

# LANDSCAPE CONSERVATION AREAS' LAW ENFORCEMENT MANUAL

## 1. BACKGROUND

The Sossusvlei area is one of the popular tourist destinations within Namibia, with the iconic towering sand dunes and Sesriem canyon that are unique to the Sossusvlei being the biggest attractions. This status is even expected to improve, following the inscription of the Namib Sand Sea as national heritage site in 2013.

Given the capacity of the area's tourism, the stakeholders within the Greater Sossusvlei-Namib Landscape (GSQL) are confronted with management issues related to the tourism industry. These issues are specifically related to the conduct of the tourists in the area, and strict management implementation is necessary to uphold the environment and socio-economic status of the area. In pursuit of this, the landscape recognised the need to enhance law enforcement capacity in the area, with the emphasis on educating NAMPOL on the relevant laws applicable to the regulation of tourism activities within the landscape, as well as on how the landscape members can complement NAMPOL's efforts by exploring what powers landscape members have in terms of the law.

The current specific activities reported to be nuisance in the landscape are: camping in unauthorized areas such as on the road side; littering; starting of fire at random sites; and trespassing. In light of the above, a legal review was commissioned by the landscape to:

- (a) review and list the current legislation relevant to enforce and control the stated unlawful activities; and
- (b) to explore the power that the landscape members have in enforcing such legislation, in efforts to complement NAMPOL efforts.

Given that the issues being addressed by the GSQL are also of concern in the other four (4) landscape associations, the scope of this study was extended to include the other four (4) landscapes associations (Greater Fish River Canyon, Windhoek Green Belt, Greater Waterberg and Mudumu Landscapes).

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The following section (Section 2) outlines the analysis of the reviewed pieces of legislation and the context in which laws were reviewed. In Section 3 a summary of the legislation and corresponding provisions in reference to the specific activities is tabulated. In the last section, a brief conclusion is provided.

## **2. LEGAL REVIEW**

The legislation reviewed includes: Road Authority Act (Act 17 of 1999); Road Traffic and Transport Act (Act 22 of 1999); Nature Conservation Ordinance (Ordinance 4 of 1975); Trespass Ordinance (Ordinance 3 of 1962); Road Ordinance (Ordinance 17 of 1972); Communal Land Reform Act (Act 5 of 2002); and Traditional Authorities Act (Act 25 of 2000).

In terms of lawful activities permitted in the conservation areas, the Landscape Conservation areas ("PLCAs"/ "landscapes") are yet to be recognised and incorporated in national legislation. However, the current law, Nature Conservation Ordinance of 1975 recognises private nature reserves and game parks; state protected area; and conservancies. Therefore for landscapes there is as yet no framework of powers or mandates which can be executed by the landscape association or its members.

### **2.1 Road Authority Act (Act 17 of 1999)**

The act mandates the Road Authority (RA) with management of national roads network, including the management of road management systems, as well as other functions assigned, though gazette by the minister in fulfillment of that principal objective (section 16 (1)).

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RA may enter into an agreement with any person, body or authority to perform certain services for the authority necessary for the performance and effectiveness of its functions (Section 16 (2) a, b)

The minimum standards and measure necessary for the management and maintenance of the national road networks are prescribed by Minister of Works and Transport (Section 16 (5) a, b, c)

The landscape associations currently do not have authority to manage the roads , BUT the association may approach the minister and propose provisions of activities they want included in the standards and measures for road management and maintenance ((e.g. wild camping on the road sides), and secondly to approach the Roads Authority and propose an agreement that the association will regulate tourism activities in the landscape areas and have such authority delegated in writing .

## **2.2 Road Traffic and Transport Act (Act 22 of 1999)**

The Minister of Works and Transport has the power to make Regulations in relation to any matter regarding the use and regulation of public roads and conduct of road users, including powers to prohibit certain activities and to issue fines on contraventions (Sections 91 (1 - 7)).

Therefore, the landscape associations may approach the minister and propose provisions of activities they want included in the regulations for the use of public roads and conduct of road users. This act does not directly give power to the landscape association to regulate public roads and road users, but the Act gives the Minister the power to delegate or assign to any person any power or duty conferred or imposed on the Minister by the Act (section 110(1)) and the Minister may enter into an agreement with any person, including any local authority council

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or regional council to exercise any of the minister's powers and duties (section 111). These provisions can be used to devolve certain powers needed for tourism control and road user management onto landscape associations.

