

PROFESSION: “POACHER”

NEW STRATEGIES TO ACCOMMODATE INDIGENOUS RIGHTS OVER NATURAL RESOURCES ¹

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Hunting and Poaching: What is the Difference?

During the planning process of the Salambala Conservancy in the Caprivi Region of Namibia,² potential participants in the conservancy were drawn into a brainstorming exercise³ with the aim of identifying their current situation and comparing it with the situation they would be in should the conservancy materialise. User groups, types of needed resources and the duration of the respective activities per year were listed.⁴ The column user groups in the

¹ The subject of this paper arose from a project that was commissioned to the Centre for Applied Social Sciences, University of Namibia, by the Namibian Ministry of Environment and Tourism, supported by NORAD and WWF.

² The institution of conservancy was recently introduced into the Namibian Natural Conservation Ordinance. Conservancies allow the people of a defined area to participate in the benefits from wildlife. See below.

³ The exercise is summarised in LIFE (1995).

⁴ The source just quoted says:

After developing an understanding of what a user group is and why it is important to take account of different user groups' needs during the planning process, the participants were asked to break into their three working groups to define user groups and the resources they use in the Salambala Forest (LIFE 1995: 13).

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evaluation sheet showed professions such as farmers, tree and grass cutters, livestock owners. Amongst them and without any indication of discrimination appeared poachers.

The profession of poacher, indeed, was listed as any other profession. The type of resources employed by poachers was given as meat. As time of activity, the meeting stated that poaching was practised throughout the year, but increased during the rainy season (LIFE 1995: 14).

There is no doubt that the participants of the meeting referred to (and with them the majority of people in Caprivi and elsewhere) understood what they were talking about. It was, in particular, understood that poaching is a punishable offence under state law.⁵ However, whether the participants of the Salambala planning meeting would subscribe to the definition of poaching as 'catching game birds, animals or fish without permission on somebody else's property' (the definition of poaching in the *Oxford Advanced Learner's Dictionary*) is another question. It is particularly doubtful whether they would accept the reference to 'somebody else's property' in defining certain acts of hunting in their area as poaching.⁶

⁵ I happened to be in Caprivi around the same time when the Salambala meeting took place. I was accompanied by a forester of the Ministry of Environment and Tourism who wanted to use the opportunity of the visit in that particular area of Caprivi to introduce some of the Ministry employees who were to be stationed there to prevent field fires. The traditional leaders of the visited community refused to talk to me until they were convinced that the subordinates of my forester were really and only concerned with fire and not with monitoring poaching.

⁶ It is interesting to note that Silozi (the lingua franca of Caprivi) which has various terms for hunting (hunting in the forest, hunting with dogs, unsuccessful hunting) does not have a word for poaching but has a circumlocution which describes the act of poaching as hunting without permission (*kuzuma kwandaa mulao*). (See O'Sullivan 1993). Another widely spoken Namibian language shows the same picture. *Kwata oohi, iinamwenyo nenge oondhila kape na epitikilo*, 'to catch fish, animals or birds without permission' is the translation of poaching in Oshindonga (ELCIN 1996) That the act of catching without permission occurs on 'somebody else's property' is not essential.

The thesis of this contribution is that modern⁷ hunting and nature conservation law is foreign to indigenous⁸ communities and lacks indigenous legitimacy. By ignoring indigenous hunting and conservation law and even denying the existence of indigenous societal principles that support conservation rules,⁹ the imposition of modern law has created a situation of alienation in which, e.g., the same behaviour is practised as 'normal' but nevertheless bears a negative connotation (poaching). This alienation is not easy to overcome after it has led to a vacuum in which values have difficulty in existing.

In the following, modern hunting and nature conservation law will be investigated in contrast to the corresponding indigenous laws. The mentioned concept of conservancy, recently introduced, will be looked at as a possible alternative to the hunting and nature conservation law as it developed with the colonial penetration of the country.

'Modern' and 'Traditional' Nature Conservation Law

Modern nature conservation law or hunting as the white man's business
Most probably the oldest hunting law of Namibia is an ordinance of the German colonial government of 15 February 1909.¹⁰ This ordinance distinguishes between

⁷ 'Modern' is used to refer to the received law during the time of colonialism and law enacted by the various administrations including the post-independence government of Namibia. The more technical legal term for 'modern law' is 'general law'.

