

# **Joint Venture Options for Communities and Safari Operators in Botswana**

**Tara Gujadhur**

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Available from: IUCN Botswana  
Hospital Way. Plot 2403  
Private Bag 00300  
Gaborone  
Botswana  
Tel / fax: (267) 371 584  
E-mail: [iucn@iucnbot.bw](mailto:iucn@iucnbot.bw)  
<http://www.iucnbot.bw>

and CBNRM Support Programme  
Kgatlhano Close, Plot 3362  
P.O. Box 611  
Gaborone  
Botswana  
Tel: (267) 352 413  
Fax: (267) 314123  
E-mail: [information@cbnrm.bw](mailto:information@cbnrm.bw)  
<http://www.cbnrm.bw>

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# Foreword

A great number of communities in Botswana, especially in the remote areas of the country, still live in poverty despite the overall national economic development. There are few formal jobs and few income-generating activities in these communities. Arable and livestock potential is limited due to adverse climatic conditions. People subsist on drought relief and other Government aided programmes. But recent opportunities for engaging in the management of community-owned natural resources have changed things drastically. A growing number of village organisations (Community Based Organisations) have secured the management responsibility over “their” natural resources and are slowly gaining experience in exploiting these resources in a sustainable manner.

The model followed in most cases has been one of joint venture agreements between the community (owning the resource) and a private sector company (having the investment, management and marketing potential). Substantial revenue has been generated for community-reinvestment and a large number of jobs created. In this way two prime needs of community members have been satisfied: money and jobs. There is reason to be content with this progress.

However, we do not want to sit back and relax. What draws our attention is the unequal balance in capacity between the two partners in most joint venture agreements: the community is selling its resources to the enterprise for money and jobs, while the company is responsible for the entire development of the enterprise itself. While the ability of the company to control the development process grows, hardly any capacity is built at community level to initiate and sustain economic development. The result might be a growing community bank account, but it is achieved through an increasing dependence on outside agencies. That is why we cannot remain contented.

This paper on joint venture options gives us some food for thought. How can we (both partners) get more out of joint venture agreements? How can we encourage more (and secure) investments by the private sector partner while building up the community capacity in managing business ventures? How can we create business ventures of mutual advantage, which allow local people to develop the necessary skills to start their own business at their own pace, following their interests? People want to learn, and joint venture partnerships offer an opportunity for “learning by doing”. More rural people acquiring business related skills would lead to more investment, higher incomes and more jobs. That would benefit everybody and that is what we all call development.

This document is the sixth in the Occasional Paper Series of the IUCN/SNV 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. Stakeholders such as Government agencies, NGOs, the private sector and CBOs which are involved in CBNRM are often too busy implementing to share experiences on success and failure with others. The CBNRM Series hopes to fill this information gap.

Relevant CBNRM related information would assist in bringing together all stakeholders who have an interest in what the concept stands for: social and economic empowerment of rural communities, and natural resources conservation. Fully informed stakeholders can understand each other’s specific opportunities, problems, roles and responsibilities, and can dispel feelings of mistrust arising from the misinterpretations of regulations and procedures or unrealistic expectations. The Series is aimed therefore at all practitioners who work with CBNRM in Botswana, and is intended to provide them with information that should assist them in successfully applying the concept. As chairman of the Botswana Network of Community Based Organisations involved in CBNRM (BOCOBONET), I truly hope that also this publication achieves this aim.

The publications in the Occasional Paper Series of the CBNRM Support Programme are 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 for downloading on the website of the CBNRM Support Programme: [www.cbnrm.bw](http://www.cbnrm.bw)

Douglas Lecholo  
Chairman of BOCOONET

## **IUCN - The World Conservation Union**

Founded in 1948, IUCN brings together States, government agencies and a diverse range of non-governmental organisations in a unique world partnership: over 900 members in all, spread across some 136 countries. As a Union, IUCN seeks to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable. A central secretariat co-ordinates the IUCN Programme and serves the Union membership, representing their views on the world stage and providing them with the strategies, services, scientific knowledge and technical support they need to achieve their goals. Through its six commissions, IUCN draws together over 6 000 expert volunteers in project teams and action groups, focusing in particular on species and biodiversity conservation and the management of habitats and natural resources. IUCN has been operating in Botswana since 1984, when IUCN was invited to assist the Government in the preparation of the Botswana National Conservation Strategy. The IUCN Botswana Office was established in 1991. Since then, the IUCN Botswana Programme has been involved in drafting environmental policies, strategies and legislation; formulating management plans; identifying the environmental interests and needs of the business sector; as well as providing support and capacity building to NGOs and CBOs in the country. For more information, visit the Internet on <http://www.iucnbot.bw>

## **SNV Netherlands Development Organisation**

SNV Netherlands Development Organisation strengthens local government and non-governmental development organisations, with a view of making a sustainable contribution to the structural alleviation of poverty in rural areas in developing countries. It deploys skilled professionals for this purpose. Over 700 Dutch and local experts are currently involved in the transfer and exchange of knowledge, skills and technology. SNV's 26 field offices are active in 28 countries throughout Africa, Latin America, Asia and Europe. SNV Botswana has been operating since 1978, building up experience in land-use planning, rural development and community mobilisation. The organisation works in conjunction with local organisations and Government to reach its target populations of poor rural women and marginalised minority groups in western Botswana, which are mainly the Basarwa (San or Bushmen). For more information, visit the Internet on <http://www.snv.nl>

## **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>

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- "Short note on the legal structures of joint venture agreements for use by communities in Botswana who have been allocated community resource user rights", by Jeffrey Bookbinder, including an example of a partnership agreement.

Documents Consulted

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A special thanks to Jeffrey Bookbinder for his attempts (in the Appendix to this paper) to make the legal terminology regarding “joint ventures” more accessible. Additional thanks for his efforts in drafting an example of a partnership agreement which may assist communities and private companies to look beyond the model of sub-lease agreement that has been applied to date.

# Introduction

## Objective of this Paper

The aim of this paper is to present and discuss options for joint ventures in Botswana and southern Africa. Since 1993 when the first joint venture was forged in Botswana, the model used has remained the same – a simple sub-lease agreement. The main benefits to communities have been money, a few jobs and meat, and to safari companies, a short-term concession for hunting or photographic tourism. Seven years later, is this still the most appropriate model? Perhaps it is, but other possibilities have been demonstrated in the region. This paper would like to stimulate the minds of rural communities, safari operators and other stakeholders to seek joint ventures that can bring a wider variety of opportunities and long-term benefits.

