

The practicalities of implementing the NRMPS from a legal perspective

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Southern Africa



Overview of existing legal framework

- 1. The international level**
- 2. African and regional level**
- 3. Domestic/national level**



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1. International level

- UN Convention to Combat Desertification 1994 – 1994(sign); 1997 (ratify)
- UN Convention on Biological Diversity - 1992 – 1992(sign); 1997 (ratify)
- UN Framework Convention on Climate Change
- Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971 - 1995



2. African and regional level

- African Convention on the Conservation of Nature and Natural Resources 1969 & 2003 – signed, not yet ratified
- SADC Protocol on Forestry – 2002 (sign)
- SADC Protocol on Wildlife Conservation and Law Enforcement – 1999 (sign), 2003



3. Domestic/National level

- **Constitution – Articles 91(c); 95(I); 143;144**
- **Legislation**
- **Policies & Strategies**



Evaluating the existing legal framework

- Some laws may be strong mechanisms to address land degradation, e.g. Agricultural Policy
- However none provide guidelines on how to deal with the issue directly
- No incentives are provided to manage land degradation in all its facets – both in terms of preventing it and in reversing its negative impact
- Some laws contradict one another - Soil Conservation Act & National Agricultural Policy



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- A lack of provisions that encourage interaction between various stakeholders - problematic
- Drought relief subsidies are paid *per head* of livestock, giving farmers incentives to keep rather than sell their herds
- Clear example of policy failure: limited land available – such subsidies promotes overstocking and hence overgrazing
- The management of bush encroachment plays a crucial role in the degradation of rangeland – yet it is not explicitly addressed in the current legal framework



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Options to implement the NRMPS

➤ **Direct controls:**

GRN set standards or prescribe or prohibit certain actions by the land user

➤ **Indirect controls (economic incentives):**

Attempt to correct market signals which lead to environmentally damaging activities



Direct Controls

- To control overstocking and hence overgrazing – Grn can for instance prescribe how many cattle or livestock farmers may keep on a x size of land
- The key to a practical rangeland policy is control of land use:
Close relationship between control of land use and ownership of the land – owner's use of his land may be extensively curtailed or limited by means of direct land use control measures
- Problem – to balance two equal competing interests, *viz* the right to property of an individual and the necessity to conserve the Namibian environment for future generations



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- Article 16 (1) – guarantees the right to property
- However ownership (right to property), like all constitutional rights are not absolute
- Limitations may be imposed on ownership by public and private law, e.g. Constitution; legislation; common law and private treaty

E.g. Section 3(a) of Subdivision of Agricultural Land Act, 70 of 1979; Article 16 (2) on expropriation



- Article 22 – limitations upon rights & freedoms
- Requirements: the infringement must be of ‘general application’ and ‘authorised by law’ – i.e. must be ‘reasonable’ and ‘equitable’
- Legislative control of land, and especially of the use of land, is important for the effective enforcement of any conservation policy
- Since there are already so many limitations placed on ownership, a less direct approach to the implementation of a rangeland policy is preferable



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Indirect Controls

- **Land taxes (done by Ms Domptail)**
- **Subsidies**
- **Environmental bonds**
- **Marketable permits**
- **Compensation**



Subsidies

- Payment per unit by GRN to land user for sustainable use of rangeland
- Instead of paying subsidies per head of livestock, it is paid for conservation of rangeland
- Where a subsidy is applied – must establish a benchmark from which a reduction in damages can be estimated in order for payment to be made
- Subsidies: financed from general taxation - cost of abatement is spread across all taxpayers, rather than returning it to the land user and utilises scarce GRN funds for land degradation control



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Environmental Bonds

- Derived from the traditional ‘deposit’ or ‘materials use fee’ – it act as an incentive for individuals to dispose of environmentally damaging resources
- A bond, equal in value to the best estimate of potential environmental damage in the future, is posted by the acting party (land user) with the Grn in an account ideally for bearing a market-related interest rate
- The bond plus interest will be repayable if the acting party provides proof that the potential environmental damage has not occurred
- Where damage occurred, the bond would provide finance for restoration



Marketable Permits

- The environmental authority determines the quality goal it wishes to achieve in terms of the assimilative capacity of the resource (rangeland)
- Goal – equivalent to that desired under a regulatory (direct) approach
- Permits are then made available for the damage allowed in terms of the environmental goal



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Compensation

- Some cost-effective incentives (such as charges) may adversely affect some members of society, like the poor
- The payment of compensation may be advisable for reasons of social equity and political expediency
- Determination of amount and manner of compensation can be complex
- A baseline is needed against which damage inflicted – i.e. the amount of harm occurring as a result of a change from no policy or regulation, to the alternative approach – can be assessed



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- The loss as a result of the policy change then needs to be quantified
- Link compensation - the form of compensation relates directly to the type of damage suffered
- E.g. if the price of meat/dairy products rises due to the imposition of charges on rangeland use in excess of generative capacity – compensation may be provided to poor communities via subsidisation of such products



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Concluding Remarks

- Lack of or partial implementation of existing legislation and policies might be a major stumbling block in the implementation of a future grazing policy and strategy
- Some provisions of Constitution or a lack thereof, may inadvertently compromise the environmental protection clauses.
- Constitution does not protect customary rights to land and natural resources in non-freehold or communal areas – Lack
- Article 21(h) – all Namibians have the right to ‘reside and settle in any part of Namibia’ – this may threaten the security of tenure that customary tenure systems may be providing



- Effect – uncontrolled settlement in non-freehold areas increase pressures on agricultural land → overstocking and overgrazing → land degradation
- Article 16 problematic in respect of direct implementation of NRMPS
- Economic incentives appear to be superior to direct controls
- Incentives - polluter pays not only his private cost, but also the social costs of damage caused as a result of his/her actions



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- Incentives – less demanding in terms of monitoring and enforcement mechanisms
- Where society perceives that the poor will be unfairly affected, the payment of compensation is preferable
- Problem – Incentives can only be applied to those areas where the sources of degradation are easily identifiable and where monitoring and control are practical and financial feasible
- No research on incentives, except for subsidies and land taxes and even they present a number of challenges