⁸ 'Indigenous' or 'traditional' is used to refer to 'traditional communities' in accordance with the Traditional Authorities Act, 17 of 1995. The Constitution of Namibia speaks, instead of 'indigenous' or 'traditional law', of 'customary law' which is misleading as customary law exists also outside the parameters of indigenous law.

⁹ Fuggle and Rabie list only 'utilitarianism', 'Judeo-Christian ethics' and 'other religions' (the world's major religious faiths) as foundations for a conservationist approach to nature (Fuggle and Rabie 1992: 7ff). The indigenous African approach only appears in a small paragraph titled "Black involvement in environmental conservation" (Fuggle and Rabie 1992: 24f).

¹⁰ Verordnung des Gouverneurs von Deutsch-Südwestafrika, betr. die Ausübung der Jagd im deutsch-südwestafrikanischen Schutzgebiet, KolBl 1909, 376, repealed by the Game Preservation Proclamation, 13 of 1921. An earlier

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five different types of animals which may be hunted. It declares elephant, hippopotamus, rhinoceros, giraffe, zebra, buffalo, adult female eland and kudu and others (section 2¹¹) not huntable unless the governor grants special permission. Otherwise, a hunting licence is required which may be issued by a regional or district office (section 3). Owners and lawful occupants of farms which are properly fenced off are exempted from the ordinance (section 9(1)). They possess the exclusive right to hunt on their land. Anyone who wants to hunt on occupied farms needs the permission of the farm owner or occupant (section 9(3)).

Hunting with traps, pits, nets, snares and similar tools is not allowed (section 4). The fee for the licence is 40 marks (section 5). The ordinance clarifies that the indigenous people are subject to the ordinance and are required to have a hunting licence for gun hunts in their tribal areas. They are not allowed to hunt on their own outside their tribal areas (section 7(1)).

The successor law to the German ordinance was the Game Preservation Ordinance, 13 of 1921, enacted by the South African Administrator. It introduced the categories of Royal Game, Big Game and Small Game to categorise animals for the purpose of differentiating the type of hunting permit. Permission to hunt Royal Game could only be obtained from the Administrator (section 4(1)). Hunting otherwise than by shooting was only allowed when especially permitted by the Administrator (section 9(1)). As the Proclamation did not specifically mention hunting by indigenous people, it can be assumed that the Proclamation was intended to apply to everybody. The fee for the Big Game Licence was 20 pounds per annum, the fee for the Small Game Licence 3 pounds or 15 shillings for any calendar month in the open season (sections 5(2) and 6(2)).

The Prohibited Areas Proclamation, 26 of 1928, amended the picture just described in so far as it provided for an additional permit to hunt in the so-called prohibited areas of the then South West Africa. The prohibited areas are the areas 'beyond the Police Zone' as it was introduced by the German colonial administration (and continued in effect by the South African Prohibited Areas Proclamation, 15 of 1919) in order to separate the areas under full and direct administration from areas that were only observed at some strategic points. In

ordinance provided for game reserves: Verordnung des Gouverneurs von Deutsch-Südwestafrika betr. Bildung von Wildreservaten im Schutzgebiet, KolBl 1907, 428.

¹¹ The catalogue of the exempted species is basically identical to what the Proclamation 13 of 1921 lists as 'Royal Game'.

geographical terms, the area beyond the police zone was the area from the mouth of the Ugab river in the West right across the northern part of the country to the Caprivi, thus including the main areas of settlement of the majority of the indigenous people.¹² The Proclamation extended the restrictions on entry and residence in the prohibited areas by requiring a permit to be issued by the Secretary for South West Africa (section 3(2)) in addition to the permit required under the Game Preservation Ordinance for hunting game.¹³ This additional requirement remained in force until 1967.

1967 saw a major legal review. The Nature Conservation Ordinance, 31 of 1967, consolidated the nature protection law, so far contained in a number of separate laws into one piece of legislation. However, this Ordinance did not change the basic structure of the law of hunting as it was enacted by the early German Ordinance and the subsequent Game Preservation Proclamation and its various amendments.

