlife-based tourism is one of the incentives for communities to manage their wildlife and other natural resources sustainably.

Further, CLBs could potentially set lease fees that make it difficult for tourism enterprises in conservancies to generate sufficient income to cover the lease fee and income for the private operator as well as the conservancy, thus providing a disincentive for investment in tourism in communal areas. According to Kakujaha-Matundu et al (2004) Cabinet has approved set lease fees depending on the size of the land, but lease fees for lodges and hotels will be determined according to the income projections contained in the business proposal or feasibility study for the enterprise. Rental fees for shops and other businesses are as follows:

1-1000 sq. m: N$735.00 per annum.
1000-2000 sq.m: N$1103.00 per annum.
2000 sq.m. plus: N$1469.00 per annum.

Neither conservancies nor community forests pay rentals, unless they take out a lease for land in their own name. Since 2002 CLBs across the country have approved a total of 688 leaseholds, with most of these being approved in 2005, and a total of 17 Permissions to Occupy have been converted into leaseholds (MLR 2005a). Most leaseholds in 2005 were approved in Caprivi (402), Oshikoto (150) and Kavango (76).

The limit of 50ha for a tourism lease contained in the Regulations that accompany the Communal Land Reform Act is a constraint to conservancies. The ability of conservancies to enforce their own zoning of land and to protect their tourism and wildlife activities against other land uses could be strengthened if they could take out a lease over their zoned areas, or indeed over the whole conservancy area. If conservancies could be granted a lease over the whole area, they would gain the security of tenure and degree of control over the land regarded by most analysts as a pre-requisite for sustainable land and resource

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1 The situation described here has occurred at least once in the Kunene Region. See sub-section 5.2.

Similar issues can be identified regarding the **interface between community forests and CLBs**. There are some legal provisions that help to determine the relationship between the two sets of institutions. For example a community forest cannot be approved without the recommendation of the relevant Regional Land Board. However, as in the case of conservancies, the actions of the CLBs can either support or undermine the activities of community forests. The allocation of leases for agricultural schemes could have considerable impact on forest vegetation and the local management of forest resources. As with conservancies, there is a need for CLBs to be aware of the management plans of community forests and to take these into account when allocating land for various purposes. The Communal Land Reform Act, while making provision for the management plans of conservancies to be taken into account in decision-making by the CLBs does not contain a similar provision regarding community forests.

3. Environmental concerns involving CLBs and the role of MET in land-related issues

This section considers the environmental concerns involving Communal Land Boards and the role of MET in land-related issues as identified in a number of recent reports on land boards and land reform.

3.1 Environmental concerns involving CLBs

The allocation of land for various purposes by CLBs clearly has the potential to impact on the environment in a number of ways. Decisions could result in conflicting land uses being approved for the same area of land, and inappropriate land uses could be approved that have detrimental effects for the environment. These negative effects could include a loss of biodiversity through habitat change, and land degradation. One of the key issues for CLBs is ensuring that their decisions are in tune with local, regional and national land use plans, and that these decisions take into account relevant social, economic, environmental and cultural considerations. The Permanent Technical Team (PTT) on Land Reform has identified an **institutional vacuum in the coordination of land use planning and land reform** (PTT 2004a:24-25) and this vacuum leaves CLBs without clear direction. The PTT suggests that the Land Use and Environmental Boards (LUEBs) proposed under the National Land Policy should be established as soon as possible in order to provide appropriate coordination of land related issues and activities (PTT 2004a:25). The PTT has also identified shortcomings with regard to the CLBs’ ability to ensure the sustainable management of natural resources:
"In most cases, members of the land boards do not live close to their communities and are unable to enforce good management of shared resources. Community members appear to believe that responsibility for sustainable management of resources has been taken away from the community and handed to the land boards" (PTT 2004a: 111).

As a result of this situation, in its main body of recommendations, the PTT calls for the clarification of the role of land boards with regard to development planning and natural resource management at community level, particularly with regard to conservancies and community forests (PTT 2004b:21). The Permanent Technical Team was also concerned that the Communal Land Reform Act and Regulations only focus on agricultural land uses and that "other forms of land use, such as conservancies, are not included" in the specified land uses for which applications for rights can be made (PTT 2004b:50). The team suggested that conservancies should be included "to encourage more integrated natural resource management at community level".

A number of documents make reference to a lack of capacity of land boards (PTT 2004a and 2004b, Kakujaha-Matundu et al 2004, MLR 2005a). The main problems mentioned are:

- A lack of funding for sitting allowances and field investigations, resulting in allocations being delayed because investigations could not be carried out, or because the land boards do not meet for long periods
- A lack of adequate office space for administrative functions and holding of registers and records
- A lack of adequate transport, resulting in postponement of investigations
- A lack of adequate communications equipment including computers, printers, photocopiers, fax machines, workshop equipment etc.
- A lack of land measurement equipment, Global Positioning System (GPS) technology or field equipment for camping
- A lack of information such as access to a regional information data base, land use plans, tourism plans etc.
- A lack of understanding by members of their functions
- Illiteracy among some members (particularly Traditional Authority representatives) or unfamiliarity with English (the language of official documents, legislation, land use plans etc.)

Collectively these problems negatively affect the ability of the Land Boards to function effectively and efficiently. This list of problems suggests that Land Boards are not able to take decisions based on good information about the suitability of land for specific purposes and in accordance with existing development and land use plans. The generally poor capacity of land Boards to function effectively is highly likely to affect their capacity to take decisions that adequately take into account environmental considerations. It should be noted, however, that as a result of the capacity assessment, the MLR is working to
improve the effectiveness of land boards. The training recommendations of the Capacity Assessment do not focus much on environmental issues. They do however, recommend that Land Board members should gain a better understanding of the socio-economic, historico-cultural and environmental background to their regions (p.37). The team also noted that the Legal Assistance Centre (LAC) had intended to develop a manual on all relevant environmental and land management legislation (p.41), but this was awaiting the completion of a government review of environmental laws and the passing of draft legislation.

A national conference to propose amendments to the Communal Land Reform Act was held in November 2005. Among the resolutions made by the conference were some that relate to conservancies and environmental issues (MLR 2005b):

- Where there is more than one conservancy in a region and distances are great and communications poor, then there should be one conservancy representative on a land board for every three conservancies within the region (p.16).
- The Act should be amended to provide that any development project such as lodges, roads, dams, etc. should be subject to an Environmental Impact Assessment (EIA) on request from the CLB to the developers (p.17).
- Any community-based organisations such as a conservancy, women’s or farmers’ group, or community development which has a leasehold right should be able to sub-lease to an investor/developer on certain conditions provided by the CLB. Relevant sections of the Regulations should be amended to make provision for the CLBs to make such conditions (p.18.).
- The application forms for leasehold rights should be amended to provide for the name of a legal entity such as a conservancy to be included not just of individuals (p.19).

