

# The Law & Forest Management

## Outlining the legal principles underpinning the forestry sector in Namibia

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# Roadmap to the Forestry Sector in Namibia

1. Constitution of the Republic of Namibia
2. International Law and Conventions
3. Namibian Policy Documents
4. Key provisions of the *Forest Act, 2001* and Regulations
5. Limitations of current legal framework



# The Constitution of the Republic of Namibia

- ▶ Article 95, Promotion of the Welfare of the People, under Principles of State Policy:
  - ▶ “The State shall actively promote and maintain the welfare of the people by adopting, *inter alia*, policies aimed at the following: (...)
    - ▶ (l) maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future (...)”
- ▶ One of the first and only Constitutions in the world to include a provision relating to the safeguarding of the environment.



# The Constitution of the Republic of Namibia

## ▶ Article 100, **Sovereign Ownership of Natural Resources**

- ▶ “Land, water and natural resources below and above the surface of the land and in the continental shelf and within the territorial waters and the exclusive economic zone of Namibia shall belong to the State if they are not otherwise lawfully owned.”
- ▶ The State as the **custodian** of all natural resources of Namibia.

## ▶ Article 6, **The Right to Life**

- ▶ Article 6 of the Namibian Constitution states that “*the right to life shall be respected and protected*”.
- ▶ Human life depends strongly on the state of the environment, including water, air, natural resources, plant and animal life.
- ▶ **Environmental degradation that threatens people’s lives** and livelihoods must be avoided and guarded against.



# The Constitution of the Republic of Namibia & International Law

- ▶ Article 144 of the Constitution -
  - ▶ *“Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.”*
- ▶ When State has signed and ratified an international agreement or treaty, such international law **binds the State**, including the three branches of government.
- ▶ Obligation on Legislature to **bring national law in line** with obligations arising from international law agreements and treaties.
- ▶ Principles contained in international law treaties **should inform policies**, which in turn guide the drafting of legislative instruments.



# International Law Commitments made by Namibia

## ▶ UN Framework Convention on Climate Change (1994)

- ▶ Article 3, Principles: The Parties should take **precautionary measures** to anticipate, prevent or minimize **the causes of climate change** and mitigate its adverse effects.
- ▶ Article 4, Commitments: Each of the Parties **shall adopt national policies** and take corresponding **measures on the mitigation of climate change**.

## ▶ Paris Agreement (2015)

- ▶ Article 5: Parties should take action to **conserve and enhance**, as appropriate, sinks and reservoirs of greenhouse gases, **including forests**. Parties are encouraged to **take action to implement and support**, the existing frameworks and policy approaches and positive incentives for activities relating to **reducing emissions from deforestation and forest degradation**, and the **role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries**.



# Rio Conventions and NAP3

- ▶ Rio Conventions - United Nations Conventions to Combat Desertification, on Climate Change and Biodiversity
- ▶ Third National Action Programme for Namibia to Implement the United Nations Convention to Combat Desertification (2014-2024)
  - ▶ Identifies **climate change** as one of the **root causes of land degradation**.
  - ▶ Emphasises Government's commitment to **integrate sustainable land management** into national development priorities.
  - ▶ Objective of NAP3 is to “***prevent and reverse desertification and land degradation in affected areas***”.
  - ▶ Outcome 4: Desertification and land degradation processes in Focal landscapes are **halted and reversed by 2024**, and affected communities and ecosystems strengthened to mitigate the impacts of drought.