## **2.3 Nature Conservation Ordinance (Ordinance 4 of 1975)**

This Ordinance does not make provision for the establishment of the PLCAs, hence in terms of controlling activities within conservation areas, PLCAs do not feature. Subsequently, general landscapes members do not have any power to regulate members of the public. State game parks and reserves, including communal conservancies, and private game parks and reserves on the other hand, are recognised by the Ordinance. Through the 1996 amendments, conservancies only have rights and powers over wildlife, but no powers to regulate tourism activities or road users. Although this ordinance make provision for the control of certain, specific activities within the two types of game parks and nature reserves, this law does not allow the landscape members to act against a transgressor. A conservancy member can inform a tourist or a road user of the legal provision which prohibits the transgression. However, Nature Conservators, who are members of the public services (other than Police), are appointed by the Ministry of Environment & Tourism and have the power to enforce the provisions of the Nature Conservancy Ordinance.

In light of the above, it may be beneficial to PLCA's to consider getting the landscapes registered as nature reserves in terms of the Nature Conservation Ordinance to be able to control tourism and road user activities within the landscape areas.

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## *Hunting:*

Hunting of game whether in game parks, nature reserves, conservancies elsewhere is highly regulated and a hunting permit is required at all times. For the purpose of hunting permit, the Ordinance has categorized the different game as: Specially Protected Game (Schedule 3); Protected Game (Schedule 4); Huntable Game (Schedule 5); and Huntable Game Birds (Schedule 6).

The only exception to the permit requirement is that owners of a farm that is enclosed with a game proof fence do not need a hunting permit.

Hunting in game parks and nature reserves without a permit or on private game parks without the permission from the owner, is a prohibited, criminal offence and carries a fine (Section 23 and 24).

Conservancies may hunt within their conservancy area, but only after obtaining an annual hunting quota.

Within the state game parks and nature reserves, no person may; (c) willfully injure, capture or disturb any animal or remove or destroy any egg or nest of any bird; (d) willfully or negligently cause any veld fire or any damage to any object of geological, ethnological, archaeological, historical, or other scientific interest within a game park and a nature reserve, WITHOUT the permission of the minister (Section 18 (1)).

Therefore, the Ordinance's prohibition against hunting on state land without a permit also applies to conservancy areas and other communal land (section 28).

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## ***Picking of plants:***

No person may pick or transport a protected, indigenous plant listed under Schedule 9 without a permit, except the owner of the land on which such a plant occurs (Section 73). Contravention of this carries up to N\$ 750.00 in fines or 1-12 months imprisonment period or both.

Since only the picking of protected plants is prohibited, the landscape may want to advocate for the inclusion of other plants through amendments to the regulations.

In terms of the Ordinance it is only illegal to collect wood inside parks. So this provision cannot be used in Landscape areas as they are not parks in terms of the Ordinance. If landscape associations need to powers to prohibit travelers from collecting wood in the landscape areas, then having the landscape area registered as a park will grant the necessary power. Another method would be to amend the relevant legislation so as to make unauthorized collecting of wood anywhere unlawful. Landscape Associations can however also use the provisions of the Forest Act to gain the power to manage the plant natural resources in a sustainable manner.

## ***Forest Act 12 of 2001***

Landscape associations could apply in terms of the Forest Act 12 of 2001 to have their landscape area (or parts thereof) declared either as Regional Forest Reserve (section 14) or as a Community Forest (section 15). A Regional Council applies to the Minister for the declaration of an area on communal land as a Regional Forest Reserve, and after the declaration the Regional Council may enter into an agreement which contains a management plan with the traditional authority of that communal land or with another authority which can grant rights over that communal land. If landscape associations, or the conservancies and traditional authorities

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which are part of the landscape association can enter into the agreement with the Ministry of Agriculture Water and Forestry, then they will have powers to control the forest resources in that area, which should include the picking of plants and collecting of firewood, and other similar matters.

Similarly, the Minister of Agriculture Water and Forestry may, with the consent of the traditional authority, declare a communal land area as a community forest. Once the area is so declare the Minister can enter into an agreement with any body which the Minister believes represents the interest of the persons who have rights over that communal land and is willing and able to manage that communal land as a community forest. Even though Landscape associations are not yet recognized in any existing law, the Forest Act says that the Minister may enter into the management agreement with *any body* which the Minister believes is willing and able to manage the community forest. Landscape Associations should easily be able to convince the Minister that they are able and willing to manage the forest resources.