This brief look at the early phases of the hunting law yields some observations. It should be noted that these observations do not question that the principal intention of the reported legislation was to protect wildlife. The observations question functional aspects vis-à-vis indigenous customs and practices, anticipating some of the considerations that will follow in the next part of this paper:

The introduction of hunting licences ignored the customary systems that regulated hunting up to then.

The recognition of the right of land ownership as including the right to hunt and the recognition of the right of ownership of wildlife by owners of properly fenced off farms stands in contrast to the non-recognition of any right to wildlife on indigenous (communal) land.

The requirement to pay the administration for hunting licences de facto excluded indigenous people from obtaining licences.

¹² The prohibited areas are defined in the First Schedule to Proclamation, 26 of 1922.

¹³ Extended to "other wild animals" by the Prohibited Areas Amendment Ordinance.

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The introduction of the additional permit under the Prohibited Areas Proclamation of 1928 enforced the system further. Although the Proclamation targeted persons intending to enter certain areas, in its section on hunting the Proclamation used the words 'no person' thus addressing all people including those lawfully living in the area.

The eventual exclusion of hunting other than by shooting discriminated against the whole arsenal of hunting tools customarily used by indigenous people.¹⁴

Traditional hunting, the ancestors and the restoration of harmony

Traditional hunting was a multifaceted event that entailed much more than killing animals. The Namibian anthropologist Fisch, who recently published a comprehensive record on hunting methods, religio-magical practices of hunting, and hunt-related praise songs of the Kavango communities (Fisch 1994),¹⁵ shows that traditional hunting used to be a very complicated societal process (Fisch 1994: 76ff), ranging from the initiation of the hunter, the exploration of all sorts of signs as to whether or not the planned hunt would be successful, the preparation of the weapons, the rituals performed before the hunt started and the rituals during and after the hunt. At all events, dialogue with the ancestors was sought.¹⁶ Before starting the hunting exercise, luck in hunting was requested, and after the successful hunt thanks were expressed to the ancestors (Fisch 1994: 79).

¹⁴ Even communities which possessed rifles employed traditional ways of hunting where possible to save expensive ammunition. This was observed, e.g., by Tönjes in Oukwanyama, northern Namibia, in the early years of this century (Tönjes 1996: 81)

¹⁵ The Namibian ethnography lists five ethnic groups as the Kavango communities (living alongside the Kavango river from west to east where the Kavango crosses Namibia into Botswana): Kwangali, Mbunza, Sambyu, Gciriku and Mbukushu. The territories of these communities are not identical with the Okavango Region

¹⁶ According to Fisch (1994: 79ff and 89ff), dialogue with the ancestors was essential for all types of hunting, for profane hunting (i.e., to have meat to eat) but also for ritual hunting (i.e., to purify the society from something, or to celebrate important events).

In societies with centralised political institutions, hunting was very much controlled by the king. In Oukwanyama, for example, large-scale hunting, as Loeb reported, was confined to times set by the king (Loeb 1962: 158ff). When the dry season started, the king held the *oshipepa* ceremony during which he ate the first piece of sorghum of the year's harvest. Thereafter, the king went out for his annual ceremonial hunt, which lasted one or two weeks. Only after the royal hunt were the people allowed to hunt for themselves. "By this time", Loeb notes, "the animals, including the big game, had already given birth to their young" (Loeb 1962: 158).

After the animal had been killed, the Kavango hunter who had been the first to wound the animal stepped on it and cited a praise song on the animal. In case of a dangerous animal, hunters drank a mouthful from the blood that seeped out of the wound (Fisch 1994: 81). The hunter would cut the tail which he, after covering the prey, took home and placed in front of the place reserved for offertories. He placed his weapons there too and took a rest. Should he put his weapons upside-down, his people would understand that the animal was only wounded. When the prey was fetched, certain parts of the animal would be offered to the ancestors (Fisch 1994: 81f). Fisch reports that the Mbukushu and the Gciriku used to hang the head of the prey in such a way that the eyes would be directed towards the successful hunter and his company (Fisch 1994: 82).

Ritual eating was practised in the following way. Close to the sacrificial altar, a fire was lit. Pieces from the prey (a piece of liver was essential) were taken for cooking. The hunter had to taste the food. After cooking, some of the liver was placed on the head of the animal while the head of the homestead said a prayer to the ancestors. The hunter would chew a piece of meat, spew out something of it towards East and West and consume his part. The older people who were allowed to communicate with the ancestors by participating in ritual eating ate the rest (Fisch 1994: 83).

