

ENVIRONMENTAL DECENTRALIZATION

**PARTICIPATORY NATURAL RESOURCES MANAGEMENT
IN MOZAMBIQUE**

AN ASSESSMENT OF LEGAL AND INSTITUTIONAL ARRANGEMENTS FOR
COMUNITY-BASED NATURAL RESOURCES MANAGEMENT

by

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OUTLINE

1. Introduction (4)

- The theory of participation and community-based natural resources management;
- Objectives and method;

2. Legal Provisions for Community Participation in Wildlife Management in Mozambique with reference to Zambian and Namibian Laws (6)

a) Actors, Representation and Accountability Mechanisms (7)

- State agents,
- Local leaders
- Private sector
- NGOs

b) Powers (10)

- Power to decide who participates in wildlife management
- Power to decide which use-rights can be exercised and in which areas
- Power to design management plans
- Power to determine what costs and benefits should be incurred by communities
- Power to determine procedures to obtain and retain use rights
- Power to revoke and transfer use rights
- Power to adjudicate disputes

3. Conclusion: (16)

- Balancing the Dual Objective

ACRONYMS

CBD – Convention on Biological Diversity

CBNRM – Community-based natural resources management

CBO – Community-based organization

MET – Minister of Environment and Tourism

NGOs – Non-governmental organization

RoM – Republic of Mozambique

RoN – Republic of Namibia

RoZ – Republic of Zambia

SADC – Southern African Development Community

ZAWA – Zambia Wildlife Authority

1. Introduction

One common definition of participation presents it as a process through which different groups in a community influence and share control over development initiatives and the decisions and resources that affect them (Mascarenhas et al., 1998).¹ A basic tenet of this approach is that all groups must be involved in all phases of decision-making processes. Advocates of community-based natural resources management often use the principle of participation to argue that community-based natural resources management includes natural resources or biodiversity protection by, for, and with local communities (Western et al., 1996).² Where local communities are not participating, these advocates would assert that their needs and concerns are not addressed. In being by and for local communities community-based natural resources management also implies that conservation costs should be balanced by equivalent or greater rewards to communities (Western et al., 1996).³ Communities, therefore, should be given the responsibility to manage resources sustainably as well as the right to exercise power over them and accrue significant benefits resulting from that use and management (Ribot, 1999).⁴

The objective of this paper is to assess whether the legal provisions for community participation natural resources management contained in the Mozambican environmental laws take into account the various factors that shape the effectiveness of participation and decentralization and the elements that promote the achievement of the dual objective defined for CBNRM. As studies in decentralization and participatory natural resources management reveal, granting natural resources management powers and the right to accrue benefits from such management to local communities is a complex task (Agrawal and Ribot, 1999).⁵ The complexity results from the political, legal and institutional issues that must be addressed in order to enable the effective exercise of management powers by local communities. Furthermore, ensuring that the powers devolved to local communities contribute to the efficient

¹ See Veit, Peter. (Ed.), Mascarenhas, Adolfo, Ampadu-Agyei, Okeyeame. 1998. "Africa Valuable Assets: Africa Development that Works". *World Resources Institute*

² See Western, D. and Wright, R. M. in "Natural Connections -The Background to Community-Based Conservation"

³ Ibid.

⁴ See, for example, (a) "Accountable representation and power in participatory and decentralized environmental management", Ribot(1999), "According to economic and public choice theory, participation and decentralization can increase economic and managerial efficiency by: (1) Allowing the local populations who bear the costs of the resource use decisions to make those decisions, rather than leaving them in the hands of outsiders or unaccountable locals; (2) Reducing administrative and managerial transaction costs via the proximity of local participants, access to skills and local information; (3). Using local knowledge and aspirations in project design, implementation, management and evaluation for better matching of actions to needs.

(b) In "Natural Connections" environmental analysts have also analyzed benefits and costs attached to the principle of participation and, thus, to community based management resources. Some of the benefits include the potential to: (a) bring more information to the decision making process; (b) ground initiatives on existing and legitimate institutions and in cultural values; (c) build political support for policy proposals and projects; and (d) build local capacity. On the other hand, potential risks include (a) longer time allocation, (b) modifications of program schedules, (c) higher planning costs, (d) opportunity for opposition from stakeholders to be articulated, and (d) prevalence for short term interests over long term sustainability. The risks associated with the involvement of stakeholders in decision making processes are viewed as necessary costs or investments in improved performance.

⁵ See Agrawal and Ribot. 1999. in "Accountability in Decentralization: A Framework with South Asian and West African Cases"

and equitable satisfaction of their economic and social needs, and simultaneously to natural resources conservation interests has also proven to be a difficult endeavor (Gibson, 1999⁶). The paper will show that what is commonly called “rights” is nothing more than simple privileges given and taken at the discretion of state authorities without real transfer of decision-making powers to local communities. Representation mechanisms proposed in laws as well as procedures established for CBNRM processes still need to be better clarified for these initiatives to correspond to the objectives declared. While upward accountability mechanisms for local actors can be found in most laws, downward accountability is lacking in all documents analyzed.

