

**CBNRM Support Programme  
Occasional Paper No. 4**

# **CBNRM and Legal Rights to Resources in Botswana**

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## **IUCN/SNV CBNRM Support Programme**

The Community Based Natural Resource Management Support Programme is a joint initiative by SNV Botswana and IUCN Botswana. It is built on SNV's experience in CBNRM pilot projects at the grassroots level and on IUCN's expertise in information sharing, documentation of project approaches, and establishing dialogue between Non-Governmental Organisations, Government and private sector on a national, regional and international level. The three main objectives of the programme are: 1) to establish a focal point for CBNRM in Botswana through support to the Botswana Community Based Organisation Network (BOCOBONET); 2) to make an inventory of and further develop CBNRM project approaches and best practices, and disseminate knowledge regarding implementation of CBNRM activities through the provision of information and technical advice to CBNRM actors; 3) to improve dialogue and co-ordination between CBOs, NGOs, private sector and Government. For more information, visit the Internet on <http://www.cbnrm.bw>

# Foreword

As modern Botswana society develops and our population grows, the pressures on our natural environment grow as well. More and more innovative solutions are introduced to counteract emerging problems. These solutions include laws, regulations, policies and guidelines that are necessary for people to sustainably use the natural environment for the benefit of the current and future generations. “Ignorance of the law is no excuse”, you often hear, but the laws, regulations, policies and guidelines indicated above are often not accessible or understood by many of the people affected by them.

Community Based Natural Resources Management (CBNRM) is a good example of the above. CBNRM in Botswana has developed rapidly over the recent years and along with it a range of guidelines, policies and regulations. So much so that the CBNRM practitioners in the districts and in the communities might find it hard to keep up with the stream of policy documents in difficult to understand legal language.

With this in mind I truly support the efforts of the CBNRM Support Programme and the consultant Lin Cassidy in trying to make the legislation pertaining to CBNRM more accessible to the communities, extension staff, and everybody else interested in CBNRM in Botswana. The author has tried to make the legal language more readable, and I trust this service will be appreciated in the districts and the communities. I hasten to add that this paper is a layperson’s interpretation of the laws and policies of Botswana that affect CBNRM. It does not replace the original guidelines, policies and legislation, nor does it represent the views of the Department of Wildlife and National Parks and the Government of Botswana. The discussions below can therefore not be seen as authoritative. The reader is advised to consult the relevant Government department or a lawyer whenever necessary.

This document is the fourth in a series of Occasional Papers under the CBNRM Support Programme. The Papers intend to promote CBNRM in Botswana by documenting experiences and lessons learnt during the implementation of the concept by the practitioners in this field. Relevant CBNRM related information on legislation, planning, management, human resource development and natural resources monitoring, will assist in bringing together all stakeholders who have an interest in what the concept stands for: natural resources conservation and social and economic empowerment of rural communities. Fully informed stakeholders can understand each other’s specific opportunities, problems, roles and responsibilities and dispel feelings of mistrust due to misinterpretations of regulations and procedures or unrealistic expectations. The Series is therefore aimed at all practitioners who deal with CBNRM in Botswana, in order to provide them with information that will assist them in successfully applying the concept.

The publications will be distributed free of charge to all institutions involved in CBNRM in Botswana and to a selected readership in Southern Africa. All documents are also freely available on the website of the CBNRM Support Programme: [www.cbnrm.bw](http://www.cbnrm.bw)

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## Abbreviations

AoJ	Administration of Justice
ARB	Agricultural Resources Board
CBNRM	Community Based Natural Resources Management
CBO	Community Based Organisation
CHA	Controlled Hunting Area
CKGR	Central Kgalagadi Game Reserve
DoT	Department of Tourism
DWNP	Department of Wildlife and National Parks
MCI	Ministry of Commerce and Industry
MFDP	Ministry of Finance and Development Planning
MLHA	Ministry of Labour and Home Affairs
MoA	Ministry of Agriculture
NCSCA	National Conservation Strategy Co-ordinating Agency
NRM	Natural Resources Management
NRU	Natural Resources Use
WMA	Wildlife Management Area

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# 1. Introduction

The aim of this paper is to clarify the exact nature of rights given to communities participating in Community Based Natural Resources Management (CBNRM). It will also touch on the rights of those communities who live nearby, but who are not themselves involved. This paper should be seen as a layperson's interpretation of the laws and policies of Botswana that affect CBNRM. The discussions below should therefore not be seen as authoritative. In case of doubt, the reader is advised to consult the relevant government department or a lawyer. In addition, there are a few "grey areas" in the legislation under review, which may only be clarified when tested in court.

In order to clarify the rights behind CBNRM it is first necessary to give some basic definitions:

- **Ownership:** this term is used to express outright possession and control. It implies the ability to deny rights of any kind to outsiders, based solely on the whim of the owner.
- **User rights:** the rights to use resources in a given area, subject to any prevailing laws or conditions. User rights are either based on customary rights, or on a legal permission, such as a lease. User rights differ from ownership, because control of the resources is limited. User rights are usually understood in terms of who has such rights, and who does not. As such, user rights can allow a group or community to exclude outsiders from using resources in a particular way. It must be noted that these rights may only be for a certain kind of use. For example, a farmer may have user rights to the grazing in an area. While he may prevent others from grazing, he does not have the legal right to exclude others from harvesting veld products in that area.
- **Management rights:** management rights imply the right to make decisions regarding the functioning and running of the area for specific purposes.
- **Customary rights:** this phrase is taken to include the concept of traditional rights. This usually refers to rights of resources use, rather than ownership. Customary rights imply a sense of history – i.e. because members of a particular community have had a practice of resource use in that area, they have gained customary rights of resource use. Because the notion of community has become harder to define in Botswana, many people feel they should have customary rights, even if they have no history of resource use in a given area.
- **Legal (de jure) rights:** rights that are given according to the country's laws and regulations, or under a formal grant or permission such as a lease.
- **De Facto rights:** actual rights, in practice, "on the ground". This phrase is usually used where practices on the ground differ from the legal position. For example, while community members may still have legal rights to use other resources in the fenced-off grazing area mentioned above, they may lose their *de facto* rights to these resources because they no longer have access to them.

Currently there are several interpretations of how participating communities can control the resources in their area. Some of this confusion may be due to the unexpectedly fast development of CBNRM in Botswana. As a result, policies and laws have not been able to give participants and practitioners enough information about the relationship between management and user rights. Some people even see CBNRM as a means to secure real ownership over resources. There is also confusion because of the dual nature of CBNRM, which is both a resource conservation tool and a means of economic development.

It is important to note that this paper deals with legal rights, as intended by the lawmaker. Communities and practitioners need to be aware of the social differences that exist on the ground. These may lead to differences between these legal (*de jure*) rights, and the actual (*de facto*) rights experienced by communities and their members. Social differences are related to whether one is a man or a woman, to how a person makes a living, and to whether one is a member of one tribal group or another. These social differences can mean that people use the land and natural resources in different ways. For example, women are more likely to collect wild plants than men. People with cattle are more likely to want grass to be kept for grazing than somebody who has no livestock and gets his money from a job in town. Herero in most cases need land for grazing, while San may wish it rather to be used by wild animals that they can hunt.

Because the subject of how these social differences affect people's actual rights is so large, it will not be addressed here. Discussion will be limited to legal (*de jure*) rights only.

Ultimate responsibility over Botswana's resources falls to Government. Different resources are the responsibility of different Ministries and Departments. The laws and policies affecting

CBNRM are all linked to specific bodies within Government. The relevant Government Departments are mentioned in table 1 below as well as the laws and policies that will be reviewed later in this document.

Table 1: Government Bodies Responsible for the Administration of Relevant Policies and Laws

Agency Responsible	Policies				Laws		
<b>Ministry of Commerce and Industry (MCI)</b>							
Department of Wildlife and National Parks (DWNP)	Wildlife Conservation Policy	Joint Venture Guidelines	Minimum Conditions Savingram	Draft CBNRM Policy (now Draft Joint CBNRM Policy)	Wildlife Conservation and National Parks Act	National Parks and Game Reserve Regulations	Draft WMA Regulations
Department of Tourism (DoT)	Tourism Policy				Tourism Act	Tourism Regulations	
<b>Ministry of Agriculture (MoA)</b>							
General	National Policy on Agricultural Development						
Agricultural Resources Board (ARB)	Draft National Policy on the Use and Management of Natural Resources (now Draft Joint CBNRM Policy)				Agricultural Resources Conservation Act	Herbage Preservation Act	
Forestry Division					Forest Act (under revision)		
Fisheries Division					Fish Protection Act		
National Conservation Strategy Co-ordinating Agency (NCSCA)	National Policy on Natural Resources Conservation and Development						
<b>Ministry of Local Government and Housing (MLGLH)*</b>							
Land Boards					Tribal Land Act		
Department of Lands					State Land Act		
<b>Ministry of Finance and Development Planning (MFDP)</b>							
Rural Development Co-ordinating Committee	Community-based Strategy for Rural Development						
<b>Ministry of Labour and Home Affairs (MLHA)</b>							
National Museum					Monuments and Relics Act		
Admin. of Justice (AoJ)					Common Law and Customary Law		

\*This Ministry has recently been split into two: the Ministry of Local Government, under which Councils fall; and the Ministry of Lands and Housing which houses the Land Boards and the Department of Lands. The original Ministry is listed here as the policies and laws were developed when it was a single body.

## 2. The Origin of CBNRM in Botswana

In order to understand why the rights given under CBNRM are as they are, it helps to look at the origin of CBNRM in Botswana. Botswana is one of very few countries where most of the land is still communal. However, the growing human and livestock populations are increasingly putting pressure on resources. In recent years resources use has fallen beyond the control of the chief or his representative. Use of natural resources has become individualised, with each individual seeking to maximise his or her own share. As a farmer in the Okavango settlement of Habu once put it: "Communal area means that nobody has to ask anybody" (Bendsen & Gelmroth, 1983).

