

Sustainable tourism development in transfrontier conservation areas: A legal perspective

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DEDICATION

To all the women with a footprint on this work.

To Willard, Marylin, Benjamin, Nazareth and Joseph, my all.

To my parents, Anne and Maxton, you are my glory.

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The information used and presented in this thesis is correct and up to date until 1 November 2018 when research for this thesis was concluded. Any later political, social and/or legal developments have not been considered.

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ABSTRACT

Transfrontier conservation areas (TFCAs) originate from the idea of conservation across international boundaries. Within the SADC region, they are defined as areas or components of large ecological regions that straddle the boundaries of two or more countries, encompassing one or more protected areas, as well as multiple resource use areas. While the objectives of TFCAs are manifold, key among these are biodiversity conservation, improvement of livelihoods - poverty alleviation and economic development. Within SADC, tourism is identified as a key driver of these objectives. To explore this further, the study embarks on a case study of the Great Limpopo Transfrontier Conservation Area (GLTFCA), the oldest and second largest TFCA in the region, involving South Africa, Mozambique and Zimbabwe. From the GLTFCA, it is established that challenges exist with the manner in which tourism development is undertaken. However, it is further established that these challenges do not necessarily stem from the tourism development itself but from the weaknesses in the governance structures of this TFCA. In particular, the exclusion of local communities as key governance actors in the GLTFCA is seen to be detrimental to conservation and perpetuates poverty. Superimposed on these weaknesses, the tourism development therefore fails to adequately promote biodiversity conservation, improvement of livelihoods - poverty alleviation and economic development in the GLTFCA.

To resolve these challenges, the study explores the concept of sustainable tourism development from a legal perspective guided by the question: what is the legal framework necessary, at domestic level – in TFCA participating countries to ensure that sustainable tourism development promotes the key SADC TFCA objectives? Through the aims or policy implications of sustainable tourism development, the study determines a legal framework comprising of the relevant TFCA governance actors as well as the governance-based tools that are necessary to promote the TFCA objectives. The domestic legal frameworks of the GLTFCA participating countries are measured against this legal framework to establish whether they promote sustainable tourism development. It is established that the domestic legal frameworks of South Africa, Mozambique and Zimbabwe, individually and as a whole, neither provide effectively for all relevant TFCA governance actors, especially local communities; nor for the tools that

promote biodiversity conservation, the improvement of livelihoods-alleviation of poverty and economic development in the GLTFCA. Thus, the legal framework of the GLTFCA does not provide for sustainable tourism development as it should. For this reason, the study's principal recommendation is the adoption, by all SADC TFCA participating countries, of a domestic legal framework for sustainable tourism development with specific elements which provides for the key TFCA governance actors as well as the relevant governance-based tools.

Keywords: TFCAs, GLTFCA, biodiversity conservation, improvement of livelihoods-alleviation of poverty, economic development, tourism, sustainable tourism development, governance actors, governance-based tools, domestic legal framework

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LIST OF ABBREVIATIONS AND ACCRONYMS

ANAC	Administração Nacional Das Áreas de Conservação
APITs	Áreas Prioritárias para Investimento no Turismo
ASGISA	Accelerated and Shared Growth Initiative for South Africa
B-BBEE	Broad-Based Black Economic Empowerment
BBO	Buy/Build/Operate
BOO	Build/Own/Operate
BOT	Build/Operate/Transfer
BTO	Build/Transfer/Operate
CAMPFIRE	Community Areas Management Programme for Indigenous Resources
CBD	Convention on Biological Diversity
CBNRM	Community-based natural resources
COGEPs	Co-management councils
CPA	Communal Property Association
CPPPs	Community-public private partnerships
CSR	Corporate social responsibility
DTI	Department of Trade and Industry
DUATs	Direito de Uso e Aproveitamento de Terra
EIA	Environmental impact assessment
EMA	Environmental Management Act
FZS	Frankfurt Zoological Society
GDP	Gross Domestic Product
GEAR	Growth, Employment and Redistribution
GLTFCA	Great Limpopo Transfrontier Conservation Area
GLTP	Great Limpopo Transfrontier Park

GNP	Gonarezhou National Park
HRIAs	Human rights impact assessments
IDPs	Integrated Development Plans
INATUR	Instituto Nacional de Turismo
IUCN	International Union for Conservation of Nature
ILO	International Labour Organisation
JMPs	Joint Management Plans
KNP	Kruger National Park
LNP	Limpopo National Park
MECs	Provincial Ministers of the Executive Council
MINMEC	Tourism Ministers and Members of Council Meeting
MIPTECH	Interprovincial Technical Committee on Tourism
MITADER	Ministério da Terra, Ambiente e Desenvolvimento Rural
MOUs	Memoranda of understanding
NDP	National Development Plan
NEMA	National Environmental Management Act
NEM:BA	National Environmental Management: Biodiversity Act 10 of 2003
NEM:PAA	National Environmental Management: Protected Areas Act 57 of 2003
NEPAD	New Partnership for Africa's Development
NEPAD EAP	NEPAD Environment Action Plan
NGOs	Non-governmental organisations
OECD	Organisation for Economic Cooperation and Development
PELJ	Potchefstroom Electronic Law Journal
PER	Potchefstroomse Elektroniese Regsblad
RDP	Reconstruction and Development Programme
RETOSA	Regional Tourism Organisation of Southern Africa

PARPA	Plano de Accao para Reducao da Pobreza Absoluta
PPPs	Public Private Partnerships
PWA	Parks and Wildlife Act
PWMA	Zimbabwe Parks and Wildlife Management Authority
PWMAB	the Parks and Wild Life Management Authority Board
RDCs	Rural District Councils
RISDP	Regional Indicative Development Strategy
SADC	Southern African Development Community
SAJELP	South African Journal of Environmental Law and Policy
SALGA	South African Local Government Association
SANBI	South African National Biodiversity Institute
SANParks	South African National Parks
SAPL	South African Public Law
SAT	South African Tourism
SDGs	Sustainable Development Goals
SMEs	Small to medium enterprises
SMMEs	Small Medium and Micro Enterprises
SEZs	Special Economic Zones
SPLUMA	Spatial Planning and Land Use Management Act
TDIDR	Tourism Development Induced Displacement and Resettlement
TFCAs	Transfrontier conservation areas
TFPs	Transfrontier parks
THETA	Tourism and Hospitality Education and Training Authority
TLGFA	Traditional Leadership and Governance Framework Act
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development

UNEP	United Nations Environmental Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNSDJ	United Nations Sustainable Development Journal
USD	United States Dollar
UNWTO	United Nations World Tourism Organisation
VAT	Value Added Tax
YBIEL	Yearbook of International Environmental Law
ZIMASSET	Zimbabwe Agenda for Sustainable Socio-Economic Transformation
ZTA	Zimbabwe Tourism Authority

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CHAPTER 1

Introduction

1.1 Introduction

Transfrontier conservation areas (TFCAs) or transboundary conservation areas are global phenomena, principally established for the conservation of biological diversity across international boundaries.¹ More than 200 transboundary conservation areas span across the globe, covering over four million square kilometres.² The Southern African Development Community (SADC) region has proposed 18 TFCAs.³ Of the 18 TFCAs, six have been established by way of treaties or protocols, seven are in the process of establishment and five are still in the conceptual stages. The key driver of TFCAs in the SADC region is tourism, perceived as able to address both environmental concerns and economic development. This study explores the conceptualisation of TFCAs within the SADC region and how tourism has been developed in promoting the objectives of these TFCAs. It focuses on the challenges arising from the manner in which tourism development is undertaken, by way of a case study of the Great Limpopo Transfrontier Conservation Area (GLTFCA). The study seeks to resolve these challenges through the concept of sustainable tourism development, albeit its application in the TFCA context, within the domestic legal frameworks of the GLTFCA participating countries. For this reason, this chapter provides an overview of the problems arising from tourism development in the SADC TFCAs, and the GLTFCA in particular. It also sets out the direction of this study by identifying the research question and objectives as well as the research methodology employed in this study. The final aspect of this chapter is an outline of the remaining chapters of this study.

1 See para 2.2.1 below.

2 SADC 2012 <https://www.sadc.int/themes/natural-resources/transfrontier-conservation-areas/>; Peace Parks Foundation 2013 www.peaceparks.org.

3 SADC 2012 <https://www.sadc.int/themes/natural-resources/transfrontier-conservation-areas/>; Peace Parks Foundation 2013 www.peaceparks.org.

1.2 Problem statement

To understand the problem arising from tourism development in the SADC TFCAs, it is necessary to highlight the TFCAs phenomena within the SADC region, the key objectives of these TFCAs, the development of tourism in SADC TFCAs, with specific reference to the GLTFCA and the notion of sustainable tourism development.

1.2.1 Transfrontier conservation areas

SADC identifies TFCAs as areas or components of large ecological regions that straddle the boundaries of two or more countries, encompassing one or more protected areas, as well as multiple resource use areas.⁴ The multiple resource use areas in TFCAs comprise of various land uses, which include among others, national parks, private game reserves, communal natural resource management areas, hunting concessions, urban and peri-urban centres, large agricultural and extractive industrial operations, and vast water retention hubs for hydropower generation.⁵ Within this Southern African context, TFCAs are regarded as initiatives that can contribute to the enhancement of cooperation between States, government agencies and communities across political boundaries.⁶ In fact, TFCAs are loosely referred to as “peace parks”, seen as a means to mitigate international antagonisms and promote a spirit of international cooperation on the African continent.⁷ TFCAs are also promoted as a means to ensure the cooperation of countries with similar biodiversity challenges to ensure sustainable resource management and the regulation of biodiversity.⁸ Moreover, it is believed that the establishment of TFCAs in SADC may be able to overcome the socio-economic marginalisation associated with the isolation of border areas.⁹ Thus, member States of SADC have entered into bilateral and multilateral agreements as a demonstration of the political will to

4 Article 1 of the *SADC Protocol on Wildlife Conservation and Law Enforcement*, 1999. See also para 2.2.1 below.

5 See para 2.2.1 below.

6 Quinn, Broberg and Freimund 2013 <http://www.re-press.org/content/view/17/33/>.

7 Van Amerom and Büscher 2005 *Journal of Modern African Studies* 161; Murphree “Forward” xviii.

8 See para 2.2.3.1 below.

9 Murphree xviii. See also para 2.2.3.3 below.

promote TFCAs and a regional approach to, *inter alia*, biodiversity conservation, the improvement of livelihoods and economic development, and policy harmonisation.¹⁰

The objectives of TFCAs may vary based on the establishing agreements by participating countries. However, in the SADC region the most prominent of them relate, in one way or another, to biodiversity conservation, the improvement of livelihoods and economic development. The *SADC Protocol on Wildlife Conservation and Law Enforcement* of 1999 (hereafter *Wildlife Protocol*) commits the SADC member States to promote the conservation of the shared wildlife resources through the establishment of TFCAs.¹¹ Hence, countries demarcate ecological regions that straddle across national borders to achieve the conservation of biological resources, using an ecosystem approach. Most of the establishing agreements of these TFCAs in SADC articulate this objective as one of the key reasons for their establishment,¹² with the aim of maintaining and restoring linkages in ecological landscapes, cross-border watersheds, ecosystem processes and critical habitats.¹³ The rationale behind this objective is that TFCAs yield more mutual conservation benefits for the cooperating parties than would be achieved independently.¹⁴

However, as multiple resource areas, the success of biodiversity conservation is dependent on the involvement of the people living within these areas. Thus, any investments by local residents in these TFCAs should match the benefits they derive from their inputs.¹⁵ The efforts towards biodiversity conservation that are introduced by stakeholders such as governments, non-governmental organisations (NGOs) and

10 Bocchino Monitoring and Evaluation of Transfrontier Conservation Areas 12; Ron "SADC Proposed Framework for TFCAs" 4. See para 2.2.2.2 below.

11 Article 4(f) of the *Wildlife Protocol*.

12 See for instance, a 1 of the Kgalagadi Transfrontier Park Agreement (2000); a 4 of the Greater Limpopo Transfrontier Park Treaty (2002); a 7 of the Great Mapungubwe TFCA Final Treaty for Approval (2010).

13 See para 2.2.3.1 below.

14 See para 2.2.3.1 below.

15 Murphree 2013 xvi. See also para 2.2.3.1 below.

private bodies must also involve local communities as key drivers. As it is, the involvement of local communities appears to be recognised in theory, but not so much in practice. This contributes substantially to the challenges within the region associated with poverty. In particular, approximately 300 million people in the SADC region alone experience high levels of poverty.¹⁶ The extent of poverty arising from the declining food production in Africa only is a justification for the TFCA programme in Southern Africa. Eradicating poverty in TFCAs therefore calls for measures to ensure that rural communities are the primary beneficiaries of TFCAs and that their livelihoods are improved. The reason for this is that rural communities living within or adjacent to TFCAs are usually marginalised into buffer zones with access to peripheral economic activities and reduced access to natural resources. Therefore, it is imperative for the TFCAs to improve their livelihoods and thus alleviate poverty in these peripheral regions. In this study, this translates into the TFCA objective of the improvement of livelihoods-alleviation of poverty.¹⁷

The continued exclusion of local communities in any meaningful participation in the decision-making in and beneficiation from TFCAs, is evidence of a policy of exclusion advanced in the establishment of protected areas in the region coupled with the drive to pursue economic development through regional integration. TFCA participating countries in the region envisage that these TFCA initiatives will boost their economic development both jointly and individually. This is consistent with the SADC agenda of regional economic integration through cooperation between and amongst member States in regional and national programmes for economic development. The basis for establishing TFCAs in the region is therefore that they are able to pay for themselves, generate revenue for their own sustenance, the surrounding communities as well as for national and regional economic development.¹⁸ This study concentrates on this objective at national level where the focus is on the economic benefits for the TFCA components and the extent to which

16 See para 2.2.3.2 below.

17 See para 2.2.3.2 below.

18 Paragraph 4.2.7 SADC Programme for TFCAs (2013); Duffy 2003 *Political Geography* 96.

they contribute to national economic growth, alleviation of poverty and biodiversity conservation. To achieve this objective, there is a particular emphasis on investments in tourism.¹⁹ This study focuses on this very agenda of using tourism as the driver of TFCAs.

1.2.2 Tourism development in SADC TFCAs

It is important to understand tourism itself, as a complex phenomenon,²⁰ in order to derive maximum benefits therefrom. This study adopts the conceptualisation of tourism by the United Nations World Tourism Organisation (UNWTO),²¹ identifying it as a social, cultural and economic phenomenon involving the movement of people outside of their usual environment for various purposes with implications on the economy, the environment and the local population at the destination.²² For TFCAs, this implies the movement by people other than the ordinary residents in these areas for various purposes with implications on the economies of the countries involved, the TFCA environment itself and beyond as well as the local communities residing within and in surrounding areas.²³ It is therefore important to ensure that the tourism development that occurs within TFCAs promotes the key objectives of these TFCAs.

1.2.2.1 SADC legal instruments for tourism development in TFCAs

The key normative instruments in SADC on TFCAs and tourism, the *Wildlife Protocol* and the *SADC Protocol on Tourism Development*, 1998 (hereafter *Tourism Protocol*) respectively, appear to be clear on the position of tourism as the key driver of TFCAs and the economic development therein. However, the same cannot be said of the TFCA objectives of biodiversity conservation and the improvement of livelihoods-

19 Paragraph 4.2.7 *SADC Programme for TFCAs*; Wolmer 2003 "Transboundary Conservation" 266. See also Pratt, Rivera and Blen "Tourism Investing in energy and resource efficiency" 414; Neto 2003 *Economic and Social Affairs* 4; UNWTO *Sustainable Tourism for Development* 14, 37.

20 See para 2.3.1 below on the various definitions of tourism.

21 UNWTO Date Unknown <http://media.unwto.org/en/content/understanding-tourism-basic-glossary>.

22 See para 2.3.1.1 below.

23 See para 2.3.1.1 below.

alleviation of poverty, something that this study explores in detail.²⁴ Suffice to say, a lack of clarity with respect to these two objectives in the key SADC legal instruments potentially allows tourism development by participating countries that may negatively influence biodiversity conservation and adversely affect the livelihoods of local communities whose very existence depends on the natural resources in these areas. As an example, this study undertakes a case study of the GLTFCA.

1.2.2.2 Tourism development in the GLTFCA: A case study

This study explores the GLTFCA because it is the oldest and the second largest TFCA in the region involving more than two participating countries and a variety of land uses. Hence, this TFCA presents compound socio-economic complexities that come with the multiple resource areas involved. It comprises of the protected areas – including three national parks making up the Great Limpopo Transfrontier Park (GLTP) as well as communal and private land located -in South Africa, Mozambique and Zimbabwe, and a series of private wildlife reserves and conservancies.²⁵ The objectives of the GLTFCA, coined in the *Great Limpopo Transfrontier Park Treaty* (hereafter *GLTP Treaty*),²⁶ principally relate to biodiversity conservation and economic development through ecotourism. However, the Treaty, which was signed ahead of the SADC TFCA programme coming in existence, is silent on the improvement of livelihoods-alleviation of poverty.²⁷ This omission, however, also permeates from the institutional framework of the GLTP, which does not include local communities.²⁸ This suggests an anomaly in the meaning and branding of ecotourism for the GLTFCA.²⁹ The effects are evident in the tourism developments undertaken in the country components.³⁰ In all three GLTFCA components, tourism is concentrated in the area in and around the national parks, namely, the Kruger

24 See para 2.3.2.1 below.

25 See para 2.4.1.1 below.

26 For the scope of the *GLTP Treaty*, see para 2.4.1 below.

27 See para 2.4.1.1 below.

28 See para 2.4.1.1 below.

29 See para 2.4.1.1 below.

30 See para 2.4.2 below.

National Park (KNP) in South Africa, the Limpopo National Park (LNP) and more recently Zinave and Banhine National Parks in Mozambique³¹ as well as the Gonarezhou National Park (GNP) in Zimbabwe.³² However, much of the tourism activities occur in the KNP, with a higher population of wildlife species and advanced infrastructural development compared to the national parks in the other two countries, giving rise to discrepancies in revenue sharing across the GLTFCA.³³ This is made clearer by an overview of the individual country components.³⁴

In the South African component, tourism development is good with more than a million visitors every year, generating annual income of around US\$40 million.³⁵ Nevertheless, this has seen the KNP exceeding its carrying capacity due to overcrowding. Closely related is the commodification of the KNP and its wildlife to meet its financial obligations, in accordance with the commercialisation strategy of the South African National Parks (SANParks). Inevitably, this compromises the TFCA objective of biodiversity conservation in this country. Even more, the SANParks Commercialisation Strategy does not promote the improvement of livelihoods for the people in the buffer zone of the KNP. Further, the local communities situated around the KNP are subject to various degrees of poverty and poor access to basic services. Moreover, a number of them with land rights over land in or adjacent to the KNP have not benefitted much from the tourism development, where such rights have been awarded by the national government.³⁶ Although they have claims over this land, many of those land claims have been contentious with outcomes that have not yielded significant or any benefits for these communities. Of note are the claims and settlements over land belonging to the Makuleke, Mnisi and Mhlanganisweni communities. While the Makuleke's claim resulted in land restitution and a subsequent agreement for the co-management of the Makuleke contractual park,

31 See para 2.4.2 below on the status of these two national parks in the GLTFCA.

32 See para 2.4.1.1 below.

33 See para 2.4.1.1 below.

34 See paras 2.4.2.1, 2.4.2.2 and 2.4.2.3 below.

35 Paragraph 11 of the GLTP Joint Management Plan, 2002; para 2.2.1.1 of the KNP Management Plan; Spenceley 2006 *Development Southern Africa* 653.

36 See para 4.3.2.3 below.

the concessioning is not without its flaws with respect to unequal power relations between the community and SANParks, specifically in terms of activities allowed in the concession area, to be managed as part of the KNP. The Mnisi community have not benefited from their land claim since their land is under the ownership of provincial government and the Mhlanganisweni communities' out of court settlement over their land claim is not certain to benefit all communities involved.³⁷

In Mozambique, tourism development is relatively low but growing, with efforts towards infrastructure development, the connections with Zinave and Banhine national parks as well as the recent private concession – the Great Libombo Conservancy.³⁸ Major concerns in this GLTFCA component revolve around the involuntary resettlement of local communities, first from the LNP and potentially from the interlocking regions of the Zinave and Banhine national parks.³⁹ Their displacement from these areas exposes them to unsustainable livelihoods such as migrant labour, informal cross-border trade, daily wage labour, informal employment and commercial poaching, now framed as wildlife crime.⁴⁰ Additionally, only two community-based tourism lodges operate in this GLTFCA component.⁴¹ These elements raise questions around the involvement of local communities in tourism development.⁴²

In Zimbabwe, tourism development has also not been flourishing because of the country's unstable economic and political climate. Another major contributing factor has been, until recently, the lack of adequate infrastructure to attract tourists. This is set to improve with the conclusion, in 2016, of a management agreement over the GNP between the Zimbabwe Parks and Wildlife Management Authority (PWMA) and an international conservation organisation, Frankfurt Zoological Society (FSZ).⁴³ Yet,

37 See para 2.4.2.1 below.

38 See para 2.4.2.2 below.

39 See para 2.4.2.2 below.

40 See para 5.3.1.4 below.

41 See para 2.4.2.2 below.

42 See para 2.4.2.2 below.

43 See para 2.4.2.3 below.

this agreement appears to have been reached without the involvement of local communities nor does it include them in the new management structures. The plight of local communities is not made any better with minimal involvement of local communities in tourism businesses, save for a few community-based projects under the Community Areas Management Programme for Indigenous Resources (CAMPFIRE) as a community-based natural resources management (CBNRM) initiative in Zimbabwe.⁴⁴ These CAMPFIRE projects have suffered from serious discrepancies in the devolution of authority to Rural District Councils (RDCs), resulting in the mismanagement of funds by these RDCs. Other emerging challenges revolve around resettlement issues relating to the land reform policy giving rise to reduced opportunities for generating income from the sustainable use of natural resources.⁴⁵

1.2.2.3 Legal basis of the study

The challenges arising in the GLTFCA country components do not necessarily stem from the tourism development itself, but, predominantly from the exclusion of local communities in the governance structures of this TFCA.⁴⁶ It appears that the laws relevant to TFCA governance in each of the country components may not cater for all the key TFCA actors, particularly the local communities. Moreover, this exclusion of local communities perpetuates the fortress conservation model dating back to the conservation initiatives of the colonial era.⁴⁷ Local communities, therefore, do not participate in biodiversity conservation on the same level as government, private entities and donor agencies, whereas their involvement is fundamental to the fulfilment of all three objectives.⁴⁸

44 See the discussion on the community-based tourism lodges involving the Mahenye communities and CAMPFIRE in para 2.4.2.3 below.

45 Chimuka *An Analysis of the impact of community development* 20-24, 65-66; Chirozva *Community engagement in the governance* 143-147. See also, the discussion in para 2.4.2.3 below.

46 See paras 2.4.2 and 2.5 below.

47 Brockington *Fortress Conservation* 1-12. See in this study para 2.5 below.

48 See para 2.5 below.

This exclusion of the local communities necessitates a legal analysis of the domestic laws in the country components relating to TFCA governance and tourism development. In South Africa, these laws include: the *Constitution of the Republic of South Africa*, 1996; the *National Environmental Management: Protected Areas Act* 57 of 2003 (NEM:PAA); the *National Environmental Management: Biodiversity Act* 10 of 2003 (NEM:BA); the *Local Government: Municipal Systems Act* 32 of 2000; the *Traditional Leadership and Governance Framework Act* 41 of 2003; the *Local Government: Municipal Structures Act* 117 of 1998; the *Communal Land Tenure Bill*, 2017 and the *Tourism Act* 3 of 2014.⁴⁹

In Mozambique, the laws include: the *Constitution of the Republic of Mozambique*, 2004; the *Conservation Areas Law (Lei de Conservação e Uso sustentável da Diversidade Biológica)* 16 of 2014; the *Environmental Framework Law (Lei do Ambiente)* 20 of 1997; the *Forestry and Wildlife Law (Lei de Florestas e Fauna Bravia)* 10 of 1999; the *Land Law (Lei de Terras)* 19 of 1997; the *Basic Law on the Organisation and Functioning of the Public Administration (Lei de Base de Organização e Funcionamento da Administração Pública)* 7 of 2012; the *Decree on the Articulation of Local Organs of State (Estados das Autoridades Tradicionais Decreto)* 15 of 2000; the *Local Organs Law (Lei dos Órgãos Locais Esatado)* 8 of 2003; the *Municipalities Law (Lei de Bases das Autarquias)* 2 of 1997; and the *Tourism Law (Lei do Turismo)* 4 of 2004.⁵⁰

In Zimbabwe, these laws include: the *Constitution of the Republic of Zimbabwe Amendment (No. 20) Act*, 2013; the *Parks and Wildlife Act (PWA)* 14 of 1975;⁵¹ the *Environmental Management Act (EMA)* 13 of 2002;⁵² the *Rural District Councils Act*

49 See para 4.2.3 and 4.2.4 for relevant provincial laws as well as government policies and strategies.

50 See paras 5.2.1 - 5.2.4 above for additional subsidiary laws and policy instruments.

51 (Chapter 20:14) as amended by Act 19 of 2001.

52 (Chapter 20:27).

(*RDCs Act*) 8 of 1998;⁵³ the *Traditional Leadership Act* 25 of 1998;⁵⁴ and the *Tourism Act* 15 of 1995.⁵⁵

These laws appear to fall short in facilitating the involvement of local communities in the biodiversity measures that relate to TFCA.⁵⁶ Consequently, the tourism development that takes place in the GLTFCA appears to thrive on fortress conservation, which in turn perpetuates the marginalisation of the rural communities from the natural resources on which their livelihoods depend.⁵⁷ This further suggests a gap in the domestic laws of the GLTFCA participating countries with respect to the tools that promote the improvement of livelihoods-alleviation of poverty for the relevant local communities.⁵⁸ More than that, these challenges suggest crucial discrepancies in the tools that promote tourism in the GLTFCA participating countries as an economic activity.⁵⁹ These issues give rise to specific research questions for this study.

1.3 Research questions

Central to this study is the main research question:

- What legal framework is necessary, at the domestic level – in TFCA participating countries, to ensure that sustainable tourism development promotes the key objectives of SADC TFCA?

This gives rise to a further two-pronged inquiry, namely:

- Who are the key actors in the governance structure of the GLTFCA and how does the law define their roles?

53 (Chapter 29:13) as amended by Act 22 of 2001.

54 (Chapter 29:17) as amended by Act 22 of 2001 (hereafter *Traditional Leadership Act* 25 of 1988).

55 (Chapter 14:20) as amended by Act 22 of 2001 (hereafter *Tourism Act*). For relevant policy instruments, see paras 6.2.2-6.2.4 below.

56 See paras 4.3.1, 5.3.1 and 6.3.1 below.

57 See para 1.2.2.2 above.

58 See paras 4.3.2, 5.3.2 and 6.3.2 below.

59 See paras 4.3.3, 5.3.3 and 6.3.3 below.

- What are the requisite legal tools for TFCA governance that can promote the TFCA objectives?

1.3.1 Sub-research questions

To address these questions, the study develops further sub- research questions for each of the chapters as follows:

- What are the challenges arising from the development of tourism in the SADC TFCAs, and more specifically in the GLTFCA? (Chapter 2)
- How can sustainable tourism development, if it is provided for in the domestic legal frameworks of the GLTFCA participating countries, address the challenges arising from the tourism development in the GLTFCA? (Chapter 3)
- Do each of the existing legal frameworks of South Africa, Mozambique and Zimbabwe on TFCA governance and tourism development promote sustainable tourism development in the GLTFCA? (Chapters 4, 5 and 6)

1.4 Assumptions and hypothesis

To answer these research questions, the study is based on the following assumptions and hypothesis:

1.4.1 Assumptions

- (1) Challenges exist with the tourism development in the TFCAs of the SADC region, for instance, in the GLTFCA, with respect to the fulfilment of their objectives of biodiversity conservation, improvement of livelihoods and economic development.
- (2) Sustainable tourism development is recognised as a viable option for achieving these TFCA objectives, where sustainable tourism development is provided for in domestic legal frameworks on TFCA governance and tourism development of the TFCA participating countries

- (3) The national laws of the GLTFCA participating countries relating to TFCA governance and tourism development are not adequate in their provision of sustainable tourism development.

1.4.2 Hypothesis

The assumptions of this study culminate into a hypothesis that:

In order for sustainable tourism development to promote biodiversity conservation, economic development and poverty alleviation in the existing SADC TFCAs, there is a need for the domestic laws on TFCA governance and tourism development of the TFCA participating countries to provide for the relevant governance actors and tools that facilitate sustainable tourism development, accordingly.

1.5 Objectives

Following from the research question and sub-questions, the main objective of this study is:

- To develop a domestic legal framework for sustainable tourism development in TFCA participating countries to promote the TFCA objectives of biodiversity conservation, the improvement of livelihoods-alleviation of poverty and economic development.

To achieve this objective, the study sets out specific objectives:

- To discuss the nature and development of TFCAs in the SADC region, the development of tourism in these TFCAs and the challenges arising therefrom, using the GLTFCA as a case study;
- To discuss the concept of sustainable tourism development as a possible solution for addressing the challenges arising from the tourism development in the GLTFCA and to develop a domestic legal framework for the GLTFCA participating countries;

- To analyse the existing legal frameworks of South Africa, Mozambique and Zimbabwe (the GLTFCA participating countries) on TFCA governance and tourism development, using the proposed legal framework; and finally
- To draw conclusions from the legal analyses informed by a comparative study of the three jurisdictions in the GLTFCA, and to provide recommendations of the legal measures necessary to promote sustainable tourism development in the SADC TFCAs.

1.6 Research methodology

To answer the research question and sub-questions, this thesis employs a legal analytical research design through a desktop study. This entails an analysis of the nature and development of TFCAs in the SADC region, with tourism at the centre of the TFCA initiatives, using legal and non-legal sources of law as well as available literature from international and regional sources.⁶⁰ The thesis undertakes a case study of the GLTFCA by examining the main legal instrument for this TFCA, the GLTP Treaty as well as implementing instruments, specifically, the Joint Management Plan and the *GLTFCA Integrated Livelihoods Diversification Strategy* (2016-2030). In addition, the case study of the GLTFCA also employs legal and policy instruments as well as non-legal literature to explore the tourism development therein. The study makes use of non-legal sources of law to inform the challenges and issues in the GLTFCA that the law needs to address.

In an attempt to resolve the challenges that indicate a failure in the tourism development in the GLTFCA to promote all three TFCA objectives, this study explores the notion of sustainable tourism development. Using legal and non-legal material, the study traces its evolution, in international discourse, from the sustainable development dialogue through to the discourse on alternative tourism. It also examines the transformation that sustainable tourism development took to

⁶⁰ Chapter 2 below.

become a concept provided for in the international and regional normative instruments on tourism. Critical to the study, the discussion focuses on the legal principles relating to sustainable development, dividing them into substantive and procedural elements in accordance with international law instruments and scholarly writings. These principles form the basis of any principled assessment of any national law and policy relevant to activities relating to sustainable development, placing them at the centre of all sector-based development, including tourism.⁶¹

For a holistic perspective, the study further investigates the theoretical foundations of sustainable tourism development, narrowing the discussion to specific theories on tourism development. This discussion takes the form of a literature review of the relevant theories. From these theories, the study identifies the specific goals of sustainable tourism development accepted in literature as well as in the international discourse on tourism. These goals translate into 12 specific aims or policy implications of sustainable tourism development, namely, biological diversity, physical integrity, resource efficiency, environmental purity, cultural richness, local control, community well-being, economic viability, local prosperity, employment quality, social equity and visitor fulfilment.⁶² The rest of the study is purposively hinged on these aims or policy implications, for their ability to contextualise the legal principles of sustainable development in tourism and therefore inform the manner in which law and policy should develop. As specific as they are, these aims or policy implications are broad and flexible enough to be adapted to any geographic and legal context. To this end, the study makes use of relevant literature on the aims of sustainable tourism development.

Applying sustainable tourism development to the TFCA context essentially means employing the aims or policy implications of sustainable tourism development for

61 Barnard 2012 *PER* 213. See also, para 3. 2.1 below.

62 UNEP *Making Tourism More Sustainable* 16; UNWTO *Sustainable Tourism Development in Developing Countries* 18. See also, Castellani and Sala *Sustainable Tourism* 12-13; Hanrahan and Maguire 2016 *European Journal of Tourism Research* 63; Sarhan, Abdelgalil and Radwan "Ecotourism principles" 19-21; Scott and Frew "Adoption of Information 77; Tefler and Sharpley *Tourism and Development* 73; Vanhove "Tourism as a Strategic Option" 100-101.

their ability to contextualise the legal principles of sustainable development in tourism. Therefore, this study examines how these aims or policy implications can influence the legal framework for TFCA governance and tourism development and thereby promote the TFCA objectives.⁶³ Informed by the governance structure of the GLTFCA, the study considers how these aims or policy implications influence the key actors in TFCA governance. Furthermore, based on the challenges encountered in tourism development in the GLTFCA, the study also considers how these aims or policy implications influence the governance-based tools that promote the TFCA objectives. Employing deductive reasoning, the study constructs a definition of sustainable tourism development for TFCAs from a legal perspective. With this definition, the study develops a legal framework for promoting sustainable tourism development in TFCAs.

This legal framework proposes the provision of the TFCA governance actors as well as the governance-based tools for promoting the TFCA objectives. It therefore makes provision, in legislation, for the key state and non-state actors for TFCA governance and management. The legislation relevant to TFCAs includes laws establishing TFCAs, laws relating to protected areas governance and management, laws relating to local governance and the principal tourism legislation.⁶⁴ With respect to the governance-based tools, the legal framework provides for tools that promote biodiversity conservation, the improvement of livelihoods-poverty alleviation and economic development.⁶⁵

The study utilises this legal framework to analyse the domestic legal frameworks of South Africa, Mozambique and Zimbabwe, with the intention of establishing whether the GLTFCA participating countries have the requisite laws for promoting sustainable tourism development and thereby advance the TFCA objectives of biodiversity conservation, the improvement of livelihoods-alleviation of poverty and economic

63 See paras 2.4.1 and 2.6 below.

64 See para 3.7.1 below.

65 See para 3.7.2.1 below.

development. This part of the thesis takes the form a legal analysis of the relevant laws in the three jurisdictions, using the legal comparative method.⁶⁶ While the focus is predominantly on principal legislation, it also refers to subsidiary laws, regulations and policy instruments where necessary. In analysing these laws, the study also consults authoritative material, which includes academic journals and other legal and non-legal scholarly writings.

The thesis concludes by drawing findings from the analytical study as well as by undertaking a comparative analysis of the legal frameworks of South Africa, Mozambique and Zimbabwe. This is done to establish the extent to which they provide for sustainable tourism development and thereby promote the TFCA objectives. From there, the study proposes recommendations at regional and domestic level. The methodology employed by this research is informed by the scope of the study as provided for below.

1.7 Delimitations of study

Notwithstanding that transboundary conservation spans across the globe, the study deliberately focuses on the TFCAs in the SADC region with the aim of addressing the challenges that exist in the fulfilment of the key objectives for their establishment. The study recognises that these objectives are manifold but focuses on three that permeate through almost all of the existing SADC TFCAs, namely, biodiversity conservation, improvement of livelihoods – alleviation of poverty and economic development. While there may be a number of economic activities that occur in the TFCAs, many of them are associated directly or indirectly to tourism, which is identified as a key driver of the TFCA objectives. For this reason the study focuses only on the challenges arising in achieving biodiversity conservation, the improvement of livelihoods - alleviation of poverty and economic development through tourism development in these TFCAs. Given that the existing TFCAs in SADC are many, the study focuses on the challenges related to achieving the three TFCA

66 See for instance, Eberle 2009 *Washington University Global Studies Law Review* 451-486.

objectives through tourism development in the GLTFCA, as the oldest and second largest TFCA in the region.

Informed by sustainable development and its influence on tourism development, the study chooses to explore the notion of sustainable tourism development as a possible solution for the challenges in the SADC TFCAs. The study recognises sustainable tourism development as an economic development model, which embraces various forms of tourism that are sustainable. However, the study approaches its conceptualisation of sustainable tourism development from a legal perspective with the understanding that relevant legal mechanisms are among the key prerequisites in addressing the challenges in the fulfilment of the TFCA objectives. Given the legal issues relating to the establishment and governance of TFCAs arising in this study, the study approaches the challenges in the TFCAs from an environmental law perspective. Within this context, the study focuses specifically on the legal elements of sustainable development that influence the development of tourism as an economic activity.

Therefore, influenced by the legal elements of sustainable development as adapted to the tourism context, as well as the theoretical underpinnings of sustainable tourism, the study deliberately employs the aims or policy implications of sustainable tourism development to develop the requisite legal framework for the GLTFCA. In exploring the legal framework that can promote sustainable tourism development in the GLTFCA, the study focuses on the key challenges within the GLTFCA with respect to its governance structures. To resolve these challenges, the study focuses only on the governance actors that are necessary within the legal framework of the GLTFCA participating countries to promote sustainable tourism development. Once the governance actors are identified, the study appreciates that there must be relevant governance based tools to complement the roles of these actors. Among the many governance based tools that may be pertinent, the study adopts an environmental governance perspective, which recognises that environmental governance-based tools are crucial in a conservation-livelihoods-development paradigm such as the one in this study. However, the study further narrows these tools to four, namely, the command and control tools, market-based tools,

agreement-based tools and civil-based tools. Here, the study recognises that any domestic legal framework must have a combination of these tools at a bare minimum. Thus, the study develops a domestic legal framework for promoting sustainable tourism development in the GLTFCA that focuses only on the relevant governance actors and governance based tools. Finally, the study analyses the domestic legal frameworks of South Africa, Mozambique and Zimbabwe as the GLTFCA participating countries.

Based on this scope, this thesis is divided into chapters as outlined below.

1.8 Chapter outline

Chapter two discusses the nature and development of TFCAs in the SADC region, the development of tourism in these TFCAs and the challenges arising therefrom, using the GLTFCA as a case study.

Chapter three explores the concept of sustainable tourism development as a possible solution for addressing the challenges arising from tourism development. It also constructs a definition of sustainable tourism development for TFCAs and develops a domestic legal framework for the GLTFCA participating countries.

Chapters four, five and six, analyse the existing legal frameworks of South Africa, Mozambique and Zimbabwe (the GLTFCA participating countries), respectively using the proposed legal framework to establish whether they provide for sustainable tourism development and thereby promote the three TFCA objectives.

Chapter seven draws findings from the analytical study of TFCAs in the SADC region and the notion of sustainable tourism development. It also makes conclusions from the legal analyses informed by a comparative study of the three jurisdictions in the GLTFCA. Ultimately, the chapter provides recommendations of the legal measures necessary to promote sustainable tourism development in the SADC TFCAs.

CHAPTER 2

SADC TFCAs and the development of tourism

2.1 Introduction

The purpose of this chapter is to investigate the challenges arising from the development of tourism in the SADC TFCAs, and more specifically the GLTFCA. To achieve this, the chapter discusses the TFCAs in the SADC region and the way tourism has developed therein. To this end, the chapter provides a definition of the notion of TFCAs as it has developed in SADC. From this definition, the chapter extracts the main characteristics of TFCAs and discusses selected key objectives of SADC TFCAs, namely, biodiversity conservation, economic development and the improvement of livelihoods – alleviation of poverty. Against this background, the study considers how tourism has been developed in the SADC TFCAs to drive these objectives. The thrust is to examine whether the tourism development in these TFCAs is promoting all three of these TFCA objectives without undermining any one of them. For this reason, the chapter examines the SADC normative instruments relevant for tourism in TFCAs and undertakes a more detailed analysis of whether tourism is promoting all three TFCA objectives by embarking on a case study of the GLTFCA.

2.2 Development of TFCAs in SADC

This section focuses on the meaning, main characteristics and objectives of TFCAs in the SADC region. This is followed by a discussion of tourism as the driver of the main objectives of the SADC TFCAs.

2.2.1 Defining TFCAs in SADC

The notion of TFCAs stems from the idea of conservation across international boundaries – transboundary conservation.¹ Vasilijević² states that transboundary conservation involves working across boundaries to achieve conservation objectives. Braack *et al*³ use the term transboundary natural resource management as the overall concept and define it as “the process of interacting across national boundaries for the sustainable management of natural resources.”⁴ From this, the International Union for Conservation of Nature (IUCN),⁵ using the term “transboundary conservation areas,” defines it as “a process of cooperation to achieve conservation goals across one or more international boundaries.”⁶

The Southern African understanding of TFCAs is provided for in the *Wildlife Protocol*. This Protocol defines a TFCA as

The area or the 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 areas.⁷

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- 1 Braack, Sandwith and Peddle *Security Considerations in the Planning and Management* 1. For a historical development of TFCAs, see for instance, Greater Virunga Transboundary Collaborative (GVTC) 2012 <http://www.greatervirunga.org/spip.php?rubrique1>; Mayoral-Phillips AJ 2009 <http://dlc.dlib.indiana.edu>; Barquet 2015 *Geoforum* 14; Barquet, Lujala and Rød 2014 *Political Geography* 2; Paterson “Protected Areas Governance in a Southern African Transfrontier Context” 166; Ron *SADC Proposed Framework for TFCAs* 13; UNESCO 2014 <http://whc.unesco.org/en/list/63>; Vasilijević *et al Transboundary Conservation* 4. For transboundary conservation, see for instance, Sandwith and Lockwood “Linking the Landscape” 584-598.
 - 2 Vasilijević “Transboundary conservation: An emerging concept” 6.
 - 3 Braack, Sandwith and Peddle *Security Considerations in the Planning and Management* 3.
 - 4 See also, Lubbe *Straddling border and legal regimes* 47.
 - 5 Vasilijević *et al Transboundary Conservation* xi.
 - 6 According to the IUCN the term “transboundary” may be used synonymously with “transborder” and “transfrontier” Vasilijević *et al Transboundary Conservation* xi. See also Vasilijević “Transboundary conservation: An emerging concept” 6-11; Paterson “Protected Areas Governance in a Southern African Transfrontier Context” 166; Sandwith *et al Transboundary Protected Areas for Peace and Cooperation* 1-16. However, Braack, Sandwith and Peddle *Security Considerations in the Planning and Management* 2 argue that while these terms are synonymous with TFCAs in the Southern African context, this terminology is not global in application.
 - 7 Article 1 of the *Wildlife Protocol*.

This definition resonates with the conceptualisation of the transboundary conservation landscape by the IUCN, save for a reference to conservation within national borders.⁸ The formulation of the concept of TFCAs in Southern Africa is based on the understanding of sustainable utilisation, consistent with the Protocol's main objective of the sustainable utilisation of wildlife.⁹ Sustainable use in the *Wildlife Protocol* is defined as "a use in a way and at a rate that does not lead to long-term decline of wildlife species."¹⁰ This understanding of sustainable use stems from the sustainable use theory that states "that the use of resources should be sustainable" at the level of the ecosystem to allow continued derivation of benefits, tangible or intangible.¹¹ International discourse on sustainable use calls on States

"to manage natural resources in a rational, sustainable and safe way, taking into account the needs of future generations in determining the rate of use, to ensure that all people benefit from the exploitation of resources and to have due care for the environment."¹²

In the African context, this theory suggests that the conversion of land for agriculture and livestock, and not overuse, is the main threat to wild habitats and resources.¹³

Moreover, it is recognised that transfrontier conservation goes beyond protected areas to include natural resource management areas and other broader conservation measures, which may not necessarily be as such in other forms of transboundary conservation elsewhere.¹⁴ According to Lubbe¹⁵ this inclusion of resource use areas

8 Lubbe *Straddling border and legal regimes* 47.

9 Article 4(2)(a) of the *Wildlife Protocol*.

10 Article 1 of the *Wildlife Protocol*.

11 Jones and Murphree "Community-Based Natural Resource Management" 63. See also, Berkes and Folke "Investing in Cultural Capital" 135.

12 Schriver *Permanent Sovereignty over Natural Resources* 8-9. See also, Barnard 2012 *PER* 212-213; Chapman, De Lacy and Whitmore "Sustainability Practice and Sustainable Use" 378-389; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 53.

13 Jones and Murphree "Community-Based Natural Resource Management" 63.

14 See for instance, Lubbe "A Legal Appraisal of the SADC Normative Framework" 205; Lubbe *Straddling border and legal regimes* 45; Mabunda *et al* "Transfrontier Conservation Areas".

15 Lubbe *Straddling border and legal regimes* 52.

in the definition of TFCAs was a foreign concept within protected areas management and adds a new conservation dimension being entered into by TFCAs.

Along these lines, Munthali¹⁶ defines a TFCA, especially for Africa, as

a part or components of a larger eco region that straddles the border between two or more countries, encompassing one or more protected areas as well as multiple-resource areas *for the use of communities and private landholders, managed for sustainable use of natural resources*.¹⁷ [Emphasis added]

This definition further indulges the notion of TFCAs by specifically pointing out the purpose for which the multiple resource areas are included.¹⁸ The emphasis here is on the involvement of communities and private landholders as important stakeholders, together with government bodies at national and international level, in the matrix of transboundary conservation.¹⁹ These dynamics are further understood by considering the main characteristics of TFCAs that this study identifies as crucial to this study.

2.2.2 Main characteristics of TFCAs

This study deduces, from the SADC definition of TFCAs that the main characteristics of TFCAs, at least from a Southern African perspective, are: larger ecological regions; agreements between two or more countries; protected areas components and multiple resource areas.

2.2.2.1 Larger ecological region

An ecological region is defined as “a mosaic of ecosystems that are relatively homogenous compared to adjacent regions.”²⁰ While this definition has attracted

16 Munthali 2007 Natural Resource Forum 52.

17 Munthali 2007 Natural Resource Forum 52.

18 See para 2.2.2.4 below.

19 Paragraph 3.2 of the *SADC Programme for TFCAs*. See more generally, Vasilijević “Transboundary conservation: An emerging concept” 6.

20 McMahon, Wiken and Gauthier 2004 *Environmental Management* 112-113. See also Bailey 1983 *Environmental Management* 365.

criticism,²¹ it elicits, for the purposes of this study, the nature of an ecological region as a geographical expanse comprising of ecosystems that are similar or interrelated.²² The idea of a “larger ecological region” suggests an intention to broaden the geographic delimitation of ecoregions. Bailey²³ explains that these regions are created to ensure that variously sized ecosystem units are divided in accordance with their significance for the development of resources as well as for the conservation of the environment. Hence, these ecoregions “straddle beyond national borders.”

In Southern Africa, it is common to find that biological resources are similar in areas along national boundaries forming large expanses of ecosystems that transcend borders. This is a result of the colonial demarcations of countries that tended to disregard the existence of such ecosystems.²⁴ This led to the creation of a chain of habitat islands that are disparate and disconnected, blocking natural migration patterns and inhibiting the genetic mixing of rare or threatened species within a given ecosystem.²⁵ The introduction of TFCAs is based on the reasoning that ecosystems are better managed in their entirety and not as separate units within individual countries.²⁶

An additional component of ecoregions is provided by Omernik²⁷ who states that “humans are an important biological component” thereof. This human component is consistent with Munthali’s definition of TFCAs and sets out right from the onset the importance of including local communities as well as the private sector in the running of TFCAs. Their involvement in the creation and running of these TFCAs cannot be undermined.

21 On the complexities around the definition of ecological regions, see for instance McMahon, Wiken and Gauthier 2004 *Environmental Management* 112; Omernik 2004 *Environmental Management* 28-32.

22 Omernik 2004 *Environmental Management* 27.

23 Bailey 2004 *Environmental Management* 15.

24 Andersson and Cumming “Defining the edge” 27-37.

25 Ferreira 2004 *Geo Journal* 301; Andersson and Cumming “Defining the edge” 27-37.

26 See Duffy 2003 *Political Geography* 95; Wolmer 2003 *Journal of African Studies* 263; Ferreira 2004 *Geo Journal* 301. See also, Murphree “Foreword” xviii; Lubbe 2007 *YBIEJ* 147.

27 Omernik 2004 *Environmental Management* 27.

2.2.2.2 Agreement between two or more countries

The creation of a larger ecological region straddling the border of two or more countries is by way of agreement. These agreements require a unique level of international cooperation especially because their contents pertain to the territorial sovereignty of States.²⁸ The key issues around sovereignty in the TFCA context deal with, *inter alia*, the removal of fences, the free movement across international borders, cooperation on conservation and management of the natural resources, including joint patrols, the use and management of “shared” water catchments and rivers, national security, policing, health and veterinary restrictions, and harmonisation of laws.²⁹ Adopting the reasoning of Scholtz,³⁰ these issues necessitate cooperation in a communal effort to promote ecological security. This implies adopting custodial sovereignty, which requires States to limit their exploitation and use of natural resources in accordance with an expectation from other States to act in the best interest of the whole mankind, or at least for the affected people.³¹ This should form the basis upon which the TFCA agreements are concluded.

28 Sands *et al* state that “the principle of territorial sovereignty allows States within limits established by international law to conduct or authorise activities such as they choose within their territories, including activities that may have adverse effects on their own environment” (Sands *et al Principles of International Environmental Law* 191). This principle is entrenched in international law through various UN General Assembly Resolutions adopted since 1945 and cemented in principle 21 of the *Stockholm Declaration*, 1972 and principle 2 of the *Rio Declaration*, 1992 and echoed in article 3 of the CBD. Moreover, the principle also extends to the right of state to be free from external interference over their exploitation (Sands *et al Principles of International Environmental Law* 192). The place of state sovereignty in international environmental law is widely discussed but see for instance Gardner 1996 *Fordham Environmental Law Journal* 133-134; McIntyre “The making of international natural resources law” 442-444; Soto 1996 *ILSA Journal of International & Comparative Law* 194; Swartz 2014 *European Journal of Business and Social Sciences* 34-38. In the context of Transboundary Governance, see for instance, Bishop *The Challenge of Creating an Effective Legal Regime* 29-30; Gullet “Transboundary Environmental Impact Assessment” 274; Karkkainen 2004 *Global Environmental Politics* 72-96; Lubbe *Straddling Border and Legal Regimes* 26-29; Venter “Transfrontier Protection of the Natural Environment” 69.

29 See para 1.2.2.1 above. See also, Hanks 2003 *Journal of Sustainable Forestry* 128. Ideally, free movement here is limited to tourists, but in practice this may involve the free movement of goods, persons, services, and labour.

30 Scholtz 2008 *Netherlands International Law Review* 333.

31 Scholtz 2008 *Netherlands International Law Review* 330, 336-337.

These TFCA agreements may take the form of formal or informal arrangements.³² Formal agreements are supported by legal mechanisms, which may be binding, such as treaties, or non-binding instruments, such as memoranda of understanding (MOUs) or Declarations of Intent.³³ Informal agreements do not require the ratification of official agreements and are based on looser arrangements made between the participants.³⁴ Edwardes³⁵ explains that the elaboration of transboundary conservation initiatives is a politically complex undertaking that can take many forms, involve various stakeholders and imply different levels of implication from national authorities.

Ultimately, the nature of the agreement should be informed by the intended functions of the TFCA initiative.³⁶ Moreover, the institutional arrangements should promote and support open, transparent, inclusive and informed processes.³⁷ In addition, these arrangements should ensure that the governance functions of the TFCAs match the scale of the issues that must be resolved by the TFCA initiatives and they must therefore encourage decision-making at the appropriate scale, deciding the parties that should be included and those that should not.³⁸

In the SADC region, the practice is to begin by concluding a MOU with the subsequent signing of a binding agreement or treaty.³⁹ At the moment, there are 11

32 Vasilijević *et al Transboundary Conservation* 50. See also, Edwardes *Transboundary Cooperation* 10-12; Katerere, Hill and Moyo *A Critique of Transboundary Natural Resource Management* 13; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 13-14; 100-102.

33 Vasilijević *et al Transboundary Conservation* 50.

34 Vasilijević *et al Transboundary Conservation* 50.

35 Edwardes *Transboundary Cooperation* 10-12.

36 Vasilijević *et al Transboundary Conservation* 51; Blatter 2003 *Governance: An International Journal of Policy, Administration, and Institutions* 503-506, 517-519.

37 Vasilijević *et al Transboundary Conservation* 51.

38 Vasilijević *et al Transboundary Conservation* 51.

39 An example is the Great Mapungubwe TFCA between Botswana, South Africa and Zimbabwe, which was concluded by an MOU in 2006, the Treaty must still be finalised. See in this regard, the *Great Mapungubwe Final Treaty for Approval*, 2010. See also, SADC TFCA Network *SADC Transfrontier Conservation Areas* 22.

established TFCAs, five by way of treaties and six by way of MOUs.⁴⁰ The conclusion of these agreements in SADC is mostly done by the Heads of States of the participating countries.⁴¹ The agreements are also supported by records of understanding between the conservation agencies of the participating States, and Joint Management Plans (JMPs) that provide for the day-to-day management of the TFCA.⁴²

The involvement of NGOs and other donor organisations in the preliminary and developmental stages of the TFCA process is characteristic in the region.⁴³ However, Katerere, Hill and Moyo⁴⁴ explain that the establishment of most of the TFCAs in the region has been pushed forward at a rapid pace without much time for consultation with communities and other stakeholders. This has become a problematic issue for the management of the TFCAs, especially with respect to the governance of the protected area components.⁴⁵ It is therefore important to consider these protected area components.

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- 40 See para 1.2.2.1 above. The TFCAs that have treaties are classified as a Category A TFCA and include: the Ais/Ais – Richtersveld TP between Namibia and South Africa; the Kgalagadi TP between Botswana and South Africa; the Kavango Zambezi TFCA between Angola, Botswana, Namibia, Zambia and Zimbabwe; and the GLTFCA. The TFCAs established by MOU are: the Lubombo TFCA between Mozambique, South Africa and Swaziland; the Maloti-Drakensberg TFCA between Lesotho and South Africa; the Greater Mapungubwe TFCA between Botswana, South Africa and Zimbabwe; the Chimanimani TFCA between Mozambique and Zimbabwe; and the Malawi-Zambia TFCA between Malawi and Zambia. SADC TFCA Network *SADC Transfrontier Conservation Areas* 1; Peace Parks Foundation 2014 <http://www.peaceparks.co.za>.
- 41 See for instance, Katerere, Hill and Moyo *A Critique of Transboundary Natural Resource Management* 15.
- 42 Hanks 2003 *Journal of Sustainable Forestry* 128. See for instance, the Joint Management Plan for the GLTFCA in para 2.4.1.2 below.
- 43 Andersson, Dzingirai and Cumming "TFCAs and the invisible peoples" 16-18; Katerere, Hill and Moyo *A Critique of Transboundary Natural Resource Management* 15; Büscher 2010 *Development and Change* 35-42; Lockwood 2010 *Journal of Environmental Management* 755.
- 44 Katerere, Hill and Moyo *A Critique of Transboundary Natural Resource Management* 13. See also, Andersson, Dzingirai and Cumming "TFCAs and the invisible peoples" 16-18; Lockwood 2010 *Journal of Environmental Management* 749-755; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 100-102.
- 45 Andersson Dzingirai and Cumming "TFCAs and the invisible peoples" 18-21; Bocchino "Rural People in Southern African" 293-319. See more generally, Vasilijević *et al Transboundary Conservation* i; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 72-73, 100-102.

2.2.2.3 Protected areas component

The IUCN⁴⁶ defines a protected area as “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.” In this study, the most important aspect of this definition suggests that protected areas have clearly defined boundaries and are formally recognised and managed for biodiversity conservation as well as for the protection of natural and associated cultural resources.⁴⁷ In the first place, this suggests that protected areas are provided for by law or another formal arrangement.⁴⁸ Secondly, this presupposes that protected areas are primarily set aside for biodiversity conservation and then for other “associated uses”.⁴⁹ These protected areas are categorised by the IUCN as: strict nature reserves,⁵⁰ wilderness areas,⁵¹ national parks,⁵² natural monuments or features,⁵³ habitat/species management areas,⁵⁴

46 Dudley “Defining protected areas” 22-24. See also, Borrini-Feyerabend and Hill “Governance for the Conservation” 175; Borrini-Feyerabend *et al Governance of Protected Areas* 5; Stolton “What are protected areas” 13-14; Worboys “Concept, purpose and challenges” 15.

47 Harmon “What does IUCN’s Protected area definition actually mean?” 25-26; Borrini-Feyerabend and Hill “Governance for the Conservation” 175; Chape *et al* 2005 *Philosophical Transactions* 444; Stolton “What are protected areas” 13-14.

48 Pellegrini and Rastogi “Enhancing the diversity, quality and vitality of governance” 13-14, 100-102; Borrini-Feyerabend and Hill “Governance for the Conservation” 175; Borrini-Feyerabend *et al Governance of Protected Areas* 6.

49 Borrini-Feyerabend *et al Governance of Protected Areas* 5; Borrini-Feyerabend and Hill “Governance for the Conservation” 177; Pellegrini and Rastogi “Enhancing the diversity, quality and vitality of governance” 15-16, 25; Stolton “What are protected areas” 13-14; Worboys “Concept, purpose and challenges” 16.

50 “These are areas that are strictly protected for biodiversity and possible geological/geomorphological features, where human visitation, use and impacts are controlled and limited” (Dudley “Defining protected areas” 22-24). See also, Borrini-Feyerabend *et al Governance of Protected Areas* 9; Chape *et al* 2005 *Philosophical Transactions* 447; Worboys “Concept, purpose and challenges” 17.

51 “These are usually large unmodified or slightly modified areas, retaining their natural character and influence, without permanent or significant human habitation, protected and managed to preserve their natural condition” (Dudley “Defining protected areas” 22-24). See also, Borrini-Feyerabend *et al Governance of Protected Areas* 9; Chape *et al* 2005 *Philosophical Transactions* 447; Stolton “What are protected areas” 15; Worboys “Concept, purpose and challenges” 18.

52 “These are large or near-natural areas protecting large-scale ecological processes with characteristic species and ecosystems, which also have environmentally and culturally compatible spiritual, scientific, educational, recreation land visitor opportunities” (Dudley “Defining protected areas” 22-24). See also, Borrini-Feyerabend *et al Governance of Protected Areas* 9; Chape *et al*

protected landscapes or seascapes⁵⁵ and protected areas with sustainable use of natural resources.⁵⁶ In a TFCA, it is possible to have more than one category of protected areas.⁵⁷

Typically, especially in Southern Africa, these protected areas are state owned.⁵⁸ However, in line with the IUCN guidelines and principles on protected areas this may also include privately owned or communally owned protected areas.⁵⁹ The ownership of the protected areas is crucial in determining the nature of governance and management of the protected areas component as well as the broader TFCA.⁶⁰ The

2005 *Philosophical Transactions* 447; Stolton "What are protected areas" 15; Worboys "Concept, purpose and challenges" 18.

- 53 "These are areas set aside to protect specific natural monuments, which can be a landform, sea mount, marine cavern, geological feature such as a cave, or a living feature such as an ancient grove" (Dudley "Defining protected areas" 22-24). See also, Borrini-Feyerabend *et al Governance of Protected Areas* 9; Chape *et al* 2005 *Philosophical Transactions* 447; Stolton "What are protected areas" 13-15; Worboys "Concept, purpose and challenges" 19.
- 54 "These are areas to protect particular species or habitats, in which management reflects this priority" (Dudley "Defining protected areas" 22-24). See also, Borrini-Feyerabend *et al Governance of Protected Areas* 9; Chape *et al* 2005 *Philosophical Transactions* 447; Stolton "What are protected areas" 15; Worboys "Concept, purpose and challenges" 19.
- 55 "These are areas in which the interaction of people and nature over time has produced a distinct character with significant ecological, biological, cultural and scenic value: and where safeguarding the integrity of this interaction is vital to protecting and sustaining the area and its associated nature conservation and other values" (Dudley "Defining protected areas" 22-24). See also, Borrini-Feyerabend *et al Governance of Protected Areas* 9; Stolton "What are protected areas" 15; Worboys "Concept, purpose and challenges" 19.
- 56 "These are areas which conserve ecosystems, together with associated cultural values and traditional natural resource management and in which low-level non-industrial natural resource use compatible with nature conservation is seen as one of the main aims" (Dudley "Defining protected areas" 22-24). See also, Borrini-Feyerabend *et al Governance of Protected Areas* 9; Coad *et al The Costs and Benefits of Protected Areas* 7; Stolton "What are protected areas" 15; Worboys "Concept, purpose and challenges" 19.
- 57 See for instance, the Kavango-Zambezi TFCA; para 3.2 of the *SADC Programme for TFCAs*; Cumming, Dzingirai and De Garine-Wichatitsky "Land- and natural resource-based" 139. See more generally, on conserved areas, Borrini-Feyerabend and Hill "Governance for the Conservation" 179.
- 58 Katerere, Hill and Moyo *A Critique of Transboundary Natural Resource Management* 15; Andersson and Cumming "Defining the edge" 25-53; Lockwood 2010 *Journal of Environmental Management* 749; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 72-73.
- 59 Dudley *Guidelines for Applying Protected Area Management Categories* 11, 22; Katerere, Hill and Moyo *A Critique of Transboundary Natural Resource Management* 15; Worboys "Concept, purpose and challenges" 24-28.
- 60 For the meaning of protected areas governance, see for instance, Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 18; Pellegrini and Rastogi "Enhancing the

IUCN⁶¹ identifies four forms of governance.⁶² The first form of governance is governance by government, in which a national ministry or park agency, sub-national ministry or agency, or government-delegated management holds the authority, responsibility and accountability for managing the protected area.⁶³ The second is shared governance, which involves collaborative management at various degrees of influence; and joint management by a pluralist management board.⁶⁴ Transboundary management of protected areas falls under this form of governance where various levels of government authorities across international borders are involved.⁶⁵ The third form of governance is private governance, which is governance by an individual owner, corporate body and non-profit organisations such as NGOs, universities or cooperatives.⁶⁶ The fourth is governance by indigenous peoples and

diversity, quality and vitality of governance" 5; Amend and Kothari "Achieving Aichi Target 11" 26.

- 61 Dudley *Guidelines for Applying Protected Area Management Categories* 11, 25. See also, Borrini-Feyerabend and Hill "Governance for the Conservation" 180; Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 18; Lausche *Guidelines for Protected Areas* 2; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 8.
- 62 Protected areas governance is defined by Borrini-Feyerabend 2004 "Governance of Protected Areas, Participation and Equity" 100 as the notion of "who holds management authority and responsibility and can be held accountable according to legal, customary or otherwise legitimate rights". See also, Borrini-Feyerabend, Johnston and Pansky "Governance of Protected Areas" 117-123; Borrini-Feyerabend *et al Governance of Protected Areas* 9; Coad *et al The Costs and Benefits of Protected Areas* 6-9; See also, Stolton "What are protected areas" 16.
- 63 Dudley *Guidelines for Applying Protected Area Management Categories* 26. See also, Borrini-Feyerabend and Hill "Governance for the Conservation" 181; Borrini-Feyerabend, Johnston and Pansky "Governance of Protected Areas" 117; Coad *et al The Costs and Benefits of Protected Areas* 6-9; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 8; Stolton "What are protected areas" 16.
- 64 Dudley *Guidelines for Applying Protected Area Management Categories* 26. See also, Borrini-Feyerabend and Hill "Governance for the Conservation" 181; Borrini-Feyerabend, Johnston and Pansky "Governance of Protected Areas" 118; Coad *et al The Costs and Benefits of Protected Areas* 6-9; Kothari "Collaboratively Managed Protected Areas" 528-535; Kothari "Diversifying Protected Area 58-59; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 15, 50-52; Stolton "What are protected areas" 16.
- 65 Dudley *Guidelines for Applying Protected Area Management Categories* 26; Coad *et al The Costs and Benefits of Protected Areas* 6-9; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 8; Stolton "What are protected areas" 16.
- 66 Dudley *Guidelines for Applying Protected Area Management Categories* 11, 20. See also Bingham *et al* 2017 *Parks* 13-15; Borrini-Feyerabend and Hill "Governance for the Conservation" 181-183; Borrini-Feyerabend, Johnston and Pansky "Governance of Protected Areas" 119; Carter, Adams and Hutton 2008 *Oryx* 177-178; Coad *et al The Costs and Benefits of Protected Areas* 6-9; Langholz and Lassoie 2001 *BioScience* 1081; Stolton, Redford and Dudley *The Futures of Privately Protected Areas* 5-14; Stolton "What are protected areas" 16; Worboys "Concept, purpose and challenges" 26.

local communities, in which “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.”⁶⁷

Paterson⁶⁸ highlights the challenges that arise from attempting to assign or prescribe any one of these governance types to a single protected area, where issues of land ownership, tenure, and therefore authority over management are highly complex. Thus, the issue of ownership of the land does and should determine the type of management over the protected area, and where ownership belongs to more than one entity, such as the government, local communities and private entities, the management model becomes a hybrid combination of the four governance typologies.⁶⁹ These complexities in governance make it imperative for principles such

67 Dudley *Guidelines for Applying Protected Area Management Categories* 11, 22. See also, Borrini-Feyerabend and Hill “Governance for the Conservation” 183-186; Borrini-Feyerabend, Johnston and Pansky “Governance of Protected Areas” 122; Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 24, 51-83; Coad *et al The Costs and Benefits of Protected Areas* 6; Kothari “Community Conserved Areas” 549-566; Kothari “Diversifying Protected Area” 59-61; Pellegrini and Rastogi “Enhancing the diversity, quality and vitality of governance” 8, 15; Stolton “What are protected areas” 16; Worboys “Concept, purpose and challenges” 19.

68 Paterson 2009 *IUCN Academy of Environmental Law Journal* 26-27. See also, Borrini-Feyerabend and Hill “Governance for the Conservation” 186-188; Borrini-Feyerabend, Johnston and Pansky “Governance of Protected Areas” 134-140; Coad *et al The Costs and Benefits of Protected Areas* 9; Dearden *et al* 2005 *Environmental Management* 97-99; Kothari “Diversifying Protected Area” 57-58; Lockwood 2010 *Journal of Environmental Management* 755; Pellegrini and Rastogi “Enhancing the diversity, quality and vitality of governance” 84, Worboys “Concept, purpose and challenges” 28-29.

69 Paterson 2009 *IUCN Academy of Environmental Law Journal* 26-29; Pellegrini and Rastogi “Enhancing the diversity, quality and vitality of governance” 8; Mansourian “Poverty and Protected Areas” 26.

as, among others,⁷⁰ beneficiation, public participation, and accountability to be embedded into the governance of protected areas.⁷¹

Beneficiation is described by Paterson⁷² as the range of rights or benefits and associated responsibilities or costs, which may flow from a protected area, where the rights or benefits and responsibilities or costs may fall on one or more person or institution, which could include: government authorities; community institutions; NGOs; companies and ordinary people. These rights or benefits and responsibilities or costs can be based in law, custom and agreement.⁷³ Moreover, the selection of the appropriate form of beneficiation will largely depend on the capacity of the key stakeholders.⁷⁴ Beneficiation is premised on a human centred approach to conservation in protected areas, which enables the stakeholders whose livelihoods are dependent on the resources within and around these areas, to access these resources and to share in the proceeds that accrue to the protected areas as a result of the activities that occur therein.⁷⁵ To ensure that beneficiation is realised, it is important to have public participation.

70 This study acknowledges that there are several principles for protected areas governance, however, it is beyond the scope of this study to discuss all in detail. The focus is therefore on those that are especially pertinent for the purposes of this study. For a detailed discussion of the principles of protected areas governance, see for instance, Borrini-Feyerabend and Hill "Governance for the Conservation" 189-190; Borrini-Feyerabend *et al Governance of Protected Areas* 4; Dudley *Guidelines for Applying Protected Area Management Categories* 11, 22; Graham, Amos and Plumtre *Governance Principles for Protected Areas* 11-26; Lockwood 2010 *Journal of Environmental Management* 758, Kisingo *et al* 2016 *Journal of Environmental Management* 749-750; Paterson 2010 *SAJELP* 112; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 7;

71 Paterson 2007 *SAPL* 23; Kisingo *et al* 2016 *Journal of Environmental Management* 750. See also, Kothari "Diversifying Protected Area" 61; Lockwood 2010 *Journal of Environmental Management* 758-762; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 72-73.

72 Paterson 2010 *SAJELP* 112.

73 Paterson 2010 *SAJELP* 112. See also, Borrini-Feyerabend and Hill "Governance for the Conservation" 190 on the principle of fairness and rights; Borrini-Feyerabend *et al Governance of Protected Areas* 4; Stolton S *et al* "Protected Areas Governance" 165.

74 Paterson 2010 *SAJELP* 112; Worboys "Concept, purpose and challenges" 17. See also, Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 92.

75 Paterson 2007 *SAPL* 27. See also, Borrini-Feyerabend *et al Governance of Protected Areas* 4; Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 9-13.

Public participation involves all the relevant stakeholders in the decision-making process of developmental activities to promote land stewardship and the inclusion of voluntary initiatives in protected areas management.⁷⁶ Thus, the participation of local communities, in particular, is especially important in the TFCA setting, where exclusion creates tensions over natural resource use and promotes environmentally harmful behaviour from these communities.⁷⁷ Studies reveal that the higher the level of community participation in protected areas' decision-making processes, the higher the level of compliance of these communities in conservation strategies.⁷⁸ To enable local involvement in the control of the natural resources, legal arrangements such as granting private ownership of land, communal ownership of land and/or resources, and secure usufruct rights should be in place.⁷⁹

Closely related to public participation is accountability, which is aimed at ensuring that decision-makers are answerable to the relevant stakeholders for their actions.⁸⁰ Accountability measures are therefore important to involve other stakeholders, especially local communities, to improve communication between protected area managers and the public, and to make the process more inclusive for all stakeholders.⁸¹ These measures include state of the parks reports, annual reports,

76 On public participation in protected areas management, see for instance, Borrini-Feyerabend "Collaborative management of protected areas" 224-234; Borrini-Feyerabend *et al Governance of Protected Areas* 4; Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 26, 92; Eagles, McCool and Haynes 1999 *Sustainable Tourism in Protected Areas* 47-48; Lausche 2011 *Guidelines for Protected Areas Legislation* 96-97; Lockwood 2010 *Journal of Environmental Management* 760; Pimbert and Pretty 1995 *Parks, People and Professionals* 26-49; Worboys "Concept, purpose and challenges" 17.

77 Pimbert and Pretty 1995 *Parks, People and Professionals* 48.

78 Andrade and Rhodes 2012 *Ecology and Society* 7; Dearden, Bennett and Johnston 2005 *Environmental Management* 93; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 8, 15, 34.

79 Dearden, Bennett and Johnston 2005 *Environmental Management* 96; Pimbert and Pretty 1995 *Parks, People and Professionals* 46; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 34.

80 See for instance, Dearden, Bennett and Johnston 2005 *Environmental Management* 95; Lockwood 2010 *Journal of Environmental Management* 759-760; Worboys "Concept, purpose and challenges" 17.

81 Borrini-Feyerabend and Hill "Governance for the Conservation" 190; Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 44-47; Chape, Spalding and Jenkins *The World's Protected Areas* 117-118; Dearden, Bennett and Johnston 2005 *Environmental Management* 95; Worboys *et al Protected Area Governance and Management* 181.

external audits, advisory committees, stakeholder roundtables and parliamentary debates.⁸²

Once these protected areas are incorporated into one single unit by way of international agreements, with the most appropriate governance and management structures and mechanisms in place, they are referred to as transfrontier parks (TFPs). TFPs are areas in which all or most of the areas are jointly-managed transboundary protected areas, usually in the form of national parks, as well as other smaller areas that link the protected areas.⁸³ Thus, there is a difference between TFCAs and TFPs, where the latter consists of the formal protected area components, whereas the former extends to other resource use areas. It is also safe to say that TFPs, *stricto sensu*, are a form of TFCAs.⁸⁴ Thus, countries can enter into agreements in terms of which they create TFPs and not TFCAs. In Southern Africa, the Kgalagadi TFP and Richtersveld Parks are examples of TFPs.⁸⁵ It is therefore important to consider the distinguishing element between TFPs and TFCAs, namely the inclusion of other multiple resource-use areas found in TFCAs.

2.2.2.4 Multiple resource areas

As alluded to earlier, the term “multiple resource areas” suggests that the TFCA has, apart from protected areas, more than one land use, thus the land within the TFCAs is not exclusively state owned. In fact, the term “transfrontier conservation” was adopted by the World Bank, the core funding to the LNP and GLTFCA, in 1996 in its pilot project on transfrontier conservation in the Mozambican component.⁸⁶ The project was aimed at establishing conservation areas, which include protected areas

82 Chape, Spalding and Jenkins *The World's Protected Areas* 117-118.

83 Braack *et al Security Considerations in the Planning and Management of Transboundary* 1939.

84 See for instance Vasilijević *et al Transboundary Conservation* ix.

85 See for instance, the discussion by Anderssen, Dzingirai and Cumming “TFCAs and the invisible people” 14.

86 World Bank 1996 *Mozambique: Transfrontier Conservation Areas* 6; Beech *et al* 2015 “Toward a Spatial Monitoring and Evaluation System” 175; Hanks 2003 *Journal of Sustainable Forestry* 128.

as well as multiple resource-use areas.⁸⁷ As the concept has evolved, it has been broadened to integrate biosphere reserves, and various community-based natural resource management programmes.⁸⁸ This concept has been embraced especially in the SADC region as a number of the TFCAs that have been proposed and/or established take the form of multiple resource areas. Munthali,⁸⁹ in his definition of TFCAs, emphasises that the multiple resource areas are used by local communities and private landholders.

With regards to private landholders, it must be understood that the land use usually varies in accordance with the landowners' preferences and although the national laws may vary, they ultimately accord some exclusivity to the land rights of these private individuals.⁹⁰ Yet, it has been suggested that where private lands are used for protected areas, the relevant legislation should regulate the way in which the private land is used.⁹¹ The trend in the region has been to have private land uses consistent with conservation including, *inter alia*, game ranching or game farming on all or part of the land.⁹²

For local communities, the most common land uses include, *inter alia*, traditional ceremonies, subsistence agriculture, shifting cultivation, grazing and harvesting of natural resources for direct consumption or small-scale commercial enterprises.⁹³

87 Paragraph 3.2 of the SADC Programme for TFCAs; Hanks 2003 *Journal of Sustainable Forestry* 128.

88 World Bank 1996 *Mozambique: Transfrontier Conservation Areas* 6; Hanks 2003 *Journal of Sustainable Forestry* 128.

89 See paragraph 2.1.1 above.

90 See for instance, Bingham *et al* 2017 *Parks* 14-16; Matta, Alavalapati and Mercer 2009 *Land Economics* 132-133; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 42-46.

91 Bingham *et al* 2017 *Parks* 13-16, Langholz and Lassoie 2001 *BioScience* 1081; Lausche *Guidelines for Protected Areas* 28; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 34; Stolton, Redford and Dudley *The Futures of Privately Protected Areas* 23-26.

92 Carter, Adams and Hutton 2008 *Oryx* 177-178; Gallo *et al* 2009 *Biological Conservation* 447. See also Bingham *et al* 2017 *Parks* 16-17; Morris 2006 *Geoforum* 1-3; Stolton, Redford and Dudley *The Futures of Privately Protected Areas* 30-36.

93 Cumming, Dzingirai and De Garine-Wichatitsky "Land- and natural resource-based" 164; Giller *et al* "Population and livelihoods" 63-75; Mukamuri *et al* "Ethnic heterogeneity and its implications" 92-98.

Where land that belongs to or used by local communities, commonly referred to as communal land,⁹⁴ falls within a part of the protected areas components, arrangements are usually made with the community leaders regarding the land use.⁹⁵ Such arrangement may include, *inter alia*, lease agreements in terms of which that part of the communal land is under the use and control of the protected area authorities for some compensation or agreements in terms of which the communities have their land use rights restricted in accordance with the goals of the protected areas.⁹⁶ The situation is different when the communities are outside the protected areas.⁹⁷ Here, communities are free to exercise their land use rights as they will, subject to national laws and, in some instances, in ways that are conflicting with the ultimate goal of the TFCA.⁹⁸ Nevertheless, with their involvement in the creation, governance and management of the TFCA, in accordance with the principles highlighted above, it is possible to get these local communities to buy in.⁹⁹

In fact, proponents of TFCAs have identified that local communities can get involved and benefit from the creation of TFCAs through the promotion of CBNRM.¹⁰⁰ Though

94 The legal definition of communal land may vary across national jurisdictions.

95 See for instance Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 32-42; Naughton-Treves, Holland and Brandon 2005 *Annual Review of Environment and Resources* 244-247; Marques 2014 *Basic and Applied Ecology* 636; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 47-49.

96 Cumming, Dzingirai and De Garine-Wichatitsky "Land- and natural resource" 176-178; Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 97-98; Borrini-Feyerabend and Hill "Governance for the Conservation" 183-186; Coad *et al The Costs and Benefits of Protected Areas* 6; Kothari "Community Conserved Areas" 549-566; Kothari "Diversifying Protected Area" 59-61; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 8, 15; Stolton "What are protected areas" 16; Worboys "Concept, purpose and challenges" 19.

97 Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 97-98.

98 Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 97-98.

99 Cumming, Dzingirai and De Garine-Wichatitsky "Land- and natural resource" 167-174, 178-182; Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 97-98; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 94-95.

100 See for instance Cumming, Dzingirai and De Garine-Wichatitsky "Land- and natural resource" 170-174; Duffy 2006 *Political Geography* 95; Duffy "Global-local linkages" 67-73; Roe, Nelson and Sandbrook *Community Management of Natural Resources in Africa* 115-118; Ramutsindela *Transfrontier Conservation in Africa* 105-113. For succinct summation of the development of CBNRM in Southern Africa, see for instance, Malan *Improved Decision-Making Processes for TFCAs* 33-35.

not discussed as such above, CBNRM is in fact another important principle of modern protected areas governance in Southern Africa.¹⁰¹ CBNRM means:

communities, defined by their tight spatial boundaries of jurisdiction and responsibilities, by their distinct and integrated social structure and common interests, can manage their natural resources in an efficient, equitable, and sustainable way.¹⁰²

At the heart of this concept is the notion that communities should satisfactorily manage their own resources – resources that they value, and over which they have exclusive rights to use, manage and benefit from, according to their local custom, knowledge and technologies.¹⁰³ Apart from subsistence agriculture and livestock rearing, the most common land uses for CBNRM, especially in the SADC region, are trophy hunting and ecotourism which have been promoted as a means of protecting wildlife and which, in return, yield additional income and employment.¹⁰⁴

But, to attain success, the following CBNRM principles must be applied: communities must have rights over their land and resources, and security of tenure, in order to control access to resources and how they are used. Communities must have strong representative and accountable institutions with solid financial and organisational management skills.¹⁰⁵ Moreover, communities must be able to derive appropriate benefits from the resources that they manage.¹⁰⁶ The latter is especially important in that the benefits must outweigh the costs of management.¹⁰⁷

101 Paterson *Legal Framework for Protected Areas* 32. See also Andrade and Rhodes 2012 *Ecology and Society* 14-16.

102 Blaikie 2006 *World Development* 1942.

103 Blaikie 2006 *World Development* 1943; Jones and Erdmann *Community-Based Natural Resource Management in Southern Africa* 16; Jones *CBNRM, poverty reduction and sustainable livelihoods* 4; Roe and Nelson "The origins and evolution of community-based natural resources management" 5.

104 Jones and Erdmann *Community-Based Natural Resource Management in Southern Africa* 16; Jones *CBNRM, poverty reduction and sustainable livelihoods* 4.

105 See for instance, Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 44-47; Dearden, Bennett and Johnston 2005 *Environmental Management* 96; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 42-43.

106 Jones *CBNRM, poverty reduction and sustainable livelihoods* 4; Jones and Erdmann *Community-Based Natural Resource Management in Southern Africa* 13. See also, Borrini-Feyerabend,

Successful CBNRM is further hinged upon the decentralisation and defining the community.¹⁰⁸ Decentralisation here involves the devolution of authority over the natural resources to the local communities to enable autonomy for the latter.¹⁰⁹ To this end, Agrawal¹¹⁰ identifies the need for recognising and working with multiple actors and interests at local level; and then granting these local actors the authority, and capacity, to create and enforce rules about the use, management and conservation of their resources. However, government agencies and bureaucracies are often unfamiliar with the specifics of local resource systems as are the local communities themselves.¹¹¹ Yet, the role of government and other stakeholders such as NGOs and aid agencies is not excluded completely.¹¹² Rather, it is crucial that checks and balances among all these actors should be in place.¹¹³

Nevertheless, Duffy¹¹⁴ indicates that the very issue of decentralisation, and the application of the CBNRM principles as a whole, has been problematic in the TFCAs in the Southern African context.¹¹⁵ The power relations involved in the establishment

Kothari and Oviedo *Indigenous and Local Communities* 26, 92; Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 8-15, 22, 34.

107 Jones and Erdmann *Community-Based Natural Resource Management in Southern Africa* 13; Jones *CBNRM, poverty reduction and sustainable livelihoods* 4.

108 Mukamuri *et al* "Ethnic heterogeneity and its implications" 92-98; Cumming, Dzingirai and De Garine-Wichatitsky "Land- and natural resource" 170-174;

109 Roe and Nelson "The origins and evolution of community-based natural resources management" 10; Jones *CBNRM, poverty reduction and sustainable livelihoods* 4; Jones and Murphree "Community-Based Natural Resource Management as a Conservation Mechanism" 63-72; Jones and Erdmann *Community-Based Natural Resource Management in Southern Africa* 15. More generally on devolution of authority in protected areas governance, see for instance, Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 47-50.

110 Agrawal 1999 *World Development* 637-638. See also, Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 47-51; Dyer *et al* 2014 *Journal of Environmental Management* 137-145; Hough "Developing Capacity" 164-182; Hulme and Murphree 1999 *Journal of International Development* 277-285.

111 Agrawal 1999 *World Development* 637-638.

112 Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 32-44. See also Andersson, Dzingirai and Cumming "TFCAs and the invisible peoples" 16-18.

113 Agrawal 1999 *World Development* 641; Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 44-50.

114 Duffy 2006 *Political Geography* 95. See also, Cumming, Dzingirai and De Garine-Wichatitsky "Land- and natural resource-based" 177.

115 Andersson, Dzingirai and Cumming "TFCAs and the invisible peoples" 18-21. For a more general discussion of the challenges with decentralisation, see for instance, Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance" 34.

and subsequent management of TFCAs in SADC have perpetuated centralisation.¹¹⁶ Dressler and Büscher¹¹⁷ also criticise the prevalence of CBNRM initiatives in SADC TFCAs, which do not necessarily benefit the local communities and in fact rob them of their livelihoods through an imposition of land uses that may not necessarily be beneficial to these local communities. This disenfranchisement of local communities is central to this study, as it highlights the manner in which local communities have been treated in the TFCAs in the region.¹¹⁸ Studies¹¹⁹ reveal that the livelihoods of local communities have not improved, and have, in certain instances, deteriorated, as a result of the creation of TFCAs and the furtherance of conservation initiatives and development activities that alter the manner in which local communities use their land and/or natural resources. Noteworthy is the remark by Andersson, Dzingirai and Cumming¹²⁰ that, in the practical implementation of CBNRM, including the level of benefit-sharing and participation, local communities often remain invisible and disengaged. Consequently, local communities experience physical displacement, changes in land tenure affecting local land management, restricted access to resources, human wildlife conflict and degradation of resources.¹²¹

From the above, it is clear that the existence of various land uses in one large ecological region has the tendency to create complexities around management and

116 Andersson, Dzingirai and Cumming "TFCAs and the invisible people" 19-20; Agrawal and Gibson 1999 *World Development* 629-649; Duffy 2006 *Political Geography* 95-102. See also, Duffy "Global-local linkages" 67-73; Dressler and Büscher 2008 *Geoforum* 453-455; Mukamuri *et al* "Ethnic heterogeneity and its implications" 92-93.

117 Dressler and Büscher 2008 *Geoforum* 453-455; Büscher 2007 *Conservation Biology* 229-233; Büscher 2007 *Conservation and Society* 22-43.

118 See para 2.4.2 below.

119 See for instance, Andersson, Dzingirai and Cumming "TFCAs and the invisible people" 19-20; Bocchino "Rural People in Southern African" 293-319; Cumming, Dzingirai and De Garine-Wichatitsky "Land- and natural resource-based" 177; Dressler and Büscher 2008 *Geoforum* 453-455; Duffy 2006 *Political Geography* 95-102; Lockwood 2010 *Journal of Environmental Management* 794-795; Steven "A New Protected Area Paradigm" 60-65. See more generally on the costs of protected areas to local livelihoods, Coad *et al* *The Costs and Benefits of Protected Areas* 16-22.

120 Andersson, Dzingirai and Cumming "TFCAs and the invisible people" 19-20. See also, Cumming, Dzingirai and De Garine-Wichatitsky "Land- and natural resource-based" 163-178; Kamoto *et al* 2013 *Land Use Policy* 293-301.

121 Cumming, Dzingirai and De Garine-Wichatitsky "Land- and natural resource-based" 177-178. See more generally, Coad *et al* *The Costs and Benefits of Protected Areas* 16-18. See also, Strickland-Munro and Moore 2014 *Koedoe* 1-5.

the furtherance of unified goals.¹²² Vasilijević¹²³ explains that this involves implementing manifold objectives of transboundary conservation at different levels, the involvement of a variety of sectors and stakeholders, identifying common values and visions, incorporating community needs from the beginning and obtaining the support of the decision-makers. It is therefore important to consider the key objectives of TFCAs.

2.2.3 Objectives of TFCAs

The objectives of TFCA establishment are not always clear-cut and clearly enunciated, and vary by case.¹²⁴ Consequently, the IUCN¹²⁵ in the context of “parks for peace”,¹²⁶ identifies the following objectives:

- (i) Supporting long-term co-operative conservation of biodiversity, ecosystem services, and natural and cultural values across boundaries;
- (ii) Promoting landscape-level ecosystem management through integrated bioregional land-use planning and management;
- (iii) Building trust, understanding, reconciliation and co-operation between and among countries, communities, agencies and other stakeholders;
- (iv) Preventing and/or resolving tension, including over access to natural resources;
- (v) Promoting the resolution of armed conflict and/or reconciliation following armed conflict;
- (vi) Sharing biodiversity and cultural resource management skills and experience, including co-operative research and information management;
- (vii) Promoting more efficient and effective co-operative management programmes;
- (viii) Promoting access to, and equitable and sustainable use of natural resources, consistent with national sovereignty; and
- (ix) Enhancing the benefits of conservation and promoting benefit-sharing across boundaries among stakeholders.¹²⁷

122 A discussion of the GLTFCA in para 2.4 below highlights the kind of complexities that exist in the multiple resource use areas.

123 Vasilijević “Transboundary conservation: An emerging concept” 8. See also, Agrawal and Gibson 1999 *World Development* 629-649; Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 87-92.

124 Sandwith *et al Transboundary Protected Areas for Peace* 4.

125 Sandwith *et al Transboundary Protected Areas for Peace* 4.

126 Vasilijević *et al Transboundary Conservation* 14; Sandwith *et al Transboundary Protected Areas for Peace* 4.

While all of these objectives are probably intended by most countries that have concluded agreements to establish TFCAs, the most prominent of them, within the SADC context, are related to biodiversity conservation, regional integration, economic development and the alleviation of poverty.¹²⁸ For the purposes of this study, the discussion that follows focuses only on biodiversity conservation, economic development and the improvement of livelihoods-alleviation of poverty.

2.2.3.1 Biodiversity conservation

The creation of large ecological regions, as discussed earlier, should, in principle, indicate that the most important reason for establishing TFCAs is the conservation of biological diversity. This is consistent with the first three objectives cited by the IUCN listed above.¹²⁹ Actually, a closer examination of all nine IUCN objectives reveals that biodiversity conservation is at the heart of each of them. Although different disciplines may provide subject-specific definitions of biodiversity conservation, this study adopts the approach of international legal instruments on the subject. Biodiversity conservation is, therefore, understood as “the preservation, protection and restoration of genetic, species and ecosystems diversity.”¹³⁰

A useful definition of biodiversity conservation, particularly “in-situ conservation”, as provided for in the *Convention Biological Diversity*, 1992 (CBD), assists in the realisation of this objective in TFCAs. *In-situ* conservation is defined as

the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the

127 Sandwith *et al Transboundary Protected Areas for Peace* 4.

128 See for instance, Hanks 2003 *Journal of Sustainable Forestry* 128; Büscher 2010 *Third World Quarterly* 260; Ron *SADC Proposed Framework for TFCAs* 10.

129 See para 2.2.3 above.

130 Lubbe *Straddling border and legal regimes* 16-23 provides a detailed discussion of the meaning of biodiversity and its importance in SADC. See also, Mugadza *Biodiversity conservation through TFCAs* 7; Borrini-Feyerabend *et al Governance of Protected Areas* 13.

case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.¹³¹

Key in this definition is the concept of conservation within natural surroundings. To this end, an obligation is placed on state parties to the CBD to “demarcate, or establish within their territories, protected areas or special measures for *in-situ* conservation” and to protect areas adjacent to protected areas for sustainable use.¹³² In as much as there is no express provision for TFCAs in this Convention, the TFCA initiatives may be classified as the “special measures for *in-situ* conservation.”¹³³ Thus, TFCAs, which include both protected areas and their “adjacent areas”, may qualify as “a special measure” by two or more countries, in which ecosystems, species and natural habitats will be conserved especially within their natural surroundings at a larger and more inclusive scale. Additionally, the *Aichi Targets*¹³⁴ agreed to under the CBD, call for greater conservation of biodiversity through well-connected protected areas,¹³⁵ as well as the prevention the extinction of known threatened species.¹³⁶ TFCAs can be classified under the “well-connected protected areas” and as ecoregions, they are vital to preventing the extinction of threatened species as required by the *Aichi Targets*.¹³⁷ Moreover, the inclusion of multiple resource areas in TFCAs is consistent with the concept of “other effective conservation measures” in *Aichi Target 11*.¹³⁸

Biodiversity conservation in TFCAs is in line with current policies on environmental protection and the sustainable use of natural resources conservation in the African Union (AU) and the SADC region. The AU’s *New Partnership for Africa’s Development*

131 Article 1 of the CBD.

132 Article 8(d) and (e) of the CBD.

133 Mugadza Biodiversity conservation through TFCAs 14. See also, Lubbe *Straddling border and legal regimes* 16.

134 CBD Conference of Parties Decision X/2 Strategic Plan for Biodiversity 2011-2020.

135 Aichi Target 11.

136 Aichi Target 12.

137 Lubbe *Straddling border and legal regimes* 7; Lubbe “A Legal Appraisal of the SADC Normative Framework” 206. See also, Pellegrini and Rastogi “Enhancing the diversity, quality and vitality of governance” 27; Amend and Kothari “Achieving Aichi Target 11” 26. See more generally, Borrini-Feyerabend and Hill “Governance for the Conservation” 178; Butchart *et al* 2015 *Conservation Letters* 334.

138 Amend and Kothari “Achieving Aichi Target 11” 26.

(NEPAD)¹³⁹ *Environment Action Plan* of 2010-2015 (NEPAD EAP),¹⁴⁰ which is aimed at assisting African States in the implementation of their obligations under the CBD and other biodiversity-related conventions,¹⁴¹ identifies cross-border conservation of natural resources as one of its key priorities. It aims at ensuring collaboration between countries on the sustainable use, conservation and management of natural resources.

At sub-regional level, the *SADC Treaty* of 1992, identifies the sustainable use of natural resources and effective protection of the environment as one of the objectives of SADC.¹⁴² It is from this Treaty that the *Wildlife Protocol* introduces TFCAs as mechanisms for the sustainable use of wildlife and other natural resources.¹⁴³ This is echoed by the *SADC Protocol on Forestry*, 2002,¹⁴⁴ the *SADC Revised Protocol on Shared Water Courses*, 2000¹⁴⁵ and the *SADC Fisheries Protocol*, 2001,¹⁴⁶ for the sustainable management of forestry, shared water courses and fisheries, respectively.¹⁴⁷ In addition, the *SADC Regional Indicative Development Strategy (RISDP)* of 2001¹⁴⁸ identifies TFCAs as consistent with the region's wildlife policies on, *inter alia*, the conservation of regional ecosystems and landscapes, endangered, endemic and cross-border migratory species, and the prevention of the extinction of indigenous plant and animal species.¹⁴⁹ In fact, TFCAs are classified under the key strategies to implement these policies in SADC.¹⁵⁰ Further, the *SADC*

139 NEPAD is a non-binding instrument on the AU programme on economic development in the region. However, all members of the AU are automatically members of NEPAD. Kamga *Human rights in Africa: Prospects for the realisation of the right to development* 255.

140 Paragraph 5.2.1 of the NEPAD EAP.

141 Paragraph 5.2.1 of the NEPAD EAP.

142 Article 5 of the *SADC Treaty* 1992.

143 Article 2(f) of the *Wildlife Protocol*.

144 Article 14 of the *SADC Protocol on Forestry* (2002).

145 Articles 1 and 2 of the *SADC Revised Protocol on Shared Water Courses* (2000).

146 Articles 3, 7 and 8 of the *SADC Protocol on Fisheries* (2001).

147 For a detailed discussion of these instruments, see Lubbe *Straddling border and legal regimes* 162-185; Lubbe "A Legal Appraisal of the SADC Normative Framework" 217-230.

148 *SADC Regional Indicative Development Strategy (RISDP)* (2001).

149 Paragraph 3.4.8 of the RISDP.

150 Paragraph 3.4.8.1 of the RISDP.

Regional Biodiversity Strategy of 2006¹⁵¹ which provides the framework for cooperation in biodiversity issues that transcend national boundaries identifies TFCAs as a vehicle for implementing the Biodiversity Strategy.

Transboundary conservation of natural resources in the region is therefore, premised on the understanding that the conservation as well as economic benefits of collaboration across national boundaries for the sustainable use, conservation and management of natural resources are greater than those achieved by the individual efforts within countries.¹⁵² The TFCAs in SADC have been established in line with the NEPAD EAP transboundary conservation project.¹⁵³ Thus within the AU and SADC region, it is accepted that where biological resources exhibit transboundary migratory patterns, the best way to ensure their conservation and management is through the joining of the conservation areas of those countries or regions that comprise of that ecosystem.¹⁵⁴

Moreover, TFCAs are necessary for the management of bioregions,¹⁵⁵ which require a multi-state management cooperation.¹⁵⁶ Bioregions are situated outside of political or national boundaries or descriptions.¹⁵⁷ The argument is that political boundaries tend to hinder the ecological integrity of certain bioregions by creating barriers or

151 SADC Regional Biodiversity Strategy (2006).

152 Paragraph 116 of the NEPAD EAP.

153 Paragraph 3.1 of the *SADC Programme for TFCAs*; Ferreira 2004 *Geo Journal* 301.

154 Paragraph 1.2 of the SADC Regional Biodiversity Strategy.

155 Wolmer 2003 *Journal of African Studies* 263. See also, Fall 2003 *Journal of Sustainable Forestry* 86-89; Barquet 2015 *Norsk Geografisk Tidsskrift-Norwegian Journal of Geography* 266-267.

156 A bioregion is defined as "A place defined by its life forms, its topography and its biota rather than human dictates; a region governed by nature, not legislature. These regions are described as self-contained and equilibrial, existing in close and complex organic harmony and having specific animal and human carrying capacities" (Bishop *The Challenge of Creating an Effective Legal Regime* 29-30). Bishop cautions that bioregionalism contradicts ecoregionalism where the former promotes conservation objectives through bottom-up initiatives that promote political autonomy, decentralised governance, grassroots empowerment, social equity and self-sufficiency; while the latter is a top-down approach that negates social objectives in favour of stakeholders, partnerships, participatory planning and capacity building. Despite these divergent management approaches the essence in this study is to highlight the objective of conserving biodiversity.

157 See for instance, Sandwith and Lockwood "Linking the Landscape" 580-584; Bakarr and Lockwood "Establishing Protected Areas" 200-208.

boundaries that are environmentally arbitrary to biotic fluxes.¹⁵⁸ Thus with the creation of TFCAs that consist of large, contiguous and “unfragmented” habitats, more biodiversity is conserved within these bioregions.¹⁵⁹ These viewpoints have also supported the reasoning that TFCAs enable the creation of wildlife corridors, which assist in restoring connectivity between parts of ecosystems that were previously isolated under national protected areas.¹⁶⁰ Therefore, it can be said that biodiversity conservation is the main reason for and the ultimate objective of all TFCAs across the globe.¹⁶¹

However, Cumming¹⁶² argues that biodiversity conservation cannot be dissociated from the “sustainable development”¹⁶³ of the people living within TFCAs as the primary objective of the establishment of these areas. This is a digression from a purely ecocentric approach towards biodiversity conservation, which is important for TFCAs.¹⁶⁴ Understood in this way, biodiversity conservation is an essential element in

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- 158 Wolmer 2003 *Journal of African Studies* 263. In Southern Africa, it is common to find similar biological resources along national boundaries forming large expanses of ecosystems that transcend borders, as a result of the colonial demarcations of countries that disregarded the existence of such ecosystems. The situation did not change with the regaining by Africa of its independence from colonialism, with the adoption of the *uti possidetis* principle in terms of which the colonial boundaries of countries are to be maintained (Ratner 1996 *American Journal of International Law* 590). Thus, during this era, and for some time afterwards, individual countries singularly protected their portions of these bioregions as national parks and wildlife reserves (Mugadza *Biodiversity conservation through TFCAs and the rights of local communities* 25). Moreover the different socio-economic and political climates of the different countries also influence the way in which these biological resources are managed (Barquet 2015 *Norsk Geografisk Tidsskrift-Norwegian Journal of Geography* 266-267). This results in the creation of chain of habitat islands that are disparate and disconnected, blocking natural migration patterns and inhibiting the genetic mixing of rare or threatened species (Ferreira 2004 *Geo Journal* 301).
- 159 Ramutsindela “Transfrontier Conservation and Local Communities” 171; Barquet 2015 *Norsk Geografisk Tidsskrift-Norwegian Journal of Geography* 266-267; Wolmer 2003 *Journal of African Studies* 263.
- 160 Duffy 2006 *Political Geography* 95.
- 161 Vasilijević *et al* *Transboundary Conservation* 22. See also, Lubbe *Straddling border and legal regimes* 16.
- 162 Cumming *Constraints to Conservation and Development Success* 5; Andersson, Dzingirai and Cumming “TFCAs and the invisible peoples” 12-21. See more generally, Lopoukhine “Protected areas” 1-2; Sherly and Emerton “Protected Areas” 4-5.
- 163 This concept is dealt with in detail in paragraph 3.2.1 below.
- 164 Lubbe *Straddling border and legal regimes* 17. See more generally, Stolton “What are protected areas” 18-19.

achieving human development¹⁶⁵ and the improvement of livelihoods in TFCAs.¹⁶⁶ This is explored further below.

2.2.3.2 The improvement of livelihoods – alleviation of poverty

As stated above, the TFCA objective of biodiversity conservation cannot be separated from the objective of the improvement of livelihoods and the alleviation of poverty.¹⁶⁷ According to Coad *et al*,¹⁶⁸ 'livelihoods' represents the "means of living", while 'poverty' is "an outcome-based measure of livelihood performance", which is measured in terms of absolute income, and more recently also in terms of health and education parameters. Therefore, the improvement of livelihood and poverty alleviation relate to, *inter alia*, non-economic benefits that contribute to well-being,¹⁶⁹ benefits which enable the earning of income, acquiring and consuming of assets, community pride, confidence in living culture, education and spiritual life; and

165 Human development in this context envisages the improvement of livelihoods and welfare of people living within the TFCAs (Cumming *Constraints to Conservation and Development Success* 5).

166 Mugadza *Biodiversity conservation through Transfrontier Conservation Areas* 10. See also, Lubbe *Straddling border and legal regimes* 16-17; Du Plessis and Du Plessis "Southern African Perspectives" 252-258. See more generally, Stolton *et al* 'Values and benefits of protected areas' 165.

167 Paragraph 4.2.5 of the *SADC Programme for TFCAs*; Du Plessis and Du Plessis "Southern African Perspectives" 265; Naughton-Treves, Holland and Brandon 2005 *Annual Review of Environment and Resources* 227-231; Secretariat of the Convention on Biological Diversity 1-2; Lopoukhine "Protected areas" 1-2; Sherly and Emerton "Protected Areas" 4-5. Closely related is the discourse on protected areas and the alleviation of poverty. In this regard, see for instance, Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 5-6; Coad *et al* *The Costs and Benefits of Protected Areas* 2; Mansourian "Poverty and Protected Areas" 18; Dudley *et al* "Changing definitions of poverty" 20-23.

168 Coad *et al* *The Costs and Benefits of Protected Areas* 2. Coad *et al* explain that the common indicator for defining poor relates to those who earn less than USD1 per day, while the Human Development Index developed by the United Nations Development Programme included the health and education parameters. Other poverty assessment frameworks now include indicators such as access to resources and basic infrastructure, the vulnerability of populations to shock, level of community organisation, well-being, the ability to make decisions on the sustainable management of resources and political capital. See also, Mansourian "Poverty and Protected Areas" 18; Dudley *et al* "Changing definitions of poverty" 20-23.

169 Mansourian "Poverty and Protected Areas" 18; Dudley *et al* "Changing definitions of poverty" 20-23.

participation in environmental services, issues of governance and decision-making processes.¹⁷⁰

To achieve this, the *Aichi Targets*, for instance, call for the integration of biodiversity values into national and local development and poverty reduction strategies.¹⁷¹ Du Plessis and Du Plessis,¹⁷² from a human rights perspective, argue that the rationale for the existence of TFCAs should be anthropocentric in nature, validating the convergence of biodiversity conservation and socio-economic interests. Moreover, the inclusion of multiple resource areas in TFCAs makes it imperative to address the needs of the local communities whose livelihoods are intricately linked to and highly dependent on the natural resources in these areas.¹⁷³ This is consistent with the regional agenda to meet the Sustainable Development Goals (SDGs),¹⁷⁴ in Southern Africa.¹⁷⁵ TFCAs have been identified as an outreach programme for this agenda.¹⁷⁶

Munthali¹⁷⁷ explains that poverty, in all its manifestations, is pervasive in sub-Saharan Africa. In 2016, it was reported that the population of SADC is estimated at 293 million people and 40 percent of these live below the one United States Dollar (USD) per day poverty line.¹⁷⁸ The situation is exacerbated by the HIV and AIDS pandemic.¹⁷⁹ Hanks¹⁸⁰ describes the extent of poverty in the context of the declining

170 Mansourian "Poverty and Protected Areas" 18. See also, Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 24; Dudley *et al* "Changing definitions of poverty" 20-23.

171 *Aichi Target* 2. See also, Vardon *et al* "The Aichi Targets and biodiversity conservation" 2.

172 Du Plessis and Du Plessis "Southern African Perspectives" 265. For a people-centered approach to biodiversity conservation, see also, Naughton-Treves, Holland and Brandon 2005 *Annual Review of Environment and Resources* 227-231.

173 Paragraph 4.2.5 of the *SADC Programme for TFCAs*; Ron *SADC Proposed Framework for TFCAs* 10. See more generally, Mansourian "Poverty and Protected Areas" 18; Thaworn, Kelley and Yasmi 2010 *Unasylva* 32.

174 See the discussion on SDGs in para 3.1.1 below.

175 Paragraphs 3.1 and 4.2.5 of the *SADC Programme for TFCAs*; Ron *SADC Proposed Framework for TFCAs* 10. For a more general discussion of SDGs and conservation in protected areas see for instance Borrini-Feyerabend, Kothari and Oviedo *Indigenous and Local Communities* 24; Sherly and Emerton "Protected Areas" 4-5; Mansourian "Poverty and Protected Areas" 18-19.

176 Paragraphs 3.1 and 4.2.5 of the *SADC Programme for TFCAs*; Ron *SADC Proposed Framework for TFCAs* 10.

177 Munthali 2007 *Natural Resources Forum* 51.

178 SADC Secretariat *Outcomes of the Ministerial Workshop 2*; Godsäter *Civil Society Regionalization* 67.

179 Paragraph 1.2 of the *SADC Poverty Reduction Framework* (2008).

food production in Africa as a justification for the TFCA programme in Southern Africa. Food production on the continent is declining rapidly, with several countries becoming net importers, no longer food exporters.¹⁸¹ In the absence of traditional African structures to adapt to these needs or to make a living by producing for the market through commercial farming, traditional farming areas are unable to meet the needs of the exploding urban population.¹⁸²

Thus, in line with SDG 1, the SADC RISDP places poverty eradication as its overarching priority.¹⁸³ According to the SADC Secretariat,¹⁸⁴ the goal of eradicating poverty in TFCAs is premised on the need to ensure that rural communities are the primary beneficiaries of TFCAs and that their livelihoods are enhanced. Munthali¹⁸⁵ elaborates on this by stating that the rural communities living within or adjacent to TFCAs are usually marginalised into buffer zones and are only able to access peripheral economic activities such as menial jobs as cooks, labourers or guards.¹⁸⁶

Consistently, sceptics¹⁸⁷ of TFCA initiatives have argued that the poverty alleviation objective is simply a “front” for neoliberal conservation.¹⁸⁸ As the argument goes, the

180 Hanks 2003 *Journal on Sustainable Forestry* 131. See also Dzingirai *et al* “On the edge of state and economy” 106-122; SADC Secretariat *Outcomes of the Ministerial Workshop* 1-6.

181 SADC Secretariat *Outcomes of the Ministerial Workshop* 2; SADC Secretariat SADC *Regional Vulnerability Assessment (2016)* 10-20. See also, Godsäter *Civil Society Regionalization* 67.

182 SADC Secretariat *Outcomes of the Ministerial Workshop* 2; Hanks 2003 *Journal on Sustainable Forestry* 131.

183 SDG 1 replaced MDG 1 on poverty.

184 SADC Secretariat 2013 *SADC Programme for TFCAs* 18.

185 Munthali 2007 *Natural Resources Forum* 52.

186 See also, Andersson and Cumming “Boundary formation and TFCAs” 25-53; Giller *et al* “Population and livelihoods on the edge” 62-84; Cumming, Dzingirai and De Garine-Wichatitsky “Land- and natural resource-based livelihood opportunities” 163-171. See more generally, Mansourian *et al* “Poverty and Protected Areas” 4-17; Naughton-Treves, Holland and Brandon 2005 *Annual Review of Environment and Resources* 227-231.

187 See for instance, Büscher 2007 *Conservation Biology* 229-233; Büscher 2007 *Conservation and Society* 22-43; Büscher 2010 *Environment and Planning* 648-653; Büscher *Transforming the Frontier* 49-80, 195-218; Büscher 2010 *Development and Change* 33-37; Büscher 2010 *Third World Quarterly* 259-276; Draper 2004 *Culture and Organization* 341-353; Duffy “Global-local linkages” 68-70; Duffy 2015 *Tourism Geographies* 530-533; Ramutsindela *Transfrontier Conservation in Africa* 105; Noe “The Selous-Niassa Transfrontier Conservation Area” 196.

