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IMEL

INSTITUTE OF MARINE
& ENVIRONMENTAL LAW

**THE CHALLENGE OF CREATING AN EFFECTIVE AND EQUITABLE
LEGAL REGIME TO GOVERN TRANSBOUNDARY PROTECTED AREAS:
CONSIDERING THE CHALLENGE THROUGH THE LENS OF THE GREAT
LIMPOPO TRANSFRONTIER PARK**

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Research dissertation presented for approval of Senate in fulfilment of part of the requirements for the degree *Magister Legum* in Environmental law in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses.



I hereby declare that I have read and understood the regulations governing the submission of *Magister Legum* dissertations, including those relating to length and plagiarism, as contained in the rules of the University, and that this dissertation conforms to those regulations.

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LIST OF ABBREVIATIONS/ACRONYMS

AA	Appropriate Authority
ANAC	National Agency for Protected Areas
BSAs	Benefit-sharing Agreements
CAMPFIRE	Communal Areas Management Programme for Indigenous Resources
CBC	Community Based Conservation
CBD	Convention on Biological Diversity
CBNRM	Community Based Natural Resource Management
CBNRM (FAO)	CBNRM Programme of the Food and Agricultural Organisation of the United Nations
CEESP	IUCN Commission on Environmental, Economic and Social Policy
CIFOR	Centre for International Forestry Research
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CLA	Communal Land Act
COGEPs	Participative Management Councils
CoM	Council of Ministers
CONDES	National Council for Sustainable Development
COP	Conference of the Parties
CPA	Community Property Association
DEA	Department of Environmental Affairs

DINAGECA	National Directorate of Geography and Cadastre
DINATUR	National Directorate for Tourism
DNAC	National Directorate for Conservation Areas
DNFFB	National Directorate of Forestry and Wildlife
EMA	Environmental Management Act
FAO-DNFFB	National Directorate of Forestry and Wildlife
FPE	Forest Policy and Economics
GLTP	Great Limpopo Transfrontier Park
ICCAs	Indigenous Community Conservation Areas
IDPs	Integrated Development Plans
IUCN	International Union for the Conservation of Nature
IUCN Management Guidelines	Guidelines for Applying Protected Area Management Categories
IUCN-EPLP	International Union for the Conservation of Nature - Environmental Law Programme Publications
IUCN-ROSA	International Union for the Conservation of Nature – Regional Office for Southern Africa
JMB	Joint Management Board
JMP	Joint Policy and Management Guidelines for the Great Limpopo Transfrontier Park

JSAL	Journal of South African Law
JSAS	Journal of Southern African Studies
JSF	Journal of Modern African Studies
JTES	Journal of Transdisciplinary Environmental Studies
KNPMP	SANParks Kruger National Park Management Plan
KfW	German Development Bank
KNP	Kruger National Park
LEDET	Limpopo Department of Economic Development, Environment and Tourism
LFW	Law on Forestry and Wildlife
MADER	Ministry of Agriculture and Rural Development
MICOA	Ministry for the Coordination of Environmental Affairs
MINAG	Ministry of Agriculture
MITUR	Ministry of Tourism
NEMA	National Environmental Management Act
NEM:BA	National Environmental Management: Biodiversity Act
NEM:PAA	Environmental Management: Protected Areas Act
NGO	Non-Government Organisations
PER/PELJ	Potchefstroomse Elektroniese Regsblad/ Potchefstroom Electronic Journal

PLASSG	Programme for Land and Agrarian Studies School of Government University of the Western Cape
PWLA	Parks and Wild Life Act
PWMA	Parks and Wild Life Management Authority
RDC	Rural District Council
RDCA	Rural District Councils Act
SADC	Southern African Development Community
SAJELP	South African Journal for Environmental Law and Policy
SALJ	South African Law Journal
SANBI	South African National Biodiversity Institute
SANParks	South African National Parks
SAPL	South African Public Law
SDIs	Spatial Development Initiatives
TBNRM	Transboundary Natural Resource Management
TFCA	Transfrontier Conservation Area
Treaty	Treaty concluded between the South African, Zimbabwean and Mozambican Governments establishing the GLTP
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environmental Programme
USAID	United States Agency for International Development
VIDCOs	Village Development Committees

WADCOs

Ward Development Committees

WCMC

World Conservation Monitoring Centre

WPC

World Parks Congress

WWCs

Ward Wildlife Committees

WWMCs

Ward Wildlife Management Committees

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1 INTRODUCTION

Protected areas present a prerequisite for successful biodiversity conservation.¹ Contemporary recognition of the need to expand existing protected area systems has culminated in the formulation of the *Strategic Plan for Biodiversity 2011-2020* by the parties to the Convention on Biological Diversity (CBD).² This *Strategic Plan* incorporates 20 ambitious 'Aichi Biodiversity Targets'; with Target 11 specifically requiring that by 2020 'at least 17 per cent of terrestrial and inland water and 10 per cent of coastal and marine areas are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas, as well as, other effective area-based conservation measures, and integrated into the wider landscape and seascape.'³

Target 11 requires compliance with a number of preconditions,⁴ two of which will be discussed in this dissertation. First, well-governed protected areas provide an established mechanism for both safeguarding habitats and populations of species, as well as, delivering important ecosystem services.⁵ It is, therefore, imperative that governance and planning measures are implemented effectively and equitably.⁶ Secondly, protected areas are required to be well-connected to the wider landscape through the use of corridors and ecological networks facilitating connectivity, adaption to climate change and the application of the ecosystem approach.⁷

Transboundary Natural Resource Management (TBNRM) provides a unique opportunity for realising both conditions.⁸ The concept denotes a process of co-operative interaction across national boundaries and facilitates the realisation of broad-ranging theoretical benefits. Included are, biological opportunities, such as: the conservation of biodiversity; the sustainable use

¹ Dudley *Guidelines* 10.

² *Convention on Biological Diversity* (1992) 31 *ILM* 818.

³ Aichi Target 11, COP 10 (Nagoya, 2010) Decision X/2 (*Strategic Plan for Biodiversity 2010-2020*).

⁴ First, increase the percentage of protected areas; secondly, inclusion of areas of particular importance for biodiversity and ecosystem services; thirdly, protected areas are required to be ecologically representative; fourthly, protected areas be effectively and equitably managed; and fifthly, protected areas be well-connected.

⁵ CBD *Aichi Biodiversity Targets* 1.

⁶ Decision X/2.

⁷ Decision X/2.

⁸ Braak et al *Security Considerations* 3.

of biological components; and equitable benefit-sharing, as well as, and non-biological objectives comprising: sustainable natural resource management; socio-economic development, tourism, trade; and a culture of peace.⁹ The variable objectives and methods of implementation associated with these undertakings have generated a suite of transboundary conservation varieties.¹⁰ Regionally, however, the Southern African Development Community (SADC) prefers the term Transfrontier Conservation Area (TFCA),¹¹ which for the purpose of clarity will be used throughout this text.¹²

TBNRM requires that protected areas are perceived as constituents of a broader conservation landscape.¹³ Individual areas should, accordingly, be integrated into coherent protected area systems; with systems in turn incorporated within broader: 'landscape-scale approaches', 'bioregional approaches' or 'ecosystem-based approaches'.¹⁴ As a bioregion denotes 'a place defined by its life forms, its topography and its biota, rather than by human dictates',¹⁵ regional biological integrity is hindered by environmentally arbitrary administrative and national boundaries.¹⁶ Large, continuous and unfragmented bioregions, conversely, support ecological processes and habitat requirements,¹⁷ as well as, present the most appropriate conservation unit under the ecosystem approach.¹⁸

⁹ Braak et al *Security Considerations* 1-3; Hanks 2003 *JSF* 130-136; Van der Linde *Beyond Boundaries* 13-15.

¹⁰ These include: Transboundary Conservation and Development Areas; Transfrontier Conservation Areas; Transboundary Protected Areas; Transfrontier Parks; and Parks for Peace. These will be considered in more detail below.

¹¹ SADC Protocol on Wildlife Conservation and Law Enforcement 1999. Other programmes and protocols adopted by SADC and applicable include the: SADC Wildlife Programme of Action 1997; Shared Watercourse Systems in the SADC Region; SADC Protocol on Tourism; SADC Protocol on Forestry; and SADC Protocol on Fisheries.

¹² The term TFCA is often equated with Transboundary Conservation and Development Areas, SADC accordingly defines it as, 'an area or component of a large ecological region that straddles the boundaries of two or more countries, encompasses one or more protected areas, as well as multiple resource use areas'.

¹³ CBD Malawi Principles CBD COP 4 1998.

¹⁴ Dudley *Guidelines* 10; Büscher & Dietz 2005 *JTES* 7.

¹⁵ Sale *Dwellers in the Land* 43.

¹⁶ Wolmer 2003 *JSAS* 263.

¹⁷ Various international and regional legal instruments directly or indirectly promote connectivity, including: CBD 1992 a8(a)-(f),(l); CBD COP 2010 decision x/2, CBD Programme of Work on Protected Areas (CBD COP 2004 decision VIII/28) goal 1.2 para 1.2.1, 1.2.3-5; CBD COP 2010 decision X/31 para 1(a), 14(a), 26(a), decision X/33 para 8(d)(iii)-(iv); CBD COP 2004 decision VII/15 para 12, VII/28 para 1(4)(5); CBD COP 2006 decision VIII/30 para 4; CBD COP 2011 Resolution 10.10 para 4, 7, Resolution 10.19 para 8(b); Convention on Wetlands of International Importance especially as Waterfowl Habitat

The adoption of an ecosystem approach to protected area management has been endorsed by the World Parks Congress (WPC) and CBD Conference of the Parties (COP).¹⁹ Defined as the 'integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way',²⁰ the ecosystem approach represents a broader framework for planning and developing integrated conservation management.²¹ Protected areas represent one important tool in the approach.²² The International Union for the Conservation of Nature (IUCN) has over the past 20 years standardised the definition of 'protected area' with the purpose of assisting the international community and domestic policy-makers in understanding, planning and recording these areas,²³ as well as, developing a series of comprehensive protected area guidelines,²⁴ the most contemporary of which being a revised set of *Guidelines for Applying Protected Area Management Categories (IUCN Management Guidelines)*.²⁵ These categories include: strict nature reserves; wilderness areas; national parks; natural monuments or features; habitat/species management areas; protected landscapes/seascapes; and protected areas with sustainable use of natural resources.

Given the size, complexity and global challenges currently facing domestic protected areas, it is increasingly recognised that states confront an

1971 a 3(1), 4(1), 5; CBD COP 2008 Decision X/24 para 12; Convention Concerning the Protection of the World Cultural and Natural Heritage a2,4; UN Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa 1994; African Convention on the Conservation of Nature and Natural Resources 1968 a II, VI, VIII, X; Maputo Convention 2003 a XII-XIII.

¹⁸; Olsen *The Global 200*; Wolmer 2003 *JSAS* 263.

¹⁹ World Parks Congress (WPC) V (Durban, 2003) Recommendation V.16 175; CBD COP 2004 VII/5, annex II para 5, annex para 2(a), VII/11 annex goal 1.3 and activity 3.1.11, VII/28 annex para 8.

²⁰ CBD COP VII/11.

²¹ Dudley *Guidelines* 11.

²² Dudley *Guidelines* 11.

²³ Resolution 4.035 World Conservation Congress 4 2008; Dudley *Guidelines* 11-24.

²⁴ Including: Lausche *Guidelines*; Davey *National System Planning*; World Commission on Protected Areas *Principle*; Hockings et al *Evaluating Effectiveness*; IUCN *Guidelines*; Beltran *Indigenous and Traditional Peoples*; Phillips *Financing Protected Areas*; Sandwith et al *Transboundary Protected Areas*; Eagles et al *Sustainable Tourism*; Phillips *Management Guidelines*; Thomas & Middleton *Guidelines*; Borrini-Feyerabend et al *Indigenous and Local Communities*; Hamilton & McMillan *Guidelines*; Dudley & Phillips *Forests and Protected Areas*; Emerton et al *Sustainable Financing*; and Lockwood et al *Managing Protected Areas*.

²⁵ Dudley *Guidelines*.

impossible task in attempting to achieve conservation objectives alone.²⁶ The *IUCN Management Guidelines*, fortunately, promote a wealth of alternative governance modes which states may harness through recognition, support and collaboration. This protected areas governance matrix includes: governance by government; shared government; private governance; and governance by indigenous peoples and local communities.²⁷ A combination of differentiated systems of governance is recommended to support both protected area objectives,²⁸ as well as, present a more 'resilient responsive and adaptive' system.²⁹ A well-governed, sustainable, effective and equitable protected area system should by, implication, utilise all available management and governance options.³⁰

Governing transboundary natural resources exacerbates the already complex governance challenge by incorporating numerous domestic regimes within one protected area.³¹ It is, therefore, imperative that TFCAs are well-governed through the promotion of strengthened protected area governance structures.³² Three broad issues fundamentally influence the rights and obligations of those responsible for protected areas governance.³³ The first relates to those who own or hold rights to land and natural resources within and/or adjacent to protected areas. The second relates to who has authority to manage land and natural resources within and/or adjacent to protected areas. The third relates to who holds the rights/benefits and is accountable for the responsibilities/costs associated with the land and resources situated within and/or adjacent to protected areas.³⁴

These issues of tenure, management, and access and benefit-sharing significantly influence the quality of protected area governance, that is, good governance.³⁵ Good governance is, in turn, demonstrated by the presence of

²⁶ Duffy 2006 *Political Geography* 95.

²⁷ Dudley *Guidelines* 25-32.

²⁸ A 8(a) CBD.

²⁹ Lausche *Guidelines* 77.

³⁰ Dudley *Guidelines* 24.

³¹ Nagai *United Nations Environmental Programme* 2.

³² WPC (2003) *Durban Action Plan* Outcome 8, Main target 13.

³³ Paterson 2010 *SALJ* 495.

³⁴ Paterson 2010 *SALJ* 498.

³⁵ Paterson propagates 'quality' to mean: participation, transparency, accountability, rule of law, effectiveness and equity; Dudley expands this to include: legitimacy of voice;

various indicators, including, *inter alia*: effectiveness and equity.³⁶ Various challenges prevent the presence of these indicators. I will, in this dissertation, pay particular attention to the threat posed by: state sovereignty; fragmented domestic governance regimes; varied tenure regimes; diverse management approaches; and dissimilar access use and benefit-sharing regimes.

No specific international legal regime governs TFCAs; despite significant contemporary growth of such undertakings.³⁷ Several multilateral conventions and programmes do, however, contain either specific TFCA obligations or indirectly promote TFCA development.³⁸ Regionally SADC member states have demonstrated commitment to the conservation of biodiversity by ratification of the Protocol on Wildlife Conservation and Law Enforcement.³⁹ This instrument, *inter alia*, commits states to 'promote the conservation of shared wildlife resources through the establishment of transfrontier conservation areas.'⁴⁰ In response to international and regional calls, several TFCAs have been established in Southern Africa over the past two decades.⁴¹ Establishing these areas is, however, only the first stage of the process. The purpose of this dissertation is, therefore, to critically reflect on the challenges facing TFCAs in a Southern African context, and propose possible solutions for creating an effective and equitable legal governance regime.

subsidiarity; fairness; doing no harm; direction; performance; accountability; transparency; and human rights.

³⁶ The United Nations Development Programme distilled the following nine characteristics of 'good governance': participation; rule of law; transparency; responsiveness; consensus orientation; equity; effectiveness and efficiency; accountability; and strategic vision.

³⁷ The United Nations Environmental Programme (UNEP) World Conservation Monitoring Centre (WCMC) has recorded a significant increase in TFCA initiatives worldwide with numbers increasing from 59 in the late 1980s to 169 by 2001 and 188 in 2005. The most recent UNEP-WCMC inventory identifies 227 TFCAs incorporating 3043 individual protected areas. For further reading see: Lausche *Guidelines* 266-267; Chester et al "Transboundary Protected Areas" in *Encyclopaedia of Earth*; and Sandwith et al *Transboundary Protected Areas* 1.

³⁸ CBD; Ramsar Convention; World Heritage Convention; Convention on Migratory Species of Wild Animals; and United Nations Convention on the Law of the Sea (UNCLOS) 1982.

³⁹ Signed in 1999 and ratified in 2003.

⁴⁰ SADC Protocol on Wildlife Conservation and Law Enforcement a 4(f); the protocol defines a TFCA as 'the area or component of a large ecological region that straddles the boundaries of two or more countries encompassing one or more protected areas as well as multiple resource use areas.'

⁴¹ /Ai/Ais-Richtersveld, Kgalagadi, Greater Mapungubwe, Maloti-Drakensberg, Great Limpopo, Lubombo, Malawi/Zambia, Kavango Zambezi, Lower Zambezi-Mana Pools, Liuwa Plains-Mussuma.

Whilst this enterprise would ideally mean critically reviewing all TFCAs in Southern Africa, this is too broad an exercise for a dissertation of this nature. I have accordingly selected to focus on the Great Limpopo Transfrontier Park (GLTP), which spans the borders of South Africa, Zimbabwe and Mozambique, as a case study through which to elicit these challenges and possible solutions. Established on 9 December 2002, by way of a Treaty between the governments of the abovementioned three countries,⁴² the GLTP incorporates the core protected areas of the Kruger National Park (South Africa), Gonarezhou National Park (Zimbabwe) and Limpopo National Park (Mozambique), as well as, private game reserves, state-owned 'communal' agricultural land, various buffer zones, and two areas referred to as the Sengwe corridor in Zimbabwe and the Makuleke region in South Africa. As the GLTP represents both the flagship TFCAs in Africa, as well as, being a conservation area of international significance, success or failure of governance structures will serve to inform future TFCAs in the region. It is, therefore, paramount that current governance structures are understood and mechanisms facilitating effective and equitable governance are adopted and implemented within the area.

The text is divided into five main parts. Part one has provided a general introduction to the topic. Part two will discuss the underlying theory justifying TFCAs, as well as, challenges presented to transboundary conservation. The latter discussion specifically reflects on how issues of land tenure, management, and access and benefit-sharing impact on and shape governance arrangements and ultimately the presence or absence of good governance within the protected area. Part three starts by unpacking the relevant national legislation pertinent to the three jurisdictions whose territory is included within the GLTP and considers the extent to which its implementation has shaped the governance arrangements at play in the domestic components of the Park. It then turns to consider the new regional/supranational governance and management structures enabling joint management over matters of common interest and mutual impact. The above

⁴² Government of the Republic of South Africa, Government of the Republic of Zimbabwe and Government of the Republic of Mozambique *Memorandum of Understanding on the establishment of the Great Limpopo Transfrontier Park*, signed 9 December 2002.

jointly provide the basis for critical analysis of the current governance challenges plaguing the GLTP, particular those presented by: state sovereignty; institutional and legislation fragmentation; divergent tenure regimes; differing management approaches; and lack of access and benefit-sharing. It is argued that these challenges undermine the effectiveness and equity of the governance arrangement in operation in the GLTP. The section, additionally, offers various recommendations for improving GLTP governance. Lastly, part five will provide a concise summation of the core elements of the preceding analysis, as well as, a conclusion to the discussion.

2 GOVERNANCE CHALLENGES WITHIN TRANSBOUNDARY CONSERVATION

2.1 Protected areas governance

Strengthened protected area governance is fundamental to successful conservation.⁴³ Notwithstanding the importance of governance, no crystallised definition dominates; endowing the notion with an exceedingly broad scope.⁴⁴ Governance is intrinsically objective, concerned with the complex mechanisms, processes, relationships and institutions which determine the exercise of authority over: the procedure of decision-making, the content of decisions made; the process of realising objectives; and the accountability for such exercisement.⁴⁵ The notion must, accordingly, be divorced from the subjective concept of 'good governance' which concerns the quality of governance displayed and specifically evidence of: effectiveness and equity.⁴⁶

Governance has been acknowledged as pivotal to the current and future role protected areas play in the conservation of biodiversity.⁴⁷ The concept of protected area governance is determined by legal, customary or

⁴³ WPC (2003) *Durban Action Plan* Outcome 8, Main target 13.

⁴⁴ For a general discussion on the definition of governance see: Weiss 2000 *Third World Quarterly* 795; Johnson *Redefining Governance* 3; Graham et al *Governance Principles* 5; Bell *Economic Governance*; Curtin & Dekker "Good Governance" in *Reflections* 5; UNDP 2005 *Governance Policy Paper*.

⁴⁵ UNDP 2005 *Governance Policy Paper*.

⁴⁶ UNDP 2005 *Governance Policy Paper*.

⁴⁷ WPC (2003) *Durban Action Plan* Outcome 8, Main target 13.

otherwise legitimate rights and concerns:⁴⁸ ‘the interactions between the myriad of structures, processes, institutions and traditions that have a role to play in the formation and management of protected areas, how power is allocated and exercised within the protected areas, and the manner in which those who exercise such power are held accountable.’⁴⁹

Considerable international emphasis has been afforded to the formulation of a common language for understanding and describing the different forms of protected area governance,⁵⁰ with efforts culminating in the preparation of the *IUCN Management Guidelines*. Typological delineation occurs in accordance ‘who holds decision making and management authority and responsibility’ within a protected area.⁵¹ The IUCN, furthermore, detects no logic in system stagnation; specifically propagating the utilisation of contemporary and sustainable alternative governance types.⁵² As was averred above, a combination of differentiated systems of governance is recommended to support both protected area objectives,⁵³ as well as, present a more ‘resilient responsive and adaptive’ system.⁵⁴ A well-governed, sustainable, effective and equitable protected area system should by, implication, utilise all available management and governance options.⁵⁵

2.2 The IUCN protected areas governance typology and matrix

The state’s traditional monopoly on governance is drawing to a close. Governance is migrating upwards to supra-national organisations; downwards, to newly empowered regions, provinces and municipalities; and horizontally, to private actors such as multinational firms, non-government

⁴⁸ Borrini-Feyerabend et al *Indigenous and Local Communities* 100.

⁴⁹ Paterson 2010 SALJ 494; Borrini-Feyerabend et al *Indigenous and Local Communities* 100.

⁵⁰ The need to improve, and where necessary, diversify, and strengthen protected areas governance types was affirmed in the *Programme of Work on Protected Areas* (adopted at COP 7 (Kuala Lumpur, 2004) and annexed to Decision VII/28). See specifically Programme Element 1 (Goal 1.1) and Programme Element 2 (Goal 2.1 and Goal 2.2). See further: COP 11 (Hyderabad, 2012) Decision XI/24 (Protected Areas); COP 10 (Nagoya, 2010) Decision X/31 (Protected Areas); COP 9 (Bonn, 2008) Decision IX/18 (Protected Areas); and COP 8 (Curitiba, 2006) Decision VIII/24 (Protected Areas); World Commission on Protected Areas 2003 *Durban Action Plan* 257.

⁵¹ Dudley *Guidelines* 26.

⁵² WPC 2003 Recommendation V.17 177-8.

⁵³ A 8(a) CBD.

⁵⁴ Lausche *Guidelines* 77.

⁵⁵ Dudley *Guidelines* 24.

organisations (NGOs) and local communities.⁵⁶ Theories of global governance promote the importance of this decentralised network of actors; while global environmental governance places particular emphasis upon the importance of public-private networks.⁵⁷ The ecosystem approach further propagates the diversification and decentralisation of conservation management.⁵⁸ Protected areas are neutral in respect of ownership and management authority,⁵⁹ incorporating a variety of stakeholders either exclusively or in any number of combinations.⁶⁰ The *IUCN Management Guidelines* promote a wealth of governance modes which states may harness through recognition, support and collaboration. This protected areas governance matrix includes: governance by government; shared government; private governance; and governance by indigenous peoples and local communities.⁶¹

2.2.1 Governance by government

Governance by government demands residence of governance authority with a government ministry or agency, formally party to a conservation objective and thus, endowed with central authority responsibility and accountability.⁶² The government body is, furthermore, the primary holder of property, resource and management rights in respect of the area. 'Government' in this respect, could present either a national, provincial or local flavour, depending on the protected area in question. The state may set objectives; however, a degree of operational delegation could exist. The domestic legal framework would, furthermore, dictate the existence of an obligation to inform or consult stakeholders concerning the protected areas' establishment or management.

⁵⁶ Kahler & Lake "Globalisation" in *Governance* 1.

⁵⁷ Duffy 2006 *Political Geography* 95.

⁵⁸ WPC 2003 Recommendation V.16 175.

⁵⁹ 'A clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values.'

⁶⁰ Dudley *Guidelines* 26.

⁶¹ Dudley *Guidelines* 25-32.

⁶² IUCN 2003 *Policy Matters* 94.

2.2.2 Shared governance

2.2.2.1 Collaborative and joint management

Shared or co-governance apportions authority, responsibility and accountability between a plethora of both formally and informally 'entitled governmental and non-governmental actors.'⁶³ Such actor's include: government agencies, local communities, private landowners and other stakeholders.⁶⁴ While contextual delineation of shared governance is inconsistent, various distilled common features indicate:⁶⁵

'arenas of social engagement, encounter and experimentation; capitalising on multiplicity, diversity and flexibility; based upon a negotiated, joint decision-making approach and some degree of power sharing; and promoting shared responsibility and the equitable distribution of benefits.'⁶⁶

The *IUCN Management Guidelines* attempt to neatly compartmentalise the complexity of this governance structure under three main subcategories. First, collaborative management involves a process by which formal decision-making authority, responsibility and accountability, reside with a singular agency, such as a national government. A pre-existing, legal or policy based mandate necessitates collaboration between stakeholders. The IUCN Commission on Environmental, Economic and Social Policy (CEESP), prescribes that true:

"'collaboration' means that a multi-stakeholder body develops and approves by consensus a number of technical proposals for protected area regulation and management, to be later submitted to the decision-making authority."⁶⁷

This approach pragmatically increases stakeholder participation in decision-making processes. Secondly, joint management vests decision-making authority in a range of bodies. Actors are required to sit on a

⁶³ Dudley *Guidelines* 26.

⁶⁴ IUCN 2003 *Policy Matters* 24.

⁶⁵ The *IUCN Management Guidelines* and *IUCN Guidelines on Indigenous and Local Communities and Protected Areas*, as reinforced by contemporary texts, propose different definitions. For further reading see Paterson 2010 SALJ 498; Kothari "Collaboratively Managed Protected Areas" in *Managing Protected Areas* 528; Borrini-Feyerabend et al *Indigenous and Local Communities* 528-529.

⁶⁶ Paterson 2010 SALJ 498.

⁶⁷ IUCN 2003 *Policy Matters* 95.

'management body with decision-making authority and responsibility.'⁶⁸ While consensus is not a material requirement with such sitting in instances where consensus is undertaken, amplification of joint management requirements is experienced. Where the balance of power reflected by the composition of the management board is, accordingly, not conducive to consensus, the amplified requirements would *de facto* transform the governance type. A pertinent example would be where government actors or private land owners hold the absolute majority of votes within the management board.⁶⁹ Thirdly, the *IUCN Management Guidelines* identify a sub-category reflecting the geographical construct of 'collaborative management', namely transboundary management.

2.2.2.2 Transboundary management

The fundamental rationale necessitating transboundary conservation is broad-ranging.⁷⁰ Within a sub-regional context various stakeholders, including: 'political leaders, local communities, governments, conservation and tourism organisations, bilateral and multilateral aid agencies, the private sector and NGOs' have progressively recognised the contribution these areas could make to both biological and non-biological objectives.⁷¹

First, artificial, anthropocentric administrative boundaries rarely coincide with natural ecosystems.⁷² The result is the dispersion of ecologically valuable regions over several sovereign state jurisdictions; with natural resource management determined by diverse domestic legislation. Combating habitat fragmentation, as the primary cause of biodiversity loss, requires large-scale ecosystem-wide approaches incorporating: variable land-use areas; differentiated forms of governance; and potentially multiple international boundaries.⁷³ Contemporarily, an attempt has been made to mitigate the effect of fragmentation on conservation management through promotion of connectivity conservation and, corresponding recognition of:

⁶⁸ IUCN 2003 *Policy Matters* 95; Dudley *Guidelines* 26.

⁶⁹ IUCN 2003 *Policy Matters* 95.

⁷⁰ Braak et al *Security Considerations* 1; Sandwith et al "Mainstreaming Biodiversity" in *Mainstreaming Biodiversity in Production Landscapes* 78-90.