The analysis is focused on the provisions from the Republic of Mozambique Wildlife and Forestry Law of 1999⁶ (hereinafter the ROM Law No. 10/99) drawing comparisons from provisions of the Wildlife Management Acts of Namibia⁷ (hereinafter the RON Law) and Zambia⁸ (hereinafter ROZ law).

The framework used for this analysis was drawn from decentralization studies that propose an assessment of actors, powers and accountability mechanisms in the context of decentralization and participatory natural resources management (Ribot, 2001)⁹. Here, the framework is somehow expanded to permit the discussion of the concept of local community and the analysis of the different actors that are involved in such concept. As it will be shown below, many laws and policies tend to present “local communities” as a unitary entity while reality shows that there are indeed distinct groups and sectors in the notion of “community”. These different actors are discussed in light of their inter-relationship, their representation structures and accountability mechanisms. We discuss here both downward and upward accountability of empowered actors, in order to discern whether decentralization of management powers to local communities is taking place in a meaningful way. Similarly, the analysis of powers has been expanded to include the discussion not only the rights and responsibilities devolved to the different actors but also the procedures through which such rights are devolved and secured (including the role of traditional norms and customs). Mechanisms and incentives to balance community development and wildlife conservation are also assessed. Although not sufficient¹⁰, assessing all these elements in the laws should help us to evaluate whether choices made and reflected in legislation provide the necessary basis for effective and equitable outcomes to occur. It should also help us to identify gaps in the laws and alternatives to overcome them so that the legal framework in Mozambique can become consistent with the objectives of participation pronounced in national and international dialogues.

⁶ Law No.10/99 of July 7

⁷ Namibian Act No.5 of 1996 and Amendment regulations No.304 of 1996

⁸ Zambian Act No.12 of 1998

⁹ See Ribot, 2001

¹⁰ Ideally a complete analysis of community participation should include an assessment of the overall enabling environment, including an analysis of constitutional provisions and provisions from other legal instruments, as well as the practice on the ground. This paper, however, is purely based on a textual assessment of institutional structures, procedures, accountability and conservation strategies for community wildlife use rights or any other form of community participation in wildlife management, proposed in wildlife management laws and regulations in Namibia, Mozambique and Zambia. It is, therefore, beyond the scope of this initial work to make a broad study.

2. Legal Provisions for Community Participation in Wildlife Management in Mozambique, Namibia and Zambia

Many African countries have adopted national policies and laws stating explicitly that communities should be involved in all areas of environmental management in a very active and direct manner, and that their values, norms and practices should be taken into consideration (RoN Cabinet Resolution No.8th/16.03.95/005)¹¹. The objective advanced in these legal instruments is to enable local communities to benefit economically from the use of wildlife and wildlife resources, while simultaneously participating in activities that aim at their conservation. Regional legal instruments that promote the participation of local communities in wildlife management have also been adopted. The 1999 SADC Protocol on Wildlife Conservation and Law Enforcement (SADC 1999, Article 7.4), for example, asserts that State parties shall establish or introduce mechanisms for community-based wildlife management and shall integrate principles and techniques derived from indigenous knowledge systems into national wildlife management and law enforcement policies and procedures. The protocol defines community-based wildlife management as the management of wildlife by a community or group of communities, which have the right to manage wildlife and to receive the benefits from that management.¹²

As reflected in both national and regional instruments, participatory community wildlife management has dual objectives: (1) ensuring conservation of wildlife resources with the participation of local communities, and (2) promoting the economic and social development of such communities through use of wildlife resources. These objectives imply that communities should not only share the benefits resulting from the use of wildlife resources but should also participate in decisions regarding wildlife management. To achieve them new forms of community participation are being institutionalized through decentralization of powers over wildlife resources. Many countries in the SADC region, such as Namibia and Zambia, have adopted or are proposing laws, regulations and/or guidelines establishing community

¹¹ The Namibia Policy on Wildlife Management, Utilization and Tourism in Communal Areas (Cabinet Decision No.8th/16.03.95/005)¹¹ sets as its objectives to establish an economically based system for the management and utilization of wildlife and other renewable living resources on communal land so that rural communities can: (a) participate on a partnership basis in the management of and benefits from, natural resources; (b) benefit from rural development based on wildlife, tourism and other natural resource management; (c) improve the conservation of natural resources by wise and sustainable resource management and the protection of our biodiversity.

¹² Several international environmental agreements to which the majority of African countries are parties, have also embraced the concept of community-based natural resources management. Most prominent among such agreements are the Rio Declaration and the Convention on Biological Diversity (CBD). In fact, principle 22 of the Rio Declaration asserts that States should recognize and duly support the identity, culture and interests of indigenous and local communities and enable their effective participation in the achievement of sustainable development. The CBD recognizes in its preamble the close dependence of many indigenous and local communities on biological resources, and the desirability of equitably sharing benefits from the use of traditional knowledge, innovations and practices relevant to the conservation and sustainable use of the environment and biological diversity. Furthermore, in its Article 10 (c), the CBD urges countries to protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.

participation mechanisms, including the so called community wildlife use rights (Johnston and Dannenmaier, 2000).¹³ Apparently, states are proposing to transfer some of their powers in wildlife management to promote the participation of locals in the decision-making process and accommodate development interests and concerns of communities.