## ***Introduction of Animals in state Game parks and Nature reserves:***

Introduction of livestock and domestic animals into a game park or a nature reserve without the permission of the minister is prohibited (section 18(1)(e)).

## **Law enforcement of the Nature Conservation Ordinance:**

In principal, the Namibian Police (NAMPOL) is mandated with the enforcement of Namibian laws, including this Ordinance. However, this Ordinance makes provision for the appointment of Nature Conservators, mandated with powers similar to those

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of that of a peace officer. Nature conservators have all the ordinary police powers needed to take immediate actions when violation of the Ordinance is taking or has taken place.

Nature Conservators have the power of entry search and seizure (Section 18). This includes power to stop vehicles; enter a building or other places to conduct an investigation and inspection without a warrant; the right to seize any object believed to be connected to a crime. Further, the nature conservator has all the powers of the peace officer to arrest any person without a warrant (Section 18 (2)).

Additional to the nature conservator, the Landscape members who are not members of the public service can be appointed as Honorary Nature Conservators. However, the Honorary Nature Conservator's power is restricted to investigations and reporting and therefore they cannot arrest, search people and property and seize articles.

## **2.4 Trespass Ordinance (Ordinance 3 of 1962)**

This Ordinance limits movements of any person without a permission of the lawful occupier of any land, building or part of building.

If a person, without the said permission, enters land, a building or part of building, then he is guilty of an offence, except if he has another lawful reason to enter on such land or in such building (Sub-section 1(1)). On conviction, such a person may be liable to payment of a fine of N\$ 1,000.00 or imprisonment for a period not exceeding a year or both.

Although this ordinance makes trespassing a punishable offence, it does not empower the property owner to take law into their own hands against the trespasser, but rather only gives such property owner a legal provision to refer to when a person



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is illegally camping address in a landscape area. Therefore Landscape Associations have to adhere to this principle of not taking the law into their own hands as well.

## **2.5            *Road Ordinance (Ordinance 17 of 1972)***

In terms of this ordinance, the road side/reserve of all proclaimed roads falls under the jurisdiction of the Minister of Works, Transport and Communication. Section 28(1) of this ordinance lists activities within the road reserve that the Minister has power and authority over. Further, section 28 (2) lists activities in the road reserve that constitute offences. These include cutting of the grass without the Minister's approval and causing damage to road improvements such as fences, walls, gates, ditch furrows and trees.

Only the Minister has the authority to erect temporary structure/s in the road reserve or on private land, in consultation with the landowner for the road workers and their families for dwelling and storage needed for the purpose of road maintenance and construction (Section 31). Under the same section, the Minister may, where no other opportunity is available, authorize the collection of firewood, cutting of trees and brushwood and obtaining water for road maintenance and traffic safety purposes.

Activities of infringements and obstruction on proclaimed roads are also detailed and prohibited in section 37, which includes leaving of vehicles on the road; interfering with the roadway or anything erected/introduced within the reserve; and the erection or introduction of anything within the reserve. Conviction of an offence related to any of the above prohibitions, carries a fine of not more than N\$ 1,000.00 or imprisonment period of not more than 2 years or both.

Therefore, wild camping in the road reserve is unlawful and the landscape members should lodge complaints with NAMPOL in the area as per the stated legal provisions.

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## **2.6 Communal Land Reform Act (Act 5 of 2000)**

This Act provides for the allocation of land rights within the communal areas; to establish Communal Land Boards (CLB); and to provide for the powers of Chiefs and Traditional Authorities (TA).

Traditional Authorities are the relevant institutions to grant or deny permission for camping. With no permission to camp in communal areas, i.e. illegal campers, a camper would be guilty of contravening section 43 (1) of the Communal Land Reform Act and the TA and CLB can institute a legal action against the camper. Under section 45 (1), the Minister of Land Reform has the mandate to make regulations on conduct within the communal land areas, and contravention of those regulations carries fines of up to N\$ 4, 000.00 or imprisonment term not exceeding one year or both.

Traditional authorities and conservancies within communal land can hence approach the Minister of Land Reform with proposed provisions necessary to equip the conservancies and traditional authorities with the powers to control unlawful activities for inclusion into the regulations,.