⁷¹ Hanks 2003 *JSF* 127, 130; Braak et al *Security Considerations* 1-3; Van der Linde *Beyond Boundaries* 13-15; Wolmer 2003 *JSAS* 262-266.

⁷² Wolmer *Tensions and Paradoxes* 1.

⁷³ Braak et al *Security Considerations* 1-2.

bioregional, eco-regional or landscape-level protected area planning as driving conservation paradigms.⁷⁴ This recognition has enabled protected area management to transcend arbitrary and artificial administrative and national boundaries; creating new management entities and large, continuous and ecologically coherent landscapes in the form of TFCAs.⁷⁵ Opportunity is, therefore, provided to: connect ecological landscape transected by political boundaries; re-establish migratory patterns; enlarge land under ecologically sustainable management; promote economic development and prevent environmental degradation in marginal land; and reduce transboundary threats to sustainable natural resource use.⁷⁶

Secondly, biological objectives are supported by various economic and political justifications, including the promoting of: sustainable natural resource management; socio-economic development, tourism, trade; and a culture of peace.⁷⁷ The promotion of ecotourism has arisen as a significant economic justification for the creation of protected areas.⁷⁸ TFCAs provide large-scale, profitable and economically self-sustainable land-use options; capable of generating income and employment from tourism and the consumptive use of natural resources.⁷⁹ Community opportunities may be further improved through: community organisation and management, strengthened community tenure; improved natural resource value; increased community-private sector collaboration; Community Based Natural Resource Management (CBNRM); and income-generating options.⁸⁰

Thirdly, transboundary initiatives may provide a foundation for: co-operation between neighbouring communities and states; inter-state cultural and community exchange; reduced tension and conflict; improved trade

⁷⁴ These are too numerous to list here. For a comprehensive list of technical guidelines and decision see: Dudley *Guidelines* 10; Büscher & Dietz 2005 *JTES* 7; Lausche *Connectivity Conservation* 63-74. The World Conservation Congress (Jeju, 2012) is particularly noteworthy for: launching the International Connectivity Conservation Network (Resolution 56); releasing a draft concept paper (Lausche *Guidelines*) and establishing a protected areas authorities forum (Resolution 43).

⁷⁵ Wolmer *Tensions and Paradoxes* 1.

⁷⁶ Van der Linde *Beyond Boundaries* 13.

⁷⁷ Braak et al *Security Considerations* 3.

⁷⁸ Duffy 2006 *Political Geography* 96.

⁷⁹ Hanks 2003 *JSF* 132. Travel and tourism is the foremost job-creating industry in SADC; generating revenues exceeding US\$1,550 billion in 2010.

⁸⁰ Van der Linde *Beyond Boundaries* 13; Büscher & Dietz 2005 *JTES* 7.

relations and foreign investment; and better regional security and peace.⁸¹ The realisation of these objectives presents a prerequisite for regional sustainable economic development, as well as, the formation of more effective inter-state natural resource management institutions.⁸²

These variable: geographic; political; economic; institutional; cultural; and governance objectives,⁸³ in addition to, diverse methods of implementation, have generated a suite of transboundary conservation varieties.⁸⁴ Building on previous processes of standardisation,⁸⁵ a comprehensive transboundary conservation typology was suggested in 2006,⁸⁶ including: Transboundary Protected Areas,⁸⁷ Parks for Peace,⁸⁸ Transboundary Conservation and Development Areas,⁸⁹ and Transboundary Migratory Corridors.⁹⁰ As was averred above, SADC utilises the term TFCA; a regional expression of Transboundary Conservation and Development Area.⁹¹

2.2.3 Private governance

Private protected areas accredit management authority and responsibility to one or more private land owners.⁹² Owners introduce specific conservation initiatives in respect of the land and natural resources and are, to the extent that is legally provided for, fully responsible for decision-making within the

⁸¹ Braak et al *Security Considerations* 3; Van der Linde *Beyond Boundaries* 15.

⁸² Hanks 2003 *JSF* 135-136; Van der Linde *Beyond Boundaries* 15.

⁸³ Braak et al *Security Considerations* 1-3.

⁸⁴ Braack et al *Security Considerations* 1-5; Erg et al *Initiating Effective Transboundary Conservation* 8-10; Sandwith et al *Transboundary Protected Areas* 1-16; Lausche *Guidelines* 267-269.

⁸⁵ The 2001 IUCN *Best Practice Guidelines Transboundary Protected Areas and Parks for Peace* proposed two terms: Transboundary Protected Area and Parks for Peace. Building on the work of the Biodiversity Support Programme the concept was later expanded to include initiatives beyond adjoining protected areas, including natural resource management initiatives.

⁸⁶ Sandwith et al *Transboundary Protected Areas*; Sandwith et al *Linking the Landscape*.

⁸⁷ 'An area of land and/or sea that straddles one or more boundaries between states, sub-national units such a provinces and regions, autonomous areas and/or areas beyond the limit of national sovereignty or jurisdiction, whose constituent parts are especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed co-operatively through legal or other effective means.'

⁸⁸ Areas which simultaneously promote peace, cooperation and biodiversity conservation.

⁸⁹ Areas formed through an integrated matrix of biodiversity protection, social and economic development aspects.

⁹⁰ Areas which attempt to sustain biological migratory pathways.

⁹¹ Braak et al *Security Considerations* 3.

⁹² IUCN 2003 *Policy Matters* 95.

protected area. An evident shortcoming hereof is a lack of accountability to society at large. The IUCN, however, proposes appropriate remediation through various incentives.⁹³

2.2.4 Governance by indigenous peoples and local communities

While a lack of clarity exists pertaining to the terminological difference between 'indigenous' and 'local', this distinction has been rendered academic by the IUCN defining governance by indigenous and local communities as:

'Protected areas where the management authority and responsibility rest with indigenous peoples and/or local communities through various forms of customary or legal, formal or informal, institutions and rules.'⁹⁴

Indigenous Community Conservation Areas (ICCAs), have three defining characteristics. First, the indigenous people or local community is closely connected to the relevant ecosystem. Secondly, these individuals are considered to be the major players in governance of the area, and lastly, the management decisions of the community or indigenous people contribute towards the conservation of the area. Management accountability may be defined in accordance with broader negotiations with national government or other appropriate partners. Accountability may act as a counterpart to assurances by other parties of recognition of: the community's collective land rights; respect for customary practices; and provision of economic incentives.⁹⁵ Negotiations may, additionally, culminate in the creation of joint management agreements, thus altering the governance type.

2.3 Key legal aspects impacting on protected areas governance

Governance principally concerns authority, with authority in turn underpinned by law.⁹⁶ Three broad legal issues, accordingly, influence the allocation and exercise of the rights and obligations of those responsible for protected areas governance.⁹⁷ The first relates to those who own or hold rights to land and natural resources within and/or adjacent to protected areas. The second

⁹³ Dudley *Guidelines* 26.

⁹⁴ Dudley *Guidelines* 26.

⁹⁵ IUCN 2003 *Policy Matters* 96.

⁹⁶ Paterson 2010 *SALJ* 495.

⁹⁷ Distilled from: Graham et al *Governance Principles* 5, Borrini-Feyerabend et al *Indigenous and Local Communities* 38-39; and Kothari "Collaboratively Managed Protected Areas" in *Managing Protected Areas* 528-548.

relates to who has authority to manage land and natural resources within and/or adjacent to protected areas. The third relates to who holds the rights/benefits and is accountable for the responsibilities/costs associated with the land and resources situated within and/or adjacent to protected areas. Each constituent component of protected areas governance requires attention pertaining to the identity of, and basis for, holders of rights and/or authority. Considering this question in respect of tenure, Paterson designates that:

'the range of actors holding tenure (which can include national, provincial and local government institutions; NGOs; community organisations; juristic and natural persons); the form of tenure (which can include legal or formal tenure; individual or customary tenure, common tenure; de jure and de facto tenure); and the content of the tenure (full ownership rights or more limited rights relating to development, use, access and/or occupation).'⁹⁸

The array of actors responsible for management comprises, but is not limited to, those parties holding tenure, including: government; communities; and individuals. Management occurs either individually or jointly through some form of shared governance, including: co-management, joint management or transboundary management. Rights may be entrenched through a spectrum of mechanisms, including: statute; customary law; traditions; or contract. Obligations, correspondingly, could include: 'the preparation of management plans; the prescription of rules, norms and standards; permitting schemes; environmental assessment; and reporting.'⁹⁹

The degree of power-sharing, promotion of shared responsibilities and equitable distribution of benefits could fall to any combination of the above stakeholders, as determined by statute, customary or contract law. The nature of rights/benefits and responsibilities/costs acquired are diverse, with the form of such rights and obligations predominantly informed by the capacity of key stakeholders.

⁹⁸ Paterson 2010 SALJ 495; Wilkie et al *Protected areas* 8-14.

⁹⁹ Paterson 2010 SALJ 495.

2.4 Good governance and governance challenges

2.4.1 Introduction

Issues of tenure, management and access and benefit-sharing significantly influence the quality of protected area governance, inclusive of effectiveness and equity.¹⁰⁰ Surveying the concept of governance quality endeavours to determine if 'good governance' is present within the protected area. This notion defines 'the interactions among structures, processes and traditions that determine how power is exercised, how decisions are taken on issues of public concern, and how citizens or other stakeholders have their say.'¹⁰¹ Good governance, accordingly, occasions a governance system which responds to the principles and values freely chosen by the requisite people and country and enshrined within: the constitution, natural resource law, protected area legislation and policies and/or the cultural practices and customary laws of such territory.¹⁰²

Various challenges have the potential to undermine good governance. These include: state sovereignty; fragmented domestic governance regimes; varied tenure regimes; diverse management approaches; and dissimilar access use and benefit-sharing regimes.

2.4.2 Governance implications for state sovereignty

Transboundary conservation impinges upon state sovereignty. The principles of sovereign equality and territorial integrity endow states with the capacity to govern territorial jurisdictions according to domestic legislation and policies.¹⁰³ The co-management of transboundary areas, however, implicitly requires a concession of sovereign decision-making capacity regarding natural resources located within domestic elements.¹⁰⁴ The consequent diffusion of state regulatory powers and functions between multiple actors effects sovereignty by encroaching upon administrative, geopolitical and

¹⁰⁰ Graham et al *Governance Principles* 5, Borrini-Feyerabend et al *Indigenous and Local Communities* 38-39; Paterson 2010 *SALJ* 495; Kothari "Collaboratively Managed Protected Areas" in *Managing Protected Areas* 528-548.

¹⁰¹ Dudley *Guidelines* 82.

¹⁰² Dudley *Guidelines* 28.

¹⁰³ A 3 CBD; Eyal Benvenisti *Sharing transboundary resources* (2002) 22; Lubbe *Cross-Border Biodiversity Conservation* 8.

¹⁰⁴ Singh (2000) *Border Regions in Transitions-IV*.

legislative interests.¹⁰⁵ Such encroachment is exacerbated by asymmetrical sovereign: capacities, power, 'incomes, degrees of park and infrastructural development, political stability and security and available financial resources; as well as diverging veterinary and immigration policies.'¹⁰⁶ These imbalanced power dichotomies threaten sovereignty, cause conflict, undermine co-operation and prevent good governance. The overemphasis of state sovereignty, additionally, facilitates fragmentation.

2.4.2 Governance implications of fragmented domestic governance regimes

TFCAs are governed by a myriad of: international law and policy; negotiated agreements; national and sub-national policy, law and regulations; and local law and customs.¹⁰⁷ These are 'superimposed on complex, contested and variegated landscapes with pre-existing overlapping institutional authorities and political constituencies, and patchworks of differing land-uses and tenure regimes (including public, private and commercial ownership).'¹⁰⁸ A strict interpretation of state sovereignty, therefore, overlays further stratum of governance creating confusion over: power, control and legitimacy.

Fragmentation manifests in various manners in a national context. The over-allocation of environmental regulatory functions and a disproportionate emphasis afforded to the distinctiveness of government spheres exhibits institutional fragmentation.¹⁰⁹ The propagated: separate, autonomous and un-cooperative spheres of government present the risk of initiating: overlap, duplication and conflict.¹¹⁰ Environmental legislation is also fragmented. The proliferation of media- or issue-specific legislation has diffused regulatory functions between numerous acts and competent authorities.¹¹¹ This has further compounded duplication of administrative procedures and jurisdictional overlap; preventing expediency.¹¹² Fragmented environmental

¹⁰⁵ Van Ameron 2002 *GeoJournal* 268-270; Wolmer *Tensions and Paradoxes* 5.

¹⁰⁶ Katerere 2001 *IUCN-ROSA*; Jackson *Quasi-states* 22-24; Simon "Regional development" in *New Regionalism*; Wolmer 2003 *JSAS* 261-278.

¹⁰⁷ Lausche *Guidelines* 280.

¹⁰⁸ Wolmer *Tensions and Paradoxes* 1.

¹⁰⁹ Craigie et al "Environmental Compliance" in *Legal Perspectives* 5.

¹¹⁰ Craigie et al "Environmental Compliance" in *Legal Perspectives* 5.

¹¹¹ Kotze 2006 *PER/PELJ* 85.

¹¹² Craigie et al "Environmental Compliance" in *Legal Perspectives* 5.

governance presents the opposite of cooperative, holistic and integrated governance.¹¹³ This system is argued to negate sustainable environmental governance efforts and is 'at best disappointing and at worst unacceptable'.¹¹⁴ In corroboration with this statement, fragmentation presents a number of disadvantages. These include, *inter alia*:

'duplication and overlap of the governance effort...; costly delays in decision making; inefficient arrangements between organs of state that control similar activities or proposals; significant gaps in control arrangements, whilst some issues are not controlled at all; inconsistent behaviour by government officials; conflicting conditions in authorisations; ineffective governance; and externalisation of governmental inefficiencies to development costs which may result in negative impacts on development.'¹¹⁵

Kotze argues that domestic manifestations of fragmentation apply, *mutatis mutandis*, to transboundary conservation.¹¹⁶ TFCAs, however, amplify fragmentation. The multiplicity of fragmented national governance structures, each promulgating differentiated policies, legislation and goals, generate geographical fragmentation.¹¹⁷ The negative effects, hereof, include: incompatible or differing conservation policies; mismatched legislation or a lack of legislation specifically regulating cross boundary conservation; duplication of processes; time delays; and costly and uncertain governance processes.¹¹⁸ Fragmentation, consequently, presents a stumbling block to sustainable transboundary conservation by undermining co-operation and preventing good governance.¹¹⁹

2.4.3 Governance implications of diverse tenure regimes

Natural resource tenure determines the terms and conditions on which land and natural resources are: owned; held, used and transacted.¹²⁰ Elements

¹¹³ Kotze 2006 *PER/PELJ* 93.

¹¹⁴ Stein 1997 *SAJELP* 254-268.

¹¹⁵ Kotze *Integrated Environmental Governance* 24-25; Kotze et al 2007 *SAJELP* 56.

¹¹⁶ Kotze *Integrated Environmental Governance* 23-26, 73-95.

¹¹⁷ Lubbe *Cross-Border Biodiversity Conservation* 10.

¹¹⁸ Kotze 2006 *PER/PELJ* 1-36.

¹¹⁹ Birnie & Boyle *International Law* 545; Glazewski *Environmental Law* 257; Sands *Principles* 499.

¹²⁰ Massuanganhe *Governance* 101; Paterson 2010 *SALJ* 495.

may be held by various actors under complex tenure regimes.¹²¹ These include, first, legal or formal tenure held in a private or public capacity. Private property tenure systems regard the formal registration of titles to provide superior ownership rights and, by implication, the most secure tenure.¹²² Where property is owned exclusively by the state, however, titling has little consequence or benefit. Secondly, customary tenure affords common rights to a specified group of people who manage the land and natural resources, particularly pastoral and forest land, through communal institutions and traditional rules and regulations.¹²³ Thirdly, open-access tenures place no legal restrictions on entry and use as land and resources are held by no-one.¹²⁴ Lastly, *de jure* and *de facto* tenure distinguish between those rights which exist in law (de jure rights) and rights which derive from practice (de facto rights).¹²⁵ Where rule of law prevails, however, the terms coincide.

The collection of rights associated with land may be held by any combination of actors and include more general property rights,¹²⁶ as well as, various conservation-specific rights.¹²⁷ Reform of the manner in which these rights are recognised and regulated is occurring widely in sub-Saharan Africa.¹²⁸ Tenure reform indicates the strategic alteration or adjustment of the 'terms of contract between land owners and tenants, or the conversion of more informal tenancy into formal property rights,' so as to avoid arbitrary evictions and natural 'resourcelessness'.¹²⁹

¹²¹ Including: individuals; households; communities; corporations; and various levels of national and international governance institutions.

¹²² Massuanganhe *Governance* 97.

¹²³ Wilkie et al "Governance" in *Protected Areas* 9.

¹²⁴ Ostrom & Schlager 1992 *Land economics* 249-262; Ostrom et al 1999 *Science* 278-282; Dietz et al 2003 *Science* 1907-1912. Wilkie et al "Governance" in *Protected Areas* 9.

¹²⁵ Wilkie et al "Governance" in *Protected Areas* 9.

¹²⁶ Adams et al 1999 *Natural Resource Perspectives* 2. Rights of occupation and use; rights to transact, donate, mortgage, lease, rent and bequeath; and rights to enforce legal and administrative provisions protecting the rights holder.

¹²⁷ Rights to: minerals; water; timber; hunting; fishing; gathering/harvesting; development; and access.

¹²⁸ Wily 2000 *Natural Resource Perspectives* 1. For a general discussion on tenure reforms see: Adams 1995 *Natural Resource Perspectives*, Adams et al 1999 *Natural Resource Perspectives*.

¹²⁹ Adams et al 1999 *Natural Resource Perspectives* 2; Massuanganhe *Governance* 101.

Understanding the connection between access to natural resources (through secure tenure, ownership and management structures) and access to derivative sources of income and capital is essential.¹³⁰ Secure natural resource tenure has the potential to: promote investment and economic development; reduce poverty; and secure sustainable livelihoods through strengthened rights in community areas. The degree to which livelihoods are advanced is determined by access to capital assets, including: finance; land; and natural resources, as well as, social capital such as customary land and natural resource rights.¹³¹

The successful implementation of TFCAs necessitates harmonised legislation and policies regulating issues of land tenure and legal access to natural resources.¹³² Discrepancies between the: form and nature of land tenure regimes; types of land and resource rights institutions; and evidence and degree of intergovernmental cooperation, undermine co-operation and preventing good governance

2.4.4 Governance implications of diverse management approaches

While an ecosystem approach affords common emphasis to the use of biodiversity corridors and the formation of ecological networks to combat habitat fragmentation,¹³³ opinions digress regarding the most appropriate governance mechanisms promoting unified ecosystems.¹³⁴ Theories are broadly categorised under ‘radical bioregionalism’ or ‘technical ecoregionalism’.

Bioregionalism promotes conservation objectives through bottom-up initiatives promoting: ‘political autonomy, decentralised governance, grassroots empowerment, social equity and self-sufficiency.’¹³⁵ Ecoregionalism, conversely, negates social objectives in favour of stakeholders, partnerships, participatory planning and capacity building.¹³⁶ A top-down approach to landscape-planning is disseminated allegedly

¹³⁰ Massuanganhe *Governance* 94.

¹³¹ Adams et al 1999 *Natural Resource Perspectives* 4-5.

¹³² Ron *SADC Framework* 24.

¹³³ CBD COP 4 Malawi Principles; Dudley *Guidelines* 10; Büscher & Dietz 2005 *JTES* 7.

¹³⁴ Fall 2003 *JSF* 81-102; Wolmer *Tensions and Paradoxes* 2-3.

¹³⁵ Wolmer *Tensions and Paradoxes* 2; Fall 2003 *JSF* 81-102.

¹³⁶ Wolmer 2003 *JSAS* 261-278; Wolmer *Tensions and Paradoxes* 3.

providing superior protection to species and habitats;¹³⁷ however, also possessing the capacity to negate headway made by CBNRM.¹³⁸

An evident divergence exists between top-down approaches, prioritising conservation through centralised power structures, and bottom-up approaches, emphasising local development.¹³⁹ While apparently theoretical, management approaches have fundamental implications for co-operation and governance within TFCAs, dictating the:¹⁴⁰ form and nature of the domestic management regime; type of management institutions; evidence and degree of intergovernmental cooperation; and nature of management decision making, including decentralisation, openness, transparency and equity.

The capacity and ability of stakeholders to contribute to, share in and benefit from, diverse social, economic, political or other societal processes is a fundamental element of local development.¹⁴¹ Decentralised natural resource management is, accordingly, critical to local democratisation and rural development. The degree, nature and transfer of decision-making power to local institutions do not, however, establish effective or equitable management of natural resources; local accountability and discretionary powers are also required.¹⁴²

Co-management of natural resources between various actors allows for a negotiated, guaranteed and implemented equitable distribution of management functions, benefits and responsibilities, while concepts of participatory development and CBNRM attempt to delineate and facilitate stakeholder agency.¹⁴³ Within a sub-regional context, the greatest shift towards this governance construct, and subsequent community benefit and control of natural resources, has occurred in respect of Community Based Conservation (CBC).¹⁴⁴ CBC structures permeate co-management,

¹³⁷ Fall 2003 *JSF* 81-102; Wolmer *Tensions and Paradoxes* 2-3.

¹³⁸ Jones & Chonguica 2001 *IUCN-ROSA*.

¹³⁹ Wolmer *Tensions and Paradoxes* 8.

¹⁴⁰ Wolmer *Tensions and Paradoxes* 2.

¹⁴¹ Massuanganhe *Governance* 66.

¹⁴² Massuanganhe *Governance* 74-75.

¹⁴³ Massuanganhe *Governance* 85.

¹⁴⁴ Whande 2007 *PLASSG* 1.

integrated conservation and development programmes, and most importantly CBNRM, with common emphasis on pursuing:

“conservation goals ... by strategies that emphasise the role of local residents in decision making about natural resources”.¹⁴⁵

CBNRM represents a bottom-up management approach which attempts to build on existing local structures and empower communities, encouraging them to create a social movement in the management of local natural resources.¹⁴⁶ This approach is analogous with international discourses of sustainable use and development, participatory development and social justice.¹⁴⁷ Internationally, the benefits of promoting and strengthening partnerships for conservation have been acknowledged as fundamental by the IUCN,¹⁴⁸ as well as, the CBD.¹⁴⁹ Regionally, CBNRM has been recognised as essential for the promotion of sustainable resource management, and to attaining the objectives of the GLTP.¹⁵⁰ However, both international and regional efforts to involve indigenous local communities in conservation management have been limited to initial consultation and superficial benefits with very little continued consultation.¹⁵¹

2.4.5 Governance implications of diverse access, use and benefit-sharing regimes

TFCAs are promoted not only as economically self-sustainable, but also as able to increase state revenue and support CBNRM through the facilitation of community organisation, management and beneficiation.¹⁵² Notwithstanding the supposed benefits a number of limitations are evidenced. Transfrontier conservation displays a predilection for private sector interests over that of rural livelihoods; eventuating asymmetrical actor relationships and causing conflict between these community and private interest.¹⁵³

¹⁴⁵ Adams & Hulme “Conservation” in *African Wildlife* 13.

¹⁴⁶ Whande 2007 *PLASSG* 1.

¹⁴⁷ Whande 2007 *PLASSG* 1.

¹⁴⁸ 1st *IUCN World Conservation Congress* Resolution 1:42; 2nd *IUCN World Conservation Congress* Resolution 2.15.

¹⁴⁹ CBD COP VIII 222-223.

¹⁵⁰ Mello *Intergovernmental Relations* 127.

¹⁵¹ WPC 2003 Recommendation V.31 214.

¹⁵² Büscher & Dietz 2005 *JTES* 7.

¹⁵³ Wolmer *Tensions and Paradoxes* 2-4.

Governments have, contemporarily, endorsed public-private partnerships so as to provide goods and services traditionally the exclusive preserve of state-controlled public sectors and thereby, enhance infrastructure delivery.¹⁵⁴ Prioritising investment and economic growth may, however, curtail conservation and socio-economic objectives.¹⁵⁵ The prioritisation of government funds as leverage for private sector investment in these predetermined areas, however, presents the risk of minimising conservation and livelihood priorities.¹⁵⁶ The merger of conservation and commercial objectives could, additionally, benefit transnational conservation organisations at the expense of national conservation organisations and grassroots and non-investor stakeholders, such as local communities.¹⁵⁷ Ecoregional planning initiatives are, moreover, capital intensive, requiring a collaborative effort between transnational conservation organisations and corporate funding entities, such as the World Bank, the United States Agency for International Development (USAID), the German Development Bank (KfW) and other donors. The funding structures and managerial tools propagated by these entities reinforce a top-down management approach.

3 UNPACKING THE DOMESTIC AND REGIONAL LEGAL LANDSCAPE IMPACTING ON GOVERNANCE IN THE GLTP

3.1 Introduction

The GLTP was established in December 2002 in terms of a Treaty concluded between the South African, Zimbabwean and Mozambican Governments. The total surface area of the TFCA is approximately 35 000km² and represents the initial phase of establishing a larger TFCA covering almost 100 000km². Its location is depicted in Map 1 and 2 below. This extensive area consists essentially of flat savannah, bisected north/south by the Lebombo mountain range, with a granitic plateau and interspersed hills along the western side and is drained by four riverine courses flowing from west to east.¹⁵⁸ The park, additionally, incorporates various biodiversity attributes including: 2000 species of plants incorporated within various vegetation

¹⁵⁴ Jourdan 1998 *Development Southern Africa* 718.

¹⁵⁵ Wolmer 2003 *JSAS* 263.

¹⁵⁶ Wolmer 2003 *JSAS* 263; Wolmer *Tensions and Paradoxes* 5.

¹⁵⁷ Wolmer *Tensions and Paradoxes* 4.

communities,¹⁵⁹ 147 species of mammal, 505 species of birds and 116 species reptiles.

The Park incorporates the core protected areas of the Kruger National Park (South Africa), Gonarezhou National Park (Zimbabwe) and Limpopo National Park (Mozambique), as well as, private game reserves, state-owned 'communal' agricultural land, various buffer zones and two areas referred to as the Sengwe communal in Zimbabwe and the Makuleke region in South Africa.

The Treaty prescribes the core objectives and principles of the TFCA, including: various conservation, sustainable use and socio-economic requirements; and promotion of local community participation.¹⁶⁰ It additionally, sets out the supranational institutional framework promoting effective co-operative management over matters of common interest and mutual impact.¹⁶¹ These institutions include: the Trilateral Ministerial Committee, the Joint Management Board (JMB) and the Co-ordinating Party.¹⁶² Overall Park management occurs through a Joint Management Plan maintained, periodically revised and implemented by the JMB, while domestic elements are governed by management plans prepared by the appropriate National Implementing Agency.¹⁶³

While the Treaty provides a framework for co-operative governance, greater insight of domestic regimes is required to comprehensively grasp GLTP governance, as well as, to provide context against which to critically reflect on the absence or presence of the challenges identified in Part 2. In so doing, specific focus will initially be afforded to the tenure regimes, management approaches, and access and benefit-sharing arrangements evident within each constituent domestic element of the Park, where after, the regional arrangement will be analysed.

¹⁵⁸ The: Save; Limpopo; Olifants; and Komati Rivers.

¹⁵⁹ Mopane woodland and shrubveld; mixed bushveld; sandveld; and riverine woodland.

¹⁶⁰ A 4 and 5 Treaty.