The need to avoid problems associated with this "tragedy of the commons" led the Government to embark on a major land use planning exercise. One of the fundamental aims of this planning was to reintroduce management of natural resources. In this process, Government also acknowledged that some communities were negatively affected by their environment, particularly wildlife. In order for such communities to want to conserve and protect their environment, they must feel the benefits of its resources.

This is an important point to be made about CBNRM in Botswana. In its conceptual phase, the trigger for CBNRM was primarily conservation, rather than the need for social empowerment or economic development in rural settlements. Economic benefits were seen as a means of achieving conservation, as well as being an end in themselves. This fact becomes obvious when noting that the Ministry of Finance and Development Planning did not start CBNRM. Instead, it was first promoted by the Department of Wildlife and National Parks, and then the Department of Lands. The briefs of these two departments are the management of the wildlife resource, and land management, respectively.

However, it is the economic development and financial opportunities resulting from CBNRM that have made it so popular in Botswana. Its rapid rate of growth means that, to some extent, it has overtaken the preparation of supporting and enabling legislation. In addition, the shift of focus from a purely conservation exercise to include development has led to questions about the rights of both participating communities and those left on the fringe.

In summary, the intention of CBNRM has never been to give communities ownership over land or resources. It was to give them an incentive to manage the land and resources. Although everyone – both in and outside Government – appreciates the synergistic roles that CBNRM now has, the issue facing practitioners in Botswana is that CBNRM has grown beyond its first aim.

### 3. Land Tenure, Land Use and Ownership in Botswana

In Botswana there are three types of land: Freehold, State and Tribal. It is on Tribal Land that the issue of rights is most complicated. On Freehold Land, the owner is the only person with rights of ownership, authority and use of the land and its resources. State Land is owned by the Republic of Botswana. Simply put, it belongs to the nation, and is controlled on the nation's behalf by the Government. For both Freehold and State Land tenure, Common Law applies (see Section 5.1 below). The Government has the right at any stage to re-gazette land from one type of tenure to another.

Tribal Land is communally owned. The exact details of what this ownership means in terms of the Tribal Land Act are given in Section 5.3 below. On Tribal Land, either Customary or Common Law can apply, depending on the identity and status of people involved. On both State Land and Tribal Land, rights to use an area and its resources are given through a lease. The primary tool in defining and allocating rights to communities is the (draft) Natural Resources Management (NRM) Lease. The lease is attached as an appendix, and is discussed in detail in Section 6.

While land tenure defines ownership over land and resources, land use defines how land and resources can be used. Defining land use in Botswana is a process of study, planning and consultation. All districts have compiled overall District Land use Plans. The resulting "National Landuse Map" (March 1996) differentiates between the following land use categories:

- National Parks
- Game and Forest Reserves
- TGLP Ranches
- Freehold Farms
- Leasehold Farms
- Wildlife Management Areas (WMAs)
- Proposed WMAs
- Pastoral/Arable/Residential (often called "communal grazing areas")
- Commercial Arable Block

In most cases, the District Authorities and Government have approved the Land use plans. In these instances the different "land owners" (the Land Board, representing the "Tribe" and the Department of Lands, representing the State) agreed on how to divide the land over different land uses. In some cases land use plans or parts thereof have been made law. For example: the 3 Wildlife Management Areas in Ghanzi District have been gazetted (made law) under the Wildlife Conservation and National Parks Act Of 1992. Boundaries and the overall use of the land are defined and cannot change easily, except by following procedures that are laid down in the relevant Act.

In terms of CBNRM there are 3 land use options that are most relevant because they contain natural resources for potential (co-) management by communities: Wildlife Management Areas (WMAs), communal grazing areas and National Parks and Reserves. The 3 land use options are mentioned in the table below to see to what extent customary rights would apply under the 3 types of land tenure.

Table 2: Matrix Showing Land Tenure vs. Land Use in Terms of Customary Rights

	Freehold Land	State Land	Tribal Land
Wildlife Management Areas (WMAs)	Does not exist.  Customary rights of access and Natural Resources Use (NRU) would not apply.	Customary rights of access and NRU apply – based on historic practices.	Customary rights of access and NRU apply.  The community's authority to exclude outsiders (in terms of CBNRM) is determined by the terms and conditions of the (draft) lease. Further control may be gained through the draft WMA regulations.
Communal grazing areas	Customary rights of access and NRU would not apply.	Does not exist.  Customary rights of access and NRU would not apply.	Customary rights of access and NRU apply.  The community's authority to exclude outsiders (in terms of CBNRM) is determined by the terms and conditions of the (draft) lease.

Reserve / Park areas	Customary rights of access and NRU do not apply.	Customary rights of access and NRU apply – based on historic practices.	Moremi (NG/28) and Khutse (KW/3) are the only Game Reserves on tribal land. No communities have been given NRU rights for these areas.
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### 3.1 Tribal Land and Customary Resource Rights in Botswana

Before looking at the rights of a community involved in CBNRM, it is first important to outline what the rights of the ordinary citizen are. It is generally accepted that every citizen has rights to traditional subsistence use of natural resources on Tribal Land in Botswana (see the Tribal Land Act at Section 5.3 below). Historically, subsistence use was done not only by individuals, but also collectively by the community under the organisation and management of the chief or headman. More recently, subsistence use has largely only taken place on an individual level. Collective management practices have gradually been disappearing.

To some extent, traditional use has come to mean subsistence use. Commercial use is seen as being non-traditional. This means that in order for customary rights to be respected, it is necessary to define these levels of use. The distinction between subsistence and commercial use is not clear-cut. There is always a grey area, and what may be seen as subsistence in one situation could be seen as commercial in another. This is because traditional subsistence use has often involved trade or exchange of goods.

The fact that all citizens already have rights to subsistence use of resources is also important for those communities wishing to become involved in CBNRM for subsistence purposes. Although, as noted above, recently subsistence use has taken place mainly at an individual level, this was not always the case. As long as they do not break any laws, there is nothing to stop community members from co-ordinating their subsistence use of resources as has been done in the past. For example, the community could discuss and agree on when and where to harvest thatching grass each year. They could put together grass-cutting trips and pool transport.

Text Box 1: Subsistence vs. Commercial Use

<p><b><u>Subsistence Use</u></b> This refers to use of a resource directly by the person collecting it. It can sometimes also include the trade of the resource collected – if the trade is not for profit, but for something that the harvester uses directly. Subsistence use usually allows people to keep the same standard of living they have. Subsistence use has come to be equated with traditional or customary use. This means harvesting using traditional methods.</p> <p><b><u>Commercial Use</u></b> Use of a resource is considered to be commercial when it is carried out at a level that allows a profit to be made. Commercial use often leads to an increase in the standard of living of people, because they are able to get more for the resource than they put into collecting it. In addition, any harvesting using non-traditional methods is viewed as commercial. This would include, for example, access by motor vehicle, or the use of guns or petrol-powered tools. Commercial utilisation of natural resources falls outside the definition of customary law, and as such cannot be said to be a customary right. Commercial utilisation of natural resources is bound by common law.</p> <p><b><u>How These Different Uses Affect CBNRM Rights</u></b> The point at which the traditional use of natural resources becomes a commercial activity is important both legally and for management purposes (refer to the important section 2.3 of the NRM lease attached to this document). However, because the range between pure subsistence use and commercial use is broad and complex, the definition of this point will vary from case to case.</p> <p>Communities are increasingly taking over management of resource use. This means that they will have to make sure that any harvesting of resources is sustainable – whether the harvesting is for subsistence or commercial purposes. In practice, the exact point at which traditional use becomes commercial does not have to be defined immediately. The distinction is better left flexible, to be judged (case by case) by the relevant Land Authority .</p>
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Adapted from Murray-Hudson *et al*, 1994.

At present the policy and regulations on CBNRM in Botswana are more concerned with the shift from subsistence to commercial use, and less with a move from individual to group usage. Since subsistence rights already exist, a lease is not necessary to secure such rights. (The function of the lease is discussed further in Section 6 below). However, it must be remembered that subsistence use is still bound by the laws of the country.

The discussion of customary rights above needs to be put in its legal context: customary rights should not imply an unregulated free-for-all, whether by one person or by a community. Rights only exist within the boundaries of our laws. For example, while every

citizen has the right to hunt, this can only be done with a licence that states where, when and what species. Ultimately, such licensing will be extended to affect some key plant resources that also need more management to ensure their sustainability.

Specific details of the existing laws surrounding natural resources use are outlined in Section 5.

### **3.2 Tribal Land and the Concept of Community**

In CBNRM, a community is seen as a group of people who are bound together by interests in shared natural resources. For the sake of convenience, community has normally come to mean settlement. Because of geographic location, the settlement is usually the practical level at which natural resources are shared. Where settlements are relatively close together, they may share their natural resources, and for CBNRM purposes, may be seen as one community. In some cases, however, there are such big differences in the way some members of a settlement use natural resources, that in fact one settlement may include several communities.

It is also useful to look at what “community” means with regard to tribal land. Originally, Tribal Land belonged to the dominant tribe in a given area. This tribe, through its Land Board, held the land in trust for its members (including any groups that had been included into the tribe for administrative purposes). Distribution of land was meant to be mainly to members of the tribe. However, in 1993 the Tribal Land Act was amended to remove any tribal distinctions. This gives all citizens equal access to any Tribal Land in Botswana.

One way of viewing this change is that it has effectively made the nation equal to the “community” with regard to Tribal Land. To some extent Government sees settlements or groups of settlements as subsets of the larger Botswana “super-community”. For that reason some Government policy makers feel it is not acceptable to give outright land and resources to a small section of this “super-community”, so that the rest of it loses rights to the resources. The view is that if some settlements are to gain extra rights and benefits, they must pay for these (hence the need for a legally binding resource lease, and the payment of a rental and resource royalty). This would be in keeping with the existing situation regarding leases given to individuals. Individuals granted exclusive rights are also charged lease rentals.

## 4. Policies Supporting CBNRM

Policies are official statements reflecting the development tasks that Government undertakes to do. They state the aims and objectives that Government hopes to achieve in a certain area of development. Policies are important because, once accepted, they form the framework for any related laws. The laws must be in agreement with the objectives of the policy. Policies shape laws, and shape development in the country.