From the night before the hunt began until its successful completion, the hunter and his family were forbidden to drink alcohol and had to abstain from sexual activities. In the case of hunting of dangerous animals (elephant, buffalo, hippopotamus), the period of avoidance before the beginning of the hunt was extended to two days. When the hunters were out, the remaining people had to observe silence and peace. Many activities were prohibited so that the hunt would proceed undisturbed (Fisch 1994: 94t).

It is important to note that the purpose of hunting was not only to obtain meat but also to achieve results in the performance of certain rites. Fisch names three

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events where hunting activities were part of rituals: in cases of serious epidemics, when a new homestead was to be built, and when a baby received the first haircut. In addition to this, the Mbukushu practised ritual hunting when a new king was being installed (Fisch 1994: 89ff).

In case of epidemics, the community was called to abstain from all sexual activities. The houses were cleaned, the fires extinguished and the fireplaces cleared. The following morning, a new sacrificial altar was established outside the settlement. The king assisted in lighting the new fire and prayed to god, the ancestors, the 'sun of god', the 'moon of god' and the 'stars of god'. Thereafter, the young boys were sent to hunt small animals and birds. The young women had to pound millet. Meat and millet was cooked close to the sacrificial altar. The old people ate parts of the food. In the evening, the rest of the cooked millet was formed into small balls and put on sticks. Led by the king, the whole community marched towards west and threw the sticks towards the setting sun (west being the direction of the death) calling that the sickness may die. On their return to the homestead, all took fire to their respective houses to start their own fires (Fisch 1994: 89f).¹⁷

What is the explanation for customs of this nature? Why are rituals of this kind performed? Mutwa writes in his introduction to "Isilwane. The Animal" that people "in old Africa" did not regard themselves as superior to the animals, the trees, the fishes and the birds. "We regarded ourselves as part of all these living things" (Mutwa 1996: 13¹⁸). The belief of human beings was that they could not exist without nature. The belief was that in every one of us "there lay a spiritual animal, bird and fish with which we should keep contact at all times, to anchor our family upon the shifting surface of this often troubled planet" (Mutwa 1996: 13).

The unity in and harmony with nature expressed in this concept requires measures of restoration whenever harmony is about to be disturbed or has been disturbed. Not retaliation and punishment but re-harmonisation and compensation are the guiding principles in the African way of life (see Hinz 1998: 175ff). "We go to the holy fire and speak to our ancestors. We tell them that we have to send somebody to hunt a kudu because we are hungry." So described Chief Hikuminue

¹⁷ Fisch refers to an unpublished manuscript by J. Wüst, "Die Mbukushu", no date, Döbra Catholic Mission Archive

¹⁸ Credo Mutwa is a South African of Zulu origin. He is acknowledged as one of the wise Africans who live their beliefs in African spirituality. He is one of the most respected and accepted traditional healers (*sangoma*) in Southern Africa

Kapika of Kaoko Omuramba parts of the preparation for a hunt.¹⁹ The strong message of this information is that the guardian of the holy fire addresses the ancestors not only to pray for luck and protection but in particular to give reasons why there is need to hunt. Only the expressed need can justify the disturbance of unity and harmony that, however, must be restored by sacrifices in the prescribed manner thereafter. To hunt drunk or in the aftermath of sexual enjoyment would mean not to be fully aware of the physical and spiritual dangers the exercise of hunting would entail. Only after all the required performances have been conducted, “the animals will allow the hunter to kill them” (Fisch 1994: 76).²⁰

People still remember praise songs on animals. Some of the old rituals are still alive and practised, sometimes in a different context. In general, however, the relatively efficient implementation of the modern hunting law rendered many customs and rituals useless or deprived them of their basis.²¹ In other words, it cut the lifeline to nature.

¹⁹ Interview with the author in July 1998. Chief Kapika is an Ovahimba traditional leader. The famous Epupa falls are in his area.