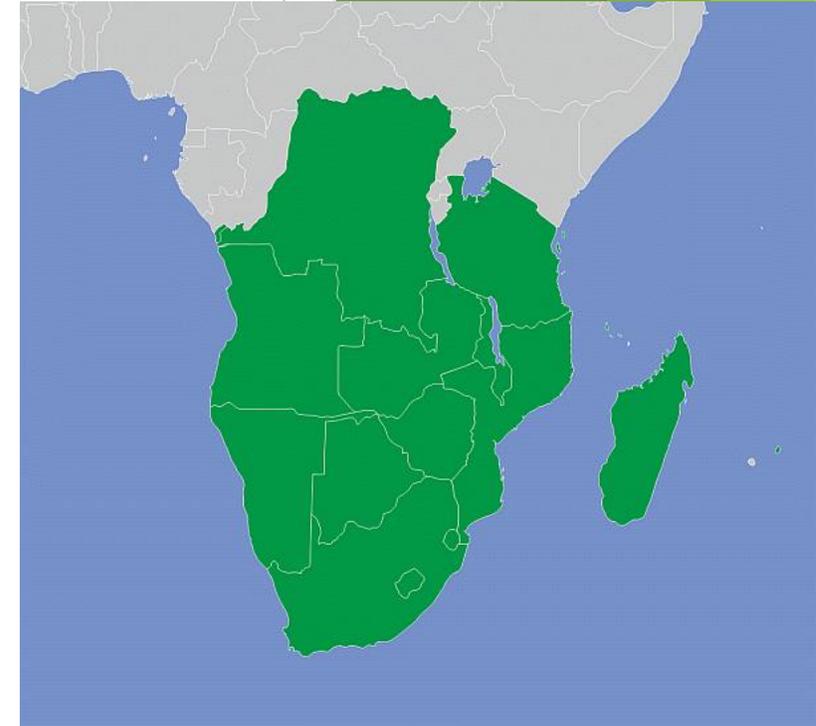
# International Law on (Illegal) Exploitation and Trade of Wild Flora

- ▶ African Union's Strategy on Combating Illegal Exploitation and Illegal Trade in Wild Fauna and Flora in Africa (2015) - Core objectives:
  - ▶ Increase the level of political commitment to prevent, combat and eradicate illegal exploitation and illegal trade in wild fauna and flora, and to recognize illegal trade in wild fauna and flora as a serious crime.
  - ▶ Component 3: Enforcement and Compliance - Strengthen enforcement of and compliance with policies, legislation and regulations combatting illegal wildlife trade; foster capacity building of all relevant officials across the enforcement chain to implement measures to combat illegal exploitation and trade in wild fauna and flora.
- ▶ Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in respect of trade of endangered species of plants
  - ▶ Article VIII: The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures: (a) to penalize trade in, or possession of, such specimens, or both; and (b) to provide for the confiscation or return to the State of export of such specimens.



# SADC Policy Documents

- ▶ SADC Protocol on Forestry (2002) as **the over-arching policy framework** for forestry collaboration amongst member states in the SADC region.
- ▶ The protocol provides for guiding principles on co-operation in protecting, managing and using forests to meet regional and national objectives.
- ▶ Objectives include that state parties shall co-operate to **harmonise approaches to sustainable forest management**, forest policy, legislation and enforcement.
- ▶ SADC Forestry Strategy (2010) contains eight strategic programme areas, *inter alia* **climate change mitigation and adaptation**.



# Namibian Policy Documents

## ▶ Namibia Forestry Strategic Plan, 1996

- ▶ Task: Protection of biodiversity and **preventing climate change**. Conservation ensures **some amount of forest growth** which in addition to protecting the existing biodiversity, sequesters carbon to **restrict potential climate change**.
- ▶ Envisages **different forms of forestry** to be developed
  - ▶ **Natural Forests** - split into production forests and environmental forests
  - ▶ **Farm Forestry**

## ▶ Forest Policy

## ▶ Harambee Prosperity Plan II (2021 - 2025)

- ▶ Under the **Economic Advancement Pillar**, the Goal to **Optimise Stewardship of Natural Resources** and Public Assets
- ▶ Objective: Subscribing to the Extractive Industries Transparency Initiative (EITI) and/or **review applicable laws governing the extractive industries** including Fisheries and **Forestry** to **improve transparency and deepen Public Trust** (closure, 31 March 2025)



# Forest Act, 2001 (as amended by Forest Amendment Act, 2005)

- ▶ Provides for the classification of “protected areas” and “*classified forests*”:
  - ▶ forest reserves (state or regional)
  - ▶ community forests
  - ▶ forest management areas
- ▶ Established by way of an agreement with the Minister
- ▶ Classified Forests are managed by a **Management Authority** in terms of a **Forest Management Plans (FMP)** and benefits generated are distributed in accordance with **Benefit Distribution Plan**.
- ▶ FMPs should be based on data generated through **forest resource inventory processes** completed by Department of Forestry, which also informs total allowable offtake.