Policies generally do not give rules that control what ordinary citizens can do. Instead, they serve as a guide for decision-making for Government officials. Policies are often a first step in the formation of a legal act or law, which does control the actions of ordinary citizens. While policies may not be legally binding over ordinary citizens, they can affect what Government allows people to do.

For example, a CBO may decide not to follow the Joint Venture Guidelines, and simply find its own safari partner without tendering. Government cannot take the CBO to court, but it can decide not to give a hunting quota or a lease to the CBO (using the right of the relevant Minister to make such decisions).

However, there may be a case where a CBO already has a lease and a hunting quota. This CBO then decides to enter into a partnership that Government does not accept. It is not the policies or guidelines that Government uses to stop this partnership, instead it is the NRM Lease or one of the Acts (see Section 5 below).

Text Box 2: An Effect of Policy on Resource Rights

### How Government Policies Can Affect the Rights of a Community

A good example of how policies can affect people's rights is shown in Khwai.

#### The Khwai Community

The Khwai community has been identified as the beneficiaries of NG/18 and NG/19. The community has formed a Quota Management Committee, and receives the hunting quota for NG/18. Nearly all of the community are San (Basarwa) and this factor has influenced how the community sees its participation in CBNRM.

#### Interpretation of Policy

One of the main principles found in most of the Government documents supporting CBNRM, is that of equity and fair representation. The Khwai CBO's constitution stated that to be a member, one had to be San. The Khwai community felt that in order to protect themselves from outsiders who could dominate their project, they needed this clause. However, Government felt that to make distinctions on ethnic grounds was not equity.

#### The Use of Policy to Sanction

Government staff followed policy and guidelines (e.g. the 1995 Savingram as mentioned in section 4.6 below), and said that Khwai had not followed all the procedures correctly. They did not take the community or CBO to court. Instead, they have withheld the allocation of a lease until they were satisfied that the CBO is representative and equitable.

Not all people agree that Khwai was doing something unfair in trying to protect itself, particularly since San have a history of marginalisation in Botswana. However, Government's focus tends to be at the level of the nation (the "super-community") and it is from this perspective that they act.

Government is still in the process of drawing up its CBNRM Policy. This document is still in its draft form. There are other documents, which support development based on sustainable natural resources use. These documents, and the draft Policy, are described in brief below. The Rural Development Policy is currently under extensive review. Although it is not included here, it is likely to be an important supporting document.

The table below presents a summary of the policies examined in this paper. Each column represents a particular land tenure and land use, showing relevant community areas (see Section 5.4 for a description of these areas). For each area type, the applicable policies are mentioned.

Table 3: Policies Affecting Community-Use Areas According to Land Tenure and Land Use

	Park / Reserve	State Land WMA Multipurpose*	State Land WMA Photographic*	Tribal Land WMA Multipurpose*	Tribal Land WMA Photographic	Tribal Land Communal Grazing	Tribal Land Forest Reserve	State Land Forest Reserve	
Community Areas	NG/40, (parts of) GH/12	NG/41, NG/49, CT/10	CT/11	NG/4, NG/5, NG/18, NG/22, NG/32, NG/34, GH/1, GH/3, GH/10, GH/11, GH/13, KD/1, KD/2, KD/5, KD/6, KD/7, KD/12, KD/15, SO/2, KW/2, KW/4, KW/6, KW/12	NG/17, NG/19, NG/23, NG/24, NG/33	NG/1, NG/2, NG/3, NG/6, NG/12, CH/1, CH/8, SO/1, SO/3	CH/2	No community areas	
Relevant Policies	Wildlife Conservation Policy								n/a
	Tourism Policy								n/a
	National Policy on Natural Resources Conservation and Development								n/a
	Joint Venture Guidelines								n/a
	Savingram on Minimum Conditions for Communities								n/a
	Joint DWNP & ARB CBNRM Policy (Draft)								n/a
	Community Based Strategy for Rural Development								n/a

\*Including proposed WMAs which have not yet been gazetted.

#### 4.1 Wildlife Conservation Policy (No. 1 of 1986)

The Wildlife Conservation Policy gave substance to the concept of WMAs. These areas coincide with the Reserved Areas set aside in the Tribal Grazing Land Policy of 1975. The relevance of this is that most Controlled Hunting Areas (CHAs) under community management are located in WMAs. The policy states that rural development and citizen participation in wildlife utilisation are specific objectives to be followed. Through this policy Government intends to:

- create economic opportunities, jobs and income for rural Batswana in particular and the national economy as a whole;
- encourage rural dwellers to enter the cash economy, while still ensuring that game meat remains an important part of local nutrition;
- increase the responsibilities of rural Batswana with regard to conservation of natural resources.

The policy does not go as far as to mention how communities would participate in the wildlife industry, nor what the extent of their rights and responsibilities would be. The Wildlife Conservation Policy is currently under review.

Text Box 3: An Example of How Wildlife Conservation Policy Objectives are Met?

##### How Chobe Enclave Conservation Trust (CECT) Meets These Objectives?

CECT is a CBNRM organisation comprising 5 member communities: Parakurungu, Satau, Kachikau, Kavimba and Mabele. CECT is a legally registered organisation. This means it has a written constitution that states what its objectives with regard to CBNRM are. Because CECT was started as a way for its member communities to benefit from CBNRM, the objectives in its constitution are similar to those of the CBNRM policy. This is an important first step in ensuring that policy can be implemented at grass-roots level.

##### Creating Economic Opportunities

CECT is in a Joint Venture Partnership with Rann Safaris, a hunting company. The company provides jobs in its camps to community members. People are employed as professional hunters, cooks waiters, drivers and cleaners.

Community members also make curios, such as baskets and carvings, which they sell through the safari camps. This brings in cash, and gives households access to more ways of making a living.

CECT as an organisation receives very large sums of money from Rann Safaris from selling the hunting quota to them. This money is distributed to the member communities. Each community then decides on how to use its share of the money. One of the villages, Mabele, has decided to start a co-operative shop. This will make it easier for people living there to buy things that until now were only available far away. Since the owners of the shop are community members, the co-operative will also mean that income from shop sales stay in the community.

#### Game Meat Still Available

Rann Safaris sells the meat from its trophy animals in the villages, for a token price. This is meant to replace the meat the people used to get from hunting themselves. Some households complain that they used to get more meat when they hunted. However, there are many more households, such as those headed by women, or poorer families, who did not have guns or some-one to hunt. As a result, the number of families with access to game meat has increased. The token price for the meat is such that it is cheaper for people to buy the meat than to buy the license and ammunition needed for them to do their own hunting.

#### Increased Responsibility of Rural Batswana in the Conservation of Natural Resources

The Community Escort Guides are hired to make sure that hunting is carried out properly. They have to make sure that no species are shot that are not allowed to be hunted. They have to make sure that the number of animals hunted is not higher than the number given on the hunting quota.

Wild animals in Chobe Enclave continue to be a threat to people's crops and livestock. However, people now also benefit from the presence of these animals. It is easier for them to tolerate damage if they see this as a side effect of something that benefits them – wildlife means money.

## **4.2 Tourism Policy (No. 2 of 1990)**

The Tourism Policy was written in acknowledgement of tourism as an important industry that deserves attention from Government. It recognised that the potential economic benefits of tourism were not fully being realised. Tourism's role in Botswana's economy is valuable because most tourism takes place in areas where there are few alternatives.

The general objective of this policy is to obtain, on a sustainable basis, the greatest possible benefits for citizens of the country from its tourism resources. It aims to promote wildlife-based tourism as an engine of growth for the nation. Although it does not specifically mention community-based tourism, the policy does state an intention to increase the participation of citizens in the industry.

Although the policy does not specifically impact on CBNRM rights, it sets out the intended steps for proper regulation and control of the tourist industry, which would then be formalised in the Tourism Act (see section 5.5 below).

## **4.3 National Policy on Natural Resources Conservation and Development (Govt. Paper No. 1 of 1990)**

This policy has its roots in Government's acknowledgement in 1983 that in order to ensure sustainable development, a National Conservation Strategy was needed. The Strategy itself aims for proper use and management of natural resources in Botswana. The Strategy lists both Development and Conservation goals. These include such items as the diversification of the rural economy, the maintenance of renewable resources and the distribution of incomes and rewards more equitably.

The policy states specifically that both rural and urban communities are expected to benefit under the Strategy. This should be not only economically and physically, but also socially. The benefits are seen as coming through four measures:

- economic incentives and disincentives that discourage the over-use of natural resources
- laws and regulations
- improved planning
- education and training.

The policy does not specifically mention community control over resources.

## **4.4 National Policy on Agricultural Development (NO. 1 of 1991)**

This revised agricultural policy arose out of a perceived need to increase productivity from this sector. Amongst its objectives are:

- to diversify the agricultural sector to increase income opportunities
- to conserve scarce agricultural and land resources for future generations.

Part of the importance of this policy is through its aspects of forestry and range ecology. Through these activities Government aims to conserve forest and range resources. This relates to CBNRM through the common goal of encouraging responsible use of natural resources.

However, a major potential impact on CBNRM is the fencing component of the policy. Section 128 of the policy supports the recommendation that tribal grazing land be fenced. Farmers will be allowed to fence livestock farming land, even as individuals. However, there are serious concerns that such fencing will lead to *de facto* private ownership of land and resources. While the land tenure may legally still be communal, in practice, it will have become individualised, as people will no longer have access to these fenced off areas. Since most people owning sufficient livestock to warrant fencing are a wealth minority, it is the poorer majority who will lose access to land and resources that they have customarily used under communal practices. If implemented this section of the policy would pose a serious threat to community rights under CBNRM.

#### **4.5 The Joint Venture Guidelines (Revised Edition, April 1999)**

The Joint Venture Guidelines have been issued by the Department of Wildlife and National Parks. The guidelines confirm (on page 1 of the booklet), that it is resource user rights that the communities are being given. The guidelines focus on resources use as a commercial activity, and emphasise the financial value of the resources. They provide suggestions for different ways in which communities can work with the private sector. This booklet is very important because it is the most widely consulted by communities and the private sector.