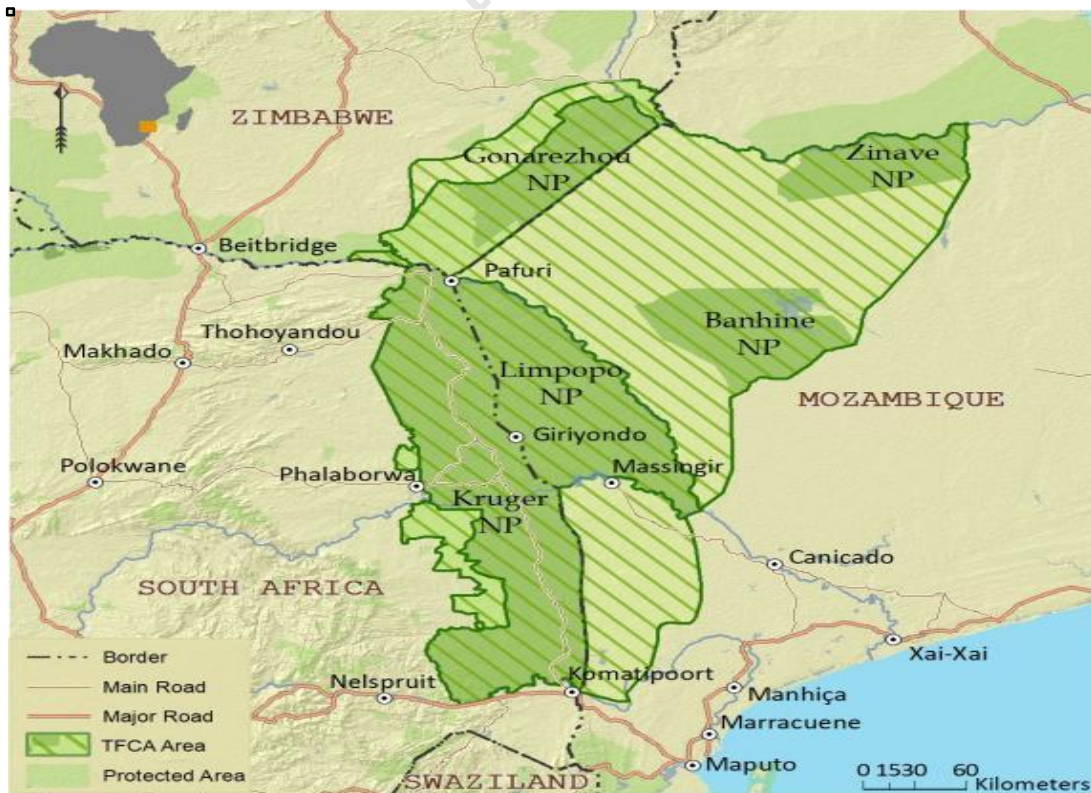
¹⁶¹ A 13(2) Treaty.

¹⁶² A 9 Treaty.

¹⁶³ A 13(1)-(2) Treaty.



Map 1- Southern African Transfrontier Parks



Map 2 - Great Limpopo Transfrontier Park

3.2 The relevant domestic regimes

3.2.1 South African component of the TFCA

The core South African component of the GLTP comprises of the Kruger National Park (KNP). Established in 1898, and formally declared a national park in 1926, the KNP covers almost 20 000km² of South Africa's lowveld region, bordering Mozambique to the east and Zimbabwe to the north, and represents the country's largest and premier national park.¹⁶⁴ Its location is depicted in Map 3 below.

South African protected areas are regulated by the National Environmental Management: Protected Areas Act (NEM:PAA) and its regulations,¹⁶⁵ which provide broadly for the protection and conservation of biodiversity through, *inter alia*, the establishment and co-operative management of national, provincial and local protected areas. National parks are declared by the Minister of Water and Environmental Affairs, who thereafter, is responsible for regulating all aspects of area management, including: assigning management of the national park to a management authority; approving the area management plan; establishing indicators for monitoring management; appointing external auditors to monitor management performance; termination of the management mandate; and prescribing norms and standards for the management and development of protected areas.¹⁶⁶

NEM:PAA, however, fails to prescribe an overarching policy or planning framework and the act is required to be read, interpreted and applied in conjunction with the National Environmental Management: Biodiversity Act (NEM:BA).¹⁶⁷ NEM:BA prescribes a comprehensive array of planning tools, including the: prescription of a national biodiversity framework;¹⁶⁸ declaration of bioregions and associated bioregional plans;¹⁶⁹

¹⁶⁴ Proclaimed in terms of the now repealed National Parks Act 56 of 1926.

¹⁶⁵ Act 57 of 2003. GN R1061 in GG 28181 of 2005-10-28. NEM:PAA operates within the framework provided by the National Environmental Management Act 107 of 1998 (NEMA).

¹⁶⁶ Norms and standards prescribed in Chapter 6 GN R1061 in GG 28181 of 2005-10-28.

¹⁶⁷ Act 10 of 2004.

¹⁶⁸ Prescribed in the draft National Biodiversity Framework for South Africa 2007.

¹⁶⁹ Yet to be prescribed but government has published the draft Guidelines Regarding the Determination of Bioregions and the Preparation and Publication of Bioregional Plans 2007.

delineation of prohibited hunting methods;¹⁷⁰ identification of threatened and protected ecosystems and species;¹⁷¹ and preparation of biodiversity management plans for these ecosystems and species.¹⁷² Cumulatively, these statutory instruments guide the identification, declaration and management of South Africa's protected area regime.¹⁷³

While NEM:PAA vests powers predominantly with the Minister, actual national terrestrial protected area management functions are carried out by the Biodiversity and Conservation Management Branch of the Department of Environmental Affairs (DEA). This branch is, however, assisted by two statutory bodies; South African National Parks (SANParks) and the South African National Biodiversity Institute (SANBI),¹⁷⁴ which report directly to the Minister.

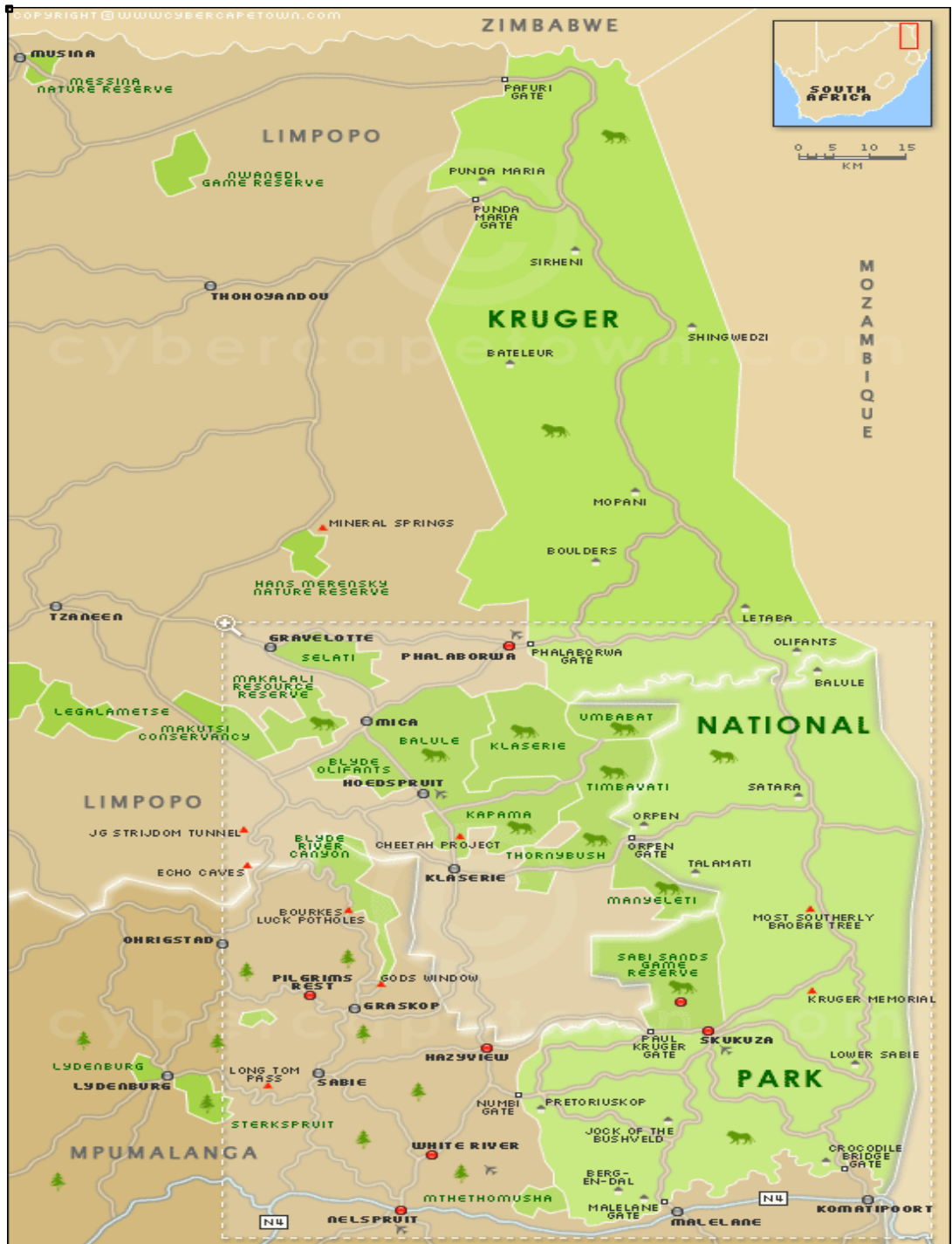
¹⁷⁰ GN R456 in GG 34326 of 2011-05-27.

¹⁷¹ Publication of Lists of Critically Endangered, Endangered, Vulnerable and Protected Species 2007; Threatened or Protected Species Regulations GN R 152 in GG 29657 of 2007-02-23; Biodiversity Management Plan for the Black Rhinoceros in South Africa 2011-2020 GN R49 in GG 36096 of 2013-01-25; National Norms and Standards for the Management of Elephants in South Africa GN R251 in GG 30833 of 2008-02-29.

¹⁷² Plan yet to be approved, however, draft National Norms and Standards for the Development of Biodiversity Management Plans for Species were published in 2007.

¹⁷³ Statutory instruments are complemented by various non-statutory biodiversity strategies, plans and programmes, including the: National Spatial Biodiversity Assessment; National Biodiversity Strategy and Action Plan; Subtropical Thicket Ecosystem Project; and National Grasslands Programme.

¹⁷⁴ SANParks is regulated under Chapter 5 NEM:PAA. SANBI is regulated under Chapter 2 of NEM:BA.



Map 3 - Kruger National Park

3.2.1.1 Tenure within the South African component of the TFCA

The KNP was originally comprised exclusively of state-owned land; however, several forms of tenure now contribute to the greater KNP ecosystem.¹⁷⁵ These include: provincial and privately-owned nature reserves abutting the western boundary as buffer zones and which,¹⁷⁶ through the removal of fencing, *de facto* form part of the Park;¹⁷⁷ concessionary areas; and contractually included parcels formed by successful land claims within the boundaries of the Park.

South Africa's 'history of institutionalised racial and gender discrimination and the exclusion of persons, groups and communities from secure land tenure' has eventuated two, divergent systems of tenure.¹⁷⁸ The first disseminates protection of real and limited real rights to immovable property through a well-developed deeds registration system; granting individualised and registered rights in accordance with the strict and formal procedures promulgated under the Deeds Registries Act.¹⁷⁹ The second creates a myriad of unregistered, informal and communal land rights.¹⁸⁰ While the latter is often regarded inferior, contemporarily, land reform programmes have initiated a 'paradigm shift from the exclusive protection of ownership and limited real rights to tenure security for unregistered and informal land rights'.¹⁸¹

South Africa's land reform programme is tripartite in nature,¹⁸² consisting of: tenure reform to secured land rights;¹⁸³ restitution of land

¹⁷⁵ SANParks *Kruger National Park Management Plan* (2008) (KNPMP) 58. A 4(2)(b) Treaty makes provision for the incorporation of privately-owned, and other state-owned, conservation areas directly bordering the TFCA.

¹⁷⁶ Regulated by the Biodiversity Policy and Strategy for South Africa: Strategy on Buffer Zones for National Parks GN R106 in GG 35020 of 2012-02-08.

¹⁷⁷ Provincial nature reserves include: Manyeleti, Mthimkhulu and Letaba Ranch Nature Reserves. Private Nature reserves include: the Sabie Sand Wildtuin and the Associated Private Nature Reserves (including: Timbavati, Klaserie, Umbabat and Balule Private Nature Reserves). Both provincial and private nature reserves have been declared in terms of the Mpumalanga Nature Conservation Act 10 of 1998 and Limpopo Environmental Act 7 of 2003.

¹⁷⁸ Pienaar 2009 *PER/PEJL* 17, 37-38; Van der Walt 1995 *SAPL* 2; Miller & Pope *Land Title* 241-245; Badenhorst et al *Property* 586-587.

¹⁷⁹ Van der Merwe *Sakereg* 65-83; Badenhorst et al *Property* 193; Act 47 of 1937.

¹⁸⁰ Pienaar 1996 *JSAL* 205-226; Badenhorst et al *Property* 212-213.

¹⁸¹ *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) par 16, 23-24; Pienaar 2009 *PER/PEJL* 37.

¹⁸² *White Paper on Land Reform* 1991; *White paper on South African Land Policy* 1997.

rights;¹⁸⁴ and redistribution of land.¹⁸⁵ Framework legislation for land restitution is provided by the Restitution of Land Rights Act.¹⁸⁶ The Act makes provision, *inter alia*, for the restitution of rights in land in respect of which persons or communities were dispossessed under, or for the purpose of furthering the object of, any racially based discriminatory law; provided that certain requirements are met.¹⁸⁷

Of the approximately 79 000 land claims instituted pursuant to democratisation, a large portion relate to land incorporated within protected areas or land with recognised biodiversity value.¹⁸⁸ Currently 40 land claims are lodged against the KNP with a total area of 7133 km²,¹⁸⁹ however, only the Makuleke claim of the Pafuri Triangle has been finalised.¹⁹⁰ The 1998 restitution vested formal ownership of 190 km² of the KNP in the Makuleke Community Property Association (CPA);¹⁹¹ a juristic person created to acquire, hold and manage property on a pre-agreed basis in terms of a written constitution.¹⁹² Communal land rights were granted subject to the condition that the community: did not reside or undertake agricultural, mining or prospecting activities within the KNP; retained the conservation status of the area; entered into a 25-year contractual agreement with conservation authorities; and concluded a co-management agreement with conservation

¹⁸³ Land Reform (Labour Tenants) Act 3 of 1996; The Prevention of of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998; and the Extension of Security of Tenure Act 62 of 1997.

¹⁸⁴ Restitution of Land Rights Act 22 of 1994; Communal Property Associations Act 28 of 1996.

¹⁸⁵ Provision of Land and Assistance Act 126 of 1993; Development Facilitation Act 67 of 1995; Land Reform (Labour Tenants) Act 3 of 1996; Housing Act 107 of 1997; Provision of Certain Land for Settlement Amendment Act 26 of 1998; Rental Housing Act 50 of 1999; Communal Land Rights Act 11 of 2004. Regulated by the Department of Rural Development and Land Reform.

¹⁸⁶ Act 22 of 1994.

¹⁸⁷ The right may be enforced provided: the applicant is a person or community as contemplated in s 121(2) of the Constitution of the Republic of South Africa, 1996 or a descendant of such person; was disposed after 19 June 1913 without adequate compensation; and the claim is lodged in proper time.

¹⁸⁸ Augrabies National Park; Kgalagadi Transfrontier Park; Richtersveld National Park; Tsitsikamma National Park; West Coast National Park and the Dwesa-Cwebe National Reserve; Hluhluwe-Mflozi National Reserve; Mkhambati Nature Reserve and the Ndumo Nature Reserve.

¹⁸⁹ SANParks *KNPMP* 70.

¹⁹⁰ The Pafuri Triangle incorporates the area from the Limpopo to the Luvuvu River in the Northern KNP.

¹⁹¹ 220km² in total.

¹⁹² Communal Property Associations Act 28 of 1996.

authorities.¹⁹³ Various concessions have been awarded by the CPA over the resultant Makuleke contractual park; generating capital for the community.

Growing criticism and dissatisfaction has been voiced over perceived shortcomings of the current land restitution model.¹⁹⁴ At present 70 validated but unsettled land claims exist within protected areas; possessing the potential to significantly affect South Africa's protected area regime.¹⁹⁵ An improved trajectory has, consequently, been proposed by the Department of Rural Development and Land Reform under the auspices of the *Green Paper on Land Reform*.¹⁹⁶ This paper shares a vision for land reform which includes: a reconfigured single, coherent four-tier system of land tenure ensuring reasonable access to land with secure tenure;¹⁹⁷ clearly defined property rights sustained by a fair, equitable and accountable land administration system;¹⁹⁸ secure forms of long-term land tenure for resident non-citizens; and effective land-use planning and regulatory systems promoting optimal land-use. Unfortunately the paper refrains from articulating policy on communal land tenure; citing the complexity of the tier and the recent nullification of the Communal Land Rights Act.¹⁹⁹

3.2.1.2 Conservation management within the South African component of the TFCA

NEM:PAA and NEM:BA comprehensively prescribe the constitution, structure, powers and functions of the two statutory protected area management authorities; SANParks and SAMBI.

¹⁹³ Paterson 2009 *IUCN-EPLP* 27; Steenkamp et al *Makuleke Land Claim* 11-20.

¹⁹⁴ The land acquisition strategy/willing-buyer willing-seller model; a fragmented beneficiary support system; beneficiary selection for land redistribution; land administration/governance particularly in communal areas; meeting the 30 per cent redistribution target by 2014; declining agriculture contribution to the Gross Domestic Product; unrelenting increase in rural unemployment; and a problematic restitution model and its support system (communal property institutions and management).

¹⁹⁵ Paterson 2009 *IUCN-EPLP* 27.

¹⁹⁶ GN R686 in GG 34656 of 2011-09-30.

¹⁹⁷ Comprising: state and public land (leasehold); privately owned land (freehold with limited extent); land owned by foreigners (freehold, but precarious tenure and obligations and conditions to comply with); and community owned land (communal tenure with individualised use rights).

¹⁹⁸ Land Management Commission; Land Valuer-General; and Land Rights Management Board.

¹⁹⁹ Act 11 of 2004.

SANParks manages the majority of the KNP in accordance with the comprehensive powers afforded to it by NEM:PAA.²⁰⁰ In theory, SANParks is required to consult with several other organs of state in exercising its statutory management mandate;²⁰¹ however, consultation of this nature remains limited.²⁰² As provided for by NEM:PAA,²⁰³ SANParks have adopted a comprehensive KNP management plan;²⁰⁴ which focuses on developing and managing the area, together with stakeholders, towards a 'desired state'.²⁰⁵ The management plan prescribes various, often interlinked, programmes which inform the KNP management approach and facilitate the achievement of the desired state. The programmes are classified into five activity groupings as reflected in the SANParks biodiversity custodian framework,²⁰⁶ these are: biodiversity and heritage conservation;²⁰⁷ sustainable tourism;²⁰⁸ constituency building;²⁰⁹ effective park management,²¹⁰ and corporate support.²¹¹ SANParks is, additionally,

²⁰⁰ S 55 NEM:PAA. Powers include: the obligation to manage national parks and other protected areas assigned to it in terms of NEM:PAA; the protection, conservation and control of those national parks and other protected areas, including areas of biological diversity; advising the Minister, pursuant to his or her request, on any matter concerning the conservation and management of biodiversity and proposed national parks, additions to or exclusions from national parks and acting as the provisional managing authority of protected areas under investigation in terms of NEM:PAA.

²⁰¹ S 39(3) NEM:PAA. These entities include: municipalities; other organs of state; local communities and affected and interested parties.

²⁰² Faasen & Watts 2007 *Ecological Economics*; Holmes-Watts & Watts 2008 *FPE* 439-440; Paterson 2009 *IUCN-EPLP* 27; Watts 2006 *JSF* 77-109; Saxena 1997 *CIFOR* 225.

²⁰³ S 41 NEM:PAA; Chapter 6 GN R1061 in GG 28181 of 2005-10-28.

²⁰⁴ SANParks KNPMP.

²⁰⁵ SANParks *KNPMP* 11-2. The desired state of a protected area refers to that areas projected vision; achieved through an adaptive planning process and 'translated into sensible and appropriate objectives through broad statements and desired outcomes.' These objectives correlate to a protected areas key attributes, opportunities and the threats posed and are included within that protected areas management plan.

²⁰⁶ Rogers *Custodian Framework*.

²⁰⁷ Conservation Development Framework and Zonation Programme; Biodiversity Management Programme; Land Issues and Effective Park Expansion Programme; Regional Land-use Planning and Cooperative Governance Programme (including: regional river management, Integrated Development Plans (IDPs), local community interaction, and bioregional biodiversity planning); Sustainable Resource Use Programme; Rehabilitation Programme (facilitated by the Expanded Public Works Programme and incorporating: Working for Wetlands and Working for Water); Wilderness Management Programme; Management of Damage-Causing Animals Programme; and Cultural Heritage Management Programme.

²⁰⁸ The Sustainable Tourism Programme and Framework.

²⁰⁹ Environmental Education and Interpretation Programme; Stakeholder Relationship Management Programme; Local Socio-Economic Development Programme; and Communication Strategy and Programme.

²¹⁰ Integrated Environmental Management Programme (facilitated by: the Solid Waste and Effluent Management Programmes and Potable Water Use Management Programme); Civil

assisted by SANBI; whose primary functions extend to biodiversity conservation in national parks, and possibly an advisory position respecting the management of, and development in, the KNP.²¹²

Management is complicated somewhat by the *de facto* inclusion of several provincial and privately-owned nature reserves, as well as, the contractual incorporation of the Pafuri Triangle. Provincial nature reserves are managed by provincial authorities, however various co-management agreements are in draft form.²¹³ Private nature reserves are managed by the appropriate landowner and/or privately appointed and funded conservation agency, with several management plans between SANParks and these private organisations being in varying stages of completion.²¹⁴ The inclusion of private and provincial buffer areas has strained relationships between SANParks and the relevant authorities as a result of incompatible land-use.²¹⁵ The Makuleke contractual park is, conversely, managed in accordance with a contractual management agreement and management plan. This area is, accordingly, co-managed by a JMB consisting, in equal parts, of SANParks and Makuleke CPA representatives; however SANParks nevertheless undertakes *de facto* management.²¹⁶

Co-management agreements, as facilitated by NEM:PAA,²¹⁷ possess the capacity to balance land reform and conservation objectives.²¹⁸ Co-management has been identified as the key mechanism through which land restitution claims within protected areas are to be settled.²¹⁹ Notwithstanding

and Building Management Programme; Electro-mechanical Programme; Roads, Fence and Dam Management Programme; and Safety and Security Programme.

²¹¹ Research Programme; Human Resources Support Programme; HIV/AIDS Programme; Integrated Information Technology Programme; Financial Management Programme; and Corporate Governance Programmes.

²¹² S 11(1)(q) NEM:BA.

²¹³ Manyeleti is managed by the Mpumalanga Tourism and Parks Agency; Letaba Ranch is managed by the Limpopo Department of Economic Development, Environment and Tourism (LEDET); while Mthimkulu is managed jointly by LEDET and the concessionaire of the land.

²¹⁴ Paterson 2010 SALJ 509. There is a signed management agreement between SANParks and the APNR, however, only a draft management plan exists with Sabie Sand.

²¹⁵ The lack of capacity of, particularly, provincial authorities have resulted in poaching; firewood harvesting and even the establishment of mining infrastructure alongside the KNP.

²¹⁶ Paterson 2010 SALJ 509.

²¹⁷ S 42 NEM:PAA.

²¹⁸ Paterson 2009 IUCN-EPLP 26-27.

²¹⁹ Memorandum of understanding between the erstwhile Department of Environmental Affairs and Tourism (now DEA) and the Department of Land Affairs (now Department of Rural Development and Land Reform) 2007.

a period of policy uncertainty,²²⁰ the utility of co-management has been recently reiterated by the *National Co-management Framework*; launched as a non-statutory instrument of NEM:PAA to provide coherent guidance for effective management of protected areas restored to communities in terms of the Restitution of Land Rights Act.²²¹ Various other non-statutory initiatives facilitating community biodiversity conservation and natural resource management in South African protected areas have, additionally, been implemented by the South African government, particularly through SANParks.²²²

3.2.1.3 Access and benefit-sharing within the South African component of the TFCA

South Africa does not possess an integrated and official CBNRM policy document or white paper. Rather, a range of existing laws and policies regulate and articulate government's obligation to implement CBNRM;²²³ dispersing regulatory authority across various government departments with legislative control over natural resources.²²⁴ While policy has, to date, addressed a number of common factors,²²⁵ these similarities have been overshadowed by substantial discrepancies.²²⁶ The variation in Departmental guidelines exacerbates this problem. Specific *Guidelines for the Implementation of Community-based Natural Resource Management*

²²⁰ A statement released by the Commission on the Restitution of Land Rights in February 2009 seemed to suggest that 'equitable redress' and not 'co-management' would be pursued as the preeminent model for outstanding land claims in the KNP. Equitable redress entails the granting of alternative land outside the boundaries of protected areas, or the payment of equitable compensation, to successful claimants.

²²¹ Fourth People and Parks Conference 30 August 2010.

²²² People and Parks Programme.

²²³ These are too numerous to list here. For a comprehensive list see: DEAT 2003 *CBNRM law and Polies* 8-28.

²²⁴ DEA; Department of Tourism; Department of Water Affairs; Department of Agriculture, Forestry and Fisheries; Department of Rural Development and Land Reform; and the Department of Provincial and Local Government. The Department of Trade and Industry is also a stakeholder with its Spatial Development Initiatives (SDIs) and the Community Public Private Partnership Unit, as is the Department of Mineral Resources and the Department of Energy.

²²⁵ The need to improve livelihoods of persons sharing common property resources; the requirement of community participation; addressing historical imbalances in access to resources and capital; the problem of unsustainable resource use.

²²⁶ Unrealistic administrative burdens placed on communities; the failure of economic policies to take into account the impact those activities have on natural resources; the failure to consider trade-offs between different resource and land-use in the same land-scape; the failure to include institutional mechanisms facilitating inter-departmental co-operation.

(CBNRM) in South African were, however, introduced in 2003 to facilitate a common understanding of CBNRM.²²⁷

The regulation of access, use and benefit rights turns fundamentally on the nature of the property concerned. Where private land is incorporated within a protected area, such as the Makuleke contractual park, access, use and benefit-sharing will be regulated by the contractual agreement establishing the area. In the current instance, limitations placed on property use only entitled the community to non-consumptive benefits, mainly derived from ecotourism.

NEM:PAA broadly recognises the need to promote a more human-centred approach to issues of access, use and benefit-sharing both within and adjacent to South African protected areas.²²⁸ The Act, accordingly, promulgates a diverse and creative array of beneficiary tools and mechanisms. Paterson postulates these to include:²²⁹ a broad delineation of 'management authority' which reasonably includes local communities, as well as, communal and private land owners residing within, or adjacent to, protected areas; the possible conclusion of co-management agreements; agreements between SANParks and local communities permitting sustainable community use of biological resources; and pro-community mechanisms within the management plan.²³⁰

Various non-statutory initiatives have been implemented, particularly through SANPark's People and Parks division, to raise community awareness and give practical effect to the above legislative provisions.²³¹ Certain pro-community clauses, additionally, permeate the content of the KNP management plan. In line with NEM:PAA,²³² various programmes facilitate meaningful, beneficial and strengthened relationships, as well as provide for CBNRM; securing stakeholder participation in KNP management

²²⁷ By the erstwhile Department of Environmental Affairs (now DEA) in partnership with GTZ Transform.

²²⁸ Reflected in the objectives of the Act, s 2(e)-(f), and the purpose for declaring protected areas, s 17(h)-(k).

²²⁹ Paterson 2009 *IUCN-EPLP* 32-33.

²³⁰ S 50(1)(b) NEM:PAA.

²³¹ People and Parks Programme.

²³² S 39(3) NEM:PAA obliges management plans to be compiled in consultation with various stakeholders. S 41(2) facilitates public participation in management plans.

and development decisions.²³³ Stakeholders include seven Community Forums which interact with KNP officials each month regarding economic empowerment, ancestral claims or cultural/spiritual claims.²³⁴ Further stakeholder participation is facilitated through the establishment of a Park Forum which meets quarterly and encourages partnerships and participation by providing a legitimate platform for interaction and debate.²³⁵

Protected area management is, additionally, required to promote the use and extraction of biological resources, community-based practices and benefit-sharing activities consistent NEM:BA.²³⁶ The formal procedures for ensuring consistency between NEM:PAA and NEM:BA in national parks and world heritage sites has been prescribed by way of regulation.²³⁷ However, similar regulation of other types of protected areas is yet to be prescribed. NEM:BA and its regulations control bioprospecting,²³⁸ access and benefit-sharing with the purpose of, *inter alia*, providing fair and equitable sharing by stakeholders in benefits arising from bioprospecting involving indigenous biological resources. Stakeholders, including communities,²³⁹ are protected mainly through the mechanism of benefit-sharing agreements (BSAs).²⁴⁰ The *National Biodiversity Strategy and Action Plan* compliment this statutory framework, promoting, *inter alia*, the enhancement of human development and well-being through the sustainable use of biological resources and the equitable sharing of benefits.