3.2 The role of MET in land-related issues

The team carrying out the Capacity Assessment of Land Boards in Namibia carried out in mid-2004 (Kakujaha-Matundu et al 2004) interviewed land board members across the country. Of the MAWF and MET representatives interviewed, all but one had no clarity on their roles and duties on the Land Board (p.17). The team also found that the commitment of the line ministries represented on land boards (including MET) was "questionable" due to CLB activities taking up too much time of ministry representatives, a lack of a separate budget to fund CLB activities of ministry representatives and a general lack of coordination (p.17).
The team made specific suggestions regarding the technical personnel on CLBs (p.38): that technical personnel such as MET members needed to be able to call in the relevant technical departments in their own ministries where appropriate (e.g. MET representatives would need to refer to specialist staff dealing with EIAs when necessary); and line Ministry representatives needed training in communal land management systems as well as in inter-ministerial cooperation and coordination.

4. Experiences of MET and Conservancy CLB Representatives and other stakeholders

This section presents the views of MET and Conservancy Land Board representatives and other stakeholders involved with CLBs regarding the performance of the Land Boards on environmental issues. See Annex 2 for a list of the persons consulted and Annex 3 for the checklists of questions used to carry out the interviews.

4.1 General performance of the CLBs

Most MET and conservancy representatives on land boards that were interviewed were positive towards the CLBs. A number of respondents pointed out the importance of the land boards in allocating land and believe that the land boards are useful new institutions. One conservancy representative said “the Land Board as it is now is a good model for land administration and allocation. It is done by people who know the area and who are in a better position to allocate and manage land in accordance with people’s wishes.” Nearly all respondents however, noted general constraints to the operation of land boards which reduce their effectiveness. These problems and constraints are similar to those identified in the land board capacity assessment by Kakuja-Matundu et al (2004) and are as follows:

- Lack of proper office space and facilities to store records and documents
- Lack of transport
- Lack of administrative support from MLR
- Lack of funding to pay for field investigations (transport costs as well as subsistence)
- Insufficient funds for the general operation of the land board
- Lack of camping gear for field investigations
- Meetings postponed because of lack of funds or lack of quorum, causing a backlog of issues to deal with
- Lack of sufficient technical/legal knowledge among members to deal adequately with some issues (including EIAs)
- Traditional Authorities (TAs) still issue leasehold rights without involving the land board, TA representatives on CLBs are unclear of their roles, and
some are unable to read English well and many need proceedings to be translated into their local language.

- Problems for some MET staff in fulfilling CLB obligations especially for senior staff who have to coordinate a region and do not have enough time to carry out their ministry responsibilities and give attention to CLB activities as well.
- Lack of sufficient understanding of business principles to set realistic lease fees, particularly for tourism developments

Issues mentioned by individual MET members included:

- Lack of sufficient background information on which to base decisions (e.g. copies of existing regional land use plans, tourism plans, or maps and details of existing projects and developments).
- Lack of enforcement of CLB decisions and of the Communal Land Reform Act, particularly over fencing; the role of the police in enforcement needs clarifying
- Lack of information on the legislation and roles of CLBs for members to do their work properly

Representatives of stakeholder organisations interviewed have varying degrees of contact with land boards. The representative from the MLR has the most contact, although mainly through reports and discussions with CLB members. Others, such as the Legal Assistance Centre (LAC) have been involved in training CLBs or interact with CLBs or the MLR institutionally such as the MET headquarters staff. Stakeholder organisations noted the following general problems with the operation of CLBs:

- Poor technical background of CLB members in interpreting the legislation and understanding regional plans
- Conflict between CLBs and TAs and the need for roles to be better understood
- Lack of funding, leading to a lack of effectiveness
- Lack of legal and other technical support
- A lack of capacity to understand project business plans (e.g. for tourism lodges)

Issues raised by individual stakeholder representatives are:

- Line Ministries need to include CLB activities in their workplans, they sometimes don’t participate in field investigations
- CLBs often hand out the wrong forms for a particular type of application, causing delays
- CLB members cannot easily read maps or relate what they see on one map (e.g. of a conservancy) to what they see on another.
CLBs are removed from the communities they serve and more community input is needed in decision-making.

In summary, MET and Conservancy CLB representatives as well as other stakeholders agree that in order to be more effective and efficient CLBs need better facilities, access to relevant information, further training on roles and responsibilities and interpretation of the legislation, adequate budgets, and stronger legal and technical understanding and support.

4.2 Performance of the CLBs in relation to environmental issues, Conservancies and Community Forests

MET and conservancy representatives mostly believe that CLBs give sufficient attention to environmental issues, that there are few conflicts with conservancies or community forests over land use issues and few negative impacts of CLB decisions on the environment. They attribute this to their own interventions in meetings where they point out the need for an EIA or the environmental implications of a proposed activity. However, one conservancy representative pointed out that in his land board decisions had been taken that negatively affected a conservancy when neither he nor the MET representative were present. Some MET representatives also confirmed that if they were not present then the CLB was unlikely to take environmental considerations into account. Other MET representatives said the Land Board would delay its decision until the MET representative was present, or had commented on the application.

Some MET representatives believe they have good support from headquarters but one gave an example of requesting guidance from headquarters on a particular application and receiving no response. He said there needed to be a focal person in MET whom MET CLB representatives could approach for guidance and assistance. Another said there was a need for proper written guidelines from MET on what to look for in applications to the CLB. One MET representative said there were examples in his region where developers had not gone ahead because they had to bear the cost of an EIA themselves and where the CLB had approved projects without an EIA being carried out.

Some MET representatives noted that the lack of relevant documents meant that CLB decisions could negatively affect conservancies or community forests. One representative pointed out for example that his Land Board did not have maps of the conservancy or community forest areas.

Representatives of stakeholder organisations identified the following issues:

- Poor technical background of CLB members for understanding EIAs
- Lack of coordination or congruence between conservancy management plans and other regional development plans
CLBS don’t adequately consider the impact of applications on other land uses or potential land uses. They are not considering the optimum land uses for specific areas of land.

There is a need for an overall land use planning mechanism that coordinates across sectors and provides a framework for CLB decision making.

CLBS are not aware of regional land use plans commissioned by MLR.

CLBS are not aware of community forest boundaries.

Poor enforcement of the Communal Land Reform Act over fencing and dual grazing which leads to additional pressure on common grazing areas.

Community Forests should also be represented on Land Boards.

In regions where there are many conservancies there should be more than one conservancy representative on a land board.

CLBs should give more attention to promoting sustainable agricultural practises, particularly the control of livestock numbers and conservation farming and drought mitigation.

CLBs need greater awareness of CBNRM and how conservancies work.

