

“Local is Lekker”*
**Devolution of Land Rights to Community-
Based Organizations and the Sustainable Use
of Local Natural Assets: The CBNRM
National Programme in Namibia**

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The problem is no longer that with every pair of hands that comes into the world there comes a hungry stomach. Rather it is that, attached to those hands are sharp elbows.

Paul A. Samuelson, *Newsweek*, 12 June 1967

Résumé : *La délégation des droits fonciers aux organisations communautaires et l'utilisation durable des ressources naturelles : le programme national CBNRM en Namibie.*

Après plus de 100 ans de colonisation et d'oppression, la Namibie connaît toujours les stigmates du système d'apartheid. Les profondes inégalités foncières donnent lieu à des disparités colossales de revenus en défaveur des populations rurales. Dans ce contexte, le gouvernement vise à promouvoir le développement rural et la préservation des ressources vitales depuis l'indépendance en 1990. Ce texte analyse les changements institutionnels en Namibie concernant la gestion et l'utilisation des ressources naturelles en zones communales. Dans ces dernières, il est impossible d'approprier individuellement les ressources qui sont caractérisées comme des biens communs (CPR). L'impossibilité d'exclusion et la rivalité entre acteurs fait craindre la surexploitation et la tragédie des communs. Le problème posé est donc celui de la mise en place d'une gouvernance efficace des ressources naturelles dans ces zones. Des institutions doivent émerger pour réguler les usages, permettre une action collective et réduire les conflits. Nous inspirant du modèle institutionnaliste de Oliver E. Williamson, notre argumentation se déploie en deux temps.

* “Lekker” is a word in Afrikaans (white South African language) meaning “good”.

Dans un premier temps, nous montrons que la nouvelle régulation délègue aux communautés rurales, regroupées en entités juridiques, *conservancy*, des nouveaux droits de propriété sur les ressources communes (programme CBNRM). Cet élément est primordial puisqu'il permet aux populations dépendantes de bénéficier de l'utilisation des actifs naturels de leurs territoires et ainsi de les inciter, dans leur propre intérêt, à les conserver. Ces nouveaux droits fonciers sécurisent la situation sociale et économique des communautés désavantagées. Cependant, ce changement foncier n'est que trop partiel. La décentralisation est incomplète et l'État souhaite garder un grand nombre de ses prérogatives passées. Les communautés ne peuvent pas totalement faire respecter et appliquer les plans d'aménagement et de gestion qu'elles mettent en œuvre. Apparaissent dès lors de nouveaux conflits pour l'appropriation de la rente et des revenus de l'utilisation des ressources naturelles.

Dans un deuxième temps, nous analysons les différents arrangements locaux institutionnels, contractuels, qui régulent la conservation et l'utilisation des ressources naturelles en zones communales. Nous montrons ainsi que le programme CBNRM est une structure de co-management où État et communautés se partagent responsabilités et prérogatives pour mieux gérer les actifs. Face aux limites des structures communautaires, un nouveau paradigme et une nouvelle forme institutionnelle émergent : les contrats de joint-ventures. Cette structure hybride lie les communautés locales au secteur privé pour la mise en valeur, par la construction de *lodges*, des actifs naturels des territoires. Un accord commercial est signé où les communautés transfèrent leur droit d'usage d'un site et de ses ressources vers un opérateur privé qui en échange reverse une part de ses revenus à la *conservancy*. Ces contrats locaux, basés sur une sécurisation des droits fonciers des communautés, permettent une redistribution de la rente touristique vers les populations rurales. La situation reste néanmoins instable puisque cette structure institutionnelle donne lieu à des conflits et marginalise encore trop les *conservancy*. Une plus grande implication des communautés ainsi qu'une réforme foncière plus profonde sont donc impératives si l'État namibien souhaite promouvoir efficacement le développement rural durable.

1. INTRODUCTION

Segregationist laws of the South African apartheid regime in Namibia (1915-1990) have led to underdevelopment and environmental degradation of communal lands. Local populations were set aside and concentrated in Bantustans, i.e. in ethnically homogeneous reserves. Rural inhabitants were prohibited from owning livestock, cattle, horses or land and were forced into

wage labour in the so-called white ‘police zone’. As a matter of fact, the labour contract system and land expropriation disrupted the vital relationship between human inhabitants and natural resources.

Poverty, disruption of kin and lineage links, along with high density in arid zones, depleted natural resources in the ethnic homelands. Soil erosion, deforestation, poaching and over-fishing resulted from strategies used by rural communities to survive. Colonial power, moreover, did not have the capacity to control human activities throughout the whole territory. Grazing, forest, fauna and flora resources faced an open-access legal situation. Resources were held in common as no private individual titles were given and no one could be excluded from utilizing resources in Bantustans. At independence, former Bantustans were declared communal lands under State property and the newly established Namibian government inherited those ecological damages and significant income inequalities (Gini coefficient of 0,707).¹ In 1990, sustainable development, “a development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (WCED 1987), was made a main objective for Namibia. Economic, social and environmental goals were to be reached to fulfil sustainability criteria and to achieve Vision 2030. Improving the condition of previously disadvantaged Namibians and at the same time assessing the preservation of ecosystems became the cornerstones of social stability in the country. Article 95 of the Constitution stipulates that “the State shall actively promote and maintain the welfare of the people by adopting (...) policies aimed at (...) maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilisation of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future (...)” Furthermore, Namibia signed the Convention on Biological Diversity (CBD) that recommends conservation *in situ* and community involvement.