188 Neoliberalism in conservation generally implies “a blend of ideology and practices – both ways of thinking about how to save nature in capitalist terms, and specific projects, structures, and techniques that use capitalist approaches to conserve biodiversity” (Holmes 2015 *Environment*

continued exclusion of local communities in any meaningful participation in the decision-making and beneficiation in TFCAs is evidence of side-lining poverty alleviation and improved livelihoods.¹⁸⁹ Bocchino¹⁹⁰ reports that rural people experience TFCAs as a continuation of practices belonging to a policy of exclusion advanced in the establishment of protected areas in the region. Wolmer¹⁹¹ adds that the objective of alleviating poverty is overtaken by the drive to pursue economic development through regional integration. The discussion therefore considers the economic development agenda in the SADC TFCAs.

2.2.3.3 Economic development

Economic development is identified as a significant reason and goal for the implementation of the TFCA programmes in the SADC region.¹⁹² One of the fundamental goals of SADC, as a regional economic community within the AU, is to “promote synergy in regional initiatives for economic, social and conservation benefits within its region.”¹⁹³ The *SADC Treaty* enshrines regional economic integration for the region and states that one of its objectives is to “achieve development and economic growth, through regional integration.”¹⁹⁴ Consequently, the *Wildlife Protocol* promotes “regional cooperation and integration in wildlife

and Planning 854). Much has been written on neoliberalism in conservation, see for instance, Büscher 2007 *Conservation Biology* 229-233; Büscher 2007 *Conservation and Society* 22-43; Büscher and Fletcher 2015 *New Political Economy* 289-293; Draper 2004 *Culture and Organization* 341-353; Fletcher “Taking the Chocolate Laxative” 87-92; Matose “Nature, Villagers, and the State” 67-68; Morris 2006 *Geoforum* 4-5; Wilshusen “Capitalizing Conservation/Development” 128-133; Scholfield and Brockington *Non-governmental Organisations* 24-32. See more generally, Barnett 2005 *Geoforum* 8-10.

189 Chaderopa *Transfrontier Parks, Social Space* 43. See also, Lockwood 2010 *Journal of Environmental Management* 755; Kothari “Diversifying Protected Area” 63. Sherly and Emerton “Protected Areas” 11; Mansourian “Poverty and Protected Areas” 26.

190 Bocchino “Rural People in Southern Africa” 293; Andersson, Dzingirai and Cumming “People at wildlife frontiers in Africa” 13-20; Andersson *et al* “People at wildlife frontiers” 1-4; Cumming, Dzingirai and De Garine-Wichatitsky “Land- and natural resource-based” 177-178. See more generally, Mansourian “Poverty and Protected Areas” 25-26.

191 Wolmer “Transboundary conservation” 266; Sherly and Emerton “Protected Areas” 4-5.

192 Paragraph 4.2.7 of the *SADC Programme for TFCAs*; Büscher 2010 *Third World Quarterly* 260.

193 SADC Regional Indicative Strategic Development Plan (RIDSP).

194 Preamble, a 5 of the *SADC Treaty* 1992.

conservation and management,"¹⁹⁵ which acknowledges "that the conservation and sustainable use of wildlife in the region contribute to economic development."¹⁹⁶ Additionally, it is believed that "the regional management of wildlife will promote awareness of the socio-economic value of wildlife and enable equitable distribution of the benefits derived from the sustainable use of wildlife."¹⁹⁷ It is within this context that the Protocol introduced and endorsed TFCAs as an important mechanism for its regional objectives.¹⁹⁸

It is envisaged that TFCAs are able to yield both conservation and economic benefits for the collaborating parties, more so than would be achieved independently.¹⁹⁹ The basis is that TFCAs are able to pay for themselves and thereby generate revenue, not only for their own sustenance and for the local communities, but also for the greater national and regional agenda of economic development.²⁰⁰ For this regional economic integration, there is a particular emphasis on investments in tourism.²⁰¹ It is envisaged that TFCAs promote widespread tourism venture opportunities, public-private and private-community partnerships, infrastructure development, increased foreign direct investment and trade liberalisation to propel economic development in the region.²⁰² At national level, the benefits for economic development include increased tax revenues and user fees, the generation of foreign exchange and the capturing of capital investment rather than exporting to the developed world. The benefits at local level include, *inter alia*, the purchasing of local products such as foods and crafts, the provision of locally owned accommodation, employing local

195 Ron *SADC Proposed Framework for TFCAs* 10.

196 Preamble of the *Wildlife Protocol*.

197 Preamble of the *Wildlife Protocol*.

198 Articles 1, 4(2)(f), 7(5)(a) and 7(9). of the *Wildlife Protocol*.

199 Mugadza *Biodiversity conservation through TFCAs* 8; Sherly and Emerton "Protected Areas" 11-16.

200 Paragraph 4.2.7 of the *SADC Programme for TFCAs*; Duffy 2003 *Political Geography* 96.

201 Wolmer "Transboundary Conservation" 266.

202 Paragraph 4.2.7 of the *SADC Programme for TFCAs*; Wolmer 2003 "Transboundary Conservation" 266. See also Pratt, Rivera and Blen "Tourism Investing in energy and resource efficiency" 414; Neto 2003 *Economic and Social Affairs* 4; UNWTO *Sustainable Tourism for Development* 14, 37.

guides and subsequent reduced rural-urban migration.²⁰³ This study focuses on this very agenda of using tourism as the driver of economic development. Yet, because these TFCA objectives are interdependent,²⁰⁴ tourism should, at a minimum, promote all three objectives.

2.3 The development of tourism in SADC TFCA's

As a precursor, this segment commences by exploring what tourism is, followed by a discussion of how it has been developed within the concept of TFCA's in Southern Africa.

2.3.1 Meaning of tourism

Tourism is a very complex phenomenon.²⁰⁵ Its conceptualisation varies, depending on the different interests involved.²⁰⁶ Accordingly, there seems to be no single definition for tourism. Instead, one comes across "traditional" and "newer" definitions,²⁰⁷ suggesting that the meaning of tourism has been changing over time. One of the earlier definitions of tourism is provided by Aronsson,²⁰⁸ who states that tourism is "a movement in space from a person's home district to one or more destinations and then back again." Tourism, in this definition, is understood simply as a movement of people from their homes to other places.²⁰⁹ Other earlier scholars on the subject, such as Mathieson and Wall,²¹⁰ defined it as:

203 Voeks and Rahmatian *Eco-tourism and Sustainable Tourism* 11.

204 Mugadza *Biodiversity conservation through TFCA's* 8.

205 Vrancken *Tourism and the Law in South Africa* 273.

206 Moore, Cushman and Simmons 1995 *Annals of Tourism Research* 71; Darbellay and Stock 2012 *Annals of Tourism Research* 442.

207 Karatzoglou Date Unknown www.aegean.gr/lid/internet/elliniki_ekdosi/TEL_DIMOSI/KLUWER. See also Sharpley 2009 *Tourism Development and the Environment* 6-19 on the various definitions of tourism.

208 Aronsson *The Development of Sustainable Tourism* 25.

209 For a detailed discussion on tourism as a movement of people, see Sharpley 2009 *Tourism Development and the Environment* 6; Moore, Cushman and Simmons 1995 *Annals of Tourism Research* 71; Darbellay and Stock 2012 *Annals of Tourism Research* 442.

210 Mathieson and Wall *Tourism: Economic, Physical and Social Impacts* 15.

The temporary movement of people to destinations outside the normal places of work and residence, activities undertaken during their stay in those destinations, and the facilities created to cater for their needs.

Similarly, the *Hague Declaration on Tourism* of 1989 (hereafter Hague Declaration) describes tourism as

...all free movements of persons away from their places of residence and work, as well as the service industries created to satisfy the needs resulting from these movements.²¹¹

It is clear from these definitions that tourism revolves around the tourist's travel and needs. Important here is the recognition that tourism also includes the component of industry. This includes travel agents, organisers and intermediaries, attractions, accommodation and supporting facilities.²¹² Other definitions add the element of time and purpose.²¹³ Nevertheless, the crucial point here is that the concept of tourism, at that stage, focused on the tourist and the tourism industry. Nevertheless, Sharpley²¹⁴ states that

An analysis of tourism within a development-environment context cannot, or should not, be undertaken without defining the character and scope of tourism as a social and economic activity.

This means that in a study such as this one, the above definitions cannot suffice. With this in mind, the definition by the United Nations World Tourism Organisation (UNWTO)²¹⁵ is worth considering. They define tourism as

A social, cultural and economic phenomenon which entails the movement of people to countries or places outside their usual environment for personal or business/professional purposes.²¹⁶

This definition includes social and cultural elements to tourism, thereby suggesting that it has to do with social and cultural interactions.²¹⁷ Recognition is therefore

211 Principle 1 of the *Hague Declaration on Tourism*.

212 Karatzoglou Date Unknown www.aegean.gr/lid/internet/elliniki_ekdosi/TEL_DIMOSI/KLUWER.

213 WTO 1991 and WTO and UNSTAT 1994; European Commission 2002.

214 Sharpley 2009 *Tourism Development and the Environment* 6.

215 UNWTO Date Unknown <http://media.unwto.org/en/content/understanding-tourism-basic-glossary>.

216 UNWTO Date Unknown <http://media.unwto.org/en/content/understanding-tourism-basic-glossary>.

given to the fact that tourism has implications not only for tourists but also for “the economy, the natural and built environment and the local population at the destination.”²¹⁸ Based on the above and in the context of this study, therefore, tourism involves

the movement of people to TFCAs, where these are outside their normal places of work and residence, for a limited period of time, the activities undertaken during their stay in the TFCAs and the facilities created to cater for their needs; all of which having economic, environmental, social and cultural implications.

At the core of this working definition is the reasoning that the movement of people and the activities they undertake in TFCAs, as well as the contingent industry, have implications for the economies of the participating countries, the physical and built environment of the TFCA and beyond; and on the local communities residing within and in surrounding areas. This conceptualisation of tourism, with its implications, is crucial in TFCAs, because it relates back to the objectives of TFCAs that are

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- 217 Sharpley 2009 *Tourism Development and the Environment* 7-9 explains in detail concerning the social interactions. See also, Higgins-Desbiolles 2006 *Tourism Management* 1192-1195 for a detailed discussion of tourism as a social force that can improve individual well-being, foster cross-cultural understanding, facilitate learning, contribute to cultural protection, supplement development, foster environmental protection, promote peace and forment global consciousness which contributes to the formation of the global society.
- 218 For a detailed discussion of the impacts of tourism on protected areas, see for instance, Adam and Hutton 2007 *Conservation and Society* 150-160; Strickland-Munro and Moore 2014 *Koedoe* 1-5; Bushell, Staiff and Eagles “Tourism and protected areas” 1-11; For a discussion of the economic, social and environmental impacts of tourism in general, see for instance, Ashley *et al* *The Role of the Tourism Sector in Expanding Economic Opportunity* 9; Chirenje *et al* 2013 *Tourism Management* 60; Chirenje *et al* 2013 *Journal of Human Ecology* 9-16; Davies and Cahill 2000 <http://www.rff.org/Documents/RFF-DP-00-14.pdf>; Dieke 2003 *Management Decision* 287-295; Hagedoorn 2013 www.icrttourism.org/wp-content/uploads/2012/03/OP26.pdf; Hanks 2003 *Journal of Sustainable Forestry* 133; ILO Date Unknown www.ilo.org/wcmsp5/groups/public/---ed_dialogue/-sector/documents/briefingnote/wcms_162186.pdf; Lubbe 2003 *Tourism Management in Southern Africa* 31; Meyer 2007 *Current Issues in Tourism* 651-562; Mowforth and Munt 2009 *Tourism and Sustainability* 251; Neto 2003 *Economic and Social Affairs* 4; Pérez-Salom 2001 *Georgetown International Environmental Law Review* 802-806; Pickering and Hill 2007 *Journal of Environmental Management* 792-794; Pratt, Rivera and Blon “Tourism investing in energy and resource efficiency” 419; Tourism Concern Date Unknown www.tourismconcern.org.uk/the-issues-explained.html; UNEP Date Unknown www.unep.org/resourceefficiency/Business/SectoralActivities/Tourism/FactsandFiguresaboutTourism/ImpactofTourism; UNWTO *Sustainable Tourism for Development* 15.

discussed above.²¹⁹ With this understanding of tourism, the study explores how it has developed in Southern Africa for TFCAs.

2.3.2 Development of tourism for TFCAs in Southern Africa

In TFCAs, tourism occurs across international boundaries. Vasilijević *et al*²²⁰ explain that it is transboundary tourism, which entails tourists travelling between different parts of the transboundary conservation area “to view different natural features, and spending money in the different countries and regions of the area, that brings benefits to all countries concerned.”²²¹ Spenceley²²² reveals that in Southern Africa, the main component of the African tourism product is nature-based tourism, which happens mostly in national parks and conservation reserves.²²³ Priskin²²⁴ defines nature-based tourism as “tourism that features nature” and includes a range of tourism experiences such as adventure tourism,²²⁵ ecotourism,²²⁶ aspects of cultural and rural tourism,²²⁷ and wildlife tourism.²²⁸ Nevertheless, nature-based tourism,

219 More generally on the role of tourism in protected areas, see for instance, De Lacy and Whitmore “Tourism and Recreation” 517-522.

220 McCallum and Schoon 2011 www.tbpa.net/page.php?ndx=55.

221 Vasilijević *et al Transboundary Conservation* 26.

222 Vasilijević *et al Transboundary Conservation* 26.

223 Spenceley “Introduction: Responsible Tourism in Southern Africa” 15.

224 Spenceley “Introduction: Responsible Tourism in Southern Africa” 15; Priskin 2001 *Tourism Management* 639. See also, Acquah *Human-Wildlife Interactions, Nature-based Tourism, and Protected Areas Management* 3; Kuenzi and McNeely 2008 “Nature-Based Tourism” 157-58

225 Priskin 2001 *Tourism Management* 639.

226 Newsome *et al Natural Area Tourism* 12; Buckley 2006 *Adventure Tourism* 1-2.

227 Ecotourism as a form of nature-based tourism relates to an experience in remote or natural areas that fosters an understanding and appreciation for the need to conserve the natural environment in a way that sustains the resources, culture, the economy and the local community (Priskin 2001 *Tourism Management* 639). See also, Higham 2007 “Ecotourism: Competing and conflicting schools of thought” 2, 5; Higham and Lück 2007 “Ecotourism pondering the paradoxes” 119; Nyaupane and Poudel 2011 *Annals of Tourism Research* 1345.

228 Cultural tourism encompasses both passive consumption of culture and active consumption of culture (Ivanovic *Cultural Tourism* 43; Griffin, Raj and Morpeth “Introduction to Cultural Tourism” 1-6); while rural tourism encompasses all activities which are undertaken in rural areas such as ecotourism, adventure tourism, etc. See in this regard, Priestley *et al* “Legislative Frameworks for Rural Tourism” 65; Hall, Mitchell and Roberts “Tourism and the Countryside” 2.

229 Wildlife tourism is defined as a form of nature-based tourism that includes the consumptive and non-consumptive use of wildlife animals in natural areas (Roe, Leader-Williams and Dalal-Clayton *Take Only Photographs, Leave Only Footprints: The Environmental Impacts of Wildlife Tourism* 19). See also, Higginbottom “Wildlife Tourism: An Introduction” 2.

including its sub-forms, does not necessarily contribute to biodiversity conservation, socio-economic development or the improvement of livelihoods.²²⁹

Moreover, it has been argued that TFCAs, through tourism, may offer a sustainable alternative to commercial farms and subsistence agriculture as they cover large areas within the arid parts of the region.²³⁰ In these areas, rain-fed agriculture or commercial livestock production is difficult.²³¹ Thus, tourism in TFCAs may affect the livelihood strategies of local households, the infrastructure of the natural resource base of the destination, opportunities for small enterprise development and patterns of local or national economic growth.²³² Against this background, it is important to consider how tourism has been identified as a key driver of the TFCA objectives in the SADC normative instruments.

2.3.2.1 SADC instruments on tourism in TFCAs

In this section, the focus is on the *Tourism Protocol*, the *Wildlife Protocol* and other regional instruments that may be relevant to tourism in TFCAs. The *Tourism Protocol*, predominantly centers on promoting regional integration and economic development through tourism.²³³ While there is no express provision in this Protocol for tourism in TFCAs, it focuses on creating the platform for strategies that promote tourism development in the region. This is pivotal to the approach taken on the tourism that occurs in the TFCA context. For instance, its position on investment in tourism is that member States should “give priority to investment in the sustainable development of natural and cultural resources that transcend territorial

229 Buckley 2010 *Conservation Tourism* 2-3; Fredman and Tyrväinen “Introduction” 8; Kothari “Diversifying Protected Area” 64. Spenceley “Introduction: Responsible Tourism in Southern Africa” 15.

230 See for instance, Hanks 2003 *Journal of Sustainable Forestry* 132; Cumming, Dzingirai and De Garine-Wichatitsky 2013 “Land- and natural resource-based livelihood opportunities” 163-171.

231 See for instance, Hanks 2003 *Journal of Sustainable Forestry* 132; Cumming, Dzingirai and De Garine-Wichatitsky 2013 “Land- and natural resource-based livelihood opportunities” 163-171.

232 Paragraphs 3.2 and 4.2.5 of the *SADC Programme for TFCAs*. See also, Ashley *et al* *The Role of the Tourism Sector in Expanding Economic Opportunity* 9. See also, Cumming, Dzingirai and De Garine-Wichatitsky 2013 “Land- and natural resource-based livelihood opportunities” 170; Eagles and Hillel “Improving Protected Area” 77; Pabon-Zamora *et al* “Protected areas” 74.

233 Preamble and a 2 of the *Tourism Protocol*.

boundaries.”²³⁴ Creating a favourable investment climate for tourism in the region for both the public and private sectors is among the key objectives of the Protocol.²³⁵ Therefore, the emphasis on prioritising investment across national boundaries indicates the importance of initiatives such as those in TFCAs. To achieve this and other related goals, the Protocol establishes the Regional Tourism Organisation of Southern Africa (RETOSA) – the promotional and marketing arm of the SADC tourism sector.²³⁶ RETOSA, and more recently Boundless Southern Africa, have been instrumental in marketing TFCAs as regional tourism destinations.²³⁷

However, the *Tourism Protocol* only has a few provisions on issues relating to environmental protection and local communities so that it does not necessarily position tourism as a driver of these pertinent TFCA objectives. In particular, the Protocol mentions the involvement of local communities in its obligations relating to investment in tourism development in the region without elaborating on the means by which their involvement can be ascertained.²³⁸ The *Tourism Protocol* seems to be silent on the improvement of livelihoods and the alleviation of poverty. With respect to biodiversity conservation, this Protocol places an obligation on member States to pursue sound, sustainable policies on the utilisation and management of the natural and cultural resources and environment.²³⁹ This leaves it to the member States involved in TFCAs to interpret in favour of biodiversity conservation. Thus, the Protocol appears to be inadequate and vague as an instrument for regulating tourism as the driver of the three TFCA objectives.

The *Wildlife Protocol*,²⁴⁰ which provides for the creation of TFCAs, is important in its application to tourism in TFCAs. This Protocol does not expressly provide for tourism

234 Article 12(e) of the *Tourism Protocol*.

235 Article 2(6) of the *Tourism Protocol*.

236 Article 7 of the *Tourism Protocol*.

237 Paragraph 5.5 of the SADC TFCA Programme; Boundless Southern Africa 2018 www.boundless-southernafrica.org; Ramutsindela *Transfrontier Conservation in Africa* 135.

238 Article 12 of the *Tourism Protocol*.

239 Article 11 of the *Tourism Protocol*.

240 See para 2.3.2 above.

in TFCAs but for the sustainable use of wildlife resources – including in TFCAs.²⁴¹ Tourism, specifically nature-based tourism, is undoubtedly envisaged under the umbrella of sustainable use of wildlife resources in the region for regional economic development and biodiversity conservation.²⁴² Understood in this way, the *Wildlife Protocol* places, by implication, significant value on developmental activities such as tourism in the sustainable use of wildlife resources in TFCAs. In addition, this Protocol also aims to facilitate CBNRM practices for the management of wildlife resources.²⁴³ These CBNRM practices include tourism and are also promoted in TFCAs.²⁴⁴

Nevertheless, it is disconcerting that the *Wildlife Protocol* does not make much of sustainable use of wildlife for poverty alleviation as much as it does for regional economic development and biodiversity conservation. To be specific, it states that the conservation and sustainable use of wildlife contributes to sustainable economic development and the conservation of biodiversity.²⁴⁵ There is no provision that can be directly linked to the alleviation of poverty and yet it states that the survival of wildlife depends on the perceptions and development needs of people living with the wildlife. This reveals the exclusion of local communities and their needs from the main objectives of this Protocol, including the rationale for TFCAs. Therefore, it

241 Article 2 of the *Wildlife Protocol*.

242 Ashley and Roe *Enhancing community involvement* 7-10; Baker 1997 *Journal of Sustainable Tourism* 307-310; Fabricius "The fundamentals of community-based" 11; Muzvidziwa 2013 *Journal of Human Ecology* 46-49; Nyikahadzoi, Mhlana and Haller "Fragmented management of natural resources 11-14; Suich 2008 "Tourism in Transfrontier Conservation Areas" 188; Spenceley "Introduction: Responsible Tourism in Southern Africa" 15; Turner "community-based natural resource" 46.

243 Article 4(f) of the *Wildlife Protocol*. See also, para 2.2.2.4 above on CBNRM.

244 This has been the subject of much discussion in the academic and political arenas but see for instance, Ashley and Roe *Enhancing community involvement* 7-10; Baker 1997 *Journal of Sustainable Tourism* 307-310; Fabricius "The fundamentals of community-based" 11; Mubaiwa "Community-Based Natural Resource Management" 77; Muzvidziwa 2013 *Journal of Human Ecology* 46-49; Sebele *Tourism Management* 137-138; Turner "Community-based natural resource" 46.

245 Preamble of the *Wildlife Protocol*.

tends to fortify the above arguments that relate to neoliberalism in TFCAs and the tourism that occurs therein.²⁴⁶

Conversely, the RISDP identifies the development of TFCAs for biodiversity conservation and the economic empowerment of rural communities through tourism, as a means of meeting its goal on poverty eradication.²⁴⁷ Following from it, the *SADC Regional Biodiversity Strategy*²⁴⁸ identifies TFCAs as one of the main initiatives in implementing trans-boundary natural resource management programmes.²⁴⁹ It also recognises the use and economic importance of, *inter alia*, terrestrial wildlife biodiversity for consumptive and non-consumptive tourism purposes.²⁵⁰ This Strategy calls for economic activities that promote biodiversity conservation as well as the eradication of poverty. Although it does not make a specific link between tourism and the TFCA objectives *per se*, it does advocate for pursuing economic activities, including tourism, in such a way that they promote socio-economic development, biodiversity conservation and the eradication of poverty across national boundaries.

The recently established *SADC Programme for TFCAs*,²⁵¹ the instrument for promoting a TFCA network in the region,²⁵² also identifies tourism in TFCAs as a driver of regional economic development.²⁵³ One of its key components is the development of TFCAs into marketable regional tourism products. This predominantly involves “increasing the value and volume of sustainable nature-based tourism flows to the region” and “inculcating more equitable partnerships between private sector and communities in the tourism industry.”²⁵⁴ Another key component of the Programme states that tourism projects can contribute

246 See para 2.2.2 above.

247 Paragraph 4 of the RISDP.

248 *SADC Regional Biodiversity Strategy* (2006).

249 Paragraph 2.3.6 of the *SADC Regional Biodiversity Strategy*.

250 Paragraph 2.1.2 of the *SADC Regional Biodiversity Strategy*.

251 *SADC Programme for TFCAs*.

252 Paragraph 4 of the *SADC Programme for TFCAs*.

253 Paragraph 4.2.7 of the *SADC Programme for TFCAs*.

254 Paragraph 4.2.7 of the *SADC Programme for TFCAs*.

significantly to improving local economies and thereby meet its goal to enhance local livelihoods.²⁵⁵ This Programme, aptly places tourism in a position of promoting the three TFCA objectives.

In looking at these SADC instruments, it is apparent that the Protocols, which are binding on member States, are consistent in their approach to have tourism as an important driver of economic development. Yet, with respect to biodiversity conservation and the improvement of livelihoods-alleviation of poverty, the same cannot be said. The *Tourism Protocol* is not convincing in its biodiversity conservation and local community involvement agenda, in the same way that the *Wildlife Protocol* is not conclusive on the improvement of livelihoods-alleviation of poverty. There is a gap in these instruments concerning the improvement of livelihoods-alleviation of poverty – an important consideration for local communities in and around TFCAs, whose very livelihoods are dependent on the natural resources in these areas. While these inconsistencies are somewhat teased out by the non-binding strategies and programmes, there is a need for an instrument of a binding nature that ensures that the tourism development that occurs in TFCAs promotes the three TFCA objectives of biodiversity conservation, economic development and the improvement of livelihoods-alleviation of poverty.²⁵⁶ In the absence of such an instrument, there is no clear vision for ensuring that the TFCAs that exist or are to be established use tourism as a driver of some and not all three TFCA objectives, especially the improvement of livelihoods – alleviation of poverty. It is therefore necessary to consider the development of tourism in the GLTFCA.

2.4 Development of tourism in the GLTFCA: A case study

The GLTFCA, as the oldest and second largest established TFCAs in the region involving more than two participating countries, projects multiple socio-economic complexities that come with the multiple resource areas involved. This segment

255 Component 5 of the SADC Programme for TFCAs.

256 See para 2.2.3 above.

considers the legal aspects of the GLTFCA, followed by an in-depth discussion of the tourism that occurs in the country components.

2.4.1 GLTFCA: legal aspects

The focus here is on the geographic delimitation, the institutional arrangements and objectives of the GLTFCA, as provided for in the *GLTP Treaty*.

2.4.1.1 Geographic delimitation

The GLTFCA is made up of the GLTP and a broader conservation area, comprising of various land uses which span across South Africa, Mozambique and Zimbabwe. It is established by a MOU signed between the participating countries in 2000 and the subsequent *GLTP Treaty* of 2002.²⁵⁷ The MOU, although not legally binding, facilitated the establishment of the TFCA and set out the institutional framework of the GLTFCA. The Treaty, on the other hand, creates legally binding obligations for the actual implementation of the GLTP. However, it appears that the Treaty does not apply to the broader conservation areas, such that there is no clarity with respect to the management of the latter within the TFCA context at both the international and domestic levels.

As stated earlier,²⁵⁸ the areas that form the GLTP include the KNP and the Makuleke Region in South Africa. In Zimbabwe, the areas include the GNP, the Malipati Safari Area, Manjinji Pan Sanctuary and the Sengwe communal areas in Zimbabwe, which constitute the biodiversity corridor linking GNP to the KNP.²⁵⁹ In Mozambique, these areas include the Banhine and Zinave National Parks, the Massingir and Corumana areas and interlinking regions.²⁶⁰ In 2017, the Greater Libombo Conservancy, a

257 SANParks 2006

http://www.sanparks.org/parks/krufer/conservation/scientific/noticeboard/science_network_meeting_2006/D5_15_H_THERON.pdf.

258 See para 1.2.2.2 above.

259 Article 3 of the *GLTP Treaty*.

260 Article 3(2)(a) of the *GLTP Treaty*.

private concession, was added to the Mozambican component of the GLTFCA.²⁶¹ In South Africa and Zimbabwe as well, the TFCA region includes various privately-owned and state owned conservation areas that border the TFP.²⁶² The area adjacent to the TFP which comprises of compatible conservation areas, though not part of the formal integration of the TFP, are managed as a TFCA.²⁶³

2.4.1.2 Institutional arrangements

The institutional framework for the management of the GLTP comprises of a Ministerial Committee, a Joint Management Board and Coordinating Party.²⁶⁴ The Ministerial Committee consists of designated Ministers from the participating countries, with the responsibility of overall policy guidance of the TFPs and to monitor the effectiveness of the JMP.²⁶⁵ The Joint Management Board consists of representatives from the National Implementing Agencies, the national agencies for border control and other individuals or entities as may be deemed fit.²⁶⁶ The key responsibilities of the Joint Management Board are, *inter alia*, to implement the JMP, to determine mechanisms for the administering of the funds for the Park and to identify and source funds for the Park.²⁶⁷ The Joint Management Board is also mandated to address tourism flows, revenue matters and other issues of common interest.²⁶⁸ The Coordinating Party designated from each state party on a rotational basis, is responsible for the overall coordination of the management of the Park to ensure accountability and progress: the current international coordinator is a *super partes* position in place since 2012.²⁶⁹

261 Great Limpopo Transfrontier Park 2017 <http://www.greatlimpopo.org/2017/03/major-developments-in-greater-limpopo-transfrontier-park-applauded/>.

262 Article 3(2)(b) of the *GLTP Treaty*.

263 Article 3(2) of the *GLTP Treaty*.

264 Article 9 of the *GLTP Treaty*.

265 Article 10 of the *GLTP Treaty*.

266 Article 11 of the *GLTP Treaty*.

267 Article 11 of the *GLTP Treaty*.

268 Article 13(2) of the *GLTP Treaty*.

269 Article 12 of the *GLTP Treaty*.

Nevertheless, while the Treaty excludes local communities in the institutional framework of the GLTP and the broader GLTFCA, the *GLTFCA Integrated Livelihoods Diversification Strategy* (2016-2030) determines to strengthen governance and capacity at all levels, including at community level in order to improve the livelihoods of the local communities.²⁷⁰ This is an attempt to redress the exclusion of local communities as pertinent stakeholders in the establishing processes and the ultimate TFCA agreement between the participating countries.²⁷¹

2.4.1.3 Objectives of the GLTP

The preamble of the *GLTP Treaty* specifies that, the establishment of the park is intended to achieve biodiversity conservation. In doing so, the parties aim at achieving sustainable development “through the conservation and sustainable use of natural resources for present and future generations.”²⁷² Thus, the Treaty articulates that the purposes of creating the GLTP are conservation, socio-economic development and public enjoyment.²⁷³

For this reason, the objectives of the GLTP are to:

- (a) foster trans-national collaboration and co-operation among the Parties which will facilitate effective ecosystem management in the Transfrontier Park;
- (b) promote alliances in the management of biological natural resources and cultural heritage resources by encouraging social, economic and other partnerships among the Parties, including the private sector, local communities and non-governmental organisations;
- (c) enhance ecosystem integrity and natural ecological processes by harmonising environmental management policies and procedures across international boundaries and striving to remove artificial barriers impeding the natural movement of wildlife;
- (d) facilitate the establishment and maintenance of a sustainable sub-regional economic base through appropriate development frameworks, strategies and work plans;

270 A GLTFCA Co-operative Agreement is currently being drafted, which may be useful in involving local communities in the TFCA governance structures.

271 See para 2.2.2.3 above.

272 Preamble of the *GLTP Treaty*.

273 Article 2 of the *GLTP Treaty*.

(e) develop trans-border eco-tourism as a means of fostering regional socio-economic development; and

(f) establish mechanisms to facilitate the exchange of technical, scientific and legal information for the joint management of the ecosystem.²⁷⁴

Objectives (a) to (c) are closely related to biodiversity conservation, while objectives (d) and (e) are related to economic development. There is no express objective on the improvement of livelihoods - poverty alleviation. From the wording of these Treaty objectives, biodiversity conservation, though not expressly stated, is implied in the recognition of "effective ecosystem management in the TFP", "the management of biological natural resources" and enhancing "ecosystem integrity and natural ecological processes".²⁷⁵ Therefore, the Treaty calls for interstate cooperation and collaboration, partnerships between the various stakeholders and the harmonisation of policies.²⁷⁶ Hence, the conservation efforts have joint management structures, clearly defined boundaries and conservation targets.²⁷⁷ However, with respect to partnerships, it has been observed that while the private sector has been engaged in the conservation efforts, there are inconsistencies in the engagement with local communities.²⁷⁸

Moreover, these conservation efforts are limited to the GLTP which comprises of protected areas from the three countries, that is, the three national parks. Andersson, Dzingirai and Cumming²⁷⁹ lament that this is an extension of fortress conservation which separates the wildlife within from human occupation and use of natural resources outside.²⁸⁰ According to Andersson and Cumming,²⁸¹ this perpetuates the colonial models of conservation that were preservationist and

274 Article 4 of the *GLTP Treaty*.

275 Mugadza Biodiversity conservation through TFCAs 28-29.

276 Article 4 of the *GLTP Treaty*.

277 Andersson, Dzingirai and Cumming "People at wildlife frontiers in Africa" 13-20.

278 Andersson, Dzingirai and Cumming "People at wildlife frontiers in Africa" 18.

279 Andersson, Dzingirai and Cumming "People at wildlife frontiers in Africa" 13-20.

280 Chirozva *Community engagement in the governance* 24-25; Mombershora and Le Bel 2009 *Biodiversity and Conservation* 2605-2607.

281 Andersson and Cumming "Defining the edge" 32-33.

targeted at excluding Africans through capitalist expansion.²⁸² Consequently, local people tend to be viewed as impediments to the realisation of an effective conservation area.²⁸³ Along this reasoning, the creation of the LNP led to the resettlement of communities that had been residing therein.²⁸⁴ In Zimbabwe, it is reported that the government has been battling to remove the Shangaan people from their settlements in order to maintain the image of wilderness and the free movement of wildlife.²⁸⁵ In retaliation, these communities sometimes resort to illegal settlement, illegal appropriation of natural resources, illegal hunting, panning or smuggling.²⁸⁶

Closely related is the removal of artificial barriers that impeded the natural movement of wildlife.²⁸⁷ Andersson, Dzingirai and Cumming²⁸⁸ note that the conservation focus for the creation of TFCAs has generally been on Southern Africa's rich large mammal fauna. This has necessitated, among other reasons, the creation of the LNP, the creation of the Sengwe-Tshipise Wilderness Corridor to link the KNP and the GNP, which has not been finalised yet, and the removal of fences along protected area boundaries to solve conservation problems such as the expanding numbers of elephants in protected areas.²⁸⁹ However, De Garine-Wichatitsky *et al*²⁹⁰ reveal that this movement of wildlife in the TFCA poses additional constraints for

282 Momershora and Le Bel 2009 *Biodiversity and Conservation* 2605-2607.

283 Andersson, Dzingirai and Cumming "People at wildlife frontiers in Africa" 16; Momershora and Le Bel 2009 *Biodiversity and Conservation* 2602-2603; Petterson *Conservation for development* 11-16.

284 Andersson and Cumming "Defining the edge" 53; Maase 2016 *Conservation and Society* 100-111

285 Momershora and Le Bel 2009 *Biodiversity and Conservation* 2602-2603.

286 Andersson, Dzingirai and Cumming "People at wildlife frontiers in Africa" 20.

287 Article 4(c), *GLTP Treaty*. For a detailed discussion on the movement of wildlife across national boundaries, see for instance, Murwira *et al* 2013 "Resource gradients and movements" 123-134.

288 Andersson, Dzingirai and Cumming "People at wildlife frontiers in Africa" 14.

289 Andersson, Dzingirai and Cumming "People at wildlife frontiers in Africa" 13-20; Chirozva *Community engagement in the governance* 120-147.

290 De Garine-Wichatitsky *et al* 2013 "Consequences of animals crossing" 137-157. See also, Chiutsi 2014 *European Scientific Journal* 13; Ganidwa *et al* 2014 *Journal of Environmental Protection* 475-481; Gandiwa *et al* 2013 *Ecology and Society* <http://dx.doi.org/10.5751/ES-05817-1804078>; Maase 2016 *Conservation and Society* 100-111; Murwira *et al* 2013 "Resource gradients and movements" 123-134; Petterson *Conservation for development* 13-16.

people, including physical aggression by wildlife, destruction of crops, predation of livestock and disease transmission.

There is much to be done in ensuring that the conservation efforts bring local communities into the conservation matrix. This calls for measures to promote beneficiation, public participation, accountability and CBNRM in the governance of the GLTFCA.²⁹¹ As it is, conservation in the GLTFCA appears to be closely linked to tourism but distant from local community development or the alleviation of poverty. Chiutsi²⁹² hypothesises that community participation in the tourism industry could lead to “sustainable conservation and communities development.” Therefore it is essential to examine whether tourism in the GLTFCA is promoting both conservation and local community development.

2.4.2 Tourism in the GLTFCA

This section considers the role that tourism has played in contributing to socio-economic development in the GLTFCA. It considers the economic and social impacts of tourism in this ecoregion by providing a general overview of the tourism setting, followed by a detailed description of the tourism development in each of the country components.

The *GLTP Treaty* aims to establish and maintain a sub-regional economic base and develop trans-border eco-tourism as a means of fostering regional socio-economic development.²⁹³ The meaning of ecotourism in the Treaty is not provided for, making it difficult to tell whether it is not just a ‘branding’ of any form of tourism that may be practiced in the TFCA. Also, without further objectives on the improvement of local communities’ livelihoods and poverty alleviation it is not clear that even this ‘eco-tourism’ will promote this agenda.

291 See para 2.2.2.3 above.

292 Chiutsi 2014 *European Scientific Journal* 13.

293 Article 4(d) and (e) of the *GLTP Treaty*.

Nevertheless, the GLTFCA as the second largest transfrontier conservation area in Southern Africa, was established with the aim of becoming an important tourism destination for the region.²⁹⁴ The area contains a number of important ecosystems and natural resources as well as some heritage and cultural resources of value, which makes it rich in tourism potential.²⁹⁵ Much of the tourism occurs in the GLTP, within the national parks and in areas of close proximity. Booth²⁹⁶ notes that the strength of the GLTP lies in the potential of all three parks to offer a diversity of products and experiences that target different markets. This is possible if the parks are developed as one integrated destination, with the KNP - the most developed of the three, playing an “anchor role” in the wider tourism development programme. The KNP covers a large area of the GLTFCA with a high population of wildlife species, attracting a large number of tourism activities.²⁹⁷ On the Zimbabwean and Mozambican sides, the wildlife population is low although there are larger areas of land falling within the TFCA.²⁹⁸ Unlike the KNP with significant infrastructural development for the purposes of tourism, the Mozambican component lacks the necessary infrastructure and therefore does not attract much tourism activity. The Zimbabwean component has the necessary infrastructure for tourism but is stifled by the continuing political and economic challenges.

Owing to these disparities, there has been a lack of consensus about revenue sharing with Mozambique and Zimbabwe concerned that the majority of revenue would go to South Africa.²⁹⁹ Yet, revenue sharing is the most important consideration in the economic development of the SADC region, and at national level

294 Doppelfeld “Collaborative Stakeholder Planning in Cross-border Regions”; Wyllie 2014 *Benefits beyond boundaries* 145.

295 Wyllie *Benefits beyond boundaries* 145.

296 Booth *Sustainable development and natural resources management* 7.

297 SANParks 2012 <http://www.sanparks.co.za/conservation/>.

298 Recent surveys, as reported by the GLTP Organisation, indicate that the wildlife population, especially of predators have been increasing on the Zimbabwean component while elephants are said to be increasing on the Mozambican side. Great Limpopo Transfrontier Park 2016 www.greatlimpopo.org/2016/04/this-is-predator-country/; Great Limpopo Transfrontier Park 2015 www.greatlimpopo.org/2015/06/more-tourists-choose-limpopo-national-park/.

299 Darnell *Are Peace Parks Effective Peacebuilding Tools?* 71.

for the participating countries. Hecht³⁰⁰ recommends the adoption of a dual fee structure in terms of which each country keeps its own revenue and then reallocates it into a joint fund, to which each park contributes a share of its entry fees, based on need and the ability to pay. There has also been a general lack of political consensus in the running of the GLTFCA, since Zimbabwe does not seem to participate willingly and actively in the developments. These challenges expose weaknesses in the economic development objectives of the GLTFCA, especially at the political level.

Although the *GLTP Treaty* does not address the improvement of livelihoods-alleviation of poverty, its JMP does. The *GLTP Joint Management Plan* acknowledges that the communities that live in close proximity of the GLTP and associated conservation areas are characterised by high levels of poverty, unemployment, illiteracy, a lack of basic infrastructure and disruptive socio-economic dynamics complicated by previous political circumstances.³⁰¹ These communities survive on unreliable subsistence agriculture and the harvesting of natural resources, particularly wildlife.³⁰² Tourism is therefore identified as an alternative livelihood for these communities.³⁰³

To facilitate tourism development, progress has been made in implementing the Treaty by South Africa and Mozambique, but not quite in Zimbabwe.³⁰⁴ The progress in South Africa and Mozambique is evidenced by the opening of the Giryondo Tourist Access Facility, in 2006, by the Presidents of the three countries. This was done to enable access for tourists to move across the KNP and LNP.³⁰⁵ Efforts have also been made to link the GNP, through the Sengwe-Tshipise Corridor, with the KNP and the LNP, while the establishment of a border-crossing point in the form of a

300 Hecht *Revenue Sharing in the GLTP* 16-20.

301 Paragraph 10 of the *GLTP Joint Management Plan*, 2002.

302 Paragraph 10 of the *GLTP Joint Management Plan*, 2002.

303 Chiutsi 2014 *European Scientific Journal* 13; Cumming, Dzingirai and De Garine-Wichatitsky "Land- and natural resource-based" 176-178.

304 Bice *Great Limpopo: Talk of the Transfrontier* 5-6; Booth *Sustainable development and natural resources management* 7. See also CESVI *Sustainable development and natural resource management* 1-19.

305 Republic of South Africa 2006 <http://www.gov.za/t-mbeki-guebuza-and-r-mugabe-open-giryondo-access-facility>.

bridge has not been finalised.³⁰⁶ Moreover, the *GLTP Joint Management Plan* encourages the GLTP authorities to work closely with the tourism industry.³⁰⁷ The primary forms of tourism development in the GLTFCA are nature-based tourism, cultural tourism and ecotourism.³⁰⁸ There is a great demand for nature-based tourism in South Africa followed by Zimbabwe, with a very low demand in Mozambique.³⁰⁹

2.4.2.1 South African component

In South Africa, the KNP is well developed as a tourist destination and is described as one of the most sought-after wildlife destinations.³¹⁰ It is regarded as pivotal in the development of the region and for the country, providing more than 1000 jobs and attracting foreign capital.³¹¹ The KNP has a highly developed infrastructure, with facilities comprising more than 4000 beds and camping sites, and wilderness trails. It has 25 rest camps, 15 designated private safari lodges and two private lodge concessions.³¹² The Park receives more than one million visitors every year and generates an annual income of around US\$40 million.³¹³ The various tourism activities take place from the Southern part of the Park through to the northern part along the borders of Mozambique and South Africa.³¹⁴ However, the high volume of tourists is threatening the tourist and social carrying capacities as well as the

306 Chirozva *Community engagement in the governance* 120-147. See also, Booth *Sustainable development and natural resources management* 3; Nelson "Livelihoods, Conservation" 306-316; Simpson "The Impacts of Tourism Initiatives" 240-264; Spenceley "Impacts of Wildlife Tourism" 160-180.

307 Paragraph 10 of the *GLTP Joint Management Plan*, 2002.

308 Wyllie 2014 *Benefits beyond boundaries* 150; Suich "Tourism in Tranfrontier Conservation" 187-188.

309 Spenceley 2006 *Development Southern Africa* 652.

310 Paragraph 10 of the *GLTP Joint Management Plan*; Ferreira and Harmse 2014 *Journal of Ecotourism* 17; Spenceley 2006 *Development Southern Africa* 653.

311 Ferreira and Harmse 2014 *Journal of Ecotourism* 31.

312 Ferreira and Harmse 2014 *Journal of Ecotourism* 17; Spenceley 2006 *Development Southern Africa* 653.

313 Paragraph 11 of the *GLTP Joint Management Plan*, 2002; para 2.2.1.1 of the *KNP Management Plan*; Spenceley 2006 *Development Southern Africa* 653.

314 Paragraph 2.2.1.1 *KNP Management Plan*; Ferreira and Harmse 2014 *Journal of Ecotourism* 17.

sustainability of the southern part of Park as a result of overcrowding.³¹⁵ There are concerns around the commodification of the Park and its wildlife to meet its financial obligations.³¹⁶ This significantly compromises the GLTFCA objective of biodiversity conservation.

Notwithstanding, the economic progress of the KNP is hinged upon the commercialisation strategy of SANParks,³¹⁷ which employs Public-Private Partnerships (PPPs) to generate additional income to fulfill the Park's objectives. Through this strategy, SANParks has managed to grant concessions for the use of defined areas of land and infrastructure in the KNP, resulting in an increase in the net revenue that commercial activities contribute to the Park's core function of nature conservation. The strategy led to the transfer of the management of tourism operations from SANParks to commercial operators that are more qualified and equipped to manage such facilities than the former.³¹⁸ Three of the seven concessions that signed agreements with SANParks were black-controlled consortia, while all the others have significant percentages of shareholding by historically disadvantaged individuals. However, these concessions have not performed as well as expected.³¹⁹ Moreover, it has been noted that the commercialisation process was undertaken without the necessary level of consultation with local communities, which would have facilitated prospects of empowerment ventures.³²⁰ It is not clear whether the award of the concessions to the black-controlled consortia considered the inclusion of members of the local communities or at least the accrual of benefits to the local communities. The *Kruger National Park Draft Park Management Plan 2018-2028* is silent on the inclusion of or considerations of local communities in the awarding of concessions.

315 Ferreira and Harmse 2014 *Journal of Ecotourism* 17.

316 Ferreira and Harmse 2014 *Journal of Ecotourism* 17.

317 For a detailed discussion of SANParks, see para 4.2.2.1 below.

318 Spenceley 2006 *Development Southern Africa* 653.

319 Spenceley 2006 *Development Southern Africa* 654.

320 Spenceley *Tourism, Local Livelihoods, and the Private Sector* 56.

This suggests that the SANParks commercialisation strategy does not promote the improvement of livelihoods given the undermining of local communities consultations in the tourism concessions granted to private operators. Effectively, therefore, all the benefits from this Strategy accrue to SANParks and the private operators and not to the local communities. There is a need for mechanisms to ensure that the improvement of livelihoods becomes an important component of the commercialisation strategy.

With respect to local communities, there is dense settlement on the border of the KNP categorised by differences in ethnicity, human density, access to services, socio-economic status and land tenure, from north to south.³²¹ These patterns are inextricably linked to the *apartheid* policies of creating homelands along ethnic lines, with the Shangaan and Venda in the north, Shangaan and North Sotho in the central lowveld and Shangaan and Swazi in the south.³²² These areas are characterised by a high degree of poverty, poor access to services and communal land ownership, except in some of the emerging urban centres.³²³ This indicates that tourism development is not necessarily improving rural local community livelihoods. As such, it calls for efforts towards ensuring that the socio-economic and environmental rights are protected further in the course of tourism development.³²⁴ In particular, the high degree of poverty, while alluding to many issues, brings to the fore issues of employment and job security that are evidently unfavourable to these communities, which must be addressed.³²⁵

Moreover, the participation of local communities in the planning and development of tourism in this TFCA component has been erratic.³²⁶ Community involvement in tourism relates mostly to the Makuleke community located in the north of the Park in

321 Giller *et al* "Population and livelihoods on the edge" 71.

322 Giller *et al* "Population and livelihoods on the edge" 71.

323 Giller *et al* "Population and livelihoods on the edge" 71.

324 Du Plessis and Du Plessis "Southern African Perspectives" 252-258.

325 See for instance, Giller *et al* "Population and livelihoods on the edge" 71; Spenceley "Impacts of Wildlife Tourism" 176-179.

326 Spenceley 2006 *Development Southern Africa* 656.

Pafuri.³²⁷ This community was forcibly removed from their land in 1969 but were given back their land in 1998 with the restitution process, leading to the creation of a contractual park.³²⁸ With the land restitution, the Makuleke, through its Communal Property Association (CPA), entered into a 25-year agreement with SANParks in terms of which the community is able to make sustainable use of specified natural resources and tourism accommodation, but only within the confines of wildlife conservation. The agreement, however, excludes specific low-impact high-income activities such as trophy hunting in the contractual park.³²⁹

In the early phases of regaining ownership of their land, the Makuleke chose hunting as their means of earning income but were not permitted by SANParks to do so and have since opted to use tourism as the main economic earner on their land.³³⁰ Thus, they have entered into agreements with private operators to build game lodges and camps.³³¹ In terms of these agreements the CPA receives 10 percent of the revenue and is guaranteed a high proportion of the jobs and skills training. The concessions are in the form of Build-Operate-Transfer (BOT), meaning that the private partners will build and operate the lodges for a specified period and then transfer ownership to the CPA.³³² As successful as it appears, critics³³³ have argued that the power relations have flawed the entire process of restitution and the subsequent concessioning, to the detriment of the community who have weaker bargaining power than that of the state and the private entities involved. This calls for

327 Spenceley 2006 *Development Southern Africa* 656.

328 Spenceley 2006 *Development Southern Africa* 656; Steenkamp and Uhr *The Makuleke Land Claim* 5, 11.

329 *Kruger National Park Draft Park Management Plan* 2018-2028.

330 Maluleke Date Unknown

<http://www.conservation-development.net/Projekte/Nachhaltigkeit/CD1/.../Maluleke.pdf>.

331 Spenceley 2006 *Development Southern Africa* 657.

332 Maluleke Date Unknown <http://www.conservation-development.net/Projekte/Nachhaltigkeit/CD1/.../Maluleke.pdf>.

333 See for instance, Steenkamp and Uhr 2000 *The Makuleke Land Claim* 21-25; Shehab 2011 *Tourism-Led Development in South Africa* 210-213.

measures that ensure equal bargaining powers and capacity to empower local communities who own the land on which the tourism development occurs.³³⁴

The involvement of the Mnisi community in tourism in the South African component of the GLTFCA is also noteworthy. The Mnisi community is located adjacent to the GLTFCA, in the area that includes the Andover and Manyeleti Provincial Game Reserves, and other private game reserves.³³⁵ The Manyeleti Game Reserve was incorporated into the KNP with the removal of a fence.³³⁶ The main livelihood of the Mnisi community is livestock farming and subsistence agriculture.³³⁷ However, with efforts by the Limpopo Provincial Government towards the involvement of a private partner in the Manyeleti Game Reserve, it was hoped that the community would benefit through employment, local Small Medium and Micro Enterprises (SMMEs) opportunities, involvement in local tourism operations, participation in the management of black-owned companies or consortia and the community development.³³⁸ These benefits have not been fully realised especially because the land of the Mnisi community remains under the ownership of the provincial government due to contentions around the beneficiaries from the land.³³⁹

As with the Makuleke, the Mnisi were also driven out of the KNP during the colonial era.³⁴⁰ The land claim of the Mnisi community in 2010 resulted in the settlement agreement in terms of which ownership will pass from provincial government to the community upon confirmation of all beneficiaries.³⁴¹ In the case of *The Trustees of*

334 See for instance, Cumming, Dzingirai and De Garine-Wichatitsky "Land- and natural resource-based" 176-178.

335 Mahony and Van Zyl *Practical strategies for pro-poor tourism* 8.

336 Mahony and Van Zyl *Practical strategies for pro-poor tourism* 8.

337 Mahony and Van Zyl *Practical strategies for pro-poor tourism* 8.

338 Spenceley *Tourism, Local Livelihoods, and the Private Sector* 57.

339 Mahony and Van Zyl *Practical strategies for pro-poor tourism* 8.

340 *The Trustees of Manyeleti Conservation Trust, Mnisi Community v Minister of Rural Development and Land Reform et al* LCC 100/2011 Judgment delivered on 17 November 2017. The latter is a judgement delivered in the Land Claims Court on the suspensive conditions in the settlement agreement in respect of the Mnisi Community Land Restitution Claim in the Manyeleti Game Reserve, for the inclusion of all beneficiaries to the land claim over the Manyeleti Game Reserve.

341 *The Trustees of Manyeleti Conservation Trust, Mnisi Community v Minister of Rural Development and Land Reform et al* paras 6-14.

Manyeleti Conservation Trust, Mnisi Community v Minister of Rural Development and Land Reform et al,³⁴² it was held that some of the beneficiaries have not yet been included, which implies that ownership cannot be passed to the community. Another case of note is the *Mhlanganisweni Community v The Minister of Rural Development and Land Reform & Others*,³⁴³ involving the MalaMala land, which shares an unfenced boundary with the KNP. The claimants to the land, a number of local communities, sought restitution of their land rights in the form of restoration of the land to continue with the land as the commercial ecotourism destination that it is – the MalaMala Game Reserve. The court ruled that restoration of the land to the claimants amounted to more than a billion rands and was not feasible. However, in an out of court settlement in 2014, the land was sold to the government for the same amount, the result of which was not to the benefit of all of the land claimants.³⁴⁴ Consequently, not all of the claimant communities are benefitting from the tourism on this land although proposals have been presented to Parliament on the settlement framework.³⁴⁵

These land claims expose the plight of local communities where their land claims are contentious. The situation of the Mnisi community reflects on deeper underlying issues of the decentralisation of government authority to the level of rural local communities that disenfranchises them from full participation in the development that concerns them. The Malamala case also reflects on the cost to government and tax payers of land restitution. Suffice to say, there are currently 15 land claims registered against the KNP, and with the land claims process re-opened until 30 June 2019, further claims may arise against the park.³⁴⁶ So far, none of these claims

342 *The Trustees of Manyeleti Conservation Trust, Mnisi Community v Minister of Rural Development and Land Reform et al* para 35.

343 *Mhlanganisweni Community v The Minister of Rural Development and Land Reform & Others* Judgement delivered on 19 April 2012.

344 Parliamentary Monitoring Group *Settlement of the MalaMala Game Ranch* 6-8. See also, Ramutsindela, Davis and Sinthumule "Diagnostic Report on Land Reform" 24-26.

345 Parliamentary Monitoring Group *Settlement of the MalaMala Game Ranch* 9-15.

346 Paragraph 2.9 of the *Kruger National Park Draft Park Management Plan 2018-2028*.

result in the restoration of land rights in the KNP, based on a decision by Cabinet in 2008 to offer equitable redress in the form of financial compensation.

2.4.2.2 Mozambican component

In Mozambique, the LNP, formerly a hunting concession known as Coutada 16, was established without much infrastructure within, except for a hunting campsite north of Shingwedzi. It now has an accommodation capacity of 40 beds and a number of camping sites, spread across the park.³⁴⁷ The wildlife population has been growing and tourists have increased in the LNP as a result of the settled political situation in the country.³⁴⁸ In accordance with the *GLTP Treaty* to include the Banhine and Zinave National Parks, the Massingir and Coruman areas and interlinking regions in Mozambique,³⁴⁹ Zinave National Park has been under development since the signing of an agreement between the Mozambican National Agency for Conservation Areas³⁵⁰ and the Peace Parks Foundation for this project.³⁵¹ This entails, *inter alia*, the re-stocking of wildlife, employing and training of field rangers, fencing, upgrading of infrastructure; and preparing and implementing a biodiversity strategy for ecotourism and wildlife opportunities.³⁵² The boundaries of the Banhine National Park (BNP) have also been re-aligned, while the wildlife corridors of the LNP have been demarcated and protected to develop national park interconnectivity in the GLTFCA.³⁵³ It is not clear whether the relevant local communities are involved in these developments, nor is it clear whether displacement may occur.

347 Spenceley 2006 *Development Southern Africa* 655; Great Limpopo Transfrontier Park 2015 www.greatlimpopo.org/2015/06/more-tourists-choose-limpopo-national-park/.

348 Great Limpopo Transfrontier Park 2015 www.greatlimpopo.org/2015/06/great-limpopo-grows-and-grows/.

349 Article 1, *GLTP Treaty*.

350 See para 5.2.1.1 below for a discussion of the Mozambican state agency responsible for protected areas management.

351 Great Limpopo Transfrontier Park 2015 www.greatlimpopo.org/2015/06/great-limpopo-grows-and-grows/.

352 Great Limpopo Transfrontier Park 2015 www.greatlimpopo.org/2015/06/great-limpopo-grows-and-grows/. See also Keet *et al* "Fencing along the Kruger National Park boundary" 66-70.

353 Great Limpopo Transfrontier Park 2015 www.greatlimpopo.org/2015/06/great-limpopo-grows-and-grows/.

These developments in the Mozambican component have influenced the livelihoods of the communities residing in and around the LNP. People have been living in the LNP area since around 1000 AD but war, drought, floods in Mozambique and labour opportunities in South Africa have moulded a history of mobility in the area.³⁵⁴ In 2001, with the declaration of the LNP, hunting and other resource harvesting for commercial use became illegal, while promises of jobs and economic development that were made have not materialised.³⁵⁵ The communities living along the Shingwedzi River in the park may be resettled on grounds that the Shingwedzi River basin is ecologically valuable for wildlife and ideal for tourist development; this is, however, incompatible with activities such as cattle keeping and cropping.³⁵⁶ Thus, the communities' livelihoods on the Mozambican side are based on remittances from migrant labourers in South Africa, the sale of livestock and agricultural products, transborder trade, sale of locally made or harvested products, micro-enterprises, daily wage labour, informal employment, fishing and since 2010, rhino poaching.³⁵⁷ The resort to rhino poaching, for one, calls for urgent attention to engage local communities more effectively in the management and development of tourism in the protected area components. The livelihood options associated with trade call for their formalisation into the national economy, while options on employment should ensure the protection of workers' rights, minimum labour conditions and job security.

Since inception, only some of the local communities residing in the LNP have been driven out.³⁵⁸ Studies³⁵⁹ reveal that the consultations with the communities prior to their resettlement did not occur, or if they did, they were merely *fait accompli*. Communities residing on the less accessible western side of the Limpopo River, within the park, were much less informed than those in the relatively accessible

354 Giller *et al* "Population and livelihoods on the edge" 64.

355 Giller *et al* "Population and livelihoods on the edge" 64.

356 Giller *et al* "Population and livelihoods on the edge" 64.

357 Giller *et al* "Population and livelihoods on the edge" 64.

358 Petterson *Conservation for development* 17. See also, para 2.4.1.3 above.

359 Ferreira 2006 *Geo Journal* 170; Spierenburg, Steenkamp and Wels 2006 *Focaal* 18-31

Massingir District.³⁶⁰ There is a need for resettlement mechanisms that ensure prior consultations as well as the protection of any potential threats to livelihoods and other related human rights.

Nevertheless, there are two examples of community based tourism projects on this side of the GLTFCA. The one is the Covane Community Lodge, initially established with the funding of a Swiss NGO known as Helvetas and later taken over by a Mozambique-based NGO, Lupa, owned by the local Canhane Community near Massingir.³⁶¹ The proceeds from the lodge benefit the community directly.³⁶² The lodge has also contributed towards the employment of the members of the community, and the building of a classroom at the local school. Other tourism activities that generate income for the community include traditional dancing, medicinal and cultural plant walks, boat trips with fishermen on the Massingir Dam, mountain biking rides, Canhane village walks, traditional meals and visits to the LNP.³⁶³ The other one is the Pafuri Community Lodge, established by an Italian NGO, CESVI, which has been running for less than five years, with little or no success as there are no tourists.³⁶⁴ The lack of significant success of these community lodges, raises serious questions around issues of community involvement in tourism enterprises, which must be addressed especially regarding the promotion of entrepreneurial ventures and even community-public-private partnerships (C PPPs).

2.4.2.3 Zimbabwean component

Until recently, Zimbabwe has been lacking in infrastructure development with the neglect of the GNP as a prime tourism destination during the period of political and

360 Ferreira 2006 *Geo Journal* 170. See also Bocchino *Is Mozambique the new South African frontier?*

361 Sepenceley *Tourism in the GLTFCA* 23.

362 Covane Lodge Date Unknown www.covanecommunityldoge.com/about.html.

363 Sepenceley *Tourism in the GLTFCA* 25.

364 See for instance, Bocchino and Murphree "Overlapping cultural commons" 89-106; Lunstrum 2013 *Political Geography* 1-11; Lunstrum 2008 *Geographical Review* 339-355; Milgroom and Spierenburg 2008 *Journal of Contemporary African Studies* 435-448.

economic instability.³⁶⁵ The GNP has two rest camps and several other camp sites, caravan sites and picnic sites in the North and Southern parts of the park.³⁶⁶ Much of the tourism that occurs in this area revolves around sport hunting in controlled safari areas in Malipati, the CAMPFIRE³⁶⁷ areas such as the Sengwe Corridor, Naivasha as well as in the Save and Malilangwe Conservancies.³⁶⁸ Non-consumptive tourism is confined to privately owned conservancies, namely, the Save and Malilangwe Conservancies and the Chilo Gorge Lodge, a community-based tourism venture, with occupancy levels at less than 10 percent.³⁶⁹ Recently, after years of collaboration, the PWMA and the FSZ³⁷⁰ have signed a partnership for the formation of the Gonarezhou Conservation Trust to manage the GNP.³⁷¹ The Trust has contributed US\$9 million towards the management of the GNP in infrastructure development, community projects, GNP staff capacity-building and training and the development of the Park Management Plan and Regional Elephant Plan, thus far.³⁷²

365 Booth *Sustainable development and natural resources management* 3; Spenceley 2006 *Development Southern Africa* 654. See also CESVI *Sustainable development and natural resource management* 1-19.

366 Zimparks 2014 www.zimparks.org/index.php/parks-overview/national/gonarezhou; Spenceley 2006 *Development Southern Africa* 654.

367 CAMPFIRE is elaborated upon under the discussion on local community involvement in tourism in para 6.2.2.2 below.

368 Booth *Sustainable development and natural resources management* 3.

369 Booth *Sustainable development and natural resources management* 3.

370 FZS is an international conservation organisation based in Frankfurt in Germany. The Society and the Ministry of Environment and Tourism (now Ministry of Environment, Tourism and Hospitality Industry) signed a MOU in 2010 for a 10-year period partnership between the two parties for the conservation and development of the Park. Work on the ground started as early as 2007 through an earlier agreement in terms of which FZS focused on providing resources for essential park management activities such as the supply of ranger patrol rations, operational fuel and field equipment, and a project aircraft for patrols. FZS also offers support in park planning, infrastructure maintenance and improvements, the provision and maintenance of equipment and increased ecological knowledge. See in this regard, FZS 2017 <https://fzs.org/en/projects/gonarezhou-conservation-project/>.

371 This new partnership is a modification of a MOU signed in July 2010 between ZPWMA and FZS for the management of GNP which has led to the provision by FZS of logistical support, supplying field equipment, technical expertise, applied research and more. Great Limpopo Transfrontier Park 2016 www.greatlimpopo.org/2016/08/trust-to-manage-gonarezhou-national-park/. See also, FZS 2016 https://fzs.org/files/7514/7401/2388/Gonarezhou_Conervation_Trust_Background.pdf.

372 FZS 2016 https://fzs.org/files/7514/7401/2388/Gonarezhou_Conervation_Trust_Background.pdf. See also

However, Bocchino³⁷³ cautions that despite their role as key drivers of the implementation of the GLTFCA, cooperation agencies and funding institutions have led to a decline in state capacity for management, long-term planning, joint decision-making, and an increase in reliance on external donor or project funding. This calls for measures to curb any potential usurpation of power by external entities. Moreover, there are no indications of local community involvement in this management agreement, which further implies that the issues of the improvement of livelihoods and conservation may be left to the behest of external entities. This calls for measures for consultation with local communities in any such agreements and the protection of their interests.

With respect to the local communities, the colonial era largely shaped the population and ethnic compositions of people within this GLTFCA component.³⁷⁴ This saw the moving of the Ndebele people from Matebeleland to the Southeast Lowveld in the Sengwe area that was predominantly occupied by Shangaan and Venda speaking people, with few Hlengwe.³⁷⁵ The Karangas were moved from Masvingo to the same area in the 1930s. Close to the GNP, the establishment of the Gonakudzingwa Native Purchase Area in 1925 also saw the movement of black civil servants and businessmen into that part of the area forming a buffer between the park and the communal areas and white-owned large-scale farms to the west.³⁷⁶ The more recent fast-track land reform led to the resettlement of black farmers since 2000 with the Chitsa community settling within the GNP in the north east, having recently moved out after an extensive consultation process with PWMA and FZS.³⁷⁷ Cross-border migration is also a form of livelihood, instead of agriculture, especially in the

Great Limpopo Transfrontier Park 2016 www.greatlimpopo.org/2016/08/trust-to-manage-gonarezhou-national-park/.

373 Bocchino 2011

www.wcs-ahead.org/gltfca_march2011/day_2/2_bocchino_implemtation_gltfca.pdf.

374 Giller *et al* "Population and livelihoods on the edge" 64.

375 Giller *et al* "Population and livelihoods on the edge" 64.

376 Giller *et al* "Population and livelihoods on the edge" 64.

377 Giller *et al* "Population and livelihoods on the edge" 64.

Shangaan communities for whom it is a maturity ritual.³⁷⁸ The remittances make the migrants' families better off, whereas those without these remittances remain dependent on agriculture and poorly-paid wage labour.³⁷⁹ The agricultural economy is largely based on livestock farming, predominantly cattle, but only a few households have large numbers of cattle. Crop production is highly risky due to the frequent droughts in the area. This in turn influences the degree of dependence of households on natural resources.³⁸⁰

The local community involvement in tourism is also concerning.³⁸¹ The wildlife tourism industry that drives the tourism in this part of the GLTFCA is mainly characterised by fully-inclusive packages which isolate tourists in lodges that have enclave characteristics of large-scale developments.³⁸² As a result, tourists at most of these lodges have all their needs and activities by one integrated enterprise, making it difficult for local communities to penetrate the market and access the tourists.³⁸³ There is a need for measures that create room for entrepreneurship by local communities in the GLTFCA component as well as at national level.

However, there are a few tourism related projects that have been developed under CAMPFIRE. CAMPFIRE is an initiative to promote CBNRM in its rural districts, in terms of which authority over natural resources devolves to rural district councils for the running of CBNRM programmes by local communities.³⁸⁴ The guiding principle of

378 Scoones and Wolmer 2003 *IDS Bulletin* 2.

379 Giller *et al* "Population and livelihoods on the edge" 64.

380 Giller *et al* "Population and livelihoods on the edge" 64.

381 Ferreira 2004 *Geo Forum* 309.

382 Goodwin *et al* *Tourism, Conservation & Sustainable Development* 6-7.

383 Goodwin *et al* *Tourism, Conservation & Sustainable Development* 6-7.

384 For a detailed discussion of the origins and development of CAMPFIRE, see for instance, Balint and Mashinya 2006 *Geoforum* 806-808; Chigonda 2018 *Scientifica* 10.115/2018/6214318; Child "Community Conservation in Southern Africa" 187-199; Duffy 2000 *Killing for Conservation* 9-17; Frost and Bond 2008 *Ecological Economics* 776-787; Jenkins "Tourism academics and tourism practitioners: bridging the great divide" 60; Metcalfe "CAMPFIRE: Zimbabwe" 1-32; Muir *Economic Policy and Wildlife Management in Zimbabwe* 1-13; Murombedzi 1999 *Journal of International Development* 287-293; Murphree *Decentralising the Proprietorship* 1-9; Murphree 2004 *Journal of International Wildlife Law & Policy* 203-216; Nuemann "Model, Panacea, or Exception" 177-194; Rihoy, Chorzva and Anstey *People are not happy* 5-32; Taylor "The

CAMPFIRE is the “sustainable rural development that enables rural communities to manage and directly benefit from natural resources.”³⁸⁵ The income from the CAMPFIRE projects is distributed amongst the CAMPFIRE Association, the rural district councils and the local communities.³⁸⁶ Initially, the programme largely centred on sport hunting but has recently included tourism related projects.³⁸⁷ However, there remains a need for more local employment, improved quality products, improved business planning, marketing, accommodation, and training.³⁸⁸

The Mahenye community, situated on the north eastern boundary of the GNP, is involved in a few tourism projects. This community was forcibly removed from the GNP in 1968 with the promulgation of the national park.³⁸⁹ According to Zeppel,³⁹⁰ they owned 210km² of land between the Save River and the Rupembi River on the border with Mozambique. In 1987, they set aside some 15,000 hectares as a wildlife conservancy for hunting and ecotourism. There is the Mahenye Lodge and the Chilo Gorge Lodge, which are five kilometres apart, located next to the GNP and developed as part of the CAMPFIRE programme, with annual lease fees and a percentage of lodge revenue paid to the Mahenye community. The Chilo Gorge Lodge is run by a private operator on behalf of the community, while Mahenye Lodge is run by the community with the help of donors.³⁹¹ These community-based tourism enterprises have been lauded for contributing positively to the broader Shangaan community.³⁹²

Performance of CAMPFIRE” 201-222; Taylor 2009 *Biodiversity and Conservation* 2563-2583; Virtanen 2003 *Journal of Society & Natural Resources* 179-190.

385 Ferreira 2004 *Geo Forum* 307.

386 See para 2.4.2.3 above.

387 Zeppel *Indigenous Ecotourism* 186.

388 Sepenceley *Tourism in the GLTFCA* 23.

389 Zeppel *Indigenous Ecotourism* 186.

390 Zeppel *Indigenous Ecotourism* 186.

391 Zeppel *Indigenous Ecotourism* 186.

392 Chimuka *An Analysis of the impact of community development* 20; Stockil 2013 chilogorge.com/about/. However, it must be noted that the Mahenye Lodge has suffered from traditional leadership power struggles, wherewith the withdrawal of NGOs and government agencies that had been responsible for oversight and capacity building led to the usurping of

Nevertheless, the decline of the national economy has led to the devaluation of the CAMPFIRE programme with reports of the mismanagement of funds by RDCs and the CAMPFIRE Association, therefore the communities have not received the proceeds from their projects.³⁹³ In fact, the Sengwe community are reported to have rejected this programme for these reasons and therefore have not participated in any tourism activities in their area.³⁹⁴ This reveals serious discrepancies in the devolution of authority over natural resources to local communities that have significantly prejudiced CAMPFIRE, which need to be addressed.³⁹⁵ Underlying the issue of devolution are the issues around land ownership and tenure that place local communities at a disadvantage in the CAMPFIRE initiatives.³⁹⁶

In the Save and Malilangwe conservancies there are tourism projects for the benefit of communities.³⁹⁷ However, in the Save Valley Conservancy the fast-track land reform programme gave rise to various problems, including unplanned settlement, intra-community friction, and wildlife conflict induced by the destruction of fencing and poaching. These problems have resulted in reduced opportunities for generating

power by the traditional community leaders from the elected CAMPFIRE committee and mismanaged the project activities and funds (Balint and Mashinya 2006 *Geoforum* 814).

393 Balint 2006 *Environmental Management* 137-145; Chigonda 2018 *Scientifica* 10.115/2018/6214318; Frost and Bond *CAMPFIRE and payments for environmental services* 6; Chapungu 2013 *Greener Journal of Environmental Management and Public Safety* 113; Chigwenya and Manatsa 2007 *Journal of Sustainable Development in Africa* 110-112; Kamphorst, Koopmanschap and Oudwater 1997 *European Journal of Agricultural Education and Extension* 173-182; Muboko and Murindagomo 2014 *Journal of Nature Conservation* 206-211; Murphree 2004 *Journal of International Wildlife Law & Policy* 203-216; Murphree "Community-Based Conservation" 1-12; Murombedzi 1999 *Journal of International Development* 287-293; Mutandwa and Gadzirayi 2007 *International Journal of Sustainable Development & World Ecology* 336-344; Ntuli and Muchapondwa 2018 *International Journal of the Commons* 134-169; Ntuli and Muchapondwa 2017 *Journal of Nature Conservation* 106-121; Rihoy, Chorzva and Anstey *People are not happy* 38-39; Virtanen 2003 *Journal of Society & Natural Resources* 179-190. See also, para 6.3.1.2 below.

394 Booth *Sustainable development and natural resources management in Southern Zimbabwe* 3.

395 See paras 6.3.1.2 below.

396 See paras 6.3.1.2 and 6.3.1.6 below.

397 These conservancies are privately owned cattle ranches converted into wildlife ranches for conservation.

income from the sustainable use of natural resources by the shareholders of the conservancies and the local communities.³⁹⁸

The private Malilangwe Conservancy also holds a Trust, the Malilangwe Trust: a non-profit organisation, which is engaged in commercial tourism for generating income to contribute to community development and conservation.³⁹⁹ From this Trust various projects have been developed, including: a feeding programme, an irrigation scheme, a conservation education programme; the building of schools and provision of bursaries, HIV/AIDS campaigns (Tunza), infrastructure development and a living museum (Kambako).⁴⁰⁰ Apart from these few positive examples, the majority of the communities in the Zimbabwean component of the GLTFCA do not seem to be benefiting significantly from the tourism.⁴⁰¹ Studies⁴⁰² reveal that this is a result of exclusion from decision-making in the development of both national protected areas and the TFCA, lack of consensus on benefit-sharing from tourism, lack of capacity within communities to capitalise on tourism opportunities and the uncertainty of land rights.

2.5 Conclusion

This chapter investigated the challenges arising from the development of tourism in the SADC TFCAs, and more specifically the GLTFCA. To this end, the chapter commences by defining TFCAs in SADC and examining their main characteristics. It is established that the nature of these TFCAs positions local communities as an important component in the conservation matrix. This understanding of TFCAs in

398 Du Toit 2016

https://www.savetherhino.org/africa_programmes/lowveld_rhino_trust_zimbabwe/updates_from_the_field/harmonising_land_use_in_save_valley_conservancy.

399 The Malilangwe Trust Date Unknown www.themalilangwetrust.org/community.

400 The Malilangwe Trust Date Unknown www.themalilangwetrust.org/community.

401 Chimuka *An Analysis of the impact of community development* 20-24, 65-66; Chirozva *Community engagement in the governance* 143-147.

402 See for instance, Chimuka *An Analysis of the impact of community development* 24; Chirozva *Community engagement in the governance* 145-147; Chiutsi 2014 *European Scientific Journal* 14-16; Malan *Improved decision-making processes for the transfrontier conservation areas* 62-82; Manjengwa *et al A comparative study of institutional arrangements for small-scale farmers* 54-59.

SADC prompted the focus, in this chapter, on the TFCA objectives of biodiversity conservation, improvement of livelihoods and economic development. It is understood that conservation is inextricably linked to the livelihoods of the people living within the TFCAs, thus positioning the improvement of livelihoods – the alleviation of poverty as a key objective of SADC TFCAs. Yet, it is revealed that this objective is undermined by neoliberal conservation and regional economic integration. Within this context, tourism is identified as the key driver of all three TFCA objectives.

Having defined the nature of tourism in the SADC region, the chapter examined the place of tourism in the SADC normative instruments. It was established that the *Tourism Protocol*, though being the principal tourism instrument, does not create a sufficient basis for tourism as the key driver of all three TFCA objectives, for its vagueness on conservation and the omission of poverty alleviation. Similarly, the *Wildlife Protocol*, which establishes TFCAs in SADC, does not suffice, for its obscurity on the improvement of livelihoods and the alleviation of poverty. These gaps are reduced, somewhat, by non-binding strategic instruments in the form of the *SADC RISDP*, the *SADC Regional Biodiversity Strategy* and the *SADC Programme for TFCAs*.

Against this background, the chapter provided a case study of the GLTFCA. It was revealed that the institutional framework of the GLTP Treaty excludes local communities from the governance and management of the GLTFCA. This weakens its governance type which should include local communities as owners or right-holders over communal land in the collaborative management structures. Similarly, the objectives of the GLTP Treaty focus more on biodiversity conservation and socio-economic development but with no express provision regarding the improvement of livelihoods - poverty alleviation. This perpetuates the fortress conservation of the colonial era that displaced local communities from the protected areas components. The creation of wildlife corridors for conservation has also created various challenges for local communities, forcing them to resort to unfavourable practices and illegal activities. Thus, much needs to be done to ensure that the conservation efforts bring local communities into the GLTFCA conservation matrix. This calls for the inclusion of

local communities into the institutional framework of the GLTFCA as well as the promotion of beneficiation, public participation, accountability and CBNRM in the governance of the GLTFCA.

These governance and management challenges are superimposed on the tourism development in the GLTFCA. There are disparities in tourism development amongst the countries, which have resulted in a lack of consensus over revenue sharing. There has also been a general lack of political consensus in the running of the GLTFCA, especially on the part of Zimbabwe. These challenges expose weaknesses in the economic development objectives of the GLTFCA, especially at the political level. There is a need for a common agenda at inter-state level for the development of tourism development in the GLTFCA.

In South Africa, one of the key issues relates to the overcrowdedness of tourists, which calls for mechanisms for biodiversity conservation and tourism to ease the pressure and damage on the physical environment as well as on the wildlife itself. Another issue concerns the SANParks commercialisation strategy, which circumvents the involvement of local communities, necessitating measures for the participation of local communities as partners in tourism concessions, or determining these concessions will at a minimum benefit the local communities living in and around the GLTFCA. Moreover, this Strategy does not seem to promote the improvement of livelihoods, necessitating the provision of mechanisms to ensure that this TFCA objective becomes an important component thereof.

The situation around the settlements of the local communities in the South African component further revealed that tourism development is not improving rural local community livelihoods. This calls for the strengthening of, as well as the addressing of issues of, *inter alia*, access to basic services, poverty alleviation, employment and job security.

It was also revealed that the actual involvement of local communities in the planning and development of tourism in the TFCA is sporadic. Community involvement in tourism relates mostly to the Makuleke community, as owners of the contractual park within the KNP, but is flawed by power relations. This calls for measures that

ensure equal bargaining powers and capacity to empower local communities who own the land on which tourism development occurs. The limited involvement of the Mnisi community in tourism exposes the plight of local communities whose position after the land claims remains contentious and must be addressed to empower them to participate as relevant stakeholders in the tourism development that impacts on them. Furthermore, their situation reflects on challenges in the decentralisation of government authority to rural local community level that must be addressed.

In Mozambique, the key issues revolve around the resettlement from either the LNP and potentially from the developments in the Zinave and Banhine National Parks, the Massingir and Coruman areas and interlinking regions in Mozambique. The livelihoods of most of the relevant local communities, which are regarded as incompatible with conservation and tourism, have largely been compromised by the resettlement for the creation of the LNP, which occurred without any meaningful consultation with them. With the improvements occurring in the other protected areas and interlinking regions, the same issues may need to be addressed further to ensure prior consultations as well as the protection of any potential threats to livelihoods and other related human rights. This includes measures to ensure that communities move away from illegal and/or unsustainable livelihoods, such as poaching. The livelihood options associated with trade, call for their formalisation into the national economy, while options for employment should ensure the protection of workers' rights, minimum labour conditions and job security. Another issue concerns the existence of only two community lodges in this GLTFCA component, which raises concerns around issues of minimal community involvement in tourism enterprises. This necessitates measures around the promotion of entrepreneurial ventures and even CPPPs.

In Zimbabwe, the major issues are associated with the socio-economic and political instability. Still arguable is the most recent issue pertaining to the transfer of management from the PWMA to the Gonarezhou Conservation Trust, an agreement between the PWMA and FSZ, the latter an international donor organisation. This new management arrangement may result in the usurpation of state power over conservation and tourism development by the FZS and has the added challenge of

the possible exclusion of local community involvement in this management. This calls for defining and delimiting the role of external entities as well as including local communities in any such management agreements and/or to have their interests protected.

With the migration and resettlement of local communities in the Zimbabwean component influenced by the colonial era and the fast-track land reform policy, the livelihoods of most communities depend on the use and access to natural resources in and surrounding the GNP. Their exclusion in the management thereof suggests that their use and access is limited. Thus, there is a need for security over rights of access and use of these natural resources. Underlying these limitations, are the questions around land ownership and tenure that must also be addressed to empower these communities in the management of the GNP. Moreover, the challenges of unplanned settlement, intra-community friction and human-wildlife conflict induced by destruction of fencing and poaching, arising from the fast-track land reform policy, call for proper mechanisms for resettlement for land reform.

Another issue in Zimbabwe revolves around the all-inclusive packaging of tourism products, which gives little room for local tourism products to enter into the market, stifling the development of domestic tourism products at national and local level. There is a need for measures that create room for entrepreneurship by local communities in the GLTFCA component and at national level. For tourism ventures, there are a few successful projects developed under CAMPFIRE, namely, the Mahenye Lodge and Chilo Gorge Lodge that are lauded for contributing positively to the broader Shangaan community. However, other CAMPFIRE initiatives have been plagued by the mismanagement of funds by RDCs and the CAMPFIRE Association to the detriment of the communities. This reveals serious discrepancies in the devolution of authority over natural resources which need to be addressed. Underlying the issue of devolution are the issues around land ownership and tenure that place local communities at a disadvantage in the CAMPFIRE initiatives.

Therefore, the main issues or challenges revolving around tourism development in the GLTFCA stem from the flaws in the TFCA governance structures that failed to

include local communities as actors from the onset. These deficiencies in the GLTFCA governance structures further imply that there are weaknesses in beneficiation, public participation, accountability, CBNRM and the devolution of authority that are pertinent to its success. This is characterised by the traces of fortress conservation that persists in the GLTFCA. These governance challenges have been superimposed on tourism development in the GLTFCA. Tourism development in the GLTFCA seems to sustain the exclusion of local communities in conservation across the country components, although South Africa has the added problem of balancing conservation and the influx of tourists, attributed to its over-commodification of the KNP.

Tourism development in the GLTFCA is also characterised by little or no consultation and participation, and negligible benefits for local communities. This is evidenced, in the country components, by, *inter alia*, unequal power relations in tourism related negotiations, unrealised benefits from tourism projects, high incidences of poverty, unemployment, lack of basic services, unsustainable and/or illegal livelihoods, resettlement challenges and the failing of CBNRM initiatives resulting from a lack of the devolution of authority. It is therefore important to investigate how these issues may be addressed to ensure that tourism development promotes biodiversity conservation, the improvement of livelihoods – alleviation of poverty and economic development in the GLTFCA. To this end, Chapter 3 explores the notion of sustainable tourism development from a legal perspective as a possible avenue for addressing these challenges and to provide a framework against which the relevant legislation in the GLTFCA participating countries could be measured.

CHAPTER 3

Theoretical background: sustainable tourism development linking the TFCAs objectives

3.1 Introduction

The previous chapter highlighted the challenges associated with tourism development in TFCAs, particularly in the GLTFCA, in promoting biodiversity conservation, economic development and improvement of livelihoods. For this reason, this chapter explores the concept of sustainable tourism development as a possible solution to the key challenges in the GLTFCA and thereby promote the TFCA objectives. In doing so, the chapter approaches the concept of sustainable tourism development from a legal perspective, which explores the domestic legal framework that should be in place to address the challenges in the GLTFCA. To this end, the chapter proceeds by examining the growth of the notion of sustainable tourism development in the international normative discourse as well as its theoretical foundations. Against this background, the chapter considers the role of sustainable tourism development in TFCAs, particularly for influencing the governance structures in the GLTFCA and the legal tools that must be in place to promote the three TFCA objectives. The chapter concludes by developing a domestic legal framework for sustainable tourism in the GLTFCA.

3.2 Development of sustainable tourism in international discourse

To understand sustainable tourism development, the study explores its development in international discourse. It focuses on how the notion of sustainable tourism development evolved from the sustainable development discourse and became a concept in its own right; and the subject of international and regional normative instruments on tourism. The crux of this discussion is to extract the main aims of sustainable tourism development that emerge, as foundational elements influencing law and policy, for addressing the challenges that arise in the tourism that occurs in TFCAs, particularly in the GLTFCA.

3.2.1 Sustainable development and sustainability

Sustainable development evolves from the realisation by the international community that humankind must live within the carrying capacity of the earth and manage natural resources to meet both current demands and the needs of future generations.¹ Its most quoted definition is “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.² This definition suggests that economic development should not only focus on the now but also on the future, and must place poverty alleviation at the heart of development. It further indicates that the needs of people are dependent on the environment’s ability to cater for them, elevating the importance of environmental protection in development.³ This definition attracted much criticism for failing to place any clear and meaningful limitations on economic growth, especially at the expense of the environment.⁴ The criticism led to the framing of the concept of sustainability, with the intention of placing environmental constraints, social considerations and more recently cultural considerations,⁵ onto economic development.⁶ Today, sustainability is encapsulated in the SDGs⁷ with an emphasis

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- 1 Although the discussions precede modern day discourses, efforts by the United Nations (UN) to support greater recognition of sustainable development took shape in the 1960s, beginning with the UN Resolution on Economic Development and the Conservation of Nature (1962) followed by the UN Resolution 2398 (XXIII) on Problems of the Human Environment (1968). Sustainable development was introduced in the discourse in 1972, at the UN Conference on the Human Environment (UNCHE) held in Stockholm and endorsed in the *Stockholm Declaration* (1972).
 - 2 This definition emerged from the World Commission on Environment and Development (1987) in its report *Our Common Future*, commonly known as the *Brundtland Report*.
 - 3 The *Rio Declaration* provides that “environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”
 - 4 Blewitt *Understanding Sustainable Development* 4-15; Daly, Jacobs, and Skolimowski *Environmental Values*; Du Pisani 2006 *Environmental Sciences* 92-94; Hall, Gössling and Scott “The evolution of sustainable development” 16; Langhelle 1999 *International Political Science Review* 129-130; Mebratu 1998 *Environmental Impact Assessment Review* 503-512; Pezzoli 1997 *Journal of Environmental Planning and Management* 553-556; Robinson 2004 *Ecological Economics* 370, 376; Seghezze 2009 *Environmental Politics* 540-547; Sneddon, Howarth and Norgaard 2006 *Ecological Economics* 254.
 - 5 There has been an increase in the literature on socio-cultural sustainability. See for instance, Axelsson *et al* 2013 *Ambio* 220-228; Isar 2017 *International Journal of Cultural Policy* 153-156; Owosuyi 2015 *PER* 2012-2018; Walker *Exploring Socio-Cultural Dimension of Sustainability* 3-12;
 - 6 It is beyond the scope of this study to provide an in-depth exposition of the concept of sustainability, although it is acknowledged that in its evolution concepts such as, *inter alia*, weak sustainability versus strong sustainability (Arias-Maldonado 2013 *Environmental Politics* 430-434;

on harnessing economic development and protecting the environment deliberately towards eradicating poverty and the improvement of livelihoods by 2030.

From a legal perspective, sustainable development as well as sustainability translates into specific legal principles that address the areas of confluence between “international economic law, international environmental law and international social law.”⁸ These specific legal principles can be categorised into substantive and procedural elements.⁹ The substantive elements comprise of legal elements that are inherent in the concept of sustainable development, namely intra and inter-generational equity, the principle of sustainable use and the principle of integration.¹⁰ Intra¹¹ and inter-generational equity¹² calls for the application of equity between States and equity between the needs of future and present generations.¹³

Neumayer *Weak versus Strong Sustainability* 1-3; Nilsen 2010 *Ecological Economics* 495) and more recently the Anthropocene (see for instance, Arias-Maldonado 2013 *Environmental Politics* 434-444; Benson and Craig 2014 *Society and Natural Resources* 778-781; Biermann 2014 *The Anthropocene Review* 57-59; Biermann *et al* 2012 *Science* 1306-1307; Karlsson 2016 *The Anthropocene Review* 23-31; Kotzé 2014 *Journal of Energy and Natural Resources Law* 121-126; Steffen, Crutzen and McNiel 2007 *Ambio* 614-621) have since been coined. For further reading on the sustainability discourse, see for instance, Dixon and Fallon 1989 *Society and Natural Resources* 74-76; Du Pisani 2006 *Environmental Sciences* 92-94; French *International Law and Policy of Sustainable Development* 54; Langhelle 1999 *International Political Science Review* 129-130; Mebratu 1998 *Environmental Impact Assessment Review* 503-512; Pezzoli 1997 *Journal of Environmental Planning and Management* 553-556; Robinson 2004 *Ecological Economics* 370; Sands *Principles of International Environmental Law* 253; Seghezzo 2009 *Environmental Politics* 540-547; Sharpley 2000 *Journal of Sustainable Tourism* 2-7; Tladi *Sustainable Development* 75; Voigt *Sustainable Development* 15; Winter “A fundamental and two pillars” 24-27.

- 7 Briefly alluded to in para 2.2.3.2 above, the SDGs are the outcome of the UN Sustainable Development Summit (2015), the latest development on the global targets for addressing key sustainability issues centred on fighting poverty. These SDGs replace the Millennium Development Goals (MDGs) adopted in the *UN Millennium Declaration* (2000).
- 8 Barnard 2012 *PER* 209; Barral 2012 *European Journal of International Law* 377-400; Cordonier-Segger 2004 *UNSDJ* 62; Cornodier Segger “Sustainable development in international law” 85-199; Owosuyi 2015 *PER* 2018; Deere “Sustainable international natural resource law” 295-310; Fitzmaurice “The Principle of Sustainable Development” 15; Kenig-Witkowska 2017 *Journal of Comparative Urban Law and Policy* 64-66; Majid *et al* 2016 *Sustainability* 2; Mekonin *Sustainable Development Law* 12-16.
- 9 Van Harmelen, Van Leeuwen and De Vette *International Law of Sustainable Development* 22.
- 10 Van Harmelen, Van Leeuwen and De Vette *International Law of Sustainable Development* 22.
- 11 Principles 5 and 8 of the *Rio Declaration*; Principle 8 of the *Stockholm Declaration*. See also Barnard 2012 *PER* 215; Hepburn and Khalfan *The Principle of Equity* 5.
- 12 Principle 2 of the *Stockholm Declaration* recognises the need to safeguard the environment against degradation for the benefit of present and future generations through careful planning or management. See also, Barnard 2012 *PER* 215.
- 13 Van Harmelen, Van Leeuwen and De Vette *International Law of Sustainable Development* 22.

Underlying equity, is the goal of eradicating of poverty.¹⁴ The principle of sustainable use of natural resources places a responsibility on States to “manage their natural resources in a rational, sustainable and safe way, taking into account the needs of future generations in determining the rate of use of natural resources, to ensure that all people benefit from the exploitation of resources,” and to have “due care for the environment.”¹⁵ Integration calls for States to take into account the interdependence and interrelationship of economic, environmental, social and human rights issues. It also calls for the reconciliation, accommodation and harmonisation of the priorities, concerns and norms, which stem from the economic, environmental and social goals of economic and other development-oriented laws, policies, plans, programmes and projects.¹⁶

The procedural elements of sustainable development includes all procedural aspects pertaining to public participation and access to information and justice, which facilitate the development of educated and informed opinions, and access to appropriate, comprehensible and timely information in the decision-making processes.¹⁷ This implies the existence of a right to public participation, the right to access information and the right of access to justice.¹⁸ Over and above these substantive and procedural elements, the *International Law Association New Delhi Declaration of Principles of International Law Relating to Sustainable Development of*

14 The principle of the eradication of poverty is provided for in Chapter II of the Johannesburg Plan of Implementation Report of the World Summit on Sustainable Development (2002) and in various provisions in the *International Covenant on Economic, Social and Cultural Rights* (1966). See also, paras 7 and 8 of the Report by the Committee on Economic, Social and Cultural Rights, Poverty and the *International Covenant on Economic, Social and Cultural Rights*, UN ESCOR, 2001, UN Doc E/C.12/2001/10; Barnard 2012 PER 215. See more generally Boon “*International cooperation for sustainable development*” 143-175.

15 Principle 2 of the *Rio Declaration* and principle 22 of the *Stockholm Declaration*. See also, Aguis “Obligations of Justice” 51; Barnard 2012 PER 215; Hepburn and Khalfan *The Principle of Equity* 3.

16 Barnard 2012 PER 215; Hepburn and Khalfan *The Principle of Equity* 3.

17 Van Harmelen, Van Leeuwen and De Vette *International Law of Sustainable Development* 22; Hepburn and Khalfan *The Principle of Equity* 3.

18 Article 21 of the *UN Universal Declaration of Human Rights* (1948); aa 12 and 13 of the *International Covenant on Economic, Social and Cultural Rights*; Preamble of the *Stockholm Declaration*; principles 5, 10, 19-21 of the *Rio Declaration*. See also, Barnard 2012 PER 217.

2002 (hereafter *New Delhi Declaration*),¹⁹ which summarises all principles of sustainable development, adds the principle of good governance.²⁰ Good governance upholds accountability, transparency, efficiency and the rule of law at all levels of decision-making.²¹ It also enables the proficient management of human, natural, economic and financial resources and guarantees the participation of civil society in decision-making processes.²²

Sustainable development therefore sets out the principles, which make up the basis of any principled assessment of any national law and policy relevant to activities relating to sustainable development.²³ This places them at the centre of all sectoral-based development, including tourism. Based on this, the study explores the development of tourism in the sustainable development discourse.

3.2.2 Sustainable tourism

The sustainable development discourse influenced the evolution of the concept of sustainable tourism on the international arena. The early 1960s saw a shift from tourism involving large groups of people visiting a destination at the same time of year beyond the carrying capacity of such destination, referred to as mass tourism,²⁴ to alternative forms of tourism. The latter involves forms of tourism that preserve towns from exceeding their carrying capacities, improve environmental and heritage ideals and educate tourists.²⁵ The first reflections of the influence of sustainable

19 The *New Delhi Declaration* is a non-binding instrument prepared by the International Law Association at the 70th Conference of the International Law Association held in New Delhi in 2002, which consolidates the principles of international law relevant to the activities of all actors involved in pursuing the objective of sustainable development.

20 Para 6(1) of the *New Delhi Declaration* (2002).

21 Kardos 2012 *Procedia-Social and Behavioral Sciences* 1166; Hossain "Evolving Principles of Sustainable Development" 15-22.

22 Kardos 2012 *Procedia-Social and Behavioral Sciences* 1166; Hossain "Evolving Principles of Sustainable Development" 15-22.

23 Barnard 2012 *PER* 213. A more detailed discussion of these rights is also provided for in this chapter in para 3.5.2.3 below.

24 Destination World 2009 <http://www.destinationworld.info/newsletter/feature45.html>.

25 Clarke 1997 *Journal of Sustainable Tourism* 225; Canavan 2014 *Journal of Sustainable Tourism* 128; Hardy, Beeton and Pearson 2002 *Journal of Sustainable Tourism* 481; Mowforth and Munt 2009 *Tourism and Sustainability* 11.

development on tourism are seen in the *Manila Declaration on World Tourism* of 1980 (hereafter *Manila Declaration*)²⁶ which states that

The satisfaction of tourism requirements must not be prejudicial to the social and economic interests of the population in tourist areas, to the environment or, above all, to natural resources, which are the fundamental attraction of tourism, and historical and cultural sites.²⁷

From the developments in the sustainable development discourse,²⁸ the position on tourism in the *Manila Declaration* was augmented in *Agenda 21 for the Travel and Tourism Industry: Towards: Environmentally Sustainable Development*. This transformed the sustainable development principles of *Agenda 21* at the 1992 United Nations Conference on the Environment and Development (UNCED), into a framework for the sustainable development for the travel and tourism industry. However, the elevation of tourism into the global sustainable development agenda, materialised at the World Summit on Sustainable Development in 2002 in the *Johannesburg Joint Programme of Implementation*.²⁹ This Programme promotes sustainable tourism “as a means to increase the benefits of tourism resources for the population in host communities, while maintaining the cultural and environmental integrity of those communities and enhancing the protection of ecologically sensitive and the natural heritage.”

As a result of these international developments, the concept of sustainable tourism began to emerge in accordance with various conceptualisations of sustainable

26 The *Manila Declaration* is a non-binding instrument of the UNWTO, the main international tourism body, concluded in Manila in 1980 at the World Conference on Tourism.

27 Paragraph 18 of the *Manila Declaration* (1980).

28 With the coining of sustainable development in the *Brundtland Report* in 1987, the international community endorsed the concept as the basis for tourism planning and development. See in this regard the *Hague Declaration on Tourism* (1989), a non-binding instrument of the UNWTO concluded in The Hague in 1989.

29 Prior to this 2002 Summit, there is the *Decision 7/3 on Tourism and Sustainable Development* of the Commission of Sustainable Development in 1999. There is also the *Global Code of Ethics for Tourism* of 2001.

development. Thus, the definitions of sustainable tourism vary accordingly,³⁰ a few of which are considered here. Butler³¹ defines sustainable tourism as

Tourism which is developed and maintained in an area (community, environment) in such a manner and at such a scale that it remains viable over an infinite period and does not degrade or alter the environment (human and physical) in which it exists to such a degree that it prohibits the successful development and well-being of other activities and processes.

This definition incorporates the key components of sustainability by emphasising the need for the longevity and viability of tourism, without negatively affecting the human and physical environment within which it occurs.³² Yet, it does not reflect on the local community involvement in the development of tourism.³³

The most quoted definition of sustainable tourism is provided by the UNWTO³⁴ as follows:

Tourism that takes full account of its current and future economic, social and environmental impacts, addressing the needs of visitors, the industry, the environment and host communities.

The latter more clearly resonates with sustainability by emphasising the importance of accountability over the economic, social and environmental impacts of tourism. It also highlights the concept of needs for the various tourism stakeholders, including the communities.³⁵ This definition is further tailored into the conceptualisation of sustainable tourism as follows:

a model form of economic development that is designed to:

30 Butler 1999 *Tourism Geographies* 9-11; Hall, Gössling and Scott "Tourism and sustainability" 490-493; Leslie "Tourism, Tourists" 21; Hardy, Beeton and Pearson 2002 *Journal of Sustainable Tourism* 483; Tefler and Sharpley *Tourism and Development* 41-43.

31 Butler 1999 *Tourism Geographies* 12.

32 For a more detailed discussion, see for instance, Hall, Gössling and Scott "Tourism and sustainability" 490-514.

33 Hardy, Beeton and Pearson 2002 *Journal of Sustainable Tourism* 478. For the increasing interest in the inclusion of this element in the sustainable tourism debate, see for instance, Spenceley "Introduction" 2-3; Truong "Pro-poor tourism" 127-128.

34 UNWTO Date Unknown <http://sdt.unwto.org/content/about-us-5>.

35 This definition has also attracted criticism. See for instance, Berno and Bricker 2001 *International Journal of Economic Development* 10; Wall 1997 "Sustainable tourism-Unsustainable development" 33.

- Improve the quality of life of the host community,
- Provide a high quality of experience for the visitor, and
- Maintain the quality of the environment on which both the host community and the visitor depend.³⁶

This definition sets sustainable tourism as a model form of economic development,³⁷ emphatically positioning it beyond a form of tourism but rather a development option for the tourism sector.³⁸ In addition, it is a goal-oriented definition setting out the main objectives of tourism development and adapting them to suit the core elements of sustainability. To suit the tourism context, it encompasses the specific aspects of sustainability – that is improvement of quality of life, which relates to social sustainability, provision of a quality experience for visitors speaks to the economic element, while the maintenance of the quality of the environment relates to the environmental sustainability.³⁹ Along this reasoning, Pforr⁴⁰ suggests that sustainable tourism is a value orientation that should influence government, industry and the community. Even more, Hardy, Beeton and Pearson⁴¹ argue that sustainable tourism is a goal that is applicable to all tourism ventures, regardless of scale.

While sustainable tourism applies to all tourism ventures, as stated above, the *CBD Conference of Parties* (COP) Decision VI/14 of 2002, identifies ecotourism as a form of sustainable tourism for the natural environment. This formed the basis for the *Quebec Declaration on Ecotourism* of 2002⁴² held at the World Ecotourism Summit in 2002,⁴³ which endorses ecotourism as the preferred form of tourism in protected areas. This is buttressed in the *International Guidelines for Biological Diversity and Tourism Development* of 2004, which incorporates sustainable tourism in the practical implementation of the CBD, and its target(s) to achieve a significant

36 UNEP and UNWTO *Making Tourism More Sustainable – A Guide for Policy Makers* 11-12.

37 See also, Neto 2003 *Economic and Social Affairs* 11.

38 See for instance, Hall, Gössling and Scott "The evolution of sustainable development" 16.

39 See for instance, Steck *Sustainable Tourism as a Development Option* 1-2.

40 Pforr 2001 *Scandinavian Journal of Hospitality and Tourism* 71.

41 Hardy, Beeton and Pearson 2002 *Journal of Sustainable Tourism* 483.

42 The Declaration is the outcome of a multi-stakeholder dialogue but not a negotiated document.

43 The *Quebec Declaration* (2002) recognises that ecotourism embraces the principles of sustainable tourism concerning the economic, social and environmental impacts of tourism. It distinguishes ecotourism from the wider concept of sustainable tourism.

reduction of the rate of biodiversity loss by 2010.⁴⁴ These guidelines are particularly pertinent for this study as they, unlike the earlier instruments, *inter alia*, are pertinent for their assimilation of sustainable use and equity strategies within and around protected areas.

In Africa, this resonates with the *Revised African Convention on the Conservation of Nature and Natural Resources* of 2003,⁴⁵ which addresses the conservation of nature and natural resources, mentioning tourism under the management objectives in protected landscapes.⁴⁶ This Convention particularly states that protected landscapes are managed “to provide opportunities for public enjoyment through tourism that is appropriate in type and scale to the essential qualities of the areas.”⁴⁷ It further states that the income that is generated from sustainable forms of tourism should “bring benefits to, and contribute to the welfare of the local community.”⁴⁸ While the Convention does not place any significant emphasis on tourism, or sustainable tourism, it indicates the AU’s appreciation of the need to ensure that the pillars of sustainable development govern activities and developments related to activities,

44 According to the CBD Global Diversity Outlook (GBO-3), these “guidelines aim at making tourism and biodiversity more mutually supportive by engaging the private sector and local and indigenous communities, and promoting infrastructure and land-use, based on the principles of conservation and the sustainable use of biodiversity.” The GBO-3 confirmed that the world failed to meet its target to achieve a significant reduction in the rate of biodiversity loss by 2010; and calls for a new strategy for reducing biodiversity loss (CBD GBO-3 2010 <https://www.cbd.int/doc/publications/gbo/gbo3-final-en.pdf>).

45 *Revised African Convention on the Conservation of Nature and Natural Resources* (2003). This is a Revised version of the *African Convention on the Conservation of Nature and Natural Resources* (1968), which recently entered into force with the fifteenth ratification by Burkina Faso on 23 June 2016, in accordance with the AU ratification requirements.

46 Protected Landscape is identified in article V(6)(a)(v) as a conservation area and is defined as “an area of land where the interaction of people and nature over time has produced an area of distinct character with significant aesthetic, ecological and/or cultural value, and often with high biological diversity” (Annex 2 *Revised African Convention on the Conservation of Nature and Natural Resources*).

47 Annex 2 of the *Revised African Convention on the Conservation of Nature and Natural Resources*.

48 Annex 2 of the *Revised African Convention on the Conservation of Nature and Natural Resources*.

such as tourism, that occur in protected landscapes. The importance therefore lies in the adaptation of these sustainable development pillars to the TFCA setting.⁴⁹

Sustainable tourism was further included in the poverty eradication goals embodied in the Millennium Development Goals (MDGs) which ended in 2015, and is now in the SDGs in the *UN 2030 Agenda for Sustainable Development*.⁵⁰ In particular, SDG 15 promotes sustainable tourism as a means to eradicate poverty through the protection and sustainable use of terrestrial ecosystems. More recent international instruments, such as the *International Conference on Tourism Statistics: Measuring Sustainable Tourism* in 2017 endorses sustainable tourism in promoting the SDGs. In Africa, the NEPAD adopted the *NEPAD Tourism Action Plan* in 2004 (hereafter Action Plan). However, this Action Plan focuses predominantly on the potential of tourism in promoting economic growth and recognises the need for greater involvement of communities in tourism development, poverty alleviation including the negative impacts of tourism on culture and environment.⁵¹ Nevertheless, at sub-regional level, the *SADC Protocol on Tourism*, which acknowledges the importance of sustainable development in tourism in the region by setting out obligations for member States, does not provide for poverty alleviation.⁵² This discrepancy lies at the heart of this study for its influence on the development of sustainable tourism in TFCAs in Africa – without clear goals on poverty eradication. It is for this reason that it becomes important to consider the concept of sustainable tourism development.

3.2.3 Sustainable tourism development

Butler⁵³ explains sustainable tourism development simply as “tourism that is developed in line with the principles of sustainable development.”⁵⁴ Put differently, sustainable tourism development is tourism development that endeavours to

49 See para 2.2.2.2 above.

50 See MDG 1 on the eradication of poverty.

51 Matlou *NEPAD Tourism Action Plan* 119.

52 See para 2.3.2 above.

53 Butler 1999 *Tourism Geographies* 12.

54 See also, Tefler and Sharpley *Tourism and Development* 58-64.

subscribe and conform to sustainable development. It is important here to define the term "tourism development" itself. Saner, Yiu and Filadoro⁵⁵ define "tourism development" as the "planning and implementation of strategies with the objective to develop the tourism sector." In most writings pertaining to tourism development, it basically relates to everything that involves the advancing of tourism as an economic activity and as a sector.⁵⁶ Thus sustainable tourism development should mean the planning and implementation of strategies in order to develop the tourism sector in accordance with the principles of sustainable development.⁵⁷

Steck⁵⁸ provides another definition that:

Sustainable tourism development meets the needs of present tourists and host regions while protecting and enhancing opportunities for the future. It is envisaged as leading to management of all resources in such a way that economic, social, and aesthetic needs can be fulfilled while maintaining cultural integrity, essential ecological processes, biological diversity, and life support systems.

This functional definition stresses on the ultimate goal of tourism development. It resonates with the proposition of tourism as an economic development approach and may be aligned with the notion that sustainable tourism is value-oriented, based on the manner in which it frames its approach to the management of all resources.⁵⁹ This is the manner in which sustainable development has been evolving in the international discourse. While some instruments may have emphasised specific aspects of the concept, as well as ecotourism for protected areas, it is accepted that sustainable tourism development incorporates the elements and principles of sustainable development to the specific tourism context with the intention of achieving economic development.⁶⁰

55 Saner, Yiu and Filadoro "Tourism Development in Least Developed Countries" 229.

56 See for instance Kabote 2008 *International Journal of Safety and Security in Tourism/Hospitality*, Steck *Sustainable Tourism as a Development Option* 1; Tefler and Sharpley *Tourism and Development* 69.

57 See for instance, Zientara "Sustainable Tourism Development" 169-171.

58 Steck *Sustainable Tourism as a Development Option* 1-2.

59 Steck *Sustainable Tourism as a Development Option* 1-2; Tefler and Sharpley *Tourism and Development* 56-58.

60 See para 3.1.3 above.

From a legal perspective therefore, this further implies that tourism, as a form of economic development, must conform to the legal principles of the sustainable use of natural resources and equity and the eradication of poverty. Moreover, it calls for the recognition in tourism development of the interdependence and interrelationship of economic, environmental, social and human rights issues. This in turn necessitates the reconciliation, accommodation and harmonisation of the priorities, concerns and norms emanating from the economic, environmental and social objectives in economic and other development laws, policies, plans, programmes and projects. In doing so, the procedural elements of sustainable development as well as good governance are also crucial for sustainable tourism development. Nevertheless, for a more holistic view to the evolution of sustainable tourism development, it is necessary to consider the theoretical foundations thereof.