Most stakeholder representatives emphasised the need for CLBs to understand environmental constraints to certain land uses in different regions and the need to promote the optimum use of land. CLB members need to know which land uses can provide the best economic returns in which circumstances. They felt that MET staff also needed greater awareness and training to help them support CLBs in understanding environmental constraints and their implications for various types of land use and to avoid allowing inappropriate land uses in important ecosystems (e.g., wetlands). There is a need for more strategic and integrated planning of land uses as well as the recognition of other forms of land use such as wildlife, tourism, and forestry and not just livestock and crop growing.

5. Environmental dimensions of CLB decisions

This section analyses the environmental dimensions of CLB decisions based on the data presented so far from documents and the results of the interviews. It also considers some examples and cases studies of land board decisions affecting conservancies and community forests.

5.1 Ways in which CLB decisions impact on the environment and on conservancies/community forests

The general impression gained from the interviews conducted and documents reviewed is that land board decisions do not currently have significant negative effects on the environment in terms of land degradation or biodiversity loss. The main activities of the CLBs consist of confirming existing or allocating new
customary rights to land (mostly for residential and crop farming purposes), and allocating leasehold rights for land under 50ha. Where applications are for land in excess of 50ha the application has to be referred to the Minister of Lands and Resettlement for a final decision. This means that land boards do not have the final say over allocating land for large agricultural projects for example.

It was beyond the scope of this consultancy to carry out any detailed field research on the impacts of CLB decisions on the environment and therefore the views of the respondents could not be “ground truthed”. One issue of future concern could be the cumulative effect of deforestation caused by new customary rights being awarded for crop growing land in the north-central and north-eastern areas. Mendelsohn and el Obeid (2003) found that land cleared for cultivation in Kavango Region had increased at about 4% annually over the past 60 years and that the clearing of woodland and extent of cultivation in the Okavango River Valley had led to a decline in soil fertility and a decline in the availability of wild fruits and other plant products. In some northern areas farmers practise shifting cultivation and clear new fields once the fertility of the old fields has begun to decline. Land boards need to be able to keep track of the amount of land cleared for crop growing and the amount of land available for common grazing in order to make balanced decisions in future.

Another cause for future concern could be the allocation of leasehold for large-scale farms. Mendelsohn and el Obeid (2003) showed that by the end of 2002 some 270 large-scale farms had been designated for individual farmers in the Kavango Region covering more than 1.1 million ha or just under 25% of the whole region. These farms range from 2 500 to 8 100 ha in size. While there are some potential advantages to establishing large-scale farms of this nature, there are also disadvantages. These include the loss of access to land by poor people with few other livelihood options, and increased pressure on the remaining common grazing land. Land Boards need to consider carefully the social and environmental costs and benefits of allocating large-scale farms to individuals. They also need to consider the areas best suited to allocating such farms and areas best suited for other forms of land use (see the example of farms allocated close to the Kaudom Game Reserve in the next sub-section).

Probably the biggest constraint to CLBs taking environmentally friendly decisions is the lack of an overall land-use planning framework that considers the optimum use of land according to its environmental characteristics and associated economic potential. Some NGOs and government programmes such as community forests and conservancies promote local level land use planning, but these plans are rarely endorsed by other authorities. Even where they are, they are rarely referred to when land-related decisions are made unless someone with specific knowledge is available to point out the possible conflicts. There needs to be a systematised process that is part of a broader decision-making framework that does not rely on the presence of a particular individual.
In general, it can also be concluded from the interviews carried out that CLBs do not have major negative effects on conservancies and community forests. MET and conservancy representatives on the CLBs believe they are doing a good job of bringing issues of potential conflict to the attention of the land boards. They also indicate that land boards mostly heed their advice. There are however, examples of some land boards taking decisions which negatively effect conservancies or community forests, or had the potential to do so until the consequences of the decision could be pointed out. These examples are considered in the next sub-section.

5.2 Case studies

Kaudom Game Reserve and leasehold farms

Some of the farms designated for individual farmers in Kavango Region form a large block of land to the west of the Kaudom Game Reserve and the allocation of the land has been approved by the land board. The land was originally designated by the Gciriku Land and Farming Committee and has been incorporated as part of the Small-scale Commercial Farming scheme of the MLR. The farms will be 2 500 ha in size and allocated to individuals under leasehold rights. The game reserve is unfenced and there is considerable movement of wildlife (particularly of elephant) westward along drainage lines (omurambas) during the wet season. There is thus considerable potential for increased human-wildlife conflict in this area including the destruction of crops and infrastructure by elephants and livestock losses to predators. Further, the allocation of this land as farms considerably diminishes the opportunity to develop economically viable wildlife and tourism enterprises using the Kaudom Game Reserve as a core wildlife area and tourism attraction. According to a consultant’s report on unutilised land suitable for small-scale commercial farming in Kavango (IDC 2002) another block of land has been designated for commercial farming to the north east of the Kaudom Game Reserve and along the Botswana border. This area of land is adjacent to the Muduva Nyangana registered conservancy and adjacent to an emerging conservancy. It is possible that part of Muduva Nyangana falls within this designated commercial farming area. There is a need for the MLR, the Kavango Regional Land Board and the relevant tribal authorities to update their information on land uses in these areas and refer to this information in their decision-making.

Massida Community Forest and Small-scale Farms

In March 2005 members of the emerging Massida Community Forest about 60 km west of Katima Mulilo in Caprivi Region discovered people surveying land around their villages. The villagers asked the Directorate of Forestry (DoF) what was happening. They were suspicious that their land would be allocated to
outsiders or wealthy influential people from Caprivi. DoF and technical advisers from DED (the German Development Service) made enquiries with the governor and the tribal authority (TA). After some time it emerged that the TA had requested the MLR to develop the area for small-scale commercial farming a few years before. However, when the TA had given its endorsement for the planned community forest, it had not recognised the potential land use conflicts. Further, it appears as if the Regional Land Board had also approved the designation of the area for commercial farms. Through the DoF the villagers took up the issue with the TA, CLB and MLR and so far no development of small-scale commercial farms has taken place in the area, although the issue has not been formally resolved.

CLBs and conservancies in Kunene Region

Land Board decisions in Kunene Region have had mixed impacts on conservancies. In some cases the impacts have been negative. Ehirovipuka Conservancy had identified a site for lodge development some years ago and applied for the leasehold over the site. It had an investor interested in developing a lodge at that site. However, the land board found it difficult to set a lease fee and took more than a year to respond to the conservancy application. Further, the conservancy wanted the lease in its name, but the land board was unsure how to proceed because the issue of sub-leasing is not covered by the legislation. After some time, the land board did agree to give the lease to the conservancy and allowed it to enter into a sub-lease with the conservancy.