Namibia has rich and specific natural assets. Minerals, fish stocks, wildlife, endemic flora and insects, but also dramatic and spectacular landscapes are among the main national resources. Since agriculture, commercial farming and industry are very risky activities, especially in communal lands (former Bantustans were situated in very arid environments), rural communities are closely dependant on natural resources and ecosystems for their livelihoods, food and energy. Thus, it is more and more recognized that communal farmers should participate in and have

¹ World Development Indicators 2004, World Bank.

incentives for the preservation of ecosystems. Murombedzi (1998) analyses conservation policies in sub-Saharan Africa and their theoretical and ideological background. From programmes of ‘conservation *against* the people’, during the colonial period, when settlers accused indigenous populations of being predators of nature, governments slightly moved to ‘conservation *for* the people’ and ‘conservation *with* the people’. Murombedzi further sets ‘conservation *by* the people’ as the conservation paradigm to reach. Thus, policies tend to be more and more people-oriented, assessing the fact that preservation and development should be complementary rather than opposed goals.

Nevertheless, one has to be cautious while embracing ideologies such as sustainable development, participation and governance. Although portrayed as working for the common good, these paradigms sometimes reveal preferences and objectives of certain groups and constitute new arenas to make African rural actors accept decentralization, state disengagement in public services, budget reduction and privatization.² In this volume, Menon shows how self-governance (as in the case of joint forest management programmes or the new Forest Dwelling Scheduled Castes law) can become another way to bring backward communities into the state discourse on development and modernization. Moreover, in those governance and participation discourses, rural communities are much too often essentialized and described in a romantic manner that conceals conflicts, group inequalities and even sometimes slavery phenomena. As demonstrated by Platteau (2003), communities are not always homogeneous entities. Free-riding and opportunistic behaviours occur frequently in rural contexts. As Karsenty shows in this volume, the ‘communist’ vision of African villages has driven CBNRM programmes all along and explains in part their limited results. Our contribution aims at questioning this vision and these concepts in the context of Sub-Saharan Africa.

In Namibia, the Nature Conservation Ordinance Amendment Act of 1996 introduced the approaches of community-based natural resources management (CBNRM) and communal land conservancy. Rights are devolved to local communities to manage resources and to benefit from them. It is hoped that local institutions and strategies for sustainable use will emerge and lead both to rural poverty alleviation and to biodiversity preservation. However, after nearly ten years of NGO-supported and state

² For a discussion on the privatization of tourism through international donors’ programmes, see Pleumaron (2006) and Lapeyre (2006) in the particular case of Namibia.

programmes, economic and ecological results show contradictory trends. Is the devolution of rights to local communities just a political discourse of tokenism or a real institutional innovation for resource conservation? Is the decentralization of natural resource management not just a substitute vector for the currently slow land reform? Are rural inhabitants truly empowered and do they benefit from their management efforts?

Williamson’s four-level model of institutions (2000) and the approach of Behera and Engel (2006)³ will provide a theoretical framework permitting us to assess the results of the Namibian CBNRM programme in terms of rights, empowerment and economic benefits. After discussing the model (2.1), we will present the process of devolution of property rights to rural communities in Namibia (2.2). Then, national and local data will be analysed to present financial and non-financial benefits to rural inhabitants (3.1) and to show that rights are incompletely devolved to local levels (3.2). Thereafter, we will use the focal point of contracts to study resource and tourism governance (4.1) and to analyse joint-venture structures and their limits (4.2), before concluding (5).

2. Devolution Rights over Natural Resources: Conceptual and Legal Framework

In this section we will present the new institutional framework in order to analyse the overexploitation of natural resources and to envisage viable solutions to it. We will then illustrate the theory through the Namibian case.

2.1. Natural Resources Depletion and Solutions: The Analytical Framework

Communal lands are situated in arid zones and are not suitable for agriculture and large-scale farming. Nevertheless, Namibia’s abundant natural resources can be incorporated into other production processes and livelihood strategies. However, natural resources in communal lands in Namibia are characterized as common-pool resources (CPR), with very costly exclusion and high competition (subtractability).

Costly exclusion is caused by the *de jure* and the *de facto* legal framework in communal lands. The latter are state-owned but the

³ This approach was based on an Indian case.

government has limited financial capacity to monitor resources on such a large territory. Natural resources are often mobile (wildlife) or on a very large scale (rangelands). The situation is a *de facto* open-access situation as outsiders can use the resource without being excluded.

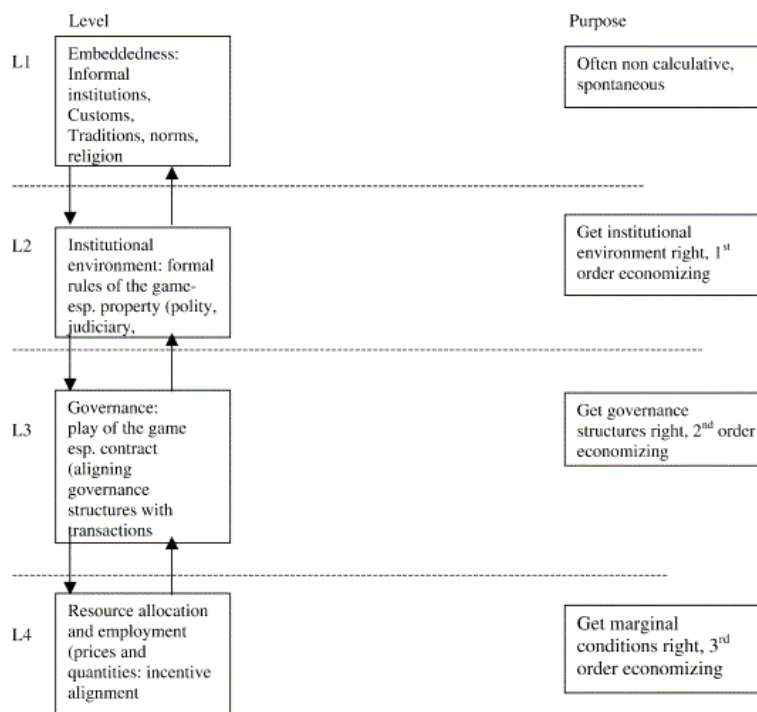
Regarding subtractability, resource flows are appropriated by users who incorporate them into their individual strategies. If one user gets a certain amount of flows, these are not available to other users. Moreover, ecosystems are multi-functional. Farmers, stockbreeders, hunters, gatherers, tourists and operators compete for the same open-access resource stock. In this context, land conflicts occur because all groups of users follow rent-seeking strategies to capture revenues from the utilization of natural resources.