## Defining a "Joint Venture"

What is a "joint venture"? According to Botswana's Department of Wildlife and National Parks (DWNP) Joint Ventures Guidelines booklet a joint venture is:

*"a business activity undertaken between two or more partners for their mutual benefit. Partners in a community joint venture will be rural people, who have user rights to the natural resources occurring in an area, and established private sector companies that recognise an area's potential for business development."*

(DWNP 1999)

There is a great deal of flexibility in this definition – any arrangement between the private sector and communities with rights over natural resources applies, whether it's a partnership between a safari company and community to develop and manage a lodge, or a sub-lease agreement where a safari company simply pays a community for use of its quota and land for hunting. So far in Botswana, a joint venture has meant the latter. Some might argue that the term "joint venture" is a misnomer, since there is nothing "joint" about the management or execution of a sub-lease agreement between a private company and community. However, this paper will continue to use the term "joint venture" as it has been widely used in southern Africa and in the DWNP definition. Simply, it is a business arrangement between a private company and rural community for commercial utilisation of an area's natural resources, be it animals, land or culture. The benefits from a joint venture can be anything from cash, jobs and infrastructure to skills, decision-making power and services.

## Role of Joint Ventures in CBNRM

Joint ventures emerged together with Community Based Natural Resources Management (CBNRM) initiatives as the component for demonstrating commercial productivity of wildlife. CBNRM aims to give rural communities control of the benefits from sustainable utilisation of wildlife and natural resources – and joint ventures have been the principal means to those benefits. The majority of joint ventures have been based on safari hunting, which is the most (economically) lucrative use of wildlife. Thus, money has emerged as the primary benefit from community rights over natural resources.

Since 1995<sup>1</sup>, communities across Botswana have been able to apply for user rights and leases over natural resources and land in a communal area, and sub-lease these rights to the private sector. Previously, private companies worked directly with government. CBNRM now vests user rights over valuable natural resources with local communities, ensuring their involvement in the lucrative and growing tourism market.

Table 1. Number of Joint Ventures in Botswana 1993-2000

Year	1993	1994	1995	1996	1997	1998	1999	2000
Number of JVs	1	1	2	3	3	5	5	8

<sup>1</sup> An exception: Chobe Enclave Conservation Trust entered into its first joint venture agreement in 1993 as the pilot project of DWNP's USAID-funded Natural Resources Management Project.

### **Long-term goals of CBNRM**

However, *involvement* of communities in tourism and natural resources management does not mean control. To date, joint venture arrangements between communities and the private sector (safari or photo-tourism operators) in Botswana have been sub-lease agreements. Communities simply sell use of their area and hunting quota to a safari operator, and play no "joint" role in management of the activities that take place. Communities are involved but they do not actively participate.

Perhaps this is not a problem in itself. However, if we re-examine the basic aims of CBNRM, then the limited role of communities in actively engaging in joint ventures shows that we are falling short of what we could achieve. CBNRM is envisioned as giving communities a chance at improving their livelihoods and skill base so that there is an incentive to conserve natural resources. However, these incentives or benefits must be directly linked with the management of natural resources to concretely demonstrate the value of the activity to individuals. Murphree (1993) states that a positive correlation between the quality of management and the magnitude of derived benefits is a general principle for common property resource management. In simpler terms, a community must "earn" or "work for" the benefits by actively managing the wildlife. The more effort they put into management, the more benefits they will gain. In the case of the present joint venture agreements in Botswana, it is debatable whether this is the situation.

The combination of conservation and rural development that CBNRM embodies points to a vision in which natural resources are preserved through their sustainable utilisation by rural communities, who can then reap the benefits. Taking this view a step further, CBNRM could be seen as a rural development strategy that gives rural communities an opportunity to diversify their livelihood strategies and control their own development process through a resource and knowledge base they already possess. CBNRM itself does not have to be the goal. Successful Community Based Natural Resources Management can be an empowerment stepping stone for communities and individuals to pursue whatever initiatives they choose.

### **Methodology and Structure of the Report**

The information presented here is based on the experience of the author as well as interviews that were carried out in March – April 2000. Interviewees were individuals from the private sector, communities, government and NGOs in Botswana, and are listed in the acknowledgements.

This paper was written to target those same four CBNRM stakeholder groups, but most especially communities and safari operators. It is hoped that the options presented and discussion will encourage further exploration of joint ventures in practice.

The paper will begin in Section II with an overview of the structure of CBNRM and joint ventures in Botswana today, including its strengths and weaknesses. What is the current policy and practice for CBNRM and joint ventures in Botswana? Are there constraints that affect the range of joint venture options available?

Section III follows with an analysis of joint venture agreements and partnerships. What are the benefits and costs of joint venture agreements vs. joint venture partnerships?

Section IV lists and examines different joint venture options.

Section V draws conclusions and recommendations.



# Joint Ventures and CBNRM in Botswana

Joint ventures between the private sector (safari operators) and communities in Botswana only became a reality with the advent of Community Based Natural Resources Management legislation and policies. Previously, all land and resources were owned and managed exclusively by the Government of Botswana. Licenses for hunting were issued only to individuals. The Tribal Land Boards and Department of Wildlife allocated commercial hunting concessions and photographic lodges directly to safari operators. Now, community organisations with legal tenure over Controlled Hunting Areas negotiate with the private sector for use of the land and wildlife.

## **CBNRM in Botswana<sup>2</sup>**

In the mid-1980's to the early 1990s several policies<sup>3</sup> were formulated which called for the increased involvement of rural communities in wildlife conservation and utilisation. The 1995 Savigram jointly issued by the Permanent Secretary of the Ministry of Commerce and Industry and the Permanent Secretary of the Ministry of Local Government, Lands and Housing directs all district and tribal authorities to grant communities rights to management and utilisation of the natural resources in their designated area. Communities that form a representative and accountable entity can be awarded community management of a yearly wildlife off-take quota by the Department of Wildlife and National Parks. If this entity is then legally registered (usually as a Trust) then the Trust can apply for a lease over their Controlled Hunting Area (CHA) from the Tribal Land Board.

Controlled Hunting Areas are administrative blocks used by DWNP to allocate hunting quotas. The entire country of Botswana is split into 163 CHAs. These are the same boundaries used for community quotas, as well as community leases over land. CHAs have been designated for different land-uses, such as commercial photographic area, community multi-purpose in a livestock area and community area in a Wildlife Management Area (WMA). In 1986 the Wildlife Conservation Policy turned tracts of land that had been previously zoned as "reserved" under the 1975 Tribal Grazing land Policy into Wildlife Management Areas. This designated conservation and utilisation of wildlife as the primary land-use. These Wildlife Management Areas are now the main areas used for CBNRM activities. All community activities, whether executed with a joint venture partner or not, must be in line with the overall district land-use plan and area specific management plan.

## **Joint Ventures in Botswana**

The community head-lease over a Controlled Hunting Area is 15 years, 5 years renewable. However, if a community wishes to sub-lease use of their land to a safari company, then they must first start out with two 1-year leases. Thereafter they can enter into a 3-year sub-lease agreement, then 5 years and another 5 years. Thus, communities are restricted first to short-term agreements in a 1-1-3-5-5 year contract pattern. This was devised to protect communities that do not have much experience in business from being trapped with an undesirable partner or in an undesirable contract. However, it also limits the possibility for increased investment and training by safari operators and communities.