3.3 Theoretical foundations of sustainable tourism development

There are many approaches and viewpoints concerning the theoretical foundations of sustainable tourism development.⁶¹ As such, this study focuses on those that resonate with its conceptualisation from a sustainable development and sustainability perspective. The focus is on theories that are relevant to the tourism development that occurs in TFCAs. As a point of departure, the study considers Butler's theory of tourism development and planning, which centers on the tourism destination life cycle.⁶² This theory suggests that all tourism destinations develop and change over time through a common process of development but with limits to its growth.⁶³ Thus, where the demand for visits is more than the capacity of the destination, the number of visitors will decrease and subsequently decline.⁶⁴ These changes in the destination are triggered by certain factors, one of which is

61 Bramwell *et al* 2017 *Journal of Sustainable Tourism* 1-9; Casagrandi and Rinaldi 2002 *Conservation Ecology* 1-2; Hunter 1997 *Annals of Tourism Research* 850-867; Lui 2003 *Journal of Sustainable Tourism* 460-462; Sharpley 2000 *Journal of Sustainable Tourism* 1-19; Wall "Sustainable Tourism" 33-40.

62 There are a few other theories prior to Butler's theory.

63 Sharpley 2000 *Journal of Sustainable Tourism* 1-19; Wall "Sustainable Tourism" 33-40.

64 Sharpley 2000 *Journal of Sustainable Tourism* 1-19; Wall "Sustainable Tourism" 33-40.

management.⁶⁵ Good management is needed to avoid failure.⁶⁶ Butler's theory is considered as the most relevant theory to tourism planning and development.⁶⁷

An important aspect of this theory is that it emphasises the changes that a destination experiences and that its success as a destination for tourism is dependent on certain factors. This makes a case for the perspectives on tourism sustainability. For instance, looking at the relationship between the tourist, the environment (destination) and capital, Casagrandi and Rinaldi⁶⁸ propose that sustainability in tourism offers a chance of maintaining the tourism industry indefinitely without jeopardising the environment. This approach suggests that sustainability is an important factor in the changes that occur in a destination. In particular, sustainability presupposes that protecting the physical environment is important for tourism development, which must not be compromised at the expense of growth in tourism.⁶⁹ Consequently, "sustainable tourism can be achieved if agents and decision-makers are prudent about reinvesting their profits and are inclined to protect the environment."⁷⁰ In essence, it calls for the balancing of economic interests with the need to minimise the negative impacts of tourism on the environment (the destination).⁷¹ Despite its limitations, such as its failure to consider social and other related aspects,⁷² this perspective resonates with the principle of the sustainable use of natural resources.⁷³

To address the limitation of the former, the second theoretical perspective on sustainable tourism development emphasises the social considerations of a

65 Sharpley 2000 *Journal of Sustainable Tourism* 1-19; Wall "Sustainable Tourism" 33-40.

66 Hunter 1997 *Annals of Tourism Research* 850-867; Lui 2003 *Journal of Sustainable Tourism* 460-462.

67 Hunter 1997 *Annals of Tourism Research* 850-867; Lui 2003 *Journal of Sustainable Tourism* 460-462.

68 Casagrandi and Rinaldi 2002 *Conservation Biology* 12.

69 Casagrandi and Rinaldi 2002 *Conservation Biology* 12.

70 Casagrandi and Rinaldi 2002 *Conservation Biology* 8-11.

71 Kasim 2006 *International Journal of Hospitality & Tourism Administration* 3. See also, Mensah 2007 *Journal of Retail & Leisure Property* 15-17; Muhanna 2006 *Problems and Perspectives in Management* 19; Wall "Sustainable Tourism" 33-40.

72 Casagrandi and Rinaldi 2002 *Conservation Biology* 8-11.

73 See para 3.1.3 above.

destination. This is summed up in the social exchange theory, which assumes that social relations involve an exchange of resources among individuals or groups of individuals seeking mutual benefit from the relationship.⁷⁴ Thus, where local people perceive tourism to have a significant impact on their life, they would be more willing to participate actively and to give their support for additional tourism development in their community. Applied to Butler's theory, this implies that the local people have an important role in contributing to the changes in a tourism destination and even more in making positive changes. This theory also has its limitations,⁷⁵ yet, it frames sustainability of tourism from a community's perspective. Principally, this perspective sets out a relationship between tourism that improves the quality of life of local communities and the involvement of these communities in making positive changes in a tourism destination. Understood in this way, this theory relates to the sustainable development principles of intra and inter-generational equity, including the eradication of poverty.⁷⁶

The involvement of local communities in tourism development itself is also traceable to another theoretical perspective, namely the stakeholder theory. This theory views the tourism destination as a network of interdependent stakeholders, making stakeholders a core component of sustainable tourism.⁷⁷ The stakeholder theory requires sustainable tourism strategies that incorporate effective stakeholder involvement and building of the capacity of some stakeholders to contribute meaningfully to tourism processes.⁷⁸ Effective stakeholder involvement is achieved through stakeholder collaboration, which embraces the participative processes in dealing with a wide and representative range of stakeholders from the destination

74 Kolawole 2017 *Botswana Notes and Records* 75; Nunkoo 2016 *Procedia Economics and Finance* 589-594.

75 Kolawole 2017 *Botswana Notes and Records* 75; Nunkoo 2016 *Procedia Economics and Finance* 589-594.

76 See para 3.1.3 above.

77 Waligo, Clarke and Hawkins 2015 *Annals of Tourism Research* 90-93; Waligo, Clarke and Hawkins 2013 *Tourism Management* 345-346; Saito and Ruhanen 2017 *Journal of Hospitality and Tourism Management* 189-196.

78 Waligo, Clarke and Hawkins 2015 *Annals of Tourism Research* 90-93; Waligo, Clarke and Hawkins 2013 *Tourism Management* 345-346.

community. It therefore enables all these stakeholders to play an active role and strive to meet common objectives even when there are divergent views on tourism development.⁷⁹

The stakeholders include the government at international, national, regional and local levels and government departments whose activities relate to tourism.⁸⁰ It also includes international, national, regional and local tourism organisations, tourism developers and entrepreneurs, tourism industry operators and non-tourism business practitioners. The community, including various local groups, indigenous people's groups and local residents are also key stakeholders.⁸¹ The dynamics involved in stakeholder collaboration include consensus, the power relations involved as well as the levels of participation, among other things.⁸² However, the essence is that stakeholder involvement in the planning and management of the destination is crucial to positive change in the destination. This resonates well with and validates the inclusion of the sustainable development principles of integration, the procedural elements and good governance in sustainable tourism development. These theoretical foundations set the basis for any interventions in tourism development to achieve sustainable tourism development. It is therefore important to establish their application in the actual implementation of sustainable tourism development. To this end, the foundations of these theories lay down the basis for the ultimate goals of sustainable tourism development and their legal and policy implications.

3.4 Sustainable tourism development goals and their aims/policy implications

The theoretical foundations of sustainable tourism development essentially inform the core purpose of sustainable tourism development. In this regard, the core purpose is formulated as three main goals, which in turn create specific policy

79 Jamal and Getz 1995 *Annals of Tourism Research* 186-204; McComb, Boyd and Boluk 2016 *Tourism and Hospitality Research* 215; Reed 1999 *Journal of Sustainable Tourism* 331-355.

80 McComb, Boyd and Boluk 2016 *Tourism and Hospitality Research* 215.

81 McComb, Boyd and Boluk 2016 *Tourism and Hospitality Research* 215.

82 See for instance, Saito and Ruhanen 2017 *Journal of Hospitality and Tourism* 190.

implications; also referred to as the aims of sustainable tourism development. The UNWTO⁸³ defines the three goals of sustainable tourism development, namely to:

Make use of environmental resources that constitute a key element in tourism development, maintaining essential ecological processes and helping to conserve natural heritage and biodiversity.

Respect the socio-cultural authenticity of host communities, conserve their built and living cultural heritage and traditional values, and contribute to inter-cultural understanding and tolerance.

Ensure viable, long-term economic operations, providing socio-economic benefits to all stakeholders that are fairly distributed, including stable employment and income-earning opportunities and social services to host communities, and contributing to poverty alleviation.⁸⁴

These three goals speak to the environmental, social-cultural and economic development considerations in sustainable tourism development.⁸⁵ To achieve these goals, the United Nations Environmental Programme (UNEP)⁸⁶ identifies specific policy implications, that is, the aims of sustainable tourism development. These aims relate to: biodiversity conservation, physical integrity, resource efficiency, environmental purity, cultural richness, local control, community well-being, economic viability, local prosperity, employment quality, social equity and visitor fulfilment.⁸⁷ In this study, these aims are also referred to as policy implications, therefore the two terms are used interchangeably. The importance of these policy implications is that they translate and adapt the legal principles of sustainable

83 Saito and Ruhanen 2017 *Journal of Hospitality and Tourism* 190.

84 UNEP *Making Tourism More Sustainable* 11; UNWTO Date Unknown Sustainable Tourism Development <http://sdt.unwto.org/content/about-us-5>. See also, Tefler and Sharpley *Tourism and Development* 73; Vanhove "Tourism as a Strategic Option" 100; Sarhan, Abdelgalil and Radwan "Ecotourism principles" 19.

85 Sarhan, Abdelgalil and Radwan "Ecotourism principles" 19; UNEP *Making Tourism More Sustainable* 11.

86 UNEP *Making Tourism More Sustainable* 16.

87 UNEP *Making Tourism More Sustainable* 16; UNWTO *Sustainable Tourism Development in Developing Countries* 18. See also Castellani and Sala *Sustainable Tourism* 12-13; Hanrahan and Maguire 2016 *European Journal of Tourism Research* 63; Sarhan, Abdelgalil and Radwan "Ecotourism principles" 19-21; Scott and Frew "Adoption of Information" 77; Tefler and Sharpley *Tourism and Development* 73; Vanhove "Tourism as a Strategic Option" 100-101.

development into the tourism development context.⁸⁸ Each of these policy implications is discussed, albeit briefly, below.⁸⁹

3.4.1.1 Biodiversity conservation

Biodiversity conservation involves supporting the conservation of natural areas, habitats and wildlife, and aims to minimise damage to them.⁹⁰ In protected areas, this involves working with the national parks and/or other protected areas in order to fortify them from the adverse effects of tourism, and increasing visitor awareness and support for conservation.⁹¹ This further requires, *inter alia*, establishing arrangements for the participation of all relevant stakeholders;⁹² and developing partnership agreements and concessions with local communities and private sector operators, which promote conservation.⁹³ Also important is the need to optimise the level and use of park admissions to support, *inter alia*, biodiversity conservation.⁹⁴ All of the legal principles of sustainable development are pertinent to the realisation of this aim, although it is directly underpinned by the principle of sustainable utilisation of natural resources.⁹⁵ In this regard, the sustainable use of natural resources also addresses the aims of the maintenance of physical integrity, resource efficiency and environmental purity. For this reason, these aims are considered together below.

88 See para 3.2.1 above.

89 It has been argued that these aims do not quite balance the three pillars of sustainability, however they suffice as policy implications for the purposes of this study. For further critique, see for instance, Sarhan, Abdelgalil and Radwan "Ecotourism principles" 19-21; Tefler and Sharpley *Tourism and Development* 74.

90 UNWTO *Sustainable Tourism Development in Developing Countries* 18. See also, Buckley "Ecotourism and conservation" 233-244; Swaabrooke *Sustainable Tourism Management* 49-53; Vanhove "Tourism as a Strategic Option" 101; Zorpas *et al* "Mediterranean standard for sustainable tourism" 93.

91 UNEP *Making Tourism More Sustainable* 41; Buckley 2009 *Journal of Sustainable Tourism* 643-672; Higham and Hopkins "Wildlife tourism" 281-282; Secretariat of the Convention on Biological Diversity *Tourism supporting Biodiversity* 10-25; Spenceley "Introduction" 13-15.

92 Walpole and Goodwin 2001 *Environmental Conservation* 160-161; Secretariat of the Convention on Biological Diversity *Tourism supporting Biodiversity* 19.

93 Newsome and Moore "Managing visitors" 264-265; Higham and Hopkins "Wildlife tourism" 281-282.

94 Newsome and Moore "Managing visitors" 264-265; Higham and Hopkins "Wildlife tourism" 281-282; Secretariat of the Convention on Biological Diversity *Tourism supporting Biodiversity* 20-25.

95 See para 3.2.1 above.

3.4.1.2 Maintenance of physical integrity, resource efficiency and environmental purity

The maintenance of the physical integrity of landscapes, resource efficiency and environmental purity are distinct policy implications but are considered together in this study as way of distinguishing them from biodiversity conservation. The maintenance of physical integrity involves maintaining and enhancing the quality of landscapes and avoiding the physical and visual degradation of the environment.⁹⁶ This necessitates new developments for tourism that are suitable for the local environmental conditions.⁹⁷ Resource efficiency aims to minimise “the use of scarce and non-renewable resources in the development and operation of tourism facilities and services.”⁹⁸ As a significant user of resources, tourism development should therefore ensure that the resources within and around a destination are used efficiently to promote environmental and community well-being.⁹⁹ Environmental purity calls for tourism enterprises and visitors to minimise all forms of pollution and to undertake waste management,¹⁰⁰ in order to “preserve the quality of the air, water, waste and land that sustain life, health and biodiversity.”¹⁰¹ Cultural richness is closely related, as it pertains to the preservation of cultural and heritage resources.

96 UNWTO *Sustainable Tourism Development in Developing Countries* 18; Ritchie “Interest Based Formulation” 44-46; Sarhan, Abdelgalil and Radwan “Ecotourism principles” 19-21; Vanhove “Tourism as a Strategic Option” 101; Zorpas *et al* “Mediterranean standard for sustainable tourism” 93.

97 UNEP *Making Tourism More Sustainable* 40-41; Newsome and Moore “Managing visitors” 265-267; Ritchie “Interest Based Formulation” 44-46.

98 UNWTO *Sustainable Tourism Development in Developing Countries* 18; Sarhan, Abdelgalil and Radwan “Ecotourism principles” 19-21; Vanhove “Tourism as a Strategic Option” 101; Zorpas *et al* “Mediterranean standard for sustainable tourism” 913

99 UNEP *Making Tourism More Sustainable* 44; Becken and Hay *Tourism and Climate Change* 274.

100 UNWTO *Sustainable Tourism Development in Developing Countries* 18; Vanhove “Tourism as a Strategic Option” 101; Zorpas *et al* “Mediterranean standard for sustainable tourism” 93.

101 UNEP *Making Tourism More Sustainable* 46.

3.4.1.3 Cultural richness

Cultural richness involves respecting and enhancing the historic heritage, authentic culture, traditions and distinctiveness of host communities.¹⁰² This further entails the management and conservation of cultural and historic heritage sites. To this end, the tourism industry should work with communities in the presentation and promotion of their culture and traditions.¹⁰³ This necessitates the active involvement of local communities in cultural aspects of tourism development.¹⁰⁴ Their involvement is achieved through local control.

3.4.1.4 Local control

Local control means to “engage and empower local communities in the planning and decision-making about the management and future development of tourism in their area, in consultation with other stakeholders.”¹⁰⁵ This calls for consultation processes in which local communities are engaged and empowered in order to participate in tourism development.¹⁰⁶ This further requires the full engagement of local communities in the development of tourism policies and plans through their local authorities, which enable wider consultation and participation for them and other stakeholders.¹⁰⁷

102 UNWTO *Sustainable Tourism Development in Developing Countries* 18; Sarhan, Abdelgalil and Radwan “Ecotourism principles” 19-21; Smith “Tourism and cultural change” 176-180; Swaabrooke *Sustainable Tourism Management* 71; Vanhove “Tourism as a Strategic Option” 101; Zorpas *et al* “Mediterranean standard for sustainable tourism” 93.

103 UNEP *Making Tourism More Sustainable* 38-40.

104 It is beyond the scope of this study to consider this policy implication in further detail, bearing in mind that cultural richness is a key component in the tourism products in the GLTFCA but it does not relate much to the highlighted challenges arising in this TFCA.

105 UNWTO *Sustainable Tourism Development in Developing Countries* 18; Sarhan, Abdelgalil and Radwan “Ecotourism principles” 19-21; Vanhove “Tourism as a Strategic Option” 101; Zorpas *et al* “Mediterranean standard for sustainable tourism” 92.

106 UNEP *Making Tourism More Sustainable* 35; Buckley 2009 *Journal of Sustainable Tourism* 651-652; Butcher “Ecotourism and community participation” 45-52; Massyn “Citizen Participation” 225-230; Mbaiwa “The Realities of Ecotourism” 208-209.

107 UNEP *Making Tourism More Sustainable* 35. See also, Buckley 2009 *Journal of Sustainable Tourism* 651-652; Kiss 2004 *Trends in Ecology and Evolution* 235; Massyn “Citizen Participation” 225-230; Walpole and Goodwin 2001 *Environmental Conservation* 160-161.

In addition, this policy implication demands the improvement of the conditions for effective local decision-making.¹⁰⁸ This involves strengthening the capacity of local authorities through capacity building and awareness in promoting sustainable tourism development; raising public awareness of the impacts of tourism on the communities; and ensuring access to information on proposed new developments.¹⁰⁹ Where local communities include indigenous communities, local control is further facilitated by the legal empowerment of their rights; guaranteeing their individual and collective land rights, so as to control the tourism that occurs on it, and respecting their beliefs and traditions and consulting them on how to represent their culture to tourists.¹¹⁰ Ultimately, local control therefore influences the improvement of the quality of life of the local communities, which relates to community well-being.

3.4.1.5 Community well-being

Community well-being means “to maintain and strengthen the quality of life in local communities, including social structures and access to resources, amenities and life support systems, avoiding any form of social degradation or exploitation.”¹¹¹ This occurs through activities and programmes that add to the quality of life of the local communities, for instance, providing basic services such as water, energy, roads and transport services, health services, shops and others.¹¹² Efforts should also be directed at: minimising the pressure that tourists place on facilities and services, ensuring that tourism development does not interfere significantly and adversely with other sources of livelihood and the disruption of access to them, the avoidance of noise, all forms of disturbances, littering, crime, prostitution and drug use.¹¹³

108 Massyn “Citizen Participation” 225-230.

109 Massyn “Citizen Participation” 225-230.

110 UNEP *Making Tourism More Sustainable* 35-36. See also, in the context of the involvement of indigenous people in ecotourism in White, Bultjens and Shoebridge “Complex interrelationships” 78-94.

111 UNWTO *Sustainable Tourism Development in Developing Countries* 18.

112 UNEP *Making Tourism More Sustainable* 36.

113 UNEP *Making Tourism More Sustainable* 36.

There is also the phenomenon of displacement and resettlement caused by tourism development, which may affect local communities, referred to as tourism development induced displacement and resettlement (TDIDR).¹¹⁴ If resettlement is to occur, Xue, Kerstetter and Buzinde¹¹⁵ propose that, if it is voluntary and/or if it is well planned and managed, it must be able to prevent impoverishment and can in fact be a tool for poverty reduction and alleviation. This, as well as the other policy implications discussed above, ultimately influence and are themselves dependent on the economic viability of tourism development.

3.4.1.6 Economic viability

Economic viability involves ensuring “the viability and competitiveness of tourism destinations and enterprises, so that they are able to continue to prosper and deliver benefits in the long term.”¹¹⁶ To enable viability, governments should facilitate extensive engagement, in all its spheres as well as in tourism planning, tourism marketing, infrastructure development, land use planning, protected areas management, natural attractions and environmental protection.¹¹⁷ This requires creating an investment climate for the government itself, the private sector or various forms of partnerships to participate in tourism development in a country or a particular region.¹¹⁸ These partnerships may be in the form of PPPs.¹¹⁹ In tourism

114 Despite its occurrence in a number of tourism projects, especially in developing countries, the concept is not widely discussed in literature. See for instance, Xue, Kerstetter and Buzinde 2015 *Tourism Management* 444; Su, Wall and Xu 2015 *Journal of Sustainable Tourism* 3. See more generally, Morel and Maes “The curious phenomenon” 273-288; Vanclay *Impact Assessment and Project Appraisal* 3-21.

115 Xue, Kerstetter and Buzinde 2015 *Tourism Management* 445-446; Mbaiwa 2011 *Tourism Management* 1055-1056. See also, Tao and Wall 2009 *Tourism Management* 90.

116 UNWTO *Sustainable Tourism Development in Developing Countries* 18. See also, Vanhove “Tourism as a Strategic Option” 100; Zorpas *et al* “Mediterranean standard for sustainable tourism” 91.

117 Dwyer and Spurr *Tourism Economics Summary* 1; Ashley *et al* *The Role of the Tourism Sector in Expanding Economic Opportunity* 6.

118 UNWTO *Sustainable Tourism for Development Guidebook* 72; Kunst 2011 *Tourism and Hospitality Management* 118.

119 “PPPs are cooperative alliances between the public and private sectors, in different areas of intervention which are traditionally inherent to the public sector, but without embracing a complete privatisation process” (Franco and Estevão 2010 *Cadernos EBAPE.BR [online]* 602). See also, UNCTAD *Promoting foreign investment in tourism* 26.

development, Wilson, Nielsen and Buultjens¹²⁰ suggest the use of tourism concessions as a form of legal protection against the over-exploitation of public land and over-commercialisation by the private sector.¹²¹ These concessions may take the form of management concessions, leases or a PPP concession such as, *inter alia*, the Build/Operate/Transfer (BOT); Build/Transfer/Operate (BTO);¹²² Build-Own-Operate (BOO);¹²³ and Buy-Build-Operate (BBO) concessions.¹²⁴

Economic viability is further promoted by the equitable treatment of foreign and national investors, as well as large investors and small to medium enterprises (SMEs) as investors.¹²⁵ Providing incentives for tourism businesses is also crucial, especially incentives that are consistent with environmental protection and local community development.¹²⁶ This also includes enabling land ownership by tourism investors –

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- 120 Wilson, Nielsen and Buultjens 2009 *Journal of Sustainable Tourism* 273. For further discussions on PPPs, see for instance, Chevallier and Milburn *SAIIA Policy Briefing* 125; See also, Hübner, Phong and Châu 2012 *Koedoe* <http://dx.doi.org/10.4102/koedoe.v56i2.1146>; Pfueller, Lee and Laing 2011 *Environmental Management* 747.
- 121 Concessions are legally binding contractual arrangements in the form of leases, licenses, permits, consents, franchises, and other rights of use.
- 122 In this model “the private partner builds a facility to the specifications agreed to by the public partner, operates the facility for a specified period under a contract of franchise agreement with the public partner, and then transfers the facility to the public partner at the end of the specified time period” (George, Nedelea and Antony 2010 *Journal of Tourism Research* 131).
- 123 “The private partner constructs and operates a facility without transferring ownership to the public partner” (George, Nedelea and Antony 2010 *Journal of Tourism Research* 134”).
- 124 “This model is a form of asset sale, by the public partner to the private partner, which includes a rehabilitation or expansion of an existing facility” (George, Nedelea and Antony 2010 *Journal of Tourism Research* 132).
- 125 See generally, Kunst 2011 *Tourism and Hospitality Management* 118. See also, the international standard of fair and equitable treatment in OECD 2004 *OECD Working Papers on International Investment Law* 25; UNCTAD *Fair and Equitable Treatment* 16. The practice of States with respect to this standard is to include either expressly or impliedly in multilateral or bilateral treaties on investment. Relevant multilateral treaties in the context of this study include the *Lomé IV Convention*, 1990, adopted by SADC member States, which in article 258 recognises the importance of private investment in the promotion of development cooperation.
- 126 UNCTAD *Promoting foreign investment in tourism* 30. According to James *Incentives and Investments: Evidence and Policy implications* 1, investment incentives are measurable economic advantages that governments provide to specific enterprises or groups of enterprises with the goal of steering investment into favoured sectors or regions of or influencing the character of investment. Incentives can be used as instruments to enhance beneficial impacts of foreign and domestic investment. See for instance, UNCTAD *Sustainable tourism: Contribution to economic growth* 17; UNEP *Tourism: Investing in energy and resource efficiency* 435. Investment incentives may also be used to pursue industrial policy goals such as diversifying investment, increasing local value added and substituting for imports. UNEP suggests the use of market

by granting security of tenure for investors, especially foreign investors as well as for the local communities involved in tourism ventures.¹²⁷ Other incentives include favourable immigration and customs controls for foreign investors as well as for tourists.¹²⁸ This further relates to local prosperity.

3.4.1.7 Local prosperity

Local prosperity means “to maximise the contribution of tourism to the prosperity of the host destination, including the proportion of visitor spending that is retained locally.”¹²⁹ This involves securing reliable tourism growth, as well as developing processes to maximise visitor spending per head, reduce leakages and develop linkages in the local economy.¹³⁰ This also requires the integration of tourism within the economy such that it develops alongside other sectors that contribute to the tourism supply chain.¹³¹ Local prosperity is closely related to the concept of fair trade in tourism,¹³² which aims to “maximise the benefits from tourism for local destination stakeholders through beneficial and equitable partnerships between national and international tourism stakeholders in the destination.” Fair trade in tourism values the right of the host communities, specifically the indigenous communities,¹³³ to

incentives as opposed to command and control measures. UNEP *Tourism: Investing in energy and resource efficiency* 435.

127 Asian Development Bank 2015 <http://www.adb.org/sites/default/files/publication/176085/land-issues-tourism-development-fcas.pdf>; UNCTAD *Promoting foreign investment in tourism* 31; Hübner, Phong and Châu 2014 *Koedoe* <http://dx.doi.org/10.4102/koedoe.v56i2.1146>; Massyn “Citizen Participation” 227-230; Mbaiwa “The Realities of Ecotourism” 212-213; Simpson “The Impacts of Tourism” 259-264; Spenceley “Local Impacts of Community” 286-301.

128 UNEP *Making Tourism More Sustainable* 28.

129 UNWTO *Sustainable Tourism Development in Developing Countries* 18; Sarhan, Abdelgalil and Radwan “Ecotourism principles” 19-21; Vanhove “Tourism as a Strategic Option” 101; Zorpas *et al* “Mediterranean standard for sustainable tourism” 91.

130 UNEP *Making Tourism More Sustainable* 28; Mbaiwa “The Realities of Ecotourism” 213-214.

131 UNEP *Making Tourism More Sustainable* 28.

132 Fair trade in tourism is a fairly recent concept in the field of sustainable tourism development that has not yet evolved into a fully-fledged concept with precise definitions, principles and standards. See in this regard Tourism Concern 2014 <http://tourismconcern.org.uk/about/who-we-are/ethical-fair-trade-tourism-principles/?print=pdf>.

133 See in this regard, para 3.4.1.4 above.

participate on an equal footing as stakeholders as well as beneficiaries of tourism development.¹³⁴

In light of the above, achieving local prosperity requires creating an environment for local control.¹³⁵ Yet, the success of local prosperity is in itself dependent on local control.¹³⁶ Yet, local prosperity goes beyond local control, by ensuring that the fair share of benefits for local stakeholders is achieved through the reduction of leakages and increase of linkages through, *inter alia*, supporting locally owned businesses; and encouraging and facilitating local sourcing of supplies.¹³⁷ Local prosperity is also effected through job creation and improving the quality of employment for the local communities. This is considered in detail below.

3.4.1.8 Employment quality

Employment quality involves increasing the quantity and quality of jobs in the tourism industry and the supply chain. The quality of employment also relateds to improvements in remuneration, conditions of service and all forms of non-discrimination.¹³⁸ In this regard, the *UNWTO Global Code of Ethics for Tourism*, which recognises “the need for local populations to share equitably in the economic, social and cultural benefits of tourism activities” also requires local communities to be included in the creation of direct and indirect jobs.¹³⁹ The tourism industry offers a variety of job opportunities for unskilled and highly skilled personnel throughout

134 Harris *Fair Trade in Tourism: Theory and Praxis* 17; Tourism Concern 2014 <http://tourismconcern.org.uk/about/who-we-are/ethical-fair-trade-tourism-principles/?print=pdf>.

135 Cleverdon and Kalisch 2000 *International Journal of Tourism Research* 183; Tourism Concern 2014 <http://tourismconcern.org.uk/about/who-we-are/ethical-fair-trade-tourism-principles/?print=pdf>; Massyn “Citizen Participation” 225-230; Mbaiwa “The Realities of Ecotourism” 212-213; Spenceley “Local Impacts of Community” 286-301.

136 See para 3.4.1.4 above.

137 Plüss 2003 *TRIALOG* 5-7; Massyn “Citizen Participation” 233-234; Nelson “Livelihoods, Conservation” 306-307, 316-317.

138 UNWTO *Sustainable Tourism Development in Developing Countries* 18. See also, Fortainer and van Wijk 2010 *International Business Review*; Ioannides and Petridou “Tourism Workers” 175; Sarhan, Abdelgalil and Radwan “Ecotourism principles” 19-21; UNCTAD *Promoting foreign investment in tourism* 6; Vanhove “Tourism as a Strategic Option” 101; Zorpas *et al* “Mediterranean standard for sustainable tourism” 92.

139 Article 5 of the *UNWTO Global Code of Ethics for Tourism*.

the tourism supply chain.¹⁴⁰ However, the majority of tourism jobs are seasonal, limiting the number of workers in the industry at any given time.¹⁴¹ In addition, the contribution of tourism to job creation and the alleviation of poverty is not spontaneous and depends on employment prospects that are created.¹⁴² This therefore requires increasing employment opportunities and the percentage of full-time jobs all year round.¹⁴³

Employment quality also requires respect for employment and labour standards. The International Labour Organisation (ILO)¹⁴⁴ provides that sustainable tourism should “generate income and decent employment for workers without affecting the environment and culture of the host communities.”¹⁴⁵ This is in line with SDG 8 on promoting inclusive and sustainable economic growth, employment and decent work for all men and women. According to the UNWTO,¹⁴⁶ “concern about working conditions and employee welfare must be seen as a fundamental principle of sustainable tourism in its own right.” The industry should ensure that it provides for decent work.¹⁴⁷ Along the same lines, the *Global Sullivan Principles* of 1999¹⁴⁸ encourage employers to compensate employees and enable them to meet, at least, their basic needs. These principles also encourage employers to provide their employees with opportunities to improve their skills and capabilities. Furthermore, it urges employers to work with governments and communities in which businesses

140 UNCTAD *Promoting foreign investment in tourism* 7.

141 UNWTO *Sustainable Tourism Development* 80; Leonard 2016 *Local Economy* 250; Massyn “Citizen Participation” 231-232; Spenceley “Impacts of Wildlife Tourism” 176-180.

142 Leonard 2016 *Local Economy* 254, 258; Mbaiwa “The Realities of Ecotourism” 213; Nelson “Livelihoods, Conservation” 306-307, 316-317; Simpson “The Impacts of Tourism” 259-264; UN Economic and Social Commission for Asia and the Pacific *Poverty Alleviation Through Sustainable Tourism Development* 9.

143 UNEP *Making Tourism More Sustainable* 28.

144 ILO 2016 www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_480824/lang--en/index.htm.

145 ILO 2016 www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_480824/lang--en/index.htm.

146 UNWTO *Sustainable Tourism Development* 80.

147 UN Sustainable Development Solutions Network 2015 *Indicators and a Monitoring Framework for the Sustainable Development Goals* 141 states that decent work as defined by the ILO is work that is productive and that delivers a fair income, workplace security and social protection for families, better prospects of personal development and social integration, freedom for people to express their concerns and enables them to organise and participate in decision that affect their lives and equality of opportunity and treatment for all men and women.

148 Rudolph “The Global Sullivan Principles of Corporate Social Responsibility” 247.

undertake to improve the quality of life of those communities, including the provision of opportunities and training for workers from disadvantaged backgrounds.¹⁴⁹ Closely related is social equity discussed below.

3.4.1.9 Social equity

Social equity entails “seeking a widespread distribution of economic and social benefits from tourism throughout the recipient community,” which includes improving opportunities, income and services available to the poor.¹⁵⁰ The emphasis is on securing benefits for disadvantaged people, the rural local communities, and tackling poverty.¹⁵¹ In the first instance, this places a responsibility on corporate bodies to design their strategies considering the interests of their stakeholders, particularly local communities, thereby adopting the stakeholder approach to corporate governance. This relates to the adoption of corporate social responsibility (CSR),¹⁵² in terms of which organisations bring economic value to the surrounding economic system; interact with the local communities through addressing issues of community involvement, employee relations, fair wages and to engage in practices that do not compromise the environmental resources for future generations.¹⁵³ This

149 See also Massyn “Citizen Participation” 231-232; Simpson “The Impacts of Tourism” 259-264.

150 UNWTO *Sustainable Tourism Development in Developing Countries* 18; Sarhan, Abdelgalil and Radwan “Ecotourism principles” 19-21; Vanhove “Tourism as a Strategic Option” 101; Zorpas *et al* “Mediterranean standard for sustainable tourism” 92.

151 In this regard, Doane and MacGillivray explain that economic sustainability relates to the notion of linking economic performance with the environmental and social outcomes that an organisation can achieve (Doane and MacGillivray 2001 *Economic sustainability – the business of staying in business* 15). See also, Chouinard, Ellison and Ridgeway 2011 *Harvard Business Review* 58; International Institute for Sustainable Development (IISD) *Business Strategy for Sustainable Development* 1; Mbaiwa “The Realities of Ecotourism” 208-216; Simpson “The Impacts of Tourism” 259-264; Nelson “Livelihoods, Conservation” 306-307, 316-317; Spenceley “Local Impacts of Community” 286-301.

152 Nicolaides 2015 *African Journal of Hospitality, Tourism and Leisure* 2 states that CSR encompasses the economic, legal, ethical and philanthropic expectations placed on organisations by society at a given point in time. Elkington *Cannibals with forks: the triple bottom line of 21st Century business* 55 states that these expectations of stakeholders are underpinned by the sustainability notion that organisations must be environmentally, socially and economically conscious, that is, the “Triple Bottom Line” in which “People, Planet, Profit” are considered in all operations. See also, Alhaddi 2015 *Business and Management Studies* 8.

153 Elkington *Cannibals with forks: the triple bottom line of 21st Century business* 55; Hopkins and Hopkins “Labour Standards and Corporate Social Responsibility” 157-176; IISD *Business Strategy*

aim therefore seeks to ensure that businesses fulfil the principles of equity and poverty alleviation as well as the sustainable utilisation of natural resources.

Closely related is the issue of businesses taking into consideration their impact on human rights.¹⁵⁴ The United Nation's Global Compact¹⁵⁵ recognises that businesses must operate in a manner that respects human rights, labour and environment. To promote sustainable tourism development, human rights accountability mechanisms for private sector activities are critical. Companies have a duty to respect human rights and comply with national laws, in so far as these laws codify international human rights treaty obligations.¹⁵⁶ To this end, human rights impact assessments (HRIAs), which require companies to "undertake human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights,"¹⁵⁷ are important tools for increasing transparency, accountability and human rights protections.¹⁵⁸ This enhances the realisation of equity and poverty alleviation.

Notwithstanding, the aforementioned aims, the main business of tourism, and indeed sustainable tourism development, is achieving visitor fulfilment.

3.4.1.10 Visitor fulfilment

Visitor fulfilment aims to "provide a safe, satisfying and fulfilling experience for all visitors, without gender, race, disability or any other forms of discrimination."¹⁵⁹

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- for Sustainable Development* 1. Specific to tourism, see for instance, UNWTO *Global Code of Ethics for Tourism*. See also, Coles, Fenclova and Dinan "Tourism and corporate social" 270-274.
- 154 See for instance, the discussion in Prandi and Lozano "Corporate Social Responsibility and Human Rights" 209-228.
- 155 Articles 1-9 of the Ten Principles of the UN Global Compact.
- 156 Watson, Tamir and Kemp 2013 *Impact Assessment and Project Appraisal* 119.
- 157 See *United Nations Draft Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (2003); Ruggie *Guiding Principles on Business and Human Rights* 15. See also, Watson, Tamir and Kemp 2013 *Impact Assessment and Project Appraisal* 123.
- 158 Watson, Tamir and Kemp 2013 *Impact Assessment and Project Appraisal* 119.
- 159 UNWTO *Sustainable Tourism Development in Developing Countries* 18; Sarhan, Abdelgalil and Radwan "Ecotourism principles" 19-21; Vanhove "Tourism as a Strategic Option" 101; Zorpas *et al* "Mediterranean standard for sustainable tourism" 92.

Evidently, these aims of sustainable tourism development are interrelated and are therefore not mutually exclusive.¹⁶⁰ The success of sustainable tourism development therefore depends on a holistic approach with respect to formulating and implementing policy as well as law relating to tourism development, which incorporates all of these policy implications in any context. Essentially, these aims contextualise the legal principles of sustainable development to tourism development.¹⁶¹ The aims of biodiversity conservation; the maintenance of physical integrity, environmental purity and resource efficiency; cultural richness; economic viability; and visitor fulfilment particularly elaborate on the principle of sustainable use.¹⁶² The aims of local control community well-being, local prosperity, employment quality and social equity contextualise the principle of intra and inter-generational equity.¹⁶³ The interdependence and interrelationship between all twelve aims emphasise the application of integration to the tourism context. However, the aim of local control is crucial to the application of the procedural elements of public participation, access to information and justice and good governance.

Thus far, the study established that sustainable tourism development is a model form of economic development that is applicable to the planning and management of tourism development in any given setting.¹⁶⁴ As such, it is designed to improve the quality of life of the host community, provide a high quality of experience for the visitor, and maintain the quality of the environment on which both the host community and the visitor depend.¹⁶⁵ The principles of sustainable development underpin this economic development model to tourism development, from which sustainable tourism development evolves. This includes the sustainable use of natural resources; equity and poverty eradication; integration, procedural aspects of

160 Sarhan, Abdelgalil and Radwan "Ecotourism principles" 19-21.

161 See para 3.2.1 above.

162 See para 3.2.1 above.

163 See para 3.2.1 above.

164 See paras 3.2.2 and 3.2.3 above.

165 See para 3.2.2 above.

sustainable development and good governance.¹⁶⁶ The application of these legal principles to tourism development translates into the goals of sustainable tourism development, which in turn lead to the establishment of specific aims or policy implications of sustainable tourism development.¹⁶⁷ Against this background, this chapter employs these policy implications to the TFCA context, with the intention of defining sustainable tourism development in the TFCA and addressing the challenges arising in the tourism development in the GLTFCA.¹⁶⁸

3.5 Applying sustainable tourism development to the TFCAs context

From a legal perspective, applying sustainable tourism development to the TFCA context, essentially means employing the aims or policy implications of sustainable tourism development for their ability to contextualise the legal principles of sustainable development in tourism. These aims or policy implications therefore influence the laws and policies relating to TFCA governance and tourism development with the ultimate goal of promoting the TFCA objectives. The essence of a legal approach is to ensure that these aims or policy implications translate into rules, norms and prescriptions that are explicitly formulated, authoritative, legitimate and enforceable.¹⁶⁹ Therefore, in this study, the aims or policy implications are explored further to determine how they can influence the legal framework for TFCA governance and tourism development, and thereby promote the TFCA objectives.¹⁷⁰

166 See para 3.2.1 above.

167 See para 3.4 above.

168 See para 2.4.2 above.

169 Johnson 1977 *Mid-American Review of Sociology* 49. It is beyond the scope of this study to delve into the discourse on the theory of law, which defines what law is and is not. However for a discussion on the latter, see for instance, Chanock *The Making of South African* 22; Craigie, Snijman and Fourie "Dissecting Environmental Compliance and Enforcement" 49; Du Bois "Introduction" 1-13; Du Bois "Law" 3-10; Dworkin *Taking Rights Seriously* vii-ix; Green "Introduction" xv, xx; Hage 2014 *Foundations* 1-3; Clarkson *Understanding Criminal Law* 263; Ehrenberg *The Functions of the Law* 15-43; Madhuku *An Introduction to Zimbabwean Law* 1; O'Halloran, McGregor-Lowndes and Simon *Charity Law* 73, 81; Sutton *Law/Society* 4-8; Tamanaha *A General Jurisprudence* 1-3. Specific to tourism, see for instance, Jenkins and Mkono "Sustainable tourism legislation" 235; Edgell *et al Tourism Policy* 7.

170 See paras 2.4.1 and 2.6 above.

3.5.1 Sustainable tourism development and TFCA governance

TFCA governance involves the “sharing of power, authority and responsibility between various actors both in the country and across the border.”¹⁷¹ Therefore parallel structures must be in place to define the national interests, roles and responsibilities of the participating countries.¹⁷² Moreover, the cross-border exchanges should comprise of the key counter-part state entities and the representatives of all private individuals, NGOs, donor agencies and local communities across the domestic borders in order to establish a common TFCA vision.¹⁷³

These different players are referred to as the relevant actors in the governance of the TFCA and are typically determined by the natural resource base and system of land and resource tenure.¹⁷⁴ This typically includes state actors such as governments, state agencies, parastatals and protected areas administrations.¹⁷⁵ The non-state actors include, among others, international development assistance agencies, private landowners and business entities, NGOs, local communities and civil society.¹⁷⁶ Within this broad classification of actors, the aims or policy implications of sustainable tourism development assist in defining the nature of their relationships, roles and responsibilities. Each of these actors is considered below.

171 See para 2.2.2.2 above. See also, Agrawal 2009 *Environmental Conservation* 328; Borrini-Feyerabend and Hill “Governance for the Conservation” 180-181; Borrini-Feyerabend *et al Governance of Protected Areas* 45; Paterson “Protected Areas Governance” 174-176; Schoon 2013 *Conservation and Society* 420-422; Van der Linde *et al Beyond Boundaries* 19; Vasilijevic *et al Transboundary Conservation* 45; Venter “Transfrontier Protection” 75.

172 Agrawal 2009 *Environmental Conservation* 328.

173 See para 2.2.2.2 above.

174 See paras 2.2.2.2 -2.2.2.4 above. See more generally, Van der Linde *et al Beyond Boundaries* 19; Briassoulis “Tourism and common pool resources” 100.

175 Borrini-Feyerabend and Hill “Governance for the Conservation” 180-181; Briassoulis “Tourism and common pool resources” 100.

176 See for instance, Younge and Fowkes 2003 *Biological Conservation* 17-18 who describe the process involved in identifying the categories of stakeholders that must be included in the transboundary management process. See also, Briassoulis “Tourism and common pool resources” 98; Chape, Spalding and Jenkins 2008 *The World’s Protected Areas* 101-115; Ruiz “Self-Management as the Goal of Regional Conservation” 13-17; Papadopoulou and Tsitsoni 2013 *Global NEST Journal* 105-106; Zbicz “Imposing Transboundary Conservation” 21-37.

3.5.1.1 State actors

State actors usually have the role of leading the TFCA governance structures and processes.¹⁷⁷ The state actors include: government departments, for example line ministries at national, provincial/regional and local levels of governance that are responsible for natural resource management and the broader environmental protection agenda. Figure 1 below illustrates the typical hierarchical structure of TFCA governance.

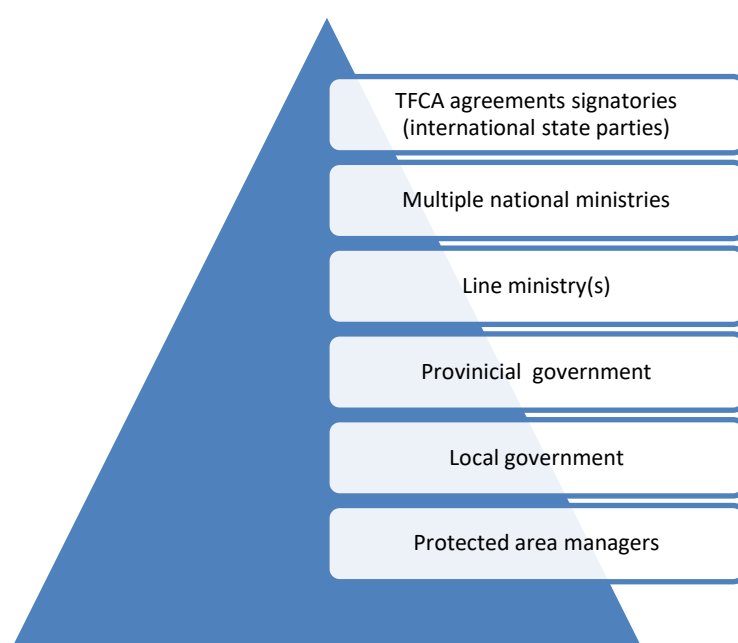


Figure 1: Hierarchical structure of state actors in TFCA governance¹⁷⁸

Figure 1 indicates that at the apex of TFCA governance are the international actors involved in the establishing agreements.¹⁷⁹ For the GLTFCA, this relates to the inter-

177 Agrawal 2009 *Environmental Conservation* 328; Borrini-Feyerabend *et al Co-management of Natural Resources* 10; Van der Linde *et al Beyond Boundaries* 23; Paterson "Protected Areas Governance" 174-176; Vasiljević *et al* 2015 *Transboundary Conservation* 46. See also, Spenceley "Implications of Responsible Tourism" 363. For the role of state actors in regulating tourism, see for instance, Jenkins and Mkono "Sustainable tourism legislation" 235-237.

178 Adapted from Van der Linde *et al Beyond Boundaries* 23.

179 See also 2.2.2.2 above.

ministerial committee.¹⁸⁰ Following, are the various ministries whose mandates relate directly or indirectly to TFCA governance. Considered holistically, sustainable tourism development calls for the inclusion of all state ministries or departments whose mandates concern or influence the twelve aims or policy implications. This includes ministries responsible for land use planning and infrastructural development;¹⁸¹ ministries responsible for rural development, culture, gender issues, youth, land and resettlement;¹⁸² and commerce, finance, labour, planning, immigration and customs, transport, and security.¹⁸³ Also relevant here is the ministry responsible for agriculture, where it relates to rural development and supply chain issues,¹⁸⁴ as well as the ministry responsible for animal health, where it relates to the livestock-wildlife interface.¹⁸⁵ The inclusion of these various ministries in the TFCA governance structures also enables improved buy-in and cooperation with all relevant sectors.¹⁸⁶ Nevertheless, there are, *inter alia*, dangers of the natural resource agenda becoming undermined in the manifold agendas and visions across many sectors, among others.¹⁸⁷

From Figure 1, the line ministry(s) follows in the governance structure. Usually, this is the mandate of the ministry responsible for natural resources management whose role is to create the enabling conditions for the TFCA.¹⁸⁸ The development of tourism as the key driver of socio-economic development in TFCAs, places the ministry

180 See para 2.4.1.2 above.

181 Relevant for the aims under biodiversity conservation. See in this regard, paras 3.4.1.1 and 3.4.1.2 above.

182 Relevant for the aims of cultural richness, local control and community well-being. See in this regard, paras 3.4.1.3 - 3.4.1.5.2 above.

183 Relevant for the aims of economic viability, local prosperity, employment quality, social equity and visitor fulfilment. See paras 3.4.1.6 - 3.4.1.10 above. See more generally, UNEP *Making Tourism More Sustainable* 50.

184 This is relevant for local prosperity. See para 3.4.1.7 above.

185 This specifically addresses issues in TFCAs relating to the sustainable tourism development aims of community well-being and more generally to livelihoods. However, it is beyond the scope of this study to discuss this aspect in detail. For further details there is a wide range of literature on the human health and the livestock/wildlife interface, see for instance, Caron *et al* 2013; *Epidemiol. Infec* 1522-1535; Cumming *Constraints to Conservation* 11-22; Garine-Wichatitsky *et al* "Consequences of animals" 137-161.

186 Van der Linde *et al Beyond Boundaries* 37.

187 Van der Linde *et al Beyond Boundaries* 37.

188 Van der Linde *et al Beyond Boundaries* 37.

responsible for tourism as a line ministry in the TFCA governance structures.¹⁸⁹ Where the two mandates fall in separate ministries, they must work closely together in formulating legislation, standards and regulations relevant for TFCA governance as well as for tourism policy and strategy development and implementation.¹⁹⁰ These close partnerships in government are a prerequisite for achieving the aim of biodiversity conservation in sustainable tourism development and must therefore be provided for specifically in the legal framework on TFCA governance.¹⁹¹ In other words, the principal laws on TFCA governance and tourism development must establish the relationship between these two government ministry areas and define their relationships individually and jointly in line with sustainable tourism development.¹⁹²

Below the various state actors at national level in the hierarchy of actors, are the state actors at provincial and local levels as indicated in Figure 1. Depending on the government systems of the participating countries, the levels illustrated above may differ slightly especially at the provincial and local levels. Nevertheless, provincial and local authorities provide local strategic direction and planning and are responsible for the implementation of policy and regulations at local level.¹⁹³ In principle, provincial level government is important for implementing national policy in their provinces by adopting a multi-sectoral approach to the national agenda,¹⁹⁴ making it the first step towards local control. Also in relation to local control, the provincial government should possess greater decision-making power than the local government and have closer connections to national government than local level

189 Jenkins and Mkono "Sustainable tourism legislation" 235-237; Van der Linde *et al Beyond Boundaries* 37.

190 UNWTO Sustainable Tourism for Development 19. See also, Swaabrooke *Sustainable Tourism Management* 88.

191 See para 3.4.1.1 above.

192 See para 3.4.1.1 above.

193 UNWTO *Sustainable Tourism for Development* 19.

194 UNWTO *Sustainable Tourism for Development* 19.

government.¹⁹⁵ Yet, this level of governance tends to be constrained by narrow decentralisation for participating in international decision-making.¹⁹⁶ As reflected in Figure 1, the management of the TFCAs is ultimately implemented at the local level where the dependence on natural resources is high,¹⁹⁷ with the necessary support from the higher levels.¹⁹⁸ This suggests that local government should provide the empowerment, ownership and buy-in of the protected areas managers.¹⁹⁹ However, local government is often limited in its implementation capacity and in its empowerment from higher levels; and the enabling conditions, such as the necessary legislation, may not exist.²⁰⁰

These limitations of provincial and local government in TFCA governance invoke the use of the specific aim of local control. The latter insists on having governance structures, specifically, devolution of authority that enables provincial and local government to participate effectively in the governance of the destination, that is TFCA governance, and thereafter in tourism development. Flowing from this system of devolution, grassroots decision-making should enable local communities to participate and influence decisions that affect their lives.²⁰¹ This makes it mandatory for the legal framework on TFCA governance to incorporate the devolution of authority from national government right through to grassroots level as a specific governing principle and with specific mechanisms for its implementation. The place of provincial and local government in the institutional structure of the GLTFCA is not expressly defined, although it may be implied by the Joint Management Board.²⁰² This lack of clarity affects the application of local control in sustainable tourism

195 Van der Linde *et al Beyond Boundaries* 37; Borrini-Feyerabend and Hill "Governance for the Conservation" 181-182.

196 Van der Linde *et al Beyond Boundaries* 37.

197 See also UNWTO *Sustainable Tourism for Development* 19; Borrini-Feyerabend and Hill "Governance for the Conservation" 181-182.

198 Agrawal 2009 *Environmental Conservation* 328; Van der Linde *et al Beyond Boundaries* 37.

199 Van der Linde *et al Beyond Boundaries* 37; Borrini-Feyerabend and Hill "Governance for the Conservation" 181-182.

200 Van der Linde *et al Beyond Boundaries* 37.

201 See para 3.4.1.4 above.

202 See para 2.4.1.2 above.

development, calling for specific mechanisms of the devolution of authority for the provincial and local authority actors in the GLTFCA.

As depicted in Figure 1, protected areas managers responsible for parks, reserves and other protected areas are at the base of the TFCA governance structure. These managers are directly involved in TFCA governance, particularly, in managing the relationship between visitation, tourism and biodiversity on the ground.²⁰³ They carry out the detailed implementation of the governance process, such as the day-to-day management and running of the programmes and research efforts.²⁰⁴ The protected areas managers also have a mandate and a responsibility to protect the natural and associated social and cultural values of protected areas.²⁰⁵ They must further ensure appropriate and sufficient access for tourism.²⁰⁶ In the GLTFCA, the protected areas managers' agencies constitute the members of the Joint Management Board.²⁰⁷ The policy implication of biodiversity conservation, calls for partnerships with other actors, particularly non-state actors, in the management of protected areas. However, the composition of the Joint Management Board in the GLTFCA does not seem to make room for these partnerships, as is further evidenced by the continuation of fortress conservation.²⁰⁸ Essentially, the governance of the GLTFCA therefore seems to be limited to state actors only.

Even then, the relationships between these various actors call for the recognition and inclusion of integration within the TFCA governance structures.²⁰⁹ For the GLTFCA, this means that the legal framework for TFCA governance for the participating countries must establish the connection between and coordination

203 Secretariat of the Convention on Biological Diversity *Tourism supporting Biodiversity* 18; UNWTO *Sustainable Tourism for Development* 19.

204 Van der Linde *et al Beyond Boundaries* 29; Eagles, McCool and Haynes *Sustainable Tourism in Protected Areas* 12.

205 Eagles, McCool and Haynes *Sustainable Tourism in Protected Areas* 12.

206 Eagles, McCool and Haynes *Sustainable Tourism in Protected Areas* 12; Buckley 2009 *Journal of Sustainable Tourism* 650-651.

207 See para 2.4.1.2 above.

208 See para 2.4.2 above.

209 See para 3.2.1 above.

across, national, provincial and local levels of government;²¹⁰ the connection between and coordination across, the line ministries as well as the supporting ministries; and the alignment of priorities, plans and activities across all state actors.²¹¹ Additionally, through the aim of biodiversity conservation, the law must create protected area management partnerships with all relevant stakeholders, which includes the non-state actors.²¹² With this in mind, it is important to consider the place of non-state actors in TFCA governance.

3.5.1.2 Non-state actors

Several non-state actors are involved in TFCAs, namely, the private sector, the local communities, NGOs (international and national), civil society groups and other related institutions whose activities influence TFCA governance. The private sector, includes private landowners who own property or run private conservation areas within the TFCA.²¹³ Privately owned reserves and eco-lodges contribute to landscape protection and biodiversity conservation, with the addition of innovative tourism services.²¹⁴ While some may not necessarily be driven by conservation goals, as much as by profit or opting for a more favourable alternative to other form of land uses, the initiative for setting up these protected areas necessitates their inclusion in the TFCA governance structures in accordance with the aims of biodiversity

210 See also, Nealer and Naudé 2011 *The Journal for Transdisciplinary Research in Southern Africa* 111.

211 Lockwood *et al* 2010 *Society & Natural Resources* 994; Nel and Kotzé "Environmental Management: An Introduction" 31.

212 See para 3.4.1.1 above.

213 See para 2.2.2.4 above. On the involvement of private landowners in the private governance of transboundary conservation areas, see for instance, Borrini-Feyerabend and Hill "Governance for the Conservation" 181-182; Borrini-Feyerabend *et al Governance of Protected Areas* 51-55; Vasilijevic *et al Transboundary Conservation* 46. More generally, see also, Simpson "The Impacts of Tourism" 259-264.

214 Eagles, McCool and Haynes *Sustainable Tourism in Protected Areas* 34. See also, Borrini-Feyerabend and Hill "Governance for the Conservation" 181-183; Bricker, Black and Cottrell 2013 *Sustainable Tourism & The Millennium Development Goals* 176; Buckley 2009 *Journal of Sustainable Tourism* 648, 651-652.

conservation and economic viability.²¹⁵ The GLTFCA comprises of a few privately owned reserves, whose owners are therefore important actors in the governance of the GLTFCA.²¹⁶ Their place in the institutional framework of the GLTFCA is also unclear and must therefore be provided for in the legal framework on TFCA governance.

The private sector also includes the private entities involved in the running of tourism businesses in the TFCAs.²¹⁷ Tourism businesses include tourism trade associations, national and local tourism service providers, tour operators, suppliers to the sector and investors.²¹⁸ A number of these businesses operate in the GLTFCA.²¹⁹ Their decisions and actions affect the natural resource base as well as the local economic development of the TFCA.²²⁰ While these private entities may not necessarily play a leadership role in the governance of the TFCA, they are the principal drivers of tourism development.²²¹ Tourism businesses influence the tourism sector, since they take the lead in the operation of tourism services, link domestic and international markets, take the lead in product development and investment, create employment and generate local income.²²² It is therefore important to have representatives of the tourism business sector in the governance structures of the TFCA as champions of tourism development. This further requires the presence of a body that regulates tourism businesses to ensure that they comply with the laws and any other norms and standards or codes of conduct that promote the aims of sustainable tourism development. This too is lacking in the institutional framework of the GLTFCA, and must be addressed in the legal framework for TFCA governance.

215 See paras 3.4.1.1 and 3.4.1.6 above. See also, Eagles, McCool and Haynes *Sustainable Tourism in Protected Areas* 35. See also, Briassoulis "Tourism and common pool resources" 100; Buckley 2009 *Journal of Sustainable Tourism* 651-652.

216 See para 2.4.1.1 and 2.4.2 above.

217 See for instance, Buckley 2009 *Journal of Sustainable Tourism* 648.

218 UNWTO *Sustainable Tourism for Development* 20.

219 See para 2.4.2 above.

220 Secretariat of the Convention on Biological Diversity *Tourism supporting Biodiversity* 15; Simpson "The Impacts of Tourism" 259-264.

221 Secretariat of the Convention on Biological Diversity *Tourism supporting Biodiversity* 15.

222 UNWTO *Sustainable Tourism for Development* 20; Simpson "The Impacts of Tourism" 261-264.

Another important component of non-state actors in TFCA governance is the local communities. These are communities that live within or near the TFCA and may either be right holders – having legal or customary rights to the land, water and natural resources within the TFCA; or stakeholders – possessing direct or indirect interest in the land, water or natural resources, without any legally or socially recognised entitlements to them.²²³ As such, their involvement in TFCA governance is important. Considering the number of local communities that fall within the GLTFCA,²²⁴ their exclusion from its institutional framework is regrettable.²²⁵

To address this, the aim of biodiversity conservation proposes protected areas management options that include local communities.²²⁶ According to Paterson,²²⁷ this requires the provision in the law for the participation of local communities in protected areas governance as owners, managers, developers and/or beneficiaries, depending on the nature of the protected area.²²⁸ In this regard, the law should make provision for local communities to play different roles, for which the following combinations are possible: “owner/manager”, “owner/co-manager”, “owner/beneficiary”, “non-owner/manager”, “non-owner/co-manager” and “non-owner/non-manger/beneficiary”.²²⁹ These management options are especially

223 See para 2.2.2.4 above. See also, Borrini-Feyerabend and Hill “Governance for the Conservation” 183-186; Borrini-Feyerabend *et al Governance of Protected Areas* 55-58; Simpson “The Impacts of Tourism” 259-264. Buckley 2009 *Journal of Sustainable Tourism* 651-652.

224 See para 2.4.2 above.

225 See para 2.4.1.2 above.

226 See para 3.4.1.1 above.

227 Paterson 2010 *SAJELP* 114.

228 Wolmer *Transboundary Protected Area Governance* 8.

229 Paterson 2010 *SAJELP* 116. As stated by Paterson, being the owner/manager is possible when a community owns or will own the land already located, or to be located in the protected area; being the owner/co-manager is possible when a community similarly owns the land in the protected area and wishes to share the responsibility to manage the protected area with another; being the owner/beneficiary is possible when a community owns the land but does not wish to take on the role of manager and assigns it to another, but as a result of its ownership accrues certain rights or benefits associated with the protected area; being the non-owner/manager is possible when a community does not own the land but wishes to take on the management of the protected areas or some of the resources situated within it; being the non-owner/co-manager is possible when a community that does not own the land wishes to participate in the management of the protected area in partnership with another or others; being the non-owner/non-manager/beneficiary is possible when a community neither owns nor manages the land but accrues rights or benefits from the protected area through external legal

important for the local communities in the GLTFCA, to enhance their participation in the governance of the GLTFCA and in the tourism development, taking into consideration their legitimate interests.²³⁰ To facilitate these management options, the law should further recognise and provide for the principles of beneficiation, public participation, accountability and CBNRM.²³¹ Moreover, the aim of local control suggests that the existence of rural communities in the GLTFCA, requires the inclusion of traditional leadership structures and other community representative bodies in the GLTFCA governance structures,²³² especially at the local government level.²³³ This in turn means including the roles and responsibilities of traditional leadership in the local government laws.²³⁴

Other pertinent non-state actors include donors, NGOs and civil society. Donors and NGOs are external entities whose role is to facilitate the governance processes.²³⁵ These organisations usually determine their own mandate in the TFCA initiative by defining their areas of interest and where and how they work as support structures to government entities.²³⁶ For instance, the Peace Parks Foundation²³⁷ has been involved in the facilitation of the creation of a number of the TFCAs in SADC at an international level, including the GLTFCA. Consequently, the law on TFCA governance must recognise these entities and define their scope of influence within the broader TFCA governance structures to avoid issues of the usurpation of powers

transactions. As Paterson has extensively researched this area of law, this study will not deal with this aspect further.

230 See para 2.2.2.3 above.

231 See para 2.2.2.3 above.

232 See para 3.4.1.4 above. See also, for instance, Agrawal 2000 *Environmental Conservation* 327.

233 Mnguni 2014 *Journal of Educational and Social Research* 365-267.

234 Zeppel *Indigenous Ecotourism: Sustainable Development and Management* 20. See also, Mbaiwa "The Realities of Ecotourism" 208-209; Walpole and Goodwin 2001 *Environmental Conservation* 160-161; UNWTO *Sustainable Tourism for Development* 20.

235 See for instance, Van der Linde *et al Beyond Boundaries* 24; Higgins-Desbiolles and Whyte "Tourism and human rights" 109; Higham and Hopkins "Wildlife tourism" 285-286; Katerere, Hill and Moyo *A Critique of Transboundary Natural Resources Management* 28.

236 Van der Linde *et al Beyond Boundaries* 24; Buckley 2009 *Journal of Sustainable Tourism* 648-650.

237 The Peace Parks Foundation is a non-profit organisation which facilitates the establishment of TFCAs Peace Parks Foundation 2017 <http://www.peaceparks.co.za/>.

or authority.²³⁸ The recent transfer of management authority over the GNP from PWMA to the ZFS,²³⁹ raises concerns around the legitimacy of the latter in driving national interests over protected areas management and biodiversity conservation and the broader TFCA agenda. Moreover, this arrangement appears to have been done without the involvement of local communities, which implies their further exclusion in the management and governance of this park.²⁴⁰ These concerns prompt the inclusion of provisions in the GLTFCA governance legal framework, particularly protected areas management legislation, of the role, responsibilities as well as limitations of the influence of external entities.²⁴¹

Civil society is not necessarily involved in the technical implementation of TFCA governance and management but promote a cause, through information dissemination, and inputs into policy development.²⁴² Along these lines, Katerere, Hill and Moyo²⁴³ state that civil society should ensure that state actors implement policies and agreements that truly improve the management of natural resources for the benefit of the people. In addition, civil society mobilises groups to participate in economic, social and political activities, thereby facilitating political and social interactions.²⁴⁴ In tourism, civil society may be involved in championing environmental protection, local control, community well-being, employment quality and other related issues.²⁴⁵ Their recognition in the law and policy relating to TFCA

238 UNWTO *Sustainable Tourism for Development* 20; Van der Linde *et al Beyond Boundaries* 28. For a critical analysis of the involvement of donor organisations in tourism, see for instance, Barnes "Community-based Tourism" 355-356; Dixey "The Unsustainability of Community" 323-327.

239 See para 2.4.2.3 above.

240 See para 2.4.2.3 above.

241 See para 3.5.1.1 above.

242 Van der Linde *et al Beyond Boundaries* 29; Borrini-Feyerabend and Hill "Governance for the Conservation" 191-192; Gemmill and Bemidele-Izu "The Role of NGOs and Civil Society" 4-9; Higgins-Desbiolles and Whyte "Tourism and human rights" 109; Higham and Hopkins "Wildlife tourism" 285-286.

243 Katerere, Hill and Moyo *A Critique of Transboundary Natural Resources Management* 28.

244 Borrini-Feyerabend, Johnston and Pansky "Governance of Protected Areas" 116.

245 For a detailed discussion of the role of civil society, especially NGOs, in promoting environmental justice in tourism, see for instance, Higgins-Desbiolles and Whyte "Tourism and human rights" 109; Tedmanson, Higgins-Desbiolles and Whyte "Tourism and Environmental Justice" 99-100 propose that "NGOs should promote the following practices: (1) the meaningful expression of a

governance is therefore important to enable them to champion the interests, especially of local communities, in the governance processes.

The inclusion of these non-state actors in the governance structures of TFCAs also requires mechanisms in the TFCA governance legal framework that promote the sustainable development principles of good governance.²⁴⁶ In TFCA governance, the governing principles include- integration,²⁴⁷ accountability,²⁴⁸ inclusiveness, legitimacy, transparency, fairness, capability and adaptability.²⁴⁹ Inclusiveness calls for mechanisms in the TFCA governance legal framework that provide for the inclusion of all the non-state actors in the governing system,²⁵⁰ to enable their participation in and influence decision-making processes and actions.²⁵¹ With the inclusion of all actors, legitimacy²⁵² calls for mechanisms that facilitate genuine

community's social circumstances and cultural terms in how the compensation schemes, consent processes, choices and trade-offs are determined, (2) open forums that express community differences on how the tourism practices are conducted, especially in relation to communities' unique needs regarding self-determination, (3) discourses used to discuss tourism in the public sphere ... that express direct participation, (4) free, prior informed consent and community right to refusal, (5) non-exploitative circumstances amenable to communities' having real choices and trade-offs regarding whether to engage or not in tourism, or in certain kinds of tourism as opposed to others."

246 See para 3.2.1 above.

247 See paras 3.2.1 and 3.5.1.1 above.

248 See para 2.2.2.3 above.

249 Borrini-Feyerabend and Hill "Governance for the Conservation" 190; Borrini-Feyerabend *et al* *Governance of Protected Areas* 36-38; Vasilijevic *et al* *Transboundary Conservation* 46; Kaggwa 2014 *Natural Resource Governance* 2. See also, Lubbe *Straddling borders and legal regimes* 75-124 who deals extensively with the principles for transboundary biodiversity conservation in TFCAs and identifies the principles listed in this study under the principle of good governance.

250 Kaggwa 2014 *Natural Resource Governance* 2.

251 Lockwood *et al* 2010 *Society & Natural Resources* 993; Andrade and Rhodes 2012 *Ecology and Society* 7; Barwick *et al* 2014 *Ecological Management & Restoration* 63; *CBD Guidelines on Biodiversity and Tourism* (2004); Frost and Laing "Natural heritage, parks" 379; Kaggwa 2014 *Natural Resource Governance* 2; Lemos and Agrawal 2006 *Annual Review of Environmental Resources* 302; Pimbert and Pretty 1995 *Parks, People and Professionals* 48; Secretariat of the Convention on Biological Diversity *Tourism supporting Biodiversity* 17; Walpole and Goodwin 2001 *Environmental Conservation* 160-161.

252 Legitimacy is defined as "the acceptance and justification of shared rule by a community" Bernstein 2005 *Journal of International Law and International Relations* 142. This relates to the validity of an organisation's authority to govern that may be conferred by democratic laws or earned through the acceptance by stakeholders of that authority. Thus, the authority must be devolved to the lowest level where it can be effectively exercised. In multilevel systems, devolution should occur to ensure that tasks are undertaken at the least centralised level with the capacity to perform and to ensure that the interests of all actors at this level are considered, see in this regard, Lockwood *et al* 2010 *Society & Natural Resources* 991.

dialogue between the state and non-state actors, allowing the latter, particularly local communities, to exert substantive influence on decision-making that affects their welfare.²⁵³ The devolution of authority is one such essential mechanism for legitimacy, in which TFCA management is undertaken at grassroots level by local government, local communities and protected areas managers, with the capacity to perform and to ensure that the interests of all actors at this level are considered.²⁵⁴

Within this set up, specific provisions must be in place for facilitating transparency, which entails the sharing of information and acting in a clear manner by all actors, especially state actors.²⁵⁵ In addition, fairness²⁵⁶ calls for mechanisms to “share costs, benefits and responsibilities of decision-making and action between and amongst the state actors at various interfaces.”²⁵⁷ It is also important for TFCA governance to include, in the legal framework, provisions that recognise and facilitate capability and adaptability. The former relates to “systems, plans, resources, skills, leadership, knowledge and experiences” that enable all TFCA actors to effectively fulfil their responsibilities.²⁵⁸ Adaptability refers, *inter alia*, to “the incorporation of new knowledge and learning into decision-making and implementation, anticipation and management of threats, opportunities and associated risks” into TFCA governance.²⁵⁹

253 Kaggwa 2014 *Natural Resource Governance* 2; Dudley *Guidelines for applying protected area* 28.

254 Borrini-Feyerabend and Hill “Governance for the Conservation” 190; Bernstein 2005 *Journal of International Law and International Relations* 142; Lockwood *et al* 2010 *Society & Natural Resources* 991.

255 Lockwood *et al* 2010 *Society & Natural Resources* 993; Kaggwa 2014 *Natural Resource Governance* 2; Secretariat of the Convention on Biological Diversity *Tourism supporting Biodiversity* 17.

256 “Fairness refers to the respect and attention given to the views of stakeholders,” the consistency and absence of personal bias in decision-making and the consideration given to the distribution of costs and benefits of decisions. See in this regard Borrini-Feyerabend and Hill “Governance for the Conservation” 191; Lockwood *et al* 2010 *Society & Natural Resources* 994.

257 See para 2.2.2.3 on the principles of beneficiation and para 2.2.2.4 on CBNRM. See more generally, Borrini-Feyerabend and Hill “Governance for the Conservation” 191; Lockwood *et al* 2010 *Society & Natural Resources* 994; Kaggwa 2014 *Natural Resource Governance* 2.

258 Lockwood *et al* 2010 *Society & Natural Resources* 995. See more generally, Lemos and Agrawal 2006 *Annual Review of Environmental Resources* 305.

259 Lockwood *et al* 2010 *Society & Natural Resources* 997; Barwick *et al* 2014 *Ecological Management & Restoration* 64; Briassoulis “Tourism and common pool resources” 99.

Having established the influence of the policy implications of sustainable tourism development in the TFCA governance legal framework, particularly that of the GLTFCA; it is important for the legal framework on tourism development to do the same. This means that the principal tourism legislation of the TFCA participating countries must, albeit more generally, recognise these various actors as pertinent tourism stakeholders for the fulfilment of all policy implications for sustainable tourism development. This consolidates the relationships and roles of the TFCA governance actors in the broader tourism development agenda. This further necessitates the inclusion of all the aims of sustainable tourism development into the legal framework for tourism development in TFCAs. This includes principal tourism legislation as well as other relevant legislation, which relate to tourism development and the TFCA objectives. The latter comprises of legislation relating to biodiversity conservation, the improvement of livelihoods – alleviation of poverty and economic development. This is effected through specific tools that appropriate the aims of sustainable tourism development for promoting the TFCA objectives.

3.5.2 Sustainable tourism development and TFCA objectives

Adopting the policy implications of sustainable tourism development into the legal framework for tourism development in TFCAs to promote the TFCA objectives calls for a governance based-approach to the specific tools that entrench them into law.²⁶⁰ Nel, Du Plessis and Du Plessis,²⁶¹ on environmental governance tools, advocate for, the use of, *inter alia*, command- and control-based instruments, incentive-based instruments, agreement-based instruments and civil-based instruments.²⁶² This study adopts these four types of governance tools to enable the aims of sustainable tourism development to promote the TFCA objectives. The use of these tools within a governance framework is illustrated in Figure 2 below. Each of these tools is discussed in detail below.

260 See for instance, Marauhn and Bohringer "An Ecosystem Approach" 95-104.

261 Nel, Du Plessis and Du Plessis "Instrumentation for local" 117.

262 Nel, Du Plessis and Du Plessis "Instrumentation for local" 97.

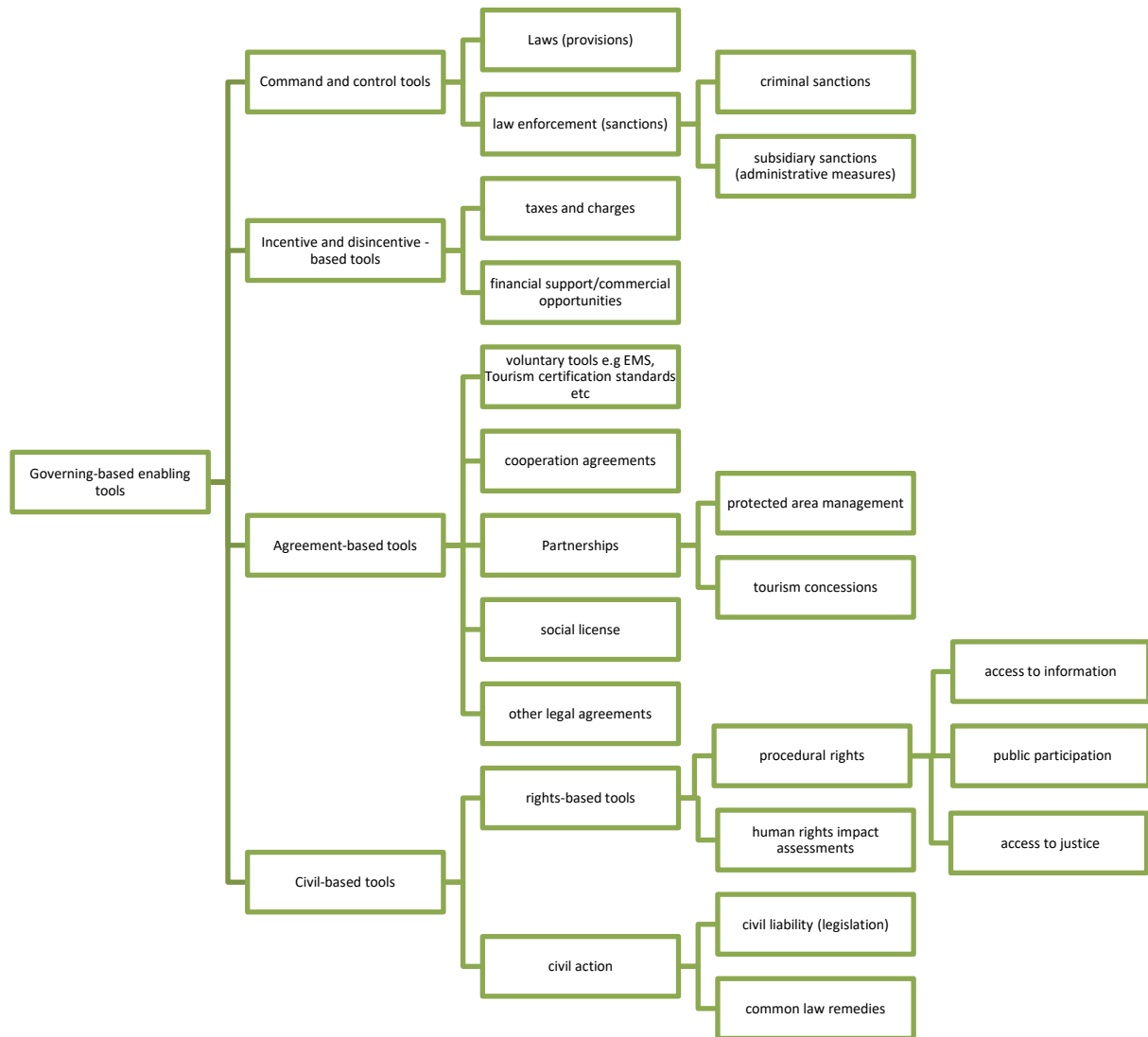


Figure 2: Governance-based tools²⁶³

263 Adapted from Nel, Du Plessis and Du Plessis "Instrumentation for local "117.

3.5.2.1 Command and control tools for TFCA objectives

Command and control tools regulate human behaviour, by prescribing a range of legislative standards, prohibitions, restrictions and sanctions in instances of contravention.²⁶⁴ These may be in the form of specific mandatory legislative provisions and law enforcement sanctions.²⁶⁵ The sanctions include criminal sanctions for direct contraventions of legislative provisions or subsidiary sanctions in the form of administrative measures.²⁶⁶ In principle, where there are laws in place, there must be concomitant sanctions, whether criminal or administrative, for non-contraventions.²⁶⁷ Yet, criminal sanctions should only be imposed, as a last resort,²⁶⁸ where heavy penalty is warranted.²⁶⁹ Therefore, subsidiary sanctions such as environmental authorisations, licenses and permits are preferred.²⁷⁰ The command

264 Paterson 2006 *PER/PELJ* 88; Junquera and Del Brío 2016 *Sustainability* 1; Kidd *Environmental Law* 210; Toxopeüs *The promotion of environmental justice* 26.

265 Nel, Du Plessis and Du Plessis *Instrumentation for local* 117.

266 Faure "Balancing of interests" 29. According to Kidd *Environmental Law* 209 the most common tools under the command and control approach are criminal sanctions. See also, Paterson 2009 "Incentive-based Measures" 306; Feris 2006 *PER/PELJ* 1. According to Eagles 2014 *Journal of Sustainable Tourism* 538 a license gives permission to operate to anyone who meets minimum standards; a permit is a permission to operate by anyone who can pay the fee; a concession is a contract with a specialised operator who meets a set of criteria for long-term provision of a service, and usually has a monopoly; and a lease over land or a facility allows the private use of government property. Administrative measures as subsidiary sanctions secure compliance with legislation by means of administrative controls such as environmental authorisations, permits, licenses, and concessions, directives, compliance notices, withdrawal of authorisations and administrative penalties in Winstanley "Administrative measures" 240-268. Directives impose on individuals a duty of care and empower competent authorities to direct transgressors to take specific steps to remedy environmental harm and comply with the law. See in this regard, Feris 2006 *PER/PELJ* 2; Kidd *Environmental Law* 219; Winstanley "Administrative Measures" 234. Compliance notices aim to bring non-compliant actors into compliance with environmental legislation or with conditions of permits, authorisations or other regulatory instruments. See in this regard, Feris 2006 *PER/PELJ* 2; Winstanley "Administrative measures" 234; Kidd *Environmental Law* 219. Withdrawals of authorisations are especially used in instances involving conditions of authorisations in Kidd *Environmental Law* 220. Administrative penalties are monetary penalties imposed by the regulator without the intervention of the courts aiming to enforce administrative regulation by punishing non-compliance, deterring violations and creating incentives to improve compliance. For a detailed discussion, see for instance, Hugo *Administrative Penalties* 19-28.

267 See for instance, Jenkins and Mkono "Sustainable tourism legislation" 235-236.

268 Kidd *Environmental Law* 216; Kidd "Criminal Measures" 244. UNEP *Making Tourism More Sustainable* 79.

269 See for instance, the SADC Law Enforcement and Anti-Poaching Strategy 2016-2021; Lubbe *A Legal Appraisal of the SADC Normative Framework* 223.

270 Nel and Wessels 2010 *PER/PELJ* 70.

and control tools provide an opportunity for the policy implications to be translated, where necessary, into mandatory legal provisions coupled with administrative or criminal sanctions for their contravention.

The challenges with respect to biodiversity conservation and tourism development in the GLTFCA,²⁷¹ necessitate the use of command and control tools to ensure that protected areas management laws and biodiversity conservation laws contain mandatory provisions and contingent sanctions for the involvement of local communities.²⁷² Specifically, mandatory provisions for the various management options, as possible management tools that make room for the involvement of local communities, must be in place; this includes the procedures for their selection.²⁷³ Further mandatory provisions, as tools for beneficiation, public participation, accountability and relevant good governance tools, are necessary.²⁷⁴ Separate specific mandatory provisions for CBNRM are also crucial, especially within the GLTFCA context in which local communities form a significant component of this TFCA.²⁷⁵ Non-compliance to these mandatory provisions by the state actors, typically involved in the management of the GLTP,²⁷⁶ should attract administrative rather than criminal penalties.²⁷⁷ With these management tools in place to include local communities in protected areas management, criminal sanctions for wildlife crimes, such as poaching, illegal fires and illegal trade become justifiable.²⁷⁸

To improve the livelihoods of communities in the GLTFCA and thereby alleviate poverty, the mandatory provisions in the law relating to protected areas management should enable consultations with the local communities with respect to the planning and management of tourism development within these protected

271 See para 2.4.2 above.

272 See para 3.5.1 above.

273 See para 3.5.2.1 above.

274 See para 3.5.2.1 above.

275 See para 3.5.2 read with para 2.2.2.3 above.

276 See para 2.4.1 above.

277 See para 3.5.2.1 above.

278 See para 3.5.2 read with para 2.4.2 above. See more generally, Kidd *Environmental Law* 216; Kidd "Criminal Measures" 244.

areas.²⁷⁹ Moreover, mandatory provisions are necessary in tourism legislation to enable local communities to participate in the development of tourism policies and plans, especially at local government level.²⁸⁰ These additional tools buttress their position within the GLTFCA as decision-makers in the development that concerns their livelihoods and well-being.²⁸¹ This further requires specific provisions in legislation relating to local governance, which demands the full engagement of these local communities through local government institutions.²⁸² This also implies the provision of mandatory devolution of authority to grassroots level in terms of which local communities, through their traditional structures, participate in the decision-making of the GLTFCA.²⁸³ Additional mandatory provisions as tools for their capacity building, education and awareness must be in place in the local government legislation.²⁸⁴ Mandatory legislative tools in local governance legislation for the disclosure and publicity of proposed new developments to local communities are also important.²⁸⁵ Moreover, specific mandatory minimum standards in tourism legislation as tools for the state actors and private sector involved in the tourism industry in the GLTFCA, to provide for the essential basic services of local communities and minimise pressure on facilities and services, are important.²⁸⁶ Also important are the mandatory procedures for TDIDR, perhaps as specific regulations for tourism legislation, which include tools for facilitating voluntary resettlement and beneficiation from tourism development in the GLTFCA.²⁸⁷

With respect to economic development at regional and national level, it is important to have specific mandatory provisions in the protected areas management legislation of all GLTFCA participating countries that facilitate the sharing of proceeds from the revenue generated from the tourism in the relevant protected areas. Nationally,

279 See para 3.4.1.4 above.

280 See para 3.4.1.4 above.

281 See paras 3.4.1.4 and 3.4.1.5 above.

282 See para 3.4.1.4 above.

283 See para 3.5.1.2 read with para 2.4.2 above.

284 See para 3.4.1.5 above read with para 2.4.2 above.

285 Massyn "Citizen Participation" 225-230.

286 See para 3.4.1.5 read with para 2.4.2 above.

287 See para 3.4.1.5 read with para 2.4.2.2 above.

investment related legislation, must provide for regulations as tools for investment in TFCAs, with specific provisions for the equitable treatment of foreign and local investors; PPPs; incentives and immigration and customs. At local level, tourism legislation must have mandatory provisions and procedures for the participation of local communities in tourism businesses.²⁸⁸ These include the determination of local community beneficiation in tourism businesses as corporate stakeholders through mandatory CSR mechanisms;²⁸⁹ tourism concessions as partners through mandatory beneficiation clauses; mandatory provision for equity in investment for SMEs, and certain specific mandatory provisions for engaging in local procurement.²⁹⁰ Also important for local economic development, are specific labour regulations for the tourism industry, which specify issues of security of employment and the improvement of working conditions for locals within the TFCA context.²⁹¹ Mandatory security provisions in protected areas management legislation and, more generally, criminal legislation for ensuring the protection of tourists as well as local people from crime, are also essential for tourism development in TFCAs. These tools are especially relevant to address the challenges with local economic development in the GLTFCA.²⁹²

In these mandatory tools, sanctions particularly administrative sanctions, are necessary for compliance. Despite much criticism against these tools resulting in the development of alternative tools,²⁹³ they remain the principal driver of compliance by organisations and must therefore form the basis of all compliance-based tools for promoting the objectives of the GLTFCA in accordance with the policy implications of sustainable tourism development. These other tools as indicated in Figure 2 above are considered below.

288 See para 3.5.4 above.

289 See para 3.4.1.9 above.

290 See paras 3.4.1.6 and 3.4.1.7 above.

291 See para 3.4.1.8 above.

292 See para 2.4.2 above.

293 Nel and Wessels 2010 *PER/PELJ* 58. For criticism of the command and control tools, see for instance, Kidd *Environmental Law* 210-215; Paterson 2006 *PER/PELJ* 88; Toxopeüs *The promotion of environmental justice* 26.

3.5.2.2 Incentive-based tools for TFCA objectives

Incentive-based tools, also referred to as market-based instruments, are economic tools that use market-based incentives or disincentives guide the desired behaviour.²⁹⁴ Sprenger²⁹⁵ states that unlike command and control tools, which place direct constraints on non-compliance, market-based instruments act via an economic signal or incentive to which the relevant actors respond.²⁹⁶ UNEP²⁹⁷ explains that these measures work through factors such as cost, price and income, which influence the choices and decisions by enterprises and consumers.²⁹⁸ Therefore, these instruments are formulated as taxes and charges; and financial support and commercial opportunities.²⁹⁹

Taxes and charges may be imposed as penalties for “unsustainable” practices as well as to change the pattern of demand.³⁰⁰ For instance, the overcrowding in the South African GLTFCA component may best be addressed by increased taxes and charges for biodiversity conservation.³⁰¹ They may be used to raise revenue from consumers and enterprises, which is used to mitigate negative impacts and to support actions such as biodiversity conservation or local community projects in the GLTFCA.³⁰² UNEP³⁰³ also identifies charges influencing after-use assurance processes such as deposit-refund schemes. Financial incentives may include tradable market permits,

294 Faure “Balancing of interests” 24-28; Nel and Wessels 2010 *PER/PELJ* 50; Paterson 2006 *PER/PELJ* 91; Paterson “incentive-based Measures” 296-335; Toxopeüs *The promotion of environmental justice* 27.

295 Sprenger 2000 “Market-based instruments in environmental policies” 3.

296 See also, Faure “Balancing of interests” 24-28; Paterson 2006 *PER/PELJ* 91; Toxopeüs *The promotion of environmental justice* 27; Whitten, Van Bueren and Collins 2003 <https://www.researchgate.net/publication/254490223>.

297 UNEP *Making Tourism More Sustainable* 89.

298 See also, Forsyth 1997 *The Geographical Journal* 270-278.

299 UNEP *Making Tourism More Sustainable* 89; Swaabrooke *Sustainable Tourism Management* 90.

300 UNEP *Making Tourism More Sustainable* 89.

301 See para 3.4.1.1 and 2.4.2.1 above.

302 UNEP *Making Tourism More Sustainable* 89; Swaabrooke *Sustainable Tourism Management* 90.

303 UNEP *Making Tourism More Sustainable* 92.

reducing import tariffs, subsidies and liability schemes, which are targeted at influencing the finance related policies and funding.³⁰⁴

These financial incentives should be in place for the private sector operating in the GLTFCA especially where they promote the objectives of the GLTFCA. The same applies to encouraging the involvement of local communities in biodiversity conservation and local economic development initiatives in the GLTFCA. With respect to the latter, the promotion of CBNRM initiatives with built-in economic incentives for local communities is effective in promoting biodiversity conservation.³⁰⁵ Incentive-based tools are also applicable to assist in the improvement of livelihoods and the alleviation of poverty in the GLTFCA. For instance, to encourage the delivery of the much needed basic services to local communities in the GLTFCA by the private sector,³⁰⁶ tax benefits and other financial incentives may be more effective than mandatory provisions and their penalties.³⁰⁷ Moreover, taxes and charges must be in place in the GLTP components to minimise the pressure that tourists place on the facilities and services, to avoid significant and adverse impacts or disruption of the other sources of livelihood of the affected local communities.³⁰⁸ This is especially true for the South African component.³⁰⁹ To encourage the provision of voluntary TDIDR in the GLTFCA, availing financial incentives to the private sector may be more effective than the command and control tools.³¹⁰

Incentive-based tools are also relevant, especially for implementing the aims or policy implications that are relevant for promoting economic development in the GLTFCA. Taxes, charges and financial incentives are perhaps most effective for promoting all aspects of economic viability – attracting foreign and local investment,

304 UNEP *Making Tourism More Sustainable* 94.

305 See for instance, Suich *Land Use Policy* 441-445. See also, Agrawal and Gibson 1999 *World Development* 629-649; Barnes, McGregor and Weaver 2002 *World Development* 667-668.

306 See para 3.4.1.5 above.

307 See para 3.5.2.1 above.

308 See para 3.4.1.5 above.

309 See para 2.4.2.1 above.

310 See para 3.4.1.5 above.

promoting PPPs and SME development and for tourism specific incentives.³¹¹ Similarly, taxes, charges and financial incentives for the private sector are ideal for promoting local prosperity, especially for the reduction of leakages and the increase of linkages through supporting locally owned businesses and local procurement.³¹² Relevant incentives for promoting employment quality by the private sector operating within the GLTFCA may also be more effective or complimentary to command and control tools. This may be especially true for reducing the challenges of seasonality and promoting job creation.³¹³ Taxes and incentives for promoting the use of CSR strategies as well as HRIAs by the private sector operating in the GLTFCA, may also be more attractive for the private sector than mandatory provisions and sanctions.³¹⁴

The use of incentive-based tools has also attracted its own criticism, but it is accepted in this study that they are still useful as compliance tools, especially in the tourism industry where there is a need for incentives for the private sector.³¹⁵ For this reason, it is necessary to consider the next set of tools as provided for in Figure 2.

3.5.2.3 Agreement-based tools for TFCA objectives

Agreement-based tools are agreements or commitments by actors to the enforcement process.³¹⁶ These tools range from voluntary commitments, such as the adoption and use of the ISO14001-based environmental management systems, to voluntary agreements that have enforceable elements such as environmental

311 See para 3.4.1.6 above.

312 See para 3.4.1.7 above.

313 See para 3.4.1.8 above.

314 See para 3.5.2.1 above.

315 For criticism of market-based instruments, see for instance, Stavins 1998 *Resources for the Future* 30-35. See also, Buckley 2012 *Annals of Tourism Research* 532; Forsyth 1997 *The Geographical Journal* 270-278.

316 Nel and Wessels 2010 *PER/PELJ* 50. Although not indicated in Figure 2 above, agreement-based tools are also voluntary compliance tools and are alternatives to command and control tools. See in this regard, Nel, Du Plessis and Du Plessis "Instrumentation for local" 128-129; Lehmann 2009 "Voluntary Compliance Measures" 269; Newsome and Moore "Managing visitors" 265-267.

cooperation agreements.³¹⁷ Agreements between state actors and local communities for CBNRM are also relevant.³¹⁸ For promoting biodiversity conservation in the GLTFCA, these tools may assist in encouraging voluntary rather than mandatory partnerships between the state actors and non-state actors in protected areas management.³¹⁹ The use of voluntary commitments may also be more attractive for tourism businesses operating in this TFCA than mandatory legal provisions in their efforts to reduce the negative impacts of tourism on biodiversity conservation.³²⁰

Literature also refers to social licenses to operate,³²¹ which are formal or informal agreements that tourism developers or businesses may enter into with local communities in instances of TDIDR.³²² Other voluntary instruments such as sustainable tourism certifications and standards, have the potential to reduce the negative environmental and social impacts of tourism in the GLTFCA and to ensure that the tourism industry is held accountable to local communities, while providing marketing benefits to those tourism businesses that meet the certification standards.³²³

317 Nel and Wessels 2010 *PER/PELJ* 50.

318 See for instance, Dyer *et al* 2014 *Journal of Environmental Management* 137-145; Balint and Mashinya 2008 *Journal of Southern African Studies* 127-143.

319 See para 3.4.1.1 above. For a discussion on voluntary agreements, see for instance, Cristofaro *Sharing uncertainty and responsibility?* 17-19; Hanks 1998 *Industry and Environment* 36-43; Hanks 2002 *Journal of Cleaner Production* 103-107; Manzini and Mariotti 2003 *Journal of Public Economics* 2725-2736.

320 See para 3.4.1.1 above.

321 Vanclay *et al Social Impact Assessment: Guidance for assessing and managing the social impacts of projects* v; Boutilier 2014 *Impact Assessment and Project Appraisal* 264; Gibson and O'Faircheallaigh *IBA Community Toolkit* 130; Morrison *The Social License* 17.

322 See para 3.4.1.5 read with para 2.4.2.2 above. For a detailed discussion of the concept of a social license to operate, see for instance, Vanclay *et al Social Impact Assessment: Guidance for assessing and managing the social impacts of projects* v; Boutilier 2014 *Impact Assessment and Project Appraisal* 264; Gibson and O'Faircheallaigh *IBA Community Toolkit* 130; Morrison *The Social License* 17.

323 Font, Sanabria and Skinner 2003 *Journal of Ecotourism* 213; Forsyth 1997 *The Geographical Journal* 275; Graci and Dodds "Certification and labelling" 201-205; Jenkins and Mkono "Sustainable tourism legislation" 235-237; Mycoo 2006 *Journal of Sustainable Tourism* 505; Rivera 2002 *Political Science* 33-60.

PPPs as well as fair trade partnerships between tourism businesses and local communities,³²⁴ may also be based on voluntary agreements for promoting economic viability and local prosperity in the GLTFCA.³²⁵ These tools may, or may not be based on the guidelines or legal requirements, since the solutions and level of performance are determined by the parties themselves.³²⁶ Where agreements or any of the aforementioned tools are not appropriate,³²⁷ it may be necessary to have civil-based tools in place as shown in Figure 2 above.

3.5.2.4 Civil-based tools for TFCA objectives

Traditionally, civil-based tools are an alternative to command and control tools.³²⁸ These tools rely mostly on private actors, NGOs and civil society to assist with improved compliance with the legislation that promotes the TFCA objectives.³²⁹ These tools include, but are not limited to, rights-based tools and civil action. Rights-based tools predominantly relate to environmental procedural rights.³³⁰ However, an environmental approach to other constitutional civil and political rights as well as socio-economic rights, which extends the ambit of the basic right to the environment, is an essential tool in itself.³³¹ In the GLTFCA, rights of access to and use of natural resources by local communities in the GLTP component are essential

324 Cleverdon and Kalisch 2000 *International Journal of Tourism Research* 183.

325 See paras 3.4.1.6 and 3.4.1.7 above.

326 Nel and Wessels 2010 *PER/PELJ* 50; Du Plessis 2015 *Environmental Law and Local Government* 129. See also Casimiro and Spenceley 2012 *Tourism Concessions* 32.

327 For criticism of agreement-based tools, see for instance, Buckley 2012 *Annals of Tourism Research* 532.

328 Faure "Balancing of interests" 29; Toxopeüs *The promotion of environmental justice* 29.

329 Nel, Du Plessis and Du Plessis "Instrumentation for local" 131. For a detailed discussion of the role of NGOs and civil society in civil-based tools, see for instance, Higgins-Desbiolles and Whyte "Tourism and human rights" 109.

330 Du Plessis *Environmental Law and Local Government* 131; Toxopeüs *The promotion of environmental justice* 32-36. See also para 3.2.1 above.

331 *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001). For a detailed discussion, see for instance, Amechi 2009 *Law Environment and Development* 114-128; Faure and Du Plessis "Introduction" xix-xxix; Feris "Environmental Rights" 119-123; Ruppel "Environmental rights and justice" 323-328; Schall 2008 *Journal of Environmental Law* 417-453; Van der Linde and Louw 2003 *African Human Rights Law Journal* 173-177.

for biodiversity conservation as well as for the improvement of livelihoods.³³² With respect to environmental procedural rights, which may or may not be constitutional rights, their inclusion as specific environmental rights in protected areas management legislation,³³³ or in other relevant legislation, to enable all actors, particularly, non-state actors, to participate in the GLTFCA governance through access to information and public participation, is crucial.³³⁴

These human rights tools are effective when they are enforceable beyond the individuals directly affected, to include interest groups.³³⁵ Therefore, issues of *locus standi*, which normally preclude groups such as local communities and civil society groups to enforce them should also be addressed in the enabling legislation. The enforceability of human rights itself is by way of civil action, which creates civil rather than criminal liability where harm or damage may be imputed.³³⁶ Therefore, where criminal liability may not be invoked in the policy implications of sustainable tourism development to promote the objectives of the GLTFCA, civil action may be

332 See for instance, Du Plessis and Du Plessis "Environmental and Human Rights Protection" 1-46; Lynch "Concepts and Strategies" 391-426; Sikor, He and Lestrelin 2017 *World Development* 337-349; Torpy-Saboe *et al* 2015 *World Development*

333 Feris and Tladi "Environmental Rights" 251; Mwebaza "Improving Environmental Procedural Rights in Uganda" 19. See also, the European *Convention on Access to Information, Participation in Decision-making and Access to Justice in Environmental Matters* of 2001 (Aarhus Convention), though it applies primarily to Europe, it has global significance for the promotion of environmental governance with an emphasis on the need for civil participation in environmental issues and therefore creates explicit linkages between environmental rights and human rights. See also, in this regard, Jeffery 2009 *Journal of South Pacific Law* 1-16;

334 Mwebaza "Improving Environmental Procedural Rights in Uganda" 20. See also, Birnie, Boyle and Redgewell 2009 *International Law and the Environment* 271; Luttenberger and Rukavina 2004 *Energy and the Environment* 257; Du Plessis 2008 *Potchefstroom Electronic Law Journal* 180; Jeffery 2009 *Journal of South Pacific Law* 1-16. In the international discourse, the *Aarhus Convention* clearly outlines the need for and the content of the right to have access to environmental information. The *Rio Declaration* also in Chapter 23 of Agenda 21 explicitly calls for access to information on the environment and development. Specific to tourism, see for instance, Higgins-Desbiolles and Whyte "Tourism and human rights" 109; Tedmanson, Higgins-Desbiolles and Whyte "Tourism and Environmental Justice" 99-100 who argue for environmental justice in tourism and therefore place the role of civil society in human rights advocacy as an essential ingredient in the sustainable tourism discourse. See also, Hales and Jamal "Environmental Justice and Tourism" 151-164.

335 Olenasha *The enforcement of environmental rights* 24-25. See also, in detail, Boyd *The Environmental Rights Revolution* 45-77; Du Plessis 2008 *PER/PELJ* 193; Toxopeüs *The promotion of environmental justice* 32-36.

336 See for instance, Du Plessis "Access to Information" 224.

more appropriate. Summers³³⁷ discusses civil action as private law instruments that allow the actors to solve disputes through court action.³³⁸ Thus, where disputes arise with respect to the other tools, civil action may be instituted. However, civil liability must be provided for in specific legislation, especially where it relates to the policy implications of sustainable tourism development and their role in promoting the TFCA objectives, unless it already exists in common law.³³⁹ Common law remedies exist for claims that may relate to any of the TFCA objectives, from the law of delict, nuisance and neighbour law.³⁴⁰

3.5.2.5 Combination of the tools

Evidently, addressing the challenges of governance and the objectives of the GLTFCA through the policy implications of sustainable tourism development is not in singling out a specific set of tools but in combining them for the best possible results.³⁴¹ This means the choice of tools for a specific matter, must be carefully selected and adopted. The mixed portfolios of tools is dependent on the number as well as the independence of the TFCA actors involved.³⁴²

From the above discussion, sustainable tourism development, through its policy implications, influences the legal framework on TFCA governance and promotes the TFCA objectives through specific governance-based tools. Thus, it becomes important to define sustainable tourism development in TFCAs.

337 Summers "Common-Law Remedies for Environmental Protection" 339-369.

338 Du Plessis *Environmental Law and Local Government* 136-137.

339 Du Plessis "Access to Information" 224.

340 For a detailed discussion of each of these remedies, see Summers "Common-Law Remedies for Environmental Protection" 339-369. See also, Kidd *Environmental Law* 220; Faure "Balancing of interests" 29-30.

341 Nel and Wessels 2010 *PER/PELJ* 70.

342 Nel and Wessels 2010 *PER/PELJ* 70; Toxopeüs *The promotion of environmental justice* 30-36.

3.6 Defining sustainable tourism development for TFCAs

For the purposes of this study, the definition of sustainable tourism development for TFCAs is informed by the characteristics of the SADC TFCAs;³⁴³ the three TFCA objectives;³⁴⁴ the development of tourism as the key driver of SADC TFCAs;³⁴⁵ and the challenges arising in the tourism development in the GLTFCA.³⁴⁶ This definition is also based on the sustainable development approach to tourism development in this study, which incorporates the legal principles of sustainable development,³⁴⁷ translated and adapted in the tourism context as the aims or policy implications of sustainable tourism development.³⁴⁸ Further, the definition is dependent on the manner in which these aims or policy implications of sustainable tourism development are applied to TFCA governance as well as to the TFCA objectives.

Therefore, sustainable tourism development for TFCAs, in this study, means

Tourism development that conforms to the principles of sustainable development through specific aims or policy implications, informing the legal framework on TFCA governance as well as promoting biodiversity conservation, the improvement of livelihoods and the alleviation of poverty and economic development in TFCAs through a combination of specific governance based-tools.

This definition of sustainable tourism development in TFCAs is largely based on a legal perspective, which places emphasis on legal structures that must be in place to drive TFCA programmes. With this conceptualisation of the concept, it is necessary to map out a legal framework that the GLTFCA participating countries can employ to collective as well as individual efforts, to ensure that sustainable tourism development drives not only the key objectives of the GLTFCA but the governance system as well.

343 Paragraph 2.2.2 above.

344 Paragraph 2.2.3 above.

345 Paragraph 2. 2.3 above.

346 Paragraph 2.4.2 above.

347 Paragraph 3.2.1 above.

348 Paragraph 3.4 above.

3.7 Developing a legal framework for sustainable tourism development in the GLTFCA

The solutions for addressing the governance and objectives-related challenges in the GLTFCA, call for a legal framework, which employs the aims or policy implications of sustainable tourism development to influence the governance actors and their roles as well as the necessary governance-based tools. This is considered in detail below.

3.7.1 Legislation relevant to TFCA governance

Various laws are relevant for governance in the GLTFCA. These include TFCA establishing legislation, protected areas governance and management legislation, local governance legislation and tourism legislation. Each of these is considered below.

3.7.1.1 Legislation establishing TFCAs

To begin with, it is necessary to have domestic legislation, following from the international establishing agreements, that provides for the establishment of TFCAs.³⁴⁹ This should set the basis for the governance of the GLTFCA, making room for the involvement of all relevant actors.³⁵⁰ Ideally, this law should define the role of the state actors, private actors, local communities and external entities for purposes of the cross-border exchanges.

3.7.1.2 Legislation relating to protected areas governance and management

To give effect to the TFCA establishing legislation, the law relating to protected areas governance and management must provide for TFCA governance structures, by recognising and providing for the roles of the TFCA actors in protected areas management.³⁵¹ To manage these relationships, mechanisms for the TFCA

³⁴⁹ See para 2.2.2.2 above.

³⁵⁰ See para 3.5.2 above.

³⁵¹ See para 3.5.2 above.

governance principles must also be included.³⁵² Specific to the involvement of local communities in the governance of these protected areas, various management options together with their mechanisms for accountability, public participation, beneficiation and CBNRM must be in place.³⁵³

3.7.1.3 Legislation relating to local governance

The TFCA governance structures must also align with the local governance legislation, especially, the laws relating to rural governance, in order to ensure local control in tourism development in the TFCAs.³⁵⁴ This includes all relevant mechanisms, such as devolution of authority and other participation mechanisms for facilitating local control within these rural governance laws.³⁵⁵ Also important here are the specific definitions of local communities as well as the mechanisms for the inclusion of traditional leadership structures in rural governance.³⁵⁶ This sets the basis for the manner in which the governance actors influence the tourism development in the TFCAs. The importance of tourism development in the SADC TFCAs also warrants the inclusion of the principal tourism legislation in the TFCA governance framework to ensure that all key tourism stakeholders are recognised within these TFCA governance structures.

3.7.1.4 Principal tourism legislation

Applying the policy implications of sustainable tourism development to the GLTFCA suggests that there must be a level of alignment between the typical tourism stakeholders provided for in the principal tourism legislation and the governance actors in the TFCA governance laws. This presupposes that the principal tourism legislation is framework legislation for the tourism sector, which provides for sustainable tourism development as the main approach to any form of tourism

352 See para 3.5.2 above.

353 See para 3.5.2 above.

354 See para 3.5.2 above.

355 See para 3.5.2 read with para 3.4.1.4 above.

356 See para 3.5.2 read with para 3.4.1.4 above.

development in any given setting within the domestic jurisdictions of the TFCA participating countries.³⁵⁷ This further implies that this legislation reflects all of the policy implications of sustainable tourism development.³⁵⁸ These policy implications identify specific tourism stakeholders, which must be included in the principal tourism legislation.³⁵⁹ However, as a framework law, the principal tourism legislation, may not necessarily provide for clearly defined roles and responsibilities of all tourism stakeholders, but should at least establish links with more specific sectoral legislation pertinent for the specific policy implications.

The policy implication of biodiversity conservation, for instance, specifically identifies protected areas managers, private operators and local communities as key stakeholders, including the relevant state actors responsible for protected areas management at all levels of government.³⁶⁰ The policy implications of maintenance of physical integrity, resource efficiency and environmental purity extend the list to include other state actors responsible, among others, officials responsible for land use planning, energy and waste management and environmental protection, in general. Nevertheless, the detailed roles and responsibilities of these actors are found in the specific environmental laws, something that must be established in the principal tourism legislation.

From the policy implications of cultural richness, community well-being and local control, it is clear that local communities are crucial stakeholders in sustainable tourism development and must be recognised as such in the principal tourism legislation.³⁶¹ Additionally, the state actors responsible for the preservation of culture and cultural heritage, rural development and resettlement (for TDIDR issues) must be recognised. However, the aim of local control further suggests the context within

357 See para 3.2.3 above.

358 See para 3.4.1 above.

359 See para 3.4.1 above.

360 See para 3.4.1.1 above.

361 See paras 3.4.1.3-3.4.1.5 above.

which local communities participate in sustainable tourism development, which is local governance.³⁶²

Moreover, the aim of economic viability suggests the recognition of the state actors that are responsible for investment and SME development, as well as local communities participating in tourism development as local investors and SMEs.³⁶³ The principal tourism legislation must therefore recognise local investors and SMEs, linking their roles with more specific investment and SME related legislation. Similarly, the policy implication of local prosperity identifies local communities as suppliers of various local products.³⁶⁴ It is imperative for sustainable tourism development that the principal tourism legislation recognises local suppliers in the tourism value chain, by establishing a link with local procurement legislation.³⁶⁵

The policy implication of employment quality suggests that local communities as employees and tourism businesses as employers, must be recognised in the principal tourism legislation, linking it to employment legislation. Similarly, state actors responsible for labour and employment matters should be recognised. The policy implication of social equity identifies local communities as well as the relevant state actors as stakeholders in corporate governance, which means their roles within the structures of tourism businesses must be reflected in the principal tourism legislation, with a link to corporate governance legislation. Finally, the policy implication of visitor fulfilment identifies tourists as key stakeholders, which includes visitors with disabilities and other previously disadvantaged groups as well as the relevant state actors. This too must be present in the tourism legislation, with links to other related legislation on consumer protection, security and others.

The sustainable tourism development approach in the principal tourism legislation therefore extends the scope of TFCA governance to include actors, especially state

362 See para 3.4.1.4 above.

363 See para 3.4.1.6 above.

364 See para 3.4.1.7 above.

365 See para 3.4.1.7 above.

actors that otherwise would not be included. In addition, this approach buttresses the role of private actors as well as local communities in TFCA governance. Moreover, it incorporates other specific laws relevant to the policy implications of sustainable tourism development into the TFCA governance legal framework. Included in this broad TFCA governance legal framework are the governance-based tools that are necessary to promote the TFCA objectives.