In another case, the land board approved an application for a leasehold for a lodge in a conservancy at a meeting at which neither the MET representative nor the conservancy representative were present. Further, the land board had not consulted the conservancy management plan before making its decision. It was subsequently pointed out to the land board that the leasehold should have been in the hands of the conservancy and the lodge owner should have negotiated with the conservancy to provide benefits for the community. However, the land board felt it could not reverse its decision. As a result, the NGO working with the conservancy had to encourage the lodge owner to contact the conservancy, cooperate with it and negotiate a benefit-sharing deal.

When it first began operating the Kunene Land Board was not clear on the provision of the legislation requiring it to take a conservancy’s management plan into account when issuing leases and wanted to vote on whether it would refer to conservancy management plans. The Conservancy representative on the land board had to explain the provision in the legislation and persuade the land board to implement it properly.

In other cases, the land board has acted in favour of the conservancy and in closer conformity to its legal responsibility to take into account the conservancy
management plan. In Puros Conservancy, for example, the land board did refer to the Conservancy management plan and rejected an application for a residential site in the conservancy’s tourism and wildlife zone and in an area for which the conservancy had applied for a lease for a lodge development. The Kunene land board has also been responsive to the need to carry out an EIA before a lease for a tourism lodge can be issued. An investor began constructing a lodge near the Doros Crater on land between the Uibasen, Doro Nawas and Sorri-Sorri conservancies. When it was pointed out to the land board that the investor did not have a lease, the land board halted the development. It told the investor that he could not continue until he met the land board requirements which included an EIA.

6. Capacity building and sensitisation needs

6.1 Capacity building and sensitisation needs for all CLB members

While most respondents believe that the Land Boards are useful and important institutions, there is also a consensus that the members lack much of the technical knowledge and support to carry out their functions effectively. There is also consensus that more attention needs to be given to providing a better framework and clear procedures for land boards to deal with environmental issues. The following are the main areas identified by respondents as the capacity building and sensitisation needs for all CLB members:

- Interpretation of the Communal Land Reform Act: for incoming members as well as refresher courses for existing members
- Roles and responsibilities of different institutions (CLB, TA, line ministries, conservancies/community forests, Regional Council, MLR etc.)
- Information on and interpretation of other relevant sectoral legislation (e.g. conservancy, community forest, water point, fisheries and Traditional Authority legislation and the national EIA policy)
- Understanding of broad environmental principles and issues such as land degradation and deforestation, environmental constraints to development in semi-arid and arid lands, and the need to promote appropriate land uses and sustainable land management practices
- Understanding of the need for an EIA, when it should be conducted and how to review it/who to access to assist with review
- Understanding of basic strategic and land use planning principles
- Information and documentation on all regional development plans and projects, including maps
- Awareness of the principles behind conservancies and community forests so TA members can understand the aims and objectives of these approaches
- Basic understanding of business principles so that members can better evaluate a proposal for a lease for an enterprise and be in a better
position to set a realistic lease fee that neither undervalues the lease nor is too high for the nature of the business.

- Conflict resolution/mediation
- Reading and interpretation of maps

6.2 Training and capacity building activities for MET and conservancy members

The following are the main capacity building activities suggested by respondents for MET officials and conservancy members:

- Training on development issues (e.g. awareness of local development needs and potential environmental links) so MET officials can incorporate development issues in their conservation agenda
- MET staff also need training on EIA
- MET staff need guidelines (from HQ) on role in land board, how to deal with specific issues, who to contact in HQ for support
- MET and conservancy representatives on all CLBs should hold a joint meeting nationally as soon as possible to agree on joint goals and objectives, discuss areas of mutual support, agree on how to cooperate in dealing with land board issues, identify problems, information needs, etc.

6.3 Frameworks and processes

In order for training of land board members to be really effective, the members need the appropriate frameworks and processes within which to apply new skills or knowledge. In some cases these frameworks are lacking. The following have been identified during the course of this study:

Information and documentation

CLB members need to be trained to interpret maps and to understand the principles behind planning documents, but then they also need to have access to the information and data itself. The following are some of the basic information requirements of each land board which will assist them to take environmentally sustainable decisions:

- Maps – for example of regional soil quality, rainfall distribution, population distribution, infrastructure, important eco-systems and biodiversity hotspots, protected areas, conservancies (including zoned areas for wildlife and tourism), community forests (existing and emerging), existing and planned developments (e.g. large agricultural schemes), areas designated for small-scale commercial farming, etc.
- Documents – all existing regional land use and development plans, tourism plans, conservancy management plans, community forest management plans, proposed developments of line ministries (e.g. Green
Scheme, small-scale commercial farming, proposed protected areas etc.), and copies of all relevant legislation. A set of all such documentation should be held by all CLBs for reference when making decisions\(^2\).

**A land use planning framework**

The land boards need to allocate land within a broader land use planning framework at regional and national level. This framework needs to incorporate local level land use planning, as carried out by entities such as conservancies and community forests. However, there also need to be regional land use plans that reflect regional priorities and provide an overall framework for local plans. Some respondents have suggested that there need to be specific institutions to provide this overall framework. Some have suggested regional land use associations and others, such as the PTT have referred to the Land Use and Environmental Boards (LUEBs) provided for in the National Land Policy (RoN 1998). According to the policy, a national-level LUEB should ensure that land-use planning, land administration, land development and environmental protection are promoted and coordinated on a national and regional basis to guarantee environmental, social and economic sustainability. The policy envisages the establishment of Regional Land Use and Environmental Boards and that land boards would play a role in ensuring environmental sustainability: "Failure to maintain such sustainable use, or the infliction of any other environmental damage, will be cause for Land Boards to cancel a title, in consultation with the Regional Land Use and Environmental Board and with the approval of the Minister (RoN 1998:16). So far neither a national nor regional LUEBs have been established, nor have criteria been established by which land boards could recommend the cancellation of a title on environmental grounds.

MLR should work closely with MET to identify the key elements of an overall land use planning framework and prioritise the establishment of the LUEBs\(^3\). The two Ministries, along with the MAWF also need to clarify some key issues raised by the National Land Policy regarding tenure and use of natural resources. For example, the land policy states that tenure rights allocated according to the policy will include all renewable natural resources on the land such as wildlife, tourist attractions, fish, water, forest resources and vegetation for grazing, subject to sustainable utilisation and the details of sectoral policy (RoN 1998). There is thus a need to review sectoral policy and legislation and harmonise this as far as possible with this provision of the National Land Policy. Further, the land policy provides that tenure rights allocated according to the policy and land legislation will be exclusive, and that enforcement of this will be supported by law. At the same time the policy encourages the sharing of land and natural resources to

\(^2\) Many of these maps and documents and much of the data required by CLBs already exists but is located in a number of different ministries and organizations. It could be collated and consolidated relatively easily.