²³³ Stakeholder Relationship Management Programme.

²³⁴ Makuya (30 villages), Hlanganani (48 villages), Phalaborwa (24 villages), Mahlamba Ndlopfu (12 villages), Ntirhiswano (22 villages), Lubambiswano (34 villages) and Malelane (17 villages).

²³⁵ Established in terms of Guiding Principles for SANParks Stakeholder Participation and regulated by the Terms of Reference for the Establishment and Operation of the KNP Park Forums.

²³⁶ Ss 1 and 6 dictate that NEM:PAA must, in relation to any protected area, be read, interpreted and applied with NEM:BA.

²³⁷ Regulations for the Proper Administration of Special Nature Reserves, National Parks and World Heritage Sites GN R1061 in GG 28181 of 2005-10-28.

²³⁸ National Environmental Management: Biodiversity Act, 2004: Regulations on Bio-prospecting, access and benefit-sharing in GN 138 in GG 30739 of 2008-02-08.

²³⁹ S 81 NEM:BA. Stakeholders include: a person, including an organ of state or community, providing or giving access to the indigenous biological resources to which the application relates; and an indigenous community which, or specified individual who, satisfies certain criteria.

²⁴⁰ S 82(2)(b)(ii) NEM:BA. Where a stakeholder has a protected interest, an issuing authority may only issue a permit if, *inter alia*, a BSA has been concluded.

3.2.2 Zimbabwean component of the TFCA

The core Zimbabwean component of the GLTP is the Gonarezhou National Park. Established in 1975 the Park covers in excess of 5000km² of Zimbabwe's lowveld region in the Chiredzi district, bordering South Africa to the south and Mozambique to the south-east.²⁴¹ Its location is depicted in Map 4 below.

Zimbabwean protected areas are regulated by the Parks and Wild Life Act (PWLA).²⁴² The Act provides, *inter alia*, for the: the formation of various protected areas;²⁴³ the conferment of privileges upon owners or occupiers of alienated land as custodians of wildlife; the creation of the Parks and Wild Life Management Authority (PWMA); and the provision of certain powers to environmental committees.²⁴⁴ National Parks are declared by the President on recommendation of the PWMA, where after, the Minister of Environment and Natural Resources is responsible for regulating all aspects of management, including: scientific research and investigations; area access; dispossession or introduction of wildlife; and general area management.²⁴⁵

The Environmental Management Act (EMA) and its regulations provide the legal and administrative framework for environmental management.²⁴⁶ The Act also establishes an Environmental Management Agency which is responsible for overall environmental policy and guideline formulation, as well as, the facilitation of intergovernmental co-operation.²⁴⁷ Various national planning tools and strategies have been prescribed including: a national planning framework,²⁴⁸ a long term development

²⁴¹ PWLA First Schedule Part 1, item 2.

²⁴² Act 14 of 1975 [Chapter 20:14]. Protected areas are regulated exclusively by national level legislation.

²⁴³ National parks, botanical reserves, botanical gardens, sanctuaries, safari areas and recreational parks.

²⁴⁴ 'Environmental committee' means an environmental committee appointed in terms of section 61 of the Rural District Councils Act 8 of 1988 (RDCA) [Chapter 29:13].

²⁴⁵ S 23 PWLA.

²⁴⁶ Act 13 of 2002 [Chapter 20:27]. EIA and Ecosystems Protection Regulations SI 7, 2007 provide for prevention of veld fires, protection of wetlands and public streams. Also regulated by s 4(1)(b)(i) PWLA.

²⁴⁷ S 7-10 EMA.

²⁴⁸ National Action Plan.

strategy;²⁴⁹ the prescription of a national biodiversity framework;²⁵⁰ biotechnology and biosafety development policies and strategies;²⁵¹ CBNRM programmes;²⁵² a drought management policy;²⁵³ agrarian and tenure reform programmes;²⁵⁴ the promotion of equitable access to, and sustainable use of, natural and cultural resources; and the protection of biodiversity.²⁵⁵ Additionally, various projects and initiatives specifically relevant to conservation have been instituted.²⁵⁶

While the PWLA vests extensive powers in the Minister, actual national protected area management functions are carried out by various environmental parastatals.²⁵⁷ Protected areas are, accordingly, controlled, managed and maintained by the PWMA,²⁵⁸ which is directly accountable to the Minister, in respect of certain predetermined matters, or the Parks and Wild Life Management Authority Board.²⁵⁹

²⁴⁹ Vision 2040. The erstwhile Vision 2020 Strategy has recently been abandoned. National Economic Revival Programme; Poverty Alleviation Policy Frameworks and Programmes (including: Poverty Alleviation Action Plan facilitated by Community Action Programmes, District Environmental Action Planning, Enhanced Social Protection Programme, Poverty Reduction Strategy Paper; and National Environmental Policy).

²⁵⁰ Zimbabwe Biodiversity Strategy and Action Plan.

²⁵¹ Science and Technology Strategy 2002; National Policy on Biotechnology and Biosafety.

²⁵² Communal Areas Management Programme for Indigenous Resources.

²⁵³ National Action Plan; National Drought Management Policy. Communal Areas Management Programme for Indigenous Resources.

²⁵⁴ Fast Track Land Reform Programme; Agrarian Reform Programme; National Action Plan land management programme; National Environmental Policy.

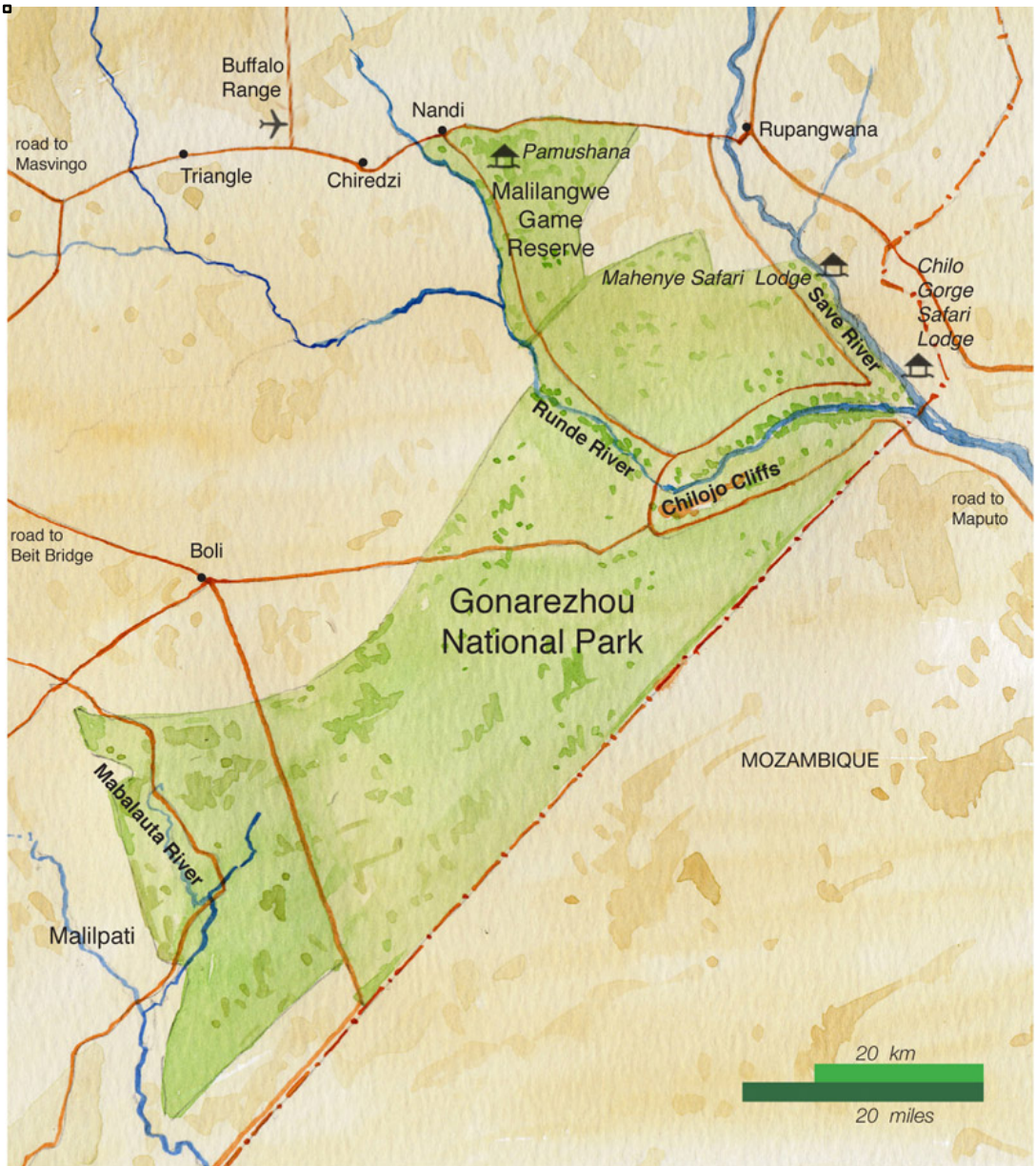
²⁵⁵ National Environmental Policy and Strategy 2009. National Environmental Plan.

²⁵⁶ Copying with Drought and Climate Change Research Programme; Rushinga Environmental Management Education Programme; Wetlands Utilisation and Protection Programme; Catchment Management Programme; and Local Environmental Action Plans.

²⁵⁷ PWMA; Allied Timbers Private Ltd; EMA; and Forestry Commission Company.

²⁵⁸ S 3-4(1)(a) PWLA.

²⁵⁹ S 4(1)(b)(i)-(x); s 5(1)-(2) PWLA.



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Map 4 - Gonarezhou National Park

3.2.2.1 Tenure within the Zimbabwean component of the TFCA

The core Gonarezhou National Park is adjoined by additional protected areas (the Malipati Safari Area and Manjinji Pan Sanctuary) and the Sengwe community area which constitutes the biodiversity corridor linking Gonarezhou to the KNP further south.²⁶⁰ Both the protected areas and the Sengwe corridor exist within the Chiredzi District of Zimbabwe.

Land degradation, inequitable distribution of land and insecure tenure are recognised as key issues impacting on the environment in Zimbabwe,²⁶¹ however, previous agrarian policy has greatly undermined secure tenure.²⁶² Zimbabwean land-holding rights and obligations find expression in four main systems of tenure, namely: freehold; state land; communal land; and leasehold resettlement systems.²⁶³ Protected areas (such as Gonarezhou National Park, Malipati Safari Area and Manjinji Pan Sanctuary) may only incorporate state or communal land,²⁶⁴ which ultimately vest in the president and together constitute the Zimbabwe Parks and Wildlife Estate.²⁶⁵ Mechanisms establishing and expanding these protected areas undermine tenure security.²⁶⁶ Land owners unwilling to alienate property may be bypassed through compulsory acquisition;²⁶⁷ local communities are afforded limited rights against displacement,²⁶⁸ and use and occupation rights over

²⁶⁰ Third Schedule Part 1 item 1, Fourth Schedule item 4 PWLA.

²⁶¹ National Environmental Policy and the National Action Plan land management programme.

²⁶² The Fast Track Land Reform Programme. Remediation hereof has been attempted by the more contemporary Agrarian Reform Programme which includes the implementation of a 99-year lease to farmers.

²⁶³ Zimbabwe Biodiversity Strategy and Action Plan 6.

²⁶⁴ Including: national parks; botanical reserves or botanical gardens; sanctuaries; safari areas; and recreational parks.

²⁶⁵ S 17 PWLA. S 3 defines State land as all land in Zimbabwe, except land which is: communal land; land in a municipal area, town area or local government area as defined in the Urban Councils Act 21 of 1997 [Chapter 29:15]; a town ward of a rural district council or an area that has been declared a specific area in terms of the RDCA; land in the area of any township as defined in the Land Survey Act 12 of 1932 [Chapter 20:12]; State land the layout of which has been approved in terms of either s 127 of the Town and Country Planning Act 29 of 1960 [Chapter 35:01] or s 43 of the Regional, Town and Country Planning Act 22 of 1976 [Chapter 29:12].

²⁶⁶ S 109-110 EMA.

²⁶⁷ S 109(3) EMA. The Land Acquisition Act 3 of 1992 [Chapter 20:10] applies, *mutatis mutandis*, in relation to the acquisition; s 120 PWLA mirrors s 109(3) with the caveat that the powers conferred by the section shall not include the power to acquire, whether compulsorily or by agreement, any communal land or any interest or right over communal land, otherwise than in accordance with the Communal Land Act 20 of 1982 (CLA) [Chapter 20:04].

²⁶⁸ S 110(1) EMA.

existing protected areas, deemed inconsistent with the EMA, may be terminated without consultation.²⁶⁹ The scope of tenure rights are, additionally, impacted by the nature of the protected areas in question. Gonarezhou National Park and Manjinji Pan Sanctuary afford special protection to wildlife; prohibiting consumptive rights.²⁷⁰ Malipati Safari Area, conversely, affords opportunity for hunting and fishing, with hunting and lease rights awarded to SSG Safaris; a company which operates hunting safaris in the concessionary area.²⁷¹

While the Sengwe communal land vests in the president,²⁷² limited usufructuary rights of occupation and use may be permitted to local inhabitants.²⁷³ The Chiredzi Rural District Council (RDC) has a dispensation to permit these rights to qualifying persons on behalf of the state.²⁷⁴ The PWLA, and contemporarily the EMA, vest use rights to wild animals in an Appropriate Authority (AA). The designation of land owners, occupiers, users and RDCs as AAs has devolved environmental management authority in the Sengwe corridor.²⁷⁵ This decentralisation has included a plethora of differentiated tenure holders within conservation management; ranging from less formal occupiers and *de facto* users of land to formal and legally recognised owners.²⁷⁶ The broad definition afforded to 'owners' further expands recognised tenure holders to include: persons formally recognised in the Deeds Registry as the owner of the property or premises; the appropriate Minister in respect of communal land and state land;²⁷⁷ the Forestry Commission in respect of forest land; and any person who lawfully holds or occupies land, including state land, in accordance with a suspensive

²⁶⁹ S 1(1)(d) PWLA; s 110(2) EMA. This is compounded by the superiority of regulations promulgated under the EMA acting to set aside communal land over conflicting regulations promulgated under the CLA and the RDCA.

²⁷⁰ S 21 and 30 PWLA. Both Malipati and Manjinji exist on communal land in ward 15.

²⁷¹ S 37(1)(a)-(b) PWLA.

²⁷² S 4 CLA.

²⁷³ Ministry of Lands and Rural Resettlement regulates agricultural land while the Ministry of Local Government Rural and Urban Development regulate RDCs.

²⁷⁴ S 7-9 CLA.

²⁷⁵ Taylor 2009 *Biodiversity Conservation* 2565. A 3(1)(c)(iv) Treaty.

²⁷⁶ 'Occupier', in relation to land or premises, means any person lawfully occupying or controlling the land or premises. 'User' in relation to land, means a person, other than an owner or occupier, who has or exercises any rights in, over or upon land or who makes use of land in any way.

²⁷⁷ Minister responsible for the administration of the CLA and the Minister responsible for the management or administration of land respectively.

condition.²⁷⁸

The Chiredzi RDC incorporates and promotes various tenure options, including local-level proprietorships.²⁷⁹ A long term programmatic approach to rural development has been instituted under the *Communal Areas Management Programme for Indigenous Resources* (CAMPFIRE) with the intention of addressing problems associated with communal natural resource ownership in Zimbabwe.²⁸⁰ The programme utilises natural resources as a mechanism for promoting three inter-linked principles, namely: devolved rural institutional structures and decentralised management power; collective proprietorship; and economic beneficiation.²⁸¹ Over 100, democratically elected and constituted Ward Wildlife Management Committees (WWMCs) and Ward Wildlife Committees (WWCs) exist in 23 districts.²⁸² The Sengwe corridor incorporates two such wards.²⁸³ The recognition of these committees has modified the existing land tenure system; establishing a property regime supporting proprietary units over collectively managed,²⁸⁴ and jurisdictionally defined, common property resources.²⁸⁵ Devolved AA is, additionally, purported to promote greater resource use efficiency through promotion of market-based mechanisms.²⁸⁶ Various consumptive and non-consumptive rights to wildlife and land are negotiated and leased by RDCs to viable, often international, private sector partners,²⁸⁷ as has occurred within the Malipati Safari Area.²⁸⁸ This arrangement benefits the RDC through fiscal

²⁷⁸ S 2 EMA.

²⁷⁹ Taylor 2009 *Biodiversity Conservation* 2581. Occurring through establishment of community trusts and/or co-operatives.

²⁸⁰ Taylor 2009 *Biodiversity Conservation* 2568; Child et al 2003 *USAID Report*. The programme was designated by the then Department of National Parks and Wild Life Management, now the Parks and Wildlife Management Authority.

²⁸¹ Jones & Murphree "Community Conservation" in *African Wildlife and African Livelihoods*; Taylor 2009 *Biodiversity Conservation* 2568-2569.

²⁸² Taylor 2009 *Biodiversity Conservation* 2569-2578.

²⁸³ Ward 13 (Chibavahlengwe) and 14 (Sengwe).

²⁸⁴ Murphree *CBNRM keynote address*; Child 1996 *Biodiversity and Conservation* 364; Taylor 2009 *Biodiversity Conservation* 2569.

²⁸⁵ Taylor 2009 *Biodiversity Conservation* 2569; Child 1996 *Biodiversity and Conservation* 364.

²⁸⁶ Child *Wildlife and People*; Bond *CAMPFIRE*; Taylor 2009 *Biodiversity Conservation* 2572.

²⁸⁷ Bond 1994 *TRAFFIC* 117-119; Taylor "Wildlife Management" in *Wildlife Ranching*; Cumming "Safari Hunting" in *Wildlife Production*; Taylor 2009 *Biodiversity Conservation* 2572.

²⁸⁸ Ward 15 (Maoze). Consumptive rights awarded to SSG Safaris.

remuneration and introduces additional layers of land-lease tenure holders into management structures.

3.2.2.2 Conservation management within the Zimbabwean component of the TFCA

Environmental management is mandated with developing effective and efficient environmental governance.²⁸⁹ The PWMA manages the Parks and Wildlife Estate.²⁹⁰ The authority, additionally, has the mandate to manage the entire wildlife population of Zimbabwe, irrespective of whether that wildlife occurs on private or communal land. Although private landowners are entitled to utilise wildlife existing on their land they are, nonetheless, accountable to the PWLA for the welfare of these animals.²⁹¹

Management within community areas, such as the Sengwe corridor, has partially been devolved through the broad delineation of AA.²⁹² Use rights to wild animals vest in the person both responsible for land and capable of legal identity;²⁹³ that is the AA. This endowment is unproblematic in respect of individually owned or leased property where the AA is easily recognisable and afforded the benefit of legal identity. In this regard AA is conferred, in order of preference, upon the: occupier; user; or owner of land, including the nominee of those parties. As primary benefactors of sustainable resource management these parties are endowed with certain privileges, including *de facto* conservation management responsibility.²⁹⁴ Conversely, while local communities may have use rights over property, in absence of legal identity, AA vests in local government.²⁹⁵ Authority, accordingly, resides

²⁸⁹ Spong et al "Zimbabwe" in *EIA in Southern Africa* 297-325. Facilitated by the National Conservation Strategy 1987, National Environmental Policy 1997 and currently, the second draft of the National Environmental Policy 2003.

²⁹⁰ S 4 PWLA.

²⁹¹ See PWMA website for more information.

²⁹² S 2 PWLA.

²⁹³ Child 1996 *Biodiversity and Conservation* 359.

²⁹⁴ Taylor 2009 *Biodiversity Conservation* 2565.

²⁹⁵ Child 1996 *Biodiversity and Conservation* 359-360. In Zimbabwe, Provinces are comprised of a number of Districts, which are in turn made up of various Wards. Wards contain a number of Villages. These spatially and physically defined groupings reflect the lower-level administrative structures of the country, namely Ward Development Committees (WADCOs) and Village Development Committees (VIDCOs).

with a RDC in respect of Communal or resettled land.²⁹⁶ Every RDC is required to appoint an environmental committee and may,²⁹⁷ in consultation with the Environmental Management Board, appoint one or more environmental subcommittee to which any or all of its functions may be delegated.²⁹⁸ Delegable functions are diverse and include the: maintenance, development, disposal and voluntary or compulsory acquisition of property; conservation of natural resources;²⁹⁹ and making of by-laws.³⁰⁰ Furthermore, all RDCs are required to prepare local Environmental Action Plans.³⁰¹

Decentralised AA was historically restricted to RDCs neglecting lower-level institutions; however, CAMPFIRE has attempted to remediate this limitation. The programme promotes structures facilitating improved: information dissemination; project planning; and community participation in governance at both local and district level.³⁰² The village-elected chairperson of the WWMC or WWC represents the Ward on the RDCs sub-committee for District Wildlife or Natural Resources, ensuring devolved administrative and legal wildlife rights to producer communities, as well as, sub-district and community-level institutions.³⁰³

3.2.2.3 Access and benefit-sharing within the Zimbabwean component of the TFCA

Zimbabwean environmental management is required to prioritise people and their needs.³⁰⁴ Notwithstanding this obligation, statutory mechanisms providing for access to biological resources are limited. Measures facilitating the conservation of biological diversity may: protect the indigenous property

²⁹⁶ S 133 of the EMA. S 108 of the PWLA defines 'communal land' as land that is communal land in terms of s 3 of the CLA. The EMA is silent in respect of communal land for which no RDC has been appointed, however, s 2 PWLA dictates that the Minister be appointed the AA.

²⁹⁷ S 61(2) RDCA.

²⁹⁸ S 61(6)(a)-(b) RDCA.

²⁹⁹ S 78 read with the First schedule PWLA.

³⁰⁰ S 88-94 RDCA.

³⁰¹ S 95 EMA. It is unclear how these local Environmental Action Plans relate to one another, however, all local plans are required to be reconcilable with the National Environmental Action Plan. Despite this mandate at present only one or two RDCs per province have implemented local plans.

³⁰² Taylor 2009 *Biodiversity Conservation* 2578.

³⁰³ Child 1996 *Biodiversity and Conservation*; Murombedzi "CAMPFIRE" in *African Wildlife*.

³⁰⁴ S 4(2)(c) EMA.

rights of local communities in respect of biological diversity,³⁰⁵ support the integration of traditional biodiversity conservation knowledge with scientific knowledge,³⁰⁶ and identify, promote and integrate this knowledge into the conservation and sustainable utilisation of biological diversity.³⁰⁷ The appropriate authority is, additionally, endowed with the somewhat quaint right to pick or sell indigenous plants on the applicable land, as well as, issue a permit to another party to perform these functions.³⁰⁸

Statutory instruments are, however, supported by various national plans and strategies facilitating: community participation in natural resources and environmental management;³⁰⁹ poverty alleviation;³¹⁰ agrarian reform;³¹¹ and access and benefit-sharing.³¹² Zimbabwe possesses an integrated and official CBNRM policy in CAMPFIRE. This programme facilitated the residence of effective natural resource management with voluntary participating communities through a number of key principles.³¹³ Fundamentally, CAMPFIRE acknowledged that the 'right of access to natural resources and the responsibility for managing them must be restored to people at the community level', despite existing legal and institutional impediments.³¹⁴ Decentralisation is facilitation through 'group ownership with defined rights of access to natural resources and appropriate institutions for legitimate management, use and benefit of these resources.'³¹⁵

Legislative decentralisation conferred certain privileges upon occupiers of land as the primary determinants of sustainable use outside formal protected areas.³¹⁶ Devolved management authority has catalysed: social development, democratisation and the creation of appropriate

³⁰⁵ S 116 (1)(i) EMA.

³⁰⁶ s 116(1)(j) EMA.

³⁰⁷ s 116(2)(e) EMA.

³⁰⁸ s 56(1)(a)-(c)(ii) PWLA.

³⁰⁹ Vision 2040 Programme.

³¹⁰ National Economic Revival Programme; Vision 2040 Programme; Poverty Alleviation Action Plan (including Community Action Programmes, District Environmental Action Planning and the Enhanced Social Protection Programme); Poverty Reduction Strategy Paper; and National Environmental Policy.

³¹¹ The Fast Track Land Reform Programme; Agrarian Reform Programme; and CAMPFIRE.

³¹² CAMPFIRE; Zimbabwe Biodiversity Strategy and Action Plan.

³¹³ Martin *CAMPFIRE*; Taylor 2009 *Biodiversity Conservation* 2568.

³¹⁴ Child 1996 *Biodiversity and Conservation* 363.

³¹⁵ Taylor 2009 *Biodiversity Conservation* 2568.

³¹⁶ Child 1996 *Biodiversity and Conservation* 363; Taylor 2009 *Biodiversity Conservation* 2568-2569.

institutions. While devolved responsibility initially vested in a limited number of RDCs with AA,³¹⁷ the programme has been endowed with further political legitimacy and advocacy through formation of the CAMPFIRE Association. CAMPFIRE has, furthermore, supported institutional development at producer community-level; facilitating improved ownership and management while directly benefiting these communities.³¹⁸ However, as membership of the CAMPFIRE Association remains exclusively RDC-based, this progress has been somewhat negated.³¹⁹

Fiscal devolution, mainly through hunting and ecotourism, accompanied decentralisation and facilitates improved rural democratisation, governance and natural resource management.³²⁰ Gross revenue, accrued through the lease of consumptive and non-consumptive rights, is allocated by the appropriate RDC to: 'district council levies, district wildlife management and to wildlife producer communities'.³²¹ Revenue allocated to communities, through WWMC's, provides financial incentive for participation in the collective management of wildlife.³²²

3.2.3 Mozambican component of the TFCA

The core Mozambican component of the GLTP comprises the Limpopo National Park.³²³ Established in 2001 the Park covers more than 10 000km² of Mozambique's sandveld region,³²⁴ bordering South African to the west and Zimbabwe to the north-west. Its location is depicted in Map 5 below.

Mozambican protected areas are regulated by specific protected area legislation, under the auspices of the Law on Forestry and Wildlife (LFW),³²⁵ as well as more generally by the Land Law.³²⁶ The LFW provides, *inter alia*, for the: principles and basic rules facilitating the protection, conservation and

³¹⁷ In 1989 two RDCs in the Zambezi Valley, Guruve and Nyaminyami, were granted AA. This increased to 12 RDCs in 1992 and 19 in 1996.

³¹⁸ Taylor 2009 *Biodiversity Conservation* 2569.

³¹⁹ Taylor 2009 *Biodiversity Conservation* 2571.

³²⁰ Child 1996 *Biodiversity and Conservation* 363-365.

³²¹ Taylor 2009 *Biodiversity Conservation* 2572.

³²² Bond "CAMPFIRE" in *African Wildlife*.

³²³ *Parque Nacional do Limpopo*.

³²⁴ Mopane, ironwood and broadleaf savannah.

³²⁵ Law no.10/1999.

³²⁶ Law no.57/2003. Legislative instruments are diverse as a result of the country's colonial heritage. In descending prominence, legislation includes: the constitution; law; decree-law; decree; presidential decree; ministerial regulation; and ministerial order.

sustainable use of forest and wildlife resources; integrated environmental management;³²⁷ the formation of various protection zones,³²⁸ and establishment of mandatory buffer zones.³²⁹ National Parks and buffer zones are declared by the Council of Ministers (CoM), in consultation with the National Council for Sustainable Development (CONDES).³³⁰ The CoM is, thereafter, responsible for extensive area management, including: adopting and implementing regulations;³³¹ modifying or extinguishing protection zones;³³² determining the exploitation of forest resources;³³³ defining the powers and responsibilities of local resource management councils;³³⁴ determining, and periodically revising, feeing and fining systems;³³⁵ and regulating forest and wildlife inspections.³³⁶

The CoM has prescribed various national planning tools and strategies, including: socio-economic programmes;³³⁷ the prescription of a national biodiversity framework,³³⁸ environmental co-ordination policy,³³⁹ land policy;³⁴⁰ agrarian policy;³⁴¹ forestry and wildlife policy;³⁴² tourism plans;³⁴³

³²⁷ A 2 and 4 LFW. 'Integrated management' means the administration of forest management in conjunction with the respective wildlife, including the control and use of such resources in accordance with the legislation and regulations issued under it, ensuring the effective participation of institutions, local communities, associations and the private sector.