Baland and Platteau (1996) show how CPR situations *could* lead to the ‘tragedy of the commons’ (Hardin 1968). Individual strategies lead resource users to exploit maximum flows before others do. The result is the total dissipation of the rent and the depletion of the resource system. *De facto* open-access situations in communal lands in Namibia, owing to low state capacity and to insecure land tenure, combined with rural poverty and demographic growth, put pressure on ecosystems and species during the 1980s and the 1990s. Black rhinos, as well as elephants and springboks, were massively poached by commercial and subsistence hunters. North-west Namibia saw a drastic fall in the number of game. Black rhinos came near to extinction, as did the mountain zebra. Deforestation and soil degradation, as a result of overgrazing, reduced natural resources and farming productivity.

Tragedy is however not an inevitable outcome. Institutions, including property rights regimes, matter (North 1993) and can emerge to coordinate and to regulate relationships between actors and to reduce conflicts. These institutions can be made of formal and informal rules and norms that help to provide for collective action and social stability. As stated by Williamson (2000: 599), “governance is an effort to craft *order* to mitigate *conflict* and to realize *mutual gains*”.

Williamson (2000) distinguishes four levels of institutions that determine coordination between actors. Our institutional view of the governance of natural resources in Namibia focuses on Levels II and III (see Fig. 1). Level II is the institutional environment, in which formal rules of the game are designed. Property rights are essential at this level, for they define the *de jure* and *de facto* authority and the responsibility of stakeholders over resources. They determine the way the game will be further played and define the positions and the bargaining powers of the respective actors.

Level III is the governance level. The ‘play of the game’ and transactions are situated here, and contracts as well as conflicts have to be locally coordinated and regulated on this level.



Source: Williamson (2000)

Figure 1: Williamson's model of institutions

In an initial stage, at Level II, property rights should be defined in such a way that they provide secure land tenure and incentives for actors to use CPRs sustainably. According to Bromley (1997: 3, cited in Vail and Hultkrantz 2000), “rights are not relationships between me and an object but rather are relationships between me and others [present or future] with respect to that object (...) To have a property right (...) is to have secure control over a *future benefit stream*. And it is to know that the authority system will come to your defence when that control is threatened” (emphasis is ours). The appropriation of resource flows is possible through property rights and their legitimacy over other users. Unclear property rights prevent

actors from securing resource flows and provide them with no incentive to conserve and invest in common natural assets and in equilibrium. The rent is totally dissipated.

As a potential answer, Demsetz (1967) called for private property rights as a way to avoid rent dissipation from CPR mismanagement. The commons must be divided and enclosed so that each agent is fully responsible and bears (captures) alone the costs (revenues) from using the resource system.

However, clear rights are not restricted to private property. Karsenty (1996) and Platteau (1998) demonstrate that evolutionary theories (which postulate that institutions will ultimately and endogenously tend towards individual property regimes) are not empirically verified in most land situations in the world. According to these authors, private property regimes bring social costs and inequity without efficiency. Tenure security is not improved. Investment incentives and access to credit are not better. Following Karsenty's critiques of the narrow approaches of the new institutional economics (NEI) in land contexts (in this volume),⁴ we position our argument in the Ostrom and Schlager model (1992) of bundles of rights. In this, they define bundles of rights over resources (see Figure 2).

<i>Rights of action</i>	<i>Owner</i>	<i>Proprietor</i>	<i>Claimant</i>	<i>Authorized User</i>	<i>Authorized entrant</i>
<i>Access</i>	X	X	X	X	X
<i>Subtraction</i>	X	X	X	X	
<i>Management</i>	X	X	X		
<i>Exclusion</i>	X	X			
<i>Alienation</i>	X				

Figure 2 : Bundles of rights

Source: Ostrom and Schlager (1992)

Access, subtraction, management, exclusion and alienation rights of action give various legal statuses to different actors. Such clarification clearly shows the diversity of land strategies and appropriation modalities and it could help to secure rural land rights without privatizing, and to

⁴ See also the contributions by Chauveau and by Galey in this volume. They make a similar critical assessment of such theories of evolutionary property rights and highlight the conceptual limits of free-market environmentalism.

provide actors with incentives to manage the commons sustainably and to generate rent efficiently (Lavigne-Delville 1998).

Through this approach, as verified in the field by our Namibian case study, we want to depart from the ‘private/public property regime’ dichotomy and to show how different institutional land arrangements (rights concerning resource use and control) can emerge in various contexts in a non-evolutionist process in order to craft resource governance institutions. While recognizing the relevance of even broader approaches (‘*maîtrises foncières*’ theory (Le Roy 1996))⁵ to explain land and resource conflicts, we focus here on the frameworks provided by the ‘bundles of rights’ and Williamson’s four levels of institutions (2000). In the following section, we will illustrate Level II of institutions in the changing Namibian context.

2.2. New Rules of the Game: the CBNRM Programme and the Devolution of Rights to Local Communities (Level II)

Based on the typology of Ostrom and Schlager (1992), we will present the evolution of the rights of Namibian rural communities over natural resources and illustrate it with a local example, the Tsiseb Conservancy.

Before 1996, any game, including huntable game, and other resources such as wood, fish, trees and plants located on communal lands were the property of the central state, which issued quotas to potential users. Communal residents and farmers could only be said to have the status of authorized entrants or users. The management of resources was the full responsibility of the State, through the local offices of the Ministry of Environment and Tourism (MET). In distinction to this, freehold⁶ farmers could be considered as ‘owners’ of wildlife. They had all rights of action over resources, including management, exclusion and alienation rights (*usus*, *fructus*, and *abusus*).