3.7.2 Sustainable tourism development influencing the governance-based tools for promoting the GLTFCA objectives

This section lists the tools that must be included in the GLTFCA governance legal framework for promoting its objectives as per the precincts of the sustainable tourism development policy implications.³⁶⁶ These tools may be provided for in the legislation discussed above, or in other sector specific legislation relevant to specific policy implications. It is clear that a combination of the various tools may be more effective for addressing the challenges in the GLTFCA.³⁶⁷

3.7.2.1 Tools for biodiversity conservation in TFCAs

To promote the TFCA objective of biodiversity conservation, the following tools are necessary within the protected areas and, where necessary, in the surrounding areas comprising of communal lands and other land uses:

- Mandatory management options for local communities to participate in protected areas management;
- Mandatory CBNRM mechanisms, including benefit-sharing mechanisms;
- Administrative sanctions for non-compliance with the above tools;
- Criminal sanctions for wildlife crimes – poaching, illegal fires, illegal trade, etc;

³⁶⁶ See paras 3.5.2 and 3.7.2-3.7.4 above.

³⁶⁷ See para 3.5.2.5 above.

- CBNRM incentives for local communities;
- Agreements between state actors, private actors and local communities for biodiversity conservation;
- Enforcement of rights to natural resources, including land;
- Complementary procedural rights for the enforcement of the natural resource rights; and
- Civil remedies for infringement of natural resource rights.³⁶⁸

3.7.2.2 Tools for the improvement of livelihoods – alleviation of poverty

The tools for improving the livelihoods of local communities and alleviating poverty in TFCAs, should apply to the protected areas and surrounding areas, comprising of communal areas and other land uses. These include:

- Mandatory poverty reduction programmes or strategies;
- Provincial legislation and local government by-laws for basic services by provincial and local government, respectively;
- Mandatory provisions or minimum standards for the provision of basic services by private actors;
- Incentives and/or agreements for private actors to provide basic services;³⁶⁹
- Social licenses, prescribed in law, for improvement of livelihoods through tourism development projects;
- Voluntary or agreement-based tourism certification standards for improvement of livelihoods and poverty alleviation;³⁷⁰

³⁶⁸ See para 3.7.2 above.

³⁶⁹ See paras 3.5.2.2 and 3.5.2.3 above.

- Human rights of access to basic services;³⁷¹
- Remedies for the infringement or violation of these human rights;³⁷²
- Mandatory mechanisms for voluntary TDIDR;³⁷³
- Incentives for private actors facilitating voluntary TDIDR;³⁷⁴
- Voluntary or agreement-based tourism certification standards for private sector facilitating TDIDR;³⁷⁵
- Agreements between state actors, private actors and communities affected by TDIDR;
- Human rights protections for local communities affected by TDIDR;³⁷⁶
- Civil remedies for claims arising out of TDIDR;³⁷⁷ and
- HRIAs, provided for in law, for tourism development projects.³⁷⁸

3.7.2.3 Tools for economic development in TFCAs

To promote economic development, the following tools are necessary for the tourism development that takes place within the TFCAs:

- International revenue sharing agreement(s) for TFCA participating countries;
- Mandatory national revenue sharing mechanisms to effect international agreement(s);

370 See para 3.5.2.3 above.

371 See para 3.5.2.4 above.

372 See para 3.5.2.4 above.

373 See paras 3.5.2.2 and 3.5.2.3 above.

374 See paras 3.5.2.2 and 3.5.2.3 above.

375 See para 3.5.2.3 above.

376 See paras 3.5.2.2 and 3.5.2.3 above.

377 See para 3.5.2.4 above.

378 See para 3.4.1.9 read with para 3.5.2.4 above.

- Mandatory national minimum standards for tourism planning and strategy, marketing, infrastructure development, land use planning in TFCAs;
- Mandatory legislation or regulations for investment in TFCAs;
- Incentives for investment in TFCAs;
- Agreements, including PPPs, for investment in TFCAs;
- Mandatory minimum clauses for tourism concessions;
- Mandatory provisions for the equitable treatment of foreign and national investors, large investors and SMEs;³⁷⁹
- Incentives for tourism businesses, including, land rights for tourism investors;
- Favourable immigration controls for foreign tourism businesses and tourists;³⁸⁰
- Minimum mandatory provisions for local procurement by private actors in TFCAs;
- Incentives and/or agreements for local procurement by state actors and private actors;
- Minimum mandatory provisions for the movement of goods and persons in TFCAs;
- Agreements for movement of goods and persons in TFCAs;
- Minimum mandatory labour regulations for tourism employers in TFCAs;
- Incentives for improved employment quality by the tourism sector in TFCAs;

379 See para 3.4.1.6 above.

380 See para 3.4.1.6 above.

- Incentives for job creation and job security by the tourism sector in TFCAs;³⁸¹
- Minimum mandatory CSR provisions for private actors; and
- Tourism specific incentives and certification standards for additional CSR strategies.

3.8 Conclusion

In attempting to resolve the challenges arising from the tourism development that occurs in TFCAs and in the GLTFCA in particular, this chapter explored sustainable tourism development, tracing its conceptualisation in the international arena from the sustainable development discourse as well as its theoretical foundations. From a legal perspective, sustainable tourism development is shaped by the legal principles of sustainable development, namely the sustainable use of natural resources, equity and poverty eradication, integration, the procedural aspects of sustainable development and good governance. In addition, its theoretical foundations influence the framing of the sustainable tourism development goals, which translate into twelve specific aims or policy implications. These policy implications, in turn, translate and adapt the legal principles of sustainable development to the tourism context, influencing the laws and policies relating to TFCA governance and tourism development with the ultimate goal of promoting the TFCA objectives.

These policy implications are applied to the TFCA context to define sustainable tourism development in the TFCAs and in turn address the challenges arising in the tourism development in the GLTFCA. Within the TFCA context, the policy implications influence the governance structures of the TFCA by determining the actors that should be involved in TFCA governance, including their relationships, roles and responsibilities. They particularly determine the relevant state actors across government ministries and at all levels of government. These policy implications also identify non-state actors, namely private actors, local communities and external

381 See para 3.5.2.2 read with para 2.4.2 above.

entities, whose relationships are governed by the good governance principles of integration, accountability, inclusiveness, legitimacy, transparency, fairness, capability and adaptability.

Having determined the governance structure for TFCAs through the policy implications, the same are used to determine the legal tools that are necessary within this governance context, for promoting the TFCA objectives of biodiversity conservation, the improvement of livelihoods – alleviation of poverty and economic development. The study adopted specific governance-based tools, from an environmental governance perspective, namely, command and control tools, incentive-based tools, agreement-based tools and civil-based tools. Their limitations make room for combinations of these tools, which are especially valid for promoting the TFCA objectives. From this, the study adopts a definition of sustainable tourism development in TFCAs, from a legal perspective, which emphasises legal structures that must be in place to drive the TFCA programmes.

The chapter employed this understanding of sustainable tourism development in TFCAs to develop a legal framework for sustainable tourism development in the GLTFCA. This legal framework is in two parts, consisting of the legislation relevant for improving the governance of the GLTFCA and the governance-based tools necessary for promoting the three objectives. This legal framework shall form the basis of examining, in chapters 4, 5 and 6 of this study, whether the GLTFCA participating countries, South Africa, Mozambique and Zimbabwe have the necessary legal framework in place to promote sustainable tourism development in the GLTFCA.

CHAPTER 4

Sustainable tourism development in the South African GLTFCA component: legal analysis

4.1 Introduction

This chapter examines the laws relating to sustainable tourism development in the South African GLTFCA component. It considers the relevant legal instruments in South Africa relating to TFCA governance and tourism development, to assess whether they provide for and promote sustainable tourism development in the GLTFCA. This analysis is guided by the legal framework for sustainable tourism development in TFCAs developed in Chapter 3. It entails identifying whether the laws in the South African component provide for the pertinent actors that are needed in TFCA governance. Following from this, the chapter further explores whether the specific governance-based tools that are necessary for promoting the GLTFCA objectives are in place within the TFCA governance legislation as well as other relevant sectoral legislation. This involves exploring the tools that are in place for promoting biodiversity conservation, the improvement of livelihoods-alleviation of poverty and economic development in the South African GLTFCA component.

4.2 Legislation relevant to TFCA governance

This segment examines the relevant legal instruments in South Africa relating to TFCA governance in order to assess whether they provide for the establishment and governance of TFCAs.¹ The analysis particularly considers whether the legal instruments provide for all the relevant actors, namely the key state actors and non-state actors that must be involved in TFCA governance, as well as the principles that govern their relationships.² These laws include legislation establishing TFCAs,

1 See para 3.6.1 above.

2 Para 3.6.1 above.

legislation relating to protected areas governance and management, legislation relating to local governance and the principal tourism legislation.

4.2.1 Legislation establishing TFCAs

Following from the GLTP Treaty,³ South Africa does not have legislation that specifically provides for TFCAs and their governance. Effectively therefore, there is a gap in the law for defining the role of the state actors, private actors, local communities and external entities for the purpose of the cross-border exchanges that relate to the GLTFCA. However, the NEM:PAA, which is the principal legislation for protected areas governance, applies to that part of the GLTFCA that falls in the South African jurisdiction – the KNP and surrounding private and communal land.⁴ A more detailed discussion of this law is provided below.

4.2.2 Legislation relating to protected areas governance and management

The NEM:PAA provides for, *inter alia*, the declaration and management of protected areas;⁵ for co-operative governance in the declaration and management of protected areas;⁶ a representative network of protected areas;⁷ and to effect a national system of protected areas to manage and conserve biodiversity.⁸ Despite the absence of specific provisions for the governance of these protected areas within the TFCA setting,⁹ NEM:PAA enables the management authority, SANParks, to participate in regional environmental, conservation and cultural heritage initiatives.¹⁰ Another relevant provision relates to the creation of co-management agreements between

3 See para 2.4.1.1 above for the establishment of the GLTFCA and the *GLTP Treaty*.

4 There are other pieces of legislation providing for the declaration of protected areas, such as the *World Heritage Convention Act* 49 of 1999, the *Mountain Catchment Areas Act* 63 of 1970 and the *National Forests Act* 84 of 1998.

5 Sections 9-16 of the NEM:PAA.

6 Sections 37-42 of the NEM:PAA.

7 Sections 17-34 of the NEM:PAA.

8 Section 2 of the NEM:PAA.

9 Lubbe 2007 *YBIEL* 128; Craigie, Snijman and Fourie "Environmental Compliance" 73.

10 Section 55(1)(aC) of the NEM:PAA. For a more detailed discussion of the role of SANParks, see paras 4.3.1.2 and 4.3.3.1.4(a)(ii) below.

managing authorities across borders to cure the lack of cross-border legislation.¹¹ This creates a basis for extending the management and governance of protected areas into the GLTFCA. It is therefore necessary to consider the roles of the key state actors and non-state actors in NEM:PAA.

4.2.2.1 State actors

Protected areas in South Africa are under the trusteeship of the State.¹² This trusteeship role is largely shared between the Minister of Environmental Affairs at national level and the Provincial Ministers of the Executive Council (MECs) responsible for environmental affairs.¹³ However, relevant government departments, assisted by various statutory authorities, perform the actual functions with respect to protected areas.¹⁴ The main statutory authority for the management of protected areas is SANParks, a statutory body, which is also the protected areas manager over the KNP.¹⁵ The mandate of SANParks with respect to the KNP is set out in the Kruger

11 Section 42 of the NEM:PAA.

12 Section 3 of the NEM:PAA. For a detailed discussion of the public trust doctrine, its origins and development see Sax 1970 *Michigan Law Review* 471, Blackmore 2017 *Bothalia: African Biodiversity & Conservation* 3; Blackmore 2014 *LEAD* 8; Brady *Boston College Environmental Affairs Law Review* 621, 633-634; Sagarin and Turnipseed 2012 *Annual Review of Environment and Resources* 473-496. For a detailed analysis of its development in South Africa, see Van der Schyff 2010 *PER* 122-159; *Hichange Investments (Pty) Ltd v Cape Produce Company Ltd t/a Pelts Products* 2004 1 SA 393 (E) and *De Beers Consolidated Mines Ltd v Ataqua Mining (Pty) Ltd* Case (3215/06) 2007 ZAFSHC 74.

13 Section 7 of the NEM:PAA. In this regard, the *Constitution of the Republic of South Africa*, 1996 in s 104(1) read with Schedule 4 places national parks under the jurisdiction of national but not provincial government, despite the concurrent competence of both spheres of government in protected areas. For further discussion, see for instance, Knoebel 2013 *PER* 176; Paterson *Legal Framework for Protected Areas* 17.

14 Sections 8 and 32 of the NEM:PAA. See also, para 4.3.3.2 below. For a discussion of these functions by various state departments, see for instance, Paterson *Legal Framework for Protected Areas* 17.

15 Section 38(1)(a)(aa) and (3) of the NEM:PAA. It must be noted that s 38 allows for the management of other protected areas by other entities such as "suitable persons, organisations and organs of state." Paterson *Legal Framework for Protected Areas* 19 points out that this has not been helpful in dealing with the "fragmented array of statutory authorities and government departments that support the Minister and MECs in the exercise of their powers and functions under NEM:PAA."

National Park Management Plan 2018-2028,¹⁶ NEM:PAA and specified provincial legislation as well as municipal by-laws.¹⁷

The relevant provincial authority is the Limpopo Provincial Government, specifically the Limpopo Department of Economic Development, Environment and Tourism. The latter is the designated authority for all provincial nature reserves and is responsible for compiling the Protected Areas Management Plan for each reserve in terms of NEM:PAA. However, its management does not include national parks, which excludes it from the management of the KNP, although their involvement is requisite in the declaration of a protected area.¹⁸ This gives provincial government the leverage to participate in the establishment of protected areas, and by extension, of those protected areas within the TFCA context.

At local level, there are a number of local municipalities whose mandates over protected areas are provided for in the respective municipal by-laws and integrated development plans.¹⁹ As with provincial government, NEM:PAA requires the participation of these municipalities in the establishment of protected areas.²⁰ Nevertheless, there are no formal structures for the inclusion of local municipal authorities in the TFCA context.²¹ Essentially, therefore, it appears that provincial government and local government in South Africa plays a peripheral role in the management of the GLTFCA.

16 SANParks 2018 *Kruger National Park Draft Management Plan for the period 2018-2028* 15. The KNP was established by GG 1576 of 2 September 1926 issued in terms of the repealed *National Parks Act* 1926.

17 Section 40(b) of the NEM:PAA.

18 Sections 31, 32 and 34 of the NEM:PAA.

19 The integrated development plans are provided for in the *Local Government Municipal Systems Act* 32 of 2000. This refers to the IDP 2017-2022 of Bushbuckridge Local Municipality; the IDP 2017-2022 of Mombela Local Municipality; the IDP 2017-2022 of Nkomazi Local Municipality; 2018-19 Draft IDP of Ba-Phalaborwa Local Municipality; IDP 2018/19 of Greater Giyani Local Municipality; IDP 2018/19 of Mopani Local Municipality; IDP 2018-19-2021-22 of Musina Local Municipality; and 2018-19 Draft IDP of Thulamela Local Municipality.

20 Sections 31, 32 and 34 of the NEM:PAA.

21 Du Plessis 2011

http://www.wcs-ahead.org/gltfca_march2011/day_2/6_duplessis_management_local.pdf.

To govern the relationships between these various state actors, NEM:PAA adopts the principle of cooperative governance enshrined in the *Constitution of the Republic of South Africa*, 1996, NEMA and the NEM:BA.²² For instance, the process of declaring protected areas in NEM:PAA involves consultations with all the relevant national organs of state as well as provincial and local authorities.²³ This is aimed at promoting intergovernmental relations as well as cooperative governance.²⁴

4.2.2.2 Non-state actors

NEM:PAA makes provision for the involvement of private or communal land owners in the management of protected areas, particularly national parks, where part of these areas fall under private or communal land.²⁵ This is by way of an agreement between such owner and the Minister.²⁶ In addition, private or communal landowners may also initiate the incorporation of their land within the protected areas framework.²⁷ In such instances, the management of the protected area is determined by an agreement between the private entity and the State.²⁸ NEM:PAA also makes provision for "suitable" non-state actors to become managing authorities over protected areas by way of the devolution of authority from the Minister or relevant provincial authority.²⁹ This suggests that the management of protected areas can be assigned to the most appropriate entity. Further, the process of incorporating land into protected areas involves a consultation process that includes any lawful occupier with a right in land in any part of the area affected.³⁰ This allows

22 Section 152 of the *Constitution of the Republic of South Africa*, 1996; ss 5 and 6 of the NEM:PAA. See also, the *Intergovernmental Relations Framework Act* 13 of 2005, which refines the constitutional principles of cooperative governance.

23 Sections 31, 32 and 34 of the NEM:PAA.

24 Section 31(a) and (b) of the NEM:PAA.

25 Section 20(3) of the NEM:PAA. See also Paterson and Glazewski "Protected Areas and Community Based Conservation" 321-362.

26 Section 20(3) of the NEM:PAA.

27 Section 35 of the NEM:PAA. For the withdrawal of such private or communal land from the protected areas 21 of the NEM:PAA applies.

28 Sections 20(3) of the NEM:PAA. For protected environments, ss 38(1)(b) and 38(2)(b) state that the consent of the owner is required prior to the appointment of the management authority.

29 Section 38 of the NEM:PAA.

30 Section 31(c) of the NEM:PAA.

for individuals and local communities situated on land adjacent to or earmarked for incorporation in a protected area that do not own such land, to participate in the process as interested or affected parties.³¹

The involvement of non-state actors in protected areas management is also made possible through the co-management agreements.³² These agreements are concluded between SANParks and other organs of state, a local community or other party, for the co-management of a national park or the regulation of human activities that affect the environment in the national park.³³ However, the co-management model provided for in NEM:PAA is more of a consultation benefit-sharing model than the internationally accepted cooperative co-management approach, making the involvement of non-state actors in the management superficial.³⁴ There is only one such co-management agreement so far,³⁵ which is the agreement between SANParks and the Makuleke community through its CPA, for the management of the Makuleke contractual park falling within the KNP.³⁶ This indicates that there is limited room for communities situated adjacent to the KNP and surrounding areas to participate in its management. Consequently, the inclusion of local communities in the management of the South African component of the GLTFCA is limited. The absence of local authorities in the management of the KNP further limits the participation of local communities in the governance of the GLTFCA,³⁷ at local governance level. This also closes the possibilities for traditional leadership in the GLTFCA as representatives of rural communities within the context of local control.³⁸

31 See para 2.4.2.1 above for the plight of local communities in surrounding areas of the KNP.

32 Section 42 of the NEM:PAA. See para 4.3.1.5 below.

33 Section 42 of the NEM:PAA. For a more detailed discussion of these co-management agreements, see also para 4.3.1.5 below.

34 See Kepe 2008 *Environmental Management* 314-315; De Koning *Analysis of a Model Designed for Land Restitution* 32; Paterson *Legal Framework for Protected Areas* 28-29; Tipa and Welch 2006 *Journal of Applied Behavioural Research* 373-391.

35 This is the position at the time of the writing of this study.

36 See para 2.4 of the Kruger National Park Draft Management Plan 2018-2028.

37 See para 4.2.2 above.

38 See para 3.4.1.4 above.

Over and above these agreements, non-state actors are able to participate in the management of the protected areas by way of consultation in the public participation process.³⁹ This form of consultation is also required in the prescribing of norms and standards as well as in the preparation of management plans.⁴⁰ With effective implementation in practice, these consultations remedy some of the limitations that may exist in the involvement of private land owners, local communities as well as external entities such as NGOs and civil society in protected areas management. The actual involvement of rural local communities, in particular, is considered below in terms of the legislation relating to local governance.

4.2.3 Legislation relating to local governance

The *Constitution of the Republic of South Africa*, 1996 places local governance in the domain of local municipalities.⁴¹ While local municipalities do not actively participate in the governance of protected areas, nor do they regulate the tourism that occurs therein, they are key stakeholders in the decision-making that involves the broader tourism agenda of the protected areas falling within their municipalities.⁴² However, the participation of rural communities apart from the public participation requirements prescribed in the *Local Government: Municipal Systems Act*,⁴³ is predominantly governed by the *Traditional Leadership and Governance Framework Act* (hereafter TLGFA).

In accordance with the *Constitution*,⁴⁴ the TLGFA provides for the recognition of traditional communities, traditional councils and traditional leaders, including their roles and functions.⁴⁵ This principally relates to the manner in which traditional

39 See also para 4.3.1.3 below.

40 Sections 11(2) and 39(3) of the NEM:PAA, respectively.

41 Section 146 read with Schedule 4 of the *Constitution of the Republic of South Africa*, 1996.

42 Section 146 read with Schedule 4 of the *Constitution of the Republic of South Africa*, 1996. See also para 4.2.1.1 above; paras 4.2.4.1 and 4.3.2.2 below.

43 See for instance, para 4.3.2.2 below.

44 Section 212 of the *Constitution of the Republic of South Africa*, 1996, which enables the enactment of legislation on the role of traditional leadership as an institution.

45 Long title of the TLGFA. For a detailed discussion of the role of traditional leadership in South Africa, see for instance, Himonga "The Future of Living Customary Law" 31-57; Himonga "The

communities participate in the activities of the state. This Act provides for the structures of governance at a local traditional level. In this regard, it provides for the necessary requirements for a community to be recognised as a traditional community.⁴⁶ Once a traditional community is recognised it must establish a traditional council in accordance with provincial legislation.⁴⁷ The traditional council comprises of traditional leaders and members of the traditional community that are selected by the senior traditional leader and elected members of the community.⁴⁸ The role of the traditional council is to, *inter alia*, facilitate the involvement of the traditional community in the development that occurs in their community and in the relevant municipality.⁴⁹ The traditional council is also mandated to participate in the development of policy and legislation at local level as well as in development programmes of municipalities and of the provincial and national spheres of government.⁵⁰ Similar structures are provided for kingships or queenships and principal traditional communities, which comprise of more than one traditional community under the leadership of a king, queen or principal traditional leader.⁵¹

In addition, the TLGFA further recognises the various offices of leadership, namely, kingship or queenship, principal traditional leadership, senior traditional leadership and headmanship.⁵² This provides a hierarchy within which traditional leadership may exist in traditional communities. The roles and functions of traditional leadership are subject to the customary law and customs of the traditional community.⁵³ However, this Act places limitations by providing for the further determination of these functions by national or provincial government, in respect of, *inter alia*, tourism, arts and culture, land administration, economic development, environment

Nature and Concept of Customary Law” 23-39; Mathenjwa and Makama 2016 *Law, Democracy & Development* 200-214; Ntonzima and Bayat 2012 *Arabian Journal of Business and Management Review (OMAN Chapter)* 88-108; Rautenbach 1999 *Koers* 295-334; Soyapi 2014 *PER/PELJ* 1446.

46 Section 2 of the TLGFA.

47 Section 3 of the TLGFA.

48 Section 3(2)(c) of the TLGFA.

49 Section 4 of the TLGFA.

50 Section 4 of the TLGFA.

51 Sections 2A and 2B of the TLGFA.

52 Sections 8-15 of the TLGFA.

53 Section 19 of the TLGFA.

and natural resources management.⁵⁴ Moreover, the allocation of these roles is subject to the concurrence of the Minister, MEC responsible for traditional affairs in consultation with the relevant structure of traditional leadership⁵⁵ and the South African Local Government Association.⁵⁶

Although this maps out the participation of rural communities in tourism development, the actual implementation of development is left to local authorities, in terms of the *Local Government: Municipal Structures Act*,⁵⁷ and not to traditional leaders.⁵⁸ In fact, traditional leaders may only participate in matters that directly affect their communities and therefore they cannot make decisions regarding developmental issues.⁵⁹ This has created challenges in the manner in which traditional leaders should participate in local development.⁶⁰ This implies that the current legislation does not facilitate proper and clear participation of local communities in tourism development, and therefore they fail to fulfil the essence of local control in sustainable tourism development. The situation for local communities may improve with the enactment of the *Communal Land Tenure Bill*, 2017, which will empower traditional councils to promote the development rights and interests of communities.⁶¹ This may provide the basis for local communities to be more involved in the development that occurs on their communal lands.

Consequently, the governance structure for the GLTFCA component of South Africa recognises all the key governance actors in the surrounding areas of the GLTFCA, setting the basis for the inclusion of all these relevant stakeholders in tourism

54 Section 20(1) of the TLGFA.

55 See the *National House of Traditional Leaders Act* 22 of 2009; *Limpopo House of Traditional Leaders Act* 5 of 2005; *Mpumalanga House of Traditional Leaders Act* 4 of 1994 as amended by *Mpumalanga House of Traditional Leaders Amendment Act* 8 of 1998.

56 Section 20(2) of the TLGFA.

57 Section 81 of the *Local Government: Municipal Structures Act*.

58 Du Plessis *et al* 1999 *Koers* 298.

59 Section 81 of the *Local Government: Municipal Structures Act*. See also, Mathonsi and Sithole 2017 *African Journal of Public Affairs* 39.

60 For a detailed discussion of the challenges that affect the functions of local government and traditional leaders, see for instance, Selepe *The role of traditional leaders* 88-89; Mathonsi and Sithole 2017 *African Journal of Public Affairs* 39-41.

61 See in this regard, s 29 of the *Communal Land Tenure Bill*, 2017.

development.⁶² It also creates the necessary platforms for promoting the networks and partnerships in accordance with the sustainable tourism development aim of biodiversity conservation.⁶³ However, the extent of involvement of actors such as the provincial and local authorities as well as local communities does not seem to meet the requirements for local control. This fails to adequately redress the challenges arising from the exclusion, especially of local communities, from the governance and management of the South African component of the GLTFCA.⁶⁴ Against this background, this study examines the interface between these actors in the principal tourism legislation.

4.2.4 *Principal tourism legislation*

The principal tourism legislation in South Africa is the *Tourism Act*. It provides, *inter alia*, “for the development and promotion of sustainable tourism for the benefit of the Republic, its residents and its visitors.”⁶⁵ The Act does not define sustainable tourism, but rather makes use of the term “responsible tourism”. This Act defines responsible tourism as tourism that

- (a) Seeks to avoid negative economic, environmental and social impacts;
- (b) Generates greater economic benefits for local people;
- (c) Enhances the well-being of host communities and improves working conditions and access to the tourism sector;
- (d) Involves local people in decisions that affect their lives;
- (e) Makes positive contribution to the conservation of natural and cultural heritage and to the maintenance of the world’s diversity;
- (f) Provides enjoyable experiences for tourists through meaningful connections with local people and greater understanding of local culture, social and environmental issues;
- (g) Provides for physically challenged people; and
- (h) Is culturally sensitive, engenders respect between tourists and hosts, and builds local pride and confidence.⁶⁶

62 For a more detailed discussion, see para 4.2.4 below.

63 See paras 3.4.1.1 and 3.5.1.1 above.

64 See para 2.4.2.1 above.

65 Long title and s 2 of the *Tourism Act*.

66 Section 2(2) of the *Tourism Act*.

Each of these elements of responsible tourism relates to the ultimate goals as well as the policy implications of sustainable tourism development.⁶⁷ Element (a), in particular, broadly speaks to all twelve aims or policy implications of sustainable tourism development.⁶⁸ Element (b) can be aligned to the aims of economic viability, local prosperity, employment quality and social equity.⁶⁹ Element (c) resonates with the aims of community well-being, employment quality and economic viability, respectively.⁷⁰ Element (d) resonates with the aim of local control.⁷¹ Element (e) relates to the aim of biodiversity conservation.⁷² Although this study argues that the aim of biodiversity conservation embodies the other aims under environmental sustainability,⁷³ its articulation in the Act may not be adequate in providing for physical integrity, resource efficiency and environmental purity.⁷⁴ Element (h), combined with element (e) resonates with the aim of cultural richness,⁷⁵ while the last three elements relate to the aim of visitor fulfilment.⁷⁶

On the face of it, therefore, this Act broadly recognises, incorporates and makes provision for sustainable tourism development as is evidenced by its conceptualisation of responsible tourism. Responsible tourism in the South African context is, at least in principle, consistent with and furthers sustainable tourism development.⁷⁷ Therefore, South Africa adopts responsible tourism as the most preferred form of tourism and sustainable tourism development as a development option, so that it is safe to say that the Act is a framework law for advancing sustainable tourism development in South African tourism. However, it is necessary to establish whether the *Tourism Act* provides for the specific tourism stakeholders that relate to each of the policy implications of sustainable tourism development.

67 See para 3.4 above.

68 Para 3.4 above.

69 Paras 3.4.1.6-3.4.1.9 above.

70 Paras 3.4.1.5, 3.4.1.8 and 3.4.1.5 above, respectively.

71 Para 3.4.1.4 above.

72 Para 3.1.4.1 above.

73 Para 3.4.1.2 above.

74 Para 3.4.1.2 above.

75 Para 3.4.1.3 above.

76 Para 3.4.1.10 above.

77 See para 3.4 above.

The Act specifically provides for national tourism institutions with the view of

redressing inadequate, uncoordinated, inconsistent and fragmented tourism planning and transforming the sector to ensure sustainable growth and development through a concerted effort by all spheres of government and the private sector.⁷⁸

Evidently, the Act purposefully identifies the importance of having national tourism institutions that involve state and non-state actors, particularly the private sector, in sustainable tourism development. A closer examination of these actors ensues below.

4.2.4.1 State actors

The Department of Tourism is responsible for the tourism management by government in South Africa.⁷⁹ The Ministry's responsibilities are, *inter alia*, to raise the profile of the tourism industry; unleash the sector's potential; link tourism management with key environmental products; coordinate other ministries whose mandates and activities directly affect tourism; and facilitate interactions between tourism and other relevant policies.⁸⁰ Other government departments involved in developing and managing tourism include: the Department of Agriculture; Forestry and Fisheries; the Department of Communications; the Department of Economic Development; the Department of Energy; the Department of Environmental Affairs; the Department of Human Settlements; the Department of Mineral Resources; the Department of Rural Development and Land Reform; the Department of Science and Technology; the Department of Small Business Development; the Department of Telecommunications and Postal Services; the Department of Trade and Industry; the Department of Transport; and the Department of Water and Sanitation.⁸¹ Other supporting ministries are recognised in the *Final Draft National Tourism Sector*

78 Preamble of the *Tourism Act*.

79 *White Paper: The Development and Promotion of Tourism in South Africa* (1996).

80 Paragraph 7.1 of the *White Paper: The Development and Promotion of Tourism in South Africa*. See also ss 2(1)(e), 3(2), 4–8 and 61 of the *Tourism Act*.

81 National Department of Tourism 2016 <https://nationalgovernment.co.za/units/view/183/South-African-Tourism>. See also para 7.1(iv) of the *White Paper: The Development and Promotion of Tourism in South Africa*; paras 4.1 and 9.4.3 in GN 404 in GG 40827 of 5 May 2017.

Strategy (2017)⁸² (hereafter the Tourism Strategy) and include the South African Police Services, the Department of Cooperative Governance and Traditional Affairs, the Department of Arts and Culture and the Department of Sports and Recreation.⁸³

The inclusion of other state departments in the tourism agenda indicates a clear recognition of the need of multiple state actors in sustainable tourism development. In principle, this in turn extends the scope of state actors involved in TFCA governance.⁸⁴ From the list of departments, it is also clear that, at least in principle, the Act caters for the key line ministries and supporting ministries that promote the aims of sustainable tourism development. Along these lines, the Act requires that where the actions of these various state departments affect tourism development, they should give effect to the Tourism Strategy.⁸⁵ This further implies that where it relates to tourism development, the principle of responsible tourism guides the actions of these other state departments that are provided for in the Tourism Strategy.⁸⁶ However, the Tourism Strategy seems to place the obligation of practising responsible tourism only on tourism businesses but not on the other relevant state departments.⁸⁷ This may be resolved by clearly defining the roles and responsibilities for each department,⁸⁸ as fragmentation persists in the area of intergovernmental collaboration and cooperation in the planning, budgets and actions across all government departments.⁸⁹

82 GG 40827 of 5 May 2017. This latest national tourism sector strategy is in accordance with section 4(3) of the *Tourism Act*, which requires the adoption of a national tourism sector strategy to promote the objects of the Act.

83 Paragraph 4.1 in GN 404 in GG 40827 of 5 May 2017.

84 See para 4.2.1 above.

85 Section 4(5) of the *Tourism Act*.

86 Para 6(d) in GN 404 in GG 40827 of 5 May 2017.

87 Paragraph 6(d) in GN 404 in GG 40827 of 5 May 2017 states with respect to responsible tourism that "all tourism development and activities shall deliver on the triple bottom-line, namely economic, social and environmental sustainability." This should apply to the activities of all actors, including state actors. Yet, in para 9.4.4 responsible tourism is used in the context of standards for tourism businesses.

88 Paragraphs 9.4.1 and 9.4.3 in GN 404 in GG 40827 of 5 May 2017.

89 Paragraph 1.3 of the National Tourism Sector Strategy (2012).

The national tourism institutions established in the Act fall under the oversight of the Minister. These institutions include the South African Tourism Board, currently operating simply as South African Tourism (SAT), and the Tourism Grading Council. The principal mandate of SAT⁹⁰ is to market and promote South African tourism at domestic and international level.⁹¹ The marketing strategy of SAT should promote, *inter alia*, responsible tourism.⁹² The National Tourism Grading Council, on the other hand, is established to implement and manage a national tourism grading system.⁹³ The national tourism grading system maintains or enhances the standards and quality of tourism services, facilities and products.⁹⁴ In doing so, the grading system must also promote responsible tourism.⁹⁵ It is difficult to determine how these two principal tourism agencies promote responsible tourism beyond the stated provisions of the Act. Neither the Act nor the Strategy states how this is to be achieved in practice.⁹⁶

The *National Heritage and Cultural Tourism Strategy* (2012) recognises the role of national and provincial conservation agencies in developing and managing state conservation land for tourism purposes.⁹⁷ This too is not clearly articulated in the strategies, which could negatively affect the actual collaboration between the tourism and environmental agencies in the absence of clear provisions. In addition, the Act recognises the role of provincial and local authorities in its main objectives.⁹⁸ In the GLTFCA, the authorities include the Limpopo Provincial Government, the Limpopo Tourism Agency,⁹⁹ Mpumalanga Provincial Government and the

90 The Act provides for the continued existence of the SATB established under the repealed *Tourism Act* 72 of 1993 as the primary tourism body.

91 Section 10(1)(a) of the *Tourism Act*.

92 Section 10(1)(c)(i) of the *Tourism Act*. For a detailed discussion of the provisions in the Act relating to responsible tourism, see para 4.3.2.2 below.

93 Section 29 of the *Tourism Act*.

94 Section 28(1) of the *Tourism Act*.

95 Section 28(2) of the *Tourism Act*.

96 See the comments made with respect to the approach of the *National Tourism Sector Strategy* (2012) and the *Final Draft National Tourism Sector Strategy* (2017) in para 4.3.2.1.1(a) above.

97 Paragraph 2.2 of the *National Tourism Sector Strategy* (2012).

98 Section 2(1)(e) of the *Tourism Act*.

99 Established in terms of the *Limpopo Tourism Act* 2 of 2009.

Mpumalanga Parks and Tourism Agency¹⁰⁰ and under them a number of municipalities. Their role is to undertake the functions of national government at provincial and local levels, with a few exceptions, additions and modifications.¹⁰¹ In doing so, provincial and local authorities should also promote the practising of responsible tourism.¹⁰² The Act specifically requires provincial and local government to give effect to the Tourism Strategy.¹⁰³ This means that responsible tourism should be practised at provincial and local levels.¹⁰⁴ In addition, provincial and local government should liaise with SAT in the marketing of the country as a business tourism destination.¹⁰⁵

To govern these relationships, the Act is binding on all organs of state in the national, provincial and local spheres of government.¹⁰⁶ The Act also prevails over other national legislation in which conflict arises over the management and development of tourism.¹⁰⁷ Moreover, any conflict between the Act and provincial legislation or local municipal by-laws is dealt with in accordance with these competencies.¹⁰⁸ In this respect, the *Constitution of the Republic of South Africa, 1996* states that tourism is an area of concurrent national and provincial competence,¹⁰⁹ while local tourism falls under local government.¹¹⁰

Moreover, the Tourism Strategy establishes collaborative partnerships among the different spheres of government that are responsible for tourism, government entities dedicated to tourism entities and other government entities whose mandates

100 Established in terms of the *Mpumalanga Parks and Tourism Act* 5 of 2005.

101 Paragraph 2.2 of the *National Heritage and Cultural Tourism Strategy* (2012).

102 Section 2(1) of the *Tourism Act*.

103 Section 4(5) of the *Tourism Act*.

104 However, the same challenges that have been raised at national level apply here too, in the absence of specific provincial legislation and municipal by-laws that clarify the application of responsible tourism as a guiding principle to be applied by state actors. See in para 4.3.2.1.1(a) above.

105 Section 10(i)(e)(ii) of the *Tourism Act*.

106 Section 3(2) of the *Tourism Act*.

107 Section 3(1) of the *Tourism Act*.

108 Section 3(1) of the *Tourism Act*.

109 Section 146 read with Schedule 4 of the *Constitution of the Republic of South Africa, 1996*.

110 Section 146 read with Schedule 4 of the *Constitution of the Republic of South Africa, 1996*.

impact on the tourism industry.¹¹¹ This is achieved through the Tourism Ministers and Members of Council Meeting (MINMEC), which is the intergovernmental tourism forum of the National Minister and the MECs for tourism. They discuss and agree on national tourism policy matters.¹¹² These institutions should be able to assist in curing the fragmentation that currently prevails across the different departments. Other bodies include an interprovincial technical committee on tourism (MIPTech), an intergovernmental forum comprising of national government tourism officials, heads of provincial tourism departments, the South African Local Government Association (SALGA) and chief executive officers of tourism authorities, which coordinate provincial and national tourism affairs in preparation for and support of the MINMEC.¹¹³ To work closely with the MIPTech, the Tourism Strategy recommends intergovernmental Tourism Working Groups, which deal with the governance, planning, development and marketing issues to ensure alignment, coordination and collaboration.¹¹⁴ Additional arrangements are proposed for the provincial and local levels of government in the Tourism Strategy.¹¹⁵ It is hoped that the role of SALGA and the additional arrangements for local levels facilitate more active involvement of the local authorities.¹¹⁶ This will assist in setting the basis for local control in sustainable tourism development to redress the challenges that exist, as will be discussed below, especially in the involvement of local communities in the tourism development in the South African component of the GLTFCA.

4.2.4.2 Non-state actors

In addition to the state actors, the *Tourism Act* recognises non-state actors, specifically the private sectors, as key players in sustainable tourism.¹¹⁷ More specifically, the *Tourism Act* provides for tourist guides and makes provision for

111 Paragraph 1.3 of the *National Tourism Sector Strategy* (2012).

112 Paragraph 11.1 in GN 404 in GG 40827 of 5 May 2017.

113 Paragraph 11.1 in GN 404 in GG 40827 of 5 May 2017.

114 Paragraph 11.1 in GN 404 in GG 40827 of 5 May 2017.

115 Paragraph 11.2 and 11.3 in GN 404 in GG 40827 of 5 May 2017.

116 For the additional arrangements for provincial and local level collaborations, see paras 11.2 and 11.3 in GN 404 in GG 40827 of 5 May 2017.

117 See Preamble of the *Tourism Act* 3 of 2014.

tourism businesses through its regulation of their standards and quality under the national grading system.¹¹⁸ Concerning the latter, the Act requires the grading of businesses involved in tourism services, facilities and products in accordance with the national grading system.¹¹⁹ In principle, if the grading system must promote responsible tourism, it should follow that tourism businesses will be required to do the same.¹²⁰ However, it is not certain whether all tourism businesses do so considering that there are a few enforcement tools in this regard.¹²¹ In relation to tourist guides, there is not much that can be said, in the Act, about their contribution to sustainable tourism development.

Also important are the private sector organisations that promote sustainable tourism development. While the *Tourism Act* does not make any specific reference to these associations, they are recognised in the Tourism Strategy.¹²² These associations include the Tourism Business Council of South Africa – the official body of the travel and tourism private sector in the country, and other associations ranging from airlines, hospitality associations, travel agents, tour operators and transport businesses.¹²³ The Tourism Strategy identifies these organisations as key stakeholders in collaboration with state actors. However, there is a need for more collaboration amongst these associations.¹²⁴ Collaboration and engagement is also encouraged between these private entities and provincial and local government as well as with the local communities.¹²⁵

Additionally, the *Tourism Act* calls on “government and the private sector to work together to create an environment conducive to the sustainable growth,

118 Section 28 of the *Tourism Act* 3 of 2014.

119 Section 28(1) of the *Tourism Act* 3 of 2014.

120 Section 28(2) of the *Tourism Act* 3 of 2014.

121 See para 4.3.2.4 below under the discussion of SANS 1162 and the national tourism complaints officers.

122 See for instance, paras 9.1-9.3 in GN 404 in GG 40827 of 5 May 2017.

123 Paragraphs 9.1-9.3 in GN 404 in GG 40827 of 5 May 2017.

124 Paragraph 1.3 of the *National Tourism Sector Strategy* (2012).

125 Paragraph 1.3 of the *National Tourism Sector Strategy* (2012).

development and transformation of tourism.”¹²⁶ In this context, the Tourism Strategy calls for collaboration and cooperation between all stakeholders.¹²⁷ The activities of all stakeholders are guided by the principles, *inter alia*, of trust, accountability, transparency and integrity, service excellence, transformation, flexibility and adaptation.¹²⁸ In line with these principles, the roles and responsibilities of the state and non-state actors are further elaborated upon with respect to the management of tourism destinations.¹²⁹

Notwithstanding, the *Tourism Act* does not make any provision for any other non-state actors, such as the local communities, civil society, NGOs and donor organisations,¹³⁰ save for a few bodies that are recognised as important stakeholders in the *National Heritage and Cultural Tourism Strategy*, 2012. These are the Tourism Enterprise Partnerships¹³¹ and the Tourism and Hospitality Education and Training Authority (THETA).¹³² The involvement of local communities, in particular, is not clearly articulated in the *Tourism Act* or in the Tourism Strategy, in spite of the elements of responsible tourism in this Act that call for their active involvement as key stakeholders.¹³³ Instead, local communities are “relegated” to beneficiaries in the Tourism Strategy, which dedicates an entire pillar to broad-based benefits.¹³⁴ This effectively undermines the operationalisation of local control.¹³⁵ There is also an apparent omission of traditional leadership in the current tourism sector governance structures, reducing the parameters within which local communities may participate in tourism development. This too adversely impacts on the realisation of local control, which in turn reduces the standing of sustainable tourism development as a

126 Preamble of the *Tourism Act*.

127 Para 4.2 read with para 6(j) in GN 404 in GG 40827 of 5 May 2017.

128 See the guiding principles listed in para 6 in GN 404 in GG 40827 of 5 May 2017.

129 Para 9.4.3 in GN 404 in GG 40827 of 5 May 2017.

130 See paras 3.4.1.2 and 3.6.2 above.

131 It is responsible for supporting the development and growth of small, micro and medium enterprises in the sector. See para 2.1.1 *National Heritage and Cultural Tourism Strategy*.

132 It is responsible for setting standards for training and development in the tourism and hospitality sectors. See para 2.1.1 of the *National Heritage and Cultural Tourism Strategy*.

133 See s 2(b) and (c) of the *Tourism Act*.

134 Paragraph 9.5 in GN 404 in GG 40827 of 5 May 2017.

135 See para 3.4.1.4 above.

development option, especially in the rural areas, which comprise a significant portion of the South African GLTFCA component.

From the above analysis of the *Tourism Act*, it is apparent that its focus is still concentrated on the industry itself, that is, the public and private sectors and not necessarily on important role players such as local communities. This position is reinforced by the focus in the *Tourism Act* on the creation of institutions that relate to marketing, the running of tourism businesses and even the satisfaction of tourism consumers. As mentioned earlier, this negatively affects the promotion of sustainable tourism development in the South African component of the GLTFCA, with the obvious omission of the key actors for local control. Furthermore, the promotion of the other aims, especially those that relate to local communities, such as cultural richness, community well-being, local prosperity, employment quality and social equity in the scheme of stakeholders presented in this Act, is generally vague.

Ultimately, the *Tourism Act* does extend the scope of the governance of the South African GLTFCA component to include state actors from the tourism sector, which would not otherwise be included. Yet, as framework legislation, it does not explicitly establish links between itself and other sectoral legislation relevant for most of the policy implications of sustainable tourism development and which in turn govern the roles and responsibilities especially of the supporting ministries. This too does not assist in addressing the issues of fragmentation across government departments that currently prevail in tourism development in the country. Moreover, the *Tourism Act* details the role of the private sector in tourism, especially with respect to the policy implications of economic viability and visitor fulfilment, which strengthens their position as key actors in the governance of the South African GLTFCA component. Yet, the Act is vague with respect to the role of local communities in the tourism sector, with the effect of watering down their role in the governance of the South African GLTFCA component. Against this background, the segment that follows examines whether the governance-based tools that are necessary for promoting the TFCA objectives are provided for in relevant legislation.

4.3 Governance-based tools for promoting the GLTFCA objectives

In addition to the actors in TFCA governance, there are specific tools that must be provided for in the GLTFCA governance legal framework for use by these actors to promote biodiversity conservation, the improvement of livelihoods – alleviation of poverty and economic development.¹³⁶ These tools are considered below.

4.3.1 Tools for biodiversity conservation in TFCAs

Specific tools are necessary for promoting biodiversity conservation in TFCAs and the GLTFCA in particular.¹³⁷ These tools include protected area management options for local communities; CBNRM and benefit-sharing; administrative sanctions; criminal sanctions for wildlife crimes; agreements for biodiversity conservation; and rights to natural resources, including land, complementary procedural rights and civil remedies.¹³⁸ It is important to establish whether there are laws applicable to the South African GLTFCA component that provide for each of these tools.

4.3.1.1 Mandatory protected areas management options for local communities

NEM:PAA makes provision for the participation of local communities as landowners in the establishment of protected areas, making it mandatory to include such local communities in the management of these areas.¹³⁹ In this regard, NEM:PAA enables local communities to participate in the management of protected areas as co-managers where agreements are established.¹⁴⁰ In terms of the *National Co-Management Framework* (2010) co-management is limited to three options, namely: (a) the full co-management model; (b) full lease; and (c) part co-management/part lease model, as developed by Paterson.¹⁴¹

136 See para 3.7.2 above.

137 See para 3.7.2.1 above.

138 See para 3.7.2.1 above.

139 Section 20 read with s 80 of the NEM:PAA.

140 Section 42 of the NEM:PAA.

141 Paterson *Bridging the Gap* 216-237; see also, Paterson 2010 *SAJELP* 102-124; Paterson and Glazewski "Protected Areas and Community Based Conservation" 321-362.

The first model, the full co-management model, enables local communities “to participate actively in the management and tourism development of the protected area but the final decision-making power vests in the management authority.”¹⁴² This model enables local communities to participate in the management and carries with it the benefits of empowerment, consultation, access to land, access to and use of biological resources, delegation (where applicable), developmental rights, gross revenue sharing, economic opportunities and the inclusion of communities as a mandatory partner in the development.¹⁴³ Yet, some of the challenges include the delayed transfer of meaningful benefits to the communities and complexities related to their inclusion in the structures of management.¹⁴⁴

The second model, the full lease model, enables communities as land owners to enter into various types of lease agreements with the government (the management authority).¹⁴⁵ It offers the management authority the freedom to manage, immediate income to the local communities, and a guaranteed stable income for the lease period.¹⁴⁶ However, it applies in areas of limited socio-economic opportunities. It also does not give local communities, as landowners, decision-making powers with respect to, *inter alia*, day-to-day management, guaranteed equity in business rights and inherent commercialisation rights.¹⁴⁷

The third model, the part co-management / part lease model, is a combination of the other two models and is dependent on the socio-economic opportunities.¹⁴⁸ While it offers most of the benefits of the other two models, the guaranteed income

142 Paragraph 4.2.1.1 of the *National Co-Management Framework*; Paterson *Bridging the Gap* 216-237; Paterson 2010 *SAJELP* 103.

143 Paragraph 5.1 of the *National Co-Management Framework*.

144 Paragraph 5.1 of the *National Co-Management Framework*; Paterson *Bridging the Gap* 216-237; Paterson 2010 *SAJELP* 103.

145 Para 4.2.1.2 of the *National Co-Management Framework*; Paterson *Bridging the Gap* 216-237; Paterson 2010 *SAJELP* 103.

146 Paragraph 5.3 of the *National Co-Management Framework*; Paterson *Bridging the Gap* 216-237; Paterson 2010 *SAJELP* 103.

147 Paragraph 5.3 of the *National Co-Management Framework*; Paterson *Bridging the Gap* 216-237; Paterson 2010 *SAJELP* 103.

148 Paragraph 4.2.1.3 of the *National Co-Management Framework*; Paterson *Bridging the Gap* 216-237; Paterson 2010 *SAJELP* 103.

is limited because of, among others, the limited security, prolonged period for the conclusion of the agreements and increased management costs.¹⁴⁹

Despite their merits,¹⁵⁰ these models are limited in their applicability to the challenges faced by local communities over land reform in South Africa. Moreover, they do not necessarily give these communities equal bargaining power or provide post-settlement support for building and sustaining the capacity of local communities in management.¹⁵¹ These models also provide inadequate compensation for the opportunity costs associated with participation in the management.¹⁵² Given the limitations of the mandatory management and co-management options in NEM:PAA, there is need for more options as highlighted earlier in this study.¹⁵³

Although not a management option, the management plans in NEM:PAA provide for mandatory public participation, which caters for the involvement of local communities.¹⁵⁴

4.3.1.2 Mandatory CBNRM and benefit-sharing tools and incentives

NEM:PAA incorporates CBNRM into the protected areas management regime, in which local communities are landowners whose land is incorporated into protected areas.¹⁵⁵ This may be regarded as a mandatory form of CBNRM. Where local communities are not landowners of the land adjacent to a protected area or land

149 Paragraphs 5.5 and 5.6 of the *National Co-Management Framework*; Paterson *Bridging the Gap* 216-237; Paterson 2010 *SAJELP* 103.

150 For a detailed discussion of the merits of these models, see for instance, De Koning 2009 *Africanus* 6-7.

151 Paragraphs 5.5 and 5.6 of the *National Co-Management Framework*; Paterson *Bridging the Gap* 216-237; Paterson 2010 *SAJELP* 103.

152 See para 3.5.1.2 above. For a detailed description of these co-management models and their implications for local communities, see for instance, Paterson *Bridging the Gap* 216-237; Paterson 2010 *SAJELP* 102-110; Blore, Cundhill and Mkhulisi 2013 *Journal of Environmental Management* 444-455; Cundill *et al* 2013 *Land Use Policy* 171-178; De Koning 2009 *Africanus* 5-17; Kepe 2008 *Environmental Management* 311-21; Thondhlana, Cundill and Kepe 2015 *Society and Natural Resources* 403-417; Thondhlana, Shackleton, Blignaut 2015 *Land Use Policy* 121-129.

153 See para 3.5.1.2 above.

154 Section 39(3) of the NEM:PAA. See para 4.2.2.4 above.

155 See ss 2(e) and 2(f) and s 17(h)-(k) of the NEM:PAA. See also Paterson and Glazewski "Protected Areas and Community Based Conservation" 321-362.

earmarked for incorporation in a protected area, NEM:PAA makes room for such communities to be management authorities, if suitable.¹⁵⁶ The latter may also enter into co-management agreements,¹⁵⁷ and enter into benefit-sharing agreements, use the biological resources in the protected areas, have access to and occupy the protected areas and participate in economic opportunities in the protected areas.¹⁵⁸ These mechanisms offer opportunities for CBNRM but are not mandatory, prejudicing such local communities.¹⁵⁹ CBNRM is mandatory in the management plan of protected areas, where such initiatives are appropriate.¹⁶⁰ In national parks, particularly, management authorities are required to enter into agreements with local communities residing within or adjacent to the protected area to promote the sustainable use of the biological resources,¹⁶¹ also creating a form of mandatory CBNRM.

In addition to the above, a number of incentives in the form of tax deductions and exemptions exist for communal landowners to voluntarily enter into CBNRM initiatives on their land. For instance, the *Local Government: Municipal Property Rates Act*¹⁶² provides a tax exemption for undeveloped parts of protected areas or those areas in protected areas that are not used for commercial, business, agricultural or residential purposes.¹⁶³ Tax rebates and reductions are also available for protected areas.¹⁶⁴ Further, the *Income Tax Act*¹⁶⁵ also provides for tax incentives for landowners who do not undertake development activities on their land for biodiversity conservation.¹⁶⁶ Moreover, deductible donations are available for all

156 Section 38 of the NEM:PAA.

157 Section 42 of the NEM:PAA.

158 Section 42(2) of the NEM:PAA.

159 Paterson "Legal Framework for Protected Areas" 39; Paterson and Glazewski "Protected Areas and Community Based Conservation" 321-362.

160 Section 41(2)(e) and (f) of the NEM:PAA.

161 Section 50(1)(b) of the NEM:PAA.

162 *Local Government: Municipal Property Rates Act* 6 of 2004 amended in 2014.

163 Section 17(1)(e) of the *Municipal Property Rates Act* 6 of 2004.

164 Section 8(2)(q) of the *Municipal Property Rates Act* 6 of 2004.

165 58 of 1962.

166 Sections 37C and 37D of the *Income Tax Act* 58 of 1962.

conservation and maintenance expenses required in the management plans of national parks.¹⁶⁷

4.3.1.3 Administrative sanctions for non-compliance

There are no administrative sanctions for non-compliance with the above mandatory management tools, perhaps because these tools are largely determined by the agreements that are involved.¹⁶⁸

4.3.1.4 Criminal sanctions for wildlife crimes

NEM:PAA provides for offences that relate to illegally accessing protected areas or the carrying out of various activities within a protected area without the necessary permission of the management authority.¹⁶⁹ Other complementary offences are provided for in NEM:BA, such as those relating to poaching,¹⁷⁰ canned hunting,¹⁷¹ illegal trading of black and white rhinos, elephants, large predators and other threatened, listed or protected species.¹⁷² Together with these sanctions in NEM:BA, legislation such as the *Animal Protection Act*,¹⁷³ the *Animal Matters Amendment Act*¹⁷⁴ provide additional offences dealing with wildlife crimes.

4.3.1.5 Agreements for biodiversity conservation

There are a number of agreements for biodiversity conservation that are relevant for the governance of the GLTFCA. In NEM:PAA, the agreements to establish protected

¹⁶⁷ Sections 18A of the *Income Tax Act* 58 of 1962. See also, Department of Environmental Affairs *Biodiversity Fiscal Incentives* 11-17; SANBI 2018 <http://biodiversityadvisor.sanbi.org/industry-and-conservation/biodiversity-stewardship/tax-incentives/>; Barendse *et al* 2016 *South African Journal of Science* 5-8; Brownlie *et al* 2017 *Impact Assessment and Project Appraisal* 248-256; Lapeyre and Laurans *Innovating for Biodiversity Conservation* 27; Paterson 2005 *South African Law Journal* 1-15; Paterson 2006 *PER* 92-96;

¹⁶⁸ See paras 4.3.1.1 and 4.3.1.2 read with para 3.5.2.1 above.

¹⁶⁹ Section 89(1) of the NEM:PAA read with reg 61 of the NEM:PAA *Regulations for the Proper Administration of Special Nature Reserves, National Parks and World Heritage Sites* (Protected Areas Regulations) GN R102 in GG 32472 of 3 August 2009.

¹⁷⁰ Regulation 26 GN R152 in GG 29657 of 23 February 2007.

¹⁷¹ Regulation 24 GN R152 in GG 29657 of 23 February 2007.

¹⁷² Regulation 24 GN R152 in GG 29657 of 23 February 2007.

¹⁷³ 71 of 1962

¹⁷⁴ 42 of 1993.

areas between landowners and government as well as the contingent co-management agreements, are entered into voluntarily, although prescribed by this law.¹⁷⁵ The same applies to the agreements for the sustainable use of biological resources in protected areas.¹⁷⁶ In these agreements, communities also have the advantage of income benefit-sharing terms; access to the area; development of economic opportunities; and matters of financial and other support for administration of the park.¹⁷⁷

NEM:BA provides for biodiversity management agreements,¹⁷⁸ which recognise landowners as custodians of the biodiversity on their land.¹⁷⁹ The biodiversity management agreements are particularly important as they may be concluded for the declaration of protected areas in terms of NEM:PAA, to form statutory conservation categories within the protected areas network.¹⁸⁰ Short-term agreements may also be concluded for areas outside of protected areas.¹⁸¹ The South African National Biodiversity Institute (SANBI)¹⁸² adds two other forms of agreements, namely: the biodiversity agreement, governed by contract; and the biodiversity partnership areas governed by informal agreements.¹⁸³ Both agreements are not binding on the property but the biodiversity partnerships are binding on the

175 See para 4.3.1.1 and 4.4.1.2 above. See also Paterson "Contractual Tools for Implementing the CBD" 341-366.

176 See para 4.4.1.2 above.

177 Paragraph 4.3.1.2 above.

178 Section 44 NEM:BA. These agreements may form part of the biodiversity management plans for ecosystems (Paragraph 1.4 GN 83 in GG 37302 of 7 February 2014). See also, DEA 2009 <https://www.cbd.int/doc/meetings/im/wscbteeb-mena-01/other/wscbteeb-mena-01-biodiv&fiscal-incentives-en.pdf>; SANBI *Biodiversity Stewardship Guideline* 4-6.

179 For a detailed discussion of the biodiversity stewardship programme, see SANBI *Biodiversity Stewardship Guideline* 29.

180 DEA 2009 <https://www.cbd.int/doc/meetings/im/wscbteeb-mena-01/other/wscbteeb-mena-01-biodiv&fiscal-incentives-en.pdf>. See also, SANBI 2014 <http://www.sanbi.org/sites/default/files/documents/documents/biodiversity-stewardship-factsheet16dec2014.pdf>.

181 SANBI 2014 <http://www.sanbi.org/sites/default/files/documents/documents/biodiversity-stewardship-factsheet16dec2014.pdf>.

182 SANBI is a statutory authority, similar to SANParks, created for the management of the nation's biodiversity. SANBI 2014 <http://www.sanbi.org/sites/default/files/documents/documents/biodiversity-stewardship-factsheet16dec2014.pdf>.

183 See also, SANBI Biodiversity Stewardship Guideline 31-33.

landowner.¹⁸⁴ One of the key advantages of these agreements is the reduced costs at which land is secured for biodiversity conservation as opposed to the purchasing of land.¹⁸⁵ These agreements in NEM:BA are complemented by beneficiation agreements,¹⁸⁶ which may be included in the protected area management agreements or can be standalone documents.¹⁸⁷

More importantly, these agreements are useful in securing the implementation of biodiversity management plans outside of the protected areas but in multiple-use landscapes in a manner that promotes continuity for the management of biodiversity in that region.¹⁸⁸ Moreover, they are instrumental in the facilitation of community-based natural resource management, although the issues around land management and beneficiation need to be clearly defined and implemented to garner continued support by local communities.¹⁸⁹ This is important for fostering biodiversity conservation and ecosystem management outside of the GLTP but within the South African GLTFCA component.¹⁹⁰

More generally, NEMA, the framework legislation for environmental protection in South Africa through environmental management,¹⁹¹ provides for environmental management co-operation agreements for private entities and community involvement in environmental management.¹⁹² These agreements are concluded by and between the Minister, MEC or municipality and any person or community for the

184 SANBI 2014 <http://www.sanbi.org/sites/default/files/documents/documents/biodiversity-stewardship-factsheet16dec2014.pdf>.

185 SANBI 2014 <http://www.sanbi.org/sites/default/files/documents/documents/biodiversity-stewardship-factsheet16dec2014.pdf>.

186 Paragraph 4.3.1.2 above.

187 SANBI *Biodiversity Stewardship Guideline* 43. For the protected area management agreement see the discussion on protected area management agreements in para 4.3.3.1.1 above.

188 SANBI *Biodiversity Stewardship Guideline* 29.

189 SANBI 2014 <http://www.sanbi.org/sites/default/files/documents/documents/biodiversity-stewardship-factsheet16dec2014.pdf>.

190 The author is currently unaware of any such agreements within the GLTFCA.

191 NEM:PAA, NEM:BA and other sectoral environmental legislation fall under the framework of NEMA.

192 Section 35 of the NEMA.

purpose of promoting compliance with the principles in this Act.¹⁹³ It may therefore contain an undertaking by the person, usually a private juristic entity, or community to improve on the standards in the Act for the protection of a specific environment.¹⁹⁴ For the GLTFCA, these agreements encourage voluntary compliance by tourism developers and perhaps in the case of communities, those communities engaged in tourism businesses such as community owned tourism enterprises, which may serve to promote biodiversity conservation in the South African GLTFCA component.¹⁹⁵

4.3.1.6 Enforcement of rights to natural resources, including land; complementary procedural rights and civil remedies

From a constitutional perspective, the *Constitution of the Republic of South Africa*, 1996 provides for an environmental right, which, *inter alia*, calls for legislative and other measures for the “use of natural resources while promoting justifiable economic and social development.”¹⁹⁶ This creates a basis for ensuring that the rights of access to and use of natural resources are provided for in the relevant legislation. To this end, NEMA entrenches the principle of equitable access to environmental resources and benefits.¹⁹⁷

More specifically, NEM:PAA provides access to and use of biological resources in national parks by local communities, subject to prior agreements with the management authorities to ensure that it is done in a sustainable manner.¹⁹⁸ NEM:PAA places restrictions on the use of these resources, where such use affects the survival of any species or significantly disrupt the integrity of the ecological

193 Section 35(1) of the NEMA.

194 Section 35(3) of the NEMA.

195 For a discussion of some of the critics, see for instance, Du Plessis and Du Plessis “Striking the sustainability balance in South Africa” 441.

196 Section 24 of the *Constitution of the Republic of South Africa*, 1996.

197 Section 2(4)(d) of the NEMA.

198 Section 50(1)(b) of the NEM:PAA.

systems of the national park.¹⁹⁹ Also important, charges are required for the access and use of national parks, commercial and community activities as well as for other activities that are detrimental to the environment.²⁰⁰ These charges are mandatory and attract penalties for non-compliance.²⁰¹ Additional restrictions exist for the access to and use of these resources in terms of specific regulations.²⁰² Moreover, NEM:PAA prohibits developments, construction or farming in national parks, placing limitations on the use of land belonging to the local communities that reside within these areas.²⁰³

The issue of land rights in protected areas, especially where local communities are concerned, is twofold. The first relates to claims of ownership of land rights within protected areas, while the second relates to communal land. The latter is discussed in detail below.²⁰⁴ The former is dealt with in terms of the *Restitution of Land Act*.²⁰⁵ This Act enables local communities to claim for restitution for unlawfully dispossessed land rights resulting from past racially discriminatory laws or practices from 1913 onwards.²⁰⁶ However, the restitution of these land rights falling within protected areas is guided by the conservation principles provided for in a *Memorandum of Understanding* of 2007 between the then Minister of Agriculture and Land Affairs and the Minister of Environmental Affairs and Tourism.²⁰⁷ One such principle precludes physical occupation by the local communities, notwithstanding contexts in which such occupation may be a viable and desirable alternative.²⁰⁸ Closely related is the principle that award access rights but prohibits alienation of the

199 Section 50(2) of the NEM:PAA. See more generally the courts approach to use and access of natural resources in *Gongqose & others v Minister of Agriculture, Forestry & Fisheries and others; Gongqose & others v State & others* (1340/16 & 287/17) [2018] ZASCA 87. This case dealt with a customary right to access to and use of marine resources.

200 Sections 50 and 52 read with ss 45, 46, 48 and 49 of the NEM:PAA.

201 See para 4.3.3.1.4 above.

202 Section 49 read with s 86 of the NEM:PAA.

203 Section 50(5) of the NEM:PAA.

204 See para 4.3.2.7 below in the context of human rights protections from TDIDR.

205 22 of 1994.

206 Section 2 of the *Restitution of Land Rights Act* 22 of 1994.

207 *Memorandum of Agreement* 8-10. See also, De Koning *et al* 2009 *Africanus* 66-79.

208 Paterson 2009 *SAJELP* 103.

restored land.²⁰⁹ Another key principle also precludes management of the portion of land, by the claimant community, by allocating management to existing authorities.²¹⁰ To this end, local communities may only participate with the existing authorities as co-managers.²¹¹ These issues create challenges for the involvement of local communities in biodiversity conservation as well as for their local control in tourism development in the South African GLTFCA component. The latter is dealt with in more detail under the tools for the improvement of livelihoods.

4.3.2 Tools for improvement of livelihoods – alleviation of poverty in TFCAs

This segment considers the tools for the improvement of livelihoods and the alleviation of poverty in TFCAs, and the GLTFCA in particular.²¹² These include mandatory poverty reduction programmes or strategies, provincial legislation and municipal by-laws for the provision of basic services, mandatory minimum standards, incentives, agreements and rights for the provision of basic services, voluntary or agreement-based tourism certification standards, social licenses to operate, tools for voluntary TDIDR, and HRIAs for tourism development projects.²¹³ It is important to establish whether there are laws that are applicable to the South African GLTFCA component that provide for each of these tools.

4.3.2.1 Mandatory poverty reduction programmes or strategies

The *Constitution of the Republic of South Africa*, 1996 provides the constitutional basis for poverty reduction programmes and strategies through its entrenchment of human rights, such as the rights to equality,²¹⁴ dignity,²¹⁵ the environment,²¹⁶

209 *Memorandum of Agreement* 8-10. See also, De Koning *et al* 2009 *Africanus* 66-79; Paterson 2009 *SAJELP* 103.

210 *Memorandum of Agreement* 8-10; Paterson 2009 *SAJELP* 103.

211 *Memorandum of Agreement* 8-10; Paterson 2009 *SAJELP* 103.

212 See para 3.7.2.2 above.

213 See para 3.7.2.2 above.

214 Section 9 of the *Constitution of the Republic of South Africa*, 1996.

215 Section 10 of the *Constitution of the Republic of South Africa*, 1996.

216 Section 24 of the *Constitution of the Republic of South Africa*, 1996.

property,²¹⁷ housing,²¹⁸ health care, water and social security.²¹⁹ Moreover, the *Constitution* also mandates all three tiers of government to address poverty. At the national level, the government is responsible for making laws and policies on the alleviation of poverty.²²⁰ At provincial level, the government has the power to approve provincial laws and the provincial budget, which includes tackling poverty.²²¹ However, the majority of the work is done at local level, where local government, which is closest to the people, is mandated to address poverty and under-development.²²²

Within this institutional framework, a number of poverty reduction programmes/strategies are in place in post-apartheid South Africa. Currently, the National Development Plan (NDP)-2030 of 2013 is the principal instrument on the country's long-term socio-economic development roadmap.²²³ The NDP is regarded as a policy blueprint for eliminating poverty and reducing inequality in South Africa by 2030. It targets to reduce the number of people living in households with a monthly income of below R419 per person from 39% to zero by 2030.²²⁴ Additionally, there are other programmes/strategies, predating the NDP, which focus on, *inter alia*, promoting higher economic growth in order to create economic

217 Section 25 of the *Constitution of the Republic of South Africa*, 1996.

218 Section 26 of the *Constitution of the Republic of South Africa*, 1996.

219 Section 27 of the *Constitution of the Republic of South Africa*, 1996.

220 Section 85 of the *Constitution of the Republic of South Africa*, 1996.

221 See also para 4.3.2.2 below.

222 See s 152(1) and (2) of the *Constitution of the Republic of South Africa*, 1996. See also, para 4.3.2.2 below.

223 The earlier instruments include the *Reconstruction and Development Programme* (RDP) (1994), the primary socio-economic programme in post-apartheid South Africa aimed at redressing the inherited gross inequalities of apartheid, socially, economically and spatially through reconstruction and development. The RDP's major policy programmes are outlined in the *White Paper on the Reconstruction and Development Programme* (1995). The demerits of the RDP led to the Growth, Employment and Redistribution (GEAR) Strategy (1996), focusing on stimulating faster economic growth to provide resources to meet social investment needs. GEAR was replaced by the *Accelerated and Shared Growth Initiative for South Africa* (ASGISA) (2005), which aimed to reduce poverty by 2010, reducing unemployment first by 2014 and 2022, respectively. ASGISA was replaced in 2010 by the New Growth Plan, which recognised that structural unemployment, poverty and inequality remain extremely high.

224 *National Development Plan* 63. See also para 4.3.2.3 below.

opportunities including jobs to alleviate poverty,²²⁵ SMME development,²²⁶ special pro-employment programmes,²²⁷ access to basic services,²²⁸ rural development²²⁹ and social assistance.²³⁰ The land reform programme is also part of the country's poverty reduction strategies as an intervention, which transfers assets into the hands of poor households.²³¹ All of these poverty reduction programmes and strategies are highly commendable, however, the prevalence of poverty in the country is still high,²³² with Limpopo ranking amongst the poorest provinces.²³³

4.3.2.2 Provincial legislation and municipal by-laws for basic services

In terms of the *Constitution of the Republic of South Africa*, 1996 provincial government is responsible for providing, among others, education, health services, human settlements, rural development and welfare services.²³⁴ Provinces also have exclusive competency over, *inter alia*, provincial roads.²³⁵ This places an obligation upon all provinces to enact legislation for the provision of these services. At local government level, the *Constitution* mandates state actors to, *inter alia*, ensure the

225 Spearheaded by GEAR and subsequent strategies.

226 Provided for in the *National Small Business Development Act* 102 of 1996. See also the Department of Trade and Industry (DTI) 1995 White Paper titled "*A National Strategy for the Development of Small Business in South Africa*."

227 See for instance, the Public Works Programmes, particularly the Community-Based Public Works Programmes in rural areas. At provincial level, Limpopo adopted the *Gundo Lashu Programme* in 2001 for the upgrading of district roads.

228 See para 4.3.2.3 below.

229 See for instance, the *Integrated Sustainable Rural Development Programme* (2001), designed as a campaign against rural poverty and underdevelopment.

230 See the *Social Assistance Act* 13 of 2004 for the categories of eligibility to social grants, which includes, among others, the aged, disabled, foster care and children.

231 In the context of land rights and land reform see also para 4.3.2.6 above. For a discussion of land reform as a poverty reduction strategy, see also, May *Poverty Eradication* 2, 9; Mbuli *Poverty Reduction Strategies in South Africa* 132-169; Sithole *Government intervention to alleviate poverty* 38.

232 Mbuli *Poverty Reduction Strategies in South Africa* 169; May *Poverty Eradication* 9; Sithole *Government intervention to alleviate poverty* 38. See also, Satumba, Bayat and Mohamed 2017 *Journal of Economics* 33-49.

233 Sithole *Government intervention to alleviate poverty* 38; Satumba, Bayat and Mohamed 2017 *Journal of Economics* 47-49. Specific to the poverty related issues in the Limpopo Province, see for instance, Ramaipadi *Implementation of Welfare Support* 30-46.

234 Section 104(1)(b) read with Schedule 4A of the *Constitution of the Republic of South Africa*, 1996.

235 Section 104(1)(b) read with Schedule 5A of the *Constitution of the Republic of South Africa*, 1996.

provision of services to communities in a sustainable manner,²³⁶ by structuring and managing its administration, budgeting and planning processes to give priority to the basic needs of the community.²³⁷ To this end, local government is responsible for, among others, childcare facilities, electricity, municipal health services, water and sanitation services.²³⁸ Furthermore, local government has concurrent competence with provincial government over, *inter alia*, municipal roads, refuse removal, refuse dumps and solid waste disposal.²³⁹ For this reason, municipalities should enact by-laws for the delivery of these basic services.²⁴⁰

4.3.2.3 Mandatory minimum standards, incentives, agreements and rights for the provision of basic services

Over and above the constitutional mandates of the three tiers of government as well as provincial legislation and municipal by-laws,²⁴¹ a number of laws also provide for mandatory provisions for the provision of basic services. For instance, the

236 Section 152(1)(b) of the *Constitution of the Republic of South Africa*, 1996.

237 Section 153(a) of the *Constitution of the Republic of South Africa*, 1996.

238 Section 155(6) and (7) read with Schedule 4B of the *Constitution of the Republic of South Africa*, 1996. For the approach of the courts with respect to the functions of local municipalities, see for instance, *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd* 2012 2 BCLR 150 (CC) paras 21-29; *Merafong City Council Local Municipality v AngloGold Ashanti Ltd* 2016 ZACC 35 at paras 84, 86-87 and *Mazibuko v City of Johannesburg* 2010 3 BCLR 239 (CC) on the mandate to provide water and sanitation services; *Joseph v City of Johannesburg* 2010 4 SA 55 (CC) para 34 on the provision of electricity by local government. For a detailed discussion on the functions of local government, see for instance, Du Plessis 2015 *PER/PELJ* 1853-1857; Du Plessis and Nel "An introduction" 24-25; De Visser *Developmental Local Government: A Case Study* 87; Fuo 2015 *Commonwealth Journal of Local Governance* 20-26; Fuo 2017 *De Jure* 324-345; Madumo 2015 *Administratio Publica* 153-166.

239 Section 155(6)(a) and (7) read with Schedule 5B of the *Constitution of the Republic of South Africa*, 1996. For a detailed discussion of waste management by local government, see for instance, Du Plessis 2015 *PER/PELJ* 1853-1857; Fakoya 2014 *Journal of Human Ecology* 120; Godfrey 2008 *Waste Management* 1663-1665; Naidoo *An analysis of municipal solid waste management* 145-173.

240 Section 156 read with Schedule 4B and 5B of the *Constitution of the Republic of South Africa*, 1996; s 12 *Local Government: Municipal Systems Act*. The approach of the courts in this regard has been to defend the constitutional law-making powers of local municipalities, see for instance, the decisions in *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1998 12 BCLR 1458 paras 34-38; *City of Cape Town v Robertson* 2005 2 SA 323 (CC) paras 54-60. For a detailed discussion, see for instance, Fuo 2017 *De Jure* 324-345; Fuo *Local Government's Role* 78-177; Nel, Du Plessis and Du Plessis "Instrumentation for Local Environmental Governance" 91-00.

241 See para 4.3.2.2 above.

Constitution empowers local government with the provision of services, including public transport, water, health and education facilities,²⁴² while in the context of land, the *Local Government: Municipal Systems Act*²⁴³ and *Spatial Planning and Land Use Management Act*,²⁴⁴ apply. The *Local Government: Municipal Demarcation Act*,²⁴⁵ prescribes the demarcation of municipal boundaries taking into consideration the services being provided to affected communities.²⁴⁶ The *Local Government: Municipal Systems Act* makes it mandatory for the municipal council to have municipal systems in place in order to meet, among others, its mandate to provide for basic services.²⁴⁷ Accordingly, local municipalities undertake their mandate for the provision of basic services through systems such as the Integrated Development Plans (IDPs), established in terms of the *Local Government: Municipal Systems Act*.²⁴⁸ The latter prescribes how IDPs should ensure an integrated approach to the provision of basic services by municipalities.²⁴⁹ The effectiveness of these systems is also dependent upon mandatory municipal structures as provided for in the *Local Government: Municipal Structures Act*.²⁵⁰ The latter sets out the structures that must be in place for the effective delivery of service. Another important tool is provided for in the *Local Government: Municipal Finance Management Act*,²⁵¹ specifying the allocation of financial resources in municipalities in line with identified priorities, which includes basic services.²⁵²

242 See para 4.3.2.3 above.

243 32 of 2000. Other relevant legislation include, *inter alia*, the *Local Government: Municipal Demarcation Board Act* 27 of 1998, the *Local Government: Municipal Structures Act* and the *Local Government: Municipal Finance Management Act* 56 of 2003.

244 16 of 2013.

245 27 of 1998.

246 Section 24 of the *Local Government: Municipal Demarcation Board Act*.

247 Sections 23 and 25 of the *Local Government: Municipal Systems Act*. See also, para 4.3.2.2 above on the IDPs.

248 See for instance, Du Plessis 2010 *Stellenbosch Law Review* 265-297; Fuo 2013 *PER/PELJ* 227-248; Harrison "The Origins and Outcomes" 321-337; Nel, Du Plessis and Du Plessis "Instrumentation for Local Environmental Governance" 91-00; Goss and Coetzee 2007 *Town and Regional Planning* 46-59.

249 Section 25 of the *Local Government: Municipal Systems Act*.

250 117 of 1998.

251 56 of 2003.

252 See for instance, s 21 of the *Local Government: Municipal Finance Management Act*.

With respect to incentives to the private sector for the provision of basic services, a few legislative provisions exist. The *Taxation Laws Amendment Act*,²⁵³ in particular, provides for tax incentives for corporate donations to public benefit organisations working in the areas of education, HIV/AIDS and assistance to vulnerable children and the elderly.²⁵⁴ Another class of incentives in the form of scores for the award of government contracts is provided for in the *Broad-Based Black Economic Empowerment (B-BBEE) Act*²⁵⁵ and the *Preferential Procurement Policy Framework Act*,²⁵⁶ for companies that spend on community development.²⁵⁷ For the tourism sector, however, the least scores are allocated to the broader goal of socio-economic development, which may or may not necessarily include the provision of basic services.²⁵⁸

Further, agreements for the provision of basic services also exist and are principally provided for in the *Public Finance Management Act*,²⁵⁹ and may take the form of PPPs.²⁶⁰ At the local level, the *Municipal Public Private Partnership Regulations*²⁶¹ of the *Local Government: Municipal Finance Management Act* enable municipalities to enter into PPPs with private entities for service delivery.²⁶² While this provides room for PPPs for the provision of basic services, the nature of the tourism industry involves PPPs in the use of state property for commercial purposes of the private parties,²⁶³ rather than for the performance of public institutions' functions. Nevertheless, as voluntary agreements, there is room for these PPPs to include

253 43 of 2014.

254 Section 18A of the *Taxation Laws Amendment Act*.

255 53 of 2003 amended in 2018.

256 24 of 2013.

257 See s 9 of the *B-BBEE Act*.

258 See the *Code of Good Practice on Broad-Based Black Economic Empowerment: Amended Tourism Sector Code* GN 1149 in GG 39430 of 20 November 2015.

259 1 of 1999.

260 PPPs are discussed in detail in para 4.3.3.3 below.

261 GN R309 in GG 27431 of 1 April 2015.

262 GN R309 in GG 27431 of 1 April 2015.

263 See para 4.3.3.3 below.

clauses on the provision of basic services.²⁶⁴ The danger is in the absence of express legislative provisions, in this regard, with the effect that the private sector is not under obligation to provide basic services.

As regards rights to basic services, the *Constitution* provides for the rights to, *inter alia*, housing,²⁶⁵ health care,²⁶⁶ water²⁶⁷ and social security.²⁶⁸ It places an obligation on the state to “take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights.”²⁶⁹ In this respect, the state is under an obligation to enable and assist communities to gain access to these rights as well as to empower private individuals and organisations to provide

264 Van der Berg 2015 *PER/PELJ* 1005-1008; Rogerson 2016 *Tourism* 419-430. See more generally, Fombad 2014 *African Journal of Business Ethics* 1-33; Haarhoff *Public Private Partnerships* 37-48; Minnie *Critical Success Factors* 16, 58; Ruiters and Matji 2016 *Water SA* 291-298.

265 Section 26 of the *Constitution of the Republic of South Africa*, 1996. A number of legislative and policy documents give effect to s 26, including, among others, the *Housing Act*, 1997, which sets principles of housing development and division of responsibility among different levels of government in the provision of housing. There is also the *Interim Protection of Informal Land Rights* 31 of 1996, the *Extension of Security of Tenure Act* 62 of 1997 and the *Prevention of Illegal Eviction from, and Unlawful Occupation Act* 19 of 1998. For a detailed discussion on this right in judicial precedents, see for instance, *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties39 (Pty) Ltd & Another* CCT 37/11[2011]; *Government of the Republic of South Africa v Grootboom* 2001 SA 46 (CC); *President of the Republic of South Africa v Modderklip Boedery (Pty) Ltd* 2005 8 BCLR 786 (CC); *Residents of Joe Slovo Community v Ithubelisha Home* 2009 9 BCLR 847; *Soobramoney v Minister of Health KwaZulu Natal* 1997 12 BCLR 1696 (CC) para 11. See also De Vos 2001 *South African Journal of Human Rights* 258-276; Dugard *et al The right to housing* 33-35; Gay 2004 *Law, Democracy & Development*; Manomano and Tanga 2018 *Social Work* 19-28; McLean *Constitutional Deference, Courts* 132-147; South African Human Rights Commission *The Right to Adequate Housing* 1-7; Van Wyk 2011 *PER/PELJ* 50-85.

266 Section 27 of the *Constitution of the Republic of South Africa*, 1996. The right to health is further provided for in legislation such as the *National Health Act* 61 of 2003. See also, *Soobramoney Minister of Health KwaZulu Natal* 1997 12 BCLR 1696 (CC); *Minister of Health v Treatment Action Campaign* 2002 5 SA 721 (CC) para 67. For a discussion, see for instance, McLean *Constitutional Deference, Courts* 121-129; Moyo “Realising the right to health” 375-456.

267 Section 27 of the *Constitution of the Republic of South Africa*, 1996. The right to water is further provided for in legislation such as the *Water Service Act* 107 of 1997. This Act provides for access to water and sanitation services. For a detailed discussion on the provision of the right to water and sanitation in South Africa, see for instance, Choma and Ramphabana 2015 *Journal of Governance and Regulation* 735-739; De Visser and Mettler 2003 *Law, Democracy and Development* 27-53; Dugard “The right to sanitation” 263-316; Dugard “The right to water” 317-374; Muller 2014 *Aquatic Procedia* 35-41.

268 Section 27 of the *Constitution of the Republic of South Africa*, 1996. For further details on the latter legislation, see para 4.3.2.4 below.

269 Section 27(2) of the *Constitution of the Republic of South Africa*, 1996.

housing.²⁷⁰ However, there are limitations on accessing these rights,²⁷¹ with the effect that in attempting to use litigation as a tool to gain access to these rights, communities, for instance, may not receive direct individual relief but may benefit from a positive order handed down by the courts.²⁷² In other words, they may not be able to claim access to these rights immediately upon demand.²⁷³ Consequently, access to basic services such as water, sanitation, electricity, refuse removal, roads and rural housing in rural areas, especially in the Limpopo Province, is still minimal when compared to urban areas.²⁷⁴ Given the situation of rural communities in accessing basic services in the Limpopo Province, it may be important to enhance the use of voluntary or agreement-based tourism certification standards.

4.3.2.4 Voluntary or agreement-based tourism certification standards

The *Tourism Act*²⁷⁵ refers to the *National Minimum Standard for Responsible Tourism (SANS 1162)* of 2011,²⁷⁶ which harmonises the different sets of criteria for certifying

270 Liebenberg "Interpretation of socio-economic rights" 33-2. See also, *Government of the Republic of South Africa v Grootboom* 2001 SA 46 (CC) para 35.

271 For a detailed discussion of the judicial precedents on the limitations on socio-economic rights in South Africa, see for instance, *Beja v Premier of the Western Cape* 2011 3 All SA 401 (WCC); *Government of the Republic of South Africa v Grootboom* 2001 SA 46 (CC) para 45; *Mazibuko v City of Johannesburg* 2010 4 SA 1 (CC); *Minister of Health v New Clicks South Africa (Pty) Ltd* 2006 8 BCLR 872 (CC) para 705; *Nokotyana v Ekurhuleni Municipality* 2010 4 BCLR 312 (CC); *President of the Republic of South Africa v Modderklip Boerdery (Pty) Ltd* 2005 8 CBLR 786 (CC) para 49. *Soobramoney v Minister of Health KwaZulu Natal* 1997 12 BCLR 1696 (CC) para 8. See also, Bilchitz 2014 *ICON* 71-739; Chenwi 2013 *De Jure* 742-769; Govindjee 2013 *National Law School of India Review* 62-80; Khoza *Socio-economic rights* 35-42; Liebenberg "Interpretation of socio-economic rights" 33-54-33-56; McLean *Constitutional Deference, Courts* 96-103; Muller 2014 *Aquatic Procedia* 35-41.

272 Liebenberg "Interpretation of socio-economic rights" 33-54; Liebenberg 2002 *Law, Democracy and Development* 159. These implications are determined by the courts approach towards the "progressive realisation" of these rights and whether this implies providing a minimum core obligation, that is, a basic level of services or a right to review the reasonableness of government's social programmes for the provision of these services. See also, Bilchitz 2014 *ICON* 71-739; Chenwi 2013 *De Jure* 742-769; Khoza *Socio-economic rights* 35-42.

273 *Government of the Republic of South Africa v Grootboom* 2001 1 SA 46 (CC) para 95.

274 Maake *An Analysis on Integrated Development Planning* 107-185; Muller 2014 *Aquatic Procedia* 35-41.

275 Section 7(1) of the *Tourism Act*.

276 The standards are usually voluntary in nature, however, when they are provided for in legislation they become legal tools.

the sustainability of tourism businesses in South Africa.²⁷⁷ This instrument incorporates the key elements of responsible tourism provided for in the Act, in accordance with the *National Responsible Tourism Development Guidelines for South Africa* of 2002 and the *Responsible Tourism Manual for South Africa*. The latter is a step towards the fulfilment of the more detailed *White Paper on the Development and Promotion of Tourism* of 1996 with respect to sustainable and responsible tourism and the implementation thereof. Effectively, these standards, if adopted by all tourism businesses in the South African GLTFCA component, reduce the negative environmental and social impacts of tourism and ensure that the tourism industry is held accountable to local communities.²⁷⁸ These standards may be more realistic where social licenses to operate exist.

4.3.2.5 Social licenses to operate

Within the context of tourism development in general, and in TFCAs particularly, there is currently no law that specifically provides for social licenses for tourism developers and businesses to operate on land belonging to the local communities or on land that local communities have rights over.²⁷⁹ It is therefore left to progressive, well-meaning tourism developers or businesses to enter into agreements with local communities to contribute to the long-term well-being of local communities especially where the use of land and/or TDIDR is concerned.²⁸⁰ This is considered further below.

²⁷⁷ Section 7 of the *Tourism Act*.

²⁷⁸ See para 3.5.2.3 above.

²⁷⁹ Much of the measures taken to incorporate social licenses in South Africa is in the context of the mining industry. See in this regard, Cronje and Chenga 2009 *Journal of Development Southern Africa* 413-427; Thulo *A Social License to Operate* 57-72. More generally, see also Kloppers and Du Plessis 2008 *Journal of Energy & Natural Resources Law* 91-119.

²⁸⁰ In the context of TDIDR, see para 4.3.2.6 below.

4.3.2.6 Mandatory tools, incentives, agreement-based standards, agreements, human rights protections and civil remedies for voluntary TDIDR

This section considers the combination of tools for voluntary TDIDR. There are no specific mandatory tools for voluntary TDIDR, save for the legal mechanisms in various laws for the protection of individuals and communities from involuntary resettlement. Within the TFCA setting, this would especially relate to communities on communal land. Communal land in South Africa is held in trust by the State on behalf of the local communities that use and occupy it.²⁸¹ Thus, communities possess informal rights to land, such as, the rights to use, occupy or access the land in terms of customary laws and practices.²⁸² Customary land rights do not constitute property rights for the members.²⁸³ This is a result of the historical development of the property rights and land ownership regime created during the colonial and apartheid era, which disregarded the communal property regime of black Africans.²⁸⁴

However, the *Constitution* provides individuals and communities with the right to security of land tenure or comparable redress.²⁸⁵ This is further provided for in additional legislative tools. For instance, the *Interim Protection of Informal Land Rights Act* 31 of 1996 protects the local communities' informal rights to land so that they cannot be unlawfully dispossessed.²⁸⁶ Other relevant pieces of legislation aimed

281 There has been much that has been discussed on communal land rights, however, see for instance, Cousins "Contextualising the controversies" 3-31; Du Plessis 2011 *PER* 45; Hull and Whittal 2018 *South African Journal of Geomatics* 108-113; Kloppers and Pienaar 2014 *PER/PELJ* 677-700; Mostert 2010 *Journal of African Law* 298-312; Pienaar 2012 *PER/PELJ* 153-178; Pienaar and Du Plessis 2010 *Fundamina: A Journal of Legal History* 73-114; Van der Schyff "South African natural resources, property rights" 323-340.

282 Centre for Law and Society 2013 http://www.lrg.uct.ac.za/usr/lrg/downloads/CLS_CommunalLand_Factsheet_Sept2013.pdf. For a detailed discussion of the historical development of communal land rights in South Africa, see for instance, Johnson *Communal Land and Tenure Security* 28. See more generally, Du Plessis 2011 *PER* 45-69; Van der Schyff "South African natural resources, property rights" 323-340.

283 Claassens 2014 <http://wiser.wits.ac.za/system/files/documents/Claassens2014.pdf>.

284 Du Plessis 2011 *PER* 45-46; Du Plessis, Pienaar and Olivier 1990 *SAPL* 266-276.

285 Section 25(6) and (9) of the *Constitution of the Republic of South Africa* 1996.

286 Sections 2 and 3 of the *Interim Protection of Informal Land Rights Act*. For the latest position of the courts with respect to the rights in this Act see for instance *Maledu v Itereleng Bakgatla Minerals Resources (Pty) Limited* (CCT 265/17) [2018] ZACC 41 where it was held that informal

at protecting these informal land rights include the *Extension of Security of Tenure Act*,²⁸⁷ the *Upgrading of Land Tenure Act*²⁸⁸ and the *Communal Property Association Act*.²⁸⁹ The latter enables communities on communal land to create communal property associations to jointly acquire, hold and manage property under a written constitution.²⁹⁰ In effect, the current regime protects local communities, at least, from involuntary TDIDR.²⁹¹ Additionally, in the event of involuntary TDIDR, the *Restitution of Land Rights Act*,²⁹² though applicable to past discriminatory practices dating back to 1913, may be a tool for local communities to claim for restitution for

right holders cannot be deprived of their rights without their consent and that therefore that they must consulted prior to any deprivation.

287 Section 1 of the *Extension of Security of Tenure Act* 62 of 1997. For detailed discussion of this piece of legislation by the courts, see for instance, *Conradie v Hanekom; President of Republic of South Africa, Minister of Agriculture and Land Affairs v Modderklip Boerdery (Pty) Ltd; Government of the Republic of South Africa v Grootboom and Others*. For criticisms of this Act, see for instance, Dhliwayo *A Constitutional Analysis of Access Rights* 123-146; Keightley 1999 *South African Journal on Human Rights* 277-307; Van der Walt 2002 *South African Journal on Human Rights* 372-420; Van Wyk 2011 *PER/PELJ* 50-83.

288 Section 1 of the *Upgrading of Land Tenure Act* 112 of 1991.

289 Section 1 of the *Communal Property Association Act* 28 of 1996. For an interpretation of this Act by the courts, see for instance, *Pliane and Another v Pilane and Another* [2013] ZACC 25, 2013 4 BCLR 431 (CC); *Bakgatla-Ba-Kgafela Communal Property Association v Bakgatla-Ba-Kgafela Tribunal Authority and Others* [2015] ZACC 25, 2015 6 SA 32 (CC) For critical discussion of this Act, see for instance, Erlank 2014 *PER/PELJ* 614-634; Everingham and Jannecke 2006 *Journal of Southern African Studies* 545-562; Luwaya 2015 *New Agenda: South African Journal of Social and Economic Policy* 21-24; Nonyana 2005 *Butterworths Property Law Digest* 1-5; O'Reagen 2016 *Constitutional Court Review* 105-126; Paterson *Bridging the Gap* 180-189; Pienaar "Communal property arrangements" 322-328; Pienaar 2007 *Journal of Contemporary Roman Dutch Law* 556-570.

290 See ss 2; 3 and 6 of the *Communal Property Association Act* 28 of 1996.

291 Currently, the *Draft Communal Land Tenure Bill* of 2017 is aimed at, *inter alia*, transferring the ownership of communal land from the government to communities; converting land rights on communal land to ownership; and transferring ownership of land acquired by the State to local communities to enable access to land on an equitable basis.

292 Section 2 of the *Restitution of Land Rights Act* 22 of 1994.

unlawfully dispossessed land.²⁹³ Here too, the claims may also be subject to principles such as those that preclude physical occupation.²⁹⁴

Notwithstanding these mandatory tools, the major setback especially within the tourism development context is that the current restitution regime is only applicable to claims from the state and not from private individuals.²⁹⁵ Therefore, it is difficult to say whether any incentives may exist for tourism businesses and developers, especially in TDIDR, to ensure that it is undertaken voluntarily. On the other hand, adopting human rights-based tools to TDIDR invokes the constitutional rights to, *inter alia*, property, as mentioned earlier,²⁹⁶ and the right to the environment.²⁹⁷ The latter includes the right to a healthy environment and well-being, which covers a broad spectrum of all that relates to the enjoyment of a sustainable life.²⁹⁸ This invokes the application of other rights such as, the right to life, right to dignity, right to privacy, right to property, and right to health care, food, water and social security to the extent to which they may be applicable to the natural and cultural

293 See for instance, Akinola 2018 *Journal of Africa Review* 1-16; Belinkie 2015 *Cornell International Law Journal* 230-234; Naidoo *Restitution of land rights* 5-7; Pienaar 2011 *PER* 32-38; Pienaar *Land Reform* 52-140; Ocheje 2007 *Journal of African Law* 173-214; Ramutsindela, Davis and Sinthumule 2016

https://www.parliamwnet.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/Commissioned_Report_land/Commissioned_Report_on_Land_Restitution_Ramutsindela_et_al.pdf.

294 See para 4.3.1.6 above. See also, the decision in *Dhlomo-Dhlomo Community v Minister of Agriculture and Land Affairs and Others* (LCC 175/10) [2012] ZALCC 15 para 34, 36 where it was held that financial limitations could not form a basis for the physical restoration of land; *Gongqoe & others v Minister of Agriculture, Forestry and Fisheries and others; Gongqose & others v State & others* (1340/16 & 287/17) [2018] 87 (01 June 2018) the communities were given the right of access and use of marine resources. For a detailed discussion, see for instance, Mapoma *The Effect of Land Restitution* 25-33; Paterson 2010 *South African Journal of Environmental Law and Policy* 97-124; Paterson 2010 *South African Law Journal* 490-514; Paterson *Legal Framework for Protected Areas* 27; Pienaar 2008 *Electronic Journal of Comparative Law* 1-17; Pienaar, Du Plessis and Olivier 2013 *South African Public Law* 197-210; Pienaar *Land Reform* 52-140; Walker 2008 *South African Review of Sociology* 232-244.

295 Naidoo *Restitution of land rights* 5-7.

296 Section 25 of the *Constitution of the Republic of South Africa*, 1996.

297 Section 4 of the *Constitution of the Republic of South Africa*, 1996.

298 See the discussion by Du Plessis & Du Plessis 2011 "Striking the sustainability balance in South Africa" 428-429; Du Plessis 2008 *SAJELP* 65-68; Kidd *Environmental Law* 22-23; Currie & De Waal 2005 *Bill of Rights Handbook* 526; Glazewski and Du Toit (eds) 2013 *Environmental Law in South Africa* 85; and Devenish 1999 *A Commentary on the South African Bill of Rights* 334-335, on the notion on "well-being" in section 24 of the *Constitution of the Republic of South Africa*, 1996.

environment.²⁹⁹ These rights may also be invoked in instances of TDIDR for affected local communities.³⁰⁰ This approach is supported by the courts, for instance, in the *Residents of Joe Slovo Community v Thubelisha Home*.³⁰¹ In this case, the Constitutional Court ruled that the State was obliged to provide temporary shelter for people who have been evicted or face imminent eviction and were unable to find shelter, as the absolute priority must be the principle of upholding human dignity.³⁰² Though applicable to instances of eviction for illegal occupation, the principle may as well be extended to legitimate claims against resettlement in TDIDR within the TFCA context. Invoking these rights may be more effective where HRIAs are incorporated into corporate governance.

4.3.2.7 HRIAs for tourism development projects

Currently, HRIAs are not expressly provided for in any law in South Africa. Therefore, tourism businesses are free to comply with the international standards on HRIAs.³⁰³ At a minimum, however, the *Companies Act*³⁰⁴ requires companies to comply with the Bill of Rights as provided for in the Constitution.³⁰⁵ With the duties of directors to act in the best interests of the company, this Act imposes a duty on companies and their directors to respect human rights.³⁰⁶ Therefore, the Bill of Rights

299 SAHRC "Chapter Nine Environmental Rights" 323. For the extension of the environmental rights to include socio-economic rights, see the discussion by Du Plessis & Du Plessis 2011 "Striking the sustainability balance in South Africa" 428-429; Du Plessis 2008 *SAJELP* 65-68; Kidd *Environmental Law* 22-23; Currie and De Waal 2005 *Bill of Rights Handbook* 526; Glazewski 2000 *Environmental Law in South Africa* 85; Devenish 1999 *A Commentary on the South African Bill of Rights* 334-335, on the notion of "well-being" in s 24 of the *Constitution of the Republic of South Africa*, 1996.

300 Paragraph 3.2.3.2.3 above.

301 2009 9 BCLR 847

302 See also McLean *Constitutional Deference, Courts* 173; McLean 2010 *Constitutional Court Review* 223-242.

303 See para 3.4.1.9 above.

304 81 of 2008.

305 Section 7(1) of the *Companies Act* 81 of 2008 read with s 8(2) of the *Constitution of the Republic of South Africa*.

306 Sections 7(1) and 76 of the *Companies Act* 81 of 2008. Ramnath, Moseneke, and Nmehielle 2013 *Speculum Juris* 106. See also, Bilchitz 2008 *South African Law Journal* 754-789; Davis "Charting the Statutory Implementation" 39-47; Du Plessis and Du Plessis "Southern African Perspectives" 252 – 290; Eloff "Introduction to the Bill of Rights" 17-19; Gwanyanya 2015 PER/PELJ 3102-3131; Hamann *et al* 2009 *Journal of Business Ethics* 453-473; Khoza "Understanding the Synergy

should be the standard against which companies' responsibilities to shareholders are balanced with their social responsibilities to stakeholders. For instance, companies are required to take into consideration community interests relating to socio-economic rights, the environmental right and the interests of employees in relation to their labour relations rights.³⁰⁷ Introducing HRIAs in the *Companies Act*, therefore, would buttress the objectives of corporate governance towards human rights protection.

4.3.3 Tools for promoting economic development in TFCAs

The final set of tools comprises of those tools that are necessary to promote economic development in TFCAs. These tools include: revenue sharing agreements; tourism planning, marketing, infrastructure development and land use planning; investment in TFCAs; tourism concessions; equitable treatment of investors; incentives for tourism businesses, including favourable immigration controls; local procurement; movement of goods and persons; labour and employment quality, job creation and job security and CSR strategies.³⁰⁸ The following sections examine the tools that are available in South African legislation for promoting economic development in the GLTFCA.

between the Bill of Rights" 19-23; National Business Initiative *Toolkit for Business and Human Rights* 6; Parnell, Scott and Agelopoulos 2013 *Journal of Business Ethics* 589-605.

307 Section 165 gives a shareholder, director, prescribed officer, trade union, employee representative or any other person the legal standing to protect their legal rights against the breach of duties by directors. See also, Bilchitz 2008 *South African Law Journal* 754-789; Davis "Charting the Statutory Implementation" 39-47; Eloff "Introduction to the Bill of Rights" 17-19; Gwanyanya 2015 *PER/PELJ* 3102-3131; Hamann *et al* 2009 *Journal of Business Ethics* 453-473; Khoza "Understanding the Synergy between the Bill of Rights" 19-23; National Business Initiative *Toolkit for Business and Human Rights* 6; Seleokane "Making the Workplace" 23; Parnell, Scott and Agelopoulos 2013 *Journal of Business Ethics* 589-605; Ramnath, Moseneke, and Nmehielle 2013 *Speculum Juris* 106; Sello "The Role of the Business Community" 47-54.

308 See para 3.7.2.3 above.

4.3.3.1 International revenue sharing agreement(s) and mandatory national revenue sharing tools for TFCA participating countries

There is currently no international revenue sharing agreement for the GLTFCA by and between the participating countries. Consequently, there are no mandatory revenue sharing tools within the TFCA governance legislation for the sharing of proceeds from the revenue generated from the tourism in the South African GLTFCA component. This creates challenges with respect to promoting economic development for the GLTFCA as a single ecoregion, to the detriment of the less viable or profitable components of the GLTFCA, hampering its overall sustainability.³⁰⁹

4.3.3.2 Mandatory national minimum standards for tourism planning, marketing, infrastructure development and land use planning in TFCAs

The *Tourism Act* prescribes that tourism marketing and planning as provided for in the Tourism Strategy must be guided by responsible tourism.³¹⁰ This sets out responsible tourism as the mandatory minimum standard by which tourism development is undertaken in the country.³¹¹ According to the Tourism Strategy, this therefore, means that all tourism development and activities shall deliver on the triple bottom-line, namely economic, social and environmental sustainability.³¹² While this should apply to the activities of all actors, including state actors, the Tourism Strategy seems to narrow down the application of these standards specifically to

309 Chiutsi 2014 *European Scientific Journal* 13-14; Whande "Windows of Opportunity or Exclusion?"¹⁵²; Spenceley *Tourism investment in the Great Limpopo* 19; Suich and Whande "Transfrontier Conservation Initiatives" 381-383.

310 Section 4(5) *Tourism Act*.

311 See para 6(d) in GN 404 in GG 40827 of 5 May 2017.

312 See para 6(d) in GN 404 in GG 40827 of 5 May 2017.

tourism businesses.³¹³ This limitation manifests in the continued fragmentation in the planning, budgeting and actions across all relevant state actors.³¹⁴

Infrastructure development is provided for in the *Infrastructure Development Act*.³¹⁵ In terms of this Act, infrastructure development must be given priority in the planning, approval and implementation of strategic integrated projects, which include, *inter alia*, economic facilities.³¹⁶ While the Act does not mention tourism facilities, they may be included under economic facilities, especially in the context of economic activities permitted in protected areas. In any case, infrastructure development is critical for destination development within the tourism context. If this reasoning is to be accepted, it follows that infrastructure development is mandatory even for tourism development in the South African component of the GLTFCA.

Land use planning is principally provided for in the *Spatial Planning and Land Use Management Act* (SPLUMA).³¹⁷ SPLUMA lays down mandatory norms and standards for spatial planning and land use planning in any form of development, which includes tourism development.³¹⁸ In protected areas, NEM:PAA, and more generally NEMA, are also applicable, incorporating the mandatory provisions for environmental management³¹⁹ and environmental impact assessments³²⁰ into land use planning.³²¹ For areas adjacent to and surrounding the protected areas, legislation such as the

313 See para 9.4.4 in GN 404 in GG 40827 of 5 May 2017. See also, para 1.3 of the *National Tourism Strategy* (2012).

314 See for instance, para 9.4.1 and 9.4.3 in GN 404 in GG 40827 of 5 May 2017. See also, para 1.3 of the *National Tourism Strategy* (2012).

315 23 of 2014.

316 Section 7(1) read with Schedule 1 of the *Infrastructure Development Act* 23 of 2014. See also, Glazewski "Sustainable development" 225-226; Du Plessis and Alberts 2014 *Southern African Public Law* 441.

317 16 of 2016.

318 Section 8 of the SPLUMA.

319 Sections 23 and 23A of the NEM:PAA.

320 GN R982-984 9n GG 38282 of 4 December 2014.

321 See also, Kimberly *The Nature, Scope and Purpose of Spatial Planning* 45-48; Nel *Urban Forum* DOI:10.1007/s12132-015-9265-5; Snyman 2017 *Journal of the Southern African Institute of Mining and Metallurgy* 21; Van Wyk *Planning Law* 24.

Local Government: Municipal Systems Act,³²² the *Local Government: Municipal Demarcation Act*,³²³ the *Local Government: Municipal Structures Act*,³²⁴ the *Limpopo Spatial Planning and Land Use Management Bill*, 2017, the *Mpumalanga Spatial Planning and Land Use Management Bill*, 2016, which together with the SPLUMA by-laws,³²⁵ set out the mandatory requirements for an integrated development planning at municipal level.

4.3.3.3 Mandatory tools, incentives and agreements for investment in TFCAs

There are no specific tools for promoting investment in TFCAs in South Africa. However, there are tools applicable to the undertaking of economic enterprises in national parks.³²⁶ NEM:PAA, in particular, allows for the undertaking of revenue generating commercial activity in the park. This tool enables investment in national parks, albeit with limitations to avoid adverse impacts on the ecological systems thereof.³²⁷ Therefore, the management authority of a national park must issue permits for such undertakings,³²⁸ complemented by compliance and monitoring mechanisms.³²⁹ Moreover, NEM:PAA allows tourism development in national parks, subject to permits issued by the management authority.³³⁰ The contravention of these permits attracts criminal liability.³³¹ Save for the incentives for biodiversity

322 32 of 2000. Other relevant legislation include, *inter alia*, the *Local Government: Municipal Demarcation Board Act*, the *Local Government: Municipal Structures Act* and the *Local Government: Municipal Finance Management Act*.

323 27 of 1998.

324 32 of 2000.

325 *Bushbuckridge Local Municipality Land Management By-Law* (2014); *Mbombela Local Municipality By-Law on Spatial Planning and Land Use Management* (2015); *Nkomazi Local Municipality Spatial Planning and Land Use Management By-Law* (2015); *Ba-Phalaborwa Local Municipality Spatial Planning and Land Use Management By-Law* (2016); *Greater Giyani Local Municipality Spatial Planning and Land Use Management* (2016); *Musina Local Municipality Spatial Planning and Land Use Management* (2016); and *Thulamela (Collins Chabane Local Municipality) Spatial Planning and Land Use Management By-Law* (2015).

326 Briefly alluded to in para 4.3.1.1 above.

327 Section 50(2) of the NEM:PAA.

328 Section 50(2) of the NEM:PAA.

329 Section 50(3) of the NEM:PAA.

330 Section 50(5) of the NEM:PAA.

331 Section 50(5) read with s 89(2) of the NEM:PAA.

conservation in national parks,³³² there are no other incentives specifically for attracting investment in national parks. NEM:PAA makes room for agreements for investment in protected areas, which are discussed in the context of tourism concessions in detail below.³³³

4.3.3.4 Mandatory minimum clauses for tourism concessions

The commercial activity and tourism development that occur in national parks,³³⁴ usually take the form of PPPs, particularly, tourism concessions. The latter are established in the *Public Finance Management Act*,³³⁵ which governs state-owned companies,³³⁶ at national and provincial level, while the *Local Government: Municipal Public Finance Management Act*³³⁷ governs companies that are owned by municipalities.³³⁸ The *Public Finance Management Act* facilitates the running of businesses through PPPs. This is defined in the *Treasury Regulations for Departments, Trading Entities, Constitutional Institutions and Public Entities*³³⁹ as commercial transactions between institutions and private parties for the performance of institutional functions by the private party on behalf of public institutions or the use of state property for the commercial purposes of the private parties.³⁴⁰ By their

332 See para 3.4.1.2 above.

333 In para 4.3.3.4 below.

334 See para 4.3.3.2 above.

335 1 of 1999.