³²⁸ A 13 LFW read with a 2 Decree no.12/2002 Regulations for Flora and Fauna Resources Protection. Protected zones include: national parks; natural reserves; and zones of historical and cultural use and value.

³²⁹ A 10(3) LFW; A 6 Land Law.

³³⁰ Decree no.40/2000.

³³¹ A 7 and 47 LFW.

³³² A 10(3) LFW.

³³³ A 14(2) LFW.

³³⁴ A 31(2) LFW.

³³⁵ A 35(2),(6) and 39(2) LFW.

³³⁶ A 37(1) LFW.

³³⁷ Governments Five-year Programme 2010-2014; Economic and Social Plan 2010.

³³⁸ Strategy and Action Plan for the Conservation of Biological Diversity in Mozambique.

³³⁹ National Environmental Management Plan, which contains the National Environmental Policy Resolution no.5/1995.

³⁴⁰ National Land Policy Resolution no.10/1995 and no.11/1995.

³⁴¹ Agrarian Policy Resolution no.11/1995; Strategies and Priorities for Agricultural Development; Gender Strategy of the Agricultural Sector.

³⁴² Policy and Strategic Development of Forestry and Wildlife Resolution no.8/1997; Assessment of Climate Change Vulnerability and Adaption Strategies; Strategic Measures Aimed at the Use of Rainwater.

³⁴³ Tourism Policy and Implementation Strategy; Strategic Plan for the Development of Tourism in Mozambique 2004-2013.

and a new conservation framework.³⁴⁴ Specific programmes have also been implemented within the Limpopo National Park.³⁴⁵

While extensive powers are afforded to the CoM,³⁴⁶ actual national terrestrial protected area management functions are carried out by the National Directorate for Conservation Areas (DNAC) of the Ministry of Tourism (MITUR),³⁴⁷ in collaboration with the Ministry for the Coordination of Environmental Affairs (MICOA).³⁴⁸ This directorate will, however, soon be transformed into a parastatal; the National Agency for Protected Areas (ANAC).³⁴⁹ Forestry and wildlife resources existing outside of formal protected areas are managed by the National Directorate of Forestry and Wildlife (DNFFB) and National Directorate of Geography and Cadastre (DINAGECA) of the Ministry of Agriculture and Rural Development (MADER).

³⁴⁴ Resolution no.63/2009.

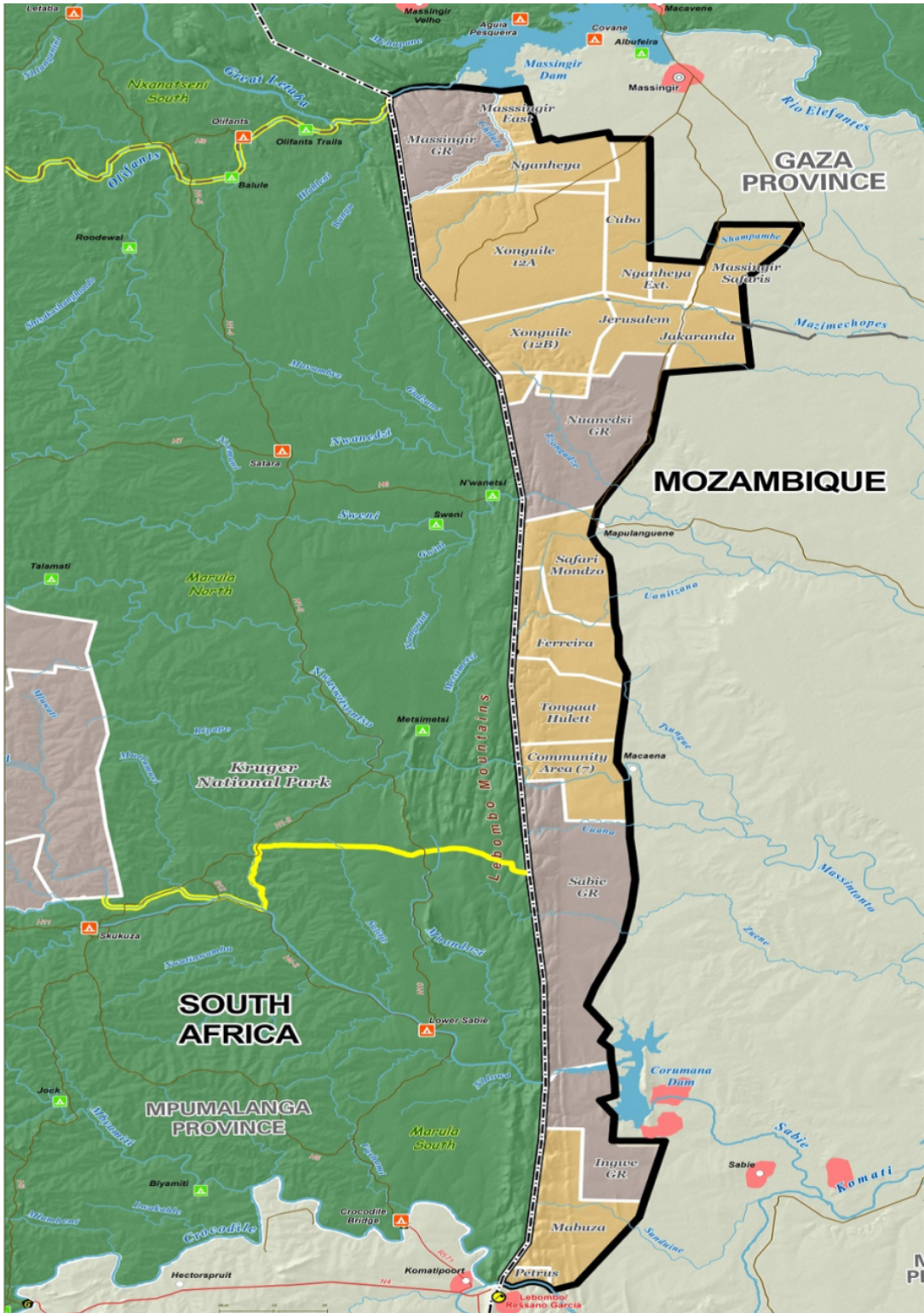
³⁴⁵ Protection Programme; Tourism Development Programme; Infrastructure Programme; Community Development Programme; and Resettlement Programme.

³⁴⁶ A 86 Decree no.12/2002.

³⁴⁷ Presidential Decree no.1/2000. Powers and Attributes (mandate) approved by Presidential Decree no.8/2010 and statutes approved by Ministerial Diploma no.126/2000.

³⁴⁸ A 87(1)-(2) and 95(2) Decree no.12/2002. MICOA created by Presidential Decree no.2/1994. Powers and Attributes (mandates) approved by Presidential Decree no.55/1995 and statutes approved by Resolution no.16/2009.

³⁴⁹ Decree no.11/2011. The directorate was expected to become functional in late 2012; however, at the time of writing it is unclear whether this has transpired.



Map 5 - Limpopo National Park and inter-linking regions

3.2.3.1 Tenure within the Mozambican component of the TFCA

The core Limpopo National Park is adjoined by additional protected areas (the 7000km² Banhine and 3700km² Zinave National Parks), the Massingir and Coruma areas and interlinking regions which while not formally integrated within the GLTP are managed as a TFCA.³⁵⁰

Ownership, use and benefit rights in Mozambican land are divorced. Ownership rights vest exclusively in the state,³⁵¹ rendering land incapable of alienation, mortgage or encumbrance.³⁵² Conversely, the use and benefit of land, as a mechanism for the creation of wealth and social well-being, is the right of all Mozambican people.³⁵³ The state, however, regulates the conditions under which these rights may be enjoyed.³⁵⁴

The Limpopo, Banhine and Zinave National Parks are designated total protection zones and rendered part of the public domain and property of the state.³⁵⁵ No rights of land-use and benefit may, accordingly, be acquired in total protection zones without first acquiring a special license.³⁵⁶ Irrespective of application, certain consumptive activities are strictly forbidden within national parks except where scientific or management motivation is furnished.³⁵⁷ Communities residing within protection zones or dependent upon their resources, however, possess customary access, occupation, use

³⁵⁰ A 3(2)(a) Treaty.

³⁵¹ A 46 Constitution of the Republic of Mozambique, 2004. Land vests with the president as trustee.

³⁵² A 3 Land Law. The state is, however, constitutionally obliged to recognise and guarantee property ownership rights, therefore, associated immovable assets or improvements upon the land possesses the capacity for alienation or mortgage. A 16(5) Land Law and 82(1) Constitution of the Republic of Mozambique, 2004. *Massuanganhe Governance* 104.

³⁵³ Preamble Land Law.

³⁵⁴ *Massuanganhe Governance* 104. The Ministry of Agriculture is mandated with granting use and development rights outside of protected areas in terms of Resolution no.17/2009.

³⁵⁵ A 98(2)(d) Constitution of the Republic of Mozambique, 2004 read with a 6-7 the Land Law and a 3 LFW; 'public domain' means areas that are destined for the satisfaction of the public interest.

³⁵⁶ A 9 Land Law. 'Special licence' means a document that authorises the carrying out of any economic activity within total or partial protection zones. All licences and authorization are submitted before the jurisdictionally competent local body in terms of the Local Bodies Law no.8/2003 and its regulations (Decree no.11/2003). These bodies include Provincial Directorates; District Services, delegations or local representatives of institutions.

³⁵⁷ A 11 LFW read with a 3 Decree no.12/2002. These include: hunting within the park boundary; forestry or agriculture exploitation, mining or livestock farming; exploration and prospecting, drilling or construction of landfills; all works liable to modify the landscape or characteristics of vegetation, as well as cause water pollution and, in general, any act which, by its nature, is capable of disturbing the flora and fauna; all introductions of zoological or botanical species, whether they are indigenous, imported, wild or domestic.

and benefit rights.³⁵⁸ Currently various communities within the core Limpopo National Park are being relocated as part of the parks *Resettlement programme*,³⁵⁹ however the new *Conservation Policy* establishes more stringent resettlement guidelines; qualifying resettlement as an extreme measure.³⁶⁰ Presently non-consumptive tourism concessions have been awarded by DNAC through special license in both the Zinave and Limpopo National Parks,³⁶¹ but not Banhine.³⁶²

Varied use and benefit rights are permissible in rural land, including the Massingr and Corumana areas and inter-linking regions.³⁶³ The State, through the Ministry of Agriculture as rights issuer, grants 50-year renewable leases, permitting liberal usufructuary rights, in exchange for various fees.³⁶⁴ These rights may be acquired through numerous avenues by: national natural persons;³⁶⁵ local communities;³⁶⁶ national juristic persons,³⁶⁷ and foreign natural and juristic persons.³⁶⁸ Natural and juristic persons may hold rights either individually or jointly,³⁶⁹ however, communities are legislatively obliged to utilise a joint title holding structure.³⁷⁰ Rights may be transferred either *inter vivos* or through inheritance,³⁷¹ while expropriation may only occur in very limited circumstances.³⁷² Notably preferential land-uses,

³⁵⁸ USAID *Tourism Concessions* 13.

³⁵⁹ Seven villages with approximately 1200 families are to be relocated to areas outside the protection zone.

³⁶⁰ Conservation Policy Annexure 4.

³⁶¹ The community association (Vuka Zinave) was granted special licence and negotiated an operational lease agreement with the private sector instituting Tondo Lodge in Zinave National Park. The lease has five year duration, renewable for 10 years.

³⁶² USAID *Tourism Concessions* 101.

³⁶³ The Ministry of Agriculture is mandated with granting use and development rights outside of protected areas in terms of Resolution no.17/2009.

³⁶⁴ A 17(1) read with a 28 the Land Law. Fees include an authorisation fee, as well as, an annual fee which may be progressive or regressive in accordance with the investments realised. *Massuanganhe Governance* 101.

³⁶⁵ A 12(1)(a)-(c) Land Law. Actors require: use of land in good faith for at least 10 years, constitutionally permissible occupancy congruent with customary norms and practices, or authorised application.

³⁶⁶ A 12(1)(a) Land Law. Actors require constitutionally permissible occupancy congruent with customary norms and practices.

³⁶⁷ A 12(1)(c) Land Law. Actors require authorised application.

³⁶⁸ A 11(a)-(b) Land Law. Actors require an approved investment project.

³⁶⁹ A 10(1)-(2) Land Law.

³⁷⁰ A 10(3) Land Law.

³⁷¹ A 16(1)-(2) Land Law.

³⁷² A 82(2) Constitution of the Republic of Mozambique, 2004. Through legally entrenched and mandated: public necessity, utility or interest, and always subject to equitable compensation.

including: personal residence,³⁷³ individual family-use and rights acquired by local communities through occupancy,³⁷⁴ are exempt from the above maximum term. Additionally, rights intended for family and community-use are excused from the payment of fees.³⁷⁵

Local or customary management systems represent the *de facto* administrative land body over rural land.³⁷⁶ Customary tenure rights are, accordingly, recognised as equivalent to and given the force of formal legal rights.³⁷⁷ Rights integration has been achieved through the institution of the 'local community',³⁷⁸ an 'extensive land holding and resource management unit reflecting local production and social systems involving a wide range of resources and dynamic patterns of land-use'.³⁷⁹ While an absence of title cannot prejudice use and benefit rights acquired through occupancy,³⁸⁰ titling and/or registration of land rights increase tenure security and benefit local communities.³⁸¹ Increased tenure security has empowered communities to negotiate *de facto* rental agreements with investors, introducing and encouraging additional layers of private sector take-up of land-use rights.³⁸² To date this capacity has resulted in numerous consumptive hunting concessions being awarded in the areas south of the Olifants River.³⁸³

3.2.3.2 Conservation management within the Mozambican component of the TFCA

Environmental management is mandated with facilitating diversified public participation and devolved management of natural forest and wildlife resources.³⁸⁴ The practical realisation of this mandate, however, differs in accordance with the categorisation of land.

³⁷³ A 17(2)(b) Land Law.

³⁷⁴ A 17(2)(a),(c) Land Law.

³⁷⁵ A 29(c) Land Law.

³⁷⁶ Durang & Tanner *Access to Land 2*.

³⁷⁷ Durang & Tanner *Access to Land 2*.

³⁷⁸ Local community bears the same definition as in the LFW.

³⁷⁹ Durang & Tanner *Access to Land 2*.

³⁸⁰ A 13(2) Land Law.

³⁸¹ Massuanganhe *Governance 109*.

³⁸² Durang & Tanner *Access to Land 10*; Massuanganhe *Governance 107*.

³⁸³ SANParks *KNPMP 23*.

³⁸⁴ A 4(1)-(8), 8, 31 and 24 Environmental Law no.10/1997.

Management of protection zones is currently undertaken by DNAC. Management powers are, additionally, devolved to Participative Management Councils (COGEPs);³⁸⁵ juristic persons comprised of representatives from: local communities,³⁸⁶ the private sector, associations and local State authorities.³⁸⁷ COGEPs are responsible for: ensuring the realisation of conservation objectives;³⁸⁸ representing and defending member interests in dialog with the state,³⁸⁹ and safeguarding equitable benefit-sharing.³⁹⁰ Protection zone management is, furthermore, conducted according to management plans prepared by COGEPs and approved by MITUR.³⁹¹ These management plans have the additional function of determining permissible land-use within buffer zones. The LFW, moreover, permits the delegation of management powers to local communities, associations or private sector participants in a wide variety of areas.³⁹² Terms and conditions of delegation are dictated by MADER, through a Joint Ministerial Diploma and attached technical annex.³⁹³ The employment of this delegation is, however, exercised without prejudice to the supervisory powers of legally competent authorities.³⁹⁴

Statutory instruments are supported by various national plans, policies and strategies facilitating: sustainable natural resource management;³⁹⁵ public and local community participation;³⁹⁶ inter-sectoral coordination;³⁹⁷ decentralisation and co-management.³⁹⁸ The new *Conservation Policy* in particular has impacted protected area management through the recognition

³⁸⁵ A 95(2) Decree no.12/2002.

³⁸⁶ A 96(1) Decree no.12/2002. 'local community' means a grouping of families and individuals living in a territorial area at locality level or lower, that aims to safeguard common interests by protecting living areas, agricultural areas, whether farmed or fallow, forests, places of cultural importance, pastures, water sources, hunting areas and areas of expansion.

³⁸⁷ A 31(1) LFW read with a 95 (1)(a)-(d) Decree no.12/2002.

³⁸⁸ A 31(1) LFW.

³⁸⁹ A 97(2)-(3) LFW read with a 98 Decree no.12/2002.

³⁹⁰ A 31(3) LFW.

³⁹¹ Kigenyi et al 2002 *Forest and Social Perspectives* 41. A 10(5) LFW.

³⁹² A 33 read with a 99(2) LFW. Areas include: protected areas; buffer zones; official game reserves; productive forests; multiple use forests; and multiple use zones.

³⁹³ A 99 Decree no.12/2002.

³⁹⁴ A 33 LFW.

³⁹⁵ Conservation Policy; DNFFB Forest and Wildlife Strategy; Agricultural Policy; Tourism Policy.

³⁹⁶ National Environmental Policy; DNFFB Forest and Wildlife Strategy.

³⁹⁷ Conservation Policy; DNFFB Forest and Wildlife Strategy.

³⁹⁸ Conservation Policy.

of broader concessionary regimes within protection zones. These include: co-management; contractual co-ownership; special licenses; and contractual delegation of hunting concession rights. The Banhine National Park has implemented a co-management arrangement with the African Wildlife Foundation, while tourism concessions have been granted in the Limpopo and Zinave National Parks.

Rural land, including the Massingir and Corumana areas and interlinking regions, is regulated by the Land Law.³⁹⁹ The legal recognition of local or customary management systems as the *de facto* administrative land body, has empowered the 'local community', as a joint title holding structure, to become the primary land-holding and resource management unit over rural land. Local communities residing within these areas are entitled to participate in natural resource management, as well as, utilise customary norms and practices in exercise of these competencies.⁴⁰⁰ Where community land is delimited and registered effective public-private partnerships in land may also be promoted.⁴⁰¹ Recently four possible partnerships have been identified as supported by the DNFFB. Contractual arrangements between the community and investors may, consequently, take the form of a rental agreement, joint venture or management in return for a fee. The fourth conventional option, whereby rights are ceded to the investor in return for tax-benefits, is also available, however, only the latter three options promote real partnerships and significant community beneficiation.

3.2.3.3 Access and benefit-sharing within the Mozambican component of the TFCA

Mozambique does not possess one integrated CBNRM policy.⁴⁰² While CBNRM in Mozambique is substantially modelled on CAMPFIRE,⁴⁰³ the

³⁹⁹ A 22-24 Land Law.

⁴⁰⁰ A 24(1)(a),24(2) Land Law.

⁴⁰¹ The Ministry of Finance is mandated with overseeing the financial implications of public-private partnerships in terms of Resolution no.18/2011.

⁴⁰² Initiatives occur under both the *Tchuma Tchato* project and CBNRM programme of the Food and Agricultural Organisation of the United Nation (FAO) which have instituted in excess of 50 CBNRM projects to date, with common emphasis afforded to the instigation of management plans which actively promoted local community participation. Durang & Tanner *Access to Land 8*

⁴⁰³ Anstey "Community Conservation" in 'African Wildlife 81-84; Makatkala & Mushova 2001 *FAO-DNFFB 12*.

mechanisms promoting equitable access and benefit-sharing have evolved in a unique context.⁴⁰⁴ Post-colonial reforms in wildlife management were dominated by government officials, foreign donors and international conservation organisations; negating local community contributions.⁴⁰⁵ Legislation reflects this genesis, as while the LFW endorses local participatory management, no direct recognition is afforded to customary or inherent rights over natural resources.⁴⁰⁶ Legislation rather creates an enabling environment facilitating community participation in the development and exploitation of natural resource.

Titleholders of use and benefit rights in land may apply for user rights and management authority, however, the devolution and exercise of these rights remains ambiguous.⁴⁰⁷ Local participation is secured over both the exploitation of resources and benefits generated.⁴⁰⁸ Communities are entitled to access and use natural resources for their own consumption without charge;⁴⁰⁹ however actions cannot prejudice conservation.⁴¹⁰ Co-operation and partnerships are facilitated through COGEPs; forums exercising decision-making power within a co-management framework and endowing communities with a public right to participate in state-mandated structures.⁴¹¹ Legislation, furthermore, promotes indirect local beneficiation with fees generated from the access and use of natural resources accruing to the state.⁴¹² 20 per cent of public revenue generated from exploitation is, however, paid to local communities residing within exploitation zones.⁴¹³

Customary land access and management rights are, however, acknowledged and integrated with legislation regulating rural land;⁴¹⁴ empowering local beneficiation through co-management and other negotiated land-use agreements with third party investors. Investors are

⁴⁰⁴ Nelson & Agrwal 2008 *Development and Change* 571.

⁴⁰⁵ Anstey "Community Conservation" in *African Wildlife* 74-87.

⁴⁰⁶ *Massuanganhe Governance* 107.

⁴⁰⁷ A 9 LFW. Nelson & Agrwal 2008 *Development and Change* 572.

⁴⁰⁸ A 31(3) LFW.

⁴⁰⁹ A 35(3) LFW.

⁴¹⁰ A 4 LFW read with a 8 Decree no.12/2002.

⁴¹¹ *Massuanganhe Governance* 108.

⁴¹² A 35(1) LFW.

⁴¹³ A 35(5) LFW read with a 102(1) Decree no.12/2002.

⁴¹⁴ Durang & Tanner *Access to Land* 4.

obliged to consult local communities and secure approval before obtaining land-use and benefit rights. Elements of co-management are, furthermore, supported by Land Policy;⁴¹⁵ allowing communities to secure direct benefits through the commercial sub-let of use and benefit rights. Viability is, however, limited by the prerequisite that agreements be finalised within the structure of delimitation, allocation and registration of community use rights.⁴¹⁶ The emergence of local jurisdictions over wildlife is, additionally, constrained by broader political-economic trends and legislative ambiguity.⁴¹⁷

Tourist interest zones including *inter alia*,⁴¹⁸ conservation areas, are required to promote the conservation of biodiversity and ecosystems, as well as, improve the standard of living and encourage the active participation of local communities.⁴¹⁹ Activities within interest zones are required to accord with pertinent management plans and legal provisions.⁴²⁰ Furthermore, 20 per cent of the value of all taxes derived from tourism accrues to local communities.⁴²¹

3.3 The regional regime

The GLTP was established on 9 December 2002, by way of a Treaty between the governments of South Africa, Zimbabwe and Mozambique; providing practical realisation to international and regional commitments. The Treaty prescribes two distinct intergovernmental structures.⁴²² First, the recognition of state sovereignty preserves the application of domestic administrative structures and regulatory instruments within constituent elements of the GLTP.⁴²³ Designated National Implementing Agencies (SANParks for South Africa, PWLA for Zimbabwe, and DNFFB for Mozambique) are delegated powers to ensure effective management and co-

⁴¹⁵ Resolution no.10/1995.

⁴¹⁶ Negrao *The Mozambican Land Campaign*; Massuanganhe *Governance* 108.

⁴¹⁷ Nelson & Agrwal 2008 *Development and Change* 572.

⁴¹⁸ Tourism Law no.4/2004. A 8; Tourist interest zones are areas that, due to the relevant characteristics of their natural and cultural resources and historical value, are capable of generating flows of national and international tourism.

⁴¹⁹ A 8 and 9 read with a 3(1)(g)-(h) Tourism Law. Local community bears the same definition as considered in the LFW and the Land Law.

⁴²⁰ A 9(1) read with a 15 Tourism Law.

⁴²¹ A 2(2) Decree no.93/2005 Regulations for Community Benefits from Tourism.

⁴²² Mello *Intergovernmental Relations* 187.

⁴²³ A 5(1) Treaty.

ordination of areas through domestic protected area management plans.⁴²⁴ Domestic administrative institutions, furthermore, influence GLTP management policy through policies and accountability requirements.⁴²⁵ Secondly, parties are mandated with facilitating effective and harmonised environmental management through transnational collaboration and co-operation.⁴²⁶ Realisation hereof required the establishment of new supranational governance and management structures enabling joint management over matters of common interest and mutual impact.⁴²⁷ These institutions include: the Trilateral Ministerial Committee, the JMB and the Co-ordinating Party.⁴²⁸

The Trilateral Ministerial Committee provides general policy guidance in GLTP management.⁴²⁹ The Committee comprises the ministers designated and mandated by their respective states.⁴³⁰ Effort is made to preserve equality through rotational chairing of annual meetings, as well as, the requirement that decisions be taken by consensus.⁴³¹ The Committee, additionally, oversees the effective implementation of the *Joint Policy and Management Guidelines for the Great Limpopo Transfrontier Park (JMP)*, and implicitly, supervises the JMB.⁴³²

The JMP established a JMB to ensure the proper administration of issues of common interest and mutual impact,⁴³³ with the JMB expected to function within the legal and political framework provided by the *SADC Protocol on Wildlife Conservation and Law Enforcement* and the Treaty.⁴³⁴

⁴²⁴ A 8(a)-(b) read with a 13(1) Treaty. A 1(k) 'National Implementing Agency' means that national institution as formally designated by each government respectively which shall be responsible for the effective management of the GLTP, as provided in a 8. A 1(i) 'Management Plan' means the specific plan providing for the management of a constituent area making up the GLTP.

⁴²⁵ Mello *Intergovernmental Relations* 187.

⁴²⁶ A 4(a)-(c) read with a 6(1) and (2)(b) Treaty.

⁴²⁷ A 13(2) Treaty.

⁴²⁸ A 9 Treaty; Mello *Intergovernmental Relations* 46.

⁴²⁹ A 10(2)(a) Treaty.

⁴³⁰ A 10(1) Treaty. Minister of Water and Environmental Affairs in South Africa; Minister of Environment and Natural Resource Management in Zimbabwe; and Minister for Coordination of Environmental Affairs in Mozambique.

⁴³¹ A 10(2)(b),(c) and (3) Treaty.

⁴³² A 10(2)(d) Treaty; Mello *Intergovernmental Relations* 46.

⁴³³ A 13(2) read with a 11(2) Treaty. Included are: the periodical revision and implementation of the JMP, determining mechanisms for the administration of park funds, identifying the financial requirements of the JMP and reporting to the Trilateral Ministerial Committee.

⁴³⁴ Para 6.2 JMP.

The board consists of two representatives from each National Implementing Agency, one from each national institution responsible for borderline control, as well as, one appointed at the prerogative of each party.⁴³⁵ Again an attempt is made to preserve equality through: the rotational chairing and hosting of quarterly meetings; a mandatory minimum quorum of six representatives per meeting;⁴³⁶ and the requirement that decisions be taken by consensus.⁴³⁷ Responsibilities extend to the: revision and implementation of the JMP;⁴³⁸ administration and sourcing of funds required for effective implementation of the JMP;⁴³⁹ and provision of reports to the Trilateral Ministerial Committee.⁴⁴⁰

The JMP makes extensive provision for management of the GLTP. The plan, accordingly, recommends the regional harmonisation of: park management zones;⁴⁴¹ institutions and management systems over shared watercourses;⁴⁴² alien invasive plants;⁴⁴³ fire management;⁴⁴⁴ wildlife management;⁴⁴⁵ veterinary issues;⁴⁴⁶ ecotourism;⁴⁴⁷ infrastructure development and management;⁴⁴⁸ fences;⁴⁴⁹ security;⁴⁵⁰ capacity building;⁴⁵¹

⁴³⁵ A 11(1)(a)-(c) Treaty.

⁴³⁶ A 11(5) Treaty. One from each National Implementing Agency and one other representative from each Party.

⁴³⁷ A 11(3)(a)-(b), (4) Treaty.

⁴³⁸ A 11(2)(a) Treaty.

⁴³⁹ A 12(2)(b)-(c) Treaty.

⁴⁴⁰ A 12(2)(e) Treaty.

⁴⁴¹ Para 8.2 JMP. Particularly between the KNP and Limpopo National Park. This was addressed in the KNP Revised Zoning System.

⁴⁴² Para 8.3 JMP. In line with the Revised SADC Protocol on Shared Watercourses 2000.

⁴⁴³ Para 8.5 JMP. Recommended the compilation of a holistic and cost-effective strategy combating these plants.