²⁰ Fisch refers with this quotation to one of her ‘old, wise’ informants in Kavango. Together with the requirement of restoration of harmony, this conclusion avoided the traps of the ‘dramatic model’ and the ‘willing sacrifice model’ as warned against by Schechner. “The violent story is the retelling of humankind’s bloodthirsty carnivorous past (‘red in tooth and claw’), while the story of willing surrender leading to a communion of flesh and blood is, of course, the Christ tale.” (Schechner 1994: 621) At the same time, the model of necessary restoration after necessary disturbance stands against the distinction between those who support the ‘ecologically-noble-savage hypothesis’ and those who point to the ‘ecological sickness of primitive societies’. See here Headland 1997, but also Dye 1998.

²¹ What, however, has remained undisturbed is the understanding of ownership of all sorts of wild animals. Wild animals are property of the traditional community represented by its traditional leadership. This has already emerged in the author’s study on communal land, forests, trees and plants (Hinz 1995) and more specifically in the ongoing research on customary law and nature conservation (see fn 1).

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Modern hunting law or cutting the lifeline to nature

In order to round up the picture drawn so far, two additional elements that have contributed to the alienation of indigenous people from nature must be mentioned. The first refers to the policy of establishing game parks; the second to the introduction of hunting rituals originating from Europe.

The history of conservation in colonial and post-colonial Africa went through various stages (Yeager and Miller 1986; Braun 1995; Jones 1997). After exploration and exploitation, preservation was the principle that governed conservation policies for many years. Preservation was identified as the "complete insulation of wildlife and their habitat from human interference" (Yeager and Miller 1986: 34). Protected areas were established in which only conservation officials had the right to be. The history of nature reserves in Namibia goes back to the time of German colonialism. Areas were allowed to be set aside by the administration for wild animals.²² In practice, setting aside nature reserves has created a variety of problems.

The idea of nature conservation through nature reserves developed to such a point that human beings living in areas earmarked as nature reserves were removed from these areas. The Hai//om community is a case at hand. At least part of the ancestral land of the Hai//om is now part of the Etosha National Park. The Topnaar of the Naukiuft and the Kxoe of West Caprivi are examples of people who are living in proclaimed parks up to now. No solution has been achieved to reconcile the interests of the people living in those areas and nature conservation interests.

Particular problems exist for people who, after the proclamation of parks, find themselves living close to these parks, as well as for people who have deliberately moved into areas that are known to be living grounds for particular animals. In some cases the borders of the parks exist on paper only, so that animals come and go, destroying crops or killing livestock. How can people who have moved into an area known as an elephant area since time immemorial expect to settle without problems? To call animals that follow and even defend their customs problem animals that need to be shot is not a solution to the problems created by the purist approach to nature conservation.²³ The purist approach that believes in the possibility of demarcating certain areas for conservation and others for the use of

²² Above fn 10.

²³ The modern nature conservation law contains provisions which explicitly deal with problem animals.

human beings does not give space to consider conflicts of interests between human beings and animals.

The second point, the introduction of hunting rituals of European origin, is very much related to the implementation of the modern hunting law. Trophy hunting is described as an issue very special to Namibia. The late doyen of Namibian hunters and writer Graf zu Castell-Rüdenhausen notes in one of his books that Namibia may be the only country in which the law distinguishes between (normal) hunters and trophy hunters (Graf zu Castell-Rüdenhausen 1991: 175). While 'normal' hunters are fully subject to the hunting law that restricts hunting to a relatively short period of two months in the year, trophy hunters coming from abroad are granted special privileges as far as the hunting seasons and the export of trophies are concerned.

For that writer, who had been born in Germany and had grown up in a hunting-related environment, customs related to hunting (he speaks of 'jagdliches Brauchtum und Waidgerechtigkeit' — 'customs and justice practised in hunting',²⁴ Graf zu Castell-Rüdenhausen 1991: 176) as he knows them are more or less universally given principles of quasi-natural law. The relevant question is not whether 'jagdliches Brauchtum und Waidgerechtigkeit' ought to be but to what extent it can be applied to "our situation in Namibia". His answer is:

'Waidgerechtigkeit', the concept of proper hunting, the respect for nature and its laws, the respect for all creation, the chivalrous behaviour vis-à-vis the object of hunting, all these are commands of behaviour that every hunter ought, also here, to comply with (Graf zu Castell-Rüdenhausen 1991: 177).