336 Referred to in this Act as public entities. A national public entity is defined in section 1 as "a national government business enterprise; or a board, commission, company, corporation, fund or other entity (other than a national business enterprise) which is established in terms of national legislation; fully or substantially funded either from the National Revenue Fund, or by way of a tax, levy or other money imposed in terms of national legislation; and accountable to Parliament." Section 1 also defines a provincial government business enterprise as "a juristic person under the ownership control of a provincial executive; has been assigned financial and operational authority to carry on a business activity; as its principal business, provides goods or services in accordance with ordinary business principles; and is financed fully or substantially from sources other than a Provincial Revenue Fund; or by way of a tax, levy or other statutory money."

337 56 of 2003.

338 Section 3 of the *Public Finance Management Act* and s 3 of the *Local Government: Public Finance Management Act*, respectively.

339 *Treasury Regulations for Departments, Trading Entities, Constitutional Institutions and Public Entities* in GN R1535 in GG 27388 of 15 March 2005.

340 Regulation 16.1 GN R1535 in GG 27388 of 15 March 2005.

nature PPPs are voluntary agreement-based tools.³⁴¹ However, their regulation in legislation introduces peremptory requirements. That said, the definition in the law establishes two forms of PPPs, although the nature of the tourism industry usually attracts the PPPs for the use of state property for profit, namely tourism concessions.³⁴² Tourism concessions typically focus on accommodation, food and beverages, heritage and culture.³⁴³ Here, the private party assumes substantial financial, technical and operational risks in connection with the use of state property in return for charges or fees collected from users or customers of the services provided to them, or a combination of both.³⁴⁴

A few pertinent requirements in the conclusion of these concessions are worth mentioning. Prior to their conclusion, feasibility studies must be conducted to establish, among other things, the potential benefits for the public entity, the “value for money” and other risks involved.³⁴⁵ This significantly relates to the aim of economic viability.³⁴⁶ Contribution towards the achievement of the public entities’ social economic objectives is also a critical consideration.³⁴⁷ Depending on the objectives of the concession, this requirement may also promote local prosperity, social equity and employment quality.³⁴⁸ In addition, the procurement procedure must be fair, equitable, transparent, competitive and cost-effective.³⁴⁹ Moreover, preference for the protection of the advancement of persons, or categories of persons in terms of the *Preferential Procurement Policy Framework Act* 5 of 2000 and *the B-BBEE Act* is taken into consideration in the procurement procedure. Where

341 Bruchez *PPPs in South Africa* 15; Fombad 2015 *Journal of Southern African Studies* 1199-1217; Haarhoff *Public Private Partnerships* 37-48; Minnie *Critical Success Factors* 16, 58; Nel, Du Plessis and Du Plessis “Instrumentation for Local Environmental Governance” 91-00; Van der Berg 2015 *PER/PELJ* 1005-1008;.

342 Bruchez *PPPs in South Africa* 15.

343 Parliamentary Monitoring Group 2013 <https://pmg.org.za/committee-meeting/15945/>.

344 Regulation 16.1 GN R1535 in GG 27388 of 15 March 2005. See also, Rogerson 2016 *Tourism* 419-430.

345 Regulation 16.4 GN R1535 in GG 27388 of 15 March 2005.

346 See para 3.2.3.3.1 above.

347 Regulation 16.4 GN R1535 in GG 27388 of 15 March 2005.

348 See paras 3.2.3.3.2-3.2.3.3.4 above.

349 Regulations 16.5 and 16A of GN R1535 in GG 27388 of 15 March 2005.

the private partner is or involves local entities, the procurement procedure is aptly positioned to promote local prosperity.³⁵⁰

The *Public Finance Management Act* also promotes competitive bidding.³⁵¹ Yet, unsuccessful bidders tend to disappear from the market, thus creating the successful bidder monopoly.³⁵² In such instances, the private operator tends to place undue pressure on the government to renegotiate the terms of the contract to ensure more favourable terms to the private operator. This problem makes it especially difficult for small or medium scale entrepreneurs, such as community-based tourism enterprises, to enter into the market.³⁵³ In addition, corruption, also, in its various forms, in the bidding processes and at the different stages of the partnership, undermines the effectiveness of this Act.³⁵⁴ Finally, financial penalties exist for non-compliance with the contractual terms, such as those relating to the targets set for meeting the public entities' objectives by the private partner.³⁵⁵ However, these penalties negatively affect the financial standing of the enterprise, with ripple effects on the income of employees, wealth distribution and empowerment.³⁵⁶

A number of tourism concessions between SANParks and the private sector have been successful in raising revenue for the management of South Africa's national parks, which it would otherwise be unable to afford.³⁵⁷ However, the mandatory park fees and levies established as a result of these concessions tends to reduce the

350 See para 3.2.3.3.2 above.

351 Regulation 16.7 GN R1535 in GG 27388 of 15 March 2005. For a discussion of the advantages of competitive bidding, see for instance, Akintoye and Beck *Policy, Management and Finance for Public-Private Partnerships* 94; Spenceley 2014 <http://www.slideshare.net/AnnaSpenceley/guidelines-on-sustainable-tourism-concessions-in-sadc-tfcas-anna-spenceley>.

351 Chevallier and Milburn *SAIIA Policy Briefing* 125.

352 Akintoye and Beck *Policy, Management and Finance for Public-Private Partnerships* 94.

353 Akintoye and Beck *Policy, Management and Finance for Public-Private Partnerships* 94.

354 Farlam *Working Together: Assessing Public-Private Partnerships* 29.

355 Regulation 16.7 GN R1535 in GG 27388 of 15 March 2005. See also, the discussion by Rivett-Carnac 2004 www.sustainabilityinstitute.net/.../275-kate-rivett-karnac-corporate-citizen.

356 Rivett-Carnac 2004 www.sustainabilityinstitute.net/.../275-kate-rivett-karnac-corporate-citizen.

357 Varghese "Public-Private Partnerships" 72-81; Biggs *et al* 2014 *Koedoe* 2. SANParks 2016 https://www.sanparks.org/docs/groups_tenders/2016/skukuza-spa/draft-ppp-agreement.pdf; Farlam *Working Together: Assessing Public-Private Partnerships* 29-33.

discretionary spending by visitors within the parks which in turn affects the income of the concessionaires to the detriment of the employees' income and the other community beneficiation measures.³⁵⁸

Overall, these tourism concessions are essential tools for facilitating the synergies between state and non-state actors in promoting sustainable tourism development in the South African GLTFCA component. However, an additional component of these specific forms of PPPs is in their facilitation of the involvement of local communities in the form of CPPPs.³⁵⁹ The latter is strengthened in the *B-BBEE Act*, which in the *Tourism B-BBEE Code* requires tourism businesses to comply with the 40% sub-minimum requirements with respect to ownership by black people. Compliance with this, and other requirements in the *Tourism B-BBEE Code* is incentivised through the scorecard system.³⁶⁰

4.3.3.5 Mandatory provisions for the equitable treatment of investors

The *B-BEE Act*, *Public Finance Management Act* and the *Preferential Procurement Policy Framework Act* as investment legislation, deliberately promote differential treatment between foreign and national investors, as instruments for redressing the economic imbalances of the past.³⁶¹ Consequently, the legal climate in the country does not necessarily promote the equitable treatment of foreign and domestic investors. In addition to the specific requirements for PPPs,³⁶² the B-BBEE Act introduces incentive schemes for effective black-owned and managed enterprises.³⁶³ This too creates preferential treatment for SMEs, particularly small to medium black-owned enterprises. The *Tourism B-BBEE Code* requires tourism businesses to comply with the 40% sub-minimum requirements with respect to ownership by black

358 Rivett-Carnac 2004 www.sustainabilityinstitute.net/.../275-kate-rivett-karnac-corporate-citizen.

359 Mitchell *Capacity Development for Partnerships* 6.

360 See para 4.3.2.3 above.

361 See for instance, s 2 of the *B-BBEE Act*.

362 In para 4.3.3.4 above.

363 Sections 10 and 11 of the *B-BBEE Act*.

people,³⁶⁴ skill development of black employees and black people, and enterprise and supplier development for large enterprises.³⁶⁵ While all large enterprises must comply with these priority elements, the Act makes provision for qualifying small enterprises to comply fully with the ownership requirement and complying with either the skills development or enterprise and supplier development requirements.³⁶⁶ There are further exemptions for smaller businesses.³⁶⁷ These tools enable local community involvement in tourism development within the South African GLTFCA component.

4.3.3.6 Incentives for tourism businesses and favourable immigration controls

In general, South Africa as an open market economy, encourages foreign investment through measures, including, among others, simple tax rules and investment incentives.³⁶⁸ The government, for instance, offers a cash grant referred to as the Foreign Investment Grant, which provides a maximum of 15 percent of the value of new machinery and equipment per entity for relocation to the country.³⁶⁹ There is also the Skills Support Programme which provides up to 50 percent of training costs and 30 percent of workers' salaries for a maximum of three years to encourage the development of advanced skills.³⁷⁰ The Strategic Investment Project Programme offers a tax allowance of upto 100 percent on the cost of buildings and machinery for strategic investments of at least USD 70 million.³⁷¹

364 See para 4.3.3.4 above.

365 Paragraphs 10 and 16 of the *Tourism B-BBEE Code* in GN 1149 in GG 39430 of 20 November 2015.

366 Paragraph 11 of the *Tourism B-BBEE Code* in GN 1149 in GG 39430 of 20 November 2015.

367 These are referred to as Exempted Micro Enterprise in para 13, Qualifying Small Enterprises in para 14 and Start-Up Enterprises in para 15 of the *Tourism B-BBEE Code* in GN 1149 in GG 39430 of 20 November 2015.

368 Department of Trade and Industry 2018
www.dti.gov.za/trade_investmnet/export_incentives.jsp?subthemeid=26.

369 Department of Trade and Industry 2018
www.dti.gov.za/trade_investmnet/export_incentives.jsp?subthemeid=26.

370 Department of Trade and Industry 2018
www.dti.gov.za/trade_investmnet/export_incentives.jsp?subthemeid=26.

371 Department of Trade and Industry 2018
www.dti.gov.za/trade_investmnet/export_incentives.jsp?subthemeid=26.

Specific to tourism, the Department of Trade and Industry offers opportunities for investment in, *inter alia*, TFCAs, accommodation, adventure tourism, ecotourism, conference tourism and cultural tourism.³⁷² However, there does not appear to be specific incentives for investment in these areas. Incentives that are more general apply to tourism businesses across the board. For instance, tourism businesses in compliance with the requirements of the scorecards in the B-BEE Act and the other investment legislation generally attract tax incentives in terms of the *Income Tax Act*. The latter provides for various determinations for the classifications of companies depending on their statuses.³⁷³ In addition, the *Income Tax Act* provides for tax regimes for local and foreign companies running businesses in the Republic, with various incentives, some of which include: incentives for foreign companies³⁷⁴ co-operatives³⁷⁵ and small businesses.³⁷⁶ However, a few disincentives exist, most notably the risk of the expropriation of private property by the government for public necessity or utility in terms of the *Constitution*³⁷⁷ and the *Expropriation Act*.³⁷⁸ The current debate in the National Assembly around the amendment of the Constitution to allow for expropriation without compensation may raise serious concerns for foreign investors.³⁷⁹

With respect to immigration controls, the *Immigration Act*³⁸⁰ provides for relatively relaxed immigration rules for foreign investments and tourism.³⁸¹ Permits may be

372 Department of Trade and Industry 2018 www.dti.gov.za/trade_investmnet/export_incentives.jsp?subthemeid=26.

373 Sections 38-40 of the *Income Tax Act* 58 of 1962.

374 Section 72A of the *Income Tax Act* 58 of 1962.

375 Section 27 of the *Income Tax Act* 58 of 1962.

376 Sections 30 and 37G of the *Income Tax Act* 58 of 1962.

377 Section 25(4) of the *Constitution of the Republic of South Africa*, 1996.

378 Section 2 of the *Expropriation Act*, 63 of 1975.

379 Citizen Reporter 2018 <http://citizen.co.za/news/south/africa/1989382/ramaphosa-announces-anc-will-expropriate-land-without-compensation/>. See also in this regard the *Expropriation Bill*, 2015 to provide for the expropriation of property for a public purpose or in the public interest. However, this Bill has been temporarily withdrawn by Parliament pending the review of s 25 of the *Constitution of the Republic of South Africa*, 1996 to allow for expropriation without compensation Mahlaka 2018 <https://www.moneyweb.co.za/news/south-africa/what-parliaments-withdrawal-of-the-expropriation-bill-means/>.

380 Act 13 of 2002.

381 Section 2 of the *Immigration Act* 13 of 2002.

offered to persons intending to conduct business in the country on the condition that they employ, train and build the capacity of South African citizens; have a stipulated minimum share capital investment and a perceived benefit to the country.³⁸² However, the 2015 immigration requirements for children have negatively affected tourism inflows, which in turn have been detrimental for tourism businesses.³⁸³

4.3.3.7 Minimum mandatory provisions, incentives and/or agreements for local procurement

With respect to local procurement, organs of state are required to consider the relevant B-BBEE codes in their procurement policies and in issuing licenses for operation as well as to place an obligation on South African public entities to report to the B-BBEE Commission on their compliance with B-BBEE.³⁸⁴ This creates a mandatory tool, not only for state actors but also for tourism concessions, to promote local procurement.³⁸⁵ There are also plans for financing B-BBEE and incentive schemes to support effective black-owned and managed enterprises.³⁸⁶ These include the Black Business Supplier Development Programme,³⁸⁷ the Incubation Support Programme,³⁸⁸ and the Co-operative Incentive Scheme.³⁸⁹ The

382 Section 15 of the *Immigration Act* 13 of 2002.

383 Regulations 6(10), 6(11), 6(12) in GN R413 in GG 37697 of 22 May 2014. Though not part of the discussion, it is important to note that there has been an announcement in September 2018 by the Minister of Home Affairs about the ease of immigration requirements for children, which may boost tourism, see in this regard, Brophy 2018 <https://www.travell24.com/TravelPlanning/VisaInfo/sa-visa-changes-we-will-not-contribute-to-child-trafficking-and-required-travel-consent-remains-for-sa-children-20180925>.

384 Section 13G of the *B-BBEE Act*.

385 See para 3.2.3.3.2 above. See also Turley and Perera *Implementing Sustainable Public Procurement* 18-20.

386 Sections 10 and 11 of the *B-BBEE Act*.

387 For assisting "small black-owned enterprises with their competitiveness and sustainability to become part of the mainstream economy and create employment" (Department of Trade and Industry *A Guide to the DTI* 26).

388 "This is a grant to develop incubators into successful enterprises with the potential to revitalise communities and strengthen local and national economies" (Department of Trade and Industry *A Guide to the DTI* 28).

389 "This is a 100% grant for registered primary co-operatives, in the emerging economy to acquire business development services" (Department of Trade and Industry *A Guide to the DTI* 30). For a more general discussion on B-BBEEs, see for instance, Emuze and Adlam 2013 *Acta Stuctilia* 126-154;

latter is provided for in terms of the *Co-operatives Act* 14 of 2005,³⁹⁰ which also encourages black women to form voluntary cooperatives for supplying agricultural products to supply food, accommodation enterprises and supplying crafts. This creates opportunities for small to medium black-owned enterprises to participate in local procurement.³⁹¹

4.3.3.8 Minimum mandatory provisions and agreements for movement of goods and persons in TFCAs

The *Customs Control Act*³⁹² and the *Immigration Act*,³⁹³ respectively, govern the movement of goods and persons to and from the South African component of the GLTFCA. In addition, the *Border Management Agency Bill*, 2015,³⁹⁴ combines efforts of all government agencies involved in border control and management.³⁹⁵ However, these laws and the Bill do not seem to facilitate informal cross-border trade for small entrepreneurs as much as they do for big businesses.³⁹⁶ For instance, the *Immigration Act* prohibits the issuing of business visas to foreigners whose business is classified as an undesirable business.³⁹⁷ This is largely prejudicial to informal traders from the Mozambican and Zimbabwean GLTFCA components whose livelihoods depend on cross-border trade and trade in their local produce and artefacts.³⁹⁸

390 14 of 2005.

391 Schoeman *The Cooperative as an Appropriate form of Enterprise* 85-150. See also, Bota *Factors affecting the Impact of BEE Strategies* 14-39 Thaba and Mbohwa "Nature, Role and Status of Cooperatives" 1-2.

392 31 of 2014.

393 13 of 2002.

394 GN 673 in GG 39056 of 5 August 2015.

395 At the time of writing of this thesis, the Bill had not yet been approved by Parliament.

396 Peberdy "Hurdles to trade?" 34-36.

397 Section 14 of the *Immigration Act* 13 of 2002.

398 Khumalo "Transport as a Servant of Trade" 890-892.

4.3.3.9 Minimum mandatory labour regulations, incentives for employment quality and job creation and job security in tourism sector in TFCAs

The combination of tools that determine employment quality, job creation and job security are principally provided for in the *Constitution of the Republic of South Africa*, 1996, the *Basic Conditions of Employment Act*,³⁹⁹ the *Labour Relations Act*⁴⁰⁰ and the *Employment Tax Incentive Act*⁴⁰¹. The *Constitution* provides for employee and employer rights,⁴⁰² setting the basis for the minimum standards in the labour regulations. The *Basic Conditions of Employment Act* establishes and enforces basic minimum conditions of employment, giving effect to the constitutional right of fair labour practices.⁴⁰³ It prescribes the minimum conditions of employment applicable to working time,⁴⁰⁴ leave,⁴⁰⁵ particulars of employment,⁴⁰⁶ remuneration,⁴⁰⁷ termination of employment,⁴⁰⁸ and the prohibition on child labour and forced labour.⁴⁰⁹ These conditions generally apply to casual, temporary or seasonal employees.⁴¹⁰ The Act further allows for sector-specific conditions to ensure that all sectors comply with these conditions.⁴¹¹ The tourism and hospitality industry is regulated by *Sectoral Determination 14: Hospitality Sector*.⁴¹² However, the actual position of non-standard workers such as casual, seasonal or part-time workers, in relation to the sectoral determinations, is not directly provided for in the Act or the Sectoral Determination. This is left to the Minister to determine by way of a

399 75 of 1997.

400 66 of 1995.

401 26 of 2013.

402 Section 23(1) of the Constitution of the Republic of South Africa, 1996.

403 Section 2 of the Basic Conditions of Employment Act read with s 23(1) of the Constitution of the Republic of South Africa, 1996.

404 Sections 6-18 of the *Basic Conditions of Employment Act* 75 of 1997.

405 Sections 19-27 of the *Basic Conditions of Employment Act* 75 of 1997.

406 Sections 28-31 of the *Basic Conditions of Employment Act* 75 of 1997.

407 Sections 32-35 of the *Basic Conditions of Employment Act* 75 of 1997. The minimum wage is sector-specific, so that the hospitality and tourism industry determines these wages periodically see GN R873 in GG 32526 of 25 August 2009.

408 Sections 36-42 of the *Basic Conditions of Employment Act* 75 of 1997.

409 Sections 43-48 of the *Basic Conditions of Employment Act* 75 of 1997.

410 Section 6 of the *Basic Conditions of Employment Act* 75 of 1997.

411 Section 51 of the *Basic Conditions of Employment Act* 75 of 1997.

412 GN R437 in GG 29885 of 15 May 2007. For a detailed discussion on the sectoral determination and compliance thereof, see Fourie 2008 *PER* 110-152.

government notice.⁴¹³ Without specific legislative protection, this allows for loopholes that can be manipulated by employers for non-standard workers.⁴¹⁴

The *Basic Conditions of Employment Act* further provides for the protection of employees against discrimination. It gives employees the rights to make complaints relating to basic conditions against the employer; the right to negotiate for conditions of employment with the employer; and the right to refuse any digression from the sectoral determinations of the employment conditions, among others.⁴¹⁵ These basic conditions are applicable to full-time, part-time and seasonal workers, but not to independent contractors.⁴¹⁶ This would generally apply to those workers in the accommodation and hospitality industry, including in the food and beverages sub-sector, which comprise the majority of workers within the GLTFCA region, but not necessarily to tourist guides that are in the minority. A number of tourist guides are contracted by tour operators as independent contractors, making their position quite precarious in terms of legislative protection.⁴¹⁷ As such, the legal minimum conditions of employment are not applicable to them.⁴¹⁸

Furthermore, the *Labour Relations Act* protects, *inter alia*, employees' rights to freedom of association,⁴¹⁹ protection of employees and persons seeking employment,⁴²⁰ collective bargaining,⁴²¹ the right to strike and recourse to lockouts,⁴²² trade unions, dispute resolution,⁴²³ unfair dismissal,⁴²⁴ and temporary

413 Section 83 of the *Basic Conditions of Employment Act* 75 of 1997.

414 Fourie 2008 *PER* 125-126

415 Sections 78 and 79 of the *Basic Conditions of Employment Act* 75 of 1997.

416 Sections 1 and 83 of the *Basic Conditions of Employment Act* 75 of 1997.

417 For a detailed analysis of the position of tour guides see De Beers *Employment Conditions in the South African Tourism Industry*.

418 It has been argued that the presumption of employment provided for in s 83A of the *Basic Conditions of Employment Act* 75 of 1997 and s 200A of the *Labour Relations Act* 66 of 1995 may be applicable as a remedy for unfair labour conditions to tourist guides within the salary scale as determined by the Minister from time to time. See in this regard, McIntyre *South African Tourist Guides* 43-83. See also Fourie 2008 *PER* 128

419 Section 5 of the *Labour Relations Act* 66 of 1995.

420 Section 6 of the *Labour Relations Act* 66 of 1995.

421 Sections 11-26 of the *Labour Relations Act* 66 of 1995.

422 Sections 64-77 of the *Labour Relations Act* 66 of 1995.

423 Sections 112-185 of the *Labour Relations Act* 66 of 1995.

employment services.⁴²⁵ Nevertheless, their protection is dependent on their category of employment, as full-time, part-time and seasonal workers, making the enforcement of their rights difficult.⁴²⁶

Incentives for compliance with these labour standards and rights are provided for in a few laws. For instance, the *Preferential Procurement Policy Framework Act*⁴²⁷ provides for companies that spend on the training of employees.⁴²⁸ Additionally, the *Employment Tax Incentive Act* 26 of 2013 creates incentives for private companies to encourage employment creation.⁴²⁹ However, these incentives are only available for employers that comply with wage regulations in accordance with the *Labour Relations Act* and the *Basic Conditions of Employment Act*.⁴³⁰ The scorecard system of the *B-BBEE Act* also incentivises skills development for black employees as well as black managed enterprises.⁴³¹ Yet, due to the seasonality of the jobs in the industry, many businesses struggle to meet the employment and management requirements of the scorecard and Charter. Another critical issue is the impact of the *B-BBEE Act* on foreign investment. The employment requirement, coupled with the labour legislation, make it difficult for employers to get rid of non-productive or surplus employees making the country a less attractive investment destination.⁴³² Although it is difficult to impose high scores for contributions by businesses to the socio-economic development of rural communities, the current regime does not seem to promote meaningful beneficiation. Therefore, more rigorous incentives and financing schemes are necessary to encourage participation by local communities.

424 Section 185 of the *Labour Relations Act* 66 of 1995.

425 Section 198 of the *Labour Relations Act* 66 of 1995.

426 Fourie 2008 *PER* 126.

427 24 of 2013.

428 See also para 4.3.2.3 above.

429 Section 2 of the *Employment Tax Incentive Act* 24 of 2013.

430 Section 4 of the *Employment Tax Incentive Act* 24 of 2013.

431 Paragraphs 10 and 16 of the *Tourism B-BBEE Code* in GN 1149 in GG 39430 of 20 November 2015.

432 Prinsloo *Business Day BDLive*.

4.3.3.10 Minimum mandatory provisions, incentives and certification standards for CSR strategies

With respect to CSR strategies, the *Companies Act* makes the appointment of social and ethics committees mandatory.⁴³³ In terms of the *Companies Regulations*,⁴³⁴ these committees are required for state-owned, listed public companies or companies with a specific annual turnover, workforce size or nature, and extent of their activities.⁴³⁵ These committees are established to monitor the company's activities for matters relating to the *Employment Equity Act* and the *B-BBEE Act* and good corporate citizenship.⁴³⁶ The latter involves the promotion of equality, prevention of discrimination; contribution to the development of the communities in which it predominantly operates; monitoring the impact of the company's activities on the environment; consumer relationships; and laws, labour and employment.⁴³⁷ This places a duty on tourism businesses that fall within the specified category, to improve the social and economic standing of black South Africans, promote equality, prevent unfair discrimination, develop local communities surrounding them, to be charitable, to monitor their impacts on the environment, health and public safety, to improve on consumer relationships, and to improve on their labour and employment relationships and obligations.⁴³⁸

In so doing, tourism businesses are positioned to promote social equity, employment quality and even local prosperity.⁴³⁹ Yet, the *Companies Act* does not expressly impose a duty on companies towards CSR.⁴⁴⁰ Effectively therefore, the indirect obligation towards CSR applies to larger companies while small to medium enterprises are only encouraged to act in a socially responsible manner. It may be

433 Section 72(4) of the *Companies Act*.

434 Regulation 43(1) GN R351 in GG 34239 of 26 April 2011.

435 Regulation 26(2) in GN R351 in GG 34239 of 26 April 2011 provides the method for determining the public interest score.

436 Regulation 43(5) in GN R351 in GG 34239 of 26 April 2011.

437 Regulation 43(5) in GN R351 in GG 34239 of 26 April 2011. For a detailed discussion of each of these functions of the social and ethics committee, see Kloppers 2013 *PER/PELJ* 166-199.

438 A detailed description of each the obligations is found in Kloppers 2013 *PER* 173-185.

439 See paras 3.2.3.3.4, 3.2.3.3.3 and 3.2.3.3.2 above, respectively.

440 Kloppers 2013 *PER* 166.

necessary for small to medium enterprises and new businesses to have some minimum standards for promoting social responsibility to ensure that all businesses promote sustainable tourism development.

4.4 Conclusion

This chapter investigated the relevant legal instruments relating to TFCA governance and tourism development, with the aim of establishing whether they provide for and promote sustainable tourism development in the South African component of the GLTFCA. To this end, the study commenced by examining the legislation establishing TFCAs, protected areas governance and management, local governance as well as the principal tourism legislation. It was established that South Africa does not have domestic legislation that specifically provides for the establishing of TFCAs, with the effect of creating a gap in the law for defining the roles of all pertinent actors in the cross-border exchanges that relate to the GLTFCA.

The roles of these actors are therefore left to be determined by NEM:PAA, the legislation relating to protected areas governance and management, which itself is limited to the protected area component, namely the KNP and surrounding private and communal land. This does not make ample provision for the roles of these actors within a transfrontier setting. Within this context, the management of the KNP principally falls under SANParks, with the provincial government and local government playing a peripheral role. NEM:PAA also involves private or communal landowners in the management of the protected areas component, if their land falls therein. Outside of their status as landowners, the latter may also be involved through co-management agreements and more generally in the public participation processes required in terms of the Kruger National Park Management Plan 2018-2028. Further, involvement of local communities in TFCA governance is also provided for in local governance legislation, namely in the *Local Government: Municipal Systems Act* and the TLGFA. The TLGFA is especially relevant for the role of rural local communities through their traditional leaders. However, it fails to facilitate their proper and clear participation in tourism development, thereby

disenfranchising them from exercising local control in sustainable tourism development within the South African GLTFCA component.

The interface of the various actors in TFCA governance is also considered within the context of tourism development as provided for in the principal tourism legislation, the *Tourism Act*. This Act spearheads the aims of sustainable tourism development through its focus on responsible tourism, the principles of which must govern the activities of all actors involved. The Department of Tourism coordinates the national agenda for tourism development with the cooperation of a number of line ministries whose activities affect tourism development as well as other relevant supporting government departments. The multiple involvement of government ministries extends the scope of the state actors involved in TFCA governance. The key state institutions for tourism development, under the oversight of the Department of Tourism, are the SAT and the Tourism Grading Council. The latter addresses the quality of tourism services, facilities and products, while the SAT focuses on marketing with the help of provincial and local governments in accordance with their constitutionally defined competencies. Nevertheless, the roles of these state actors are marred by fragmentation and lack of collaboration.

The *Tourism Act* identifies the private sector as a key driver of tourism development in the country, as such much of the Act focuses on the regulation of their activities. With the focus skewed toward tourism marketing and regulating the conduct of the private sector, the Act appears to relegate the role of local communities to beneficiaries of tourism development rather than active stakeholders notwithstanding the elements of responsible tourism that suggest otherwise. This adversely affects the promotion of sustainable tourism development in the South African component of the GLTFCA, particularly with respect to the key actors for local control. Moreover, this approach to local communities undermines the promotion of those aims of sustainable tourism development that relate to local communities, such as cultural richness, community well-being, local prosperity, employment quality and social equity. This vagueness, with respect to the role of local communities in the tourism sector, narrows down the parameters within which they can participate in the governance of the South African GLTFCA component.

Having established the position of state and non-state actors in TFCA governance and tourism development, the chapter furthermore explored the governance-based tools that are necessary for these actors to promote the TFCA objectives. For biodiversity conservation, a combination of tools ranging from mandatory management tools, where local communities are landowners within the protected area domains; protected areas' co-management models; mandatory public participation in management plans; mandatory provisions for CBNRM; to incentives and agreements for CBNRM; biodiversity management agreements and environmental co-operation agreements are relevant. All of these enable state actors and non-state actors to promote biodiversity conservation in the South African GLTFCA component. However, for local communities their involvement is ultimately dependent on their natural resource use and access rights but more specifically their land rights. There are a number of limitations in terms of existing legislation on the extent of application of these land rights, which curtail the extent, especially for the rural local communities, in the management and governance of protected areas and therefore minimising their involvement in biodiversity conservation. This also has a negative bearing on their local control in tourism development in the South African GLTFCA component as well as the improvement of their livelihoods.

Notwithstanding, a combination of tools for the improvement of livelihoods is also evident within the relevant legislation in South Africa. These include a variety of mandatory poverty reduction programmes stemming from constitutionally entrenched rights; provincial legislation for the provision of basic services; legislation for the provision of basic services at municipal level as well as specific mandatory tools for the provision of basic services in the form of IDPs and financial resources allocations in municipalities. Tax incentives, B-BBEE scorecard-based incentives and other affirmative action incentives as well as room for agreements in the form of PPPs, exist for the provision of basic services by the private sector. In addition, constitutional rights such as the rights to housing, health care, water and social security are provided, although they are realised by the State progressively and within the latter's available resources. Thus, communities seeking to enforce these rights may not receive direct and immediate relief. Despite all these tools, the rural

communities in the Limpopo Province are amongst the least in accessing these basic services.

The existence of SANS 1162 in the *Tourism Act* should assist in increasing private sector efforts towards the improvement of livelihoods but the absence of the legal enforcement of social licenses to operate on land belonging to local communities or on the land upon which their rights exist fails to bring these voluntary tools into perspective. These issues are especially important in instances of TDIDR. So far, the only mandatory tools that exist are the protection of informal land rights against involuntary TDIDR as well as the possibility for restitution from the state and not from private individuals in specific circumstances. Where prejudices exist despite these tools, constitutional rights to property and the environment and their contingent rights may be invoked against TDIDR. This would have been further strengthened by HRIAs, which are currently not provided for in law. Therefore, the combination of tools for the improvement of livelihoods and poverty alleviation that are available are significant but more is needed to improve the situation of local communities in the South African GLTFCA component.

There are a number of tools available for promoting economic development in the GLTFCA, but despite this, there are no tools in place for revenue sharing at international or national level. The tools in place include: mandatory minimum standards for tourism planning, marketing, infrastructure development and land use planning applicable to the South African component. Yet, there are no specific tools for promoting investment in TFCAs except for commercial activities and development in national parks. These commercial activities are undertaken via tourism concessions as provided for in the law and have contributed significantly to the running of the KNP as well as other national parks countrywide. CPPPs are a tool for local community involvement effected through the B-BBEE regime. This regime also influences the treatment of investors by adopting affirmative action tools in favour of national and local black investors, local procurement and even employment quality and job creation. These tools are advantageous for local communities with the requisite capacity to participate. For foreign investors, however, various incentives do exist, which include favourable immigration controls. The only setback here

affecting the entire tourism industry has been the immigration regulations relating to travelling with children. For informal traders and their movement across the GLTFCA borders, these immigration as well as custom controls have been tightened with adverse effects on this very real form of livelihood within the GLTFCA. To sum it all up, CSR is provided for in the corporate governance regime for specified categories of tourism businesses but does not impose it as a duty.

In the final analysis the laws examined indicate that a commendable legal framework exists for promoting sustainable tourism development in the South African component of the GLTFCA. This relates to the progressiveness in the laws relating to protected areas management and the tourism legislation. However, the position of rural local communities still needs to be addressed in these laws as well as in the laws relating to local governance, in order to facilitate their more active involvement in TFCA management and governance. The same applies to the impressive plethora of tools available in various pieces of legislation for promoting biodiversity conservation, the improvement of livelihoods - poverty alleviation and economic development. Yet, these tools do not sufficiently address the position of local communities. Chapter 5 explores the position in the Mozambican component of the GLTFCA.

CHAPTER 5

Sustainable tourism development in the Mozambican GLTFCA component: legal analysis

5.1 Introduction

This chapter examines the laws relating to sustainable tourism development in the Mozambican GLTFCA component. It considers the relevant legal instruments relating to TFCA governance and tourism development in Mozambique. This is done to assess whether they provide for and promote sustainable tourism development in the GLTFCA. Similar to Chapter 4, this analysis is guided by the legal framework for sustainable tourism development in TFCAs developed in Chapter 3. It entails identifying whether the laws for the Mozambican component provide for the pertinent actors that are necessary for TFCA governance. Following from this, the chapter further explores whether the specific governance-based tools that are necessary for promoting the GLTFCA objectives are in place within the TFCA governance legislation as well as other relevant sectoral legislation. This involves exploring the tools that are in place for promoting biodiversity conservation, the improvement of livelihoods-alleviation of poverty and economic development in the Mozambican GLTFCA component.

5.2 Legislation relevant to TFCA governance

This segment examines the relevant legal instruments in Mozambique relating to TFCA governance in order to assess whether they provide for the establishment and governance of TFCAs.¹ The analysis particularly considers whether it provides for all the relevant actors, namely the key state actors and non-state actors that must be involved in TFCA governance as well as the principles that govern their

1 See para 3.6.1 above.

relationships.² These laws include legislation establishing TFCAs, legislation relating to protected areas governance and management, legislation relating to local governance and the principal tourism legislation.

5.2.1 *Legislation establishing TFCAs*

The *Conservation Areas Law*, which provides for the establishment of the basic principles and rules on the protection, conservation, restoration and sustainable use of biological diversity in conservation areas, makes provision for the creation of TFCAs.³ It states that TFCAs are established by treaty or agreement entered into and approved by the competent state organs.⁴ Moreover, it defines TFCAs as areas that are established by statutory instrument and managed jointly; straddling the boundaries of one or more States; consisting of conservation areas or other forms of land use that contribute to the protection and maintenance of biodiversity and of natural and associated cultural resources; and promote socio-economic development.⁵ This law adopts the definition of TFCAs provided for in the *Wildlife Protocol* by recognising the transboundary setting within which its national protected areas, referred to as conservation areas, exist as well as the multiple resource use areas that are surrounding them.⁶ In addition, the *Environmental Framework Law*, which is the framework law on environmental protection, adopts the principle of international cooperation in resolving cross-border environmental problems.⁷ In particular, it forms the basis of conservation areas by its recognition of protected areas, including international protected areas.⁸ However, these laws do not define the role of the governance actors in the conservation areas within the TFCA context, with the effect that their roles are therefore limited to the domestic context.

2 Para 3.6.1 above.

3 Article 36 of the *Conservation Areas Law*.

4 Article 36(3) of the *Conservation Areas Law*.

5 Article 36 of the *Conservation Areas Law*.

6 See para 2.2.1 above.

7 Article 4(8) of the *Environmental Framework Law*.

8 Article 13 of the *Environmental Framework Law*.

5.2.2 Legislation relating to protected areas governance and management

The regime for the governance and management of conservation areas in Mozambique spans across various laws, stemming from the constitutional approach towards the ownership of land and natural resources and subsequently in the sectoral approach to the specific aspects of environmental protection. The relevant sectoral legislation defines the specific roles and responsibilities of the various state and non- state actors.

5.2.2.1 State actors

In terms of the *Constitution of the Republic of Mozambique*, 2004, the land and natural resources belong to the State.⁹ This is echoed in the *Conservation Areas Law*, which states that the management of conservation areas is the responsibility of the State, albeit with the collaboration of other actors in a participatory manner.¹⁰ At the apex of state actors is the Cabinet, referred to as the Council of Ministers. It defines the policies on, *inter alia*, the management of conservation areas.¹¹ Following from this Council, the actual mandate for the governance and management of conservation areas, in terms of the *Conservation Areas Law*,¹² belongs to the Ministry of Land, Environment and Rural Development (*Ministério da Terra, Ambiente e Desenvolvimento Rural* - MITADER).¹³ Its mandate involves the management of conservation areas, land, the environment, forests, wildlife and rural development.¹⁴ Its functions are, *inter alia*, to promote, monitor and evaluate

9 Articles 109 and 110 of the *Constitution of the Republic of Mozambique*, 2004.

10 Article 6 of the *Conservation Areas Law*.

11 Article 200(3) of the *Constitution of the Republic of Mozambique*, 2004 read with a 6(2) of the *Conservation Areas Law*.

12 Article 6(2) of the *Conservation Areas Law*.

13 Created by Presidential Decree 1 of 2015 of 16 January 2015. See also, *Resolution to Approve the Organic Statute of the Ministry of Land, Environment and Rural Development (Resolução Aprova o Estatuto Orgânico do Ministério da Terra, Ambiente e Desenvolvimento Rural 6/2015)* 6 of 2015 of 26 June 2016 (hereafter Resolution 6 of 2015); *Decree on the Attributes and Competences of the Ministry of Land, Environment and Rural Development (Decreto Atribuições e competências do Ministério da Terra, Ambiente e Desenvolvimento Rural 13/2015)* 13 of 2015 of 16 March 2015 (hereafter Decree 13 of 2015).

14 MITADER Service Charter (*MITADUR Carta De Serviços*).

policies and strategies that integrate rural development, improve basic social services and attract investment in rural areas; develop standards and procedures on the sustainable management of forestry; and promote and monitor the implementation of territorial management instruments by the national, provincial, district and local authorities.¹⁵

To effect these functions, MITADER comprises of directorates, which include: the Inspectorate for Land, Environment and Rural Development (*Inspecção da Terra, Ambiente e Desenvolvimento Rural*); the National Directorate for National Rural Development (*Dirrecção Nacional de Desenvolvimento Rural*); the National Directorate for Forestry (*Dirrecção Nacional de Florestas*); the National Directorate for Land (*Dirrecção Nacional de Terras*); the National Directorate for the Environment (*Dirrecção Nacional do Ambiente*); and the National Directorate for Territorial Planning and Resettlement (*Dirrecção Nacional de Ordenamento Territorial e Reassentamento*).¹⁶ Each of these directorates is further divided into departments, all of which are relevant in their respective mandates in the governance structures of TFCAs.¹⁷

However, of these Directorates, the National Directorate for National Rural Development is the central body of MITADER. Its principal functions are to ensure intersectoral coordination at different levels, ensuring the sustainable use of the resources that are available for rural development; and promoting community participation at all of the stages of local development initiatives.¹⁸ The conglomeration of these Directorates under one Ministry is creditworthy, as it enables a holistic and integrated approach towards biodiversity conservation, tourism development and rural development, which is highly important for TFCA governance and driving the TFCA objectives in an integrated and systematic manner.

15 MITADER Service Charter (*MITADUR Carta De Serviços*)

16 Article 4 of the Resolution 6 of 2015. For the functions of these directorates see aa 8-13 of the Resolution 6 of 2015. See also, MITADER 2017 <http://www.mitader.gov.mz/sobre-nos/organograma/>.

17 MITADER 2017 <http://www.mitader.gov.mz/sobre-nos/organograma/>

18 Article 3 (a) and (b) of Decree 13 of 2015 read with a 8 of the Resolution 6 of 2015.

The *Conservation Areas Law* also makes room for the involvement of other supporting ministries in the advisory committees for the management authorities over conservation areas, which fall under the supervision of the principal state agency for the management of conservation areas.¹⁹ The latter will be discussed below.

The MITADER further executes its mandate at provincial level in terms of the *Constitution of the Republic of Mozambique*, 2004, and the *Local Organs Law*. The Minister of the MITADER in consultation with the Provincial Governor appoints its provincial government representatives.²⁰ At district level,²¹ the role of local government, executed by the District Administrator, is to, *inter alia*, approve municipal environmental plans; municipal ecological zoning, local programmes for natural resources management; the establishment of municipal reserves; and proposals regarding the definition and establishment of protected areas.²² The *Forestry and Wildlife Law* further defines the role of local government in the management of forest and wildlife resources as local resource management councils, known as co-management councils (COGEPs).²³ For instance, the COGEPs have the power to propose the cancellation or revocation of projects that do not promote rural development and sustainable use of forestry and wildlife resources.²⁴ This governance structure for provincial and local government enables the active involvement of the latter in the governance and management of protected areas and by extension, in the TFCA governance structures of the Mozambican GLTFCA component.

19 Article 6(1) of the *Conservation Areas Law*.

20 Article 39 of the *Local Organs Law* read with a 141 of the *Constitution of the Republic of Mozambique*, 2004. For the place of the Provincial Governor in the hierarchy of government, see para 5.2.3 below.

21 For a detailed description of the role of local government, see para 5.2.3 below.

22 Articles 46 and 78 of the *Local Organs Law* read with a 264 of the *Constitution of the Republic of Mozambique*, 2004.

23 Article 31 of the *Forestry and Wildlife Law* 10 of 1999.

24 Article 97(3) of the *Forestry and Wildlife Regulation (Regulamento da Lei de Florestas e Fauna Bravia)* 12 of 2002.

Notwithstanding the hierarchical government structures for the governance of conservation areas, the management authority over conservation areas, in terms of the *Conservation Areas Law*,²⁵ is the National Administration of Conservation Areas (*Administração Nacional Das Áreas de Conservação* - ANAC).²⁶ ANAC falls under the supervision of MITADER, which approves its programmes and operations.²⁷ ANAC is responsible for the conservation of biodiversity and the sustainable tourism development of the country's ecotourism.²⁸ The functions of ANAC are, among others, to: administer national parks and reserves and other conservation areas; to protect, conserve and guarantee the management of wildlife; implement the component of the *Conservation Policy and Implementation Strategy*²⁹ regarding conservation areas; ensure the integrity of the conservation area system and guarantee the effective management of conservation areas for climate change.³⁰ It is also responsible for the issuing of licenses for operating businesses, hunting and ecotourism activities in conservation areas.³¹

Other pertinent functions include defining and monitoring the performance of conservation areas; establishing and operating management advisory bodies in partnership with private operators and local communities; preparing conservation areas sector management plans and programmes; and declaring new conservation areas.³²

More importantly, ANAC is responsible for promoting conservation activities in TFCAs through cooperation with entities that have similar national and international

25 Article 6(2) of the *Conservation Areas Law*.

26 Established by the *Decree creating the National Administration for Conservation Areas (Decreto Cria a Administração Nacional Das Áreas de Conservação* 11 of 2011 of 25 May 2011 (hereafter Decree 11 of 2011).

27 Article 4 of the *Decree for the Review of the attributes and norms related to the National Administration of Conservation Areas (Revisão da atribuições e normas relativas à Administração Nacional da Áreas de Conservação)* 8 of 2016 of 15 April 2016 (hereafter Decree 8 of 2016).

28 Article 6 of the *Conservation Areas Law*.

29 Resolution 63 of 2009.

30 Article 3(a)-(e), (h) of Decree 8 of 2016.

31 Article 3(f) and (g) of Decree 8 of 2016. For the development of ANAC's role in protected areas governance, see for instance, Soto "Protected Areas in Mozambique" 85-102.

32 Article 3(l)-(n) of Decree 8 of 2016.

interests.³³ This mandate over TFCA is specifically allocated to ANAC's departments of Conservation and Community Development and Tourism and Sustainable Use respectively.³⁴ This dual role of ANAC, relating to biodiversity conservation and tourism development in conservation areas, facilitates coherence and coordination of the developmental activities that occur in these areas. With the MITADER also responsible for rural development, it is envisaged that the functions of ANAC are also aligned towards rural development, placing the key areas that relate to the TFCA objectives, under a single state actor.

Moreover, ANAC comprises of a Governing Board and Conservation Committees.³⁵ The former, which is responsible for the running of ANAC, also ensures that the management and maintenance of conservation areas complies with the Conservation Policy and other legislation and policies and that revenue is used for these purposes.³⁶ The functions of the Conservation Committees, on the other hand, are to provide technical support to ANAC with respect to the development of conservation areas and the management of wildlife.³⁷ These functions include: the implementation of the management plans; the supervision of the conservation areas; responding to the developmental needs of communities residing in the conservation areas; the elaboration of strategic development plans for conservation areas; searching for income generation activities; and the supervision of the implementation of concession agreements.³⁸ At national level, the Conservation Committee comprises of the Director-General as the chair; and representatives from MITADER, the ministries responsible for security and order, tourism,³⁹ fisheries and

33 Article 3(e) and (k) of Decree 8 of 2016.

34 Established under the Ministerial Decision approving the Personnel of the ANAC (*Ministério da Administração Estatal e Função Pública*) 13 of 2016 of 25 January 2016. For criticisms of ANAC, see for instance, Lamarque and Magane *Advantages and Disadvantages* 1-20.

35 Article 5 of Decree 8 of 2016 read with a 6 of the *Conservation Areas Law*.

36 Article 7(a) of Decree 8 of 2016. For a detailed discussion of ANAC's functionality, see for instance, Buján and Macazanda *Sustainable Financing of the Protected Area* 20-22.

37 Articles 8 and 9 of Decree 8 of 2016.

38 Article 7 of the *Conservation Areas Law*.

39 See para 5.3.1 below for a detailed description of this ministry.

civil society.⁴⁰ Herein lies the involvement of supporting line ministries in TFCA governance. The Conservation Committee also include non-state actors.

5.2.2.2 Non-state actors

The *Conservation Areas Law* promotes the participation of non-state actors in the management of conservation areas.⁴¹ This includes the private sector, local communities and civil society organisations.⁴² The private sector in particular forms an important component in the management of conservation areas.⁴³ They are empowered in terms of the *Conservation Areas Law* to establish sanctuaries to enhance the reproduction, shelter, food and research of certain species of fauna and flora⁴⁴ in national parks and in other conservation areas.⁴⁵ The private sector may also establish game farms,⁴⁶ and enter into partnerships with the public sector and local communities for the management of conservation areas.⁴⁷ One such partnership enables the private sector to play an advisory role to the Conservation Committees of ANAC in the preparation of business plans and management plans.⁴⁸

Further to this, the *Forestry and Wildlife Law* recognises private sector participation in the management, conservation and exploitation of forest and wildlife resources for increasing added value and stimulating greater development for local communities.⁴⁹ Therefore, private sector representatives form part of the COGEPs,⁵⁰ and may participate in consultative activities with the MITADER, provincial governments and other state bodies.⁵¹ In addition, the MITADER may delegate its power over forestry and wildlife resources to the private sector especially for the purpose of the

40 Article 8 of Decree 8 of 2016.

41 Article 7 of the *Conservation Areas Law*.

42 Article 9 of the *Conservation Areas Law*.

43 Articles 8 and 9 of the *Conservation Areas Law*.

44 Article 23 of the *Conservation Areas Law*.

45 Article 23(2) of the *Conservation Areas Law*.

46 Article 24 of the *Conservation Areas Law*.

47 Article 9 of the *Conservation Areas Law*.

48 Article 3(l) of Decree 8 of 2016 read with a 7 of the *Conservation Areas Law*.

49 Articles 3(e) and 7 of the *Forestry and Wildlife Law*.

50 See para 5.2.2.1 above on COGEPs.

51 Article 31 read with a 97(2) of the *Forestry and Wildlife Regulation* 12 of 2002.

repopulation of species.⁵² This is a clear acknowledgement of the capacity of the sector to use its much-needed financial resources for the management of natural resources where the relevant management authority may have limited or no such capacity.⁵³ This creates a pivotal role for the private sector in TFCA governance in the Mozambican component.

Similar to the private sector involvement, the *Conservation Areas Law* requires collaboration with local communities in the management of conservation areas.⁵⁴ The management of conservation areas should support activities that are compatible with their conservation efforts and contribute to the improvement of the quality of life in community areas.⁵⁵ In addition, local communities may enter into partnerships with the public and private sector for the management of conservation areas.⁵⁶ For this reason, MITADER places communities at the heart of inclusive growth and socio-economic development.⁵⁷ In addition, the Conservation Committees of ANAC must also include local communities and must enter into partnerships with community institutions for the preparation of business plans and management plans.⁵⁸

The *Forestry and Wildlife Law* also includes representatives of local communities to participate as equals with local state authorities in the decision-making processes of forest and wildlife resource management in the COGEPs.⁵⁹ Added to this, the *Land Law* specifically states that the system of management of conservation areas in rural areas should involve local community participation.⁶⁰ This includes participation in the management of natural resources, the resolution of conflicts, the process of the titling of land and the demarcation of boundaries on the land occupied by these

52 Article 31 of the *Forestry and Wildlife Law* 10 of 1999.

53 Cousins, Sadler and Evans <http://www.ecologyandsociety.org/vol13/iss2/art43/>.

54 Articles 7 of the *Conservation Areas Law*.

55 Articles 7 and 12 of the *Conservation Areas Law*.

56 Article 9 of the *Conservation Areas Law*.

57 MITADER Service Charter (*MITADER Carta De Serviços*).

58 Article 3(I) of Decree 8 of 2016 read with a 7 of the *Conservation Areas Law*.

59 Article 31 of the *Forestry and Wildlife Law* read with a 95 of the *Forestry and Wildlife Regulation Decree* 12 of 2002.

60 Article 1 of the *Land Law*.

communities.⁶¹ Moreover, the State has a discretion to delegate their powers to manage forest and wildlife resources in, *inter alia*, protected areas, buffer zones, official hunting areas, and multiple use zones, to local communities.

The *Conservation Areas Law* includes external entities such as NGOs and other civil society organisations, referred to as associations, as part of the key actors in the management of conservation areas.⁶² They also form part of the Conservation Committees of ANAC.⁶³ Even more important is their role as financiers of conservation areas.⁶⁴ The *Conservation Areas Law* specifically provides for national and foreign civil society organisations to enter into partnerships for financing the management of conservation activities.⁶⁵ Furthermore, the *Forestry and Wildlife Law* includes civil society organisations linked to forestry and wildlife resources or to local community development in the COGEPs.⁶⁶ The central role of civil society organisations, especially as donors, is attributed to the heavy reliance of the Mozambican government on external aid, with almost half of the country's expenditures financed through developmental assistance.⁶⁷

Notwithstanding the complexities involved and the weaknesses that may exist, the most notable aspect from these laws is that Mozambique provides expressly for all the necessary actors in TFCA governance – especially for non-state actors.

5.2.3 Legislation relating to local governance

The *Constitution of the Republic of Mozambique*, 2004, establishes local governance with the mandate to implement economic, cultural and social programmes and tasks

61 Article 24 of the *Land Law*.

62 Article 7 of the *Conservation Areas Law*.

63 See paras 5.2.2.1 and 5.2.2.2 above.

64 Article 8 of the *Conservation Areas Law*.

65 Article 8 of the *Conservation Areas Law*.

66 Article 31 *Forestry and Wildlife Law* read with a 95 of the *Forestry and Wildlife Regulation Decree* 12 of 2002.

67 Lamb, Mixon and Minot *The Uncertain Transition from Stability to Peace* 20; Astill-Brown and Weimer *Mozambique: Balancing Development, Politics and Security* 10-13; Manning and Malbrough *The Changing Dynamics of Foreign Aid* 4-12; Virtanen 2015 *Africa Review* 93-94.

of local and national interest; and implement the decisions of the Assembly of the Republic, the Council of Ministers and higher-ranking State officials.⁶⁸ In addition, the *Basic Law on the Organisation and Functioning of the Public Administration* establishes other state agencies to operate at subnational level, at the same level as the local government,⁶⁹ thereby diluting the autonomy of the local government. This limits the scope of the authority of local government.⁷⁰ In the areas of land-use planning and management, the decentralisation is even more limited for districts and municipal services, with the lack of financial and human capacity.⁷¹

In this setting, local government consists of municipalities and settlements.⁷² Municipalities are found in urban areas while settlements are found in rural areas.⁷³ The *Municipalities Law* establishes rural districts in Mozambique that remain subject to state administration mediated by provincial government, which are subordinate to central government.⁷⁴ In addition, for service delivery functions, the autonomy is limited in rural areas, as the national actors remain responsible through the deconcentrated local government units of territorial administration.⁷⁵ Yet, 90 percent of the territory of Mozambique falls under these rural districts and is resident to 70 percent of the national population.⁷⁶ However, the autonomy of rural districts through the constitutional decentralisation is highly diluted.⁷⁷ This creates gaps for the inclusion of rural districts in the formal structures of government in the management of conservation areas.⁷⁸

68 Article 264 of the *Constitution of the Republic of Mozambique*, 2004.

69 Article 5, 67 and 74 of *Law 7* of 2012.

70 CLGF *Commonwealth Local Government Handbook* 114.

71 CLGF *Commonwealth Local Government Handbook* 114.

72 Article 273 of the *Constitution of the Republic of Mozambique*, 2004.

73 Rocha and Zavale *Cadernos de Estudos Africanos* 111.

74 UNDESA *Republic of Mozambique 7-8*; CLGF *Commonwealth Local Government Handbook* 114. See also Rocha and Zavale *Cadernos de Estudos Africanos* 111.

75 Norfolk and Cosijn "Development and the balancing of interests" 300-301.

76 CLGF *Commonwealth Local Government Handbook* 114.

77 Norfolk and Cosijn "Development and the balancing of interests" 300-301.

78 Norfolk and Cosijn "Development and the balancing of interests" 300-301.

Notwithstanding, the *Constitution of the Republic of Mozambique*, 2004, recognises the role of traditional authority in the economic, social and cultural affairs of the country.⁷⁹ As such, the leadership structures for rural communities are provided for in *Decree 15* of 2000, which establishes three forms of community authorities.⁸⁰ These community authorities are traditional leaders, secretaries and other legitimate community leaders.⁸¹ Traditional leaders govern over communities in terms of their customary law while the other two types of leaders represent the communities that have evolved over time and are governed by state institutions.⁸² The existence of these multiple institutions at community level comes with its own complexities,⁸³ which may contribute to the challenges facing local communities in the Mozambican component of the GLTFCA.⁸⁴ Moreover, there is no clarity as to how the various types of communities should participate in the management and governance of conservation areas. This creates informal collaborations and confusion amongst the local communities vis-à-vis other stakeholders.⁸⁵ This may further affect the involvement of local communities in tourism development. With this in mind, the segment that follows considers the governance structures in principal tourism legislation.

5.2.4 Principal tourism legislation

The principal tourism legislation in Mozambique is the *Tourism Law*. The purpose of this law is to establish the legal framework for promoting and carrying out tourism activities.⁸⁶ Its aims are:

79 Article 118 of the *Environmental Framework Law*.

80 See for instance, Buur and Kyed *Implementation of Decree 15/2000* 4.

81 Article 1.1 of Decree 15 of 2000.

82 Article 1.3 of Decree 15 of 2000.

83 For the complexities involved in the local community institutions, see for instance, Buur and Kyed *Implementation of Decree 15/2000* 32; Gonçalves 2006 *Journal of Contemporary African Studies* 29-52; Loreço 2009 *Cadernos De Estudos Africanos* 115-138; Nhancale *Participatory Governance* 73; Norfolk *et al The 'New' Communities* 7-15.

84 See para 2.4.2.2 above.

85 Nhancale *Participatory Governance* 73-74.

86 Article 3 of the *Tourism Law*.

- a) To drive economic and social development in the country, while respecting its forest, faunal, mineral, archaeological and artistic heritage, which should be preserved and passed on to future generations;
- b) To preserve historical and cultural values and promote national pride;
- c) To contribute to the harmonious and balanced development of the country;
- d) To contribute to job creation, economic growth and relief of poverty;
- e) To stimulate the domestic private sector to participate in the promotion and development of tourism resources;
- f) To establish mechanisms for inter-institutional coordination and participation;
- g) To promote the conservation of biodiversity and marine and land ecosystems;
- h) To improve the standard of living of local communities, encouraging their active participation in the tourism sector;
- i) To encourage measures for the safety and tranquillity of tourists, consumers and suppliers of tourism services;
- j) To ensure equal rights and opportunities for all those subject to this Law.⁸⁷

These objectives, considered holistically, resonate with the goals of sustainable tourism development, while singularly they align with the policy implications of sustainable tourism development.⁸⁸ Objectives (a) and (g) predominantly relate to the aim of biodiversity conservation, with specific emphasis on physical integrity.⁸⁹ Objective (b) resonates with the aim of cultural heritage.⁹⁰ Objective (c) is a broad goal but may be aligned with the aim of local prosperity.⁹¹ Objective (d) is concerned with the aim of employment quality, local prosperity and community well-being.⁹² Objective (e) correlates with the aim of economic viability as well as local prosperity.⁹³ Objective (h) largely relates to the aim of community well-being linking it with the aim of local control.⁹⁴ Objective (i) mainly applies to the aim of visitor fulfilment.⁹⁵ Objective (j), arguably so, creates a basis for invoking the aim of social equity.⁹⁶

87 Article 3 of the *Tourism Law* translation provided by Club of Mozambique Solutions (*Soluções*) 2009 adrien.frey@clubofmozambique.com.

88 See para 3.4 above.

89 See para 3.4.1.1 above.

90 See para 3.4.1.2 above.

91 See para 3.4.1.7 above.

92 See paras 3.4.1.8; 3.4.1.7 and 3.4.1.5 above.

93 See paras 3.4.1.6 and 3.4.1.7 above.

94 See paras 3.4.1.5 and 3.4.1.4 above.

95 See para 3.4.1.10 above.

96 See para 3.4.1.9 above.

Noticeably, the *Tourism Law* does not provide for the aim of local control,⁹⁷ despite its traces under objective (h). This affects the ultimate goal of sustainable tourism development to improve livelihoods, considerably, and even more, it reflects adversely on the approach towards local communities in the Mozambican GLTFCA component. The objective with connotations of social equity is also vague in the Law, indicating that the tourism industry in Mozambique may be lacking in its obligations towards corporate social responsibility or human rights protection, other than for tourists.⁹⁸ Within this context, the *Tourism Law* applies to tourism activities; public sector activities directed at promoting tourism, suppliers of tourism products and services, tourists and consumers of tourism products and services.⁹⁹ This scope of the law includes both state actors and non-actors.

5.2.4.1 State actors

The *Tourism Law* entrusts the Council of Ministers with the supervisory role over tourism policy and the strategic planning for tourism development.¹⁰⁰ The principal mandate for the management and promotion of tourism, however, rests with the Ministry of Culture and Tourism (*Ministério da Cultura e Turismo*).¹⁰¹ Its functions include: promoting culture and tourism as instruments of social and economic development; preserving, valorising and conserving cultural heritage; encouraging activities that contribute to the development and strengthening of the cultural and tourist associated movement; improving the legal framework and other mechanisms of articulation; encouraging the participation of public and private individuals and institutions in supporting the promotion of cultural and tourist initiatives; promoting the sustainable development of culture and tourism; contributing to the increase of state revenues through the promotion and development of cultural and creative industries; and regulating and supervising the application of public policies in the

97 See para 3.4.1.4 above.

98 See para 3.4.1.9 above.

99 Article 4 of the *Tourism Law*.

100 Article 6 of the *Tourism Law*.

101 The Ministry of Culture and Tourism is established by *Presidential Decree (Decreto Presidencial)* 1 of 2015 of 16 January 2015.

areas of culture and tourism. These functions are undertaken under specific directorates within this ministry.

The scope of the *Tourism Law* also encompasses other public bodies whose activities promote tourism.¹⁰² The MITADER, whose mandate also includes the licensing of tourism activities in the context of land, environment and rural development, falls under this bracket.¹⁰³ Other ministries whose activities promote tourism development include the ministry responsible for investment, taxation and immigration, namely the Ministry of Industry and Trade (*Ministério da Indústria e Comércio*),¹⁰⁴ the Ministry of Economics and Finance (*Ministério da Economia e Finanças*) and the Ministry of Interior (*Ministério do Interior*),¹⁰⁵ respectively. The *Tourism Law* also calls for the involvement of public training institutions in the planning and programmes of tourism.¹⁰⁶ This makes the Ministry of Education and Human Development (*Ministério da Educação e Desenvolvimento Humano*) an important player in tourism development.

The Ministry of Culture and Tourism also governs the activities of the state agencies that promote tourism development in Mozambique. The first is the National Institute for Tourism (*Instituto Nacional de Turismo - INATUR*),¹⁰⁷ that falls under the Ministry of Culture and Tourism and the Ministry of Economics and Finance.¹⁰⁸ While the principal supervisory body is the former, the Ministry of Economics and Finance oversees the investment aspects of INATUR.¹⁰⁹ INATUR is responsible for, among others, promoting the development of the tourism sector; the classification of

102 Article 4 of the *Tourism Law*.

103 See para 5.2.2.1 above.

104 Established by a 5 of Decree 1 of 1975

105 Established by article 22 of Decree 1 of 1975

106 Article 12 of the *Tourism Law*.

107 Established by *Decree creating the National Institute of Tourism (INATUR) (Decreto Cria o Instituto Nacional do Turismo)* 36 of 2008 (hereafter Decree 36 of 2008) read with *Ministerial Diploma Approving the Internal Regulation of the National Tourism Institute (Diploma Ministerial Aprova o Regulamento Interno do Instituto Nacional do Turismo)* 40 of 2016 of 22 June 2016 (hereafter *Ministerial Diploma 40 of 2016*).

108 Article 2 of the *Ministerial Diploma 40 of 2016*.

109 Article 12 of the *Tourism Law*.

tourism establishments; the development of tourism interest zones; the promotion of tourism activities; financing and investments in tourism development; identifying tourism interest zones, participation in social shares and the management of heritage assets.¹¹⁰

In accordance with these functions, INATUR comprises of Investment and Development Services, Promotion Services, Classification and Training Services and Heritage Services.¹¹¹ The Investment and Development Services focuses on the development of zones for tourist attraction and the development of infrastructure.¹¹² The Promotion Services are concerned with the marketing of tourism and tourism events.¹¹³ The Classification and Training services focuses on the classification of tourism enterprises as well as training.¹¹⁴ The Department of Heritage Management Services focuses on the management of real estate assets and social participation.¹¹⁵ INATUR also comprises of a Microcredit Board for providing financial assistance and credits in the tourism industry.¹¹⁶ Though not under the Ministry of Culture and Tourism, ANAC is the other state agency, which as discussed earlier, is responsible for the issuing of tourism licenses in conservation areas.¹¹⁷

At subnational level, the Provincial Directorates of Culture and Tourism (*Direcções Provinciais de Cultura e Turismo*) as well as District Economic Services (*Serviços Distritais de Actividades Económicas*) represent the Ministry of Culture and Tourism.¹¹⁸ The Provincial Governors are responsible for the licensing of the lower classifications of accommodation establishments, while the District Administrators are responsible for the licensing of single classification establishments in rural

110 Article 3 of the *Ministerial Diploma* 40 of 2016.

111 Article 10 of the *Ministerial Diploma* 40 of 2016.

112 Articles 10(1), 14, 19 and 20 of the *Ministerial Diploma* 40 of 2016.

113 Articles 10(2), 15,16 and 18 of the *Ministerial Diploma* 40 of 2016.

114 Article 10(3) of the *Ministerial Diploma* 40 of 2016.

115 Articles 10(4), 22-25 of the *Ministerial Diploma* 40 of 2016.

116 Articles 37 and 38 of the *Ministerial Diploma* 40 of 2016.

117 See para 5.2.2 above.

118 Article 31 of the *Ministerial Diploma* 40 of 2016.

areas.¹¹⁹ The District Administrator is also responsible for promoting and licensing of tourism activities, and may delegate it to the relevant tourism representative at district level.¹²⁰ However, challenges around the decentralisation of the licensing of tourism activities, persist in practice.¹²¹ The section that follows considers the role of non-state actors in tourism development.

5.2.4.2 Non-state actors

The tourism sector is organised and functions through a system that incorporates the public and private entities involved in tourism activities.¹²² The private sector includes suppliers of tourism products and services, namely tour operators, tourist amusement, the travel industry, the accommodation industry, recreation, the food and beverages industry and suppliers of other activities that may be included by the Council of Ministers.¹²³ The *Tourism Law* also paves the way for the involvement of tourism businesses in the governance of TFCAs by allowing tourism activities in conservation areas.¹²⁴

While the *Tourism Law* allows for the involvement of other parties in tourism development, it does not provide any further detail as to the meaning of these “other parties,” nor does it contain provisions on “other actors”, save for the enumerated rights of tourists.¹²⁵ This suggests that the law fails to incorporate pertinent stakeholders such as the local communities. This vagueness over other non-state actors is somewhat alleviated by the *National Tourism Policy and Strategy, 2003 (Política Nacional de Turismo e Estratégia de Implementação)*.¹²⁶ This policy document calls for the establishment of local tourism bodies, in the form of associations, which integrate economic agents and community leaders of specific

119 Article 12(b) and (c) of Decree 18 of 2007.

120 Article 35 of the *Ministerial Diploma* 40 of 2016.

121 ACIS and GIZ *The Legal Framework for Tourism Licensing* 12.

122 Article 5 of the *Tourism Law*.

123 Article 15 of the *Tourism Law*.

124 Article 9 of the *Tourism Law*.

125 Articles 20 and 21 of the *Tourism Law*.

126 Approved by Resolution 14 of 2003.

areas. It calls for representatives of NGOs that operate in a tourism destination and other entities that are influential in the socio-economic development of the area.¹²⁷ These associations should represent residents of tourism destinations in relation to, *inter alia*, plans for the utilisation of the area for tourism purposes.¹²⁸ They may be useful in facilitating the involvement of local stakeholders such as local communities in tourism development, filling the gaps in the *Tourism Law*.¹²⁹ The new *Strategic Tourism Development Plan 2015-2024* of 2016, a product of multi-stakeholder engagement, envisages a more detailed account of the relationships between these actors.¹³⁰

5.3 Governance-based tools for promoting the GLTFCA objectives

Against this background, it is necessary to examine the governance-based tools in place to promote biodiversity conservation, the improvement of livelihoods—alleviation of poverty and economic development, after the governance actors in the Mozambican GLTFCA component have been established.¹³¹

5.3.1 Tools for biodiversity conservation in TFCAs

This segment assesses whether the relevant Mozambican legislation provides for the tools necessary for promoting biodiversity conservation in TFCAs are provided for in.¹³² These tools include protected area management options for local communities, CBNRM and benefit-sharing, administrative sanctions, criminal sanctions for wildlife crimes, agreements for biodiversity conservation, rights to natural resources, including land, complementary procedural rights and civil remedies.¹³³

127 Paragraph 8.6.3 of the *National Tourism Policy and Strategy*.

128 Paragraph 8.6.3 of the *National Tourism Policy and Strategy*.

129 See para 5.3.1.2 above.

130 UNWTO 2016

<http://cooperation.unwto.org/news/2016-01-14/new-strategic-tourism-development-plan-stdp-mozambique-approved>.

131 See para 3.7.2 above.

132 See para 3.7.2.1 above.

133 See para 3.7.2.1 above.

5.3.1.1 Mandatory protected areas management options for local communities

The *Conservation Areas Law* establishes community conservation areas (*área de conservação comunitária*) that fall within the community public domain under the management of the local communities who hold the rights of use and enjoyment of land that is allocated for conservation.¹³⁴ The objectives of these community conservation areas are to protect and conserve natural resources within customary community use in order to ensure their sustainable management for local sustainable development.¹³⁵ The local communities therefore manage community conservation areas in accordance with the community customary rules and practices, enabling even the licensing of activities for the exploitation of the resources.¹³⁶

Additionally, the participatory management in the *Conservation Areas Law*, which includes ANAC as the managing authority in collaboration with the private sector, local communities and other external entities, is mandatory in nature.¹³⁷ However, it does not specify the nature of these collaborations and the extent to which local communities may participate. In other words, the law is silent on whether local communities participate as managers-*cum*-land rights holders and/or beneficiaries.¹³⁸ This is somewhat alleviated by the *Land Law*, which ensures the participation of rural communities in natural resource management as holders of land use rights known as the *Direito de Uso e Aproveitamento de Terra* (DUATs). It also ensures the participation of rural communities as natural resources right holders. However, in the absence of clear and definitive management arrangements, this leaves local communities vulnerable to the dictates of the management authorities and the other actors.¹³⁹

134 Article 22 of the *Conservation Areas Law*.

135 Article 22(2) of the *Conservation Areas Law*.

136 Articles 22(3) and (4) of the *Conservation Areas Law*.

137 See para 5.2.2.2 above.

138 See para 5.2.2.2 read with para 3.5.1.2 above.

139 See para 5.2.2.2 read with para 2.4.2.2 above.

5.3.1.2 Mandatory CBNRM and benefit-sharing tools and incentives

CBNRM in Mozambique can be traced back to the *Constitution of the Republic of Mozambique*, 2004, which places certain natural resources under the public domain of communities.¹⁴⁰ Consequently, the community conservation areas in the *Conservation Areas Law* are a mandatory form of CBNRM.¹⁴¹ Moreover, the participatory management in conservation areas, which includes local communities; as well as the COGEs in forestry and wildlife management and the local community management provisions in the *Land Law*, makes CBNRM mandatory.¹⁴² However, it appears that local communities do not benefit much from these tools.¹⁴³ For instance, the *Ministerial Decree on the Sharing of Protected Area Tourism Revenues (Consignação das Receitas Cobradas nos Parques e Reservas Nacionais Decreto)*,¹⁴⁴ entitles local management committees to 16 percent of the revenue generated from the tourism fees in protected areas.¹⁴⁵ The *Forestry and Wildlife Regulations*¹⁴⁶ also allocate 20 percent of the revenue from forestry and wildlife management to local communities.¹⁴⁷ Yet, these benefit-sharing tools apply to the local communities as right holders to the land or natural resources within or adjacent to the protected areas and not necessarily as part of their participation in CBNRM.¹⁴⁸

Even then, local communities are licensed to exploit the natural resources for commercial purposes, except where the exploitation is for their own consumption.¹⁴⁹ For instance, hunting wildlife for consumptive purposes, requires additional

140 Article 98(3) of the *Constitution of the Republic of Mozambique*, 2004. See also para 5.3.1.1 above.

141 See para 5.3.1.1 above.

142 See para 5.2.2.2 above.

143 See for instance Dyer *et al* 2014 *Journal of Environmental Management* 137-145; Nhantumbo and Anstey "CBNRM in Mozambique" 257-276; Wilson "Of Diffusion and Context" 149-176.

144 (*Ministerio Decreto no. 15/2009*) Decree 15 of 2009 and Ministerial Diploma (*Ministerio Diploma no. 66/2010*) 66 of 2010.

145 See also, Pereira *Sharing Benefits from Tourism in Mozambique* 81-83.

146 Decree 12 of 2002.

147 Article 102 of the *Forestry and Wildlife Regulations* read with a 35 of the *Forestry and Wildlife Law*.

148 Aquino *et al Mozambique Dedicated Grant Mechanism* 1.

149 Articles 9 and 15 of the *Forestry and Wildlife Law*.

requirements for the fulfilment of technical requirements, such as proof of technical capacity in the commercial use of wildlife and forestry resources.¹⁵⁰ These qualifications to the CBNRM have a crippling effect on local community participation. Notwithstanding the above, there are no incentives for CBNRM in the management of protected areas.¹⁵¹

5.3.1.3 Administrative sanctions for non-compliance

There are no administrative sanctions for non-compliance with the mandatory management tools as a means to protect the interests of local communities. This is perhaps the reason for the challenges that local communities face in participating and benefiting from the management of protected areas in Mozambique.¹⁵²

5.3.1.4 Criminal sanctions for wildlife crimes

The *Environmental Framework Law*, which governs environmental protection and management, prohibits activities that threaten conservation, reproduction, quality and quantity of biological resources, especially those that are threatened with extinction.¹⁵³ Criminal liability arises for non-compliance with these prohibitions.¹⁵⁴ The *Conservation Areas Law* further prohibits activities such as hunting, forestry, agriculture, mining or farming, all works that may alter the land or vegetation, that cause pollution, that disturb the maintenance of ecological processes, and the introduction of alien species in national parks.¹⁵⁵ These prohibitions also attract criminal liability.¹⁵⁶ Moreover, the *Forest and Wildlife Law* imposes penalties in the

150 Article 15(3) of the *Forestry and Wildlife Law*.

151 Johnstone, Cau and Norfolk 2004 www.policy-powertools.org/.../Mozambique_study_Johnstone_et_al.pdf.

152 See para 2.4.2.2 above.

153 Article 12 of the *Environmental Framework Law*.

154 Article 27 of the *Environmental Framework Law*.

155 Article 16 of the *Conservation Areas Law*.

156 Articles 53, 54, 59 and 60 of the *Conservation Areas Law* on additional penalties relating to conservation areas.

form of fines and imprisonment for infractions pertaining to forest and wildlife management and resources.¹⁵⁷

5.3.1.5 Agreements for biodiversity conservation

The participatory management of conservation areas, though mandatory, is effected through agreements between ANAC and private entities, external entities and local communities.¹⁵⁸ Similar agreements are possible for the management of forestry and wildlife resources as well as for the management of rural land falling within protected areas.¹⁵⁹ In addition, the ANAC conservation committees allow for the conclusion of agreements for local communities to participate in an advisory capacity for conservation initiatives.¹⁶⁰ The *Conservation Areas Law* also specifically provides for PPPs and CPPPs for generating income for biodiversity conservation.¹⁶¹ These tools enable local community participation in biodiversity conservation within the GLTFCA component.

5.3.1.6 Enforcement of rights to natural resources, including land; complementary procedural rights and civil remedies

The rights of access to and use of natural resources is premised in the *Constitution of the Republic of Mozambique*, 2004, which places the ownership of natural resources in the State.¹⁶² The State therefore determines the conditions under which natural resources may be used subject to national interests.¹⁶³ Within this context, the *Forestry and Wildlife Law* provides for the right of local communities to access and use forestry and wildlife resources for subsistence purposes.¹⁶⁴ Local

157 Articles 39, 41, 42, 44 and 45 of the *Forestry and Wildlife Law*.

158 See paras 5.2.2.2 and 5.3.1.1 above.

159 See paras 5.2.2.2 and 5.3.1.1 above.

160 See para 5.2.2.2 above.

161 Article 9 of the *Conservation Areas Law*.

162 Article 98 of the *Constitution of the Republic of Mozambique*, 2004.

163 Article 102 of the *Constitution of the Republic of Mozambique*, 2004.

164 Articles 9, 18 and 35 of the *Forestry and Wildlife Law*. See also Johnstone, Cau and Norfolk www.policy-powertools.org/.../Mozambique_study_Johnstone_et_al.pdf.

communities are therefore entitled to enter into conservation areas at no charge.¹⁶⁵ In addition, the DUATs for rural communities in the *Land Law*, entitle them to participate in the management of conservation.¹⁶⁶ However, this Law does not seem to extend this to the access and use of land within the conservation areas themselves.¹⁶⁷ Similarly, the *Conservation Areas Law* does not permit resource extraction within national parks and other similar conservation areas, permitting only the indirect use of natural resources with exceptions.¹⁶⁸ The effect is that this law limits the access and use rights of local communities in the national parks that fall within the Mozambican GLTFCA component but not so within those areas outside of the national parks.¹⁶⁹ This appears to conflict with the rights provided for in the *Forestry and Wildlife Law*.

Concerning procedural rights, the *Conservation Areas Law* recognises the principle of citizen participation in the management and benefits of natural resources as a right for the public to participate in the decision-making processes throughout the conservation value chain and in the sustainable use of resources.¹⁷⁰ The State is therefore obliged to establish appropriate mechanisms for the participation of public, private and community organisations in the management of conservation areas.¹⁷¹ These tools are buttressed by the requirements for the participation of local communities in forestry and wildlife management in the *Forestry and Wildlife Law* as well as in the *Land Law's* provisions for the participation of rural communities in the

165 Articles 18 and 35 of the *Forestry and Wildlife Law*.

166 Article 7 of the *Land Law*.

167 Article 7 of the *Land Law*.

168 Articles 13 and 14 of the *Conservation Areas Law*.

169 See for instance, Tipping-Woods 2016 <https://conservation.co.za/media-articles/finding-refuge-untapped-potential-mozambiques-banhine-zinave/> who reports that the protected areas in the Mozambican GLTFCA component are surrounded by rural villages and are under pressure from bush meat and commercial poaching and logging as well as human wildlife conflict. These challenges are perhaps a consequence of the limitations on the rights of use and access within the protected area components. See also, Ekblom, Gillson and Notelid 2010 *Journal of Archaeology and Ancient History* 1-29; Lustrum 2015 *Area* 142-152; Lustrum 2010 *South African Geographical Journal* 129-143; Maasé 2016 *Conservation and Society* 100-111; Maasé and Lustrum 2016 *Geoforum* 227-237; Spierenburg and Wels 2006 *Space and Culture* 294-312; Witter 2013 *Conservation and Society* 406-419.

170 Article 4 of the *Conservation Areas Law*.

171 Article 6 of the *Conservation Areas Law*.

management of natural resources.¹⁷² The *Forestry and Wildlife Regulations* go a step further by setting out the consultative process between a potential investor and the local community for concession awards and licensing.¹⁷³ The aim of this provision is to secure benefits for local communities, as primary stakeholders, in the commercial exploitation of their resources.¹⁷⁴ By giving local communities a central role, this also avoids disenfranchisement of traditional users of these resources while at the same time attracting commercial investment.¹⁷⁵ Yet, this consultative process is only undertaken in the planning phase of the projects so that there is no follow-up or monitoring and evaluation mechanisms during the operational phase of the commercial projects.¹⁷⁶ Other challenges relating to the use of the consultation tool emanate from its dilution by the lack of incentives for investors, technical incompetence of local government and the lack of awareness or bargaining power of communities.¹⁷⁷ However, there does not seem to be remedies where local communities are aggrieved. These setbacks ultimately influence the improvement of livelihoods, as will be seen below.

5.3.2 *Tools for the improvement of livelihoods–alleviation of poverty in TFCAs*

This segment examines whether the necessary tools for promoting the improvement of livelihoods–alleviation of poverty in TFCAs exist in Mozambique.¹⁷⁸ It explores the existence of mandatory poverty reduction programmes or strategies, provincial legislation and municipal by-laws for the provision of basic services, mandatory minimum standards, incentives, agreements and rights for the provision of basic services, voluntary or agreement-based tourism certification standards, social

172 See paras 5.2.2.2 and 5.3.1.1 above.

173 Article 97 of the *Forestry and Wildlife Regulations* read with aa 35 and 36 of the *Forestry and Wildlife Law* 10 of 1999.

174 Salomão 2006 <http://www.cifor.org/miombo/docs/CBNRM%20Mozambique.pdf>.

175 Johnstone, Cau and Norfolk 2004 www.policy-powertools.org/.../Mozambique_study_Johnstone_et_al.pdf.

176 Johnstone, Cau and Norfolk 2004 www.policy-powertools.org/.../Mozambique_study_Johnstone_et_al.pdf.

177 Johnstone, Cau and Norfolk 2004 www.policy-powertools.org/.../Mozambique_study_Johnstone_et_al.pdf.

178 See para 3.7.2.2 above.

licenses to operate, tools for voluntary TDIDR, and HRIAs for tourism development projects.¹⁷⁹

5.3.2.1 Mandatory poverty reduction programmes or strategies

The *Constitution of the Republic of Mozambique*, 2004 states that the fundamental objectives of Mozambique are, *inter alia*, to build a society of social justice and to achieve material and spiritual well-being and quality of life for its citizens.¹⁸⁰ These objectives are effected through, *inter alia*, the *Government's Action Plan for the Reduction of Absolute Poverty 2011-2014* (*Plano de Accao para Reducao da Pobreza Absoluta* - PARPA) which, despite its timeframe, serves as the key framework document for fighting poverty in Mozambique through pro-poor growth.¹⁸¹ It recognises that the tourism sector can contribute to the alleviation of poverty through promoting locally produced goods and thereby stimulating employment opportunities.¹⁸² Closely related is the *Five Year Plan 2015-2019* (*Programa Quiquenal do Governo*), a key medium-term programming instrument, to improve the living conditions of Mozambican people. Another strategic instrument is *Agenda 2025*, which highlights medium to long-term priorities for the future development of Mozambique and establishes the three main pillars for the development of the country, namely, governance, human capital and economic development.¹⁸³

Other pertinent strategies include the *Strategic Plan for Agricultural Development* (*Plano Estratégico de Desenvolvimento do Sector Agrário*) 2011-2020,¹⁸⁴ the *National Strategy for Basic Social Security* (*Estratégia Nacional de Segurança Social Básica*) (2016-2024)¹⁸⁵ and the *National School Feeding Programme* (*Nacional de*

179 See para 3.7.2.2 above.

180 Article 11 of the *Constitution of the Republic of Mozambique*, 2004.

181 IMF 2011 <https://www.imf.org/external/pubs/ft/scr/2011/cr11132.pdf>.

182 Paragraph 3.1 of the *Strategic Plan for the Development of Tourism in Mozambique* (2004-2013).

183 *Agenda 2025* (2003).

184 This aims to strengthen value chains and PPPs in food security.

185 For improvement in the management and coverage of social security programmes.

Alimentação Escolar).¹⁸⁶ However, the operationalisation of these strategies at the sub-national level is challenged by the insufficient development of implementation strategies and the lack of capacity in institutions at this level of government.¹⁸⁷ Consequently, poverty remains high in provinces such as the GLTFCA province of Gaza, which is predominantly rural.¹⁸⁸ Within this context, the study considers subnational the tools for the provision of basic services.

5.3.2.2 Provincial legislation and municipal by-laws for basic services

The provision of basic services at subnational and local level is regulated by the *Law of Local State Organs*, which decentralises this mandate to district and provincial governments.¹⁸⁹ Therefore, the provision of basic services falls under the domain of provinces and districts. However, in the absence of identified provincial legislation and municipal by-laws,¹⁹⁰ the national sectoral laws apply. This is considered in detail below.

5.3.2.3 Mandatory minimum standards, incentives, agreements and rights for provision of basic services

The national sectoral legislation sets minimum standards for the provision of basic services. For instance, the *Water Law (Lei de Águas)* provides for water supply and sanitation services.¹⁹¹ In terms of this and related law and policy,¹⁹² access to water and sanitation services is facilitated by provinces and districts but once the necessary infrastructure is constructed it is managed by community groups that have little or no state intervention as well as very limited, if any, public funding for

186 For the expansion of school feeding to all pre-primary and primary schools, emphasising local procurement, community participation and nutrition education.

187 World Food Programme 2017
<https://documents.wfp.org/stellent/groups/public/documents/resources/wfp291937.pdf>.

188 World Bank *Accelerating Poverty Reduction* 27-30.

189 Articles 2 and 3 of the *Law of Local Organs*.

190 The researcher was unable to access any provincial legislation or municipal by-laws.

191 *Water Law* 16 of 1991.

192 See for instance, the *National Water Policy (Política Nacional de Água)* (2007); the *National Rural Water and Sanitation Strategic Plan (Água Rural Nacional e Plano Estratégico de Saneamento)* (2007).

works.¹⁹³ The *Constitution of the Republic of Mozambique*, 2004 provides for a national health system for all citizens. This is regulated by the *Health Sector Strategic Plan (Plano Estratégico do Sector da Saúde) 2014-2019*, which emphasises the provision of primary health care to all citizens through the National Health Services.¹⁹⁴ However, in rural areas – where the National Health Services cannot reach,¹⁹⁵ the provision of primary health care is left to community level service providers as well as Traditional Medicine Practitioners who offer an alternative to western medicine.¹⁹⁶ Similarly, access to other basic services for rural communities is limited by a lack of finance and government personnel.¹⁹⁷

There appears to be no incentives for the provision of basic services in existing legislation. For rural communities there also appears to be no legislative provision for agreements hence the limited provision or inaccessibility of these services in rural areas. Nevertheless, the *Constitution of the Republic of Mozambique*, 2004 recognises certain rights to basic services, such as, the right to education,¹⁹⁸ the right to health¹⁹⁹ and the right to housing.²⁰⁰ These rights are justiciable and therefore guarantee access to justice and courts for breach.²⁰¹ In addition, the *Constitution of the Republic of Mozambique*, 2004, sets out a right of popular action, which enables citizens to claim, *inter alia*, compensation for the violation of rights

193 African Ministers' Council on Water *Water Supply and Sanitation* 16-22.

194 National Health Service has four levels of service provision, namely, Health Centres and Health Posts; and district hospitals, general hospitals and rural hospitals, see para 2.1.4.1 of the *Health Sector Strategic Plan PESS 2014-2019*.

195 See para 2.1.4 of the *Health Sector Strategic Plan PESS 2014-2019*. See also, Schwitters *et al* 2015 *Global Health: Science and Practice* 109-115; Van der Ploeg *et al* "The responsibility of business enterprises" 194.

196 See para 2.1.4 of the *Health Sector Strategic Plan PESS 2014-2019*. See for instance, Schwitters *et al* 2015 *Global Health: Science and Practice* 109-115. See also, Van der Ploeg *et al* "The responsibility of business enterprises" 194.

197 With respect to the education sector, see for instance, the *National Education System Law (Lei do Sistema Nacional de Educação)* 6 of 1992; the *Education Sector Strategic Plan (Plano Estratégico do Sector da Educação Nacional)* II 2005-2009.

198 Article 88 of the *Constitution of the Republic of Mozambique*, 2004.

199 Article 89 of the *Constitution of the Republic of Mozambique*, 2004.

200 Article 91 of the *Constitution of the Republic of Mozambique*, 2004.

201 Articles 6(2)1 and 70 of the *Constitution of the Republic of Mozambique*, 2004.

such as the right to health.²⁰² However, judicial actions regarding these and other rights involve litigation against the State, yet in terms of the justice system the State cannot be held accountable by the courts.²⁰³

5.3.2.4 Voluntary or agreement-based tourism certification standards

The law does not yet provide for tourism certification standards. However, voluntary tourism certification standards are established by regional tourism organisations, which tourism businesses in Mozambique can comply with.²⁰⁴

5.3.2.5 Social license to operate

It appears that there are no express laws to include a social license to operate for tourism developers. Nevertheless, the management regime for rural land in the *Land Law* may set the basis for such agreements to be concluded between rural communities and developers.²⁰⁵

5.3.2.6 Mandatory tools, incentives, agreement-based standards, agreements, human rights protections and civil remedies for voluntary TDIDR

The *Conservation Areas Law* provides for the resettlement of people out of conservation areas, where the presence of these people is incompatible with the legal status of the conservation area or prevents its good management.²⁰⁶ While this provision is not directly applicable to TDIDR, it serves as a basis for resettlement where tourism development occurs, within the management framework of the conservation area. However, there are no specific procedures for the resettlement process. This potentially exposes affected communities to involuntary displacement

202 Article 81(1)(2)(a)(b) of the *Constitution of the Republic of Mozambique*, 2004.

203 See for instance, aa 223-230 of the *Constitution of the Republic of Mozambique*, 2004 on the judicial system of Mozambique. For a detailed discussion of the power of the courts over human rights claims against the State, see for instance, Nhampossa *Challenges to the Implementation and enforcement* 22-26; Mandlate 2010 *ESR: Economic and Social Rights in South Africa* 22-24.

204 See for instance, the certification standards of Fair Trade Tourism organization <http://www.fairtrade.travel/Mozambique/>.

205 See para 5.3.3.1 above.

206 Article 48 of the *Conservation Areas Law*.

and resettlement. Notwithstanding, the DUAT for rural communities provided for in the *Land Law* makes it mandatory for tourism developers to consult affected communities prior to any TDIDR.²⁰⁷ The consultation process may be regarded as a basis for the creation of agreements between tourism developers and rural communities, where TDIDR is an option.²⁰⁸ The DUAT is also a right of use even where there is no formal title over the land, thus protecting rural communities from involuntary TDIDR.²⁰⁹

In addition, the *Territorial Planning Legal Framework Law (Lei sobre Ordenamento do Território)*²¹⁰ states that legal occupiers in an area planned to be used in the public interest, may be removed from such land and be fairly compensated for the loss of tangible and intangible assets, the breakdown of social cohesion, and the loss of their productive assets.²¹¹ Nevertheless, it does not detail the mechanisms for compensation in instances of appropriation of land.²¹² Moreover, where TDIDR occurs, the *Regulations on the Process of Resettlement Resulting from Economic Activities (Regulamento sobre o Processo de Reinstalação de Actividades Económicas)*²¹³ (hereafter Resettlement Regulations) lay down the procedures for the preparation, implementation and monitoring of resettlement.²¹⁴ These Regulations establish a resettlement model, the environmental characteristics and criteria for the definition of plots for any resettlement process,²¹⁵ prescribing the

207 See para 5.3.3.1 above.

208 See para 5.3.3.1 above.

209 See para 5.3.3.1 above. These legal tools for resettlement are especially applicable to mining activities in Mozambique. For a detailed discussion of their application in the latter, see for instance, Lillywhite, Kemp and Sturman *Mining, resettlement and lost livelihoods* 6.

210 *Territorial Planning Legal Framework Law* 19 of 2007; Decree (*Decreto*) 23/2008; Ministerial Diploma (*Ministerio Diploma*) 181/2010.

211 Article 12 of the *Territorial Planning Legal Framework Law*.

212 Chiziane *et al Legal Framework Enabling Sustainable Land-use* 46.

213 *Regulation on the Process of Resettlement Resulting from Economic Activities Decree* 31 of 2012.

214 Article 11 of the *Regulation on the Process of Resettlement Resulting from Economic Activities Decree* 31 of 2012.

215 Articles 16, 17 and 18 of the *Regulation on the Process of Resettlement Resulting from Economic Activities Decree*.

respective roles and responsibilities of the government at all levels,²¹⁶ and the developers.²¹⁷ In particular, tourism developers must produce resettlement plans, which are an integral part of the environmental impact assessment (EIA).²¹⁸ The resettlement process is also subject to inspection by the Environmental Inspection authorities.²¹⁹ Non-compliance with the Resettlement Regulations attracts administrative as well as criminal sanctions.²²⁰

Also important, the Resettlement Regulations establish performance benchmarks for developers to re-establish or create a standard of living equal to or above the pre-resettlement standard.²²¹ These benchmarks are also enforceable as rights for the affected communities:

- (a) To have their income level re-established, equal to or above the previous level;
- (b) To have their standard of living re-established, equal to or above the previous level;
- (c) To be transported with their goods to the new place of residence;
- (d) To live in a physical space with infrastructures and social facilities;
- (e) To have space to perform their subsistence activities; and
- (f) To give their opinion about the entire resettlement process.²²²

In addition to these substantive rights, the affected communities have the right to information about the resettlement process to enable public participation.²²³ This

216 Article 12 of the *Regulation on the Process of Resettlement Resulting from Economic Activities Decree*.

217 Article 11 of the *Regulation on the Process of Resettlement Resulting from Economic Activities Decree*.

218 Article 15 read with aa 19-23 of the *Regulation on the Process of Resettlement Resulting from Economic Activities Decree*. The EIA is provided for in the *Environmental Impact Assessments Regulations Decree (Regulamento sobre a Avaliação do Impacto Ambiental)* 45 of 2004.

219 Article 24 of 2012. The Environmental Inspection authorities are established in terms a 29 of the *Environmental Framework Law*.

220 Articles 25 and 26 of the *Regulation on the Process of Resettlement Resulting from Economic Activities Decree*.

221 Article 4 of the *Regulation on the Process of Resettlement Resulting from Economic Activities Decree*.

222 Article 10 of the *Regulation on the Process of Resettlement Resulting from Economic Activities Decree*. Translation made available by Associação de Comércio e Indústria 2017 <https://www.acismoz.com/wp-content/uploads/2017/06/Regulamento-de-Reassentamento-August-as-published-JO.pdf>.

223 Article 14(1) and (2) of the *Regulation on the Process of Resettlement Resulting from Economic Activities Decree*.

right also includes compulsory dissemination procedures.²²⁴ The right of access to information is also enforceable by interested parties, enabling the participation of civil society on behalf of local communities.²²⁵ These substantive and procedural rights, however, are not fortified by a specific concomitant right of access to justice in the event of TDIDR.²²⁶ As progressive as these tools for resettlement are, they do not limit TDIDR to a last resort.²²⁷ This exposes local communities to high possibilities of displacement for large-scale economic activities.²²⁸ It is therefore important to consider whether there are HRIAs.

5.3.2.7 HRIAs for tourism development projects

There are also no laws that provide for HRIAs in general and for tourism development projects in particular. However, the National Directorate for Human Rights of the Ministry of Justice, in partnership with civil society has drawn up a Business and Human Rights Initiative (*Iniciativa de Negócios Direitos Humanos de Moçambique*), based on the United Nations Guiding Principles on Business and Human Rights.²²⁹ This initiative is a preliminary effort for the creation of a National Action Plan on business and human rights, as recommended by the UN Human Rights Council and UN Working Group on business and human rights.²³⁰

224 Article 14(4) of the *Regulation on the Process of Resettlement Resulting from Economic Activities Decree*.

225 Article 14(2) of the *Regulation on the Process of Resettlement Resulting from Economic Activities Decree*.

226 Chiziane *et al* *Legal Framework Enabling Sustainable Land-use* 43.

227 Chiziane *et al* *Legal Framework Enabling Sustainable Land-use* 43.

228 See para 2.4.2.2 above. See also Van der Ploeg *et al* "The responsibility of business enterprises" 194-195; Du Plessis "Cross-border gas pipelines" 292.

229 Business & Human Rights Resource Centre 2018 <https://www.business-humanrights.org/en/mozambique-1>. See also UN Human Rights Office of the High Commissioner 2016 <https://www.ohchr.org/en/issues/business/pages/nationalactionplans.aspx>.

230 Business & Human Rights Resource Centre 2018 <https://www.business-humanrights.org/en/mozambique-1>.

5.3.3 Tools for promoting economic development in TFCAs

This segment examines whether relevant Mozambican legislation provides for the necessary tools for promoting economic development in TFCAs.²³¹ This entails investigating the existence of the following tools: revenue sharing agreements, tourism planning, marketing, infrastructure development and land use planning, investment in TFCAs, tourism concessions, equitable treatment of investors, incentives for tourism businesses including favourable immigration controls, local procurement, movement of goods and persons, labour and employment quality, job creation and job security and CSR strategies.²³²

5.3.3.1 International revenue sharing agreement(s) and mandatory national revenue sharing tools for TFCA participating countries

In as much as the *Conservation Areas Law* provides for the establishing of TFCAs,²³³ the absence of a revenue sharing agreement between the participating countries also means there are no revenue sharing tools at domestic level.²³⁴

5.3.3.2 Mandatory national minimum standards for tourism planning, marketing, infrastructure development and land use planning in TFCAs

The *Tourism Law* provides for the sustainable development of tourism as the benchmark for tourism planning.²³⁵ The sustainable development of tourism requires all levels of government to promote tourism development with low environmental impact in order to preserve the natural resources.²³⁶ In addition, the operation of tourist undertakings must be done in ways that seek to improve their integration into the local economy and the social environment.²³⁷ In conservation areas, the *Tourism Law* prescribes specific forms of tourism, namely, ecotourism and cynegetic

231 See para 3.7.2.3 above.

232 See para 3.7.2.3 above.

233 See para 5.2.1 above.

234 See para 4.3.3.1 above.

235 Article 7 of the *Tourism Law*.

236 Article 7(2) of the *Tourism Law*.

237 Article 7(3) of the *Tourism Law*.

tourism,²³⁸ among others, which must comply with management plans and other legal provisions.²³⁹ Further, the tourism that occurs in the conservation areas must promote the conservation of the ecosystems, habitats and species found therein.²⁴⁰ The *Conservation Areas Law* adds the basic standards for the protection, conservation, renewal and sustainable use of biodiversity in conservation areas,²⁴¹ while the *Forestry and Wildlife Law* stipulates the sustainable use of natural resources.²⁴²

Tourism marketing is regulated by the *Tourism Marketing Strategy (Estratégia de Marketing do Turismo)*.²⁴³ For marketing purposes, this Strategy establishes key geographic areas as Priority Investment Areas (*Áreas Prioritárias para Investimento no Turismo – APITs*). In terms of this classification, the GLTFCA falls under the Type B Priority Investment Areas (Limpopo Massingir and Limpopo-Mapai) that allow for ecotourism, adventure, special interests for the domestic, regional and international leisure and niche eco-tourism market segments.²⁴⁴ This marketing classification is consistent with the sustainable development of tourism provided for in the *Tourism Law* with respect to low impact tourism.²⁴⁵

With respect to infrastructure development, Mozambique is largely dependent upon PPPs, particularly donor funded projects regulated by the *Public-Private Partnerships, Large Scale Projects and Business Concessions Law (Lei do Normas Orientadoras do Processo de Contratação, Implementação e Monitoria de Empreendimentos de Parcerias Público-Privadas, de Projectos de Grande Dimensão e de Concessões*

238 Paragraph 26 Glossary of the *Tourism Law* defines cynegetic tourism as hunting, photography, filming and watching of wild animals for recreational or commercial purposes.

239 Article 9 of the *Tourism Law*.

240 Article 9 of the *Tourism Law*.

241 See paras 5.2.1, 5.2.2. and 5.3.1.1 above.

242 See paras 5.2.1, 5.2.2. and 5.3.1.1 above.

243 Approved by Resolution 45 of 2006.

244 See the *APIT Classifications in the Tourism Marketing Strategy 2006/2013*. For a detailed discussion of these classifications, see for instance, Magnani 2017 *Almatourism Special Issue* 231-240.

245 Para 5.2.4.1 above.

Emresariais).²⁴⁶ The over reliance on donor funded projects has contributed to *ad hoc* infrastructure development in areas determined by the donors, leaving minimal development in rural areas.²⁴⁷ Nevertheless, the *Tax Incentives Code (Código de Benefícios Fiscais)*²⁴⁸ establishes tax benefits for investment expenditures incurred with the construction and rehabilitation of public infrastructure, creating incentives for infrastructure development for the private sector.²⁴⁹ It also provides for incentives to develop basic public infrastructure, such as, among others, the construction and rehabilitation of highways, railways, airports, water supply, electricity, in order to attract further investment in certain economic activities.²⁵⁰

As regards land use planning, the *Territorial Planning Framework Law* establishes the framework for coordinated land use in rural and urban areas. Its objectives are to ensure the organisation of the national space and the sustainable use of natural resources, considering legal, administrative and cultural aspects; and to ensure favourable material conditions for social and economic development of the country, including protection and conservation of the environment.²⁵¹ In rural areas, spatial planning is provided for in regional, provincial and municipal plans through a consultative process and subsequent publication.²⁵² This process takes into account the rights of occupation of local communities and their opportunities to comment, complaint and dispute.²⁵³ However, it does not provide for planning at the district level, thereby it limits the means by which local communities may participate in the planning process.²⁵⁴

246 *Public-Private Partnerships, Large Scale Projects and Business Concessions Law* 15 of 2011.

247 See for instance, Shannon *et al* 2018 *Sustainability* 4. More generally on PPPs in various sectors, see for instance, Fischer and Nhabinde *Assessment of Public-Private Partnerships* 11-12.

248 Approved by Act 4 of 2009.

249 Article 20 of the *Tax Incentives Code* 4 of 2009.

250 Article 19 of the *Tax Incentives Code*.

251 Article 10 of the *Territorial Planning Law*.

252 Article 12 of the *Territorial Planning Law*.

253 Article 12 of the *Territorial Planning Law*.

254 Monteiro *et al Territorial Planning at Community Level* 9. Currently, the district level land use plans available were developed under the Community Land Initiative, a project funded by a group of donors from the United Kingdom, the Netherlands, Switzerland, Sweden, Denmark and

The *Land Law* also establishes land use plans to provide, in an integrated manner, the general and sectoral development guidelines for a specific geographical area.²⁵⁵ Additionally it requires the preparation of exploitation plans.²⁵⁶ These are prepared by project developers, indicating the proposed land use and the benefits to be derived from the activities and works on the land, in accordance with a determined schedule.²⁵⁷ These land use plans may assist in remedying the gap in local community participation in spatial planning.

5.3.3.3 Mandatory tools, incentives and agreements for investment in TFCAs

The *Constitution of the Republic of Mozambique*, 2004 establishes the general principles for the economic, social, financial and fiscal organisation of the state.²⁵⁸ The general principle for the economic policy is to lay down “the fundamental bases for development, improving the living conditions of the people, through the participation of citizens and the efficient use of human and material resources.”²⁵⁹ Within this framework of the State’s economic policy, the State must guarantee foreign investment.²⁶⁰ The *Investment Law (Lei de Investimentos)*²⁶¹ and its *Regulations*,²⁶² the principal law on investment, specify that investments should contribute to the sustainable economic and social development of the country.²⁶³ Read with the *Tourism Marketing Strategy*, investment in tourism also specifically extends to investment in APITs, including the GLTFCA Mozambican component.²⁶⁴

Ireland, aimed at supporting the Government of Mozambique in securing community land use rights. See also Chiziane 2017 *International Yearbook of Soil Law and Policy* 309-320.

255 Article 31 of the *Land Law*.

256 Article 19 of the *Land Law*.

257 Article 1(12) of the *Land Law*.

258 Chapter IV of the *Constitution of the Republic of Mozambique*, 2004.

259 Article 96 of the *Constitution of the Republic of Mozambique*, 2004.

260 Article 108 read with aa 11 and 107 of the *Constitution of the Republic of Mozambique*, 2004. The economic policy is further developed in the Five Year Plan (*Plano Quinquenal do Governo*) 2015-2019.

261 *Investment Law* 3 of 1993.

262 Decree 43 of 2009.

263 Article 6 of the *Investment Law*.

264 See para 5.3.3.2 above.

The *Tourism Law* provides for incentives for new investments and undertakings as well as improvements in APITs.²⁶⁵ Further, tourism projects in conservation areas in terms of the *Conservation Areas Law* qualify for the incentives contemplated in the *Tourism Law*.²⁶⁶ Where these foreign tourism investors comply with the requirements of the *Investment Law* to obtain an investment license, they may also qualify for the right to repatriate the invested capital and profits obtained.²⁶⁷ Additionally, the *Public-Private Partnerships, Large Scale Projects and Business Concessions Law* provides for incentives for PPPs in APITs that are not financially feasible without contributions by the state.²⁶⁸ These guarantees may be in the form of the provision of finances; access to guarantees for financing requested from multilateral or government institutions; and subsidies or compensation for the provision of services or sale of products at fixed prices or tariffs.

The *Tax Incentives Code* also provides for relevant incentives for foreign investment in, among others, the tourism sector in the form of generic and specific benefits.²⁶⁹ The generic benefits include, *inter alia*, exemptions from the payment of customs and duties and Value Added Tax on specific capital goods; tax credits; and accelerated depreciation and amortisation of new buildings constructed in relation to the investment project.²⁷⁰ Specific benefits exist for investment in the hotel trade and tourism industry and the construction of basic infrastructure.²⁷¹ More particularly, it provides for incentives for investment projects that promote

265 Article 14 of the *Tourism Law*.

266 See also, the *Decree relating to Taxes Applicable in Conservation Areas Decree (Taxas aplicaveis nas Areas de Conservacao Decreto no 27/2003)* 27 of 2003.

267 These incentives are of course subject to compliance with specific requirements and procedures in terms of the *Investment Act Regulation (Regulamento da Lei de Investimentos)* Decree 43 of 2009.

268 Article 20 of the *Public-Private Partnerships, Large Scale Projects and Business Concessions Law* 15 of 2011.

269 Article 30 of the *Tax Incentives Code*. See also para 5.3.3.2 above and paras 5.3.3.7 and 5.3.3.9 below.

270 Article 2 of the *Tax Incentives Code*.

271 Article 30 of the *Tax Incentives Code*.

rehabilitation, construction, enlargement or modernisation of infrastructure related to tourism and the development of nature parks and reserves.²⁷²

The *Tourism Law* also creates rights for the suppliers of tourism products and services, as an additional tool for promoting investment in tourism.²⁷³ Suppliers of tourism products and services have the right to undertake their activities freely in compliance with this legislation; to receive authorisations to undertake their activities from competent authorities; to have their brochures and guides published officially; and to participate in programmes for promotion, support and capacity-building relating to tourism.²⁷⁴ Rights of use and enjoyment of land, DAUTs, in terms of the *Land Law*, may be held by individuals, or corporate national and foreign persons,²⁷⁵ for commercial purposes, subject to specific conditions.²⁷⁶ The land use rights are limited to a maximum period of 50 years, renewable for another 50 years, and are not transferrable.²⁷⁷

For rural land, the transfer of the land title is limited to infrastructure, structures and improvements on the land.²⁷⁸ While the *Land Law* does not extend these DUATs to protected areas, offering instead special licenses for certain activities,²⁷⁹ the tourism law and policy relaxes these restrictions for investors.²⁸⁰ The *Tourism Law*,²⁸¹ the *Strategic Plan for Tourism Development*, 2003 as well as the *Tourism Interest Zones Regulations (Regulamentos de Criação de Interesse Turístico)*,²⁸² reserve land for

272 Article 20 of the *Tax Incentives Code*.

273 Article 17 of the *Tourism Law*.

274 Article 17 of the *Tourism Law*.

275 Articles 10 and 14 of the *Land Law*.

276 Article 12 read with aa 11 and 22 of the *Land Law*. For purposes of the *Land Law* a national corporate person refers to an entity with citizens holding an equity of more than 50%; while a foreign corporate person is an entity constituted in terms of Mozambican or foreign legislation, in which more than 50% of its equity belongs to foreign citizens, corporations or institutions.

277 Articles 17 and 18 of the *Land Law*.

278 Article 16(2) of the *Land Law*.

279 Article 9 of the *Land Law*.

280 Investment Climate Advisory Services World Bank Group 2012 *Facilitating Large-Scale Tourism Resorts in Mozambique* 18; *Direcção Provincial do Turismo Provincia de Sofala* 2008 Legal Framework for Tourism Licensing in Mozambique 53.