⁴⁴⁴ Para 8.6 JMP. Recommended the compilation of an Annual Fire Management Programme.

⁴⁴⁵ Para 8.7 JMP. Recommended the: compilation of a Joint Elephant Management Policy; management of threatened species in accordance with SADC Protocol on Wildlife Conservation and Law Enforcement; and institution of a Conservation Committee of the JMB. The Conservation Committee has indeed been established. An Elephant Management Indaba was held in 2004 and an Elephant Management Plan is currently in preparation.

⁴⁴⁶ Para 8.8 JMP.

⁴⁴⁷ Para 9.2 JMP. Recommended the: establishment of a Tourism Committee of the JMB; compilation of a Strategic Tourism Plan; and harmonisation of tourism fees. The Tourism Committee has been established and the Integrated Tourism Development Plan 2002 formulated.

⁴⁴⁸ Para 10.1.2 JMP.

⁴⁴⁹ Para 10.2 JMP.

⁴⁵⁰ Para 13 JMP. Recommended the ratification and implementation of SADC Protocol on Wildlife Conservation and Law Enforcement; harmonisation of laws and penalties; establishment of Security Protocols; and creation of a Security Committee of the JMB. The Committee has been established, the Protocol ratified.

and funding and technical assistance.⁴⁵² Additional provision is made for aspects of access and benefit-sharing,⁴⁵³ secure community tenure; and local community and private sector involvement in GLTP developments and operations.⁴⁵⁴ The plan, accordingly, recommends that the JMB and National Implementing Agencies ensure meaningful community participation in policy making, development planning and management through: employment opportunities, skills development, equity sharing; entrepreneurial training, capacity building; community access to natural resources and sites of cultural and traditional significance; and liaisonary structures.

The implementation of these recommendations is envisaged to occur through the establishment, by the JMB, of permanent and *ad hoc* sub-committees.⁴⁵⁵ Continuity and co-operation between structures is secured through JMB members chairing committees.⁴⁵⁶ While not endowed with decision-making authority,⁴⁵⁷ management committees perform two significant functions. First, they fulfil a facilitatory role; implementing the JMP and advising the JMB on day-to-day issues relating to conservation, safety and security, finance, human resources, legislation and tourism.⁴⁵⁸ Secondly, committees act as liaisons, ensuring: relevant stakeholder participation in administration, policy formulation and management activities; collaboration with regional initiatives, such as the Maputo Development Corridor; and the provision of feedback and progress reports to the JMB.⁴⁵⁹ Currently permanent management committees have been established to regulate: conservation; safety and security; finance; human resources and legislation; and tourism with each required to establish individualised monitoring protocols.

Lastly, inter-party equity is advanced by the Coordinating Party.⁴⁶⁰ The Ministerial Committee, on recommendation of the JMB, designates on a

⁴⁵¹ Para 14.1.4 JMP.

⁴⁵² Para 15 JMP. Recommended the creation of a Funding Committee of the JMB, which has been established.

⁴⁵³ Para 11 JMP.

⁴⁵⁴ Para 12 JMP.

⁴⁵⁵ A 9(d) read with a 11(2)(d) Treaty; Mello *Intergovernmental Relations* 47. Para 16 JMP.

⁴⁵⁶ Mello *Intergovernmental Relations* 47.

⁴⁵⁷ Mello *Intergovernmental Relations* 49.

⁴⁵⁸ SANParks *KNPMP* 59; Mello *Intergovernmental Relations* 48-49.

⁴⁵⁹ Mello *Intergovernmental Relations* 49.

⁴⁶⁰ Mello *Intergovernmental Relations* 188.

biannual and rotational basis the appointment of a Coordinating Party.⁴⁶¹ This party functions to facilitate the: promotion and coordination of effective and accountable management and administration;⁴⁶² establishment of Management Committees;⁴⁶³ implementation and revision, together with relevant stakeholders, of the JMP;⁴⁶⁴ adherence to relevant regional and international treaties and protocols;⁴⁶⁵ and maintenance of an effective JMB.⁴⁶⁶

4 INITIATING EFFECTIVE AND EQUITABLE TRANSBOUNDARY CONSERVATION

4.1 Introduction

Target 11 requires compliance with a number of preconditions. Within TFCA it is, therefore, imperative that governance and planning measures are implemented effectively and equitably, as the presence of these two indicators demonstrates the presence of good governance⁴⁶⁷ Evidence of these indicators is, however, materially influenced by several inherent governance challenges. This section will observe the governance implications of: state sovereignty; fragmented domestic governance regimes; varied tenure regimes; diverse management approaches; and dissimilar access use and benefit-sharing regimes, whereafter, various recommendations for improvement will be suggested.

4.2 Governance implications for state sovereignty

Transfrontier conservation is purported to foster regional integration, improved security and sustainable natural resource management.⁴⁶⁸ Successful realisation hereof requires effective inter-state co-operation and collaboration within joint decision-making structures. Notwithstanding the recognition of state sovereignty within the GLTP, the creation and

⁴⁶¹ A 12(1)-(3) Treaty. A party may elect to forfeit designation in which event the function shall rotate to the next eligible Party. A 1(c) 'Co-ordinating Party' means that country which on a rotational basis of two years shall be held accountable for routine initiation of meetings and achieving overall co-ordination of activities relating to management of the GLTP, as provided by a 12.

⁴⁶² A 12(1)-(2) read with a 12(5)(a),(e),(f)-(g) Treaty.

⁴⁶³ Mello *Intergovernmental Relations* 48.

⁴⁶⁴ A 12(5)(c) Treaty.

⁴⁶⁵ A 12(5)(d) Treaty.

⁴⁶⁶ A 12(5)(b) Treaty.

⁴⁶⁷ Decision X/2 CBD COP10.

⁴⁶⁸ Duffy 2006 *Political Geography* 99.

management of the area *de facto* encroaches upon various sovereign state interests.⁴⁶⁹

4.2.1 Conservation interests

The redistribution of administrative space and power impinges upon sovereign environmental management in various manners. First, spatial re-organisation of borderlands is likely to facilitate land-use incompatible with conservation, as well as, alter the operation, location and function of administrative borders.⁴⁷⁰ When this land-use is incompatible stakeholder conflict is generated. Particularly biodiverse areas, such as the bank of the Shingwedzi River in the Limpopo National Park, are valued by the private tourism sector, local communities and conservation.⁴⁷¹ Divergent land-use unsuccessfully attempts to promote simultaneous development, agriculture, subsistence-hunting and conservation within a relatively limited area.⁴⁷²

Secondly, the redistribution of sovereign administrative power potentially discourages future state participation in the GLTP.⁴⁷³ Disparities in state resources and knowledge have placed South Africa in a disproportionately influential position over GLTP management and development.⁴⁷⁴ While the Treaty imposes rights and obligations, securing sovereignty,⁴⁷⁵ this attempt to balance power and maintain equity has been largely unsuccessful as disparities between South Africa and neighbour states persevere; compromising co-operation and initiating conflict.

4.2.2 Political interests

Transboundary conservation effects vested sovereign political, security and administrative interests.⁴⁷⁶ Long-term TFCA effectiveness is determined by the ability of TFCA objectives to transcend national sovereignty without compromising national security.⁴⁷⁷ While apparently innocuous TFCA

⁴⁶⁹ Braak et al *Security Considerations* 7.

⁴⁷⁰ Van Ameron 2002 *GeoJournal* 269.

⁴⁷¹ Van Ameron 2002 *GeoJournal* 268.

⁴⁷² Van Ameron 2002 *GeoJournal* 268-270.

⁴⁷³ Van der Linde *Beyond Boundaries* 111.

⁴⁷⁴ Mello *Intergovernmental Relations* 188.

⁴⁷⁵ A 5(1) Treaty.

⁴⁷⁶ Duffy 2001 *Geopolitics* 24; Van Ameron 2002 *GeoJournal* 269-270.

⁴⁷⁷ Braak et al *Security Considerations* 7.

planning, development and management generates various political and security concerns through the relocation, alteration or termination of international borders.⁴⁷⁸ South Africa has acknowledged intensified risks to already porous international borders; refusing to implement peripheral border posts along GLTP boundaries.⁴⁷⁹ Rather two internal border posts (Pafuri and Gironde) were established along existing international borders.⁴⁸⁰

Transboundary conservation, additionally, affords disproportionate administrative benefits; causing conflict. TFCAs present an opportunity for weak states to extend administrative authority in previously under-regulated border regions; supporting improved and extended infrastructure, border security, anti-poaching and community beneficiation.⁴⁸¹ These regions are, conversely, better regulated in stronger states, such as South Africa. Improved infrastructure and increasingly porous borders could, therefore, amplify criminal activity, refugee incursions, poaching and pollution in stronger states.⁴⁸²

4.2.3 Economic interests

Transboundary conservation is purported to generate sustainable economic development in border regions.⁴⁸³ Various factors, however, obstruct the realisation of this objective; undermining co-operation and facilitating conflict. First, funding is facilitated through once-off international donations and grants with limited sustained private sector investment.⁴⁸⁴ Secondly, tourism is dependent upon a stable sub-regional political atmosphere. Political instability in Zimbabwe has, accordingly, resulted in a corresponding tourism decline and decreased economic benefits in South Africa and Mozambique.⁴⁸⁵ Thirdly, the regional distribution of economic benefits is disproportionately weighted in South Africa's favour due to dominance in the

⁴⁷⁸ Braak et al *Security Considerations* 9. Including: international relations and diplomatic protocols; human migration; custom and excise controls; criminal activity; disease in humans and animals; alien invasive species; and land restitution.

⁴⁷⁹ Minaar 2001 *African Security Review* 92; Braak et al *Security Considerations* 10. Security authorities cited amplified danger of illegal entry and movement of narcotics and firearms.

⁴⁸⁰ Braak et al *Security Considerations* 10.

⁴⁸¹ Singh (2000) *Border Regions in Transitions-IV*.

⁴⁸² Braak et al *Security Considerations* 1.

⁴⁸³ Van Ameron & Büscher 2005 *JMAS* 175-176.

⁴⁸⁴ Van Ameron & Büscher 2005 *JMAS* 176.

⁴⁸⁵ Duffy 2006 *Political Geography* 105.

sub-regional tourism sector.⁴⁸⁶ Fourthly, increasingly porous borders promote human and animal migration encouraging the spread of health risk and illegal economic activities; both of which negatively impact state economic viability.⁴⁸⁷

4.2.4 Legislative interests

TFCAs amplify fragmentation through the amalgamation of existing fragmented national governance structures, policies, legislation and goals. The harmonisation of incompatible national legislation and policies, however, impedes national administration; challenging sovereignty and creating conflict.⁴⁸⁸

Legislative disparities compound this threat.⁴⁸⁹ Achieving legislative co-operation within an unequal power dichotomy proves problematic for both strong and weak states. The alignment of less stringent environmental legislation and policies in weaker states, such as Mozambique, with stronger states requires drastic administrative interference; impinging on sovereignty and creating conflict.⁴⁹⁰ Less stringent regulation and prosecution of criminals could, additionally, result in criminal abscondment; detrimentally affecting weak states through an influx of criminals and criminal activity, and preventing strong states prosecuting offenders.⁴⁹¹ Conversely, porous international borders and improved borderland infrastructure expose stronger states, such as South Africa, to harm generated by the slow, or non-existent, implementation of environmental policy and agreements in weaker states, as well as, various security risks.⁴⁹² Additionally, inequitable application of convention management provisions, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), could expose compliant states to downgraded status; interfering with trade.⁴⁹³

⁴⁸⁶ Duffy 2006 *Political Geography* 105; Mello *Intergovernmental Relations* 174.

⁴⁸⁷ Nielsen & Chikoko 2002 *Newsletter of the Southern African TBNRM network* 11.

⁴⁸⁸ Van Ameron 2002 *GeoJournal* 269-270.

⁴⁸⁹ Braak et al *Security Considerations* 14. Co-operation is required concerning: application of conservation regulations; anti-poaching measures; international conventions and protocols; criminal activity; and overall development consensus.

⁴⁹⁰ Van Ameron 2002 *GeoJournal* 269-270.

⁴⁹¹ Van Ameron 2002 *GeoJournal* 269-270.

⁴⁹² Duffy 2006 *Political Geography* 105.

⁴⁹³ Braak et al *Security Considerations* 14.

4.2.5 Recommendations

Transboundary co-management implicitly requires the concession of a degree of sovereign natural resource decision-making capacity.⁴⁹⁴ It is, therefore, recommended that constituent domestic elements of the GLTP establish specialised departments within each National Implementing Agency addressing:⁴⁹⁵ conflicting mandates and activities; and proper information dissemination of TFCA cooperative arrangements. The proper implementation of existing JMB committees would also promote homogeneity, especially if domestic departments and committees were mandated to effectively liaise. Security concerns could be greatly reduced through proper application of existing protocols, such as the SADC Protocol on Wildlife and Law Enforcement which facilitates the harmonisation of legislation,⁴⁹⁶ as well as, co-operative international environmental management and law enforcement.⁴⁹⁷

The Treaty should, additionally, be amended to limit sovereignty in transboundary areas. Sovereign rights, while requiring respect, are not absolute.⁴⁹⁸ The CBD ratifies this averment, facilitating dilution through: the non-detrimental exercisement of sovereign resource extraction rights; instigation of a duty to co-operate in respect of areas beyond national jurisdiction; and ordering the integration, sustainable use and conservation of biodiversity through sectoral or cross sectoral plans, programmes and polities.⁴⁹⁹

4.3 Fragmentation

Fragmented environmental governance presents the opposite of a cooperative, holistic and integrated system of governance,⁵⁰⁰ impeding and reducing transboundary effectiveness.⁵⁰¹ The GLTP acknowledges the threat

⁴⁹⁴ Singh (2000) *Border Regions in Transitions-IV*.

⁴⁹⁵ Particularly agencies mandated with controlling foreign affairs and security.

⁴⁹⁶ A 3 SADC.

⁴⁹⁷ A 5(3) Treaty.

⁴⁹⁸ Bowman & Redgewell *International Law* 12.

⁴⁹⁹ A 3, 5, 6 CBD.

⁵⁰⁰ Kotze 2006 *PER/PELJ* 93.

⁵⁰¹ Lausche *Guidelines* 271.

fragmentation presents and attempts to harmonise environmental management procedures across international boundaries.⁵⁰²

4.3.1 Institutional fragmentation

National environmental governance structures are horizontally and vertically fragmented.⁵⁰³ South African environmental sectors are administered in accordance with three constitutionally prescribed and distinct: national, provincial and local spheres of government.⁵⁰⁴ Environmental departments are horizontally fragmented across spherical divides of government in accordance with media-specific sectoral competencies.⁵⁰⁵ National and provincial elements of the greater KNP ecosystem are, therefore, regulated by divergent authorities. Fragmentation is simultaneously exacerbated by the lack of a centralised environmental lead agency.⁵⁰⁶ The DEA assumes, rather, the role of a co-ordinating party providing policy guidance;⁵⁰⁷ proliferating incidental regulation of environmental matters and fostering duplicated governance functions and inefficiency within the various departments.⁵⁰⁸

Zimbabwean legislative authority vests in a centralised national government, theoretically dispelling vertical fragmentation.⁵⁰⁹ Local government is not an independent and constitutionally entrenched sphere and legislatively established local authorities such as RDCs, accordingly, operate in a delegated capacity;⁵¹⁰ performing functions conferred by central government.⁵¹¹ Problematically, the mandated jurisdiction of these structures does not extend to protected areas despite RDCs requiring environmental committees and voluntary District Wildlife or Natural Resources subcommittees. Responsibility, alternatively, vests with the Minister

⁵⁰² A 4(c) Treaty.

⁵⁰³ Kotze 2006 *PER/PELJ* 77.

⁵⁰⁴ S 40 Constitution of the Republic of South Africa, 1996; Kotze "Environmental Governance" in *Environmental Compliance* 110.

⁵⁰⁵ Kotze "Environmental Governance" in *Environmental Compliance* 110. Environmental media include: air; land; water; agriculture; land-use and planning; and cultural heritage.

⁵⁰⁶ Kotze 2006 *PER/PELJ* 90.

⁵⁰⁷ Glazewski *Environmental Law* 105-107; Plessis & Nel 2001 *SAJELP* 26-27.

⁵⁰⁸ Kotze "Environmental Governance" in *Environmental Compliance* 111; Kotze 2006 *PER/PELJ* 90.

⁵⁰⁹ S 32 Constitution of the Republic of Zimbabwe, 2009.

⁵¹⁰ Principally the RDCA.

⁵¹¹ The current draft constitution chapter 5 portrays a willingness to remedy this fact.

responsible for the environment that will perform the duties of Local Planning Authority.⁵¹² Conflicting mandates, accordingly, propagate confusion, duplication and uncertainty. The further division of RDCs into wards; represented by democratically elected and constituted WWMC's and WWC's aggravates fragmentation.⁵¹³ Regulation by a central lead agency, the Ministry of Environment and Natural Resource Management, attempts to remedy fragmentation and promote efficiency.

Environmental regulatory powers are dispersed across a plethora of ministries, departments and directorates in Mozambique. Fragmentation is created by the distinct regulation of protection zones and rural land with forestry and wildlife resources by numerous institutions with conflicting mandates.⁵¹⁴ As the Mozambican element of the GLTP includes both land types, with unclear distinction and boundary delimitation, regulation can be somewhat confused. Furthermore, while licencing procedures are streamlined inside protection zones,⁵¹⁵ certainty dissolves outside formal protected areas with licencing mandates shared between: the general licencing authority (DINATUR); the authority responsible for granting use and development rights (MINAG); and provincial licencing directorates (Licencing Directorates and Services). Another layer of complexity is added when one considers that all public-private partnerships, the rationale for acquiring many of these licences both within and outside protected areas, are regulated by the Ministry of Finance.

4.3.2 Legislative fragmentation

Legislative fragmentation manifests in various manners; including: vertical and horizontal avenues. South African biodiversity and protected areas legislation is fragmented.⁵¹⁶ NEM:BA regulates the management and conservation of biodiversity in the national sphere. The Act, however, mandates the publication of regulations, listing threatened ecosystems and

⁵¹² S 10(1)(c)-(d) Regional Town Planning Act.

⁵¹³ De Visser *Local Government* 103.

⁵¹⁴ Protection zones are regulated by: CoM; CONDES; DNAC of MITUR; MICOA and COGEPs. Rural land is regulated by: DNFFB; and DINAGECA of MADER.

⁵¹⁵ DNAC is the recognised licencing authority, as overseen by CONDES.

⁵¹⁶ Kotze "Environmental Governance" in *Environmental Compliance* 111; Kotze 2006 *PER/PELJ* 78.

invasive species, intended to operate solely in the provincial sphere; propagating vertical legislative fragmentation.⁵¹⁷ Provincial ordinances and acts regulating biodiversity within Limpopo and Mpumalanga provinces exacerbate this fragmentation.⁵¹⁸ Biodiversity resources are, furthermore, regulated by various national acts, including: the National Forests Act and NEM:PAA.⁵¹⁹ This horizontal fragmentation implicates multiple competent authorities, including the DEA and the Department of Agriculture, Forestry and Fisheries. NEM:PAA, furthermore, regulates the declaration and management of protected areas in the national sphere. The Act provides for four management categories at national level, however, the wide delineation of 'protected area' recognises areas declared under provincial and national legislation; confusing management mandates and aggravating vertical, as well as, horizontal fragmentation.

Zimbabwean protected areas are established and managed by national legislation, successfully dismissing vertical fragmentation. The establishment and expansion of protected areas is, however, facilitated by various and contradictory national legislation; evidencing horizontal fragmentation.⁵²⁰ Legislation dictates that state or communal land may be set aside for environmental purposes, under the EMA, or as a protected area, under the PWLA. The distinction between these areas is uncertain, as is the cumulative or singular application of appropriate legislation. Instruments, additionally, propose divergent expropriation mechanisms regarding communal land.⁵²¹ Similar conflict is evidenced regarding access and benefit-sharing; with the EMA and PWLA promoting contradictory biodiversity permitting authorities.⁵²² The creation of various management authorities and boards with overlapping jurisdictions and mandates, in addition to no clear

⁵¹⁷ S 52(1) read with s 70 NEM:BA.

⁵¹⁸ The Mpumalanga Nature Conservation Act, Limpopo Environmental Act.

⁵¹⁹ Act 84 of 1988, Act 15 of 1997.

⁵²⁰ The EMA; PWLA; Land Acquisition Act.

⁵²¹ The PWLA prohibits expropriation not accordingly with the CLA, while the EMA merely requires an area conducive for relocation of the community.

⁵²² The PWLA stipulates that either: the PWMA (s 53), or AA (s 56) may issue a permit, while the EMA designates the Environmental Management Board as sole permitting authority.

system of deference, compounds fragmentation.⁵²³

Mozambique integrates various colonial laws with post-independence legislation; establishing a convoluted hierarchy of legal instruments which proliferate vertical fragmentation.⁵²⁴ The regulation of: conservation; agriculture; and land-use and development planning is vertically fragmented. The legal framework providing for ownership of land and natural resources, land-use rights and allocation of prospective protected zones is provided by a dichotomy of national and decree-level legislation.⁵²⁵ Furthermore, the exploitation of fauna or flora by a land or development rights holder requires separate licencing procedures.⁵²⁶ Conservation of wildlife and natural resources, additionally, intersects land and fauna and flora legislation while introducing additional sector-specific national and decree-level laws.⁵²⁷ The evidenced vertical fragmentation is, furthermore, exacerbated horizontally with conservation regulated by various national legislative instruments.⁵²⁸ This fragmentation promotes sectoral, departmental and jurisdictional division; hampering co-ordination and effectiveness.

4.3.3 Recommendations

TFCAs are governed by a myriad of national-level, bilateral, regional and global instruments.⁵²⁹ It is, therefore, imperative that legislation and operations are harmonised across domestic elements; removing barriers to co-operation and promoting tools and mechanisms advancing effective and equitable governance. It is, therefore, recommended that both national environmental framework legislation,⁵³⁰ as well as, specific protected area legislation is amended to make provision for transboundary conservation. These instruments must include appropriate mandates to adopt policies and/or legislation facilitating transboundary conservation.⁵³¹ Another viable,

⁵²³ These include; the National Environmental Council, Environmental Management Board, Parks and Wild Life Management Authority and Parks and Wild Life Management Authority Board.

⁵²⁴ Walmsely & Patel *SADC Handbook* 256.

⁵²⁵ The Land Law; Land Law Regulations; Decree no.66/1998.

⁵²⁶ The Land Law; Decree no.66/1998; Decree no.12/2002.

⁵²⁷ The LFW and Decree no.12/2002.

⁵²⁸ The Land Law and LWF.

⁵²⁹ Wolmer *Tensions and Paradoxes* 1.

⁵³⁰ NEMA(South Africa); EMA(Zimbabwe); Environmental Law(Mozambique).

⁵³¹ Lubbe *Cross-Border Biodiversity Conservation* 57.

yet perhaps less attractive option, would be the promulgation of TFCA-specific framework legislation which may be justified by inadequate domestic protected area legislation and the nature and scope of the GLTP.⁵³² This suggestion, however, presents a risk of adding additional legislation (and fragmentation) to already congested environmental instruments.

A further viable option would be the utilisation of pre-ratified agreements, such as SADC, to inform TFCA-specific protocols. SADC has adopted protocols concerning transboundary forests, protected areas, and shared watercourses. The concepts and implementation techniques contained in these agreements provide useful guidance in developing TFCA agreements. Lubbe, accordingly, recommends the adoption of a SADC cross-border biodiversity conservation protocol, resembling the Shared Watercourses Protocol, providing a unified and integrated regional approach to transboundary conservation.⁵³³ I am inclined to agree with this proposal.

4.4 Diverse tenure regimes

Tenure can be founded on legal or formal tenure, customary tenure, common tenure, *de jure* and *de facto* tenure, with the content comprising full ownership rights or limited rights to development, use and access and/or occupation.⁵³⁴

4.4.1 Form and nature of land tenure regime

The GLTP incorporates various, and often contradictory tenure systems. While the majority of the KNP is state-owned several forms of tenure now contribute to the greater KNP ecosystem. These include: provincial and privately-owned nature reserves (vested with legal tenure and full ownership rights); concession areas (vested with legal tenure and limited lease rights); and the Makuleke contractual park (vested with legal tenure and rights contractually limited to exclude, inter alia, occupation). The ability of persons, other than the state, to own land within the GLTP, is fundamentally divergent from the situation in Zimbabwe and Mozambique.

⁵³² Lausche *Guidelines* 281.

⁵³³ Lubbe *Cross-Border Biodiversity Conservation* 58.

⁵³⁴ Paterson 2010 *SALJ* 512.

Zimbabwean protected areas may only incorporate state or communal land, which vest ownership in the president. Notwithstanding this fact, legal consumptive rights are leased in the Malipati Safari Area to SSG Safaris and limited legal usufructuary rights of occupation and use are permitted to inhabitants of the Sengwe communal land. If not properly regulated these divergent rights could prove problematic to an ecosystem-wide protected area, both in respect of Zimbabwean protected areas which do not allow consumptive rights, and particularly in respect of spill-over into South African elements which maintain a total prohibition on consumptive rights.

Ownership, use and benefit rights in Mozambican land are divorced. Ownership of all land vests exclusively in the president, however, use and benefit rights may be permitted. Communities residing within protection zones are endowed with customary access, occupation, use and benefit rights, while varied usufructuary rights may be legally leased to various persons over rural land such as the Massingr and Corumana areas. Natural and juristic persons may hold these rights either individually or jointly,⁵³⁵ however, communities are legislatively obliged to utilise a joint title holding structure.⁵³⁶ Once again varied rights within a larger conservation landscape could prove problematic if not properly regulated, furthermore, the inclusion of customary rights recognition is at odds with the tenure system in South Africa and Zimbabwe.

4.4.2 Types of land and resource rights Institutions

Land and resource rights within the GLTP are regulated by various domestic institutions. South African land is regulated nationally by the Department of Rural Development and Land Reform. Land reform programmes have also necessitated the creation of CPAs; juristic persons formed to acquire, hold and manage property on a pre-agreed basis in terms of written constitution. Various amended institutions have also been proposed by the *Green Paper on Land Reform*, including a Land Management Commission; Land Valuer-General; and Land Rights Management Board.

⁵³⁵ A 10(1)-(2) Land Law.

⁵³⁶ A 10(3) Land Law.

Zimbabwean land rights institutions are fragmented as no overarching land ministry exists. All communal land, as well as state and communal land constituted within protected areas, is regulated by the Ministry of Environment and Natural Resources Management. Furthermore, agricultural land is regulated by the Ministry of Lands and Rural Resettlement, while rural areas and RDCs are regulated by Ministry of Local Government, Urban and Rural Development. Various local-level institutions play an integral role in regulating non-protected area land rights. The Chiredzi RDC has a dispensation to permit usufructuary rights to local inhabitants. CAMPFIRE has further devolved resource rights institutions through the facilitation of WWMCs and WWCs; establishing a property regime supporting proprietary units over common property resources.

Mozambican institutions are somewhat convolved, with protected areas regulated by DNAC of the MITUR, and forest and wildlife resources existing outside of formal protected areas regulated by DNFFB and DINAGECA of the MADER. Additionally, local or customary management systems present the *de facto* administrative land body over rural land, which may include land with forest or wildlife resources. The local community typifies the land-holding and resource management unit at this level. This level of devolution is not present in South Africa or Zimbabwe.

4.4.3 Intergovernmental cooperation

The JMP, implemented through the JMB, attempts to regulate tenure within the GLTP. The plan recommended the establishment of management zones at the interface of the KNP and the Limpopo National Park; harmonising activities which may be licenced or permitted within the parks. This mandate has necessitated the formulation of a revised KNP zoning system which included provision for: land claims; socio-economic revisions (including national park interface zones and improved community benefit-sharing through Multiple Use Zones); TFCA developments; and joint operation areas to stop rhinoceros poaching and incursions from Mozambique. The

Mozambican and South African governments have, additionally, identified the need to formalise the Greater Lebombo Conservancy as part of the GLTP.⁵³⁷

Wildlife management provisions recommend that consumptive use rights over any natural resource within the GLTP must be preceded by: adequate research; appropriate monitoring protocols; and JMB approval. This would appear to apply to consumptive use other than that by a local community, as community access to natural resources is regulated separately and in accordance with lower standards.⁵³⁸ Accordingly, consumptive use licences, such as those issued in the Malipati Safari Area (Zimbabwe) and the concessionary areas in Mozambique, would be issued on satisfaction of the JMB Conservation Committee. There is no evidence that this mechanism has been utilised to date, however, it provides a simple and possibly effective mechanism for regulating land-use within the GLTP.