The booklet has been designed to be easily understood by the communities. However, in its attempt to use straightforward English, some phrases can be misleading. For example, there are references to: “their community’s *assets*”, “the value of *their* natural resources”, “rather not share *their assets*” [own emphasis]. This could lead to some people interpreting this to mean the community has ownership of the resource.

Although the Joint Venture Guidelines do not actually use the word “commercial”, it is the right to commercial use of resources by communities that this particular document refers to. If the communities do not take on a commercial, profit-making activity, they are unlikely to enter into a Joint Venture, as without profit, the private sector would not have a reason to participate.

#### **4.6 Savingram on Minimum Conditions for Communities Seeking Hunting Quotas & Resource Leases (20 November 1995)**

This important document is more to do with community obligations than with community rights. However, it provides reference to the Wildlife Conservation Policy (1986) and the Tourism Policy of (1990) and re-states their objectives.

The obligations of the community are as follows:

- to have a *management group or entity*, that is representative and accountable
- to *meet the needs of Special Game Licence* holders in way that is acceptable to them
- to *work with District authorities* so that they can sanction the process
- to make sure their activities *conform to the District Land Use Plan* covering their area.

Through this Savingram (letter from Government) communities are given the right to give sub-leases to tour operators. However, this right must be carried out in terms of the Joint Venture Guidelines and an initial limit on the period of subletting.

How Nqwaa Khobee Xeya Trust Meets The Savingram's Minimum Conditions

Nqwaa Khobee Xeya is the CBO that co-ordinates the CBNRM activities of 3 settlements in KD/1. The area is remote, and soils, water and climate limit the number of economic options for residents. For these reasons, the CBNRM activities are seen as extremely important to the participating communities. As a result they have worked hard to satisfy the conditions for a successful project.

A Representative, Accountable Management Group

The CBO has a well-structured constitution. This document details exactly how decision-making and benefit distribution should be carried out. It uses existing social units to make sure that all sections of the community, regardless of wealth, gender or ethnicity, participate in CBNRM. Representation is based on family groups (wards) which are also linked economically. Each family group has one man and one woman to represent them.

The representatives of all the family groups in each settlement form a Settlement Committee. Each Settlement Committee then sends two men and two women from among its members to sit on the CBO Board.

Accountability at both Settlement Committee and Board level is strong. This is partly because people are elected every year and therefore have to be approved by the community. It is also because the representatives have to report back to the family groups. In addition, all meetings must be advertised well in advance. Finally, the treasurers and secretaries are obliged to keep good and open records of finances and meetings.

Meeting the needs of Special Game Licence Holders

In some settlements in Botswana the number of households with Special Game Licences were a small minority, but in KD/1 this was not the case. This means that secure access to game meat is very important across the whole community. For this reason, there has been a strong emphasis on using the hunting quota for subsistence purposes as well as for commercial purposes. This means that each year, before the CBO sells some of the quota, it needs to set some aside for the community members. The meat from commercial hunting is also made available. Distribution of meat, like any other benefit, is done across the family groups.

Working with District Authorities

Nqwaa Khobee Xeya holds regular meetings and workshops with District officials. These have included Wildlife Officers, Land Board Officers, the District Officer (Lands) and District Officer (Development). Most importantly, is that the constitution of the CBO has called for many local authorities to be ex officio members of the CBO Board. These include: the headmen of the 3 settlements, the District Councillors, and representatives from DWNP, the District Agricultural Office, the Remote Area Development Programme, Social and Community Development, Land Board and District Administration. The Village Development Committee chairman from each settlement is also automatically a Board member. This means that there is a great deal of transparency and communication between Government and the CBO.

Activities Conforming to the District Land Use Plan

The CBO has prepared its own Land Use and Management Plan for its operations in KD/1. In preparing the plan, official District documents were consulted. This has meant that zoning, infrastructure development and general land use fit into District planning. In addition, the District Authorities were consulted for advice in the Management Plan preparation. Finally, the plan was submitted to Land Board for approval.

The Savingram gives instructions to Land Boards that the leases given to communities must contain a specific condition relating to the subletting to tour operators. This condition states that, when giving a sub-lease for the first or second time, the community may only give it for a maximum of one year. When giving a sub-lease for the third time, the community may only give it for a maximum of three years. The aim of this condition was to protect the community from being locked into a bad arrangement. However, it does place a limit on the rights of communities. It stops them from being able to make long-term plans, and from attracting Joint Venture partners who are prepared to put long-term effort into the community.

Because this Savingram is not a law, it is not legally binding on the community. Technically, it is not this Savingram which stops the community from having longer subleases. It is the *NRM Lease* which gives the power to Land Boards to determine the length of subleases. The Land Boards then follow the instructions laid out in the Savingram.

The same applies to the community being obliged to have formed a "representative and accountable entity". It is not this Savingram that is legally binding on the community. It is however the Land Board or the Department of Wildlife and National Parks that will follow the instructions. In other words, in case the community "entity" (e.g. the Trust) has found to be not representative of the interests of all community members, the Land Board might decide not to extend the NRM lease or DWNP might decide not to allocate a wildlife quota for the area.

## **4.7 Joint DWNP & ARB CBNRM Policy (Revised Discussion Draft of 21 June 1999)**

The Ministry of Commerce and Industry (MCI), through DWNP, initiated the original CBNRM projects in Botswana, mainly because the wildlife resource which it controls has been viewed as the most valuable of the country's renewable assets. However, CBNRM communities immediately expressed an interest in using plant resources too. Plant resources fall under the Ministry of Agriculture (MoA) and its Agricultural Resources Board (ARB). Both Ministries realised that the growing use of natural resources would need further legal support for it to be properly managed. The draft Joint CBNRM Policy brings together two strategies that were at first being drawn up separately by MoA and MCI.

### **4.7.1 National Policy on the Use and Management of Natural Resources (Draft of 15 February 1999)**

This draft policy was prepared by the MoA to support and co-ordinate the existing Acts under its administration. This policy has, amongst others, the following objectives:

- creating of an enabling environment to support CBNRM
- co-ordinating and increasing co-operation with existing CBNRM programmes
- increasing opportunities for individuals through community organisations to derive economic benefits from the sustainable use of natural resources
- clarifying rights of tenure including natural resource management, use, access and exclusionary rights.

This policy is now part of the joint MCI/MoA CBNRM Policy, sharing its objectives and implementation strategy.

### **4.7.2 CBNRM Policy (Revised Discussion Draft of 28 October 1998)**

MCI's original draft was intended as an extension of the main Acts and policies within the Ministry, as well as the National Development Plans 7 and 8. One of its main objectives is: "to increase the proportion of benefits from *the wildlife and tourism industries* [own emphasis] that reach local citizens and communities, in particular employment, training, skills, enhancement, small- and medium-scale enterprises and investment opportunities."

The draft Joint DWNP & ARB CBNRM Policy is specifically aimed at providing a means of combining natural resources conservation with social and economic development. However, the policy appears to focus more on sustainable natural resources use than on economic development. Again, this is largely because the policy comes from Government sectors involved with resources rather than with rural development. The policy's intention is to ensure that development stays within sustainable limits. It states: "To be sustainable, a community's exercise of their natural resources *use rights* [own emphasis] should fall within the parameters of Government established land use plans, regulations, permitting and licensing requirements, and other legal instruments."

The draft CBNRM policy highlights the need to move away from open access to community managed access. The policy further states that – subject to conditions set by law, land use plans and the NRM Lease – the community may be allowed to maintain exclusive resource access. While this may appear to give the community a lot of power, the lease in fact moderates this, by obliging community leaseholders to respect traditional use.

The draft CBNRM Policy proposes changes to some of the laws affecting natural resources, particularly the Agricultural Resources Conservation Act and the Fish Protection Act. These changes will help communities to secure user rights over some resources. The changes are explained under the relevant Acts below.

The draft policy introduces the concept of a new right – that of intellectual property rights. It is the Government's intention that communities and individuals should be able to benefit from the exploitation of their traditional knowledge of the practical uses of natural resources. Intellectual property rights extend from areas such as ethno-botany to the exploration and development of genetic and chemical materials derived from natural resources. The policy suggests contract agreements with CBOs as a way of making these rights secure. It also allows for the sharing of such rights between CBOs.

## **4.8 Community Based Strategy for Rural Development (February 1997)**

The purpose of this community-based programme strategy is to expand rural economic activities and to reduce poverty. The strategy differs from most of the other policies discussed here, in that it aims to decentralise control and decision-making. However, this decentralised control is not over resources, but rather over planning and rural development projects. Where Government has final responsibility over resources, it is understandable that they may be reluctant to give up control.

The strategy is pessimistic in its assessment of the potential of the natural resources base in rural areas. Specifically, it notes that veld products are unlikely to be a significant source of income. In most cases this opinion is correct. Nevertheless, veld products can be a useful supplement to household earnings.

The strategy says that it would like to give communities the power to make decisions on development activities. However, it is unlikely that giving this decentralised decision-making to communities will extend to decisions over specific natural resources.

## 5. Laws affecting Natural Resources Utilisation in General and CBNRM in Particular

Laws are rules that control the behaviour of the members of a nation. Generally they are drawn up by a centralised authority and apply to the whole nation. The implementation and policing of laws is usually done at a more local level. In a democracy like Botswana's, the centralised authority is elected by the nation. This means that the nation gives the government the power to organise and regulate its behaviour. Laws are bound by the country's constitution. If they are seen to oppose any of the principles of the constitution, they can be challenged in court. If the nation decides it does not agree with all the laws the government makes, it has the chance to change the government by voting in a different party at a general election.

Until as recently as 50 years ago, the most common way for Botswana to make a living has been by using the country's natural resources. This has either been done by harvesting directly from the wild, or by changing it through arable and pastoral agriculture. Use of natural resources has always been controlled. Originally this was done by the chief, and more recently, it has become controlled by Acts of Parliament. The transition from the immediate, on-the-spot control of the chief to the more remote rule of a central government has coincided with a large growth in human population. This expanding population has continued to rely heavily on natural resources, all within the framework of the various laws governing the different resources.