Graf zu Castell-Rüdenhausen describes rituals which should be performed after the successful completion of the hunting of big game. After the animal has been killed, the hunt guide cuts two small branches from a bush. One branch is put into the mouth of the animal symbolising the animal's last meal. The other branch is given to the hunter to be placed in his hat. In case various animals have been shot, the bodies of the animals should be laid side by side so that the heads are directed to the participants of the hunt with the biggest animal at the right wing. The successful trophy hunters in this case place the above-mentioned branch in the middle of the animal's body, thus expressing their acquired ownership. Should a horn player be around, this person would stand behind the prey and

²⁴ The word 'waid' in 'Waidgerechtigkeit' is hunter's language and implies caring for animals.

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opposite the hunting party and 'play away' the prey, piece by piece. In the evening a fire may be lit on both sides of the displayed prey. A flagon would circulate with the aim, as Graf zu Castell-RUclenhausen names it, to "drink dead" the prey (Graf zu Castell-Rudenhausen 1991: 177).

It is obvious that these rituals represent a world far away from the rituals of traditional hunting described above. The only common point is the respect European hunters and traditional hunters are prepared to extend to the hunted animal. Otherwise, the European hunter is an individual hunter: the final achievement in his hunting is to demonstrate his superiority over the killed animal by expressing ownership. The hunter carries the trophy away in order to have a touchable item to remind him on the momentous occasion.

The traditional hunter is part of his community. His hunting is contextualised. He operates within the customs of the community upon which he is dependent for his very survival during his hunt; he operates in the awareness that he is disturbing the harmony between himself and nature. He pays for this by accepting restrictions and contributing to the ancestors for the restoration of harmony at several stages of his hunting exercise.

Conservancies: New Strategies for Natural Resources

It was within the first phase of the South African policy of so-called separate development,²⁵ that the legislative assemblies of Owambo and Kavango enacted two pieces of legislation that provided for decentralisation in the issue of hunting licences (Owambo Nature Conservation Enactment, 6 of 1973; Kavango Nature Conservation Act, 4 of 1974). The Executive Council of Owambo, e.g., was given authority to determine the hunting season, to limit the amount of huntable game, and to issue licences to hunt specially protected game (sections 2, 3). Licences for certain game (eland, impala, zebra) could be issued by the various traditional authorities. The traditional authorities also had the right to limit the number of huntable animals within their areas of jurisdiction (section 5).

So far no information has become available that would indicate to what extent and how the two laws mentioned were applied. The Nature Conservation Amendment Act, 27 of 1986, repealed both, re-instituting the centralised system of control and licensing. In 1987, however, the cabinet of the then South West African government resolved to exempt the Ju/'hoan San of Eastern Bushmanland from

²⁵ In pursuance of the recommendation of the Odendaal Plan (Republic of South Africa 1964) the country was divided into 11 'homelands'.

the provisions of the Nature Conservation Ordinance. The resolution permitted the said community to hunt in their traditional way. But what was traditional hunting? It was hunting on foot and with poisoned arrows. Hence under this resolution the wounded animal must be followed on foot and killed with spears.²⁶

That this description looks only to the technical side of traditional hunting is one point of concern. That it limits tradition to a fixed practice by not recognizing that tradition always had its own way of developing, is another. Nobody in Eastern Bushmanland will understand why a hunter of today should run after a wounded giraffe when other means of following the prey are available.²⁷ The exemption granted to the Ju/'hoansi in reality implemented, in the interest of nature preservation, a concept of preservation of culture.

However, the European concept of nature conservation through preservation was, step by step, replaced with other ideas. Strategies for the ecologically balanced use of natural resources gained ground in the debate. The IVth World Congress on National Parks and Protected Areas resolved that protected areas

cannot co-exist with communities which are hostile to them. But they can achieve significant social and economic objectives when placed in a proper context. The establishment and management of protected areas and the use of resources in and around them must be socially responsive and just.

This statement is based on the very obvious fact that communities "living in and around protected areas, often have important and long-standing relationships with these areas" (IUCN, 'Parks for Life. Report of the IVth World Congress on National Parks and Protected Areas', Gland 1993 quoted from Jones 1997: 1).