4.4.4 Recommendations

Domestic tenure regimes propagate divergent land-use within constituent elements of the GLTP. It is, therefore, recommended that existing mechanisms, such as zonation plans, be extended to encompass Zimbabwean tenure. Ideally this would amount to an alignment of all tenure within the Park; however, practically alignment may have to be limited at first to interface zones. In this manner, the areas which would exemplify the greatest conflict and juxtaposition of tenure regimes would be targeted first, and with the success of these regions, the plan may be extended outward. A necessary co-recommendation would be the creation of a detailed zonation map encompassing all land within the Park which would serve to inform the zonation plan, as well as, the granting of future tenure rights. Such mechanisms could avoid incompatible activities on parallel sides of national borders, as well as, 'ensure that the partners develop an appreciation of the relative biophysical, political, social and economic context of the protected areas.'⁵³⁹

⁵³⁷ 06 February 2012.

⁵³⁸ Community access is recommended to occur sustainably and within the framework provided by domestic park policy.

⁵³⁹ Sandwith et al *Transboundary Protected Areas* 28.

4.5 Diverse management approaches

Management rights and obligations vary from statutorily prescribed structures to those finding basis in customary law or tradition, while the nature of management activities can include: 'the preparation of management plans; prescription of rules, norms and standards; permitting schemes; environmental assessment; and reporting.'⁵⁴⁰ Actors may, furthermore, undertake management roles either individually or jointly in some form of co-management arrangement.

4.5.1 Form and nature of management regime

The majority of the KNP is regulated by national legislation, under the auspices of NEM:PAA and NEM:BA. National legislation also provides for the conclusion of co-managements; a power that has permitted the formation of the Makuleke contractual park. However this contractual park is in reality managed by as a sub-park of the KNP. The *de facto* inclusion of various provincial and private nature reserves, however, complicates the management regime as these are declared and managed in accordance with provincial legislation.

Zimbabwean protected areas are, conversely, declared and managed exclusively by national legislation under the PWLA; dispensing with the need to utilise provincial legislation as in South Africa. Environmental management of the Sengwe corridor has, however, been diversified. The Chiredzi RDC has a dispensation to permit usufructuary rights to local inhabitants and as AA is endowed with certain privileges, including *de facto* conservation management responsibility.⁵⁴¹ CAMPFIRE, has, furthermore, acted to devolved management to producer community-level.

Mozambican protected areas are nationally regulated and managed by specific protected area legislation, under the auspices of the LFW, as well as more generally by the Land Law. Rural land is, however, exclusively regulated by the Land Law which affords legal recognition to local and customary management systems. Mozambique accordingly affords much greater recognition to customary and local systems than either South Africa

⁵⁴⁰ Paterson 2010 SALJ 495.

⁵⁴¹ Taylor 2009 *Biodiversity Conservation* 2565.

or Zimbabwe; which could prove problematic when attempting to harmonise management regimes.

4.5.2 Type of management institutions

The constitution, structure, powers and functions of South Africa's two protected area management authorities, SANParks and SANBI, are statutorily prescribed.⁵⁴² SANParks is afforded extensive management powers over national parks and is assisted by SANBI in biodiversity matters. SANParks is, additionally, contractually mandated to manage the Pafuri Triangle. The *de facto* inclusion of other property has, however, diversified management. Private nature reserves are managed by the landowner and/or privately appointed and funded conservation agency, while provincial protected areas are managed by provincial conservation management authorities.

Zimbabwean protected areas are controlled, managed and maintained exclusively by the PWMA in accordance with statutorily prescribed powers. The broad delineation of AA has, however, partially devolved management authority in the Sengwe corridor to occupiers, users, or owners of land. As local communities lack AA, communal land is managed by the Chiredzi RDC through environmental committees and sub-committees. CAMPFIRE has, additionally, devolved management further to include WWMCs and WWCs; ensuring the devolvement of administrative and legal rights to wildlife to producer communities. These structures, however, operate within existing government levels.

Mozambican protected areas are currently managed by DNAC; however, certain powers are devolved to COGEPs. The new *Conservation Policy* has also served to recognise broader co-management structures within protected areas. Rural land is managed through legally recognised local or customary management systems. The 'local community' utilises a joint title holding structure and is legislatively entitled to participate in natural resource management, as well as, utilise customary norms and practices in exercise of these competencies.

⁵⁴² NEM:PAA and NEM:BA.

4.5.3 Management decision-making

Effective transboundary management requires some form of shared responsibility. Successful governance necessitates the diversification and decentralisation of management, as well as, the recognition and facilitated participation of numerous stakeholders. Shared governance, accordingly, demands: consultation, collaboration, and coordination between these stakeholders.⁵⁴³

NEM:PAA expresses a clear intention to co-operatively manage the network of South African protected areas across state, private and communal land in participation with local communities. The act provides for co-management agreements between SANParks and private and provincial nature reserves and/or communities in the greater KNP ecosystem. Unfortunately, most agreements between SANParks and private or provincial nature reserves are still in draft form, and only the one co-management agreement with the Makuleke community exists. Private nature reserves, therefore, continue to exemplify a private governance approach, while provincial nature reserves illustrate top-down governance by government. The Makuleke have, additionally, referenced a number of weaknesses with their current governance system. These include: SANParks lack of respect for the community, a lack of understanding of the authority of the JMB and disregard for the transitional nature of this structure.⁵⁴⁴ The involvement of local communities should empower these communities, resulting in the transfer of power and power structures and the acquisition of control over local decisions.⁵⁴⁵ While management of the region suggests *prima facie* a form of shared responsibility, the majority of management is conducted *de facto* by SANParks; illustrating a predominately top-down governance by government approach.⁵⁴⁶

Zimbabwean protected areas are comprised of state or communal land; vesting exclusive management with the PWMA and typifying top-down governance by government. The PWLA and EMA have, however, partially

⁵⁴³ Zbicz "Transfrontier Ecosystems" in *Ecosystems* 1-13.

⁵⁴⁴ Maluleke *The Makuleke Story* 5-6.

⁵⁴⁵ Holmes-Watts & Watts 2008 *FPE* 441.

⁵⁴⁶ Paterson 2010 *SALJ* 510.

devolved management surrounding formal protected areas through a broad delineation of AA. The Sengwe corridor is managed by the Chiredzi RDC, a local government institution endowed with *de facto* conservation management responsibility. CAMPFIRE has acted to devolve rural institutions and decentralised management power, however, the success of the program is questionable as these structures operate within existing government levels. It, therefore appears that while an attempt has been made to decentralise management authority, structures retain predominantly top-down governance by government approach.

Mozambican total protection zones are managed by DNAC. However, certain management powers are devolved to COGEPs. Local communities residing within rural land are, furthermore, entitled to participate in natural resource management, as well as, utilise customary norms and practices in exercise of these competencies. Mozambique again exemplifies a more liberal and open approach to management; at odds with that witnessed in South Africa and Zimbabwe. Protection zones appear to present a form of shared governance, while rural areas typify governance by indigenous peoples and local communities.

4.5.4 Intergovernmental management cooperation

The administration of issues of common interest and mutual impact occur through joint management. Authority, responsibility and accountability are, therefore, required to be shared between various formally and informally 'entitled governmental and non-governmental actors'.⁵⁴⁷ Such actors are, furthermore, obliged to sit on a 'management body with decision making authority and responsibility', that is, the JMB.⁵⁴⁸ While consensus is not a material requirement with such sitting, it is undertaken within the GLTP,⁵⁴⁹ therefore, amplifying the joint management requirements. This is problematic for a number of reasons. First, the composition of the JMB does not provide seats to all requisite actors. Accordingly, local communities, private land owners and other non-governmental stakeholders are excluded from the

⁵⁴⁷ Dudley *Guidelines* 26.

⁵⁴⁸ IUCN 2003 *Policy Matters* 95; Dudley *Guidelines* 26.

⁵⁴⁹ A 11(4) Treaty.

decision-making structure of the GLTP. Such parties are rather required to liaise through relevant *ad hoc* subcommittees lacking decision-making capacity. Secondly, despite efforts to preserve inter-state equality South Africa commands disproportionate management, development and economic influence over the GLTP. Efforts to balance power through a Co-ordinating party, while noble, requires review as these present adverse consequences for management continuity and consistency, as well as, intergovernmental relations.⁵⁵⁰ Accordingly, where the balance of power, reflected in either the actual composition of the JMB or the amount of power exercised by any given party, is not conducive to consensus the amplified requirements would *de facto* transform the governance type. Notwithstanding the undertaking to operate through shared or co-governance, the GLTP, therefore, exemplifies a top-down approach more akin to traditional governance by government.

4.5.5 Recommendations

TFCAs should satisfy the general IUCN definitions of: 'transfrontier conservation area', 'protected area', and the various management categories.⁵⁵¹ Evidence of co-management is, therefore, mandatory; facilitated through formal and/or informal institutional mechanisms for co-operation.⁵⁵² While existing institutional mechanisms (represented by the Trilateral Ministerial Committee, the JMB and the Co-ordinating Party) are provided for in a formal agreement, this mechanism fails to incorporate representatives of: all sectors and levels of government and lead protection area agencies; NGOs; and indigenous peoples and local communities. The Treaty currently contains only cursory commitment to management harmonisation. A well-balanced, sustainable and effective protected area system should utilise all available management and governance options. It is therefore recommended that transboundary advisory bodies be established to include representatives of all stakeholder groups.⁵⁵³ Additionally recommended, is the compulsory facilitation, through formal establishment or administrative agreement, of joint technical working groups. These are to

⁵⁵⁰ Mello *Intergovernmental Relations* 188.

⁵⁵¹ Lausche *Guidelines* 270.

⁵⁵² Lausche *Guidelines* 288.

⁵⁵³ Lausche *Guidelines* 288.

perform liaisonary functions between stakeholders; as the current JMB sub-committees do not adequately perform such duties.⁵⁵⁴

The Co-ordinating Party, furthermore, fails to balance inter-party power and equity; with South Africa maintaining a disproportionate influence on the GLTP.⁵⁵⁵ It is therefore recommended that this structure be reviewed and more stringent equality clauses be introduced to the Treaty. Finally, as formal agreements entrench top-down non-inclusive processes, insensitive to local strategies and institutional arrangements, recognition and incorporation of informal arrangements affording equal gravity to transboundary livelihood strategies and ecotourism is required.⁵⁵⁶

4.6 Diverse access use and benefit-sharing regimes

Co-managed protected areas are required to facilitate the equitable distribution of benefits between stakeholders.⁵⁵⁷ Transboundary conservation intensifies such onus; requiring the promotion of equity in both domestic and transnational management structures.

4.6.1 Form and nature of access use and benefit-sharing regimes

The manner in which access, use and benefit-sharing rights are entrenched, as well as, the content of these rights, differs substantially across the three domestic components of the GLTP. South Africa does not possess an official CBNRM policy; entrenching broad beneficiary tools through legislation with limited non-statutory mechanisms informing the application of these provisions. Tools operate indirectly through the space legislation allows for beneficiation, rather than by direct legislative entitlements. Communities, accordingly, rely on: the broad delineation of 'management authority', co-management agreements; pro-community mechanisms in the KNP management plan; and BSAs. Existing mechanisms are undermined by SANParks seeming unwillingness to 'interactively involve local communities

⁵⁵⁴ Lausche *Guidelines* 288.

⁵⁵⁵ Mello *Intergovernmental Relations* 188.

⁵⁵⁶ Wolmer *Tensions and Paradoxes* 9.

⁵⁵⁷ IUCN 2003 *Policy Matters* 92.

in management' of protected areas.⁵⁵⁸ Co-management agreements, accordingly, face criticism that:

'they have largely failed to achieve an equitable balance between conservation and land reform imperatives; local communities are frequently excluded from accessing the resources situated in the protected area and participating in its management; and few resources or benefits have flowed back to the local communities.'⁵⁵⁹

SANParks, furthermore, takes a unilateral approach to the designation of community participation terms of reference. Hereunder, the entity formulates terms while communities are invited to join with minimal participation; the so called 'I manage, you participate' approach.⁵⁶⁰ Holmes-Watts and Watts are of the opinion that this at best reflects 'passive participation or at worst manipulative participation', going so far as to liken current community participation to that displayed under fortress conservation.⁵⁶¹ The author's denounce such failure to promote local capacity building and participation.

Zimbabwe, conversely, opts for more limited legislative beneficiary provisions in protected areas, in favour of specific CBNRM policy. CAMPFIRES inability to effectively devolve responsibility, however, prevents the allocation of real ownership rights; precluding the emergence of communities as managerial and planning partners.⁵⁶² Fiscal devolution, through the lease of consumptive and non-consumptive rights to private operators, was proposed to accompany decentralisation. CAMPFIRES failure to correlate authority and responsibility has, however, disenfranchised communities; reducing them to 'gatekeepers' with the primary role of designating a preferred operator in return for a dividend.⁵⁶³ Child illustrates:

'the importance of people participating in deciding how their 'dividends' from wildlife should be divided between take home cash and public works. He also describes the importance of linking returns to the value of the resource

⁵⁵⁸ Holmes-Watts & Watts 2008 *FPE* 440.

⁵⁵⁹ Paterson 2009 *IUCN-EPLP* 27.

⁵⁶⁰ Watts 2006 *JSF* 77; Saxena 1997 *CIFOR special publication* 225.

⁵⁶¹ Holmes-Watts & Watts 2008 *FPE* 440.

⁵⁶² Massuanganhe *Governance* 88.

⁵⁶³ Massuanganhe *Governance* 88.

in a public ceremony, to ensure transparency and emphasise the importance of wildlife to human welfare.⁵⁶⁴

While wildlife dividends appear to be decided democratically and transparently, conflicting rights to wildlife and the failure to adequately consult communities exhibits the need for: greater recognition of local values, priorities and differentiated rights; and the alteration of the perception that private investor interests supersede those of local communities.⁵⁶⁵ Commentators, accordingly, propagate that stronger property rights need to be conferred on local communities through fundamental agrarian reform.⁵⁶⁶

Mozambique utilises a more holistic approach, instituting two main CBNRM programmes and entrenching provisions legislatively.⁵⁶⁷ CBNRM in Mozambique is substantially modelled on CAMPFIRE; evidencing similar difficulties.⁵⁶⁸ Institutional structures are heavily centralised, demonstrating a predilection for third party investors while simultaneously reducing communities to passive beneficiaries.⁵⁶⁹ Initiatives are, additionally, predominantly externally initiated with community participation determined by government and/or donor organisations.⁵⁷⁰ Mozambique, additionally recognises no direct customary or inherent right over natural resources, creating rather an enabling environment which facilitates community participation in the development and exploitation of natural resources, however, the relatively limited nature of Mozambique's commercial wildlife sector curtails possible benefits.⁵⁷¹ Additionally, while a percentage of public revenue or tax is ring-fenced for local communities; actual collection hereof is low and is exacerbated by weak enforcement capacities.⁵⁷² However, despite legislative, economic and practical constraints CBNRM has experienced

⁵⁶⁴ Child 1996 *Biodiversity and Conservation* 364.

⁵⁶⁵ Massuanganhe *Governance* 88.

⁵⁶⁶ Murphree *CBNRM keynote address*; Child 1996 *Biodiversity and Conservation* 364.

⁵⁶⁷ Tchuma Tchato and CBNRM FAO.

⁵⁶⁸ Anstey "Community Conservation" in *African Wildlife* 81-84; Makatkala & Mushova 2001 *FAO-DNFFB* 12.

⁵⁶⁹ Virtanen 2005 *Sustainable Development* 5.

⁵⁷⁰ Makatkala & Mushova 2001 *FAO-DNFFB* 19-23.

⁵⁷¹ Nelson & Agrwal 2008 *Development and Change* 572.

⁵⁷² Cuco 1994 *Unasyiva* 49; Ribeiro "Institutional development" in *Sustainable Development in Mozambique* 90-91.

some success through *de facto* negotiations over resource rights and access. CBNRM, therefore, operates in the vast majority of cases in a legal vacuum.

4.6.2 Types of access use and benefit-sharing institutions

Institutions facilitating access, use and benefit-sharing are as dissimilar as the nature and form of their respective domestic regimes. South Africa possesses no specific benefit-sharing institutions. Communities rather, utilise CPAs as juristic persons through which property may be held, managed and potential benefits may be equitable distributed. CAMPFIRE has, conversely, attempted to devolve AA, historically limited to RDCs, to WWMCs or WWCs. In this manner administrative and legal rights to wildlife are devolved to producer communities, as well as, sub-district and community-level institutions. Unfortunately, these structures are only applicable outside formal protected areas and their effectiveness is undermined by RDCs retaining excessive revenue and management control.⁵⁷³ Mozambique promotes benefit-sharing institutions both within protected areas and on rural land. COGEPs endow communities with a public right to participate in state-mandated structures regulating protected areas, while the 'local community' is the primary land-holding and resource management unit over rural land.

4.6.3 Intergovernmental cooperation

The GLTP promotes an environment enabling sustainable sub-regional socio-economic development through the conflicting mechanisms of joint management and ecotourism.⁵⁷⁴ While co-management actively promotes shared responsibilities and the equitable distribution of benefits, public-private partnerships prioritise investment and economic growth over conservation and socio-economic objectives.⁵⁷⁵ Evidenced is a predilection for private-sector interests over rural livelihoods; undermining equity.⁵⁷⁶ The funding structures and managerial tools propagated by eco-regional planning entities, furthermore, reinforce a top-down approach to management.

⁵⁷³ Taylor 2009 *Biodiversity Conservation* 2572-2581.

⁵⁷⁴ A 4(d) read with preamble Treaty.

⁵⁷⁵ Wolmer 2003 *JSAS* 263.

⁵⁷⁶ Soderbaum & Taylor (2001) *JMAS* 675-695.

Wolmer, accordingly, propagates that it is crucial to determine whether new partnership arrangements prioritise investment or equity.⁵⁷⁷

Community consultation and participation in the implementation and management of the GLTP is wholly inadequate.⁵⁷⁸ While the JMP acknowledges high levels of regional poverty and unemployment,⁵⁷⁹ no mechanisms have been provided by the JMB to engagement with, and devolve equity benefits to, local communities.⁵⁸⁰ The GLTP communities have expressed concern at the evident absence of mechanisms promoting access and benefit-sharing and the costs they are required to bear in the creation of such a TFCA.⁵⁸¹ The GLTP has, accordingly, failed in its objectives to develop frameworks and strategies facilitating local community participation and tangibly benefit from the management and sustainable use of natural resources which occur with the Park.

4.6.4 Recommendations

Local communities must be involved and allowed to benefit through protected area policy formulation, planning and management. Institutional design cannot occur without due regard to regional power and politics.⁵⁸² Empowering local communities as stakeholders in the TFCA process requires secure access to land and resources; equating to more legal, economic and political community power and correspondingly an improved negotiating position with the private sector.⁵⁸³ It is therefore recommended that states incorporate community involvement and equity criteria in ecotourism concession tenders.⁵⁸⁴ Conflict between development and conservation should, additionally, be addressed through locally negotiated

⁵⁷⁷ Wolmer *Tensions and Paradoxes* 4.

⁵⁷⁸ Wolmer 2003 JSAS 277.

⁵⁷⁹ Para 11 JMP.

⁵⁸⁰ Para 12 JMP.

⁵⁸¹ Community Park Statement World Parks Congress 2003. Costs include: loss of land without compensation; loss of crop and livestock; loss of livelihoods and resources (including medical herbs); and loss of cultural attachment.

⁵⁸² Wolmer *Tensions and Paradoxes* 8.

⁵⁸³ Katerere 2001 *IUCN-ROSA*; Magome & Murombedzi "Sharing South African National Parks" in *Decolonizing Nature*; Ashley & Wolmer 2003 *Sustainable Livelihoods in Southern Africa Programme Research Paper* 18.

⁵⁸⁴ Ashley & Wolmer 2003 *Sustainable Livelihoods in Southern Africa Programme Research Paper* 18.

decision-making and power-sharing arrangements; necessitating transparency and recognition of inherent power asymmetries.⁵⁸⁵

5 CONCLUSION

Protected areas present a prerequisite for successful biodiversity conservation.⁵⁸⁶ Contemporary recognition of the need to expand existing protected area systems has necessitated the formulation of the *Strategic Plan for Biodiversity 2011-2020*. This *Strategic Plan* incorporates 20 ambitious 'Aichi Biodiversity Targets'.

Target 11 requires compliance with a number of preconditions,⁵⁸⁷ two of which have been discussed in this dissertation. First, well-governed protected areas provide an established mechanism for both safeguarding habitats and populations of species, as well as, delivering important ecosystem services.⁵⁸⁸ It is, therefore, imperative that governance and planning measures are implemented effectively and equitably.⁵⁸⁹ Secondly, protected areas are required to be well-connected to the wider landscape through the use of corridors and ecological networks facilitating connectivity, adaption to climate change and the application of the ecosystem approach.⁵⁹⁰ TFCAs, therefore, provide a unique opportunity for realising these conditions.

Part two commenced with a discussion of the underlying theory justifying TFCAs. Artificial, anthropocentric administrative boundaries rarely coincide with natural ecosystems.⁵⁹¹ Eventuated is the dispersion of ecologically valuable regions over several sovereign state jurisdictions; with natural resource management determined by diverse domestic legislation. Contemporarily, an attempt has been made to mitigate the effect of political boundaries on conservation management through recognition of bioregional, ecoregional or landscape-level protected area planning as a driving

⁵⁸⁵ Wolmer *Tensions and Paradoxes* 9.

⁵⁸⁶ Dudley *Guidelines* 10.

⁵⁸⁷ First, increase the percentage of protected areas; secondly, inclusion of areas of particular importance for biodiversity and ecosystem services; thirdly, protected areas are required to be ecologically representative; fourthly, protected areas be effectively and equitably managed; and fifthly, protected areas be well-connected.

⁵⁸⁸ CBD *Aichi Biodiversity Targets* 1.

⁵⁸⁹ Decision X/2.

⁵⁹⁰ Decision X/2.

⁵⁹¹ Wolmer *Tensions and Paradoxes* 1.

conservation paradigm.⁵⁹² This recognition has enabled protected area management to transcend arbitrary and artificial administrative and national boundaries; creating new management entities and large, continuous and ecologically coherent landscapes in the form of TFCAs.

Strengthened protected area governance structures have been identified as fundamental to worldwide conservation.⁵⁹³ Such governance is 'concerned with the interactions between the myriad of structures, processes, institutions and traditions that have a role to play in the formation and management of protected areas, how power is allocated and exercised within the protected areas, and the manner in which those who exercise such power are held accountable.'⁵⁹⁴ Three broad issues fundamentally influence the rights and obligations of those responsible for protected areas governance.⁵⁹⁵ The first relates to those who own or hold rights to land and natural resources within and/or adjacent to protected areas. The second relates to who has authority to manage land and natural resources within and/or adjacent to protected areas. The third relates to who holds the rights/benefits and is accountable for the responsibilities/costs associated with the land and resources situated within and/or adjacent to protected areas. The section delineated the issues of: management; tenure; and access and benefit-sharing as significantly influencing the quality of protected area governance, that is, good governance. Good governance was, in turn; shown to be demonstrated by the presence of various indicators, including effectiveness and equity. Part two concluded with a delineation of various governance challenges which prevent the presence of effectiveness and equity indicators. Particular attention was paid to the threat posed by: state sovereignty; fragmented domestic governance regimes; varied tenure regimes; diverse management approaches; and dissimilar access use and benefit-sharing regimes.

Part three unpacked the two distinct intergovernmental structures

⁵⁹² Dudley *Guidelines* 10; Büscher & Dietz 2005 *JTES* 7.

⁵⁹³ WPC 2003 *Durban Action Plan* Outcome 8, Main target 13 257.

⁵⁹⁴ Paterson 2010 *SALJ* 495; Borrini-Feyerabend et al *Indigenous and Local Communities* 100.

⁵⁹⁵ Graham et al *Governance Principles* 5.

within the GLTP.⁵⁹⁶ The recognition of state sovereignty was found to preserve the application of domestic administrative structures and regulatory instruments within constituent elements of the GLTP.⁵⁹⁷ Domestic legislation providing for conservation management, land tenure and access and benefit-sharing were discussed so as to create a basis for later evaluation of governance quality. The section concluded with a discussion of the new supranational governance and management structures enabling joint management over matters of common interest and mutual impact. Parties are mandated with facilitating effective and harmonised environmental management through transnational collaboration and co-operation.⁵⁹⁸ Realisation hereof required the establishment of new supranational governance and management structures enabling joint management over matters of common interest and mutual impact.⁵⁹⁹ These institutions include: the Trilateral Ministerial Committee, the Joint Management Board (JMB) and the Co-ordinating Party.⁶⁰⁰

Part four critically analysed the challenges presented by state sovereignty, institutional and legislation fragmentation, divergent tenure regimes, differing management approaches; and lack of access and benefit-sharing to the realisation of effectiveness and equity. The section concluded with a number of recommendations required for facilitating good governance within the GLTP, and thereby, the realisation of Target 11.

At present the various challenges within the GLTP appear to prevent evidence of effectiveness and equity, therefore, precluding good governance. Much work is, accordingly, required to realise the potential of this areas and attain both the Parks localised objectives and purposes, or the general objectives of TFCAs. However, through apply the various recommendations proposed above it is believed that these goals are indeed achievable.

⁵⁹⁶ Mello *Intergovernmental Relations* 187.

⁵⁹⁷ A 5(1) Treaty.

⁵⁹⁸ A 4(a)-(c) read with a 6(1), (2)(b) Treaty.

⁵⁹⁹ A 13(2) Treaty.

⁶⁰⁰ A 9 Treaty; Mello *Intergovernmental Relations* 46.

6 BIBLIOGRAPHY

Primary Sources

Statutes

South Africa

Biodiversity Management Plan for the Black Rhinoceros in South Africa
2011-2020 GN R49 in GG 36096 OF 2013-01-25.

Communal Land Rights Act 11 of 2004.

Communal Property Associations Act 28 of 1996.

Constitution of the Republic of South Africa, 1996.

Development Facilitation Act 67 of 1995.

Extension of Security of Tenure Act 26 of 1997.

GN R456 in GG 34326 of 2011-05-27.

Housing Act 107 of 1997.

Interim Protection of Informal Land Rights Act 31 of 1996.

Land Reform (Labour Tenants) Act 3 of 1996.

Limpopo Environmental Act 7 of 2003.

Marine Living Resources Act 18 of 1998.

Mountain Catchment Areas Act 63 of 1970.

National Environmental Management Act 107 of 1998.

National Environmental Management: Biodiversity Act 10 2004.

National Environmental Management: Biodiversity Act, 2004: Regulations on
Bio-prospecting, access and benefit-sharing in GN 138 of GG 30739 of 8
February 2008.

National Environmental Management: Biodiversity Act, 2004: Regulations on
Bio-prospecting, access and benefit-sharing in GN 138 in GG 30739 of 2008-
02-08.

National Environmental Management: Protected Areas Act 57 of 2003.

National Norms and Standards for the Management of Elephants in South Africa GN R251 in GG 30833 of 2008-02-29.

Provision of Certain Land for Settlement Amendment Act 26 of 1998.

Provision of Land and Assistance Act 126 of 1993.

Regulations for the Proper Administration of Special Nature Reserves, National Parks and World Heritage Sites GN R1061 in GG 28181 of 2005-10-28.

Rental Housing Act 50 of 1999.

Restitution of Land Rights Act 22 of 1994.

The Mpumalanga Nature Conservation Act 10 of 1998.

The National Forests Act 84 of 1988.

The Prevention of of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

Threatened or Protected Species Regulations GN R 152 in GG 29657 of 2007-02-23.

Tribal Trust Act 6 of 1979.

White Paper on Land Reform 1991.

White paper on South African Land Policy 1997

World Heritage Convention Act 49 of 1999.

Zimbabwe

Constitution of the Republic of Zimbabwe, 2009.

Regional, Town and Country Planning Act 22 of 1976 [Chapter 29:12].

Rural District Councils Act 8 of 1988 [Chapter 29:13].