Text Box 5: Traditional Regulation of Natural Resources in Botswana

### Historic and Customary Tswana Laws and Customs Relating to Natural Resources Use

#### Hunting rights

Any people wanting to hunt eland, gemsbok, giraffe or similar had to get permission from the Chief. If he agreed, he would notify the headman. The headman would then know who had permission to be hunting or not. If the headman were to find someone hunting, and whom he did not know had permission, he had to report this to the Chief.

There was a reservation on species – larger game belonged to the Chief. There were sometimes temporary bans on big game animals which were felt to be in danger of extermination.

The Chief could also declare a ban on hunting in certain areas.

The right to hunt did not come free: the Chief had to receive tribute. This would consist of the breast of every big game animal, lion and leopard skins, tusk of elephant, etc. Similarly, there were rules for sharing out the meat within the household.

#### Plant resources

Some trees such as *Mokgala*, *Mogonono* and *Motlopi* could not be cut in autumn – the Chief proclaimed this period of no cutting every year.

In some tribes it was an offence to burn grazing veld in the winter, when grass was scarce. Burning was meant to be done in October or November, when the first rains were due. Even then, burning had to be restricted to the man's own place of grazing - he could not let the fire drift to other areas. The Chief could also prevent any burning of a specific area at all. In addition, no burning was allowed until the Chief was satisfied that all people who needed grass or reeds had been able to collect these.

Thatching grass could not be harvested until the seeds had set, ensuring that there would be regeneration the following year. Each year, the Chief would announce that grass could now be cut.

In some tribes, the chiefs actively controlled the sale of thatching grass and firewood to non-tribe members. Controls included a limit on the amount that could be sold, as well as a maximum price per bundle. These controls were done to ensure that the resources did not get depleted too quickly.

Chiefs were also known to appoint a "grazing bailiff". It was the responsibility of this person to see that overgrazing did not occur. He had to check the condition of the veld, and make recommendations for moving livestock, or for limiting the numbers of livestock that could graze in an area.

Mainly from Schapera, 1994, but also anecdotal.

CBNRM is just one form of natural resources use. It is a preferred form, because of the intended emphasis on management, and not just consumption. Until specific CBNRM regulations are finalised, the existing laws must be used to guide how community-based organisations (CBOs) can use their resources. These laws also affect use of natural resources outside of the formal structure of a CBO. This is important for those communities wishing to co-ordinate subsistence use, and for CBOs who may have to accommodate the subsistence use of outsiders. Even when specific CBNRM regulations are in place, these will fit into the laws.

For the purposes of this paper, the laws are important because they qualify what rights citizens and communities *don't* have. It is important to remember that laws change occasionally. As noted above, some laws are being amended at the time of writing specifically because of changes in natural resources use.

The laws relevant to CBNRM are tabulated below. Different laws apply according to variations in land tenure and land use. Each (merged) column shows the laws relevant to the community CHAs based on these variations.

Table 4: Laws Affecting Community-Use Areas According to Land Tenure and Land Use

	Park / Reserve	State Land WMA Multipurpose*	State Land WMA Photographic *	Tribal Land WMA Multipurpose*	Tribal Land WMA Photographic	Tribal Land Communal Grazing	Tribal Land Forest Reserve	State Land Forest Reserve	
Community Areas	NG/40, GH/12	NG/41, NG/49, CT/10	CT/11	NG/4, NG/5, NG/18, NG/22, NG/32, NG/34, GH/1, GH/3, GH/10, GH/11, GH/13, KD/1, KD/2, KD/5, KD/6, KD/7, KD/12, KD/15, SO/2, KW/2, KW/4, KW/6, KW/12	NG/17, NG/19, NG/23, NG/24, NG/33	NG/1, NG/2, NG/3, NG/6, NG/12, CH/1, CH/8, SO/1, SO/3	CH/2	No community areas	
Relevant Laws	Common Law and Customary Law								
	State Land Act			Tribal Land Act				State Land Act	
	Wildlife Conservation and National Parks Act								
	National Parks and Game Reserve Regulations	WMA Regulations (Draft)					-	-	-
	Tourism Act								
	Agricultural Resources Conservation Act								
	Herbage Preservation Act								
	Forest Act				-	-	-	Forest Act	
	Water Act								
	-	Fish Protection Act							
	Monuments and Relics Act								

\*Including proposed WMAs, which have not yet been gazetted.

## 5.1 Common Law and Customary Law (Cap<sup>1</sup> 16:01)

Simply put, Customary Law is law that is based on historical practices. It is valid only between individuals who share the same social and cultural background. In terms of land and natural resources use, it is related to traditional rather than modern activities. Customary Law is not independent of the acts of law in Botswana. Instead, it is bound by them, as is pointed out in Section 3.1. Customary Law is administered by headmen or chiefs, with the assistance of Tribal Police. Often Customary Law is not written down, but mutually understood.

Commercial use of natural resources falls outside the definition of Customary Law. It is subject to Common Law. Common Law is the law that applies to any non-traditional grouping

<sup>1</sup> The numbers in brackets help to identify and locate the particular Act. "Cap" stands for Chapter. Each specific Act fits into a specific section, or chapter, of Botswana Law. Laws that were drawn up more recently tend to be referred to a numbered Act of a given year, rather than by a chapter number.

of people, or non-traditional activity. Any land grants given outside of Customary Law require leases. Any leases issued for commercial purposes, or issued to organisations rather than private citizens, are subject to Common Law. Common Law is administered according to centralised standards, by government officials, the national police force, and the national magistrates and judges.

The written laws of Botswana are the Common Law.

## **5.2 State Land Act (Cap 32.01)**

The State Land Act defines any land that is not tribal or freehold land, as belonging to the Republic of Botswana. It is the President, or some-one whom he has deputised, who controls rights of use and access. This could either be the District Commissioner (as in Ghanzi) or some-one specially appointed to look at a particular situation. In some cases, such as with the village of Phuduhudu in CHA NG/49, the use of land and its resources is informally sanctioned. However, the Government has the legal right to move the settlement should it need to do so. Another special case is that of the people living in Central Kgalagadi Game Reserve (GH/12). (The resources in *parks* on State Land falls under DWNP, and their regulations and authority will also apply (see Section 5.4).)

A community on State Land with commercial rights to use natural resources would have to work directly with the Department of Lands (for the lease) or other Government authorities (such as DWNP and ARB for resource rights) should they wish to control access to the area by outsiders.

## **5.3 Tribal Land Act (Cap 32:02)**

The Tribal Land Act defines *land* as including “any interest in land and anything which is either artificially or naturally attached to the land”. This is taken to mean the resources on the land, with the exception of water and minerals.

For the foreseeable future, most CBNRM activities will continue to take place on Tribal Land. The main reason for this is that there are very few settlements on State Land (e.g. Mababe, Phuduhudu). This makes the Tribal Land Act the main legal instrument through which Government and a community can proceed with securing rights under CBNRM.

In 1993 the Tribal Land Act was “detrivalised”. The word Tribesman has been replaced throughout with Citizen of Botswana. This amendment is of particular importance in Section 10. This section now shows that the land is held in trust “for the benefit and advantage of the citizens of Botswana.” It no longer gives priority to the people who live in that area.

Under the Tribal Land Act, Land Boards can grant land under Customary Law or under Common Law. Under Customary Law, only user rights can be given. In addition, this can only be for customary purposes, such as residence, arable agriculture, and to a small extent, grazing. Section 20 of the Act clearly states that land will not be granted under Customary Law for business or commercial purposes. All of the NRM Leases with the CBOs will be given under Common Law.

Part IV of the Act deals with land rights granted under Common Law. All grants under this section must be in the form of a written agreement between the Land Board and the party wanting to use the land. In the case of communities, this written agreement will be the NRM Lease. The lease will specify the rights and responsibilities of the community (see Section 6).

## **5.4 Wildlife Conservation and National Parks (Act No. 28 of 1992)**

This Act describes how wild animals can be used in all areas of Botswana. For the purposes of managing different types of wildlife use, the country has been divided up into 163 Controlled Hunting Areas (CHAs). The management of a CHA will vary according to the following factors:

- Whether it is a commercial (private) operator area, or a community area
- Whether it is a multipurpose area (both hunting and photographic tourism) or a photographic area (non-consumptive use of wildlife)
- Whether it is inside or outside a WMA
- Whether it is on State Land or on Tribal Land.

The use of wild animals depends on the CHA the animals are in. The Act puts all animals, including insects, under the control of the Department of Wildlife and National Parks. This is true for the whole country, and not only within parks and reserves. The only exception is that fish resources outside of parks and reserves fall under MoA. There are very few animals that can be used without a license. Most of these are of little food or economic importance (e.g. mongoose, mice, etc.). One that is commercially important is the *phane* worm.

In some CHAs no hunting is permitted, regardless of what the original customary rights were. Sometimes the ban on hunting is permanent, because of the kind of area it is (e.g. National Park, photographic area in a Wildlife Management Area). Sometimes it is temporary, to allow the numbers of animals to reach higher levels.

Table 5: How WMA and CHA Status Affects Community Areas?

	<b>Multipurpose CHA under Community Management</b>	<b>Photographic CHA under Community Management</b>
<b>In WMA</b>	<ul style="list-style-type: none"> <li>➤ Hunting allowed</li> <li>➤ Wildlife must be the main form of land use</li> <li>➤ draft WMA regulations increase the rights of community to control outsiders</li> </ul>	<ul style="list-style-type: none"> <li>➤ No hunting</li> <li>➤ Wildlife must be the main form of land use</li> <li>➤ draft WMA regulations increase the rights of community to control outsiders</li> </ul>
<b>Outside WMA</b>	<ul style="list-style-type: none"> <li>➤ Hunting allowed</li> <li>➤ Wildlife does not have to be the main form of land use (e.g. livestock grazing can dominate)</li> <li>➤ Greater pressure on community to respect traditional use by outsiders</li> </ul>	<ul style="list-style-type: none"> <li>➤ Does not exist</li> </ul>

#### **5.4.1 National Parks and Game Reserves Regulations (S.I. No. 28 of 2000)**

These recently issued regulations are relevant to those communities living in, or along the edge of national parks and game reserves. People living in the reserve or park (only Central Kgalagadi Game Reserve still has residents) or in designated communities next to a park or a reserve may be given the right to enter without paying a fee. This is subject to proper authorisation.