Joint ventures and sub-leases for community-managed areas are awarded through a tender process. In each district, a Technical Advisory Committee is formed with representatives from the Department of Wildlife and National Parks, District Land Board, District Administration and District Council. This committee's mandate is to provide assistance and advice to communities who have (or are pursuing) user-rights over a Controlled Hunting Area, and who are entering into joint ventures with the private sector. Once a community has formed and registered a legal entity, it can decide whether to tender out use of its land (in the form of a sub-lease) and wildlife-quota. If a community decides it wants to have a joint venture, then the Technical Advisory Committee (or an NGO who may be providing assistance) will advise them in drawing up tender guidelines and advertising the CHA.

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<sup>2</sup> For more information on the CBNRM institutional and legislative framework in Botswana, see: Rozemeijer and van der Jagt (2000), Jones (1997) or [www.cbnrm.bw](http://www.cbnrm.bw).

<sup>3</sup> The Wildlife Conservation Policy (1986), the National Conservation Strategy (1990), the Tourism Policy (1990), the Tourism Act (1992) and Wildlife Conservation and National Parks Act (1992)

A community's tender guidelines will dictate what a minimum tender may offer, and what sort of benefits or activities it prefers. For example, the safari operator may be required to provide a certain number of jobs, training, infrastructure or equipment. Three community Trusts in Botswana (Cgaecgae Tlhabololo Trust in NG4, Okavango Jakotsha Community Trust in NG24, and Nqwaa Khobee Xeya Trust in KD1) have put together land-use and management plans for their CHAs, which outline community goals and activities for the next 5 years. Certain sections of these plans may be made available to safari companies so they can better inform themselves about the community's vision, and try to provide such elements in their proposal. Safari companies must submit "Technical Proposals", which outline what benefits they will offer the community, and how they will fulfil the objectives and activities of the communities' guidelines.

Once the tender period is closed, the Technical Advisory Committee along with a community Review Committee (usually the Trust board) goes through the tenders. The Technical Advisory Committee usually comes up with 3 tenders they recommend as the most sound (in terms of money offered, company background, resources, natural resource management capability). The Review Committee will take these back to the community. The safari companies who are short-listed are sometimes asked to make a presentation to the community, and then it is put to vote. A contract is drawn up, using the Tender Guidelines and Technical Proposal.

This tender process is outlined by the Department of Wildlife and National Parks Joint Ventures Guidelines which were updated in April of 1999. This booklet reviews the roles of the private sector, Technical Advisory Committee and the community, what tenders should contain and how communities should look at tenders.

### **Issues in Joint Ventures in Botswana**

Joint ventures are a vital part of CBNRM activities. In the beginning, when a community does not have a great deal of knowledge about how to commercially utilise their natural resources, nor capital to do so, joint ventures can fill the gaps. Joint ventures directly demonstrate that wildlife can provide money and tangible benefits to communities – and in quite large amounts. It is estimated that a combined total of BWP 2,290,000 in cash went to the 13 Community Based Organisations (CBOs) involved in commercial ventures in 1999. That is an average of over BWP 224,000 per CBO (Wynter *et al.* 1999). What are the other benefits that have come from joint ventures? The basic ones seem to be money, meat and jobs (40 or 50 jobs at the average). Sub-leases have also earned communities boreholes, radios, funeral funds, "development funds", blankets, clothing and offices. However, the transfer of skills and knowledge to communities on how to manage and utilise their assets seems to be lacking. This is the first of three major weaknesses in joint ventures in Botswana currently. Identified at the first national CBNRM conference in Botswana (Gaborone, July 1999), they are:

1. Need for transfer of skills (to communities);
2. need to secure investment and tenure over land and resources; and
3. lack of trust among the various stakeholders.

(Cassidy and Jansen 2000)

#### *1. Need for transfer of skills (to communities)*

Joint ventures are a very good opportunity for communities to profit from their natural resources when they do not have the knowledge or capital to do so themselves. One of the underlying objectives of CBNRM is to empower communities to manage the wildlife and benefit from this management. However, communities in Botswana who are commercially utilising their resources have so far been passive recipients of money and goods. There is little to no decision-making or active management of activities or natural resources. There are communities with tourism operation plans or fledgling enterprises, but there have been no examples of real collaboration and learning between safari companies and communities so far in Botswana. This may be fine for a learning period in the beginning, when CBOs simply want to build up capital and ideas. Many CBOs have since begun spin-off enterprises that they manage independently of their joint venture partner, such as grinding mills, hardware stores, street vendors and community campsites. However, it seems that CBOs have not ventured far into the realm of tourism. They do not have to, of course, but it should be an option, and joint ventures are an obvious place to get a head start.

## *2. Need to secure investment and tenure over land and resources*

Related to the transfer of skills issue is the need for secure investment and tenure. Many safari companies have said that the 1-1-3-5-5 system does not encourage real investment in a CHA or CBO, whether through infrastructure, wildlife management or skills transfer. Similarly, community advocates say that the 15-year lease is too short to encourage communities to act as real "owners" of the land and invest in its management and utilisation. The DWNP has taken this under consideration and it is possible that the 1-1-3-5-5 rule will be reviewed. However, the counter-argument is that a short time period should not be an excuse for inactivity. There are several communities who are in the 3 year or 5 year sub-lease period, but their joint venture agreements have stayed the same in spirit as the 1 year leases.

## *3. Lack of trust among the various stakeholders*

There has been a lot of discussion of the mistrust between the different parties in CBNRM. The communities feel that the private sector might be "cheating" them and the government is "trying to control them"; the private sector believes that communities are "blackmailing" them and the government is "influencing" the communities; and the government thinks that communities are "stuffing their pockets" and the private sector is "only interested in maximum profits". These are just extreme examples, but the insecurity and misrepresentation is there. This obviously has a huge impact on the possibility for healthy working relationships. If communication helps combat mistrust, then the Ngamiland District CBNRM Forum, which has met 5 times since August 1999, is an example of how all the stakeholders can be brought together to discuss major issues. Others have said that if the roles of the stakeholders and the activity guidelines were clarified, then mistrust would be less of an issue (Sandenbergh in Cassidy and Jansen 2000: 46). Of the three obstacles to joint ventures, the mistrust is the hardest to overcome, because it requires a change in attitude among individuals and groups.

This is not to say that joint ventures in Botswana have been unproductive or unsuccessful. Communities and the private sector only started to work together in the mid-1990s. This is a very short period of time for something as complex as commercial activities based on communally owned natural resources. Communities are still at the beginning of their learning curve, and safari operators are adapting to working in a very different business environment. This overview of joint ventures in Botswana is simply to lay a basis for discussion on how best to move forward. Joint ventures in Botswana are still young, but now is the time to strategize for the future.

