

Mopani
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The realisation of environmental and socio-economic rights in the GLTFCA

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Transboundary conservation initiatives have captured the imagination of many. They represent an ideal whereby conservation can deliver more than simply biodiversity, species, and habitat protection, but also sustainable development and the promotion of a culture of peace and cooperation. But the question remains whether this assertion is valid, whether the methods currently being employed are optimal in relation to the investment and transaction costs of such initiatives, and whether the enthusiasm for implementation overlooks the emergent and unforeseen consequences. We call for a more deliberate process of reflection and analysis that disaggregates objectives, methods, and impacts.

(Sandwith and Besançon, 2005)



Questions

What are the environmental and socio-economic rights currently applicable in GLTFA?

How can these rights be realised?



TFCA Ideals (Metcalfe)

Conservation of biodiversity

Protection and strengthening of ecosystem services, natural and **cultural values** across boundaries

Promoting landscape level ecosystem management; **peace building** and laying the foundations for collaboration (**trust, reconciliation** and cooperation)

Increasing the **benefits of conservation for communities** on both sides of international borders

Economic development (largely through tourism) of local and national economies

Cross border control of certain problems (**fire, pests, poaching, pollution and smuggling**).

TFCA ideals: poverty alleviation

- Another aim recently added is, however, as an ideal, “projects tend to lean towards conservation and not poverty alleviation, ultimately usurping community benefits in favor of strictly ecological interests.”

[William M Adams et al “Biodiversity conservation and the eradication of poverty” *Science* 12 November 2004 Vol 306 at 1146-1149
www.sciencemag.org [date of access 2010-11-03]

Ecocentric Approach

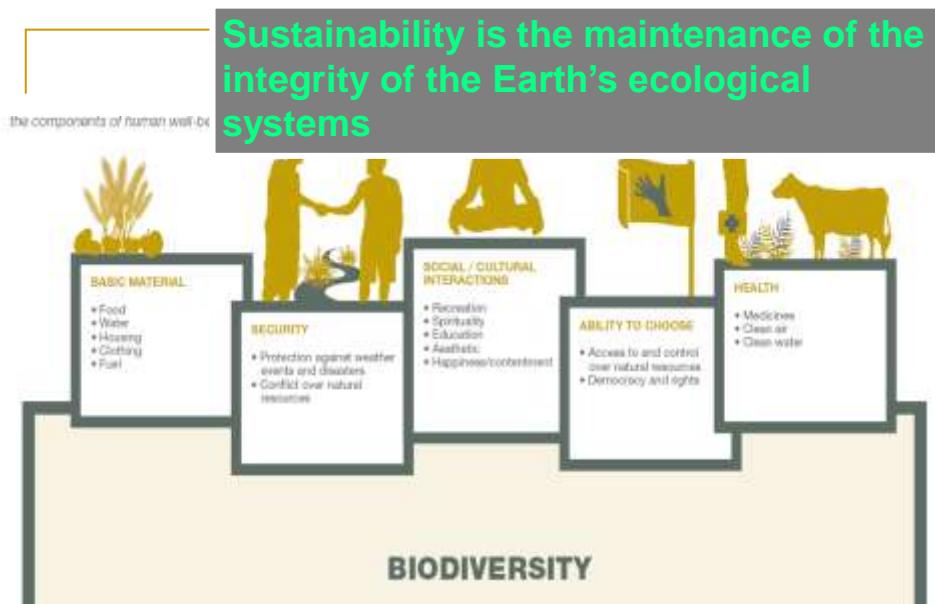


... **human rights and the environment** are inextricably linked to each other. **Without human rights, environmental protection could not effectively be enforced.** And vice versa, without the inclusion of the environment, human rights would be in danger of losing their core function, i.e. the protection of human life, well-being and integrity. ...
[t]he development of all human rights (should demonstrate that) humanity is an integral part of the biosphere, that nature has an intrinsic value and that humanity has obligations towards nature. In short, ecological limitations, together with corollary obligations, should be part of the rights discourse ...