281 Article 8 of the *Tourism Law*.

282 *Tourism Interest Zones Regulations Decree* 77 of 2009.

tourism development, which includes land in conservation areas. These instruments enable developers in the public and private sector to secure land for tourism development by way of a declaration.²⁸³ The declaration also expedites the procedures for securing land and undertaking projects for tourism developers, and facilitates partial or total suspension of spatial planning instruments.²⁸⁴ The *Conservation Areas Law* makes additional provisions for investment in conservation areas for tourism concessions. This is discussed in detail below.

5.3.3.4 Mandatory minimum clauses for tourism concessions

The *Tourism Law* as well as the *Conservation Areas Law* are key instruments in promoting partnerships for tourism development in TFCAs. In terms of the *Tourism Law*, the tourism sector is organised and functions through a system that incorporates the public and private sector as well as other parties involved in tourism.²⁸⁵ The *Conservation Law* permits the development of tourism concessions, subject to authorisation.²⁸⁶ These provisions do not introduce new land use rights, but, consistent with the *Land Law*, allow concessions and special licenses for tourism development in conservation areas for the processing of the DUATs and other related rights expeditiously.²⁸⁷ This is also an incentive for investors, enabling them in issues relating to land registration and the acquisition of land rights.²⁸⁸

The *Public-Private Partnerships, Large Scale Projects and Business Concessions Law* also tourism concessions.²⁸⁹ This law requires tourism concessions to be guided by principles, such as the contribution to the development of effective capacity and the rational utilisation of national resources and goods, equity in benefit-sharing,

283 Article 16 of the *Tourism Interest Zones Regulations Decree 77* of 2009.

284 MLGTS Legal Circle *Doing Business Mozambique* 53.

285 Article 5 of the *Tourism Law*.

286 Article 26 of the *Conservation Areas Law*.

287 Paragraph 5.3.3.3 above. For a detailed discussion of these tools, see for instance, *Direcção Provincial do Turismo Provincia de Sofala* 2008 Legal Framework for Tourism Licensing in Mozambique 53.

288 Paragraph 5.3.3.3 above. See also Investment Climate Advisory Services World Bank Group *Facilitating Large-Scale Tourism Resorts in Mozambique* 18.

289 Article 21 of the *Public-Private Partnerships, Large Scale Projects and Business Concessions Law*.

prevention and mitigation of inherent risks, business freedom and competitiveness, job creation and maintenance and transfer of technical know-how to nationals and the contribution to national capital markets.²⁹⁰ The concession contracts may take the form of BOT; Design, Build, Operate and Transfer (DBOT); Build, Own, Operate and Transfer (BOOT); Design, Build, Own, Operate and Transfer (DBOOT); Rehabilitate, Operate and Transfer (ROT); or Rehabilitate, Own, Operate and Transfer (ROOT). The contracts are awarded by way of public tender, which is a competitive bidding process governed by the public procurement rules.²⁹¹ Where there are no bidders, the contract may be awarded by way of negotiation or direct award.²⁹² The duration of these contracts ranges from ten to a maximum of thirty years depending on the time needed for the implementation and completion of the project.

The *Land Law*,²⁹³ *Tourism Licensing Regulation*²⁹⁴ and *Time Sharing Regime*²⁹⁵ add additional tools for the establishment of tourism concessions. They empower local communities residing in protected areas to participate in the approval stages of the tourism concessions, as well as to share in the benefits through the sharing of parks and reserves revenues.²⁹⁶ The tools on tourism concessions, however, do not seem to facilitate CPPPs as a means to enable equitable treatment of local communities as investors. This is explored further below.

5.3.3.5 Mandatory provisions for the equitable treatment of investors

The *Investment Law* makes the equal treatment of national and foreign investors mandatory by providing them with the same rights, duties and obligations.²⁹⁷ This law therefore provides for three distinct forms of investment, namely, foreign direct

290 Article 4 of the *Public-Private Partnerships, Large Scale Projects and Business Concessions Law*.

291 Article 13 of the *Public-Private Partnerships, Large Scale Projects and Business Concessions Law*.

292 Article 13 of the *Public-Private Partnerships, Large Scale Projects and Business Concessions Law*.

293 Article 24 of the *Land Law* 19 of 1997.

294 Articles 15(2) and 16(1)-(2) of the *Tourism Licensing Regulation* Decree 18 of 2007.

295 Approved by Decree 39 of 2007.

296 See the *Sharing of Protected Areas Revenues Ministerial Diploma* 93 of 2005, Decree 15 of 2009 and Ministerial Diploma 66 of 2010.

297 Article 4 of the *Investment Law*.

investment,²⁹⁸ national direct investment,²⁹⁹ and indirect investment.³⁰⁰ The protection guarantees available to investors with investment licenses, are designed to encourage voluntary compliance by foreign and national investors.³⁰¹ Yet they tend to discriminate between small and large investors,³⁰² with requirements that are too cumbersome and costly for SMEs.³⁰³ This limits the opportunities for local communities to participate as active investors in tourism development in TFCAs.

5.3.3.6 Incentives for tourism businesses and favourable immigration controls

In addition to the specific incentives for tourism businesses,³⁰⁴ Ministry of Culture and Tourism also provides for exemptions from customs duties and VAT on specific goods for the tourist trade, which include, among others, construction material, restaurant and bar equipment, communications equipment, recreational equipment, and aircraft.³⁰⁵

5.3.3.7 Minimum mandatory provisions, incentives and/or agreements for local procurement

The *Tourism Law* recognises the need for the participation of the domestic private sector as well as the active participation of local communities in tourism.³⁰⁶ The

298 Defined in s 1(m) as "any form of foreign capital contribution valuable in monetary terms which constitutes own equity capital or resources at the own account and risk of the foreign investor, brought from external sources and to be used in an investment project for carrying out an economic activity, through a company registered in Mozambique and operating from Mozambican territory."

299 Defined in s 1(n) as "any form of contribution of national capital valuable in monetary terms which constitutes own equity capital or resources at the own account and risk of the national investor destined for use in an investment project for carrying out an economic activity, through a company registered in Mozambique and operating from Mozambican territory."

300 Defined in s 1(o) as "any form of investment whose remuneration and/or repayment does not exclusively consist of the direct participation of its contributors in the distribution of profits resulting from the operation of activities in projects in which the type of investment contemplated in Article 10 has been applied."

301 See para 5.3.3.3 above.

302 OECD *OECD Investment Policy Reviews: Mozambique, 2013* 34.

303 OECD *OECD Investment Policy Reviews: Mozambique, 2013* 34.

304 See paras 5.3.3.2; 5.3.3.3 above and paras 5.3.3.7; 5.3.3.9 below.

305 Ministry of Tourism 2013 <http://www.embamoc.co.za/tourism-leisure>.

306 Articles 3 and 4 of the *Tourism Law*.

Tourism Strategic Plan of 2005 reiterates this by recognising the need for action programmes to stimulate the creation of local businesses for tourism and the development of linkages in order to reduce imports as much as possible. Similarly, one of the key goals of the PARPA is to stimulate the demand for locally produced goods.³⁰⁷ However, in the absence of minimum mandatory standards or incentives there is minimal effort towards the use of local products and materials. As a result, the existing tools are predominantly biased towards the promotion of investment, especially, by international players, without necessarily creating equitable partnerships with national and local players and fair competition. There is also no improvement in issues relating to the reduction of leakages, increase of linkages and fair distribution of tourism revenue.³⁰⁸ In addition, linkages in the tourism sector have been underexploited due to inadequate supply in the local economy. Therefore, tourism businesses source the majority of their inputs wholly sourced from outside Mozambique, because the local markets are underdeveloped.³⁰⁹ Closely related is the discussion below on the movement of goods and persons in TFCAs to enhance the potential of local traders in tourism.

5.3.3.8 Minimum mandatory provisions and agreements for movement of goods and persons in TFCAs

The movement of persons in Mozambique is governed by the *Immigration Law (Lei de Estabelece o Regime Juridico do Cidadão Estrangeiro Ficado as Respectivas Normas de Entrada, Permanência e Saída do País, Direitos, Deveres e Garantias)*³¹⁰ and regulated by the *Regulation on the Legal Standards Applicable to Foreign Citizens, Relative to their Entry into, Stay in and Departure from the Country (Regulamento sobre Normas Jurídicas Aplicáveis ao Cidadão Estrangeiro, Relativos à Entrada, Permanência e Saída do País)* (hereafter *Immigration Regulations*).³¹¹ The

307 See para 5.3.2.1 above.

308 Jones and Ibrahim *The contribution of tourism in Mozambique – present and future* 9.

309 OECD *OECD Investment Policy Reviews: Mozambique, 2013* 104.

310 Immigration Law 5 of 1993.

311 Decree 38 of 2006; Decree 38 of 2000 and for work related issues Decree 26 of 1999.

law provides for various entry visas, granted upon the fulfilment of specific requirements, which include, among others, a residence visa, tourist visa, transit visa, visitor visa, business visa and employment visa.³¹² The *Immigration Law* establishes visa waiver agreements concluded for South African³¹³ and Zimbabwean passport holders. This facilitates easier movement of tourists, traders, employees, and local communities from all GLTFCA participating countries. In principle, this should be beneficial to traders from the GLTFCA local communities.

More significantly, the Giryondo Tourist Access Facility opened in 2006 by the Presidents of the GLTP participating countries to facilitate the ease of movement by tourists,³¹⁴ could have been a conduit for the movement of local traders as well. However, the movement of these local traders is still significantly restricted,³¹⁵ evidenced by reports of "excessive customs charges, unwarranted impounding of goods and the unfair treatment of traders as smugglers and drug traffickers."³¹⁶

The *Customs and Excise Law (Lei de Pauta Aduaneira e as Respectivas Instruções Preliminares)*,³¹⁷ which provides for special customs mechanisms, regulates movement of goods. This Law places significant restrictions on the movement of specific types of goods. For instance, it prohibits the movement of livestock across the borders at the wildlife/livestock interface for health reasons.³¹⁸ Nevertheless, this significantly curtails the advantages that TFCAs provide for the movement of local communities across borders. With the selling of livestock as a major form of livelihood for most families that were forced to relocate from the Limpopo National

312 Articles 10–14 of the *Immigration Law*.

313 Joint Agreement between Mozambique and South Africa in the field of Tourism signed on 28 February 1995. The researcher was unable to establish the date of the entry into force of this agreement.

314 Republic of South Africa 2006 <http://www.gov.za/t-mbeki-guebuza-and-r-mugabe-open-giryondo-access-facility>.

315 Bocchino "Rural People in Southern African Transfrontier Conservation Areas: A Question of Governance" 315.

316 Masango and Haraldsson "Across Southern African Borders with Informal Cross Border Traders" 3.

317 Customs and Excise Law 6 of 2009.

318 There is a wide variety of contributions on health issues at the wildlife/livestock interface, see for instance Cumming 2011 *Constraints to Conservation and Development Success* 2; 17.

Park,³¹⁹ the restriction on livestock creates further strain on the survival of these communities.³²⁰ The restrictions on the movement of goods and persons in legislation, rob tourism development of an opportunity to indirectly support or promote an alternative livelihood for local cross-border traders, creating pressure on employment opportunities within the GLTFCA. This is explored further below.

5.3.3.9 Minimum mandatory labour regulations, incentives for employment quality and job creation and job security in the tourism sector in TFCAs

Labour relations in Mozambique are primarily governed by the *Constitution of the Republic of Mozambique*, 2004 and the *Labour Law (Lei do Trabalho)*.³²¹ The Constitution recognises the right to work, fair remuneration, health and safety at work, equal pay for equal work and the freedom of association and unions.³²² The *Labour Law* applies to the relations between employers and employees, and domestic and foreign employment. It provides for three main types of contracts, namely, permanent employment, fixed-term employment and unfixed-term employment contracts.³²³ The fixed-term and unfixed-term employment contracts are permitted only for, among others, seasonal activities, construction work, projects or other specific temporary activities. The law therefore does not permit term contracts for activities that relate to the meeting of the employer's permanent needs. However, fixed term contracts are permitted for small and medium enterprises for the first 10 years of their activity as a special exception for such businesses. Where the term contracts exceed the prescribed period of their existence, they are upgraded to permanent employment contracts.³²⁴ These provisions are particularly useful for job security especially for local and rural

319 See paras 2.4.2.2 and 5.3.2.6 above.

320 Giller *et al* "Population and livelihoods on the edge" 68.

321 *Labour Law* 23 of 2007.

322 Article 84 of the *Constitution of the Republic of Mozambique*, 2004.

323 Articles 38, 40 and 44 of the *Labour Law*.

324 Article 40 of the *Labour Law*. Fixed term contracts run for a period of two years and then may be renewed for a maximum of two times. Unfixed terms contracts are only permitted for where the date of termination of the temporary activity cannot be determined with certainty at the conclusion of the contract.

communities that predominantly comprise the majority of the unfixed-term workers in areas such as the GLTFCA component. Notwithstanding, this means that most employment relationships are not governed by the law.

The *Labour Law* also makes provision for the employment of foreign nationals in terms of the principle of equal treatment and opportunities.³²⁵ However, this principle is subject to the requirement in the law that employers facilitate the integration of nationals in jobs that require certain skills and qualifications; this is also valid for managerial and administrative positions.³²⁶ This Law also reserves certain functions or activities solely for Mozambican nationals, where it is in the public interest.³²⁷ Moreover, the repatriation of invested capital for foreign investors³²⁸ is conditional upon the creation and maintenance of the direct employment of a prescribed number of national employees. These employees must be registered in the national social security system from the second year of activity.³²⁹

The *Labour Law* generally complies with the international standards regarding the conditions of employment such as the rules relating, *inter alia*, to working hours, vacations, holidays, absences, remuneration, termination of employment, collective bargaining, and social security.³³⁰ However, given that the majority of employees do not have employment contracts, the working conditions are not consistent with the law; and benefits such as social security are not available for these workers.³³¹ The

325 Article 31 of the *Labour Law*. See also, the general rules for hiring of foreign nationals are prescribed in Decree 55 of 2008. See also, para 5.3.3.4 above.

326 Article 32 of the *Labour Law*. See also, the general rules for hiring of foreign nationals are prescribed in Decree 55 of 2008. See also, para 5.3.3.4 above.

327 Article 33 of the *Labour Law*. ILO *National Profile of Working Conditions in Mozambique* 8.

328 See para 5.3.3.3 above.

329 Article 33 of the *Labour Law 23 of 2007*. These incentives are of course subject to compliance with specific requirements and procedures in terms of the *Investment Regulation (Regulamento da Lei de Investimentos)* Decree 43 of 2009.

330 ILO *National Profile of Working Conditions in Mozambique* 8.

331 ILO *National Profile of Working Conditions in Mozambique* 18; Ulandssekretariatet LO/ FTF Council 2014 Mozambique: Labour Market Profile 9.

tourism sector, for instance, is characterised by an extreme system of prolonged working hours, irregular working time patterns that are determined by the level of demand for labour, a high incidence of low pay, especially amongst the working poor and women, and high exposure to physical and health risks at the workplace.³³²

Specific to job creation, the *Governmental Five-Year Plan 2015-2019 on Economic Development and Promoting a Culture of Work (Plano Quiquenal do Governo sobre Desenvolvimento Económico e Promoção da Cultura do Trabalho)*;³³³ the Priority on Employment Promotion through MSNE Development, the Employment and Vocational Training Strategy (*Estratégia de Emprego e Formação Profissional em Moçambique*) (2006-2015) and the PARPA,³³⁴ apply. These policies focus on the creation of decent work in line with the international standards of the ILO and the MDGs. They identify tourism among the leading sectors for economic growth in Mozambique, and therefore it has the potential to employ an increasing number of workers.³³⁵ Additionally, the *National Tourism Code of Conduct (Código Nacional de Conduta Turística)* promotes the creation of jobs in the sector by recognising the need for local communities to be associated with tourism activities and share equitably in the creation of direct and indirect jobs resulting from these activities.³³⁶ However, the jobs that are available are low-wage jobs with little possibility for advancement due to the high rates of illiteracy in the rural areas, where the natural resources for the development of tourism are located.³³⁷ Moreover, formal employment is scarce for locals, with over 90 percent of skilled labour still being sourced from South Africa.³³⁸ This suggests the absence of specific tools to address these issues within corporate governance. This is discussed in detail below.

332 ILO *National Profile of Working Conditions in Mozambique* 18-23.

333 See para 5.3.3.1 above.

334 See para 5.3.1.1 above.

335 ILO *National Profile of Working Conditions in Mozambique* 4.

336 Article 7 of the *National Tourism Code of Conduct*.

337 Lopes 2010 *Human Rights in Tourism* 36.

338 Giller *et al* "Population and livelihoods on the edge" 68; and OECD *OECD Investment Policy Reviews: Mozambique, 2013* 104.

5.3.3.10 Minimum mandatory provisions, incentives and certification standards for CSR strategies

Corporate governance in Mozambique exists largely according to the traditional tenets of corporate governance. It excludes the sustainability principles that promote stakeholder management and CSR. The principal corporate governance legislation, the *Commercial Code (Código Comercial)*,³³⁹ does not contain any of the provisions that promote stakeholder management and/or CSR in organisations. The closest that this law gets to the recognition of CSR, for instance, is found in its prohibition of abusive clauses in contracts, one of which is a clause that violates or allows the violation of environmental standards.³⁴⁰ Within this context, directors and managers may be held liable to third parties for damages caused directly in the exercise of their functions.³⁴¹

Beyond the corporate law, CSR related provisions appear in the *Public-Private Partnerships, Large Scale Projects and Business Concessions Law*. This law requires the inclusion of social responsibility obligations in the PPPs and tourism concession contracts. Concession contracts, in particular, should also include a clause specifying the socio-economic benefits, the promotion of social responsibility projects as well as social sustainability projects with local communities.³⁴² Specific to tourism, the *National Tourism Code of Conduct* requires that local communities be associated with tourism activities and share equitably in the economic, social and cultural benefits they generate.³⁴³ But, there are no specific provisions, neither is there a legal framework, within which actual benefit-sharing can be done, unlike the mining sector³⁴⁴ and the petroleum sector³⁴⁵ that have specific provisions establishing

339 *Commercial Code Decree 2 of 2005 as amended by Law (Lei Concernente á alteração do Código Comercial 2/2005) 1/2018.*

340 Article 471(p) of the *Commercial Code Decree*.

341 Article 471(p) of the *Commercial Code Decree*.

342 Article 34 of the *Public-Private Partnerships, Large Scale Projects and Business Concessions Law*.

343 Article 7 of the *National Tourism Code of Conduct*.

344 *Decree Regulation of Tax Regime for Mining (Lei de Impostos Específicos para Atividade Minerária) 5 of 2008.*

345 *Petroleum Production Tax Law (Lei de Impostos sobre a Produção do Petróleo) 12 of 2007.*

percentages of the receipts generated from natural resources exploitation that should be directed to the development of communities in which these resources are situated.³⁴⁶

The *Tourism Law* and the *Conservation Areas Law* indirectly encourage CSR through provisions that encourage the private sector to promote biodiversity conservation.³⁴⁷

The *Conservation Areas Law* specifically encourages the private sector to create institutions to provide financial support for biodiversity conservation and to establish compensation tools for activities undertaken in conservation areas.³⁴⁸ For the purposes of this study, the absence of a coherent set of CSR tools for tourism businesses creates a fragmented approach towards biodiversity conservation and the improvement of livelihoods and poverty alleviation by corporate entities within the Mozambican GLTFCA component.

5.4 Conclusion

This chapter investigated the relevant legal instruments relating to TFCA governance and tourism development in the Mozambican GLTFCA component, with the aim of establishing whether they provide for and promote sustainable tourism development. This involved an investigation into whether all the key actors in TFCA governance as well as the governance-based tools they should employ are provided for in the legal instruments.

The study begun by examining the legislation establishing TFCAs, protected areas governance and management, local governance as well as the principal tourism legislation. It was established that Mozambique specifically provides for TFCAs in its domestic legislation, key among them being the *Conservation Areas Law*. This law recognises TFCAs as part of the protected areas system of the country, referring to protected areas as conservation areas, and recognising the TFCA framework in

346 Lopes 2010 *Human Rights in Tourism* 37.

347 See para 5.3.3.5 above.

348 Articles 10 and 11 of the *Conservation Areas Law*.

accordance with the international TFCA establishing agreements. It also adopts the *SADC Wildlife Protocol's* definition of TFCAs. Other relevant legislation, including the *Environmental Framework Law* also recognise and provide for the mechanisms for addressing cross-border challenges via international cooperation. However, these laws fail to define the role of the governance actors beyond the domestic parameters – creating a gap with respect to the place of the TFCA governance actors within the domestic legal framework. This leaves it to the legislation relevant to protected areas' governance and management within the national boundaries to define the role of the relevant actors.

It was determined that the governance and management of protected areas in Mozambique are influenced by the constitutional approach to land ownership, which establishes the State as the owner of land and natural resources. Thus, the governance and management of conservation areas are the responsibility of the State. At the pinnacle of the governance structure is the Council of Ministers followed by the MITADER, which is the ministry responsible for the management of conservation areas, land, the environment, natural resources and rural development. Placing these key issues within one ministry enables the effective coordination of the key TFCA objectives, particularly biodiversity conservation and the improvement of livelihoods. The *Conservation Areas Law*, which establishes this governance structure, further incorporates key supporting line ministries into the governance of conservation areas with advisory functions. This set-up is followed through by provincial government in accordance with the Constitution. Further down the hierarchy, local government is involved in the conservation areas' governance, for the planning and developmental programmes at municipal level in accordance with the *Local Organs Law*. to the role of conservation areas specifically, relates to natural resources management in accordance with the *Forestry and Wildlife Law*.

Notwithstanding the government hierarchy, the *Conservation Areas Law* specifically establishes ANAC, under the supervision of MITADER, as the management authority over conservation areas responsible for biodiversity conservation and tourism development. ANAC is actively involved in TFCAs as the link for international cooperation. With its mandate spanning across biodiversity conservation and tourism

development, ANAC creates a platform for consolidating all three key TFCA objectives under one body. Conservation committees comprising of representatives of supporting ministries, the private sector, civil society organisations and local community representatives buttress the role of ANAC in the governance and management of the conservation areas.

The chapter also ascertained that the private sector plays a significant role within this governance framework, as co-managers with ANAC in the management of conservation areas, as sole managers of sanctuaries or game farms that they establish within national parks or other conservation areas, or as advisors to ANAC in their capacity as members of conservation committees. Moreover, they are actively involved in the management of natural resources as part of the COGEPs established in the *Forestry and Wildlife Law*. Their inclusion in the latter is specifically targeted at harnessing private sector financial resources for natural resources management. This positions the private sector as a key actor in the broader TFCA governance structures within the Mozambican GLTFCA component.

It was further established that local communities also comprise a key component in the governance of conservation areas in all relevant legislation. Within the *Conservation Areas Law*, local communities play a collaborative role through partnerships with ANAC and the private sector. They also play an advisory role to ANAC as part of the conservation committees. As with the private actors, local communities are involved in the management of natural resources as part of the COGEPs. The *Forestry and Wildlife Law* enables the State to delegate the management of forest and wildlife resources to local communities, strengthening their role within entire governance structures. The challenges that remain relate to the local governance structures, which recognise traditional authorities and other legitimate community leaders as the representatives of local communities but outside of the formal governance structures. Consequently, state structures and traditional structures operate simultaneously, creating complexities for local community participation in protected areas governance.

The governance of protected areas in Mozambique also specifically recognises the role of NGOs and other civil society organisations within its structures. They play an advisory role to ANAC in the conservation committees and as financiers of conservation areas. They are also part of the COGEPs for the management of natural resources. It has been observed that their role, particularly as financiers, creates over-reliance, by state actors, on external aid for the governance and management of conservation areas.

Specific to tourism development as an important component of TFCA governance, the *Tourism Law* sets the basis for sustainable tourism development in the Mozambican GLTFCA component, because of its express recognition of sustainable development of tourism. Yet, its objectives align with almost all policy implications of sustainable tourism development, except local control and social equity. This undermines the role of local communities in the tourism development that occurs in this GLTFCA component. Notwithstanding, commendable synergies exist for state actors, with the Ministry of Culture and Tourism in collaboration with MITADER and supporting ministries overseeing tourism development in TFCAs.

Overall, the legal framework in Mozambique relating to TFCA governance expressly provides for all key actors relevant for TFCA governance – at least for its GLTFCA component. Yet, it is clear that the actual implementation leaves much to be desired especially with respect to the participation of local communities in the governance structures. This is also evident in the governance-based tools that exist in the legal framework in Mozambique for promoting the three TFCA objectives of biodiversity conservation, the improvement of livelihoods-alleviation of poverty and economic development.

The legal instruments that are in place provide for a combination of tools for all three TFCA objectives, with some tools emphasised more than others, in specific instances. For biodiversity conservation, the law makes provision for specific tools for mandatory protected areas management options for local communities in the form of community conservation areas and participatory management, which actively involves local communities in collaboration with ANAC and the private sector.

Biodiversity agreements are also provided for where local communities can enter into CPPPs for financing biodiversity conservation in conservation areas. However, there are no specific tools for the participation of local communities as co-managing authorities of conservation areas neither are there tools to define clearly their place in the permissible management arrangements. However, for the natural resources within these conservation areas, their participation is made possible by virtue of their DUATs, their rights to natural resources and the public participation tools available. Even so, limitations to access and use exist in the exercise of these rights in land and natural resources.

Also for biodiversity conservation, CBNRM tools are in place in the relevant laws. For instance, the community conservation areas and the participation of local communities in COGEs establish mandatory CBNRM as well as CBNRM agreements. However, local communities are not benefitting much from these CBNRM tools notwithstanding the benefit-sharing arrangements provided for in law. The enjoyment of the benefits from CBNRM is also crippled by the requirements for technical capacity in the use of forestry and wildlife resources. Regrettably, there are no incentives for CBNRM, neither are there any sanctions for non-compliance with the mandatory CBNRM tools. This appears to be a possible justification for the existing management challenges faced by local communities in the Mozambican GLTFCA component. There are a number of sanctions for wildlife crimes but in their current form they potentially disenfranchise local communities more than any of the other governance actors, especially with respect to their livelihoods.

A number of tools exist in Mozambican law for the improvement of livelihoods-alleviation of poverty. These include the constitutional objectives for the alleviation of poverty enabled through PARPA, the *Five Year Plan 2015-2019* and *Agenda 2025* as strategic tools. Sector-specific strategic tools are in place although their operationalisation at sub-national level is hampered by, *inter alia*, lack of financial and human capacity. These challenges manifest in the high levels of poverty in the GLTFCA province of Gaza, which is predominantly rural. The situation in the Gaza province is also perpetuated by the weaknesses in the tools for the provision of basic services. The national and provincial laws relating to basic services in conjunction

with the *Local Organs Law* differentiate between rural and urban areas, leaving the provision of basic services in rural areas to ill-equipped local communities. This is the case despite the existence of rights to basic services, such as the right to water, the right to health, the right to education and the right to housing, which too are beyond the reach of local communities due to the inability of the justice system to hold the state accountable before the courts. The absence of voluntary tourism certification standards and a social license to operate in law leaves the public and private sector with limited accountability towards local communities.

Consolation is found in the existence of tools for TDIDR. The law permits TDIDR in conservation areas, albeit indirectly, to promote conservation. Yet, in the absence of clear procedural tools, TDIDR may be involuntary despite the provision in the *Land Law* of mandatory prior consultations with local communities by virtue of the DUATs held by these communities. Where resettlement occurs, additional tools for the compensation for loss as well as for the resettlement process are in place, which include, *inter alia*, resettlement plans as part of EIAs, performance benchmarks, rights of affected communities, inspections and sanctions for non-compliance. Even so, the failure to limit TDIDR to a last resort exposes local communities to displacement for large-scale economic activities. The plight of local communities is worsened by the absence of HRIAs to hold tourism businesses accountable for the violation of human rights. It therefore means that the TFCA objective of the improvement of livelihoods is still far from being realised in the Mozambican GLTFCA component.

A number of tools also exist for promoting economic development in the GLTFCA component, although the absence of an international revenue sharing agreement largely undermines the effectiveness of these tools. Nevertheless, the *Tourism Law* establishes sustainable development of tourism as the benchmark for tourism planning, identifying low impact tourism such as ecotourism and cynegetic tourism as well as influencing the marketing tools, particularly the creation of ATIPs, one of which includes the GLTFCA, all in line with the conservation objectives of conservation areas and the sustainable use of natural resources. Infrastructure development, which is key to economic development, is facilitated by PPPs as well as

tax incentives but is currently over reliant on the *ad hoc* nature of donor funded projects that have left rural communities with little infrastructure. Land use planning which is also pertinent, excludes district level plans for rural areas although this is somewhat addressed by the land use plans in the *Land Law*.

The majority of tools relate to investment. The Constitution guarantees foreign investment for promoting economic and social development in the country. Notably, the classification of the Mozambican GLTFCA component as an ATIP is an essential tool for investment in the GLTFCA. The concomitant incentives that are conditional upon proof of the investment license, promote foreign investment but not so much local investment. Additional generic incentives exist for foreign investors and specific incentives for tourism investors are operational in terms of the *Tax Code*. Other tools that promote investment include the rights for tourism , the DUATs and concomitant special licenses over land and declarations are available for tourism investors. Tourism concessions with their specific contractual requirements and procedures are in place for economic development, subject to local community participation at the concession approval stages. However, the role of local communities is reduced to beneficiaries and not active partners such as CPPPs. It was established that while the investment law provides for the equitable treatment of foreign and local investors, the latter do not meet most of the requirements for enjoying the investment incentives, disenfranchising SMEs and consequently local community-based tourism businesses. Immigration controls are also favourable to foreign investors but stringent measures exist for informal cross-border traders. Additionally, the tools available for promoting local procurement are not mandatory in nature, nor are they incentivised. Consequently, there are few opportunities for local businesses.

Closely related are the tools for employment quality, job creation and job security. Constitutional rights of employees exist and are incorporated into employment contracts for skilled and unskilled workers. Incentives for employers to upgrade their employees' contracts to permanent employment contracts are available to encourage job security in the labour sector. Special reservations of employment opportunities to Mozambican nationals and direct employment measures are also in place. However, tourism showcases high incidences of unskilled labour characterised by unfavourable

working conditions. Tools for job creation exist although they are for low wage jobs with limited advancement opportunities. This is attributed to high illiteracy rates especially in rural areas. With CSR tools in place, these challenges would be alleviated. However, there are no formal mandatory tools or incentives for CSR in tourism businesses. Nevertheless, tourism businesses operating as PPPs or tourism concessions have CSR related obligations, although they are not well defined, as is the case in the extractives industries. Indirect CSR tools are available for tourism businesses operating in conservation areas to support biodiversity conservation.

In conclusion, the relevant legislation for TFCA governance in Mozambique is quite distinct for its express recognition of TFCAs. Moreover, the role of the private sector and local communities is largely participatory despite that much effort is necessary to secure their participation as a result of the various implementation challenges that exist. This creates an environment conducive for sustainable tourism development in the Mozambican GLTFCA component. However, the same cannot be said of the governance-based tools in place. While there are indeed a variety of these tools, wherever they relate to local communities they are wanting. Consequently, the TFCA objectives are not being fully realised. This largely compromises efforts towards sustainable tourism development in the Mozambican GLTFCA component. It remains to be seen how the Zimbabwean GLTFCA fares in its legal framework for sustainable tourism development as. This will be discussed in Chapter 6.

CHAPTER 6

Sustainable tourism development in the Zimbabwean GLTFCA component: legal analysis

6.1 Introduction

In the same way that Chapters 4 and 5 deal with the South African and Mozambican components of the GLTFCA respectively, this chapter focuses on the Zimbabwean GLTFCA component. It examines the laws relating to sustainable tourism development in the Zimbabwean GLTFCA component. It considers the relevant legal instruments in Zimbabwe relating to TFCA governance and tourism development to assess whether they provide for and promote sustainable tourism development for the GLTFCA. The legal framework for sustainable tourism development in TFCAs developed in Chapter 3 guides this analysis. It entails identifying whether the laws in the Zimbabwean component provide for all the pertinent actors that are necessary for TFCA governance. Following from this, the chapter further explores whether the specific governance-based tools that are necessary for promoting the GLTFCA objectives are in place within the TFCA governance legislation as well as other relevant sectoral legislation. This involves exploring the tools that are in place for promoting biodiversity conservation, the improvement of livelihoods-alleviation of poverty and economic development in the Zimbabwean GLTFCA component.

6.2 Legislation relevant to TFCA governance

This segment examines the legislation in Zimbabwe relating to TFCA governance, to assess whether they provide for the establishment and governance of TFCAs.¹ This involves an analysis of whether the legislation provides for all the relevant actors, namely the key state actors and non-state actors that must be involved in TFCA

¹ See para 3.6.1 above.

governance.² These laws include legislation establishing TFCAs, legislation relating to protected areas governance and management, legislation relating to local governance and the principal tourism legislation.

6.2.1 Legislation establishing TFCAs

There is no specific legislation for the governance of TFCAs in Zimbabwe. This creates a gap in the law for defining the role of all the relevant actors necessary to fulfil the international requirements of governance for the GLTFCA. Thus, reference is made to the legislation governing protected areas governance and management at domestic level.

6.2.2 Legislation relating to protected areas governance and management

The PWA is the primary legislation for the governance and management of Zimbabwe's protected areas and wildlife. This Act provides for a system of protected areas comprising of national parks,³ botanical reserves and botanical gardens,⁴ sanctuaries,⁵ safari areas⁶ and recreational parks,⁷ all of which make up the Parks and Wildlife Estate.⁸ A large area comprising of the Zimbabwean GLTFCA component includes a national park, a sanctuary and safari areas, while the other part consists of land outside of the protected areas' domain.⁹ With this in mind, it is important to consider the actors involved, commencing with the state actors.

6.2.2.1 State actors

The Parks and Wildlife Estate comprises of state land and private land, the former being vested in the President who constitutes land as a park area.¹⁰ However, the

2 Para 3.6.1 above.

3 Sections 21 and 22 of the PWA.

4 Sections 25 and 26 of the PWA.

5 Sections 30 and 31 of the PWA.

6 Sections 35 and 36 of the PWA.

7 Sections 40- 42 of the PWA.

8 Section 1 read with s 17 of the PWA.

9 See para 2.4.1.1 for the area falling within the *Zimbabwean GLTFCA component*.

10 Section 1 read with ss 4 and 18(1) of the PWA.

management of the Estate is assigned to specific government ministries at national level and key state agencies. At national level, the PWA assigns overall responsibility to the Ministry of Environment, Tourism and Hospitality Industry for the governance of the Wildlife and Parks Estate.¹¹ Within this Ministry, the Department of Environment and Natural Resources is responsible for promoting best practices in environmental and natural resources management.¹² In doing so, the Department undertakes to: plan, formulate, review and coordinate policy in support of sustainable development; develop action plans for the implementation of the National Environmental Policy and Strategies in consultation with all stakeholders; promote conservation and sustainable use of natural resources through coordination with other Government Ministries, non-state actors and communities; coordinate transboundary management of environment and natural resources as provided for in applicable regional and international conventions and treaties; develop processes and procedures for conducting environment and natural resources assessments; and define the institutional and administrative arrangements for coordinating environmental assessments.¹³ These functions, though not specifically provided for in law, define the role of this Ministry in TFCA governance.

The EMA, which provides for the sustainable management of natural resources, the protection of the environment and the prevention of pollution and environmental degradation,¹⁴ establishes the relationship between the Ministry of Environment, Tourism and Hospitality Industry and supporting ministries.¹⁵ The Ministry of Environment, Tourism and Hospitality Industry regulates the activities of the following ministries: the Ministry of Lands, Agriculture, Water Climate and Rural Resettlement, the Ministry of Energy and Power Development and the Ministry of

11 Section 4 of the PWA.

12 Ministry of Environment, Water and Climate Date Unknown
www.environment.gov.zw/index.php/blogs.

13 Ministry of Environment, Water and Climate Date Unknown
www.environment.gov.zw/index.php/blogs.

14 Preamble of the EMA.

15 Section 5(1)(b) of the EMA in relation to the functions of the Minister.

Mines and Mining Development.¹⁶ These Ministries are specifically identified as supporting ministries for the impact of their activities on the environment.¹⁷ They form part of the National Environmental Council, as advisors with respect to environmental management, and therefore should influence the environmental management in the Parks and Wildlife Estate.¹⁸

Nevertheless, the appropriate authority in the management of the state land component of the Parks and Wildlife Estate is the PWMA,¹⁹ a state agency falling under the Ministry of Environment, Tourism and Hospitality Industry.²⁰ The PWMA is established under the PWA with the mandate to control, manage and maintain national parks, botanical reserves and botanical gardens, sanctuaries, safari areas and recreational parks.²¹ It is responsible for the conservation and utilisation of the wildlife and fish resources of Zimbabwe.²² It also specifically protects the animals and particular species of animals in sanctuaries;²³ and preserves and protects natural habitat and wildlife in safari areas open to the public for, *inter alia*, camping, hunting, fishing, photography, viewing of animals and bird watching.²⁴

The PWMA is managed by a Board, the Parks and Wild Life Management Authority Board (PWMAB), whose composition consists of, among others, professionals in wildlife conservation, environmental conservation and tourism.²⁵ The inclusion of a tourism professional in the PWMAB establishes the basis for PWMA's mandate over the tourism development that occurs in the national parks, sanctuaries and safari areas. The Board is headed by the Director-General and subordinate directors for the different divisions – *inter alia*, the management services for conservation; business

16 Section 5(1)(b) of the EMA in relation to the functions of the Minister.

17 Section 5(1)(b) and s 7 of the EMA.

18 Section 8 of the EMA.

19 Section 3 of the PWA.

20 Republic of Zimbabwe Ministry of Environment and Tourism *Protection and Conservation of Wildlife* 1.

21 Section 4(1)(a) of the PWA.

22 Section 4(1)(b)(iv) of the PWA.

23 Section 4(1)(b)(vii) of the PWA.

24 Section 4(1)(b)(viii) of the PWA.

25 Section 5(3)(a)(i)-(iii) of the PWA.

development for consumptive and non-consumptive businesses; scientific services for scientific research; and TFCAs.²⁶ Under the directors are the National Parks Provincial Officers that head the provincial offices of PWMA.²⁷ Specific national parks are managed by station managers.²⁸

The national TFCA coordinator and coordinators for specific TFCAs, act within the management structures of the PWMA.²⁹ The PWA specifically empowers the PWMA to enter into joint ventures with any authority in any other country that is responsible for the administration and management of national parks and wildlife, in this instance for South Africa and Mozambique, or with any public or private entity for the purposes of promoting its functions.³⁰ Therefore, the TFCA coordinators work in collaboration with the Zimbabwe Tourism Authority (ZTA),³¹ which is regarded as the coordinator of the TFCA initiatives. These coordinators in turn collaborate with the management authorities of TFCA participating countries and form part of the Joint Management Board of the GLTFCA.³²

The the scientific services department and to a lesser extent, by the management services department undertake the crux of the management that relates to biodiversity conservation. The management services department deals with the conservation of wildlife, anti-poaching, hunting, permits and licenses, problem animal control and radio communications. The scientific services department, on the other hand, is responsible for the maintenance of biodiversity through the conservation of ecosystems, species and ecological processes, to enable natural selection to operate in wild populations. This involves the preparation of park plans, environmental protection, which includes integrated environmental management and

26 ZPWA 2014 www.zimparks.org/index.php/about-us/departments.

27 Republic of Zimbabwe Ministry of Environment and Tourism *Protection and Conservation of Wildlife* 3.

28 Republic of Zimbabwe Ministry of Environment and Tourism *Protection and Conservation of Wildlife* 3.

29 ZPWA 2014 www.zimparks.org/index.php/conservation/investigations.

30 Section 4(5) read with schedule 11 para 10 of the PWA.

31 For a detailed discussion of the ZTA, see para 6.2.4.1 below.

32 See para 2.4.2.1 above.

environmental impact assessments;³³ species protection and management;³⁴ ecological research and management; sustainable utilisation;³⁵ economics; institutional development; monitoring of databases; control; extension of advice, reports, manuals, guidelines and other related material; and collaboration.³⁶

Thus the scientific services department, *inter alia*, monitors the key ecosystem components in protected areas, the key species throughout Zimbabwe, rare or threatened species as well as the status and trends in rhino populations.³⁷ The scientific services department also monitors law enforcement and illegal activities; the translocation of wildlife; the utilisation of wildlife throughout Zimbabwe³⁸ and water pollution.³⁹ In relation to tourism, the scientific services department designs adaptive management systems for species, habitats and tourism; regulates sport hunting and hunting; evaluates the efficiency and cost effectiveness of protected area management; and assists in the development of tourism standards. It also monitors tourism trends, income and impacts; and access to areas of all resources through contracts, leases and agreements. Nevertheless, it is not clear whether this department has the capacity to execute these duties extensively and adequately, given that it mainly comprises of aquatic and terrestrial ecologists, whose main role is research.⁴⁰ In fact, it has been reported that there is a lack of coordination between the management and scientific departments to the extent that one branch does not know what the other is doing in relation to wildlife management.⁴¹ This

33 This function is specifically regulated in terms of s 97 of the EMA.

34 These functions are further defined in terms of ss 43-58 of the PWA.

35 This function is defined in terms of s 116 of the EMA.

36 These functions are further defined in terms of ss 43-58 of the PWA.

37 This function is defined further in terms of ss 59-96 of the PWA.

38 These functions are based on ss 59-76 of the PWA.

39 Zimbabwe Parks & Wildlife Authority 2014 www.zimparks.org/index.php/about-us/department.

40 For the composition of the scientific services department, see Zimbabwe Parks & Wildlife Authority 2014 www.zimparks.org/index.php/about-us/department.

41 Republic of Zimbabwe Ministry of Environment and Tourism *Protection and Conservation of Wildlife* iii.

adversely affects the quality of decisions made on the governance and management of the Zimbabwe GLTFCA component.⁴²

In undertaking its functions, the scientific service department of PWMA coordinates, collaborates and cooperates with the environmental committees and sub-committees of the relevant RDCs and producer associations.⁴³ It also collaborates with other land use agencies such as the Environmental Management Authority,⁴⁴ the Forestry Commission⁴⁵ and the Zimbabwe National Water Authority;⁴⁶ NGOs, international conservation organisations and external researchers.⁴⁷

It follows from the above that the PWMA is the protected areas administrator body over the GNP.⁴⁸ The GNP is divided into a northern part, Chipinda Pools comprising of the Runde and Save sub-region managed by one park manager; and a Southern part, Mabalauta, comprising of the Mwenezi sub-region managed by another park manager.⁴⁹ The entire Park has one ecologist responsible for the scientific services. However, the management of the GNP now falls under the newly established Gonarezhou Conservation Trust.⁵⁰ The latter is a result of an agreement between the PWMA and the FZS to jointly manage the Park.⁵¹

The role of state actors at provincial government level is less clearly defined. The largest administrative units within Zimbabwe are the provinces.⁵² Provincial

42 Republic of Zimbabwe Ministry of Environment and Tourism *Protection and Conservation of Wildlife* iii.

43 See para 6.2.3. below.

44 Established under EMA.

45 Established under the *Forest Act* (Chapter 19:05) 37 of 1949.

46 Established under the *Zimbabwe National Water Authority Act* (Chapter 20:25) 11 of 1988 as amended by Act 14 of 2002 (hereafter *Zimbabwe National Water Authority Act* 11 of 1988).

47 See para 6.2.2.2 below, for further details of these collaborations.

48 See para 2.4.2.1 above.

49 Chapungu 2013 *Greener Journal of Environmental Management and Public Safety* 110.

50 See para 2.4.2.3 above.

51 See paras 2.4.2.3 above and 6.2.2.2 below for a detailed discussion of the impact of this latest management arrangement. Great Limpopo 2016

www.greatlimpopo.org/2016/08/trust-to-manage-gonarezhou-national-park/;

Peace Parks Foundation 2016 www.peaceparks.org/news.php?pid=1611&lid=1005.

52 Centre for Conflict Management and Transformation (CCMT) *Roles and Responsibilities in Rural Local Governance in Zimbabwe* 9.

government represents all the local authorities within a specific province.⁵³ Prior to the amendments of the role of provincial government in the *Constitution of the Republic of Zimbabwe Amendment (No. 20) Act, 2013* (hereafter *Constitution*), provincial governments were largely coordinative structures of the national government at provincial level without any “real” powers and functions.⁵⁴ The amendments to the *Constitution* provides that the functions of the provincial government include, planning and implementing social and economic development activities in its province, coordinating and implementing governmental programmes in its province, and planning and implementing measures for the conservation and improvement and management of natural resources in its province.⁵⁵ It also includes the promotion of tourism in its province and the development of facilities for that purpose and monitoring and evaluating the use of resources in its province.⁵⁶ Without enabling legislation for the fulfilment of these functions, it is not clear whether provincial governments are able to carry out their mandate effectively.⁵⁷ These uncertainties also influence the role of provincial government in TFCA governance.

As stated earlier, the relevant actors at local government level work in collaboration with the PWMA. The *RDCs Act*, discussed in detail below.⁵⁸ Suffice to say, the PWMA, in collaboration with the other state actors at national level and less so at provincial and local levels undertake the governance and management of the state actors in the Zimbabwean GLTFCA. The role of other national state actors seems to

53 Chigwata *The Law and Policy for Provincial and Local Government in Zimbabwe* 126-27.

54 Chigwata *The Law and Policy for Provincial and Local Government in Zimbabwe* 126-27. As it is, the Ministers of State for Provincial Affairs are selected from the ruling party, ZANU-PF, by the President and are responsible for each of the country’s ten provinces. This has raised fears that the role of these Ministers effectively undermines the devolution of power given that the Ministers create leadership challenges, where there are already provincial councils led by Provincial Council Chairpersons. See also, Moyo and Ncube 2014 *Law, Democracy & Development* 302.

55 Section 270(1) of the *Constitution*.

56 Section 270(1) of the *Constitution*.

57 Moyo and Ncube 2014 *Law, Democracy & Development* 296.

58 Paragraph 6.2.3 below.

be more advisory than functional.⁵⁹ The actual management of the GNP is now under a non-state actor, the Gonarezhou Conservation Trust, creating interesting dynamics in the governance and management of the Zimbabwean GLTFCA component.⁶⁰ This calls for a closer examination of the role of the non-state actors.

6.2.2.2 Non-state actors

The non-state actors include the private sector, local communities, external entities, civil society and other institutions.⁶¹ The private sector refers to private land owners and tourism businesses as part of the key actors in TFCA governance.⁶² As mentioned earlier, the Parks and Wildlife Estate also include private land, which is land within a recreational park.⁶³ This land is set aside for the erection of hotels, restaurants, rest camps, caravan parks, camping grounds, shops, service stations and other buildings and facilities for accommodation, recreation, enjoyment or for the convenience of visitors.⁶⁴ Therefore, tourism businesses are the appropriate authorities over the private land components of the Parks and Wildlife Estate.⁶⁵ This establishes tourism businesses as key actors in protected areas governance and management in Zimbabwe's protected areas and therefore in the GLTFCA component.

The PWA authorises private landowners to use, manage and protect wildlife on their properties as appropriate authorities.⁶⁶ In the 1980s, many private landowners converted their farms into game ranches,⁶⁷ but the recent economic and political

59 See for instance, Chibememe, Middleton and Booker *Review of National Laws & Policies* 37-43; Child "The Emergence of Modern Conservation" 67-80; Child "The Emergence of Parks" 19-32.

60 See para 2.4.2.3 above.

61 See para 2.4.2.3 above.

62 See para 2.4.2.3 above.

63 Section 18 of the PWA.

64 Section 42 of the PWA.

65 See for instance, Lindsey *et al* "Save Valley Conservancy" 163-180; Soto "Protected Areas in Mozambique" 85-102; Child "Private Conservation" 103-110; Child "Game Ranching in Zimbabwe" 127-162.

66 Section 2 read with ss 61 to 81 of the PWA.

67 See for instance, Child "Game Ranching in Zimbabwe" 127-145; Child "Private Conservation" 103-110; Child *et al* 2012 *Pastoralism: Policy and Practice* 7-16; Kreuter, Peel and Warner 2010

challenges, including the invasion of farms and white-owned property, have seen the deterioration of these efforts towards wildlife conservation and sustainable utilisation.⁶⁸ Nonetheless, private landowners are an integral component of the governing structures of the GLTFCA because of the inclusion of private land in the Zimbabwean component.⁶⁹ Most notably, there is the Malilangwe Trust, a non-profit organisation, which owns the Malilangwe Wildlife Reserve bordering GNP.⁷⁰ It generates its income from commercial tourism for the purposes of funding its core activities of community development and conservation.⁷¹ The Malilangwe Trust is a member of the local GLTP Steering Committee, a body comprised of local stakeholders, in Zimbabwe.⁷²

While the PWA clearly defines the role of private entities, the same cannot be said about the local communities residing in the communal land adjacent to the Parks and Wildlife Estate. The PWA states that the RDCs are the appropriate authorities over the wildlife resources in communal land,⁷³ as the representatives of local communities.⁷⁴ They determine the measures for protecting wildlife in their domain.⁷⁵ In this setting, local communities are not directly involved in the governance and management of protected areas, including the protected areas that form part of the Zimbabwean GLTFCA component.⁷⁶

Society and Natural Resources 510-516; Muir-Leresche and Nelson 2000 *PERC Reports* 7-9; Wilson, Hayward and Wilson 2016 *Conservation Letters* 2; Wels *Private Wildlife Conservation in Zimbabwe* 42-72.

68 Duffy *Killing for Conservation* 86. Duffy explains that the economic viability of conservancies is dependent on tourists interested in wildlife viewing; they are threatened by changes in the tourist flow, because of regional or national strife.

69 Article 3(2)(b) of the *GLTP Treaty*.

70 Malilangwe Trust Date Unknown www.themalilangwetrust.org/conservation/malilangwe-wildlife-reserve.

71 Malilangwe Trust Date Unknown www.themalilangwetrust.org/conservation/malilangwe-wildlife-reserve.

72 Malilangwe Trust Date Unknown www.themalilangwetrust.org/conservation/malilangwe-wildlife-reserve.

73 Section 108 of the PWA.

74 See para 6.2.3 below.

75 Section 77 of the PWA.

76 See para 6.2.3 below for a detailed framework of local community representation by the RDCs.

Concerning the role of external entities, such as NGOs and civil society, the PWA empowers the PWMA to enter into joint ventures with any international entity, for purposes of promoting its functions.⁷⁷ This appears to form the basis for the joint management of the GNP by the PWMA and FZS under the Gonarezhou Conservation Trust.⁷⁸ It is not clear, however, whether the PWMA can transfer or cede all its powers over the park to the Trust or the FZS. Therefore, it is unclear whether the Trust or FZS may, individually, become the appropriate authorities over this national park. The trust agreement itself places the FZS as a key player in the governance and management of the Zimbabwean GLTFCA component. While this may be justifiable in the Zimbabwean context, where funding and international assistance is much needed, the chances of the usurpation of powers from the PWMA are high.⁷⁹ So far, this management arrangement has further disenfranchised local community participation in the management and governance of the GNP and in a significant part of the Zimbabwean GLTFCA component.⁸⁰ It is therefore important to consider the place of local communities within the local governance structures, to establish the extent of their influence in the governance of the Zimbabwean GLTFCA component.

6.2.3 Legislation relating to local governance

The primary legislation for local governance in the rural areas is the *RDCs Act*. This Act establishes RDCs as the local authorities over rural areas.⁸¹ RDCs work in collaboration with the PWMA in the management of protected areas,⁸² as the appropriate authorities over the wildlife resources and the environment within the communal land areas.⁸³ Their specific role is to serve as environmental

77 Section 4(5) read with Schedule 11 para 10 of the PWA.

78 See paras 2.4.2.3 and 6.2.2.1 above.

79 See para 3.5.1.2 above.

80 See para 3.5.1.2 above. See also, Ntuli and Muchapondwa 2018 *International Journal of the Commons* 134-144.

81 The relevant RDCs include the Chiredzi District of the Masvingo province, the Beitbridge District of Matebeleland South and overlaps into the Chipinge District in the Manicaland Province.

82 See para 6.2.2.1 above.

83 See para 6.2.2.1 above.

committees,⁸⁴ which undertake environmental protection and conservation within their rural districts.⁸⁵ The chairpersons in the Rural District Development Committee represent these RDCs.⁸⁶ At ward level,⁸⁷ these committees operate as environment subcommittees or wildlife committees.⁸⁸ These subcommittees are comprised of a ward councillor, elected by vote by the rural communities in their respective wards.⁸⁹ However, the representation of ward councillors may not necessarily reflect the communities and their interests, given that the immediate leadership of rural communities in villages are village heads.⁹⁰ This indicates the challenges that exist in the devolution of power from national government to the grassroots level in Zimbabwe.

Nevertheless, the village heads are appointed in terms of the *Traditional Leadership Act* to lead their villages in all traditional, customary and cultural matters.⁹¹ In terms of the *Traditional Leadership Act*, it appears that village heads do not have powers over natural resources management and rural development. This is in spite of the constitutional mandate of traditional leaders to administer communal land and the protection of the environment.⁹² These parallel authority structures of traditional and elected leadership have, in fact, resulted in a myriad of conflicts that have stunted development in rural Zimbabwe, as traditional leaders claim that they are the

84 Established in terms of s 61 of the RDCs Act read with Schedule 6 of the EMA.

85 The function of environmental committees is established in EMA, which requires environmental authorities at local government level.

86 Section 60(1)(b) of the RDCs Act.

87 Within the rural districts there are different levels of administrative units. The ward is the smallest administrative unit.

88 Section 61(3) and (4) of the RDCs Act. See also para 6.3.1.2 below.

89 Section 61(4) of the RDCs Act.

90 See the discussion by CCMT 2014 Roles and Responsibilities in Rural Local Governance in Zimbabwe 9-14; Chibememe, Middleton and Booker Review of National Laws & Policies 16, 2128-32; Murombedzi 1999 *Journal of International Development* 287-293; Murombo 2010 *South African Public Law* 573-574.

91 Sections 11 and 12 of the RDCs Act.

92 Section 282(d) of the *Constitution*.

legitimate representatives of the people by virtue of customary law, while councillors claim that their mandate comes directly from the people by virtue of elections.⁹³

Notwithstanding, with the advent of the 2013 *Constitution*, local governance is constitutionally based on the principle of the devolution of authority to, *inter alia*, recognise the right of communities to manage their own affairs and to further development; and to ensure the equitable sharing of local and national resources.⁹⁴ Thus, the RDCs are responsible for the development of rural areas, which includes tourism development.⁹⁵ This function, elaborated on in the *RDCs Act*, is undertaken by the Rural District Development Committee and chaired by the District Administrator who is appointed by the Minister of Local Government, Public Works and National Housing. The composition of these committees includes, among others, a designated district head of each Ministry and department of a Ministry within the District.⁹⁶ However, it has been argued that the overall powers of the RDCs are substantially undermined by the numerous provisions in the *RDCs Act*, ceding authority to the Minister of Local Government, Public Works and National Housing.⁹⁷ Ultimately, therefore, neither the *RDCs Act* nor the *Traditional Authorities Act* creates the requisite role of local communities in the management of the Zimbabwean component of the GLTFCA. As a result, the actual involvement of local communities or producer communities in the governance of natural resources and therefore in the decision-making processes relating to tourism development, is superficial. The role of these actors is further explored below in the context of the principal tourism legislation.

93 CCMT 2014 *Roles and Responsibilities in Rural Local Governance in Zimbabwe* 30.

94 Section 264 of the *Constitution*.

95 See for instance paragraph 5.4 of the *National Tourism Policy*, 2014.

96 Section 60(1)(e) of the *RDCs Act*.

97 CCMT *Roles and Responsibilities in Rural Local Governance in Zimbabwe* 14; Chibememe, Middleton and Booker *Review of National Laws & Policies* 32-36; Murombedzi 1999 *Journal of International Development* 287-293. See also, with respect to the protected areas component Balint 2006 *Environmental Management* 137-145.

6.2.4 Principal tourism legislation

The principal tourism legislation in Zimbabwe is the *Tourism Act*. The purpose of the Act is to

Establish a Zimbabwe Tourism Authority and to provide for its functions; a Zimbabwe Tourism Fund; to provide for the appointment of a Chief Executive of the Authority, licensing officers and other officers; to provide for the designation, registration and grading of tourist facilities and for the licensing of persons who provide services connected with tourism; to provide for the imposition and collection of levies in respect of designated tourist facilities; and to provide for matters connected with or incidental to the foregoing.⁹⁸

The primary focus of this Act is to market Zimbabwe as a tourism destination. The Act does not include sustainable tourism development as an approach to the tourism development that occurs in the country. Instead, in driving its marketing agenda, the *Tourism Act* details the functions of its key marketing body as well as other marketing related actors. These functions are considered separately below.⁹⁹

Despite the absence of a clear mandate on sustainable tourism development in the *Tourism Act*, the *National Tourism Policy* (2014), formulated to address some of the gaps in the principal Act,¹⁰⁰ has a sustainable tourism development agenda. Though not binding, this Policy is essential in the legal analysis of Zimbabwe's sustainable tourism development agenda. The Policy defines sustainable tourism as "tourism development and management which optimises the economic and other social benefits available in the present without jeopardising the potential for similar benefits in future."¹⁰¹ Its principal objective is to create an enabling environment for tourism development and community participation in order to optimise the

98 Preamble of the *Tourism Act*.

99 See para 6.2.4.1 below.

100 Paragraph 2.6.5(iii) of the *National Tourism Policy*.

101 Definition of Terms of the *National Tourism Policy*.

contribution of the tourism sector to national economic development.¹⁰² This goal comprises of economic, cultural, social, environmental and institutional objectives.¹⁰³

The economic objectives of the Policy buttressed by specific policy targets are: to increase foreign receipts and the GDP,¹⁰⁴ to create a conducive investment climate that encourages entrepreneurship and curb leakages in the sector,¹⁰⁵ to maximise employment opportunities¹⁰⁶ and to use tourism to develop marginalised communities.¹⁰⁷ These objectives are steps towards aligning Zimbabwe's tourism development with the sustainable tourism development aims of economic viability,¹⁰⁸ local prosperity¹⁰⁹ and employment quality.¹¹⁰ Yet, with respect to employment quality, the Policy addresses issues of job creation more than improving the working conditions of employees within the tourism sector. Objectives with respect to the aim of social equity are also missing in the Policy,¹¹¹ with the effect that tourism businesses in Zimbabwe have no policy-based responsibilities relating to CSR or human rights protections. This suggests that the focus of the Policy is heavily skewed towards marketing tourism in Zimbabwe and less on the elements that make it sustainable.¹¹²

The cultural and social objectives of the Policy target to improve the participation of locals in tourism.¹¹³ These include, improving the quality of life of Zimbabweans,¹¹⁴ promoting gender equality and empowering women and the youth to participate in main stream activities through tourism,¹¹⁵ advancing the well-being of citizens,¹¹⁶

102 Paragraph 2.6 of the *National Tourism Policy*.

103 Paragraph 2.6 of the *National Tourism Policy*.

104 Paragraph 2.6.1(i) read with para 2.6.6(i) of the *National Tourism Policy*.

105 Paragraph 2.6.1(ii) read with para 2.6.6(ii) of the *National Tourism Policy*.

106 Paragraph 2.6.1(iii) read with para 2.6.6(iv) of the *National Tourism Policy*.

107 Paragraph 2.6.1(iv) read with para 2.6.6(v) of the *National Tourism Policy*.

108 See para 3.4.1.6 above.

109 See para 3.4.1.7 above.

110 See para 3.4.1.8 above.

111 See para 3.4.1.9 above.

112 See paras 3.2.2 and 3.3 above.

113 Paragraph 2.6.6(v) of the *National Tourism Policy*.

114 Paragraph 2.6.2(i) of the *National Tourism Policy*.

115 Paragraph 2.6.2(iii) of the *National Tourism Policy*.

positively affecting the livelihoods of local households, promoting SME development,¹¹⁷ and monitoring and minimising the adverse social impacts of tourism on the local population.¹¹⁸ These objectives resonate with the sustainable tourism development aims of community well-being¹¹⁹ and local prosperity.¹²⁰ The objective of SME development speaks to economic viability,¹²¹ while the objective on gender equality and the empowerment of women and youth may be classified under the aim of local control.¹²² Nevertheless, the Policy fails to clearly articulate how these objectives can be materialised in the absence of more specific policy targets.

The environmental objectives of the Policy promote the development of environmental sustainable products and practices,¹²³ empower host communities in managing their tourism projects for maximum benefit, while limiting negative impacts on the environment¹²⁴ and promote and support national and cross-border conservation areas.¹²⁵ The guiding principle for these objectives is to ensure that tourism development is environmentally responsible and sustainable.¹²⁶ Moreover, these objectives predominantly deal with the aim of biodiversity conservation and much less with the contingent aims of the maintenance of physical integrity, environmental purity and resource efficiency.¹²⁷ Within this context, the Policy promotes TFCAs.¹²⁸ Interestingly, there are no specific policy targets to achieve these environmental objectives. This seems to indicate a lack of commitment towards the environmental aims of sustainable tourism development, despite the recognition of its importance in this Policy.

116 Paragraph 2.6.3(i) of the *National Tourism Policy*.

117 Paragraph 2.6.3(ii) of the *National Tourism Policy*.

118 Paragraph 2.6.3(iii) of the *National Tourism Policy*.

119 See para 3.4.1.5 above.

120 See para 3.4.1.7 above.

121 See para 3.4.1.6 above.

122 See para 3.4.1.4 above.

123 Paragraph 2.6.4(i), of the *National Tourism Policy*.

124 Paragraph 2.6.4(ii), of the *National Tourism Policy*.

125 Paragraph 2.6.4(iii) of the *National Tourism Policy*.

126 Paragraph 2.2(iii) read with paragraph 2.6.4(iii) of the *National Tourism Policy*.

127 See for instance Ministry of Tourism and Hospitality Industry *Stakeholder Consultation Report* 10-12.

128 See para 2.6.4(iii) of the *National Tourism Policy*.

The institutional objectives of the Policy are, *inter alia*, to establish and coordinate effective institutional arrangements and planning mechanisms for the tourism sector development,¹²⁹ and to build and strengthen institutional capacities within the tourism sector.¹³⁰ These, together with the state actors and non-state actors provided for in the *Tourism Act*, are considered in detail below.

6.2.4.1 State actors

The overall responsibility for tourism development in Zimbabwe lies with the Ministry of Environment, Tourism and Hospitality Industry.¹³¹ The Ministry works closely with the Parliamentary Committee responsible for tourism to ensure that tourism is given the importance it deserves in terms of fiscal support and its value to the economy.¹³² However, there is no recognition of supporting ministries either in the *Tourism Act* or in the Policy. This indicates an absence of integration in the broader national economic agenda of the country, which adversely affects sustainable development and eventually, sustainable tourism development.¹³³ At local government level, local authorities implement specific functions of planning, land use, product development, marketing and promotion.¹³⁴ Although this provides clarity on the role of local authorities in tourism development and even in TFCA governance, it remains that the influence of national government over them potentially undermines the exercise of their functions at local level, weakening the devolution of power to local levels, especially in rural areas.¹³⁵

129 Paragraph 2.6.5(i) of the *National Tourism Policy*.

130 Paragraph 2.6.5(ii) of the *National Tourism Policy*.

131 Paragraph 5.1 of the *National Tourism Policy*.

132 Paragraph 5.7 of the *National Tourism Policy*. The Parliamentary Committees are designated according to government portfolios to examine the expenditure, administration and policy of government departments Parliament of Zimbabwe 2018 <https://www.parlzim.gov.zw/about-parliament/committee-system/portfolio-thematic-committees>.

133 See para 3.2.1 above on the substantive elements of sustainable development and para 3.2.3 above.

134 Paragraph 5.4 of the *National Tourism Policy*.

135 See paras 6.2.2.1 and 6.2.3 above.

Under this Ministry, the *Tourism Act* establishes the Zimbabwe Tourism Authority (ZTA), as the principal tourism state agency.¹³⁶ The functions of the ZTA are:

- (a) to promote Zimbabwe as a destination for tourists, and to promote the tourist industry in overseas, regional and domestic markets;
- (b) to develop marketing skills and initiatives within the tourist industry;
- (c) to promote high standards in the tourist industry through the establishment of standards, training and human resource development;
- (d) to register and grade designated tourist facilities;
- (e) to promote the development of tourist facilities;
- (f) to undertake the planning for the tourist industry, including the conduct of market research and the development of a tourism database;
- (g) to promote awareness in Zimbabwe of the benefits of tourism;
- (h) to provide consultancy and advisory services in relation to tourism;
- (i) to investigate and make recommendations to the Minister on any matter affecting the tourist industry and the administration of the Act;
- (j) on its own initiative or at the request of the Minister, to carry out any function that may be conferred or imposed on the Authority by or under this Act or any other enactment.¹³⁷

These functions essentially set out the ZTA as the tourism marketing body, without any roles that promote the aims of sustainable tourism development.¹³⁸ Nevertheless, the *Tourism Act* requires the Board of the ZTA to consider the environmental, social and physical impact of any activity or undertaking related to the execution of its functions.¹³⁹ This somewhat compensates for the obvious omission of sustainable tourism development in the mandate of the ZTA, and serves as a basis for the ZTA's engagements in agendas that promote sustainable tourism development. Still, express legal provisions on the latter would have clearly determined the correct trajectory for tourism development in. The effect therefore is that the ZTA's role in promoting sustainable tourism development in the GLTFCA is somewhat diluted and undefined. The effect is therefore that the roles of the ZTA and the PWMA¹⁴⁰ may not necessarily be integrated to promote sustainable tourism development in the country, nor in the Zimbabwean GLTFCA component.

¹³⁶ Section 3 of the *Tourism Act*. See also para 5.2 of the *National Tourism Policy*.

¹³⁷ Section 5(1) of the *Tourism Act*.

¹³⁸ For a detailed discussion on the performance of the ZTA, see for instance, Karambakuwa *et al* 2011 *Journal of Sustainable Development in Africa* 68-76.

¹³⁹ Section 5(3) of the *Tourism Act*.

¹⁴⁰ See para 6.2.2.1 above.

The Policy further requires that the Ministry as well as the ZTA work in collaboration with specific non-state actors. The roles of these non-state actors are considered below.

6.2.4.2 Non-state actors

The *Tourism Act* focuses specifically on the role of the private sector as tourism business operators.¹⁴¹ The Policy defines their role as the drivers of tourism in the country.¹⁴² However, neither the Act nor the Policy elaborates on their role in relation to sustainable tourism development. While the *Tourism Act* does not provide for any other non-state actors, the Policy also recognises NGOs and local communities.¹⁴³ NGOs are responsible for resource mobilisation for sustainable tourism development and capacitating specific community-based tourism projects.¹⁴⁴ However, it is not clear how NGOs are meant to mobilise sustainable tourism development. The Policy also assigns NGOs with the role of assisting the Government in conducting tourism awareness programmes among communities.¹⁴⁵ As regards local communities, the Policy states that they must be fully involved in the development and management of tourist attractions, and participate in the preservation of natural and man-made resources.¹⁴⁶ The Policy also recognises the role of local community participation in tourism businesses through community-based tourism projects and in SME development.¹⁴⁷ This assists in creating the basis for local communities' inclusion in the governance of TFCAs.

The analysis of the *Tourism Act* and the *National Tourism Policy* reveals that tourism development in Zimbabwe emphasises the economic benefits that the sector yields, thus its focus is on the state actors and the private sector. The role of non-state actors such as NGOs and local communities, does not receive the attention it should,

141 Sections 35-49 of the *Tourism Act*.

142 Paragraph 5.3 of the *National Tourism Policy*.

143 Paragraphs 5.5 and 5.8 of the *National Tourism Policy*.

144 Paragraph 5.5 of the *National Tourism Policy*.

145 Paragraph 5.5 of the *National Tourism Policy*.

146 Paragraph 5.8 of the *National Tourism Policy*.

147 Paragraph 5.8 of the *National Tourism Policy*.

although it does encourage the involvement of local communities in wildlife management as well as community-based tourism enterprises.¹⁴⁸ This simply acknowledges initiatives such as CAMPFIRE and other community-based tourism activities.¹⁴⁹ Thus, while the Policy creates the basis for the inclusion of NGOs and local communities as key actors in the governance of the Zimbabwean GLTFCA component, it does little to position them as such, in the absence of binding legal provisions. Essentially, this does not establish the requisite attention for promoting sustainable tourism development in this part of the GLTFCA. Within this context, the next part of this study considers the governance-based tools in relevant legislation for these various actors to employ to promote the TFCA objectives.

6.3 Governance-based tools for promoting the GLTFCA objectives

This section focuses on tools that promote biodiversity conservation, the improvement of livelihoods—alleviation of poverty and economic development.¹⁵⁰

6.3.1 Tools for biodiversity conservation in TFCAs

The analysis examines the provision in Zimbabwe's domestic legislation of the tools that are relevant for promoting biodiversity conservation in the Zimbabwean GLTFCA component. These tools include mandatory protected areas management options for local communities, CBNRM and benefit-sharing, administrative sanctions, criminal sanctions for wildlife crimes, agreements for biodiversity conservation and rights to natural resources, including land, complementary procedural rights and civil remedies.¹⁵¹

148 See para 3.12 *National Tourism Policy*. See also, para 2.4.2.3 above on the discussion around CAMPFIRE.

149 Paragraph 2.7.2 - 2.7.6 of the *Tourism Master Plan 2017-2035*.

150 See para 3.7.2 above.

151 See para 3.7.2.1 above.

6.3.1.1 Mandatory protected areas management options for local communities

The establishment of RDCs as the appropriate authority over wildlife situated in communal land¹⁵² does not create direct involvement for local communities in protected areas management. There are no mandatory protected areas management options for local communities in Zimbabwe's laws to promote biodiversity conservation in TFCAs.¹⁵³ Had there been mandatory management options for local communities in law, this would have significantly impacted on the composition of the Gonarezhou Conservation Trust and the functions thereof.¹⁵⁴ The absence of mandatory tools also significantly influences the nature of the CBNRM and benefit-sharing tools provided for in law.

6.3.1.2 Mandatory CBNRM and benefit-sharing tools and incentives

The PWA establishes a form of mandatory CBNRM with respect to the protection of wildlife within the domain of environmental committees.¹⁵⁵ These environmental committees regulate the hunting of specially protected animals as well as the picking of indigenous plants in their areas.¹⁵⁶ Within this framework, the Community Areas Management Programme for Indigenous Resources (CAMPFIRE), recognised in the *Policy for Wildlife*, 1992, has been operative as a CBNRM initiative in selected rural districts.¹⁵⁷ CAMPFIRE enables rural communities living adjacent to protected areas

152 See paras 6.2.2.2 and 6.2.3 above.

153 See for instance, Child "The Emergence of Parks" 19-32; Child "The Emergence of Modern Conservation" 67-80; Murombedzi 1999 *Journal of International Development* 287-293.

154 See para 6.2.2.2 above.

155 Section 77 of the PWA. For the role of environmental committees, see para 6.2.3 above.

156 Section 77(1) of the PWA.

157 For a detailed discussion of the origins and development of CAMPFIRE, see for instance, Chigonda 2018 *Scientifica* 10.115/2018/6214318; Child "Community Conservation in Southern Africa" 187-199; Duffy 2000 *Killing for Conservation* 9-17; Frost and Bond 2008 *Ecological Economics* 776-787; Jenkins 2003 "Tourism academics and tourism practitioners: bridging the great divide" 60; Metcalfe "CAMPFIRE: Zimbabwe" 1-32; Muir 1992 *Economic Policy and Wildlife Management in Zimbabwe* 1-13; Murombedzi 1999 *Journal of International Development* 287-293; Murphree *Decentralising the Proprietorship* 1-9; Murphree 2004 *Journal of International Wildlife Law & Policy* 203-216; Nuemann "Model, Panacea, or Exception" 177-194; Rihoy, Chorzva and Anstey *People are not happy* 5-32; Taylor "The Performance of CAMPFIRE" 201-222; Taylor 2009 *Biodiversity and Conservation* 2563-2583; Virtanen 2003 *Journal of Society & Natural Resources* 179-190.

to participate in wildlife conservation initiatives in terms of which hunting and other commercial activities are offered to safari operators and tour operators, respectively.¹⁵⁸ In the areas in which CAMPFIRE operates, the environmental committees, and not necessarily the local communities, manage the natural resources.¹⁵⁹ These environmental committees may be CAMPFIRE committees or wildlife committees for that area.¹⁶⁰

CAMPFIRE is a form of incentive for communities to be involved in CBNRM as they receive monetary benefits from the proceeds derived from the hunting quotas they manage.¹⁶¹ Thus, those communities involved in the CAMPFIRE programme act as buffer zones between local communities and the national parks.¹⁶² In terms of this programme, animals that move from the national parks into the 'CAMPFIRE villages', fall within the custody of these communities and can be managed and used to their benefit.¹⁶³ In addition, the use of hunting quotas in itself is a market-based tool targeted at avoiding the over-exploitation of the wildlife resources.¹⁶⁴ The PWA permits quota hunting in safari areas, which is controlled through a comprehensive

158 Frost and Bond 2008 *Ecological Economics* 776-787; Chirozva *Community Engagement in the governance* 61, 228; Muboko and Murindagomo 2014 *Journal of Nature Conservation* 206-211; Murphree 2004 *Journal of International Wildlife Law & Policy* 203-216; Murombedzi 1999 *Journal of International Development* 287-293; Ntuli and Muchapondwa 2018 *International Journal of the Commons* 134-144.

159 Section 61 of the RDCs Act.

160 CAMPFIRE Association 2016 campfirezimbabwe.org/index.php/management-t/6-policy.

161 Harris 2012 "Conserving Biodiversity and Natural Resources" 123. See also, Chapungu 2013 *Greener Journal of Environmental Management and Public Safety* 113; Duffy *Killing for Conservation* 86-87; Frost and Bond *CAMPFIRE and payments for environmental services* 15; Loveridge, Reynolds and Milner Gulland "Does sport hunting benefit" 233-234; Murphree "Congruent Objectives" 105-110; Muposhi *et al* 2016 *International Journal of Biodiversity* 8; African Wildlife Foundation *An Assessment of Protected Areas, Conservancies and Implications of the Indigenisation Policy* 8.

162 Chapungu 2013 *Greener Journal of Environmental Management and Public Safety* 113; Muboko and Murindagomo 2014 *Journal of Nature Conservation* 206-211.

163 Balint 2006 *Environmental Management* 137-145; Chapungu 2013 *Greener Journal of Environmental Management and Public Safety* 113; Murombedzi 1999 *Journal of International Development* 287-293.

164 Arntzen "Wildlife User Rights in Zimbabwe" 46-53; Chigonda 2018 *Scientifica* 10.115/2018/6214318; Kock 1996 *The Exploitation of Mammal Populations* 229-249; Ntuli and Muchapondwa 2018 *International Journal of the Commons* 134-169.

quota system that allows for sustainable and non-destructive hunting.¹⁶⁵ Thus, there is a specific number of animal species which a person or community is allowed to kill per year.¹⁶⁶

The revenue from the programme is distributed between the producer communities, the RDCs and the wildlife management.¹⁶⁷ However, the limited ownership rights over wildlife has generally forced some communities to abandon or reject CAMPFIRE and resort to poaching wildlife and smuggling their livestock into national parks for grazing.¹⁶⁸ There seems to be a need for further incentives through the establishing and clarifying of laws regarding benefit-sharing with local communities, and making wildlife worth more, alive than dead.¹⁶⁹ Also, with the unfavourable economic climate in the country, the income from CAMPFIRE has become a source of contention between RDCs and the producer communities, as the proceeds are not reverting to the communities but are being retained by the RDCs.¹⁷⁰

165 Sections 35-39 and 65 of the PWA. For a detailed explanation, see for instance, Muposhi *et al* 2016 *International Journal of Biodiversity* 6.

166 Sections 39 and 66 of the PWA.

167 Chigonda 2018 *Scientifica* 10.115/2018/6214318; Frost and Bond *CAMPFIRE and payments for environmental services* 12; Fischer, Muchapondwa and Sterner *Bioeconomic Model of Community Incentives for Wildlife* 14.

168 Balint 2006 *Environmental Management* 137-145; Chigonda 2018 *Scientifica* 10.115/2018/6214318; Frost and Bond *CAMPFIRE and payments for environmental services* 6; Chapungu 2013 *Greener Journal of Environmental Management and Public Safety* 113; Chigwenya and Manatsa 2007 *Journal of Sustainable Development in Africa* 110-112; Kamphorst, Koopmanschap and Oudwater 1997 *European Journal of Agricultural Education and Extension* 173-182; Muboko and Murindagomo 2014 *Journal of Nature Conservation* 206-211; Murphree 2004 *Journal of International Wildlife Law & Policy* 203-216; Murphree "Community-Based Conservation" 1-12; Murombedzi 1999 *Journal of International Development* 287-293; Mutandwa and Gadzirayi 2007 *International Journal of Sustainable Development & World Ecology* 336-344; Ntuli and Muchapondwa 2018 *International Journal of the Commons* 134-169; Ntuli and Muchapondwa 2017 *Journal of Nature Conservation* 106-121; Rihoy, Chorzva and Anstey *People are not happy* 38-39; Virtanen 2003 *Journal of Society & Natural Resources* 179-190.

169 Hulme and Murphree 1999 *Journal of International Development* 281-282; Murphree "Community-Based Conservation" 1-6; Murphree 2004 *Journal of International Wildlife Law & Policy* 203-216; Pack, Golden and Walker 2013 *Comparison of national wildlife* 3. See also, CCMT 2014 *Roles and Responsibilities in Rural Local Governance in Zimbabwe* 9-14; Chigonda 2018 *Scientifica* 10.115/2018/6214318; Muposhi *et al* 2016 *International Journal of Biodiversity* 8; Murombo 2010 *South African Public Law* 573-574.

170 Balint and Mashinya 2008 *Society & Natural Resources* 783-796; Harris 2012 "Conserving Biodiversity and Natural Resources" 123; Kamphorst, Koopmanschap and Oudwater 1997 *European Journal of Agricultural Education and Extension* 173-182; Manyena *et al* 2013 *Forum*

6.3.1.3 Administrative sanctions for non-compliance

The PWA provides for hunting licenses for hunting in safari areas as well as hunting permits in areas under the authority of conservation committees.¹⁷¹ Non-compliance with these sanctions, however, attracts criminal liability. This is discussed below.

6.3.1.4 Criminal sanctions for wildlife crimes

The PWA creates offences for contraventions of its provisions relating to the Wildlife Estate. Essentially, these offences are aimed at curbing wildlife crimes that have devastated wildlife protection in the country and the region. These include offences for illegal hunting, picking or removal of plants, and illegal trade in animal specimen.¹⁷² Some of these offences include the possession of freshly killed animals or their products,¹⁷³ ivory or rhinoceros horn, an excess amount of animals or fish, without authorisation.¹⁷⁴ In addition, hunting on private land on a scale that is likely to be injurious to animal populations is prohibited.¹⁷⁵ Additional penalties are also provided for rhino poaching and illegal trade in the rhino horn.¹⁷⁶ The regulations to the PWA, namely the *Parks and Wildlife (General) Regulations*, 1981¹⁷⁷ and the *Trapping of Animals (Control) Act* state further offences for illegal hunting.¹⁷⁸ The PWA also provides for the regulation of illegal fires in national protected areas.¹⁷⁹ Additional provisions for the control of illegal fires are further provided for in

for Development Studies 87-109; Muboko and Murindagomo 2014 *Journal of Nature Conservation* 206-211.

171 Sections 38, 65 and 77(9) of the PWA.

172 Sections 24(1), 45-50 of the PWA.

173 Section 71 of the PWA.

174 Section 74 of the PWA.

175 Section 79 of the PWA.

176 Section 128 of the PWA.

177 Section 104 of the *Parks and Wildlife (General) Regulations* 900 of 1981.

178 (Chapter 20:21) 34 of 1973. The relevant provisions in this Act are in ss 6, 10 and 22.

179 Section 129 of the PWA.

the *Forest Act*¹⁸⁰ and the *Communal Lands Forest Produce Act*, that regularly regulate all fires on communal land.¹⁸¹

6.3.1.5 Agreements for biodiversity conservation

The management system of the PWA, which establishes appropriate authorities over the Wildlife Estate, private land and communal land, indirectly creates the basis for agreements for biodiversity conservation. The CAMPFIRE programme itself creates agreements for wildlife conservation between the appropriate authorities of national parks and safari areas and the authorities of the communal areas.¹⁸² However, these agreements have been hampered by patronage and power imbalances within the RDCs.¹⁸³ Moreover, agreements also exist between private landowners, such as that of the Malilangwe Trust and the GNP, for the protection and conservation of wildlife. These agreements do not include CAMPFIRE and the RDCs.¹⁸⁴

6.3.1.6 Enforcement of rights to natural resources, including land; complementary procedural rights and civil remedies

The *Constitution* provides for the right to use natural resources while promoting economic and social development.¹⁸⁵ This right is also provided for in the EMA.¹⁸⁶ However, the PWA does not provide local communities with rights of access or the use of the natural resources and land within national parks.¹⁸⁷ Instead, licenses are required for the use of the natural resources therein.¹⁸⁸ Moreover, the land within the Wildlife Estate is state land, thus no land rights accrue to local communities for land within national parks, sanctuaries or safari areas.¹⁸⁹ The absence of rights to

180 Sections 67-75, 78(2) and 79 of the *Forest Act* 37 of 1949.

181 Section 23 of the *Communal Lands and Forest Produce Act* 20 of 1987.

182 See para 6.3.1.2 above.

183 Rihoy, Chorzva and Anstey *People are not happy* 39-41.

184 See para 6.2.2.2 above.

185 Section 73(1)(b)(iii) of the *Constitution*.

186 Section 4(1)(b)(ii) of the EMA.

187 See for instance, Balint 2006 *Environmental Management* 137-145; Jones *Legislation and Policies relating to Protected Areas* 50-54.

188 Sections 24, 34 and 39 of the PWA.

189 Section 18 of the PWA.

natural resources or land in the protected areas creates animosity within the local communities situated adjacent to these areas to the detriment of biodiversity conservation.¹⁹⁰

However, in the safari areas falling within or comprising of communal land, community rights over natural resources are available for local communities,¹⁹¹ excluding land ownership - as communal land in Zimbabwe vests in the President.¹⁹² Notwithstanding, the rights over the natural resources form the basis of the hunting concessions concluded between the CAMPFIRE communities and safari operators.¹⁹³

In addition, communal land, and the rights associated with it, are subject to alteration by the President for its inclusion into State land, in this context, into the Wildlife Estate¹⁹⁴ or for the conservation and improvement of natural resources.¹⁹⁵ This is detrimental to the cooperation of local communities in biodiversity conservation, as it deprives them of the land, which is their source of livelihood and being.¹⁹⁶ For instance, there has been much resistance by local communities situated in and around the Sengwe-Tshipise Corridor- in the process of its incorporation into the GLTFCA.¹⁹⁷

190 For a detailed discussion, see for, instance Balint 2006 *Environmental Management* 137-145; Chigonda 2018 *Scientifica* 10.115/2018/6214318; Chirozva *Community engagement in the governance* 246; Chigwenya and Manatsa 2007 *Journal of Sustainable Development in Africa* 102-115; Harrison *The Governance of Natural Resources* 114; Manyena *et al* 2013 *Forum for Development Studies* 87-109; Murphree 2004 *Journal of International Wildlife Law & Policy* 203-216; Murombedzi 1999 *Journal of International Development* 287-293; Mutandwa and Gadzirayi 2007 *International Journal of Sustainable Development & World Ecology* 336-344.

191 Section 36 of the PWA.

192 Section 4 of the *Communal Land Act* (Chapter 20:04) 20 of 1982 (hereafter *Communal Land Act* 20 of 1982; s 61 of the RDCs Act.

193 Muboko and Murindagomo 2014 *Journal of Nature Conservation* 206-211.

194 Section 6 of the *Communal Land Act* 20 of 1982.

195 Section 110 of the EMA.

196 See for instance, Balint 2006 *Environmental Management* 137-148; Kamphorst, Koopmanschap and Oudwater 1997 *European Journal of Agricultural Education and Extension* 173-182; Mutandwa and Gadzirayi 2007 *International Journal of Sustainable Development & World Ecology* 336-344; Ntuli and Muchapondwa 2018 *International Journal of the Commons* 134-169; Rihoy, Chorzva and Anstey *People are not happy* 39-41.

197 Chirozva *Community engagement in the governance* 247-249; Andersson, De Garine-Wichatitsky and Cumming "TFCAs and the invisible people" 12-24; Chirozva "Community agency and entrepreneurship" 103; Chirozva, Black and Higgins 2017 *Society & Natural Resources* 964-979;

EMA establishes procedural rights such as the right of access to information,¹⁹⁸ and the right to participation in the implementation of legislation and policy relating to the management and use of natural resources.¹⁹⁹ These rights empower local communities to be informed as well as to participate in the decision-making processes pertaining to the management of natural resources-that include the protected areas. Thus, these rights should apply where their communal land rights are subject to alteration for conservation purposes. A constitutional right of access exists,²⁰⁰ which is further enumerated in the *Access to Information and Protection of Privacy Act*.²⁰¹ Yet, the latter restricts this right by providing various instances of non-disclosure of protected information,²⁰² such as the protection of deliberations of the Cabinet and local government bodies, research information, information relating to the conservation of heritage sites, and information relating to business interests of third parties.²⁰³ The provisions of the Act that restrict access to information use wide terms that allow for virtually any information to be withheld.²⁰⁴

The right to public participation is not expressly provided for in the *Constitution* but it is realised through other rights such as freedom of assembly and association, freedom of expression and freedom of movement.²⁰⁵ In addition, the devolution of governmental power to local authorities is aimed at ensuring, *inter alia*, the participation of local communities in the determination of the development priorities within their areas.²⁰⁶ This is further provided for in legislation such as the *Rural District Councils Act* and the *Traditional Leaders Act*.²⁰⁷ However, it cannot be said

Chiutsi and Saarinen 2017 *Development Southern Africa* 260-275; Tavuyanago *Living on the fringes* 335-344.

198 Section 4(1)(b) of the EMA.

199 Section 4(1)(b) of the EMA.

200 Section 62 of the *Constitution*.

201 (Chapter 10:27) 5 of 2002 as amended by Act 5 of 2003 (hereafter *Access to Information and Protection of Privacy Act* 5 of 2002).

202 Part 3 of the *Access to Information and Protection of Privacy Act* 5 of 2002.

203 Sections 14-25 of the *Access to Information and Protection of Privacy Act*.

204 Human Rights NGO Forum 2011 *Human Rights Bulletin* 2.

205 Section 58, 61 and 66 respectively of the *Constitution*.

206 Chapter 14 Preamble read with s 264 of the *Constitution*.

207 See for instance ss 50, 87, 88, 121 of the RDCs Act; s 30 of the *Traditional Authorities Act* 25 of 1988.

that local communities have adequate legislative provisions for their realisation of this entitlement to public participation.²⁰⁸

There also is no express constitutional provision for the right of access to justice. Nevertheless, the *Constitution* places a duty on the State as well as on individuals, including juristic persons, to respect, protect, promote and fulfil the rights and freedoms enshrined therein.²⁰⁹ It further states that the human rights enshrined in the *Constitution* bind the executive, the legislature, judicial institutions and state agencies at every level.²¹⁰ These constitutional provisions give an individual the power to challenge the organs of the state as well as private individuals against any breach of these rights.²¹¹ The *Legal Aid Act*,²¹² which provides for the granting of legal aid to indigent persons, can set the basis for access to justice, especially for rural communities that may be negatively affected by tourism development.²¹³

Thus far, there is a need for more legal tools to promote biodiversity conservation in TFCAs, especially where the involvement of local communities is concerned. The current framework, in which local communities are excluded from the direct management of protected areas as well as the very limited scope of their rights over natural resources and land, which impact on their participation in biodiversity conservation through CBNRM and in the beneficiation thereof, is detrimental to realising the TFCA objective. The effects of these tools in their current form also influence the livelihoods of the local communities within the GLTFCA component. This is explored further below.

208 See paras 6.2.2.2, 6.2.3 and 6.3.1.2 above. For a discussion, see for instance, Fuo 2015 *African Human Rights Law Journal* 177-178; Madzivanyika 2014 *Local government, participatory processes and citizen engagement* 6-10.

209 Section 4 of the *Constitution*.

210 Section 45(1) of the *Constitution*.

211 Sections 44 and 45 of the *Constitution*. See also, Chiduza and Makiwane 2016 *PER* 13.

212 (Chapter 7:16) Act 18 of 1996 as amended by Act 22 of 2001 (hereafter *Legal Aid Act* 18 of 1996).

213 Sections 3-13 of the *Legal Aid Act* 18 of 1996.

6.3.2 Tools for improvement of livelihoods – alleviation of poverty in TFCAs

This section analyses the governance-based tools provided by law to promote the improvement of livelihoods–alleviation of poverty in the Zimbabwean GLTFCA component. This entails establishing whether the following tools are in place: mandatory poverty reduction programmes or strategies; provincial and municipal by-laws for the provision of basic services; mandatory minimum standards, incentives, agreements and rights for the provision of basic services; voluntary or agreement-based tourism certification standards; a license to operate; tools for voluntary TDIDR; and HRIAs for tourism development projects.²¹⁴

6.3.2.1 Mandatory poverty reduction programmes or strategies

The *Constitution* has founding values and principles that include, *inter alia*, the recognition of the inherent dignity and worth of each human being;²¹⁵ respect for the people of Zimbabwe; and the equitable sharing of national resources, including land.²¹⁶ It further states national objectives to guide the State in formulating and implementing of laws and policy decisions that will, among other things, enhance and promote a society in which people enjoy prosperous, happy and fulfilling lives.²¹⁷ A specific objective is for the State to take all practical measures, within the limits of the resources available to it, to provide social care to those who are in need.²¹⁸ These constitutional provisions form the basis for poverty reduction programmes and strategies.

A key instrument on economic development, which addresses poverty eradication, is the *Zimbabwe Agenda for Sustainable Socio-Economic Transformation (ZIMASSET)*, 2013-2018. It provides for indigenisation and empowerment, which entails improving service delivery, entrepreneurial skills development, empowerment programmes for

214 See para 3.7.2.2 above.

215 Section 3(1) of the *Constitution*.

216 Section 3(2)(f) and (j) of the *Constitution*.

217 Section 8 of the *Constitution*.

218 Section 30 of the *Constitution*.

unemployed graduates, increased literacy levels, and improving social service delivery, including reducing financial barriers to health services. *ZIMASSET* also targets to improve access to justice to indigent person, to improve standards of living through housing strategies, to provide social benefits, food assistance, access to medical treatment, education and the provision of agricultural inputs.²¹⁹ Amongst its many challenges to implementation, *ZIMASSET* fails to overcome challenges around transparency, accountability and corruption and the on-going governance crisis.²²⁰ The new government recently launched Vision 2030 and is working on other economic policies to address, *inter alia*, poverty eradication.²²¹

Nevertheless, in accordance with *ZIMASSET*, the *Zimbabwe Interim Poverty Reduction Strategy Paper* 2016-2018 aims to direct its efforts towards agricultural productivity, growth and rural food security; health, education, social protection and water and sanitation; manufacturing, SMEs, mining, tourism, inclusive banking and indigenisation and economic empowerment and infrastructure development in energy, housing, transport and environmental protection, among others.²²² With respect to tourism the *Zimbabwe Interim Poverty Reduction Strategy Paper* promotes community based-tourism enterprises for the improvement of livelihoods of communities.²²³ This Strategy Paper also identifies the CAMPFIRE programme as a means to address poverty reduction at rural community level through community beneficiation.²²⁴

Also significant is the *Land Reform Policy*, which was instituted in 1980 and consolidated in a series of instruments, including, the *Land Acquisition Act*,²²⁵ the

219 Paragraph 7.2 of the *ZIMASSET*.

220 Sibanda and Makwata *Zimbabwe Post Independence* 29-34.

221 At the time of writing this study, these policy instruments were not yet in the public domain.

222 Ministry of Finance & Economic Development *Zimbabwe Interim Poverty Reduction Strategy Paper* 65-139.

223 Ministry of Finance & Economic Development *Zimbabwe Interim Poverty Reduction Strategy Paper* 108.

224 Ministry of Finance & Economic Development *Zimbabwe Interim Poverty Reduction Strategy Paper* 125. See also, Mapuva 2015 *African Journal of History and Culture* 147. For a detailed discussion of CAMPFIRE, see para 6.3.1.2 above.

225 *Land Acquisition Act* (Chapter 20:10) 3 of 1992 (hereafter *Land Acquisition Act* 3 of 1992).

Land Reform and Resettlement Programme Phase II, 1998, and the *Fast Track Land Reform Program*, 2000. The Policy aimed at changing the racial composition of access to land, landholding sizes, land use norms and tenure systems to effect entrenchment of non-racially structured land access, tenures and production systems.²²⁶ The success of this policy is marred by the controversies around the efficacy of the market-led reforms, *vis-à-vis* the physical violence and the violation of the property rights of landowners and of farmworkers, which were militant and state-led.²²⁷ The land transfers that have been effected have had limited impact on poverty reduction at farm household and national level.²²⁸ This is attributed to the rapid loss of substantial agricultural production by former landowners and farmworker jobs, as well as the effects of economic collapse and internal opposition to land reform and international isolation over the years.²²⁹

Specific to tourism, the *National Tourism Policy* aims for tourism that is government-led, private sector driven and community-welfare oriented, play a leading role in the emancipation of local communities.²³⁰ This reflects in its social objectives.²³¹ It further advocates the role of tourism in providing for the eradication of poverty, especially for communities living within or around tourist attractions, through their involvement in the development, management and preservation of these resources; and through the establishment of viable community-based tourism projects.²³² The latter also validates the CAMPFIRE initiatives. These policy provisions are important

226 Deininger and Hoogeveen 2004 *World Development* 1697-1709; Moyo "Land policy, poverty reduction" 344-345; Matondi *Zimbabwe's Fast Track Land Reform* 1-18.

227 Chitsike "A Critical Analysis"; De Villiers *Land reform* 5-29; Moyo "Land policy, poverty reduction" 344-345; Masiwa *Land Reform Programme* 1-21.

228 Bangwayo-Skeete, Bezabih and Zikhali 2010 *Quarterly Journal of International Agriculture* 319-339; Moyo "Land policy, poverty reduction" 344-345; Matondi *Zimbabwe's Fast Track Land Reform* 1-18; Scoones *et al* 2011 *Journal of Peasant Studies* 967-993.

229 Cliffe *et al* 2011 *Journal of Peasant Studies* 907-938; Matavire, Sibanda and Dube 2015 *Transactions of the Royal Society of South Africa* 181-186; Moyo "Land policy, poverty reduction" 344-345; Moyo 2011 *Journal of Peasant Studies* 493-531; Moyo 2011 *Review of African Political Economy* 257-276; Moyo 2014 *Public Policy and Administrative Review* 67-74; Nwayo 2014 *International Journal of African Renaissance Studies – Multi-, Inter- and Transdisciplinary* 36-49.

230 Paragraph 2.2 of the *National Tourism Policy*.

231 See para 6.2.4 above.

232 Paragraph 5.8 of the *National Tourism Policy*. See also para 6.2.4 above.

in steering tourism development towards the alleviation of poverty in the GLTFCA, although mandatory legal tools to give effect to these policy provisions are necessary.

6.3.2.2 Provincial legislation and municipal by-laws for basic services

There is no provincial legislation for the provision of basic services, perhaps because of the undefined mandate of provincial government, therefore national legislation determines the provision of basic services in the country.²³³ Services such as water and sanitation, health and education are provided for in relevant national laws, which establish the relevant authorities with specific mandates. For instance, the *Water Act*²³⁴ and *National Water Authority Act*²³⁵ provide for the supply of water and sanitation services by the Ministry of Lands, Agriculture, Water, Climate and Rural Resettlement in consultation with the National Water Authority.²³⁶ However, the current *Public Health Act*,²³⁷ in the provision of health services, assigns the provision of water supplies and maintaining these supplies in good order to the local authorities.²³⁸ This Act mandates local authorities to provide health services.²³⁹ The *Public Health Bill*, 2017 seeks to include provincial health administration as coordinators of the planning of provincial health plans and the controlling of the quality of health services in provinces. This gives meaning to the constitutional mandate of provincial government.²⁴⁰ These sectoral provisions necessitate an examination of the existence of further tools for the provision of the relevant services. Apart from these prospective changes in the health sector, the implementation of national tools down to the provincial and local grassroots setting is still lacking, in the absence of provincial laws and municipal by-laws for the

233 Chakunda 2015 *IOSR Journal of Humanities and Social Science* 46; Madhekeni and Zhou 2012 *Journal of Public Administration and Governance* 20-21. See also, para 6.2.2.1 above on the role of provincial government in protected areas governance.

234 *Water Act* (20:24) 31 of 1998 (hereafter *Water Act* 31 of 1998).

235 *National Water Authority* (20:25) 11 of 1998 (hereafter *National Water Authority*).

236 Section 6 of the *Water Act* 31 of 1998.

237 *Public Health Act* (Chapter 15:09) 19 of 1924 (hereafter *Public Health Act*).

238 Sections 64 and 66 of the *Public Health Act*.

239 Sections 4A, 6-10 of the *Public Health Act*.

240 Sections 9-12 of the *Public Health Bill*.

provision of basic services. The new government that promises devolution of economic development to provinces may address this challenge.²⁴¹

6.3.2.3 Mandatory minimum standards, incentives, agreements and rights for the provision of basic services

The *Constitution* places an obligation on the State to take all practical measures to ensure the provision of basic, accessible and adequate healthcare throughout Zimbabwe.²⁴² There are, however, no specific standards for private actors to provide health services, save for the duty on all persons, including juristic persons, to respect, protect, promote and fulfil human rights.²⁴³ As such, the *Tourism Master Plan 2017-2035*,²⁴⁴ in accordance with the *Joint Ventures Act*,²⁴⁵ encourages the private sector to enter into partnerships for the refurbishment of electrification, roads and transport, water supply, sanitation services and other existing infrastructure relating to basic services.²⁴⁶ Investment legislation becomes applicable for the provision of incentives in such partnerships.²⁴⁷

In addition, the provision of basic services is rights-based. The *Constitution* provides for the right to education,²⁴⁸ the right to health care,²⁴⁹ and the right to water.²⁵⁰ However, the realisation of each of these rights is limited by the availability of state

241 The President, Emmerson D Mnangagwa in his State of the Nation address at the official opening of the first session of the ninth Parliament of Zimbabwe, 18 September 2018, promised that a *Provincial and Metropolitan Councils Bill* will facilitate the devolution of governmental powers and responsibilities to provincial and local authorities Parliament of Zimbabwe 2018 <https://www.parlzim.gov.zw/component/k2/address-by-president-of-the-republic-of-zimbabwe-his-excellency-cde-e-d-mnangagwa-on-the-occassion-of-the-stae-of-the-nation-address-and-the-official-opening-of-the-first-session-of-the-ninth-parliament-of-zimbabwe>.

242 Section 29 of the *Constitution*.

243 Section 44 of the *Constitution*.

244 Paragraph 2.1.2(3) of the *Tourism Master Plan 2017-2035*.

245 (Chapter 22:22) 6 of 2015 (hereafter *Joint Ventures Act*).

246 Paragraph 2.1.2(4) of the *Tourism Master Plan 2017-2035*.

247 See para 6.3.3.3 below.

248 Section 75 of the *Constitution*.

249 Sections 76, 81(1)(f) and 82(b) of the *Constitution*.

250 Section 77 of the *Constitution*.

resources and the progressive realisation of these rights.²⁵¹ Nonetheless, sectoral legislation provide for these rights in detail. The *Water Act*,²⁵² for instance, provides for the supply of and quality of water although it is restricted by levels of demand.²⁵³ The deterioration of infrastructure for the proper maintenance of water supply and water treatment, resulting in outbreaks of waterborne diseases undermines the realisation of this right, to date.²⁵⁴ Closely related, the *Public Health Act* provides for the right to health care through provisions on, among others, water and food supplies,²⁵⁵ sanitation and housing,²⁵⁶ all of which falls under the mandate of local authorities.²⁵⁷ The inadequacies of the provisions in the *Public Health Act* to meet the constitutional right are currently addressed in the *Public Health Bill*, with specific provisions on health services that are not in the current Act.²⁵⁸ Nonetheless, the current collapse of the health system in the country creates challenges for realising the right to health care.²⁵⁹ The right to education, as provided for in the *Education Act*,²⁶⁰ makes education compulsory at primary and secondary levels and prescribes minimum fees for education.²⁶¹ This right to education makes education accessible, even in rural communities.²⁶² However, children from low socio-economic backgrounds, even in rural areas and in the remote areas, including orphans and vulnerable children, are at higher risk of dropping out and being marginalised from the education system, due to the prevailing economic challenges.²⁶³

251 Sections 75(4), 76(4) and 77(b) of the *Constitution*. For a discussion of the implications of the limitation clause see Ndhlovu *Protection of socio-economic rights in Zimbabwe* 10-38. See more generally para 4.3.2.3 above.

252 *Water Act* (20:24) 31 of 1998 hereafter *Water Act*.

253 Section 32 read with s 54 of the *Water Act*.

254 Paragraph 2.3.2 of the *Tourism Master Plan 2017-2035*.

255 Sections 64-66 of the *Public Health Act* 19 of 1924.

256 Sections 82-84 of the *Public Health Act*.

257 See para 6.3.2.2 above.

258 The Preamble to the Bill states that the Bill seeks to replace, update and align to the *Constitution* the law relating to Public Health, by *inter alia*, providing for rights and duties in Public Health. See in this regard ss 30-45 of the Bill on the provision of health services.

259 Human Rights Forum *The right to health* 2.

260 [Chapter 25:04] 5 of 1987 as amended by Act 22 of 2001 (hereafter *Education Act*).

261 Sections 4, 5 and 6 of the *Education Act*.

262 See para 6.3.2.1 above.

263 UNICEF Date Unknown <https://www.unicef.org/zimbabwe/education.html>.

6.3.2.4 Voluntary or agreement-based tourism certification standards

There are no specific provisions in the *Tourism Act* to regulate voluntary or agreement based-tourism certification standards. Consequently, a few tourism businesses subscribe to voluntary certification standards within the industry and beyond.²⁶⁴ The limited participation of tourism businesses in these voluntary certification standards, suggests that many of these businesses may not necessarily be compelled to participate in the improvement of livelihoods and the alleviation of poverty. This calls for legislative measures to meet this TFCA objective for the communities in the Zimbabwean GLTFCA component.

6.3.2.5 Social license to operate

There is no law for the tourism sector or any other sector in Zimbabwe that currently provides either directly or indirectly for a social license to operate. Essentially, therefore, tourism developers are under no obligation to engage with local communities in the Zimbabwean GLTFCA component, for their long-term well-being, especially in instances of TDIDR.

6.3.2.6 Mandatory tools, incentives, agreement-based standards, agreements, human rights protections and civil remedies for voluntary TDIDR

The *Constitution* places an obligation on the State to take reasonable legislative and other measures to enable every person to have access to adequate shelter.²⁶⁵ In this respect, the freedom of movement and residence is also pertinent as it gives citizens the right to reside in any part of the country.²⁶⁶ Closely related is the right to property, which prohibits the compulsory deprivation of property except in terms of legislation; and for development that is beneficial to the community.²⁶⁷ The freedom from arbitrary eviction, which prohibits the eviction of persons from their homes or

264 Zengeni *et al* 2014 *International Journal of Management Sciences* 116-138; Maphosa *An investigation of the causes of non-adherence* 94-95.

265 Section 28 of the *Constitution*.

266 Section 66(2)(b) of the *Constitution*.

267 Section 71(3) of the *Constitution*.

having their homes demolished without an order of the court that is made after considering all relevant circumstances, is also relevant.²⁶⁸ The consideration of all relevant circumstances prior to an eviction order invokes additional resettlement requirements in terms of other laws.

Since communal land may be altered for inclusion into the Wildlife Estate or for other conservation purposes,²⁶⁹ the EMA requires that the Minister responsible for the administration of communal land must ensure that suitable provision is made elsewhere for the inhabitants who will be affected by the setting aside of the areas.²⁷⁰

In *Malvern Mudiwa and Newman Chiadzwa v Mbada Mining (Private) Limited and Others*,²⁷¹ the court failed to endorse the rights of local communities to access to information and participation in their eviction for mining. While an appeal to this decision is yet to be finalised since 2010, the earlier decision influenced the resettlement process that followed, as the mining companies and the Ministry of Mines disclosed their resettlement plans to the communities.²⁷²

In addition to the above, the *Land Acquisition Act* specifically provides for resettlement for agricultural, environmental and other purposes such as the utilisation of wildlife or other natural resources, which can be applicable to TDIDR.²⁷³ However, it does not offer protection to people displaced by compulsory acquisitions. The *Social Welfare Assistance Act*²⁷⁴ allows destitute or indigent people to apply for welfare assistance and provides for a wide range of social welfare to be provided to eligible applicants, although it does not specifically apply to displaced persons.²⁷⁵

268 Section 74 of the *Constitution*.

269 See para 6.3.1.6 above where it is established that communal land is vested in the President who may alter such land.

270 Section 110 of the EMA.

271 HC 6334/09.

272 Chibememe, Middleton and Booker *Review of National Laws & Policies* 66.

273 Section 3 of the *Land Acquisition Act* 3 of 1992.

274 (Chapter 17:06) Act 10 of 1988 (hereafter *Social Welfare Assistance Act*).

275 Sections 5 and 6 of the *Social Welfare Assistance Act* 10 of 1988.

Additionally, the *Regional, Town and Country Planning Act*²⁷⁶ empowers local authorities to remove or demolish property without compensation, if the property is not compatible with the master plan or local plan.²⁷⁷ It further provides for the expropriation of land, subject to compensation, for the implementation of a master plan or local plan.²⁷⁸ However, the compensation is only payable in limited circumstances.²⁷⁹

6.3.2.7 HRIAs for tourism development projects

At present, there is no law that provides for HRIAs in Zimbabwe. Therefore, human rights violations by tourism businesses, as with businesses in other sectors such as mining are unregulated beyond the constitutional obligations.²⁸⁰

Overall, the existing tools for promoting the improvement of livelihoods in the Zimbabwean GTLFCA component are rendered ineffective by the socio-economic and concomitant challenges facing the country. There is also an apparent lack of mandatory minimum standards for promoting this TFCA objective, failing to take advantage of the role of actors, especially tourism businesses, in contributing towards the improvement of the livelihoods of local communities. The absence of tools such as voluntary certification standards, SIAs, HRIAs and human rights protection from TDIDR in tourism development, reduces the chances for the improvement of livelihoods and alleviation of poverty in this GLTFCA component. This existing climate also significantly affects the TFCA objective of economic development and the nature of the tools available.