In 1996, the Nature Conservation Amendment Act n° 5 amended the Nature Conservation Ordinance of 1975 so that residents of communal areas could gain the same rights over wildlife and tourism as commercial farmers. The Act makes the formation of a *conservancy*⁷ a condition for giving rights

⁵ See also the contributions by Le Roy and by Karsenty in this volume.

⁶ Freehold farms are lands that farmers own individually with a land title. Those lands are outside communal lands; they are situated in the former ‘police zone’.

⁷ A conservancy is a territorial unit managed by a community-based organization.

over game and tourism to communal area residents of a certain territory. Based on this new legislation, the MET and donors launched the CBNRM (community-based natural resources management) programme. This programme supports communities in registering as communal land conservancies. The community⁸ must elect a representative committee, agree upon a legal constitution, prepare a resource management and utilization plan, set up a financial distribution plan and, finally, agree on undisputed recorded (GPS) boundaries.

When registered, rights over wildlife conferred on a conservancy committee are *theoretically* for the ownership (and therefore use for own purposes) of huntable game (e.g. oryx, springbok, kudu), the capture and sale of game, hunting and culling, and the right to apply for permits for the use of protected (e.g. cheetah, leopard) and specially protected (e.g. giraffe, elephant, rhinoceros) game. Trophy hunting can also take place in a conservancy if the MET issues quotas for this purpose.

Therefore, communities, through conservancies, are recognized with new rights over resources. *Theoretically*:

- ✓ they can now have access, subtract and manage natural resources on the conservancy territory (claimant);
- ✓ they are able to exclude outsiders from utilizing game inside the conservancy (proprietor). The conservancy committee controls the use of game and decides who will be the users of game and who will benefit from the meat.

This clarification and limited security of land and resource rights create incentives for local communities to use their CPRs wisely. They set up decision structures and design tourism and resource management plans to regulate activities by members and outsiders. Zonation plans reserve areas for specific activities and set rules for each zone. Cutting and harvesting wood, grazing animals and illegal hunting are controlled by community game guards, who patrol on the territory to monitor resources and to report any incident.

Let us now have a look at our local case. The Tsiseb Conservancy lies in north-west Namibia in an arid environment bordering the Skeleton Coast desert on the west. The main resources and attractions in Tsiseb

⁸ A community here is simply seen as a declared group of people who have recognized themselves as an entity.

Conservancy are the Brandberg Mountain (the highest massif in Namibia with 2,574 m), the Ugab River and abundant and endemic wildlife such as the desert elephant. Archaeological remains, as well as the world famous ‘White Lady’ Bushman painting, make the scenic Brandberg an attraction in the area. Uis is the main human settlement in the area with around 1,000 inhabitants.

To benefit from these natural assets, Tsiseb Conservancy was registered in January 2001. A broad conservancy committee of twenty-four people has been set up. Sixteen people are nominated from four different rural areas in the conservancy, as well as two members of the traditional authority (TA). The conservancy committee holds quarterly meetings. An annual general meeting is organized every year so that all members can be involved in the decisions of the conservancy. The previous year’s financial report is presented to the members along with the progress report on activities in the conservancy (hunting concessions, tourism, and conflicts). Members also vote at the annual meeting on the budget of the coming year, and they have some say in the elaboration of the future distribution of the conservancy income.

Concerning biodiversity conservation in Tsiseb, four community game guards patrol, check and control animal movements and reproduction. They deal with animal problems and report poaching in the area. If the latter occurs, they call for support from the MET officers.

Consultation was organized in Tsiseb Conservancy in order to put in place a zonation plan for the management of natural resources in the area. All stakeholders (MET, members, farmers, TA) were involved and their inputs were important for the final version. The Zonation Plan became official in 2004. It consists of the mapping of the conservancy, dividing it into different areas of land-use options. Various zones were identified and geographically separated: Wildlife and General Tourism (WGT) Zone; Farming and Wildlife Zone; Wildlife, Mining and Tourism Zone; Sensitive Area Zone; Wildlife Breeding Zone.

A management and utilization plan for Tsiseb Conservancy was also endorsed by conservancy members and by different stakeholders (TA, NGO, line ministries). This plan defines regulations in each of the different zones. For example, section 3.2.1 sets rules and priorities for the WGT zone: “Tourism activities such as guided mountain trails, walks, game drives and

trophy hunting will take place and tourism developments such as campsites and lodges can be established here. Additionally, wildlife harvesting can take place, both in terms of professional hunting and own use (...). The plan also defines the roles and the duties of the different stakeholders. As it says, “stakeholders who will be involved in decision making with regard to the management of the zones are: a) Conservancy Committee and members, b) Daures Daman Traditional Authority, c) Ministry of Environment and Tourism, d) Other line ministries”.

In March 2006, forty-four conservancies were registered by the government, representing more than 100,000 people (over 1.8m inhabitants for all of Namibia) and 100,000 km², i.e. 13% of the territory. Communal conservancies have added substantially to the network of conservation areas in Namibia. More than 25% of the Namibian surface is under conservation management. To this figure, we can add 5% of the territory under freehold private conservancy and even more under private reserves and tourism and hunting concessions (see Figure 3).

It appears that user groups obtain collective rights over natural resources (utilization and management) through the CBNRM programme. Communities have access, subtraction, management and limited exclusion rights. CPRs, used under the open-access regime before 1996, are now regulated (Baland and Platteau 1996) and monitored by local rural communities.

Let us now assess the economic and livelihood consequences and the limits of this changing property rights regime in the Namibian communal lands.

3. Devolution of Rights and the Utilization of Natural Resources: Outcomes and Challenges at the National and Local Levels

In the competition between communities, the private sector, the State and the ministries to appropriate resource flows, property rights are the main tool for obtaining the lion’s share of the resource utilization. As seen in the previous section, the CBNRM legislation modifies the rules of the game (Level II) by devolving rights to communities. What are the consequences in terms of new economic opportunities?