Town and Country Planning Act 29 of 1960 [Chapter 35:01].

Urban Councils Act 21 of 1997 [Chapter 29:15].

EIA and Ecosystems Protection Regulations SI 7, 2007.

The Forest Act 37 of 1949 [Chapter 19:05].

Communal Land Act 20 of 1982 [Chapter 20:04].

Land Acquisition Act 3 of 1992 [Chapter 20:10].

Land Survey Act 12 of 1932 [Chapter 20:12].

Parks and Wild Life Act 14 of 1975 [Chapter 20:14].

Environmental Management Act 13 of 2002 [Chapter 20:27].

Mozambique

Agrarian Policy Resolution no.11/1995.

Constitution of the Republic of Mozambique, 2004.

Decree no.1/2000.

Decree no.11/2003.

Decree no.11/2011.

Decree no.12/2002 Regulations for Flora and Fauna Resources Protection.

Decree no.2/1994.

Decree no.40/2000.

Decree no.55/1995.

Decree no.66/1998.

Decree no.8/2010.

Decree no.93/2005 Regulations for Community Benefits from Tourism.

Environmental Law no.20/1997.

Land Law no.57/2003.

Law on Forestry and Wildlife Law no.10/1999.

Local Bodies Law no.8/2003.

Ministerial Diploma no.126/2000.

Resolution no.10/1995 and no.11/1995 National Land Policy.

Resolution no.10/1995.

Resolution no.16/2009.

Resolution no.17/2009.

Resolution no.18/2011.

Resolution no.5/1995.

Resolution no.63/2009.

Resolution no.8/1997 Policy and Strategic Development of Forestry and Wildlife.

Tourism Law no.4/2004.

Secondary Sources

Adams, B & Hulme, D 'Conservation and Communities: Changing Narratives and Practices in African Conservation' in Hulme, D & Murphree, M *African Wildlife and African Livelihoods: the Promise and Performance of Community Conservation* (2001) James Curry Ltd, Oxford.

Adams, M 'Land reform: new seeds on old ground?' (1995) 6 *Natural Resource Perspectives*.

Adams, M; Sibanda, S & Turner, S 'Land tenure reform and rural livelihoods in Southern Africa (1999) 39 *Natural Resource Perspectives*.

Adrian, D *National System Planning for Protected Areas* (1998) IUCN Gland, Switzerland and Cambridge, UK.

Anstey, S 'Necessarily vague: the political economy of community conservation in Mozambique' in Hulme, D & Murphree, M *African Wildlife and African Livelihoods: the Promise and Performance of Community Conservation* (2001) James Curry Ltd, Oxford.

Ashley, C & Wolmer, W 'Transformation or tinkering? New forms of engagement between communities and the private sector in tourism and

forestry in southern Africa' (2003) *Sustainable Livelihoods in Southern Africa Programme Research Paper*.

Badenhorst, PJ; Pienaar, J & Mostert, H *The Law of Property* 5 ed (2006) LexisNexis Butterworths, Durban.

Barkin, JS 'The evolution of the constitutional of sovereignty and the emergence of human rights norms' (1998) 27 *Journal of International Studies*.

Beltran, J (ed) *Indigenous and Traditional Peoples and Protected Areas: Principles, Guidelines and Case Studies* (2000) IUCN, Gland, Switzerland and Cambridge, UK and WWF International, Gland, Switzerland.

Benvenisti, E *Sharing transboundary resources* (2002) Cambridge University Press, Cambridge.

Birnie, P & Boyle, A *International Law and the Environment* (2001) Oxford University Press, Oxford.

Blok, R *Transboundary Conservation-Towards an Institution Framework for Integrated Management A Case Study of the Ndumo-Tembe-Futi Transfrontier Conservation Area* (LLM thesis, University of KwaZulu-Natal, 2005) University of KwaZulu-Natal.

Bond, I 'CAMPFIRE and the incentives for institutional change' in Hulme, D & Murphree, M *African Wildlife and African Livelihoods: the Promise and Performance of Community Conservation* (2001) James Curry Ltd, Oxford.

Bond, I 'The importance of sport-hunted African elephants to CAMPFIRE in Zimbabwe' (1994) 14 *TRAFFIC Bulletin*.

Bond, I *CAMPFIRE as a vehicle for sustainable rural development in the semi-arid communal lands of Zimbabwe: incentives for institutional change* (D.Phil thesis, University of Zimbabwe, 1999) University of Zimbabwe.

Borrini-Feyerabend, G; Ashish, K & Oviedo, G *Indigenous and Local Communities and Protected Areas: Towards Equity and Enhanced Conservation* (2004) IUCN, Gland, Switzerland and Cambridge, UK.

Borrini-Feyerabend, G; Dudley, N; Lassen, B; Pathak, N & Sandwith, T *Draft Governance of Protected Areas: From understanding to action* (2012) IUCN, Gland, Switzerland.

Bowman, M & Redgewell, C *International Law and the Conservation of Biological Diversity* (1996) Kluwer Law International, London.

Braak, L; Sandwith, T; Peddle, D & Peterman, T *Security Considerations in the Planning and Management of Transboundary Conservation Areas* (2005) IUCN, Gland, Switzerland and Cambridge, UK.

Brosius, P 'Ecoregions and investments: conservation by design' (Unpublished manuscript, 2003).

Büscher, B & Dietz, T 'Conjunctions of Governance: The State and the Conservation-development Nexus in Southern Africa' (2005) 4:2 *JTES*.

Chester, C; Dontje, J & Burns, W 'Transboundary Protected Areas' in Cleveland, C (ed), *Encyclopaedia of Earth*, Environmental Information Coalition and National Council for Science and the Environment (2006) Washington DC.

Child, B; Jones, B; Mazambani, D; Mlalazi A & Moinuddin H Final evaluation report: Zimbabwe natural resources management programme-USAID/Zimbabwe strategic objective no.1 CAMPFIRE communal areas management for indigenous resources. Unpublished report. USAID, Harare (2003).

Child, G 'The role of community-based wild resource management in Zimbabwe' (1996) 5 *Biodiversity and Conservation*.

Child, G *Wildlife and people: the Zimbabwean success: How the Conflict Between Animals and People Became Progress for Both* (1995) Wisdom Foundation.

Cowan, GI *Management Plan Framework: Guidance for the development of management plans in terms of the National Environmental Management: Protected Areas Act (Act 57 of 2003)* (2006) Department of Environmental Affairs and Tourism, Pretoria.

Craigie, F; Snijman, P & Fourie, M '*Environmental compliance and enforcement institutions*' in Paterson, A & Kotze, LJ (eds) *Environmental Compliance and Enforcement: Legal Perspectives* (2009), JUTA Law, Cape Town.

Crouch, N; Douwes, E; Wolfson, M; Smith, G & Edwards, T 'South Africa's bioprospecting, access and benefit-sharing legislation: current realities, future complications, and a proposed alternative' (2008) 104 *South African Journal of Science*.

Cuco, A 'The impact of structural adjustment on forestry industry in Mozambique' (1994) 45(179) *Unasyiva*.

Cumming, DHM 'Commercial and safari hunting in Zimbabwe' in Hudson, R; Drew, K & Baskin, M (eds) *Wildlife production systems: economic utilisation of wild ungulates* (1989) Cambridge University Press, Cambridge.

Curtin, D & Dekker, I 'Good Governance: The Concept and its Application by the European Union' in Curtin, D & Wessels, R (eds), *Good Governance and the European Union: Reflections on Concepts, Institutions and Substance*, (2005) Intersentia, Antwerp.

De Visser, J; Steytler, N & Machingauta, N (eds) *Local government reform in Zimbabwe: A policy dialog* (2010) *Community Law Centre*.

DEAT *CBNRM Laws, policies, international agreements and departmental guidelines that support community based natural resource management type programmes in South Africa* (2003) Department of Environmental Affairs and Tourism and GTZ Transform, Pretoria.

Dietz, T; Ostrom, E & Stern, PC 'The struggle to govern the commons' (2003) 302 *Science*.

Draper, M; Spierenburg, M & Wels, H 'African Dreams of Cohesion: Elite Pacting and Community Development in Transfrontier Conservation Areas in Southern Africa' (2003) 10:4 *Culture and Organisation*.

Du Plessis, W & Nel, LG 'An Evaluation of NEMA Based on a Generic Framework for Environmental Framework Legislation' (2001) 8:1 *SAJELP*.

Dudley, N & Phillips, A *Forests and Protected Areas — Guidance on the Use of IUCN Protected Area Management Categories* (2006) IUCN, Gland, Switzerland and Cambridge, UK.

Dudley, N (ed) *Guidelines for Applying Protected Area Management Categories* (2008) IUCN, Gland, Switzerland.

Duffy, R 'Peace Parks: The Paradox of Globalisation' (2001) 6:2 *Geopolitics*.

Duffy, R 'The potential and pitfalls of global environmental governance: The politics of transfrontier conservation in Southern Africa' (2006) 25 *Political Geography*.

Durang, T & Tanner, C *Access to land and other natural resources for local communities in Mozambique: Current Examples from Manica Province* Paper presented to the Green Agri Net Conference on 'Land Registration in Practice', Denmark (2004).

Eagles, P; McCool, S & Haynes, C *Sustainable Tourism in Protected Areas—Guidelines for Planning and Management* (2002) IUCN, Gland, Switzerland and Cambridge, UK.

Emerton, L; Bishop, J & Thomas, L *Sustainable Financing of Protected Areas: A Global Review of Challenges and Options* (2006) IUCN, Gland, Switzerland and Cambridge, UK.

Faasen, H & Watts S 'Local community reaction to the "no-take" policy on fishing in the Tsitsikamma National Park, South Africa' (2007) *Ecological Economics*.

Fall, J 'Planning protected areas across boundaries: new paradigms and old ghosts' (2003) 12(1/2) *Journal of Sustainable Forestry*.

Feris, L 'Constitutional Environmental Rights: An Underutilised Resource' (2008) 24 *SAJHR*.

Glazewski, J *Environmental Law in South Africa* 2 ed (2005) Butterworths, Durban.

Graham, J; Amos, B & Plumptre, T *Governance Principles for Protected Areas in the 21st Century, A Discussion Paper* (2003) *Institute on Governance, Parks Canada & CIDA, Ottawa.*

Graham, J; Amos, B; & Plumptre, T 'Principles for Good Governance in the 21st Century' (2003) Policy Brief 15 *Institute on Governance.*

Griffin, J; Cummings, D; Metcalfe, S & Singh, J *Study on the Development of Transboundary Natural Resource Management Areas in Southern Africa* (1999) Biodiversity Support Programme.

Hamilton, L & McMillan, L *Guidelines for Planning and Managing Mountain Protected Areas* (2004) IUCN, Gland, Switzerland and Cambridge, UK.

Hanks, J 'Transfrontier Conservation Areas (TFCAs) in Southern Africa: Their Role in Conserving Biodiversity, Socio-economic Development and Promoting a Culture of Peace' (2003) 17(1) *Journal of Sustainable Forestry.*

Hockings, M; Stolton, S & Dudley, N *Evaluating Effectiveness — A Framework for Assessing the Management of Protected Areas* (2000) IUCN, Gland, Switzerland and Cambridge, UK.

Holmes-Watts, T & Watts, S 'Legal frameworks for and the practice of participatory natural resource management in South Africa' (2008) 10 *Forest Policy and Economics.*

IUCN Commission on Environmental, Economic and Social Policy *Policy Matters: Community Empowerment for Conservation* 12 ed (2003).

IUCN Guidelines for Protected Areas Management Categories (1994) IUCN, Gland, Switzerland and Cambridge, UK.

Jackson, R *Quasi-states: sovereignty, international relations, and the Third World* (1990) University of Cambridge, Cambridge.

Johnson, I *Redefining the Concept of Governance* (1997) CIDA Quebec.

Jones, B & Chonguica, E 'Review and analysis of specific transboundary natural resource management initiatives in the southern African region' IUCN-Rosa Series on Transboundary Natural Resource Management-Paper 2 (2001) Harare, IUCN-ROSA.

Jones, B & Murphree, M 'The evolution of policy on community conservation in Namibia and Zimbabwe' in Hulme, D & Murphree, M *African Wildlife and African Livelihoods: the Promise and Performance of Community Conservation* (2001) James Curry Ltd, Oxford.

Jourdaan, P 'Spatial development initiatives (SDI's)-the official view' (1998) 15:5 *Development Southern Africa*.

Kahler, M & Lake, D 'Globalisation and Governance: definition, variation and explanation' in Kahler, M & Lake, D (eds) *Governance in a Global Economy* (2003) Princeton University Press, Princeton.

Katerere, Y; Hill, R & Moyo, S 'A critique of Transboundary Natural Resource Management in Southern Africa' in *IUCN-ROSA Series on Transboundary Natural Resource Management paper 1, Harare* (2001).

Kigenyi, F; Gondo, P & Mugabe, J 'Practice Before Policy: An Analysis of policy and Institutional Changes Enabling Community involvement in Forest Management in Eastern and Southern Africa' (2002) 10 *Forest and Social Perspectives*.

Kothari, A 'Collaboratively managed protected areas' in Lockwood, M; Worboys, G & Kothari, A (eds) *Managing Protected Areas-A Global Guide* (2006) Earthscan, London.

Kotze, LJ 'Environmental Governance' in Paterson, A & Kotze, LJ (eds) *Environmental Compliance and Enforcement: Legal Perspectives* (2009), JUTA Law, Cape Town.

Kotze, LJ 'Improving unsustainable environmental governance in South Africa: The case for holistic governance' (2006) (9) 1 *PER/PELJ*.

Kotze, LJ *A Legal Framework for Integrated Environmental Governance in South Africa and the North-West Province* (unpublished LLD thesis, North-West University, 2005) North-West University.

Kotze, LJ; Nel, J; Snyman, E & Du Plessis, W 'Strategies to Integrate Environmental Policy at the Operational Level - Towards an integrated framework for environmental authorisations' (2007) *SAJELP*.

Kumleben, ME; Sangweni, S & Ledger, JA *Board of Investigation into the Institutional Arrangements for Nature Conservation in South Africa* (1998) Minister of Environmental Affairs and Tourism.

Lausche, B & Burhenne-Guilmin, F *Guidelines for Protected Areas Legislation* (2011) IUCN, Gland, Switzerland.

Lausche, B *Guidelines for Protected Areas Legislation* (1980) IUCN, Gland, Switzerland and Cambridge, UK.

Lausche, B *The Legal Aspects of Connectivity Conservation - A Concept Paper, DRAFT 12.11.2012* (2012) IUCN, Gland Switzerland.

Lubbe, W *An analysis of the environmental framework regulating cross-border biodiversity conservation in the Maloti-Drakensberg Transfrontier Park* (LLM thesis North-West University Potchefstroom Campus, 2007) Faculty of Law, University of North-West, Potchefstroom Campus.

Magome, H & Murombedzi, J 'Sharing South African National Parks: Community land and conservation in a democratic South Africa' in Adams, W & Mulligan, M (eds) *Decolonizing Nature: Strategies for conservation in a Post-Colonial Era* (2003) Earthscan, London.

Makatkala, P; & Mushova, P 'Arranjos Institucionais para o Maneio Comunitario dos Recursos Naturais (MCRN): Perfis e Analise de 42 Iniciativas de MCRN em Mocambique' (2001) *FAO-DNFFB*.

Maluleke, L 'The Makuleke Story' available at http://www.earthlore.ca/clients/WPC/English/grfx/sessions/PDFs/session_1/Maluleke.pdf accessed 03 March 2012.

Martin, R *Communal Areas Management Programme for Indigenous Resources (CAMPFIRE), revised edition* (1986) Department of National Parks and Wild Life Management, Harare.

Marumahoko, S & Fessha, Y 'Fiscal autonomy of urban councils in Zimbabwe: A critical analysis' (2011) 15 *Law Democracy & Development*.

Massuanganhe, I *Governance, natural resources and local government in Mozambique: Institutional constraints and the role of local authorities* (PhD thesis, University of the Free State. 2008) University of the Free State.

Mello, D *Intergovernmental relations in the management of the Great Limpopo Transfrontier Park* (PHD thesis, University of Pretoria, 2007) Faculty of Economic and Management Sciences, University of Pretoria.

Miller, CDL & Pope, A *Land Title in South Africa* (2000), JUTA Law, Cape Town.

Minaar, A 'Border control and regionalism' (2001) 10:2 *African Security Review*.

Murombedzi, J 'Communities, rights, costs and benefits: natural resource stewardship and community benefits in Zimbabwe's CAMPFIRE programme' in Hulme, D & Murphree, M *African Wildlife and African Livelihoods: the Promise and Performance of Community Conservation* (2001) James Curry Ltd, Oxford.

Murphree, M Optimal principles and pragmatic strategies: creating an enabling politico-legal environment for community based natural resource management (CBNRM) Keynote Address, Conference of the Natural Resource Management Programme, Chobe Botswana (1995).

Nagai, M *United Nations Environmental Programme (UNEP)*.

Negrao, J *The Mozambican land campaign 1997-99* (1999) Paper for the Workshop on The Associative Movement, Maputo .

Nelson, F & Agrwal, A 'Patronage or Participation? Community-based Natural Resource Management Reform in Sub-Saharan Africa' (2008) 39(4) *Development and Change*.

Nielsen, S & Chikoko, H 'The Great Limpopo Transfrontier Park, how great is the idea?' (2002) 1:1 *Newsletter of the Southern African TBNRM network*.

Olsen, DM *The Global 200: A Representation Approach to Conserving the Earth's Distinctive Ecoregions* (2000) World Wildlife Fund-US, Conservation Science Program.

Ostrom, E & Schlager, E 'Property-rights regimes and natural resources: A conceptual analysis' (1992) 68 *Land Economics*.

Ostrom, E; Burger, J; Field, CB; Norgaard, RB & Poliocansky, D 'Revisiting the commons: local lessons, global challenges' (1999) 284 *Science*.

Parks and Wildlife Management Authority website available at <http://www.zimparks.org/> access on 02 February 2013.

Paterson, A 'Clearing or Clouding the Discourse- A South African Perspective on the Utility of the IUCN Protected Areas Governance Typology' (2010) 127 *SALJ*.

Paterson, A 'Legal Framework for Protected Areas South Africa' (2009) 81 *IUCN-EPLP*.

Phillips, A (ed) *Financing Protected Areas—Guidelines for Protected Areas Managers* (2000) IUCN, Gland, Switzerland and Cambridge, UK.

Phillips, A *Management Guidelines for IUCN Category V Protected Areas, Protected Landscapes/Seascapes* (2002) IUCN, Gland, Switzerland and Cambridge, UK.

Pienaar, G 'Aspects of land administration in the context of good governance' (2009) 12:2 *PER/PEJL*.

Pienaar, GJ 'Die Suid-Afrikaanse registrasiesistelsel-waarheen vorentoe?' (1996) *JSAL*.

Pienaar, J & Mostert, H 'The balance between burial rights and land ownership in South Africa: Issues, content, nature and constitutionality' (2005) *SALJ*.

Ramutsindela, M 'The perfect way to ending a painful past? Makuleke land deal in South Africa' (2002) 33 *GeoForum*.

Reid, H 'Contractual National Parks and Makuleke Community' (2002) 29(2) *Human Ecology*.

Ribeiro, A 'Institutional development for community-based resource management research' in Ferrez, B & Munslow, B (eds) *Sustainable Development in Mozambique* (1999) James Curry Ltd, Oxford.

Rogers, KH *Biodiversity Custodianship in SANParks. A Protected Area Management Planning Framework* (2003) SANParks, Pretoria.

Ron, T *Southern Africa Development Community Proposed Framework for Transfrontier Conservation Areas: Issues and options report* (2007).

Sale, K *Dwellers in the Land: The Biological Vision* (2000) University of Georgia Press, Georgia.

Sands, P *Principles of International Environmental Law* (2003) Cambridge University Press, Cambridge.

Sandwith, T; Lockwood, M & Gurung, C 'Linking the Landscape' in Lockwood, M; Worboys, G & Kothari, A (eds) *Managing Protected Areas: A Global Guide* (2006) UK and USA: Earthscan.

Sandwith, T; Maze, K; Barnett, M; Frazee, S & Cadman, M 'Mainstreaming Biodiversity through South Africa's Bioregional Conservation Programmes: Top-Down and Bottom-Up' in Petersen, C & Huntley, B *Mainstreaming Biodiversity in Production Landscapes* (2005) Global Environmental Facility.

Sandwith, T; Shine, C; Hamilton, L & Sheppard, D *Transboundary Protected Areas for Peace and Co-operation* (2001) IUCN, Gland, Switzerland.

Saxena, NC 'The saga of participatory forest management in India' (1997) *CIFOR special publication*.

Scones, I & Wolmer, W (eds) 'Livelihoods in crisis: new perspectives on governance and rural development in southern Africa' (2003) 34(3) *IDS Bulletin*.

Simon, D 'Regional development-environmental discourses, policies and practices in post-apartheid southern Africa' in Grant, J & Soderbaum, F (eds) *New Regionalism in Africa* (2003) Ashgate Publishing Ltd, Aldershot.

Singh, J 'Transboundary conservation in the African context: A threat to sovereignty?' Paper presented at the Border Regions in Transitions- IV conference: Rethinking Boundaries, Geopolitics, Identities and Sustainability (2000).

Soderbaum, F & Taylor, I 'Transmission belt for transnational capital or facilitator for development? Problematizing the role of the state in the Maputo Development Corridor' (2001) 39(4) *Journal of Modern African Studies*.

Spong, PJ; Booth, V & Walmsley, B 'Country chapter on Zimbabwe' in the Southern African Institute for Environmental Assessments *EIA in Southern Africa* (2003) African Institute for Environmental Assessment, Windhoek.

Steenkamp, C & Uhr, J 'The Makuleke land claim: Power relations and community-based natural resource management' (2000) Evaluating Eden Series Discussion Paper No. 18 *International Institute on Environment and Development*.

Stein, R 'Regulation of Waste Management in South Africa: A Case for Integration' 1997 (4) *South African Journal of Environmental Law and Policy*.

Taylor, R & Bond, I 'Participatory technology development for community based wildlife management in Zimbabwe: The WWF support to CAMPFIRE Project' in *personal, societal and ecological values of wilderness. Proceedings of the 6th World Wilderness Congress, Bangalore* (1999).

Taylor, R 'Community based natural resource management in Zimbabwe: the experience of CAMPFIRE' (2009) 18 *Biodiversity Conservation*.

Taylor, R 'Wildlife management and utilization in a Zimbabwean communal land: a preliminary evaluation in Nyaminyami district, Kariba' in Van Hoven, W; Edebes, H & Conroy, A (eds) *Wildlife ranching: a celebration of diversity* (1994) Promedia, Pretoria.

Thomas, L & Middleton, J *Guidelines for Management Planning of Protected Areas* (2003) IUCN, Gland, Switzerland and Cambridge, UK.

United Nations Development Programme *Governance for Sustainable Human Development* UNDP Policy Paper (2005).

United Nations Development Programme *Governance for Sustainable Human Development* (2005) UNDP Policy Paper.

USAID 'Tourism Concessions in Protected Areas in Mozambique: Analysis of tourism concession models in protected areas in Mozambique' (2012) *SPEED-Reports*.

Van Ameron, M & Büscher, B 'Peace parks in Southern Africa: bringers of an African Renaissance?' (2005) 43:2 *Journal of Modern African Studies*.

- Van Ameron, M 'National Sovereignty & transboundary protected areas in Southern Africa' (2002) 58 *GeoJournal*.
- Van der Linde, H; Oglethorpe, J; Sandwith, T; Snelson, D & Tessema, Y 'Beyond Boundaries: Transboundary Natural Resource Management in Sub-Saharan Africa' (2001) *Biodiversity Support Program*.
- Van der Merwe, GG *Sakereg* 2 ed (1989) Butterworths, Durban.
- Van der Walt, AJ 'Land reform in South Africa since 1990' (1995) *SAPL*.
- Vasilijevic, M 'Transboundary conservation: An emerging concept in environmental governance' in Erg, B; Vasilijevic, M & McKinney, M (eds) *Initiating effective transboundary conservation: A practitioner's guideline based on the experience from the Dinaric Arc* (2012) IUCN, Gland, Switzerland.
- Virtanen, P 'Community-Based Natural Resource Management in Mozambique: A Critical Review of the Concept's Application at Local Level' (2005) 13 *Sustainable Development*.
- Walmsely, B & Patel, S *Handbook on environmental assessment legislation in the SADC Region* 3ed (2011) Development Bank of Southern Africa (DBSA) in collaboration with the Southern African Institute for Environmental Assessment (SAIEA), Pretoria.
- Watts, S 'Strategic developments in natural forest conservation in South Africa' (2006) 22 *Journal of Sustainable Forestry*.
- Weiss, T 'Governance, Good Governance and Global Governance: Conceptual and Actual Challenges' (2000) 21(5) *Third World Quarterly*.
- Whande, W 'Community-based natural resource management in the Southern Africa region: An annotated bibliography and general overview of literature 1996-2004' (2007) 24 *PLASSG*.
- Wilhusen, P; Brechin, S; Fortwangler, C & West, P 'Reinventing a square wheel: critique of a resurgent 'protection paradigm' in international biodiversity conservation' (2002) 15 *Society and Natural Resources*.

Wilkie, D; Adams, W & Redford, K 'Protected Areas, Ecological Scale, and Governance: A Framing Paper' in Redford, K & Grippio, C (eds) *Protected Areas, Governance and Scale*, Wildlife Conservation Society (2008) New York.

Wolmer, W 'Transboundary conservation: the politics of ecological integrity in the Great Limpopo Transfrontier Park' (2003) 29(1) *Journal of Southern African Studies*.

Wolmer, W 'Transboundary Protected Area governance: tensions and paradoxes' *Paper prepared for the workshop on Transboundary Protected Areas in the Governance Stream of the 5th World Parks Congress, Durban South Africa* (2003).

Woodley, S; Bertzky, B; Crawhall, N; Dudley, N; Londono, J; MacKinnon, K; Redford, K & Sandwith, T 'Meeting Aichi target 11: what does success look like for protected area systems?' (2012) 18(1) *PARKS*.

World Bank, *A Decade of Measuring the Quality of Governance: Governance Matters*, World Bank Governance Indicators Project (2007) Washington.

World Commission on Protected Areas *Principles and Guidelines on Indigenous and Traditional Peoples and Protected Areas* (1999) IUCN, Gland, Switzerland and Cambridge, UK.

Zbicz, D 'Transfrontier Ecosystems and Internationally Adjoining Protected Areas' in: the World Conservation Monitoring Centres *Ecosystems* (1999) Nicholas School of the Environment, Duke University, Durham.

Zimbabwe Institute *Local Government: Policy Review* (2005) Policy document prepared for the Zimbabwe Institute.

International reports, conventions and protocols

Convention on Biological Diversity Aichi Target 11, Nagoya, 2010.

Convention on Biological Diversity Conference of Parties IX, Bonn, 2008.

Convention on Biological Diversity Conference of Parties VII, Kuala Lumpur, 2004.

Convention on Biological Diversity Conference of Parties VIII, Curitiba, 2006.

Convention on Biological Diversity Conference of Parties X, Nagoya, 2010.

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Convention on Migratory Species and Wild Animals.

Global Biodiversity Outlook, Nairobi, 2010.

Indigenous and Tribal Peoples' rights over their ancestral lands and natural resources (Norms and Jurisprudence of the Inter-American Human Rights System, 2009.

IUCN World Conservation Congress.

Programme of Work on Protected Areas, approved at COP 7, Kuala Lumpur, 2004.

Ramsar Convention.

Recommendations from, the Vth World Parks Congress (WPC), Durban, South Africa, 2003.

SBSTTA, Nairobi, 2010.

The Bruntland Report 1987.

The Durban Accord, the Vth World Parks Congress (WPC), Durban, South Africa, 2003.

The Durban Action Plan, the Vth World Parks Congress (WPC), Durban, South Africa, 2003.

The International Labour Organisation (ILO) Convention, no. 169, 1989.

Treaty concluded between the South African, Zimbabwean and Mozambican Governments establishing the GLTP.

United Nations Convention on the Law of the Sea (UNCLOS) 1982.

World Conservation Congress IV.

World Conservation Congress, Bangkok, 2004.

World Conservation Congress, Barcelona, 2008.

World Heritage Convention.

World Parks Congress V.