276 (Chapter 29:12) 22 of 1976 (hereafter *Regional, Town and Country Planning Act*).

277 Sections 35 and 36 of the *Regional, Town and Country Planning Act*.

278 Section 46 read with s 50 of the *Regional, Town and Country Planning Act*.

279 Section 52 of the *Regional, Town and Country Planning Act*.

280 See s 44 of the *Constitution*, which places an obligation on private entities to respect human rights. For a discussion on human rights violations in Zimbabwe, see for instance, United States Embassy 2016 <https://zw.usembassy.gov/2016-zimbabwe-human-rights-report/>.

6.3.3 Tools for promoting economic development in TFCAs

This segment examines the legislation in Zimbabwe that is relevant to the promotion of economic development in TFCAs in order to establish whether they provide for the requisite tools. These tools include revenue sharing agreements, tourism planning, marketing, infrastructure development and land use planning, investment in TFCAs, tourism concessions, equitable treatment of investors, incentives for tourism businesses, including favourable immigration controls, local procurement, the movement of goods and persons, labour and employment quality, job creation and job security and CSR strategies.²⁸¹

6.3.3.1 International revenue sharing agreement(s) and mandatory national revenue sharing tools for TFCA participating countries

As with South African and Mozambique, Zimbabwe does not have any national revenue sharing tools because of the absence of an international revenue sharing agreement.²⁸²

6.3.3.2 Mandatory national minimum standards for tourism planning, marketing, infrastructure development and land use planning in TFCAs

The *Tourism Act* mandates the ZTA with tourism planning and marketing.²⁸³ It further provides for the ZTA Board to take into consideration environmental and social factors in the fulfilment of its functions. The Board therefore guides the ZTA in the performance of its functions, including tourism planning and marketing. Without specific mandatory tools in place, these very broad provisions on tourism planning and marketing in the *Tourism Act*, are inadequate especially, for promoting sustainable tourism development in TFCAs. Infrastructure development in Zimbabwe is not expressly provided for in the law, except in the context of the *Infrastructure*

281 See para 3.7.2.3 above.

282 See paras 4.3.3.1 and 5.3.3.1 above.

283 See para 6.2.4 above.

Development Bank Act,²⁸⁴ which facilitates funding for entities involved in infrastructure development. The absence of specific legislation and tools implies that infrastructure development is not targeted at specific purposes within the broader economic development agenda. The effects of this omission are manifest in the deterioration of existing infrastructure across the country, negatively impacting tourism development.²⁸⁵

Land use planning is provided for in the *Regional, Town and Country Planning Act*, which prescribes for regional plans at the provincial level as well as master plans and local plans at the local level.²⁸⁶ Local planning authorities, under the guidance of the Minister of Environment, Tourism, and Hospitality Industries, prepare the master plans for areas set aside for tourism related purposes.²⁸⁷ These plans regulate the land use, construction of buildings and the conservation and improvement of the physical environment,²⁸⁸ taking into consideration the economic and social circumstances prevailing in the area and surrounding areas.²⁸⁹ Local plans may be prepared for specific purposes that may vary within a given local area in accordance with the master plans.²⁹⁰ Both the master plan and local plans are subject to development permits, which require, among others, the preservation of trees and woodlands.²⁹¹ These tools in the *Regional, Town and Country Planning Act* should be available for tourism development in the Zimbabwean GLTFCA component. The EMA is also relevant for stipulating that EIAs are a prerequisite for developing resort facilities, hotels and safari operations.²⁹² It states that these tourism facilities can only be constructed following the issuance of a certificate showing that EIAs were prepared.²⁹³ Any contraventions in this regard attract the suspension or cancellation

284 (Chapter 24:14) 7 of 1983 as amended by Act 11 of 2005.

285 Paragraph 2.3.2 of the *Tourism Master Plan 2017-2035*. See also, para 2.4.2.3 above.

286 Sections 6, 14 and 17 of the *Regional, Town and Country Planning Act*.

287 Section 14 of the *Regional, Town and Country Planning Act*.

288 Section 14(2) of the *Regional, Town and Country Planning Act*.

289 Section 14(3) of the *Regional, Town and Country Planning Act*.

290 Section 17 of the *Regional, Town and Country Planning Act*.

291 Section 31 of the *Regional, Town and Country Planning Act*.

292 Sections 2 and 97 read with para 10 of Schedule 1 of the EMA.

293 Section 97(1)(b) of the EMA.

of the certificates. In principle, this should imply that the cancellation or suspension of an EIA certificate prohibit further operations by tourism businesses. However, in practice, tourism facilities have been erected and tourism projects have commenced without EIAs.²⁹⁴ Yet, within the GNP the *PWA* specifically demarcates areas where tourism facilities may be erected, subject to more specific restrictions and regulations.²⁹⁵

6.3.3.3 Mandatory tools, incentives and agreements for investment in TFCAs

The *National Tourism Policy* aims to create an enabling environment to attract investment into the tourism sector by, *inter alia*, creating special economic zones in which tourism may offer comparative advantages for investors.²⁹⁶ These zones are specifically provided for in the *Special Economic Zones (SEZs) Act*,²⁹⁷ and may include TFCAs.²⁹⁸ The inclusion of TFCAs as investment areas and the GLTFCA in particular, is specifically provided for in the *Tourism Master Plan 2017-2035*.²⁹⁹ This Master Plan also encourages investors to enter into partnerships for the refurbishment of existing tourism infrastructure.³⁰⁰ There are no express incentives for investment in TFCAs in the *SEZs Act* or any other instrument. However, the granting of ownership of wildlife to private landowners in the PWA to promote the sustainable use and conservation of wildlife on private land,³⁰¹ serves as an incentive and basis for agreements for private landowners, as investors, to participate in the development of the Zimbabwean component of the GLTFCA.³⁰²

294 Mpofu *The Source*, 25 September 2014.

295 Section 23(1)(C)(k)(iv) and (m) of the PWA.

296 Paragraph 3.9 of the *National Tourism Policy*.

297 (Chapter 14:34) 7 of 2016.

298 Muboko 2017 *Journal of Sustainable Forestry* 18.

299 Paragraph 2.1.2(3) of the *Tourism Master Plan 2017-2035*.

300 Paragraph 2.1.2(4) of the *Tourism Master Plan 2017-2035*.

301 See para 6.2.2.2 above.

302 Section 2 read with ss 59; 61-67 of the PWA. See also, Duffy *Killing for Conservation* 86-87; Child *et al* 2012 *Pastoralism: Research Policy and Practice* 7.

6.3.3.4 Mandatory minimum clauses for tourism concessions

While the *Tourism Law* does not provide for PPPs in the tourism sector, the *National Tourism Policy* identifies the need for government to work closely with the private sector by entering into mutually beneficial PPPs.³⁰³ More generally, the *Joint Ventures Act*, which enables public entities to enter into joint venture agreements with private entities, provides for PPPs.³⁰⁴ These PPPs may take the form of, *inter alia*, Build and Transfer, Build, Lease and Transfer, BOT, BOO, BOOT and BTO.³⁰⁵ However, this Act too does not include tourism concessions as part of the permissible joint ventures.³⁰⁶ This omission may be the reason for the general absence of tourism concessioning in the Zimbabwean component of the GLTFCA.

6.3.3.5 Mandatory provisions for the equitable treatment of investors

The 2018 amendments to the *Indigenisation and Economic Empowerment Act*³⁰⁷ in the *Finance Act*³⁰⁸ have done away with the preferential treatment of national investors in all other sectors, excluding mining and agriculture.³⁰⁹ This promotes equitable treatment of tourism investors, among others. Prior to these amendments, it was mandatory for foreign investors to partner with indigenous Zimbabweans, so that the shareholding of the latter is at a minimum of 51 percent, while that of the former is a maximum of 49 percent.³¹⁰ These developments are targeted at attracting foreign investment in the various sectors, including tourism, as part of reviving the Zimbabwean economy.

303 Paragraph 5.3 of the *National Tourism Policy*.

304 Section 8(1) of the *Joint Ventures Act*.

305 Section 2(2) read with Schedule Part II of the *Joint Ventures Act*.

306 Section 2(2) read with Schedule Part I of the *Joint Ventures Act*.

307 (Chapter 14:33) 14 of 2007 (hereafter *Indigenisation and Economic Empowerment Act*).

308 *Finance Act* 1 of 2018. This Act amended the *Indigenisation and Economic Empowerment Act* on 14 March 2018.

309 See para 6.3.3.3 above.

310 Section 3(1) of the *Indigenisation and Economic Empowerment Act*.

However, the *Zimbabwe Investment Authority Act*,³¹¹ the principal legislation on investment, prescribes investment licenses for foreign investors that wish to establish operations in the country.³¹² This license assists investors in attaining a certain measure of investment certainty and security against pitfalls when operating informally; and qualifies the investor for the incentives offered in this Act.³¹³ The *Zimbabwe Investment Authority Act* further provides for incentives for licensed investors only, which includes both foreign and domestic investors,³¹⁴ encouraging foreign and domestic investment.³¹⁵ The considerations for approving the licenses apply equally to both domestic and foreign investors.³¹⁶ This opens up opportunities for locals to get involved in tourism businesses, although the preference for licensed investors may discriminate against local communities who are unable to meet the license requirements.

6.3.3.6 Incentives for tourism businesses, including favourable immigration controls

The *Zimbabwe Investment Authority Act* distinguishes between general incentives, special incentives and other incentives or conditions applicable to investors.³¹⁷ These incentives are available for investors that are in possession of investment licenses.³¹⁸ The benefits of obtaining an investment license relate to the repatriation of income, taxation, export and exchange controls and import tariff dispensations.³¹⁹ Moreover, the Zimbabwe Investment Authority has a “One Stop Shop” for processing investment proposals, which includes the requisite approvals and permits from the Registrar of Companies; the Zimbabwe Revenue Authority; and other relevant

311 (Chapter 14:30) 4 of 2006 (hereafter *Zimbabwe Investment Authority Act*).

312 Section 13 of the *Zimbabwe Investment Authority Act*.

313 Manokore Attorneys *Doing Business in Zimbabwe* 6.

314 Sections 23 and 24 of the *Zimbabwe Investment Authority Act*.

315 Chidede *The Legal Protection of Foreign Direct Investment in the New Millennium* 148.

316 Chidede *The Legal Protection of Foreign Direct Investment in the New Millennium* 148.

317 See para 6.3.3.5 above.

318 See para 6.3.3.5 above.

319 Section 24 of the *Zimbabwe Investment Authority Act*.

government departments.³²⁰ This facilitates speedy processing of investment applications.

Also significant, the *Constitution* provides for legal protection on investment through the right of private individuals and business entities to own property.³²¹ The right includes a prohibition against expropriation of private property without adequate compensation.³²² This right also provides an incentive for investors to establish a basis for acquiring property for investment, under a constitutional protection clause. However, the extension of expropriation without compensation to non-agricultural sectors, such as mining,³²³ is a disincentive to potential investors, even if it does not apply to sectors such as tourism.³²⁴

In addition, the *Income Tax Act*³²⁵ provides for tax exemptions for investors interested in tourism concessions involving BOOT and BOT arrangements.³²⁶ The private partner or concessionaire enjoys a tax exemption for the first five years, followed by a reduced tax of 15 percent for the second five years.³²⁷ In addition, tourist facility operators conducting business in approved tourism development zones or hunting safari operators are required to charge Value Added Tax (VAT) at zero percent. This non-payment of VAT is provided for services offered to persons who are not residents of Zimbabwe and who are required under the *Exchange Control Act* to pay for such services in foreign currency; and in turn receive a refund for goods and services acquired locally.³²⁸ With respect to favourable immigration controls, the *Immigration Act*³²⁹ provides for investor residence permits and

320 Manokore Attorneys 2015 *Doing Business in Zimbabwe* 6.

321 Section 71 of the *Constitution*.

322 Section 71(3) of the *Constitution*. It is important to note that the *Constitution* distinguishes between private property and agricultural land. The latter is provided for in s 72, which provides that the expropriation of agricultural land is without compensation.

323 US Department of State 2015 *Zimbabwe Investment Climate Statement* 7.

324 Maja and Nhara 2016 *Zimbabwe Electronic Law Journal* 17.

325 (Chapter 23:06) Act 51 of 1967 as amended by Act 11 of 2014 (hereafter *Income Tax Act*).

326 Section 15(2)(c) read with Schedule 4; and section 80A of the *Income Tax Act*.

327 Section 15(2)(c) read with Schedule 4; and section 80A of the *Income Tax Act*.

328 Section 10(2)(q) of the *Income Tax Act*.

329 (Chapter 4:02) Act 18 of 1979 as amended by Act 22 of 2001 (hereafter *Immigration Act*).

temporary employment permits.³³⁰ However, the 15 percent foreign tourist VAT charged to tourists makes Zimbabwe an expensive destination in comparison to other destinations in the region.³³¹

6.3.3.7 Minimum mandatory provisions, incentives and/or agreements for local procurement

With the repeal of relevant provisions in the *Indigenisation and Economic Empowerment Act*, there appears to be no law in place to promote local procurement especially within the context of tourism development.³³² While the *Zimbabwe Investment Authorities Act* facilitates local procurement by enabling equitable treatment of foreign and national investors,³³³ it does not provide for mandatory tools or incentives for tourism businesses to procure locally neither does it facilitate agreements for local procurement such as CPPPs. The *Competition Act*³³⁴ provides for the prevention and control of restrictive practices, the prevention and control of monopoly situations and the prohibition of unfair trade practices.³³⁵ However, this too does not promote local procurement, especially in the tourism industry in which imported goods and products may be preferred over local products. The *Control of Goods Act*³³⁶ is more useful in limiting the import of foreign goods in preference of local products. However, the latest developments with the lifting of the import license may be detrimental to the purchasing of local goods in preference for imports.³³⁷

330 Section 30 of the *Immigration Act*.

331 See para 2.1.4 of the *Tourism Master Plan 2017-2035*.

332 See para 6.3.3.3 above.

333 See para 6.3.3.5 above.

334 (Chapter 14:28) Act 7 of 1996 (hereafter Act 7 of 1996).

335 Preamble of the Act 7 of 1996.

336 (Chapter 14:05) Act 12 of 1954 (hereafter *Competition Act* 12 of 1954).

337 See para 6.3.3.8 below.

6.3.3.8 Minimum mandatory provisions and agreements for movement of goods and persons in TFCAs

The *Customs and Excise Act*,³³⁸ the *Control of Goods Act* and the *Immigration Act*³³⁹ regulate the movement of goods and persons in Zimbabwe. The *Immigration Act* provides a list of countries for which the nationals do not require visas to enter Zimbabwe, which includes nationals from Mozambique and South Africa. This enables the free movement of persons across the GLTFCA. However, the movement of goods is restricted by import control, requiring import licenses for the commercial purposes prescribed in the *Control of Goods (Open General Import License) (Amendment) Notice*.³⁴⁰ These restrictions significantly limit the transboundary movement of goods by informal traders who are unable to meet the extensive and costly requirements.³⁴¹ Essentially, therefore, there are no domestic tools, mandatory or otherwise, for facilitating the movement of goods and persons across the GLTFCA. This adversely affects the livelihoods of the cross-border traders within the GLTFCA.³⁴²

6.3.3.9 Minimum mandatory labour regulations, incentives for employment quality and job creation and job security in the tourism sector in TFCAs

The *Constitution* provides for the right to fair and safe labour practices and the payment of fair and reasonable wages.³⁴³ It further provides for the right to just,

338 (Chapter 23:03) Act 16 of 1955 as amended by Act 11 of 2014 (hereafter *Customs and Excise Act*).

339 (Chapter 4:02) Act 18 of 1979 as amended by Act 22 of 2001 (hereafter *Control of Goods Act*).

340 *Control of Goods (Open General Import Licence) (Amendment) Notice Statutory instrument* 122 of 2017. However, on 23 October 2018 the import license was temporarily suspended to increase the flow of basic goods into Zimbabwe in response to the latest shortages of commodities in the market. See for instance, Mushava and Zwinoira 2018 <https://www.newsday.co.zw/2018/10/govt-lifts-import-ban>.

341 For a detailed discussion, see for instance, TRALAC 2018 <https://www.tralac.org/discussions/article/12411-zimbabwe-re-brands-statutory-instrument-si-64.html>.

342 See para 2.4.2.3 above.

343 Section 65(1) of the *Constitution*.

equitable and satisfactory working conditions.³⁴⁴ These rights are elaborated in the *Labour Act*³⁴⁵ and its accompanying regulations. The *Labour Act* protects the fundamental rights of employees, such as the employees' entitlement to membership of trade unions and workers committees;³⁴⁶ the prohibition against forced labour;³⁴⁷ the protection of employees against discrimination;³⁴⁸ the protection of employees' right to fair labour standards;³⁴⁹ and the protection of employees' right to democracy in the work place.³⁵⁰ The Act further prohibits unfair labour practices by employers and trade unions or workers committees.³⁵¹ Moreover, the *Labour Act* provides for general conditions of employment such as the employment contract;³⁵² remuneration;³⁵³ dismissal;³⁵⁴ retrenchment;³⁵⁵ wages³⁵⁶ and leave.³⁵⁷ Despite these provisions, the *Tourism Law* does not contain any provisions for employment and labour standards. Subsequently, workers in the tourism and hospitality sector face challenges in the workplace, including low wages, pathetic working conditions, uncompensated overtime, the politicisation and victimisation of union members, low levels of awareness of workers' rights, ill-treatment by managers, stigmatisation of female workers, etc.³⁵⁸

Concerning job creation, the *Constitution* provides for the national objective relating to work and labour relations, requiring the government to adopt reasonable policies and measures, within the limits of available resources, to provide work in a freely

344 Section 65(4) of the *Constitution*.

345 (Chapter 28:01) 16 of 1985 (hereafter *Labour Act*).

346 Section 4 of the *Labour Act*.

347 Section 4A of the *Labour Act*.

348 Section 5 of the *Labour Act*.

349 Section 6 of the *Labour Act*.

350 Section 7 of the *Labour Act*.

351 Sections 8 and 9 of the *Labour Act*.

352 Section 12 of the *Labour Act*.

353 Section 12A of the *Labour Act*.

354 Section 12B of the *Labour Act*.

355 Section 12C of the *Labour Act*.

356 Sections 13-14C, 18 of the *Labour Act*.

357 Sections 19-22 of the *Labour Act*.

358 Rusike and Chitambara *Organising in the Zimbabwe Hospitality Sector* 17.

chosen activity.³⁵⁹ In as much as this is not mandatory, there is a duty on government to facilitate job creation. The *National Tourism Policy* recognises this duty through its economic objective to maximise employment opportunities.³⁶⁰ More importantly, the requirement of the extent of employment creation and human resources development for the investment license in the *Zimbabwe Investment Authority Act*, is an essential tool in ensuring that investors contribute to job creation.³⁶¹

6.3.3.10 Minimum mandatory provisions, incentives and certification standards for CSR strategies

There is no regulatory framework for CSR standards in the corporate governance sector. Efforts currently underway to formulate a code of corporate governance will hopefully incorporate CSR standards.³⁶² However, various laws have provisions that indirectly prescribe CSR. For instance, the requirements for the investment license namely, skills transfer, employment creation and human resources development, impact on local industries and impact on environment, which are stipulated in the *Zimbabwe Investment Authority Act*, all promote CSR.³⁶³ Non-compliance with these requirements attract penalties such as the cancellation or suspension of the license and criminal sanctions for more serious offences such as fraud, material misrepresentation and false or misleading statements.³⁶⁴ This creates an indirect mandatory tool for CSR. Similarly, the EMA is relevant for its requirements for EIAs for resort facilities and hotels and safari operations.³⁶⁵ It provides that these tourism facilities can only be established upon the issuance of a certificate showing that EIAs were prepared.³⁶⁶ Any contraventions in this regard attract the suspension or cancellation of the certificates. In principle, this should imply that the cancellation or

³⁵⁹ Section 24 of the *Constitution*.

³⁶⁰ See para 6.2.4 above.

³⁶¹ See para 6.3.3.5 above and 6.3.3.10 below.

³⁶² Maune 2015 *Asian Economic and Financial Review* 168; Deloitte *Doing Business in Zimbabwe* 26.

³⁶³ See paras 6.3.3.5 and 6.3.3.9 above.

³⁶⁴ Sections 22 and 30 of the *Zimbabwe Investment Authorities Act*.

³⁶⁵ Sections 2 and 97 read with paragraph 10 of Schedule 1 of the EMA.

³⁶⁶ Section 97(1)(b) of the EMA.

suspension of an EIA certificate prohibits further operations by tourism businesses. However, in practice, tourism facilities and tourism projects commence and continue without EIAs, as is the case with other development projects.³⁶⁷

Specific to tourism businesses in protected areas, the PWA provides for the construction of tourist facilities and the undertaking of tourism activities in national parks subject to specific restrictions and regulations.³⁶⁸ In the same way, tourism facilities may be constructed in sanctuaries.³⁶⁹ In safari areas, hunting is allowed subject to rights and permits.³⁷⁰ Non-compliance with any of these provisions attracts criminal sanctions.³⁷¹ This creates built-in tools within the protected areas context that relate to CSR.

6.4 ***Conclusion***

The aim of this chapter was to examine the relevant legal instruments relating to TFCA governance and tourism development in the Zimbabwean GLTFCA component, in order to establish whether they provide for the relevant actors and tools for promoting sustainable tourism development. In doing so, the study examined whether there was legislation establishing TFCAs, legislation relating to protected areas governance and management, legislation on local governance and legislation on tourism development. The study established that there is no specific legislation governing TFCAs in Zimbabwe, creating a gap in defining the pertinent governance actors within the TFCA context and the domestic context.

However, the PWA and to a limited extent the EMA and the *Constitution*, which provide for protected areas governance and management in Zimbabwe, cover this gap by defining the role of the state actors and non-state actors. The principal state actor is the PWMA under the supervision of the Ministry of Environment, Tourism

367 Mpofu *The Source*, 25 September 2014.

368 Section 23(1)(C)(k)(iv) and (m) of the PWA.

369 Section 32(2)(a) of the PWA.

370 Sections 37 and 38 of the PWA.

371 Sections 23, 32 and 38 of the PWA.

and Hospitality Industry. The PWMA is empowered to enter into joint ventures with, among others, the protected areas management authorities of TFCA participating countries. Furthermore, the role of provincial government is undefined and that of local government is collaborative. However, the role of these state actors, specifically for the GLTFCA component, the GNP, appears to be unclear, with the creation of the Gonarezhou Conservation Trust, which creates a new system of management involving PWMA and an international donor NGO, the FZS. This new management raises concerns as to the possibility of having an external entity, the FZS, or a private entity, the Trust, as the appropriate authority over a national park. Anyhow, this setting further excludes the role of local communities, even when it is meant to be realised through the participation of RDCs in protected areas management. The role of private actors as appropriate authorities of private land falling within the protected areas component, the Wildlife Estate, is however, clearly defined in the PWA.

Concerning the actors provided for in the *RDCs Act*, the principal legislation relating to local governance, it is clear that the RDCs govern rural areas on behalf of rural communities in accordance with the principles of the devolution of authority. However, the existing system of devolution fails to afford true representation for local communities, with unwarranted interferences from the Ministry of Local Government, Public Works and National Housing. In fact, a parallel system exists with the presence of traditional authorities in rural areas, usually accepted by the communities as their true representatives, as opposed to the elected RDC representatives. This creates tension with respect to the participation of local communities in the governance of the GLTFCA component in Zimbabwe.

It is further established from the *Tourism Act*, the principal tourism legislation, that in the absence of a clear agenda for sustainable tourism development, the role of the actors in tourism development in the Zimbabwean GLTFCA component is left to a market oriented ZTA and the private sector, with no clear definitive role for local communities. Tourism development, as indicated in the *Tourism Act* and its subsequent policies, is still very much focused on getting Zimbabwe on the world

tourism map at the expense of meaningful agendas on the improvement of livelihoods and biodiversity conservation.

Against this background, the chapter considered the governance-based tools available for the various actors in TFCA governance in order to promote the TFCA objectives. As a result of the exclusion of local communities from protected areas governance and management, there are no mandatory protected areas management options. Nevertheless, this is somewhat alleviated by the provision of mandatory CBNRM tools in the form of environmental committees, which facilitate the celebrated CAMPFIRE programme for the sustainable use of wildlife resources by local communities. CAMPFIRE serves as a CBNRM tool, an incentive and an agreement-based tool, for local communities to participate in biodiversity conservation. Yet, in most instances it has failed to yield its goals as a benefit-sharing tool because of the challenges relating to devolution to RDCs, especially in the prevailing unfavourable national economic climate. To curb wildlife crimes that may arise, the PWA and related laws provide quite extensively for criminal sanctions.

The role of local communities in TFCA governance would have been enforceable through the constitutional rights to use natural resources. However, these rights are limited by the licenses provided for in the PWA and the exclusion of local communities' rights to land within the Wildlife Estate. The rights of these communities relate to land outside of the protected areas domain and are subject to alteration by the President, which is a source of contention for the inclusion of the Sengwe-Tshipise Corridor in the GLTFCA. The available rights to access to information, less public participation and access to justice do not place the local communities in any better position. Consequently, there is a need for more legal tools to promote biodiversity in the Zimbabwean GLTFCA component.

There is also a continuum for the position of local communities in TFCA governance as well as the nature of the biodiversity tools in place and the existing tools for promoting the improvement of livelihoods in the Zimbabwean GTLFCA component. The tools for poverty reduction and the provision of basic services have largely been rendered ineffective by the socio-economic and concomitant challenges facing the

country. Moreover, most of these tools lack the requisite mandatory elements to compel actors to improve livelihoods and alleviate poverty. The absence of provincial legislation and municipal by-laws for basic services hinders the implementation of the tools for basic services in the specific provincial and local grassroots settings, something that may change with the promises for devolution by the new government. The apparent lack of mandatory minimum standards for promoting the improvement of livelihoods–alleviation of poverty also fails to maximise the role of tourism businesses, in contributing towards the livelihoods of local communities. The absence of tools such as voluntary certification standards, SIAs, HRIAs and favourable human rights protection from TDIDR in tourism development, leaves the GLTFCA communities without much hope for the improvement of their livelihoods and poverty alleviation. This existing climate also negatively affects the TFCA objective of economic development and the nature of the tools available.

Apart from the absence of international and domestic revenue sharing tools, there are mixed feelings concerning the existing tools for promoting economic development. The SEZs Act establishes the GLTFCA as a special economic zone to attract investment but it does not provide for incentives or any other tools to further promote investment in this, or in any other TFCA in Zimbabwe. Tourism marketing is mandatory, and so is tourism planning, but the absence of mandatory tools for infrastructure development significantly affects tourism marketing and planning in the country. Mandatory tools for concessioning exist but not necessarily for the tourism sector. The 2018 amendments to the *Indigenisation and Economic Empowerment Act* are commendable for the equitable treatment of investors but the investment license may dissuade local community participation as SMEs in tourism investment. A number of incentives for tourism businesses, including favourable immigration controls, are available, although the most recent economic uncertainties are not favourable. Mandatory employment quality standards and job creation tools exist although the tourism industry does not seem to implement them. CSR tools are provided for indirectly in the absence of a regulatory framework in the corporate governance legislation. Moreover, the only available tool to promote local procurement, the *Control of Goods Act*, has recently been suspended, while there

are just no tools to promote the movement of goods and persons in the Zimbabwean GLTFCA component.

From the above, it is apparent that there is much to be done to ensure that the existing legal framework promotes sustainable tourism development in the Zimbabwean GLTFCA component. Most significantly, the apparent exclusion of direct and active participation of local communities dilutes the effectiveness of the existing governance structure and their tools. As if this is not enough, the unfavourable economic climate, looms over the TFCA governance framework and its tools and the implementation thereof, like a dark cloud. The chapter that follows draws conclusions for the entire study by providing a comparative analysis of the legal frameworks from all three GLTFCA participating countries and making recommendations.

CHAPTER 7

Conclusion and recommendations

7.1 Introduction

The aim of this study was to develop a legal framework, at the domestic level, for ensuring that sustainable tourism development promotes the key objectives of SADC TFCAs.¹ Sustainable tourism development for the purposes of this study was defined as

Tourism development that conforms to the principles of sustainable development through specific aims or policy implications, informing the legal framework on TFCA governance as well as promoting biodiversity conservation, the improvement of livelihoods and the alleviation of poverty and economic development in TFCAs through a combination of specific governance-based tools.²

7.2 SADC TFCAs and the challenges arising from or associated with tourism development in the GLTFCA

Chapter 2 explored the development of TFCAs in the SADC region focusing on the GLTFCA as a case study. It was established that the conceptualisation of TFCAs in Southern Africa is based on the theory of the sustainable use of wildlife as reflected in the main TFCAs instrument, the SADC *Wildlife Protocol*.³ The intention is to unify ecosystem units separated by colonial demarcations and promote ecological security by joining protected area components of varying categories, consisting of the TFP components, and multiple-resource areas comprising of other land uses including, among others, communal lands and private land, all of which make up TFCAs.⁴ Their

1 See para 1.3 above.

2 See para 3.6 above.

3 See para 2.2.1 above.

4 See para 2.2.2 above.

governance is predominantly influenced by ownership of the land by the state, private entities, local communities or combinations of any of them, invoking the principles of beneficiation, public participation and accountability, and CBNRM.⁵ This study concluded that biodiversity conservation, improvement of livelihoods and economic development are at the core of the SADC TFCA initiatives.⁶ Biodiversity conservation centres on the transboundary collaboration for the sustainable use and management of natural resources for conservation and economic benefits. These benefits are greater than the conservation efforts by the individual countries.⁷ However, it was also established that conservation is inextricably linked to the livelihoods of the people living within the TFCAs, giving biodiversity conservation a human component.⁸ The improvement of livelihoods in this context incorporates the alleviation of poverty, which addresses the high incidences of poverty in the SADC region.⁹ A human rights approach to TFCAs is crucial given the high dependence of local community livelihoods on the natural resources therein.¹⁰ Yet, it was determined that this objective is undermined by neoliberal conservation and regional economic integration.

Regional economic integration is at the heart of SADC and the creation of TFCAs.¹¹ Tourism was identified as the key driver of economic development in TFCAs and is defined as the movement of people to TFCAs, the activities they undertake there, the contingent industry and the implications on the environment and the local communities residing therein.¹² However, it was concluded that the binding SADC instruments, the *Tourism Protocol*, and the *Wildlife Protocol*, for different reasons, do not position tourism as a driver of these three TFCA objectives.¹³ It was conceded that this is abated by the non-binding strategic instruments - the *SADC RISDP*, the

5 See para 2.2.2 above.

6 See para 2.2.3 above.

7 See para 2.2.3.1 above.

8 See para 2.2.3.1 above.

9 See para 2.2.3.2 above.

10 See para 2.2.3.2 above.

11 See para 2.2.3.3 above.

12 See paras 2.2.3.3 and 2.3 above.

13 See para 2.3.2.1 above.

SADC Regional Biodiversity Strategy and the *SADC Programme for TFCAs*, which do establish the role of tourism in promoting biodiversity conservation, the improvement of livelihoods and alleviation of poverty as well as economic development.¹⁴

A study of the GLTFCA revealed that the institutional framework of the GLTP Treaty excludes local communities from the governance and management of the GLTFCA.¹⁵ Similarly, the objectives of the GLTP Treaty focus more on biodiversity conservation and socio-economic development but with no express provision on improvement of livelihoods or poverty alleviation. This perpetuates the colonial oriented fortress conservation of displacing local communities from the protected areas components.¹⁶ A number of challenges persist in this regard, namely, unfavourable conservation practices and illegal activities by local communities to sustain their compromised livelihoods.¹⁷ The study found that conservation efforts to include local communities into the GLTFCA conservation matrix are therefore crucial to the success of this TFCA. This suggests the inclusion of local communities into the institutional framework of the GLTFCA as well as promoting beneficiation, public participation, accountability and CBNRM in the governance of the GLTFCA.¹⁸ It was further established that these governance and management challenges are superimposed on the tourism development in the GLTFCA, which is characterised by disparities in tourism amongst the countries, a lack of consensus over revenue sharing and a general lack of political consensus in the running of the GLTFCA. This exposes weaknesses in the economic development of the GLTFCA, amongst others.¹⁹

In South Africa, the key issues relate to the overcrowdedness of tourists; the SANParks commercialisation strategy, which circumvents the involvement of local communities and fails to promote the improvement of livelihoods; the settlements of

14 See para 2.3.2.1 above.

15 See para 2.4.1.2 above.

16 See para 2.4.2 above.

17 See para 2.4.2 above.

18 See para 2.4.2 above.

19 See para 2.4.2 above.

the local communities with limited access to basic services, poverty alleviation, employment and job security; the sporadic involvement of local communities in the planning and development of tourism in the TFCA, exemplified by the situation of the Mnisi community; and the flawed power relations in tourism concessioning as well as in park management – exemplified in the agreements and arrangements with the Makuleke community as owners of the contractual park within the KNP.²⁰

In Mozambique, the key issue revolves around involuntary resettlement from the protected area components of the GLTFCA, as the livelihoods of the relevant local communities are regarded as incompatible with conservation and tourism. This is further exacerbated by illegal and or unsustainable livelihoods such as poaching in the Mozambican component. Other common livelihood options are associated with informal trade and informal employment, which compromise on workers' rights, minimum labour conditions and job security. The existence of a single successful community lodge in the Mozambican component indicates minimal community involvement in tourism enterprises.²¹

In Zimbabwe, the major issues, still very much associated with the socio-economic instability, revolve around the side-lining of local communities in the management and governance of the Zimbabwean component and their disenfranchisement in conservation benefits. In particular, the new management agreement for the GNP by the Gonarezhou Conservation Trust which involves PWMA and FSZ, poses the danger of usurpation of state power over conservation and tourism development as well as the exclusion of local community involvement in this management.²² The migration and resettlement of local communities in the Zimbabwean component during the colonial era and during the periods of implementation of the fast-track land reform policy, have also alienated local communities and robbed them of livelihoods that are dependent on the use of and access to natural resources in and

20 See para 2.4.2.1 and Chapter 4 above.

21 See para 2.4.2.2 and Chapter 5 above.

22 See paras 2.4.2.3 and 6.2.2.1 above.

surrounding the GNP.²³ Underlying these limitations, are the questions around land ownership and tenure, the challenges of unplanned settlement, intra-community friction, human-wildlife conflict induced by the destruction of fencing and poaching.²⁴ Despite a few success stories related to CAMPFIRE and community-based tourism, the Zimbabwean component also faces challenges with the all-inclusive packaging of tourism products, which gives little room for local tourism products to enter into the market, stifling the development of domestic tourism products at national and local level.²⁵ With respect to the much-celebrated CAMPFIRE programme, the mismanagement of funds by RDCs and the CAMPFIRE Association, to the detriment of the communities, revealing serious discrepancies in the devolution of authority over natural resources and land ownership, have been its demise.²⁶

It was therefore established that the common thread in the challenges with respect to tourism development in the GLTFCA relates to the flaws in the TFCA governance structures that failed to include local communities as actors from the onset, weakening beneficiation, public participation, accountability, CBNRM and devolution of authority, all of which that are pertinent to its success.²⁷ Thus, tourism development in the GTLFCA seems to sustain the exclusion of local communities in conservation.²⁸ It is also characterised by little or no consultation and participation and negligible benefits for local communities in the country components, evidenced by, unequal power relations in tourism related negotiations, unrealised benefits from tourism projects, high incidences of poverty, unemployment, lack of basic services, unsustainable and/or illegal livelihoods, resettlement challenges and the failing of tourism related CBNRM initiatives.²⁹ Consequently, even economic development is

23 See paras 2.4.2.3 and 6.3.2.6 above.

24 See paras 2.4.2.3 and 6.3.2.6 above. See more generally, Ferguson and Chase "Elephants and fencing conflicts" 173-180.

25 See paras 2.4.2.3 and 6.3.3.7 above.

26 See para 2.4.2.3 and Chapter 6 above.

27 See paras 2.4.1.2, 4.2, 5.2 and 6.2 above.

28 See paras 2.4.2, 4.2.4, 5.2.4 and 6.2.4 above.

29 See paras 2.4.2, 4.3.2, 5.3.2 and 6.3.2 above.

not fully realised through the tourism development taking place in the GLTFCA; this is exacerbated by the absence of revenue sharing agreements.³⁰

7.3 Sustainable tourism development as a possible solution to the challenges encountered in TFCAs

To address the challenges encountered in the GLTFCA, the study in Chapter 3 explored the notion of sustainable tourism development from a sustainable development perspective. Focusing on the legal principles of sustainable development, namely the sustainable use of natural resources, equity and poverty eradication, integration, and procedural aspects of sustainable development and good governance as well as tracing the theoretical foundations of sustainable tourism development, it was established that sustainable development in tourism translates into twelve specific aims or policy implications.³¹ These aims or policy implications relate to (a) biological diversity, (b) physical integrity, (c) resource efficiency, (d) environmental purity, (e) cultural richness, (f) local control, (g) community well-being, (h) economic viability, (i) local prosperity, (j) employment quality, (k) social equity and (l) visitor fulfilment.³² These policy implications adapt the legal principles of sustainable development to the tourism context, influencing the laws and policies relating to TFCA governance and tourism development, with the ultimate goal of promoting the TFCA objectives.³³

Applied to the TFCA context, the aims or policy implications of sustainable tourism development determine the governance actors that should be involved in TFCA governance, including their relationships, roles and responsibilities.³⁴ They determine the relevant state actors across government ministries and at all spheres of government as well as the non-state actors, such as private actors, local

30 See paras 2.4.2, 4.3.3, 5.3.3 and 6.3.3 above.

31 See paras 3.2 and 3.3 above.

32 See para 3.4 above.

33 See para 3.5 above.

34 See para 3.5.1 above.

communities and external entities.³⁵ The aims or policy implications also determine the legal tools that are necessary within this governance context, for promoting the TFCA objectives of biodiversity conservation, the improvement of livelihoods—alleviation of poverty and economic development.³⁶ The environmental governance perspective, adopted in the study, applied the aims or policy implications to command and control tools, incentive-based tools, agreement-based tools and civil-based tools.³⁷ It was found that combinations of these tools, are needed to promote the TFCA objectives.³⁸

The study developed a legal framework for sustainable tourism development in the GLTFCA consisting of the legislation relevant for improving the governance of the GLTFCA and the governance-based tools necessary for promoting the three TFCA objectives.³⁹ This legal framework formed the basis of examining whether the GLTFCA participating countries, South Africa, Mozambique and Zimbabwe, each has the necessary legal framework to promote sustainable tourism development in the GLTFCA.⁴⁰

7.4 Comparative analysis of the legal framework for sustainable tourism development in GLTFCA participating countries

Chapters 4, 5 and 6 investigated the laws of South Africa, Mozambique and Zimbabwe respectively to establish whether they promote sustainable tourism development in the GLTFCA. These findings are provided by way of a comparison of the legal frameworks of the three jurisdictions, particularly the legislation relevant to TFCA governance and the governance-based tools in place for promoting the TFCA objectives.

35 See para 3.5.2 above.

36 See para 3.5.2 above.

37 See para 3.5.2 above.

38 See para 3.5.2 above.

39 See para 3.7 above.

40 See Chapters 4, 5 and 6 above.

7.4.1 TFCA governance

The study ascertained that South Africa and Zimbabwe do not have domestic legislation that specifically provides for the establishment of TFCAs.⁴¹ However, Mozambique has specific legislation, which specifically provides for TFCAs, recognising them as part of the domestic protected areas system.⁴² Mozambique recognises the TFCA framework in accordance with the international TFCA establishing agreements and adopts the SADC Wildlife Protocol's definition of TFCAs.⁴³ Despite its progressiveness in recognising TFCAs in domestic law, Mozambique, like South Africa and Zimbabwe, still fails to define the role of the governance actors beyond the domestic parameters.⁴⁴ Effectively therefore, a gap exists between the Treaty and the domestic laws of the GLTFCA participating countries with respect to the place of the TFCA governance actors within the domestic legal frameworks.⁴⁵

This leaves it to the legislation relevant to protected areas' governance and management within the national boundaries to define the role of the relevant actors.⁴⁶ The legislation in all three jurisdictions relating to protected areas governance and management also do not make ample provision for the roles of these actors within a transfrontier setting.⁴⁷ Consequently, the governance of the GLTFCA is determined by the roles of domestic actors.⁴⁸

In South Africa, the key state actors are the Ministry of Environmental Affairs as trustee over protected areas and SANParks, as the management authority over the protected areas component.⁴⁹ The key state actors in Zimbabwe are the Ministry of Environment and Tourism and under it, DPWM the appropriate authority over

41 See paras 4.2.1 and 6.2.1 above.

42 See para 5.2.1 above.

43 See para 5.2.1 read with para 2.1 above.

44 See paras 4.2.1, 5.2.1 and 6.2.1 above.

45 See paras 4.2.1, 5.2.1 and 6.2.1 above.

46 See paras 4.2.2, 5.2.2 and 6.2.2 above.

47 See paras 4.2.1, 5.2.1 and 6.2.1 above.

48 See paras 4.2.2, 5.2.2 and 6.2.2 above.

49 See para 4.2.2.1 above.

protected areas, referred to as the Wildlife Estate.⁵⁰ With the new management agreement involving PWMA and an international donor NGO, the FZS, the level of authority of the state actors appears to be diluted.⁵¹ In Mozambique, the key state actors are the MITADER, responsible for the management of conservation areas, land, the environment, natural resources and rural development, and under it, ANAC, the management authority.⁵² With ANAC's mandate spanning across biodiversity conservation and tourism development, Mozambique creates a platform for the consolidation of all three key TFCA objectives under one body. This sets the latter apart from the other two jurisdictions that have to work with other line ministries to promote the TFCA objectives.⁵³ Moreover, the Mozambican law, unlike that of South Africa and Zimbabwe, expressly defines the role of supporting ministries as advisory in conservation areas management, with the effect that it directly promotes coordinated efforts towards protected areas governance and management by all relevant national state actors in Mozambique.⁵⁴ Nevertheless, Mozambique is plagued by institutional and financial incapacities that hinder attempts to drive this agenda.⁵⁵

Provincial government and local government in the South African GLTFCA component play a peripheral role in protected areas governance due to the constitutional competencies that limit the role of lower levels of government in protected areas management.⁵⁶ In Zimbabwe too, provincial government plays a peripheral role although it is attributed to its ill-defined constitutional mandate.⁵⁷ Local government, in Zimbabwe, particularly RDCs, however, are more actively involved in protected areas governance but with significant interference from

50 See para 6.2.2.1 above.

51 See para 6.2.2.1 above.

52 See para 5.2.2.1 above.

53 See para 5.2.2.1 above.

54 See paras 4.2.2.1, 5.2.2.1 and 6.2.2.1 above.

55 See para 5.2.2.1 above.

56 See para 4.2.2.1 above.

57 See para 6.2.2.1 above.

national government.⁵⁸ In Mozambique, provincial government seems to play a more active role as subsidiary functionaries of the national government departments.⁵⁹ Local government too, is actively involved although their role relates to the management of the natural resources management in the protected areas and less in the management of the protected areas domain itself.⁶⁰ The limited involvement of provincial and local government in the GLTFCA participating countries creates a disjuncture between the international actors and local actors, diluting the level of participation of local actors in TFCA governance.⁶¹

In all three GLTFCA participating countries, non-state actors participate in the governance of the GLTFCA.⁶² In South Africa, private and communal landowners, whose land is incorporated into the protected area component, participate in the management of this GLTFCA component in accordance with agreements with SANParks.⁶³ Outside of their status as landowners, local communities, in particular, may also be involved through co-management agreements and more generally in the prescribed public participation processes.⁶⁴ Nevertheless, the vagueness of local government legislation limits the involvement of these local communities in developmental activities such as tourism development, even within these protected areas.⁶⁵ In Mozambique, the involvement of private actors in the management of the GLTFCA component is not based on their ownership of land falling within the conservation areas, given that this land belongs to the State, but as financiers of protected areas' governance and management.⁶⁶ Local communities situated around the Mozambican GLTFCA component, also play a key role in the governance of conservation areas in all relevant legislation as key stakeholders and not as

58 See para 6.2.2.1 above.

59 See para 5.2.2.1 above.

60 See para 5.2.2.1 above.

61 See paras 4.2.2.1, 5.2.2.1 and 6.2.2.1 above.

62 See paras 4.2.2.2, 5.2.2.2 and 6.2.2.2 above.

63 See para 4.2.2.2 above.

64 See para 4.2.2.2 above.

65 See para 4.2.2.2 above.

66 See para 5.2.2.2 above.

landowners.⁶⁷ Their role, as that of the private actors, is collaborative and advisory.⁶⁸ However, the simultaneous operation of state structures and traditional structures in local governance creates representation complexities for local community participation in protected areas governance.⁶⁹ In Zimbabwe, private actors participate in protected areas management as management authorities in their capacity as landowners as well as business operators of land falling within the protected areas' domain.⁷⁰ Local communities in Zimbabwe, however, have no direct involvement since the appropriate authority over rural land, within the protected areas domain, is with local government - the RDCs, who do not directly represent rural communities.⁷¹ Essentially, therefore, the law significantly limits the role of local communities in the governance of the GLTFCA, unlike that of private entities.⁷²

In Mozambique and, recently, Zimbabwe, but not so much in South Africa, external entities such as NGOs and donor organisations play a key role in TFCA governance.⁷³ In Mozambique, the law clearly stipulates their financial responsibilities, while in Zimbabwe their role is based on the new management system, which is meant to improve the performance of PMWA.⁷⁴ Mozambique also recognises civil society organisations as advisors as well as financiers of conservation areas.⁷⁵ In both jurisdictions, concerns arise about the over-reliance on external aid as well as the usurpation of powers from state actors for the governance and management of conservation areas.⁷⁶

Against this background, the study considered whether the principal tourism legislation of all three GLTFCA participating countries promoted sustainable tourism development, thereby influencing the TFCA governance actors and their roles in

67 See para 5.2.2.2 above.

68 See para 5.2.2.2 above.

69 See para 5.2.2.2 above.

70 See para 6.2.2.2 above.

71 See para 6.2.2.2 above.

72 See para 6.2.2.2 above.

73 See paras 4.2.2.2, 5.2.2.2 and 6.2.2.2 above.

74 See paras 5.2.2.2 and 6.2.2.2 above.

75 See para 5.2.2.2 above.

76 See paras 5.2.2.2 and 6.2.2.2 above.

promoting sustainable tourism development in the GLTFCA.⁷⁷ It was established that the extent of recognition of the aims of sustainable tourism development in the principal tourism legislation of the three jurisdictions influenced the role of the TFCA governance actors in promoting sustainable tourism development in the GLTFCA.⁷⁸

South Africa's legislation, which focuses on sustainable tourism development through responsible tourism, resonates with the majority of the aims of sustainable tourism development, thereby setting a positive basis for tourism development in this GLTFCA component and defining the role of state actors and private entities accordingly.⁷⁹ Despite this, the law fails to contribute significantly, especially to the role of local communities in tourism development as well as in TFCA governance, by reducing them to beneficiaries of tourism development rather than active stakeholders, notwithstanding the elements of responsible tourism that suggest otherwise.⁸⁰ This adversely affects the promotion of local control as well as the other aims for sustainable tourism development in the South African component of the GLTFCA.⁸¹ This vagueness with respect to the role of local communities in the tourism sector, narrows the parameters within which they can participate in the governance of the South African GLTFCA component.⁸² Similar to South Africa, Mozambique in its principal tourism law expressly recognises sustainable tourism development in its objectives but in defining the roles of the state actors and private entities, undermines the role of local communities. Thus local communities do not actively participate in the tourism development that occurs in the GLTFCA component.⁸³ Zimbabwe, however, lags behind for the absence of a clear agenda for sustainable tourism development in its law.⁸⁴ Hence, the roles of its state actors and

77 See paras 4.2.4, 5.2.4 and 6.2.4 above.

78 See paras 4.2.4, 5.2.4 and 6.2.4 above.

79 See para 4.2.4 above.

80 See para 4.2.4 above.

81 See para 4.2.4 above.

82 See para 4.2.4 above.

83 See para 5.2.4 above.

84 See para 6.2.4 above.

private entities are predominantly market oriented, with the obvious omission of the role of local communities.⁸⁵

In essence, the legislation in all three jurisdictions do not all promote sustainable tourism development nor do they all enhance the role of the TFCA governance actors in promoting sustainable tourism development in the GLTFCA.⁸⁶ The undermining of local communities in all three jurisdictions adversely affects the realisation of sustainable tourism development in the GLTFCA as their role would largely influence all of the sustainable tourism development aims.⁸⁷ The study established that this further influenced the tools for promoting the TFCA objectives.⁸⁸

7.4.2 Governance-based tools for promoting TFCA objectives

The governance-based tools for promoting the TFCA objectives as provided for in the three GLTFCA participating countries are summarised in Table 1 below.

85 See para 6.2.4 above.

86 See paras 4.2, 5.2 and 6.2 above.

87 See paras 4.2, 5.2 and 6.2 above.

88 See paras 4.2, 5.2 and 6.2 above.

Governance-based tools in GLTFCA Participating countries				
TFCA objective	List of tools	South Africa	Mozambique	Zimbabwe
Biodiversity conservation	Mandatory protected areas management options for local communities	Present	Present	None
	Mandatory CBNRM and benefit-sharing tools and incentives	Present	Present	Present
	Administrative sanctions for non-compliance			
	Criminal sanctions for wildlife crimes	Present	Present	Present
	Agreements for biodiversity conservation	Present	Present	Present
	Enforcement of rights to natural resources, including land; complementary procedural rights and civil remedies	Present with limitations	Present	Present with limitations
Improvement of livelihoods-alleviation of poverty	Mandatory poverty reduction programmes/strategies	Present	Present	Present
	Provincial legislation and municipal by-laws for basic services	Present	Present	Present
	Mandatory minimum standards, incentives, agreements and rights for the provision of basic services	Present	Present	Present
	Voluntary/agreement-based tourism certification standards	Present	None	None
	Social license to operate	None	None	None
	Mandatory tools, incentives, agreement-based standards, agreements, human rights protections and civil remedies for voluntary TDIDR	Present	Present	Present
	HRIAs for tourism development projects	None	None	None
Economic development	International revenue sharing agreement(s) and mandatory national revenue sharing tools	None	None	None
	Mandatory minimum standards for tourism planning, marketing, infrastructure development, land use planning	Present	Present	Present

Governance-based tools in GLTFCA Participating countries				
TFCA objective	List of tools	South Africa	Mozambique	Zimbabwe
	Mandatory tools, incentives, agreements for investment in TFCAs	None (save indirectly)	Present	Present
	Mandatory minimum clauses for tourism concessions	Present	Present	None
	Mandatory provisions for equitable treatment of investors	Present	Present	Present
	Incentives for tourism businesses and favourable immigration controls	Present	Present	Present
	Minimum mandatory provisions, incentives and/or agreements for local procurement	Present	Present (not mandatory/incentivised)	Present (not mandatory/incentivised)
	Minimum mandatory provisions and agreements for the movement of goods and persons in TFCAs	Restricted	Restricted	Restricted
	Minimum mandatory labour regulations, incentives for employment quality and job creation and job security in tourism sector	Present	Present	Present
	Minimum mandatory provisions, incentives and certification standards for CSR strategies	None	None	None

Table 1: A summary of the governance-based tools provided for in the GLTFCA participating countries

Table 1 indicates that all three jurisdictions have a combination of tools for promoting biodiversity conservation in the GLTFCA.⁸⁹ In South Africa, the combination of tools provided for by law, ranges from mandatory management tools, where local communities are landowners within the protected area domains, protected areas' co-management models, mandatory public participation in management plans, mandatory provisions for CBNRM as well as incentives and agreements for CBNRM, biodiversity management agreements, environmental co-

⁸⁹ See paras 4.3.1, 5.3.1 and 6.3.1 above.

operation agreements and wildlife offences.⁹⁰ However, the involvement of the rural local communities in promoting biodiversity conservation is hampered by the limitations on their natural resource use and access rights but more specifically on their land rights.⁹¹ In Mozambique, the combination of tools for biodiversity conservation includes, community conservation areas, participatory management, biodiversity agreements such as CPPPs for financing biodiversity conservation in conservation areas, DUATs, natural resources rights, benefit-sharing arrangements and sanctions for wildlife crimes.⁹² Like South Africa, the effectiveness of these tools in Mozambique is hindered by the limitations on natural resource use and access rights for local communities.⁹³ Zimbabwe has a combination of tools, although not as varied as those in the other two jurisdictions.⁹⁴ These are the mandatory provisions, incentives and agreements for CBNRM, wildlife crimes and natural resource rights.⁹⁵ The CBNRM tools are mainly characterised by CAMPFIRE.⁹⁶ Although it is not expressly provided for in law, it is effected through other mandatory tools such as the environmental committees for natural resources management.⁹⁷ CAMPFIRE serves as an incentive and agreement-based tool for local community participation in biodiversity conservation.⁹⁸ The successes of CAMPFIRE have been hampered by the challenges relating to limited access rights of local communities to natural resources in protected areas as well as the weaknesses in devolution to RDCs, especially in the prevailing unfavourable national economic climate.⁹⁹

It is clear therefore that the existence of a variety of tools for biodiversity conservation in all three jurisdictions has not contributed significantly to the

90 See para 4.3.1 above.

91 See para 4.3.1 above.

92 See para 5.3.1 above.

93 See para 5.3.1 above.

94 See para 6.3.1 above.

95 See para 6.3.1 above.

96 See para 6.3.1 above.

97 See para 6.3.1 above.

98 See para 6.3.1 above.

99 See para 6.3.1 above.

involvement of local communities in promoting this objective in the GLTFCA.¹⁰⁰ This in turn indicates that the existing tools are not sufficient in enabling sustainable tourism development in the GLTFCA.¹⁰¹

It was further established that all three jurisdictions have a combination of tools for promoting the improvement of livelihoods.¹⁰² In South Africa these include, a variety of mandatory poverty reduction programmes stemming from constitutionally entrenched rights, provincial legislation for the provision of basic services, legislation for the provision of basic services at municipal level as well as specific mandatory tools for the provision of basic services in the form of IDPs and financial resources allocations in municipalities.¹⁰³ Tax incentives, B-BBEE scorecard-based incentives and other affirmative action incentives as well as room for agreements in the form of PPPs exist for the provision of basic services by the private sector.¹⁰⁴ In addition, constitutional rights to basic services are provided although they are realised by the state progressively and within the latter's available resources. Therefore, communities seeking to enforce these rights may not receive direct and immediate relief.¹⁰⁵ Despite all these tools, the rural communities in the Limpopo Province are lagging behind in accessing these basic services.¹⁰⁶ In Mozambique too, the communities in the Gaza Province, where the GLTFCA component is situated, suffer high levels of poverty despite the existence of a number of tools for the improvement of livelihoods-alleviation of poverty.¹⁰⁷ These tools include constitutional objectives for the alleviation of poverty, enabled through specific strategic tools, laws providing for basic services and the rights to basic services.¹⁰⁸ The operationalisation of most of these tools at sub-national level is hampered by the lack of financial and human capacity as well as the inability of the justice system

100 See paras 4.3.1, 5.3.1 and 6.3.1 above.

101 See paras 4.3.1, 5.3.1 and 6.3.1 above.

102 See paras 4.3.2, 5.3.2 and 6.3.2 above.

103 See para 4.3.2 above.

104 See para 4.3.2 above.

105 See para 4.3.2 above.

106 See para 4.3.2 above.

107 See para 5.3.2 above.

108 See para 5.3.2 above.

to hold the state accountable before the courts.¹⁰⁹ The situation for local communities in Zimbabwe is not any better, given the socio-economic and concomitant challenges facing the country, which render ineffective the tools for improving livelihoods and alleviating poverty.¹¹⁰ These tools include poverty reduction strategies, laws providing for the provision of basic services and the rights to basic services.¹¹¹

It is clear from this study, as reflected in Table 1, that the absence of tools such SIAs, HRIAs and favourable human rights protections from TDIDR in tourism development in the GLTFCA participating countries, leaves the GLTFCA communities without much hope for the improvement of their livelihoods and poverty alleviation.¹¹² This in turn creates challenges for promoting sustainable tourism development in the GLTFCA.

One of the noticeable weaknesses, reflected in Table 1, is the absence of tools for revenue sharing at international level and at national level.¹¹³ This significantly affects economic development in the GLTFCA, currently defined according to the individual revenues of the country components.¹¹⁴ Nevertheless, a number of tools for promoting economic development in the individual components are in place.¹¹⁵

Table 1 indicates that in all three countries, mandatory minimum standards for tourism planning, marketing, infrastructure development and land use planning are in place.¹¹⁶ Whereas Mozambique classifies its GLTFCA component as an ATIP, which is an essential tool for investment in TFCAs, South Africa does not have specific tools for promoting investment in TFCAs, except for commercial activities and development in national parks, undertaken via tourism concessions that have

109 See para 5.3.2 above.

110 See para 6.3.2 above.

111 See para 6.3.2 above.

112 See paras 4.3.2, 5.3.2 and 6.3.2 above.

113 See paras 4.3.3.1, 5.3.3.1 and 6.3.3.1 above.

114 See paras 4.3.3, 5.3.3 and 6.3.3 above.

115 See paras 4.3.3, 5.3.3 and 6.3.3 above.

116 See paras 4.3.3.2, 5.3.3.2 and 6.3.3.2 above.

contributed significantly to the running of the KNP.¹¹⁷ However, these tourism concessions do not seem to bring significant benefits for local communities in South Africa, as is the case in Mozambique where tourism concessions are legislated for but do not include local communities as active partners.¹¹⁸ Zimbabwe, like Mozambique, has a specific tool, the SEZs, for investment in the GLTFCA although there does not seem to be any additional incentives and agreement-based tools in this regard.¹¹⁹

Table 1 further shows that mandatory provisions and incentives for promoting foreign investments, including favourable immigration controls, are available in all three jurisdictions indicating deliberate efforts to promote economic development.¹²⁰ However, these tools for the most part fail to promote equitable treatment of foreign and local investors, at the expense of the latter.¹²¹ South Africa seems to be moving towards equity through its affirmative action tools.¹²² South Africa's affirmative action tools promote local procurement but there is no evidence of increased local procurement in tourism development.¹²³ Mozambique and Zimbabwe provide for tools that promote local procurement but because they are not mandatory nor are they incentivised, few opportunities exist for local businesses.¹²⁴ With respect to employment quality and job creation, all three jurisdictions have a plethora of tools.¹²⁵ However, the seasonality of the jobs in the tourism industry, as well as the high levels of low skilled workers make it difficult for the available tools to promote this aspect of economic development.¹²⁶ Closely related, the absence of mandatory CSR tools for corporate governance in all three countries has reduced the obligations of tourism businesses to contribute to social equity in the economic development of

117 See paras 4.3.3.2 and 5.3.3.2 above.

118 See paras 4.3.3.2 and 5.3.3.2 above.

119 See paras 5.3.3.2 and 6.3.3.2 above.

120 See paras 4.3.3.3-6, 5.3.3.3-6 and 6.3.3.3-6 above.

121 See paras 4.3.3.3-6, 5.3.3.3-6 and 6.3.3.3-6 above.

122 See paras 4.3.3.3-6, 5.3.3.3-6 and 6.3.3.3-6 above.

123 See paras 4.3.3.3-6 above.

124 See paras 4.3.3.7, 5.3.3.7 and 6.3.3.7 above.

125 See paras 4.3.3.9, 5.3.3.9 and 6.3.3.9 above.

126 See paras 4.3.3.9, 5.3.3.9 and 6.3.3.9 above.

the GLTFCA.¹²⁷ Also important, the movement of goods and informal traders within the GLTFCA is largely restricted in all three jurisdictions, adversely affecting the chances of tourism development promoting cross-border trade in this TFCA as an alternative livelihood.¹²⁸

From the foregoing, it is clear that in Mozambique, the effectiveness of these tools for economic development is heavily dependent on *ad hoc* donor funded projects that do not necessarily benefit rural communities.¹²⁹ In Zimbabwe, the efficiency of these tools is affected by the economic challenges faced by the country.¹³⁰ South Africa fares better in this respect, something that is evidenced by the high volumes of tourists in this GLTFCA component.¹³¹ As a result, it is apparent that the tools in the individual components shape the economic development in the GLTFCA, with more development in the South African component than in the other two.¹³² Viewed holistically, this does not promote sustainable tourism development in the GLTFCA.

In the final analysis, the study established that the domestic legal frameworks in the GLTFCA participating countries do not provide effectively for TFCA governance as well as for biodiversity conservation, the improvement of livelihoods-alleviation of poverty and economic development in this TFCA. This in turn implies that the legal framework in the GLTFCA does not provide for sustainable tourism development in the way it should. In most instances, the tools in place are not effective because of their failure to incorporate the role of local communities. There are also some pertinent tools that are not provided for in all three jurisdictions, which significantly inhibits sustainable tourism development in the GLTFCA. In other instances, the failure of these tools is attributed to external forces such as lack of financial, human and technical capacity as well as challenges in the economic climate at national

127 See paras 4.3.3.10, 5.3.3.10 and 6.3.3.10 above.

128 See paras 4.3.3.8, 5.3.3.8 and 6.3.3.8 above.

129 See para 5.3.3 above.

130 See para 6.3.3 above.

131 See para 4.3.3 above.

132 See paras 4.3.3, 5.3.3 and 6.3.3 above.

level. With this in mind, the study proposes the following recommendations for promoting sustainable tourism development in the GLTFCA.

7.5 Recommendations

Based on the discussion above, the following recommendations are made:

7.5.1 On a regional level

The SADC TFCA Programme could be given the status of a SADC Protocol, which specifically provides for a definition for sustainable tourism development as well as identifying the relevant governance actors and tools in sustainable tourism development. The key actors in TFCA governance at an international level as well as at domestic level, down to the grassroots level, should be identified. This will assist in defining the roles of the actors in the cross-border exchanges as well as within their individual jurisdictions, for clarity and uniformity. A protocol will create binding obligations on TFCA participating countries for the involvement of actors such as sub-national state actors, traditional authorities and local communities. This instrument could also create legally defined parameters for external entities to guard against over-reliance on donor organisations as well as the usurpation of authority by these organisations. The Protocol should establish a legal framework for sustainable tourism development in the SADC TFCAs to ensure that all TFCA establishing agreements are provided for in regional and national laws. For instance, that TFCA participating countries should provide a social license to operate, HRIAs and relevant human rights protection. This could contribute significantly to the improvement of livelihoods within the TFCAs and in surrounding areas.

The importance of creating a specific protocol for TFCAs in the SADC region is in providing a comprehensive and holistic legal framework for TFCA governance and management as well as in creating the much needed legal mechanisms for realising the TFCA objectives. This will strengthen the currently “weak” legal framework relevant to TFCAs, which comprises of, *inter alia*, the Tourism and Wildlife Protocols. Therefore, whereas the Tourism Protocol envisages tourism development across national boundaries, in general, and the Wildlife Protocol incorporates TFCAs as a

means for sustainable use of wildlife, the TFCA Protocol would detail the manner in which both tourism and other sustainable uses of wildlife may occur within a broader and all-encompassing TFCA governance and management framework.

In addition, it is important that all of the SADC Protocols relating to TFCAs and tourism, are revised and amended to recognise and provide adequately for sustainable tourism development. The *Tourism Protocol*, which currently does not adequately provide for biodiversity conservation and is silent on the improvement of livelihoods and the alleviation of poverty, should be amended to create more detailed obligations for member States for both TFCA objectives.¹³³ This essentially brings this Protocol in line with the relevant aims of sustainable tourism development such as biodiversity conservation, local control, local prosperity, social equity and employment quality.¹³⁴ The *Wildlife Protocol* in its current form also does not provide clearly for the improvement of livelihoods in TFCAs, something that must be addressed to ensure sustainable tourism development in TFCAs. The amendments to these Protocols will strengthen the objectives of instruments such as the SADC Programme for TFCAs and the *SADC Regional Biodiversity Strategy* as well as those of the TFCA establishing agreements.

The GLTFCA participating countries should adopt a Protocol that specifically provides for sustainable tourism development in the GLTFCA. To achieve this, it is important to amend the GLTP institutional framework to include all key actors in the governance of the GLTFCA, which means specific provisions for the inclusion of local communities in the governance structure.¹³⁵ Moreover, this Protocol should ensure the provision of tools that promote the objectives of the TFCA.¹³⁶ This means incorporating all the requisite tools for sustainable tourism development.¹³⁷ One such tool is an international agreement or obligations for revenue sharing amongst the

133 See para 2.3.2.1 above.

134 See para 3.4 above.

135 See paras 2.4 and 2.5 above.

136 See para 3.7.2 above.

137 See para 3.7.2 above.

GLTFCA participating countries.¹³⁸ This may further warrant the alignment of the GLTFCA enabling instruments such as the JMP and other development plans and strategies.¹³⁹

7.5.2 At the domestic level

A domestic legal framework for sustainable tourism development in SADC TFCAs should be adopted. This framework should have the following elements:

- A clear definition of sustainable tourism development in TFCAs, which recognises the principles of sustainable development through specific aims or policy implications of sustainable tourism development, namely, biodiversity conservation, physical integrity, resource efficiency, environmental purity, cultural richness, local control, community well-being, economic viability, local prosperity, employment quality, social equity and visitor fulfilment; that serve as the basis upon which the framework provides for TFCA governance actors as well as the tools for promoting biodiversity conservation, the improvement of livelihoods-alleviation of poverty and economic development in TFCAs.
- The main objective of providing for TFCA governance actors and the governance based tools necessary for promoting TFCA objectives in accordance with the specific aims or policy implications of sustainable tourism development.
- Provisions specifically identifying key TFCA governance actors and defining their roles and responsibilities in accordance with the specific aims or policy implications of sustainable tourism development. These include state actors and non-state actors. The state actors should include government departments, particularly line ministries at national, provincial/regional and local spheres of governance that are responsible for natural resource

¹³⁸ See para 3.7.2 above.

¹³⁹ See para 2.4.2 above.

management and the broader environmental protection agenda. The non-state actors include the private sector, the local communities, NGOs (international and national), civil society groups and other related institutions whose activities influence on TFCA governance.

- Provisions specifically providing for the necessary governance-based tools which promote the TFCA objectives of biodiversity conservation, the improvement of livelihoods – alleviation of poverty and economic development.
- The relevant tools for biodiversity conservation include: protected area management options for local communities, CBNRM and benefit-sharing, administrative sanctions, criminal sanctions for wildlife crimes, agreements for biodiversity conservation and rights to natural resources, including land, complementary procedural rights and civil remedies.
- The relevant tools for the improvement of livelihoods–alleviation of poverty include: mandatory poverty reduction programmes or strategies, provincial legislation and municipal by-laws for the provision of basic services, mandatory minimum standards, incentives, agreements and rights for the provision of basic services, voluntary or agreement based tourism certification standards, social licenses to operate, tools for voluntary TDIDR, and HRIAs for tourism development projects.
- The relevant tools for economic development include: revenue sharing agreements; tourism planning, marketing, infrastructure development and land use planning; investment in TFCAs; tourism concessions; equitable treatment of investors; incentives for tourism businesses including favourable immigration controls; local procurement; movement of goods and persons; labour and employment quality, job creation and job security and CSR strategies.

To incorporate this framework for the GLTFCA, the domestic legislation of all three countries should be harmonised to promote sustainable tourism development in the

GLTFCA. This will remedy the fragmentation that currently exists in the domestic legal frameworks in the GLTFCA participating countries with respect to the provision of all the relevant TFCA governance actors and the TFCA governance-based tools.

To facilitate harmonisation, it is necessary, as point of departure, to require all TFCA participating countries to include measures in their legislation that provides for the TFCA establishing agreements. Such legal measures may cover the gaps that currently exist with respect to the roles of the pertinent actors in the cross-border exchanges. It is necessary for all three participating countries to clearly define the role of sub-national government structures as well as traditional authorities and local communities in protected areas management and governance. This will enable better collaboration and buy-in from local actors in TFCA governance, and in turn promote the TFCA objectives. Moreover, to ensure sustainable tourism development in the GTLFCA it is crucial to have all the requisite governance-based tools in place in all three jurisdictions. Uniformity across the three jurisdictions cannot be overemphasised.¹⁴⁰ This further implies the provision in each of the three jurisdictions of the following:

South Africa:

- Affording local communities land rights, including physical occupation on restituted land, where such occupation may be a viable and desirable alternative;
- Social licenses to operate which extends to tourism development projects either in the relevant land laws and/or the resettlement laws – in instances of TDIDR.

¹⁴⁰ Though not discussed in this study, political will with respect to meeting the TFCA objectives is also critical for the furtherance of sustainable tourism development. Political will ultimately plays out in efforts towards improving the economic and political climates of TFCA participating countries.

- HRIAs in corporate governance laws, particularly the Companies Act, which will cater for, *inter alia*, tourism development projects;
- Mandatory national revenue sharing tools in the TFCA governance legislation (NEM:PAA) for sharing proceeds from revenue generated from the tourism in the South African component;
- Mandatory tools, incentives and agreements specifically for investment in TFCAs in the NEM:PAA and/or tax legislation;
- Provision, in immigration and customs legislation, for the movement of goods and informal traders; and
- CSR mechanisms in corporate governance legislation.

Mozambique:

- Voluntary tourism certification standards in the *Tourism Law*;
- Social licenses to operate in the *Land Law*;
- HRIAs in the *Commercial Code*;
- Mandatory revenue sharing tools in the *Conservation Areas Law*;
- Provision, in immigration and customs laws, of clauses for the movement of goods and persons; and
- CSR mechanisms in *Commercial Code*.

Zimbabwe:

- Mandatory protected areas management options for local communities in the PWA;
- Land rights and rights to natural resources in the protected areas in the PWA as well as *Communal Land Act*, where necessary;
- Voluntary tourism certification standards in *Tourism Act*;

- Social licenses to operate in Communal Land Act;
- HRIAs in *Companies Act*;
- Mandatory national revenue sharing tools in PWA;
- Mandatory minimum clauses for tourism concessions in PWA;
- Mandatory clauses as well as incentives for local procurement in *Tourism Act* and/or *Income Tax Act*;
- Provision, in immigration and customs laws, of clauses for the movement of goods and informal traders in the TFCA setting; and
- CSR strategies in the *Companies Act*.

BIBLIOGRAPHY

Literature – Books, Chapters in Books, Conference Proceedings, Reports and Theses

A

Acquah *Human-Wildlife Interactions, Nature-based Tourism, and Protected Areas*

Acquah E *Human-Wildlife Interactions, Nature-based Tourism, and Protected Areas Management: The Case of Mole National Park and the Adjacent Communities in Ghana* (Phd Dissertation University of Cape Coast 2013)

Aguis "*Obligations of Justice*"

Aguis E "Obligations of Justice Towards Future Generations: A Revolution in Social and Legal Thought" in Aguis E *et al* (eds) *Future Generations and International Law* (Earthscan London 1998) 51-63

Akintoye and Beck *Policy, Management and Finance for Public-Private Partnerships*

Akintoye A and Beck M *Policy, Management and Finance for Public-Private Partnerships: Innovation in the Built Environment* (John Wiley & Sons Oxford 2009) 94

Amend and Kothari "Achieving Aichi Target 11"

Amend T and Kothari A "Achieving Aichi Target 11: governance diversity, coverage and conservation" in Pellegrini, A., Rastogi, A., 2016 (eds) *Enhancing the diversity, quality and vitality of governance of protected (and conserved) areas* In: Proceedings of Stream 6 of the IUCN World Parks Congress, Sydney, Australia. November 12-19

Aquino *et al Mozambique Dedicated Grant Mechanism*

Aquino *et al Mozambique Dedicated Grant Mechanism for Local Communities: Community Participation and Decision-Making in Natural Resource Management* (World Bank Maputo 2017)

Ashley *et al* *The Role of the Tourism Sector in Expanding Economic Opportunity*.

Ashley C *et al* *The Role of the Tourism Sector in Expanding Economic Opportunity*. Corporate Social Responsibility Initiative Report No. 23 (Kennedy School of Government Harvard University Cambridge 2007)

B

Bakarr and Lockwood "Establishing Protected Areas"

Bakarr MI and Lockwood M "Establishing Protected Areas" in Lockwood M, Worboys and Kothari A (eds) *Managing Protected Areas: A global Guide* (Earthscan London 2006) 195-222

Barnes "Community-based Tourism and Natural Resource Management in Namibia: Local and National Economic Impacts"

Barnes JI "Community-based Tourism and Natural Resource Management in Namibia: Local and National Economic Impacts" in Spenceley A (ed) *Responsible Tourism: Critical Issues for Conservation and Development* (Earthscan London 2012) 343-360

Beech *et al* "Toward a Spatial Monitoring and Evaluation System"

Beech C *et al* "Toward a Spatial Monitoring and Evaluation System, Collecting Indicators to Map and Measure" in Hostettler S, Hazboun E and Bolay J (eds) *Technologies for Development: What is Essential?* (Springer Cham 2015) 173-184

Berkes and Folke "Investing in Cultural Capital"

Berkes F and Folke C "Investing in Cultural Capital for Sustainable Use of Natural Capital" in Jansson A *et al* (eds) *Investing in Natural Capital: The Ecological Economics Approach to Sustainability* (Island Press Washington 1994)

Bice *Great Limpopo: Talk of the Transfrontier Official Newsletter*

Bice J *Great Limpopo: Talk of the Transfrontier Official Newsletter of the Great Limpopo Transfrontier Park* (GLTP Maputo 2004)

Birnie, Boyle and Redgewell *International Law and the Environment*

Birnie PW, Boyle AE and Redgewell C *International Law and the Environment*
3rd ed (Oxford University Press Oxford 2009)

Blewitt *Understanding Sustainable Development*

Blewitt J *Understanding Sustainable Development* 2nd ed (Routledge Oxon
2015)

Boon "International cooperation for sustainable development in Africa"

Boon EK "International cooperation for sustainable development in Africa" in
Munir F *et al International Sustainable Development Law Volume III* (ECOLOSS
UNESCO Oxford 2010)143-175

Booth *Sustainable development and natural resources management*

Booth V *Sustainable development and natural resources management in
southern Zimbabwe: Compilation Study of Tourism and Regional Development
Initiatives I the Great Limpopo Transfrontier Conservation Area in Zimbabwe*
(CESVI Southern Lowveld 2005)

Borrini-Feyerabend and Hill "Governance for the Conservation"

Borrini-Feyerabend G and Hill R "Governance for the Conservation of Nature"
in Worboys GL *et al* (eds) *Protected Area Governance and Management*
(Australian National University Press Canberra 2015) 169-206

Borrini-Feyerabend "Collaborative management of protected areas"

Borrini-Feyerabend G "*Collaborative management of protected areas*" in
Stolton S and Dudley N *Partnerships for Protection: New Strategies for
Planning and Management for Protected Areas* (Earthscan London 1999) 224-
234

Borrini-Feyerabend *et al Co-management of Natural Resources*

Borrini-Feyerabend G *et al Co-management of Natural Resources: Organising,
Negotiating and Learning-by-Doing* (Kasparek Verlag Heidelberg 2000)

Borrini-Feyerabend "Governance of Protected Areas, Participation and Equity"

Borrini-Feyerabend G 'Governance of Protected Areas, Participation and Equity' in Secretariat of the Convention on Biological Diversity Biodiversity Issues for Consideration in the Planning, Establishment and Management of Protected Areas Sites and Networks Convention on Biological Diversity Technical Series 15 (Montreal Secretariat of the Convention on Biological Diversity 2004)

Borrini-Feyerabend, Johnston and Pansky "Governance of Protected Areas"

Borrini-Feyerabend G, Johnston J and Pansky D "Governance of Protected Areas" in Lockwood M, Worboys and Kothari A (eds) *Managing Protected Areas: A global Guide* (Earthscan London 2006) 116-144

Bota *Factors affecting the Impact of BEE Strategies*

Bota PM *Factors affecting the Impact of BEE Strategies in Enhancing Previously Disadvantaged Beneficiaries in Manquma Local Municipality* (MSc Dissertation Nelson Mandela Metropolitan University 2013)

Boyd *The Environmental Rights Revolution Environment*

Boyd DR *The Environmental Rights Revolution environment* (UBC Press Vancouver 2012)

Braack, Sandwith and Peddle *Security Considerations in the Planning*

Braack L, Sandwith T and Peddle D *Security Considerations in the Planning and Management of Transboundary Conservation Areas* (IUCN Gland 2006)

Bruchez *PPPs in South Africa*

Bruchez N *Public Private Partnerships (PPPs) in South Africa: To what extent are PPPs suitable for the long-term development of infrastructure in South Africa?* (M thesis University of Bern 2014)

Buján and Macazanda *Sustainable Financing of the Protected Area*

Buján JAC and Macazanda V *Sustainable Financing of the Protected Area System in Mozambique* (World Bank Washington 2017)

Büscher *Transforming the Frontier*

Büscher B *Transforming the Frontier: Peace Parks and the Politics of Neoliberal Conservation in Southern Africa* (Duke University Press Durham 2013)

Bushell, Staiff and Eagles "Tourism and protected areas"

Bushell R, Staiff R and Eagles PGF "Tourism and protected areas: Benefits beyond boundaries" in Bushell R and Eagles PFJ (eds) *Tourism and protected areas: Benefits beyond boundaries* (CABI Wallingford 2007)1-11

C

Centre for Conflict Management and Transformation (CCMT) *Roles*

Centre for Conflict Management and Transformation (CCMT) *Roles and Responsibilities in Rural Local Governance in Zimbabwe: Parallels, Overlaps and Conflict* (CCMT Harare 2014)

CESVI *Sustainable development and natural resources management*

CESVI *Concept Paper for the Zimbabwe Component of the Limpopo/Shashe Trans Frontier Conservation Area* 2001 *Sustainable development and natural resources management in Southern Zimbabwe* 1-19

Chaderopa *Transfrontier Parks, Social Space and Local Communities' Livelihoods*

Chaderopa C *Transfrontier Parks, Social Space and Local Communities' Livelihoods: A Crisis of Representation* (PhD Thesis University of Otago 2011)

Chape, Spalding and Jenkins *The World's Protected Areas*

Chape S, Spalding M and Jenkins M (eds) *The World's Protected Areas: Status, Values and Prospects in the 21st Century* (University of California Press California 2008)

Chapman, De Lacy and Whitmore "Sustainability Practice and Sustainable Use"

Chapman J, De Lacy T and Whitmore M "Sustainability Practice and Sustainable Use" in Lockwood M, Worboys and Kothari A (eds) *Managing Protected Areas: A global Guide* (Earthscan London 2006) 377-405

Chibememe, Middleton and Booker *Review of National Laws & Policies*

Chibememe G ,Middleton L and Booker S (eds)*Review of National Laws & Policies that Support or Undermine Indigenous Peoples and Local Communities: Zimbabwe* (Natural Justice Organisation Harare 2014)

Chigwata *The Law and Policy for Provincial and Local Government in Zimbabwe*

Chigwata TC *The Law and Policy for Provincial and Local Government in Zimbabwe: The Potential to Realise Development, Build Democracy and Sustain Peace* (PhD University of Western Cape 2014)

Chimuka *An Analysis of the impact of community development*

Chimuka Y *An Analysis of the impact of community development in the development of the Great Limpopo Transfrontier Park: Case Study of Gonarezhou National Park with reference to Chitsa and Tshovani Communities* (MSC University of Zimbabwe 2012)

Coad *et al The Costs and Benefits of Protected Areas*

Coad L *et al The Costs and Benefits of Protected Areas for Local Livelihoods: a review of the current literature Working Paper* (UNEP World Conservation Monitoring Centre Cambridge 2008)

Commission on Sustainable Development "Guidance in Preparing "

Commission on Sustainable Development "Guidance in Preparing a National Sustainable Development Strategy: Managing Sustainable Development in the

New Millennium” in Outcome of the International Forum on National Sustainable Development Strategies 7-9 November 2001 Accra 1-46

Cordonier Segger “Sustainable development in international law”

Cordonier Segger M “Sustainable development in international law” in Bugge HC and Voigt C *Sustainable development in international and national law: What did the Brundtland report due to legal thinking and legal development, and where can we go from here?* (Europa Law Publishing Groningen 2008)85-199

Cousins “Contextualising the controversies”

Cousins B “Contextualising the controversies: dilemmas of communal tenure reform in post-apartheid South Africa” in Claasens A and Cousins B (eds)*Land, Power & Custom: Controversies generated by South Africa’s Communal Land Rights Act* (University of Cape Town Press Cape Town 2008) 3–31

Cumming *Constraints to Conservation and Development Success*

Cumming DHM *Constraints to Conservation and Development Success at the Wildlife-Human Interface in Southern African Transfrontier Conservation Areas: A preliminary Review* (Wildlife Conservation Society New York 2011)

Cumming, Dzingirai and de Garine-Wichatitsky” Land and natural resource”

Cumming DHM, Dzingirai V and de Garine-Wichatitsky M “Land- and natural resource- based livelihood opportunities in TFCAs” in Andersson JA *et al* (eds) *Transfrontier Conservation Areas: People living on the edge* (Routledge London 2013) 137-162

Cristofaro *Sharing uncertainty and responsibility?*

Cristofaro D *Sharing uncertainty and responsibility?* Voluntary environmental agreements in developing countries: the case of South Africa (MSc Thesis International Institute for Industrial Environmental Economics Lund 2004)

D

Darnell *Are Peace Parks Effective Peace building Tools?*

Darnell JE *Are Peace Parks Effective Peace building Tools? Evaluating the Impact of Great Limpopo Transfrontier Park as a Regional Stabilising Agent* (MA American University Washington 2008)

Davis *"Charting the Statutory Implementation"*

Davis D "Charting the Statutory Implementation of the Values of the Bill of Rights in the Business World: Past and Future" in Human Rights Science Council *Business and Human Rights in South Africa* (30-31 October 1999 Pretoria) 39-47

De Beers *Employment Conditions in the South African Tourism Industry*

De Beers A *Employment Conditions in the South African Tourism Industry: An Analysis of Tourist Guides* (Research Report MA Tourism University of Witwatersrand 2011)

Deere "Sustainable international natural resources law"

Deere C "Sustainable international natural resources law" in Segger MC and Khalfan A *Sustainable development law: principles, practices and prospects* (Oxford University Press Oxford New York 2004) 295-310

De Garine-Wichatitsky "Consequences of animals crossing the edges "

De Garine-Wichatitsky M *et al* "Consequences of animals crossing the edges of transfrontier parks" in Andersson JA *et al* (eds) *Transfrontier Conservation Areas: People living on the edge* (Routledge London 2013) 137-162

De Lacy and Whitmore "Tourism and Recreation"

De Lacy T and Whitmore M "Tourism and Recreation" in Lockwood M, Worboys and Kothari A (eds) *Managing Protected Areas: A global Guide* (Earthscan London 2006) 76-86

Department of Environmental Affairs *Biodiversity Fiscal Incentives*

Department of Environmental Affairs and Tourism *Biodiversity Fiscal Incentives: A Framework on Fiscal Incentives for Biodiversity* (DEAT Pretoria 2009)

Devenish *A Commentary on the South African Bill of Rights*

Devenish GE *A Commentary on the South African Bill of Rights* (LexisNexis Durban 1999)

De Visser *Developmental Local Government: A Case Study*

De Visser JW *Developmental Local Government: A Case Study of South Africa* (Antwerpen-Oxford Utrecht 2005)

Dhliwayo *A Constitutional Analysis of Access Rights*

Dhliwayo P *A Constitutional Analysis of Access Rights that Limit Landowners' Right to Exclude* (LLD thesis Stellenbosch University 2015)

Doane and MacGillivray *Economic Sustainability*

Doane D and MacGillivray A *Economic sustainability – the business of staying in business: The SIGMA Project Report* (New Economics Foundation London 2001)

Direcção Provincial do Turismo Provincia de Sofala *Legal Framework for Tourism*

Direcção Provincial do Turismo Provincia de Sofala *Legal Framework for Tourism Licensing and Related Enterprises in Mozambique* (Direcção Provincial do Turismo Provincia de Sofala 2008)

Dixey "The Unsustainability of Community Tourism Donor Projects"

Dixey LM "The Unsustainability of Community Tourism Donor Projects: Lessons from Zambia" in Spenceley A (ed) *Responsible Tourism: Critical Issues for Conservation and Development* (Earthscan London 2012)323-343

Doppelfeld "Collaborative Stakeholder Planning in Cross-border Regions"

Doppelfeld M "Collaborative Stakeholder Planning in Cross-border Regions: The Case of the Great Limpopo Transfrontier Park in Southern Africa" in Wachowiak H (ed) *Tourism and Borders: Contemporary Issues, Policies and International Research* (Ashgate Hampshire 2006)

Dudley *et al* "Changing definitions of poverty"

Dudley N *et al* "Changing definitions of poverty" in Dudley N *et al* *Safety Net: Protected areas and poverty reduction* (World Wide Fund for Nature Gland 2008) 20-24

Dugard *et al* "The right to housing"

Dugard J *et al* "The right to housing in South Africa" in Foundation for Human Rights *Socio-economic Rights: Progressive realisation?* (Foundation for Human Rights Pretoria 2016) 155-262

Dugard "The right to sanitation"

Dugard J "The right to sanitation in South Africa" in Foundation for Human Rights *Socio-economic Rights: Progressive realisation?* (Foundation for Human Rights Pretoria 2016) 263-316

Dugard "The right to water"

Dugard J "The right to water in South Africa" in Foundation for Human Rights *Socio-economic Rights: Progressive realisation?* (Foundation for Human Rights Pretoria 2016) 317-374

Du Plessis "Cross-border gas pipeline and sustainability in Southern Africa"

Du Plessis W "Cross-border gas pipelines and sustainability in southern Africa" in Benidickson J *et al* (eds) *Environmental Law and Sustainability after Rio* (Edward Elgar Cheltenham Northampton 2011) 279-296

Du Plessis and Du Plessis "Striking the sustainability balance in South Africa"

Du Plessis W and Du Plessis AA "Striking the sustainability balance in South Africa" in Faure M and Du Plessis W (eds) *The balancing of interests in environmental law in Africa* (PULP Pretoria 2011) 413-458

Du Plessis and Du Plessis 'Environmental and Human Rights Protection'

Du Plessis AA and Du Plessis W Environmental and Human Rights Protection through TBPA's Unpublished speech delivered at the *International Conference on Transboundary Protected Areas in Europe and Southern Africa* (November 2010 Giessen)

Dworkin *Taking Rights Seriously*

Dworkin R *Taking Rights Seriously* (Cambridge Harvard University Press 1978)

Dwyer and Spurr *Tourism Economics Summary*

Dwyer L and Spurr R *Tourism Economics Summary* (Cooperative Research Centre for Sustainable Tourism Queensland 2010)

Dzingirai *et al* 'On the edge of state and economy'

Dzingirai V *et al* "On the edge of state and economy" in Andersson JA *et al* (eds) *Transfrontier Conservation Areas: People living on the edge* (Routledge London 2013) 106-122

E

Eagles and Hillel 'Improving Protected Area'

Eagles P and Hillel O "Improving Protected Area Finance through Tourism" in Secretariat of the Convention on Biological Diversity (ed) *Protected Areas in Today's World: Their Values and Benefits for the Welfare of the Planet* (Secretariat of the Convention on Biological Diversity Montreal 2008)

Elkington *Cannibals with forks: the triple bottom line 21st century business*

Elkington J *Cannibals with forks: the triple bottom line 21st century business* (Capstone Oxford 1997)

Eloff "Introduction to the Bill of Rights"

Eloff T "Introduction to the Bill of Rights from a Commercial Perspective" in Human Rights Science Council *Business and Human Rights in South Africa* (30-31 October 1999 Pretoria) 17-19

F

Farlam *Working Together: Assessing Public-Private Partnerships*

Farlam P *Working Together: Assessing Public-Private Partnerships in Africa NEPAD Policy Focus Series* (South African Institute International Affairs Pretoria 2005)

Faure 'Balancing of interests'

Faure M "Balancing of interests: some preliminary (economic) remarks" in Faure M and Du Plessis W (eds) *The balancing of interests in environmental law in Africa* (Pretoria University Press Pretoria 2011)1-34

Faure and Du Plessis "Introduction"

Faure M and Du Plessis W "Introduction" in Faure M and Du Plessis W (eds) *The balancing of interests in environmental law in Africa* (Pretoria University Press Pretoria 2011) xix-xxix

Ferguson and Chase 'Elephants and fencing conflicts '

Ferguson K and Chase M "Elephants and fencing conflicts in the GLTFCA and KAZA TFCA" in Ferguson K and Hanks J (eds) *Fencing Impacts: A review of the environmental, social and economic impacts of game and veterinary fencing in Africa with particular reference to the Great Limpopo and Kavango-Zambezi Transfrontier Conservation Areas*(Pretoria Mammal Research Institute 2010) 173-180

Feris and Tladi "Environmental Rights"

Feris LA and Tladi D "Environmental rights" in Brand D and Heyns C (eds) *Socio-economic rights in South Africa: International and constitutional law* (University Law Press Pretoria 2004)

Fitzmaurice "The principle of sustainable development "

Fitzmaurice M "The principle of sustainable development in international development law" in Munir F *et al International Sustainable Development Law* (ECOLOSS UNESCO Oxford 2010) 112-136

Fletcher "Taking the Chocolate Laxative"

Fletcher R "Taking the Chocolate Laxative: Why Neoliberal Conservation 'Fails Forward'" in Büscher B, Dressler W and Fletcher R (eds) *Nature Inc.: Environmental Conservation in the Neoliberal Age* (University of Arizona Press Tucson 2014) 87-107

Fredman and Tyrväinen L "Introduction"

Fredman P and Tyrväinen L "Introduction" in Fredman P and Tyrväinen L (eds) *Frontiers in Nature-based Tourism: Lessons from Finland, Iceland, Norway and Sweden* (Routledge London 2011) 5-17

French *International Law and Policy of Sustainable Development*

French D *International Law and Policy of Sustainable Development* (Juris Publishing Manchester 2005)

G

Gibson and O'Faircheallaigh *IBA Community Toolkit*

Gibson and O'Faircheallaigh *IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements* (Gordon Foundation Toronto 2015)

Giller *et al* "Population and livelihoods on the edge"

Giller KE *et al* "Population and livelihoods on the edge" in Andersson JA *et al* (eds) *Transfrontier Conservation Areas: People living on the edge* (Routledge London 2013) 62-88

Glazewski *Environmental Law in South Africa*

Glazewski J *Environmental Law in South Africa* (Butterworths Durban 2000)

Glazewski *Environmental Law in South Africa*

Glazewski J *Environmental Law in South Africa* (LexisNexis Butterworths Durban 2005)

Glazewski "Sustainable development"

Glazewski J "Sustainable development and proposed shale gas extraction in South Africa: prospects and challenges" in Dernbach JC and May JR (eds) *Shale Gas and the Future of Energy: Law and Policy for Sustainability* (Edward Elgar Cheltenham 2016) 209-229

Godsäter *Civil Society Regionalization*

Godsäter A *Civil Society Regionalization in Southern Africa: The Cases of Trade and HIV/AIDS* (Routledge London 2016)

Goodwin *et al Tourism, Conservation & Sustainable Development Volume IV*

Goodwin H *et al Tourism, Conservation & Sustainable Development Volume IV, The South-East Lowveld, Zimbabwe* (Unpublished Report Department for International Development University of Kent 1997)

Graham, Amos and Plumtre *Governance Principles for Protected Areas*

Graham J, Amos B and Plumtre T *Governance Principles for Protected Areas in the 21st Century* (Parks Canada and Canadian International Development Agency Ottawa 2003)

Gutto "Environmental law and rights"

Gutto SBO "Environmental law and rights" in Chaskalson M *et al* (eds) *Constitutional law of South Africa* (Juta Cape Town 1996) 32-8

H

Haarhoff *Public Private Partnerships*

Haarhoff KJ *Public Private Partnerships as an Alternative Service Delivery Option: A Multiple Case Study of the Healthcare Sector* (MPA thesis University of Stellenbosch 2008)

Harris *Fair Trade in Tourism: Theory and Praxis*

Harris *Fair Trade in Tourism: Theory and Praxis* (MSc Thesis Canterbury Christ Church College 2003)

Hecht *Revenue Sharing in the Great Limpopo Transfontier Park*

Hecht JE *Revenue Sharing in the Great Limpopo Transfrontier Park* (Development Alternatives Inc. Nelspruit 2004)

Higginbottom "Wildlife Tourism: An Introduction"

Higginbottom K "Wildlife Tourism: An Introduction" in Higginbottom K (ed) *Wildlife Tourism: impacts, management and planning* (Common Ground Publishing Altona 2004) 1-12

Higham and Lück "Ecotourism: pondering the paradoxes"

Higham J and Lück "Ecotourism: pondering the paradoxes" in Higham J (ed) *Critical Issues in Ecotourism: Understanding a complex tourism phenomenon* (Elsevier Oxford 2007) 118-135

Himonga "The Future of Living Customary Law"

Himonga C "The Future of Living Customary Law in African Legal Systems in the Twenty-First Century and Beyond with Special Reference to South Africa" in J Fenrich *et al* (ed) *The Future of African Customary Law* (Cambridge University Press Cambridge 2011) 31-57

Hossain "Evolving Principles of Sustainable Development and Good Governance"

Hossain K "Evolving Principles of Sustainable Development and Good Governance" in Ginther K *et al Sustainable Development and Good Governance* (Leiden London 1995) 15-22

Hough "Developing Capacity"

Hough J "Developing Capacity" in Lockwood M, Worboys and Kothari A (eds) *Managing Protected Areas: A global Guide* (Earthscan London 2006) 164-192

Hopkins and Hopkins "Labour Standards and Corporate Social Responsibility"

Hopkins M and Hopkins I "Labour Standards and Corporate Social Responsibility: The Need for a Planetary Bargain" in Mullerat R and Brennan D (eds) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* 2nd Ed (Alpen ann den Rijn Kluwer Law International 2011) 157-176

Hugo *Administrative Penalties as a Tool*

Hugo RE *Administrative Penalties as a Tool for Resolving South Africa's Environmental Compliance and Enforcement Woes* (LLM Dissertation University of Cape Town 2014)

Himonga "The Nature and Concept of Customary Law"

Himonga C "The Nature and Concept of Customary Law" in Himonga C and Nhlapo T *African Customary Law in South Africa Post-Apartheid and Living Law Perspectives* (Oxford University Press Oxford 2014) 23-39

I

International Institute for Sustainable Development *Business Strategy*

International Institute for Sustainable Development (IISD) *Business Strategy for Sustainable Development* (IISD New York 2001)

Investment Climate Advisory Services World Bank Group *Facilitating Large-Scale Tourism*

Investment Climate Advisory Services World Bank Group *Facilitating Large-Scale Tourism Resorts in Mozambique: The Tourism Investment Generation Approach* (Washington World Bank Group 2012)

ILO *National Profile of Working Conditions in Mozambique*

ILO *National Profile of Working Conditions in Mozambique* (ILO Geneva 2009)

Ivanovic *Cultural Tourism*

Ivanovic M *Cultural Tourism* (Cape Town Juta 2008)

J

James *Incentives and Investments: Evidence and Policy implications*

James S *Incentives and Investments: Evidence and Policy implications* (World Bank Washington 2010)

Jenkins "Tourism academics and tourism practitioners: bridging the great divide"

Jenkins CL "Tourism academics and tourism practitioners: bridging the great divide" in Butler RW and Pearce DG (eds) *Contemporary Issues in Tourism Development* (Routledge London 2003)

Jones *Poverty reduction and sustainable livelihoods*

Jones BTB *CBNRM poverty reduction and sustainable livelihoods: Developing criteria for evaluating the contribution of CBNRM to poverty reduction and alleviation in southern Africa* (Centre for Applied Sciences Harare 2004)

Jones and Erdmann *Community-Based Natural Resource Management*

Jones BTB and Erdmann TK *Community-Based Natural Resource Management in Southern Africa: A Decision-Maker's Guide* (USAID Washington 2013)

Jones and Ibrahimio *The contribution of tourism in Mozambique: present and future*

Jones S and Ibrahimo H *The contribution of tourism in Mozambique: present and future* (National Directorate of Studies and Policy Analysis and Ministry of Planning and Development Maputo 2008)

Jones and Murphree "Community-Based Natural Resources Management "

Jones BTB and Murphree MW "Community-Based Natural Resource Management as a Conservation Mechanisms: Lessons and Directions" in Child B (ed) *Parks in Transition: "Biodiversity, Rural Development and the Bottom Line"* (Earthscan London 2004) 63-104

K

Kaggwa "Natural Resource Governance in a Changing World"

Kaggwa R "Natural Resource Governance In A Changing World: Challenges and Opportunities" paper presented at *Regional Symposium on Public Interest Environmental Litigation for Lawyers in East Africa* 17-20 June 2014 Garuga

Kamga *Human rights in Africa*

Kamga SAD *Human rights in Africa: Prospects for the realisation of the right to development under the New Partnership for Africa's Development* (LLD-thesis University of Pretoria 2011)

Keet *et al* "Fencing along the Kruger National Park boundary"

Keet D *et al* "Fencing along the Kruger National Park boundary" in Ferguson K and Hanks J (eds) *Fencing Impacts: A review of the environmental, social and economic impacts of game and veterinary fencing in Africa with particular reference to the Great Limpopo and Kavango-Zambezi Transfrontier Conservation Areas* (Mammal Research Institute Pretoria 2010) 66-70

Khoza "Understanding the Synergy Between the Bill of Rights"

Khoza R "Understanding the Synergy Between the Bill of Rights and Commercial Activity" in Human Rights Science Council *Business and Human Rights in South Africa* (30-31 October 1999 Pretoria) 19-23

Khumalo "Transport as a Servant of Trade"

Khumalo G "Transport as a Servant of Trade and its Cross-Border Challenges: A Case of Swaziland and the Newly Introduced Immigration Laws by the South African Government" in *Southern African Transport Conference* (2015) 890-894

Kidd "Criminal Measures"

Kidd M "Criminal Measures" in Paterson AR and Kotzé LJ (eds) *Environmental Compliance and Enforcement in South Africa: Legal Perspectives* (Juta Cape Town 2009) 240-268

Kidd *Environmental law*

Kidd M *Environmental law* (Juta Cape Town 2011)

Kimberly *The Nature, Scope and Purpose of Spatial Planning*

Kimberly J *The Nature, Scope and Purpose of Spatial Planning in South Africa* (MPhil Dissertation University of Cape Town 2015)

Kothari "Collaboratively Managed Protected Areas"

Kothari A "Collaboratively Managed Protected Areas" in Lockwood M, Worboys and Kothari A (eds) *Managing Protected Areas: A global Guide* (Earthscan London 2006) 528-548

Kothari "Community Conserved Areas"

Kothari A "Community Conserved Areas" in Lockwood M, Worboys and Kothari A (eds) *Managing Protected Areas: A global Guide* (Earthscan London 2006) 549-573

Kothari "Diversifying Protected Area"

Kothari A "Diversifying Protected Area Governance: Ecological, Social and Economic Benefits" in Secretariat of the Convention on Biological Diversity

(ed) *Protected Areas in Today's World: Their Values and Benefits for the Welfare of the Planet* (Secretariat of the Convention on Biological Diversity Montreal 2008) 56-66

Kuenzi and McNeely "Nature-Based Tourism"

Kuenzi C and McNeely J "Nature-Based Tourism" in Renn O and Walker C (eds) *Global Risk Governance: Concept and Practice Using the IRGC Framework* (Springer 2008) 155-178

L

Lamarque and Magane "Advantages and Disadvantages "

Lamarque F and Magane S "*Advantages and Disadvantages of the Management of Conservation Areas in Mozambique by a Parastatal Entity: Summary and Recommendations*" *Wildlife Management Working Paper Number 10* (FAO-Netherlands Partnership Programme MITUR DNAC Maputo 2007) 1-20

Lapeyre and Laurans *Innovating for Biodiversity Conservation*

Lapeyre R and Laurans Y *Innovating for Biodiversity Conservation in African Protected Areas: A Study* (Institute for Sustainable Development and International Relations France 2016)

Lausche *Guidelines for Protected Areas Legislation*

Lausche B *Guidelines for Protected Areas Legislation* (IUCN and UNEP Gland 1980)

Lausche *Guidelines for Protected Areas Legislation*

Lausche B *Guidelines for Protected Areas Legislation* (IUCN Gland 2011)

Leslie *Responsible Tourism: Concept, Theory and Practice*

Leslie D *Responsible Tourism: Concept, Theory and Practice* (CABI Wallingford 2012)

Liebenberg "Interpretation of socio-economic rights"

Liebenberg S "Interpretation of socio-economic rights" in Woolman S and Bishop M (eds) *Constitutional Law of South Africa* 2nd ed (Juta Cape Town 2013) 33-1- 33-64

Lillywhite, Kemp and Sturman *Mining, resettlement and lost livelihoods*

Lillywhite S, Kemp D and Sturman K *Mining, resettlement and lost livelihoods: Listening to the Voices of Resettled Communities in Mualadzi, Mozambique* (Oxfam Melbourne 2015)

Lopes *Human Rights in Tourism*

Lopes EU *Human Rights in Tourism: Effectiveness of Tourism Legislation Upon the Realisation of the Right to Development of Local Communities in Mozambique* (LLM Dissertation University of Pretoria 2010)

Lopoukhine "Protected areas"

Lopoukhine N "Protected areas – for Life's Sake" in Secretariat of the Convention on Biological Diversity (ed) *Protected Areas in Today's World: Their Values and Benefits for the Welfare of the Planet* (Secretariat of the Convention on Biological Diversity Montreal 2008) 1-4

M

Mabunda *et al* "Transfrontier Conservation Areas"

Mabunda D *et al* "Transfrontier Conservation Areas: The Southern African Experience" in Quinn MS, Broberg L and Freimund W (eds) *Parks, Peace and Partnership Initiatives in Transboundary Conservation* (University of Calgary Press Calgary 2012)

Madhuku *An introduction to Zimbabwean Law*

Madhuku L *An Introduction to Zimbabwean Law* (Harare Weaver Press 2010)

Mahony and Van Zyl *Practical strategies for pro-poor tourism*

Mahony K and Van Zyl J 2001 *Practical strategies for pro-poor tourism: Case studies of Makuleke and Manyeleti tourism initiatives. Pro-Poor Tourism Working Paper 2* (Overseas Development Institute, IIED, Centre for Responsible Tourism London 2001)

Malan *Improved decision-making processes for the transfrontier*

Malan AS *Improved decision-making processes for the transfrontier conservation areas of southern Africa* (PhD University of British Columbia 2015)

Manjengwa *et al A comparative study of institutional*

Manjengwa J *et al A comparative study of institutional arrangements for small-scale farmers in communities the Great Limpopo Transfrontier Conservation Area (GLTFCA) in Zimbabwe and Mozambique: Final Report* (AHEAD-GLTFCA CASS Harare 2010)

Mansourian *et al "Poverty and Protected Areas"*

Mansourian S *et al "Poverty and Protected Areas"* in Secretariat of the Convention on Biological Diversity (ed) *Protected Areas in Today's World: Their Values and Benefits for the Welfare of the Planet* (Secretariat of the Convention on Biological Diversity Montreal 2008) 4-17

Maripe "Development and balancing of interests in environmental law"

Maripe B "Development and balancing of interests in environmental law: the case of Botswana" in Faure M and Du Plessis W (eds) *The balancing of interests in environmental law in Africa* (PULP Pretoria 2011) 49-74

Massyn "Citizen Participation in the Lodge Sector of the Okavango Delta"

Massyn PJ "Citizen Participation in the Lodge Sector of the Okavango Delta" in Spenceley A (ed) *Responsible Tourism: Critical Issues for Conservation and Development* (Earthscan London 2012) 225-238

Massyn *Environmental Impact Assessment for Sasol PSA and LPG Project*

Massyn PJ *Environmental Impact Assessment for Sasol PSA and LPG Project: Tourism Impact Assessment Report Specialist Report 14* (Golder Associates Maputo 2014)

Matose "Nature, Villagers, and the State"

Matose "Nature, Villagers, and the State: Resistance Politics from Protected Areas in Zimbabwe" in Büscher B, Dressler W and Fletcher R (eds) *Nature Inc.: Environmental Conservation in the Neoliberal Age* (University of Arizona Press Tucson 2014) 66-86

May *Poverty Eradication*

May J *Poverty Eradication: The South African Experience* (Department of Economics and Social Affairs, NEPAD Addis Ababa 2010)

Mbaiwa "The Realities of Ecotourism Development in Botswana"

Mbaiwa JE "The Realities of Ecotourism Development in Botswana" in Spenceley A (ed) *Responsible Tourism: Critical Issues for Conservation and Development* (Earthscan London 2012) 205-224

Mbuli *Poverty Reduction Strategies in South Africa*

Mbuli BN *Poverty Reduction Strategies in South Africa* (M.Comm Dissertation University of South Africa 2008)

McIntyre *South African Tourist Guides*

McIntyre P *South African Tourist Guides: An Inquiry into their Status in Employment* (Minor Dissertation MPhil (Commercial Law) University of Cape Town 2007)

McLean *Constitutional Deference, Courts*

McLean K *Constitutional Deference, Courts and Socio-Economic Rights in South Africa* (Pretoria University Law Press Pretoria 2009)

McNeely, Thorsell and Ceballos-Lascuráin *Guidelines*

McNeely, JA Thorsell JW and Ceballos-Lascuráin H *Guidelines: Development of National and Protected Areas for Tourism* (IUCN Gland 1992)

Mekonin *Sustainable Development Law*

Mekonin AA *Sustainable Development Law-The Path to Sustainable Peace* (Unpublished PhD Thesis Linnaeus University 2010)

Metcalfe "The impacts of transboundary protected areas "

Metcalfe S "The impacts of transboundary protected areas on local communities in three Southern African initiatives" Paper presented at the Workshop on *Transboundary Protected Areas in the Governance Stream of the 5th World Park Congress* 12-13 September 2003 Durban 1-24

MLGTS Legal Circle *Doing Business Mozambique*

MLGTS Legal Circle *Doing Business Mozambique* (MLGTS Legal Circle Maputo 2012)

Morel and Maes "The curious phenomenon "

Morel M and Maes F "*The curious phenomenon of "environmental migration/displacement" and the role of international law in cross-border protection*" in French D (ed) *Global justice and Sustainable Development* (Martinus Nijhoff Publishers Leiden 2010) 273-288

Morrison *The Social License: How to Keep your Organization Legitimate*

Morrison J *The Social License: How to Keep your Organization Legitimate* (Palgrave Macmillan Hampshire 2014)

Mowforth and Munt *Tourism and Sustainability*

Mowforth M and Munt I *Tourism and Sustainability: Development, globalisation and new tourism in the Third World* (Routledge London 2009)

Mugadza *Biodiversity conservation through Transfrontier Conservation Areas*

Mugadza AT *Biodiversity conservation through Transfrontier Conservation Areas (TFCAs) and the rights of local communities: Reconciliation through sustainable development* (LLM-mini dissertation North-West University 2012)

Mukamuri *et al* "Ethnic heterogeneity and its implications "

Mukamuri B *et al* "Ethnic heterogeneity and its implications for natural resources management on the edge" in Andersson JA *et al* (eds) *Transfrontier Conservation Areas: People living on the edge* (Routledge London 2013) 89-105

Murphree "Forward"

Murphree MW "Forward" in Andersson JA *et al* (eds) *Transfrontier Conservation Areas: People living on the edge* (Routledge London 2013) xv-xx

Murwira *et al* "Resource gradients and movements "

Murwira A *et al* "Resource gradients and movements across the edge of transfrontier parks" in Andersson JA *et al* (eds) *Transfrontier Conservation Areas: People living on the edge* (Routledge London 2013) 122-136

Mwebaza "Improving Environmental Procedural Rights in Uganda"

Mwebaza R "Improving Environmental Procedural Rights in Uganda" in Bonilla MC *et al* (eds) *Environmental Law in Developing Countries: Selected Issues* (IUCN Gland 2004) 17-54

N

Naidoo *Restitution of land rights*

Naidoo R *Restitution of land rights: the requirement of feasibility or restoration* (LLM University of South Africa 2015)

Naidoo *An analysis of municipal solid waste management*

Naidoo K *An analysis of municipal solid waste management in South Africa using the Msunduzi Municipality as a Case Study* (MSc University of Natal 2009)

National Business Initiative *Toolkit for Business and Human Rights*

National Business Initiative *Toolkit for Business and Human Rights in South Africa* (National Business Initiative Cape Town 2016)

Ndhlovu *Protection of socio-economic rights in Zimbabwe*

Ndhlovu N *Protection of socio-economic rights in Zimbabwe: A critical assessment of the domestic framework under the 2013 Constitution of Zimbabwe* (Hamburg Anchor Academic Publishing 2015)

Nelson F *Community Rights, Conservation and Contested Lands*

Nelson F *Community Rights, Conservation and Contested Lands: The Politics of Natural Resource Governance in Africa* (Routledge London 2012)

Norfolk and Cosijn "Development and the balancing of interests in Mozambique"

Norfolk S and Cosijn M "Development and the balancing of interests in Mozambique" in Faure M and Du Plessis W (eds) *The balancing of interests in environmental law in Africa* (PULP Pretoria 2011)295-340

O

Olenasha *The enforcement of environmental rights*

Olenasha WT *The enforcement of environmental rights: a case study of the new South Africa constitutional dispensation* (LLM Thesis University of Pretoria 2001)

P

Pabon-Zamora *et al* "Protected areas"

Pabon-Zamora L *et al* "Protected areas and Human Well-being: Experiences from Indonesia, Mexico, Peru and Venezuela" in Secretariat of the Convention on Biological Diversity (ed) *Protected Areas in Today's World: Their Values and Benefits for the Welfare of the Planet* (Secretariat of the Convention on Biological Diversity Montreal 2008) 67-76

Parliamentary Monitoring Group *Settlement of the MalaMala Game Ranch*

Parliamentary Monitoring Group *Settlement of the MalaMala Game Ranch to the N'Wandlamharhi CPA Presentation to the Portfolio Committee on Rural Development and Land Reform 13 June 2018* (Commission on Restitution of Land Rights 2018)

Paterson *Bridging the Gap Between Conservation and Land Reform*

Paterson AR *Bridging the Gap Between Conservation and Land Reform: Communally-conserved areas as a tool for managing South Africa's natural commons* (PhD University of Cape Town 2011)

Paterson "Contractual Tools for Implementing the CBD in South Africa"

Paterson AR "Contractual Tools for Implementing the CBD in South Africa" in Benidickson J (ed) *Environmental law and Sustainability after Rio* (Edward Elgar Cheltenham Northampton 2011) 341-366

Paterson "Incentive-based Measures"

Paterson AR "Incentive-based Measures" in Paterson AR and Kotzé LJ (eds) *Environmental Compliance and Enforcement in South Africa: Legal Perspectives* (JUTA Law Cape Town 2009) 296-335

Paterson "Protected Areas Governance in a Southern African Transfrontier Context"

Paterson AR "Protected Areas Governance in a Southern African Transfrontier Context" in Kotzé LJ & Marauhn T (eds) (2014) *Transboundary Protection of Biodiversity* (Brill Martinus Nijhoff 2014)

Paterson and Glazewski "Protected Areas and Community Based Conservation"

Paterson AR and Glazewski J "*Protected Areas and Community Based Conservation*" in Glazewski J *Environmental Law in South Africa* (LexisNexis Butterworth Durban 2005) 321-362

Peberdy "Hurdles to trade?"