3.1. From New Rights to New Revenues?

Local communities can now benefit from wildlife and tourism resources by directly consuming them for subsistence or by transforming them. Wildlife resources can be used for hunting operations, meat distribution to the conservancy members, shooting and selling the meat to outside corporations, live animal sale or trophy hunting. Natural assets, such as dramatic landscape and endemic species (desert elephants and black rhinos) can also help to develop non-consumptive tourism activities on conservancy territory. In all cases, conservancies decide whether to operate themselves or to call for private partners. If the latter option is chosen, quotas must be transferred to the operators and the latter must sign a contract or a concession agreement with the community. New livelihood strategies and sources of revenue emerge for rural actors.

Nationally, communities in conservancies received around eight million N\$⁹ from the sustainable use of natural assets on their territory in 2004, as shown in Table 1 on the next page. Here, we differentiate the conservancy's financial revenues, wages (household income) and non-financial benefits. The latter represent wildlife meat that is distributed gratis to workers and to rural farmers, whether by private operators or by the conservancy itself. Conservancy revenues cover running and operation costs such as community game guards, patrol vehicles, resource monitoring, conservancy office and officers. The remaining money is put into a trust fund and is distributed (or not) according to the annually voted distribution plan. Thus, the conservancy approach is a tool for sustainable development as it promotes biodiversity conservation and alleviates rural poverty.

Locally, the income of the Tsiseb Conservancy comes from hunting and tourism revenues. Revenues are derived from 'shoot and sell' as well as from trophy hunting. A trophy hunting concession has been leased to a private operator and a contract has been designed. The African Hunting Safaris (AHS) Company has signed an agreement with the conservancy, in order to use wildlife in the area on a consumptive basis. The contract stipulates the financial, social and economic conditions that the operator has to fulfil in order to be transferred rights of access and use. Transfer of "exclusive trophy hunting rights to plains Game in the Tsiseb conservancy hunting concession [is] for the period May 1, 2003 to November, 2005". The guaranteed quota is 2 gemsboks and 10 springboks per year. The guaranteed

⁹ N\$ is Namibian dollar. In 2006: 1 US\$ = 6.37 N\$.

concession fee is 16,680 N\$ per year and 1,790 N\$ (gemsbok) and 1,310 N\$ (springbok) for an additional animal. AHS also has local training goals and obligations. Thus, the transfer of skills to local communities is one essential condition to be fulfilled in order to enter into a partnership and to be transferred rights of use. The conservancy remains, in the contract, the body that manages and monitors resources. Only the rights of access and use are sold to the partner. Section 3.2 says: “AHS agrees not to hunt within 2 km of Ugab River [a very fragile wetland area] or any other established permanent water points or springs in Tsiseb conservancy”. Section 3.4 further states: “AHS agrees to hunt only in areas zoned for hunting in the conservancy and not to hunt within 5 km of existing tourism facilities (lodges and/or campsites)”. These conditions illustrate the implementation of the zonation plan, which serves as a management tool for coexistence of the different socio-economic activities in the area. ‘Shoot and sell’ operations (selling to meat companies) brought further revenues. With one agreement (among others) in 2005, which concerned the shooting of 600 springboks, 40 gemsboks (oryx) and 40 ostriches, the conservancy earned around 120,000 N\$.

Conservancy income by sector	Total Benefit	Total (gross) Income	Conservancy Income	Household Income	Non-Financial	FT	PT
Campsites/CBTEs	432 285	432 285	269 481	162 804	0	23	15
Trophy Hunting	2 283 259	2 191 959	2 042 272	149 687	91 300	6	34
Joint-Venture Tourism	4 399 564	3 686 787	1 302 772	2 384 015	712 777	204	43
Game Donation	0	0	0	0	0	0	0
Crafts	304 518	304 518	1 047	303 471	0	3	255
Game Meat Dist.	561 592	0	0	0	561 592	0	0
Own Use Game	235 152	0	0	0	235 152	0	0
Interest Earned	161 807	161 807	161 807	0	0	0	0
Miscellaneous	14 791	14 791	0	14 791	0	0	2
Thatching grass	0	0	0	0	0	0	0
Live Game Sale	110 100	110 100	110 100	0	0	0	0
Premium Hunting	8 280	8 280	8 280	0	0	0	0
Shoot and Sell	11 064	11 064	11 064	0	0	0	0
TOTAL	8 522 412	6 921 591	3 906 823	3 014 768	1 600 821	236	349

Table 1: conservancy revenues in 2004¹⁰

¹⁰ Amounts are given in N\$. FT is the number of full-time workers and PT is the number of part-time workers.

Source: WWF, 2005

Until November 2004, operating costs were covered through USAid, NNF and RISE funding. From that date, however, Tsiseb has sustained itself thanks to hunting and tourism revenues.

National and local data in this section show that, when rules of the game (Level II) are modified and property rights devolved to communities, rural users benefit from sustainable resource utilization. However, as the next section will demonstrate, devolution is still incomplete. New property rights are limited and insecure, leading to new conflicts that jeopardize the CBNRM approach and the regulation of CPRs.

3.2. Incomplete Devolution: Insecure Land Tenure and Unregulated Resources

Corbett and Jones (2000) analyse differences between the legal provisions and the implementation of *actual* policies on the ground. Legal provisions devolved use rights to local communities. As proprietors (see Figure 2), conservancies should gain rights to use huntable game for their own use without permits or restrictions on numbers. However, *de facto*, rights are limited. MET officials insist on communal area conservancies receiving quotas and permits for hunting for their own use purposes. In general, the MET strictly controls the decision-making process pertaining to rights over wildlife. The Ministry often decides quota numbers unilaterally. For Tsiseb, the MET presented the new annual quota numbers for the 2005-2009 period to the representatives of the conservancy, who could only approve them. Also, management plans have to be reviewed and approved by the MET department of parks and wildlife before quotas are set (even if this obligation is not stipulated in the legislation). As a matter of fact, any conservancy decision concerning wildlife conservation and utilization should be verified and supported by the MET.