## **2.7 Traditional Authorities Act**

This Act is relevant to communal land. In terms of section 3(2), the traditional authorities are mandated to assist NAMPOL and other law enforcement agencies in the prevention and investigation of crimes, and, subject to the Criminal Procedure Act, 51 of 1977, also to apprehend offenders within their jurisdiction .

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## 3. Summary of the Reviewed Legislations in relations to the specific unlawful activities

ISSUE	APPLICABLE LAW	LEGAL PROVISION	PENALTY
<b>1. Wild Camping</b>			
<p><b>(a) in Road Reserve</b></p> <p>Only permitted temporarily with the minister's approval and only for the purpose of road construction</p> <p>Other than the minister's approval, camping in this area is unlawful</p>	S 28(1) of <b>Roads Ordinance 17 of 1972</b>	The Minister of Transport has power over the road reserve	N\$ 200.00 fine or six months imprisonment or both
	S 28(2)	It is an offence to damage buildings, structures or a tree or cut grass in the road reserve	N\$ 200.00 fine or six months imprisonment or both
	S 31	The Minister may, through contractors and with the owner, erect temporary dwellings, take water and fire and cut down trees for road workers on private land	N\$ 200.00 fine or six months imprisonment or both
	S 37	No person may leave a vehicle on -, erect or interfere with anything erected in the road reserve of a proclaimed road	N\$ 1,000 fine or 2 years imprisonment or both
<b>(b) in Communal Land</b>	<b>Communal Land Reform Act 5 of 2002</b>	No person may occupy communal land except under a right acquired under the Act	S 43 Chief or Traditional Authority may institute legal action against any person who occupies communal land in contravention of the prohibition.
<b>2. Trespassing</b>			
<b>(a) Entering private land without</b>	<b>Trespass Ordinance 3 of 1962</b>	It is an offence to enter private land without the permission of the owner	N\$ 1,000.00 fine or one year imprisonment or both

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permission		or lawful occupier	
<b>3. Hunting</b>			
<b>(a) Hunting of Game</b>	<b>Nature Conservation Ordinance 4 of 1975</b>  S25 - 28	Hunting without permit is an offence	N\$ 250.00 fine or 3 months imprisonment on 1 <sup>st</sup> conviction  N\$ 500.00 fine or 6 months imprisonment on 2 <sup>nd</sup> conviction
	Huntable game & game birds on state land belongs to the state S, 31 & 32	Hunting only with a permit from the minister of MET  Farms bigger than 1000 hectares with game-proof fence enclosed are exempt from permit requirement.	N\$ 500 – N\$ 750 fine or 6 -12 months imprisonment or both  N\$ 250.00 fine or 3 months imprisonment (for 1 <sup>st</sup> conviction)  N\$ 500.00 fine or 6 months imprisonment (for consequent convictions)
	Huntable game & game birds on private land belongs to land owner S29, 31, 32 & 33	Land owners with game-proof fence around the land are owners of huntable game on that land.  Farms bigger than 1000 hectares with game-proof fence enclosed are exempt from permit requirement.  Permission to hunt huntable bird game only by written permission of land owner	N\$ 250.00 find or 3 months imprisonment (for 1 <sup>st</sup> conviction)  N\$ 500.00 fine or 6 months imprisonment ( for consequent convictions)

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	Huntable game & game birds in conservancy belongs to conservancy 24A & 28	Hunting only with permit and conservancy's permission	N\$ 4000 or 4 years imprisonment
	S39(1) Land owner, lessee or occupier can demand to see hunting permit from hunter	If hunter fails to produce permit, land owner can demand to know name & address;	If hunter refuse to give name & address, land owner, lessee, occupier may arrest the hunter
	S 39(2) lawful occupier of State Owned land may demand to see hunting permit from hunter	If hunter fails to produce permit, occupier can demand to know name & address and order hunter to leave the land	If hunter refuses to leave the land, occupier can arrest the hunter
	S 39(3)	Land owner or occupier may destroy a dog found chasing game or any dog which is not under proper control of an adult	N\$ 250 fine (max) or 3 months imprisonment (for 1 <sup>st</sup> conviction)  N\$ 500 fine (max) or 6 months imprisonment (for consequent convictions)
<b>4. Gathering of Natural Resources</b>			
<b>(b) Eggs of game birds</b>	S 44	No disturbing, removal, selling, purchasing or destruction of huntable game- or protected birds eggs in Schedule 4(ii) without permit	N\$ 250 fine (max) or 3 months imprisonment ( for1 <sup>st</sup> conviction)  N\$ 500 fine (max) or 6 months imprisonment (for consequent convictions)
<b>(c) Game found dead on road or in road reserve</b>	S 50	Game found dead on a proclaimed road within the boundaries of the road reserve may be removed if it obstructs the proclaimed road.  The Director to be informed in writing	N\$ 250 fine (max) or 3 months imprisonment ( for 1 <sup>st</sup> conviction)  N\$ 500 fine ( max) or 6 months imprisonment (for consequent convictions)