\(^3\) Support for developing such a framework could be considered by the GEF-funded Country Pilot Partnership for Integrated Sustainable Land Management (CPP-ISLM) project which will be implemented by MET, MLR and MAWF.
mutual benefit between neighbours particularly in times of drought. There is a need to develop clear guidelines for how these provisions can be put into practice, particularly regarding exclusive group tenure rights over common grazing land.

Processes and procedures in MET and MLR

Both MET and MLR need to develop some clear processes and procedures that can support land boards to make environmentally sustainable decisions.

MET needs to recognise the importance of land board decisions and their potential environmental impacts and/or impacts on community-based conservation activities. In order to provide support to land boards and MET and conservancy representatives on the CLBs, there needs to be a focal person in MET who can coordinate (not necessarily carry out) the following:

- Guidance and technical support to MET and conservancy representatives in fulfilling their roles on CLBs
- Support in reviewing EIAs or accessing suitably qualified persons to carry out reviews (see below)
- Liaison with the MLR (e.g. informing MLR on emerging and existing conservancies including provision of up to date maps, gaining information on MLR projects such as the small-scale commercial farming scheme, supporting MLR in considering environmental issues for leaseholds above 50 ha)
- Ensuring that conservancies lodge their management plans with the CLBs (coordination with the MET CBNRM Support Division and with NGOs), including working with CLBs to establish what information the land boards would like to receive from conservancies

MET and MLR should agree a set of procedures for CLBs to deal with EIAs, which could be incorporated in the regulations accompanying the Environmental Management and Assessment Bill that will put into effect the National Environmental Assessment Policy. For example:

- The principle outlined in the National Environmental Assessment Policy that the proponent pays, should be applied.
- CLBs should receive clear guidelines on what level of EIA is required for a specific type of project. E.g. most lodges do not need a full EIA, but would need a scoping exercise to identify key issues and then the development of an Environmental Management Plan (EMP) which should guide design, construction and operation of the lodge. This process would be much cheaper (about N$20 0004) than a full EIA and affordable for lodge developers.

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✓ CLBs should have a manual on what is required and should be able to inform project proponents on what needs to be done and approximate costs.

✓ It is perhaps unrealistic for CLBs to be expected to review an EIA, particularly if it is for a large project. However, they should be aware of who can be asked to do this. Currently there is some capacity within the DEA in MET to do this, but this capacity could be strengthened. Other organisations that could do this include the Southern African Institute for Environmental Assessment (SAIEA), based in Windhoek.

✓ Once the EIA/EMP has been reviewed, the results should be conveyed to the CLB which would then inform the proponent of any need for revisions.

SAIEA has training modules that could easily be adapted for land boards and could put together a 4-day training course on EIA and EMP for the CLB members. This would also include a package of materials to help the CLBs in applying EIAs or EMPs in practice.

CLBs are required to get approval from the Minister of Lands for leaseholds above 50ha in size. This means that the MLR will scrutinise the application and make a recommendation to the Minister for a decision. The implications of this procedure are that MLR officials will also need to be sensitive to possible environmental concerns in such an application. Most applications for areas more than 50 ha in size are likely to be for agricultural projects and would involve clearing of vegetation. There is a need for capacity building of MLR officials who deal with such applications so that they are in a position to recognise environmental concerns and take the necessary steps to address them, if this has not already happened at the land board level.

7. Conclusions and recommendations

7.1 Conclusions

The overall conclusion of this report is that although land board decisions currently do not have major negative impacts on the environment or on conservancies and community forests, there is still much that can be done to ensure that CLB decisions promote environmental sustainability.

The main areas of strength from an environmental perspective are that MET and conservancies are represented on land boards and are able to use their technical knowledge and understanding of community-based approaches to conservation to influence land board decisions. There is a growing awareness among CLBs of the need to consider environmental issues and of the need for environmental assessments to be carried out for particular projects. There is less awareness among land board members of land use planning principles, and the need to promote land uses that are appropriate to the land capability given environmental
constraints. There is also less awareness of the value of land uses other than livestock and crop farming.

In order for land boards to promote environmental sustainability, there needs to be a more systematised approach to dealing with environmental issues. There is a need for a clear land use planning framework as envisaged by the National Land Policy that can provide guidelines for CLBs in considering land allocations for particular uses. Land Boards need guidelines and procedures for applying and dealing with EIAs. Clear responsibilities and procedures for supporting land boards in dealing with environmental issues need to be established in the MET. Systems need to be developed in MLR for ensuring that environmental considerations are taken into account when land boards refer decisions to the Minister. All land board officials need a basic understanding of environmental issues, of land use planning principles, and of the potential economic returns from different land uses so that this knowledge can be institutionalised and does not remain the domain of individuals from one sector. Land boards need the information and documentation that can assist them to make good decisions. Further the general weak capacity of land boards due to financial issues, lack of equipment and lack of facilities also needs to be addressed to improve their overall performance, which will also positively impact decisions that affect the environment.

7.2 Recommendations for strengthening environmental considerations in the administration of communal land

The previous sections have provided detailed suggestions for supporting land boards to promote environmentally sustainable decision-making. The following recommendations summarise the key areas of support with regard to environmental issues that have emerged from this study:

- Develop a systematised approach to environmental decision-making by Land Boards, which links CLBs to broader land use planning systems, and includes developing clear procedures and guidelines for addressing environmental issues at land board level and within MLR:
  - MLR, MET and MAWF should initiate a joint process to identify the key elements of national and regional land use planning systems, and to clarify the roles of key stakeholders in such a system. The aim should be to develop a coordinated planning system that encompasses land-use planning, physical planning and development planning as well as clear procedures for taking environmental considerations into account.
  - MLR, supported by MET and MAWF should develop TOR for a national and regional LUEBs and establish these boards as a priority in order to administer and coordinate national and regional land use planning systems
• MLR, MET and MAWF should as a priority share and regularly update all land use plans and information (e.g. areas designated for small-scale commercial farming, emerging and existing conservancies and community forests, planned agricultural schemes, etc.). This information should be used to coordinate planning at national level and should also be made available to land boards.

• MLR and MET should develop clear steps and guidelines for CLBs to deal with environmental issues (e.g. what steps to take regarding specific types of application, how to deal with an EIA and allocating responsibility to specific agencies for specific actions)

• MLR should work with MET and MAWF to identify the steps needed to harmonise sectoral legislation with the National Land Policy and identify steps required to implement the natural resource tenure provisions of the policy

• The recommendations concerning conservancies and environmental issues of the 2005 conference to propose amendments to the Communal Land Reform Act should be implemented. In addition, representatives of community forests should also be included in the Act as mandatory members of CLBs in the same way as representatives of conservancies.