Land tenure policy is another loophole for resource regulation in communal lands in Namibia. The CBNRM programme is based on sectoral approaches that are implemented by different state departments. The legal framework lacks coherence and suffers from 'sectoral fragmentation' (Jones 2003). Even if the Communal Land Reform Act of 2002 gives power to communal land conservancies to control land allocation within their boundaries (by stating that allocation should not defeat the objectives of the management plans of the conservancies), tenurial insecurity and confusion

still remain. This leads to a control weakness of the conservancies, which are unable to legally enforce their zonation plans. They cannot exclude other users, for example, from grazing areas. Right from the beginning, the operation of the Ugab Wilderness community campsite (UWCC), in the Ugab River area in Tsiseb, has been a bone of contention with the local farmers. As the Tsiseb Conservancy coordinator says,¹¹ “there was conflict between the farmers and the conservancy as the campsite is located in a good grazing area and the farmers wanted to know what would happen to their livestock”. Voluntary agreements have been reached but, without further legislation to empower conservancies, the very unclear regulation could result in conflicts over resource rights and in degradation of the tourism resources. Mosimane (2000) concludes that, “in the absence of formal rules and regulations governing grazing rights and the creation of effective enforcement mechanisms, open access to the conservancy’s grazing resources will remain a threat to its long-term viability and tourism potential”.

At the same time, the regulation of tourism resources lacks a legal framework and insecure rights over communal land reinforce the incapacity of the conservancies. No legislation provides conservancies with a possibility to prohibit wild camping and off-road driving. In the Constitution, communal lands are common resources for the benefit of all. Thus, conservancies cannot restrict entry or exclude operators or self-drivers that behave in a non-environmental manner. During the busy season, local farmers report quite a number of cases around the Brandberg in which overland trucks stop and camp anywhere without permission. Their ecological impact is not negligible, particularly on wildlife and on soil degradation. Off-road drivers undertake similar unregulated activities. They track desert elephants in the Ugab River and harass them. In both cases, the conservancy is unable to regulate resources because precise tourism legislation does not exist. Zonation plans and tourism management plans are only consultative documents without any legal authority. Game guards have no legal right to arrest outsiders who would enter prohibited zones or persons who would contravene conservancy rules. Community game guards must simply report to the local office of the MET. A further irony is that the Legal Assistance Centre (LAC) now informs communities that they can use the Criminal Procedures Act of 1977 to arrest without a warrant anybody

¹¹ Eric Xaweb, interview in WILD Working Paper Series, 17/03/03, and personal communication: interviews in Gaus and Ugab settlements on 25 May 2005.

who commits an offence. Here, rural communities should use a law passed by colonial South Africa during the apartheid regime!

In the above analysis of the changing property regime in Namibia (Level II), we showed that communities are given limited rights. Land is still state property and conservancies have limited utilization and management rights because the State (MET) and NGOs have a strong voice in the decision-making process. This is consistent with other decentralization programmes, as in India, for example¹². Let us now move on to the next section to analyse organizational forms that coordinate actors on a daily basis (Level III: play of the game).

4. Institutional Arrangements and Resource Governance (Level III)

Once rights have been defined, the question lies in the particular institutional arrangement chosen to utilize and to manage CPRs and to coordinate actors. As stated above in section 3.1, rights can be transferred between actors through contracts and agreements. This provides incentives for resources to move from inefficient to more efficient land-use options and from less productive to more productive users (Pejovich 1990). However, transaction costs, which are the costs of measuring what is being exchanged and of enforcing agreements, arise from those arrangements. This section aims at evaluating these costs in the context of the CBNRM and nature tourism in Namibia. After presenting the ‘transaction costs’ framework, we apply it first to natural resources and then to tourism resources.

4.1. Governance Structures in Resource and Tourism Management

According to Birner and Wittmer (2000), transaction costs in natural resources include *ex ante* and *ex post* costs. *Ex ante* costs are decision costs, i.e. the research of information about partners and the organization of agreement negotiations. *Ex post* costs are implementation costs, i.e. monitoring, regulation and governance costs.

¹² As Menon (in this volume) points out in the case of India, the devolution of use rights is limited. Actually, recent policies aimed at decentralized natural resource management have good governance objectives rather than a political will of a well-defined articulation of rights. See also Dejouhanet in this volume.

Birner and Wittmer (2000) differentiate community-based arrangements, co-management, hybrid-private forms and state management as contingent institutions that minimize transaction costs, depending on two elements: state capacity and community social capital (see Figure 4).

	Social Capital : Low	High
State Capacity: Low	<i>Hybrid : private-sector management under contract or regulation</i>	<i>Community-based management</i>
High	<i>Public-Sector management</i>	<div style="border: 1px solid black; padding: 2px; display: inline-block; text-align: center;"> CBNRM Program </div> <i>Hybrid : Co-management involving collective action sector and State</i>

Figure 4: Contractual continuum

Source: Birner and Wittmer (2000)

State capacity is defined as the possibility for the Namibian government to monitor and to control natural resources on communal lands and to impose its rules and regulations on biodiversity utilization. Capacity depends on available technical skills and operational costs incurred by such a control.

According to Putnam (1995), social capital refers to “the collective value of all 'social networks' and the inclinations that arise from these networks to do things for each other”. Social capital consists of the types of norms, traditions and social relations that build links between people and enhance collective action.

Based on assumptions of strong social capital in Namibian rural communities and a relative degree of state control over resources and the enforcement of rules in rural areas, the CBNRM approach is best characterized in Figure 3 as a hybrid co-management (public-communities) structure. The important local knowledge of communities helps to understand and to monitor ecological cycles. An *in situ* community-based monitoring system reduces operational costs and provides incentives to local farmers. Further, social capital minimizes opportunistic behaviours. Peer-control and social pressure are efficient tools against free-riding and individual rent-seeking strategies. As a matter of fact, a degree of community management, with limited state capacity and strong social capital, reduces monitoring and governance costs.