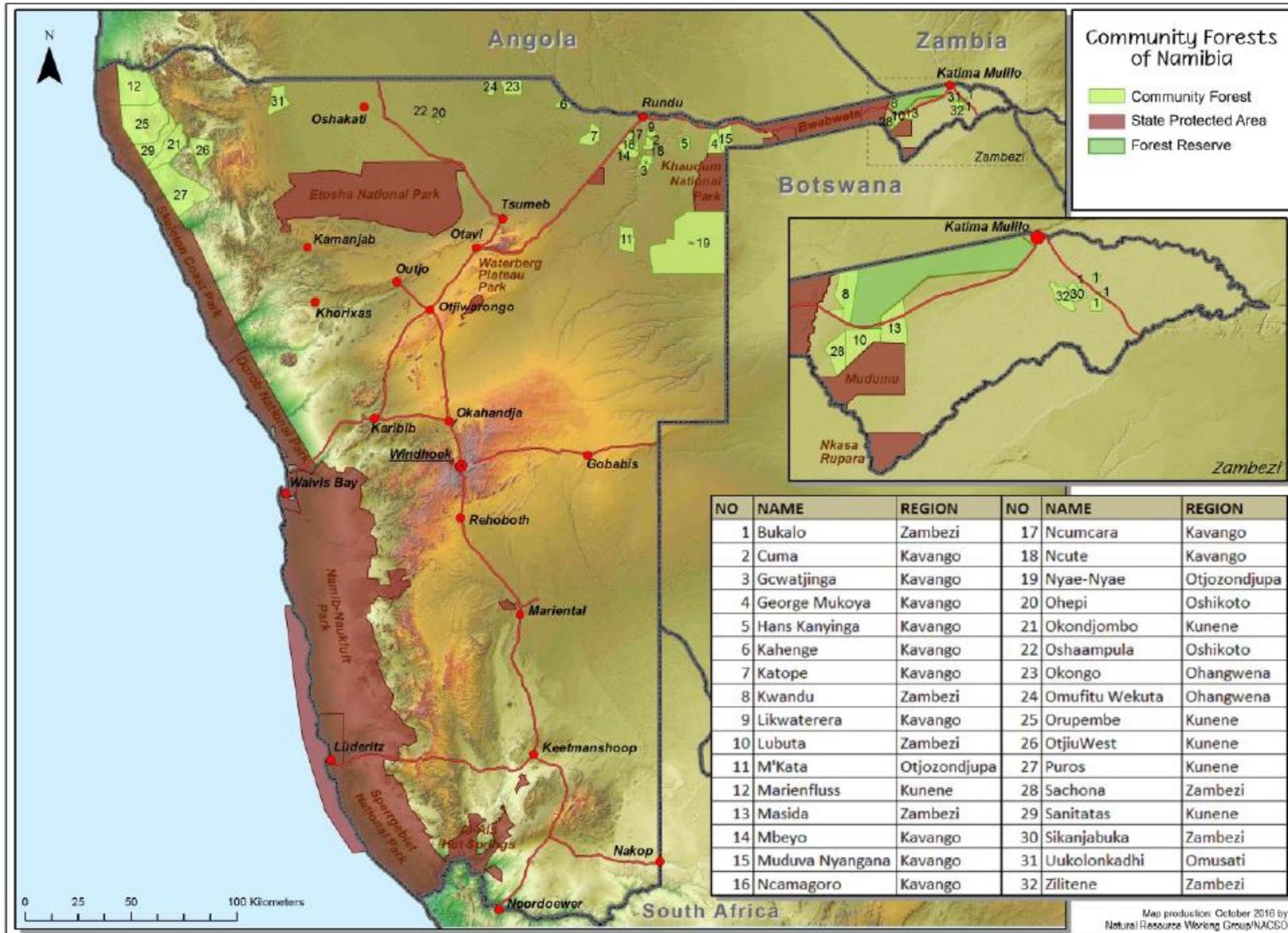


# Forest Act: Community Forests

- ▶ Purpose to assist communal areas to manage their forests and woodlands, and to **incentivize community members to conserve** their local forests by benefit sharing.
- ▶ With the consent of the chief or traditional authority of the area which is part of CL
- ▶ Minister may enter into a **written agreement** with any body which the Minister reasonably believes **represents the interests of the persons** who have rights over such CL and is **willing and able to manage** that CL as a community forest.
- ▶ Agreement will confer **rights to manage and use forest produce** and other natural resources of the forest, to graze animals and to **authorise others to exercise** those rights and to collect and retain benefits and **impose conditions**.



# Registered Classified Forests



# Forest Act: General Protective Measures

- **License** required to **cut, destroy or remove** -
  - **vegetation** which is on a **sand dune or drifting sand or on a gully** unless the cutting, destruction or removal is done for purpose of stabilizing the sand or gully;
  - any living tree, bush or shrub growing **within 100 metres of a river, stream or watercourse**,  
on any land which is **not part** of a surveyed erven of a local authority area.
- **Approval from Director** required to:
  - plant trees, other than fruit trees, **on more than 15 ha**;
  - **clear vegetation** on **more than 15 ha** on any area which has predominately woody vegetation; or
  - **cut or remove more than 500 cubic meters of forest produce** from any piece of land in a period of one year.
  - Director may require environmental impact assessment (EIA).
- Minister may, by regulation, declare any plant or species of any plant to be a **protected plant** and may **impose conditions** under which that protected plant shall be conserved, cultivated, used or destroyed by any person.