• MET and MLR should adopt a joint formal policy decision that leases for tourism lodges in conservancies should be taken out by the conservancy and not the private operator. This policy decision should be signed by the Permanent Secretaries of these ministries and issued in writing to land boards and appropriate officials.

➢ Develop the capacity of the MET and MLR to provide increased and improved technical support to land boards on environmental issues:

• MET should appoint a focal person to deal with land and related issues who can coordinate guidance and technical support to MET and conservancy CLB representatives, liaise regularly on land issues with the MLR and ensuring conservancies lodge their management plans with the CLBs

• Build the capacity of relevant MLR officials to identify key environmental issues related to land board decisions (including for applications above 50 ha) and to take the appropriate steps to ensure environmental issues are taken into account in decision-making at all levels

• Develop checklists for land boards and MLR officials to ensure that appropriate criteria are applied and appropriate steps are taken

➢ Develop training programmes for land board members that cover basic land use planning, map reading and interpretation, basic environmental principles, economic potential of different land uses, EIAs and EMPs, other relevant sectoral legislation, and principles of CBNRM (including community forests):
• Training should include short courses as well as the development of manuals setting out clear steps and procedures for dealing with environmental issues

➢ Provide land boards with the appropriate data, documentation and maps that will enable them to make informed decisions:
  • Provide CLBs with all relevant climate, land capability and environmental data\(^5\) along with copies of all existing development plans (agricultural, tourism, small-scale commercial farming schemes, Green Scheme etc.)
  • Ensure that CLBs have appropriate filing and storage space and systems to enable them to easily access data, documents and maps.

In addition, the following are the main recommendations for CLB members when considering applications for land rights:

✓ Consider the possible cumulative environmental effects of land clearing and the need to maintain some patches of natural vegetation even in agricultural areas, particularly in important habitats such as riverine vegetation
✓ Consider the possible social and environmental effects (e.g. greater poverty leading to greater pressure on common resources) of allocating large pieces of communal land to individuals or to large agricultural schemes
✓ Consider the best possible economic uses of areas of land (e.g. is it best suited for livestock, wildlife/tourism, harvesting of forest resources, or cultivation?)
✓ Refer to existing development plans such as tourism plans, regional development plans, etc. to see if the application fits in with existing proposals and plans for using the land
✓ Apply the appropriate level of EIA to each development (e.g. apply the Environmental Management Plan approach to tourism lodge development rather than a full EIA)
✓ Ensure that project proponents have sufficient information about the scope of EIA/EMP required
✓ Ensure that leases for major tourism activities such as lodges are not given directly to the private sector in a conservancy
✓ Refer to the conservancy/community forest management plans when making allocations within a conservancy/community forest or consult the conservancy/community forest if such a plan has not yet been developed
✓ Ensure that lease fees for lodges in conservancies are realistically set so that they do not act as a disincentive for tourism development (bearing in mind that the lodge owner/operator has to share income also with the conservancy)

\(^5\) E.g. where regional environmental profiles exist such as for Caprivi, Kavango, etc., key data could be summarized in a short two-page document for easy reference by CLB members
References


Annex 1.
Terms of Reference

Terms of Reference for Consultancy

PROMOTING ENVIRONMENTALLY SOUND DECISION-MAKING OF COMMUNAL LAND BOARDS

1. BACKGROUND

Within the focal area of "Natural Resources Management and Rural Development" the German Government provides support to strengthening the management capacity of Namibian institutions in the land, water, biodiversity and environment sectors. This support includes a technical assistance project through GTZ which aims at strengthening MET’s technical and organizational capacity to plan and implement integrated sustainable natural resource management. One component under this project seeks to reinforce MET’s role as a service provider supporting environmentally sound land use planning and land use decisions.

2. CONTEXT OF THE ASSIGNMENT

Communal Land Boards (CLBs) are institutions initiated three years ago under the Communal Land Reform Act (2002) in order to improve the system of land tenure in communal areas. They are responsible for the allocation and administration of communal land rights by:

- controlling the allocation and cancellation of customary land rights by chiefs and/or traditional authorities;
- deciding applications for leasehold rights;
- creating and maintaining registers for the allocation, transfer, cancellation of customary land rights and rights of leasehold; and
- mediating land disputes between individuals and/or communities; and
- advising the Minister of Lands and Resettlement on regulations to be made to meet the objectives of the Act.

CLBs have been established via the Ministry of Lands and Resettlement (MLR) in 12 regions. The boards act in cooperation with traditional authorities, regional governments, farmers’ unions, communal conservancies and also have representation of MLR, MAWF and MET for technical inputs on land, water and natural resources issues. The first 3 year term of CLB members is about to expire in March 2006, when new members will be nominated by their respective organizations and confirmed by the MLR.

The decisions of CLBs might (positively or negatively) affect the environment, have implications for biodiversity conservation, land degradation, and Community Based Natural Resources Management (CBNRM) Schemes, e.g.

- Communal conservancies enable rural communities to gain control over, and benefit from sustainable management of natural resources, especially from game and tourism in declared areas. Currently about 44 conservancies with 51,815 registered members are in operation. They cover about 1/3 of all communal land
in 9 regions (see Annex A). Conservancies might be negatively affected by CLB decisions, if leases (e.g. for the operation of lodges) are allocated that undermine conservancy management plans or income generation activities through sustainable natural resource management, tourism, trophy hunting etc. In the case of emerging conservancies or a conservancy which has not yet formulated a 'management and utilization plan', the CLBs might 'pre-empt' conservancy resource management planning through the act of allocating leases. The same applies to emerging communal forest schemes that allow for rural communities to control and manage forest products and other natural resources and benefit financially from their sustainable utilization.

- The allocation of land rights and leases in areas adjacent to protected areas might lead to increases in human-wildlife conflicts.
- The notion of under-utilized or virgin communal land and its development into small scale commercial farming units needs to be assessed carefully. Some of the land might be left fallow to allow for a restoration of soil fertility; other areas are to be proclaimed as conservancy or community forest.
- Other environmental dimensions in the CLBs' work might be related to:
  - fencing in communal areas;
  - different processes of regional development and land use planning;
  - land allocation decisions leading to unsustainable land use schemes (overgrazing, pollution, water scarcity etc.)
  - the Environmental Management and Assessment Bill which is likely to be enacted in 2006, etc.

Representatives of MET and communal conservancies have a key role to play to ensure that environmental and CBNRM concerns receive adequate attention in CLB decisions. Their technical and communication capacities therefore need to be strengthened. In March 2006 new members will begin to work on the CLBs, and some of the experiences of former members might be lost.