However, one could easily question the theoretical and the empirical bases of the stated 'strong social capital of the community'. Communities are often fragmented and heterogeneous. Elite capture, opportunistic behaviours and self-enrichment occur frequently in the conservancies. This lowers the legitimacy of the conservancies and increases illegal activities. Benefits are captured by a limited number of people who use the conservancy to make a living. In field research conducted in Tsiseb in 2005, we found that quite a high number of rural marginalized inhabitants of the conservancy were neither members nor were they informed about the existence of the conservancy. According to respondents, the conservancy appeared to be the 'property' of its manager and no benefits were visible, apart from one meat distribution in the previous year. Finally, many respondents had not been to a conservancy meeting for a long time and did not know who their local representative was.

Applying now this framework to the management of tourism resources, we show that neither state management nor community-based arrangements are really sustainable.

- On state lands, the biodiversity management of national parks is the responsibility of the Parks and of the Wildlife Department of the MET. To generate revenues from national parks, the Namibian government set up a parastatal company in 1998, the Namibia Wildlife Resorts (NWR),¹³ which operates alone tourism accommodation facilities. However, due to underinvestment and limited capacity, infrastructures and management in national parks (Etosha or Namib Naukluft) are of limited quality.
- On the other side of the institutional spectrum, community-based tourism enterprises (CBTE)¹⁴ lack incentive structures for community members to generate revenues from tourism and to stop overexploiting natural resources. Governance costs are high because of intra-group conflicts within the community. Different traditional authorities and clans often seek to control the management and ownership of the projects. Moreover, community management weakens the hierarchical dimension in work relations. Threats and punishments are less credible because all members of the project are linked by lineage or kin. Managers coming from the community could not control their

¹³ Refers to the public-sector management structure in Figure 3.

¹⁴ Refers to the community-based management structure in Figure 3.

workers as their new hierarchical position was not accepted in an egalitarian society. Thus, peer-control can become *peer-protection* and can lead to legitimate and bad natural resource management. In Tsiseb, there have been numerous conflicts concerning the UWCC, which was started in 1997 and was owned by the local community. Alcohol problems, insubordination, unjustified and repeated absenteeism worsened the image of the tourism project and reduced its revenues. In Tsiseb and other cases, conflict resolution costs are high.

4.2. New Governance Structures in Nature Tourism: Community-Private Sector Agreements and Their Limits

Facing organizational and institutional instability, causing environmentally and economically unsustainable development, new institutional arrangements have to be looked at. Hybrid forms, including the private sector¹⁵ in tourism, can overcome the relatively low capacities of the State and of the community by introducing private-sector skills and by creating synergy.

Joint-venture partnerships involve local communities, represented by their conservancy committee, and a private operator that wants to build and to operate a lodge on community territory. The State, through the regional communal land board (RCLB), grants a right of leasehold (ROL) over an area to the communities. The latter (the lessor), as first users and proprietors of the land (ROL), transfer the right to a private operator (the lessee), which brings its business and marketing skills as well as its financial resources. A contractual agreement is thus reached between two actors. Communities ‘own’ and propose specific assets that the co-contracting agent wants to use, i.e. the natural and cultural capital of the area. In order for the right to occupy an area and to develop a tourism business to be transferred, private operators contractually distribute financial revenues to the conservancy’s funds. Generally, clauses in lease contracts stipulate a percentage of gross turnover of between 4% and 12% annually. These are variable lease fees. However, a constant annual minimum lease fee is guaranteed.

Private operators must also hire local residents on a priority basis and implement an empowerment plan that provides training sessions for low-skilled workers so that they can gradually reach middle and senior management positions. Other non-financial benefits for communities are transport, food, medical aid and logistic support for conservancy operations (e.g. to

¹⁵ Refers to the ‘hybrid private’ structure in Figure 3.

monitor wildlife). The private operator is also engaged to implement an environmental management plan and to respect both the resource zonation and management plans of the conservancy and tourism management plans.

In return, the lessee has a renewable ten-year lease right over an area of ten or twenty hectares on which he can build an accommodation structure (a lodge). The lessee is granted a) an exclusive development zone (EDZ), “where the right to develop tourism infrastructure is restricted to the lessee”, and b) traversing rights (for tourism purposes, e.g. game drive) over traversing areas which include the EDZ and multiple-use zones designed in the contract and in the conservancy zonation plan.

At the end of the contract, or when it is breached, ownership (equity) of immovable developments, i.e. building structures, is fully transferred back to the communities, which become owners. An option is also given to the conservancy to buy movable assets such as cars and furniture. After the lease period, the conservancy can run the business itself or sign another lease agreement for the operation of the lodge. Referring to Spenceley (2003), this joint-venture agreement is defined as a build-operate-transfer back (BOT) contract between private and community partners on the construction, supply and delivery of tourism services from common-pool resources.

Nationally, we could list nine formal joint-ventures of the above type. Two more are under negotiation. Many other agreements also link communities with the private sector, although more informally and with a weaker institutional set up.

Tsiseb Conservancy signed a joint-venture partnership in 2003 with a private entrepreneur, as the committee recognized the inefficient community management of the campsite in Ugab River (see above UWCC). Earlier, very few revenues accrued to the conservancy fund because conflicts and governance costs reduced the turnover of the campsite. Thus, the idea emerged to lease out the site to a skilled entrepreneur.