# Joint Venture Agreements versus Joint Venture Partnerships

Will the current model for joint ventures that is the norm in Botswana contribute to a long-term vision of a natural resource base that is sustained through profitable management through empowered communities? Sub-lease agreements do attribute benefits to wildlife and those benefits do accrue directly to communities. It has been an important step for CBNRM that communities have legal tenure over land and natural resources and that safari operators must now work directly with and pay communities for their use. However, it has been argued that passively earned benefits which do not directly improve the lives of community residents (e.g. cash that is banked) do not provide a concrete link to wildlife conservation (Van der Jagt *et al.* 2000). Active natural resource utilisation and management and intangible benefits (decision-making power, food security, and employment) are the necessary complements to financial benefits that will ensure the long-term sustainability of CBNRM.

Wider benefits could be possible with more innovative joint venture agreements or even partnerships. Partnerships could mean several things; both parties take risk, contribute investment costs, or simply share decision-making through a board. It is not realistic to expect communities to start immediately with partnerships, and when they do, the arrangement may not be an equal partnership in the strictest sense. Safari operators have years of experience, clients and assets behind them, whereas communities have only started within the last decade, generally have a small pool of educated people to choose from, are based somewhere in the bush, and have much fewer resources (in terms of money, connections, infrastructure etc.). However, communities do have other unique opportunities that their land, resources and traditional knowledge can bring, and a resourceful safari company could take advantage of those traits.

Again, joint ventures, as they stand today, are not undesirable. They are an extremely important step in the evolution of community-based activities. Sub-lease agreements give communities the time to gain some familiarity with the joint venture process, tourism and natural resource utilisation, and allow them to build up a bank account and identify their priorities. It is also true the communities are not under any obligation to enter into a joint venture agreement or partnership of any sort. They can self-operate their own enterprises, whether related to tourism or not. However, joint ventures can be a very good opportunity to gain first-hand business experience, especially if a community or individuals in a community are interested in starting tourism-related activities. The World Tourism Organisation predicts that by 2010, the number of tourists will reach one billion per year, and a quarter of all tourist arrivals will be in the Third World. Communities can tap into this market on their own, but their skills, marketing and familiarity with tourism are still very low. Collaboration between the private sector and communities takes advantage of the skills and clients and knowledge of one partner, and bases activities on the natural resources of the other.

## **Characterising Joint Ventures Agreements, Partnerships and Community Enterprises**

Before going further into the discussion of the pros and cons of the different types of joint ventures, it would be helpful to clarify what the different joint venture categories are. In this paper, joint venture agreements and joint venture partnerships will be the two broad models.

Joint venture agreement: generally a sub-lease agreement. There is no merging of assets and no collaboration in executing activities. Communities will benefit from jobs and tangible benefits such as money, meat and infrastructure by entering into contract with a safari company. Generally, a safari company gains exclusive use over a piece of land for hunting and photographic safari operations and hunting rights over designated wildlife.

Joint venture partnership: a collaborative agreement. The DWNP in Botswana characterises a partnership through the merger of both parties' assets (DWNP 1999). In this paper, the definition will not be so narrow, but will refer generally to a co-operative agreement. Communities may have to contribute investment costs, buy shares in a company and will not necessarily receive a guaranteed lease fee for a period of time. The safari operator may have to offer more management training, share revenues and marketing skills. A partnership will be defined by the joint responsibility and decision-making of both parties.

Both agreements and partnerships have their place in CBNRM, along with community-controlled enterprises. Table 2 summarises their attributes.

Generally, communities retain the greatest amount of control and decision-making power from community-managed enterprises, and the least from joint venture agreements. Joint venture partnerships are somewhere in-between. Conversely, community-managed enterprises have the least earning potential and the highest risk of failure, and joint venture agreements have little risk with high *community* (not necessarily individual) cash earnings. Joint venture partnerships have a medium amount of risk and medium to high earning potential, but also require much higher investment costs. To collaborate with a private company, a community may have to invest quite a bit of money, commit itself and its resources to a long-term binding contract and take on much more responsibility for good work performance and natural resources management. However, partnerships also hold more potential for skills transfer and empowerment of a community and its individuals through training, decision-making responsibility and business experience.

All three strategies have their advantages and disadvantages. However, this paper will focus on joint ventures, particularly, how to pave the way for joint venture partnerships. The assumption is that joint venture partnerships:

1. Are the "next step" after sub-lease agreements;
2. will complement and enhance community-managed enterprises;
3. encourage the transfer of important skills and empowerment to communities which are essential for the success of CBNRM and the indigenisation of the tourism industry in Botswana; and
4. will contribute to the long-term gain of communities and the tourism sector in Botswana, based on the previous three assumptions.

Table 2. Advantages and Disadvantages of three Methods of Commercial Utilisation of Community Natural Resources

Approach	Advantages		disadvantages		Existing Examples in Botswana
	For Community	For Safari Operator	For Community	For Safari Operator	
<b>Joint Venture Agreement</b>  <b>(Sub-leases)</b>	<ul style="list-style-type: none"> <li>• Low risk</li> <li>• High <i>community</i> cash earnings</li> <li>• Few demands on time and effort</li> <li>• No investment costs</li> <li>• Employment creation</li> </ul>	<ul style="list-style-type: none"> <li>• Low risk</li> <li>• Fewer demands on time and effort</li> </ul>	<ul style="list-style-type: none"> <li>• Low transfer of skills</li> <li>• No decision-making power</li> <li>• Dependence on private sector and mistrust of private sector</li> <li>• Limited employment creation</li> <li>• No local institutions developed</li> </ul>	<ul style="list-style-type: none"> <li>• Insecure tenure (with 1-1-3-5-5 system)</li> <li>• High investment costs with short-term tenure</li> </ul>	<ul style="list-style-type: none"> <li>• All joint ventures to date between communities and the private sector in Botswana</li> </ul>
<b>Joint Venture Partnership</b>	<ul style="list-style-type: none"> <li>• Transfer of skills</li> <li>• Decision-making power</li> <li>• Employment creation</li> <li>• Local institutions developed</li> <li>• Better marketing of community-run enterprises</li> <li>• Combined investment costs from safari operator</li> </ul>	<ul style="list-style-type: none"> <li>• More security of tenure</li> <li>• Accountability of community</li> <li>• Tap into eco-tourism market</li> <li>• Higher contribution and responsibility of community</li> </ul>	<ul style="list-style-type: none"> <li>• High risk</li> <li>• Insecure cash earnings</li> <li>• High demands on time and effort</li> <li>• Requires co-ordinated and skilled management</li> <li>• Possible mistrust issues since community has less experience</li> </ul>	<ul style="list-style-type: none"> <li>• High risk</li> <li>• High demands on time and effort</li> <li>• Requires adaptation to different business and communication skills</li> </ul>	<ul style="list-style-type: none"> <li>• None to date</li> </ul>
<b>Community-Managed Enterprises</b>  <b>(Tourism activities, general dealerships, crafts co-operatives, grinding mills etc.)</b>	<ul style="list-style-type: none"> <li>• Decision-making power</li> <li>• Independence and control</li> <li>• Employment creation</li> <li>• Local institutions developed</li> </ul>	<ul style="list-style-type: none"> <li>• No involvement</li> </ul>	<ul style="list-style-type: none"> <li>• High risk</li> <li>• Limited income generation</li> <li>• Community has lack of skills and marketing knowledge</li> <li>• High demands on time and effort</li> <li>• No skills transfer</li> <li>• Quality of tourism activities may not be up to standard</li> </ul>	<ul style="list-style-type: none"> <li>• No involvement</li> </ul>	<ul style="list-style-type: none"> <li>• Cgaecgae Tlhabololo Trust (NG4) cultural tourism activities, !Kokoro Semausu (co-op streetvendor), !Kokoro Crafts</li> <li>• Chobe Enclave Conservation Trust (CH1/2) – Kavimba village campsite, Satau hardware store</li> </ul>