3. OBJECTIVE

The objectives of the consultancy are to

- capture and document the experiences of representatives of MET, conservancies (and communal forests) in CLBs,
- identify, describe and categorize the environmental dimensions of CLB decisions - ideally based on real cases,
- identify capacity building needs and sensitization issues for all CLB members, and propose specific training and capacity building activities for MET and conservancy representatives,
- identify critical issues beyond the CLBs' control which affect the environmental sustainability of their decisions.

The results of this study will be presented in the "National Induction Conference for New Communal Land Board Members and Staff" which is planned for 07th – 12th May 2006. The workshop will be organized by the Division of Land Boards, Tenure and Advice of the Ministry of Lands and Resettlement.
4. TASKS OF THE CONSULTANTS

The study will be carried out by a team of consultants:

Consultant 1 with specific knowledge of communal land boards
Consultant 2 with expertise in environmental issues and the CBNRM programme

Tasks of the team

4.1 Review relevant documents [such as the “Recommendations of the Permanent Technical Team (PTT) on Land Reform” (2006), the Operational Manual for CLBs (2005); the Capacity Assessment of CLBs (2004), Proceedings of the Workshop on “Loopholes in the Communal Land Reform Act”] and synthesize the needs mentioned and recommendations given with regard to environmental input and MET’s role.

4.2 Conduct (telephone) interviews with MET and conservancy representatives on the CLBs (see Annex B) in order to document their experiences:
- How did they perceive their role in the CLBs?
- Do they think that some of the decisions taken by the CLBs had positive or negative effects, e.g. on CBNRM, regarding human-wildlife conflict, environmental degradation or biodiversity conservation?
- What did they do to integrate environmental considerations into CLBs’ decision-making?
- What difficulties did they face (e.g. operational or procedural issues, lack of information etc.)?
- What kind of needs for training and support do they articulate?

4.3 Identify and describe real cases, where CLB decisions had a positive or negative impact on the environment and CBNRM. If interesting cases can be identified based on the first round of (telephone) interviews, a visit to the region might be agreed upon with GTZ/MET for more in-depth analysis and interviews with selected CLB representatives.

4.4 Conduct interviews with selected key resource persons (NACSO, NNF, LAC, MLR, SAIEA, PTT) to obtain their view on the environmental dimensions in the CLBs’ work and their recommendations on how environmental considerations could be strengthened in the administration of communal land.

Tasks Consultant 1:
(Working days: 2.5 days review of documents, development interview guide and report outline; 4 days preparations, interviews in Windhoek and via telephone; 3 days report writing and presentation = 9.5 days;
Optional: up to 4 additional days for travel and interviews in one region, to be determined by supervisors)

Implementation of the above mentioned tasks, including:
- Development of interview guideline and an outline of the report in close consultation with consultant 2;
- Conduct at least four interviews jointly with consultant 2 in order to adjust the methodological approach where necessary;
- Conduct at least 8-10 additional interviews individually (interviewees might be provided with the interview guideline in advance through MET);
• Travel to visit interviewees in one region - only if interesting cases can be identified based on the first round of (telephone) interviews;
• Provide inputs and comments to the publication;
• Main responsibility for the presentation of results during the “National Induction Conference for New Communal Land Board Members”.

Tasks Consultant 2:
(Working days: 2.5 days review of documents, development interview guide and report outline; 4 days preparations, interviews in Windhoek and via telephone; 3 days report writing and presentation = 9.5 days;
Optional: up to 4 additional days for travel and interviews in one region, to be determined by supervisors)

Implementation of the above mentioned tasks, including:
• Development of interview guideline and an outline of the report in close consultation with consultant 1;
• Conduct at least four interviews jointly with consultant 1 in order to adjust the methodological approach where necessary;
• Conduct at least 8-10 additional interviews individually (interviewees might be provided with the interview guideline in advance through MET);
• Travel to visit interviewees in one region - only if interesting cases can be identified based on the first round of (telephone) interviews;
• Main responsibility for the development of the report.
• Provide inputs and comments to the presentation.

Tasks will be concretized and planned in close consultation with Sem Shikongo (MET-DEA), John Hazam (MET-DPWM) and Kirsten Probst (GTZ-Advisor to MET).

5. SUPERVISION, TIME FRAME AND REPORTING
The consultants will work under supervision of MET (Sem Shikongo) and in close cooperation with Kirsten Probst, GTZ-Advisor to MET. The consultancy will be carried out between 20th March and 12th May 2006. The consultants will present a comprehensive report in English language (max. 40 pages plus annexes; including an executive summary) to be submitted to MET. Three paper copies and an electronic copy of the report should be submitted at latest by 21st April 2006. A Power Point presentation, which includes key results and recommendations, will be prepared and presented during the “National Induction Conference for New Communal Land Board Members” planned for 07-12 May 2006.
<table>
<thead>
<tr>
<th>Community Land Boards</th>
<th>Registered [and emerging] conservancies in the region (date registered)</th>
<th>Gazetted*community forest in the region (constituency) * all were gazetted on 14/2/06</th>
<th>Protected Areas in the region</th>
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<td>Namib-Naukluft Park Hardap Game Park</td>
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<td>Karas</td>
<td>Khoa Naub (July 2003) //Gamaseb (July 2003) //Gawachab (Sept 2005)</td>
<td></td>
<td>Al-Ais Hot Springs Park Naute Recreation Resort National Diamond Coast Recreation Area; [Sperrgebiet National Park]</td>
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<td>Omaheke</td>
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Annex 2.
List of persons consulted

Dr C. Brown  Executive Director, Namibian Nature Foundation
Ms T. Garoes   Head: CBNRM Support Division, MET
Mr J. Hazam  CBNRM Advisor, MET (Living in a Finite Environment Project)
Mr J. Kasaona  Chairperson, Sesfontein Conservancy (Conservancy representative on Kunene Regional Land Board)
Mr F. Kayofoa  MAWF (former MET representative on Omusati Regional Land Board)
Mr A. Kannyainga  Chief Control Warden for North East Parks, MET (MET representative on Kavango Regional Land Board)
Ms M. Pia Louis  Secretariat Coordinator, NACSO
Mr C. Madeju  Chief Control Warden, Erongo Region, MET (MET representative, Erongo Regional Land Board)
Mr S. Mhunhu  MET (former MET representative on Hardap Regional Land Board)
Ms K. Mumba  Chairperson of Uukwaliudhi Conservancy (Conservancy representative on Omusati Regional Land Board)
Mr O. Munjanu  Programme Coordinator for Advocacy, Policy and Education, Namibia National Farmers’ Union
Ms A. Shishome  Chief Forester, North West Region, MAWF (former MET representative on Oshana Regional Land Board)
Mr A. Sikopo  Chief Development Planner, Division: Land Boards, Tenure and Advice, MLR
Mr S. Siloka  Warden, MET (MET representative on Caprivi Regional Land Board)
Mr R. Sprung  German Development Service (DED)/DoF, Programme Coordinator, Community Forestry
Mr S. Steenkamp  Director: Agricultural Extension and Engineering Services, MAWF
Dr P. Tarr  Executive Director, Southern African Institute for Environmental Assessment
Mr V Tjimune  Executive Director, Namibia National Farmers’ Union (former member of the PTT)
Mr A. Ucham  Acting Deputy Director for Southern Region, MLR (former MET representative and chair of Karas Regional Land Board)
Mr E. Xaweb  Chairperson, Tsiseb Conservancy (Conservancy representative on Erongo Regional Land Board)
Annex 3.
Checklists of questions for interviews

CHECKLIST OF QUESTIONS
A. For Conservancy/MET Representatives

Introduction
Good day. My Name is ...................., I am contracted by the GTZ/MET to undertake a study on how to improve services/support to and input of Conservancy/MET Reps on CLBs. And also to look at possible training and support needs by Conservancy/MET representatives and other CLB members so as to enable them to make environmentally sound decisions.