Mozambique has also embarked in a process of creating space and opportunities for community participation. In 1997 Mozambique adopted a Policy and Strategy for Wildlife and Forestry Development, through Cabinet Resolution Number 8/97 of April 1. The Mozambican Wildlife and Forestry Policy states that it is important that those who use and benefit more directly from wildlife participate in the management planning processes. Local communities are, in effect, targeted as the principal actor in the implementation of the policy. This document sets some principles for wildlife and forestry management which include: (a) conserving basic resources, including biological diversity; (b) involving people who are dependent on forestry and wildlife resources in the planning and sustainable use of such resources; and (c) ensuring that communities benefit from wildlife resources. Similarly the Wildlife and Forestry Law adopted in 1999 recommends an integrated management of natural resources that ensures effective participation of local communities, associations and the private sector. It furthermore establishes, as a principle, that wildlife and forestry resources must be managed in a way that ensures harmony between local communities and state local organs so that customary practices and conservation principles are respected. Socio-economic community development is emphasized by a recommendation that the involvement of the private sector in natural resources management should aim at furthering local community progress (RoM law No10/99, Article 3(f)).¹⁴ The following discussion evaluates how the law addresses these objectives and principles and the elements proposed in the framework for this analysis.

a) Actors and their Representation and Accountability Mechanisms

There are various kinds of actors that can potentially receive wildlife management powers in the name of decentralized or community-based natural resource management. In this section of the article the objective is to understand who these actors are, how they fit into the community structure and how they promote or hinder CBNRM objectives.

The Mozambican law defines local communities as “a group of families and individuals living in a locally circumscribed territory aiming at safeguarding common interests through protection of inhabited areas, agricultural areas, forests, areas of cultural value, pastures, water fountains, hunting and expansion areas” (RoM Law No. 10/99, of July 7, Article 1(5)).¹⁵ Although this vague definition may transmit an image of local communities as homogeneous entities, “local community” may not always be easy to define geographically and usually comprises diverse interests stratified along gender, age, caste, class, religion, livelihood and other factors.¹⁶ Definition of community powers, benefits and representation, therefore, must be

¹³ See Leslie Johnston and Eric Dannenmaier, 2000, in “Sustainable Use of Wildlife: The Role of Private Contracts.” “Many developing countries are formulating sustainable use plans as a strategy for wildlife conservation outside of protected areas, and one of the more popular approaches is to grant wildlife use rights, which imbue communities and individuals with legal rights for wildlife use.”

¹⁴ See Mozambican law No10/99, Article 3(f)

¹⁵ See Law No. 10/99, of July 7, Article 1(5)

¹⁶ See Zerner, Charles, 1999 “People, Plants & Justice”, See also Gibson, Clark, 1999.

responsive to the community as a whole but must also consider the diversity of groups and interests in most communities.¹⁷

Article 31 of the Mozambican law on participatory management, allows for numerous actors to interact in wildlife management and in “community participation”. The law creates local councils for natural resources management and establishes that such councils shall be composed by representatives of local communities, of the private sector and of associations and local state authorities. Unfortunately, important details such as mode of selection of representatives, specific functions of local councils, responsibilities of the different actors and the relationship among them have been relegated to a regulation to be specified by the government, which so far has not been adopted.

In the same line with the Mozambican law, the Zambian law defines local communities as “the residents within a game management area or open area who by virtue of their rights over land invest in and derive benefits from the sustainable utilization of wildlife resources in the area”.¹⁸ Provisions from this law and the Namibian law related to local actors show that organizations that act on behalf of communities are key actors for community participation in wildlife management. Communities must form community-based organizations (“Community Resources Boards” in Zambia and “Conservancy Committees” in Namibia) and register them as a means of acquiring wildlife management rights and rights over benefits resulting from wildlife.¹⁹ It is these committees and boards that interrelate with both the government and the private sector in the name of community. With regard to other actors, NGO’s involvement in Namibia has been contemplated mainly to help the government assist communities in establishing conservancies. All countries also contemplate partnerships between communities and the private sector in one way or another.

While there is an attempt to involve, or, better said, to mention actors other than the rural farmers/hunters and the state, namely NGO’s and the private sector, the distinct but crucial role that these actors can play in shaping community development and natural resources conservation does not receive significant coverage in the laws. The role of chiefs and/or local leaders is also not mentioned despite the significant influence that they have in many rural communities.²⁰ It is also interesting to note that definitions of local community in all cases could allow exclusion from CBNRM initiatives of anyone who does not conserve wildlife resources. In other words, those who are not protecting nature are not part of “the community”.