# Protective Measures in Classified Forests

## ▶ No person shall -

- destroy or damage vegetation or harvest forest produce;
- carry out any activity for the purpose of mining minerals;
- build a road, building or structure;
- disturb or remove soil; or
- carry out agricultural activities or graze animals,

in a **classified forest** unless **authorised** to do so by MP, a forest management agreement or a licence issued under Forest Act.

## ▶ Licence to -

- ▶ cut or remove forest produce;
- ▶ graze animals;
- ▶ engage in agricultural activities;
- ▶ carry on mining activities; or
- ▶ construct roads or buildings,

in a **Forest Reserve**.



# Forest Act: Own Use Provisions

- ▶ Owner or legal occupier of any land, including CL, may, **subject to MP, without a licence** harvest forest produce from the land he or she **owns or occupies** and dispose of that forest produce in any way he or she likes.
- ▶ A person who resides in or near a forest reserve or community forest may, subject to the MP, cut or remove forest produce for use as **household fuel** or for the **construction of shelter** for him or herself or for his or her livestock.
- ▶ The inhabitant of CL may, **subject to customary law** applicable in the CL, on CL which is not legally occupied by any person and which is not a classified forest, **cut, take and remove forest produce** for use as **household fuel**, for the **construction of shelter** or for **construction of structures used to protect agricultural crops**.



# Forest Act: Unclassified Forests



- ▶ No person shall **harvest** forest produce from land (including CL) which is not classified forest unless **harvesting is done in accordance with a licence issued**.
- ▶ The licencing officer shall, if the land in question is CL which is not legally occupied by a person, **obtain the consent** of the chief or TA of the CL in question.