<table>
<thead>
<tr>
<th>Date of interview</th>
<th>Land Board:</th>
<th>Male/Female</th>
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<tbody>
<tr>
<td></td>
<td>MET Rep/Conservancy Rep/Forest Rep</td>
<td>Conservancy/Forest</td>
</tr>
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BACKGROUND INFORMATION

a. In which year were you first appointed to this Land Board?

b. Please describe your work as a member of the Land Board

______________________________________________________________

c. Apart from being a Land Board member, what is your other occupation (e.g., farmer, businessman, teacher, priest etc.)

                                           _______________________________________________________

d. State any other work experience that you may have

                                           _______________________________________________________

e. State your level of formal education

    (a) Tertiary
    (b) Secondary
    (c) Primary
    (d) No formal education

For MET Reps

f. What are your other functions and responsibilities within MET

g. Can you state your time commitment between MET duties and responsibilities and that of CLB. In other words do you regard your CLB activities as fulltime? In short where do your allegiance lie?
h. Do you receive enough support (material and financial) from your supervisors in MET for your CLB activities/duties?

i. If your duties and responsibilities within MET have hindered your participation in CLB activities, what would you like change to see so as to internalise CLB activities into your official MET duties and responsibilities.

PRECEPTIONS ABOUT LAND BOARDS/CONSERVANCY MANAGEMENT PLANS/CBNRM

6. How did you perceive your role in the CLB?

7. What is your perception about the CLB in general i.e., how do you feel about the performance of the CLB? What were the problems?

8. What level of attention is given to environmental issues (land degradation, loss of biodiversity etc) in the CLBs? What issues did arise and how were they dealt with.

9. How are environmental issues perceived in the CLB?

10. Were your CLB clear as to what it wanted/expected from Conservancies and MET in terms of information e.g., EIAs, Management Plans etc. to enable them to make certain decisions.

CLB DECISION-MAKING IMPACT ON CBNRM/CONSERVANCY REPS/MET REP

11. Are there certain decisions taken by CLBs that you think have positive effects on conservation in general and conservancies in particular? If so please mention some.

12. What decisions have been taken by CLBs which had a negative or bad effect/s on your work as a Conservancy/MET Representative on the CLB or conservation efforts in general?

13. What other decisions have been taken by CLB, which you think have or could lead to environmental degradation or other environmental problems?

14. In practice how do CLB go about when allocating land? Are you aware of any instances where CLB practice deviates from legislation (CLRAAct)?

15. What is the process that is followed when looking at environmental dimensions to be considered in their decision-making? What information do they look for (EIAs, Conservation plans, regional plans)?
16. Can you comment on the working relationship CBRNM Reps and MET reps. Similarly what is the interaction between CLB and other stakeholders e.g., Regional Government, Traditional Authorities, MAWRD, Forestry etc.

CONFLICTS

17. Are you aware of any instances in the working of/decisions made by the CLB which you could regard as conflicting with conservation efforts by Conservancy/MET? For example allocation of land which is reserved or earmarked as a conservancy or community forest. If yes, please mention those instances.

18. Any suggestions as to minimize this type of conflict in land allocation?

CONSTRAINTS/OPPORTUNITIES

19. What other ‘things’ in the CLB make your working as a Conservancy/MET representative difficult?

20. Which ‘things’, that are happening in the CLB do you think are good for CBNRM/Conservancy Rep/MET Rep?

21. What did you as a CBNRM/MET representative do to bring those issues that affects conservation efforts negatively to the attention of CLB or to make it part of the CLB decision-making?

22. What other things beside action from fellow members on the CLB have hindered your smooth operation for example, are there any operational/procedural issues which you think have been the cause of some problems experienced by the CBNRM representatives?

TRAINING AND SUPPORT

23. Should you need some more information to enable you to carry out your work as a Conservancy/MET representative on CLB, what could that have been? Mention some examples.

24. Do you think there are areas in which you will need some training? If yes please mention them and tell us how that will assist you in carrying out your duties.

25. What training would you suggest for other CLB members?

26. What other support would you need and from whom?
OTHER CONCERNS

27. Do you have suggestions on improving representation/communication of Conservancy/MET reps on CLBs?

28. Please tell us anything that is on your mind that we have left out. Anything at all...

CHECKLIST OF QUESTIONS

B. FOR INSTITUTIONS

Introduction

Good day. My Name is .................., I am contracted by the GTZ/MET to undertake a study on how to improve services/support to and input of Conservancy/MET Reps on CLBs. And also to look at possible training and support needs by Conservancy/MET representatives and other CLB members so as to enable them to make environmentally sound decisions.

<table>
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<tr>
<th>Date of interview</th>
<th>Institution</th>
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<th>Official’s Name</th>
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Questions

1. What is the nature of your contact with CLBs/Conservancies/CBNRM? Do you have or have you had any direct contact or work closely with them
   - CLB
   - CBNRM/Conservancy

2. What is your perception about CLBs vis-à-vis environmental issues or CBNRM efforts?

3. What would you consider as the strengths and weaknesses of CLBs re CBNRM?

4. What would you consider as the key environmental considerations that should be the focus of CLBs?

5. What would you regard as challenges and opportunities for CLBs in making sound environmental decisions?

6. Are you aware of any direct conflict between CBNRM/Conservancies and CLB arising from the decisions taken by the latter?

7. In your opinion what training would be needed for CBNRM representatives and MET representatives on CLB and also for other members of CLBs to sensitize them re environmental issues?
   - CLB
• CBNRM/Conservancy
• MET Representatives

8. What other support is needed for both CBNRM representatives and the whole CLB?
• CLB
• CBNRM/Conservancy Reps

9. Any other comment you would like to make?

10. Are aware of any instances where CLB practice deviates from legislation (CLRAct)?