The purpose in examining representation and accountability issues is to identify to whom the actors receiving powers in the name of decentralization are accountable and to identify the mechanism established for such accountability to effectively occur. Assessment of representation and accountability is made here with reference to local populations whose interests representatives are suppose to defend (downwardly accountability), and to central state which is the guardian of natural resources (upwardly accountability). The basic question concerning accountability is whether the actors who retain and/or receive powers over nature truly represent and are responsive to the population affected by such powers. Since the states, through governments, play an important role in promoting community participation and since real management powers are not in fact being transferred as it will be shown bellow, the question

¹⁷ See, in this regard, Ribot, 1999

¹⁸ See Zambian Act No.12 of 1998, Section 2

¹⁹ See Ibid. Section 6, and Namibian Act No. 5 of 1996, section 24.A

²⁰ See Gibson, Clark. 1999. “(...) Many chiefs still possess considerable influence over social and economic institutions in rural areas, despite the slow erosion of their authority over the past century, allowing them to enhance their own position, as well as the standing of those residents they favor.”

of accountability is also whether or not state governments are accountable. The question of selecting representatives is crucial, since it is these representatives who decide, in the name of communities, the general use of wildlife and the beneficiaries.²¹ According to Ribot (1999) "locally accountable representation in public decision-making must be in place in order to test the hypothesis that participation and decentralization lead to a greater efficiency, equity, development and environmental outcomes".

The only provision that may be forcibly linked to representation in the Mozambican law is Article 31, which creates local councils and directs that these councils shall be composed by representatives of local communities, local government, private sector and associations. The law does not specify how community representatives will be selected and there is no sufficient data to evaluate the functions, jurisdiction and accountability of such local councils. According to the law, the functions of local councils shall be established by a cabinet decree.

Zambia and Namibia have established representative participation and therefore the first actor to assess in terms of accountability is the mediating body mandated by the laws. What is not clear from these representation schemes is how comprehensive these schemes are in terms of ensuring that the diversity of community members endorses the options chosen for community representation. Both countries have adopted elections as a mode of selecting community representatives for wildlife management, however, and as it can be inferred from Ribot's analysis, despite being probably the most commonly evoked and effective mode of representative accountability, elections do not necessarily ensure comprehensiveness of representation nor accountability. Rural elites, for one, can always try to manipulate candidacies, electoral processes and those in elected positions²².

With regard to mechanisms of accountability of local representatives, decentralization researchers have proposed other mechanisms for increasing local or downward accountability of elected representatives that could be written into as including: central state sanctions; recourse to accessible courts; third-party monitoring by the media, non-governmental organizations or independently elected controllers; political pressures and lobbying by associations and associative movements; civic education and provision of information on roles and obligations of government; public reporting requirements; free press; embeddedness of leaders in their community; belief systems of leaders and their communities; moral obligations; measures to increase the civic dedication and pride of civil servants and other leaders; orchestrated participation; social movements, threats of social unrest and threats of resistance; earned – income taxation systems(Ribot, 1996). There is no space in the laws examined for communities to decide which form(s) of representation to adopt, electoral or otherwise.

Traditional and governmental institutions have a crucial role to play both in community representation and in natural resources management, and this role should be duly recognized and explored. In any instance, the choices for community representation, be they traditional or formal, should be a result of a process that ensures legitimacy, comprehensiveness and accountability.²³ Then, the role of the laws should be to establish minimum standards and safeguards that ensure the necessary balance between downward and upward accountability.

While there are a few provisions on upward accountability, mechanisms for downward accountability other than elections are completely absent from most laws. CBOs, who are key organizations in development of management plans and revenue distribution, are required to

²¹ The representatives make such decisions via formulation of a management plans, for example.

²² See Ribot, 1996

²³ Ibid.

report to government agencies but there are no legal mechanisms in place to ensure that they are also downwardly accountable.

Bellow we examine the powers that the different local actors hold in wildlife management.

b) Powers

In order to glean some understanding of driving forces shaping community development and resource sustainability, it is necessary to understand which actors are influential. This implies examining which actors have significant powers.

According to decentralization analysts²⁴ the nature of decentralization depends to a significant degree upon who gets to exercise power and the accountability relations to which they are subject. Consequently, while local actors form the institutional basis of decentralization, decentralization cannot be said to take place until they hold significant powers and are accountable to the local population.²⁵ These analysts indicate powers that can be transferred as part of a decentralization to include: power to create or modify rules; power to make decisions about how a particular resource or opportunity is to be used; power to implement and ensure compliance; and power to adjudicate disputes.²⁶ But, if powers are transferred to actors that are not accountable to their constituents, or who are accountable only to themselves or to superior authorities within the structure of the government, then, these analysts assert such reforms are not likely to accomplish the stated aims of decentralization.

- **Right to participate in wildlife management and to access resulting benefits**

Although the need for decentralization of wildlife management has been mentioned in the Mozambican national wildlife and forestry policy as well as in the principles of wildlife management included in the law,²⁷ wildlife management powers to local communities and other actors are, according to the law, to be “delegated” with the state retaining monitoring powers.²⁸ Article 33 shows that the central government retains the power to determine the conditions and restrictions under which local communities must participate in wildlife management. The underlying assumption reflected in the law is that the State, represented by the government, has the ultimate power to decide whether or not communities can participate in wildlife management and access benefits from wildlife. Concrete participation mechanisms and decision-making powers that would support the rhetoric of community participation mentioned before are not established by any provision of this law. The little space that communities are given to intervene in the design of management plans, in monitoring activities or in decisions on forestry concessions is ambiguously indicated.²⁹ For example, nothing is said also regarding community participation in the decision-making processes leading to the establishment of national parks and

²⁴ See Agrawal and Ribot, 1999

²⁵ See Gibson, Clark, 1999

²⁶ See Agrawal and Ribot, 1999

²⁷ Ibid. Article 3(e)

²⁸ Ibid. Article 33

²⁹ Ibid. Article 17(2)

reserves although communities have the right to participate in designing management plans for these areas³⁰. Provisions for benefit sharing are also very scarce. A major gap in the law, therefore, is the lack of a clear intention to create any form of community participation.