# Joint Venture Options

This section will propose possibilities for joint ventures in Botswana. As the definition of joint venture partnerships supplied in this paper indicates, a “partnership” can mean a variety of different business arrangements. It is hoped that by listing some concrete and detailed arrangements, communities and the private sector will be encouraged to “take the next step”. For the most part, these joint ventures are consistent with the current legislative and institutional framework in Botswana. The options are presented as examples – imaginary names of Trusts and safari operators are used, and imaginary numbers. These should be regarded as simply “pretend case-studies” that offer concrete ideas on how a real joint venture partnership could work.

## Arrangement A: Sub-Lease Agreement

The Kgalagadi Kukama Trust (KKT) has only had their head-lease over its CHA for 1 year. Thus, they have decided to enter into a sub-lease agreement. The Trust is sub-leasing exclusive rights for use of its CHA and all of the quota to Desert Hunter Safaris for 1 year. Desert Hunter Safaris is paying a sub-lease fee and quota fee which amounts to P280,000, a Trust office, 40 low-skilled jobs (cook, camp cleaner, skinner) with some on-the-job training and 3 individuals from community paid to undergo hospitality training in South Africa.

KKT has few skills and money since they are new to CBNRM, so this arrangement is best because they receive a large amount of money and some employment and training for their resources, and there is no risk of them not receiving their benefits. Desert Hunter Safaris also assumes very little risk and there is little time required for working with the KKT. They do not have a very close relationship, but each party receives its benefits with little effort required.

### Major characteristics:

- No management capacity or decision-making by community needed.
- Little time and effort required by both parties.
- Minimum transfer of skills. Three individuals will receive school training.
- Safari operator has insecure tenure as community can receive these types of benefits from almost any company and incurs high investment costs (depending on the length of the sub-lease).
- Community assumes no risk and no responsibility.

### Arrangement B: Sub-Lease with Community Managed Tourism

The Chobe Tlholego Trust (CTT) has sub-leased exclusive rights over the commercial hunting zone of its CHA and half of the quota to a safari operator, WildAfrica Safaris, for 3 years. The community has split its CHA into commercial and communal hunting zones. WildAfrica Safaris can use the commercial zone for hunting their half of the quota, and community members can hunt for subsistence in the communal hunting zone. WildAfrica Safaris is paying the Chobe Tlholego Trust a sub-lease fee and quota fees which amount to P180,000 and 30 low-skilled jobs with some on-the-job training.

The CTT has its own cultural tourism activities – a small campsite has been created, and community-members are organised into a dancing group, storytellers and bushwalk guides. In the contract with WildAfrica Safaris, the CTT requires WildAfrica to book 20 nights in the campsite, with activities. This means that WildAfrica Safaris must market the community's tourism activities and find business for it. WildAfrica Safaris is a hunting company though, so it finds a photographic tourism operator, African Experiences Safaris, to bring in the community tourism clients. It is important to note that African Experiences Safaris does not have *exclusive* photographic tourism rights to the area. The community can also entertain tourists that come in on their own, or through other safari companies. The minimum of 20 nights is just an extra benefit for the community.

In the contract between WildAfrica and Chobe Tlholego Trust, it is agreed that the tourists that are booked by WildAfrica must be given evaluation forms. If the tourists find the quality of the activities very bad, then the CTT must either improve the activities, or the safari company does not have to bring tourists in anymore. Otherwise, the CTT could have a very bad tourism operation, but WildAfrica Safaris is still obligated by its agreement to bring in tourists. Since WildAfrica sub-leased the photographic part of the agreement to African Experiences Safaris, the same rules apply. African Experiences Safaris can also provide some input and advice to the community regarding how to improve the tourism.

The CTT wishes to do tourism activities but doesn't have a way of marketing. That is why they have required their joint venture partner to bring a number of tourists in – at least they will have a minimum number of visitors and receive some advice. CTT still receives a good deal of money and some other job opportunities. The community-tourism activities do not affect WildAfrica Safaris too much, but it does mean that they must put in some extra effort to provide tourists. Since their business is hunting, they found another company to bring clients in for photographic tourism. African Experiences Safaris has the opportunity to offer a completely new cultural holiday. Their risk is that the community tourism is not very polished yet – but they are able to provide advice, and the evaluation forms makes sure that if CTT is not doing their job, then they no longer have to do business.

#### Major characteristics:

- Medium management capacity required for the community to manage its tourism activities effectively.
- Some effort required by both parties.
- Minimum transfer of skills.
- Safari operator still has insecure tenure, but a photographic company has the opportunity to build up a relationship with the community tourism operation.
- Community assumes no risk and some responsibility (for offering quality tourism activities).



### **Arrangement C: Sub-Lease with 5 year Transfer of Hunting Camp Management**

The Okavango Lefatshe Trust (OLT) sub-leased exclusive rights over the commercial hunting zone of its CHA and 70% of the quota to Delta Land Safaris (DLS) for 5 years. The community has split its CHA into commercial and communal hunting zones. Delta Land Safaris can use the commercial zone for hunting its 70% of the quota, and community members can hunt in the communal hunting zone.

The Okavango Lefatshe Trust has built a hunting campsite within the commercial hunting zone, which is for use by Delta Land Safaris. Over the 5 years, Delta Land Safaris must train community members to manage the hunting camp independently. Delta Land pays a sub-lease fee which is discounted (to make up for the training costs) of BWP 80,000, a quota fee of BWP 100,000 and performs intensive hiring and training of community members in all types of work – managers, cooks, guides, trackers, drivers etc.