Where appropriate, community use zones may be identified. In these areas, designated communities that live in or next to a park or reserve, will be given some user rights. These user rights will be for commercial tourism, and the use of veld products. User rights will be subject to a management plan and any restriction by the Officer-in-charge. Communities may have to pay for these user rights. Specifically, designated communities within or next to a park or reserve may collect firewood in a community use zone for sale to guests at lodges or in public campsites.

Special provision is made for the subsistence hunting rights of *bona fide* CKGR residents. Such rights will be given in writing for specified animal species, and for veld products. Rights to sell any hunted animal or plant product would need further written permission.

#### **5.4.2 The WMA Regulations (Discussion Draft of 16 December 1998)**

The Wildlife Management Area (WMA) regulations are still in draft form. These regulations will affect most communities involved in CBNRM, because most community Controlled Hunting Areas (CHAs) are within WMAs.

The draft WMA Regulations establish the new way of allocating wildlife for hunting. In many CHAs, access to the right to hunt in a particular CHA has already moved from the old system of individual licenses to the allocation of the hunting quota for the CHA to a CBO (or private company). The hunting quota now includes all the animals that used to be given on Single Game Licences and Special Game Licences. (Small Game Licences and Bird Licences are not included in the quota, but the use of them is felt to be covered by the first clause of the NRM Lease.) Those communities living in WMAs are normally given the hunting quota for the particular CHA where they live, or for one nearby. The giving of a

hunting quota is not in recognition of a community's right to the animals of the area. Instead, it is in recognition of the fact that communities near wildlife are more likely to use the wildlife wisely if they stand to benefit from it.

The hunting quota gives the community control over access to, and use of, the animals on the quota. To a large extent, they can exclude other people from access to wildlife. However, the community has an obligation to allow outsider citizens equitable access to hunting for any animals issued on Small Game Licences for that area, and then to make the animals themselves available to the citizens. The community will have a measure of control over this access. It will have the right to dictate exactly where and when hunting may occur. It can stipulate which routes, which type of vehicle, and which type of weapon may be used. In most cases the community's control will be even stronger since it will have given out the licences from its quota in the first place.

Communities that wish to use the hunting quota for their own subsistence do not need a lease. That is, they can use the CHA for hunting against this quota without a lease. This use of the *land* is seen as falling under Customary Law. However, because wildlife is controlled by central Government (not a customary body), the use of the *wildlife* falls under Common Law.

If communities want to use the CHA for commercial hunting or photographic use, their use of the land falls under Common Law, and they need to have a lease as outlined in Sections 5.2 and 5.3 above.

The community has the right to sub-lease its hunting quota, according to the conditions of its lease over the area.

Communities living in WMAs, whether they participate in CBNRM projects or not, may find that some of their customary rights of resources use will be limited. For example, people will not have the right to live where they choose. They will have to live within a designated population area. In most cases, this will be an existing settlement.

People with livestock will still have the right to keep some animals, but their numbers will be controlled. The CBO will be given the grazing rights for the fixed number of livestock. The CBO has the duty to distribute these rights *equitably* [own emphasis]. However – and in possible contradiction to equity – the CBO can sell its grazing rights to people from outside the settlement, as long as that person is from the same District. It can also charge its community members for each grazing right. DWNP will be responsible for ensuring that priority is given to people living in the area, or with customary rights to grazing in the area. However, there is still the chance that customary rights of grazing may be lost to poorer community members who cannot compete with richer people, both within the community and outsiders.

Grazing of all livestock will be restricted to certain zones, as set out in the management plan. People will be able to keep the stock they need for transport without obtaining a grazing right.

In WMAs, people will be allowed to grow crops only within the demarcated population areas.

The community will be given the right to control access into its CHA. Outsiders may enter the area for natural resources use only on a designated “passage” route. In order to travel beyond this route, the outsider will need to get express permission from the CBO. This is particularly important during the hunting season, for safety and the prevention of illegal hunting. The CBO will have the right to charge outsiders fees for entry into the CHA for the purpose of harvesting natural resources.

Outsiders wishing to use the area for commercial purposes, such as tourism, also need permission from the CBO. In addition, the draft WMA regulations state specifically that private or personal camping trips may need permission from the CBO. It also allows CBOs to charge a reasonable fee for this permission.

Only members of communities within the CBO, or otherwise designated by Government, will be able to exercise customary rights in the CHA. CBO community members will be able to continue harvesting natural resources for subsistence purposes. However, if any

designated community outside the WMA wishes to use the resources in a community CHA, it must first enter into a "Community Access Agreement". Any spontaneous, unplanned harvesting by outsiders will not be allowed. As the draft regulations currently stand, CBOs may be allowed to charge outsiders for the right to harvest these identified resources.

Non-customary rights are also regulated. These relate to borehole rights, vehicle, boat and airplane access rights, and commercial building rights.

These draft WMA regulations are important in extending the control and exclusion rights that the NRM Lease will give the community. The lease says that: "...The lawful entry of other Botswana citizens for reasons not associated with commercial tourism or hunting or game capturing, and the commercial consumptive use of veld products, *exercised according to current legislation* [own emphasis], shall be respected" The NRM Lease in itself, cannot exclude outsiders from entering the area for private camping trips or subsistence natural resources use. It is the draft WMA regulations that give this extra authority. Communities with leases outside WMAs, such as those in Chobe Enclave or Xai-Xai, have less control over outsiders because the draft WMA regulations do not apply.

## **5.5 Tourism Act (No. 22 of 1992)**

Tourism is a commercial activity, which the Act defines as enterprises that include "operations that offer facilities on and off site, such as tourist camps, lodges, caravans, hunting camps and tented tourist camps, which also operate tours which require the services of professional guides or professional hunters licensed under the Wildlife Conservation and National Parks Act, 1992."

As with any other operator, no community (or its CBO) may carry on the business of tourism without a licence. Where communities sub-let their tourist activities to a Joint Venture Partner, the partner must obtain a licence. These licenses are issued by the Tourist Industry Licensing Board, within the Department of Tourism. If the CBO wishes to carry out the tourist activities in its area by itself, it must get its own license. This is done by submitting the application "Form A" to the Director of the Department of Tourism.

## **5.6 Agricultural Resources Conservation Act (Cap 35:06)**

The definition of agricultural resources given in this Act has the potential to give the Agricultural Resources Board considerable power. In its current form, the Act can instruct the occupier of any land (outside National Parks) to change how they conduct their activities if this will lead to better conservation of the resources. The ARB is the body that has the authority to regulate the off-take of plant species such as *sengaparile* (*Harpagophytum procumbens*, grapple plant or devil's claw) by issuing permits. It has the authority to regulate the use of any agricultural resource that it identifies. However, at the moment, *sengaparile* is the only species for which the ARB has issued regulations. Currently, permits are only given to individuals for the harvesting of *sengaparile*. Permits are not issued for a specific geographic area. Instead they are issued to members of settlements which are near *sengaparile*-rich places.

However, there is nothing in the Act that prevents the members of a community from co-ordinating their use of the permits, or from deciding how to zone *sengaparile* areas around their village for managed harvesting. In addition, people with permits could involve other individuals in collecting, and could pool the sales from their harvest to allow a larger section of their community to benefit from the off-take. However, the individuals with the permits are the ones who would have to answer for any incorrect harvesting, such as over-harvesting, poor harvesting methods, etc.

Because permits are currently not given over a specific area, it is (at the time of writing) not possible to link this to a lease. However, the community lease is being designed to accommodate commercial use of plant resources according to a given geographic area (see Section 6.4).

As outlined in the draft Joint DWNP and ARB CBNRM Policy, the ARB is currently considering how best to restructure its roles and functions. This is likely to include provisions for increased regulation of other commercially important plant resources, such as *morula* (*Sclerocarya birrea*), the *mokolwane* palm (*Hyphaene ventricosa*, used for baskets), reeds and thatching grass. It may also include different ways of allocating licences, such as to groups rather than just to individuals. It will probably also include a move to identify zones of use, which could relate to leased areas. Such a licence would give communities rights to that resource in a given area. This would include the right to exclude others from using that resource. Such rights would, of course, be subject to the conditions of the licence.

## **5.7 Herbage Preservation (Prevention of Fires) Act (Cap 38:02)**

Deliberate burning of Botswana's veld has been used as a way of manipulating natural resources for as long as people have lived here. For example, burning creates new shoots, attracting game for hunting, and providing better grazing for livestock. Historically, burning of the veld was under the control of the chief, who decided where and when fires could be set. This is no longer the case, many individuals take it upon themselves to set fires for various reasons.

This Act seeks to prevent uncontrolled burning. However, controlled burning is an important management tool, and is permitted. Anyone who wishes to burn bush on land, which they occupy, must obtain written permission to do so from the Herbage Preservation Committee. As a lessee, the CBO can be seen as the lawful occupier of its allocated CHA, and as such, can apply for permission to burn for management purposes. That this is possible is evident from examples set by private sector CHA lessees who have burnt sections of their area with permission of the committee.

However, it must be noted that the draft lease states that consent for controlled burning must be obtained from DWNP, the Department of Tourism, and the Lessor. (The latter could be the relevant Land Board or the Department of Lands, depending on whether the lease is on Tribal or State Land.)

## **5.8 Forest Act (Cap 38:04)**

At first, the Forest Act appears to have limited relevance to CBNRM. Much of its regulations apply only to Forest Reserves and to State Land. However, there are some communities who are allocated State Land CHAs (Mababe – NG/41, Phuduhudu - NG/49, Gweta, Zoroga and Tshokhotshaa – CT/11, and Toromoja, Mopipi, Rakops and Xhumo – CT/10). In addition, the Chobe Enclave Conservation Trust has the use of the hunting quota in CH/2, the Chobe Forest Reserve.

It is also possible that, should the Land Board agree, parts of Tribal Land can be declared Forest Reserve. This would subject any communities who had use of that land for CBNRM to the regulations of this Act. Any community or individual wanting to use any plants would need a licence from the Forestry Division to do so. Such a licence would be necessary for both subsistence and commercial use.