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		within ten (10) days	
<b>(d) Picking of plants</b>	S 73	Picking or transporting of of protected plants prohibited  Owners of registered nurseries and owners of land where protected plant grows are exempt from needing a permit.	N\$ 100 – N\$750 fine or 1 - 12 months imprisonment
	S 77	Picking of indigenous plants without land-owner's written permission prohibited.  Land-owner's family members & employees may pick without written permission	N\$ 250 fine (max) or 3 months imprisonment (for 1 <sup>st</sup> conviction)  N\$ 500 fine (max) or 6 months imprisonment (for consequent convictions)
<b>5. Power of Nature Conservators &amp; Honorary Conservators</b>			
<b>Powers of Nature Conservators</b>	S 81 to to determine whether Ordinance is being complied with	Nature Conservator may conduct any investigations or question any person and may, without warrant, search any property and seize any article related to an offence in the Ordinance.  Nature Conservator may also remove or destroy anything used to unlawfully catch game or wild animals.  Assault of hindering of a Nature Conservator is an offence.	N\$ 4,000 fine (max) or 4 years imprisonment (max) or both

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<b>Honorary Nature Conservators</b>	S 81(4)	The Minister may appoint Nature Conservators and Honorary Nature Conservators.  Falsely pretending to be – or refusing to follow the order of a Nature Conservator or Honorary Nature Conservator is an offence.	N\$ 250 fine (max) or 3 months imprisonment (for 1 <sup>st</sup> conviction)  N\$ 500 fine (max) or 6 months imprisonment (for consequent convictions)
<b>6. Power and Duties of Police Officers</b>			
<b>Powers &amp; duties of Police Officers (nature conservators also have these powers)</b>	<b>Police Act 19 of 1990</b> S 14(5)(a)	A Police Officer may stop, and to search without warrant, search any vehicle on any public road and seize any article in the vehicle that may relate to a crime.  Failure to comply with such a demand is an offence.	Any person who refuses to stop is guilty of an offence  N\$ 2000 fine or 1 year imprisonment or both
	<b>Criminal Procedure Act 51 of 1977</b> S 47	Male private person between 16 and 60 must assist police to arrest or detain a person when ordered to do so.  Failure to comply is an offence.	Failure to comply:  N\$ 100 fine or 3 months imprisonment
	<b>Traditional Authorities Act s</b> S 3(2)(a) and (b)	Member of the TA has duty to assist Police in crime prevention and investigation & apprehension of offenders.  Duty to ensure that community uses natural resources on a sustainable	Acts performed by TA established in conflict with Act are null and void.  N\$ 4000 fine or 1 year imprisonment or both

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		<p>basis.</p> <p>A traditional community that, in conflict with the Act, establishes another authority purporting to be a TA with authority to perform the above duties are guilty of an offence.</p>	



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## **4. CONCLUSION**

As mentioned in the introduction, the current developments within tourism were not envisaged at the time when the laws reviewed above were passed. Therefore provisions which can be used to curb the negative conduct of tourists and other road users must be used to the extent that they can be made applicable to the conduct complained of. In numerous cases the provisions highlighted here and especially in the table will give members of the landscape associations something to refer to when they interact with tourists and other road users who want to challenge the advice not to behave in a manner destructive to the environment and damaging to an orderly tourist experience for all stakeholders.

In addition, it is hoped that the new draft legislation which is to replace the Nature Conservation Ordinance contains provisions which directly address the matters faced by landscape associations, or that such provisions will be contained in the regulations to such new legislation. Furthermore, several existing laws have been shown which enable the relevant authorities to gazette regulations to give the necessary powers to members of the landscape association (or to the traditional authority and conservancies which may be members of the landscape association) to properly regulate tourism conduct along the main tourism routes of the country.