After 2 years and 4 years of this arrangement, two independent consultants are hired (half the money is paid by the OLT and half by DLS, and the transport is paid by DLS) to evaluate and make recommendations on the arrangement. The consultants will check whether Delta Land Safaris is offering a high level of training and responsibility, and whether Okavango Lefatshe Trust is providing the effort and individuals to receive this training and responsibility. The consultants can suggest improvements if there are problems with the effort of either party. If the arrangement is completely failing, it can be recommended that the hunting camp training part of the contract is terminated. Then, Delta Land Safaris will be able to manage the camp on its own for a rental fee.

If the arrangement is successful, after the 5 years, the Okavango Lefatshe Trust will then charge a higher rental fee to the safari operator (which will probably be Delta Land Safaris) for use of the community-managed hunting camp and may build other camps.

Delta Land Safaris will benefit from hunting camps that are built and run by the community according to its training. If DLS trains well, it will have built up a relationship with the community, and can continue to offer hunting activities using the community skills and camps. The Okavango Lefatshe Trust will learn to manage the camps, and can charge a higher rental fee and offer more employment to its members.

#### **Major characteristics:**

- Medium to high management capacity required for the community to work effectively with safari operator in training of community members to manage a hunting camp.
- More effort required by safari operator to intensively train community members, but less sub-lease fees and investment costs.
- High transfer of skills.
- Safari operator has more secure tenure (5 years) and a relationship with the community. Also, safari operator has opportunity to train community to manage a campsite according to its client needs.
- Community assumes little risk (will still receive small sub-lease fee and quota fees) and medium responsibility (must perform management of camp).

#### Arrangement D: Co-Development of Lodge

The Gcwihaba Trust (GT) has sub-leased 5 year exclusive rights to Horizon Hotels/Blackfoot Hunting Safaris over the commercial hunting zone of its CHA, half of the quota and a site for development of a lodge. The community hunts its half of the quota in its own communal hunting zone.

Horizon Hotels and Blackfoot Hunting Safaris have joined together in tendering for the area because Horizon would like to develop the lodge and Blackfoot would like to run the hunting operation. Blackfoot Hunting Safaris is paying GT a fee for the sub-lease of the hunting area and quota of P175,000 and 20 low-skilled jobs. Horizon is not paying any sub-lease fee for the photographic tourism zone or the lodge site, but must pay for the development and management of the lodge. Horizon must also pay the Gcwihaba Trust P25 for each person staying in the lodge each night (bed-night levy). The lodge site and number of beds has been decided by Gcwihaba Trust and included in the tender invitation.

The Gcwihaba Trust has already developed its own traditional village and cultural tourism activities and the lodge site has been placed nearby. The lodge Horizon develops must only make use of these activities, and any new activities will be decided with the community and be based on community skills or training opportunities. The lodge will offer a minimum of 15 jobs to community members, but will not be required to hire and train management positions. A lodge development committee will be formed consisting of members from Gcwihaba Trust and Horizon Hotels, and will discuss activities, any management changes and conflicts. After 5 years, Horizon can renew the contract with GT, sell the lodge to another company (with GT's input) or sell the lodge to the community (who will hire another company to manage the lodge).

The Gcwihaba Trust has ensured that it will have visitors to its cultural tourism activities through the development of a lodge nearby. This requires the Trust to put effort into working with a private company and offering quality activities. The Trust will gain knowledge of how to operate its own activities efficiently, and how to do business with a complex enterprise. The Trust also receives money and some employment created through the hunting and lodge leases. The community has a responsibility to ensure that the lodge succeeds – after 5 years, Gcwihaba Trust will have to decide to renew the lease or ensure that Horizon finds a buyer. The Trust cannot sub-lease the photographic zone to another company or end the lease with Horizon without ensuring that Horizon recoups some of their investment by sale of the lodge. Through this arrangement, Horizon Hotels obtains an exclusive lodge site and photographic area with no lease-fee. No other tour operators can work in the area. It has almost complete freedom in developing and managing the lodge, and cultural activities are provided and managed by the GT. After the 5 years is over, Horizon can continue the relationship with Gcwihaba Trust, or opt to sell its assets and move on. Blackfoot Hunting Safaris gains all the usual benefits of exclusive hunting rights for 5 years.

#### Major characteristics:

- High management capacity required for the community to work effectively with safari operator.
- More effort required by safari operator to work with community in offering quality activities for lodge clients, but less sub-lease fees.
- Medium transfer of skills.
- Safari operator has more secure tenure (at least 5 years) and a relationship with the community. At the end of the 5 years, the safari operator can sell the lodge (with input from the community) or renew the contract.
- Community assumes some risk and high responsibility (will still receive small hunting and quota fees, but if the lodge is not successful, their bed-night levies will be erratic and sale/release of the lodge will be difficult).

### Arrangement E: Co-Development and Management of Lodge

The Kwando Tlhabololo Trust (KTT) has had sub-lease agreements for 5 years, and would now like to become more involved in tourism activities. A photographic tourism company, Linyanti Safaris, is interested in the CHA for a lodge and has approached the KTT.

These two partners have come to an agreement in which the Kwando Tlhabololo Trust sub-leases exclusive rights to Linyanti Safaris over the photographic and mixed-use zones of its CHA and a site for development of a lodge for 5 years. Linyanti Safaris does not have to pay any sub-lease fees, but pays for lodge costs, is obligated to employ and train a number of community members, and pays 35% of the profits from the lodge to the community. Every quarter, Linyanti and the KTT will review the books and every year an audit will be carried out. Linyanti must employ KTT members for 50% of the construction of the lodge, and use local materials where possible.

Linyanti is responsible for management of the lodge, but is overseen by a joint management team with representatives from Linyanti Safaris and KTT. The joint management team resolves disputes and decides on the direction of the lodge – its design, activities and market. A percentage of the staff of the lodge at all levels and sectors (front-desk, catering, housekeeping, groundskeeping, management, marketing) must be community members. They will be trainees for the first 2 years, but afterwards will be fully responsible employees. These percentages will be decided by the joint management team, depending on the requirements of the positions and the availability of educated and willing community candidates.

After 5 years, KTT should have some capability to run and oversee the lodge independently. At this time, Kwando Tlhabololo Trust has the option to buy the lodge and manage it independently (by also hiring outside staff), buy the lodge and hire a different safari company to manage it, or re-lease the lodge to Linyanti Safaris again.

Outside the lodge development and training, KTT has tendered out its entire hunting quota for a 5 year lease. The hunting company which won the tender, Knudson Hunting, is paying KTT P400,000 per year and offering 10 low-skilled jobs. Kwando Tlhabololo Trust is not very involved with Knudson Hunting, but this money allows them to concentrate their energy on working on the development of the lodge and earn money for a possible buy-out of the lodge. If successful, this arrangement will give residents of the KTT area valuable skills and employment, and KTT will have the option of owning its own lodge. Linyanti Safaris must provide intensive training and work very closely with the community, but it also gains an exclusive lodge site and photographic tourism area.