If a license were to be granted to a community either on State Land, or in a Forest Reserve, the community would be able to exclude others from the use of the resources for which they have a license.

With the Land Board's consent, even some species of trees outside of State Land or Forest Reserves can be declared protected. This has in fact happened in Chobe and Ngamiland, where *mukwa* (*Pterocarpus angolensis*) and *mukusi* (*Baikiaea plurijuga*) may no longer be harvested for commercial purposes. If individuals wish to cut down one of these trees for their immediate use – such as making a *mokoro*, they must buy a permit for a token amount from the local Forestry Division office.

An important aspect that needs further investigation is whether Forest Reserves could be declared within WMAs without causing legal problems such as where the regulations for each may disagree.

The Forest Act is currently under revision.

## **5.9 Water Act (Cap 34:01)**

This Act states quite clearly that there will be no right of property in public water. This includes both groundwater, and water in any natural streams, rivers, lakes, pans or swamps.

If a community wants to use water for anything other than a member's immediate personal use, they must apply for a grant to the Water Apportionment Board to do so. This includes pumping from a river, building a dam or pumping from a borehole. (Permission to sink a borehole must first be obtained from the land authority.)

A community may not stop anyone who is allowed to be in the area, from taking water for their own immediate use.

The Water Act appears to deal only with water in terms of its *use*, and not as a geographic body. The Tribal Land Act clearly excludes water resources, and it is therefore not clear who, on Tribal Land, would control bodies of permanent water apart from the dams that fall under the authority of the Water Utilities Corporation. This lack of clarity is largely a theoretical issue. Permanent bodies of water are not common in Botswana, and in most cases will only form the boundary of a lease area. Where they may fall entirely within a lease area, access to these bodies will largely be determined by the community's lease.

## **5.10 Fish Protection Act (Cap 38:05)**

The Fish Protection Act is particularly relevant for CBNRM communities in Ngamiland and Chobe. It places all fish under the control of the Ministry of Agriculture. It gives the Minister the authority to regulate the species, quantities, places, timing and methods related to fishing. At present there is very little actual control over fishing, both in terms of written regulations, and on-the-ground enforcement.

The CBNRM Policy makes recommendations for improving management of the country's fish resources. These include the preparation of regulations for this Act. When these are in place, it is likely that zones for community use will be set aside. CBOs would then have to obtain a licence for fishing. This licence would probably determine the number and minimum size of particular species listed on the licence. In much the same way as the hunting quota is given, it would be subject to a given season in the year, methods of catching, and any other conditions important for fish population management.

## **5.11 Monuments and relics Act (Cap 59:03)**

This Act was drawn up to allow the preservation and protection of ancient monuments, ancient workings, relics and other objects of aesthetic, archaeological, historical or scientific interest. To qualify as one of the above, the object must date from before the 1<sup>st</sup> June 1902. Rock paintings, scenically beautiful places, fossils, caves, and even trees (such as Baines' Baobabs) can qualify as a monument or relic.

The Act gives Government, through the Ministry of Labour and Home Affairs, the right to take any necessary steps to protect a monument or relic. This includes the right to buy the monument, or the land on which the monument is found. It also includes the right to secure access for the public to the site. If the site is found within an area leased to a community, the CBO has a duty to notify the Minister immediately.

The lease does not affect the status of the community with regard to right of access to, or use of the site. This is because the NRM Lease is for specific purposes only. On State Land, the monument belongs to the State. On Tribal Land, the Land Board is seen as the relevant authority.

It is possible that the Minister could declare the CBO a custodian of the site. This would give them the duty to protect it. It is also possible that the Minister could enter an agreement with the CBO for the maintenance and use of the monument site. Such an agreement could be given to match the period of the NRM Lease. The CBO could also get permission to charge a reasonable fee for members of the public wanting access to the site. An example of this is Lekhubu Island, on Makgadikgadi Pans. Lekhubu is an archaeological site with stone walls and pottery remains dating back about 800 years. It is also an important sacred place for the Sowakhwe San. The surrounding communities now manage the site, stating where visitors may stay and charge visitors camping fees.

## 6. The Natural Resources Management Lease

The Natural Resources Management (NRM) Lease (also sometimes called Community Wildlife Management Lease) is intended for any community participating in the commercial use of natural resources. The preparation of the lease is in its final stages. The lease is important because it defines a geographic area over which an agreement between the Land Board (or the Department of Lands) and the community is made. Originally it was thought that leases would only be given to communities in WMAs. This would have meant that the lease would carry conditions about farming and further settlement. However, the growing interest in CBNRM has meant that some communities (including Chobe Enclave and /Xai-/Xai) outside of WMAs could also be given a NRM Lease.

A modified copy of the latest draft of the NRM Lease is attached as an appendix. The modifications consist of a layman's interpretation of each section. It must be noted that both the lease and the interpretations are subject to revision and no rights can be derived from any interpretation of the attached draft lease.

### 6.1 The Rationale Behind the Lease

One of the main functions of the NRM Lease is to formalise the agreement between the lessor, who controls the resource base, and the lessee, who wants to take over some of the control. Government is the lessor, represented either by the Department of Land or the relevant Land Board. The community, through its CBO, is the lessee. Government's position is that the land and its resources belong to all the peoples of Botswana – to the super-community that is the nation. If one subset of this super-community is to enjoy benefits that other subsets don't, then that subset must pay for the privilege. This payment is one reason why a lease is necessary. Another, more important reason, is to bring in the aspect of *management* to the use of natural resources.

The lease makes it clear that being allocated use of the land and some resources is not just a one-way gift. It reminds both parties that with rights, there are duties or obligations. The lease stipulates the conditions under which the agreement can continue. It details exactly what the rights of a participating community are. It also is quite clear on what the community's responsibilities are.

Because of its early orientation towards wildlife, the NRM Lease was originally planned so that it would relate to a specific CHA. However, where communities are only using plant resources, or are doing limited tourism, it is possible that leases over smaller areas could be given. It is also possible that some portions of a CHA can be excluded from a lease (refer to the cover page of the NRM lease).

### 6.2 Rights given to Communities under the Lease

In its current form, the lease gives the community exclusive rights to use the area (normally a CHA) for commercial tourism related activities, and hunting and game capture, and commercial consumptive use of veld products. Any such use of the area is still under the laws of Botswana. Hunting and game capture, for example, must be done according to the Wildlife Conservation and National Parks Act. It is further restricted by the hunting quota given for that area. Because a community has the hunting quota for an area, it has the right to decide who can hunt on the quota. (This control over the quota exists whether that community has a lease or not.) These hunting rights also include the commercial hunting of birds. Until citizen bird licences are given according to the CHAs, some communities may have to accommodate citizen bird hunting. Small Game Licences also fall outside the hunting quota. However, citizen hunters must still negotiate where and when they can use their licences.

The lease gives communities the right to exclude outsiders from using the area for commercial tourism purposes. This extends the rights of exclusion that are given by the hunting quota.

The NRM Lease is being designed to allow the commercial harvesting of some plant resources. This will also give the communities the right to prevent outsiders from commercial harvesting of any plant resources. These resources will, like wildlife, be subject to any laws and limitations relating to species, quantity, seasons, harvesting methods and location. In the meantime, commercial harvesting of plant resources is acknowledged and allowed to continue under some observation until the regulations are updated. An example of this is the marula collection and processing done by Gwezotshaa Natural Resources Trust in CT/7. Importantly, CT/7 is not the area earmarked for allocation to the community for tourism or hunting. It is simply the area in which the settlements (and marula trees) happen to fall.

The lease does not confer ownership over the land. In itself, the lease does not give the community the right to stop people exercising their customary rights of access. Limitations on subsistence use are imposed by the relevant acts and regulations. The NRM Lease does not give a community any additional subsistence rights. Rights of subsistence already exist, purely by virtue of the community living where they do.

### 6.3 Obligations of the Communities under the Lease

In return for giving communities the opportunity to earn money from natural resources, the Government expects communities to actively manage the land and resources of the area. To do this, communities have to prepare a management and zoning plan for the area, which must be acceptable to Government. Communities are further obliged to *implement* this plan.

The community has the obligation to respect the customary rights of communities living within the CHA. This is not normally a major issue, since the resident communities are in most cases those with the lease. However, they must also respect the rights of other Botswana who lawfully enter the area for reasons other than related to tourism, hunting and game capturing, or commercial plant harvesting.

Text Box 6: Some Examples of Customary Rights

**Customary Rights**

Customary rights are the rights that inhabitants of tribal areas have, by custom, to use natural resources as part of their livelihoods. Under the 1993 amendment to the tribal Land Act, customary land rights no longer have any tribal connotations, nor are they geographically determined. Specific protection for local residents within or peripheral to the CHAs does not exist. In terms of the NRM Lease, customary rights include, but are not limited to:

- the right of residence
- the right of access
- the right of transit
- the right to harvest natural plant and insect resources
- the right to hunt
- the right to fish
- the right to casual use of public water.

These rights are subject to subsistence, non-commercial, levels of use. They are further bound by any regulations or laws of the Government. For example, this means that while the lease may not have the power to stop people living in a leased area inside a WMA, the draft WMA regulations will have the power to do so.

Adapted from Murray-Hudson *et al*, 1994.

One specific obligation relating to customary rights of community members, is that of making sure the needs of those people who are “principally dependent on hunting and gathering veld produce for their food” are met. This refers particularly to those people who lost their Special Game Licences with the introduction of community quota management. At present, this is not a specific clause in the lease. It is a statement from the Minimum Conditions Savingram of 20 November 1995, issued jointly by the Minister of Commerce and Industry and the Minister of Local Government, Lands and Housing.

Managing an area is not a cheap exercise. It requires both expertise and money. It is felt that communities who do not generate money from their lease rights will not be able to meet either their financial or management obligations. This is a supporting reason for why leases are unlikely to be given for subsistence purposes.