Peberdy S "Hurdles to trade?" South Africa's immigration policy and informal sector cross-border traders in the SADC" Unpublished contribution delivered at the SAMP/LHR/HRSC Workshop on *Regional Integration, Poverty and South Africa's Proposed Migration Policy* (23 April 2002 Pretoria)

Pellegrini and Rastogi "Enhancing the diversity, quality and vitality of governance"

Pellegrini A and Rastogi A "Enhancing the diversity, quality and vitality of governance of protected (and conserved) areas" in *Proceedings of Stream 6 of the IUCN World Parks Congress* (12-19 November 2014 Sydney)

Petterson "*Conservation for development* "

Petterson R *Conservation for development – a literature study of the socioeconomic effects of the Great Limpopo Transfrontier Conservation Area* (Master's Thesis Uppsala University 2014)

Pienaar "Communal property arrangements"

Pienaar JM "Communal property arrangements: A second bite" in Cousins B (ed) *At the crossroads: land and agrarian reform into the 21st century* (University of Western Cape Town 2000) 322-328

Pienaar *Land Reform*

Pienaar JM *Land Reform* (Juta Cape Town 2014)

Pimbert and Pretty *Parks, People and Professionals*

Pimbert MP and Pretty JN Parks, *People and Professionals: Putting 'Participation' into Protected Area Management* (United Nations Research Institute for Social Development Geneva 1995)

Prandi and Lozano "Corporate Social Responsibility and Human Rights"

Prandi M and Lozano JM "Corporate Social Responsibility and Human Rights" in Mullerat R and Brennan D (eds) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* 2nd ed (Kluwer Law International Alpen ann den Rijn 2011) 209-228

R

Ramaipadi *Implementation of Welfare Support*

Ramaipadi MA *Implementation of Welfare Support and Free Basic Services at Mapuve Village in Limpopo Province* (MDev Dissertation University of Limpopo 2011)

Ramutsindela, Davis and Sinthumule "Diagnostic Report on Land Reform"

Ramutsindela, Davis and Sinthumule "Diagnostic Report on Land Reform in South Africa" *Land Restitution Commissioned Report for High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change, An Initiative of the Parliament of South Africa* September 2016

Ramutsindela "Transfrontier Conservation and Local Communities"

Ramutsindela M "Transfrontier Conservation and Local Communities" in Saarinen J *et al* (eds) *Sustainable Tourism in Southern Africa: Local Communities and Natural Resources in Transition* (Channel View Publications Bristol 2009) 169-185

Republic of Zimbabwe Ministry of Environment and Tourism *Zimbabwe Report*

Republic of Zimbabwe Ministry of Environment and Tourism *Zimbabwe Report of the Comptroller and Auditor-General on the Protection and Conservation of*

Wildlife by Parks and Wildlife Management Authority (Ministry of Environment and Tourism Harare 2003)

Roe and Nelson "The origins and evolution of community-based natural resources"

Roe D and Nelson F "The origins and evolution of community-based natural resources management" in Roe D, Nelson F and Sandbrook C *Community management of natural resources in Africa: Impacts, experiences and future directions* (IIED London 2009)

Roe, Leader-Williams and Dalal-Clayton *Take Only Photographs*

Roe D, Leader-Williams N and Dalal-Clayton B *Take Only Photographs, Leave Only Footprints: The Environmental Impacts of Wildlife Tourism. Wildlife and Development Series No 10* (IIED London 1997)

Ron *Southern Africa Development*

Ron T *Southern Africa Development Community (SADC) Proposed Framework for Transfrontier Conservation Areas (TFCAs) – Issues and Options Report* (SADC Secretariat Gaborone 2007)

Rudolph "The Global Sullivan Principles of Corporate Social Responsibility"

Rudolph PH "The Global Sullivan Principles of Corporate Social Responsibility" in Mullerat R and Brennan D (eds) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* 2nd Ed (Alpen ann den Rijn Kluwer Law International 2011) 247-252

Ruppel "Environmental rights and justice"

Ruppel OC "Environmental rights and justice under the Namibian Constitution" in Bosl A, Horn N and Du Pisani A *Constitutional democracy in Namibia: A critical analysis after two decades* (Konrad Adenauer Stiftung Windhoek 2010) 323-328

Ruiz "Self-Management as the Goal of Regional Conservation Strategies"

Ruiz RM "Self-Management as the Goal of Regional Conservation Strategies" in Goodale UM *et al* (eds) *Transboundary Protected Areas: The Viability of Regional Conservation Strategies* (Hawthorn Press New York 2003) 13-17

S

SADC Secretariat *Outcomes of the Ministerial Workshop*

SADC Secretariat *Outcomes of the Ministerial Workshop on Food Security and Poverty Eradication: Towards a Poverty Free and Food Secure Future* (SADC Secretariat Gaborone 2016)

SADC Secretariat *SADC Regional Vulnerability Assessment*

SADC Secretariat *SADC Regional Vulnerability Assessment and Analysis Synthesis Report* (SADC Secretariat Gaborone 2016)

SADC TFCA Network *SADC Transfrontier Conservation Areas*

SADC TFCA Network 2017 *SADC Transfrontier Conservation Areas* (SADC Secretariat Gaborone 2017)

Salmão "Institutional Co-ordination & Harmonizing Formal & Customary Law"

Salmão A "Institutional Co-ordination & Harmonizing Formal & Customary Law in the Management of Natural Resources" in Ferraz B and Munslow B (eds) *Sustainable Development in Mozambique* (Asmara Africa World Press 2000) 83-88

Sands *et al Principles of international environmental law*

Sands P *et al Principles of international environmental law* 3rd ed (Cambridge University Press Cambridge 2012)

Sands *Principles of International Environmental Law*

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

Sandwith *et al Transboundary Protected Areas for Peace and Co-operation*

Sandwith T *et al Transboundary Protected Areas for Peace and Co-operation. Best Practice Protected Area Guidelines Series No. 7* (IUCN Gland 2001)

Sandwith and Lockwood "*Linking the Landscape*"

Sandwith and Lockwood "*Linking the Landscape*" in Lockwood M, Worboys and Kothari A (eds) *Managing Protected Areas: A global Guide* (Earthscan London 2006) 574-601

Schoeman *The Cooperative as an Appropriate form of Enterprise*

Schoeman NF *The Cooperative as an appropriate form of Enterprise for Black Economic Empowerment* (LLM Dissertation University of the Free State 2006)

Scholfield and Brockington *Non-governmental Organizations*

Scholfield K and Brockington D *Non-governmental Organizations and African Wildlife Conservation: A Preliminary Analysis* (University of Manchester Brooks World Poverty Institute Manchester 2009)

Secretariat of the Convention on Biological Diversity 2015 *Tourism supporting Biodiversity*

Secretariat of the Convention on Biological Diversity 2015 *Tourism supporting Biodiversity – A Manual on applying the CBD Guidelines on Biodiversity and Tourism Development* (Secretariat of the Convention Biological Diversity Montreal 2015)

Seleoane "*Making the Workplace Human Rights Friendly*"

Seleoane M "*Making the Workplace Human Rights Friendly*" in Human Rights Science Council *Business and Human Rights in South Africa* (30-31 October 1999 Pretoria)

Sello "*The Role of the Business Community*"

Sello "The Role of the Business Community" in Human Rights Science Council
Business and Human Rights in South Africa (30-31 October 1999 Pretoria)

Sharpley *Tourism Development and the Environment: Beyond Sustainability?*

Sharpley R *Tourism Development and the Environment: Beyond Sustainability?* (Earthscan London 2009)

Sharpley and Tefler *Tourism and Development: Concepts and Issues*

Sharpley R and Tefler DJ *Tourism and Development: Concepts and Issues*
(Channel View Publications Bristol 2002)

Shehab *Tourism-Led Development in South Africa*

Shehab M *Tourism-Led Development in South Africa: a case study of the Makuleke partnership with Wilderness Safaris* (DPhil Thesis University of Witwatersrand 2011)

Simpson "The Impacts of Tourism Initiatives "

Simpson MC "The Impacts of Tourism Initiatives on Rural Livelihoods and Poverty Reduction in South Africa: Mathenjwa and Mqobela" in Spenceley A (ed) *Responsible Tourism: Critical Issues for Conservation and Development* (Earthscan London 2012)239-266

Sithole *Government intervention to alleviate poverty*

Sithole N *Government intervention to alleviate poverty in South Africa, with a specific focus on poverty in Eastern Cape* (MCom Thesis University of the Western Cape 2014)

Soto "Fast-Track Strengthening of the Management Capacity "

Soto B "Fast-Track Strengthening of the Management Capacity of Conservation Institutions: The Case of the Great Limpopo Transfrontier Conservation Park in Mozambique's Capacity" in Quinn MS, Broberg L and

Freimund W (eds) *Parks, Peace and Partnership Initiatives in Transboundary Conservation* (University of Calgary Press Calgary 2012)265-282

South African Human Rights Commission *The Right to Adequate Housing*

South African Human Rights Commission *The Right to Adequate Housing Fact Sheet* (South African Human Rights Commission Braamfontein Date Unknown)

Spenceley and Casimiro *Tourism Concessions in Protected Areas in Mozambique*

Spenceley A and Casimiro R *Tourism Concessions in Protected Areas in Mozambique: Manual for Operators and Concessionaires* (USAID Maputo 2012)

Spenceley *et al Responsible Tourism Manual for South Africa*

Spenceley A *et al Responsible Tourism Manual for South Africa* (Department of Environmental Affairs and Tourism Pretoria 2002)

Spenceley "Impacts of Wildlife Tourism on Rural livelihoods in Southern Africa"

Spenceley A "Impacts of Wildlife Tourism on Rural livelihoods in Southern Africa" in Spenceley A (ed) *Responsible Tourism: Critical Issues for Conservation and Development* (Earthscan London 2012) 159-186

Spenceley "Implications of Responsible Tourism for Conservation"

Spenceley A "Implications of Responsible Tourism for Conservation and Development in Southern Africa" in Spenceley A (ed) *Responsible Tourism: Critical Issues for Conservation and Development* (Earthscan London 2012)361-374

Spenceley "Introduction: Responsible Tourism in Southern Africa"

Spenceley A "Introduction: Responsible Tourism in Southern Africa" in Spenceley A (ed) *Responsible Tourism: Critical Issues for Conservation and Development* (Earthscan London 2008) 1-26

Spenceley *Tourism, Local Livelihoods, and the Private Sector in South Africa:*

Spenceley A *Tourism, Local Livelihoods, and the Private Sector in South Africa: Case Studies on the Growing Role of the Private Sector in Natural Resources Management. Sustainable Livelihoods in southern Africa Research Paper 8* (Sustainable Livelihoods in Southern Africa Programme Brighton 2003)

Sprenger "Market-based instruments in environmental policies"

Sprenger R "Market-based instruments in environmental policies: the lessons of experience" in Andersen MS and Sprenger R (eds) *Market-Based Instruments for Environmental Management: Politics and Institutions* (Edward Elgar Cheltenham 2000)

Stolton *et al* "Values and benefits of protected areas"

Stolton S *et al* "Values and benefits of protected areas" in Worboys GL *et al Protected Area Governance and Management* (Australian National University Press Canberra 2015) 145-168

Stolton, Redford and Dudley *The Futures of Privately Protected Areas*

Stolton S, Redford KH and Dudley N *The Futures of Privately Protected Areas* (IUCN Gland 2014)

Stolton "What are protected areas"

Stolton S "What are protected areas" in Dudley N *et al Safety Net: Protected areas and poverty reduction* (World Wide Fund for Nature Gland 2008)

Suich "Tourism in Transfrontier Conservation Areas: The Kavango-Zambezi TFCA"

Suich H "Tourism in Transfrontier Conservation Areas: The Kavango-Zambezi TFCA" in Spenceley A (ed) *Responsible Tourism: Critical Issues for Conservation and Development* (Earthscan London 2008) 187-204

Suich and Whande "Transfrontier Conservation Initiatives"

Suich H and Whande W "Transfrontier Conservation Initiatives in Southern Africa: Observations from the Great Limpopo Transfrontier Conservation Area" in Child B, Suich H and Spenceley A (eds) *Evolution and Innovation in Wildlife Conservation Parks and Game Ranches to Transfrontier Conservation Areas* (Earthscan New York 2009) 373-392

Summers "Common-Law Remedies for Environmental Protection"

Summers R "Common-Law Remedies for Environmental Protection" in Paterson AR and Kotzé LJ (eds) *Environmental Compliance and Enforcement in South Africa: Legal Perspectives* (Juta Cape Town 2009) 339-369

T

Thaba and Mbohwa "Nature, Role and Status of Cooperatives"

Thaba SC and Mbohwa C "Nature, Role and Status of Cooperatives in South African Context" in *World Congress on Engineering and Computer Science* (21-23 October 2015 San Francisco) 1-6

Tladi *Sustainable Development*

Tladi D *Sustainable Development in International Law: An Analysis of Key Enviro-Economic Instruments* (PULP Pretoria 2007)

Toxopeüs *The promotion of environmental justice*

Toxopeüs M *The promotion of environmental justice through the lens of civil-based environmental governance in South Africa* (LLM dissertation North-West University 2015)

Turley and Perera *Implementing Sustainable Public Procurement*

Turley L and Perera O *Implementing Sustainable Public Procurement in South Africa: Where to start* (International Institute for Sustainable Development Manitoba 2014)

U

UNCTAD "Sustainable Tourism: Contribution to economic growth"

UNCTAD "Sustainable Tourism: Contribution to economic growth and sustainable development" in *Expert Meeting on Tourism's Contribution to Sustainable Development* 14-15 March 2013 Geneva

UN Economic and Social Commission for Asia and the Pacific *Poverty Alleviation*

UN Economic and Social Commission for Asia and the Pacific *Poverty Alleviation through Sustainable Tourism Development* (UN ECOSOC New York 2003)

UNEP and UNWTO *Making tourism more sustainable: a guide for policy makers*

Spenceley A *Making tourism more sustainable: a guide for policy makers* (UNEP WTO Madrid 2005)

UN Sustainable Development Solutions Network (UNSDSN) *Indicators*

UN Sustainable Development Solutions Network (UNSDSN) *Indicators and a Monitoring Framework for the Sustainable Development Goals: Launching a data revolution for the SDGs* (UNSDSN New York 2015)

UNWTO *Sustainable Tourism for Development Guidebook*

UNWTO *Sustainable Tourism for Development Guidebook* (UNWTO Madrid 2013)

V

Vanclay et al *Social Impact Assessment*

Vanclay F et al *Social Impact Assessment: Guidance for assessing and managing the social impacts of projects* (IAIA Washington 2015)

Varghese "SANParks concessioning process"

Varghese G "SANParks concessioning process, conservation and empowerment objectives" in Spenceley A (ed) *Tourism in the Great Limpopo Transfrontier Conservation Area Workshop Proceedings 14-16 April 2005*

(Transboundary Protected Areas Research Initiative TPARI Johannesburg 2005)

Varghese "Public-Private Partnerships in South African National Parks"

Varghese G "Public-Private Partnerships in South African National Parks: The Rationale, Benefits and Lessons Learned" in Spenceley A (ed) *Responsible Tourism: Critical Issues for Conservation and Development* (Earthscan London 2008)69-84

Van der Linde *et al Beyond Boundaries*

Van der Linde H *et al Beyond Boundaries: Transboundary Natural Resource Management in Sub-Saharan Africa* (Biodiversity Support Program Washington 2001)

Van der Schyff "South African natural resources, property rights"

Van der Schyff E "South African natural resources, property rights and public trusteeship: transformation in progress" in Grinlinton D and Taylor P (eds) *Property rights and sustainability: the evolution of property rights to meet ecological challenges* (Martinus Nijhoff Leiden Boston 2011) 323-340

Van Harmelen, van Leeuwen and de Vette *International Law*

Van Harmelen M, van Leeuwen MS and de Vette T *International Law of Sustainable Development: Legal Aspects of Environmental Security on the Indonesian Island of Kalimantan Protopye EnviroSecurity Assessments* (Institute for Environmental Security The Hague 2005)

Van Wyk *Planning Law*

Van Wyk *Planning Law* 2nd ed (Juta Cape Town 2012)

Vardon *et al* "The Aichi Targets and biodiversity conservation"

Vardon M *et al* "The Aichi Targets and biodiversity conservation – the role of natural capital accounting" in Vardon *et al* (eds) *Better policy through natural*

capital accounting: stock take and ways forward (WAVES World Bank Washington 2017) 1-4

Vasiljević "Transboundary conservation"

Vasiljević M "Transboundary conservation: An emerging concept in environmental governance" in Erg B, Vasiljević M and McKinney M (eds) *Initiating effective transboundary conservation: A practitioners guideline based on the experience from the Dinaric Arc* (IUCN Gland 2012) 6-11

Vasiljević *et al Transboundary Conservation*

Vasiljević M *et al Transboundary Conservation: A systematic and integrated approach. Best Practice Protected Area Guidelines Series No.23* (IUCN Gland 2015)

Voigt *Sustainable Development*

Voigt C *Sustainable Development as a Principle of International Law* (Martinus Nijhoff Leiden 2009)

Vrancken "*Tourism Organisations and Regulation*"

Vrancken PHG "Tourism Organisations and Regulation" in Vrancken PHG (ed) *Tourism and the Law in South Africa* (LexisNexis Durban 2002)275-306

W

Wall 'Sustainable Tourism'

Wall G "Sustainable Tourism – Unsustainable Development" in Wahab S and Pigram JJ (eds) *Tourism, Development and Growth: The Challenge of Sustainability* (Routledge London 1997) 33-49

Walker *Exploring Socio-Cultural Dimension of Sustainability*

Walker EJ *Exploring Socio-Cultural Dimension of Sustainability: How Cultural and Social Factors Inform a Sustainable Redesign of Whitmore Park (Annapolis, MD)* (MLA Thesis University of Maryland 2014)

Wels *Private Wildlife Conservation in Zimbabwe: Joint Ventures and Reciprocity*

Wels H *Private Wildlife Conservation in Zimbabwe: Joint Ventures and Reciprocity* (Brill Leiden 2003)

Whande "Windows of Opportunity or Exclusion? "

Whande W "Windows of Opportunity or Exclusion? Local Communities in the Great Limpopo Transfrontier Conservation Area, South Africa" in Nelson F *Community Rights, Conservation and Contested Lands: The Politics of Natural Resource Governance in Africa* (Routledge London 2012) 147-173

Wilshusen "Capitalizing Conservation/Development"

Wilshusen PR "Capitalizing Conservation/Development: Dissimulation, Misrecognition, and the Erasure of Power" in Büscher B, Dressler W and Fletcher R (eds) *Nature Inc.: Environmental Conservation in the Neoliberal Age* (University of Arizona Press Tucson 2014) 127-157

Winstanley "Administrative Measures"

Winstanley T "Administrative Measures" in Paterson AR and Kotzé LJ (eds) *Environmental Compliance and Enforcement in South Africa: Legal Perspectives* (Juta Cape Town 2009) 225-239

Winter "A fundamental and two pillars"

Winter G "A fundamental and two pillars: the concept of sustainable development 20 years after the Brundtland report" in Bugge HC and Voigt C *Sustainable development in international and national law: What did the Brundtland report do to legal thinking and legal development, and where can we go from here?* (Europa Law Publishing Groningen 2008) 23-45

Worboys "Concept, purpose and challenges"

Worboys GL "Concept, purpose and challenges" in Worboys GL *et al* (eds) *Protected Area Governance and Management* 9-42 (Australian National University Press Canberra 2015)

Worboys *et al* *Protected area governance and management*

Worboys G *et al* *Protected area governance and management* (ANU Press Canberra 2015)

World Bank *Accelerating Poverty Reduction*

World Bank *Accelerating Poverty Reduction in Mozambique: Challenge and Opportunities* (World Bank Washington 2016)

World Bank *Mozambique: Transfrontier Conservation Areas Pilot and Institutional Strengthening Project*

World Bank *Mozambique: Transfrontier Conservation Areas Pilot and Institutional Strengthening Project* (World Bank Washington 1996)

Wolmer *Transboundary Conservation*

Wolmer W *Transboundary Conservation: The Politics of Ecological Integrity in the Great Limpopo Transfrontier Park. Sustainable livelihoods in Southern Africa Research Paper 4* (Institute of Development Studies Brighton 2003)

Wyllie *Benefits beyond boundaries: Cross-border tourism collaboration*

Wyllie RS *Benefits beyond boundaries: Cross-border tourism collaboration in Southern African transfrontier conservation areas* (MSc Dissertation University of Pretoria 2014)

Z

Zbicz "Imposing Transboundary Conservation"

Zbicz DC "Imposing Transboundary Conservation: Cooperation between Internationally Adjoining Protected Areas" in Goodale UM *et al* (eds)

Transboundary Protected Areas: The Viability of Regional Conservation Strategies (Hawthorn Press New York 2003) 21-37

Zeppel H *Indigenous Ecotourism: Sustainable Development and Management*

Zeppel H *Indigenous Ecotourism: Sustainable Development and Management*
(CABI Oxfordshire 2006)

Journal articles

A

Adam and Hutton 2007 *Conservation and Society*

Adam WM and Hutton J "People, Parks and Poverty: Political Ecology and Biodiversity Conservation" 2007 *Conservation and Society* 147-183

Agrawal 2000 *Environmental Conservation*

Agrawal A "Adaptive management in transboundary protected areas: The Bialowieza National Park and biosphere Reserve as a case study" 2000 *Environmental Conservation* 326-333

Agrawal 1999 *World Development*

Agrawal A "Enchantment and Disenchantment: The Role of Community in Natural Resource Conservation" 1999 *World Development* 629-649

Akinola 2018 *Journal of Africa Review*

Akinola AO "Land Reform in South Africa: an appraisal" 2018 *Journal of Africa Review* 1-16

Alhaddi 2015 *Business and Management*

Alhaddi H "Triple Bottom Line and Sustainability: A Literature Review" 2015 *Business and Management Studies* 6-10

Amechi 2009 *Law Environment and Development Journal*

Amechi EP "Linking Environmental Protection and Poverty Reduction in Africa: An Analysis of the Regional Legal Responses to Environmental Protection" 2009 *Law Environment and Development Journal* 114-128

Andrade and Rhodes 2012 *Ecology and Society*

Andrade GSM and Rhodes JR "Protected Areas and Local Communities: an Inevitable Partnership toward Successful Conservation Strategies" 2012 *Ecology and Society* 1-16

Arias-Maldonado 2013 *Environmental Politics*

Arias-Maldonado M "Rethinking Sustainability in the Anthropocene" 2013 *Environmental Politics* 428-446

Axelsson *et al* 2013 *Ambio*

Axelsson R *et al* "Social and Cultural Sustainability: Criteria, Indicators, Verifier Variables for Measurement and Maps for Visualisation to Support Planning" 2013 *Ambio* 215-228

B

Balint and Mashinya 2006 *Geoforum*

Balint PJ and Mashinya J "The decline of a model community-based conservation project: Governance, capacity, and devolution on Mahenye, Zimbabwe" 2006 *Geoforum* 805-815

Barendse *et al* 2016 *South African Journal of Science*

Barendse J *et al* "A broader view of stewardship to achieve conservation and sustainability goals in South Africa" 2016 *South African Journal of Science* 1-15

Barral 2012 *European Journal of International Law*

Barral V "Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm" 2012 *European Journal of International Law* 377-400

Barnard 2012 *PER*

Barnard M "The Role of International Sustainable Development Law Principles in Enabling Effective Renewable Energy Policy – A South African Perspective" 2012 *PER* 207-243

Barnett 2005 *Geoforum*

Barnett "The consolations of 'neoliberalism'" 2005 *Geoforum* 7-12

Barwick et al 2014 *Ecological Management & Restoration*

Barwick M *et al* "The role of governance in delivery of natural resources management programmes – a case study involving the restoration of freshwater fish communities in the Murray-Darling Basin" 2014 *Ecological Management & Restoration* 62-67

Belinkie 2015 *Cornell International Law Journal*

Belinkie SF "South Africa's Land Restitution Challenge: Mining Alternatives from Evolving Mineral Taxation Policies" 2015 *Cornell International Law Journal* 219-245

Benson and Craig 2014 *Society and Natural Resources*

Benson MH and Craig RK "The End of Sustainability" 2014 *Society and Natural Resources* 777-782

Berno and Bricker 2001 *International Journal of Economic Development*

Berno T and Bricker K "Sustainable Tourism Development: The Long Road from Theory to Practice" 2001 *International Journal of Economic Development* 1-18

Bernstein 2005 *Journal of International Law and International Relations*

Bernstein S "Legitimacy in global environmental governance" 2005 *Journal of International Law and International Relations* 139-166

Biermann 2014 *The Anthropocene Review*

Biermann F "The Anthropocene: A governance perspective" 2014 57-61; *The Anthropocene Review*

Biermann *et al* 2012 *Science*

Biermann F *et al* "Navigating the Anthropocene: Improving Earth System Governance" 2012 *Science* 1306-1307

Bingham *et al* 2017 *Parks*

Bingham H *et al* "Privately Protected Areas: Advances and Challenges in Guidance, Policy and Documentation" 2017 *Parks* 13-28

Bilchitz 2014 *ICON*

Bilchitz D "Socio-economic rights, economic crisis, and legal doctrine" 2014 *ICON* 710-739

Bilchitz 2008 *South African Law Journal*

Bilchitz D "Corporate Law and the Constitution: Towards Binding Human Rights Responsibilities for Corporations" 2008 *South African Law Journal* 754-789

Blackmore 2017 *Bothalia: African Biodiversity & Conservation*

Blackmore AC "Public trust doctrine, research and responsible wildlife management in South Africa" 2017 *Bothalia: African Biodiversity & Conservation* 1-9

Blatter 2003 *Governance: An International Journal of Policy, Administration, and Institutions*

Blatter J "Beyond Hierarchies and Networks: Institutional Logics and Change in Transboundary Spaces" 2003 *Governance: An International Journal of Policy, Administration, and Institutions* 503-526

Blore, Cundhill and Mkhulisi 2013 *Journal of Environmental Management*

Blore ML, Cundhill G and Mkhulisi M "Towards measuring the transaction costs of co-management in Mkambati Nature Reserve, Eastern Cape, South Africa" 2013 *Journal of Environmental Management* 444-455

Bocchino 2014 *Journal of Development Studies*

Bocchino C "Transforming the Frontier: Peace Parks and the Politics of Neoliberal Conservation in Southern Africa by Bram Büscher" 2014 *Journal of Development Studies* 1038-1039

Boutilier 2014 *Impact Assessment and Project Appraisal*

Boutilier RG "Frequently asked question about the social license to operate" 2014 *Impact Assessment and Project Appraisal* 263-272

Briassoulis 2002 *Annals of Tourism Research*

Briassoulis H "Sustainable Tourism and the Question of the Commons" 2002 *Annals of Tourism Research* 1065-1085

Buckley 2002 *The Journal of Tourism Studies*

Buckley R "Public and Private Partnerships between Tourism and Protected Areas: The Australian Situation" 2002 *The Journal of Tourism Studies* 26-38

Büscher and Fletcher 2015 *New Political Economy*

Büscher B and Fletcher R "Accumulation by Conservation" 2015 *New Political Economy* 273-298

Büscher 2007 *Conservation Biology*

Büscher B "Conservation, Neoliberalism, and Social Science: A Critical Reflection on the SCB 2007 Annual Meeting in South Africa" 2007 *Conservation Biology* 229-233

Büscher and Whande 2007 *Conservation and Society*

Büscher B and Whande W "Whims in the Winds of Time: Emerging Trends in Biodiversity Conservation and Protected Area Management" 2007 *Conservation and Society* 22-43

Büscher 2010 *Development and Change*

Büscher B "Anti-Politics as Political Strategy: Neoliberalism and Transfrontier Conservation in Southern Africa" 2010 *Development and Change* 29-51

C

Carter, Adams and Hutton 2008 *Oryx*

Carter E, Adams WM and Hutton J "Private protected areas: management regimes, tenure arrangements and protected area categorization in East Africa" 2008 *Oryx* 177-178

Casagrandi and Rinaldi 2002 *Conservation Biology*

Casagrandi R and Rinaldi S "A Theoretical Approach to Tourism Sustainability" 2002 *Conservation Biology* 1-15

Chakunda 2015 *IOSR Journal of Humanities and Social Sciences*

Chakunda V "Towards Intergovernmental Balance of Power in Zimbabwe. Opportunities, Challenges and Critical Success Factors" 2015 *IOSR Journal of Humanities and Social Sciences* 42-48

Chape *et al* 2005 *Philosophical Transactions*

Chape S *et al* "Measuring the extent and effectiveness of protected areas as an indicator for meeting global biodiversity targets" 2005 *Philosophical Transactions* 443-455

Chenwi 2013 *De Jure*

Chenwi L "Unpacking "progressive realization", its relation to resources, minimum core and reasonableness, and some methodological considerations for assessing compliance" 2013 *De Jure* 724-769

Child *et al* 2012 *Pastoralism: Policy and Practice*

Child BA *et al* "The economics and institutional economics of wildlife on private land in Africa" 2012 *Pastoralism: Policy and Practice* 18-50

Chirenje 2013 *Chinese Journal of Population Resources and Environment*

Chirenje LI *et al* "Local communities' participation in decision-making processes through planning and budgeting in African countries" 2013 *Chinese Journal of Population Resources and Environment* 10-16

Chirozva 2015 *Journal of Ecotourism*

Chirozva C *Community agency and entrepreneurship in ecotourism planning and development In the Great Limpopo Transfrontier Conservation Area*" 2015 *Journal of Ecotourism* 185-203

Chiutsi 2014 *European Scientific Journal*

Chiutsi S "Tranfrontier Conservation, Livelihoods and Sustainable Tourism – A review of Community Perceptions of the Value of the Greater Limpopo Transfrontier Conservation Area (GLTFCA)" 2014 *European Scientific Journal* 12-18

Chouinard, Ellison and Ridgeway 2011 *Harvard Business Review*

Chouinard Y, Ellison J and Ridgeway R "The Sustainable Economy" 2011 *Harvard Business Review* 52-62

Cleverdon and Kalisch 2000 *International Journal of Tourism Research*

Cleverdon R and Kalisch A "Fair Trade in Tourism" 2000 *International Journal of Tourism Research* 171-281

Cordier-Segger 2004 *UNSDJ*

Cordier-Segger MC "Significant Developments on Sustainable Development Law and Governance: A Proposal" 2004 *United Nations Sustainable Development Journal* 61-74

Cronje and Chenga 2009 *Journal of Development Southern Africa*

Cronje F and Chenga CS "Sustainable social development in the South African mining sector" 2009 *Journal of Development Southern Africa* 413-427

Cundill *et al* 2013 *Land Use Policy*

Cundill G *et al* "Land claims and the pursuit of co-management on four protected areas in South Africa" 2013 *Land Use Policy* 171-178

D

Dearden, Bennett and Johnston 2005 *Environmental Management*

Dearden P, Bennett M and Johnston J "Trends in Global Protected Area Governance, 1992-2002" 2005 *Environmental Management* 89-100

De Koning 2009 *Africanus*

De Koning M "Co-management and its options in protected areas of South Africa" 2009 *Africanus* 5-17

De Visser and Mettler 2003 *Law, Democracy and Development*

De Visser and Mettler "Realising the right of access to water: Pipe dream or watershed?" 2003 *Law, Democracy and Development* 27-53

De Vos 2001 *South African Journal of Human Rights*

De Vos P "Grootboom, the Right to of Access to Housing and Substantive Equality as Contextual Fairness" 2001 *South African Journal of Human Rights* 258-276

Dieke 2003 *Management Decision*

Dieke PUC "Tourism in Africa's economic development: policy implications" 2003
Management Decision 287-295

Dixon and Fallon 1989 *Society and Natural Resources*

Dixon JA and Fallon LA "The concept of sustainability: Origins, extensions, usefulness for policy" 1989 *Society and Natural Resources* 73-84

Draper 2004 *Culture and Organization*

Draper M, Spierenburg M and Wels H "African dreams of cohesion: elite pacting and community development in transfrontier conservation areas in southern Africa" 2004 *Culture and Organization* 341-353

Du Pisani 2006 *Environmental Sciences*

Du Pisani JA "Sustainable development-historical roots of the concept" 2006
Environmental Sciences 83-96

Du Plessis and Alberts 2014 *Southern African Public Law*

Du Plessis AA and Alberts R "Cooperative environmental governance: At the coalface of sustainable infrastructure development in South Africa" 2014
Southern African Public Law 441

Du Plessis 2015 *PER/PELJ*

Du Plessis AA "The "Brown" Environmental Agenda and the Constitutional Duties of Local Government in South Africa: A Conceptual Introduction" 2015
PER/PELJ 1846-1880

Du Plessis 2008 *PER/PELJ*

Du Plessis AA 2008 "Public Participation, Good Environmental Governance and Fulfilment of Environmental Rights" *PER/PELJ* 1-29

Du Plessis 2010 *Stellenbosch Law Review*

Du Plessis AA "Local Environmental Governance' and the Role of Local Government in Realising Section 24 of the South African Constitution" 2010 *Stellenbosch Law Review* 265-297

Du Plessis and Scheepers 1998 *PER/PELJ*

Du Plessis W and Scheepers T "Traditional Leaders and Development: Recognition and the Road Ahead: Summary" 1998 *PER/ PELJ* 1-2

Du Plessis W, Pienaar JM and Olivier NJJ "Legislation Affecting Land: An Overview" 1990 *SAPL* 266-276

E

Eagles 2014 *Journal of Sustainable Tourism*

Eagles PFJ "Research priorities in park tourism" 2014 *Journal of Sustainable Tourism* 528-549

Eberle 2009 *Washington University Global Studies Law Review*

Eberle E "The Method and Role of Comparative Law" 2009 *Washington University Global Studies Law Review* 451-486

Ekblom, Gillson and Notelid 2010 *The Holocene*

Ekblom AL, Gillson L and Notelid M "A historical ecology of the Limpopo and Kruger National Parks and Lower Limpopo Valley 2010 *Journal of Archaeology and Ancient History* 1-29

Emuze and Adlam 2013 *Acta Stuctilia*

Emuze F and Adlam R "Implementation of Broad-Based Black Economic Empowerment in construction: A South African metropolitan area study" 2013 *Acta Stuctilia* 126-154

Erlank 2014 *PER/PELJ*

Erlank W "Green Paper on Land Reform: Overview and Challenges" 2014
PER/PELJ 614-634

Everingham and Jannecke 2006 *Journal of Southern African Studies*

Everingham M and Jannecke C "Land Restitution and Democratic Citizenship
in South Africa" 2006 *Journal of Southern African Studies* 545-562

F

Fakoya 2014 *Journal of Human Ecology*

Fakoya MB "Institutional Challenges to Municipal Waste Management Service
Delivery in South Africa" 2014 *Journal of Human Ecology* 119-125

Ferreira 2004 *Geographical Journal*

Ferreira S "Problems associated with tourism development in Southern Africa:
The case of Transfrontier Conservation Areas" 2004 *Geographical Journal*
301-310

Ferreira 2006 *South African Geographical Journal*

Ferreira SLA "Communities and Transfrontier Parks in the Southern African
Development Community: The Case of Limpopo National Park, Mozambique
2006 *South African Geographical Journal* 166-176

Ferreira and Harmse 2014 *Journal of Ecotourism*

Ferreira S and Harmse A "Kruger National Park: tourism development and
issues around the management of large numbers of tourists" 2014 *Journal of
Ecotourism* 16-34

Feris 2006 *PER/PELJ*

Feris LA "Compliance Notices – A New Tool in Environmental Enforcement"
2006 *PER/PELJ* 1-18

Fombad 2014 *African Journal of Business Ethics*

Fombad MC "Accountability challenges in public-private partnerships from a South African perspective" 2014 *African Journal of Business Ethics* 1-33

Fombad 2015 *Journal of Southern African Studies*

Fombad MC "Governance in Public-Private Partnerships in South Africa: Some Lessons from the Gautrain" 2015 *Journal of Southern African Studies* 1199-1217

Fourie 2008 *PER*

Fourie ES "Non-standard workers: the South African context, international law and regulation by the European Union" 2008 *PER* 110-152

Fuo 2013 *EPR/PELG*

Fuo O "A Critical Investigation of the Relevance and Potential of IDPs as a Local Governance Instrument for Pursuing Social Justice in South Africa 2013 *EPR/PELG* 221-286

Fuo 2015 *Commonwealth Journal of Local Governance*

Fuo O "Role of Courts in Interpreting Local Government's Environmental Powers in South Africa" 2015 *Commonwealth Journal of Local Governance* 17-35

Fuo 2017 *De Jure*

Fuo O "Intrusion into the autonomy of South African local government: Advancing the minority judgment in the *Merafong City* case" 2017 *De Jure* 324-345

G

Gallo *et al* 2009 *Biological Conservation*

Gallo JA *et al* "The role of private conservation areas in biodiversity representation and target achievement within the Little Karoo region, South Africa" 2009 *Biological Conservation* 446-454

Gandiwa *et al* 2013 *Ecology and Society*

Gandiwa E *et al* "CAMPFIRE and Human-wildlife Conflicts in Local Communities Bordering Northern Gonarezhou National Park, Zimbabwe" 2013 *Ecology and Society* <http://dx.doi.org/10.5751/ES-05817-1804078>

Gandiwa 2014 *Journal of Environmental Protection*

Gandiwa E *et al* "Local People's Knowledge and Perceptions of Wildlife Conservation in Southeastern Zimbabwe" 2014 *Journal of Environmental Protection* 474-485

Gay 2004 *Law, Democracy & Development*

Gay L "The right to housing in France and South Africa" 2004 *Law, Democracy & Development* 119-137

Godfrey 2008 *Waste Management*

Godfrey L "Facilitating the improved management of waste in South Africa through a national waste information system" 2008 *Waste Management* 1660-1671

Gonçalves 2006 *Journal of Contemporary African Studies*

Gonçalves E "Local powers and decentralisation: Recognition of community leaders in Mocumbi, southern Mozambique" 2006 *Journal of Contemporary African Studies* 29-52

Goss and Coetzee 2007 *Town and Regional Planning*

Goss H and Coetzee M "Capacity building for integrated development: considerations from practice in South Africa" 2007 *Town and Regional Planning* 46-59

Govindjee 2013 *National Law School of India Review*

Govindjee N "Adjudication of Socio-Economic Rights by the Constitutional Court of South Africa: Walking the Tightrope between Activism and Deference" 2013 *National Law School of India Review* 62-80

Gwanyanya 2015 *PER/PELJ*

Gwanyanya M "The South African *Companies Act* and The Realisation of Corporate Human Rights Responsibilities" 2015 *PER/PELJ* 3102-3131

H

Hamann *et al* 2009 *Journal of Business Ethics*

Hamann R *et al* "Business and Human Rights in South Africa: An Analysis of Antecedents of Human Rights Due Diligence" 2009 *Journal of Business Ethics* 453-473

Hanks 1998 *Industry and Environment*

Hanks J "Sharing responsibility: co-regulatory policy instruments as a means of achieving industrial sustainable development in South Africa" 1998 *Industry and Environment* 36-43

Hanks 2002 *Journal of Cleaner Production* 103-107

Hanks J "Voluntary agreements, climate change and industrial efficiency" 2002 *Journal of Cleaner Production* 103-107

Hanks 2003 *Journal of Sustainable Forestry*

Hanks J "Transfrontier Conservation Areas (TFCAs) in southern Africa: their role in conserving biodiversity, socio-economic development and promoting a culture of peace" 2003 *Journal of Sustainable Forestry* 127-148

Harrison "The Origins and Outcomes"

Harrison P "The Origins and Outcomes of South Africa's Integrated Development Plans" in Van Donk M *et al Consolidating Developmental Local*

Government: Lessons from the South African Experience (University of Cape Town Press Cape Town 2008) 321-337

Hepburn and Khalfan *The Principle of Equity*

Hepburn J and Khalfan AL *The Principle of Equity and the Eradication of Poverty* Centre for International Sustainable Development Law Draft Working Paper (Oxford Oxford 2005)

Holmes 2015 *Environment and Planning*

Holmes "Markets, nature, neoliberalism and conservation through private protected areas in southern Chile" 2015 *Environment and Planning* 850-866

Hübner , Phong and Châu 2014 *Koedoe*

Hübner A, Phong LT and Châu TSH "Good governance and tourism development in protected areas :The case of Phong Nha-Ke Bang National Park, central Vietnam" 2014 *Koedoe*

Hull and Whittal 2018 *South African Journal of Geomatics*

Hull S and Whittal JF "Filling the gap: customary land tenure reform in Mozambique and South Africa" 2018 *South African Journal of Geomatics* 102-117

Hunter 1997 *Annals of Tourism Research*

Hunter C "Sustainable tourism as an adaptive paradigm" 1997 *Annals of Tourism Research* 850-867

I

Isar 2017 *International Journal of Cultural Policy*

Isar YR "'Culture', 'sustainable development' and cultural policy: a contrarian view" 2017 *International Journal of Cultural Policy* 148-158

J

Jamal and Getz 1995 *Annals of Tourism Research*

Jamal T and Getz D "Collaboration Theory and Community Tourism Planning"
1995 *Annals of Tourism Research* 186-204

Jeffery 2009 *Journal of South Pacific Law*

Jeffery M "Environmental Governance: A Comparative Analysis of Public
Participation and Access to Justice" 2009 *Journal of South Pacific Law* 1-16

Johnson 1977 *Mid-American Review of Sociology*

Johnson AV "A Definition of the Concept of Law" 1977 *Mid-American Review
of Sociology* 47-71

K

Kamga 2011 *De Jure*

Kamga SAD "The right to development in the African human rights system:
The Endorois case" 2011 *De Jure* 381-391

Karambakuwa et al 2011 *Journal of Sustainable Development*

Karambakuwa RT *et al* "The Impact of the Zimbabwe Tourism Authority
Initiatives on Tourist Arrivals in Zimbabwe (2008-2009)" 2011 *Journal of
Sustainable Development in Africa* 68-76

Kardos 2012 *Procedia-Social and Behavioural Sciences*

Kardos M "The reflection of good governance in sustainable development
strategies" 2012 *Procedia-Social and Behavioural Sciences* 1166-1173

Karlsson 2016 *The Anthropocene Review*

Karlsson R "Three metaphors for sustainability in the Anthropocene" 2016 *The
Anthropocene Review* 23-32

Kasim 2006 *International Journal of Hospitality & Tourism Administration*

Kasim A "The Need for Business Environmental and Social Responsibility in the Tourism Industry" 2006 *International Journal of Hospitality & Tourism Administration* 1-22

Kenig-Witkowska 2017 *Journal of Comparative Urban Law and Policy*

Kenig-Witkowska MM "The Concept of Sustainable Development in the European Union Policy and Law" 2017 *Journal of Comparative Urban Law and Policy* 64-80

Keightley 1999 *South African Journal on Human Rights*

Keightley R "The Impact of the Extension of Security of Tenure Act on an Owner's Right to Vindicate Immovable Property" 1999 *South African Journal on Human Rights* 277-307

Kepe 2008 *Environmental Management*

Kepe T "Land claims and co management of protected areas in South Africa: exploring the challenges 2008 *Environmental Management* 311-321

Kidd 2008 *SAJELP*

Kidd M "'Removing the green-tinted spectacles' the three pillars of sustainable development in South African Law" 2008 *SAJELP* 84-102

Kidd 2010 *PER/PELJ*

Kidd M "Public interest environmental litigation: recent cases raise possible obstacle" 2010 *PER/PELJ* 27-46

Kisingo 2016 *Journal of Environmental Management*

Kisingo A "Evaluating 'good governance': The development of a quantitative tool in the Greater Serengeti Ecosystem" *et al* 2016 *Journal of Environmental Management* 749-755

Kiss 2004 *TRENDS in Ecology and Evolution*

Kiss A "Is community-based ecotourism a good use of biodiversity conservation funds?" 2004 *TRENDS in Ecology and Evolution* 232-237

Kloppers 2013 *PER/PELJ*

Kloppers H "Driving Social Corporate Responsibility (CSR) through the *Companies Act*: An Overview of the Role of the Social and Ethics Committee" 2013 *PER/PELJ* 166-199

Kloppers and Pienaar 2014 *PER/PELJ*

Kloppers HJ and Pienaar GJ "The Historical Context of Land Reform in South Africa and Early Policies" 2014 *PER/PELJ* 677-707

Kolawole 2017 *Botswana Notes and Records*

Kolawole OI *et al* "The Socio-Cultural Impacts of Tourism on People's Quality of Life in Maun, Botswana" 2017 *Botswana Notes and Records* 73-86

Kotze and Du Plessis 2006 *Queensland University of Technology Law*

Kotzé LJ and Du Plessis AA "The inception and role of international environmental law in domestic biodiversity conservation efforts: the South African Experience" 2006 *Queensland University of Technology Law and Justice Journal* 1-24

Kotzé 2014 *Journal of Energy and Natural Resources Law*

Kotzé LJ "Rethinking global Environmental Law and Governance in the Anthropocene" 2014 *Journal of Energy and Natural Resources Law* 121-156

Kreuter 2010 *Society and Natural Resources*

Kreuter URS, Peel M and Warner E "Wildlife Conservation and Community-Based Natural Resource Management in Southern Africa's Private Nature Reserves" 2010 *Society and Natural Resources* 5-7-524

Kunst 2011 *Tourism and Hospitality Management*

Kunst "The Role of Government in Promoting Tourism Investment in Selected Mediterranean Countries – Implications for the Republic of Croatia" 2011 *Tourism and Hospitality Management* 115-130

L

Langhelle 1999 *International Political Science Review*

Langhelle O "Sustainable Development: Exploring the Ethics of Our Common Future" 1999 *International Political Science Review* 129-149

Langholz and Lassoie 2001 *BioScience*

Langholz JA and Lassoie JP "Perils and Promise of Privately Owned Protected Areas" 2001 *BioScience* 1081

Lemos and Agrawal 2006 *Annual Review of Environmental Resources*

Lemos and Agrawal "Environmental Governance" 2006 *Annual Review of Environmental Resources* 297-325

Leonard 2016 *Local Economy*

Leonard L "Mining and/or tourism development for job creation and sustainability in Dullstroom, Mpumalanga" 2016 *Local Economy* 249-263

Liebenberg 2002 *Law, Democracy and Development*

Liebenberg S "Evolving Jurisprudence on Socio-Economic Rights: An Effective Tool in Challenging Poverty?" 2002 *Law, Democracy and Development* 155-191

Lockwood *et al* 2010 *Society & Natural Resources*

Lockwood M *et al* "Governance Principles for Natural Resource Management" 2010 *Society & Natural Resources* 986-1001

Lorenço 2009 *Cadernos De Estudos Africanos*

Lorenço VA "State, Traditional Authorities and Democratic Transition in Mozambique: Theoretical questions, social dynamics and political strategies 2009 *Cadernos De Estudos Africanos*"115-138

Lubbe 2007 *YBIEL*

Lubbe "Straddling Borders and Legal Regimes: The Case for Cooperative Transfrontier Biodiversity Conservation in the Southern African Development Community 2007 *YBIEL* 126-152

Lui 2003 *Journal of Sustainable Tourism*

Lui Z "Sustainable Tourism Development: A Critique" 2003 *Journal of Sustainable Tourism* 459-475

Lustrum 2010 *South African Geographical Journal*

Lustrum E "Reconstructing history, grounding claims to space: history, memory, and displacement in the Great Limpopo Transfrontier Park" 2010 *South African Geographical Journal* 129-143

Luttenberger and Rukavina 2004 *Energy and the Environment*

Luttenberger A and Rukavina B "The Right to Access to Information on Environmental Matters" 2004 *Energy and the Environment* 257-263

Luwaya 2015 *New Agenda: South African Journal of Social and Economic Policy*

Luwaya N "Rural communities' right to choose "carefully considered and principally discouraged": rural development" 2015 *New Agenda: South African Journal of Social and Economic Policy* 21-24

M

Maake *An Analysis on Integrated Development Planning*

Maake MT *An Analysis on Integrated Development Planning: A Case Study of Mopani District Municipality* (PhD Thesis University of Pretoria 2016)

Maasé and Lustrum 2016 *Geoforum*

Maasé F and Lustrum E "Accumulation by securitization commercial poaching, neoliberal conservation, and the creation of new wildlife frontiers" 2016 *Geoforum* 227-237

Maase 2016 *Conservation and Society*

Maase F "The political ecology of human-wildlife conflict: Producing wilderness, insecurity, and displacement in the Limpopo National Park" 2016 *Conservation and Society* 100-111

Majid *et al* 2016 *Sustainability*

Majid MA *et al* "The Principle of Integration in International Sustainable Development Law (ISDL) with Reference to the Biological Weapons Convention (BWC)" 2016 *Sustainability* 1-16

Madhekeni and Zhou 2012 *Journal of Public Administration and Governance*

Madhekeni A and Zhou G "Legal and Institutional Framework: The "Achilles Heel" of Local Authorities and Raison D'être of Ministerial Intervention in Zimbabwe" 2012 *Journal of Public Administration and Governance* 19-32

Madumo 2015 *Administratio Publica*

Madumo OS "Developmental Local Government Challenges and Progress in South Africa" 2015 *Administratio Publica* 153-166

Manomano and Tanga 2018 *Social Work*

Manomano T and Tanga PT "Housing Needs: The Quality and Quantity of Housing Provided by the Government for the People of Eastern Cape Province in South Africa" 2018 *Social Work* 19-38

Manzini and Mariotti 2003 *Journal of Public Economics*

Manzini P and Mariotti M "A bargaining model of voluntary environmental agreements" 2003 *Journal of Public Economics* 2725-2736

Marques 2014 *Basic and Applied Ecology*

Marques A "A framework to identify enabling and urgent actions for the 2020 Aichi Targets" 2014 *Basic and Applied Ecology* 633-638

Mathenjwa and Makama 2016 *Law, Democracy & Development*

Mathenjwa M and Makama P "Revisiting the participation of traditional leaders in municipal councils in South Africa" 2016 *Law, Democracy & Development* 200-214

Matta, Alavalapati and Mercer 2009 *Land Economics*

Matta JR, Alavalapati RR and Mercer DE "Incentives for Biodiversity Conservation Beyond Best Management Practices: Are Forestland Owners Interested?" 2009 *Land Economics* 132-143

Mapuva 2015 *International Journal of Political Science Development*

Mapuva J "The Controversies of Devolution in Zimbabwe" 2015 *International Journal of Political Science Development* 183-192

McComb, Boyd and Boluk "Stakeholder Collaboration"

McComb E, Boyd G and Boluk K "Stakeholder Collaboration: A Means to the Success of Rural Tourism Destination? A Critical Evaluation of the Existence of Stakeholder Collaboration within the Mournes, Northern Ireland" 2016 *Tourism and Hospitality Research* DOI:1177/1467358415583738

McLean 2010 *Constitutional Court Review*

McLean K "Meaningful Engagement: One Step Forward or Two Back? Some Thoughts on Joe Slovo" 2010 *Constitutional Court Review* 223-242

McMahon, Wiken and Gauthier 2004 *Environmental Management*

McMahon G, Wiken B and Gauthier DA "Towards a Scientifically Rigorous Basis for Developing Mapped Ecological Regions." 2004 *Environmental Management* S111-S124

Mebratu 1998 *Environmental Impact Assessment Review*

Mebratu D 1998 "Sustainability and sustainable development: Historical and Conceptual Review" *Environmental Impact Assessment Review* 493-520

Mensah 2007 *Journal of Retail & Leisure Property*

Mensah I "Environmental management and sustainable tourism development: The case of hotels in Greater Accra Region (GAR) of Ghana" 2007 *Journal of Retail & Leisure Property* 15-22

Meyer 2007 *Current Issues in Tourism*

Meyer D "Pro-Poor Tourism: From Leakages to Linkages. A Conceptual Framework for Creating Linkages between the Accommodation Sector and 'Poor' Neighbouring Communities" 2007 *Current Issues in Tourism* 558-583

Mnguni 2014 *Journal of Educational and Social Research*

Mnguni ME "The Role of Traditional Leaders in the Promotion of Cultural Tourism in the South Coast of Kwazulu-Natal: A Case Study of Umzumbe Municipality" 2014 *Journal of Educational and Social Research* 265-270

Morris 2006 *Geoforum*

Morris AW "Easing conservation? Conservation easements, public accountability and neoliberalism" 2006 *Geoforum* 1-13

Mostert 2010 *Journal of African Law*

Mostert H "South Africa's Communal Land Rights Act: A Plea for Restraint in Reform" 2010 *Journal of African Law* 298-312

Moswete, Thapa and Child 2012 *International Journal of Sustainable Development*

Moswete N, Thapa B and Child B "Attitudes and opinions of local and national public sector stakeholders towards Kgalagadi Transfrontier Park, Botswana" 2012 *International Journal of Sustainable Development & World Ecology* 67-80

Moswete and Thapa 2015 *Journal of Ecotourism*

Moswete N and Thapa B "Factors that influence support for community-based ecotourism in the rural communities adjacent to the Kgalagadi Transfrontier Park, Botswana" 2015 *Journal of Ecotourism* 243-263

Moyo and Ncube 2014 *Law, Democracy and Development*

Moyo P and Ncube C "Devolution of power in Zimbabwe's new constitutional order: Opportunities and potential constraints" 2014 *Law, Democracy & Development* 289-304

Moyo "Realising the right to health"

Moyo K "Realising the right to health in South Africa" in Foundation for Human Rights Socio-economic Rights: Progressive realisation? (Foundation for Human Rights 2016) 375-456

Muhanna 2006 *Problems and Perspectives in Management*

Muhanna E "Sustainable Tourism Development and Environmental Management for Developing Countries" 2006 *Problems and Perspectives in Management* 14-30

Muir-Leresche and Nelson 2001 *PERC*

Muir-Leresche K and Nelson RH "Managing Wildlife in Southern Africa" 2001 *PERC Reports* 7-9

Muller 2014 *Aquatic Procedia*

Muller H "The South African Experience on Legal, Institutional and Operational Aspects of the Rights to Water and Sanitation" 2014 *Aquatic Procedia* 35-41

Munthali 2007 *Natural Resource Forum*

Munthali SM "Transfrontier conservation areas: Integrating biodiversity and poverty alleviation in Southern Africa" 2007 *Natural Resource Forum* 51-60

Murombo 2010 *Law, Environment and Development*

Murombo T "Strengthening *Locus Standi* in Public Interest Environmental Litigation: Has leadership moved from the United States to South Africa?" 2010 *Law, Environment and Development Journal* 163-183

N

Naughton-Treves, Holland and Brandon 2005 *Annual Review of Environment*

Naughton-Treves L, Holland MB and Brandon K "The Role of Protected Areas in Conserving Biodiversity and Sustaining Local Livelihoods" 2005 *Annual Review of Environment and Resources* 219-252

Nealer and Naude 2011 *The Journal for Transdisciplinary Research*

Nealer EJ and Naudé M "Integrated co-operative governance in the context of sustainable development" 2011 *The Journal for Transdisciplinary Research in Southern Africa*

Nel and Wessels 2010 *PER/PELJ*

Nel JG and Wessel JA "How to Use Voluntary, Self-Regulatory and Alternative Environmental Compliance Tools: Some Lessons Learnt" 2010 *PER/PELJ* 48-78

Neto 2003 *Economic and Social Affairs*

Neto F "A New Approach to Sustainable Tourism Development: Moving Beyond Environmental Protection" 2003 *Economic and Social Affairs* 1-16

Neumayer *Weak versus Strong Sustainability*

Neumayer E *Weak versus Strong Sustainability: Exploring the Limits of Two Opposing Paradigms* 2nd ed (Edward Elgar Cheltenham 2003)

Nilsen 2010 *Ecological Economics*

Nilsen HR "The joint discourse 'reflexive sustainable development' – From weak towards strong sustainable development" 2010 *Ecological Economics* 495-501

Nonyana 2005 *Butterworths Property Law Digest*

Nonyana MR "Communal property associations and their impact on the formation of small business in the rural sector" 2005 *Butterworths Property Law Digest* 1-5

Norfolk and Cosjin 2013 *PER*

Norfolk S and Cosijn M "Towards the Legal Recognition and Governance of Forest Ecosystem Services in Mozambique" 2013 *PER* 122-183

Ntonzima and Bayat 2012 *Arabian Journal of Business and Management Review (OMAN Chapter)*

Ntonzima L and Bayat MS "The Role of Traditional Leaders in South Africa – A Relic of the Past, or a Contemporary Reality?" 2012 *Arabian Journal of Business and Management Review (OMAN Chapter)* 88-108

Nunkoo 2016 *Procedia Economics and Finance*

Nunkoo R "Toward a More Comprehensive Use of Social Exchange Theory to Study Residents' Attitude to Tourism" 2016 *Procedia Economics and Finance* 588-596

Nyaupane and Poudel 2011 *Annals of Tourism Research*

Nyaupane GP and Poudel S "Linkages among biodiversity, livelihood and tourism" 2011 *Annals of Tourism Research* 1344-1366

O

Ocheje 2007 *Journal of African Law* 173-214

Ocheje PD "In the public interest: forced evictions, land rights and human development" 2007 *Journal of African Law* 173-214

Omernik 2004 *Environmental Management*

Omernik JM "Perspectives on the Nature and Definition of Ecological Regions" 2004 *Environmental Management* S28-S32

O'Reagen 2016 *Constitutional Court Review*

O'Reagen K "Tradition and Modernity: Adjudicating a Constitutional Paradox" 2016 *Constitutional Court Review* 105-126

Owosuyi 2015 *PER*

Owosuyi IL "The Pursuit of Sustainable Development through Cultural Law and Governance Frameworks: An African Perspective" 2015 *PER* 2012-2059

P

Papadopoulou and Tsitsoni 2013 *Global NEST Journal*

Papadopoulou SD and Tsitsoni KT "The Potential for Transboundary Cooperation Towards the Conservation of the Avifauna in the Voras Mountain Range" 2013 *Global NEST Journal* 102-110

Parnell, Scott and Agelopoulos 2013 *Journal of Business Ethics*

Parnell JA, Scott GJ and Agelopoulos G "Benchmarking Tendencies in Managerial Mindsets: Prioritizing Stockholders and Stakeholders in Peru, South Africa, and the United States" 2013 *Journal of Business Ethics* 589-605

Paterson 2005 *SALJ*

Paterson AR "Tax incentives – Valuable Tools for Biodiversity Conservation in South Africa" 2005 *SALJ* 182-216

Paterson 2006 *PER/PELJ*

Paterson AR "Pruning the Money Tree to Ensure Sustainable Growth: Facilitating Sustainable Development Through Market-Based Instruments" 2006 *PER* 87-114

Paterson 2010 *SAJELP*

Paterson A "Co- Managing South Africa's Conservation and Land Reform Agendas: Evaluating Recent Initiatives to Resolve the Unruly Interface Thrust upon South Africa's Protected Areas" 2010 *SAJELP* 97- 124

Paterson 2010 *SALJ*

Paterson A "Clearing or Clouding the Discourse: A South African Perspective on the Utility of the IUCN Protected Areas Governance Typology" 2010 *SALJ* 490- 514

Paterson 2007 *SA Public Law*

Paterson AR "Wandering About South Africa's New Protected Areas Regime" 2007 *SA Public Law* 1-33

Pérez-Salom 2001 *The Georgetown International Environmental Law Review*

Pérez-Salom J "Sustainable Tourism: Emerging Global and Regional Regulation" 2001 *The Georgetown International Environmental Law Review* 801-836

Pezzoli 1997 *Journal of Environmental Planning and Management*

Pezzoli K "Sustainable Development: A Transdisciplinary Overview of the Literature" 1997 *Journal of Environmental Planning and Management* 549-574

Pfueller, Lee, and Laing 2011 *Environmental Management*

Pfueller SL, Lee D, and Laing J "Tourism Partnerships in Protected Areas: Exploring Contributions to Sustainability" 2011 *Environmental Management* 734-749

Pickering and Hill 2007 *Journal of Environmental Management*

Pickering CM and Hill W "Impacts of recreation and tourism on plant biodiversity and vegetation in protected areas in Australia" 2007 *Journal of Environmental Management* 791-800

Pienaar 2007 *Journal of Contemporary Roman Dutch Law*

Pienaar GJ "The need for a comprehensive land administration system for communal property in South Africa" 2007 *Journal of Contemporary Roman Dutch Law* 556-570

Pienaar 2011 *PER*

Pienaar JM "Restitutionary Road: Reflecting on Good Governance and the Role of the Land Claims Court" 2011 *PER* 30-48

Pienaar 2012 *PER/PELJ*

Pienaar G "The Methodology Used to Interpret Customary Land Tenure" 2012 *PER/PELJ* 153-183

Pienaar 2008 *Electronic Journal of Comparative Law*

Pienaar G "The Inclusivity of Communal Land Tenure: A Redefinition of Ownership in Canada and South Africa" 2008 *Electronic Journal of Comparative Law* 1-17

Pienaar and Du Plessis 2010 *Fundamina: A Journal of Legal History*

Pienaar J and Du Plessis W "The More Things Change, The More They Stay the Same: The Story of Communal Land Tenure in South Africa" 2010 *Fundamina: A Journal of Legal History* 73-114

Pienaar, Du Plessis and Olivier 2012 *South African Public Law*

Pienaar J, Du Plessis W and Olivier N "Land Matters and rural development" 2012 *South African Public Law* 181-219

Plüss 2003 *TRIALOG*

Plüss C "Fair Trade – also in Tourism!" 2003 *TRIALOG* 1-17

Priskin 2001 *Tourism Management*

Priskin J "Assessment of natural resources for nature-based tourism: the case of the Central Coast Region of Western Australia" 2001 *Tourism Management* 637-648

R

Ratner 1996 *American Journal of International Law*

Ratner SR "Drawing a Better Line: Uti Possidetis and the Borders of New States" 1996 *American Journal of International Law* 590-624

Rautenbach 1999 *Koers*

Rautenbach C "The Role and Future of Traditional Leaders in South Africa" 1999 *Koers* 295-334

Rivera 2002 *Political Science*

Rivera J "Assessing a voluntary environmental initiatives in the developing world: The Costa Rican Certification for Sustainable Tourism" 2002 *Political Science* 33-60

Robinson 2004 *Ecological Economics*

Robinson J "Squaring the circle? Some thought on the idea of sustainable development" 2004 *Ecological Economics* 369-384

Rogerson 2006 *International Journal of Justice and Sustainability*

Rogerson CM "Pro-Poor local economic development in South Africa: The role of pro-poor tourism" 2006 *International Journal of Justice and Sustainability* 37-60

Rogerson 2016 *Tourism*

Rogerson CM "Public-private partnerships for tourism infrastructure development: Evidence from the Cradle of Humankind, South Africa" 2016 *Tourism* 419-430

Ruiters and Matji 2016 *Water SA*

Ruiters C and Matji MP "Public-private partnership conceptual framework and models for funding and financing of water services infrastructure in municipalities from selected provinces in South Africa" 2016 *Water SA* 291-305

S

Saito and Ruhanen 2017 *Journal of Hospitality and Tourism Management*

Saito and Ruhanen "Power in Tourism Stakeholder Collaborations: Power types and power holders" 2017 *Journal of Hospitality and Tourism Management* 189-196

Satumba, Bayat and Mohamed 2017 *Journal of Economics*

Satumba T, Bayat A and Mohamed S "The impact of Social Grants on Poverty Reduction in South Africa" 2017 *Journal of Economics* 33-49

Schall 2008 *Journal of Environmental Law*

Schall C "Public Interest Litigation Concerning Environmental Matters before Human Rights Courts: A Promising Concept?" 2008 *Journal of Environmental Law* 417-453

Scholtz 2008 *Netherlands International Review*

Scholtz W "Custodial Sovereignty: Reconciliation of Sovereignty and Global Environmental Challenges amongst the Vestiges of Colonialism" 2008 *Netherlands International Review* 323-341

Scoones and Wolmer 2003 *IDS Bulletin*

Scoones I and Wolmer W "Introduction: livelihoods in crisis: challenges for rural development in Southern Africa" 2003 *IDS Bulletin* 1-11

Seghezzo 2009 *Environmental Politics*

Seghezzo "The five dimensions of sustainability" 2009 *Environmental Politics* 539-556

Sharpley 2000 *Journal of Sustainable Tourism*

Sharpley R "Tourism and Sustainable Development: Exploring the Theoretical Divide" 2000 *Journal of Sustainable Tourism* 1-19

Sneddon, Howarth and Norgaard 2006 *Ecological Economics*

Sneddon C, Howarth RB and Norgaard RB "Sustainable development in a post-Brundtland world" 2006 *Ecological Economics* 253-268

Snyman 2017 *Journal of the Southern African Institute of Mining and Metallurgy*

Snyman LG "Environmental management frameworks: balancing environmental and developmental imperatives in sensitive areas" 2017 *Journal of the Southern African Institute of Mining and Metallurgy* 19-24

Soyapi 2014 *PER/PELJ*

Soyapi CB "Regulating Traditional Justice in South Africa: A Comparative Analysis of Selected Aspects of the Traditional Courts Bill" 2014 *PER/PELJ* 1441-1465

Spenceley 2006 *Development Southern Africa*

Spenceley A "Tourism in the Great Limpopo Transfrontier Park" 2006 *Development Southern Africa* 649-667

Spierenburg and Wels 2006 *Space and Culture*

Spierenburg M and Wels H "Securing space': mapping and fencing in transfrontier conservation in Southern Africa" 2006 *Space and Culture* 294-312

Spierenburg, Steenkamp and Wels 2006 *Focaal- European Journal of Anthropology*

Spierenburg M, Steenkamp C and Wels H "Resistance of local communities against marginalisation in the Great Limpopo Transfrontier Conservation Area" 2006 *Focaal – European Journal of Anthropology* 18-31

Stavins 1998 *Resources for the Future*

Stavins RN "Market-Based Environmental Policies 1998 *Resources for the Future* 1-39

Steenkamp and Uhr 2000 *International Institute for Environment and Development*

Steenkamp C and Uhr J "The Makuleke Land Claim: Power Relations and Community-Based Natural Resource Management" 2000 *International Institute for Environment and Development London*

Steffen, Crutzen and McNeil 2007 *Ambio*

Steffen W, Crutzen J and McNeil JR "The Anthropocene: are humans now overwhelming the great forces of nature?" 2007 *Ambio* 614-621

Strickland-Munro and Moore 2014 *Koedoe*

Strickland-Munro and Moore "Exploring the impacts of protected area tourism on local communities using a resilience approach" 2014 *Koedoe* 1-10

T

Tao and Wall 2009 *Tourism Management*

Tao T and Wall G "Tourism as a sustainable livelihood strategy" 2009 *Tourism Management* 90-98

Thaworn, Kelley and Yasmi 2010 *Unasyiva*

Thaworn R, Kelley L and Yasmi Y "Can biodiversity conservation go hand in hand with local livelihoods? A case of conflict resolution in Thailand" 2010 *Unasy/va* 28-33

Thondlana, Shackleton and Blignaut 2015 *Land Use Policy*

Thondlana G, Shackleton S, Blignaut J "Local institutions, actors, and natural resource governance in Kgalagadi Transfrontier Park and surrounds, South Africa" 2015 *Land Use Policy* 121-129

V

Van Amerom and Büscher 2005 *Journal of Modern African Studies*

Von Amerom M and Büscher B "Peace parks in Southern Africa: bringers of an African Renaissance?" 2005 *Journal of Modern African Studies* 159-182

Van der Berg 2015 *PER/PELJ*

Van der Berg A "Public-Private Partnerships in Local Disaster Management: A Panacea to All Local Disaster Management Ills 2015 *PER/PELJ* 994-1033

Van der Linde and Louw 2003 *African Human Rights Law Journal*

Van der Linde M and Louw L "Considering the interpretation and implementation of article 24 of the African Charter on Human and Peoples' Rights in light of the SERAC communication" 2003 *African Human Rights Law Journal* 167-178

Van der Schyff 2010 *PER/PELJ*

Van der Schyff E "Unpacking the Public Trust Doctrine: A Journey into Foreign Territory" 2010 *PER/PELJ* 122-189

Van der Walt 2002 *South African Journal on Human Rights*

Van der Walt AJ "Exclusivity of Ownership, Security of Tenure and Eviction Orders: A Critical Evaluation of Recent Case Law" 2002 *South African Journal on Human Rights* 372-420

Van Wyk 2011 *PER/PELJ*

Van Wyk J "The Role of Local Government in Evictions" 2011 *PER/PELJ* 50-85

W

Walker 2008 *South African Review of Sociology*

Walker C "Land Claims, Land Conservation and the Public Interest in Protected Areas" 2008 *South African Review of Sociology* 232-244

Waligo, Clarke and Hawkins 2015 *Annals of Tourism Research*

Waligo VM, Clarke J and Hawkins R "Embedding Stakeholders in Sustainable Tourism Strategies" 2015 *Annals of Tourism Research* 90-93

Waligo, Clarke and Hawkins 2013 *Tourism Management*

Waligo VM, Clarke J and Hawkins R "Implementing Sustainable Tourism: A Multi-Stakeholder Involvement Management Framework" 2013 *Tourism Management* 342-353

Watson, Tamir and Kemp 2013 *Impact Assessment and Project Appraisal*

Watson G, Tamir I and Kemp B "Human rights impact assessment in practice: Oxfam's application of community-based approach" 2013 *Impact Assessment and Project Appraisal*, 118-127

Wilson, Hayward and Wilson 2016 *Conservation Letters*

Wilson GR, Hayward MW and Wilson C "Market-Based Incentives and Private Ownerships of Wildlife to Remedy Shortfalls in Government Funding for Conservation 2016 *Conservation Letters*

Wilson, Nielsen and Buultjens 2009 *Journal of Sustainable Tourism*

Wilson E, Nielsen N and Buultjens J "From lessees to partners: exploring tourism public-private partnerships within the New South Wales national parks and wildlife service" 2009 *Journal of Sustainable Tourism* 269-285

Witter 2013 *Conservation and Society*

Witter R "Elephant-induced displacement and the power of choice: moral narratives about resettlement in Mozambique's Limpopo National Park" 2013 *Conservation and Society* 406-419

Wolmer 2003 *Journal of Southern African Studies*

Wolmer W "Transboundary Conservation: The Politics of Ecology Integrity in the Great Limpopo Transfrontier Park" 2003 *Journal of Southern African Studies* 261-278

X

Xue, Kerstetter and Buzinde 2015 *Tourism Management*

Xue L, Kerstetter D and Buzinde CN "Residents' experiences with tourism development and resettlement in Luoyang, China" 2015 *Tourism Management* 444-453

Y

Younge and Fowkes 2003 *Biological Conservation*

Younge A and Fowkes S "The Cape Action Plan for the Environment: overview of an ecoregional planning process" 2003 *Biological Conservation* 15-28

Z

Zbicz 2003 *Journal of Sustainable Forestry*

Zbicz DC "Imposing Transboundary Conservation" 2003 *Journal of Sustainable Forestry* 21-37

Zisadza-Gandiwa, Gandiwa and Muboko 2016 *African Journal of Ecology*

Zisadza-Gandiwa P, Gandiwa E and Muboko N "Preliminary assessment of human-wildlife conflicts in Maramani Communal Area, Zimbabwe" 2016 *African Journal of Ecology* 1-4

Case law

South Africa

City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd & Another CCT 37/11[2011]

De Beers Consolidated Mines Ltd v Ataqua Mining (Pty) Ltd Case (3215/06) 2007 ZAFSHC 74

Gongqose & others v Minister of Agriculture, Forestry & Fisheries and others; Gongqose & others v State & others (1340/16 & 287/17) [2018] ZASCA 87

Government of the Republic of South Africa v Grootboom 2001 SA 46 (CC)

Hichange Investments (Pty) Ltd v Cape Produce Co (Pty) Ltd t/a Pelts Products and Others 2004 2 SA 393 (E)

Maledu v Itereleng Bakgatla Minerals Resources (Pty) Limited (CCT 265/17) [2018] ZACC 41

Mazibuko v City of Johannesburg 2010 3 BCLR 239 (CC)

Merafong City Council Local Municipality v AngloGold Ashanti Ltd 2016 ZACC 35

Minister of Health v Treatment Action Campaign 2002 5 SA 721 (CC)

Mhlanganisweni Community v The Minister of Rural Development and Land Reform & Others Judgement delivered on 19 April 2012

President of the Republic of South Africa v Modderklip Boerdery (Pty) Ltd 2005 8 CBLR 786(CC)

Soobramoney v Minister of Health KwaZulu Natal 1997 12 BCLR 1696 (CC)

The Trustees of Manyeleti Conservation Trust, Mnisi Community v Minister of Rural Development and Land Reform et al LCC 100/2011 Judgment delivered on 17 November 2017

Zimbabwe

Malvern Mudiwa and Newman Chiadzwa v Mbada Mining (Private) Limited and Others HC 6334/09

International and regional instruments

Agenda 21 for the Travel and Tourism Industry: Towards: Environmentally Sustainable Development, 1992

CBD Conference of Parties (COP) Decision VI/14 , 2002

Decision 7/3 on Tourism and Sustainable Development, 2002

GLTP Joint Management Plan, 2002

GLTP Treaty, 2002

Hague Declaration on Tourism, 1989

International Conference on Tourism Statistics: Measuring Sustainable Tourism, 2017

International Covenant on Economic, Social and Cultural Rights, 1966

International Guidelines for Biological Diversity and Tourism Development of 2004

Johannesburg Joint Programme of Implementation, 2002

Manila Declaration on World Tourism, 1980

NEPAD Tourism Action Plan, 2004

New Delhi Declaration, 2002

Our Common Future, 1987

Quebec Declaration on Ecotourism of 2002

Revised African Convention on the Conservation of Nature and Natural Resources, 2003

Rio Declaration, 1992

SADC Charter of the Regional Tourism Organisation of Southern Africa, 1997

SADC Programme for TFCAs, 2013

SADC Protocol on the Development of Tourism, 1998

SADC Protocol on Wildlife Conservation and Law Enforcement, 1999

SADC Regional Biodiversity Strategy, 2006

Stockholm Declaration, 1972

UN 2030 Agenda for Sustainable Development

UN Economic, Social and Cultural Rights, 2001, UN Doc E/C.12/2001/10

UN Millennium Declaration, 2000

UN Resolution on Economic Development and the Conservation of Nature, 1962

UN Resolution 2398 (XXIII) on Problems of the Human Environment, 1968

UN Universal Declaration of Human Rights, 1948

Legislation and policy documents

South Africa

Accelerated and Shared Growth Initiative for South Africa (ASGISA) (2005)

Basic Conditions of Employment Act 75 of 1997

Border Management Agency Bill, 2015

Communal Property Association Act 28 of 1996

Communal Land Tenure Bill, 2017

Companies Act 81 of 2008

Constitution of the Republic of South Africa, 1996

Co-operatives Act 14 of 2005

Customs Control Act 31 of 2014

Employment Tax Incentive Act 26 of 2013

Expropriation Act, 63 of 1975

Expropriation Bill, 2015

Extension of Security of Tenure Act 62 of 1997

Fencing Act 31 of 1963

Growth, Employment and Redistribution (GEAR) Strategy (1996)

Immigration Act 13 of 2002

Income Tax Act 58 of 1962

Infrastructure Development Act 23 of 2014

Intergovernmental Relations Framework Act 13 of 2005

Integrated Sustainable Rural Development Programme (2001)

Interim Protection of Informal Land Rights 31 of 1996

Kruger National Park Draft Park Management Plan 2018-2028

Labour Relations Act 66 of 1995

Limpopo Environmental Management Act 7 of 2003

Limpopo House of Traditional Leaders Act 5 of 2005

Limpopo Spatial Planning and Land Use Management Bill, 2017

Limpopo Tourism Act 8 of 2009

Local Government: Municipal Demarcation Board Act 27 of 1998

Local Government: Municipal Finance Management Act 56 of 2003

Local Government: Municipal Property Rates Act 6 of 2004

Local Government: Municipal Structures Act 117 of 1998

Local Government: Municipal Systems Act 32 of 2000

Mountain Catchment Areas Act 63 of 1970

Mpumalanga House of Traditional Leaders Act 4 of 1994

Mpumalanga House of Traditional Leaders Amendment Act 8 of 1998

Mpumalanga Nature Conservation Act 10 of 1998

Mpumalanga Parks and Tourism Act 5 of 2005

Mpumalanga Spatial Planning and Land Use Management Bill, 2016

National Biodiversity Framework, 2007

National Biodiversity Strategy and Action Plan

National Development Plan

National Forests Act 84 of 1998

National Environmental Management Act 107 of 1998

National Environmental Management: Biodiversity Act 10 of 2004

National Environmental Management Laws Amendment Act 14 of 2009

National Environmental Management Laws Second Amendment Act 30 of 2013.

National Environmental Management: Protected Areas Act 57 of 2003

National Forests Act 84 of 1998

National Health Act 61 of 2003

National Heritage Resources Act 25 of 1999

National Heritage and Cultural Tourism Strategy (2012)

National Parks Act 1926

National Small Business Development Act 102 of 1996

National Co-Management Framework (2010)

National Heritage and Cultural Tourism Strategy (2012)

National House of Traditional Leaders Act 22 of 2009

National Minimum Standard for Responsible Tourism (SANS 1162) of 2011

National Responsible Tourism Development Guidelines for South Africa of 2002

Preferential Procurement Policy Framework Act 5 of 2000

Prevention of Illegal Eviction from, and Unlawful Occupation Act 19 of 1998

Public Finance Management Act 1 of 1999

Restitution of Land Rights Act 22 of 1994

Social Assistance Act 13 of 2004

Spatial Planning and Land Use Management Act 16 of 2013

Traditional Leadership and Governance Framework Act 41 of 2003

Tourism Act 3 of 2014

Upgrading of Land Tenure Act 112 of 1991

Water Service Act 107 of 1997

White Paper: The Development and Promotion of Tourism in South Africa (1996)

White Paper on the Reconstruction and Development Programme (1995)

World Heritage Convention Act 49 of 1999

GN 83 in GG 37302 of 7 February 2014

GG 1576 of 2 September 1926

GN 1149 in GG 39430 of 20 November 2015

GN 404 in GG 40827 of 5 May 2017

GN R413 in GG 37697 of 22 May 2014

GN R102 in GG 32472 of 3 August 2009

GN R152 in GG 29657 of 23 February 2007

GN R1535 in GG 27388 of 15 March 2005

GN R351 in GG 34239 of 26 April 2011

GN R437 in GG 29885 of 15 May 2007

GN R982-984 9n GG 38282 of 4 December 2014

Mozambique

Agenda 2025

Basic Law on the Organisation and Functioning of the Public Administration (Lei de Base de Organização e Funcionamento da Administração Pública) 7 of 2012

Commercial Code (Código Comercial) 2 of 2005

Constitution of the Republic of Mozambique, 2004

Conservation Areas Law (Lei de Conservação e Uso sustentável da Diversidade Biológica) 16 of 2014

Conservation Policy and Implementation Strategy Resolution 63 of 2009

Customs and Excise Law (Lei de Pauta Aduaneira e as Respectivas Instruções Preliminares) 6 of 2009

Decree creating the National Administration for Conservation Areas (Decreto Cria a Administração Nacional Das Áreas de Conservação 11 of 2011 of 25 May 2011

Decree on the Articulation of Local Organs of State (Estados das Autoridades Tradicionais Decreto) 15 of 2000

Decree on the Attributes and Competences of the Ministry of Land, Environment and Rural Development (Decreto Atribuições e competências do Ministério da Terra, Ambiente e Desenvolvimento Rural 13/2015) 13 of 2015 of 16 March 2015

Decree for the Review of the attributes and norms related to the National Administration of Conservation Areas (Revisão da atribuições e normas relativas à Administração Nacional da Áreas de Conservação) 8 of 2016 of 15 April 2016

Decree Regulation of Tax Regime for Mining (Lei de Impostos Específicos para Atividade Minerária) 5 of 2008

Decree relating to Taxes Applicable in Conservation Areas Decree (Taxas aplicaveis nas Areas de Conservacao Decreto no 27/2003) 27 of 2003

Environmental Framework Law (Lei do Ambiente) 20 of 1997

Environmental Impact Assessments Regulations Decree (Regulamento sobre a Avaliação do Impacto Ambiental) 45 of 2004

Five Year Plan 2015-2019 (Programa Quinquenal do Governo)

Forestry and Wildlife Law (Lei de Florestas e Fauna Bravia) 10 of 1999

Forestry and Wildlife Regulation (Regulamento da Lei de Florestas e Fauna Bravia) 12 of 2002

Government's Action Plan for the Reduction of Absolute Poverty 2011-2014 (Plano de Acção para Redução da Pobreza Absoluta - PARPA)

Governmental Five-Year Plan 2015-2019 on Economic Development and Promoting a Culture of Work (Plano Quinquenal do Governo sobre Desenvolvimento Económico e Promoção da Cultura do Trabalho)

Health Sector Strategic Plan (Plano Estratégico do Sector da Saúde) 2014-2019

Immigration Law (Lei de Estabelece o Regime Jurídico do Cidadão Estrangeiro Ficado as Respectivas Normas de Entrada, Permanência e Saída do País, Direitos, Deveres e Garantias) 5 of 1993

Investment Law (Lei de Investimentos) 3 of 1993

Labour Law (Lei do Trabalho) 23 of 2007

Land Law (Lei de Terras) 19 of 1997

Land Planning Law of 2007

Local Organs Law (Lei dos Órgãos Locais Esatado) 8 of 2003

Ministerial Decree on the Sharing of Protected Area Tourism Revenues (Consignação das Receitas Cobradas nos Parques e Reservas Nacionais Decreto) Decree 15 of 2009

Ministerial Diploma Approving the Internal Regulation of the National Tourism Institute (Diploma Ministerial Aprova o Regulamento Interno do Instituto Nacional do Turismo) 40 of 2016 of 22 June 2016

Municipalities Law (Lei de Bases das Autarquias) 2 of 1997

National School Feeding Programme (Nacional de Alimentação Escolar)

National Strategy for Basic Social Security (Estratégia Nacional de Segurança Social Básica) (2016-2024)

National Tourism Code of Conduct (Código Nacional de Conduta Turística)

National Tourism Policy and Strategy, 2003 (Política Nacional de Turismo e Estratégia de Implementação)

Regulations on Taxes and Tariffs for Protected Areas of 2009

Regulations on the Law on Forestry and Wildlife of 1999

Regulation on the Legal Standards Applicable to Foreign Citizens, Relative to their Entry into, Stay in and Departure from the Country (Regulamento sobre Normas Jurídicas Aplicáveis ao Cidadão Estrangeiro, Relativos à Entrada, Permanência e Saída do País) (hereafter Immigration Regulations) 38 of 2006

Regulation on the Process of Resettlement Resulting from Economic Activities Decree 31 of 2012

Resolution to Approve the Organic Statute of the Ministry of Land, Environment and Rural Development (Resolução Aprova o Estatuto Orgânico do Ministério da Terra, Ambiente e Desenvolvimento Rural 6/2015) 6 of 2015 of 26 June 2016

Petroleum Production Tax Law (Lei de Impostos sobre a Produção do Petróleo) 12 of 2007

Policy on Land Planning, 2007

Priority on Employment Promotion through MSNE Development, the Employment and Vocational Training Strategy (*Estratégia de Emprego e Formação Profissional em Moçambique*) (2006-2015)

Public-Private Partnerships, Large Scale Projects and Business Concessions Law 15 of 2011

Strategic Plan for Agricultural Development (Plano Estratégico de Desenvolvimento do Sector Agrário) 2011-2020

Strategic Plan for Tourism Development, 2003

Strategic Tourism Development Plan 2015-2024, 2016

Tax Incentives Code 4 of 2009

Territorial Planning Legal Framework Law (Lei sobre Ordenamento do Território) 19 of 2007

Time Sharing Regime Decree 39 of 2007

Tourism Licensing Regulation 18 of 2007

Tourism Interest Zones Regulations (Regulamentos de Criação de Interesse Turístico) 77 of 2009

Tourism Law (Lei do Turismo) 4 of 2004

Tourism Marketing Strategy (Estratégia de Marketing do Turismo), 2006

Tourism Strategic Plan, 2005

Water Law (Lei de Águas) 16 of 1991

Zimbabwe

Access to Information and Protection of Privacy Act 5 of 2003

Communal Land Act 20 of 1982

Communal Lands Forest Produce Act 20 of 1987

Competition Act 12 of 1954

Constitution of the Republic of Zimbabwe Amendment (No. 20) Act, 2013

Control of Goods Act 18 of 1979

Control of Goods (Open General Import License) (Amendment) Notice Statutory instrument 122 of 2017

Customs and Excise Act 16 of 1955

Education Act, 22 of 2001

Environmental Management Act 13 of 2002

Fast Track Land Reform Program, 2000

Finance Act 1 of 2018

Immigration Act 18 of 1979

Income Tax Act 51 of 1967

Indigenisation and Economic Empowerment Act 14 of 2007

Infrastructure Development Bank Act 7 of 1983

Joint Ventures Act 6 of 2015

Labour Act 16 of 1985

Land Acquisition Act 3 of 1992

Land Occupation Conditions Act CAP 20:11

Land Reform and Resettlement Programme Phase II, 1998

Legal Aid Act 18 of 1996

National Tourism Policy, 2014

National Water Authority (20:25) 11 of 1998

Parks and Wildlife Act 14 of 1975

Parks and Wildlife (General) Regulations, 1981

Policy for Wildlife, 1992

Protection of Wild Life (Indemnity) Act CAP 20:15

Public Health Act 19 of 1924

Public Health Bill, 2017

Regional, Town and Country Planning Act 22 of 1976

Rural District Councils Act 8 of 1998

Social Welfare Assistance Act 10 of 1988

Special Economic Zones (SEZs) Act 7 of 2016

Trapping of Animals (Control) Act 34 of 1973

Tourism Act 15 of 1995

Tourism Master Plan 2017-2035

Traditional Leadership Act 25 of 1998

Water Act 31 of 1998

Zimbabwe Agenda for Sustainable Socio-Economic Transformation (ZIMASSET), 2013-2018

Zimbabwe Interim Poverty Reduction Strategy Paper 2016-2018

Zimbabwe Investment Authority Act 4 of 2006

Internet sources

Asian Development Bank 2015
<http://www.adb.org/sites/default/files/publication/176085/land-issues-tourism-development-fcas.pdf>

- Asian Development Bank 2015
<http://www.adb.org/sites/default/files/publication/176085/land-issues-tourism-development-fcas.pdf> accessed 07 April 2016
- Associação de Comércio e Indústria 2017 <https://www.acismoz.com/wp-content/uploads/2017/06/Regulamento-de-Reassentamento-August-as-published-JO.pdf>
- Associação de Comércio e Indústria 2017 *Regulations for Resettlement Process Resulting from Economic Activities Decree 31/2012 of 8 August*
<https://www.acismoz.com/wp-content/uploads/2017/06/Regulamento-de-Reassentamento-August-as-published-JO.pdf> accessed 16 November 2018
- Brophy 2018 <https://www.travell24com/TravelPlanning/VisaInfo/sa-visa-changes-we-will-not-contribute-to-child-trafficking-and-required-travel-consent-remains-for-sa-children-20180925>
- Brophy S 2018 *SA visa changes: WE will not contribute to child trafficking and required travel consent remains for SA children*
<https://www.travell24com/TravelPlanning/VisaInfo/sa-visa-changes-we-will-not-contribute-to-child-trafficking-and-required-travel-consent-remains-for-sa-children-20180925> accessed 9 November 2018
- Bocchino 2011
www.wcsahead.org/gltfca_march2011/day_2/2_bocchino_implemtation_gltfca.pdf
- Bocchino 2011 www.wcs-ahead.org/gltfca_march2011/day_2/2_bocchino_implemtation_gltfca.pdf
 accessed 3 Nov 2016
- Bocchino 2013
SULiNews https://www.iucn.org/about/union/sustainable_use_and_livelihoods_specialist_group/sulnew/issue_7/sn7_tfcas/
- Bocchino C 2013 Transfrontier conservation, sustainable use and the southern African challenge

SULiNews https://www.iucn.org/about/union/sustainable_use_and_livelihoods_specialist_group/sulinew/issue_7/sn7_tfcas/ accessed 30 Oct 2014

Business & Human Rights Resource Centre 2018 <https://www.business-humanrights.org/en/mozambique-1>

Business & Human Rights Resource Centre 2018 *Mozambique*
<https://www.business-humanrights.org/en/mozambique-1> accessed 24 Sept 2018

Club of Mozambique Solutions (Soluções) 2009 adrien.frey@clubofmozambique.com
Club of Mozambique Solutions (Soluções) 2009 *Tourism Law*
adrien.frey@clubofmozambique.com accessed 14 September 2015

Cousins, Sadler and Evans 2008 <http://www.ecologyandsociety.org/vol13/iss2/art43/>
Cousins, Sadler and Evans 2008 *Ecology and Society*
<http://www.ecologyandsociety.org/vol13/iss2/art43/> accessed 12 August 2015

Department of Trade and Industry 2018
www.dti.gov.za/trade_investmnet/export_incentives.jsp?subthemeid=26
Department of Trade and Industry 2018 *Trade, Exports and Investment*
www.dti.gov.za/trade_investmnet/export_incentives.jsp?subthemeid=26
accessed 28 Aug 2018

Du Toit 2016
https://www.savetherhino.org/africa_programmes/lowveld_rhino_trust_zimbabwe/updates_from_the_field/harmonising_land_use_in_save_valley_conservancy
Du Toit R 2016 Harmonising land use in Save Valley Conservancy
https://www.savetherhino.org/africa_programmes/lowveld_rhino_trust_zimbabwe/updates_from_the_field/harmonising_land_use_in_save_valley_conservancy
accessed 16 Nov 2016

Frankfurt Zoological Society (FZS) 2017 <https://fzs.org/en/projects/gonarezhou-conservation-project/>

Frankfurt Zoological Society (FZS) 2017 <https://fzs.org/en/projects/gonarezhou-conservation-project/> accessed 29 March 2017

FZS 2017 *Gonarezhou Conservation Project* <https://fzs.org/en/projects/gonarezhou-conservation-project/>

FZS 2017 *Gonarezhou Conservation Project*
<https://fzs.org/en/projects/gonarezhou-conservation-project/> accessed 29 March 2017

FZS 2016

https://fzs.org/files/7514/7401/2388/Gonarezhou_Conservation_Trust_Background.pdf

FZS 2016 *Gonarezhou National Park Partnership Between Zimbabwe Parks and Wildlife Management and Frankfurt Zoological Society*
https://fzs.org/files/7514/7401/2388/Gonarezhou_Conservation_Trust_Background.pdf accessed 29 March 2017

Great Limpopo 2016 www.greatlimpopo.org/2016/08/trust-to-manage-gonarezhou-national-park/

Great Limpopo 2016 Trust to Manage Gonarezhou National Park
www.greatlimpopo.org/2016/08/trust-to-manage-gonarezhou-national-park/
accessed 29 March 2017

Great Limpopo Transfrontier Park 2017
<http://www.greatlimpopo.org/2017/03/major-developments-in-greater-limpopo-transfrontier-park-applauded/>

Great Limpopo Transfrontier Park 2017 *Major Developments in Great Limpopo Transfrontier Park Applauded*
<http://www.greatlimpopo.org/2017/03/major-developments-in-greater-limpopo-transfrontier-park-applauded/> accessed 29 March 2017

Great Limpopo Transfrontier Park 2016 www.greatlimpopo.org/2016/08/trust-to-manage-gonarezhou-national-park/

Great Limpopo Transfrontier Park 2016 www.greatlimpopo.org/2016/08/trust-to-manage-gonarezhou-national-park/ accessed 2 Nov 2016

ILO 2016 www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_480824/lang--en/index.htm

ILO 2016 www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_480824/lang--en/index.htm accessed 29 November 2016

Johnstone, Cau and Norfolk 2004 www.policy-powertools.org/.../Mozambique_study_Johnstone_et_al.pdf

Johnstone R Cau B and Norfolk S 2004 Forestry legislation in Mozambique: compliance and the impact on forest communities www.policy-powertools.org/.../Mozambique_study_Johnstone_et_al.pdf accessed 18 June 2015

Mahlaka 2018 <https://www.moneyweb.co.za/news/south-africa/what-parliaments-withdrawal-of-the-expropriation-bill-means/>

Mahlaka R 2018 *What Parliament's withdrawal of the Expropriation Bill means* <https://www.moneyweb.co.za/news/south-africa/what-parliaments-withdrawal-of-the-expropriation-bill-means/> accessed 9 November 2018

Malilangwe Trust Date Unknown www.themalilangwetrust.org/conservation/malilangwe-wildlife-reserve

Malilangwe Trust Date Unknown Malilangwe Wildlife Reserve www.themalilangwetrust.org/conservation/malilangwe-wildlife-reserve accessed 29 March 2017

Maluleke Date Unknown <http://www.conservation-development.net/Projekte/Nachhaltigkeit/CD1/.../Maluleke.pdf>

Maluleke L Date Unknown The Makuleke Story <http://www.conservation-development.net/Projekte/Nachhaltigkeit/CD1/.../Maluleke.pdf> accessed 8 Nov 2016

McCallum and Schoon 2011 <http://www.tbpa.net/page.php?ndx=55>

McCallum J and Schoon M 2011 The economic case for transboundary conservation <http://www.tbpa.net/page.php?ndx=55> [date of use 19 Oct 2016]

Ministry of Environment, Water and Climate Date Unknown
www.environment.gov.zw/index.php/about-us

Ministry of Environment, Water and Climate Date Unknown Ministry of Environment, Water and Climate www.environment.gov.zw/index.php/about-us accessed 20 March 2017

Ministry of Environment, Water and Climate Date Unknown

www.environment.gov.zw/index.php/blogs

Ministry of Environment, Water and Climate Date Unknown
www.environment.gov.zw/index.php/blogs accessed 23 February 2017

Parliamentary Monitoring Group 2013 <https://pmg.org.za/committee-meeting/15945/> Parliamentary Monitoring Group 2013 "Public Private Partnership Toolkit for tourism: briefing by National Treasury" <https://pmg.org.za/committee-meeting/15945/> accessed 08 April 2015

Peace Parks Foundation 2013 www.peaceparks.org

Peace Parks Foundation 2013 *Southern African Peace Parks* www.peaceparks.org accessed 08 Apr 2013

Peace Parks Foundation 2014 <http://www.peaceparks.co.za>

Peace Parks Foundation 2014 *Southern African Peace Parks*
<http://www.peaceparks.co.za> accessed 24 Mar 2014

Peace Parks Foundation 2016 www.peaceparks.org/news.php?pid=1611&lid=1005
Peace Parks Foundation 2016 Gonarezhou Conservation Trust: Sharing
Responsibilities in Conservation
www.peaceparks.org/news.php?pid=1611&lid=1005 accessed 29 March 2017

Quinn, Broberg and Freimund <http://www.re-press.org/content/view/17/33/>
Quinn MS, Broberg L and Freimund W Parks, Peace and Partnership: Global
Initiatives in Transboundary Conservation [http://www.re-](http://www.re-press.org/content/view/17/33/)
[press.org/content/view/17/33/](http://www.re-press.org/content/view/17/33/) accessed 08 Apr 2013

Ramutsindela, Davis and Sinthumule 2016
[https://www.parliamwnet.gov.za/storage/app/media/Pages/2017/october/High_Leve](https://www.parliamwnet.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/Commissioned_Report_land/Commissioned_Report_on_Land_Restitution_Ramutsindela_et_al.pdf)
[l_Panel/Commissioned_Report_land/Commissioned_Report_on_Land_Restitution_Ra](https://www.parliamwnet.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/Commissioned_Report_land/Commissioned_Report_on_Land_Restitution_Ramutsindela_et_al.pdf)
[mutsindela_et_al.pdf](https://www.parliamwnet.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/Commissioned_Report_land/Commissioned_Report_on_Land_Restitution_Ramutsindela_et_al.pdf)

Ramutsindela M, Davis N and Sinthumule I 2016
[https://www.parliamwnet.gov.za/storage/app/media/Pages/2017/october/High_](https://www.parliamwnet.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/Commissioned_Report_land/Commissioned_Report_on_Land_Restitution_Ramutsindela_et_al.pdf)
[Level_Panel/Commissioned_Report_land/Commissioned_Report_on_Land_Restit](https://www.parliamwnet.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/Commissioned_Report_land/Commissioned_Report_on_Land_Restitution_Ramutsindela_et_al.pdf)
[ution_Ramutsindela_et_al.pdf](https://www.parliamwnet.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/Commissioned_Report_land/Commissioned_Report_on_Land_Restitution_Ramutsindela_et_al.pdf) accessed 22 Aug 2018

Rivett-Carnac 2004 [www.sustainabilityinstitute.net/.../275-kate-rivett-karnac-](http://www.sustainabilityinstitute.net/.../275-kate-rivett-karnac-corporate-citizen)
[corporate-citizen](http://www.sustainabilityinstitute.net/.../275-kate-rivett-karnac-corporate-citizen)
Rivett-Carnac KE 2004 "The South African Public Sector and Corporate
Citizenship in Tourism" [www.sustainabilityinstitute.net/.../275-kate-rivett-karnac-](http://www.sustainabilityinstitute.net/.../275-kate-rivett-karnac-corporate-citizen)
[corporate-citizen](http://www.sustainabilityinstitute.net/.../275-kate-rivett-karnac-corporate-citizen).accessed 08 April 2015

SADC 2012 <http://www.sadc.int/fanr/naturalresources/transfrontier/>
SADC 2012 SADC Transfrontier Conservation Areas (TFCAs)
<http://www.sadc.int/fanr/naturalresources/transfrontier/> accessed 09 Jul 2012

SADC 2012 www.sadc.int/member-states/zimbabwe

SADC 2012 Zimbabwe www.sadc.int/member-states/zimbabwe accessed 24 April 2017

Salomão 2006 <http://www.cifor.org/miombo/docs/CBNRM%20Mozambique.pdf>

Salomão A 2006 *Towards people-centred woodland management in Mozambique: can this make a difference?: community-based natural resources management in miombo forest in Mozambique and the fight against poverty Draft* <http://www.cifor.org/miombo/docs/CBNRM%20Mozambique.pdf> accessed 18 June 2015

SANBI 2014

<http://www.sanbi.org/sites/default/files/documents/documents/biodiversity-stewardship-factsheet16dec2014.pdf>

SANBI 2014 Biodiversity Stewardship: Partnering for Securing Biodiversity <http://www.sanbi.org/sites/default/files/documents/documents/biodiversity-stewardship-factsheet16dec2014.pdf> accessed 09 March 2015

SANBI 2018 <http://biodiversityadvisor.sanbi.org/industry-and-conservation/biodiversity-stewardship/tax-incentives/>

SANBI 2018 *Biodiversity Advisor: Tax Incentives* <http://biodiversityadvisor.sanbi.org/industry-and-conservation/biodiversity-stewardship/tax-incentives/> accessed 8 Aug 2018

South African National Parks (SANParks) 2006 http://www.sanparks.org/parks/krufer/conservation/scientific/noticeboard/science_network_meeting_2006/D5_15_H_THERON.pdf

South African National Parks (SANParks) 2006 Great Limpopo Transfrontier Park: History and Context http://www.sanparks.org/parks/krufer/conservation/scientific/noticeboard/science_network_meeting_2006/D5_15_H_THERON.pdf accessed 27 Oct 2016

SANParks 2012 <http://www.sanparks.co.za/conservation/>

SANParks 2012 Great Limpopo Transfrontier Park
<http://www.sanparks.co.za/conservation/> accessed 2 Nov 2016

Stockil 2013 chilogorge.com/about/

Stockil C 2013 Chilo Gorge: Community Led Conservation chilogorge.com/about/
accessed 15 Nov 2016

Tipping-Woods 2016 <https://conservation.co.za/media-articles/finding-refuge-untapped-potential-mozambiques-banhine-zinave/>

Tipping-Woods D 2016 *Finding refuge: The untapped potential of Mozambique's Banhine and Zinave* <https://conservation.co.za/media-articles/finding-refuge-untapped-potential-mozambiques-banhine-zinave/> accessed 12 November 2018

Tourism Concern 2014 <http://tourismconcern.org.uk/about/who-we-are/ethical-fair-trade-tourism-principles/?print=pdf>

Tourism Concern 2014 <http://tourismconcern.org.uk/about/who-we-are/ethical-fair-trade-tourism-principles/?print=pdf> accessed 24 December 2015

UNESCO 2014 <http://whc.unesco.org/en/list/63>

UNESCO 2014 "Virunga National Park" <http://whc.unesco.org/en/list/63>
accessed 4 Apr 2014

UNEP 2010
www.unep.org/training/programmes/InstructorVersion/Part_2/Activities/Interest_Groups/Decision-Making/Core/Def_Enviro_Governance_rev2.pdf

UNEP 2010 "Definition of Environmental Governance"
www.unep.org/training/programmes/InstructorVersion/Part_2/Activities/Interest_Groups/Decision-Making/Core/Def_Enviro_Governance_rev2.pdf accessed 09 August 2016

UNWTO 2016 <http://cooperation.unwto.org/news/2016-01-14/new-strategic-tourism-development-plan-stdp-mozambique-approved>

UNWTO 2016 *New Strategic Tourism Development (STDP) for Mozambique Approved* <http://cooperation.unwto.org/news/2016-01-14/new-strategic-tourism-development-plan-stdp-mozambique-approved> accessed 27 November 2017

Whitten, Van Bueren and Collins 2003 <https://www.researchgate.net/publication/254490223>

Whitten S, Van Bueren M and Collins D 2003 "An Overview of Market-Based Instruments and Environmental Policy in Australia" <https://www.researchgate.net/publication/254490223> accessed 28 September 2016

World Food Programme 2017 <http://documents.wfp.org/stellent/groups/public/documents/resources/wfp291937.pdf> World Food Programme 2017 *Country Strategic Plans – Mozambique (2017-2021)* <http://documents.wfp.org/stellent/groups/public/documents/resources/wfp291937.pdf> accessed 6 September 2018

Zimbabwe Parks & Wildlife Management Authority (Zimparks) 2014 www.zimparks.org/index.php/parks-overview/national/gonarezhou

Zimbabwe Parks & Wildlife Management Authority (Zimparks) 2014 www.zimparks.org/index.php/parks-overview/national/gonarezhou accessed 2 November 2016

Zimbabwe Parks & Wildlife Authority 2014 www.zimparks.org/index.php/about-us/department

Zimbabwe Parks & Wildlife Authority 2014 Departments www.zimparks.org/index.php/about-us/department accessed 17 March 2017