It was in line with this changed direction in conservation²⁸ that the Nature Conservation Ordinance, 4 of 1975, was amended to provide for what the

²⁶ Kabinetsbesluit Nr 1074/87 (Tradisionele jag deur die inwoners van Boesmanland), section 3.3.1.

²⁷ In 1992 a case of giraffe hunting on horseback came before the Magistrates' Court in Grootfontein. 16 Ju/'hoansi were accused and convicted of hunting on horseback

²⁸ MET 1995. Stimulating models in the region are reported from Zimbabwe: CAMPFIRE, the Communal Areas Management Programme for Indigenous Resources, and Zambia: ADMADE, the Administrative Management Design.

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amendment calls "conservancies" (section 24A of the Ordinance inserted by the Nature Conservation Amendment Act, 5 of 1996). A conservancy is a demarcated piece of communal land in which a group of residents are granted the right of sustainable management and utilisation of game. The conservancy committee (which must be representative of the community residing in the area) is the organ required by the Act to run the conservancy according to its constitution. In April 1998, 19 applications for conservancies were received by the Ministry of Environment and Tourism; four of them have been accepted and gazetted.²⁹

In some areas, the planning for conservancies goes back to 1995, i.e., to a time before the amendment to the Nature Conservation Ordinance on conservancies came into being. In Damaraland and Kaoko (Kunene Region), the involvement of communities in efforts to protect wildlife has a unique history. As early as 1983, traditional leaders in these areas decided on a community-game-guard system by which a number of community members were to patrol areas and to report suspected illegal activities. The game-guards were a success; they contributed substantially to the decreasing number of poaching cases.³⁰

A few remarks may be added to assess the societal processes that accompanied the emerging conservancies.

With almost no exceptions, the move towards conservancies was welcomed and supported by the traditional authorities. The planning process led to community involvement without precedent. People have understood the move towards conservancies as a move by which they can receive back control over matters that ought to be under their control.³¹ The legal requirement of sustainable management and utilisation of game engaged the community in planning exercises reaching much further than wildlife management, indeed reaching out to comprehensive land use planning.

²⁹ These are: two in the Kunene Region (former Damaraland), the Torra (Bergsig) and =Khoadi HOAs (Grootberg) Conservancies; the Salambala Conservancy (Caprivi Region); and the Nyae Nyae Conservancy (Eastern Bushmanland, Otjozondjupa Region).

³⁰ Today game guards operate in many regions: Owen-Smith and Jacobsen 1989; Braun 1995: 111ff.

³¹ Cf here what Adams and McShane (1992: 227ff) say in answer to the question: "Who says Africans don't care?"

The most crucial issue, however, is the relationship between conservancy committees and traditional authorities. This remains problematic despite the major support traditional authorities have so far given to the development of conservancies. To start from the legal point of view, it may be noted that the enabling clause in the amendment of the Nature Conservation Ordinance states very simply that "any group of persons residing on communal land" is entitled to apply for a conservancy. Traditional authorities are not mentioned although the Traditional Authorities Act, 17 of 1995, section 10(2)(c) gives them responsibilities, which include the sustainable use of natural resources. (See further Piek 1998). The amendment of the Nature Conservation Ordinance is also silent about the administrative place of the conservancy committee. Given the fact that conservancies are about wildlife, wildlife is about land, land is about traditional authorities, and traditional authorities are about widely accepted and legitimate governance, a whole range of legal and practical questions come to mind.

So far, no conservancy is known the borders of which cross traditional borders. All defined conservancies are clearly defined within the jurisdiction of a traditional authority. Although no case is known where the supreme traditional leader is a member of the conservancy committee, in most (if not all) cases there is a representative of the competent traditional authority in the committee. Is this representative just one person like any other serving on the committee or is the representative the channel between the committee and the traditional authority through which approval and disapproval of committee decisions are communicated? Depending on the strength of traditional authorities, conservancy committees will either develop into independently acting bodies or be integrated into the traditional structure.

The latter could benefit conservancies, as their integration into the structure of traditional authorities will certainly result in the inclusion of important elements of customary resource management law in the administration of conservancies. Societal functions that so far have been associated with traditional authorities and are closely related to the basis of their legitimacy would be fulfilled by this administration. Whether this will fill the vacuum created by the introduction of modern hunting law as shown above is an open question, as is the question whether such a development would serve any purpose at all. The purpose, however, one could think of is that such a remedy would create (or re-activate) a value framework for the community to sustain the idea of conservation in their conservancy. Whether or not conservancy committees born from secular parents will be able to achieve what is expected of them remains to be seen.