The laws in Namibia and Zambia provide communities with more than just wildlife exploitation opportunities. In fact, after complying with procedures established for participation in wildlife management, i.e. forming conservancies³¹ or community resources boards³², communities are entitled to take part in decision-making processes regarding wildlife resources existing in their area. However, as will be discussed below, communities must apply to access decision-making processes and wildlife benefits. Communities can only have wildlife management rights in conservancies or wildlife management areas, the existence of which requires approval by a government minister. Approval requirements and procedures seem to demonstrate that what governments are proposing here are essentially participation privileges, that can be given and taken, and not exactly participation rights. Thus, the now commonly evoked community wildlife use “rights” are nothing else but a misleading interpretation of the participation provisions from these and other laws in the region. This analysis will also show that when opening space for community participation in decision-making processes over natural resources governments reserve for themselves the discretionary power to withdraw such community “rights”. This is obviously contrary to what governments could do in face of real rights.

- **Procedures for Community Participation**

Procedures for community participation in wildlife management and benefit sharing will determine how accessible decision-making processes are and, consequently, will shape to a large extent how genuine the principles of community participation proclaimed in laws. The Mozambican law does not include any procedural guidelines for community participation in wildlife and forestry management, which represents a major gap in the existing framework. In Zambia and Namibia, however, states require a number of steps for communities’ involvement. Local communities in Zambia, for example, must organize themselves and apply for registration as Community Resources Boards. Such boards should be comprised of elected representatives from the local communities, a representative of the local authority in the area and a representative of a chief in whose area the board is established³³. Similarly, in Namibia communities are required to form conservancies³⁴ in order to apply for participation in wildlife management. According to the interpretative guide for the Namibian law, prepared by the Minister of Environment and Tourism (MET) communities must identify its members and select a conservancy committee as a first step. The conservancy should then define its boundaries and develop a constitution. After this the conservancy applies to MET for registration in a prescribed form. After approval by the Minister, the conservancy must be registered and gazettted. It may then become operational and establish enterprises³⁵. The fact that the central governments retain, in

³⁰ Ibid. Article 10

³¹ Namibian Act, Section 24A

³² Zambian Act, Section 6

³³ Zambian Act No.12 of 1998, Section 6(1)(3)

³⁴ The Namibian Act determines that “any group of people residing on communal land and which desires to have the area which they inhabit to be declared a conservancy shall apply to the Minister.

³⁵ See on this regard Section 155B of the Namibian Regulations No.304 of 1996

all cases, the legislative powers to determine the rules that community must follow to access wildlife benefits is not a cause for surprise. However, questions can be raised as to the extent to which the institutional structures and procedures proposed for community representation and participation are relevant and appropriate. These governments are imposing procedures that are complex, costly and time-consuming for communities and this may have the effect of removing opportunities for extensive community participation in wildlife management communities. Avoiding lengthy and cumbersome requirements is a challenge that Mozambique will have to face when it decides to fill in the existing legal gaps on this issue.

- **Power to determine wildlife management areas, wildlife uses and quantities**

Sustainable community wildlife-use entails delimiting different uses in different areas. It is worth mentioning here that restrictions on community access to wildlife resources can potentially be made through geographical criteria (limiting areas where communities can participate in management and accrue benefits), through quotas (limiting the quantity of resources that communities can utilize) and through types of uses (consumptive versus non-consumptive or, in other words, commercial versus non-commercial uses). Unless management plans are designed in a truly participatory way, the cumulative affect of these restrictions on community access to resources can be substantial. In fact, what first appears as an opportunity for community development can be greatly reduced by circumscribing participation areas, limiting permissible uses for communities and via allocating quotas.

In Mozambique the government retains substantial powers over defining the type of resources uses communities may undertake and where they can exercise them. With regard to wildlife uses, communities must have a hunting license to use wildlife resources for consumptive purposes. Such license is to be issued by local councils according to customary norms and practices.³⁶ Use of forestry resources for the same purpose is license free but should also be undertaken respecting local norms and practices. Non-consumptive uses of wildlife and forestry resources are subject to licensing and communities, as well as other interested actors, must fulfill technical requirements established in the law. Such requirements include, among other things, proof of technical capacity to harvest, transport and process the resources³⁷. It should be noted here that except for consumptive purposes, land-tenure holders must always apply to the government for use of wildlife and forestry resources existing in their land. Restricted uses, also subject to licenses, may be allowed in buffer zones and national reserves.³⁸

Namibian law prohibits communities from using resources in any land owned by the state (including federally owned communal land) but communities have the power to decide on consumptive and non-consumptive uses to be exercised within conservancies.³⁹ In Zambia, community resource boards have also the power to manage wildlife within its jurisdiction but within quotas specified by the authority.⁴⁰

³⁶ Ibid. Article 15(3)

³⁷ Ibid. Article Ibid. Article 15(1)

³⁸ Ibid. Articles 9 and 12

³⁹ See Namibian Amendment Regulations No.304, Section 155B(3)(c)

⁴⁰ Zambian Act No 12 of 1998, Section 7(2)(b)

- **Power to design management plans**

Socio-ecological pre-assessments and resource management plans can be an important component of sustainable natural resources management. The Mozambican law establishes that communities must be involved in the design of management plans for wildlife management, including management plans for national parks and reserves. However, it is silent about the role that community knowledge and experience should play in the choices made in such plans, despite ample recommendations made by the CBD and by the national wildlife and forestry policy.