Following a tender process to attract private investors,¹⁶ the conservancy’s committee accepted to grant a lease right to Brandberg White Lady Lodge CC for the Ugab River site and signed a joint-venture contract in 2003. The operator took over the operation and the management of the existing campsite and built a lodge accommodation structure with a

¹⁶ This tender process was supported and driven by NGOs such as the WWF or NACOBTA (Namibia Community-based Tourism Association).

restaurant, a bar, six luxurious tents and twenty-three chalets that were completed and officially launched in June 2004. Thirty people (a majority of whom were local residents) were hired for the building phase. Twenty-two people (twenty-one from Tsiseb Conservancy) are now wage workers at the lodge and campsite operation. Four local residents have reached middle and senior management positions.¹⁷

A minimum lease fee of 150,000 N\$ was agreed on for the campsite and 100,000 N\$ for the lodge. Eight per cent of the lodge’s turnover is paid monthly to the conservancy fund. Up to now, more than 400,000 N\$ have been distributed, but more money will accrue to the community as the owner still owes unpaid revenues to the conservancy fund.

Institutionally, the contract (like other joint ventures in Namibia) makes provisions for the creation of a joint management committee (JMC) that consists of six representatives, three representatives to be designated by each party. More specifically, the purpose of the JMC is a) to take responsibility for implementing and ensuring that the commitments of both parties are met, b) to nominate/recommend candidates for employment, c) to resolve such issues as the movements of commercial tour operators within the EDZ and to address the conduct of members of the conservancy when it is in conflict with the tourism activities of the lessee, d) to air grievances and to propose solutions with respect to conflicts arising within the EDZ and the multiple-use zone resulting from the activities of other users, for example, tour operators, 4x4 drivers, local livestock grazers and trophy hunters. The JMC is to meet “as often as it deems necessary, but not less than once every quarter”.

When property rights are devolved, communities are able to set up governance structures and institutional arrangements to generate revenues (employment and lease fees) and to regulate natural resources (such as wildlife and tourism) on a sustainable basis.

Nevertheless, contractual agreements are still insecure for private operators. Some conditions are too stringent for private operators, who face investment risks in communal lands where property and use rights are not fully secured by legislation. The leasehold period is too short for a good return on investment. Improvements are transferred back quite quickly and

¹⁷ Interview with Kobus de Jager, owner of the White Lady lodge and the Ugab Wilderness Campsite on 03 July 2005.

thus operators must face all construction and operation risks without being secured. Moreover, the ROL remains in the conservancy's name and cannot be used as collateral by the concessionaire for a bank loan. Contracts in an uncertain environment and based on specific assets are very unstable if no provision is made for risk-guarantee (Williamson 1985). Finally, private operators feel that NGOs are not behaving like honest brokers. Hence, the standard lease contract is in favour of the conservancies and long negotiations to reach a difficult agreement bring high *ex ante* transactions costs.

Monitoring contract compliance is also a costly process for both parties. JMCs are *de facto* quite unable to regulate conflicts concerning the agreement. This leads to high *ex post* transaction costs, which include 1) a long time to control the behaviour of the other party, 2) funds for hiring experts and lawyers and 3) time to solve problems arising from the implementation of the contract.

Monitoring behaviour is time-costly because opportunistic strategies are difficult to observe and information is asymmetrically in favour of the private operator. In Tsiseb, the operator failed to pay monthly lease fees that were due and the empowerment plan was not fully implemented. As the JMC did not meet from October 2004 to July 2005, the committee was unable to solve the problem. The lack of communication finally led to conflict. In July 2005, the conservancy threatened the operating company to unilaterally modify the contract by transferring the campsite operation back to the community. This highlights the instability of joint ventures.

In these situations, communities strongly rely on NGOs for support. NACOBTA and the WWF often send business advisors to the site to discuss and solve problems. Several meetings are organized between operator and conservancy and the business advisors serve as moderators in the discussion. Trips, accommodation, per diems and consultancy fees are all transaction costs associated with this costly conflict resolution process. Further, tendering, negotiation and monitoring institutional arrangements between the different actors are NGO-driven processes. This leads to a dependency-syndrome that jeopardizes the sustainability of rural development in communal lands in Namibia.

5. Conclusion

An institutional analysis of the governance of natural resources shows that various elements are essential to regulate natural assets and to utilize them on a sustainable basis. Multiple actors (private and public sector, communities, donors, NGOs) compete for the appropriation of resources following different rent-seeking strategies. Conflicts arise between stakeholders concerning the use of natural capital and this could lead to overexploitation and to unsustainable development. However, institutions do matter. By enhancing governance, they strengthen coordination between competing actors and reduce conflicts. By regulating groups of users, institutions can transform demographic growth, often seen as a challenge, into a great opportunity to build social capital and collective action. Williamson’s four-level model of institutions underlines the importance, first, to secure property rights for actors in order to clarify their strategies (Level II), then to regulate contracts and agreements in order to reduce transaction and governance costs (Level III). In Namibia, the community-based natural resources management (CBNRM) approach and legislation devolved rights to community organizations (conservancies) for them to manage and use their own wildlife and tourism resources. From the mid-1990s, biodiversity, especially wildlife, has increased in north-west Namibia, where most of the conservancies are registered. Moreover, revenues have accrued to community funds through the utilization of natural specific assets situated in communal lands in Namibia. Trophy hunting and nature tourism are main sources of income for conservancies and help to cover the operating costs necessary to manage and monitor natural resources and to develop the rural economy, thus leading to a sustainable development.

Concerning tourism, hybrid forms of governance have appeared. Joint-venture agreements are signed between conservancies, the State and the private sector in order to generate income from natural attractions.

However, institutional arrangements are still unstable. Community conflicts, rivalry between actors, uncertainty and opportunistic behaviours endanger the sustainability of institutions and rural development. Negotiations, discussions and decision-making processes are costly in terms of time and money. NGOs and international donors are predominant and even drive the whole approach. Endogenous development is thus weakened by this strong external support.

It appears that sustainability requires profound land reform and a full devolution of rights to communities. Capacity-building and institutional development programmes should be parallel to a new indigenous entrepreneurship in order to move to a real ‘conservation *by the people*’ paradigm (Murombedzi 1998).

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