# Regulations to Forest Act

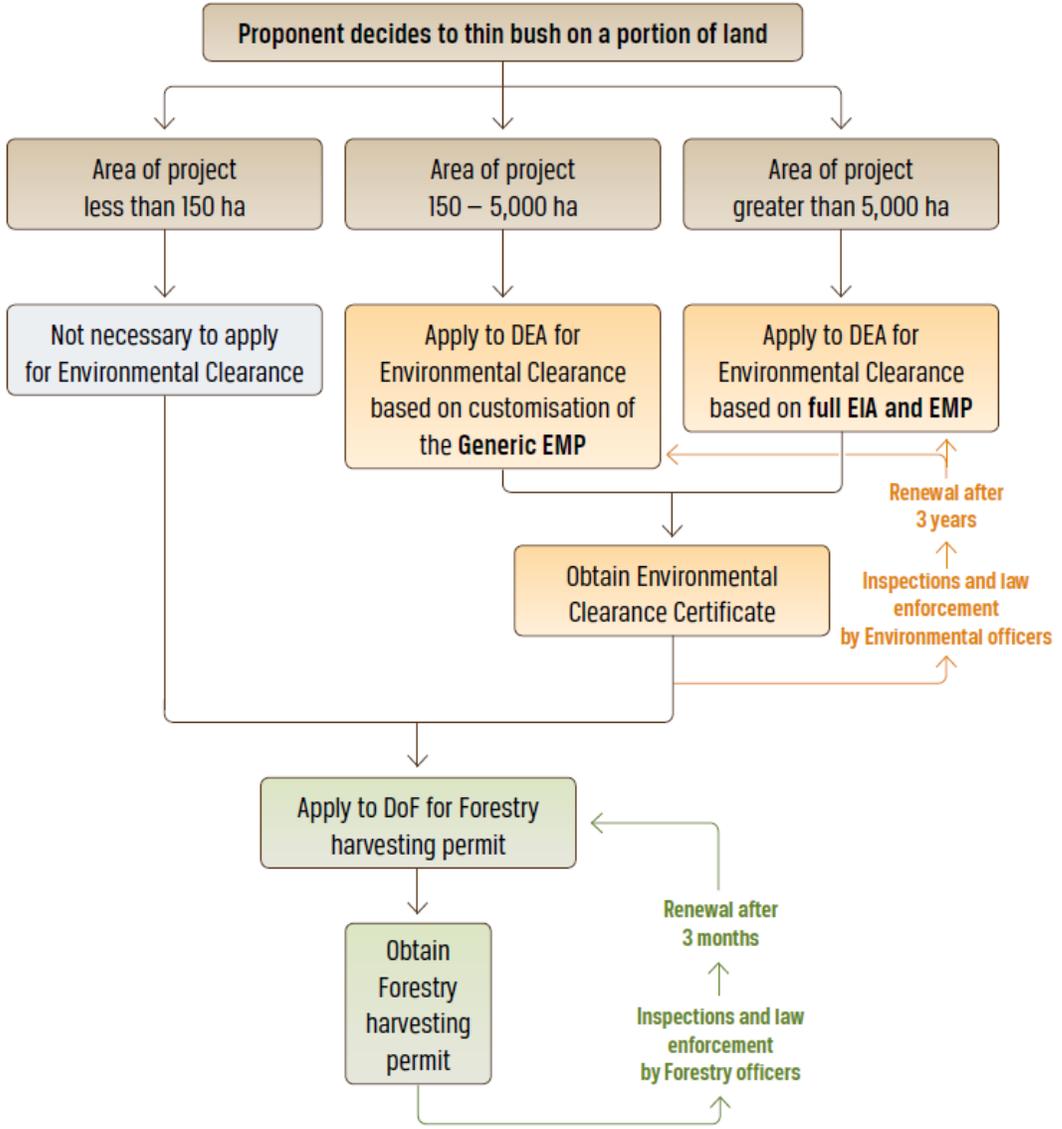
- ▶ Provides that a person is not authorized to harvest, transport, sell, market, transit, export or import forest produce **without a valid licence** for harvesting or permit for transport, marketing, transit, export or import
- ▶ **Prescribed application forms** (bush control licence, forest produce (harvesting licence) and conditions attached to licence (bush control, charcoal production, harvesting, transport, export, import)
- ▶ Sets out documentation to accompany application, including **written permission** from land owner, TA or chairperson of conservancy, or proof of ownership of farm.
- ▶ Permit duration:
  - ▶ 3 months for a harvesting permit in commercial areas;
  - ▶ 7 days for harvesting permit in CL; and
  - ▶ 3 days for harvesting permit for own use.