One of the functions of the community resource board in Zambia is to develop and implement management plans that reconcile the various uses of land in areas falling under the board's jurisdiction. These plans must be developed in consultation with the Zambia Wildlife Authority. When preparing management plans for game management areas and other protected areas ZAWA is expected to consult local communities.⁴¹

In Namibia the constitution of a conservancy must include a game management and utilization plan, which should be developed by the conservancy committee.⁴²

Differently from what happens in Zambia and Namibia where communities are responsible for developing and implementing management plans (with some intervention from government in Zambia), in Mozambique it is the government who plays a leading role. Communities here are relegated to an advisory role in this process (this is if that is what "consultation" means). With regard to Zambia and Namibia, it may be interesting to note that even where the power to design and implement management plans has been completely devolved to local committees, as it is the case in Namibia, in reality this is a limited devolution. For one, the technical requirements imposed by the government for this purpose⁴³ may imply that most communities (in Mozambique, at least) would always need government assistance to design management plans. In addition, management plans have to be approved by the government.

Imposing technical analysis that in turn requires assistance may simply be another route for state control over plans. If communities were granted resources that they could freely use to hire independent or state bodies for assistance that would perhaps constitute greater decentralization. But the only sort of assistance or intervention that is envisaged in community design of management plans is governmental, and the laws are silent on the role of NGOs and the private sector on this matter.

As for the role that local knowledge and capacity of communities should play in the development and implementation of management plans in Zambia and Namibia, one could assume that local knowledge receives due consideration in these countries since communities are responsible for developing such plans. However, the lack of explicit reference to this aspect creates ambiguity and poses the danger that local knowledge and capacity are overwhelmed by state technical requirements

⁴¹ Zambian Act No.12 of 1988, Section 7(d) and 5(h)

⁴² Namibian Regulations No.304 of 1996, Section 155B(3)(a)

⁴³ Conservancy committees are required to prepare a detailed management plan for a specific use right that must stipulate, inter alia: (a) the type of use right required; (b) the area in which the use right would be carried out; (c) the beneficiaries from the use right; (d) the wildlife population; (e) the proposed take-off (f) the management capabilities of the applicant (g) details of where the products would be sold; (h) infrastructure present and further development required; (i) a plan for monitoring the wildlife population, to be reviewed and approved by UWA; (j) technical competence of any potential operator; (k) any contractual agreement required with such operators;

- **Power to determine community costs and benefits**

Both the Mozambican wildlife policy and the law establish that communities should share revenues and other benefits from wildlife management, but provisions on this issue are scarce and unclear. The few provisions on benefits determine that communities should be exempt from paying taxes for consumptive use of wildlife and forestry resources or that the government should establish a wildlife tax percentage to benefit communities.⁴⁴ Guidelines as to who exactly is to spend revenues on what were not included in the law. For example, local communities are expected to participate, through local councils, in general monitoring activities⁴⁵ but provisions considering the costs of these activities, which may include control of problem animals and illegal poachers, are absent. It is not clear also if the benefits mentioned above were established in relation to community participation in management activities.

The law from Namibia explicitly gives communities the power to determine how benefits from wildlife resources shall be accrued and distributed. Ownership of resources is vested in the conservancy, which “owns huntable game within it and will be able to buy and sell game, as well as retain all revenue from the use of huntable game”⁴⁶. The conservancy’s constitution should include procedures for members of the community to decide on the policy to be followed by the conservancy committees in the equitable distribution of benefits, including money derived from consumptive and non-consumptive uses of wildlife.⁴⁷

In contrast, the government of Zambia maintains a tight control over community resources board freedom to decide on costs and benefits. For example, negotiation of co-management agreements with the private sector is to be made in conjunction with the ZAWA. In the same line, acceptance of any grants or donations from any sources within or outside the country must have the approval of ZAWA or the Minister, respectively. No autonomy whatsoever is given to the boards to make financial decisions.

In general no provisions are included requiring that a pre-assessment of the socio-economic situation of communities and identification of interests and aspirations of communities are made before allocating wildlife conservation responsibilities. Because the objective should be to maximize benefits and minimize costs to local communities a requirement for an assessment of the costs attached to community wildlife involvement in wildlife management would help to ensure that costs do not exceed the benefits⁴⁸. Furthermore, no provisions are included to ensure that benefits resulting from of wildlife use are applied for community development. This latter aspect would help to assess the role of the law in promoting the objective of community development and could be an important means to avoid conflicts over choices for revenue use.

⁴⁴ Ibid. Article 35(3)(5)

⁴⁵ Ibid. Article 37.2

⁴⁶ See Namibian Regulations No.304 of 1996, Section 155B

⁴⁷ Ibid.