(Bosselmann, 2009)

Implication?

- Protected areas
- Without people
- People to benefit by protecting natural resources
- If natural resource base is protected then it will ensure food security, good health etc.



IUCN Programme 2009-2012: Shaping a sustainable future:
(Adopted World Conservation Conference Barcelona Oct 2008):

Anthropocentric approach



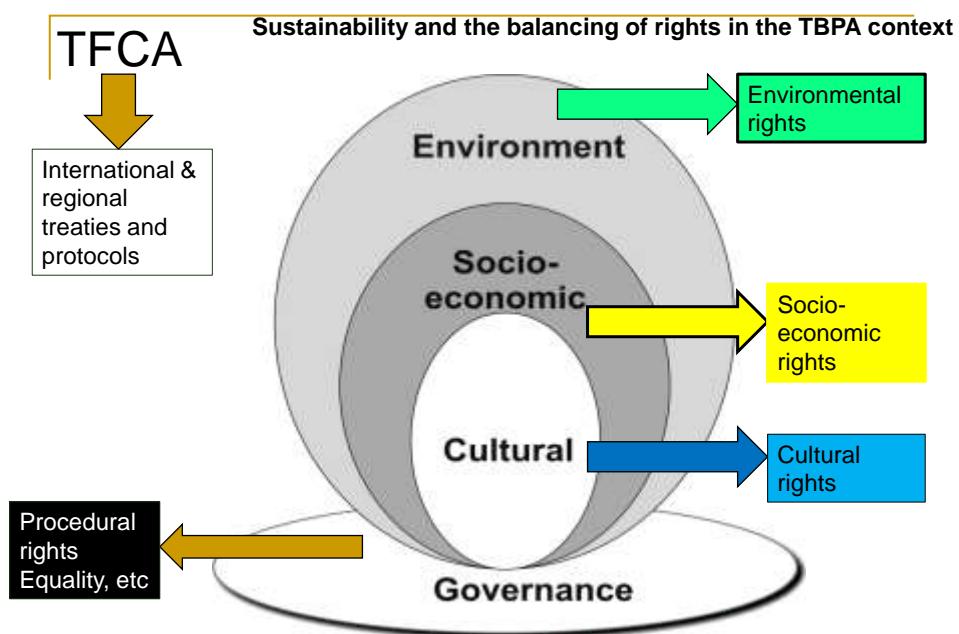
Objective of TFCA: humans

- “An objective of transfrontier parks is to uplift the rural communities living in and around them socio-economically.
- The two objectives are interrelated as it is envisaged that improving the lives of the rural communities will in turn further contribute towards biodiversity conservation by demonstrating the economic and social advantages that can be achieved through wildlife conservation.”

<http://www.golimpopo.com/park/transfrontier-parks/great-limpopo-transfrontier-park.html>

Implication?

- Communities are part of the ecosystem – included/living in the park
- Require a balancing act – socio-economic interests vis-à-vis cultural and environmental interests



Lessons learned



Weaknesses of significance

- **Eviction and relocation of communities that are in principle flawed**
- Limitations on rural development
- A lack of efficient and fair public participation processes
- Increased arms and human trafficking
- An increased level of law enforcement at and across borders
- Arbitrary change of 'laws' and 'policies' at border posts
- Selective inclusion of authorities in decision-making processes and inadequate involvement of traditional authorities
- A disregard of the influence and importance of the geopolitics
- Disregard of distribution equity in the creation of new jobs
- A top-down management approach as opposed to bottom-up

Constitutional protection: South Africa, Mozambique and Zimbabwe

Environmental rights

- South Africa: S 24 Constitution
 - Everyone has a right to an environment that is not harmful to their health or well-being
- Mozambique:
 - Art 90(1): All citizens have the right to live in a balanced environment and have a duty to defend it.
 - Art 45(f): Every individual shall have the duty to protect and conserve the environment
- Zimbabwe
 - Currently no environmental right