# Forestry Act, 2001 & Environmental Management Act, 2007 (EMA)

- ▶ The EMA contains a **list of activities** which may not be undertaken without an **environmental clearance certificate**, including:
  - ▶ *“The clearance of forest areas, deforestation, afforestation, timber harvesting or any other related activity that **requires authorisation in term of the Forest Act, 2001 (Act No. 12 of 2001) or any other law**”.*
- ▶ The Environmental Commissioner will decide whether an environmental impact assessment is required and, if so, the scope of the assessment.
- ▶ The applicant is required to conduct a **public consultation process**, as well as to open and maintain a register of **all interested and affected parties**.



# Guidelines: Forestry and environmental authorisations process for bush harvesting projects



# Limitations of the *Forest Act, 2001*

► Lack of definitions of key terms:

forest	bush	encroacher	shrub
charcoal	bush clearing	harvesting permit	woodland
controlled burn	bush thinning	own use	sustainable utilisation
deforestation	processed wood	resource inspection	sustainable limits

- No clear differentiation of criteria and limits for **different purposes of harvesting** - e.g. field clearing for growing subsistence crops, bush thinning, charcoal production, harvesting to control bush encroachment, biomass production, harvesting timber.



# Limitations of *the Forest Act, 2001*

- ▶ No clear and **defined criteria** to guide the issuing of permits in a transparent and **uniform manner**, and setting out when an ECC is required.
- ▶ Need for **publicly accessible record** of successful permit applications and rejections.
- ▶ Permits granted by licencing officers (not forest officers) who are not required to have the **required expertise or training**.
- ▶ Lack of a **effective monitoring system for report-back** on use of permits issued.
- ▶ **Ineffective implementation** of forest management plans.
- ▶ Forest management plans **only required for classified forests**, not in respect of forest produce harvested on land outside of classified forests.
- ▶ Regional offices operate independently, with **no current national system for permit data capturing** or **collation of permit data**, which could be used to inform management decisions and determination of total allowable offtake.
- ▶ **No public tendering process** for exploitation of timber resources, unlike the conservancies' trophy hunting quotas where tendering is standard procedure.



# Limitations of *Forest Act, 2001*

- ▶ **Limited revenues** are materializing for communities.
- ▶ Only **total allowable offtake** for harvesting of timber in community forests, not for all harvesting.
- ▶ No limit on how much forest produce can be **harvested for own use**.
- ▶ No effective use of **resource inspections and resource inspection reports** in decisions to issue permits.
- ▶ **Lack of enforcement of prohibitions**, whereby capacity to regulate firewood sales, illegal logging and incorrectly documented exports needs to be improved.
- ▶ **Low monetary penalties** for violation of provisions of Forest Act (N\$ 8,000)
- ▶ **Unauthorised re-use of permits** (especially transport permits) as permits are not required to be returned once used - recommend **tracking system for permits** that have been issued.
- ▶ Lack of **integration** between conservancies and community forests.



# Concluding Remarks

- ▶ Limitations and shortfalls of current legal framework relating to the Forestry Sector should be **considered with obligations** imposed by -
  - ▶ **Article 95 of the Constitution** (environmental protection clause);
  - ▶ Commitments under various **international law treaties and agreements** relating to the mitigation of climate change; and
  - ▶ The objective contained in **Harambee Prosperity Plan II** (2021 - 2025) to review legislation relating to forests to improve transparency and deepen public trust.
  
- ▶ Accordingly, State has **obligation to review the legal framework** relating to the Forestry Sector to implement policies and legislative framework informed by **principles of sustainable forest management** and **climate change mitigation**.

# Thank you!

Do you have any questions or comments?



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