#### Major characteristics:

- High management capacity required for the community to work effectively with safari operator and learn to manage the lodge.
- More effort required by safari operator to intensively train community members, but less sub-lease fees and investment costs.
- High transfer of skills.
- Safari operator has more secure tenure (at least 5 years) and a relationship with the community. Safari operator has opportunity to train community to manage and run the lodge according to their client needs. At the end of the 5 years, the community must either buy the lodge or renew the contract with the same safari operator.
- Community assumes some risk and medium responsibility (will still receive hunting and quota fees, but if the lodge is not successful, their percentage earnings will be low).

### Arrangement F: 5 year Joint Venture Partnership for CHA Development

The Ghanzi Kopagano Trust (GKT) has had sub-lease agreements for the past 7 years and has started its own spin-off activities (crafts shop and cultural tourism activities). It has built up a large bank account, but does not really know how to create employment and stimulate productive activities on its own. The crafts and tourism activities have provided some small cash earnings to community individuals, but very few tourists know about the area.

The GKT decides to tender for a safari operator partner to develop their CHA over 5 years. Kalahari Thirstland Safaris would like to work in the GKT's area which is right next to the Central Kgalagadi Game Reserve. The partners agree to split all of the investment costs. Kalahari Thirstland Safaris will not have to pay any sub-lease or quota fees, as this is part of the community contribution. It will have to provide training to community members, and all management decisions are jointly made. Since the Ghanzi Kopagano Trust has provided a large amount of money and investment into the start-up activities, it essentially owns part of the Kalahari Thirstland Safaris company. It has the right to review the books and auditing process.

The partners decide that they will sub-lease half of the quota to another company, and they will develop two campsites, one near the main road and one next to the CKGR gate. They will also provide tourists with guided day-drives into the CKGR, and bushwalks, storytelling and traditional dancing just outside the game reserve. Kalahari Thirstland trains community-members on constructing the camps, marketing activities and guiding tourists.

Each year, the two partners split the profits from the activities. After 5 years, they will most likely simply continue the partnership. They share the management, costs and risks of the entire enterprise.

#### Major characteristics:

- High management capacity required for the community to work effectively with safari operator.
- More effort required by safari operator to work with and train community members, but less sub-lease fees and investment costs.
- Medium to high transfer of skills.
- Safari operator has more secure tenure (at least 5 years) and a relationship with the community. Safari operator has opportunity to train community to manage and run the activities according to its client needs.
- Community assumes high risk and responsibility for their performance and returns on their investment.

### Arrangement G: Joint Venture Partnership Company

After 10 years of working in partnership, the Ghanzi Kopagano Trust and Kalahari Thirstland Safaris (KTS) decide to change their relationship a bit. They have consulted a lawyer and will now set up an equal partnership company to market and run activities (hunting and photographic) in the community CHA. This new company, called Kalahari Cultural Safaris will continue the same types of activities as before. However, now that the community has a bit more experience, it will be independently responsible for managing and running the activities in the CHA itself, and Kalahari Thirstland Safaris will be responsible for marketing the activities and providing clients from Maun. All profits from the enterprise are earned under the company and divided up according to how much the Trust and how much KTS have contributed.

#### Major characteristics:

- High management capacity required for the community to work effectively with safari operator.
- Low transfer of skills - this arrangement will be based on the community's and safari operator's pre-existing skills.
- Safari operator has more secure tenure as provided by the company agreement.
- Equal effort and risk by the safari company and community as partners.

# Conclusions

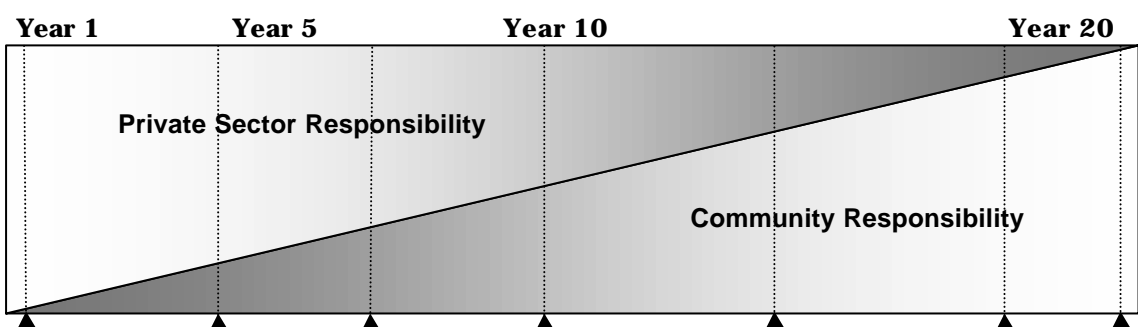
Community Based Natural Resources Management is not a short-term approach to livelihood improvement and conservation of wildlife. It requires major changes in government policy, attitudes and structure, community-based institution building, intensive training and innovative business strategies. Joint ventures – a business arrangement between a community and a safari operator – have been the primary means of attributing economic benefits to natural resources management in southern Africa. Consumptive utilisation of wildlife (sport hunting) has high financial returns with the least inputs and impact on the environment.

The first joint venture in Botswana was initiated in 1993 in the wildlife-rich Chobe Enclave. Since then, joint ventures in Botswana have all been short-term sub-lease agreements – a community awarding exclusive hunting and photographic rights over a CHA to a safari operator for cash, limited employment and meat. This has resulted in escalation of the market value of the wildlife and land, and several Trusts, especially around the Okavango delta and Chobe National Park have sizeable bank accounts. However, these short-term sub-leases have not resulted in real ownership and participation in natural resources utilisation by the communities. The transfer of skills between safari operators and communities has been limited, and through competition and insecurity, an atmosphere of mistrust is pervasive.

Joint venture partnerships could be an opportunity for community members in CHAs to acquire skills and employment in the tourism sector and for safari operators to gain security of tenure and offer unique tourist destinations and experiences. However, it is important to remember that safari operators and communities will not take the step towards partnerships unless it is worthwhile for them. Safari operators need to make sure that the time and risks taken by working in partnership with a community will pay off (in profits, market share etc). Communities need to make sure that the time and risks that are taken by investing in activities will result in more benefits for the community than would have been possible under a sub-lease agreement. These benefits – decision-making power, training, management capacity – may be less tangible than the large amount of money that was possible under the sub-lease agreement. Communities, especially very poor ones, may not want to take this step because they are extremely risk-averse. Perhaps it will take a minimum of 5 years of sub-leasing and a sizeable bank account before a community will want to look at joint venture partnerships. However, some communities may be ready to make small changes and take on small risks. They do not yet have to jump into a full-blown partnership, but perhaps they will invest in a campsite in order to gain more control and training.

The possibilities for joint ventures can be seen along a graduated continuum (see diagram below). At the beginning of this continuum are sub-lease agreements, in the middle joint venture partnerships and at the end are community-managed enterprises.