⁴⁸ A few categories of local benefits could include: financial income (resulting from sale of or tax on collected, hunted or captured wildlife, and traditional knowledge usage fees, etc); general community benefits (resulting from employment, schools and/or educational supplies, health centers and/or medical supplies, roads, training opportunities and provision of equipment, information dissemination, etc). These and other categories of benefits could serve as a basis from which choices could be made.

- **Power to revoke or transfer use rights**

In evaluating security of participation rights, and as it has been mentioned before in this work, we find that the “rights” that community members have to manage wildlife and to decide on the use of wildlife are in practice privileges granted to communities (or their representatives). In Namibia the government explicitly reserves for itself the right to withdraw community wildlife management and use rights. For example, the Minister may, at any time, withdraw his or her recognition of a conservancy committee, amend or withdraw any condition imposed, or amend or withdraw any notice. The Minister is obligated to solicit advice before withdrawing the recognition of a conservancy committee or amending or withdrawing any condition or notice, but is not necessarily obligated to follow such advice.⁴⁹ The Mozambican and Zambian laws are silent about this issue, which means that they do not provide a guarantee against arbitrary or unjustifiable limitations of participation opportunities established by its provisions.⁵⁰

With regard to transfer of rights, what most laws contemplate are partnerships between local communities and the private sector in wildlife management. The Mozambican law presents ambiguous wording in this regard. Article 3 on principles for wildlife and forestry management, encourages private sector involvement in order to “add value to and promote development of local communities”. Strategies for this to be put into practice, however, are absent from the law.

Although Namibian and Zambian laws contain provisions for partnerships between communities and the private sector⁵¹, a common characteristic is that no guidelines are included neither to ensure effective contribution by the private sector to community development and wildlife conservation nor to protect communities against possible misconduct by this sector.

The threat that the economic and financial superiority of the private sector may represent to communities, who will generally be negotiating from a position of weakness, is not legally considered. To prevent this, standard or model contracts for all CBNRM agreements may be a good alternative for the protection of community rights against abuses from both the State and the private sector. CBNRM regulations could include basic contractual provisions (model contracts) for community participation agreements with the government and private sector, with clear indications of the contractual responsibilities of the parties. Basic provisions could be related to wildlife protection and conservation roles and responsibilities, the economic and social benefits that communities would expect to receive by entering into wildlife management

⁴⁹ The Namibian law states that “After considering any representations received within the specified period from the conservancy committee concerned, the Minister may in his or her discretion proceed with the withdrawal or amendment in question or refrain from taking any steps”.

⁵⁰ In many regulations on CBNRM governments retain the power to withdraw wildlife management and use rights if they decide that, for example, communities are not conforming with a wildlife management plan (monitoring and enforcing), or that there is a superior public interest that determines a withdrawal of such rights. Although reserves are usually justified under considerations of “public interest” but in many cases such interest is neither explained nor delimited, which means that the rights of local communities are not protected against state arbitrary and unjustifiable decisions. Where restriction are imposed on the exercise of wildlife use rights, both within community land and on other land, clear and solid arguments should be provided, in the same way as the use “state interest” for withdrawal of rights should be justified. In other words, the government may reserve the right not to grant use rights to communities where it is solidly determined that a certain use will be prejudicial to conservation and/or community development interests when practiced by local communities.⁵⁰ However, this must be determined through a transparent procedure and the government should ensure that communities nonetheless benefit from exercise of the restricted uses by others. Discriminatory exclusions, which generally occur in favor of private commercial interests, should not be allowed.

⁵¹ See Section 7(a) of the Zambian Act No.12 of 1998 and Section 155B, of the Namibian Regulations No.304 of 1996

agreements and by involving the private sector in the process accountability mechanism for government agencies and the private sector, and mechanisms to prevent conflicts and facilitate resolution of disputes. Another aspect that might reinforce the “privileges theory” presented in this work is that no means of recourse are available for communities in the event of breach of participation “rights”.

- **Powers to adjudicate disputes**

The power to resolve disputes over wildlife resources is one important aspect of participation and the independence and accessibility of the adjudicating bodies is key.⁵² In this context, in order to ensure that the legitimate rights, expectations and interests of communities and other actors are not undermined, the authority to settle disputes should not be left exclusively on the hands of the government or of any other party. Alternative dispute mechanisms - including access to courts, arbitration, mutual conciliation and to traditional dispute resolution schemes - should always be considered as these diversity of mechanisms provides better opportunities for access to justice.

No guidelines for dispute resolution mechanisms are included in the Mozambican and Zambian laws. It can be said that the same situation occurs in Namibia since this issue is completely left to be decided by community conservancies. Here, the law establishes that the conservancies shall provide for a procedure for dispute resolution in their constitutions. Although the government may always alter such provision in the approval process, it seems that the idea was to give communities the power to decide about how conflicts will be resolved.⁵³ Although positive in principle, this option can be problematic. Determination of forms and powers to adjudicate conflicts at the community level implies, in many cases, dealing with multiple overlapping systems of law. It suffices to say that it is important that studies be undertaken to determine how best the written and oral systems of law coexisting in many African countries can be used to promote community progress and sound wildlife resources management. Provisions for recourse to customary law and dispute resolution schemes have been proposed in many laws in different countries but the mechanisms through which customary and formal legal frameworks will co-exist and inter-relate have not been assessed and established.