## 6.4 The NRM Lease and Plant Resources

As noted earlier, CBNRM in Botswana did not start as a grass-roots movement. It was initiated by Government, primarily to bring about wildlife conservation. For this reason, mechanisms for community-based wildlife utilisation were put in place before the process actually began. However, the spread of interest to plant resources was not anticipated. This has resulted in a lot of uncertainty over how things will work for community groups wanting to collectively use and manage plant species that are important to them.

The NRM Lease will be able to accommodate commercial use of plants. This could happen in one of three ways. Firstly, a community could be given commercial rights over specified plant resources in all of a CHA over which they have been given a lease for hunting or tourism. Secondly, a community could be given commercial rights over specified plant resources in a demarcated subsection of a CHA for which they have a lease. Thirdly, a CBO could be given a lease over a smaller area (separate from the CHA boundaries) specifically for the commercial harvesting of specified plant resources.

As with wildlife, the NRM Lease alone would not be enough to gain commercial rights to key plant species in the area. Wildlife use also needs a hunting quota to be issued. Likewise, it is expected that communities would also have to get a permit or license for each plant species they plan to harvest from the relevant authority.

Text Box 7: Lease Area Boundaries and Plant Resources

### The Case of Gwezotshaa Natural Resources Trust

Gwezotshaa is a community trust incorporating 3 settlements – Gweta, Zoroga and Tshokhotshaa. All 3 settlements are located in CT/7, a CHA on tribal grazing land. The community has been designated for management of CT/11, a separate CHA in a State Land WMA. However, through its trust, the community has begun using natural resources in CT/7. Its main activity is the annual collection and processing of marula fruit. It has no lease on CT/7, nor a permit for commercial collection of marula (this resource is currently unregulated). For these reasons, it has no right to stop people entering the area, nor can it stop anyone outside the community from harvesting marula fruit. This is important, because there is another major community, Nata, living in CT/7, which may also have an interest in subsistence or commercial marula harvesting.

Because there is another community in CT/7, it is unlikely that Gwezotshaa will be given a lease over the whole area, even if this lease is just for the commercial rights to marula. They could, perhaps, be given a lease over smaller sections of the CHA. This lease would give them the right to exclude others from the commercial harvesting of marula in that section. However, the lease itself would not have the power to prevent subsistence harvesting of the fruit. Since the area would be outside a WMA, these regulations would not apply. If the community were to be issued a permit for all the marula fruit in their small lease area, this would give them the right to exclude anyone from using the fruit in that area – even for subsistence purposes.

## 7. Conclusion: Ownership and Authority Status at Community level

That CBNRM does not give outright ownership over resources is clear from the fact that it is a lease, and not a title deed, that is given. In addition, the length of the lease at 15 years is relatively short.

As citizens of Botswana, all community members have rights to subsistence use. These rights exist without any need for a lease. Leases will only be given for commercial use of resources, whether these are wildlife (through the hunting quota) or veld products (through an Agricultural Resources Board permit).

Even at subsistence level, communities participating in CBNRM can increase their sense of ownership by adopting group management practices. For example, by pooling their veld product permits, or by applying for a single permit through a CBO, they can gain control over that resource in a given area. They can, subject to the terms of the permit, make decisions about when and where to collect, and how to divide up the harvest. The same is true for the hunting quota.

With a lease, communities can make decisions about how, and with whom, they will carry out their tourism and commercial hunting activities. They can decide how to distribute the benefits, and what the benefits should be used for. Again, this is subject to the terms of the NRM Lease, and other supporting documents such as the 1995 Savingram, and the CBNRM Policy.

If a community has a lease within a WMA, they can decide – subject to the management plan – where any grazing will take place, and how much to charge for this. They can decide what resources can be collected where, when, how, by whom, and in what quantities. Such decisions, however, can be overruled by DWNP.

If “ownership” of resources under CBNRM is to be measured by a community’s ability to make decisions, it is still fairly limited. Government can, at any stage, overturn or amend these decisions if they see that to be for the country’s better interests.

The authority rights that a community can get under CBNRM will vary according to several factors:

- 1) whether the area is inside a WMA, and subject to WMA regulations, or not
- 2) whether they have a quota or permit to harvest a particular resource or not
- 3) whether the community has a lease or not, and what the lease is for
- 4) whether the lease is over a whole CHA, or over a smaller area (e.g. for veld products only)
- 5) how many non-participating communities there are nearby whose needs must be accommodated.

If a community has a leased area in a WMA, the (draft) regulations for this area give the community the right to exclude outsiders from using the area and its natural resources, even for subsistence purposes. There is a small exception to this: the (draft) WMA regulations oblige the community in some areas to permit planned natural resources utilisation by identified nearby settlements, through a Community Access Agreement.

If the community has a NRM Lease, this lease will say what user rights the community has. The community can exclude outsiders from these specific user rights. For example, if the lease says rights of tourism, the community can stop others entering the area for tourist purposes. If the lease says “commercial harvesting of thatching grass” it can prevent outsiders from collecting grass for commercial purposes.

If a community has a quota or permit, they have the right to prevent outsiders from harvesting that particular resource in their area, whether or not they have a lease. If they have a lease only for commercial harvesting of one species – *sengaparile*, for example – the community cannot exclude outsiders from entering that area for a different purpose, such as citizen hunting. This is particularly true for leases in areas outside of WMAs.

If a community has a NRM Lease over an area, it also has management obligations for that area, as set out in its Land Use and Management Plan. In order to fulfil these obligations, it needs to

keep track of outsiders moving through the area. The following is a suggested list of things a community can reasonably expect all outsiders to do, even if they are in the area for purposes other than the rights that the community has through its lease:

1. Outsiders must only use accepted entry and exit points, as detailed in the management plan for the area.
2. They must notify the community's CBO of their entry, and the duration and purpose of their visit.
3. They must stick to routes that the community stipulates, in accordance with the area's management plan.
4. They must comply with any request by the CBO to change the location and / or timing of their visit so that it fits in with the community's tourism and hunting activities.

These basic courtesies are in addition to any of the exclusion rights discussed above.

The user rights at the level of the community are well supported by policies and regulations. The rights of community members to benefit from the proceeds of CBNRM activities are determined by the constitution of the CBO in which they are members. What is less clear is whether the user rights at the level of the individual community member are equitably distributed. This is an issue both in terms of what mechanisms exist to ensure equity, and in terms of how well these mechanisms work.

CBNRM in Botswana assumes broad-based participation. It assumes that the majority did vote for its representatives. The problem is that in reality, in many rural communities, richer and more powerful community members do dominate local institutions, including the CBO. Rural Botswana tend to be passive in their participation, preferring to let elected representatives make decisions on their behalf. These factors work against equity in the distribution of resource use rights.

Again, the question of the rights of ex-Special Game Licence holders is raised. These community members have a right to have their needs fulfilled. However, the people who used to have these licences tend to be poorer, and with less of a voice. No-one seem to check to see how far the CBO does cater to their needs.

Social conditions vary from community to community. The NRM Lease needs to accommodate this by attaching conditions specific to each area. Where the lease is given to a community that used to have Special Game Licence holders, it should state that their needs must be accommodated. Where the lease is given outside a WMA, it could state (as do the draft WMA regulations) which outside communities should be allowed user rights.

Veld product collection is a slightly more complex issue. Where the community organises a commercial harvest without a permit, there may be conflict with those who wish to collect the same plant for subsistence use. If the community is given a permit to harvest a particular plant in a particular area, this will probably carry a quota. The CBO will have to make sure that it meets community members' subsistence requirements from this. The danger is that community decision-makers may be less dependent of the plant resource. If it is a resource with a high value, they could push for more of the quota to be used for commercial purposes.

Resources of no commercial value and which are unregulated (either because the area falls outside a WMA, or because it is not something the CBO controls), are generally not an issue. Free access to them will probably continue. Yet, because Government needs to ensure the long-term sustainability of the resource base, more and more resources will become regulated.

Botswana has a proud tradition of democracy. However, there is often a wide gap between democracy as a theory, and what actually happens on the ground. Marginalised parts of the community (women, ethnic minorities, people with no livestock, etc.) still need to develop a full voice so that they can look after their own rights. Until that happens, it is likely that a disinterested outside party will need to observe the making of decisions that affect the allocation of individual user rights. At the moment, Government is playing that role. There are two practical problems with this. Firstly, not all people feel that Government is truly a disinterested party. Secondly, consultation tends to be with the community representatives, who may not reflect the views of the majority. There are no mechanisms to guarantee that weaker community members will get a fair share of the total claim.

## **Publications available from the CBNRM Support Programme**

- **CBNRM workshop and conference proceedings:**

1. L. Cassidy and M. Madzwamuse (Eds). 1999. Community Mobilisation in Community Based Natural Resources Management in Botswana. Report of Workshop Proceedings. Francistown, Botswana, December 9-11 1998.
2. L. Cassidy and M. Madzwamuse (Eds). 1999. Enterprise Development and Community Based Natural Resources Management in Botswana. Report of Workshop Proceedings. Maun, Botswana, March 9-12 1999.
3. L. Cassidy and S. Tveden (Eds). 1999. Natural Resources Monitoring and Community Based Natural Resources Management in Botswana. Report of Workshop Proceedings. Mokolodi, Botswana, June 10-11 1999.
4. L. Cassidy and R. Jansen (Eds). 2000. National Conference on Community Based Natural Resources Management in Botswana. Report of the National Conference Proceedings. Gaborone, Botswana, July 26-29 1999.
5. National CBNRM Forum in Botswana. 2000. Proceedings of the first National CBNRM Forum meeting in Botswana 30<sup>th</sup> and 31<sup>st</sup> of May 2000 and the CBNRM Status Report 1999/2000.

- **CBNRM Occasional Papers:**

1. T. Gujadhur. 2000. Organisations and their approaches in Community Based Natural Resources Management in Botswana, Namibia, Zambia and Zimbabwe.
2. C. J. van der Jagt, T. Gujadhur and F. van Bussel. 2000. Community Benefits through Community Based Natural Resources Management in Botswana.
3. T. Gujadhur. 2000. "It's good to feel like we own the land..." The people's view of community land rights under CBNRM in Botswana.
4. L. Cassidy. 2000. CBNRM and Legal Rights to Resources in Botswana.

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