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References

- ADAMS, Jonathan S. and Thomas O. McSHANE
1992 *The Myth of Wild Africa. Conservation Without Illusion*. New York and London: W W Norton & Company.
- BRAUN, E.
1995 *Portraits in conservation. Eastern and Southern Africa*. Colorado: North America Press.
- D'ENGELBRONNER-KOLFF, F. Marina, Manfred O. HINZ and Jabu L. SINDANE (eds.)
1998 *Traditional Authority and Democracy in Southern Africa*. Windhoek: New Namibia Books.
- DYE, T. Wayne
1998 'On tribal conservationists.' *Current Anthropology* 39: 352-53.
- ELCIN
1996 *English-Ndonga Dictionary*. Oniipa: ELCIN Printing Press.
- FISCH, M.
1994 *Die Kavangojager im Nordosten Namibias. Jagdmethoden, religiosmagische Praktiken, Lieder und Preisgedichte*. Windhoek: Namibia Wissenschaftliche Gesellschaft.
- FUGGLE, R.F. and M.A. RABIE (eds.)
1992 *Environmental Management in South Africa*. Cape Town, Wetton, Johannesburg: Juta.
- GRAF zu CASTELL-RÜDENHAUSEN, H.
1991 *Jagen zwischen Namib und Kalahari. Wildarten und Wildvorkommen, Jagdmöglichkeiten und Jagdarten*, 2nd ed. Hamburg, Berlin: Paul Parey.
- HEADLAND, Thomas N.
1997 'Revisionism in ecological anthropology.' *Current Anthropology* 38: 605-609.
- HINZ, Manfred O.
1995 'Customary land law and the implications for forests, trees and plants.' Report commissioned by the Ministry of Environment and Tourism and FAO, Windhoek (TCP/NAM/4453). Reproduced in Hinz (1998); and slightly amended pp. 183ff in d'EngelbronnerKoiff, Hinz and Sindane (1998).
1998 *Customary Law in Namibia: Development and Perspective*, 4 ed. assisted by Santos Joas. Windhoek: Centre for Applied Social Sciences (CASS), University of Namibia.
- JONES, B.T.
1997 'Parks and resident peoples. Linking Namibian protected areas with local communities', Research Discussion Paper No 24. Windhoek: Ministry of Environment and Tourism.

LIFE

1995 'First workshop on formation of the Salambala conservancy, June 13-14, 1995.' Windhoek: WWF/LIFE.

LOEB, E.

1962 *In Feudal Africa*. Bloomington: Indiana University.

MET (Ministry of Environment and Tourism)

1995 'Wildlife management, utilisation and tourism in communal areas.' Windhoek: Ministry of Environment and Tourism.

MUTWA, Credo

1996 *Isilwane. The Animal. Tales and Fables of Africa*. Cape Town: Struik.

O'SULLIVAN, O.

1993 *English-Silozi Dictionary*. Lusaka: Zambia Educational Publishing House.

OWEN-SMITH, G. and M. JACOBSON

1989 'Involving a local community in wildlife conservation. A pilot project at Purros, South-western Kaokoland.' *Quagga* 27: 21ff.

PIEK, J.

1998 'The role of traditional authorities in natural resource management.' Pp. 228ff in d'Engelbronner-Kolff, Hinz and Sindane.

REPUBLIC OF SOUTH AFRICA

1964 *Report of the Commission of Enquiry into South West Africa Affairs*. Pretoria: Government Printer.

SCHECHNER, Richard

1994 'Ritual and performance.' Pp. 613-647 in Tim Ingold (ed.), *Companion Encyclopedia of Anthropology*. London, New York: Routledge.

TONJES, H.

1996 *Ovamboland. Country, People, Mission with Particular Reference to the Largest Tribe, the Kwanyama* (English translation of the original published in German in 1911). Windhoek: Namibia Scientific Society.

YEAGER, Rodger and Norman N. MILLER

1986 *Wildlife, Wild Death. Land Use and Survival in Eastern Africa*. Albany, New York: State University of New York Press.