4. Conclusion: Balancing the Dual Objective

Environmental conservation and community development are two sides to the same coin. One depends on the other. Despite the rhetoric on decentralization and local community involvement throughout the policy and law, the Mozambican law stands out for its lack of significant provisions to accommodate the CBNRM principles. Further, since no complementary instrument to the law has been adopted yet, CBNRM issues might remain a matter for pilot testing for a long time.⁵⁴ The legal provisions analyzed show that the Mozambican law has failed to address or has, in some cases, inadequately addressed essential issues that would effectively

⁵² See Ribot, 1999.

⁵³ See Namibian Amendment regulations No.304 of 1996, section 155B(3)(i)

⁵⁴ See, on this regard, the IUCN/FAO/DNFFB report of the Second National Conference on CBNRM organized in Maputo in May 2001.

translate discourse into practice. The powers to decide and control that are essential for community's meaningful participation in management of wildlife resources are not being transferred or significantly shared. As far as the law is concerned, communities will continue to play an insignificant role in the decision-making process while the government unilaterally determines the conditions and terms under which communities will intervene and benefit. Its current wording, what the law is proposing is a situation of participation without powers a half-hearted attempt of decentralization still requiring a significant commitment from the part of government to its principles. As decentralization analysts assert, "the distinction between rights and privileges is key in construction of local autonomy, whether for governance issues or for individuals. Privileges are delegated. Privileges are subject to the abuses of the allocating authority who may give them and take them away at whim. Rights, however, are held by citizens who have representation and recourse in the event those rights are denied. Transfers made in the form of rights rather than delegated privileges reflect the degree of government commitment to the decentralization process".⁵⁵

As seen throughout the analysis of laws, governments in Mozambique and elsewhere tend to retain powers that have significant impact in community socio-economic development, such as the power to make financial decisions and to decide on commercial uses of natural resources. Even where powers seem to have been devolved to communities, the government reserves for itself, through approval and other mechanisms, the power to sanction choices made at the community level. Illustrative of this aspect is, for example, the recent back-pedaling by the government of Botswana in a number of progressive reforms introduced in its wildlife sector. One of the most controversial of these was the decision to transfer powers to manage wildlife revenues from communities to district councils⁵⁶.

Specific provisions directed at addressing the issue of balance between conservation strategies and effective community development are absent from the laws, which tend to favor conservation aspects. In an analysis of community-based programs in Zambia, Kenya and Zimbabwe, Gibson (1999) corroborates this perception when he concludes that:

"...these programs did not create incentive structures sufficient to turn rural residents into conservationists; neither did the programs devolve much authority over wildlife to the locals. In fact, the new conservation initiatives retain fundamental aspects of their colonial heritage: ultimate ownership of wildlife remains in the hands of the state, whose agencies control access to the animals using paramilitary scouts. Nearly all of the important decisions about revenues and quotas continue to be made by governmental personnel. Locals remain disenfranchised from wildlife resources."

Representation of communities through community-based organizations has become a popular choice in many CBNRM laws adopted or being drafted in the region⁵⁷. The question that remains here, however, is related to the strategies that should effectively ensure that the interests of the diversity of community members are well defended and that both government

⁵⁵ See Ribot, 2001

⁵⁶ See Africa Policy Information Center issue of March 1, 2001 at www.allafrica.com. Also mentioned in a presentation from the Kalahari Conservation Society (Botswana) to the Maputo Workshop on Strategies of Environmental Advocacy, September 2001.

⁵⁷ This choice is not free from controversy, though, since some analysts argue that as natural resources are public resources, the management powers related to them should be most appropriately devolved to local public institutions. According to Ribot (1999) "elected local government is the appropriate institution to entrust with representation of local populations in matters of public resource use."

agencies and communities who elected the representatives have mechanisms to check performance and make them accountable.

In conclusion, the regulations that must be produced to operationalize the Mozambican law due to its many gaps, should address, with the necessary detail, the actors that might play a significant role in promoting community participation and their responsibilities. In mentioning “local communities” such regulations must reflect the existence of different groups, interests and socio-economic and political influence in this concept. The structures to be chosen for community representation must, therefore, be aware and responsive to the diversity of actors that they are obliged to serve. Furthermore, community recognition and legitimacy of representatives will be determined by how these representatives are chosen, who gets involved in their selection and the accountability strategies that will ensure that they remain committed to defend their constituencies.

The powers that communities must receive for effective participation and involvement in decision-making processes are also key aspects. The power to decide on resources uses and to determine benefit distribution may contribute significantly to both objectives of CBNRM. Motivated by real prospects of socio-economic gain, communities may be more motivated and willing to conserve resources and use them sustainably. For example, requiring that specific programs to balance natural resources conservation and local development be selected by communities themselves with measurable socio-economic outputs will certainly represent a step forward in the establishment of a sense of ownership and participation towards CBNRM initiatives. It is essential for the success of CBNRM initiatives that community members experience direct or even indirect economic and social benefits from such programs. So far, existing legal provisions have failed to provide for this in a clear and unambiguous manner.

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