However, it is also possible for any and all of these three strategies to exist at the same time. Furthermore, this diagram and the examples cited only depict the responsibility of the private sector and communities. However, government and NGOs also play a vital role in regulating joint venture agreements. They can provide mediation, training and guidance to both communities and safari operators. It will take time, effort and trust for partnerships to be forged, but without this general evolution in joint venture operations, CBNRM will most certainly stagnate.



Adapted from pers comm Hasler (23 March 2000)

Sub-Lease Agreement

Sub-Lease with 5 year Transfer of Hunting Camp Management

Co-Development and Management of a Lodge

Joint Venture Partnership Company

Sub-Lease with Community Managed Tourism

Co-Development of a Lodge

5 year Joint Venture Partnership for CHA Development

# **Appendix**



# **A SHORT NOTE ON THE LEGAL STRUCTURES OF JOINT VENTURE AGREEMENTS FOR USE BY COMMUNITIES IN BOTSWANA WHOM HAVE BEEN ALLOCATED COMMUNITY RESOURCE USER RIGHTS**

## **1. INTRODUCTION**

I have been asked to provide a short note on the potential legal structures, which may be employed by communities whom have been allocated community resource user rights in controlled hunting areas. The views expressed herein are strictly those of the writer and should not be ascribed to any other person. The note will commence with a discussion of the legal nature of a joint venture, provide a synopsis of the most usual forms of joint venture agreement and discuss an attached model partnership agreement, which may assist communities to look beyond the existing form of “joint venture” exclusively used in the community areas (namely, sub-leases which as we will see is not a joint venture at all).

## **2. WHAT IS A JOINT VENTURE AS A MATTER OF LAW?**

2.1. The Joint Venture Guidelines of DWNP (revised edition of April 1999) (“the Guidelines”) as quoted on page 1 of the paper to which this short note is attached, describes a joint venture as “an activity, or venture, undertaken by two or more partners for their mutual benefit”. Whilst this is loosely correct in layperson’s terms a lawyer would see that definition as a classic description of a “partnership”. In fact, as a matter of law, there is no such legal creature as a “joint venture”. The law recognises only persons (whether natural or corporate), registered societies and trusts as having independent legal status. Thus when someone refers to an entity as being a “joint venture” a lawyer will not accept this on face value but will look behind the label to understand what is the precise legal nature of the creature sought to be described. To use the definition as quoted above, therefore, we need to understand what legal vehicle is the activity to be carried out. Lawyers will advise their clients that joint ventures usually take the form of the following entities: a joint venture company, joint venture created by contract or a joint venture partnership.

### **2.2. Joint venture companies**

A joint venture company is a limited liability company specifically incorporated by (usually) two persons for the purpose of carrying out a specific venture. This is quite common in the property development and construction industry in Botswana pursuant to which each party earns their respective interest in the equity of the joint venture company usually by the donation of a thing, rather than cash, in return for shares. Generally, in that sector, a person who owns land will agree to transfer land to the joint venture company whilst the other shareholder invests a mixture of capital and skills in return for their shares.

2.3. In the context of a community, one could envisage a joint venture between an investor and a community pursuant to which the parties agree to incorporate a limited liability company and, against the donation of the rights of the community in its lease of the CHA, the investor would invest a mixture of capital and expertise. The relationship between the parties and the management of the joint venture company is usually governed by a shareholders’ agreement which outlines the respective rights and obligations of the parties as shareholders and provides a structure for the joint management of the joint venture company once in operation. So far as the writer is aware, no community has entered into such a joint venture agreement, probably because it is a relationship that is so difficult to terminate for a number of complex legal reasons.

### **2.4. Joint ventures created by contract**

Joint ventures created by contract are simply agreements between two persons to carry out a venture together for profit. The astute will be saying that this is what was warned against above and what has just been described is a partnership. This is probably correct but lawyers will go to extreme lengths to attempt to exclude the law of partnership from such agreements for a number of reasons; the primary one being that

partners are jointly and severally liable for each others debts, regardless of whether the debt was approved by the partners as a group. Thus, if my law partner owes the bank a million pula for an expensive car purchased through the partnership, and reneges on that debt, the bank may look to me for the funds even though I received none of the dubious benefits of such investment.

- 2.5. It follows that parties to joint ventures created by contract do all that they possibly can to shield themselves from the law of partnership (with varying degrees of success) and employ a number of legal techniques in order to do so. Such joint ventures are quite common in large construction projects in Botswana such as the North-South Carrier project. In respect of a joint venture created for the carrying out of large-scale construction contract each party will agree to provide their own unique skills and capital to the carrying out of the project at issue in return for a share of the profits of the venture, which does not necessarily have to be divided on an even basis. In terms of community areas the writer is not aware of any such joint venture constituted by contract (or management services agreement for the matter) entered into by a community.
- 2.6. The Guidelines attempts (on pages 12 to 14) to make a distinction between the type of joint venture agreement discussed above and a joint venture partnership by stating that the former does **not** involve the merging of either parties assets while the latter does involve the merging of portions of the partner's assets. In the view of the author, only the latter constitutes a joint venture whereas the former, at least in the examples provided, are sub-leases which is simply, as a matter of law, an entirely different legal structure.

### 2.7. **Joint Venture Partnerships**

The last common form of a joint venture is the classic one: a partnership. A legal dictionary describes a "partnership" as an association of two or more people formed for the purpose of carrying on a business with a view to profit" (*Oxford Dictionary of Law*, fourth ed. 1997). The Guidelines provide an accurate description of a partnership between the community and an investor (page 13): "A joint venture partnership is formed between a safari company or companies (providing expertise, infrastructure and equipment) and the community (providing the land, natural resources and labour) and this entity effectively becomes a natural resource and tourism management group, receiving all revenues and responsible for all costs. The community learns about the business aspects of the tourist industry and has a say in day to day resource management decisions. The community and the safari company or companies share all profits from the enterprise according to their initial agreement".

- 2.8. Once again, the writer knows of no partnership agreement having been effected between a community and an investor in Botswana.
- 2.9. In any event I annex hereto as schedule "A" a form of partnership agreement which envisages an agreement between a community and an investor pursuant to which the investor constructs and operates a photographic camp on behalf of a community in exchange for an equal share in the profits of the camp with the community. Of course, being a lawyer means that a word of caution is necessary and I urge that the precedent be treated simply as an example. Again, it can not be emphasised enough that independent legal advice should be sought by communities prior to entering into such agreements to ensure that their rights are protected.

## 3 **CONCLUSION**

It is hoped the above assists those interested in understanding the legal structure of the joint venture process and its practical application.

**JEFFREY BOOKBINDER**

Schedule "A"

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Kgatlhano Close, Plot 3362  
P.O. Box 611  
Gaborone  
Botswana  
Tel: (267) 352 413  
Fax: (267) 314123  
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