Other rights

- South Africa, Mozambique & Zimbabwe
 - Right to life
- Mozambique and South Africa
 - Right of access to information
- South Africa, Mozambique and Zimbabwe
 - SA: Right to culture and acknowledgement of traditional leaders
 - Moz: State should enable the Mozambican people to benefit from the cultural achievements of other peoples
 - Zim: EMA: Traditional leaders to resolve disputes re land, water, natural resources in communal areas
- Zimbabwe
 - Right to freedom to movement (s 22)
 - Assembly and association (s 21) (for public participation)
 - Liberty (s 13)

who “owns” the natural resources?

- Mozambican Constitution
 - “All natural resources occurring in the soil, subsoil, inland waters, territorial sea and continental shelf belong to the State (this includes nature conservation zones). The State determines conditions of use.”
- South African Constitution – none
 - NEMA – Trust for the people
- Zimbabwe
 - Environment Management Act 2002
 - No provision for public trust doctrine

Duties of government

■ Mozambique A 90(2)

- The State and the local authorities, with collaboration from associations for environmental protection, shall adopt policies to protect the environment and shall promote the rational use of all natural resources
- A 104(2): The State shall guarantee and promote rural development in order to meet the growing and diverse needs of the people, and for the economic and social progress of the country

■ South Africa S 24(b)

- Obligation on government through reasonable legislative and other measures to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures ...
- Socio-economic rights – progressive realisation & means

Mozambique

■ Article 117

- Environment and Quality of Life
- 1. The State shall **promote efforts to guarantee the ecological balance and the conservation and preservation of the environment, with a view to improving the quality of life of its citizens**
- 2. With a view to guaranteeing the right to the environment within the framework of sustainable development, the State shall adopt policies aimed at:
 -
 - d) guaranteeing the rational utilisation of natural resources and the safeguarding of their capacity to regenerate, ecological stability and the rights of future generations;
 - e) **promoting territorial ordinance with a view to ensuring the correct location of activities, and balanced socio-economic development.**

Socio economic rights

■ Mozambique

- Right to medical health care
- Right to a suitable home (state responsible for funding)

■ South Africa

- Right of access to housing
- Right of access to sufficient water
- “Right of access to electricity” (recent decision)
- Right of access to health services

■ Zimbabwe

- Currently – no socio-economic rights – draft Constitution – includes socio-economic rights

How to realise these rights?

■ Cannot ignore the communities

- Certain promises were made by establishing parks – certain expectations were raised
- Some people were relocated with promises of access to better living conditions, education, water, access to the parks etc.
- Many of the promises were not realised
- Communities sometimes excluded from public participation processes – or raise their concerns and are ignored
- Limited access to information
- etc

How to realise these rights?

- Mostly poor communities – especially in Mozambique and SA – Constitutions guaranteed socio-economic rights – balancing of interests
 - Should only protected areas benefit and natural resource protection?
 - If communities' socio-economic rights and expectations are realised, would it contribute to natural resource protection, animal health, etc?
- Less conflict, if promises could be fulfilled
- Do not decide for community what needs are; which rights they would like to see protected – determine by consulting communities as such – not sectoral approach
- Governments must BUDGET! Need proper structures

How to realise these rights?

- Conflict resolution or right to adjudicatory bodies
 - Zimbabwe – use traditional structures
 - If that fail – consult communities for alternative dispute resolution measures
 - Provide communities access to other adjudicatory bodies
 - If ignore disgruntled communities – protection of environment fails
- Proper public participation processes
 - Talk to women, aged and youth
 - Need for education and buy in from community

How to realise these rights?

- Not only government that has this task
- The TFCA has a role to play
 - It cannot ignore environmental, socio-economic, cultural and procedural rights of communities
 - It can contribute towards the realisation of these rights – e.g. by
 - Negotiation with government for the realisation of people's socio-economic rights;
 - In negotiation with donors.
 - Ensure public participation with communities
 - Ensure fulfilment of promises made



Thank you

